



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
ZONGTEX GARMENT MANUFACTURING  
(CAMBODIA)  
FINDINGS, RECOMMENDATIONS AND STATUS**

**March 13, 2014**

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## A. Introduction

This report outlines the WRC's findings and recommendations concerning labor practices at two apparel factories owned by Zongtex Garment Manufacturing ("Zongtex").

Zongtex is a Taiwanese-owned firm operating two factories in Cambodia. The primary Zongtex factory, which will be referred to herein as Zongtex I, is located in the western outskirts of Phnom Penh, the capital city of Cambodia. Zongtex I employs approximately 600 workers. Fine World LLC has disclosed Zongtex I as a producer of university-licensed goods for its apparel brand, E5. Zongtex also produces non-collegiate apparel for a variety of firms including Costco, the Army and Air Force Exchange Service, Sears, Ross, Komar Brands, Moret Group, Planet Gold (a brand sold at Macy's and Sears), Derek Heart (a brand sold at Kohl's, Sears, and Belk), Leonard Feinberg, Jese Apparel/Silverwear (a brand sold at JCPenney), and Cato Corporation.

This report also includes findings and recommendations concerning labor practices at Zongtex's second production facility, which is located in Pochentong, approximately five kilometers away from the main facility. This factory will be referred to herein as Zongtex II. A WRC inspection found that this second facility produces the same brands as Zongtex I, and employs approximately 300 workers. Zongtex II is not registered independently of Zongtex I with the Garment Manufacturers Association of Cambodia (GMAC) or with the International Labour Organization's Better Factories Cambodia monitoring program ("BFC")<sup>1</sup>; this means that only Zongtex I is being monitored by BFC. The Cambodian government requires that factories be registered with GMAC and monitored by BFC to obtain export licenses.<sup>2</sup> Zongtex II is essentially operating as an extension of Zongtex I, operating under the same management and producing the same products for the same buyers. These two facilities are the only known facilities operated by Zongtex.

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<sup>1</sup>BFC was launched in 2001 to monitor the working conditions at Cambodia's garment export industry. It is currently monitoring more than 400 factories in Cambodia. For more information, see, [www.betterfactories.org](http://www.betterfactories.org). For further context on BFC, please see a report dated February 2013 by the WRC and Stanford Law School's International Human Rights and Conflict Resolution Clinic "Monitoring in the Dark: An evaluation of the International Labour Organization's Better Factories Cambodia monitoring and reporting program," available at <http://www.workersrights.org/linkedddocs/Monitoring-In-The-Dark-Stanford-WRC.pdf>.

<sup>2</sup>See, Royal Government of Cambodia, Circular on the implementation of the ILO's Better Factories Cambodia Project in the Cambodian Textile and Apparel Sector (July, 2006), § 3 ("[A]ll textile and apparel factories and their duly authorized sub-contractors are required to be registered with ILO's Better Factories Cambodia's office and with the Ministry of Commerce and have to abide by the Labor Law of the Kingdom of Cambodia for export eligibility."), and Ministry of Commerce, Prakas 3896, clauses 3 (September 5, 2011) ("[O]nly the members of the Garment Manufacturers Association of Cambodia (GMAC) that has registered with the Better Factories Cambodia in compliance with the Ministry of Commerce are entitled to the entry into a subcontract.") and 8 ("[F]actories that are not members of the Garment Manufacturers Association of Cambodia (GMAC) shall not be allowed to enter into a subcontract with a factory that has been registered as member of the Garment Manufacturers Association of Cambodia (GMAC).").

The WRC initiated its investigation of working conditions at Zongtex I in August 2010 after receiving complaints from workers regarding the factory's failure to respect their rights to freedom of association, occupational health and safety, and legally mandated benefits. The bulk of these violations began after Zongtex acquired the factory. The WRC's subsequent investigation, the findings of which are detailed in this report, found several instances of noncompliance with Cambodian labor laws and university codes of conduct. The WRC conducted one of its initial inspections of Zongtex I in cooperation with inspectors from BFC.<sup>3</sup>

As reported below, Zongtex has refused to follow the recommendations made by the WRC and BFC regarding Zongtex I, and, furthermore, has refused to comply with multiple legally binding awards of Cambodia's Arbitration Council, the country's leading labor adjudication body, regarding both facilities. In March 2011, after communications from the WRC, the university licensee Fine World LLC, and Fine World's agent March Development, Zongtex I initially took some steps recommended by the WRC and BFC and mandated by the Arbitration Council, such as ending the requirement that workers obtain passes to use the toilet and paying maternity leave at a rate closer to, although still lower than, the appropriate legal calculation. Further details are provided below.

Unfortunately, Zongtex I has committed additional violations in several key areas since this 2011 engagement. These include employing underage workers and failing to ensure that walkways are sufficiently uncluttered to allow workers safe egress in an emergency. Zongtex has also reversed improvements the company had made following the WRC's initial recommendations regarding Zongtex I, including reinstating the restrictive toilet pass system. Zongtex has also failed to remedy any of the violations identified by the WRC at Zongtex II.

Given this lack of progress, the WRC has concluded that Zongtex is unlikely to remedy its violations of Cambodian laws and comply with international labor rights standards unless buyers compel Zongtex management to do so.

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<sup>3</sup>At the time that these investigations were conducted, BFC compliance reports on specific factories were not made public; rather, only the factory and its buyers had access to these reports. While the WRC is thus unable to access or share the official results of the BFC investigation, conversations with BFC staff at the time of the investigation indicate that their assessment was substantively similar to that of the WRC.

## **B. Methodology**

The findings discussed in this report are based on the following sources of evidence:

- Interviews with Zongtex I management between 2010 and 2012;
- In-depth interviews with former and present Zongtex production employees, which were conducted both at the factories and offsite between 2010 and 2013;
- A review of company records;
- A review of relevant Arbitration Council Awards;
- A review of relevant Cambodian labor laws;
- Physical inspection of Zongtex I conducted jointly with ILO Better Factories Cambodia on September 9, 2010, and subsequent follow-up visits on February 12 and August 8, 2011, and on March 28, 2012; and
- Physical inspection of Zongtex II on December 29, 2011.

## **C. Zongtex I: Findings, Recommendations and Current Status**

### **1) Factual Background**

In December 2009, Zongtex acquired the factory referred to here as Zongtex I, which had operated since 2005 as Perfecta Garment. At the time of Zongtex's takeover of the factory, Perfecta employed around 400 workers, some of whom had been employed for four or five years.

The factory's managers did not provide any information about the takeover to its workers, who remained unaware of the change in ownership until they received their February 2010 pay slips. This pay slip indicated that they now were employed by Zongtex, rather than Perfecta. Documents reviewed by the WRC indicated that Zongtex had, in fact, taken over the company in December 2009, two months before the workers became aware of the change. According to workers' testimonies, there was no change in the factory's products or buyers during this period, and there was no interruption of its operations.

The pay slips that Zongtex I issued to workers in February 2010 revealed that the company had changed their terms of employment in ways that were unfavorable to the workers. Examples include the elimination of certain benefits, including a seniority bonus, and changes in the calculation of their attendance bonus. Under Perfecta, deductions in attendance bonuses in cases where workers took leave were proportional to the amount of work time the worker missed. Under Zongtex, workers who missed time from work, even with prior permission from their managers, lost their entire attendance bonus for the relevant period. As will be discussed below in further detail, these changes violated Cambodian law in two respects: First, some of Zongtex's new personnel policies were illegal on their face. Second, under Cambodian law, new owners are required to honor the previous owners' employment contracts with the firm's workers.<sup>4</sup>

The union that represented the factory's workers, the Workers' Rights Promotion Trade Union, promptly contacted the factory management regarding the decreases in workers' bonuses that were reflected in their February 2010 pay slips. However, the factory management refused to consider changing its new policies, as they claimed that the factory legally had closed at the end of December, and been reopened by Zongtex in January. The management falsely claimed to the workers that because Zongtex was the new owner of the factory, it was free to set new conditions

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<sup>4</sup>See, Cambodian Labor Law, §87 ("[I]f a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of funds to form a company, all labor contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise. The contracts cannot be terminated except under the conditions laid down in the present Section. The closing of an enterprise, except for acts of God, does not release the employer from his obligations as stated in this section three. Bankruptcy and judicial liquidation are not considered as acts of God.").

of employment without regard to previous arrangements between Perfecta and the factory's workers. As noted above, this is an inaccurate explanation of the law, which stipulates that "all labor contracts in effect on the day of the change [in ownership] remain binding between the new employer and the workers of the former enterprise."<sup>5</sup> Following this failed negotiation, the Zongtex I workers commenced a strike that lasted from February 5 to February 16, 2010, demanding that the company reinstate their previous benefits and terms of employment.

