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Public Response

ILRF Report on Fair for Life and Theo Chocolate

Detailed Reponse, 26.2.2013

While IMO appreciates the ILRF's concern for workers rights, it does not accept the report findings and conclusions. IMO believes that the present campaign damages workers interests in the US and discourages companies from public commitment to fair working conditions.

With respect to the complaints raised about the Fair for Life Programme and the specific case of Theo Chocolate, IMO would like to respond as follows:

1) Fair Trade and Labor Rights

At present Fair for Life fair trade certification is the ONLY fair trade certification¹ on the US market that applies fair labor standards to workers in processing and trading organizations along the chain of custody up to final brands. IMO assesses fair working conditions including all core labor rights, fair wages, good social benefits and decent working hours in annual audits based on documentary checks, a substantial number of confidential worker interviews and site visits in addition to verification of fair trading relationships to fair trade suppliers.

2) Fair for Life Certification of Theo Chocolate and actions taken in response to allegations

As a Fair for Life Fair Trade certified handling company, Theo Chocolate has taken the voluntary responsibility to be annually audited and certified to demonstrate not only fair trading practices but also fair working conditions for all its staff, even before this was formally required for all Fair for Life certified handlers in 2011. The company has been Fair for Life - Fair Trade and For Life – Social Responsibility certified since February 2010 after the first audit in January 2010.

In reaction to the allegations received concerning Theo Chocolate's alleged violation of its workers right to freedom of association in 2010, IMO has investigated the matter in detail and in line with the grievance procedure outlined in chapter 1.3.7 of Module 1 of the Fair for Life Programme:

A two day unannounced audit was conducted in November 2010, with confidential individual interviews of about 40% of all employees (22 out of 55, not including management), unrestricted access to all documentation and an open invitation to all employees (sent by e-mail and posted in the employee break area at Theo Chocolate) to send additional confidential statements per email, which several employees did. The management adapted an open attitude to the audit and fully supported the process. Additionally, former employees who had recently left the company as well as union representatives were contacted per e-mail or telephone. Their feedback and view of the situation was considered in the evaluation as well.

¹ We acknowledge that the Agricultural Justice Project has also recently introduced an optional second Social Justice labeling option for products from fair farms handled by fair companies.

3) Audit Findings November 2010

During the unannounced audit and subsequent follow up audits, the company's employees expressed varying attitudes regarding unionization of their workplace with some outspoken active union supporters, some strongly in favor of maintaining the present direct employment relationship with the company, and some employees taking a neutral position.

It was found during the audit that when first discussions had started amongst staff, some employees had requested management to provide more information regarding how its employment conditions, especially wages and benefits, compared with those of union-represented employees at similar employers in the area. In reaction to the discussions on unionization, the management had repeatedly stated its preference to continue directly working and talking with employees regarding any concerns and how they could best be addressed.

IMO confirmed that the company had hired a consultant who provided a comparison of Theo Chocolates employment conditions to those under the Teamster union. The consultant held meetings with employees and provided information in support of direct employment relations with Theo Chocolate and in response to questions posed by employees. The information provided by the consultant was factual. The consultant did not intimidate workers. However most interviewed employees, independent of their position with regard to unionization, felt the company could have provided a consultant who was a better fit. Employees were free to decide whether they wished to talk to the consultant or not; many chose not to, a few felt obliged to attend the meetings. All workers interviewed confirmed that in the end they felt free to make their own decision on union membership by voting, during a long internal meeting without management being present. They voted against joining a union.

In interviews it became apparent that the episode had been very stressful for most staff of Theo Chocolate, also because of tensions within the workforce itself, as the decision on unionization would have had a potential effect on all employees, whether in favor of joining a union or not. Many employees also expressed that they were upset about the external allegations made by one employee against the company as the statements being made did not represent the views of all employees.

Several alleged cases of discrimination of employees who left the company have been investigated in detail. Based on information received from different angles, including their testimonies, testimonies of the external HR consultant, and feedback from supervisors and co-workers IMO concluded that according to all information available employees had been not systematically discriminated against.

