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IR/PS CSR Case #07-24

Fair Labor Association



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I. Overview

The FLA grew out of the Apparel Industry Partnership (AIP), which was an initiative of the US President Bill Clinton, established in 1996 to address labor rights standards in the apparel industry. In 1999, leading footwear and apparel companies joined with human rights groups, consumer groups, university officials and others to form the Fair Labor Association (FLA), a non-profit organization dedicated to protecting the rights of workers who labor in factories in the U.S. and overseas¹. Companies that participate in the FLA – including Adidas-Salomon, Eddie Bauer, Gear for Sports, Joy Athletic, Liz Claiborne, Nike, Nordstrom, Patagonia, Phillips-Van Heusen, Polo Ralph Lauren, Reebok, and Zephyr Graf-X – have agreed to encourage the factories that produce their products to meet specified worker protection standards, known as codes of conduct. FLA participating companies have also agreed to monitor how well factories have met these standards and to take action to remediate problems as they arise. In addition to companies, participating organizations include about 175 US-based colleges and universities. Approximately 1100 suppliers are taking part in the FLA's licensee program. All these suppliers are licensed by US-based colleges and universities to produce (mainly) sports related products that bear their school logos.

The FLA is governed by a Board that consists of the three categories of participating organizations (companies, universities and NGOs). In numbers they are equally represented (six board members representing each group)². The FLA also has an NGO Advisory Council, which consists of representatives of around 30 NGOs. Trade union organizations pulled out of the AIP,

¹ Fair Labor Association website. <http://www.fairlabor.org/>

² The FLA Board of Directors List. http://www.fairlabor.org/about/fla_board

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already in 1998, mainly after disputes over code content. They are, therefore, not involved in the governance or operation of the FLA.

The FLA accredits the independent monitors, verifies that companies are in compliance with the code of conduct, and serves as a source of information for the public. The FLA accredits other organizations that then serve as "independent external monitors", investigating adherence to the FLA code in the supply chains of member companies. This happens through factory inspections and the filing of reports. In 2002, the FLA mandated the public disclosure of the results of these reports. Where non-compliance is identified, participating companies are required to implement a remediation plan. The FLA also has a confidential complaint procedure, which is open to any person or organization.

A. What the Fair Labor Association Does

The FLA brings together colleges and universities, NGOs, and socially responsible companies in a multi-stakeholder initiative to end sweatshop labor and improve working conditions in factories worldwide. The FLA holds its participants -- those involved at every stage of the manufacturing and marketing process -- accountable to the FLA Workplace Code of Conduct³. At its core, the FLA is built on four pillars:

B. Collaborative Action

The FLA's broad makeup provides a unique power and effectiveness to improve the situation of workers in factories across the globe. In all of its programs and initiatives, the FLA leverages the strength of its diverse membership to effect positive change in working conditions. The FLA also works with governments, other labor and human rights groups, and local trade

³ See Page 5 for the full list of FLA Workplace Code of Conduct.

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unions and NGOs in its projects. The FLA is a member of the Joint Initiative on Corporate Accountability and Workers Rights (Jo-In) along with five other multi-stakeholder initiatives such as the Workers Rights Consortium and Clean Clothes Campaign. The project seeks consensus on a common code of conduct and standards on living wage, hours of work and freedom of association.

C. Monitoring, Transparency and Public Reporting

Companies who join the FLA commit to public reporting on the conditions in their supplier factories, to establish internal systems for monitoring working conditions and maintaining Code standards, and to being part of a rigorous system of monitoring.

To ensure transparency, the results of these Independent External Monitoring (IEM) events are published on the FLA website in the form of tracking charts. Since 2002, the FLA has conducted over 600 IEMs in factories around the world. The FLA is the only labor rights initiative to publish the results of its systematic monitoring efforts. The FLA accredits independent third-party monitors and engages them to conduct annually unannounced audits of a group of randomly selected factories that supply FLA-affiliate brands and universities.

The FLA also publishes an Annual Public Report that provides a comprehensive view of IEM data; profiles member companies and their supply chains; and offers insight into global labor rights trends.

In the annual report, the FLA is publishing data on its Independent External Verification (IEV) audits. In 2006, 20 verification audits were conducted for IEMs that occurred between 2002 and 2004. Of the 20 factories involved in the verification audits, 19 continue to produce for

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the brands that participated in the original IEM. Seven of the IEVs took place in East Asia (all in China); 5 in Southeast Asia (Thailand and Vietnam); 4 in South Asia (India, Sri Lanka and Bangladesh); and 4 in the Americas (El Salvador and Mexico).