During and after the strike, Zongtex management refused to allow any of the striking workers to return to work unless they agreed to sign a new employment contract with the management that ratified the company's retraction of their benefits. Signing such a contract would mean that workers had sacrificed benefits that they had accrued over time and that they would have to undergo a new probationary period. This refusal to reinstate the workers under their existing employment contracts effectively amounted to dismissing the striking workers, which is illegal under Cambodian law.<sup>6</sup>

While the workers were on strike, a representative of the Ministry of Labor and Vocational Training called upon the union and the company to meet for a formal conciliation (i.e., mediation) process in accordance with the procedures required under Cambodian labor law.<sup>7</sup> The factory's management, however, refused to even allow the Ministry's representatives to enter the factory to convene a conciliation meeting.<sup>8</sup> Both refusing the Ministry's representative access to the facility and refusing to attend a conciliation session called by the Ministry constituted violations of Cambodian law.<sup>9</sup> Following the failed attempt at conciliation, the Ministry's representative forwarded the case to the Arbitration Council on February 10, 2010.<sup>10</sup> The Council then scheduled an arbitration hearing. Under Cambodian law, the Arbitration Council is

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<sup>5</sup>Cambodian Labor Law, §87.

<sup>6</sup>See, id., §332("[A] strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid. The worker shall be reinstated in his job at the end of the strike.").

<sup>7</sup>See, id. § 303 ("[I]f there is no planned settlement procedure in a collective agreement, the parties shall communicate the collective labor dispute to the Labor Inspector of their province or municipality. However, the Labor Inspector can take legal conciliation proceedings upon learning of the collective labor dispute even though he has not been officially notified.").

<sup>8</sup>See, Cambodian Labor Law, §346 (1)(a); ("Labor Inspectors and Controllers possessing the proper identification are authorized: to freely enter any enterprise within the jurisdiction of their inspection, without prior notification of the time.").

<sup>9</sup>See, Cambodian Labor Law, §306; ("[D]uring the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings to which the conciliator calls them. Unjustified absence from any such meeting is punishable by a fine set in the rules of Chapter Sixteen.").

<sup>10</sup>See, id., §§, §§308("[I]n the absence of an agreement, the conciliator shall record and indicate the key points where the conciliation failed and shall prepare a report on the dispute. The conciliator shall send such record and report to the Minister in Charge of Labor within forty-eight hours at the latest after the conclusion of conciliation."), 310 ("[I]n a case covered by paragraph c) of Article 309 above, the Minister in Charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator as specified in Article 308 above. The Council of Arbitration must meet within three days following the receipt of the case.").



authorized to hear and issue awards in labor disputes that concern workers' collective rights and benefits.<sup>11</sup>

Although it was legally required to do so, Zongtex did not attend the hearing scheduled by the Arbitration Council, and gave no justification for its failure to appear.<sup>12</sup> On March 5, 2010, the Arbitration Council issued an award (i.e., an official determination) in the case. The Arbitration Council ordered Zongtex to reinstate the striking workers and restore the more favorable terms of employment that had been in force when Perfecta had managed the factory. Zongtex failed to respond formally to the Council's decision, with the result that, under Cambodian law, it became legally binding on the company.<sup>13</sup> Despite its binding nature, Zongtex has failed to implement the Arbitration Council's award.

## **2) Freedom of Association: Mass Retaliatory Termination of Workers**

### Findings

As described above, following the strike that took place during February 2010, Zongtex refused to allow any of the striking workers to return to work at the factory under their existing employment contracts. Instead, the company informed employees who attempted to return to

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<sup>11</sup>The Arbitration Council was established by the Cambodian Government in 2003. The role of the Arbitration Council is to resolve labor disputes through conciliation and arbitration. While the Arbitration Council is not a court, it is endowed with legal decision-making authority with regard to labor disputes. *For further information, see* <http://arbitrationcouncil.org/>

<sup>12</sup>*See*, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 99; Clause 20 (2004) (“[D]uring the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them”).

<sup>13</sup>*See*, Cambodian Labor Law, §313; (“[W]ithin fifteen days starting from the date of its receipt of the case, the Council of Arbitration shall communicate its decision to the Minister in Charge of Labor. The Minister shall immediately notify the parties. The latter have the right to appeal this arbitral decision by informing the Minister by registered mail or by any other reliable method within eight calendar days from the date of receiving the notification.”), and §314; “The final arbitral decision, if not appealed by either party, shall be implemented immediately. This decision shall be filed and registered the same way that a collective agreement is.”) *For further details see also* Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 99; Clause 40 (2004) (“[E]ach of the parties may lodge an opposition to the arbitral award by informing the Minister of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation by registered letter or any other reliable means, within eight calendar days of notification. If the last day of this period is not a working day for civil government officials then the period shall be extended to include the next working day. If either party to a dispute lodges such an opposition within the specified timeframe, the award shall be unenforceable. In this case, if the dispute is about a right relating to the application of a rule of law (for example, a provision of the Labour Law, of a collective bargaining agreement, or an arbitral award that takes the place of the collective bargaining agreement) the disputant party may bring the case before the court of competent jurisdiction for final resolution.”) *and* Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 99; Clause 41 (2004) (“[I]f no opposition has been lodged within the specified timeframe as indicated in Clause 40 above, the arbitral award shall become final, and the disputant parties shall be bound to implement it.”) *and* <http://www.arbitrationcouncil.org/InformationforParties/OverviewoftheArbitrationHearingProcess/tabid/64/language/en-US/Default.aspx>

work that they must sign new employment contracts, which offered terms that were inferior to those in their existing employment contracts.

In effect, the conditions the company set amounted to the mass termination of these workers' existing employment contracts. As a result, these conditions violated Cambodian labor law, which protects workers' right to return to their existing positions after a strike, stating that "the worker shall be reinstated in his job at the end of the strike."<sup>14</sup>

On March 5, 2010, the Arbitration Council issued a binding award directing Zongtex to reinstate the workers who had participated in the strike under the same terms of employment they had enjoyed under the factory's prior ownership.<sup>15</sup> To this date, however, Zongtex has continued to deny these workers reinstatement under the terms they enjoyed at the time of the strike.

### Recommendations

Zongtex should immediately implement the award of the Arbitration Council, including offering reinstatement to all 322 workers who participated in the February 2010 strike to their previous positions under their prior terms of employment, and should compensate these workers for all losses of earnings they may have suffered as a result of the company's prior failure to do so.

## **3) Child Labor: Illegal Employment of Underage Workers**

### Findings

The WRC found that, since 2011, Zongtex has violated Cambodian labor law concerning the minimum age at which workers are to be employed. Workers testified that Zongtex I employs roughly 20 workers who are 15 or 16 years of age.

While Cambodian law permits the employment of workers who are as young as 15 years of age, it establishes certain protections for such employees.<sup>16</sup> Specifically, employers must maintain a register of all workers less than 18 years of age<sup>17</sup> and must obtain a letter of permission from the

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<sup>14</sup> Cambodian Labor Law, §332.

<sup>15</sup> See, Arbitration Council Award 17/10 (Zongtex Garment), order re additional issue ("Order the employer to reinstate workers under the same conditions as with the former employer").

<sup>16</sup> See, Cambodian Labor Law, § 177 (1) ("[T]he allowable minimum age for wage employment is set at fifteen years").

<sup>17</sup> Ibid. ("[A]ll employers must keep a register of children aged less than eighteen years old, whom they employ, indicating their date of birth. This register must be submitted to the Labor Inspector for visa, observation and potential warning.").

parents or guardians of such workers to employ them.<sup>18</sup> In addition, the law requires that the “working hours of children must in any case be not more than eight hours per day.”<sup>19</sup>

Zongtex I regularly requires its employees to work overtime; further details on this issue appear in the section of this report on Working Hours. Contrary to Cambodian law, Zongtex does not exempt the 15 and 16-year-olds working at Zongtex I from this requirement. Instead, workers report, when outside auditors inspect the facility, factory supervisors instruct the 15 and 16-year-olds working in the plant to hide in the bathrooms until the persons in charge of the production lines to which they are assigned (their “line leaders”) call them to return.

The WRC has not been able to verify whether Zongtex complies with the law’s other requirements pertaining to employment of workers at this age.

