

## **OECD-complaint against Triumph International “Massive layoff in Thailand and the Philippines”**

**Triumph International**  
Spiesshofer & Braun  
Promenadestr. 24  
5330 Bad Zurzach

### **Complaint handed over to:**

**State Secretariat for Economic Affairs**  
National Contact Point of Switzerland  
International Investment and Multinational Enterprises  
Effingerstrasse 1  
3003 Berne

### **Content of this document:**

1. Contact details of the complainants
2. Details of the company
3. Summary of the case
4. Violation of OECD-guidelines and failure of Triumph International
5. Goal/expected outcomes of the OECD complaint
6. Public information available about your case
7. Documents in the annex

Date: 2. December 2009

## 1. Complaint filed by:

### **Triumph International Thailand Labour Union (TITLU)**

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### **Bagong Pagkakaisa ng mga Manggagawa sa Triumph Int'l. Phils. Inc. (BPMTI-INDEPENDENT)**

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### **Defend Job Philippines Organization Inc.**

Contact Person: Melona R. Daclan

Position: Campaign Director

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### **Thai Labour Campaign (facilitator)**

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## Complaint supported by:

- TIE Bildungswerk, Germany  
0Contact person: Heiner Koehnen, e-mail: heiner.koehnen@tie-germany.org

## The following NGOs have been in contact with TITLU, BMTI and the Thai Labour Campaign throughout the last months and they share the vision of the case as presented in this complaint:

- Clean Clothes Campaign (CCC), international network
- Asian Monitor Resource Centre (AMRC)
- Committee for Asian Women (CAW)
- Solidar Belgium

## 2. Details of the company

Triumph International was founded 1886 by the German families Spiesshofer and Braun and is owned by these families till today. The company's headquarters is located in Bad Zurzach, Switzerland. Triumph International is one of the world leading companies for lingerie. It sells its core brand products (Triumph®, sloggi®, Valisère® und HOM®) in more than 120 countries, and in 1650 Triumph stores (self-owned, franchise or partner-store). Triumph has worldwide over 44`500 employees and had in 2008 a turnover of 2.37 billion Swiss Francs. According to the annual report of the company, the best business markets are Japan, Germany, Italy and the UK. The Indian, Russian, South African and Central European markets as well as especially the Asian subsidiaries developed satisfactory in 2008. According to the self-declaration of Triumph in a survey conducted by the Clean Clothes Campaign in 2007/2008, the company owns approx. 60% of the production sites in its supply chain. The concerned subsidiaries of this complaint in Thailand and the Philippines are 100% owned by Triumph International. <http://www.triumph.com/ch/de/cw/1489.html>

### **Mission Statement: "We Are In To Win"**

"Triumph strives to lead the global intimates market and to achieve profitable growth. We collaborate to exceed consumer expectations with desirable, highest-quality, and best-fit products supported by best-in-class services. Passionate employees - valued as our greatest assets and ambassadors to the market - make our brands strong and desired. Inspired by family heritage, we meet the highest ethical and social standards and take great care of the global environment."

(according to the Website: <http://www.triumph.com/ch/de/cw/1491.html>)

### **Philosophy**

The philosophy of the company is: "Triumph - Dedicated to Women's Lives"

(according to the Website: <http://www.triumph.com/ch/de/cw/1528.html>)

### **Code of Conduct**

The company claims to have high ethical standards and to contribute to socially exemplary and lasting work places as well as sustainable commercial development in aggrieved regions. Triumph makes its code of conduct publicly available: <http://www.triumph.com/ch/de/cw/1490.html>

*In its code of conduct, Triumph states in the preamble:*

TRIUMPH INTERNATIONAL is aware of the responsibilities that arise from its international business activities and the employment of a labour force world-wide. TRIUMPH INTERNATIONAL acknowledges that these responsibilities extend to all employees who produce TRIUMPH INTERNATIONAL products regardless of whether they are employees of TRIUMPH INTERNATIONAL or not.

*Concerning unions, the company states in paragraph 2:*

#### 2. Union- and Freedom of Wage Negotiations

Every employee has the right to establish and join unions and the right for wage negotiations is acknowledged. (ILO-Agreement 87 and 98). Employee - representatives must not be discriminated against and must have access to all necessary work places so that they are able to look after their representation function. (ILO-Agreement 135 and Recommendation 143).