In careful evaluation of these findings IMO concluded that Theo Chocolate had not violated labor law. However Theo Chocolate had not met some of the minimum requirements of the Fair for Life standard and hence several corrective actions were imposed as pre-requirement for continued certification.

With regard to freedom of association the following corrective actions were required by IMO and have been implemented by Theo Chocolate in the following months to mediate and calm the situation in the workforce and prevent similar conflicts from arising again:

- Theo management had to send a written note to all employees confirming that the company will not interfere with any union campaign or associative activities of employees, or discriminate employees based on their desire to join or form a union or participate in associative activities. This statement had to be included in the employee handbook.
- Theo Chocolate management will offer to the employees if they so desire to bring in an un-biased not-for-profit organization to educate about unionization, collective bargaining and workers' rights to organize and to be available for worker questions during paid worker time.
- A letter of confirmation was requested from Theo Chocolate that in future cases of internal discussion on unionization, efforts will be made to bring in a neutral consultant to inform workers on their different options.

These measures were required and implemented in addition to Theo Chocolate's demonstrated efforts to improve relations to workers and to address any concerns in a timely manner.

4) Follow-up of corrective actions by IMO

The evaluation results and findings were followed up and cross-verified again during the 2011 audit at Theo Chocolate company, taking place in March 2011. The audit included 17 worker interviews, which represents 25% of the workforce, selected by the auditor and covered all Fair for Life fair trade handling as well as Hired Labour Social Responsibility criteria. Implementation of corrective actions was followed up and only after due fulfillment of all conditions above, Fair for Life certification has been renewed.

IMO continues to monitor the situation with close scrutiny during annual audits with a substantial number of worker interviews and continues to certify Theo Chocolate as Fair for Life Fair Trade handler and Social Responsibility certified company with good working conditions.

5) Worker interviews and Confidentiality

Confidentiality during worker interviews is one of the core principles in the Fair for Life audit methodology, and also outlined in the FFL Programme: "If in the course of staff interviews confidential information is revealed, anonymity will be strictly granted in order to protect the informant from possible negative impact or punishment."

The statement that information from worker interviews has been passed on or that interviews have not been carried out confidentially is not true.

For conducting workers interviews, IMO may sometimes interview workers more informally near their workplace in a quiet side room or section in addition to interviews in a meeting room (based on a list of workers selected for the interview by the auditor) which is the most common procedure in social auditing. Fair for Life is currently in process of benchmarking against the Global Social Compliance Programme's audit methodology and will again review its workers interview methodology against the most up to date best practice.

Fair for Life standards version 2011 require companies to inform their workers on their social and fair trade certification commitments, including their right to provide information

to the auditor without any negative consequences and to develop a public social responsibility policy known to workers within the first year of certification. Obviously, in an unannounced additional audit, the company can not inform workers beforehand.

6) Confidentiality of Audit Results

Fair for Life is a public and voluntary certification programme. Fair Trade certified companies decide to commit to continuous compliance with the standard and undergo detailed annual audits, giving the auditor unrestricted access to all business data and employees for information. This working relationship has to be based on clear agreements on confidentiality of results and findings as defined by the certification standard and contract. The Fair for Life standard procedure is – in line with ISO 65 the international standard for certification bodies – that a certification body cannot publish a statement about a certified operation’s audit findings without consent and audit reports are confidential documents (but may be shared by the certified company).

Fair for Life is presently reviewing its standards also with regard to its allegations and complaints procedures and will review other best practices in the field of voluntary product certification to further strengthen the system. The ILRF’s concerns have been noted and the issues raised considered as stakeholder feedback and the organization was invited to provide inputs in the standard revision process. Fair for Life promotes transparency and publishes audit ratings and use of premium on the Fair for Life website, but companies have the right to object to publication at present.

