



## WORKER RIGHTS CONSORTIUM

### **Additional Remedial Recommendations re Russell/Jerzees de Honduras Case**

**June 1, 2009**

This document outlines the remedial measures necessary to address the chilling effect on workers' exercise of associational rights at Russell factories throughout Honduras caused by the company's actions in the Jerzees de Honduras case.

It is important to bear in mind that this chilling effect has been exacerbated by Russell's failure to take timely and meaningful action to address the violations at JDH. More than seven months have now passed since the closure of JDH was announced. Russell's violations of the rights of the workers at JDH, and the company's failure to correct those violations in a timely fashion, have sent a powerful message to Russell employees throughout Honduras that any effort by workers' to exercise their associational rights is futile – and will only result in workers being subjected to threats, intimidation, and, ultimately, losing their very livelihood. This situation is particularly damaging because Russell is the largest private employer in Honduras and the Jerzees de Honduras case has been widely-covered in the Honduran media. The influence of Russell's conduct on the overall labor rights environment in the country is therefore quite profound. Very extensive and concrete measures will be required at Russell factories in Honduras in order to reverse this chilling effect and enable workers to freely exercise their associational rights.

It is important to emphasize that these measures are needed in addition to the corrective action that is required to address the harm directly done to the JDH workers. As you know, the WRC has recommended that the JDH workers be reinstated, with back pay, through the reopening of the JDH plant. Reinstatement with back-pay is, under international labor standards, the minimum remedy that is appropriate when workers lose their jobs due – in any significant part – to a retaliatory motive of their employer. Russell's current remediation plan, which does not guarantee reinstatement to a single JDH worker, much less the whole workforce, does not address the harm the JDH workers have suffered.

With respect to the chilling effect at Russell's other factories, strenuous measures are also needed. There are well-established procedures for remedying the chilling effect caused by severe violations of workers' associational rights and these procedures should be followed in the present case. The measures Russell has undertaken on this question to date – which center almost exclusively on the re-issuance of existing company policy on

freedom of association – fall far short of these requirements. This is particularly true because, since Russell first issued its freedom of association policy in 2007, the company has repeatedly violated it. In general, a public commitment by a company that it will respect workers' rights and will cease and desist from future violations may be sufficient where the violations committed are not particularly serious and the employer has no prior history of such conduct. However, where violations are severe and have been repeated in multiple instances, far more extensive measures are required.

The main objective of a remediation program at the affected factories must be to create an enabling environment in which workers can exercise freedom of association insulated from any coercion from any party. First, employees must be free to meet with their co-workers and union representatives, on factory premises, on non-work time and in non-work areas. Second, a company policy of non-interference with freedom of association must be implemented in concrete terms, so that employees are convinced that, this time, the employer actually "means it." This must include a requirement that management refrain from any further conduct meant to influence workers' exercise of their associational rights – since it is no longer reasonable to assume that workers, who are aware of the rampant retaliatory measures by taken by Russell at JDH, will be able to distinguish between a coercive threat and a non-coercive argument against unionization. Third, given the specific circumstances of the Russell case, there must also be a reasonable and credible commitment made regarding stability of production and employment at plants where workers chose to exercise freedom of association – otherwise workers may understandably fear that exercise of their rights will lead inexorably to plant closure. Fourth, a special mechanism is needed to monitor and enforce management's compliance with its remedial commitments and to order remedies on a real-time basis.

Specifically, Russell should take the following specific steps at all of its wholly-owned and operated facilities in Honduras:

#### Access for Union Representatives

- Afford employees, on an ongoing basis, the freedom to meet with staff and designated employee representatives of the JDH workers' union federation, the Central General de Trabajadores (CGT) in non-work areas of the factory and on industrial zone premises, on non-work time.
- Provide the CGT reasonable and secure access to post literature on all factory bulletin boards and all places where notices to employees are customarily posted.
- Afford the CGT the right to make periodic presentations to all non-management employees, during work time, with no loss of pay for the employees.

- Offer jobs to interested worker-leaders of the JDH union (Sitrajerzeesh), equivalent to those they held at the JDH plant, with the assignment of each board member to each plant to be determined by the union with agreement of the employee. The presence of proven worker-leaders in these factories is essential if workers are to be empowered to exercise associational rights. This measure is necessary to counteract the effect of the company's prior conduct on these plants' existing workforce.

