International Organisation of Employers
Organisation Internationale des Employeurs
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The Global Voice of Business

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Third session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights

Subject 5: Legal Liability

Thank you Mr Chairperson-Rapporteur,

I am Vice President for Corporate Responsibility and Labor Affairs with the U.S. Council for International Business speaking on behalf of the IOE, the largest network of the private sector in the world, with more than 150 business and employer organization members. The IOE is the recognized voice of business in social and labor policy debates across the ILO, UN and G20.

Our points are reflected in the joint statement from the international business community in response to the "elements" paper, which can be found at the back of the room and on the Intergovernmental Working Group website.

My remarks today respond specifically to the "Legal Liability" part of the "elements" paper.

- Respecting and advancing human rights is a priority for the international business community. We continue to endorse, promote and disseminate the UN Guiding Principles on Business and Human Rights (UNGPs), and other Government-backed instruments on responsible business conduct, among our members and our global networks. We also actively help businesses of all sizes to meet their responsibility to respect human rights in line with the UN Guiding Principles and to make a positive contribution to the Sustainable Development Goals (SDGs).

- Since its launch, we have also engaged substantively with the work of the Intergovernmental Working Group. We submitted written observations on the UN treaty process in June 2015 and September 2016 and we participated in the IGWG's first two sessions.

- The recently introduced "elements" paper seeks to impose obligations on TNCs and OBEs so they "comply with all applicable laws and respect internationally recognised human rights, wherever they operate, and throughout their supply chains." We interpret this troubling text as an intention of making TNCs legally liable for the conduct of all companies and business partners down the entire supply chain, including globally. Notably, the inclusion of the terms "wherever they operate" and "supply chains" is especially relevant, because it suggests that a future binding instrument would be focused on domestic and global supply chains.

- It is also important to note that some stakeholders incorrectly assert that cross-border supply chains are a unique and distinct phenomenon that require new forms of global regulation. We strongly refute this view. Human rights abuses and decent work challenges occurring in global supply chains – in the vast majority of cases – are not caused by the cross-border nature of trade. These complex challenges are often already present in many national economies. Meaningfully addressing these domestic challenges requires the support of all stakeholders, but no stakeholder can or should replace the role of the State.

- States have the primary duty to develop strong national institutions, as well as promulgate and effectively enforce domestic laws covering all companies within its borders, regardless of whether they participate in global supply chains or not. States must also meet their existing human rights duties and obligations as required under international law and under the UNGPs. This includes providing greater access to remedy for victims of alleged abuse via judicial and non-judicial remedy mechanisms at the local level.

- Global supply chains are understood to be "complex, diverse and fragmented" and they are constantly changing in response to economic factors and market conditions. Buyers do not control their full supply chains and their ability to influence the business conduct of a supplier largely depends on the buyer's market position. For example, small and medium-sized enterprises (SMEs) often have limited leverage over their suppliers. In other scenarios, large TNCs may find themselves having limited leverage when they source only a small amount of a supplier's production, or when the supplier has a monopoly, or when the supplier is actually a much bigger company than the TNC.

- Furthermore, it is often impossible or impractical, either economically or logistically, to control all suppliers and subcontractors. These complexities and limitations have been recognized in many Government-backed instruments, such as the UNGPs and the OECD Guidelines for Multinational Enterprises, which recognize the practical limitations on business enterprises to effect a change in their supplier's behaviour. These limitations relate to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain.

- Linked to this, *all* individuals, communities and workers should have their rights protected. Therefore, we should avoid creating a two-tiered compliance system, whereby individuals, communities or workers that suffer business-related alleged harms involving TNCs have greater protections, but the rest get lesser or diluted protections and remediation.

- Most importantly, global supply chains have existed for centuries and we should be careful not to undermine their hugely positive impact on social development. Cross-border supply chains have been ladders of development and instrumental in bringing economic and social progress in industrialised, emerging and developing countries. Cross-border exchange fosters economic growth and creates jobs including by increasing people's opportunities for gaining a foothold in the world of formal work. It promotes technological progress, enhances productivity, stimulates innovation that leads to skills-upgrading, and contributes to the reduction of poverty. Indeed, studies show that many jobs created in global supply chains provide better working conditions in a number of developing countries than jobs in purely domestic supply chains or work in the informal sector.

- The overly-restrictive and punitive approach envisaged in the "elements" paper would have a number of unintended consequences. It would harm countries efforts to achieve inclusive economic growth; discourage companies from working with other stakeholders on social development and progress; and dampen investment flows to emerging and least developed economies.

Thank you.