### 3. Summary of the case

#### 3a) Massive layoff in Thailand:

Body Fashion (Thailand) Ltd. (BFT) is located at 393 Moo 17 in Bangp Pli Industrial Estate Bang Saothong, Samut Prakan province. BFT is a subsidiary of Triumph International Headquarters in Switzerland and manufactures and distributes women's lingerie and swimwear under the management of Mr. Kenneth Louis Marshall. After employing 4,200 staffs for the past several years, the company suddenly announced a dramatic layoff of half of its workforce:

- On 25<sup>th</sup> June 2009, the BFT management announced a special holiday for the weekend 27<sup>th</sup> and 28<sup>th</sup> June 2009.
- On Saturday, 27<sup>th</sup> June 2009, the BFT management informed for the first time officially the Triumph International Labour Union (TITLU) about the planned layoff. There were no prior negotiations, which is in opposition to earlier statements made by the company. (see also annex 59)
- <sup>1</sup>On Monday, 29<sup>th</sup> June 2009, the BFT management held a factory-wide meeting and announced the dismissal of 1959 workers including 13 out of 19 committee and sub-committee members of the union. A representative from the management of the Swiss headquarters, Leonardo Innocenzi, informed the union about the re-structuring of the company. The workers were given a blank envelop with either the dismissal or the future employment announcement. Many of the dismissed workers were working in the swim-wear department, the department that was engaged most during the six-week-strike 2008 when the union leader Jittra Kotchadej has been dismissed unfairly after her appearance in a television show.
- Many of the dismissed workers have been working for Triumph during the last 20-30 years, among the dismissed workers are also disable, elderly and pregnant women. Dismissing pregnant women is not against the Thai law, however, there has been a significant number of pregnant women that was dismissed (28 women).
- The management told the workers whose names were on the list of dismissal to stop working from 1<sup>st</sup> of July 2009 to 31<sup>st</sup> of August 2009. The workers were paid until 31<sup>st</sup> of August but they were no longer employed since 26<sup>th</sup> of August 2009.
- 17<sup>th</sup> July 2009: In a letter to the Triumph International headquarters and the local BFT management, secretary general of the ITGLWF, Neil Kearney, demanded immediate action of both, the local and the international Triumph management in order to guarantee a fair negotiation (see annex 37).
- 20<sup>th</sup> July: the Triumph workers asked the Swiss embassy in Bangkok to intervene at the Triumph-management and to guarantee a fair and open negotiation (see annex 36)
- The dismissals of 1959 workers took effect on 31<sup>st</sup> of August 2008
- The lay off scheme took fully effect on 26<sup>th</sup> September 2009 with the severance pay
- The company paid the workers a severance pay only according to Thai labour protection law article 118, but not according to the Thai labour relation law and the CBA between TITLU and BFT.
- The severance pay for the workers was as follows:
  - For workers who worked 120 days but less than 1 year: 30 days paid
  - For workers who worked there since 1 year to less than 3 year: 90 days paid
  - For workers who worked there since 3 years to less than 6 year: 180 days paid
  - For workers who worked there since 6 years to less than 10 year: 240 days paid
  - For workers who worked there since 10 years: 300 days paid
- Sick workers who were dismissed were promised to be given assistance as the management announced but they still have not received any assistance
- The 28 pregnant workers who were dismissed will be paid according to Thailand's social security laws for additional 45 days. The medication of theses new mothers will be paid until February 2010.

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<sup>1</sup> According to the CBA between BFT and TITLU, the employer must at least 60 days in advance of the date of a termination or retrenchment due to restructure inform the labour inspection services and the employees of the grounds for termination as well as the names of employees affected.

- In a letter dated 29<sup>th</sup> of June 2009 to the Clean Clothes Campaign (see annex 14), Triumph International states that sales and marketing operations in Thailand and the company's plant in Nakhon Sawan province that has the capacity to employ 2,000 people (currently approx. 1000 already employed) were not affected by the dismissals. The factory in the Nakhon Sawan province is not unionised. Triumph International bought this plant in 1992, started to expand it in 2006 and finished by 2008.
- The BFT management initiated –according to Thai law- a court proceeding with regard to the dismissal of the union committee members. The court ruled on 26<sup>th</sup> of November 2009 that the employer is allowed to dismiss the committee members.
- After the massive layoffs in June 2009, the then president of the union started to side with the company. The union members decided to elect a new president and a new union committee (after 13 out of 19 members has been dismissed, this election of the committee was necessary to be functional as a union). But the BFT management refuses ever since to accept the new president and the new elected union committee and refuses to talk to them.
- The latest CBA between TITLU and BFT has been signed on 2<sup>nd</sup> July 2008 and registered by the employer as it is requested by Thai law (see annex 58). By dismissing the 1959 workers, the employer violated article 18 of the Thai labour relation law.

