Annual Report on the OECD Guidelines for Multinational Enterprises 2009

CONSUMER EMPOWERMENT

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Foreword

To many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct by these companies is a real challenge however since their operations often straddle dozens of countries and hundreds of cultural, legal and regulatory environments.

The OECD Guidelines for Multinational Enterprises aim to help businesses, labour unions and NGOs meet this challenge by providing a global framework for responsible business conduct covering all areas of business ethics, including tax, competition, disclosure, anti-corruption, labour and human rights, or environment. While observance of the Guidelines by enterprises is voluntary and not legally enforceable, 42 adhering governments are committed to promoting them and to making them influential among companies operating in or from their territories.

This Annual Report on the OECD Guidelines for Multinational Enterprises, the ninth in a series, describes what adhering governments have done to live up to this commitment over the period June 2008-June 2009. It acknowledges that while progress has continued, further improvements are needed to raise awareness and effectiveness of the Guidelines. The outbreak of the financial and economic crisis has reinforced this message by highlighting the importance of promoting more actively business ethics worldwide.

The Report also presents the main findings and supporting material for the 2009 Roundtable on Corporate Responsibility which was devoted to the theme of "Consumer Empowerment and Responsible Business Conduct". The discussions highlighted the positive impact that responsible consumers can exercise on enterprises and the supporting role that the OECD Guidelines play in promoting and protecting consumer interests.

The Annual Report has been approved by the National Contact Points and the Investment Committee. The material for this publication was prepared by Marie-France Houde, Senior Economist, in the Investment Division headed by Pierre Poret, of the Directorate for Financial and Enterprise Affairs, with input from Céline Kauffmann, Economist and Policy Analyst, Lahra Liberti, Legal Advisor, Cristina Tebar Less, Lead Manager, and Neeraja Bhavaraju and Jack Faine, Consultants in this Division, as well as from Bruno Levesque, Principal Administrator, Financial Affairs Division and Magdalena Olczak-Rancitelli, Policy Analyst, Information, Communications and Consumer Policy Division.

Table of Contents

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Chapter 1

Guidelines Implementation

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises ("the Guidelines") meet to review their experiences in performing and promoting the implementation of the Guidelines. This chapter reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2008-June 2009 period.

1. Report by the Chair on the 2008-2009 Activities of the National Contact Points

1.1. Overview

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises ("the Guidelines") meet to review their experiences with promoting the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines.

In addition, a back-to-back Roundtable with practitioners is organised to assist NCPs to better understand emerging issues and policy developments relevant to the Guidelines. This year's event, held on 15 June 2009 and organised under the auspices of the OECD Investment Committee in co-operation with three other OECD Committees,[1] was devoted to the theme of "Consumer Empowerment and Responsible Business Conduct". The Guidelines are the sole existing government-endorsed international instrument for corporate responsibility to address consumer interests. Participants discussed the role of the Guidelines in encouraging responsible behaviour, notably on supply chains, energy consumption and climate change, and financial protection and education.

This report reviews activities to promote and implement the Guidelines undertaken by adhering governments over the June 2008 – June 2009 period. It is based on individual NCP reports and other information received during the reporting period and the results of this year's Annual NCP Meeting. The report is divided into five additional sections: 1.2 – Institutional Arrangements; 1.3 – Information and Promotion; 1.4 – Specific Instances; 1.5 – Activities related to OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones; and 1.6 – Considerations for Future Actions.

This year's implementation cycle of the Guidelines witnessed the outbreak of an unprecedented financial and economic crisis and a severe drop of confidence in global business. This led to renewed calls for enforcement of the standards of business ethics contained in leading international corporate responsibility instruments together with considerably less complacency with their shortcomings. In this context, the strategic role of the OECD Guidelines continued to enjoy high level expressions of support, including in the G8 and UN contexts. Simultaneously, NCP activities have come under greater scrutiny, and demands for an update of the Guidelines, ten years after the 2000 Review, have become more pressing.

The NCPs reports show that NCPs have been listening to stakeholders' expectations of their performance in raising the profile and effectiveness of the Guidelines. Several NCPs report institutional changes designed to make more resources available to the promotion of the Guidelines and to raise the NCPs' capacity to offer good offices in the mediation or conciliation of specific instances. This also responds to an OECD Council recommendation adopted in January 2009.[2] Several NCPs also report changes to increase stakeholder inclusiveness and procedural transparency in their activities, thus emulating some of the emerging practices identified in last year's survey of NCP performance. The Dutch and UK NCPs report considerable effort in making their recent structural reforms work. Canada and Norway's comprehensive reviews of their corporate responsibility policies confirmed the strategic role of the Guidelines. Individual efforts to raise the awareness, visibility and use of the Guidelines and of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones continued in various forms.

Although the number of specific instance requests was lower this past year than in the 2007-2008 implementation cycle of the Guidelines, this does not appear to signal a decline in support for the specific instances facility. With 25 new cases raised, the total number of requests since the 2000 Review exceeded the 200 mark. Of these, 146 have been accepted for consideration and 114 have been concluded or closed. While a majority of the new cases continue to relate to employment and industrial relations under Chapter IV of the Guidelines, some also involved financial actors and environmental issues covered by Chapter V. Consultations between NCPs on cases involving multiple requests also seem to have become smoother and more productive. But most importantly perhaps, some of the recently concluded or actively reviewed cases are exemplary of the role that the Guidelines can play in addressing investment disputes. In addition, a large majority of the new specific instances were raised in non-OECD countries (of which 8 in non-adhering countries).

Adherence to the OECD Declaration on International Investment and Multinational Enterprises, including the Guidelines, has continued to expand. Peru became the 41st adherent to the Declaration, and the review of Morocco's application has been launched with the aim to complete it within the forthcoming year. At their request, Jordan and Serbia have also been invited to adhere to the OECD Declaration subject to a review of their investment policies.

The Guidelines also garnered increased visibility within the context of the OECD Investment Committee's work on the financial sector, the horizontal Water project, the investment policy review of India, OECD contribution to the work of the Special Representative of the United Nations Secretary-General on Business and Human Rights, co-operation with the UN Global Compact and with other OECD Committees.

The Annual Meeting held on 16-17 June 2009 was devoted mainly to NCP performance. While noting the progress made in fulfilling their duties, NCPs felt that still more could be done to further the effectiveness of the Guidelines. They agreed that the next implementation cycle should continue to focus on ways to improve NCP performance. In addition, with the 10th Anniversary of the 2000 Review approaching, they discussed the merits of starting preparations for launching an update of the Guidelines at their 2010 Annual meeting. NCPs confirmed their readiness to actively contribute to this process. They also welcomed the confirmation that the voluntary peer review of the Dutch NCP will soon be launched.

The NCPs were subsequently informed that at the 2009 OECD Ministerial Council Meeting of 24-25 June 2009, Ministers "welcomed further consultation on the updating of the OECD Guidelines to increase their relevance and clarify private sector responsibilities".

1.2. Innovations in NCP structure and procedures

Taking into account the structural changes that occurred in the June 2007-June 2008 period, current NCP structures now consist of:

- 17 NCP single government departments;[3]
- 11 NCP multiple government departments;[4]
- 1 bipartite NCP;[5]
- 9 tripartite NCPs (involving governments, business, and trade unions);[6]
- 1 quadripartite NCP (involving governments, business, trade unions and NGOs);[7] and
- 1 mixed structure of independent experts and government representatives.[8]

Compared with 2000, when the NCP mechanism under the revised Guidelines was created, the inclusion of stakeholders into NCP structures has markedly expanded.[9] The number of NCPs with tri- or quadri-partite organisations has increased, and advisory committees or permanent consultative bodies involving non-government partners have become widespread in countries with government-based NCP structures. Meetings with business, trade unions and civil society have also become more frequent. While several NCPs seem to prefer more informal channels of communication, this year's reports underscore NCPs' commitment to respond to enquiries about the functioning of the Guidelines and to be more transparent about their activities.

The following institutional changes are reported to have been adopted or to be under active consideration:

- *Canada* has transferred the role of the NCP chair and co-ordinator from the Investment Trade Policy Division to the Director General, Trade Commissioner Service – Client Services Bureau to promote more effectively the Guidelines abroad. In addition, Canada foresees the establishment a Centre of Excellence to encourage the Canadian extractive sector companies to implement voluntary performance guidelines, such as the OECD Guidelines, and the Office of the Extractive Sector Counsellor ("Counsellor") to work in close synergy with the Canadian NCP to assist stakeholders in the resolution of corporate responsibility issues pertaining to the activities of these companies abroad (see Box 1.1).
- *Denmark* has established an open "Guidelines-group" as a liaison between interested NGOs and members of the Danish Contact Point to facilitate the exchange of views and ideas on the promotion of the Guidelines.
- In *Estonia,* the NCP functions are being moved to the Ministry of Economic Affairs and Communications to improve engagement with enterprises.
- *France* is exploring the institutional relations between the French NCP and other leading social responsibility organisations, notably the French branch of Global Compact.
- In *Germany*, a Working Party on the OECD Guidelines composed of representatives of Federal Ministries, business organisations, employee organisations/trade unions and selected NGOs meets once a year under the chairmanship of a senior official of the Federal Ministry of Economics and Technology to discuss all Guidelines-related issues. In addition, the participating ministries – the Federal Foreign Office, the Federal Ministry of Justice, the Federal Ministry of Finance, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry for Economic Co-operation and Development – meet at regular

Box 1.1. **Canada's New CSR Strategy for the Extractive Sector**

On March 26, 2009 the Government of Canada announced the adoption of a new strategy named Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector. The new strategy is based on the results of extensive consultation with stakeholders which began with a series of "National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries", held in 2006. The Roundtables were a consultative process which engaged industry, civil society and the public in a solutions-oriented discussion on how to enable the Canadian global extractive sector to better identify and manage the social and environmental risks of their operations. In March 2007, the Advisory Group for the National Roundtables, which was composed of non-governmental experts drawn from across stakeholder groups (civil society, labour, industry, investment sector and academics), released a report containing numerous recommendations to the government.

There are several components to the new strategy. One such component involves supporting initiatives to enhance the capacities of developing countries to manage the development of the extraction industry and to benefit from these resources to reduce poverty.

Another component of the strategy is the development of a Centre of Excellence within an existing institution outside of government. The purpose of this Centre is to encourage the Canadian international extractive sector to implement voluntary performance guidelines, such as the OECD Guidelines, by disseminating high-quality information for clients in industry, civil society and government, at home and abroad.

A further component of the strategy involves the establishment of the Office of the Extractive Sector Counsellor ("Counsellor") to assist stakeholders in the resolution of corporate responsibility issues pertaining to the activities of Canadian extractive sector companies abroad.

The Counsellor and the NCP will operate as two separate and distinct bodies. Canada's NCP for the OECD Guidelines will continue to be responsible for promoting the effective implementation of the Guidelines across all industry sectors, as well as reviewing any specific instances which it receives, including those in the extractive sector. The NCP will remain the primary authority with respect to the OECD Guidelines. The Counsellor and the NCP will ensure that overlapping activities are closely co-ordinated.

More information can be found on the strategy at: *www.csr.gc.ca*.

intervals to discuss *a)* current issues relating to the OECD Guidelines; *b)* how to improve the dissemination of these Guidelines; and *c)* the working methods of the National Contact Point.

- *Japan* has established a consultative body comprised of representatives from the Japanese business and labour communities.
- *Mexico* completed in March 2009 the reorganisation of their NCP when the Directorate General for Foreign Investment (DGFI) within the Ministry of the Economy took over the office for the implementation and operation of the NCP.
- *New Zealand* plans to increase the membership of its Liaison Group to include a broader representation of stakeholders.
- In *Peru* the forthcoming Peruvian NCP will be led by the Board of Directors of PROINVERSION, the Peruvian Investment Promotion Agency, which is composed of five

Ministers headed by the Minister of Economy and Finance. PROINVERSION's Executive Office will act as Peru's NCP Secretariat through the Investment Facilitation and Promotion Division.

- *Portugal's* NCP is now composed of the Portuguese Investment Agency (AICEP) and the Directorate-General for Economic Activities (DGAE). AICP is in charge of promotional activities on the Guidelines while DGAE is in charge of the functioning of the specific instance facility.
- *Slovenia* has decided to divide the structure of its NCP. The Slovenian NCP will be mainly responsible for promotional and awareness activities while an interdepartmental body composed of five ministries will be responsible specific instances.

Smoother and more productive consultations among NCPs stand out as significant development during the reviewed period. In particular, the Dutch and Irish NCPs report working closely together with assistance from Norway and the United States, on a recent case involving a major pipeline laying project in Ireland. Since 2000, NCPs report having engaged in joint consultations on 25 specific instances.

1.3. Recent developments in information and promotional activities

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities. During the reporting period, NCPs continued to engage in various activities designed to enhance the value of the Guidelines. This section summarizes the main activities described in the individual NCP reports.

Selected promotional activities

In addition to the activities reported below, promotional developments worth underlining include:

- *Argentina – Co-operating regionally.* The Argentinean Contact Point promoted the Guidelines at regional consultations on the "Protect, Respect, and Remedy Framework" developed by the UN Special Representative on Business and Human Rights John Ruggie.
- *Denmark – CSR Action Plan.* This Action plan, adopted in May 2008, which introduced statutory requirements for large businesses operating in Denmark, renewed *inter alia* the government's commitment to the promotion of responsible business conduct standards of the Guidelines.
- *Egypt – Promoting the Guidelines in the Middle East and North Africa*. Egypt acted as a regional representative for the Guidelines. The Egyptian NCP website was launched in the early summer of 2008 featuring the Guidelines in both English and Arabic and other information relevant to stakeholders in Egypt. A half-day workshop was organised in mid 2009 the business community, the Egyptian Trade Union and national NGOs.
- *Finland – Continued focus on promotion.* The Finnish Committee on CSR has continued to take a proactive role to progress CSR by raising awareness among all types and sized enterprises in order to prevent breaches of the Guidelines in advance. The Finnish CSR Committee's activities included dissemination of information about the OECD Guidelines
- *France – Under the French Presidency of the European Union*, a conference titled "Social Responsibility and Enterprises" was held in Paris on the 30th of October 2008. Partnership and transparency were the main themes of the conference, as well as the

need for European leadership in the field of social responsibility. The OECD Secretariat gave a speech *on the importance of the implementation of social responsi*bility initiatives and the supporting role of the Guidelines.

- *Germany – Promoting social responsibility in Asia*. At a conference held in Potsdam in March 2009, the German government – together with EU Commissioner Vladimir Spidla and the labour and employment *ministers* of key ASEM member states – underscored the need for greater corporate responsibility in Europe and Asia. The OECD Guidelines were highlighted and discussed in depth as one of the most important international instruments for implementing social responsibility. A handbook, sponsored by the German NCP in collaboration with the Working Party on the OECD Guidelines, is being prepared to provide German companies with specific instructions on how to comply with the OECD Guidelines in commercial activities abroad.
- *Israel – Targeting business*. Israel's NCP is conducting a thorough reconstruction of the OECD-related part of the Ministry's website in order to make the site more NCP-oriented. It is also developing new steps to raise awareness of the Guidelines in the business community through government support programs and networks.
- *Italy – Assessing performance*. In February 2009, the NCP launched a proposal for two research projects on the topics of the OECD Guidelines and enterprise performance. These two projects have since been assigned to the Bocconi University in Milan and to the LUISS University in Rome.
- *Japan – The importance ofnetworking*. With a view to promoting corporate responsibility and the OECD Guidelines, the Japanese NCP established the co-operation with the local office of UN Global Compact, the local office of ILO in Tokyo and an NGO engaging in the promotion of Global Reporting Initiative (GRI). As a result, in March 2008, the Japanese NCP made a presentation to Japanese CSR business representatives at a seminar organised by the local office of UN Global Compact. The presentation covered NCP activities as well as the Guidelines.
- *Netherlands – Thinking globally*. The Dutch NCP has worked with the Dutch Agency for International Business and Co-operation (EVD) to provide information on the Guidelines and guidance on their implementation in emerging markets for companies considering foreign operations. Stakeholders were given the opportunity to comment on the ongoing specific instance procedures (SIs) and communication activities. Furthermore, an interview with Mr. De Waal on Dutch national television about the National Contact Point and its object and purpose was broadcast in April 2009. A member of the Dutch NCP actively participated at the March 2009 OECD consultations on the application of the Guidelines to the financial sector.
- *Norway – Maximising impact through strategic thinking*. In January 2009, the Norwegian Government published a White Paper titled *Corporate Social Responsibility in a Global Economy*, in which the Government evaluated possible models for reorganising the NCP and ensuring a more comprehensive CSR strategy as well as the incorporation of the Guidelines. The Government's Consultative Forum on CSR organises 4-6 meetings annually; the one meeting held in April 2009 was devoted to the OECD Guidelines; the OECD Secretariat was invited as a guest (see Box 1.2).
- *Switzerland* introduced an expanded website on the Guidelines in mid-2008.

Box 1.2. **Norway's White Paper:**
Corporate Social Responsibility in a Global Economy

The Norwegian government's white paper, *Corporate Social Responsibility in a Global Economy*, released on January 23, 2009 represents a comprehensive national tool to mobilise business, investors and supporting organisations around the issue of responsible business conduct. Instead of creating a new set of corporate social responsibility standards for Norwegian firms, the government of Norway chose to rely on leading international corporate responsibility frameworks, such as the OECD Guidelines and NCP mechanism, the UN Global Compact, and the Global Reporting Initiative, as a base for its own expectations regarding the behaviour of Norwegian enterprises and its guidance as to how these expectations can be fulfilled. The white paper is a key component of this effort, presenting corporate responsibility as a vehicle both to maintain home country economic competitiveness and to generate host country development and reasserting the Norwegian government's strong support for international corporate responsibility efforts.

The report supports corporate responsibility efforts by cataloguing the available resources and tools beginning with a discussion of the government's own responsibilities and expectations regarding Norwegian businesses. The white paper then offers a user-friendly overview of the existing tools and frameworks that can guide business behaviour and then goes further, delving into emerging topics, such as human rights or the international business operations in conflict zones.

The White Paper is designed to be a living document to be improved over time by incorporating periodic feedback from stakeholders, the Parliament, other countries and international organisations. The paper represents a welcome assertion of support for international frameworks, such as the OECD Guidelines, and provides a helpful tool for all businesses, investors, and organisations who aim to encourage responsible international business behaviour.

Source: Norwegian Ministry of Foreign Affairs, *Corporate social responsibility in a global economy*, Report, No. 10 (2008-2009) to the Sorting.

- *Turkey – Mobilising business*. A major gathering with four Turkish business associations was organised to inform them about the Guidelines. This successful experience will be repeated with other stakeholders in the near future.
- *United Kingdom*. In June 2008, the UK National Contact Point Steering Board presented a paper setting out the communications strategy to raise awareness of the OECD Guidelines. The paper proposed a phased approach, with phase one targeting government officials, followed by business, NGOs, Trade Unions and other key organisations.

Other promotional activities undertaken by NCPs during the reporting period include:

- Outreach to companies via contacts or presentations to individual companies or business associations (Brazil, Canada, Chile, Italy, Japan, Korea, Netherlands, Poland, Sweden, United Kingdom).
- Consultations and organisation of meetings with national partners (Australia, Brazil, Canada, Chile, Czech Republic, Denmark, Egypt, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Romania, Sweden, United Kingdom).
- Newsletters, articles in the press or other promotion through the media (various NCPs).

- Participation in conferences organised by non-governmental actors (Argentina, Australia, Canada, Chile, Finland, Greece, Italy, Poland, Romania, Turkey, United Kingdom, United States).
- Development of promotional material and mailings (Austria, Australia, European Commission, Japan, New Zealand, Norway, United Kingdom).
- Website development (Argentina, Australia, Brazil, Egypt, Italy, Japan, Poland, Romania United Kingdom).

Promotional activities within governments include:

- Promotion through presentations to government departments or agencies by high-level officials (Australia, Canada, Chile, Norway, Turkey, United Kingdom).
- Promotion with and training of embassy and consular staff (Australia, Canada, Germany, Japan, Norway, Romania, Spain, Switzerland, United Kingdom, United States). In December 2008 the UK's Foreign and Commonwealth Office (FCO) sent a guidance note (e-gram) on the Guidelines and human rights to its overseas posts to assist them in the handling of any complaints they may receive on the behaviour of UK companies overseas. The UK NCP has continued to work with the FCO to produce a toolkit providing overseas posts with guidance for business on the Guidelines and human rights.
- Trade and Investment Promotion missions or activities (Canada, Germany, Japan, Lithuania, Netherlands, Norway, Romania, Slovenia, Sweden).
- Promotion through overseas development agencies (Canada, Netherlands).
- Answering questions from Parliaments, Ombudsmen or other government bodies (Canada, European Commission, Germany, Japan, Norway, Sweden, United Kingdom). Promoting the Guidelines to foreign embassies (several NCPs).

Investment promotion, export credit and investment guarantee agencies

Adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Twenty-eight NCPs report that such links exist.

OECD Investment Committee work

As a result of the continuous high political profile of the OECD Guidelines, and renewed NCP commitments to make a more effective use of the Guidelines worldwide, the Committee continued to actively promote the Guidelines and support peer learning on a number of issues.

Promoting responsible investment in infrastructure. Timed for release at the Istanbul 5th World Water Forum of March 2009, the OECD developed *the "Checklist for Public Action"*, a practical guidance for governments wishing to engage the private sector in water infrastructure based on the OECD Principles for Private Sector Participation in infrastructure. The Checklist highlights the role of the OECD Guidelines in encouraging responsible business conduct in critical sectors such as water (water is a vital good with important economic, social, environmental and political repercussions).