D. Ensuring Remediation

In addition, the FLA requires that companies work with the factories to ensure that violations of the Code are corrected through development of a remediation plan. The FLA reports on remediation efforts through the tracking charts. In addition, the FLA conducts verification audits to confirm ongoing progress in audited factories.

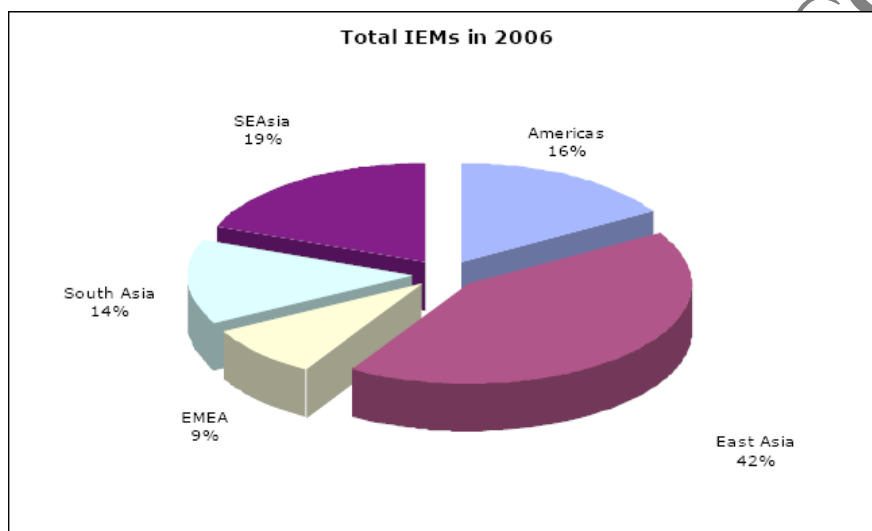
In 2006, FLA-accredited monitors conducted Independent External Monitoring (IEM) visits to 147 facilities worldwide. Twenty one of those factory visits were conducted in factories where two or more FLA companies – Participating Companies (PCs) or Category B Licensees – were sourcing. Of those 21, 18 of the IEMs were shared by two FLA companies and the other three were shared by three FLA companies⁴.

Factory Visits	147
IEMs Including Shared Facilities	171
Number of Factories (2006 factory list)	5,178
Estimated Number of Workers (2006 factory list)	3.76 million
Estimated Number of Workers in Factories that Received IEMs in 2006	110,326

⁴ FLA 2007 Annual Report

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The chart below displays the breakdown in the percentages of IEMs by geographic region. More than 75% of the IEMs were conducted in Asia, with the largest block (42%) in East Asia, followed by Southeast Asia (19%). The Americas was third, with 16% followed by South Asia (14%) and EMEA (9%).