### 3b) Massive layoff in the Philippines:

The massive layoffs happened in Triumph International's subsidiaries in Philippines, Triumph International (Philippines) and the nearby Star Performance Incorporated due to the closure of the two factories. All the 1663 employees of the two factories lost their jobs: the workers of Triumph International Philippines (TIPI) by 9<sup>th</sup> of July 2009 and the workers of Star Performance Incorporated by 25<sup>th</sup> July 2009.

Especially the union in TIPI was very active and tried to have real negotiation, but they did not succeed:

- The union Bagong Pagkakaisa ng Manggagawa sa Triumph International (BPMTI) or New Unity of Workers in Triumph International was duly registered on 1977, organized at Bagsakan Road, FTI Complex, Taguig City with registration number NCR-UR-8-389-89. BPMTI has 857 members. In December 2008 the most recent collective bargaining agreement was signed between TIPI and BPMTI.
- On March 31, 2009, the TIPI management issued a company notice, stating that "there will be a change of production in July and August, and possibly June, to stock lot merchandise to use up [their] own surplus materials and also surplus from other production centers. By turning this surplus material into saleable merchandise we can help the company generate cash and avoid the costly and wasteful write off of good material. Previously scheduled regular orders will be redirected to other Triumph production centers where capacity is under-utilized due to order cancellations." (see annex 42)
- After observation that raw materials intended for TIPI orders and production particularly for week # 22 were exported, The Bagong Pagkakaisa ng mga Manggagawa ng Triumph International President Isabelita Dela Cruz wrote a letter on May 14, addressed to Mr. Dieter Streicher, Managing Director of TIPI, requesting for a meeting to clarify reports of re-exportation of raw materials and condemning the unilateral action of the TIPI management. (see annex 40)
- Mr. Dieter Streicher replied on May 19, stressing that the re-export of raw materials to other Triumph production centers was in adherence to the COMPANY NOTICE dated March 31.
- When the exportation continued and workers staged a protest on May 28, TIPI management met with BPMTI and declared that the export of raw materials would cease immediately.
- On June 27, a meeting was convened by TIPI. In this meeting, the management announced the closure of the factory. Triumph International offered separation pay to the workers. DOLE offered the workers enrollment in a job search program. However, the lawyer of Triumph International threatened that if workers start resistance against the dismissal, the management would not hesitate to file individual court cases against the workers and take away their benefits
- <sup>2</sup>The offered separation pay included:
  - 35 days per year of service to all regular employees with at least one year of service or 1 month pay for regular employees with less than one year of service, plus
  - Every employee gets a sewing machine.
  - Health insurance (based on current hospitalization coverage) thru HMO for one year from date of separation from the company.
- On June 29, a second meeting took place between Triumph International management, DOLE and BPMTI. On behalf of its members BPMTI stated that they rejected the separation package as offered by management and DOLE as the economic need for closing these particular production sites was not substantiated and not openly explained with evidence to the union
- On June 30, BPMTI union leaders and workers along with other workers and supporters staged a picket protest in front of Department of Labour and Employment in Intramuros, Manila denouncing the connivance of the Philippine government and Triumph International. (see annex 44)
- On July 1, in the third meeting of the union and management, BPMTI formally asked for pertinent and official company documents (board resolution) on the closure issue. But Mr. Dieter Streicher, the Managing Director Triumph International Philippines, showed no documents. Instead, he underscored that the closure decision is final and what they have is the severance payment for the workers.

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<sup>2</sup> Severance Pay: Termination of employment by the employer of an authorized cause: Due to retrenchment: one-half month's pay for every year of service or one month's pay, whichever is higher. However, there is no requirement for separation pay if the closure is due to serious business losses.