### Recommendations

Zongtex must comply with Cambodian law regarding the employment of workers under the age of 18. This includes refraining from requiring these employees to work more than eight hours per day. At the same time, Zongtex must also refrain from any discrimination against these workers due to their being prohibited from performing overtime. In order to protect these employees from such discrimination, the WRC recommends that Zongtex employ them on open-ended work contracts (Undetermined Duration Contracts or “UDCs”), and provide them with proper training and skills development in line with international standards.<sup>20</sup>

## **4) Wages, Benefits, and Labor Contracts**

### *a. Illegal Change of Terms of Employment*

### Findings

The changes to workers’ terms of employment that Zongtex imposed following its acquisition of Perfecta Garment violated Cambodian labor law. These changes included elimination of several benefits workers previously enjoyed, including their seniority bonuses, and changes to the manner in which the company calculated their attendance bonuses. Imposing these changes

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<sup>18</sup>Id. at § 181; (“[N]o unemancipated child of either sex less than eighteen years old can contract to work without the consent of his guardian.”).

<sup>19</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 144, clause 2 (2002) (“[D]aily working hours of children must in any case be not more than eight hours per day and the break between working hours must be a minimum of thirteen consecutive hours.”).

<sup>20</sup>See, ILO Recommendation 146, §12 (2) (“[M]easures should likewise be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions and schools for vocational or technical education and to formulate standards for their protection and development.”).

violated Section 87 of the labor law, which states that, “if a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of funds to form a company, all labor contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise.”

On March 5, 2010, the Arbitration Council issued an award against the company, ordering Zongtex to reinstitute its previous personnel policies.<sup>21</sup> Because Zongtex has failed to do so, it remains in violation of not only Cambodian law, but also collegiate codes of conduct which require compliance with national laws.<sup>22</sup>

### Recommendations

The WRC recommends that Zongtex reinstate the former terms of employment (under Perfecta) that were subsequently changed to be less favorable to employees. In addition to reinstating these terms, Zongtex should make workers whole for any losses they suffered as a result of these illegal changes. Such measures should include reinstating workers’ seniority bonuses and pro rata payment of attendance bonus to employees whose absences from work had prior authorization.

#### *b. Withdrawal of Legally Mandated Seniority Bonuses*

### Findings

Cambodian labor law mandates that workers with more than one year of service receive monthly seniority bonuses of one dollar, plus one additional dollar per year of service, up to a maximum of eleven US dollars per month.<sup>23</sup> The law makes no distinction based on whether workers are

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<sup>21</sup>See, Arbitration Council Award 17/10 (Zongtex Garment), order re additional issue (“Order the employer to reinstate workers under the same conditions as with the former employer”).

<sup>22</sup>See, Collegiate Licensing Company, Labor Code Standards, Article II(A) (2003) (“Legal Compliance: Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles. Where there are differences or conflicts with the Code and the laws of the country(ies) of manufacture, the higher standard shall prevail, subject to the considerations.”). See also, Ross Stores Inc., Vendor Compliance Manual 2011, Vendor Code of Conduct; Section C, Labor Standards: (“Vendors must comply with applicable national and international laws and regulations with regard to their employment practices and policies, including minimum wage, overtime, and benefits requirements relating to the vendor and to any contractor or subcontractor.”).

<sup>23</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification 17, clause 5 (2000): (“[W]orkers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows: 5.1 those who have been working from one year up shall receive a seniority bonus of US\$ 2 per month; 5.2 those who have been working from two years up shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year; ...”).

See also, Ministry of Labor and Vocational Training; Notification 41, clause 3 (2011): (“[S]eniority bonus: A) Workers/employees who have worked in the factory, enterprise or establishment more than one year shall receive seniority bonus as follows:

Year of seniority	1	2	3	4	5	6	7	8	9	10	11
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working under UDCs or Fixed Duration Contracts (FDCs); factories must pay workers these bonuses regardless of whether the workers are employed under temporary or open-ended contracts, and regardless of any change in the ownership of the factory where they work.

The WRC found that, starting in January 2010, Zongtex I ceased paying the factory's workers legally required seniority bonuses. Prior to this time, the majority of the factory's workers received seniority bonuses of two to five US dollars per month depending on their length of service. In its award of March 5, 2010, the Arbitration Council determined that the company is required to pay workers these bonuses.<sup>24</sup>

### Recommendations

Zongtex should pay seniority bonuses to all employees in accordance with Cambodian law, reflecting the total length of time that they have worked at the factory, and should compensate workers for all losses they have incurred as a result of the company's failure to do so since its acquisition of the factory from Perfecta.

#### *c. Underpayment of Statutory Attendance Bonus*

### Findings

Cambodian labor law requires that employers pay each worker an attendance bonus of at least five dollars for each month during which the worker has perfect attendance.<sup>25</sup>

From January 2010 to March 2011, Zongtex I set the attendance bonus at six US dollars per month, which, at that time, was one US dollar above the legal minimum. In 2013, following a statutorily mandated increase in the minimum attendance bonus to 10 USD per month, Zongtex increased the attendance bonus to 12 USD per month.<sup>26</sup>

However, after Zongtex acquired the factory, it instituted a policy that an employee forfeits the entire monthly bonus if she is absent from work for any reason during the preceding month, even

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Amount received in dollar per month	0	2	3	4	5	6	7	8	9	10	11
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B) Workers/employees who have seniority of any above year shall receive seniority bonus of that year (as in the above table) except those who have seniority beyond 11 years upwards shall receive seniority bonus of the 11<sup>th</sup> year, i.e. 11 USD (eleven United States dollars) per month.”).

<sup>24</sup>See, Arbitration Council Award 17/10 (Zongtex Garment), order re Issue 3: (“Order the employer to continue providing a seniority bonus to workers who used to receive the bonus provided by the former employer.”).

<sup>25</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Notification 17, clause 3; (2000) (“[W]orkers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.”).

<sup>26</sup>See, Ministry of Labor and Vocational Training; Notification 230, clause 2(2013); (“[W]orkers/employees who have come to work regularly every working day of each month without absence shall receive at least USD 10 (ten) of attendance bonus per month.”).

if the worker has obtained prior permission to take leave, or is recovering from a work-related injury.

The Arbitration Council has determined that an employer cannot deduct from a worker's attendance bonus on the basis of the worker taking certain categories of permitted leave during the relevant month, including, but not limited to paid annual leave.<sup>27</sup> Moreover, the council has held that when a worker takes certain other types of permitted leave, including, among others, paid sick leave, the employer may only deduct from a worker's attendance bonus the fraction of the bonus proportional to the share of the preceding month's working days that the worker was absent for those types of leave.<sup>28</sup>

Contrary to the Arbitration Council's holdings on this issue,<sup>29</sup> Zongtex deducts workers' entire attendance bonus when they have been absent from work during the preceding month for any of these reasons. As a result, Zongtex's practices in this area continue to violate Cambodian labor law and, by extension, university and buyer codes of conduct.

### Recommendations

Zongtex should cease its current practice of illegally denying workers their whole attendance bonus or making illegal deductions to the attendance bonus based on workers' taking legally protected forms of leave. The company should instead bring its practice in this area into compliance with the Arbitration Council's binding precedents concerning this issue.<sup>30</sup>

To be in compliance with Cambodian law, Zongtex must cease deducting any funds from workers' monthly attendance bonuses due to workers' taking annual leave during the relevant month. In addition, deductions from workers' attendance bonuses due to their having taken sick leave during the relevant month must be taken only in proportion to the share of the preceding month's work days in which such leave was used. Finally, Zongtex must fully compensate workers for all prior deductions from or denials of their attendance bonuses which violated the Arbitration Council's binding precedents on this issue.

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<sup>27</sup> See, Arbitration Council Award 52/05 (Huy Fu (Cambodia) Co., Ltd.), issue 2; ("The Arbitration Council agrees with the previous interpretation of the Arbitration Council that the provision of the attendance bonus is to motivate workers who work regularly and who do not take leave by their own unilateral decision or without permission. Therefore, the Arbitration Council finds that [...] In a case where the company allows the workers to take paid annual leave, the regular attendance bonus of US\$5 of the workers will not be cut during the working days of the workers who take annual leave.")

<sup>28</sup> See, Arbitration Council Award 63/04 (Shine Well Industry Co Ltd.), issue 5; ("Because Notification No. 17 does not clearly provide for this issue, the Arbitration Council decides to approach an equity principle which allows the employer to deduct an attendance bonus proportional to the number of days which workers took sick leave for each month.")

<sup>29</sup> As per Cambodian Labor Law §312 (2), these decisions "are in equity for all other disputes."

<sup>30</sup> See, e.g., Arbitration Council Awards 52/05 ((Huy Fu (Cambodia) Co., Ltd.)) and 63/04 (Shine Well Industry Co Ltd.).

*d. Failure to Provide Legally Mandated Paid Sick Leave*

Findings

The WRC found that Zongtex violates its own internal work rules and Cambodian law by failing to provide workers with paid sick leave.

