**Oral contribution on the second revised draft of the legally binding instrument:**

to the sixth session of the “open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights”, 26-30. October 2020, Room XX, Palais des Nations

The session during which the oral intervention is to take place: Tuesday afternoon, Agenda Item

How the intervention will take place: in person delivery

The type of stakeholder speaking: NGO with ECOSOC status

Name of the State or organization(s): Verein Sudwind Entwicklungspolitik

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Südwind and the other members of the Treaty Alliance Austria, a coalition of 15 Austrian NGOs and trade unions, highly welcome the “Second revised Draft” and the process of consultations and negotiations that led to it.

We believe with regulatory developments on UN, EU and many national levels we have a unique window of opportunity open to establish equal conditions of competition on a global scale in terms of human rights and the environment - the so-called *level playing field* is in sight.

With regards to article 7.6. we know from our daily engagement with human rights defenders, trade unions and workers in global supply chains how difficult it is to gain access to justice and legally proof the wrongdoings of a certain business especially in complex supply chains. The continued corporate impunity after the tragical accidents of the collapse of Rana Plaza building in Bangladesh and the Ali Enterprise Factory Fire in Pakistan have showed how important the reversal of the burden of proof is for the victims.

We think that the revised paragraph 7.6. has been weakened. We recommend the text should include a clear provision stating that it rests on the defendant business enterprise to demonstrate that it took every reasonable step to avoid causing or contributing to a human rights violation or abuse, or prevent such violation or abuse. This type of provision is well established in different national and international legal instruments and case law, and is here suggested for civil claims. It thus does not conflict with the ‘presumption of innocence’ principle in criminal law.

This reversal is a way to ensure equality of arms in the judicial process, eliminating the barriers that proof represents for victims in reaching justice. In order to ensure that submitted lawsuits have realistic chances of success, the provision in Article 7.6 on the shift of the burden of proof should not be made optional. The shift of the burden of proof must be directly enshrined in the treaty so that legal actions have realistic chances for victims and human rights defenders in global supply chains