- On July 3 at 6:00 PM, 15-20 armed men with high powered rifles (in three no plate cars) were recognized in front of worker's picket line in front of Triumph International plant.
- A suspicious man; more than 20 years of age and dark complexion entered BPMTI gate but was preempted to enter the union office by a union leader.
- The day after, suspicious men in varied personalities keep on spying and monitoring the union's affairs and picket line.
- Wages for the workers of both factories were paid according to the CBA and according to the national law<sup>3</sup> until 28th August 2009.
- Many of the workers in the two factories in the Philippines worked for Triumph International for a long time, some for decades.
- From 22-29 September 2009, a High Level Mission of the ILO was conducted in the Philippines. The case of the massive layoff in the Philippines was presented to the ILO-delegation (see annex 38-39)
- The union tried on several levels to get the management on the table and asked assistance from several officials: ACTIONS TAKEN:
  - a. BANTAY PABRIKA. TANGGOL KABUHAYAN- a 24/7 picket protest during the massive relocation of raw materials was staged starting May.
  - b. BPMTI filed a Notice of Strike at the Department of Labor and Employment. Until now, the workers are in their 5th month of tireless struggle and picket protest.
  - c. Lobbied at the Embassy of Switzerland and Germany but the embassies said that they cannot do something because it is the company's discretion. Submitted a letter to the Delegation of the European Commission in the Philippines but the secretary refused to accept the letter.
  - d. Filed a Congress Inquiry to the House of Representative to investigate the validity of closure of Triumph International. No hearing has been set until now.
  - e. Sent appeals to and get support from fellow labor unions, peoples' organization, and government agencies, non-government organizations inside the Philippines, Asia and in European countries.
  - f. Solidarity actions in Thailand with Triumph International Thailand Labor Union and in Hong Kong with Asia Monitoring Resource Center, Asia Pacific Migrants Mission, Hong Kong Confederation of Trade Union and Hong Kong based organizations. Conducted also a picket dialogue at the Triumph International Headquarters in Hong Kong but Mr. Leonardo Innozenci, head of the global supply chain, refused to meet the union leaders.
  - g. Series of picket protest and dialogue at the Department of Labor and Employment. The DOLE said that the union shall prove that Triumph International is re-opening or subcontracting.
  - h. Series of negotiations with the management at the Department of Labor and Employment. However, management is still firm on its position.
  - i. Presented at the High Level Mission to the Philippines of the International Labor Organization investigating the spate of union repression in the Philippines. ILO issued a general press statement on September 29 but no further recommendations on particular issues being raised by many unions. ILO HLM official said that they are going to tackle the issue during the regular meetings of ILO on November and March.
  - j. Attended the OECD Watch Diplomacy Training Program for the preparation of the filing of complaint to the OECD National Contact Point in Switzerland.
  - k. Series of meetings and consultations with the Clean Clothes Campaign as the major partner in Europe.
- Currently, there is a mediation process going on with DOLE, however, there is no progress made.

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<sup>3</sup> Dismissals based on authorized causes (business or health) demand a payment of separation pay. If the dismissal is based on a just cause, the employer must give the employee two written notices and a hearing or opportunity to be heard before terminating the employment, that is, a notice specifying the grounds for which the dismissal is sought and, after hearing or opportunity to be heard, the notice of the decision to dismiss and if the dismissal is based on a authorized causes, the employer must give the employee and the Department of Labour and Employment written 30 days period prior to effectively of the separation.

#### 4. Violations of the OECD Guidelines

The behaviour of Triumph International violates several paragraphs of the following articles of the OECD Guidelines: article II, IV and VII. As we see the violations of article IV as the core violations in the case of Triumph, we start with the various violations of article IV on Employment and Industrial Relations and will continue with article II and article VII.

##### **Article IV. Employment and Industrial Relations**

- 1 a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.
2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.  
b) Provide information to employee representatives, which is needed for meaningful negotiations on conditions of employment.  
c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. 4Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole

#### Failure of Triumph International

Triumph International has a history of union-busting activities, especially in Asian countries. In its subsidiary Body Fashion Thailand (BFT), a conflict between the factory union TITLU and the local management went on for a long time. The unfair dismissal of their union leader Jitra Kotchadej in August 2008 led to an immediate strike of more than 2000 workers at the plant. Only after six weeks of strike, an agreement was reached in September 2008 (see annex 21). But there were clearly outstanding issues. The union raised 12 concrete points that should be handled and they came for a visit to Switzerland, demanding a meeting with the Triumph CEO at the international headquarters (see annex 22). Only after lengthy negotiation, Triumph agreed on a meeting, but not with the CEO. Triumph also refused to have an observer from IG Metall or from CCC present during the meeting. In the end, Triumph was ready to accept an observer of the Workers Council, but the representative did not speak English, so they had to have a translator from the company to allow a minimum talk between the union and the Workers Council representative. The union rose already during the meeting the concern, that not everything was translated properly and the representative did not, as it was planned, write minutes, but let the lead to the Triumph representative. The official minutes of the Triumph management and the minutes taken by the union show clearly a big gap of misunderstanding and make it obvious, that the meeting was not satisfying for TITLU (see annex 29 and 30).

