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致工商事務委員會

中國勞動透視有關「加強香港與內地的貿易關係」的意見

2008 年 5 月 20 日

中國勞動透視專注研究國內經濟及勞工問題。自 2005 年起，本會累計收集超過 200 宗有關港資企業在國內投資設廠導致國內員工患上矽肺病的個案，牽涉的港資寶石加工企業多達 16 家。矽肺病為國內頭號致命的職業病，由寶石切割，打磨及加工過程中產生的矽塵，以及企業缺乏抽風等安全生產措施引起。200 多個矽肺病的個案中，有至少 4 名患者死亡，其餘患者部分或永久喪失工作能力。至少過半數個案的國內受害工人，因所謂「產業提升」搬遷廠房，或變更公司法人，至今未能在國內透過民事訴訟向港商老闆取得法定賠償。

事實是部分港商在國內設廠，投資的同時，並沒有遵守國內的勞動法，職業病防治法，安全生產法，以及國際勞工組織的核心勞動條款和第 135 號有關職業安全健康的公約。本會收集到的 200 多宗個案，包括國內工人的工傷登記 合法的診斷證明，以及法庭判決，都是這些港商違法的充份證明。這些違法的現象屢見不絕，更並非個別行為。港商在積極提出在內地營商愈趨困難的同時，亦不能對保障勞工及環境的問題懸而不談。

工貿處有必要關注在促進中港貿易，協助港商的同時，能夠確保港商在內地投資時遵守勞動標準。更有需要研究港府有關中港貿易的政策，及針對港商及中小企的各項資助計劃是否需要加入勞工及環保原則。

目前工貿處從四方面向中小企提供資助，包括信貸保證計劃，中小企業市場推廣，培訓及發展基金。資助計劃的原則及目標大致為 (i) 成本效益; (ii) 自由及公平申請; (iii) 能推動香港經濟發展，形象及競爭力等。

這些資助原則並沒有包括評審申請企業的勞工權益及環保標準，導致這些資助計劃有明顯缺位及矛盾之處。

- (a) 當申請企業的勞工成本可以透過違反國內的勞動法規，拖欠國內工人工資，對工傷及患有職業病員工不作合法賠償時，工貿處何以確保受資助企業的運

作「真正地」並且「合法地」具有成本效益?

- (b) 工貿處何以確保受資助的企業並沒有違反國內法規及國際勞工標準，以保障對其他未被資助但守法的企業享有公平受助的機會? 事實上香港及內地政府已有政策推動企業社會責任，港商亦普遍面對內地政府加強對勞動及環保的監察及檢控壓力。因為缺乏勞工及環保的原則和標準，工貿處的資助計劃有可能資助曾經或正在被國內監察機關檢控的違法企業，對守法的企業而言形同資助違法企業進行不公平競爭。
- (c) 以本會收集到的個案為例，其中一家港資寶石加工企業自 2002 年以來，未為工人提供安全生產環境，導致至少 46 名國內工人患上矽肺病。內地法院在至少 14 宗有關該企業的判決中，裁定該企業違反勞動法、職業病防治法、及社保條例。該企業至今仍有 9 宗有關賠償及非法辭退職業病工人的訴訟在內地法院進行。並且由 2005 年至 2008 年間，每年均有國內工人、香港及外國勞工團體、包括瑞士恩工會 UNIA 不斷向香港珠寶展覽會及瑞士巴塞爾珠寶及鐘錶展覽會投訴該企業有違國際勞工標準，要求取消其參展資格。工貿處何以確保資助計劃，特別是市場推廣計劃不會用以資助此等有損香港名聲的企業參加本地及國際工貿展覽? 工貿處如何能防止政府公帑不被濫用，影響香港企業在國際社會的人權形象及競爭力?

工貿處有迫切需要檢討現時的中港貿易推廣政策及資助計劃，並考慮推行以下措施，確保資助企業與保障權益得以平衡。

- i. 工貿處應參考國際勞工及環保標準，在中港貿易推廣政策及資助計劃的申請條件及評審方法中加入相關條款，推動及確保計劃符合勞工權益及環保原則。
- ii. 申請資助計劃的企業要承諾遵守申請條件中援引的與勞工權益，環保及企業社會責任相關的法例及國際標準。
- iii. 如有第三方提出投訴及證據，工貿處有權拒絕有關申請或終止資助計劃。
- iv. 公佈受資助的企業名單予公眾監督。

Panel on Commerce and Industry
Furthering of trade relations between the Mainland and Hong Kong
20 May 2008
Labour Action China

Labour Action China (LAC) is a Hong Kong based non-government organisation researching investment and labour issues in mainland China. Since 2005, LAC has documented more than 200 cases of mainland Chinese workers who had contracted

silicosis during their employment in 16 Hong Kong registered and invested jewellery and gemstone processing factories operating in Guangdong province. Silicosis is incurable and the number one killing occupational disease in China. It is directly caused by inhalation of silica dust due to lack of safety and health provision in the manufacturing process of stone cutting, grinding and polishing of the jewellery and gemstone industry. 4 workers out of the documented cases had died while others suffered from partial to complete loss of work ability permanently. More than half of these cases could not be pursued further in the civil courts in China over compensation claims due to relocation of the original employing units in the name of 'industrial upgrading', or change of company name.

