



TENTH ITEM ON THE AGENDA

## Report of the Subcommittee on Multinational Enterprises

1. The Subcommittee on Multinational Enterprises met on 11 November 2005. Ms. Niven (Government, United Kingdom) chaired the meeting. Ms. Hornung-Draus (Employer, Germany) and Ms. Brighi (Worker, Italy) were Vice-Chairpersons.
2. The Chairperson welcomed Mr. José M. Salazar as the new Executive Director for the Employment Sector.
3. Mr. Salazar, in his initial statement, said that he would do his best to identify and strengthen the core competencies of the Employment Sector with a view to obtaining maximum impact and concrete results. He said that corporate social responsibility (CSR) was a major way in which companies integrated and affirmed principles and values in their internal methods and processes, and in their interaction with stakeholders and the communities in which they operated, and that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) provided a unique platform to expand that effort and to improve local and global governance.
4. The Worker Vice-Chairperson expressed thanks to Mr. Hofmeijer, Director a.i. of the Multinational Enterprises Programme for his work. She underlined the need for a rapid definition of the structure of MULTI and asked for information on the criteria for recruitment, which should be transparent and aim for the best professional results. She also underlined the need to be aware of financial allocations to the department in order to have a targeted discussion on priorities.

**Eighth Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Presentation and discussion of the draft analysis, with a view to providing an input to the formulation of the conclusions and recommendations to be discussed in March 2006**

5. The representative of the Director-General (Mr. Henriques) introduced two papers<sup>1</sup> for the preliminary discussion. He noted that, despite the extension of the deadline and efforts taken by the Office, responses had declined significantly as compared with the Seventh Survey. Nevertheless, they represented a respectable sample in terms of the origin and destination of foreign direct investment (FDI), and provided a useful basis for identifying good practices and areas for follow-up activities.
6. The Worker Vice-Chairperson expressed concern over the low response rate and wondered whether the Survey in its current form was the most effective way to evaluate the effect given to the MNE Declaration. The MNE Declaration did not seem to be used sufficiently by constituents and enterprises. In some cases, workers' organizations had not received the Survey; nor was the Survey discussed by some of the tripartite ILO bodies at national level. She asked the Office to prepare a paper for submission to the Subcommittee in March 2006 which would outline different options to assess the implementation of the MNE Declaration. She stressed the importance of promoting the MNE Declaration if the response rate was to be improved and, in that regard, referred to the Italian project on promoting the United Nations Global Compact, the MNE Declaration and the OECD Guidelines for Multinational Enterprises. She asked that the finalized survey be updated to include statistics from the UNCTAD *World Investment Report 2005*. She also stressed the need to improve the MNE Declaration follow-up mechanism and to foresee the possibility of enabling enterprises to adhere to the Declaration.
7. The Employer Vice-Chairperson noted that efforts to simplify the Survey had not had the desired effect and expressed disappointment with the low response rate. She identified two possible reasons for the low response rate: the constituents had not been successful in getting their own members to respond to the Survey, and the limited success in promoting the MNE Declaration. Nevertheless, the summary did represent a fair reflection of trends, which were very positive, although it provided insufficient detail. She stressed the importance of developing a strategy to communicate the results of the Eighth Survey. She asked that the Office make a proposal to the next Subcommittee meeting on a more meaningful process for assessing the effect given to the MNE Declaration.
8. Mr. Trogen (Employer representative, Sweden) noted that, while the responses to the Survey perhaps had not been impressive in terms of quantity, the quality of the response was noteworthy.
9. The representative of the Government of the United Kingdom thought that the Survey provided valuable examples of good practices; nonetheless, the level of detail was not sufficient. He looked forward to an Office paper on alternative options to the current Survey at the March 2006 meeting of the Subcommittee and suggested that consideration

<sup>1</sup> GB.294/MNE/1/1 and GB.294/MNE/1/2.

be given to a more detailed survey on thematic issues that could better illustrate good practices.