Clarification of the financial sector's responsibilities. As a follow-up to the 2007 Roundtable and the attention given to the responsibilities of the financial sector in the economic crisis, the Investment Committee resumed its reflection on the application of the OECD

Table 1.1. **The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes**

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Austrade websites.
Austria	Export credits	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export Credits	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.
Chile	Investment promotion	The Foreign Investment Committee is the agency which promotes Chile as an attractive destination for foreign investment and international business.
Czech Republic	Investment promotion	There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the Czech Republic. The Czech NCP (at the Ministry of Finance) co-operates closely with Czech Invest.
Denmark	Export credits	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the OECD Guidelines and encourages exporters to act in accordance with the OECD Guidelines.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export promotion	This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.
France	Export credits and investment guarantees	Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines ("*avoir pris connaissance des Principes directeurs*").
Germany	Investment guarantees	A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.
Greece	Investment promotion	The *Guidelines* are available on the portal of the Ministry of Economy and Finance (*www.mnec.gr*), as well as on the websites of the Invest in Greece Agency (*www.investingreece.gov.gr*) and of the Export Credit Insurance Organization (ECIO) (*www.oaep.gr*).
Hungary	Investment promotion	The site of Investment and Trade Development Agency has links to the Ministry for National Development and Economy, EXIMBANK, MEHIB, and other ministries where important OECD documents on bribery, anti-corruption, export credits are available. Cross links support the quick search for relevant OECD documents.
Israel	Investment Promotion Centre	The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.
Italy	Export credits	The Italian NCP is in regular contact with SACE (the Italian association in charge of insuring export credit) and contributes to its activities.
Japan	Trade-investment promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, MHLW, and METI Japan. The Japan External Trade Organization (JETRO) website, the ASEAN-Japan Centre website and the Nippon Export and Investment Insurance (NEXI) website are also linked to the summary, full texts of the Guidelines, introduction of the Japanese NCP activity including its procedures and promotion.
Korea	Trade-investment promotion	OECD Guidelines can be found at the MKE (Ministry of Knowledge Economy) website (*www.mke.go.kr).* MKE promotes trade and investment.
Lithuania	Investment promotion	"Lithuanian Development Agency" operates in the Republic of Lithuania and provides information on the Lithuanian business environment to foreign investors. It has prepared an information package that is passed to all foreign investors considering investing within the territory of Lithuania. The Lithuanian NCP (at the Ministry of Economy) co-operates closely with the "Lithuanian Development Agency". Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19th of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy: *www.ukmin.lt/en/investment/invest-promotion/index.php*

Table 1.1. **The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes** *(cont.)*

Mexico	Investment Promotion	The Mexican NCP is located within the Directorate General for Foreign Investment in the Ministry of Economy, which is responsible for the negotiation of BIT's and for Mexico's participation in Investment Committee's in different international organisations. The guidelines can be found on the website. Mexico's investment promotion agency – PROMEXICO – works in close co-operation with this Department.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
New Zealand	Export Credit promotion	New Zealand's Export Credit Office (ECO) mentions the OECD MNE Guidelines on its website. The ECO also provides a link to both the OECD Guidelines and the New Zealand NCP's website.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIiIZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIiIZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.
Portugal	Exports and Investment Promotion	AICEP – Portugal Global is a Business Development Agency responsible for the promotion of exports, the internationalisation of Portuguese companies, especially SMEs and for inbound foreign investment. The Guidelines are part of the information given to all companies.
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (*www.mae.ro*) and the Romanian Agency for Foreign Investments (ARIS) (*www.arisinvest.ro*). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCP's web page include: – Policy framework for Investment; – OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Romanian Agency for Foreign Investment edited, among other specific promotional materials, the brochure entitled "Frequently Asked Questions – An Overview", including a separate chapter on Romanian National Contact Point and OECD Guidelines for Multinational Enterprises.
Slovenia	Promotion and awareness of OECD Guidelines	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Slovene NCP has just been reconstructed and will perform various promotional activities mostly in second half of the year 2009 (*e.g.* translation into Slovene language, first public appearance, printing and distribution of Guidelines).
Slovak Republic	Investment promotion	NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in Slovak language at Ministry´s webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both business environment and investment opportunities. The investors entering the Slovak republic who had been awarded with governmental incentives are to commit themselves to keep the Guidelines (part of the awarding decision).
Spain	Investment guarantees	The CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) and ICO (the Official Credit Institute) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on environment, the rules on bribery, the OECD Guidelines for MNE´s and the Swedish Partnership for Global Responsibility.
Switzerland	Export credits insurance	The Swiss Export Risk Insurance (SERV) promotes corporate responsibility principles. On its website, it provides information regarding the Guidelines and their implementation mechanism (*www.serv-ch.com*).
Turkey	FDI	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for investment policy making. The Treasury's website provides information on the Guidelines.
United Kingdom	Export credits and investment insurance	Links connect the Export Credits Guarantee Department's website with that of the UK National Contact Point. In addition, ECGD refers to the Guidelines in its publicly available Case Impact Analysis Process document.
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

Guidelines to financial institutions, notably in their capacity as lenders or investors to multinational enterprises. Representatives of the Equator Principles, the IFC Environmental and Social Performance Requirements and the UN Principles for Responsible Investment shared their experiences with these three leading financial initiatives and share their views on the supporting role of the OECD Guidelines. OECD Watch submitted a written contribution on the application of the Guidelines to the financial sector. The OECD Guidelines for Pension Fund Governance approved in May 2009 highlighted the relevancy of the OECD Guidelines as a reference for public disclosure of relevant information.

Outreach continued to elevating the Guidelines' profile. The OECD Secretary-General launched the Chinese edition of the third OECD Investment Policy Review of China in Beijing in March 2009. This publication was devoted to public policies to promote responsible business conduct in China and by Chinese enterprises operating abroad. A special session of the Investment Committee was also organised in the same month to discuss the results of the first investment policy review of India. This review, which benefited from the participation of high-level Indian government officials, highlighted the OECD Guidelines as a benchmark for responsible business conduct in this key emerging non-OECD country.

The contribution of the OECD Guidelines in fostering and promoting responsible business conduct was also discussed over the year among G8 and G5 countries participating in the Working Group on Investment of the Heiligendamm Dialogue Process (HDP). The OECD Guidelines were identified, together with the UN Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as the main international voluntary government-endorsed corporate responsibility instruments. The Italian G8 Presidency and the German Government have also promoted the OECD Guidelines as an element of a "Global Standard for Market Transparency and Integrity" and a "Charter for Sustainable Economic Activity" under consideration by the G8 and G20 respectively.

Co-operation with other leading corporate responsibility instruments or bodies. Drawing on the suggestions made at the OECD-ILO High-Level Conference held in Paris on 23-24 June 2008, the OECD Secretary-General discussed during the fall with ILO Director General the list of areas for future co-operation developed by the Investment Committee on the OECD Guidelines and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy. The G8 reiterated its support for building of the strengths of these two instruments to foster the positive contribution of international business to social progress.[10] The ILO will be one of the leading organisations to be associated with the OECD planned event in Bangkok on 2-3 November 2009 on responsible business conduct. The Committee also continued to encourage closer relations with the UN Global Compact. The 2009 OECD Corporate Responsibility Roundtable was organised in close co-operation with the OECD Committee on Consumer Policy, the Committee on Financial Markets and the Environment Policy Committee. The OECD Secretariat also kept the Annual Meeting of Sustainable Development Experts (AMSDE) informed about this event.

In addition, the OECD Investment Committee and its Working Party continued to provide a privileged forum for exchanging experiences on the implementation of the Guidelines, notably with regard to the areas identified for future action in the 2008 Annual Report on the Guidelines.[11]

Other promotion by the OECD

In a key note speech delivered to the G8 on 12 May 2009,[12] the OECD Secretary-General summarised the views he has expressed on several occasions[13] since the beginning of the financial and economic crisis on the need to draw on the OECD Guidelines and other OECD integrity instruments to restore confidence in the global economy and avoid the recurrence of a similar crisis in the future. The OECD Deputy-Secretary General Aart de Geus also made key note remarks on the role of the OECD Guidelines in promoting socially responsible behaviour at a High-Level ASEM-CSR Conference organised by Germany in Potsdam in March 2009.

The Secretariat presented recent developments relating to the NCP specific instance facility at Professor Ruggie's consultations on Non-Judicial Remedies for Corporate Human Rights Impacts held in Boston in November 2008. At the 2009 Annual NCP Meeting, a member of the UN Secretary-General's Special Representative John Ruggie on business and human rights' team highlighted the strategic directions of Professor Ruggie's work in operationalising the "Protect Respect and Remedy Framework" approved last year the UN Human Rights Council. Professor Ruggie's 2009 Report [A/HRC/11/13] welcomes recent innovations in NCP governance structures but also re-states his view that this unique mechanism is not used as effectively as it could in protecting human rights.

At the margins of the 2008 and 2009 Annual NCP events, the Chair of the Investment Committee convened two meetings of the "Friends of OECD Guidelines for Multinational Enterprises" to discuss ways to expand the influence of the Guidelines. In November 2008, the OECD Observer published an article by Paul Hohnen showing that the OECD Guidelines are being widely used by companies seeking to be recognised as leaders in responsible business practice. This article was based on joint research conducted by the OECD and Vigeo, the leading European corporate responsibility rating agency, on the corporate practices of leading international companies. Rights and Accountability in Development (RAID) released a comprehensive review of the UK National Contact Point (NCP) in association with the Corporate Responsibility (Core) Coalition and the Trade Union Congress (TUC) which also highlights the benchmark value of this instrument and the unique features of the specific instance facility.

Officers of the Investment Committee and its Secretariat accepted invitations to promote the Guidelines at several international meetings over the period. Selected promotional events attended and activities undertaken include:

- The Chair of the Investment Committee was invited to make key note presentations on the Guidelines at various events, notably the Workshop "Zukunftsfähiges Wirtschaften mit gesellschaftlicher Verantwortung und sozialer Innovation", organised in Vienna by the Austrian Economic Chamber the Conference in November 2008, the Conference "Enterprises and Human Rights" organised in Vienna by Bundesarbeiterkammer and Amnesty International Austria in March 2009 and the Conference, the Global Standard of the XXI Century organised by the Aspen Institute Italia in Rome in May 2009.
- In October 2008, the Secretariat made a presentation on the role of the OECD Guidelines in promoting responsible business conduct at a conference organised in Paris by the French Presidency of the European Union entitled "Le partenariat et la transparence au Cœur de le Responsabilité Sociale des Entreprises".
- The Secretariat presented the Investment Committee work on the application of the OECD Guidelines to the financial sector at a the 27th session of UNCTAD

Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) held in Geneva in fall 2009.

- In May 2009, the Chair of the Investment Committee Working Party made a presentation on the OECD Guidelines at an ISO International Workshop on the Role of Government in Social Responsibility organised at the margins of the 7th ISO Social Responsibility Plenary Meeting held in Quebec City in May 2009. The OECD Secretariat participated in the First Congress on International and Mexican initiatives, instruments and standards on Social Responsibility organised at Monterrey University by the Chair of the Mexican Standard on Social Responsibility in October 2008. The OECD became a member of the ISO 26000 Chair Advisory Group.
- In April 2009, the Secretariat was invited to speak before the Norwegian's Consultative Forum on CSR chaired by the Norwegian State Minister for Foreign Affairs. The Secretariat also participated in April 2009 at Chatham House workshop sponsored by the government of Norway to consider the feasibility of an internationally sponsored mechanism to help resolve conflicts in cases where companies are accused of serious breaches of good environmental practices.
- In May 2009, the Secretariat met with Eurotradia International, an association of high level French executives to discuss the role of the OECD Guidelines in defining the so-called "license to operate".

Since March 2006, the OECD Investment Newsletter, published three times a year, has kept the larger investment policy community and other stakeholders informed about ongoing Investment Committee work on the Guidelines. In addition, the Secretariat answered numerous queries about the Guidelines from the media, universities and other interested parties, and continued to improve the OECD website dedicated to the Guidelines.

1.4. Active use of the "specific instance" facility

Number of specific instances

207 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been filed: Argentina (6), Australia (3), Austria (5), Belgium (12), Brazil (15), Canada (7), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (12), Germany (10), Hungary (1), Ireland (2), Israel (1), Italy (5), Japan (5), Korea (7), Mexico (3), Netherlands (19), New Zealand (1), Norway (5), Peru (1), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (11), Turkey (3), United Kingdom (20), and United States (27).

Part 3 of this chapter shows that 146 specific instances have been actively taken up and considered to date by NCPs.[14] 114 of these have been concluded or closed. Most specific instances dealt with Chapter IV (Employment and Industrial Relations). A number of cases also involved violation of human rights in the resources sector and, more recently, complaints relating to the activities of the financial sector. The only Guidelines chapter that has not been referenced in the context of a specific instance is Chapter VIII (Science and Technology).

Selected specific instances described in NCP reports

Australia – In July 2007, the Australian NCP received a request regarding alleged non-observance with several provisions of the OECD Guidelines by mining company BHP Billiton operating via Cerrejon Coal in Colombia. The Australian NCP consulted with the Swiss and UK NCPs in relation to this specific instance. This instance was suspended pending release of the report commissioned by the mining company's management and shareholders to review the firm's social engagement. The social review has since been released and the company has publicly responded positively to all of the recommendations in the report. The company appointed an independent facilitator in August 2008, and by December 2008 an agreement was reached between the company and the residents of Tabaco in regard to legacy issues and a way forward. There are five other communities for which an agreement is yet to be reached, but the process of consultation is proceeding.

Brazil – The Brazilian NCP has received two complaints concerning two banks, Unibanco and ABN-AMRO Real, brought by the Brazilian labour union, "Central Única dos Trabalhadores" (CUT). In both cases, the Brazilian NCP has sent a list of questions in accordance with its specific instance procedures.

Ireland – In August 2008, the Irish NCP received a complaint regarding the operation of a gas project on the west coast of Ireland. The complaint came from a local community group, supported by NGOs, who alleged breaches of the OECD Guidelines, Chapter II (General Policies) and Chapter V (Environment). As the operating company is headquartered in the Netherlands, the Dutch NCP was duly contacted. On the 19th of February 2009, following close work between the Irish and Dutch NCP, the case was deemed to be admissible. However, in an unrelated initiative the Irish Government undertook active mediation with the Community Groups and the concerned Consortium. The NCPs suspended their process for fear of compromising the mediation but in April 2009, the two NCPs resumed their work on the case as the Ministerial efforts stalled. This ongoing case has thus far involved bilateral meetings with the Consortium, the Complainants and relevant Government departments as well as the co-operation with the US and Norwegian NCPs which have also been closely involved and informed of progressive developments.

United Kingdom – In December 2008, a final statement was published by the UK NCP on the specific instance concerning the activities of G4S in Nepal, Mozambique, Malawi and the Democratic Republic of Congo. The alleged breaches of Chapter II (General policies) and Chapter IV (Employment and Industrial Relations) were brought to the OECD in December 2006 by the trade union representatives of Union Network International. The UK NCP accepted the complaint and commenced mediation between the two parties in an effort to reach a voluntary resolution. The result of the independent mediation was an exemplary success as G4S and UNI undertook specific commitments with regard to the issues presented in Nepal and DRC. In connection with Mozambique and Malawi, the parties have agreed to a process to allow them to work more closely together on a number of particular issues at the national level. The aim of this process is to both protect the rights and interests of G4S employees and to build and strengthen the local relationships between G4S and the unions which represent its employees. The case was covered in an edition of a monthly newsletter that is put together by Business in the Community (BITC) for the All Party Parliamentary Group on Corporate Responsibility. Furthermore, the Trade Union Congress (TUC) published a press release in December 2008 which was circulated to its members. TUAC and UNI also published information/articles following the conclusion of this case on their respective websites. This specific instance shows that the UK NCP provided a high quality mediation service with the aim of assisting the parties to come to their own settlement.

1.5. Implementation of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

Many adhering countries continued to promote awareness of the OECD Risk Awareness Tool on NCP websites or other relevant web pages, providing links to the document (*e.g.* Australia, and German internet site of the Federal Ministry of Economics and Technology) and recommending its use for companies operating in weak governance zones (Canada). The tool is explicitly mentioned in the guidance on the guidelines and human rights that the UK Foreign and Commonwealth Office (FCO) sent to its overseas posts to assist them in the handling of any complaints they may receive on the behaviour of UK companies overseas. The Norwegian White Paper on Corporate Social Responsibility in a Global Economy includes reference to the OECD Risk Awareness Tool, recognising that it can be of help for companies in assessing and handling risks and dilemmas which they encounter in areas with weak governance. The Swiss National Contact Point discussed on various occasions with Swiss multinational enterprises ways to raise awareness and disseminate the tool.

BIAC, TUAC and a number of NGOs have asked the OECD to undertake further work for management and implementation of the Tool. The need for more detailed guidance for companies operating in areas where human rights abuses are taking place was also highlighted during the joint meeting on "Company Responsibilities in Countries with Human Rights Challenges" organised by the Conference Board's European Council on Corporate Responsibility and the Business Humanitarian Forum held in Geneva on 23-24 October 2008.[15]

In response to these requests, the OECD Investment Committee agreed to intensify efforts to use the OECD as a platform to operationalise the OECD Guidelines and the Risk Awareness Tool. The NEPAD-OECD Expert Roundtable on Investment in Transport Infrastructure, held in Kampala, Uganda on 10-11 December 2008, served as the first opportunity for selected experts and representatives of host countries, international organisations, development agencies, academia, and private companies to engage in a dialogue on ethical dilemmas companies are likely to face while carrying out infrastructure projects.

The Investment Committee continued to engage with the Development Assistance Committee (DAC) on the development of a pilot project on the implementation of the OECD Risk Awareness Tool in the extractive industries sector. In December 2008, a discussion was organised in co-operation with the Secretariat of the newly launched International Network on Conflict and Fragility (INCAF) – held in Paris a discussion on the subject of "Tackling the Natural Resources Trap in the Democratic Republic of Congo".

As a follow-up to the 2007 G8 Heiligendamm Declaration on Growth and Responsibility in the World Economy, which acknowledged the potential of certification systems to increase transparency and good governance in the extraction and processing of mineral raw materials, the German Federal Institute for Geosciences and Natural Resources has made use of the the OECD Risk Awareness Tool and the OECD Guidelines to develop a set of indicators for measuring companies' performance as part of the implementation of the pilot project on Certified Trading Chains (CTC) in Rwanda's mineral sector.

The International Conference on the Great Lakes Region (ICGLR) expressed interest in using the OECD Guidelines and OECD Risk Awareness Tool in support of its efforts to curb the illegal exploitation of natural resources in the region as a result of the ICGLR's first expert meeting held on 2-3 April 2009 in Bujumbura in which the Secretariat of the Investment Committee was invited to participate.[16] The ICGLR is particularly interested in co-operation with the OECD for the implementation of the 2006 Protocol against the illegal exploitation of natural resources with regard to: *a)* the development of guidelines towards the harmonisation of the regional legal framework against the illegal exploitation of natural resources; *b)* the elaboration of a regional certification mechanism; and *c)* the promotion of due diligence procedures to enhance transparency and accountability in the extractive sector. The Investment Committee, in consultation with the DAC, will consider how it can best respond to this request.

With particular regard to due diligence, the UK NCP noted the relevance of the OECD Risk Awareness Tool in both the final statements for Das Air (para. 54-55) and Afrimex (para. 67-70) specific instances, which were published in July and August 2008 respectively. The UK NCP found that both Das Air and Afrimex performed insufficient due diligence on the supply chain. In its recommendations, the UK NCP drew attention to the OECD Risk Awareness Tool and recommended that Afrimex should integrate it in its corporate policies. In December 2008, the UN Security Council also called on member states to ensure that companies under their jurisdiction perform due diligence procedures to ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase.[17]

OECD work on due diligence in the extractive sector in the coming year will be carried out in co-operation with the ICGLR and the Task Force on the illegal exploitation of natural resources in the Great Lakes Region[18] as part of the project on the implementation of the OECD Risk Awareness Tool in the extractive industry. The Task Force has recommended that the OECD be invited by its Members to provide the umbrella for this exercise. Roundtables with relevant stakeholders on due diligence measures in the electronics and information and communications technologies [ICT] sector and the coltan-tantalum and cassiterite supply chain will be organised in fall 2009 and a working group hosted by the OECD will be set up to undertake preparatory work. Experts from home and host countries (ICGLR), donors, academics, private sector and civil society organisations will be invited to participate and submit contributions.[19]

It is also envisaged to make use of the newly created OECD DAC-hosted International Network on Conflict and Fragility (INCAF) and the NEPAD-OECD Investment Initiative for multi-stakeholder consultations on the implementation of the Risk Awareness Tool. Useful links will be established with the work of other OECD bodies (such as the Working Party on Export Credits and Credit Guarantees and the Working Group on Bribery).

In addition, the OECD intends to assist companies more actively in turning universal principles of ethical conduct into local practices, appropriate management and compliance systems and interpret the OECD Guidelines in weak governance situations. This work should contribute in simplifying and clarifying the plethora of available operational tools and provide more effective web-based practical guidance.

1.6. Considerations for future action

Given the high level of support that the Guidelines have as a tool to rebuild trust and confidence in global business and given the recent progress made during the reporting period, NCPs generally agreed that the best use of the year remaining until the 10th Anniversary of the 2000 Revision would be to concentrate energies on the following three priorities:

Furtherimprovement of NCP performance. The Annual Meeting showed once more how important "peer learning" is for NCP performance and why it should be actively pursued. NCPs welcomed the plans presented by the Dutch NCP for conducting a "peer review" of its performance in the coming months and several of them declared their intention to participate in this exercise. NCPs noted that various areas have been proposed for further reflection to increase the effectiveness of the NCP mechanism including parallel proceedings, the relationship between the Guidelines and national laws, the role of parent companies, the responsibilities of joint-venture partners, confidentiality requirements and representation of stakeholders.

The NCPs agreed that they should continue to exchange information on lessons learned from specific instances and promotional activities on the Guidelines. A number of NCPs reiterated the importance of following through last year's OECD Council recommendation to adherent countries to allocate adequate resources to their NCPs.

The NCPs welcomed the intervention by the Deputy-Director of the UN Global Compact (UNGC). They agreed that individual NCPs might consider whether the synergies between the UNGC "integrity measures" and the "specific instance facility" could be further enhanced to improve the implementation of both instruments. They also welcomed the intention of the OECD and UN Global Compact and their Secretariats to update the 2005 UN-OECD document entitled "The UN Global Compact and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions.[20]"

In addition, NCPs welcomed the Investment Committee's ongoing work on the application of the Guidelines to the financial sector and its willingness to assist NCPs on other matters as appropriate.

Outreach. The rise in the number of specific instances in non-adhering countries (8 out of 18 cases in 2008-2009) presents challenges for the operation of the specific instance facility. This also means that non-adherent countries need to become better aware of the benefits of the Guidelines and be more closely involved in their implementation. NCPs welcomed the Investment Committee's intention to continue to include the subject of responsible business conduct in its future investment policy reviews (IPRs) with enhanced engagement countries (as with the recent IPRs of China and India). They also welcomed the OECD's intention to organise a major dialogue event on the Guidelines in Bangkok on 2-3 November 2009 in co-operation with the UN Asia-Pacific Commission, the UN Global Compact and the ILO, and the Global Reporting Initiative.

Updating the Guidelines. As a living instrument, the Guidelines need to be kept up-to-date. Furthermore, the 2000 Council Decision on the Implementation Procedures of the Guidelines provides that this Decision should be periodically reviewed and that the Investment Committee shall make proposals for this purpose. With the 10th anniversary of the 2000 Review approaching, NCPs generally felt that this is an appropriate time to consider the merits of updating the Guidelines. They recommended that the OECD Investment Committee use the coming period to generate a list of substantive and procedural issues that have arisen from experience with the Guidelines over the past ten years with a view to defining the terms of reference for any future update of the Guidelines. They also confirmed their readiness to actively contribute to this process. Shortly after the Annual Meeting, the NCPs were informed that at the 2009 OECD Ministerial Council Meeting of 24-25 June 2009, Ministers had "welcomed further consultation on the updating of the OECD Guidelines to increase their relevance and clarify private sector responsibilities".

2. Statements released by National Contact Points

This section reproduces statements issued by the National Contact Points concerning specific instances during the reporting period of June 2008-June 2009, in accordance with the Procedural Guidance on the implementation of the Guidelines in specific instances. The Procedural Guidance provides that "if the parties involved do not reach agreement on the issues raised in the specific instance, the NCP will issue a statement and make recommendations as appropriate on the implementation of the Guidelines" and also that "after consultation with the parties involved, make publicly available the results of the specific instance procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines":

- Public statement by the Australian National Contact Point on the BHP Billiton Specific Instance.
- Public statement by the United Kingdom National Contact Point on the DAS Air Specific Instance (Annex: RAID press release).
- Public statement by the United Kingdom National Contact Point on the Afrimex Specific Instance.
- Public statement by the United Kingdom National Contact Point on the G4S Specific Instance.

Statement by the Australian NCP

Final statement by Australian National Contact Point for the OECD Guidelines for Multinational Enterprises: BHP-Billiton – CERREJON COAL

12 June 2009

Introduction

On 2 July 2007, the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) received a specific instance regarding BHP-Billiton's involvement in the Cerrejon Coal Company (Cerrejon) in Colombia. The submission was lodged by Mr Ralph Bleechmore, an Adelaide based lawyer, as agent for parties in Colombia. The parties in Columbia include: Dr Armando Perez Araujo, a Columbian legal practitioner; Senor Jose-Julio Perez, a spokesman for the ex-residents of Tabaco, Senor Alirio Uribe Munoz, a senior legal officer with the Corporation Colectivo de Abogados *Jose Alvear Restrepo*; and other unnamed individual complainants from the five communities.

The submission claimed that BHP-Billiton had breached the General Policies, Disclosure and Environment sections of the Guidelines, including:

- not respecting human rights;
- not encouraging local capacity building and human capital formation;
- not abstaining from any improper involvement in local political activities;
- not supporting good corporate governance; and
- not protecting the environment, public health and safety.