Cambodia's labor law requires any company with more than eight employees to formulate internal work rules.<sup>31</sup> These internal work rules must include language on provision of sick leave.<sup>32</sup> Before they are posted in the work place, the internal work rules must be approved by the Ministry of Labor.<sup>33</sup> An established practice of the Ministry of Labor is to approve only internal work rules that provide paid sick leave, indicating that the Ministry regards paid sick leave as a requirement for all firms.<sup>34</sup> Given this Ministry practice, BFC treats paid sick leave as a compliance requirement as well.<sup>35</sup>

Cambodian law also makes specific reference to workers who suffer work-related injuries or illnesses, stipulating that workers must receive their regular wage for the first four days that they are off the job due to such an injury, and are entitled to additional compensation after four days.<sup>36</sup>

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<sup>31</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification no. 14 (August 16, 2002); Notification on the Internal Work Rules of the Enterprise, clause 1; (“[T]he owners or directors of the above mentioned [businesses] which employ at least 8 employees shall have internal rules for their enterprises.”)

<sup>32</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Appendix for Notification no. 14 (October 16, 2002); Model Internal Rules, clause 4; (“[-]working hours including both night work and work shifts; - Weekly time off; - Annual leave, public holidays and special leave; - Maternity leave; - Sick leave.”)

<sup>33</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Notification no. 14 (August 16, 2002); Notification on the Internal Work Rules of the Enterprise, clause 3; ) “[T]he internal rules shall be organized by the owners or directors of the enterprise after discussion with the staff representatives within three months after the opening of the enterprise. After their creation, the owners or directors of the enterprise shall send two copies of these internal rules with the written ideas and opinions of the shop stewards in order to apply for a visa from the labour inspector before applying the rules.”)

<sup>34</sup> The standard rate for sick leave payment is 100% of the wages for the first month of sick leave, 60% of the wages from the second and third month of sick leave, and for the fourth to sixth month the sick leave is unpaid, but the position will be kept.

<sup>35</sup> See, Stanford Law School and WRC, “Monitoring in the Dark,” Appendix A: ILO Better Factories: IMS Question Flow Checklist; re Sick leave, ¶ A-7.

<sup>36</sup>Cambodian Labor Law, §252; (“[T]he victim or his beneficiaries are entitled to compensation from the manager of the enterprise or the employer in the event of work-related accidents inflicted on him and resulting in temporary incapacitation. However, this compensation can only be paid on the condition if the accident has caused incapacitation for longer than four days. If the work-related accidents lead to a temporary incapacitation of four days or less, the victim is entitled to just his regular wage.”); Ministry of Social Affairs, Labor Vocational Training and Youth Rehabilitation, Prakas 243/2, §8 (2002) (“[I]n case of an occupational accident resulting in a temporary or permanent disability accounting for over 20%, and in inability to return to work, that is, the accident causes temporary absence at work, the victim shall be entitled to daily allowances beginning from the 5th day after the accident occurred as long as he/she has the certified letter of physician recognized by MOSLAVY, in addition to

Zongtex's internal work rules stipulate "that for those who take sick leave and obtain a proper medical certificate, the employer will pay full wages for the first month, 60% of the wages for the second and third month. From the fourth to the sixth month, the company will not provide wages, but will keep the post for the worker."

Workers reported that Zongtex does not pay employees when they are absent from work even when workers have properly submitted medical certificates prescribing such leave. This is true both for workers who are experiencing non-work-related illnesses, and for workers who have been injured on the job. By failing to provide paid sick leave, Zongtex is violating both its own work rules and Cambodian labor law as it is commonly interpreted.

### Recommendations

Zongtex must pay employees for all days from which they are absent from work due to illness. The company should fully compensate any workers who have lost income in the past due to the company's failure to provide paid sick leave, with interest.

### *e. Illegal Use of Temporary Employment Contracts (Fixed Duration Contracts)*

### Findings

All Zongtex I workers are currently employed on consecutive temporary employment contracts (FDCs). At the time the WRC began its assessment of the factory's labor practices, the company hired all of its employees for three-month terms. Workers report that since that time, Zongtex I has begun employing the majority of its workers on six-month FDCs instead of three-month FDCs.

At the expiration of each worker's FDC, the company decides, at its sole discretion, whether to offer workers another contract of the same duration. Zongtex I does not employ any of its production workers on open-ended contracts (Undetermined Duration Contracts or "UDCs"), which provide access to important statutory rights, including protection from arbitrary dismissal. A number of Zongtex I employees have worked at the factory under such successive contracts for more than two years. This practice violates Cambodian labor law, which requires that after two years of employment in the same job, workers must be employed under UDCs, not FDCs.<sup>37</sup>

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receiving the allowances provided in article 7. The daily allowances shall be equivalent to the average daily wage of the victim."), Arbitration Council Award 13/04 (Genuine Garment Factory co., Ltd (Cambodia)) order re Issue 2A ("When workers are sick, or injured while working on the job, and it is confirmed by a doctor, Genuine Garment must provide the following: - 100% of regular wages for the first month - 60% of regular wages for the second and third month, - Security of job and position for the fourth, fifth and sixth months.").

<sup>37</sup>Cambodian Labor Law, § 67 (2) ("[T]he labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the



Even in the case of those employees who have worked at the factory for less than two years' time, Zongtex's use of successive three-month contracts is inconsistent with respect for international labor standards and relevant codes of conduct. Cambodian garment factories' practice of employing their permanent workforces on successive FDCs has been criticized by BFC and other international labor and human rights experts as undermining employment security and basic worker rights.<sup>38</sup> In 2011, Yale Law School's Allard K. Lowenstein International Human Rights Clinic published a report detailing how the practice of employing workers on repeated FDCs contributes to a myriad of labor rights abuses that seriously undermine factories' compliance with buyer codes of conduct.<sup>39</sup> Moreover, the practice clearly contravenes international labor standards as the ILO Termination of Employment Recommendation (Recommendation 166) disfavors use of short-term contracts that have the effect of denying workers the protections stipulated in its Convention on Termination of Employment (Convention 158).<sup>40</sup>

### Recommendation

Zongtex should ensure that all workers who have passed their probationary period are employed on UDCs, except for those employees whom it hires to perform work that is truly temporary in nature. In the case of workers whom the factory currently employs under FDCs, but whose work is not temporary in nature, the factory should immediately convert these contracts into UDCs.

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maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration.”); Arbitration Council Award 10/03 (Jacqsintex Garment Co., Ltd.) order re Issue 1 (“The Arbitration Council finds that contracts of employment of fixed duration shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years.”).

<sup>38</sup>See, ILO Better Factories, “Better Factories concerned about labor contracts,” ILO Better Factories Cambodia Quarterly Newsletter, (October, 2006).

<sup>39</sup>See, Yale Law School Allard K. Lowenstein International Human Rights Clinic; “*Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*” (August 2011), available at

[http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/Cambodia\\_TearingApartattheSeams.pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf).

<sup>40</sup>See, International Labour Organization; Recommendation 166 ([NAME]), § 3; (“(1) [A]dequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation. (2) To this end, for example, provision may be made for one or more of the following:

(a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;

(b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;

(c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.”).

*f. Failure to Provide Legally Mandated Severance Benefits*

Findings

Cambodian law requires that at the expiration of each FDC, the employer must pay the employee in question severance benefits in an amount equal to five percent of the employee's total earnings during the contract's term.<sup>41</sup> Total earnings in this case must include payments for overtime and any bonuses paid above the worker's basic wage.<sup>42</sup> The WRC's investigation found that when employees completed FDCs, Zongtex failed to pay them the full legally required amount. Instead, the company paid workers five percent of their basic wage alone, excluding overtime and any bonuses.

The WRC recommended that the company cease this practice and begin paying workers the full legally required amount. As of October 2013, workers report that Zongtex has changed its practices and now provides workers the appropriate amount at the expiration of their employment contracts.

Recommendations

Zongtex should make whole all workers to whom it previously paid severance benefits below the legal minimum by paying them the additional amounts that they are owed, plus interest.

*g. Illegal Underpayment of Maternity Benefits*

Findings

Cambodian law requires that employers allow female workers three months of leave of absence from work following the birth of a child. During this leave, these employees must be paid 50% of the total income they would otherwise receive.<sup>43</sup> The Arbitration Council has held that the amount the employer must pay should be calculated based on the worker's average monthly wages during the twelve months prior to the commencement of her maternity leave, including earnings from fringe benefits and overtime work.<sup>44</sup>

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<sup>41</sup>See, Cambodian Labor Law, § 73 (6); (“[A]t the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.”).

<sup>42</sup>See, Cambodian Labor Law, § 103; (“[W]age includes, in particular: actual wage or remuneration; overtime payments; commissions; bonuses and indemnities; profit sharing; gratuities; the value of benefits in kind; family allowance in excess of the legally prescribed amount; holiday pay or compensatory holiday pay; amount of money paid by the employer to the workers during disability and maternity leave.”).