Violations of the Labour Laws of China, the Occupational Disease Prevention Law, the Safe Production Law, as well as the core labour standards and Convention No.135 on Occupational Safety and Health of the International Labour Organisation are committed by some of the Hong Kong investments in mainland China. These documented cases all of which are grounded with work injury certificates, diagnosis certificates and court rulings officially issued by authorised hospitals, the Ministry of Labour, as well as the civil courts in mainland China are hard proofs of the fact. These violation cases are part of the every facts of Hong Kong investment in mainland China rather than isolated phenomenon or bygone facts; nor should they be discarded vis-à-vis the mounting expressed opinions of the business sector regarding worsened investment environment in mainland China recently.

While promoting Hong Kong and mainland trade and providing assistance to Hong Kong enterprises, TID should also ensure that Hong Kong enterprises benefiting from its schemes are respecting labour rights and environmental standards. It is time to start studying about the integration of these criteria into the policy framework and support schemes of the TID regarding trade and investment relations between Hong Kong and the mainland.

At present the TID is administering loans and direct subsidy programs to provide financial support to small-medium sized enterprises under four schemes, namely the SME Loan Guarantee Scheme, the SME Export Marketing Scheme, the SME Training Fund and SME Development Fund. The criteria of approving these schemes take into considerations mainly the principles of (i) cost effectiveness; (ii) free and fair application; and (iii) promotion of the competitiveness, image and economic development of Hong Kong.

There are obvious limitations as well as contradictions in the objectives of the existing criteria of the SME support schemes due to its blankness on the issue of labour rights performance of the applicant's investment in its operations in mainland China.

- (i) How can the support schemes ensure real and legally abiding cost effectiveness of the subsidised enterprises if the labour costs of their operations are externalised and hidden in terms of violations of the Chinese labour laws, un-paid premiums and compensation for overtime work, injuries and occupational diseases to employees of the enterprises in mainland China?
- (ii) How can TID ensure that the support schemes are not subsidising enterprises that are committing violations of the labour law of mainland China and

international labour conventions at the expense of enterprises that are not? How can TID ensure that it is promoting free and fair competition and not the contrary, that it is not subsidising enterprises that have been or are being prosecuted by mainland government, in the absence of a comprehensive trade promotion policy framework that does not exclude the principles and mechanism of labour rights, environmental protection and corporate social responsibility that both Hong Kong and the mainland government are promoting and already have policies and inspection mechanism in implementing?

- (iii) In the concrete example of a Hong Kong registered jewellery and gemstone company that has operations in Guangdong province, our documentation data shows that since 2002, at least 46 cases of workers were officially diagnosed for silicosis contraction; not less than 14 litigation cases were pursued and ruled in the civil courts in mainland China against the company for having violated the mainland labour law, occupational disease law and social security law; and 9 lawsuit cases are still going on in mainland courts regarding work injury compensation and illegal dismissal of workers who have contracted occupational disease. Between 2005 and 2008 March, official complaints had been filed by the mainland employees of this company, non-government organisations in Hong Kong, as well as international trade unions such as the Swiss trade union, UNIA to the Hong Kong Trade Development Council and the Basel World Jewellery and Watches Exhibition for admitting this company to the trade fair despite the violations against the Chinese laws and the ILO Convention No.135 on labour rights and occupational safety and health. How can the public community in Hong Kong ensure that in none of the government funded support programs to the business sector is such a company that tarnishes the image of Hong Kong investment not subsidised by public money? How can TID ensure that the SME Export Marketing Scheme is not abused to subsidising companies that has caused damages to the image and social competitiveness of Hong Kong against the labour and environmental standards respected by the international community?

To ensure balance between trade promotion and rights protection, we believe that it is of urgency and necessity that TID reviews the trade promotion policy framework and administering schemes by incorporating the following measures:

1. Integrate labour rights and environmental protection stipulations with reference to international standards in the assessment tools and application criteria of all the trade promotion and subsidy schemes.
2. Applicants to TID support schemes should undertake to ensure that no violation of laws and international conventions, including labour, social and environmental as stipulated in the application and assessment criteria is committed.
3. TID should have the right to terminate the application and any current support programs with the enterprise should complaints are filed and founded with proofs from the third parties.
4. Disclose the beneficiary enterprises and organisations under the TID support schemes for public monitoring.