Specifically, the submission claimed that:

- the owners and operators of Cerrejon attempted to depopulate an area of the La Guajira Peninsular, Colombia, by destroying the township of Tabaco and through the forced expulsion of its population.
- five other communities in the region are suffering the effects of a policy designed to make living unviable in the area and to drive the population out.

The complainant sought revision of the compensation paid to, and improvements to the current living conditions of, the former residents of Tabaco. The complainant also sought to ensure that there is an appropriate process to manage the relocation of the five other communities, including adequate consultation, and that any resettlement occurs in a socially responsible manner.

ANCP Assessment

In accordance with the ANCP's published procedures for handling specific instances, the ANCP commenced an initial assessment as to whether the issues raised warranted further consideration as a specific instance under the Guidelines.

The ANCP contacted both the complainant and BHP-Billiton. A phone meeting was held between the ANCP and Ralph Bleechmore on 18 July 2007 and a face-to-face meeting was held between the ANCP and BHP-Billiton in Melbourne on 7 August 2007.

As the submission also involved companies in the United Kingdom and Switzerland, and with the agreement of the complainant and BHP-Billiton, the ANCP consulted with the United Kingdom National Contact Point and Swiss National Contact Point (NCP).

- On 4 October 2007, a Swiss NGO, Arbeitsgruppe Schweiz-Kolumbien (ASK), lodged a complaint with the Swiss NCP regarding Xstrata's relationship with Cerrejon. The text of that complaint is in German and was not made available to the ANCP. However, the Swiss NCP reported that it is materially similar to that lodged by Mr Bleechmore with the ANCP.

On 28 September 2007, the ANCP accepted the matters raised by the complainant and relevant to the Guidelines that related to the conduct of BHP-Billiton (see Attachment 1). The results of the initial assessment were communicated to both parties and the United Kingdom and Swiss NCPs.

- Part of the submission related to the question of whether the actions of Cerrejon were legal under Colombian law. The ANCP noted that it was in no position to assess this as it was something that could only be assessed through the Colombian legal system.

ANCP Mediation Process

Consistent with its mandate to provide a forum for discussion to assist in resolving disputes, the ANCP organised a meeting in London on 9 October 2007. The meeting was attended by the complainant and representatives of BHP-Billiton, the Australian, Swiss and UK NCPs, Anglo-American, Xstrata, Cerrejon, ASK and the Colombia Solidarity Campaign (UK).

- The meeting participants agreed that the issues should be dealt with on an integrated basis rather than as separate complaints in the local jurisdictions and the ANCP agreed to take the lead in consultation with the Swiss and UK NCPs.

While there was general agreement on most of the basic facts, there were some areas of disagreement on the detail. Key issues raised included:

- the ongoing concern and distrust among some of the local communities;
- the ongoing disagreement about the validity of the census of Tabaco residents and the values assigned to land for compensation purposes; and
- the differing views about compensation, noting that the joint venture partners directed Cerrejon to consider community settlement as the preferred option, including cash payments as well as land and income restoration.

The companies provided information on an independent social review which had been established by Cerrejon to provide an independent assessment of their social engagement. The review was expected to make recommendations including addressing the legacy issues. These issues were essentially similar to those raised in the specific instance. The review was to be conducted by *John Harker*, President of Cape Breton University in Canada; *Saloman Kalmonovitz*, Dean of Economics and Business Administration, Jorge Tadeo Lozano University; Colombia; *Nick Killick*, Manager, International Alert, UK, an international NGO focused on peacebuilding, security and extractive industries; and *Elena Serrano*, Advisor, Casa de La Paz Foundation, Chile, an NGO that promotes peace, social development and environmental awareness. The review had selected the Social Capital Group (from Peru) as consultants. The review was expected to report by mid-February 2008.

It was agreed that, subject to the complainants consulting with their principals, the current complaint would be suspended pending the outcome of the independent review.

Independent Review

The independent review, *Cerrejon Coal and Social Responsibility: An Independent Review of Impacts and Intent*, was released in February 2008.[21] The report examined current and future practices of the company and addressed outstanding legacy issues. The review made numerous recommendations on steps Cerrejon should take to improve its relationships with the local community and to resolve the underlying issues.

Among other things, the report called for talks between the company and surrounding communities to address outstanding issues. Foremost among them was the continuing bitterness over the treatment of the township of Tabaco. The complainants and BHP-Billiton agreed that the recommendations of the independent review provided a sound basis for moving forward.

In April 2008, Cerrejon responded to the independent review recommendations which included a commitment to meet with the Tabaco Relocation Committee (TRC).[22] In August 2008, Cerrejon and the TRC jointly sought Dr Harker to serve as a facilitator in talks between them. On 12 December 2008, an agreement was reached between the parties resolving the legacy issues and clearing the way for sustainable development, including:

- contributions to indemnities totalling USD 1.8 million; and
- a further USD 1.3 million for sustainable projects.

Resolution of Specific Instance

On 18 December 2008, the ANCP met with Mr Bleechmore, BHP-Billiton and Xstrata to resolve any outstanding issues. The meeting provided a forum for general agreement on a range of issues, including that:

- the serious legacy issues affecting Tabaco residents had been resolved;
- a process should be established to provide information relating to air quality and pollution to the local communities; and
- an independent party should be engaged to monitor the consultation process for communities potentially subject to resettlement.

On 2 February 2009, a phone meeting addressed these outstanding issues with BHP-B reporting that:

- Cerrejon conducts air quality and pollution monitoring of the local communities and will release this information, consistent with processes underway at other BHP-B mines.
- Cerrejon will engage the Social Capital Group (SCG) from 16 February 2009 as an independent facilitator to work with individual communities to provide an oversight role, including the monitoring of relocation and resettlement issues; and
- Cerrejon would be making a senior appointment to their management team to oversee community engagement, community development activities and resettlement processes.

The ANCP was subsequently advised that BHP-B's Group Manager for Community Relations would join Cerrejon as the Social Responsibility Manager in a full-time capacity.

Outcomes of the Specific Instance

There was agreement from all parties that the outcome for the Tabaco community provides for a viable resettlement program to be achieved. In this context it was agreed that the issues relating to Tabaco have been satisfactorily resolved.

There are ongoing negotiations on possible resettlements of the communities of La Roche, Patilla, Los Remedios, Chancleta and Tamaquitos. The complainants sought the appointment of a facilitator to take on a similar role to that provided by Prof Harker for Tabaco.

The companies have argued that while the Tabaco situation related to a specific issue that arose from past actions and omissions, the potential resettlements of the other communities are contemporary instances which require a different type of monitoring structure. The companies now have internal mechanisms in place which means that approach is not necessary. In particular, Cerrejon's new Social Responsibility Manager will be expected to improve the communications processes, helping to progress and resolve the outstanding issues.

The ANCP acknowledges the companies' position but is concerned that progress on resettlements still appears to be slow. In light of the positive experience of the role of Dr Harker in resolving the Tabaco matters, the ANCP believes there would be significant advantage if the companies provide similar support to the communities for the ongoing negotiations. The resettlement process is likely to be complicated and prolonged in the absence of someone to take on this role. Although the companies have provided additional supports for Cerrejon, these clearly cannot provide adequate independent support for the communities. In particular, there is likely to be a significant asymmetry of knowledge and negotiating capacity between the Cerrejon and the local community.

However, as a compromise position suggested by the ANCP, the companies did agree to an external process to monitor the negotiations and to report on progress. The SCG, as an independent party, was expected to provide this oversight. In April 2009, the SCG provided its first report[23] which is aimed more broadly at the total package of recommendations arising from the independent review. The report notes that Cerrejon's processes "adequately follow IFC performance guidelines" but it also reports community concern at the delays against the timetables. The SCG further comments on the need to "further improve the bi-directional information, consultation and communication mechanisms between the company and communities, to strengthen trust and coordination of resettlement…"

The ANCP remains uncertain as to the role the SCG will play in assuring all parties that the ongoing resettlement processes are implemented adequately. However, the ANCP also acknowledges that Cerrejon's Social Responsibility Manager should be a critical element in this process and notes that he has only recently taken up his role.

The complainants also sought the ANCP to maintain an ongoing overseeing role in the process and have requested that the specific instance remain open until a binding written agreement is in place between the five communities and Cerrejon. Therefore, the complainants are opposed to the ANCP making a final determination on the five communities.

The complainants do not believe the ANCP should accept Cerrejon's undertakings of the effectiveness of on-going negotiations. The complainants continue to raise concerns that progress has not been as fast as they would prefer and that the process is not adequately defined. There also appears to be deep seated distrust of the companies. The ANCP is aware of the long history and resolution of issues has been slow, and indeed is still ongoing. However, further progress will depend upon good faith by all parties and the ANCP believes that it is important to encourage the community and companies to work together to resolve outstanding matters.

Notwithstanding the concerns of the complainants, the ANCP believes that the substantive issues raised in the complaint have now been dealt with – the Tabaco community has an agreement and there is an established process for managing further issues. These outcomes substantially meet the rectification originally proposed by the complainant.

A shift in the approach taken by Cerrejon provides the ANCP with some prospect that given time the company has the opportunity to deliver on their commitments and the expectations of the local communities and all parties involved in the specific instance. However, the ANCP urges the companies to take all reasonable steps to conclude the negotiations in an equitable and timely fashion. The companies have indicated their willingness and commitment to do so.

The ANCP process is intended to be about mediation and does not encompass managing or overseeing the negotiations or resettlement process – indeed, the ANCP cannot see how this could be achieved in any meaningful way from a distance. However, the ANCP is available to deal with further specific issues should any arise.

Conclusion

The specific instance raised significant and long standing issues. The resolution of these issues is paramount to the daily lives of the people on the ground in the local communities surrounding the mining operations of Cerrejon.

The agreement between Cerrejon and the former residents of Tabaco is a significant, positive outcome that has been welcomed by all parties. This outcome has provided valuable lessons for the other communities and the companies.

Cerrejon has appointed a Social Responsibility Manager on-site and engaged an independent organisation to monitor progress in the other communities. In addition, the companies have undertaken to ensure that Cerrejon provides environmental information to the local communities in a way that is both meaningful and consistent with international best practice.

While the ANCP notes the complainants' concerns about closing the specific instance at this stage, the ANCP does not believe that it can add further value to the process involving the five communities, Cerrejon and SCG.

The ANCP would like to thank all parties involved in the dispute for contributing in a constructive and cooperative manner. The ANCP fulfilled its primary function in providing a forum for discussion and assisting the parties reach agreement on the issues. The ANCP does not anticipate having an ongoing role. However, the ANCP will be available, if required, as an avenue for further discussions in the event that outstanding issues remain unresolved.

The ANCP endeavoured to handle the specific instance as quickly and as efficiently as possible and to keep the parties informed of relevant progress.

Patrick Colmer
Australian National Contact Point
Department of Treasury
Canberra
12 June 2009

Statement by the United Kingdom NCP

Statement by the United Kingdom National Contact Point for OECD Guidelines for Multinational Enterprises (NCP): DAS Air

17 July 2008

Summary of NCP Decision

The National Contact Point (NCP) considered the complaint brought under Chapter I (Concepts and Principles) and Chapter II (General policies) of the OECD Guidelines for Multinational Enterprises (the Guidelines) alleging that DAS Air (i) failed to apply due diligence when transporting minerals from Entebbe and Kigali, which had a reasonable probability of being sourced from the conflict zone in the Democratic Republic of Congo (DRC); and (ii) undertook flights between Entebbe airport and the conflict zone in Eastern DRC. These flights coincided with an illegal occupation of the area by the Ugandan military, during a period when the United Nations and NGO's recorded human rights abuses. A flight ban between DRC and Entebbe was in place during the applicable period, meaning these flights were in direct contravention of international aviation conventions (the Chicago Convention). The NCP upheld the allegations brought by Rights and Accountability in Development (RAID) and concluded that DAS Air had failed to meet the requirements of the Guidelines.

Background

The complaint about DAS Air was submitted to the NCP under the auspices of the OECD Guidelines for Multinational Enterprises by a Non-Government Organisation RAID (Rights and Accountability in Development) on 28 April 2005. The complaint alleges that DAS Air knowingly breached United Nations embargoes by transporting minerals, notably coltan, from rebel held areas of DRC:

- The transportation of coltan from DRC including flights between DRC and Uganda between 1998 and 2001 (when this airspace was closed to civilian airlines due to the conflict); and
- The onwards transportation of coltan from Rwanda and Uganda until December 2001, which the complainants allege were sourced from the conflict area in Eastern DRC.

The OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. The Guidelines are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: *general companypolicies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.*

The Guidelines are not legally binding, but OECD governments and a number of non-OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved the work of the OECD

Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

The final statement has been approved by Gareth Thomas, Minister for Trade and Consumer Affairs and copies have been placed in the House of Commons and the House of Lords libraries.

The complainant

Rights and Accountability in Development (RAID). A Non-Government Organisation founded in 1997 that aims through its research to promote social and economic rights and improve corporate accountability.

The MNE that is the subject of the allegations

*DAS Air***.** DAS Air is a long established UK based air freight services business operating routes between Europe and West Africa and between East Africa and the Middle East.

In October 2007 DAS Air Limited had been forced to close operations after failing to recover from a ban on flights operating into and out of European Community (EC) that was imposed on 16 October 2006. Administrators were appointed. It was subsequently confirmed that the administrators have sold the business and assets of DAS Air Limited to Continental Aviation Services (Nig) Limited. The date of the transfer was 20 November 2007. DAS Air Limited is now in liquidation.

The Complaint

The complaint submitted covers the period of the war in DRC, in particular from the end of 1998 to December 2001 (the date that DAS Air stopped flying coltan from Rwanda). The NCP's determination of this complaint is towards those actions after June 2000, when the current version of the Guidelines came into effect.

The allegations by RAID were of DAS Air:

- Flying into a conflict zone pre-2000 in support of a Ugandan offensive found by the International Court of Justice to have violated the principle of non-use of force in international relations and principle of non-intervention, as well as having violated international human rights law and humanitarian law.
- Flying into a conflict zone in DRC during 2000-2001 while the area was occupied by the Ugandan military. The occupation was deemed illegal and to violate international human rights law by International Court of Justice.
- The operation of civilian aircraft in a conflict zone pre and post 2000, in contravention of international conventions governing civil aviation.
- The transport of coltan from Kigali in Rwanda and the transport of cobalt from Entebbe in Uganda which had a reasonable probability of originating in eastern DRC during the conflict period.

The applicable paragraphs of the Guidelines are:

1.7 Governments have the right to prescribe the condition under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

II.1 Contribute to economic, social and environmental progress with a view to achieving sustainable development.

II.2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

II.5 Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

II.10 Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the guidelines.

Coltan

Coltan is the colloquial African name for columbite-tantalite, a metallic ore used to produce the elements niobium and tantalum. The latter is used primarily for the production of capacitors, which are vital components in electronic devices ranging from mobile telephones to laptop computers. After an increased demand from the hi-tech, communications and aerospace industries drove coltan prices to an all-time high of more than USD 300 per pound in 2000, prices plummeted during the first six months of 2001, levelling off at USD 20 to USD 30 per pound in late 2001. DRC has an estimated 80% of the world's coltan reserves. It is also found in Egypt, Ethiopia, Mozambique, Namibia, Nigeria and South Africa. The high-tec industry's demand for tantalum has fuelled an increase in coltan mining worldwide – including in DRC.

DAS Air's response

DAS Air denied the allegations in the complaint and strongly objected to the allegations that DAS Air contributed to the ongoing conflict in the DRC and to human rights' abuses. The company accepts that it transported coltan from Kigali in Rwanda but state these flights were halted immediately that DAS Air was notified that the transportation of such cargo from Kigali was unacceptable, this occurred when they came across the UN Panel report in December 2001 (the first report was published on 12 April 2001 citing the link between conflict and resources in DRC and the second report, which named DAS Air was published in November 2001). The Company firmly denied that it had ever knowingly transported coltan sourced from DRC explaining they believed the coltan it flew out of Kigali originated in Kigali.

In response to the allegation of DAS Air flights into DRC between 1998 and August 2001, the company make a categorical denial pointing out that air space between Uganda and DRC was closed for the duration of the conflict, and that it was impossible for Ugandan registered aircraft to land in DRC.

Applicability of the Guidelines

The dates of the events that are the subject of the complaint by RAID are relevant. The complaint covers the period between 1998 (from the start of the second conflict in DRC) to the end of 2001 (when the Company stopped flying minerals from the area). The current version of the OECD Guidelines came into force in June 2000 replacing the 1991 version.

There is precedent for the UK NCP to investigate behaviour that took place before 2000 but in that case the parties were aware of the retrospective application of the Guidelines.

Although there was active engagement in the complaint by Das Air between April 2005 – October 2006, there had been no active consideration as to whether it was appropriate to apply the 2000 Guidelines to events that occurred between 1998- June 2000. Since May 2008, the NCP has attempted to contact Das Air through its liquidators to see if they have any comments on this issue. No response has been received. In this case, the NCP has taken the view that it is not appropriate to apply the 2000 revision of the Guidelines to events that occurred before 2000. However, the NCP considers that past behaviour is pertinent when considering behaviour that occurred after June 2000.

UN Panel of Experts – the genesis of the allegations

In June 2000, The United Nations Security Council appointed an independent panel of experts:

- "To follow up on reports and collect information on all activities on illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including in violation of the sovereignty of that country;
- To research and analyse the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict."

The UN Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo published its first report on 12 April 2001, two of the report's key conclusions was:

> "The conflict in the Democratic Republic of the Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold. The wealth of the country is appealing and hard to resist in the context of lawlessness and the weakness of the central authority.
>
> Exploitation of the natural resources of the Democratic Republic of Congo by foreign armies has become systematic and systemic. Plundering, looting and racketeering and the constitution of criminal cartels are becoming commonplace in occupied territories. These criminal cartels have ramifications and connections worldwide, and they represent the next serious security problem in the region."

In a second report issued by the UN Panel, published on 13 November 2001, reference was made to DAS Air:

> "DAS Air, a Ugandan-owned freight company, is also believed to be transporting coltan from Bukavu and Goma to Europe via Kigali."

This reference formed part of the complaint lodged with the UK National Contact Point under the OECD Guidelines for Multinational Enterprises by RAID.

The Porter Commission

Following the first Report by the UN Panel of Experts the Ugandan Government established a Ugandan Judicial Commission under Justice Porter (Porter Commission) to look into allegations made in the UN Report, specifically about Uganda. It is information provided by the Porter Commission that provides much of the information in support of RAID's original complaint.

The Porter Commission investigated the use of the Military Air Base as a result of the original UN Panel's claims that it was being used during Operation Safe Haven to transport goods to and from the DRC.

Porter found that, "trade through the Military Air Base was being hidden…"

The use of the air base for civilian purposes is a key consideration of this complaint.

The NCP Analysis

The NCP analysis is made with the understanding that the specific instance process further to the complaint was not completed due to DAS Air going into administration. The last letter between the parties was exchanged on 18 October 2006. The NCP received no further response from DAS Air after this point. The NCP notes that this timing coincided with the European Commission ban of DAS Air from flying over EU territory. However DAS Air did not go into administration until September 2007 and so there was sufficient time for it to rebut RAID's allegations.

RAID alleges that DAS Air knowingly breached United Nations embargoes by transporting from rebel held areas of the Democratic Republic of Congo (DRC) by:

- The transportation of coltan from DRC including flights between DRC and Entebbe, Uganda between 1998 and 2001 (when this airspace was closed to civilian airlines due to the conflict); and
- The onwards transportation of coltan from Rwanda and Uganda until December 2001, which the complainants allege were sourced from the conflict area in Eastern DRC.

Flights between DRC and Uganda

The complainant provided records sourced from the Porter Commission archives that indicated that DAS Air had undertaken 35 flights from Entebbe to DRC during the period of the conflict, when this air space was closed. The NCP has determined on the 3 flights that took place after June 2000 (when the current version of the Guidelines came into force).

The implications of these flights are that:

- DAS Air contravened international aviation conventions that prohibited civil flights between Uganda and DRC due to the conflict.
- To circumvent the ban on civil flights between DRC and Uganda, DAS Air defined civil flights as military or were flying in support of the Ugandan army during its occupation of the area.

DAS Air has insisted throughout that the information sourced from the Porter Commission archives is false, with the exception of 1 flight (which took place before June 2000) undertaken on behalf of *Medecins Sans Frontiers*. DAS Air also pointed out the allegations that DAS Air flew between Entebbe airport and DRC is demonstrably incorrect as it is "common knowledge that the air space between Uganda and DRC has been closed for the duration of the conflict, and it was impossible for Ugandan registered aircraft to land in DRC; because of their size". The NCP considers that DAS Air had sufficient time to provide evidence to substantiate this explanation about the size of plane but did not. In the absence of any evidence to support the statement, the NCP gave consideration to the balance of information *i.e.* the claim that DAS Air airplanes could not land in Eastern DRC due to the size of the planes *versus* the credibility of the Porter Commission archives; the NCP rejects DAS Air's explanation as unsubstantiated. The NCP also notes that DAS Air provided this explanation before it was aware of the Porter

Commission records itemising the DAS Air flights from Entebbe and no subsequent explanation was received once this evidence was passed to DAS Air.

International Conventions required the air space between Uganda and DRC to be closed to civil aircraft during the period of the conflict (specifically from July 1999 until April 2004, when A Memorandum of Understanding normalising mutually beneficial air operations between the two countries was signed). Civil aviation flights are subject to the provisions of the *Convention on International Civil Aviation* (CICA), also known as "the Chicago Convention". The Convention consists of a number of principles and arrangements to which governments have agreed "in order that international civil aviation may be developed in a safe and orderly manner and that international civil air transport services may be established on the basis of equality of opportunity and operated soundly and economically" (Preamble, CICA, 2006 version).

Following the report of the UN Panel of Experts in 2001, the Porter Commission investigated allegations that the Ugandan Army had contravened these requirements by designating civil flights that used Entebbe Airport as military flights (as the Convention on Civil Aviation only applies to civilian airlines). The Porter Commission was published in May 2003 and quotes a letter, dated 23 July 1999, from the Managing Director of the Civil Aviation Authority to a UPDF officer:

> "We wish to advise you that Civil Aviation Authority had difficulty in authorising civil air operation in/out of DR Congo for the following reasons:
>
> The ICAO rules and regulations that govern international air operations do not permit such operations given the current situation prevailing in the eastern part of Congo."

The Porter Commission concluded that "if the operator was private and not military, and the aircraft was not chartered to MOD, then it should not be allowed to fly, as it came under Civil Aviation Authority rules'".

The Commission report described how Uganda has one International Airport (Entebbe International Airport), part of which is called the New Airport; the other part is the Old Airport or the Military Air Base, which is for the military. The Commission recorded a situation in which international civilian flights into the DRC, as a conflict zone, were not allowed by International Convention. The Porter Commission cites a further paragraph from the Managing Director of the CAA's letter of 23 July 1999:

> "However, if the flights have to be operated, then they should be operated as purely military flights which are not subject to Civil Aviation Authority's strict regulations and safety requirements…"

While this indicates that the flights flying between Entebbe Airport and DRC were categorised as military, the Porter Commission went on to conclude that non-military flights occurred during this period:

> "Whilst military transport of goods from the Congo, which cannot have been anything else than natural resources, has been proved to have been taking place, by far the largest number of flights were private carrying merchandise to and from the Congo."

Therefore, the Porter Commission Report concluded that it is likely that civilian flights did take place between DRC and Uganda during the period of the conflict in direct contravention of International Conventions. Having reviewed the Porter Commission report the NCP accepts its conclusions and considers that the flights undertaken by DAS Air between Entebbe and DRC were likely to have been civil flights defined as military to circumvent International Aviation Conventions. The issue that the NCP considered for the purpose of this specific instance is whether DAS Air participated in these flights which would have been in direct contravention of International Aviation Conventions leading to a failure to meet the expectations of paragraphs 1.7 and II.5 of the Guidelines.