#### Notice to Workers and Non-Interference in Workers' Decisions Concerning Their Associational Rights

- Require all managerial and supervisory employees to refrain from making any statements regarding the exercise of freedom of association apart from the company's official notice of its policy and discipline any employee who threatens or otherwise engages in discriminatory treatment towards another employee on the basis of their exercise of freedom of association. In the event that any managerial or supervisory employee does make any statement apart from the company's official notice of its policy, give the union a meaningful opportunity to respond to all employees affected.
- Provide workers, and the university community, with reasonable commitments regarding the stability of production and employment levels of its existing Honduran facilities. Discussion will be required among the stakeholders to determine what commitments are necessary and appropriate.
- Provide to workers at all factories a letter from top executives at Fruit of the Loom and Russell explaining that the company's business partners require that it fully respect and adopt a policy of non-interference toward workers' exercise of associational rights, stating that it is in the corporation's interest to respect these rights, stating that the company will recognize and bargain in good faith with any duly constituted union workers choose to form, stating the company's intention to discipline – and, if necessary, dismiss – any manager, supervisor or employee who discriminates against other employees' exercise of, or otherwise violates, freedom of association rights, and enumerating the remedial steps to which the company has agreed.

#### Compliance and Monitoring

- Agree to a system of compliance monitoring of these remedial actions and of compliance with all applicable law and codes of conduct that involves the following elements:
  - The appointment of a freedom of association ombudsperson, acceptable to both Russell and the CGT, to be supervised by the WRC. This ombudsperson's role will be to monitor compliance and receive and investigate complaints on a real-time basis (in most cases, the day

complaints are lodged or the following day) and, where needed, to recommend immediate remedial action by management.

-The ombudsperson will have regular access to all Russell production facilities in Honduras, including the right to enter the facilities unannounced and to have the same level of access to managers, company records and workers as would be typically granted to a labor rights auditor. The ombudsperson will have the right, when he or she deems it necessary, to appoint a factory-level deputy and place that person in a given factory, for as long as needed to address acute or ongoing problems. The deputies will have the same powers as the ombudsperson.

-The company will be obligated to act in good faith both to cooperate with the ombudsperson and any deputies and to implement remedial recommendations they may make. The ombudsperson will issue regular reports concerning Russell's compliance with its obligations, which the WRC will provide to affiliate universities and will make public. The ombudsperson will also have the right to request emergency intervention by the WRC if serious problems occur and the company fails to address them. The ombudsperson will establish a complaint system whereby complaints can be lodged and will provide information, through both printed material and public presentations, to all workers explaining the role of the ombudsperson, the complaints process, and the company's obligations. The cost of the salary and expenses of the ombudsperson, and any deputies he or she chooses to appoint, will be born by Russell.

- Take swift and appropriate disciplinary action against any company employee or manager who violates the terms of this plan, including where recommended by the ombudsperson.

### Collective Bargaining

- Immediately recognize any legally constituted union formed by its employees and commence good faith negotiations towards a collective bargaining agreement in a timely manner upon that union's request.
- In order to facilitate constructive industrial relations and minimize fear on the part of workers of retaliation against the workforce of a particular plant for the exercise of their associational rights, Russell must agree, if so requested by the CGT, to bargain a joint, multi-factory collective agreement, covering all factories where workers are represented by the CGT.

### Legal Compliance

- In addition to these measures, Russell must also comply with all applicable Honduran law governing freedom of association.

### Plan Development and Implementation

These recommendations outline, in broad terms, the measures needed – in combination with the re-employment of JDH workforce – to restore associational rights at Russell’s other factories in Honduras. The WRC may also make additional recommendations, as needed. With respect to many elements of the program, worker representatives will have the fullest understanding of how to shape each remedial measure in the way that will be most meaningful to workers. It will therefore necessary for the CGT to be involved in the development of the remedial program and specific plans for implementation.

We continue to hope that Russell will reconsider its approach to this case and recognize its obligation to remediate the labor rights violations at JDH and to address the impact of those violations at its other production facilities in Honduras.