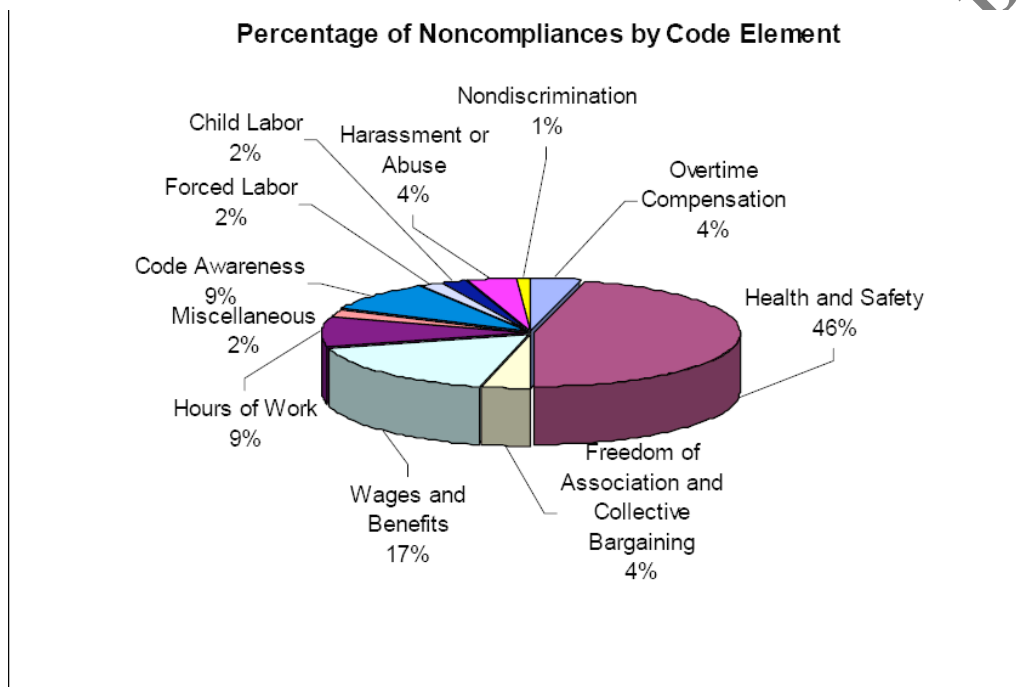


The 2007 Annual Public Report examines the results of all 147 IEM visits conducted in 2006. Overall, 2,511 noncompliance issues were discovered by accredited monitors and reported to the FLA. These noncompliances varied widely in terms of severity, significance and subject matter. The largest number of noncompliances, by element within the FLA Workplace Code of Conduct, is shown in the table below.

By far, the largest number of reported noncompliances referred to the Health and Safety code element (1,151 noncompliances or 46%), followed by Wages and Benefits (419 noncompliances or 17%), Code Awareness (230 noncompliances or 9%), Hours of Work (210 noncompliances or 8%), Harassment or Abuse (106 noncompliances or 4%), Overtime

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Compensation (98 noncompliances or 4%), Freedom of Association and Collective Bargaining (98 noncompliances or 4%), Forced Labor (61 noncompliances or 2%), Miscellaneous (54 noncompliances or 2%), Child Labor (49 noncompliances or 2%), and lastly Nondiscrimination (35 noncompliances or 1%).⁵



The 2,511 noncompliances translate into about 17.1 instances of noncompliance per factory subject to an IEM, and compares with 16.0 instances of noncompliance per IEM in 2005, 18.2 instances of noncompliance in 2004, and 15.1 instances of noncompliance in 2003. The reader is cautioned not to interpret increases or declines in the average number of noncompliances per IEM over time as indicating a deterioration or improvement in working conditions in the supply chain subject to IEMs because the number of noncompliances can be affected by a number of factors, including changes in the quality of monitors used by the FLA,

⁵ FLA 2007 Annual Report

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the degree of familiarity of monitors with the audit instrument, and the level of monitors' experience with FLA monitoring requirements.

After an IEM is conducted and noncompliances are observed, FLA companies are obligated to conduct internal monitoring and remediate noncompliances found in their supply chains through the development and implementation of Corrective Action Plans. The FLA process requires companies to work with their suppliers to develop a plan within 60 days, at which point the company must report the correction of the issue back to the FLA, which evaluates the company's Corrective Action Plan⁶, advises it on necessary actions and improvements, collects evidence and, when determined by FLA staff to be necessary, conducts a follow-up visit and verification audit to ensure that the company has taken the necessary steps to remediate the noncompliance issue.

In returning to these factories, monitors were asked to focus on the original noncompliances and to evaluate the progress made toward remediation. The monitors also were asked to cite new noncompliance issues that were not included in the original IEM report. The IEVs were consciously selected based on the severity of the issues that emerged from the IEMs, in particular, challenging findings related to nonpayment of wages, egregious health and safety violations, freedom of association, discrimination, and harassment or abuse issues.

E. Third Party Complaints

Still another way in which the FLA responds to labor violations in a workplace is through its third party complaint system. Anyone—a worker, advocate, company, or individual—can contact the Fair Labor Association to report Code violations at a factory supplying products to a member company. Complaints are confidential and are rigorously investigated. When violations

⁶ *FLA Monitoring Procedures*. <http://www.fairlabor.org/about/monitoring>

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are found, the Fair Labor Association publicly reports them and works with all stakeholders to find sustainable solutions.

*F. Workplace Code of Conduct:*⁷

- ✓ Forced Labor There shall not be any use of forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise.
- ✓ Child Labor No person shall be employed at an age younger than 15 (or 14 where the law of the country of manufacture* allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.
- ✓ Harassment or Abuse Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.
- ✓ Nondiscrimination No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.
- ✓ Health and Safety Employers 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 employer facilities.
- ✓ Freedom of Association and Collective Bargaining Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

⁷The FLA Workplace Code of Conduct, <http://www.fairlabor.org/conduct>

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- ✓ Wages and Benefits Employers recognize that wages are essential to meeting employees' basic needs. Employers shall pay employees, as a floor, at least the minimum wage required by local law or the prevailing industry wage, whichever is higher, and shall provide legally mandated benefits.
- ✓ Hours of Work Except in extraordinary business circumstances, employees shall (i) not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture or, where the laws of such country do not limit the hours of work, the regular work week in such country plus 12 hours overtime and (ii) be entitled to at least one day off in every seven day period.
- ✓ Overtime Compensation In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required in the country of manufacture or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

The FLA Workplace Code of Conduct specifies compliance with forced labor, child labor, harassment, abuse, nondiscrimination, health and safety, freedom of association and collective bargaining, wages and benefits, hours of work, and overtime compensation.