The key evidence submitted by RAID is flight logs sourced from the Porter Commission archives. The NCP has considered the validity of the evidence collected by the Porter Commission. The Porter Commission was established by the Minister of Foreign Affairs by Legal Notice and operated under the Commission of Inquiries Act. The Commission gathered extensive documentation. It worked only with sworn evidence given in public. The Commission adhered to the Evidence Act in its proceedings. The International Court of Justice (ICJ) has acknowledged the evidentiary value of the Porter Commission. The ICJ, in the Case Concerning Armed Activities on the Territory of the Congo, 2005 used evidence from the Porter Commission as they considered the Commission had followed methods of inquiry that were broadly accepted standards and included testimony of Ugandan officials that contained statements against interest, the Court found the Commission's factual findings particularly reliable. The ICJ had tested the evidence collected by the Porter Commission and considered it stood up to scrutiny. The NCP also considers evidence collected by the Porter Commission to be reliable and admissible.

The flight logs indicate that DAS Air contravened International Conventions by flying between Uganda and DRC during the conflict.

The flight logs also points to DAS Air operating flights into areas of Eastern DRC while it was occupied by Ugandan troops. Human Rights Watch documented human rights abuses on the local population including the killing of civilians around Beni in mid-2000.[24] The UN Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo in his August 2001 report described Ugandan backing for rebel forces, how the local population was living in fear, and attested to the use of torture and "many acts of violence by Ugandan soldiers that caused countless deaths".[25] Amnesty International condemned the use of torture by Ugandan forces.[26] The occupation in this area followed a major Ugandan Offensive condemned and declared illegal by the International Court of Justice.

The NCP did not make a determination on the 32 flights that took place before the current version of the Guidelines came into force but did consider these flights when determining the status of the 3 flights that took place after June 2000. The NCP believes that past behaviour is pertinent to the analysis. The NCP noted that many of the DAS Air flights into Eastern DRC occurred shortly after the Ugandan army had occupied the specific area during Operation "Safe Haven". The NCP noted that the ICJ concluded that Operation "Safe Haven" was not consonant with self-defence and that Uganda violated the sovereignty and territorial integrity of the DRC.

The NCP notes that DAS Air did not respond to the specific allegations made in October 2006 (when the Porter Commission records were shared with DAS Air) but that it had sufficient opportunity to do so. The NCP notes that prior to that date DAS Air had denied that flights between Entebbe and the DRC took place. Despite this, the NCP is satisfied that the evidence submitted is sufficient to conclude that DAS Air did fly between Entebbe and DRC in breach of International Conventions. The NCP accepts the Porter Commission evidence. While the NCP process had not been finalised by the time DAS Air went into administration, the NCP considers that sufficient evidence had been collected to conclude that there was a clear failure to meet the expectations of the Guidelines. By flying between Entebbe and DRC, DAS Air failed to meet the requirements of paragraphs II.2, II.5 and 1.7 of the Guidelines.

The onward transportation of coltan and cobalt from Rwanda and Uganda

DAS Air estimated that it transported approximately 400 tonnes of coltan from Kigali to Johannesburg and 500 tonnes of cobalt from Entebbe to Ostende between 21 November 2000 and 17 December 2001. RAID alleges that this coltan and cobalt was sourced from the conflict zone in Eastern DRC. DAS Air stated they were merely contracted by the freight forwarders to transport the minerals; that all merchandise transported by DAS Air is customs-cleared before it is transported and DAS Air had not at any time been aware that any coltan transported by it originated from DRC. They also stated that any enquiries the NCP had in regards to the consignors and consignees should be made to DAS Air's customer as DAS Air would not have that information. DAS Air explained that it was not aware of the UN Panel report of 12 April 2001. The adverse implications of the carriage of minerals from the region did not come to DAS Air's attention until December 2001 (in all likelihood from a press article): as soon as it came to DAS Air's attention, they immediately halted all transportation of coltan from Kigali. DAS Air was named in the November 2001 UN Panel Report:

> Transport networks have also been reconfigured since the publication of the report [the Panel's April 2001 report]. Sabena halted the transport of all coltan shipments from Kigali. Instead, the Netherlands carrier Martinair is now shipping coltan from Kigali twice a week to Amsterdam. DAS Air, a Ugandan-owned freight company, is also believed to be transporting coltan from Bukavu and Goma to Europe via Kigali.

The NCP accepts the key conclusion made by Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo that "the conflict in the Democratic Republic of the Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold. The wealth of the country is appealing and hard to resist in the context of lawlessness and the weakness of the central authority…" The Panel went on to explain that "the role of the private sector in the exploitation of natural resources and the continuation of the war has been vital…Companies trading minerals, which the Panel considered to be 'the engine of the conflict in the Democratic Republic of Congo', have prepared the field for illegal mining activities in the country."

Heightened care is required by companies when investing and trading in weak governance zones. There is no evidence that DAS Air made any concessions to the conflict occurring in the region. DAS Air transported minerals from Kigali, which had a reasonable probability of having been sourced from the conflict zone in the DRC, on behalf of its customers.

The NCP considered the extent of the influence that DAS Air could have in its contracts with third parties to transport coltan from Kigali to Europe. The commentary to the Guidelines on the supply chain paragraph refers to the level of influence that a business holds and says "the extent of these limitations depends upon sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise…". The NCP understands that DAS Air did not hold a monopoly but had a significant market share of flights transporting minerals from Kigali, DAS Air had good regional knowledge as it was a prominent carrier in Africa. Most importantly, the flights recorded by the Porter Commission showing DAS Air flying between Entebbe and DRC illustrates that DAS Air should have had a clear understanding of the potential for the minerals to have been sourced from Eastern DRC. DAS Air clearly stated to the NCP that they did not question the source of the mineral that it transported, the NCP considers that DAS Air undertook insufficient due diligence on the supply chain.

The Porter Commission archives record 35 DAS Air flight between DRC and Entebbe airport between 1998 and 2004, the majority of these flights into the conflict zone where many of DRC's minerals are mined. The NCP has not made a determination on the 32 flights that took place before June 2000, but believes these earlier flights should be recorded in this statement in support the NCP's view that DAS Air was aware of the conflict in DRC and the potential for the minerals to be sourced from the conflict zone.

Therefore the NCP finds that DAS Air did not meet the requirements set out in paragraphs II.1, II.2 and II.10 of the Guidelines:

NCP Conclusions

DAS Air flights between Entebbe and DRC were in direct contravention of the Chicago Convention. The destination airports in Eastern DRC were situated in an area in North Eastern DRC that was under Ugandan army occupation and human rights abuses were recorded by NGOs in the area during 2001. The DAS Air flights can be seen as either:

- civilian flights that were recorded as military to circumvent the Chicago Convention; or
- flying in support of the Ugandan army during its occupation of the area.

The NCP believes it to be the former option as the Porter Commission records instances of civilian flights being defined as military to circumvent the Chicago Convention and the NCP concludes that this is the more likely outcome. The NCP concludes that the flights between DRC and Entebbe failed to meet the expectations of the following paragraphs of the Guidelines:

II.2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

II.5 Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

1.7 Governments have the right to prescribe the condition under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

DAS Air did not try to establish the source of the minerals they were transporting from Kigali and Entebbe, stating they were unaware of the potential for the minerals to be sourced from the conflict zone in eastern DRC. The NCP finds it difficult to accept that an airline with a significant presence in Africa including a base in Entebbe would not have been aware of the conflict and the potential for the minerals to be sourced from Eastern DRC. In addition, the 35 DAS Air flights between Entebbe and DRC (including several flights to the conflict zone itself) between 1998 and 2001 recorded by the Porter Commission, adds support to DAS Air having an intimate understanding of the situation and the conflict.

The NCP concludes the lack of due diligence on the supply chain, meant that DAS Air did not meet the requirements of the following paragraphs of the Guidelines:

II.1 Contribute to economic, social and environmental progress with a view to achieving sustainable development.

II.2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

II.10 Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the guidelines.

Recommendations

The UK Government expects all UK business to follow international conventions including the Convention of International Civil Aviation.

Under no circumstances should a UK MNE define its flights as military when they are not.

The NCP refers to UN Resolution 1592 (30 March 2005): recital 10 of the resolution urges "all states neighbouring the Democratic Republic of Congo to impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories". The NCP notes that this resolution is directed towards states but considers this resolution highlights the requirement for business to undertake heightened awareness when trading or investing in natural resources within this region. The NCP urges UK companies to use their influence over contracting parties, when trading in natural resources from this region, to ensure that due diligence is applied to the supply chain.

The UK Government draws attention to the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, which has been developed as part of the OECD's Investment Committee's follow up to the Guidelines. The Risk Awareness tool consists of a list of questions that companies should ask themselves when considering actual or prospective investments in weak governance zones. The questions cover the following issues:

- Obeying the law and observing international relations.
- Heightened managerial care.
- Political activities.
- Knowing clients and business partners.
- Speaking out about wrongdoing.
- Business roles in weak governance societies – a broadened view of self interest.
- The Risk Awareness tool can be downloaded from *www.oecd.org/dataoecd/26/21/36885821.pdf*.

NCP commitment to publicise recommendations

The NCP will contact trade organisations with an interest in freight forwarding and request they bring this statement to the attention of their members.

17 July 2008

Margaret Sutherland	Dal Dio	Martin Taylor
UK NCP – BERR	UK NCP- BERR	UK NCP – DFID

Rights and Accountability in Development (RAID) press release: DAS Air

21 July 2008

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Government Condemns British Aviation Company for Fueling Congo's War

Oxford, Monday 21 July 2008

The British Government has found DAS Air, a UK-based air cargo company, in breach of the OECD Guidelines on corporate conduct for its part in transporting minerals from rebel-held areas of the Eastern Democratic Republic of the Congo (DRC). Rights and Accountability in Development (RAID), a human rights non-governmental organisation, which brought a complaint against the company welcomed the government's findings.

> "This is a major breakthrough and sets an important precedent" said Patricia Feeney, RAID's Executive Director. "For the first time a foreign company has been held to account by its own government for its part in fueling a war that has cost the lives of an estimated 5.4 million people – the highest civilian death toll since World War II."

In 2002 a UN Panel of experts accused over 80 multinational companies of violating the OECD Guidelines for Multinational Enterprises (a government-backed code of corporate conduct). Despite the wealth of evidence in the UN Panel's reports to date DAS Air is the only company to have been publicly sanctioned by a government.

According to the UN Panel, DAS Air transported coltan (columbo-tantalite used in the manufacture of electronic equipment) from the Congolese towns of Bukavu and Goma to Europe via Kigali (the Rwandan capital).[1]

The UK National Contact Point (NCP) – the government unit responsible for overseeing companies' adherence to the OECD Guidelines – rejected DAS Air's argument denying that it knew the coltan came from rebel areas:

> "DAS Air did not try to establish the source of the minerals they were transporting from Kigali and Entebbe, stating they were unaware of the potential for the minerals to be sourced from the conflict zone in eastern DRC. The NCP finds it difficult to accept that an airline with a significant presence in Africa including a base in Entebbe would not have been aware of the conflict and the potential for the minerals to be sourced from Eastern DRC."[2]

RAID provided the British Government with crucial evidence proving that DAS Air made regular flights into the Eastern DRC. The flights contravened international aviation conventions banning civil air traffic from flying into conflict zones. Several flights coincided with a Ugandan military offensive which was found by the International Court of Justice to have been in violation of international humanitarian law.

> "By finding DAS Air to have breached human rights the British Government has sent a powerful message to others currently engaged in the exploitation of natural resources in conflict zones around the world which fuels war and appalling human rights abuses. This case has taken four years to resolve" said Patricia Feeney. "It is time for Britain to lead the way in prohibiting such callous corporate behaviour and to provide clear guidance for British businesses that operate in difficult business environments."

Rights and Accountability in Development (RAID) press release: DAS Air *(cont.)*

In 2003 the UN Panel forwarded dossiers to the British Government concerning the activities of three other British companies, De Beers, Avient Limited and Oryx Natural Resources, all of which were exonerated in *ad hoc* and untransparent proceedings.[3]

"The condemnation of DAS Air has emerged as a result of the reforms to the UK NCP's procedures that were implemented last year after pressure from MPs. It is to be hoped that the Government will now use the promised parliamentary statement on the UN Panel process to set the record straight about the conduct of some of the other companies, and indicate when further guidance for British business will be forthcoming" said Patricia Feeney.

Notes for Editors

1. Statement by the United Kingdom National Contact Point (NCP) for OECD Guidelines for Multinational Enterprises: DAS Air; available at: *www.csr.gov.uk/oecd1.htm*.

2. DAS Air is a long established air freight services business operating routes between Europe and West Africa and between East Africa and the Middle East. In October 2007 DAS Air Limited was forced to shut down its operations after failing to recover from a ban on flights operating into and out of European Community that was imposed on 16 October 2006. Administrators were appointed. In November 2007, the business and assets of DAS Air Limited were sold to Continental Aviation Services (Nig) Limited. DAS Air limited is now in liquidation.

3. International Rescue Committee, *Mortality in the Democratic Republic of Congo,www.theirc.org/resources/2007/2006-7_congomortalitysurvey.pdf*. Survey Conducted: January 2006 – April 2007. "Based on the results of the five IRC studies, we now estimate that 5.4 million excess deaths have occurred between August 1998 and April 2007. An estimated 2.1 million of those deaths have occurred since the formal end of war in 2002."

4. UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (UN Panel) was set up by the Security Council in June 2000. Between 2001 and 2003, when it was disbanded, the Panel's reports detailed the role foreign companies had played in fueling the conflict through the exploitation of minerals, timber and diamonds.

5. NCP statement paragraph 43

> "Heightened care is required by companies when investing and trading in weak governance zones. There is no evidence that DAS Air made any concessions to the conflict occurring in the region. DAS Air transported minerals from Kigali, which had a reasonable probability of having been sourced from the conflict zone in the DRC on behalf of its customers."

6. Republic of Uganda, "Judicial Commission of Inquiry Into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo", Final Report November 2002 p. 38, lines 22- 23. The Commission known as the "Porter Commission" was set up to examine the UN Panel's allegations relating to Uganda.

7. International Court of Justice Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) 19 December 2005, Judgement paragraphs 61 and 237. In its judgment the ICJ concluded that Operation "Safe Haven" was not consonant with self-defence and that Uganda violated the sovereignty and territorial integrity of the DRC. [NCP Statement paragraph 39].

8. International Civil Aviation Convention.

Rights and Accountability in Development (RAID) press release: DAS Air *(cont.)*

References

RAID, *Unanswered Questions: companies, conflict and the Democratic Republic of the Congo* (June 2004) available at: *www.raiduk.org/docs/UN_Panel_DRC/Unanswered_Questions_Full.pdf*

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UN Panel report dated 16 January 2001 *www.un.org/Docs/sc/letters/2001/sglet01.htm* click on S/2001/49

UN Panel report dated 12 April 2001 *www.un.org/Docs/sc/letters/2001/sglet01.htm* click on S/2001/357

UN Panel report dated 13 November 2001 *www.un.org/Docs/sc/letters/2001/sglet01.htm* click on S/2001/1072

UN Panel report dated 22 May 2002 *www.un.org/Docs/sc/letters/2002/sglet02.htm* click on S/2002/565

UN Panel report dated 16 October 2002 *www.un.org/Docs/sc/letters/2002/sglet02.htm* click on S/2002/1146

UN Panel report dated 20 June 2003 *www.un.org/Docs/sc/letters/2002/sglet02.htm* click on S/2002/1146/Add.1

UN Panel report dated 23 October 2003 *www.un.org/Docs/sc/unsc_presandsg_letters03.html* click on S/2003/1027

1. UN Panel report dated 13 November 2001, paragraph 20.
   www.un.org/Docs/sc/letters/2001/sglet01.htm click on S/2001/1072
2. NCP Statement paragraph 493.
3. The NCP statements on these companies are available at *www.csr.gov.uk/oecd1.htm*.

Statement by the United Kingdom NCP

Final statement by United Kingdom National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd

28 August 2008

Summary of NCP decision

The National Contact Point (NCP) considered the complaint brought under Chapter II (General policies), Chapter IV (Employment and Industrial Relations) and Chapter VI (Combating bribery) of the OECD Guidelines for Multinational Enterprises (the Guidelines) alleging that Afrimex paid taxes to rebel forces in the Democratic Republic of Congo and practiced insufficient due diligence on the supply chain, sourcing minerals from mines that used child and forced labour, who work under unacceptable health and safety practices. The NCP upheld the majority of the allegations brought by Global Witness. Afrimex initiated the demand for minerals sourced from a conflict zone. Afrimex sourced these minerals from an associated company SOCOMI, and 2 independent comptoirs who paid taxes and mineral licences to RCD-Goma when they occupied the area. These payments contributed to the ongoing conflict. Therefore the NCP concluded that Afrimex failed to contribute to the sustainable development in the region; to respect human rights; or to influence business partners and suppliers to adhere to the Guidelines. The NCP concluded that Afrimex did not apply sufficient due diligence to the supply chain and failed to take adequate steps to contribute to the abolition of child and forced labour in the mines or to take steps to influence the conditions of the mines. The NCP did not uphold the allegations that Afrimex failed to fulfil the bribery and corruption chapter of the Guidelines or the improper involvement in local politics.

OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. They are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: general company policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.

The Guidelines are not legally binding but OECD governments and a number of non-OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved in the work of the OECD Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

The final statement has been approved by Gareth Thomas, Minister for Trade and Consumer Affairs and copies have been placed in the House of Commons and the House of Lords libraries.

Specific Instance procedure

The first step when a complaint is brought to the NCP under the OECD Guidelines is the initial assessment; this consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The NCP uses this information to determine whether further consideration is required under the Guidelines. The initial assessment is published to *www.csr.gov.uk*. If a case is accepted, the NCP instigates mediation between the two parties to ascertain whether they can agree on an appropriate way forward. Should mediation fail, the NCP will determine whether the Guidelines have been met and if necessary, make recommendations for future conduct.

Background of complaint

On 20 February 2007, the UK National Contact Point (NCP) received a request from Global Witness (the Complainant) to consider the specific instance regarding Afrimex UK Ltd (the Company). The complaint alleged that Afrimex paid taxes to rebel forces in the Democratic Republic of Congo (DRC) and practiced insufficient due diligence on the supply chain, sourcing minerals from mines that use child and forced labour, who work under unacceptable health and safety practices.

Applicability of the Guidelines

The dates of the events that are the subject of the complaint by Global Witness are relevant. The complaint covers the period between 1998 (from the start of the second conflict in DRC) to the date of the complaint (February 2007). The current version of the OECD Guidelines came into force in June 2000 replacing the 1991 version. There is precedent for the UK NCP to investigate behaviour that took place before 2000 but in that case the parties agreed to the retrospective application of the Guidelines, in this case Afrimex withheld consent. While the NCP will not make a determination about the allegations prior to June 2000, the NCP considers that past behaviour is pertinent when considering behaviour that occurred after June 2000.

UN and DRC

In June 2000, The United Nations Security Council appointed an independent panel of experts:

> "To follow up on reports and collect information on all activities on illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including in violation of the sovereignty of that country;
>
> To research and analyse the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict."

The UN Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo published its first report on 12 April 2001,[27] two of the report's key conclusions were:

> "The conflict in the Democratic Republic of the Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold. The wealth of the country is appealing and hard to resist in the context of lawlessness and the weakness of the central authority…

The role of the private sector in the exploitation of natural resources and the continuation of the war has been vital. A number of companies have been involved and have fuelled the war directly, trading arms for natural resources. Others have facilitated access to financial resources, which are used to purchase weapons. Companies trading minerals, which the Panel considered to be 'the engine of the conflict in the Democratic Republic of Congo', have prepared the field for illegal mining activities in the country."

Afrimex was first mentioned as a company of concern in the Panel's first report and was subsequently listed in Annex III of the October 2002 report, as the Panel considered Afrimex to be in violation of the OECD Guidelines. After dialogue with Afrimex, the UN classified Afrimex in Category 1, a "resolved" case that required no further action. The discussions that took place between Afrimex and the UN following this report are summarised in the letter that Ketan Kotecha sent the UN.[28] The content of this letter is considered further in paragraph 20.

The UN's ongoing concern is reflected by the creation of a further group in 2004: the Group of Experts on the Democratic Republic of Congo. Their reports are accessible at *www.un.org/sc/committees/1533/egroup.shtml*. These reports describe the ongoing conflict, and again, make the explicit link between minerals and funding of rebel groups.

The UN continues to be gravely concerned about the situation in DRC. This is reflected in the number of resolutions passed by the Security Council. The Security Council first imposed an arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri and on groups not party to the Global and All-inclusive agreement in the Democratic Republic of the Congo on 28 July 2003 with the adoption of resolution 1493. The sanctions regime was subsequently modified and strengthened with the adoption of resolutions 1533 (2004), 1596 (2005), 1649 (2005) and 1698 (2006) which, among other things, expanded the scope of the arms embargo, imposed additional targeted sanctions measures (travel ban and an assets freeze), and broadened the criteria under which individuals could be designated as subject to those measures. *Resolution 1807* (31 March 2008) amended and renewed the sanctions regime until 31 December 2008 and extended the Group of Experts for the same period.

Substance of complaint

Global Witness alleges that Afrimex (UK) Ltd did not comply with Chapter II (General Policies), Chapter IV (Employment and Industrial Relations) and Chapter VI (Combating bribery) of the Guidelines, specifically:

General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should

II.1 Contribute to economic, social and environmental progress with a view to achieving sustainable development.

II.2: Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

II.10 Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.

II.11 Abstain from any improper involvement in local politics.

Employment and Industrial Relation

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

IV.1b Contribute to the effective abolition of child labour.

IV.1c Contribute to the elimination of all forms of forced or compulsory labour.

IV.4b Take adequate steps to ensure occupational health and safety in their operations.

Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantange. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

VI.2 Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.

VI.6 Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior managements.

Afrimex's response

Afrimex do not believe they have acted contrary to the expectations of the Guidelines and consider the complaint made by Global Witness to have numerous misconceptions and errors.

Afrimex dismissed the allegation they had paid taxes to rebel forces, with the explanation that Afrimex only take ownership of the minerals at the border so do not have a tax liability in DRC. They also stated that no agent paid tax on Afrimex's behalf.

In regards to the supply chain for the sourcing of minerals, Afrimex explained they have never bought minerals directly from the mine. They described the supply chain for minerals as extremely fractured, with Afrimex several steps removed from the mines. The lack of an audit chain prevents Afrimex's minerals from being traced back to the mine they were sourced from. They explained that Afrimex source their minerals from a small number of comptoirs with a good reputation with whom they have long standing relationships. Following the UN Panel report Afrimex sought oral confirmation from comptoirs and following the 2005 Channel 4 news report, Afrimex sought and obtained written assurances from the comptoirs that their products meet all legal and regulatory requirements (a copy of one assurance was received by the NCP, while the other was subsequently requested, it was not received).

Relationship between Afrimex, Societe Kotecha and SOCOMI

The complaint lodged by Global Witness stated that Afrimex operates in DRC as Societe Kotecha. The complaint continues by describing SOCOMI (a DRC company) as "the ore marketing arm of Societe Kotecha". As Afrimex disputed the link between the 3 companies, it was necessary to explore the relationship.

Afrimex explained to the NCP that its relationship with Societe Kotecha is merely business. Afrimex exports goods, mainly commodities to Societe Kotecha. Societe Kotecha provides certain services to Afrimex, for example, physical checks on minerals to confirm volumes before export. Afrimex confirmed that Societe Kotecha does not take ownership of the minerals and explained that Societe Kotecha does not trade in minerals nor has it done so in the past. Afrimex and Societe Kotecha are independent companies which do not co-ordinate their operations or exert influence over one another in any manner that compromises their independence.

The Global Witness complaint refers to 2 key reasons why Afrimex should be seen as connected to Societe Kotecha and Socomi. Global Witness' believe that Afrimex and Societe Kotecha trade as one entity and in a letter to the NCP dated 29 May 2007 refer to a conversation between a Global Witness researcher and an employee at Societe Kotecha in Bukavu who referred to Afrimex as "the London office".