7) Role of a Certification Body and Impartiality

Our role as certification body is to verify compliance with public standards based on the view of all findings and come to the conclusion if the requirements for certification are met while promoting positive change and improvements wherever possible. It is not the role of a certification body to act as mediator between individual workers and their employer, but of course the views of all workers in the operation are a very important basis for our evaluation and certification decision.

All credible voluntary certification standards, including organic standards, are certified by certifiers who are paid by the management of the certified company. Certification bodies themselves are under much scrutiny and must abide to international norms like ISO65 to ensure the impartiality of their decisions. IMO is a renowned international certification body for sustainable products with more than 20 years experience.

8) Fair for Life Standard Wording with regard to Freedom of Association

Fair for Life standards (Module 2) require that (1) Workers, without distinction, have the right to join or form workers’ organisations of their own choosing and to bargain collectively unless restricted by law, as required by ILO Conventions 87 and 98 (2) The employer adopts a neutral attitude towards the activities of workers organisations and their organisational activities. Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace. This is verified in every Fair for Life audit since the beginning of certification in 2006.

In the 2011 standard revision various more detailed compliance criteria were added to clarify the requirements and expectations of this principle. The guidance text added in the 2011 revision (after the case in question), based on numerous stakeholder feedback, is quoted out of context in the ILRF report. The guidance aims to ensure that workers have access to balanced and complete information as the basis for their decision to join a union. *“In case workers wish to unionise the employer must permit open internal discussions on the advantages and possible disadvantages of unionisation. Management or labour consultants shall not hold one-to-one anti-union meetings with individual workers. The company may not hire consultants with the objective of persuading workers not to unionise. However the company may hold information meetings for all workers with the help of*

external consultants as long as all information provided is truthful and does not intimidate workers. In workplaces with internal discussions on unionisation, it is recommended to invite neutral external experts in to provide balanced information on the potential changes in employment conditions and other aspects in order to allow workers to make well informed decisions. The company must respect national law with regard to freedom of association.”

9) Fair for Life Standard Setting

The Fair for Life programme is owned by the Swiss Bio-Foundation, who is also responsible for standard revisions. In respect of the principles of the ISEAL Code of Good Practice for Setting Social and Environmental Standards, comments were invited and considered from a wide range of stakeholders through public consultation in two consultation rounds in 2010 to set the final present standard version Feb. 2011. There are always official public invitations to comment on the standards, and different stakeholders are directly invited. The Bio-Foundation cannot and will never change the standards in order to adjust it to a special situation found at one of our certified companies.

The conclusion by ILRF that the Fair for Life requirements regarding unionization and freedom of association have been adapted to Theo`s situation are out of context. The public allegations against Theo Chocolate already in 2010 have, however, led to a lot of feedback received in the standard revision process from different stakeholders with regard to freedom of association, which led to the present standard version.

We would also invite everybody (and particularly organizations like ILRF and unions) to take part in the present Fair for Life standard revision process (revision of the Fair for Life criteria for Fair Trade Handlers and Control Procedures), acknowledging that there are many different stakeholders in fair trade standards, with often differing focus or interest.

10) Multi-stakeholder complaint review panel

We welcome – in principle - the idea of a neutral multi stakeholder complaint review panel, but at present it could not include many other main fair trade labeling organizations in the US as Fair for Life is the only fair trade scheme in the US with labor standards for also US workers, together with AJP's domestic food justice certification. As with other changes to the Fair for Life certification scheme, this would need to be changed in Fair for Life programme with defined rules and undergo public stakeholder consultation. In the present revision we will review options to collaborate with other schemes or organizations as neutral review instance for serious complaints.

We believe that ILRFs campaign against Fair for Life and Theo Chocolate is based on a biased investigation, representing the views of a few individuals and not all workers involved. It damages workers interests in the US by attacking the only fair trade scheme in the US that considers fair working conditions in fair trade companies worldwide paramount to fair trade. This type of campaign encourages businesses to not make any public commitment, statement or external review on fair labor practices.

The Fair for Life Team,
Weinfeld 26.2.2013