The union kept trying to follow up the 12 points of concern and had several meeting with the BFT management. The situation calmed down a bit, but still there was a lack of concrete results and progress of the relation between TITLU and the management. BFT kept postponing meetings and the union found it difficult to truly engage with the management. There were also subcontracting activities going on and in a meeting between the union and the BFT management at 23<sup>rd</sup> of February 2009, the union raised their concern and the management confirmed they would stop the subcontracting practise.

Various reports of labour activists from Thailand throughout the years showed clearly a long history of union busting within the management decisions taken by Triumph International (see annex 31-35)

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<sup>4</sup> "26. In paragraph three of this chapter, information provided by companies to their employees is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards." (according to the OECD-Guidelines for Multinational Enterprises, Commentaries, page 33ff)



Also in the Triumph facilities in the Philippines, there is a long history of labour disputes and union busting activities, dating back as far as to 1978. In summer 2009, the long-lasting union-busting activities reached its sad highlight in the closure of two unionized factories with workers standing in for their rights. (see annex 50).

The following facts underline the argument that Triumph tries to hinder the trade unions activities at the factories, by predominantly dismissing unionized workers during the recent lay-offs:

- In both countries, the affected factories are unionized and the workforce is well organised, economic and political benefits such as in the Collective Bargaining Agreement were collectively won through hardships and determination of the workers led by their unions.
- In both countries, there were conflicts during the past years and the union repeatedly reported union-busting activities
- In Thailand, Triumph International did not dismiss the sales and marketing operations and the company's plant in Nakhon Sawan province that has the capacity to employ 2000-3000 people (currently approx. 1300 already employed) was not affected by the dismissals. The factory in the Nakhon Sawan province is not unionised. Triumph International bought this plant in 1992, started to expand it in 2006 and finished by 2008.
- In the light of the massive layoff 2009, the company told the court that they have had financial difficulties since 2005. However, in 2006, Triumph bought a piece of land next to the factory in Samut Prakan province in the light of expanding its plant. In 2007, Kenneth Marschall, the manager of BFT, implied in a meeting with TITLU that Triumph already came up with construction plans for a new plant in Samut Prakan province (see annex 56).
- On 16 June 2008 the meeting about CBA took place between Markus Kabisch (the representative of BFT) and TITLU. TITLU asked for a higher salary and bonus. Markus Kabisch stated that if the company agreed to the demands, they would have high cost of production, so it would be better to consider subcontracting. This implied that there would clearly be a plan to subcontract (see annex 57)
- In Philippines, most of the dismissed workers are union members, in Thailand, 90% of the dismissed workers are union members.
- In Thailand, 13 out of 19 committee and subcommittee members were dismissed. The workers from the swim wear department that were most active during the strike in 2008, were mostly affected by the dismissals since the whole swim wear department was closed by August 2009
- In the Philippines, the whole workforce including all union members were dismissed and the union was disrupted by that (see various annexes as referred to under IV/6)

There is one more argument which shows that Triumph is not dismissing people because of less orders and the recession, but to fight unions:

- In the Philippines, Triumph offered to the workers that accepted the severance pay subcontracting jobs and push the workers to precarious job conditions

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6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions. 5

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<sup>5</sup> "29. Paragraph six recommends that enterprises provide reasonable notice to the representatives of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific

### Failure of Triumph International

Both the unions in Thailand and the Philippines tried for a long time to get more concrete information about the company and the current state of orders and sales. Despite some meetings that took place, the company never openly reported about the situation and even after the massive layoff kept refusing to give access to relevant documents for the unions.

In March 20<sup>th</sup> 2009, the union in Thailand contacted the BFT-management and specifically tried to get more information about rumours concerning a big change in the factory in May 2009 (see annex 24). But at this point, there was no concrete answer from the management.