The first key reason cited by Global Witness is Ketan Kotecha's letter to the UN, which he described as a "recap of the main points of the discussion". It is clear that Mr Kotecha implied to the UN that Afrimex, Societe Kotecha and SOCOMI were associated companies (even indicating they were one and the same business). The letter is referring to a family business which imports commodities, sold through a network of branches in the region and has made substantial infrastructure investments in the region, including the investment in sugar and plastic moulding factories. This description does not tally with the explanation given to NCP of Afrimex as a company that merely exports commodities to DRC and imports minerals from DRC. Afrimex has told the NCP that this letter "was perhaps misjudged" but the NCP considers it to indicate that Afrimex has either misdirected the UN or the NCP in regards to the relationship between these companies.

The second issue raised by Global Witness is Ketan Kotecha's evidence to the International Development Committee[29] (IDC)[30] on 4 July 2006. Again, Ketan Kotecha appears to be discussing Afrimex and Societe Kotecha as closely associated businesses, and as paying taxes to RCD-Goma. While the NCP recognises that observers would conclude these companies are associated based on Mr Kotecha's oral evidence, the NCP notes that Mr Kotecha subsequently wrote to the IDC to provide clarification of certain points to prevent misinterpretation. The key clarification for the purpose of determining the relationship between Afrimex and Societe Kotecha is:

> "Afrimex is a UK registered company that I founded in 1984. It has a staff of four individuals (including myself) from offices in Wembley, Middlesex. It acts solely as a commissioning agent for several companies, one of which is Societe Kotecha. Societe Kotecha is my father's Congolese company, established in Bukavu as Kotecha's in the early 1960's. Societe Kotecha directly employs approximately 160 people in the Congo. All of its investment and business activities are conducted in the Congo, and it deals with a number of other companies and engages in a variety of businesses unrelated to its dealings with Afrimex."[31]

This letter introduces the view that a clear separation of the business exists.

Afrimex states that the owners and directors of the 2 companies are different. The NCP understands that the directors of Societe Kotecha are Ketan Kotecha and Ramnik Kotecha, while the directors of Afrimex are Ketan Kotecha and Didi Kotecha (the NCP sourced confirmation of Afrimex directors from Companies House). Ketan Kotecha told the NCP that he is a minority shareholder with a minor role in the running of Societe Kotecha.

Afrimex describes SOCOMI as being a separate business from Societe Kotecha and was formed by Ramnik Kotecha and 2 others in 1984. The NCP requested confirmation of the other directors, primarily to satisfy itself that the remaining directors were not comptoirs but Afrimex stated they did not have access to this information. The NCP is only interested in SOCOMI for the period of the complaint while it was involved in the mineral industry (until November 2001 when it moved to telecommunications). Afrimex state that to the best of its knowledge SOCOMI did not act as a comptoir and merely crushed ore and exported minerals that it had bought locally.

The NCP gave careful thought to the views put forward by the parties and referred to the Guidelines which pointed to flexibility in defining an "MNE":

> "A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another."[32]

In considering whether these companies were associated, the NCP considered a variety of factors. The NCP did not find this relationship clear cut. The NCP accepted Afrimex's explanations for the ambiguities and confusion instigated by Mr Kotecha's evidence to the IDC evidence and his letter to the UN. Ultimately, the NCP kept returning to the same key issues:

- The linkage between the directors in the 3 companies: Mr Ketan Kotecha is a director of Afrimex and Societe Kotecha, Mr Ramnik Kotecha is a director in Societe Kotecha and SOCOMI (during the period that SOCOMI traded in minerals until 2002).
- Mr Ketan Kotecha and Ramnik Kotecha are shareholders of Societe Kotecha.
- Familial relationship – Ramnik Kotecha is Ketan Kotecha's father.
- Societe Kotecha is a key (but not sole) customer of Afrimex.
- Societe Kotecha provides some services to Afrimex in regards to checking and coordinating mineral deliveries.

The NCP believes these links are sufficient to determine that Afrimex was in a position to significantly influence Societe Kotecha and SOCOMI. Therefore, the NCP has treated these companies as linked for the purposes of this complaint.

Process

The parties entered into mediation and met 3 times. They were unable to agree a mediated settlement and the process subsequently moved to an NCP determination. Mediation is a confidential process between the parties and the NCP will not comment on the discussions that took place during these sessions.

NCP analysis

The NCP will only determine on the period after 2000 but as referred in paragraph 7, consideration of Afrimex's behaviour before 2000 is pertinent when considering behaviour from June 2000.

Global Witness alleges that Afrimex paid taxes to an armed group (RCD-Goma) that was engaged in armed conflict against the national Government and these payments contributed to financing (and therefore prolonging) the conflict. These aspects of the complaint fall to paragraphs II.1 and II.2 of the Guidelines.

Afrimex explained their trade in minerals is confined to importing minerals from the Democratic Republic of Congo. As Afrimex effectively takes ownership of the minerals at the border, they currently do not have any tax liability in DRC nor have they had tax liability in the past for minerals. Tax paid in DRC on the minerals exported by Afrimex is the responsibility of their suppliers.

The NCP considered Mr Kotecha's evidence to the IDC (referred to in paragraph 21), Mr Kotecha was asked whether Afrimex made any payments to any political organisations or military organisation in DRC, he responded in the negative. Mr Kotecha also confirmed that taxes were paid to the "RCD Government" *i.e.* RCD Goma, who occupied the area during the conflict and used the taxes collected to fund the conflict. Mr Kotecha subsequently provided written clarification to the IDC, stating that he had responded to these issues on behalf of his family's business and was not talking about Afrimex.

The NCP accepts that Mr Kotecha refered to Societe Kotecha paying taxes to RCD-Goma and not Afrimex. As the complaint centres on the trade of minerals the NCP is restricted to considering the mineral trade only. The NCP accepts that Societe Kotecha does not trade in minerals; the taxes paid to RCD Goma by Societe Kotecha would have been around other business activities and do not form part of this complaint.

In correspondence with the NCP, Mr Kotecha referred to SOCOMI holding a mineral license until 2002. During the oral evidence given to the IDC by Mr Kotecha, he refers to the payment of licences and taxes during this period. The NCP believes this included the mineral licences and taxes paid by SOCOMI.

Therefore SOCOMI paid taxation and licence fees as outlined in the complaint:

> "From August 1998 to November 2000, non-government forces involved in the conflict imposed a USD 15 000 per year licence fee in addition to a tax estimated at 8% of the total value of exports on all coltan traders."

This is supported by statistics of exports of coltan and cassiterite collected by IPIS during their research in DRC for the 2002 report "Supporting the War Economy in the DRC: European Companies and the Coltan Trade.[33]" The statistics cover the period January 2000 to July 2001. A proportion of these statistics are used within the report, and show SOCOMI as a significant exporter of minerals from Eastern DRC during this period. The statistics received by the NCP direct from IPIS are more detailed than those used in the report and show Afrimex to be a significant customer of SOCOMI during the period of the research.

The NCP considered the eligibility of the statistics provided by IPIS. IPIS is an independent research institute which focuses on Sub-Saharan Africa; areas of expertise include the exploitation of natural resources. The UK NCP discussed the status of IPIS with the Belgian NCP who confirmed the credibility of the organisation and its work. The NCP considers the statistics received are material evidence in substantiating the trade between SOCOMI and Afrimex.

The NCP believes that Afrimex was in a strong position to influence SOCOMI and to question whether SOCOMI should have been paying money to RCD-Goma through the purchase of mineral licences and paying taxes. The information received from IPIS implies that Afrimex was SOCOMI's only export customer during the period of the statistics collected in 2000/01. If this is the case, Afrimex was the reason that SOCOMI traded in minerals and therefore Afrimex is responsible for SOCOMI paying the licence fees and taxation to RCD-Goma. If Afrimex was not SOCOMI's only customer, then their responsibility for the payment of taxes depends on what proportion of SOCOMI's trade in minerals was with Afrimex. These licence fees would have been paid to RCD-Goma during the period they occupied the area (1998 to 2002 – when SOCOMI changed its business activity from minerals).

The NCP concludes that Afrimex failed to apply sufficient pressure on an associated company (SOCOMI) to cease trading in minerals during a period when taxes and licence fees were paid to RCD-Goma. These taxes and licence fees were used to fund the continuation of the war. Therefore the NCP determined that Afrimex failed to meet the expectation of paragraphs II.1 and II.2.

SOCOMI was not Afrimex's only supplier. Therefore, the NCP considered whether the supply chain paragraph (II.10) of the guidelines applied. Taxation would have been paid down the supply chain and the NCP was required to consider whether Afrimex was in a position to influence its business partners and suppliers.

The NCP's consideration is centred on the level of "due diligence" applied to the supply chain by Afrimex. Professor Ruggie,[34] defines due diligence as "a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it. The scope of human rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities."[35]

Mr Kotecha confirmed to the IDC that during the period of the conflict (1998 to 2003) the amount of cassiterite purchased remained at a similar level as that purchased before the conflict while the amount of coltan increased by 100%.

On November 2000, RCD-Goma imposed a monopoly on the coltan trade through Societe Miniere des Grands Lac (SOGIML). A tax of USD 10 per kilogramme of coltan was applied to all traders. Afrimex said they stopped purchasing coltan once this monopoly was imposed. This explanation is partially supported by the IPIS research (covering the period January 2000 to July 2001) which shows just one purchase of coltan by Afrimex after November 2000. As Afrimex only received the IPIS documents from the NCP on 22 January 2008, they explained they had insufficient time to follow up this single transaction.

The NCP has struggled with the inconsistencies put forward by Afrimex in its evidence. For instance Afrimex explained to the NCP that it had stopped importing coltan once the SOGIML monopoly was created. This is contradictory to Mr Kotecha's evidence to the IDC when he confirmed that Afrimex increased its imports of coltan by 100% during the war.

The NCP considered the influence that Afrimex has over its suppliers to consider whether the supply chain requirements of the Guidelines should be applied.

Afrimex used 2 independent comptoirs during this period. These comptoirs will have paid taxes and licences to RCD-Goma.

Afrimex explained to the NCP that it requested oral reassurances from its suppliers after the discussions with the UN Panel in 2003 and subsequently written assurances after the Channel 4 news item: Congo's tin soldiers in 2005. This indicates that during the period of the war (prior to 2003); Afrimex did not apply any conditions on its suppliers. This is unacceptable considering the context of the conflict and human rights abuses taking place.

During Mr Kotecha's appearance at the IDC, he cited the written statements from his comptoirs but confirmed that he had not asked his suppliers whether they had made payments to RCD-Goma or any other military organisation or political party.

Afrimex provided the NCP with one of the written statements Mr Kotecha referred to during his evidence to the IDC. These statements were requested from Afrimex's suppliers following the 2005 Channel 4 news article "Congo's tin soldiers". The document is dated July 2005 and is signed by Afrimex's supplier Muyeye, in which he confirms that the minerals sold to Afrimex are purchased from officially recognised producers who are trustworthy individuals and all appropriate export certificates are obtained from the competent authorities.

The NCP does not consider the suppliers' statements constitute sufficient due diligence, particularly as it does not deal with rents extracted through the supply chain. In judging how robust these documents are, the NCP considered Mr Kotecha's admission to the IDC that he had never asked his suppliers about payments to political or military organisation.

The NCP concludes that Afrimex did not fulfil the requirements of paragraph II.10 of the Guidelines. The lack of due diligence on the supply chain means that Afrimex failed to fulfil the expectations of paragraphs II.1 and II.2 of the Guidelines. The payment of taxation down the supply chain funded the conflict in which numerous human rights abuses have occurred. The conflict prevented the economic, social and environmental progress key to achieving sustainable development and contributed to human rights abuses.

The complainant alleges that payment of taxes to rebel forces constitutes a breach of Chapter VI (combating bribery) of the Guidelines, in particular VI.2 and VI.6. As the NCP has accepted that Afrimex did not pay taxes in DRC, the NCP did not uphold this element of the complaint (Chapter VI).

The second part of the complaint alleges that Afrimex practiced insufficient due diligence sourcing minerals from mines that use child and forced labour, working under unacceptable health and safety practices. The specific Guidelines cited are IV.1b, IV.1c and IV.4b.

Afrimex questioned whether they could contribute to the abolition of child and forced labour considering they were several steps removed from the mine in the supply chain. The NCP refers to the concept of due diligence described in paragraph 41. If sufficient due diligence is applied to the supply chain, then the NCP considers that Afrimex can make a contribution.

Afrimex would have been aware of the potential for minerals to be sourced from mines which use child and forced labour. When Mr Kotecha gave evidence to the IDC, he confirmed that he was aware of the Channel 4 news article "Congo's tin soldiers" which illustrated the conditions in the Bisie mine in Walikale. When he was challenged on the potential for the minerals purchased to have been sourced from mines which use forced labour, he responded:

> "As I mentioned earlier, we asked the people from whom we were buying, the registered comptoirs or the licensed comptoirs, and they assured us that these are not materials coming from any such areas, these are coming from where they have control of the mines."

Mr Kotecha confirmed to the IDC that he had never visited a mine to determine whether forced labour occurred and that his business practices were based on the assurances provided by his suppliers. The NCP recognises that Eastern DRC is a dangerous place, FCO travel advice is not to travel to eastern and north eastern DRC, with the exception of Goma and Bukavu, where advice is against all but essential travel. This is due to continued insecurity and lawlessness in these areas. Instability and fighting between Congolese army and insurgents in North Kivu province have led to a very high number of civilians being displaced. The NCP fully understands why Mr Kotecha would be unwilling to visit the mines to establish the conditions but that in itself illustrates the requirement for increased due diligence.

57 The reliance on oral assurances from the suppliers and the subsequent written statements amount to insufficient due diligence for a company sourcing minerals in the conflict zone in Eastern DRC. The NCP is concerned that these assurances lack substance and are not underpinned by any checks. Afrimex readily admitted to the NCP that it did not know the source of the minerals and put forward the view that as the NCP could not prove that its minerals were sourced from a mine that uses child or forced labour then the NCP

could not determine that Afrimex failed to meet the requirements of the Guidelines. The NCP disagrees with this view and asserts that this in fact, supports its view that Afrimex practiced insufficient due diligence on the supply chain. Therefore, the NCP determines that Afrimex failed to meet the requirements of Paragraph IV.1b, IV.1c and IV.4b.

NCP conclusions

As Mr Kotecha has been trading with DRC since the 1980s and his family trading in DRC since the 1960s, it is untenable to conclude that he was unaware of the situation and the widespread human rights abuses that have taken place in Eastern DRC. When Mr Kotecha gave evidence to the IDC he said he was fully aware of the human rights abuses in Eastern DRC during the conflict. Afrimex was named in a UN report in 2001; this report explicitly linked the ongoing conflict with the mineral trade. Afrimex was then named in the Channel 4 news report "Congo's tin soldiers" in 2005. It appears neither of these experiences led Afrimex to take action to deal seriously with the allegations made and to consider changing their behaviour.

Afrimex purchased minerals sourced from Eastern DRC throughout the period of occupation (1998 to 2003). The NCP restricts itself to concluding on the period from June 2000. The NCP accepts that Afrimex did not pay taxes to RCD-Goma as it did not accrue a tax liability in DRC. However, the NCP recognises that Afrimex did not take steps to influence its associated company, SOCOMI. SOCOMI paid taxes and mineral licences to RCD-Goma and these payments contributed to the continuation of the conflict. Therefore the NCP concluded that Afrimex failed to meet the following requirements of the OECD Guidelines for Multinational Enterprises:

II.I "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments." and

II.2 "Contribute to economic, social and environmental progress with a view of achieving sustainable development."

The NCP accepts that Afrimex did not pay taxes to RCD-Goma. While Societe Kotecha and SOCOMI did, the NCP does not believe these payments constitute bribery. Therefore the NCP does not consider that Afrimex failed to meet the expectation of Chapter VI of the Guidelines that deal with bribery and corruption. The NCP also rejects the allegation that Afrimex participated in improper involvement in local political activity (paragraph II.11).

The NCP has found insufficient evidence that Afrimex encouraged business partners or suppliers (comptoirs and SOCOMI) to apply principles of corporate conduct compatible with the Guidelines. Taxation on minerals paid by these business partners and suppliers to RCD-Goma will have paid for weapons and therefore the contributed to the continuation of the conflict. From June 2000, the NCP has concluded that Afrimex failed to meet the following requirements of the OECD Guidelines for Multinational Enterprises:

II.I "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments." and

II.2 "Contribute to economic, social and environmental progress with a view of achieving sustainable development."

II.10 Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.

The NCP also concluded that from June 2000 Afrimex applied insufficient due diligence on the supply chain and this remains the case. The UK NCP expects UK business to respect human rights and to take steps to ensure it does not contribute to human rights abuses. Afrimex did not take steps to influence the supply chain and to explore options with its suppliers exploring methods to ascertain how minerals could be sourced from mines that do not use child or forced labour or with better health and safety. The assurances that Afrimex gained from their suppliers were too weak to fulfil the requirements of the Guidelines. Therefore the NCP found that Afrimex had failed to:

IV.1.b "Contribute to the effective abolition of child labour."

IV.1.c "Contribute to the elimination of all forms of forced or compulsory labour."

IV.4.b "Take adequate steps to ensure occupational health and safety in their operations."

NCP recommendations

Afrimex offered to formulate a corporate responsibility policy document to shape its actions going forward. The NCP thanks Afrimex for this suggestion and understands that work is underway on this document.

In creating this corporate responsibility document, the NCP draws Afrimex's attention to the UN Special Representative on the issue of Human Rights' recent report: "Protect, Respect and Remedy: A Framework for Business and Human Rights". In this report, Professor Ruggie outlines a basic human rights due diligence process which will include "a human rights policy…broad aspirational language may be used to describe respect for human rights but more detailed guidance in specific functional areas is necessary to give those commitments meaning."

In formulating this corporate responsibility document, Afrimex is required to consider the potential implications of their activities. The Company has been provided with a great deal of information over the years describing the human rights abuses associated with the mineral trade in Eastern DRC. Afrimex must take proactive steps to understand how their existing and proposed activities affect human rights in DRC. This impact assessment should make explicit references to internationally recognised human rights. The information gathered in this impact assessment should directly feed into the corporate responsibility policy.

To ensure this policy is effective, it needs to be integrated into Afrimex's way of working; to create this policy without a subsequent change in behaviour would merely create a worthless piece of paper. In Afrimex's case this means requiring its suppliers to do no harm: to take credible steps to ensure that military forces do not extract rents along the supply chain; to require a commitment that adequate steps are taken to ensure that minerals are not sourced from mines using forced and child labour, and are not from the most dangerous mines. Afrimex then needs to consider the necessary steps to monitor the effectiveness of this policy, which should be reviewed periodically.

The NCP also refers Afrimex to the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, which has been developed as part of the OECD's Investment Committee's follow up to the Guidelines. The Risk Awareness tool consists of a list of questions that companies should ask themselves when considering actual or prospective investments in weak governance zones. These questions cover obeying the law and observing international relations; heightened managerial care; political activities; knowing clients and business partners; speaking out about wrongdoing; and business roles in weak governance societies – a broadened view of self interest.

The Risk Awareness Tool states that "Companies have the same broad responsibilities in weak governance zones that they do in other investment environments – they are expected to comply with their legal obligations and to observe other relevant international instruments covering such areas as human rights…”. A company should question what steps it has to take to avoid situations where it might aggravate existing problems, for example, human rights abuses and violent conflict and what measures it has adopted to respect the human rights of those affected by its activities consistent with the host government’s international obligations and commitments. Key questions that a company should ask itself are:

- Do the host government, other important political bodies and non- state actors respect human rights?
- Do non-state actors impair the enjoyment of human rights?
- If the country is experiencing armed conflict, do the parties to the conflict respect international humanitarian law?
- Does the host government fully control its territory? If not, what is the human rights situation in areas outside of effective government control and is international humanitarian law respected if there is armed conflict?
- What do external evaluations of the government’s record in respecting human rights and international humanitarian law indicate?

The *Risk Awareness Tool* warns of the “heightened risks of entering into relationships with employees, clients or business partners that might damage business reputations or give rise to violations of law or to other abuses (*e.g.* of human rights).” The onus is upon companies to exercise heightened care to manage these risks, including “informing itself about possible roles in host country criminality, corruption and violent conflict of people with whom it may have business or political relations” and ensuring “that it does not, through its business relations, facilitate criminality, corruption and/or human rights abuses or contribute to fuelling violent conflict (*e.g.* through heightened care in the collection of information, selection of employees and business partners, contracting practices, assessment and resolution, documentation and follow-up monitoring).”

The Risk Awareness tool has already been shared with Afrimex and can also be downloaded from: *www.oecd.org/dataoecd/26/21/36885821.pdf*.

The UN sanctions apply on arms in DRC. The Group of Experts on the DRC outlined their view of “due diligence” on purchasing minerals from Eastern DRC; this includes the precise identification of deposits from which minerals have come; whether the deposits are controlled/taxed by illegal armed groups and; a refusal to buy such minerals. The sanctions unit at the Foreign and Commonwealth Office (FCO) provides the following advice to UK companies that are sourcing minerals from conflict areas:

> “It is clear that where a company or individual is intending to purchase minerals from areas of the DRC where there is a high rebel presence it will need to consider carefully where it risks being in breach of the arms embargo and may need to demonstrate to the appropriate authorities that it has taken all reasonable steps to ensure that its actions comply with the existing sanctions regime.”

Afrimex sources minerals from Eastern DRC where there is a high rebel presence. This advice is pertinent to Afrimex and should be incorporated into the policy document that Afrimex is currently formulating.

The July 2007 report by the UN Group of Experts on the Democratic Republic of Congo[36] illustrates the on-going situation in DRC, particularly the methods by which rebels extract rents from the mineral trade:

> “Following up on the case study of cassiterite (tin oxide) production in Walikale presented in the group’s interim report the presence, nature or abuse and illegal

exploitation by members of the non-integrated FARDC 85th Brigade have not substantially changed. A small number of soldiers under the direct command of the 8th Military Region and the mining police who were recently deployed in the Walikale area were not able to break the 85th Brigade's control of the mining sites and the transit routes to and from the mining areas. Extortion and illegal taxation of producers and transporters have become even more profitable to the members of this armed group because of the increase in the world market price of tin oxides (cassiterite), accelerating the demand for transport, local trade and frequency of flights to and from Walikale."

Despite this paper being published after the date of the complaint, the NCP considers it to be pertinent to illustrate the continuing situation in DRC and the urgent need for Afrimex to take steps to ensure due diligence. The extract describes a specific set of circumstances and events in this region. The 2007 Pole Institute paper "Rules for Sale"[37] commissioned by DFID, USAID and Comesa, describes both the comptoirs used by Afrimex as having premises in Njingala at Walikale, this makes it likely that some of the minerals purchased by Afrimex were sourced from this area. This alone does not prove that extortion and illegal taxation on these minerals took place but it illustrates the clear need for Afrimex to apply due diligence on the supply chain.

The UK Government expects British companies to exercise the highest levels of due diligence in situations of widespread violence and systematic human rights abuse, such as that which prevails in Eastern DRC.

The NCP urges UK companies to use their influence over contracting parties and business partners, when trading in natural resources from this region, to ensure that due diligence is applied to the supply chain.

The NCP reiterates John Ruggie's definition of due diligence:

"Due diligence can be defined as a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it. The scope of human rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities."

Margaret Sutherland	Dal Dio	Martin Taylor
UK-NCP	UK-NCP	UK-NCP
Department for Business, Enterprise and Regulatory Reform	Department for Business, Enterprise and Regulatory Reform	Department for International Development

Statement by the United Kingdom NCP

Final statement by United Kingdom National Contact Point for the OECD Guidelines for Multinational Enterprises: G4S and Union Network International

12 December 2008

OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. They are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: general company policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.

The Guidelines are not legally binding but OECD governments and a number of non-OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved in the work of the OECD Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

The final statement has been approved by Gareth Thomas, Minister for Trade and Consumer Affairs and copies have been placed in the House of Commons and the House of Lords libraries.