10. The representative of the Government of Canada supported the proposal made by the representative of the Government of the United Kingdom and suggested that the Survey be reassessed and consideration given to conducting it on either a sectoral or regional basis. She also explained that governments could not reply to some questions because they did not differentiate between multinational enterprises (MNEs) and national enterprises in the collection of their information.
11. The representative of the Government of Kenya noted that paragraphs 44, 88 and 89 of the Survey accurately reflected the African reality.
12. The representative of the Government of the Netherlands expressed concern that no disputes had been put before the Subcommittee on the application of the MNE Declaration and questioned the effectiveness of the instrument.
13. In reply, the Employer Vice-Chairperson stressed that the MNE Declaration was not only addressed to enterprises, but also to governments, and, as such, was a much broader instrument than a mechanism to address disputes.

## **Progress in the implementation of the work programme**

### **(a) Update of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**

14. The representative of the Director-General introduced the document.<sup>2</sup> He highlighted the proposed amendments which aimed at updating the text of the MNE Declaration with new or revised instruments adopted by the International Labour Conference and the Governing Body.
15. The Employer Vice-Chairperson noted that the Office had been requested to prepare the update in consultation with the Officers, ACTRAV and ACT/EMP and was disappointed that no such consultations had taken place. She supported most of the changes proposed by the Office, but could not support the inclusion of a reference to the Human Resources Development Recommendation, 2004 (No. 195), in light of the fact that the Employers' group had unanimously voted against the adoption of that instrument at the International Labour Conference. She noted the agreement among the Officers of the Subcommittee of the Governing Body that the Office produce an accessible executive summary in addition to the update and emphasized how important that executive summary would be to the overall accessibility and promotion of the MNE Declaration.
16. The Worker Vice-Chairperson considered that the updating of the text to include Recommendation No. 195, which revised and replaced the Human Resources Development Recommendation, 1975 (No. 150), was a procedural matter. She also underlined the need for a clear reference to Recommendation No. 195, owing to the fact that various parts of the MNE Declaration itself referred to the issues addressed in that Recommendation. She asked for clarification from the Legal Adviser. She also noted other parts of the MNE Declaration that needed to be updated with the relevant fundamental

<sup>2</sup> GB.294/MNE/2.

Conventions. The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), needed to be added to paragraph 9. Furthermore, the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), were missing from paragraph 58.

17. The representative of the Government of Nigeria supported all of the amendments proposed in the Office document.
18. The representative of the Government of the Netherlands also supported the proposed amendments but considered the language to be weak.
19. The representative of the Government of Germany supported the proposed amendments set out in the paper, and also supported citations to all the fundamental Conventions.
20. The representative of the Government of Japan supported all the proposed changes and suggested that future updates should include more drastic revisions.
21. The Legal Adviser explained that Recommendation No. 195 had been adopted by the Conference to revise and replace Recommendation No. 150. Therefore, it would be normal practice to revise and replace Recommendation No. 150 with Recommendation No. 195 in the footnote to the text of the MNE Declaration. However, the procedure was not automatic, and a decision to replace an outdated instrument with the revised instrument would need to be taken by Governing Body through the Subcommittee. In his opinion, the Subcommittee would be at fault if it did not at least recommend the elimination of the reference to an outdated Recommendation.
22. The Employer Vice-Chairperson proposed deleting the reference to Recommendation No. 150, in accordance with the Legal Adviser's advice, but not replacing it with Recommendation No. 195. She noted that if employers' organizations were to promote the MNE Declaration, tripartite consensus was needed on its content.
23. The Worker Vice-Chairperson stressed that the decision to revise and replace Recommendation No. 150 with Recommendation No. 195 had been a decision of the International Labour Conference, and that it was incumbent on the Governing Body to give effect to that decision by updating the MNE Declaration.
24. The representative of the Government of the United Kingdom was of the opinion that, since the replacement of Recommendation No. 150 with Recommendation No. 195 had been a decision of the International Labour Conference, reference to Recommendation No. 150 in the MNE Declaration should be replaced with the revised instrument.
25. The representative of the Government of the Bolivarian Republic of Venezuela supported the proposal to update the MNE Declaration by making reference to the revised instrument.
26. The representative of the Government of Germany considered it sufficient to cite the principles contained in the instrument in the text of the MNE Declaration, without actually providing reference to the revised instrument. Therefore, she suggested that one way to bridge the differences might be to leave paragraph 29 as it was, while eliminating the footnote.
27. The representative of the Government of Nigeria agreed that updating the text with the revised instrument was a technical and procedural matter.