<sup>43</sup>See, *id.*, § 183 (“[D]uring the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.”).

<sup>44</sup>See, Arbitration Council Award 49/04 (Ho Hing Garment Company) order re Issue 2 (“Order the employer to provide women workers who take maternity leave as following: 1) 90 days leave; and 2) Half wages and all

While Zongtex allows female employees to avail themselves of maternity leave, it does not pay such workers the full amount required by law. Based on a review of company documents, the WRC found that, at the time of the initial assessment, Zongtex paid workers taking maternity leave only 50% of their base wage for the statutory three month period, excluding overtime and fringe benefits from its calculation.

Workers reported that the company subsequently increased the amount provided to workers as maternity benefits. According to WRC calculations, however, this level remains below the legal minimum. While it appears to reflect fringe benefits, the amount workers are receiving is so low that the WRC concludes that Zongtex is not including overtime earnings in its calculations. As a result, the company remains in violation of Cambodian law and, by extension, relevant codes of conduct.

### Recommendations

As required by Cambodian law, Zongtex must calculate the maternity pay it provides to eligible female workers based on their total earnings during their preceding twelve months. The factory also must make whole all workers who previously were paid less than the legal minimum during their maternity leave by paying them the amount that they are legally owed, plus interest.

## **5) Working Hours: Involuntary and Excessive Overtime**

### Findings

Under Cambodian law, workers cannot be compelled to work overtime; all work outside normal working hours must be voluntary.<sup>45</sup> According to workers, Zongtex I managers coerce employees to perform overtime.

In addition, the amount of overtime at Zongtex I exceeded the maximum allowed under Cambodian law. Cambodian law allows factories to ask workers to work overtime for only up to two hours per day, for a total of ten work hours per day.<sup>46</sup> In 2012, workers reported, Zongtex I typically required workers to work three hours of overtime per day. During that year, workers reported repeated incidents of workers fainting at the plant. In 2013, workers generally reported

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perquisites. This amount will include the seniority bonus and the attendance bonus of the 12 month period before the taking of leave and will be divided by 12 months in order to calculate the average amount of each month; then divided by two in order to find the amount to be provided to the women workers in each month.”).

<sup>45</sup>See, Ministry of Social Affairs, Labor Vocational Training and Youth Rehabilitation, Prakas80, clause 4 (1999)(“[A]n arrangement for overtime work shall be executed on a voluntary basis, which means the owner or director of an establishment/enterprise shall not coerce or discipline the workers who do not volunteer to work overtime.”)

<sup>46</sup>See, Cambodian Labor Law, §197(c) (“[H]ours of work cannot exceed ten hours per day.”).

performing two hours of overtime each day, and reported fewer instances of fainting, indicating that the excessive overtime may be one factor triggering workers to faint.

Zongtex management claimed to the WRC during the initial assessment visit that it was the company's policy not to force workers to work overtime. However, workers have consistently reported that they feel strong pressure to work overtime. Each day, managers instruct workers to complete a form indicating that the workers are willing to work "voluntary" overtime. If they do not express willingness to work overtime, workers report, managers note their names, call them to the factory office, and berate them, asking, "Why don't you cooperate? Don't you know we need to finish these orders?"

Often, workers report, if they refuse to perform overtime on a given day, their line leaders press them to commit to work overtime the following day. While the WRC did not identify cases of Zongtex punishing workers who declined to work overtime, workers reported that they understood their line leaders' statements to imply that they would be at risk of retaliation if they did not perform the overtime.

### Recommendations

Zongtex I must cease coercing its workers to work overtime. If Zongtex does, in fact, have a policy requiring that all overtime is voluntary, this policy should be fully implemented. If not, such a policy should be established. Management should ensure that any such policy is clearly understood and enforced. The voluntary overtime policy should be read aloud by the line leaders to each line and posted prominently.

Management must comply with Cambodian law by limiting overtime to two hours per day, for a total of no more than ten total work hours per day.

Supervisory personnel should receive training in proper communication practices and should be clearly instructed that coercion of workers to work overtime will not be tolerated.

## **6) Occupational Health and Safety**

### *a. Restricted Access to Toilets and Inadequate Toilet Facilities*

#### Findings

The WRC found that Zongtex requires workers to obtain a "toilet pass" from their line leaders in order to use the toilet. Moreover, Zongtex provides only two passes to each production line, which means that only two workers from any given production line can use the toilets at the same time. As each production line has roughly 40 workers, and workers often had to wait in line once they arrived at the bathrooms, employees report that they often wait up to ten or fifteen

minutes for one of their co-workers to return with one of the passes before they could go to the toilet. This was a source of significant stress on the job; as workers were required to continue working while waiting for their turn, they had to maintain a constant lookout for their colleagues to return so that they could be the next one to take the pass, before another worker attempted to take her turn. If they failed to obtain the card at that opportunity, they would then have to wait another fifteen minutes.

Zongtex also prohibits employees from using the toilet during the first and last fifteen minutes of the workday, and during their rest breaks.

Finally, before using the toilet, a worker must show her factory ID card and the toilet pass to a security guard stationed at the toilet entrance. The guard notes the time that the employee enters and exits the toilet. If the guard feels the worker is spending too long in the bathroom, the guard may question the worker or inform managers, who may call workers to the factory office to be reprimanded.

These restrictions on workers' access to the toilets have resulted, in at least one instance, in a worker having to relieve herself at her workstation.

In addition to mental humiliation, the restrictions the company places on workers' access to the toilets may lead to physical health problems. Workers testified that after the adoption of the toilet pass system, they reduced their personal water consumption by half, from one liter to a half liter per workday, in order to reduce the number of times they would have to go to the toilets. Reduced intake of water and restriction of urination and defecation has been linked to more serious health problems.<sup>47</sup> Some workers interviewed by the WRC reported occasionally experiencing pain when relieving themselves. The fainting incidents mentioned above also may be related to dehydration.

The WRC informed Zongtex that the restrictions on employees' access to toilet facilities violated basic protections for occupational health and safety under buyer and university codes of conduct.<sup>48</sup> In response, the company ceased requiring employees to have passes to use the toilets

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<sup>47</sup>See, U.S.Department of Labor, Occupational Safety and Health AdministrationHSA,;"Memorandum of April 6, 1998 re Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities"; ("[A]dverse health effects that may result from voluntary urinary retention include increased frequency of urinary tract infections which can lead to more serious infections and, in rare situations, renal damage [...] UTIs during pregnancy have been associated with low birthweight babies, who are at risk for additional health problems compared to normal weight infants[...] Medical evidence also shows that health problems, including constipation, abdominal pain, diverticuli, and hemorrhoids, can result if individuals delay defecation.").

<sup>48</sup>*Ibid.* ("[T]he language and structure of the general industry sanitation standard reflect the Agency's intent that employees be able to use toilet facilities promptly. The standard requires that toilet facilities be 'provided' in every workplace. The most basic meaning of 'provide' is 'make available.'...Toilets that employees are not allowed to use

in March 2011. In November 2013, however, Zongtex reinstated the toilet pass system. Moreover, the company continued other restrictive practices related to workers' access to toilets, including stationing a guard in front of the toilets to record when workers enter and leave, and prohibiting workers from using the bathrooms during and immediately prior to their break times.

Finally, in the initial factory inspection, the WRC found that Zongtex did not provide any soap in the factory's washrooms. Later, the company installed soap dispensers in the washrooms, but filled these with detergent instead of hand soap. This practice violates Cambodian law, which requires that workers be provided with soap in workplace bathrooms.<sup>49</sup>

### Recommendations

The WRC recommends that Zongtex immediately discontinue its practices of requiring passes to enter toilets and prohibiting workers from using the toilets during break times. In addition, the practice of recording the time that workers enter and exit the toilets should be discontinued. Finally, Zongtex must provide adequate hand soap in the factory's washrooms.

### *b. Excessive Temperatures*

### Findings

The WRC found that the ambient temperature in the Zongtex I sewing section was 35 degrees Centigrade (95 Fahrenheit), an excessively hot level. While the company had installed a wall-mounted evaporative cooling system in this area, the system's cooling pads were not functioning.

At the time of the WRC's first inspection, Zongtex I also lacked thermometers. This is a violation of Cambodian law, which requires factories to post thermometers and to keep daily records of peak temperatures.<sup>50</sup> While thermometers were later installed, the temperature inside

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for extended periods cannot be said to be 'available' to those employees.... Timely access is the goal of the standard."); [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=2293](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=2293); Reebok, *Human Rights Guidelines*, p. 41 (stating that any factory procedure relating to toilet use must not "demean the workers or restrict their individual right to go to the toilet when necessary"); [http://www.reebok.com/Static/global/initiatives/rights/pdf/ReebokHR\\_Guide.pdf](http://www.reebok.com/Static/global/initiatives/rights/pdf/ReebokHR_Guide.pdf); WRC, *Assessment re New Wide Garment (Cambodia)* (2008), pp. 23-25, [http://workersrights.org/Reports/New\\_Wide\\_Garment\\_Report\\_3-6-08.pdf](http://workersrights.org/Reports/New_Wide_Garment_Report_3-6-08.pdf).