Specific Instance procedure

The first step when a complaint is brought to the NCP under the OECD Guidelines is the initial assessment; this consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The NCP uses this information to determine whether further consideration is required under the Guidelines. The initial assessment is published to: *www.berr.gov.uk/nationalcontactpoint*. If a case is accepted, the NCP instigates mediation between the two parties to ascertain whether they can agree on an appropriate way forward. Should mediation fail, the NCP will determine whether the Guidelines have been met and if necessary, make recommendations for future conduct.

Background of complaint

On 12 December 2006, the UK National Contact Point (NCP) received a request from UNI (the Complainant) to consider the specific instance regarding G4S (the Company).

In March 2008, the NCP published its initial assessment accepting the complaint for further consideration concerning Nepal, Mozambique, Malawi and the Democratic Republic of Congo under the following paragraphs of the Guidelines:

a) *Chapter II, Paragraph 1*. The Guidelines state that "enterprises should … contribute to economic, social and environmental progress with a view to achieving sustainable development."

b) *Chapter IV, Paragraph 1 (a): right to organise*. The Guidelines state that "Enterprises should, within the framework of applicable law, regulations and prevailing labour regulations and practices… respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers associations, with such representatives with a view to reaching agreements on employment conditions."

The initial assessment outlined the allegations that were accepted for further consideration as: in Mozambique on non payment of back pay, non payment of severance pay, dismissal and blacklisting of workers with union involvement and non compliance with Court and Minister orders. In Malawi on overtime pay, refusal to allow medical visits, and refusal to leave, and in Nepal on provision of holiday bonuses, access to toilets or water for security officers in private homes, payments to provident fund and lack of rules and advanced notice on remote or difficult postings and the issue of union recognition in DRC. **Acceptance of a complaint for further consideration does not mean that the NCP considers G4S to have operated inconsistently with the Guidelines.**

The parties to the complaint agreed to mediation.

Summary of mediation (provided by G4S and UNI)

By decision dated, March 2008 the UK NCP for the OECD Guidelines for Multinational Enterprises announced its intention to accept a specific instance under these Guidelines In an effort to reach a voluntary resolution to the case the NCP appointed ACAS Arbitrator and Mediator John Mulholland to serve as conciliator-mediator.

Mr. Mulholland convened a series of conciliation discussions between the G4S and UNI to consider the concerns raised by UNI regarding the conduct of G4S in relation to the Guidelines in four countries: Democratic Republic of Congo, Nepal, Malawi and Mozambique.

Further to these discussions, G4S and UNI have reached an agreement in resolution of this case.

The parties have agreed to specific commitments with regard to the specific issues presented in Nepal and DRC. In connection with Mozambique and Malawi, the parties have agreed to a process to allow them to work more closely together on a number of specific issues at the national level. The aim of this process is to both protect the rights and interests of G4S employees and to build and strengthen the local relationships between G4S and the unions which represent its employees.

As part of this process G4S has also reaffirmed its ongoing commitment to honour and respect national law and to respect the ILO core labour Conventions, including the rights to freedom of association and collective bargaining.

NCP comment

Accordingly this formal process has now been concluded and there will be no investigation into the allegations made in UNI's complaint to the UK NCP.

The UK NCP congratulates G4S and UNI for engaging constructively and in a manner that has directly resulted in their agreement to this mediated settlement

Arno Vanden Eyde, NCP Dal Dio, NCP Margaret Sutherland, NCP

3. Specific Instances Considered by National Contact Points to Date

This table provides an archive of specific instances that have been or are being considered by NCPs. The table seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines. Discrepancies between the number of specific instances described in this table and the number listed in Section IV.a could arise for at least two reasons. First, there may be double counting – that is, the same specific instance may be handled by more than one NCP. In such situations, the NCP with main responsibility for handling the specific instance would generally note its co-operation with other NCPs in the column "NCP concerned". Second, the NCP might consider that it is not in the interests of effective implementation of the Guidelines to publish information about the case (note that recommendation 4.b. states that "The NCP will… make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines"). The texts in this table are submitted by the NCPs. Company, NGO and trade union names are mentioned when the NCP has mentioned these names in its public statements or in its submissions to the Secretariat.

Table 1.2. **Specific Instances Considered by National Contact Points to Date**

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The NCP received a request from the Argentine Banking Association (Asociación Bancaria Argentina) a trade union regarding an Argentine subsidiary of the Banca Nazionale del Lavoro (BNL) S.A of the banking sector.	Dec 2004	Argentina	II. General Policies IV. Employment and Industrial Relations	Concluded	No	The instance after the acquisition of the BNL by another multinational bank (HSBC) of 100% of the stock has not been followed up. Since last year no new presentations have been made and the NCP has closed its involvement in the case.
Argentina	The NCP received a request from the Argentine Miller's Labour Union (Unión Obrera Molinera Argentina) regarding an alleged non-observance of the OECD Guidelines by CARGILL S.A. a multinational operating in the food sector.	Nov 2006	Argentina	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Both parties reached a solution and the agreement was formalised on July 31, 2007.
Argentina	The NCP received a request of non-observance of Guidelines recommendations on bribery and taxation by a Swedish multinational enterprise.	Nov 2007	Argentina	VI. Combating Bribery X. Taxation	Concluded	No	The specific instance concluded on September 26, 2008, due to an alleged breaching in the non-disclosure agreement. However, on May 20, 2009, a new presentation was made by CIPCE based on alleged new elements considered by them to be in relation to the specific instance. The ANCP is still analysing the presentation.
Argentina	The NCP received a non-observance of labour relations and bribery by a French multinational enterprise.	Nov 2007	Argentina	II. General Policies IV. Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	The outcomes were conveyed to the public through a paid announcement published in two broadsheet newspapers of nation-wide circulation. It is hereby stated, for informative purposes, that at the beginning of the instance a parallel judicial process regarding the conduct of an official that had been linked to the French multinational enterprise already existed, but this situation did not hinder the development of the instance and its adequate conclusion, which was published in the main journals of Argentina.
Argentina	The ANCP received a request from The Institute for Participation and Development of Argentina and Foundation Friend of the Earth of Argentina regarding an alleged non-observance of the OECD Guidelines by a Dutch multinational enterprise.	May 28 2008	Argentina	II. General Policies III. Disclosure V. Environment	Ongoing		The acceptance of the Instance is still pending.
Australia (The Australian NCP assumed carriage following an agreement with the UK NCP in June 2005)	GSL (Australia) Pty Ltd – an Australian incorporated wholly-owned subsidiary of a UK controlled multinational – Global Solutions Limited.	June 2005	Australia	II. General Policies VII. Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at *www.ausncp.gov.au.*

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Australia	Australia and New Zealand Banking Group Ltd (ANZ).	August 2006	Papua New Guinea	II. General Policies V. Environment	Concluded	Yes	The NCP concluded that there was no specific instance to answer and issued an official statement which is available on the website at *www.ausncp.gov.au*.
Australia	BHP Billiton – resettlement and compensation of the occupants of the land.	July 2007	Colombia	II. General Policies	Concluded	Yes	There was agreement by all parties that the outcome for the community in question provides a viable resettlement program to be achieved. Negotiations for possible resettlement of other communities are ongoing. The statement issued is available on the website at *www.ausncp.gov.au*.
Austria	Mining activities.	Nov 2004	Democratic Republic of Congo	Various	Concluded	Yes	No consensus reached.
Austria	Textile industry.	Mar 2006	Sri Lanka	IV. Employment and Industrial relations	Ongoing		Mediation efforts continue.
Austria	Pharmaceutics.	Feb 2008	Austria	IV. Employment and Industrial Relations	Ongoing		An initial assessment will be made.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium.	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A..	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group.	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The case was handled in together with the NGO complaint.
Belgium	Forrest Group.	Nov 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment IX. Competition	Concluded	Yes	Press release in 2005.
Belgium	Tractebel-Suez.	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Concluded	Yes	Press release in 2005.
Belgium	KBC/DEXIA/ING.	Mai 2004	Azerbaijan, Georgia and Turkey	I. Concepts and Principles II. General Policies III. Disclosure V. Environment			UK NCP.
Belgium	Cogecom.	Nov 2004	Democratic Republic of Congo	I. Concepts and Principles II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Belgolaise.	Nov 2004	Democratic Republic of Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems.	Nov 2004	Democratic Republic of Congo	I. Concepts and Principles II. General Policies X. Taxation	Concluded	Yes	Press release in 2006.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	GP Garments.	June 2005	Sri Lanka	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Press release in 2007.
Belgium	InBev.	July 2006	Montenegro	I. Concepts and Principles IV. Employment and Industrial Relations		n.a	Complaint withdrawn by trade union.
Belgium	Pharmaceutical company.	January 2008	Belgium	II. General Policies III. Disclosure VI. Combating bribery VII. Consumer interests IX. Competition	Concluded	Yes	Press release in 2008. No further examination.
Brazil	Workers' representation in labour unions.	26 Sept 2003	Brazil	IV. Employment and Industrial Relations, article 1	Concluded	Yes	Complaint settled.
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	V. Environment	Ongoing	No	Negotiations in dead-lock.
Brazil	Environment and workers´ health issues.	8 May 2006	Brazil	V. Environment, articles 1 and 3	Concluded	Yes	After a long mediation, several meetings and contacts held with the opposing parties, on March 25th 2008, the Brazilian NCP decided to close the complaint held against the multinational enterprise Shell through a comprehensive final Report in Portuguese.
Brazil	Dismissal of workers.	26 Sept 2006	Brazil	IV. Employment and Industrial Relations, article 6	Concluded	Yes	
Brazil	Refusal to negotiate with labour union.	6 March, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 02 (a, b, c), 03 and 08	Ongoing	No	List of questions answered by the enterprise. Awaiting manifestation from the complaining labour union.
Brazil	Dismissal of workers.	7 March, 2007	Brazil	II. General Policies, article 02 IV. Employment and Industrial Relations, articles 1(a), 2(a), 4(a), 7 and 8	Ongoing	No	Termination of proceedings awaiting judiciary decision.
Brazil	Refusal to negotiate with labour union.	19 April, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 01 (d), 02 (a), 02 (b), 02 (c), 03, 04 (a), 04 (b) and 06.	Ongoing	No	
Brazil	Dismissal of labour union representative without cause.	April, 2007	Paraguay	II. General Policies IV. Employment and Industrial Relations	Ongoing	No	List of questions sent to the labour union.
Brazil	Lack of negotiations for work agreement.	July, 2007	Brazil	IV. Employment and Industrial Relations	Ongoing	No	List of questions sent to the parties.
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [*www.ncp-pcn.gc.ca/annual_2002-en.asp*]. The Swiss company was kept informed of developments.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada	Follow-up to allegations made in UN Experts Report on Democratic Republic of Congo.	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country.	Nov 2002	Myanmar	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.
Canada	Complaint from a coalition of NGOs concerning Canadian business activity in a non-adhering country.	May 2005	Ecuador	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	Yes	Following extensive consultation and arrangements for setting up the dialogue, the NGOs withdrew their complaint in January 2005 in disagreement over the set terms of reference for the meeting.
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	Oct 2002	Chile	IV. Employment and Industrial Relations V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.
Chile	La Centrale Unitaire de Travailleurs du Chili (CUTCH) dans le cas de Unilever.	June 2005	Chile	IV. Employment and Industrial Relations V. Environment	Concluded November 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Chile	ISS Facility Services S.A..	April 2007	Denmark	IV. Employment and Industrial Relations	Closed	No	
Chile	Banque du Travail du Perou.	April 2007	Peru	IV. Employment and Industrial Relations	Closed	No	
Chile	Entreprise Zaldivar, subsidiary of the Canadian firm Barrick Gold.	2007	Canada	IV. Employment and Industrial Relations	Closed	No	
Chile	Marine Harvest.	April 2009	Norway	IV. Employment and Industrial Relations V. Environment		No	The NCP is waiting for the formal and written presentation of ONG ECOCEANOS.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices.	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Jan 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Feb 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union´s (submitter´s) request, August 2004.
Denmark	Trade union representation in Danish owned enterprise in Malaysia.	Feb 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America.	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established.
Denmark	Several questions in relation to logging and trading of wood by a Danish enterprise in Cameroon, Liberia and Burma.	Mar 2006	Cameroon, Liberia and Burma	Several chapters (*e.g.* II, IV, V and IX)	Ongoing	Not relevant at this stage	Specific instance initially assessed, specific instance raised by NGO (Nepenthes).
Finland	Finnvera plc/Botnia SA paper mill project in Uruguay.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP concluded on 8 Nov 2006 that the request for a specific instance did not merit further examination. The nature of Finnvera Oy's special financing role and the company's position as a provider of state export guarantees (ECA) was considered.
Finland	Botnia SA paper mill project in Uruguay/ Botnia SA/Metsa-Botnia Oy.	Dec 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP considered on 21 Dec 2006 that Botnia SA/Metsa-Botnia Oy had not violated the OECD Guidelines in the pulp mill project in Uruguay.
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country.	Jan 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm*.
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003, see *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm*.
France	Marks and Spencer's announcement of closure of its stores in France.	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm*
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	Feb 2003	France	V. Environment III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	Feb 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	Accusation of non-observance of the Guidelines in the areas of environment, "contractual" and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	Oct 2003	Turkey, Azerbaijan and Georgia	II. General Policies	Ongoing	n.a.	In consultation with parties.
France	DRC/SDV Transami – Report by the expert Panel of the United Nations. Violation of the Guidelines by this transport company in the Congo, named in the third report as not having responded to the Panel's requests for information.	Oct 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Concluded	No	
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	Nov 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn010405.htm*.
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	Feb 2005	France	IV. Employment and Industrial Relations	Ongoing		
Germany	Labour conditions in a manufacturing supplier of Adidas.	Sept 2002	Indonesia	II. General Policies I V. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 *www.bmwi.de/go/nationale-kontaktstelle*.
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 29 June 2007 *www.bmwi.de/go/nationale-kontaktstelle*.
Germany	Child labour in supply chain.	Oct 2004	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 30 August 2007 *www.bmwi.de/go/nationale-kontaktstelle*.
Germany	Complaint that Guideline recommendations were not complied with, particularly with respect to environmental issues.	May 2007	Various	V. Environment	Closed	Yes	The initial assessment found that the company had not violated the Guidelines. Final statement published on-line *www.bmwi.de/go/nationale-kontaktstelle*.
Germany	Complaint that anti-corruption Guidelines were violated within the framework of the UN Oil for Food Programme.	June 2007	Iraq	VI. Combating Bribery	Closed	Yes	The initial assessment found that the inquiry referred solely to supply transactions and that, because there was no reference to investment, the Guidelines did not apply. Final statement published online *www.bmwi.de/go/nationale-kontaktstelle*.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Germany	Complaint that support for the Olympic torch relay would lead to human rights violations.	April 2008	China	II. General policies	Closed	Yes	The initial assessment found that the actions named in the inquiry were not connected to a foreign investment but rather constituted permissible business conduct, namely logistical support for the IOC. Final statement published online *www.bmwi.de/go/nationale-kontaktstelle*.
Hungary	Personal injury occurred in the plant of Visteon Hungary Ltd. Charge injury arising from negligence.	June 2006	Hungary	IV. Employment and Industrial Relations	Concluded	Yes	A joint statement was signed by the MoET and Visteon Hungary Ltd on 20 February 2007 but only released on 14 May 2007 when attempts to agree a trilateral statement were not successful.
Ireland	Allegations of non compliance with environmental, health and safety grounds. Allegations of failure to comply with human rights provisions.	August 2008	Ireland	V. Environment II. General Policies	Ongoing	n.a	The Dutch NCP is also dealing with this, with Ireland as lead. The Norwegian and US NCPs are kept informed of developments.
Israel	UN Expert Panel Report – Democratic Republic of Congo	2003	Democratic Republic of Congo	Not specified in Report	Concluded	No	Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from DRC.
Italy- UK	Accusation of non-observance of Guidelines recommendations on human and labour rights, environment.	2003	Turkey, Azerbaijan Georgia	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Currently waiting for the leader NCP final statement.
Italy	Accusation of non-observance of Guidelines recommendations on human and labour rights.	2005	China	IV. Employment and Industrial Relations	Concluded	n.a	Following an enquiry by the Italian NCP, there was no connection between the accused firm and an Italian firm.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights and competition.	2007	Italy	IV. Employment and Industrial Relations IX. Competition	Concluded	n.a.	The instance was concluded with an agreement with involved company.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights.	2007	Italy, India	IV. Employment and Industrial Relations	Concluded	n.a	The multiparty instance was closed thanks to a successful mediation process with the Indian government led by a former representative of the Government of the other NCP involved.
Italy	Accusation of non-observance of Guidelines recommendations on human rights, environment and contribution to host country's progress.	2007	India	II. General Policies V. Environment	Concluded	n.a.	The initial assessment led to the rejection of the instance. There was no involvement of the Italian firm in the project referring to which the alleged violations were made.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	Feb 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company.	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Philippines subsidiary of a Japanese company.	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties concerned. There is a parallel legal proceeding.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Japan	Industrial relations of a Japanese subsidiary of a Swiss-owned multinational company.	May 2006	Japan	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	After the initial assessment was made, the Japanese NCP has consultations with parties concerned including the Swiss NCP. There is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector.	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' labour relations.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. The Swiss NCP issued an intermediate press statement: *www.seco.admin.ch/news/00197/index.html?lang=en*.
Korea	Korean company's business relations in Malaysia's wire rope manufacturing sector.	2003	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	Korea's NCP is engaged in Guidelines promotion and Specific Instances implementation in accordance with the rule for Korea's NCP, which was established in May 2001.
Korea	Companies from guidelines adhering countries that are present in Korea.	2007	Korea	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	
Korea	Korean companies in non-adhering countries.	2007	Philippines	I. Concepts and Principles III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Ongoing		
Korea	Two Korean companies operating in a non-adhering country.	2008	Myanmar	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment	Concluded	No	After conducting an initial assessment, the NCP determined that additional investigation was unwarranted.
Korea	Company based in an adhering country operating in Korea.	2009	Korea	IV. Employment and Industrial Relations	Ongoing	No	Undergoing initial assessment.
Mexico (consulting with the German NCP)	Closing of a plant.	2002	Mexico	IV. Employment and Industrial relations	Concluded	n.a.	The conflict was settled on 17 Jan 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican *Llanti Systems* and a co-operative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and *Llanti Systems* bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Mexico	Dismissal of Workers.	November 2008	Mexico	IV. Employment and Industrial Relations	Ongoing		In consultation with concerning parties.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Adidas' outsourcing of footballs in India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 *www.oecd.org/dataoecd/33/43/2489243.pdf.*
Netherlands	Dutch trading company selling footballs from India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues.	July 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties agreed on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found in English on *www.oesorichtlijnen.nl*.
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands.	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala.	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the USA..	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company.	Aug 2002	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	As the Dutch affiliate went bankrupt and the management went elsewhere neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from bilateral consultations and courts' rulings (*www.oesorichtlijnen.nl*).
Netherlands (consulting with Chile)	On the effects of fish farming.	Aug 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the Democratic Republic of Congo.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV. Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned (*www.oesorichtlijnen.nl*).
Netherlands	Closure of an affiliate of an American company in the Netherlands.	Sept 2003	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union.	Aug 2004 – April 2005	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, through its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar.	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar (*www.oesorichtlijnen.nl* -in Dutch).
Netherlands	Treatment of the employees of an Irish company in the Netherlands.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	The NCP decided that the specific instance, raised by a Dutch labour union, did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.
Netherlands	Introduction of a 40 hrs working week in an affiliate in the Netherlands of an American company.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Treatment of employees and trade unions in a subsidiary of a Dutch company in Chile.	July 2005	Chile	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	Labour Union requested the Dutch NCP to inquire after the follow up of an Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile.
Netherlands	Storage facility in Brazil of a Dutch multinational and its American partner: alleged improper seeking of exceptions to local legislation and endangering the health of employees and the surrounding community.	July 2006	USA	II. General Policies IV. Employment and Industrial Relations	Pending	n.a	The Dutch NCP has referred the notifying NGO to the NCP in Brazil and has offered its assistance in the handling of the instance.
Netherlands	Storage facilities in the Philippines of a Dutch multinational: alleged improper influencing of local decision making processes and of violating environmental and safety regulations.	May 2006	Philippines	II. General Policies III. Disclosure IV. Employment and industrial Relations VI. Combating Bribery	Pending	No	Local legal proceedings caused an on-hold status for the NCP proceedings. Continuation is expected to take place in September.
Netherlands	Request by NCP of the USA to contact Dutch parent company of an American company, with regard to an instance concerning trade union rights.	July 2006	USA	IV. Employment and Industrial Relations	Closed	n.a	Report of the meeting between Dutch NCP and the Dutch company was sent to the NCP of the USA. In April 2007 an agreement was reached between parties.
Netherlands	Maltreatment of employees and *de facto* denial of union rights at a main garment supplier in India of a Dutch clothing company.	October 2006	India	II. General Policies IV. Employment and Industrial Relations	Closed	Yes, although the statement does not go into the merits of the case.	After a successful mediatory attempt beyond NCP-level between complainants and the Indian company, the specific instance was withdrawn on February 5, 2007.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Abuse of local corporate law by a subsidiary of a Dutch/British multinational, in order to dismiss employees without compensation.	October 2006	India	IV. Employment and Industrial Relations	Pending before UK NCP	n.a	Case was brought to both the Dutch and UK NCP. The instance was decided admissible for the UK NCP. Facilitating role by the Dutch NCP.
Netherlands, Argentina (lead)	Alleged violation of environmental standards and ineffective local stakeholder involvement by subsidiary of Shell, Shell CAPSA.	June 2008	Argentina	II. General Policies V. Environment	Pending	No	Please be referred to Argentinean overview of cases.
Netherlands, Ireland (lead), Norway, USA	Pipeline laying project of Shell Ireland E&P, Statoil and Marathon allegedly violating human rights and environmental standards.	August 2008	Ireland	II. General Policies V. Environment	Pending	No	The SI was brought to both the Irish and the Dutch NCP, which accepted the SI jointly. All parties involved were heard in late April 09, new steps are under consideration.
Netherlands	Alleged violation of local land property law and environmental pollution (air, noise) by a Pakistani Joint Venture of Dutch SHV Holding NV at a newly build store in Karachi.	October 2008	Pakistan	II. General Policies V. Environment	Pending	No	After admissibility the NCP met with the MNE. Currently the NCP awaits the response of notifier on questions of the NCP.
New Zealand	Activities of a financial institution.	October 2007	Papua New Guinea	II. General Policies V. Environment	Concluded	No	An initial assessment was conducted into a complaint regarding an MNE operating in a non-adhering country. The MNE was headquartered in an adhering country, and that country's NCP had previously considered the specific instance. The NZ NCP concluded that there was not a sufficient New Zealand link to the instance, so the complaint did not warrant further examination by the NZNCP. Toward effective operation of the Guidelines, the NZNCP passed relevant documents to the NCP in the country where the MNE is headquartered.
Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases.	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay.	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.
Norway	Accusation of non-observance of Guidelines recommendations on transparency regarding financial information/environmental information. First case where the GL has been applied to the financial sector.	2006	Uruguay		Concluded	Yes	
Norway	Trade Union.	25 Nov 2009		IV. Employment and Industrial Relations	Ongoing		In contact with the parties.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	NGO.	29 Jan 2009		II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Ongoing		In contact with the parties.
Peru	Central Unica de Trabajadores del Peru – CUT claims an alleged violation of the Guidelines regarding mining workers rights, in the closure of a mine managed by a subsidiary of a multinational Swiss company.	23 March 2009	Peru	IV. Employment and Industrial Relations	Ongoing	No	The case is being revised in specific instances under Peru's labour and mining laws.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2002	Poland	IV. Employment and Industrial Relations	Closed	No	NCP was in contact with representatives of the trade union and the company. However the board of the company stated that none of the charges take place in the company. Therefore no reconciliation action was possible in such situation. The case was consequently then closed in 2005.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2004	Poland	IV. Employment and Industrial Relations	Closed	No	According to the claim, the board despite previous declaration of respect for dialogue, failed to engage in constructive negotiations to reach agreement with the representation of the trade union. Contrary to the law, the president of the trade union was dismissed. NCP was in constant contact with the representation of the employees, and has contacted the company. Despite numerous tries no answer has yet been given to the NCP. The case was consequently then closed in 2006.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise.	2006	Poland	IV. Employment and Industrial Relations	Closed	No	The representatives of aggrieved party and their witnesses have been questioned. In October 2007 the witnesses of the accused were being questioned at the court and the verdict was returned in May 2008 at the latest. The managers were acquitted of sexual harassment and proved guilty of infringing the regulations of the IV chapter of the Guidelines. The case was consequently closed.
Portugal	Closing of a factory.	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec 2004	Peru	IV. Employment and Industrial Relations	Concluded		