G. Processes

When a company joins the FLA, it commits to establish a workplace standards program that complies with FLA requirements, opting to implement the program during a two- or three-year initial implementation period⁸. At the end of that period the FLA carries out an in-depth

⁸ Note that the Initial Implementation Period would commence for each Participating Company at the time that the Company's application to the Association to participate in the Association's monitoring process is accepted.

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evaluation of the company's performance, and reports its findings in the FLA's annual public report. The FLA's second annual public report, which will be released in coming months, will report on each participating company and complements the FLA's tracking charts, which report on the monitoring of factories by the FLA's accredited independent external monitors. Public reports and tracking charts are published on the FLA's website.

A participating company shall be required to keep its monitoring plan up-to-date, by notifying the association of any material changes to its monitoring plan. A participating company needs to report to the FLA annually on its ongoing activities to implement its monitoring plan with respect to additional brands. In addition, if a participating company at any time acquires any additional brands, and then the company needs to provide the FLA with a plan for participation of such brands in the association.

In considering whether to accredit a company's labor compliance program in accordance with the FLA Charter, the staff and Board evaluate the extent to which a company has⁹:

- Adopted and communicated the Workplace Code of Conduct to workers and management at applicable facilities.
- Trained internal compliance staff to monitor and remediate noncompliance issues.
- Conducted internal monitoring of applicable facilities.
- Submitted to unannounced, independent external monitoring visits to factories throughout its supply chain.
- Remediated noncompliance issues in a timely manner.
- Taken steps to prevent persistent patterns of noncompliance, or instances of serious noncompliance.

⁹ *Towards Improving Workers' Lives- FLA First Public Report.*
http://www.fairlabor.org/all/transparency/charts_2002/PublicReportY1.pdf

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- Collected and managed compliance information effectively.
- Provided workers with confidential reporting channels to report on noncompliance issues to the company.
- Consulted with non-governmental organizations, unions and other local experts in its work.
- Paid FLA dues and met other procedural and administrative requirements.

II. Critiques

"The FLA is controlled by factories," said Abad. "It must be controlled by a human rights group."

– Former Gap Sweatshop Worker Speaks on Labor Issues, FLA¹⁰

The quote above from clearly reflected the conflict of interest between different stakeholder of FLA:

- Manufacturers: Socially responsible companies, which are held accountable by the FLA to its Code of Conduct, have a strong influence on factory management and help to ensure that workers receive fair treatment from their employees.
- Colleges and Universities: They play an important role by ensuring that university licensees and the factories they use in the production of university products conform with standards that protect workers' rights and also to help raise campus awareness on issues of human and labor rights.
- Non-governmental organizations (NGOs): play a vital role in the FLA, not only in setting the organization's policy but also at the grassroots level through coordination and

¹⁰ *The Hoya*, Friday, March 17th, 2000. <http://www.thehoya.com/news/031700/news6.htm>

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cooperation with local NGOs and trade unions that helps to build and enhance labor compliance in workplaces around the world.

Keep the different stakeholders' interests in mind; let's look at the costs of the FLA monitoring processes.

The FLA has established a subsidiary company, the FLA Independent External Monitoring LLC, to be used exclusively for independent external monitoring. Each Participating Company shall pay assessments at regular intervals into the LLC to cover costs incurred by the FLA with respect to the independent external monitoring of the Company's Applicable Facilities. Assessments paid into the LLC that are not used in any one assessment period will either be reimbursed to the Company or carried over into the next period to cover independent external monitoring. Any interest accrued in the creation and maintenance of the LLC will be used to support the administrative costs of the LLC. If the interest exceeds these costs, the Executive Director will have the discretion to use the remaining balance of that interest to support other aspects of the FLA Monitoring Program directly related to independent external monitoring. Each Participating Company shall also bear all costs, within reasonable and expected limits, of any verification visits of the facilities in connection with the remediation of instances of significant noncompliance with the Workplace Code or Monitoring Principles found at the facilities.¹¹

Lately many industry players have been pushing the Fair Labor Association (FLA) as a "solution" to the problem of sweatshops, but it is a weak code that fails to provide for women's

¹¹ "Costs of Independent External Monitoring" - FLA Charter Document, as amended Feb. 14th, 2007.

