

National Contact Point of Switzerland

Closing Statement: Specific Instance regarding Triumph in the Philippines and in Thailand

Berne, 14 January 2011

Background

1. The National Contact Point of Switzerland (NCP) for the OECD Guidelines for Multinational Enterprises has the mandate to raise awareness and promote observance of the Guidelines. The NCP also contributes to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances by offering a forum for discussion and assisting parties concerned to deal with these issues.

Proceeding of the NCP

2. The NCP received a written request dated on 2 December 2009 to consider a specific instance regarding factory downsizing in Thailand and factory closures on the Philippines involving Body Fashion (Thailand) Ltd. (BFT) as well as Triumph International (Philippines) Inc. (TIPI) and Star Performance Inc. (SPI). All factories are respectively were fully owned by Triumph International, which has its headquarters in Switzerland.
3. The specific instance was submitted jointly by a group of four parties: Triumph International Thailand Labour Union (TITLU), which is the union representing workers at BFT; Thai Labour Campaign; Bagong Pagkakaisa ng mga Manggagawa sa Triumph Int'l. Phils. Inc. (BPMTI), which was the union representing workers of TIPI; and Defend Job Philippines Organization Inc. In addition, the TIE Bildungswerk Germany was indicated to take the role of an advisor of the above-mentioned four parties.
4. The concerns raised in the submission were particularly related to layoffs in June 2009 due to the closure of two factories in the Philippines (1663 workers) as well as the reduction in capacity at a production center in Thailand (1959 workers). The parties submitting the specific instance argued that Triumph enforced this large-scale restructuring not because of economic difficulties but to constrict labour union activities. Furthermore, the submitting parties stated that unions were neither informed in advance of the restructuring nor involved in the process of reduction of workplaces. Finally, they asserted that financial compensation was not paid according to applicable law and the collective bargaining agreements (CBA).
5. In their submission, the submitting parties claimed noncompliance with the following Chapters of the OECD Guidelines: Chapter II: General Policies, para. 9; Chapter IV: Employment and Industrial Relations, para. 1, 2 ,3, 6, 8; Chapter VII: Consumer Interests, para. 4.
6. On 18 December 2009, Triumph explained in its written reaction to the submission addressed to the NCP that the company had to undergo a major restructuring program. Therefore, the company decided to close or downsize its three worst

performing factories, which turned out to be BFT, SPI and TIPI. Triumph assured that its actions were entirely in accordance with the applicable law, the CBA as well as the OECD Guidelines and disagreed with the claims made in the submission. In addition, it was explained that Triumph met all its obligations to employees, including a notice period that significantly exceeded the requirements of applicable law, full wage payment during the notice period and severance pay in excess of legal requirements.

The company specifically rejected allegations regarding union busting activities. Furthermore, it was stated that clear and comprehensive information of all changes were provided to unions. However, it was underlined that Triumph was unable to give notice prior to taking the decision to restructure operations as doing so would have required the company to advise all production centers worldwide that layoffs were being considered. This would have created mass destabilization and significant harm to the health of the enterprise as a whole.

Furthermore, Triumph stated that all competent ministries of the Philippines and Thailand have confirmed that the company's actions had been entirely legal.

7. On 23 December 2009, the NCP requested further information from the submitting parties in order to get a clearer picture of the situation described in the submission.
8. On 16 February 2010, the NCP concluded its initial assessment and informed parties concerned that it found the issues raised under Chapter IV of the OECD Guidelines to be relevant and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Triumph to have acted inconsistently with the Guidelines. Furthermore, the NCP offered its good offices to facilitate a dialogue between parties concerned with the aim of reaching a mutually acceptable outcome.
9. In March 2010, the NCP received through the Swiss Embassy in Thailand the copy of a Thai court decision. Almost 300 dismissed workers had taken legal action, asking the court to determine whether Triumph had to pay special compensation according to the CBA. The court rejected the claim and concluded, based on its interpretation of the respective passage of the CBA, that Triumph was not obliged to pay such special compensation.
10. On 1 April 2010, Triumph accepted the offer of the NCP to facilitate a dialogue and suggested a framework and conditions for such discussions. The NCP forwarded this proposal to the submitting parties in the Philippines and in Thailand for comment. On 1 June 2010, the NCP obtained a joint reply from the submitting parties. While they welcomed Triumph's willingness to engage in a dialogue they did not agree on all elements of the suggested framework. Triumph reacted with a written response dated on 30 June 2010 which was forwarded by the NCP to the submitting parties. They sent their second written reply to the NCP on 29 September 2010. Although the NCP tried to facilitate an agreement on the framework for the dialogue it came to the conclusion that it was not possible to reach such an agreement taking into account the exchange of written positions over a period of several months. While there was a general agreement to discuss issues raised in the submission under Chapter IV of the Guidelines, there remained disagreement on whether to reopen discussions on financial compensation paid to dismissed workers. The NCP decided therefore to conclude the proceeding and to draft its final statement.
11. During the proceeding, the submitting parties requested the NCP to conduct possible facilitation or mediation meetings in Thailand and/or in the Philippines. As an alternative option the NCP was asked to provide funding for travel expenses to Switzerland and translation costs to the submitting parties. The NCP was not in a

position to comply with these requests. According to its established practice, the NCP is holding its meetings in Switzerland. Furthermore, the NCP is not in the position to provide any funds to the parties.

Outcome of the Proceeding

12. If a specific instance is submitted to the NCP, the NCP's role is to facilitate a dialogue between parties concerned and thus to contribute to a mutually agreed solution of the problem raised. Parties must reach an agreement on the framework and content of the dialogue. In the case under consideration, parties concerned had a different understanding on the objectives of the proceeding and it was therefore not possible to reach such an agreement. In view of this situation, the NCP sees no possibility to further contribute to the solution of the conflict.

Conclusions

13. Following the outcome of the NCP proceeding, the NCP will close the specific instance.

14. The NCP thanks both parties for engaging in the process.