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector.	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 *www.oecd.org/dataoecd/16/34/15595948.pdf.*
Sweden (consulting with Norway)	Applying the guidelines to the financial sector, liability by part-financing of construction of paper mill.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment	Concluded	Yes	The Swedish NCP issued a statement in January 2008 *www.sweden.gov.se/content/1/c6/09/65/71/9e9e4a6b.pdf.*
Switzerland (consulting with Canada)	Impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	2001	Zambia	II. General Policies V. Environment	Concluded	No	The specific instance was dealt with by the Canadian NCP (see information there). The Swiss company was kept informed of developments.
Switzerland (consulting with Korea)	Swiss multinational Nestlé's labour relations in a Korean subsidiary.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	The specific instance was dealt with by the Korean NCP (see information there). The Swiss NCP acted as a mediator between trade unions, the enterprise and the Korean NCP. The Swiss NCP issued an intermediate press statement: *www.seco.admin.ch/news/00197/index.html?lang=en.*
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary.	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region.	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
Switzerland (consulting with Australia and UK)	Activities of Swiss based multi-natio-nal company and co-owner of the coal mine "El Cerrejon" in Colombia.	2007	Colombia	Several chapters, including: I. Concepts and Principles (incl. Human Rights) II. General Policies V. Environment VI. Combating Bribery	Ongoing	n.a.	The Australian NCP is in the lead to deal with the specific instance.
Switzerland	Swiss multinational Nestlé's labour relations in a Russian subsidiary.	2008	Russia	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in September 2008: *www.seco.admin.ch/themen/00513/00527/02584/02586/index.html?lang=de.*
Switzerland	Swiss multinational enterprise's labour relations in an Indonesian subsidiary.	2008	Indonesia	IV. Employment and Industrial Relations	Ongoing	n.a.	
Turkey	Activities of a Dutch/UK multinational company in transportation sector.	Nov 2008	Turkey	IV. Employment and Industrial Relations	Pending	No	At the initial assessment stage.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	BP (*et al.*) – various alleged breaches of the OECD Guidelines in the construction of the Baku-Tbilisi-Ceyhan (BTC) pipeline.	2003	Azerbaijan, Georgia, Turkey	II.5 Exemption from Regulation, III.I Disclosure, V.I Environmental management, V.2a Information on environmental health/safety V.2b Community consultation, V.4 Postponement of environmental protection measures	Ongoing	n.a	At the request of the parties this case was reviewed by the UK NCP's Steering Board. The outcome of the review is available at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Activities of Oryx Minerals alleged in a UN Expert Panel Report.	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	*www.berr.gov.uk/nationalcontactpoint*
United Kingdom	Activities of De Beers in UN Expert Panel Report.	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	*www.berr.gov.uk/nationalcontactpoint*
United Kingdom	Activities of National Grid/Transco.	2004	Democratic Republic of Congo	Various	Concluded	Yes	*www.berr.gov.uk/nationalcontactpoint*
United Kingdom	DAS Air – alleged failure to apply due diligence when transporting minerals and alleged breach of UN embargo.	2005	Democratic Republic of Congo	II.1 Achieving sustainable development. II.2 Human rights II.10 Encourage business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the guidelines.	Concluded	Yes	Finalised July 2008. Final statement can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Coats – issues related to employees' right of representation.	2005	Bangladesh	IV. Employment and Industrial Relations.	Suspended	n.a.	
United Kingdom	Anglo American – issues arising from the privatisation of the copper industry in Zambia during the period 1995 –2000.	2005	Zambia	Various	Concluded	Yes	Finalised May 2008. Final statement can be found at *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Peugeot – issues related to the closure of the Ryton manufacturing plant.	2006	United Kingdom	IV. Employment and Industrial Relations	Concluded	Yes	Finalised 1 February 2008.Final statement can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	G4S – issues related to pay, dismissal, leave and health and safety entitlements.	2006	Mozambique Malawi Democratic Republic of Congo Nepal	II. General policies IV. Employment and Industrial Relations	Concluded	Yes	The UK NCP piloted the use of a professional mediator for this complaint. Through mediation, the parties reached an agreement and resolved the complaint with a mutually satisfactory outcome. Final statement can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Unilever (Sewri factory) – Employment issues related to the transfer of ownership, and subsequent closure, of the Sewri factory.	2007	India	I. Concepts and principles IV. Employment and Industrial Relations	Ongoing	n.a.	Initial assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Afrimex – alleged payments to armed groups and insufficient due diligence on the supply chain.	2007	Democratic Republic of Congo	II. General policies IV. Employment and Industrial Relations VI. Combating bribery	Concluded	Yes	Finalised August 2008. Final assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Unilever (Doom Dooma factory) – issues related to employees' right to representation.	2007	India	IV. Employment and Industrial Relations	Suspended	n.a.	Initial assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	British American Tobacco – issues related to employees' right to representation.	2007	Malaysia	IV. Employment and Industrial Relations	Suspended	n.a.	Initial assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Vedanta Resources – impact of a planned bauxite mine on local community.	2008	India	II. General Policies V. Environment	Ongoing	n.a.	Initial assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United Kingdom	Unilever (Rahim Yar Khan factory) – dismissal of temporary employees seeking permanent status in the factory.	2008	Pakistan	II. General Policies IV Employment and Industrial Relations	Ongoing	n.a.	Initial assessment can be found at: *www.berr.gov.uk/nationalcontactpoint*.
United States, consulting with French NCP	Employee representation.	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Employee representation.	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Investigate the conduct of an international ship registry.	November 2001	Liberia	II. General Policies III. Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the conduct in question was being effectively addressed through other appropriate means, including a United Nations Security Resolution.
United States, consulting with French NCP	Employment and industrial relations, freedom of association and collective bargaining.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, multiple NCPs	Business in conflict zones, natural resource exploitation.	October 2002	Democratic Republic of Congo	Numerous	Concluded	No	UN Panel Report concluded that all outstanding issues with the US-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the US companies.
United States, consulting with German NCP	Employee relations in global manufacturing operations.	November 2002	Global, focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	US NCP declined involvement, concluded that the issues raised were being adequately addressed through other means.
United States consulting with French NCP	Employment and industrial relations, collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Concluded	Yes	Specific instance resolved under US labor law; NCP released final statement at *www.state.gov/e/eeb/rls/othr/2007/84021.htm*.
United States, consulting with German NCP	Employment and industrial relations, collective bargaining representation.	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States, consulting with Mexican NCP	Employment and industrial relations, collective bargaining, freedom of association.	July 2004	Mexico	IV. Employment and Industrial Relations	Concluded	No	Remanded to Mexican NCP based on fact that specific instance occurred in Mexico.
United States, consulting with Dutch NCP	Employment and industrial relations.	August 2004	United States	II. General Policies IV. Employment and Industrial Relations VII. Consumer Interests	Concluded	No	US NCP declined involvement after initial assessment due to lack of investment nexus; parties later reached agreement under US labor law.
United States	Business in conflict zones, natural resource exploitation.	August 2004	Democratic Republic of Congo	Numerous	Concluded	No	US NCP declined involvement after concluding that the UN Panel of Experts report had resolved all outstanding issues with respect to US companies involved.

Table 1.2. **Specific Instances Considered by National Contact Points to Date** *(cont.)*

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States	Employment and industrial relations.	August 2004	United States	IV. Employment and Industrial Relations	Concluded	No	Company declined NCP assistance.
United States	Employment and industrial relations.	September 2004	United States	IV. Employment and Industrial Relations	Concluded	No	Company declined NCP assistance.
United States	Employment and industrial relations.	March 2005	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement under US labor law and withdrew specific instance petition.
United States	Employment and industrial relations.	May 2005	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with parties; initial assessment.
United States	Employment and industrial relations.	March 2006	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement under US labor law and withdrew specific instance petition.
United States, consulting with Polish NCP	Employment and industrial relations, sexual harassment.	May 2006	Poland	IV. Employment and Industrial Relations	Concluded	No	Remanded to Polish NCP based on fact that specific instance occurred in Poland.
United States	Employment and industrial relations.	June 2006	United States	IV. Employment and Industrial Relations	Concluded	No	Dispute resolved by US National Labor Relations Board; instance closed.
United States, consulting with German NCP	Employment and industrial relations.	August 2006	United States	IV. Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment.
United States, consulting with Austrian NCP	Employment and industrial relations.	November 2006	United States	IV. Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment.
United States	Employment and Industrial Relations.	8 Sept 2008		IV. Employment and Industrial Relations	Concluded	No	Declined due to lack of investment nexus.

n.a. = not applicable

4. Structure of the National Contact Points

Table 1.3. Structure of the National Contact Points

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
Argentina	Single department	OECD Co-ordination Unit – National Directorate of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		The NCP has been co-ordinated with other government departments, business, labour and civil society and having in mind the experiences that has got from these Contac Points and its conviction that other areas of government might be involved, is working hard to present a new scheme in order to fulfil the complexities of in coming presentations.
Australia	Single department	Foreign Investment and Trade Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds community consultations with business, trade unions and other NGO representatives.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economics and Labour	Other divisions of the Federal Ministry of Economics and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	
Brazil	Interministerial body composed of 8 ministries and the Central Bank	Ministry of Finance	Ministry of Foreign Affairs Ministry of Labour and Employment Ministry of Planning, Budget and Management Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Ministry of Agriculture Brazilian Central Bank	Representatives from other government offices can be asked to participate as well as other entities. In April 2007, the Brazilian NCP issued a decision to regularly invite CUT, the largest Brazilian labour union, to the forthcoming meetings. Other institutions have also been invited to the NCP meetings, like the NGO ETHOS Institute, the National Confederation of Industry – CNI, and the SOBEET (Brazilian Society for Transnational Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	Foreign Affairs and International Trade Canada	Industry Canada Human Resources and Social Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an "as required" basis, *e.g.*, Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Chamber of Commerce, the Canadian Labour Congress and the Confédération des syndicats nationaux. The Interdeparmental Committee is chaired by DFAIT at the Director General level.
Chile	In the process of restructuring. The NCP is working towards a multiple government department co-ordinated by the OECD department in the Chilean Foreign Office.	Ministry of Foreign Affairs, Directorate of International Economic Relations		The NCP consults regularly with business, trade unions and other NGO representatives.

Table 1.3. **Structure of the National Contact Points** *(cont.)*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
Czech Republic	Single Department	Ministry of Finance	Ministry of Labour and Social Affairs Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners. The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment Ministry of Foreign Affairs	Ministry of the Environment Ministry of Economic and Business Affairs	
Egypt	Single Department	Ministry of Investment	Ministry of Foreign Affairs Ministry of Trade and Industry Ministry of Administrative Ministry of Finance Ministry of Labour Egyptian Labour Union	
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Export Agency Ministry of Foreign Affairs Ministry of Justice Enterprise Estonia Estonian Employers Confederation Confederation of Estonian Trade Unions Estonian Chamber of Commerce and Industry	The NCP continues in co-operation with the business, trade unions and other NGO representatives
Finland	Quadri-partite with several ministries and civil society partners, as business and labour organisations	Ministry of Employment and the Economy	Ministry of Foreign Affairs Ministry of Social Affairs and Health Ministry of Environment The Prime Minister's Office The Confederation of Finnish Industries (EK) The Central Organization of Finnish Trade Unions (SAK) The Finnish Section of the International Chamber of Commerce (ICC) FinnWatch The Finnish Confederation of Professionals (STTK) Akava – Confederation of Unions for Professional and Managerial Staff Federation of Finnish Enterprises The Finnish Consumers' Association WWF Finland The Evangelical Lutheran Church of Finland	The new Finnish CSR Committee (set on 16 October 2008) established by the Government Decree (591/2008) on 9 September 2008 operates under the auspices of the Ministry of Employment and the Economy, and the Committee replaces the MONIKA Committee (established by Government Decree 335/2001). The CSR Committee focuses on the issues of CSR and on the promotion of the guidelines of the OECD and of the other international organisations. The Committee on CSR has met three times over the review period.

Table 1.3. **Structure of the National Contact Points** *(cont.)*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and six Trade Union Federations are part of the NCP.
Germany	Single Department	Federal Ministry of Economics and Technology	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment Ministry of Labour and Social Affairs	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues. In addition, the participating ministries meet at regular intervals to discuss *a)* current issues relating to the OECD Guidelines, *b)* how to improve the dissemination of these Guidelines and *c)* the working methods of the National Contact Point.
Greece	Single Department	Unit for International Investments, Directorate for International Economic Development and Co-operation, General Directorate for International Economic Policy, Ministry of Economy and Finance		The Unit for International Investments, part of the Directorate for International Economic Developments and Co-operation, in the General Directorate for International Economic Policy of the Ministry of Economy and Finance, is designated as the NCP.
Hungary	Interdepartmental Office	Ministry for National Development and Economy	Ministry for National Development and Economy Ministry of Finance	
Iceland	Interdepartmental Office	Ministry of Business Affairs		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment	The Department of Communications, Energy and Natural Resources Office of the State Solicitor.	
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee has been composed of representatives from those ministries mentioned in the previous column, and business and employee organisations.
Italy	Single Department	General Directorate for Industrial Policy, Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Labour, Welfare and Health Ministry of Agriculture and Forest Policy Department of International Trade (Ministry of Economic Development)	The NCP works in close collaboration with representatives of social organisations and its Advisory Committee also includes members of the most important trade unions and business associations.
Japan	Interministerial body composed of three ministries	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental office, with several ministries	Foreign Investment Subcommittee, Ministry of Knowledge Economy	Ministry of Strategy and Finance Ministry of Foreign Affairs and Trade Ministry of Environment Ministry of Labour, etc	Ministry titles have been changed.

Table 1.3. **Structure of the National Contact Points** *(cont.)*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
Latvia	The OECD Consultative Board – Interministerial body including representatives of business and labour organisations	Economic Policy Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Employer's Confederation of Latvia Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		The NCP works in close co-operation with other concerned departments.
Netherlands	Independent Board	Ministry of Economic Affairs (NCP Secretariat)	Ministry of Social Affairs and Employment Ministry of Housing, Spatial Planning and Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders. The board consists of four persons including a chairman with each a background in one of the various stake holding groups in society.
New Zealand	Single Department	Ministry of Economic Development	Department of Labour Ministry for the Environment Ministry of Foreign Affairs and Trade	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Section for Economic, Commercial and CSR Affairs Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Trade and Commerce Norwegian Confederation of Trade Unions Confederation of Norwegian Enterprise	
Poland	Single Department	Polish Information and Foreign Investment Agency (PAIiIZ)		The Polish Information and Foreign Investment Agency (PAIiIZ) is supervised by the Ministry of the Economy.
Portugal	Bipartite Structure	AICEP Ministry of Economy and Innovation DGAE Ministry of Economy and Innovation	Ministry of Foreign Affairs Ministry of Finance Ministry of Justice IAPMEI	

Table 1.3. **Structure of the National Contact Points** *(cont.)*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
Romania	Bipartite Structure	*Co-ordination* Ministry of SMEs, Trade and Business Environment Ministry of Foreign Affairs *Executive function* Ministry of SME's, Trade and Business Environment – Directorate for Business Environment and Liberal Professions Romanian Agency for Foreign Investment *Technical secretariat* Ministry of Foreign Affairs Romanian Agency for Foreign Investment	Ministry of Foreign Affairs Ministry of Economy Ministry of Public Finance Ministry of Justice and Citizens' Freedoms Ministry of Education, Research and Innovation Ministry of Labour, Family and Social Protection Ministry of Transportation and Infrastructure Ministry of Regional Development and Housing Ministry of Environment Ministry of SME's, Trade and Business Environment Romanian Agency for Foreign Investment Business Environment Unit Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.
Slovak Republic	Single Department	Ministry of Economy	Slovak Investment and Trade Development Agency (SARIO) Ministry of Finance Ministry of Labour, Social Affairs and Family (both Ministries are investment aid providers)	Strategic investment department is a single department in the Ministry of Economy, under the Section of strategy.
Slovenia	Tripartite, with several ministries	Ministry of the Economy	Other ministries, agencies, local communities, NGOs	The Slovene NCP has been just reconstructed and is therefore in its opening phase.
Spain	Single Department	General Secretariat for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment and Rural and Marine Affairs Ministry of Justice Ministry of Health and Social Policy Ministry of Labour and Immigration	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	International Trade Policy Department, Ministry for Foreign Affairs	Ministry for Foreign Affairs Ministry of the Environment Ministry of Employment Ministry of Enterprise, Energy and Communications	The Ministry for Foreign Affairs, International Trade Policy Department, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets in principle once a year and is provided with essential information as required.
Turkey	Tripartite, includes three governmental bodies.	General Directorate of Foreign Investment, Under secretariat of Treasury	Ministry of Foreign Affairs Ministry of Justice	Depending on the issue under debate, the consultation and fact finding processes are extended to other governmental offices. Also an Advisory Committee including academicians, NGOs, representatives from trade unions and business associations helps the NCP in its activities.

Table 1.3. **Structure of the National Contact Points** *(cont.)*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved[1]	Comments and notes
United Kingdom	Inter-ministerial – two ministries	Department for Business, Innovation and Skills(BIS) Department for International Development (DFID)	Department for Work and Pensions (DWP), Export Credits Guarantee Department (ECGD), Foreign and Commonwealth Office (FCO)	A Steering Board oversees work of the NCP. The Board includes external members drawn from outside Government, selected for their experience in business, employee relations and issues of concern to NGO's including representatives of the national organisations of workers and employers. Other Government Departments and agencies with an interest in the OECD Guidelines are also represented. On a day to day level, the NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an *ad hoc* basis.

1. The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

5. Contributions by Business, Trade Unions and Non-Governmental Organisations

Every year when the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises meet to review their experiences in performing and promoting the implementation of the Guidelines, they also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations, notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines.

The following texts are published in their original form. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.

Trade Union Advisory Committee (TUAC) submission

This analysis is based on information provided by TUAC affiliates and partners, as well as the public reports and statements of National Contact Points (NCPs) and companies. TUAC welcomes any additions, modifications or comments that would correct, augment or improve this information.

Introduction

This 2009 Annual Meeting of National Contact Points is taking place in the context of a fast-changing landscape both in terms of the economic and financial crisis and in the business and human rights arena, where the UN Special Representative on Human Rights and Business, Professor John Ruggie, is working to operationalise his *Protect, Remedy and Remedy* framework. Both provide opportunities for the Guidelines, as well as challenges.

As governments and businesses struggle to respond to the unprecedented economic and financial crisis there is a threat that hard won gains in labour and environmental standards will be lost due to competitive pressures. At the same time, the crisis has turned the spotlight on the lack of "honesty, propriety and transparency" in business conduct, as well as the need to achieve a fairer, more balanced model of economic growth.

The mandate given by the Human Rights Council to the UN Special Representative on Human Rights and Business represents a landmark, which has created real momentum to move this agenda forward. In his reports, Professor Ruggie has criticised the NCPs for a patchy and often poor performance, whilst at the same time recognising their potential as "an important vehicle for providing remedy."[38]

It is essential that the effects of this crisis are not exacerbated by lowering the standards that are needed to protect those worst affected. Cases presented in the *2009 Edition of TUAC's Analysis of Cases Raised with NCPs* indicate that workers are already suffering through loss of jobs, incomes and rights as companies down-size or close as a result of the crisis. Professor Ruggie also recognises that: "*[F]or companies… even downsizing and plant closings must be conducted responsibly…*".

The NCPs must take the opportunities and meet the challenges to assure the future relevance of the Guidelines by improving NCP performance across the board and using the review in 2010 to strengthen content and procedures.

Trade unions have raised 103 cases since the 2000 review of the Guidelines. TUAC uses this experience to analyse performance and addresses the future challenges under the following headings:

- NCP Performance;
- the 2010 Review of the OECD MNE Guidelines;
- the 2009 Peer Review of the Dutch National Contact Point;
- the Global Standard of Common Principles of Propriety, Integrity and Transparency;
- the Application of the Guidelines to Financial Institutions;
- the Joint Statement of the Investment Committee and the ILO.

An overview of the 103 cases, together with summaries of the individual cases, is provided in the attached *Annex*.

NCP Performance

Lack of Functional Equivalence

TUAC considers that the uneven performance of NCPs is severely undermining the effectiveness of the Guidelines as a whole, with improvements in some being negated by the persistently poor performance of a number of laggards, including Japan, Korea and the US.

Comparing the UK and the Korean NCP, for example, trade unions have reported that the re-structured UK NCP is dealing with cases faster than before, in a transparent manner and showing an increased willingness to bring parties together for dialogue (see Box 1.3). In contrast, trade unions and NGOs raising cases with the Korean NCP, report that the Korean NCP appears to take at face value statements made by the company to refute claims made by the complainants. The NCP then seems to summarily dismiss the claims on this basis.

Box 1.3. **UK NCP – Dialogue and mediation**

In December 2006, the Union Network International (UNI) raised a case against Group 4 Securicor (G4S) with the UK NCP. On the 11th December 2008, the case was successfully resolved after the UK NCP appointed an external mediator. On the 16th December 2008, UNI and G4s signed a Global Framework Agreement. UNI considered the use of an external mediator to be an effective tool. It also considered a key factor contributing to success of the mediation was the NCP's provision that the mediator had the authority to recommend a settlement, which the parties should consider "sympathetically".

The recent rejection of a case concerning allegations of human rights and environmental abuses in Myanmar, whilst just one example, is particularly damaging to the Guidelines (see Box 1.4). In view of the well-documented human rights abuses in Myanmar and the Investment Committee's recognition that Myanmar represents "*an important test of the credibility of the Guidelines*", the outright rejection of this case should be a matter of concern for all NCPs and the Investment Committee.

NCP Structure

Structure is a key factor affecting NCP performance. Whereas the procedural guidance affords flexibility to countries in how they organise their NCPs, and the extent to which they

Box 1.4. Korean NCP – Uneven handling of information

In October 2008, Earthrights raised a case with Korean NCP on behalf of a coalition of civil society organisations, including the two Korean trade union confederations, which concerned allegations of human rights, including forced labour and environmental abuses in Myanmar by Daewoo International and the Korea Gas Corporation (KOGAS). The Korean NCP rejected the complaint in November 2008 on the basis of information refuting the claims provided by the companies. In its response, the NCP appears to accept general explanations from the company, such as the existence of a code of conduct, as being an adequate basis on which to reject the claims of the complainants. It also seems to dismiss the need for due diligence, despite the context of the host country. This position is at odds both with decisions made by other NCPs and the direction of the work being undertaken by the UN Special Representative on Business Rights, whose framework highlights the need for companies to undertake due diligence on human rights impacts.

involve the social partners and non-governmental organisations (NGOs), the official commentaries to the procedural guidance explain that the composition of the NCP should "*provide an effective basis for dealing with the broad range of issues covered by the Guidelines*".