On 20<sup>th</sup> of June 2009, the union insisted in having more information about the planned massive layoff and wanted to engage in negotiation (see annex 25). The same day, they sent a letter to the Head of Labour Protection and asked for support (see annex 26).

Only on 27<sup>th</sup> of June 2009, the BFT management informed for the first time officially the union about the massive layoff.

On 29<sup>th</sup> of June 2009, the BFT management announced the dismissals by giving already the concrete written notices to the affected 1959 workers, including 13 out of 19 committee members of the union. The same day, the union wrote again to Triumph International, demanding transparent information and negotiation (see annex 27).

So far, neither negotiations have taken place, nor did the union get transparent insight in the reasons that led to the decision of the massive layoff.

The relation between the BFT management and the union keeps being very difficult and the management repeatedly keeps refusing a constructive dialogue with the union.

Despite the fact that TITLU itself as well as the International Clean Clothes network asked for more than a year on several occasions for a direct involvement and a dialogue with the international headquarters, Triumph International keeps refusing this dialogue and refers to the local management, where the relation with the union came to a deadlock (see annex 28 and 1-20).

In the Philippines, the union started in May 2009 to ask for more clarity about the re-exportation of raw materials from TIPI to other Triumph facilities. On the second week of May, Triumph International Workers reported and expressed their observation to the Bagong Pagkakaisa ng mga Manggagawa sa Triumph International (BPMTI) on the massive and series re-exportation of raw materials intended for TIPI orders and production particularly for week # 22. The Bagong Pagkakaisa ng mga Manggagawa ng Triumph International President Isabelita Dela Cruz wrote on May 14 a letter addressed to Mr. Dieter Streicher, Managing Director of TIPI, requesting for a meeting to clarify reports of re-exportation of raw materials and condemning the unilateral action of the TIPI management. Mr. Dieter Streicher only responded through a letter to BPMTI stressing that the re-export of raw materials to other Triumph production centers is in adherence to the COMPANY NOTICE dated March 31. On May 28, TIPI Management attempted to move out raw materials for the week # 24 but was perceived and urgently protested by the workers and the TIPI management was forced to meet BPMTI and informed the union that triumph management will be having a meeting in Hong Kong on the first week of June to tackle the relocation of raw materials and will discuss to the union the outcome of the global meeting, which did not happen until June 27, when the union and the workers were shocked to get the news that the company is closing their 2 production centers in the Philippines.

In addition, Triumph International in the Philippines filed retrenchment and not plant closure as reason of retrenchment at the Department of Labor. Mr. Diether Streicher said also in a meeting that the looking forward for future investments in the Philippines.

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circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented." (according to the OECD-Guidelines for Multinational Enterprises, Commentaries, page 33ff)

Similar to Thailand, the management in the Philippines did as well neither engage in negotiations with the unions, nor did it openly communicate the facts that led to the closure of the two factories.

There is a parallel strategy in Thailand and the Philippines visible:

- In the Philippines, the union reports that there are rumours, that Triumph would already start to set up a new factory in a Laguna special economic zone to profit from tax incentives and no-strike-policy that is enforced there
- In the Philippines, Triumph International did not close its Sales and Head Office located in Makati City, Metro Manila and maintained and employed 142 employees.
- In Thailand, Triumph International did – as mentioned already under the previous chapter - not dismiss the sales and marketing operations and the company's plant in Nakhon Sawan, which is not unionised, was not affected by the massive layoffs.
- In both countries, the unions were not informed prior to the decision of the dismissals and retrenchment. They were not consulted prior to the decision and could therefore not negotiate with the management about the retrenchment and the dismissals, respectively about a social plan in case the dismissals and retrenchment were unavoidable.
- In both countries, the management refused to give access to the relevant documentation and facts that would have allowed the unions to engage in a real dialogue

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8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.
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#### Failure of Triumph International

Both the unions in Thailand and the Philippines asked for many times to have direct contact with the Triumph International headquarters in Switzerland, since the negotiations with the local management ended in a deadlock and since there has been repeatedly said that the final decision comes from Switzerland. Despite representatives from the headquarters of Switzerland travelled on various occasions to the facilities, the unions did hardly, if ever, have a chance to talk to them.