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rights, a living wage, the full public disclosure of factory locations, or university control over the monitoring process. It is more corporate cover up than industry reform. For example, in WRC's code of conduct, there are very detailed codes specifically addressing women's rights and the standards for workers Health and Safety are a lot more specified and detailed than FLA's code:¹²

Women's Rights

- a) Women workers will receive equal remuneration, including benefits; equal treatment; equal evaluation of the quality of their work; and equal opportunity to fill all positions open to male workers.*
- b) Pregnancy tests will not be a condition of employment, nor will they be demanded of employees.*
- c) Workers who take maternity leave will not face dismissal nor threat of dismissal, loss of seniority or deduction of wages, and will be able to return to their former employment at the same rate of pay and benefits.*
- d) Workers will not be forced or pressured to use contraception.*
- e) Workers will not be exposed to hazards, including glues and solvents, that may endanger their safety, including their reproductive health.*
- f) Licensees shall provide appropriate services and accommodation to women workers in connection with pregnancy.*

¹² WRC Model Code of Conduct Page 3.

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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. In addition, Licensees must comply with the following provisions:

- a) The Licensee shall ensure that its direct operations and those of any subcontractors comply with all workplace safety and health regulations established by the national government where the production facility is located, or with Title 29 CFR of the Federal Code of Regulations, enforced by Federal OSHA (Occupational Safety and Health Administration), whichever regulation is more health protective for a given hazard.*
- b) The Licensee shall ensure that its direct operations and subcontractors comply with all health and safety conventions of the International Labor Organization (ILO) ratified and adopted by the country in which the production facility is located.*

For these reasons and others the United Students Against Sweatshops and SOLE¹³ have opposed universities joining the FLA. Thirteen members of the University of Pennsylvania's group, Penn Students Against Sweatshops demanded Penn drop out of the Fair Labor Association and join the WRC.

The FLA is a White House-sponsored coalition of human rights groups and corporations. The student activists contend the FLA's corporate presence discredits the group. The FLA uses a series of standards and checklists, and the WRC proceeds on a complaint basis. Over the last

¹³ *The International Society of Logistics. <http://www.sole.org/>*

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five years, there has been a growing and legitimate concern that monitoring of licensees has not been effective.

III. Conclusion

Being one of the leading evaluation organizations in the industry, FLA fails to meet what is described in its mission statement. As a coalition set up by the government between consumers and manufacturers, the FLA represents more the interest of the manufacturers rather than really improving workers' situation as it is described in its Mission Statement. Because the manufacturers are solely responsible for the auditing costs, it takes away some credibility of the fairness of the auditors and their auditing results because they are likely to be biased by the treatment they receive during the examine process from the manufacturers.

Also compared to WRC, FLA's code of conduct is more of a checklist. The weak code does not address women workers issues or the specified workers' work condition and the evaluation processes are not completely credible. Once a plant is brought into compliance with an organization's codes of conduct, production sometimes gets moved to other countries where the cost of production is lower. From this perspective, neither FLA nor WRC is the cure to the sweatshop problems in the world. To effectively "protect workers' rights and improve working conditions worldwide"¹⁴, FLA still has a long way to go.

¹⁴ FLA Mission Statement 2007.

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IV. Suggested Items for Further Research

1. FLA Organization Structure: Who sits on the FLA's board of directors? Who is on its staff? How much is their operating budget and the source of revenue?
2. Relationship with Manufacturers: How does the FLA access manufacturers? Through members? Are all members required to disclose all suppliers to the FLA? What kinds of manufacturers are more likely to come in contact with FLA?
3. Nature of audits: Describe in details certification and audit process.
4. Comparison with WRC: Compare and contrast the origins, standards, and mechanisms of these two competing standards and organizations. If possible, interview university bookstore or university licensee that is a member of both the FLA and WRC. What is their experience with each organization? Which standard to they prefer?

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V. Discussion Questions

1. How much do organizations like FLA really help to improve worker's rights all over the world? One prevailing concern is the growing trend for brands to move production to lower-cost suppliers who may not necessarily meet the codes of conduct, in countries like Vietnam and China. It is common that once a plant is brought into compliance with an organization's codes of conduct, production sometimes gets moved. How would organizations like FLA and WRC change to really effectively improve workers situation?
2. Compared to FLA, how much better is WRC doing to fulfill their mission statement other than the points discussed in the paper?
3. What is the future of FLA? Do you think it will be completely replaced by WRC since it has been losing a lot of universities and companies to WRC?
4. Next time you stop by the bookstore at Price Center, would you feel more skeptical when you see FLA certified products? What about WRC certified ones?
5. How should we evaluate FLA's sanction mechanisms? Are they effective? If not, what further information should we require in order to strengthen FLA's credibility?

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