28. The representative of the Government of Canada asked for clarification on the legal implications of footnotes in the text of the Declaration and suggested that discussion of the update be deferred to the March 2006 meeting of the Subcommittee.
29. In response, the Legal Adviser clarified that, in the context of the MNE Declaration, governments were to draw inspiration from the Conventions and Recommendations cited in the footnotes. However, governments were not legally bound by a Convention cited therein unless they had ratified it.
30. The Employer Vice-Chairperson reiterated the fact that decisions regarding updates to the MNE Declaration were, at their very core, political decisions rather than legal obligations, as had been supported by the opinion given by the Legal Adviser. In order to ensure that the instrument continued to be supported and promoted by all, its content had to be decided on the basis of consensus. To do otherwise would jeopardize the tripartite consensus of the MNE Declaration, which was the very basis of its strength.
31. It was agreed that the Subcommittee would readdress the issue at its March 2006 meeting.

**(b) Three subregional symposia: Oral presentation**

32. The representative of the Director-General reported on the three tripartite symposia that had been held between January and April 2005 in the Association of South-East Asian Nations (ASEAN), the Common Market of the Southern Cone (MERCOSUR) and the Southern African Development Community (SADC) regions to promote the MNE Declaration at the subregional level. The meetings had provided a valuable opportunity for discussions, and a number of important recommendations had emerged from the symposia. The Office had received requests for follow-up activities. The MNE Declaration had proved a useful instrument for discussing the impact of MNE activity on economic and social issues and the CSR policies and programmes of MNEs. A number of lessons had been learned that would be incorporated into future work of the Office.
33. The Worker Vice-Chairperson expressed her disappointment over the low levels of attendance and asked the Office to provide the next Subcommittee with a written report on the impact of the symposia and the proposed follow-up.
34. The Employer Vice-Chairperson also expressed her disappointment over the low levels of attendance. She wondered how the effectiveness and impact of regional symposia could be improved given the considerable cost involved in organizing those events and asked the Office to consider that in the proposed follow-up. She emphasized the need to ensure a concrete follow-up to those meetings.
35. The representative of the Government of the United Kingdom suggested that future symposia must include mechanisms to evaluate their impact.
36. The Chairperson recommended that lessons learned from the evaluation of the subregional symposia be kept in mind in the planning of future events.

## **Preparations for the 2007 International Forum on Corporate Social Responsibility and the World of Work: Oral presentation**

37. The representative of the Director-General sought guidance from the Subcommittee on preparations for the 2007 International Forum on Corporate Social Responsibility and the World of Work to mark the 30th anniversary of the MNE Declaration.
38. The Employer Vice-Chairperson asked the Office to clarify whether there was an intention to combine a technical CSR forum with the event to mark the 30th anniversary of the MNE Declaration. She referred to paragraph 23 of the text of the Report of the Subcommittee on Multinational Enterprises submitted to the 292nd Session of the Governing Body (March 2005)<sup>3</sup> which put emphasis on the importance of positioning the MNE Declaration in the CSR debate at that event and not on holding another CSR conference.
39. The Worker Vice-Chairperson noted that she had understood the CSR forum and an event to mark the 30th anniversary of the MNE Declaration to be two separate events. She also asked to know about the specific budget allocation for the event which had been decided at the previous Subcommittee meeting.
40. The representative of the Director-General pointed out that the description of the CSR forum contained in Appendix II of document GB.294/PFA/10 referred to the commemoration of the 30th anniversary of the MNE Declaration, as well as the contribution of business to the social dimension of globalization. However, since the PFAC had decided to postpone the decision on that item until the March 2006 session of the Governing Body, there would still be time to clarify the focus of the event along the lines reiterated by the Subcommittee.
41. The Employer Vice-Chairperson stated that her group supported an event to commemorate the 30th anniversary of the MNE Declaration so as to position it as the ILO's key reference in the CSR debate.
42. The Chairperson referred to paragraph 23 of the text of the Report of the Subcommittee on Multinational Enterprises<sup>4</sup> and asked the Office to clarify the matter.