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<b>Article II</b> 9) Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.
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#### Failure of Triumph International

During the protests in Thailand and the Philippines, both unions report severe interference by the police or armed force:

In Thailand, the workers were confronted with the police using a Long Range Acoustic Device (LRAD) against the protesters. The Dusit Police Bureau in Bangkok issued arrest warrants against three union activists for their role in a peaceful demonstration against the dismissal of the 1959 workers. Bunrawd Saiwong (33), secretary of the Triumph International Thailand Labour Union, Jitra Kotchadej (34), independent consultant of TITLU, and Sunthorn Boonyod (50), manager at Labour Congress Centre for Labour Unions of Thailand, faced three charges: they were accused of breaching the traffic law, the law that is forbidding demonstrations of more than 10 people in Dusit district in Bangkok and they were accused of creation chaos in the society. In this case, the laws were used to suppress peaceful assembly and freedom of speech in a case of labour rights violations committed by a European multinational corporation.

The management did provoke more intense protests among the workers by repeatedly refusing to engage in real negotiations with the union representatives. There is also the open question if the police got a hint and why exactly these three above mentioned people were held accountable since there were many protesters on the ground. In addition, the management did not engage to resolve the problem peacefully and did not intervene at the police when the arrest warrants were issued and became public.

Jittra Kotchadej was as well personally confronted with anonymous phone calls to intimidate her and even threatening her with death in summer 2009. The union does not know who the anonymous callers were, but the person was said to have a foreign accent and the union suspects that it might have been somebody in connection with the BFT management.

In the Philippines, the union reports spying activities during the picket protest in summer 2009 as well as violent dispersal of picket lines. On 29<sup>th</sup> of May – 1<sup>st</sup> of June 2009, tens and elements of the Food Terminal Incorporated Policemen (FTI police) with Philippine National Police assistance brutally destroyed the workers picket protest against the massive relocation of raw materials to China and Vietnam. The goons took away all things; make shift tents, chairs, streamers and everything in the picket line. The harassment and threat against the workers' protest continued throughout the summer- and autumn months.

Even though the TIPI-management was also in this case not directly involved in the violation that happened, they did not engage in resolving the situation peacefully and let the violent dispersal happen without intervention.

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**Article VII Consumer interests**

4) Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.

Failure of Triumph International

As stated in their own Code of Conduct, which is publicly available, Triumph International claims to “*be aware of the responsibilities that arise from its international business activities and the employment of a labour force world-wide. TRIUMPH INTERNATIONAL acknowledges that these responsibilities extend to all employees who produce TRIUMPH INTERNATIONAL products regardless of whether they are employees of TRIUMPH INTERNATIONAL or not.*” Further, the company states that: “*Every employee has the right to establish and join unions and the right for wage negotiations is acknowledged. (ILO-Agreement 87 and 98). Employee - representatives must not be discriminated against and must have access to all necessary work places so that they are able to look after their representation function. (ILO-Agreement 135 and Recommendation 143).*”

In the light of the latest developments in Thailand and the Philippines, which clearly show a strategy of union busting throughout years, this claim in the Code of Conduct as well as the mission statement where Triumphs claims to “*meet the highest ethical and social standards and take great care of the global environment*” can be considered to break the Article VII of the OECD-Guidelines.

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**Triumph International repeatedly kept referring to its compliance with the national law in Thailand and the Philippines. If corporate social responsibility was only about complying with the national law, Guidelines like the OECD-Guidelines for Multinational-Enterprises would not be necessary. But exactly because a real engagement and taking responsibility as a MNE goes beyond the compliance with the national law, the Guidelines are relevant and Triumph International fails so far clearly to demonstrate its honest efforts and to follow the OECD-Guidelines as outlined above.**

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## 5. Outcomes of the OECD complaint:

The demands towards Triumph headquarters in connection to the dismissals in Thailand and the Philippines are:

1. Unconditional reinstatement of all dismissed workers who want to be reinstated, either at BFT, TIPI or Star Performance, including union committee members to the same conditions as they previously had been employed.
2. Restart the process of reduction of the workforce in close co-operation with TITLU and BPMTI and in accordance with current the CBAs, the relevant ILO-conventions (e.g. ILO-convention 158), as well as the OECD guidelines.
3. For those workers who do not wish to be reinstated, negotiate with the unions a fair separation package, based on the CBA and applicable laws.
4. Present full documentation to the Thai Labour Union (TITLU) and to the Triumph workers union in the Philippines, BPMTI, on why Triumph International has opted for the current plan to reduce the workforce in the said factories.
5. Ensure that the Global Restructuring Plan does not result in massive retrenchments and relocation of Triumph workers worldwide, and in depriving workers of their union rights. Therefore Triumph should present full documentation to TITLU and BPMTI, on why Triumph International has opted for the current plan to reduce the workforce in the said factories.