<sup>49</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 052/00, clause 6 (2000) ("[W]ater for use at the toilet must be sufficient, clean, and clear. There must be sufficient soap at each toilet. Each toilet must be cleaned at least once a day.").

<sup>50</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 147, clause 1 (2002); ("Employers of enterprises and establishments stated in Article 1 of the Labor Law must arrange in whatever way to make the heat temperature in the workplace to be an acceptable level. The heat temperature must be appropriate for the health of workers and it must not interrupt their work. The heat temperature is measured by thermometer or "temperature measurement device" which is placed in the workplace.").

the factory remained excessively high.

### Recommendations

Zongtex should use the thermometers it has installed to monitor temperatures in the factory in accordance with legal requirements. If the measurements indicate that the temperature remains excessive, factory management must take adequate measures to reduce the temperature in the plant's sewing section, including repairing the cooling pads on its evaporative cooling system, and, if necessary, relocating the water cooling wall and its exhaust fans for greater effectiveness.

### *c. Blocked Exit Aisles*

### Findings

When re-inspecting Zongtex I on March 28, 2012, the WRC found that the exit aisles in the plant's work areas were cluttered in a way that could impede movement. This had not been the case during previous inspections. Such obstructions endanger workers in case of fire or other disaster, as they prevent workers from evacuating the building in a timely manner. For this reason they constitute a violation of protections for worker health and safety under university and industry codes of conduct.<sup>51</sup>

Workers reported that in 2011, a gas cylinder used for cooking food at the factory exploded, causing a small fire. Fortunately, at the time, the exit aisles were unobstructed and workers were able to evacuate the building safely. Workers interviewed by the WRC in November 2013, however, indicated that aisles in the factory remained cluttered to an extent that would obstruct evacuation.

### Recommendations

Zongtex must ensure that factory exit aisles are kept clear at all times.

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<sup>51</sup>See, See Cambodian Labor Law, § 230 ("[A]ll establishments and work places must be set up to guarantee the safety of workers."). While Cambodian Labor Law does not specify that factory walkways must be unobstructed, both United States and European Union occupational safety and health guidelines require. See, U.S. OSHA Regulation 1910.36 (g)(2-4) ("[A]n exit access must be at least 28 inches (71.1 cm) wide at all points. Where there is only one exit access leading to an exit or exit discharge, the width of the exit and exit discharge must be at least equal to the width of the exit access. The width of an exit route must be sufficient to accommodate the maximum permitted occupant load of each floor served by the exit route. Objects that project into the exit route must not reduce the width of the exit route to less than the minimum width requirements for exit routes."), and Council of the European Communities, Directive Concerning the Minimum Safety and Health Requirements for the Workplace, §6 ("[T]o safeguard the safety and health of workers, the employer shall see to it that:—traffic routes to emergency exits and the exits themselves are kept clear at all times,...") See also, Collegiate Licensing Company, CLC, Labor Code Standards, 6. Health and Safety: ("Licensees shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of Licensee facilities").

*d. Failure to Provide Clean Drinking Water*

Findings

While Cambodian law requires that employers provide safe drinking water to workers,<sup>52</sup> the WRC found that the drinking water Zongtex supplied in the factory posed possible health hazards to workers. According to employees, the drinking water provided to workers was often visibly dirty, and sometimes contained mosquito larvae. Workers reported that this was due, at least in part, to inadequate cleaning of the water tank. Moreover, the tank was located very near to toilets, raising concerns regarding cross-contamination.

After the WRC raised these concerns with the company, Zongtex moved the water tank so that it is no longer near the bathrooms. In addition, workers reported that the quality of the drinking water kept in the tank appears to be improved, and is no longer visibly unclean.

Recommendations

The WRC recommends that Zongtex conduct regular tests of the drinking water in the tank and post the results of these tests in the plant so that workers can have accurate information about its quality and safety.

*e. Inadequate Clinic Facilities*

Findings

Cambodian labor law requires that all enterprises with more than 50 workers must have a health facility.<sup>53</sup> The WRC found that Zongtex I's onsite health clinic is excessively hot, and that the treatment it provides to workers in case of injuries or illnesses is inadequate.

In the March 2012 factory inspection, the WRC found that the only ventilation in the clinic was provided by a portable fan that had been purchased by the clinic nurse at her own expense. The WRC also found that the clinic only had three kinds of medicine available, all simple over-the-counter aids. As a result, workers who visited the clinic reporting pain often were not offered any

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<sup>52</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 54, clause 1 (2000) (“[A]n employer of an enterprise or establishment as stipulated in Article 1 of the Labour Law shall provide sufficient hygienic drinks to his or her workers.”)

<sup>53</sup>See, Cambodian Labor Law, § 242 (“[A]ll enterprises and establishments covered by Article 238 of this law and employing at least fifty workers shall have a permanent infirmary on the premises of the establishment, workshop, or work site. This infirmary shall be run by a physician assisted by one or more male or female nurses, based on the number of workers. During working hours, both day and night, there shall always be at least one male or female nurse present. The infirmary shall be supplied with adequate materials, bandages and medicines to provide emergency care to workers in the event of accidents or occupational illness or sickness during work. Expenses incurred in organizing and operating this infirmary are the responsibility of the employer.”).



medication. Instead, the clinic provided a Khmer folk remedy treatment known as coin massage, in which the skin is treated with oil and then rubbed vigorously with a coin.

Alarming, workers reported, and the WRC verified, that the oil the clinic used to provide these massages was the same oil used to lubricate the factory's sewing machines. An independent physician consulted by the WRC stated that using industrial lubricants for skin massage may expose workers to serious health risks. In particular, the physician noted, since massage of the kind the clinic applies can cause small blood vessels near the skin's surface to break, the machine oil used for the massage could potentially enter the body's bloodstream.

### Recommendations

Zongtex must ensure that the temperature in the clinic is maintained at a level that is appropriate for treating ill or injured workers. The factory should supply the clinic with adequate medications. If massage is to be applied as a treatment, factory management must supply proper oil or other materials.

## **7) Failure to Participate in Mandatory Dispute Resolution Process**

### Findings

One of the more concerning aspects of Zongtex's labor practices is the company's consistent refusal to cooperate with local labor authorities or participate in dispute resolution processes as is required of employers under Cambodian law. As previously discussed, in February 2010, Zongtex unlawfully barred entry to the factory by the Ministry of Labor and Vocational Training when a ministry representative attempted to convene a conciliation meeting at the plant to resolve the dispute between workers and management regarding the illegal reductions in benefits.<sup>54</sup> Subsequently, Zongtex again violated the law by failing to appear before the Arbitration Council when that body took up the dispute.<sup>55</sup> The company then failed to either appeal or comply with the Arbitration Council's March 5, 2010, award concerning this dispute.

Compliance with national labor laws, including those requiring participation in mandatory dispute resolution procedures, is a standard element of buyer and university codes of conduct.<sup>56</sup>

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<sup>54</sup>See, Cambodian Labor Law, §346 (1) (a) ("Labor Inspectors and Controllers possessing the proper identification are authorized: to freely enter any enterprise within the jurisdiction of their inspection, without prior notification of the time.").

<sup>55</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, Prakas 99; Clause 20 (2004) ("[D]uring the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.").

<sup>56</sup>See, Collegiate Licensing Company, Labor Code Standards, Article II(A) (2003) ("Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles."); Ross, Vendor Compliance Manual 2011, Vendor Code of Conduct;

By its failure to meet its legal obligation to cooperate with these procedures, Zongtex remains in violation of these standards.

### Recommendations

Zongtex should implement all legally binding awards of the Arbitration Council without further delay. Zongtex also must allow representatives of the Ministry of Labor and Vocational Training unhindered access to its facilities and participate in legally required conciliation sessions and hearings convened by the Ministry of Labor or Arbitration Council.

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Section C (“Labor Standards”)(“Vendors must comply with applicable national and international laws and regulations with regard to their employment practices and policies.”) available at <http://partners.rossstores.com/FORMS/Ross%20Vendor%20Compliance%20Manual.pdf>.

## **D. Zongtex II: Findings and Recommendations**

### **1) Background Information**

In November 2010, Zongtex acquired a second garment factory in the Phnom Penh area. This factory will be referred to in this report as Zongtex II. Zongtex II is located near the Phnom Penh airport in the district of Pochentong, and formerly operated under the name “Wasino.” It employs around 300 workers. As noted above, this factory does not appear to be registered with GMAC or BFC.