## **Update on CSR activities of the Office outside MULTI: Oral presentations**

43. The Chairperson invited the Executive Directors and the Director of the International Training Centre of the ILO (ITC-ILO) to give brief presentations.
44. Mr. Diop, Executive Director of the Social Protection Sector, highlighted three main considerations: the role of the ILO in promoting a mix of regulatory and voluntary initiatives; the need to promote the ILO Declaration on Fundamental Principles and Rights at Work in combination with technical instruments (such as those developed and promoted in the context of social protection) that had a direct impact on workers' lives; and the fact that social protection instruments and CSR objectives were mutually beneficial for workers

<sup>3</sup> GB.292/11.

<sup>4</sup> *ibid.*

and employers as they could increase productivity. Social security had a more diffuse link to CSR, but there were areas for synergies between public and private voluntary schemes. Focus should be on making technical recommendations operational and transforming good advice into practical and efficient actions.

45. Ms. Paxton, Executive Director of the Social Dialogue Sector, presented some of the activities conducted by ACTRAV and ACT/EMP to promote the Global Compact and conduct technical cooperation projects in selected countries; described technical cooperation projects run by the units within the Social Dialogue Sector; and highlighted the recently held Tripartite Meeting on Promoting Fair Globalization in Textiles and Clothing in a Post-MFA Environment. She stressed several points: the difference between CSR and industrial relations; the voluntary nature of CSR; and that CSR was not a substitute for labour law, collective bargaining or dispute resolution. A recent evaluation of IFP/DIALOGUE had recommended further involvement of the Sector in CSR. The tentative workplan concerning the InFocus Initiative (IFI) on export processing zones (EPZs) included building on work already done by the Office, conducting research on how to go forward, applying a sectoral approach, helping EPZs to adjust to a change of trade rules, and looking at global production chains.
46. Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector, stressed that international labour standards were essential for all CSR initiatives. He said that standards were addressed to governments, and that it was not legally possible to apply them directly to companies. Since CSR was essentially promotional, it was important to help companies to understand standards. The Sector had worked with ACT/EMP to develop user-friendly guidance on standards for enterprises. The ILO Declaration on Fundamental Principles and Rights at Work's annual plans of action included activities aimed at enterprises. The International Programme on the Elimination of Child Labour (IPEC) helped enterprises and sectoral employers' organizations deal with certification programmes. Other examples of initiatives involving the private sector included the football project in Pakistan, a tripartite agreement to eliminate child labour in the mining sector, and projects in the tobacco and cocoa sectors.
47. The Director of the ITC-ILO, Mr. Trémeaud, stated that the Enterprise Development and the Standards and Fundamental Principles and Rights at Work units of the ITC-ILO were carrying out activities related to CSR, in close collaboration with the relevant ILO units. Programmes included training on socially responsible enterprise restructuring; non-discrimination; and the relationship between the MNE Declaration, the Global Compact and the OECD Guidelines for Multinational Enterprises; and international labour standards and globalization. There was great demand for training on issues related to CSR and, in particular, on how to translate standards into practice. He asked the Subcommittee for precise instructions on how to deal with that demand.
48. The Worker Vice-Chairperson warmly thanked the Executive Directors for their presentations, which she thought had been very informative, with many of the issues that had been raised being of direct interest to the Workers. She asked that the speakers be invited to future meetings of the Subcommittee.
49. The Employer Vice-Chairperson also expressed her great appreciation for the very useful inputs provided by the Executive Directors, and underlined that such dialogue was important to ensure transparency and policy coherence between departments in the ILO. She welcomed the invitation extended by Mr. Trémeaud for closer collaboration on integrating the MNE Declaration in training programmes.