In addition for the Philippines:

6. Immediately stop the relocation of materials and equipment from TIPI and Star Performance
7. Unemployment pay of wages, salaries and benefits to the retrenched workers as long as the dispute has not been settled and workers have not been reinstated
8. Stop the harassment and repression to the union by Triumph International
9. Stop subcontracting schemes

In addition for Thailand:

10. Immediately recognize the union and their elected union committee members according to the Union Assembly Meeting on 18<sup>th</sup> August 2009
11. Provide (or Disclose) necessary company's information to TITLU regarding on its operation and engage in dialogue with the union.
12. Abolish the complaint policy via supervisor
13. For workers who voluntarily resigned, the company must pay
  - a) compensation according to Thai labour protection law
  - b) compensation according to CBA 1999
  - c) the severance payment as agreed

The more general demands of Triumph headquarters are:

- demonstrate a union-friendly attitude and advice local managers to do so
- engage truly in implementing social standards according to international standards (ILO, OECD-Guidelines) as well as the company's code of conduct throughout the whole supply chain

As allowed by Procedural Guidance regarding confidentiality, the Complainants have publicized the filing of this complaint. It is however understood, that neither party is to make public any new information learned after the NCP has accepted the complaint. The Complainants maintain their right to continue to campaign on information that already is in the public domain or is displayed by third parties.

We ask the NCP in Switzerland:

- to set a concrete timeline for handling this case
- to facilitate communication and exchange between the parties in a impartial, transparent and objective manner

## 6. Public information available about the case

- Unions in Thailand: <http://triumph-union.blogspot.com/>
- Unions in the Philippines: <http://defendjobphilippines.webs.com/> and <http://www.bpmti-ind.webs.com>
- International Clean Clothes Campaign: <http://www.cleanclothes.org/>

## 7. Documents in the annex:

- Annex 1-20: Correspondence CCC International and Triumph International (2008-2009)
- Annex 21: Agreement Body Fashion Thailand (BFT) and Triumph International Thailand Labour Union (TITLU) (12.9.2008)
- Annex 22-28: Correspondence between TITLU, BFT and Triumph International (2008-2009)
- Annex 29-30: Minutes Meeting TITLU and Triumph International headquarters (3.10.2009)
- Annex 31-35: Various reports on the issue of union busting in Triumph facilities in Thailand
- Annex 36: Letter of TITLU to the Swiss embassy in Bangkok (20.7.2009)
- Annex 37: Letter of the ITGLWF to the Triumph International headquarters and the BFT-Management (17.7.2009)
- Annex 38-39: Executive summary and oral statement to the delegation of the ILO High Level Mission to the Philippines (22.-29.9.2009)
- Annex 40-41: Fact sheet and timeline of events in the Philippines
- Annex 42: Company statement Philippines
- Annex 43-44: Press release union Philippines
- Annex 45-46: Letter to the Swiss and Germany embassy in Manila
- Annex 47: Joint Appeal of the unions in Thailand and the Philippines
- Annex 48: Statement of support for the unions in the Philippines
- Annex 49: Letter BPMTI to Triumph International
- Annex 50: History of the Triumph unions in the Philippines concerning union busting
- Annex 51: Urgent Appeal unions Philippines
- Annex 52-53: Additional documents handed in during the ILO-High-Level-Mission Philippines 2009
- Annex 54: Letter TITLU to CEO Triumph, 3<sup>rd</sup> July 2009
- Annex 55: Letter TITLU to the EU, 21<sup>st</sup> August 2009
- Annex 56: Minutes of the meeting between BFT and TITLU, 5<sup>th</sup> September 2007 (in Thai)
- Annex 57: Minutes of the between BFT and TITLU, 16<sup>th</sup> June 2008 (in Thai)
- Annex 58: CBA between TITLU and BFT, 2<sup>nd</sup> July 2008 (in Thai)
- Annex 59: Minutes between TITLU and BFT, 17<sup>th</sup> February 2004