In December 2011, the WRC visited Zongtex II and found that the company supplies garments to the same brands that Zongtex supplies from the former Perfecta factory. The WRC also noted that the same managers are responsible for both factories.

This arrangement suggests that Zongtex II is a “hidden” factory used by Zongtex to produce orders for the buyers who place orders from Zongtex I. It is likely that in addition to failing to disclose Zongtex II’s existence to GMAC and BFC, Zongtex has also failed to inform buyers, who may believe that their apparel is being produced at Zongtex I. In recent years, such “hidden factories” have proliferated in the Cambodian garment industry. Some factories, like Zongtex II, are operated by and supply GMAC member companies that openly operate other factories; some are independently operated by owners that do not register any of their plants and only provide subcontracted production, rather than any direct exports.

Because these “hidden” factories are not monitored by either buyers or BFC, labor rights advocates have identified them as a major obstacle to ensuring respect for labor rights in the Cambodian garment industry.<sup>57</sup> Zongtex’s operation of such a factory raises serious concerns that the company is attempting to evade scrutiny of its labor practices at this facility.

Zongtex’s operation of the Pochentong factory was brought to the attention of the WRC in August 2011 when the Arbitration Council published an award concerning violations of freedom of association at this plant. Subsequently, in late 2011, the WRC conducted a preliminary assessment of Zongtex II which included an inspection of the plant in December 2011 and a meeting with the factory’s management to discuss the WRC’s findings in March 2012. The results of this assessment are detailed below.

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<sup>57</sup> See, Dasgupta, Sukti; Poutiainen, Tuomo; Williams, David; “*From Downturn to Recovery: Cambodia’s Garment Sector in Transition*”, (ILO: International Labour Organization (2011), pp. 40, 123; and Arnold, Dennis, “Workers’ agency and re-working power relations in Cambodia’s garment industry,” in *Capturing The Gains: Economic and Social Upgrading in Global Production Networks*, working paper 24, (2013), p. 10.

## 2) Findings

### *a) Operation of Unlicensed Facility*

#### Findings

According to Cambodian law, any factory engaged in production of goods for export, regardless whether they are direct exporters or sub-contractors, must be registered with both the Ministry of Commerce and with BFC.<sup>58</sup> Since 2011, it has been illegal for exporters to enter any sub-contracting agreement with a factory that is not a member of the GMAC.<sup>59</sup> The WRC has found no evidence that Zongtex II is registered with the relevant entities, including the Ministry of Commerce, BFC, and GMAC. As an unregistered entity, Zongtex II is an illegal sub-contractor of orders from Zongtex I.

These registration requirements are intended, at least in part, to ensure transparency in the supply chain and increase protections for workers. Zongtex's failure to register this facility creates an illegal and unnecessary obstacle to entities charged with verifying labor rights compliance.

#### Recommendations

Zongtex should register its Pochentong facility (referred to in this report as Zongtex II) with the Ministry of Commerce, BFC and GMAC.

### *b) Freedom of Association: Illegal Dismissal of Employee Union Leaders*

#### Findings

In early 2011, workers at Zongtex II formed a union affiliated to the Khmer Youth Federation of Trade Unions (KYFTU) and elected several employees as union officers. On April 25, 2011, the union received its registration from the Ministry of Labor and Vocational Training. A month later, on May 25, 2011, the union attempted to deliver the registration documents to the factory

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<sup>58</sup>See, Royal Government of Cambodia, Circular on the implementation of the ILO's Better Factories Cambodia Project in the Cambodian Textile and Apparel Sector (July, 2006), § 3 (“[A]ll textile and apparel factories and their duly authorized sub-contractors are required to be registered with ILO's Better Factories Cambodia's office and with the Ministry of Commerce and have to abide by the Labor Law of the Kingdom of Cambodia for export eligibility.”).

<sup>59</sup>Ministry of Commerce, Prakas 3896, clauses 3 (September 5, 2011)(“[O]nly the members of the Garment Manufacturers Association of Cambodia (GMAC) that has registered with the Better Factories Cambodia in compliance with the Ministry of Commerce are entitled to the entry into a subcontract.”) and 8 (“[F]actories that are not members of the Garment Manufacturers Association of Cambodia (GMAC) shall not be allowed to enter into a subcontract with a factory that has been registered as member of the Garment Manufacturers Association of Cambodia (GMAC).”).

management and thus initiate an official relationship between the union and management in which the elected leaders could represent the workers in dealings with management. However, the factory's security guard, apparently acting on the company's instructions, refused to accept the document. The union then mailed the document to the company.

Two weeks later, on June 11, 2011, Zongtex management dismissed the worker who was the union's vice-president. Two days later, factory management fired the worker who was the union's president. Because Cambodian law prohibits the dismissal of union leaders without prior approval of the Ministry of Labor,<sup>60</sup> which Zongtex had not obtained in this case, these firings were facially illegal.

Following their dismissal, the union filed a complaint with the Ministry of Labor. The Ministry proceeded to convene two conciliation meetings at the Ministry's office, one on July 7, 2011, and one on July 12, 2011. However, Zongtex management failed to attend either meeting, much as it failed to attend a Ministry conciliation session regarding Zongtex I the previous year. Refusing to attend a conciliation session called by the Ministry constitutes a violation of Cambodian law.<sup>61</sup>

After this incident, the Ministry of Labor, following the standard procedure in such matters,<sup>62</sup> forwarded the case to the Arbitration Council on July 20, 2011. The Council issued its award on August 19, 2011. The council found that the workers had properly notified Zongtex of their

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<sup>60</sup>See, Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 305, §4 (a-b) (2001); ("[F]rom the time of applying for union registration, all employees that are union founders or all employees that voluntarily joined the membership of the union while asking for registration, also receive protection like a worker delegate. This protection lasts for 30 days after the date of union registration. Exceeding the period mentioned in the above paragraph, this protection will be granted to 3 union leaders pursuant to the conditions set out in Articles 282 and 293 of the Labour Law. For a union having more than 200 members, this protection shall be granted to one union member for each 100 members. Additional protected members can be granted through a collective agreement. In order to receive this protection, the union shall notify the employer of the names of people receiving protection by official means. A copy of this information shall be sent to the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.").

<sup>61</sup>See, Cambodian Labor Law, §306; ("[D]uring the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings to which the conciliator calls them. Unjustified absence from any such meeting is punishable by a fine set in the rules of Chapter Sixteen.").

<sup>62</sup>See, Cambodian Labor Law, §§., §§308("[I]n the absence of an agreement, the conciliator shall record and indicate the key points where the conciliation failed and shall prepare a report on the dispute. The conciliator shall send such record and report to the Minister in Charge of Labor within forty-eight hours at the latest after the conclusion of conciliation."), 310 ("[I]n a case covered by paragraph c) of Article 309 above, the Minister in Charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator as specified in Article 308 above. The Council of Arbitration must meet within three days following the receipt of the case.").

decision to form a union and their election of union officers. The panel of arbitrators unanimously found that Zongtex must reinstate the two employee union officers.<sup>63</sup>

Zongtex was legally obligated to implement the Arbitration Council's award by reinstating the two employees. In September 2010, a number of Cambodian trade union confederations, including the KYFTU and the GMAC, on behalf of its member companies, which, as noted above, include Zongtex, signed a Memorandum of Understanding (MOU) that commits the signatories and their members to "use the national dispute procedure [i.e., mediation by the labor ministry and arbitration by the Arbitration Council] and accept...binding arbitration for rights disputes."<sup>64</sup>

The WRC conducted its own assessment of the firing of the two workers and reached findings that were consistent with those of the Arbitration Council. The company claimed that the terminations could not be retaliatory because its managers were not aware that the two workers were union officers at the time when the latter were terminated.

The WRC did not find this claim credible. The factory management was well aware of the workers having formed a union, as the former had both attempted to hand deliver a document to this effect to factory management and mailed the same notification to the company. This notification clearly indicated that the two workers in question were union officers. In addition, the Ministry of Labor had also forwarded a copy of the union registration to Zongtex. If Zongtex management was unaware of the workers' names, this can only be because the company deliberately avoided such knowledge in order to avoid its obligation to comply with the law. It is more likely, however, that the company was in fact aware of the workers' role in the union. This echoes the Arbitration Council's finding that the workers appropriately notified the employer.