## **Initial proposal for the forthcoming InFocus Initiative on CSR**

- 50.** The Chairperson informed the Subcommittee that Office paper GB.294/MNE/5 had been withdrawn. She proceeded to invite the Subcommittee to provide general guidance on what they considered to be the priorities for the IFI on CSR.
- 51.** The Worker Vice-Chairperson considered that the IFI on CSR should consider how MNEs were implementing labour standards and decent work in their supply chains in light of the internationalization of production and be linked to the IFI on EPZs; aim at promoting social dialogue and workers' and employers' participation as key actors in CSR; develop ways and means to promote the MNE Declaration, the Global Compact, the OECD Guidelines for Multinational Enterprises and framework agreements in different contexts; liaise with DIALOGUE and SECTOR in promoting mature systems of industrial relations; include a training component and, in that regard, she requested the Office to submit a report to the March session of the Subcommittee on the training programmes on CSR that the ITC-ILO was planning to develop; and address the quality of social auditing and proliferation of different CSR instruments. She called for a paper to clearly define the priorities and necessary cooperation with other departments. She also stressed the need for MULTI to be involved in the follow-up to the resolution concerning Burma/Myanmar, as discussed by the Committee on the Application of Standards in June 2005. Lastly, she sought clarification on the overall financial resources available to implement the IFI on CSR.
- 52.** The Employer Vice-Chairperson stressed the need for conceptual clarity on CSR, which was a voluntary initiative by enterprises; it was important to distinguish that from the responsibility of governments to ensure compliance with national legislation. Care should be taken to ensure that enterprises were not being used to fill gaps created by the failure of governments. She proposed four concrete areas for action: improving the capacity of governments to enforce legislation so that companies were not left to fill gaps arising from government failures; collecting and disseminating good practices and developing practical tools, in particular updating and improving the Business and Social Initiatives Database (BASID); promoting the MNE Declaration and facilitating dialogue between the constituents; and ensuring that any exchanges between the ILO and enterprises be conducted in close cooperation with ACT/EMP and the International Organisation of Employers (IOE).
- 53.** The representative of the Government of Kenya, speaking on behalf of the Africa group, proposed focusing more on increased promotional and training activities.
- 54.** The representative of the Director-General clarified that the IFI on CSR would have no additional resources allocated. The IFI on CSR would be managed and coordinated by the Multinational Enterprises Programme, but joint work items with other departments would be co-managed.
- 55.** The Chairperson suggested that there might be a case for governments and constituents to mobilize extra-budgetary funding to support the IFI on CSR.

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## **Update on international corporate social responsibility (CSR) issues and the ILO's involvement (inter alia, ISO, HCHR, Global Compact)**

**56.** Owing to time constraints, the Subcommittee agreed to postpone the discussion concerning developments on CSR in other organizations to the March 2006 session of the Governing Body. The Employer and Worker Vice-Chairpersons wished to be closely consulted by the Office with regard to the International Organization for Standardization (ISO) Working Group on Social Responsibility.

**57.** *The Subcommittee recommends that the Governing Body:*

- (a) request the Office to prepare for the March 2006 meeting a paper outlining different options for evaluating the effect given to the MNE Declaration;*
- (b) postpone the decision on the update of the MNE Declaration until March 2006;*
- (c) request the Office to prepare for the March 2006 meeting a paper outlining the impact and concrete lessons learned from the three subregional tripartite symposia and any proposed follow-up;*
- (d) request the Office, in consultation with ACT/EMP and ACTRAV and the respective secretariats, to prepare a proposal for an event to mark the occasion of the 30th anniversary of the MNE Declaration, with a view to promoting the MNE Declaration as the ILO's key reference in the CSR debate;*
- (e) request the Office to provide written updates of all CSR-related activities within and outside the Office to the Subcommittee at its March and November sessions on an ongoing basis;*
- (f) request the Office, in consultation with ACT/EMP and ACTRAV and the Workers' and Employers' secretariats, to prepare a paper on the Office's strategy and plan of action for the InFocus Initiative on CSR for discussion and decision by the Subcommittee at its March 2006 session;*
- (g) request the Office to prepare a paper for the March 2006 session outlining any training programmes on CSR that the ILO International Training Centre plans to develop in the next biennium.*

Geneva, 15 November 2005.

*Point for decision:* Paragraph 57.