It is worth noting that the law's prohibition of termination of union leaders without prior approval of the labor ministry is not limited to circumstances where the employer acts intentionally to retaliate.<sup>65</sup> Without prior ministry approval, such terminations are illegal,

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<sup>63</sup>See, Arbitration Council Award 11/092 (Zongtex Garment (Branch)); Issue 2: ("Order the employer to reinstate Mr. Leng Pak and Mr. Kem Sokhorn with full back pay from the date of termination to the date of reinstatement.").

<sup>64</sup>See, Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (September 28, 2010); clause 6 ("In the absence of a CBA, the parties shall agree to use the national dispute procedure and accept, where mediation is unable to resolve the issue, binding arbitration for rights disputes.").

<sup>65</sup>See, Cambodian Labor Law, §293 ("[T]he dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labor Inspector."), and Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation; Prakas 305, §4 (a-b) (2001); ("[F]rom the time of applying for union registration, all employees that are union founders or all employees that voluntarily joined the membership of the union while asking for registration, also receive protection like a worker delegate [shop steward]. This protection lasts for 30 days after the date of union registration. Exceeding the period mentioned in the above paragraph, this

regardless of the intention of the managers responsible. Yet, despite its clear legal obligation to reinstate the two workers, Zongtex continues to refuse to do so.

### Recommendations

Zongtex should immediately implement the Arbitration Council's award, including by offering reinstatement to the employees serving as union president and vice president with full back pay from the dates of their dismissal, and no loss of seniority or accrued benefits.

#### *c) Other Labor Rights Violations*

The WRC found workers' rights violations at Zongtex II that were consistent with those found at Zongtex I and discussed in the previous section of this report.<sup>66</sup> These violations included:

- Illegally reducing workers' monthly attendance bonuses when workers take approved statutory leave (as discussed in Section C(4)(c) above);
- Failing to provide legally mandated paid sick leave (as discussed in Section C(4)(d) above);
- Failing to maintain the factory's toilets in decent hygienic condition and provide soap in the washrooms (as discussed in Section C(6)(a) above);
- Restricting workers' access to the toilet by stationing guards at the entrance to the bathroom to record the times that workers enter and exit (as discussed in Section C(6)(a) above);
- Excessive heat level in the sewing section (as discussed in Section C(6)(b) above);
- Failing to stock adequate medicine in the onsite health clinic (as discussed in Section C(6)(e) above); and
- Refusing to permit access to the factory by labor ministry representatives and to implement an Arbitration Council award (as discussed in Section C(7) above).

In addition, the WRC found that several of the fire extinguishers in Zongtex II lacked tags indicating the date of their last previous inspection and approval for use. Some of these fire extinguishers were covered in dust, raising concerns as to whether they had been properly maintained. Moreover, access to some fire extinguishers was blocked by stacks of boxes, such

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protection will be granted to 3 union leaders pursuant to the conditions set out in Articles 282 and 293 of the Labour Law.

<sup>66</sup>Details on the relevant laws and standards that these practices violate can be found in the relevant sections of Section C of this report, dealing with Zongtex I.

that workers would not be able to reach them quickly in case of a fire. These practices are in violation of accepted health and safety standards.<sup>67</sup>

### Recommendations

Where the same violations were found at Zongtex II as at Zongtex I, the company should implement the same remedial measures at Zongtex II that the WRC has recommended with regards to Zongtex I. In addition, Zongtex should ensure that all fire extinguishers at Zongtex II are easily accessible to workers and properly maintained.

### **3) Status Update**

The WRC initially presented these findings to Zongtex management at a meeting conducted on December 29, 2011, immediately following the conclusion of the WRC site visit. The factory managers present committed to raise these findings with the owner.

On March 28, 2012, during a site visit to Zongtex I, the WRC again discussed the outstanding compliance issues at Zongtex II with the managers who oversee work at both facilities. The representatives of factory management informed the WRC that they had not yet discussed the WRC recommendations with the owner, but pledged to do so in the near future.

Over the nearly two years since that meeting, Zongtex management has not provided any information to the WRC regarding remediation at Zongtex II. Follow-up interviews with Zongtex II workers indicate that there has been no action to remediate the violations reported here.

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<sup>67</sup>See, for example, U.S. OSHA Regulation 1910.157 (c)(1) (“[T]he employer shall provide portable fire extinguishers and shall mount, locate and identify them so that they are readily accessible to employees without subjecting the employees to possible injury.”).



## E. Management Response

Regrettably, Zongtex has made minimal effort to remedy the violations detailed in this report. While Zongtex management allowed the WRC access to its facilities and discussed these violations repeatedly with the WRC over several years, it has consistently failed to implement the necessary remedial measures identified by the WRC and the Arbitration Council at both of its factories. Moreover, as discussed above, with respect to some violations at Zongtex I, Zongtex management chose to *reverse* some of its initial positive steps.

Several labor rights violations at Zongtex were discussed in an article discussing factories producing apparel for the US government published in *The New York Times* on December 22, 2013.<sup>68</sup> The *Times* quoted one worker as saying that “sometimes people soil themselves at their sewing machines” because of the restrictions on toilet access, and indicated that underage workers had been found working at the plant.

According to a subsequent article in *The Cambodia Daily*, Zongtex representative Kiv Chanseyha, Chief of Accounting at Zongtex I, responded with vague, contradictory denials. “Right now, I am checking this information. I don’t understand where they got this information or why this case would happen in this factory,” said Chanseyha, adding, “I think that this is not accurate information because this factory never chose minors to work here. We always respect the labor law.” Her next quote, however, contradicts this statement, as she reported that, “there are three or four workers that are one to two months from turning 18 years old, but they work there because they have sewing skills.”<sup>69</sup> Press reports do not indicate any response from Chanseyha regarding the restrictions on bathroom access.

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<sup>68</sup>Urbina, Ian, “U.S. Flouts Its Own Advice in Procuring Overseas Clothing,” *The New York Times*, December 22, 2013. Available at [http://www.nytimes.com/2013/12/23/world/americas/buying-overseas-clothing-us-flouts-its-own-advice.html?\\_r=0&pagewanted=all](http://www.nytimes.com/2013/12/23/world/americas/buying-overseas-clothing-us-flouts-its-own-advice.html?_r=0&pagewanted=all).

<sup>69</sup>Sovuthy, Kiv, and Joshua Wilwohl, “US Government Clothes Producer Denies Abuses,” *The Cambodia Daily*, December 25, 2013. Available at <http://www.cambodiadaily.com/business/us-government-clothes-producer-denies-abuses-49654/>.

## **F. Buyer Response**

During March 2011, the WRC contacted a number of brands and retailers identified as purchasing garments from Zongtex, including university licensee Fine World LLC, requesting their assistance in securing the company's implementation of the recommendations in this report. For its part, Fine World informed the WRC in March 2011 that it was no longer contracting with Zongtex. However, Fine World agreed to communicate to Zongtex that the latter would need to correct the violations identified by the WRC before Fine World would consider placing any new orders with Zongtex. In July 2011, the WRC again contacted Fine World and its agent March Development regarding the continued violations at Zongtex, but received no response.

The WRC also contacted a number of other brands and retailers that had been identified as purchasing from Zongtex, including Jones Apparel Group, Kohl's, JCPenney, Cato, and Derek Heart.

Kohl's stated it was not aware of Zongtex supplying any of its vendors, and that it did not carry apparel from Derek Heart. This response was not credible as Kohl's advertises a range of Derek Heart garments on its website.<sup>70</sup> Jones Apparel Group responded by acknowledging that it had sourced apparel from Perfecta, but claiming that it had not placed any orders with the factory since the latter was acquired by Zongtex. This is consistent with testimony provided by workers. JCPenney, Cato, and Derek Heart did not respond to WRC communication.

Subsequently, through a review of import data, the WRC identified a number of other brands and retailers doing business in 2013-2014 with Zongtex, among them Costco, the U.S. Army and Air Force Exchange Services (AAFES), Macy's, Sears, Ross, Komar, Moret, Planet Gold, Leonard Feinberg, and Jese Apparel/Silverwear. The WRC will be contacting these buyers shortly.

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<sup>70</sup>See, Kohl's online catalogue, e.g., <http://www.kohls.com/catalog/derek-heart.jsp?CN=4294873619>. Accessed December 17, 2013.

## **G. Conclusion**

At both of its facilities in Cambodia, Zongtex has repeatedly violated workers' rights under Cambodian law, and buyer and university codes of conduct. Zongtex has refused to remedy these violations even when directed to do so by the Arbitration Council, Cambodia's leading adjudication body for labor disputes.

The WRC urges the buyers from Zongtex I and II to compel Zongtex to remedy the violations identified in this report and bring its practices in compliance with Cambodian labor law and relevant codes of conduct. Based on Zongtex management's behavior to date, the WRC concludes that if buyers do not take such action, it is unlikely that the Zongtex workers will be able to secure redress for these violations and respect for the basic rights granted them by Cambodian law.