There are strong benefits from involving the social partners in the NCPs. In the Swedish NCP, whilst not yet tested by a heavy case load, trade unions report a constructive approach to problem-solving as a result of strong consensus-based relations between the social partners. In the UK, there are already signs that the new multi-stakeholder board is providing the means to build consensus between parties, albeit incrementally, on difficult issues arising from cases. The board also plays an oversight role thus assuring improved adherence to the timetable on responses to cases and improving accountability.

A number of NCPs, however, still do not appear to involve the labour or social ministries/ departments, or have any formal involvement with the social partners. TUAC does not consider that such structures provide the required "effective basis" for dealing with labour issues.

Interpretation of the Guidelines

A second key factor contributing to the uneven performance of NCPs is variations in their interpretation of the Guidelines, in particular *vis-à-vis* parallel proceedings and the investment nexus. As regards parallel proceedings, NCPs have adopted a range of positions: some NCPs have resolved cases successfully regardless of the existence of parallel proceedings; others have developed specific guidance laying out the basis on which Guidelines cases can proceed in the event of parallel proceedings; whilst other NCPs, including Japan and the US, appear to routinely suspend or reject cases that involve parallel proceedings. Within the French NCP, trade unions report a division on the issue with trade unions pushing the NCP to accept cases that involve parallel proceedings, whereas the employers (primarily) and the government do not wish to accept such cases. As regards the investment nexus, trade unions similarly report that some NCPs are adopting an overly-restrictive view. The investment nexus has proved to be significant obstacle in a number of cases raised by NGOs.

Furthermore, parallel proceedings and the investment nexus both pose particular problems for cases involving non-adhering countries where trade unions are likely to first seek remedy in their national legal processes prior to using international mechanisms and where there is clear evidence of labour rights abuses in supply chains.[39]

Additional Factors Affecting NCP Performance

Trade unions have reported a number of additional factors, which they consider to affect NCP performance, including:

- level of resources;
- skills level of staff (mediation, industrial relations, law of evidence);
- staff turnover rate;
- the balance between confidentiality and transparency;
- lack of political will.

Other Obstacles to the Guidelines

In addition to NCP performance, there are other obstacles to the effectiveness of the Guidelines.

One of the most important is the lack of cooperation by companies. This manifests itself in a variety of ways ranging from: failure to comply with the timetable; representation by junior rather than senior staff at meetings; reluctance to engage in dialogue; and refusal to comply with recommendations made by the NCP (*e.g.* Afrimex in the UK).

A second key challenge that has been identified by trade unions is the difficulties NCPs have in discharging the burden of proof, in complex cases where different accounts of the facts are given.

Recommendations

Urgent steps need to be taken to increase the performance of all NCPs – so as to achieve functional equivalence. The existence of a number of laggards detracts from the achievements of the "improvers" (*e.g.* the Dutch) and undermines the credibility of the Guidelines as a whole.

According to the procedural guidance, functional equivalence is supposed to be secured by NCPs operating in adherence to four core criteria: *visibility; accessibility; transparency;* and *accountability.* TUAC urges all NCPs to:

- take steps to improve these four core criteria and in particular focus on promoting the Guidelines, as well as increasing overall transparency, including at the level of communications with parties on cases;
- consider extending the core criteria to cover the six principles of effectiveness identified by the UN Special Representative for Business and Human Rights: legitimate; accessible; predictable; equitable; rights-compatible; and transparent. TUAC considers that adhering to the additional elements of legitimacy, equitability and predictability would require NCPs to tackle variations in interpretations of the Guidelines and deficits in NCP structure;
- adopt either a tripartite structure or advisory board as soon as possible.

Moreover, TUAC considers that the principle of functional equivalence can only deliver in practice if a mandatory peer review mechanism is put in place. Whereas in principle, the annual reports submitted by the NCPs serve as a form of assessment, there is no feedback or recommendations and they thus do not fulfill this role.

TUAC also considers that NCPs could improve effectiveness by stronger collaboration between home and host country NCPs in the treatment of cases. NCPs should also seek to intervene proactively where companies are involved in multiple cases.

On the question of the cooperation of companies, whilst NCPs cannot force parties to come to the table, they can be pro-active in encouraging parties to engage. A number of trade unions have highlighted the importance of the NCPs offering dialogue in the initial stage, whilst others have noted the reluctance of some NCPs to use their influence in this way. However, the lack of sanction remains a real problem. This points to the need for NCPs to go much further than they have done to date in linking adherence to the Guidelines with the provisions of export credit and investment insurance.

Support to NCPs in discharging the burden of proof could be given in the form of specialist training and the use of fact-finding missions. The latter has been successfully used for example, by the Swedish NCP, with the costs being met by contributions from all parties involved in the NCP and the mission facilitated by the Swedish embassy in the host country. The desirability and feasibility of creating a centralised fact-finding facility was one of the options explored at a brainstorming meeting held at Chatham House in 2009.[40] The OECD Investment Committee could play a role in supporting the provision of both.

Finally, the OECD Investment Committee should take action to strengthen the visibility of the Guidelines. This could be done either through organising OECD Roundtable Programmes to promote the Guidelines using as a model the Roundtable programmes on Corporate Governance and Governance of State-Owned Enterprises, or by organising joint events with these instruments. TUAC is ready to support such events.

The 2010 Review of the OECD MNE Guidelines

As regards the possibility of a review of the Guidelines in 2010, TUAC is organising a meeting with its affiliates in the beginning of September 2009 to discuss the review and prepare the trade union position. TUAC is ready to play a full role in the preparations for the review, should it go ahead, which it considers should be conducted on as transparent and participatory basis as possible.

Peer Review

TUAC welcomes the forthcoming peer review of the Dutch NCP and similarly underlines the need for the process to be transparent and participatory. However, TUAC notes that this review is being organised on a voluntary basis by the Dutch NCP itself and not by the OECD.

The OECD peer review is a tried and tested method of review which aims not only to ensure compliance with established standards and principles, but also a common standard of performance by countries (*functional equivalence*).

TUAC considers it essential that a formal and mandatory OECD peer review process be adopted in the near future, which should be developed in cooperation with TUAC, BIAC and OECD Watch. The formal peer reviews should lead to country reports in which the functioning of each NCP is evaluated, shortcomings and successes identified and recommendations for improvement made.

The Global Standard of Common Principles of Propriety Integrity

The crisis has provided the catalyst for two new "global" initiatives aimed at balancing future economic development with sound public and private governance. The first is the G20's Charter for Sustainable Economic Activity, which will incorporate the full range of economic, financial, development, environmental and social instruments, including labour standards. The second is the G8's Global Standard of Common Principles of Propriety, Integrity and Transparency, which will focus primarily on instruments that govern private sector conduct covering, *inter alia*, corporate governance, money laundering, bribery and tax.

TUAC welcomes the development of these new instruments. It considers it essential that the MNE Guidelines form a central part of the Global Standard of Common Principles of Propriety, Integrity and Transparency, the work on which is being led by the OECD.

The Investment Committee should also take this opportunity to improve coherence between the OECD MNE Guidelines and other relevant instruments. Steps should be taken to strengthen links with the Principles of Corporate Governance and the Guidelines for the Corporate Governance of State-owned Enterprises. Whilst both instruments make reference to the MNE Guidelines, little has been done in practice to strengthen the linkages between the instruments.[41]

The Investment Committee should seek to work with the relevant corporate governance-related bodies at the OECD. It should also explore whether there is scope for cooperation in the organisation of the Roundtables on Corporate Governance.

Steps should also be taken to strengthen links with the OECD Export Credit Group. The work of the UN Special Rapporteur has identified the duty of home states to protect against third party abuse abroad by companies and has focused in particular on the potential role of export credit agencies in requiring clients to undertake due diligence on their human rights impacts. TUAC considers that the Guidelines have a key role to play in supporting this agenda and that the withdrawal or denial of export credit support would provide NCPs with the necessary access to sanction.

The Application of the OECD Guidelines to the Financial Sector

TUAC is extremely concerned by the lack of visibility of the MNE Guidelines within the financial sector as a whole, as well as among institutional investors working in the area of "responsible investment".[42]

Moreover TUAC considers that there are insufficient links between relevant OECD financial investment-related standards, such as those developed by the Insurance and Private Pensions Committee (IPPC), including the Guidelines on the governance of pension funds.[43]

The Investment Committee should build links with other OECD standards that address asset ownership investment policies, including pension fund-related governance and asset management guidelines. This could take the form of a research group set up jointly by the Investment Committee and the IPPC, with the participation of the TUAC the BIAC, OECD Watch and representatives of the pension fund and the insurance industries.

TUAC also considers that the OECD should actively promote the MNE Guidelines with private sector initiatives that have gained authority in the area of responsible investment, such as the Principles for Responsible Investment (PRI),[44] which include all major OECD-based pension funds and many asset managers.

OECD ILO Dialogue

TUAC welcomes the commitments made to strengthen dialogue with the ILO. It urges the Investment Committee to follow up on proposals to conduct joint promotional activities at the regional level and to examine how ILO experience and expertise could be used to help build the capacity of NCPs to deal with labour cases, including providing input to the development of training programmes.

OECD Watch submission

The OECD Guidelines for MNEs: Are they "fit for the job"?
OECD Watch 2009 submission to the Annual Meeting of the National Contact Points

Introduction

Each year in preparation for the Annual Meeting of National Contact Points (NCPs) in June, OECD Watch evaluates the functioning of the OECD Guidelines for Multinational Enterprises (Guidelines) and NCPs and their effectiveness in enhancing responsible business conduct. This evaluation is based on experiences from OECD Watch members and other NGOs from around the globe who have used the instrument in an effort to improve corporate practices. Without doubt, this year's review of NCPs is undertaken in the context of the current global economic crisis.

The crisis has brought to light the question of whether the vast number of existing international policy tools are adequate for promoting responsible business conduct. There appears to be consensus at the international level that more needs to be done to achieve the long overdue transition from the current excessively profit-oriented global economy to a world economy that is centred on human development and managed sustainably. The political momentum for change exists, but there is an urgent need to act swiftly and undertake fundamental policy changes before economic recovery changes the mood back to a short-term-profits, business-as-usual agenda. We must act now to ensure that economic recovery is effective, equitable and sustainable.

While the global economic crisis may provide the political space to address some longstanding imbalances between the rights and responsibilities of global economic actors, the crisis is nothing less than a disaster for many of the world's poorest. Workers, communities and organisations in the South are faced with a worsening of the adverse effects of inexistent or ineffective regulation of corporate conduct. It is within this context that OECD Watch calls upon the OECD Investment Committee and NCPs to consider how the content and implementation of the OECD Guidelines can be improved in order to contribute effectively to the broader OECD agenda and its support for global responsible business practice.

This year's review of the functioning of the OECD Guidelines and NCPs focuses on three key questions:

- Have the OECD Guidelines contributed to resolving conflicts between MNEs and communities in which they operate?
- Are the OECD Guidelines an effective grievance mechanism?
- What reforms of the text, commentaries and Procedural Guidance are needed to make the instrument more effective?

Experiences from OECD Watch members

OECD Watch has sought and received feedback from its members and other NGOs in support of this submission.[45] Several members identified developments that are encouraging for the effectiveness of the instrument. However, a number of serious concerns remain, particularly with regard to the handling of specific instances. The concerns regarding the performance of NCPs are not new and have been consistently highlighted by OECD Watch. Nevertheless, in the context of the crisis and the update of the Guidelines, it is prudent to address them again:

- Unequal treatment of parties by NCPs, particularly biased towards business interests.
- Location of some NCPs in a single ministry with a potential conflict of interest.
- Unjustifiable delays in the handling of specific instances.
- Inconsistent and arbitrary interpretation of the Guidelines, *e.g.* on parallel legal proceedings and supply chain issues.
- Lack of clarity and functional equivalence among NCPs on procedures for accepting and handling cases.
- Lack of capacity and resources among the majority of NCPs.
- Lack of credibility and authority to mediate.

A balanced score card

OECD Watch has drawn on specific examples to identify the contrasting approaches of NCPs. These are summarised below.

Box 1.5. **Promising trends**

- In the UK, there are new procedures for handling specific instances within a 12-month time frame. A review process is also in place. The most significant and far reaching change to the UK NCP is the establishment of a Steering Board. The Board has four external members drawn from four key constituencies (parliament, NGO, union and business). This initiative has been invaluable in improving the UK NCP's procedures and enhancing the quality of debate on policy issues. It is highly commended by OECD Watch.
- The Dutch NCP, which underwent a major organisational revision in 2007 towards an independent body with considerable human and financial resources, has now scheduled a peer review to asses its functioning, to be conducted by the end of 2009. OECD Watch has been calling for an NCP peer review mechanism for many years, and highly commends the Dutch NCP for taking this initiative. It is hoped that the peer review will lead to more constructive criticism and peer pressure among NCPs to raise the bar for performance in both promotional activities and handling of specific instances.
- Increasingly, NCPs have taken the initiative to conduct fact-finding missions. In the past year, for example, such mission were undertaken by the Dutch and Argentine NCPs. Fact-finding missions, in particular when the issue involves activities in non-adhering countries, are often essential for an NCP to establish the facts as a basis for mediation and to determine whether the OECD Guidelines have been complied with.
- In September 2008, the German NCP announced its intention to consult regularly with relevant ministries. While the Economics Ministry remains the sole leading and responsible ministry for the NCP, other ministries can now initiate consultations as they consider appropriate. Additionally, there have been some noteworthy improvements in transparency. For example, the NCP recently published on its website statistics about the number of cases filed since 2001 (11), those accepted and concluded (3) and those rejected (8). For the three rejected cases since 2007, the website includes a brief summary of the reasons for the NCP's rejection.

Box 1.5. **Promising trends** *(cont.)*

- The Romanian NCP, installed since Romania's adherence to the OECD Declaration in 2005, has undertaken promotional and outreach activities. The office of the Romanian NCP has strived for a high degree of transparency in its functioning and has demonstrated a keen interest in working closely with various stakeholders.
- In light of UN Special Representative on business and human rights Professor John Ruggie's observations on parent company responsibility for its subsidiaries, we welcome the Dutch NCP's position that it "considers the involvement of the parent company in the [specific instance] procedure at least equally important as of the subsidiary". In specific instances involving a parent and a subsidiary in two different OECD/adhering countries, close cooperation between host and home country NCPs is crucial. OECD Watch commends the Dutch, Argentine and Irish NCPs for doing so in recent specific instances.

Box 1.6. **Discouraging developments**

- In a complaint against Daewoo and Kogas for alleged breaches of the Guidelines related to natural gas development in military-ruled Burma, the complainants are most unsatisfied with the handling of the case by the Korean NCP. There are concerns about the perceived conflict of interest in the NCP office, located solely in the Ministry of Knowledge Economy. Furthermore, the complainants are disappointed that the NCP failed to demonstrate or even question how the companies' response to environmental impact assessments and stakeholder consultation could be considered in line with the Guidelines. As a result of these procedural inadequacies, the Korean NCP's summary dismissal of the case is in stark contrast with the handling of Burma-related specific instances by other NCPs that issued specific recommendations for appropriate corporate conduct.
- The alleged existence of parallel legal proceedings continues to be widely misused as a pretext for not accepting cases, or as a reason for delaying the entire NCP process. This leaves the complainants and other key OECD Investment Committee stakeholders in limbo about the status of specific instances in such circumstances. The Argentine NGOs have expressed their dissatisfaction with the Argentine NCP for allowing parallel legal proceedings to stall the pending specific instance against Shell in that country.
- A grave concern for OECD Watch and its members lies with cases where the NCP is not clear about that status of the case. In such situations, there is neither a formal rejection, nor an intention to accept as a specific instance either. OECD Watch considers such cases to be "blocked". There are a number of cases that have been blocked by NCPs for several years, such as: Alcoa/Votorantim (Brazilian NCP), Toyota Motor Corporation (Japanese NCP) and BAE Systems/Airbus S.A.S./Rolls Royce (UK NCP).[1]
- In a case against BHP regarding forced evictions at the Cerrejón Coal mine in Colombia before the Australian and Swiss NCPs, complainants requested that the NCPs conduct fact-finding on the ground in Colombia either in person or through the respective embassies. The Swiss NCP responded that the NCP does not have the human or financial resources to carry out local fact-finding or mediation, and that doing so would be a violation of national sovereignty. This seems to be at odds with the approaches of other NCPs (such as the UK and Dutch NCPs), and is another example of functional in-equivalence among NCPs. The Swiss NCP further argued that local embassies cannot carry out the duties of the NCPs. It should be noted that an independent review "Cerrejon Coal and Social Responsibility: An Independent Review of Impacts and Intent" was undertaken at the request of Cerrejon Coal. While "The complainants and BHP-Billiton agreed the recommendations of the independent review provided a sound basis for moving forward",[2] this does not address the broader issue of NCP responsibility to undertake fact finding in support of achieving successful mediated outcomes and the desired "win-win" scenario.

Box 1.6. **Discouraging developments** *(cont.)*

- In contrast to the positive trend among some NCPs to recognize parent company responsibility and the need for the involvement of home country NCPs in specific instances involving both a parent company and a subsidiary (see above), some NCPs continue to limit their responsibility for investigating parent company behaviour. In Norway, there is deep concern among trade unions and NGOs about the Norwegian NCP's recent attempts to transfer two complaints to other countries despite the fact that the parent company, as well as the complainants, are in both cases based in Norway. In the Cermaq case the complainants emphasised the urgency of handling the complaint in Norway, claiming that local violations of the OECD Guidelines were the direct result of strategic policy decisions made by the parent company.

1. For more detailed information on individual specific instances, see OECD Watch's Quarterly Case Updates: *http://oecdwatch.org/publications-en/quarterly-case-updates*.
2. Statement by the Australian National Contact Point, BHP-Billiton – Cerrejon Coal Specific Instance, 12 June, 2009.

Major lessons learned since 2000

With the exception of a few cases, the OECD Guidelines have not been able to resolve conflicts between MNEs and communities in which they operate.

After nine years of a revised set of Guidelines and procedural guidance, very few NCP complaint procedures have contributed to a meaningful and effective resolution of the problems addressed in the complaint. Only 5 out of the total of 85 NGO cases raised since the 2000 revision have been concluded through a mediated solution or a satisfactory final statement.

The credibility and effectiveness of the Guidelines as a tool to promote corporate responsibility must be assessed. An assessment of why so relatively few cases are filed by NGOs with NCPs is useful. Given the vast number of well-known and well-documented cases of corporate malpractices throughout the world, it is concerning that the Guidelines complaint mechanism is "underused". The Dutch NCP draft report for the Annual Meeting of NCPs, takes note of this as well:

> "*The number of newly brought specific instances can be considered low, given the means and efforts put into the Dutch NCP. This low number could be explained by the scepticism with the NGO world towards the NCP procedure, the fact that the procedure remains known with only a small group of actors, or the general lengthiness of the procedure.*"

In the opinion of OECD Watch, the lack of knowledge of the Guidelines among the broader NGO community is not the critical problem. Rather, the poor reputation of the OECD Guidelines complaint procedure in terms of expected outcome relative to the time and resources required to adequately engage in the NCP process is what keeps many NGOs from using the instrument. The OECD Watch secretariat receives numerous requests for support and advice from NGOs considering filing complaints. All too often, the decision is made not to pursue the case because the company involved is headquartered in a country whose NCP is notorious for its lack of willingness to effectively promote the Guidelines and engage in the specific instance process, such as the United States, Japan and Korea.

A recent report by the London School of Economic and Political Science, "The Reality of Rights" provides further illustration of this point.[46] The report evaluates the effectiveness of existing systems of redress available to individuals and communities affected by human rights abuse by UK companies. In four out of the five cases examined, the NCP procedure was "judged a poor investment of resources given weakness of enforcement capacity and other procedural weaknesses".

Very few complaints are satisfactorily resolved through mediation

On many occasions NCPs have stated that they see their key role as one of facilitating and offering a forum for mediation. However, OECD Watch case study data confirms that in reality very few successful mediation processes have been achieved.[47] Even the Dutch NCP, commended for its restructuring into a more independent body two years ago has yet to facilitate a single mediation process between the NGO complainants and the company involved.

In recent years, many efforts to facilitate mediation between NGOs and companies have failed. Often, it is the reluctance of companies to discuss the real issues at stake, and demanding unreasonable and narrowing conditions for their participation in the mediation. Some recent examples include:

- A case against British mining company Vedanta Resources filed by Survival International at the UK NCP in December 2008, Vedanta turned down the invitation to mediation.
- In September 2008, the Swedish company Skanska withdrew from the Argentine NCP mediation over disagreements on confidentiality with the complainants.
- In a case filed by Friends of the Earth *et al.* against Shell in the Philippines, the NCP was unsuccessful in getting the parties to agree on the terms of mediation.

The fact that mediation is the self-proclaimed key role for NCPs makes this conclusion even more concerning and should give rise to reflection among NCP themselves as to whether they have the appropriate skills, mandate and authority to act as a forum for mediation. The question could also be asked whether there is really much need for the mediation forum that the NCP offers. NGOs and trade unions in particular have often decided not to file a complaint with NCPs if the company appeared willing to discuss and negotiate on a specific issue directly. In such instances the NCP mediation is seen as adding little or no value. As such, it is important to acknowledge that the NCP process is often called upon when the issue has escalated and there is a need for an alternative assessment of the facts and examination of the alleged breaches.

NCPs are unable to compel companies found to have breached the Guidelines to change their corporate practices

At present there is a widespread lack of confidence in the effectiveness of the Guidelines' specific instance procedure because the NCP cannot compel a company found to have breached the Guidelines to change its corporate practices. For the mediation process to be given a fair chance and engender genuine commitment to the process and outcome from the companies, it seems evident that NCPs need "teeth" to sanction companies that are unwilling to take part in the mediation or are found to be in breach of the Guidelines. Furthermore, NCPs must be willing and able to monitor company behaviour after final statements have been issued and to ensure compliance with any recommendations made. Without doing so, breaches of the OECD Guidelines may continue.

- The specific instance filed by Global Witness in the UK NCP against Afrimex highlights the problem as to what should happen when a company is found to have breached the Guidelines, but no follow up steps are taken to monitor the company's adherence to the recommendations in the final statement. Without monitoring or oversight, companies may continue to act abusively. Afrimex continued trading in minerals from eastern DRC at least until September 2008. Also, the company did not provide information to the NCP on whether, or how, it was implementing the recommendations in the final statement.

- In the case against GSL (Australia), a case regarded as one of the best examples of a successful mediated outcome, agreement was reached on 34 different issues to improve the management of Australia's immigration detention centres. Given that the Guidelines lack provisions for follow-up and monitoring, the NCP was unable to ensure the agreements reached in the final statement were implemented and successful in changing corporate behaviour. Furthermore, the NCP did make the final statement available to other organisations, such as the Commonwealth Ombudsman and the Australian Human Rights Commission, that have the authority to monitor conditions in Australia's immigration detention centres.[48]

Actions that might be taken by the NCP depending on the nature of the case include, but are not limited to:

- formally notifying a company that a case has been raised and that the NCP is examining its behaviour
- obliging companies to disclose to shareholders that they are involved in a specific instance
- referral (if appropriate) to the UN or EU Sanctions Committees, or other appropriate national authorities
- disqualification of company directors
- delisting of public companies
- withdrawal of public subsidies or export credits
- blacklisting companies, so as to exclude them from public procurement and trade missions

Recommendations for a revision of the Guidelines

It has become evident that fundamental and far-reaching changes needed to harmonize NCP performance and enhance the effectiveness of the OECD Guidelines will only be achieved through a revision of the OECD Guidelines' provisions and in particular the Procedural Guidance concerning the structure and functioning of NCPs. In light of recent references to a possible revision, OECD Watch calls upon the Investment Committee to commence discussion on the proposed scope, conditions and timelines of an upgrade of the Guidelines with NCPs, TUAC, BIAC, OECD Watch and other relevant stakeholders.

As stated in the OECD Investment Committee's report of March 2009, "Building Trust and Confidence in International Investments", such a revision:

> *"..would need to be preceded by careful consideration of whether and how the Guidelines need to be reviewed and would need to seek the views of business, trade unions and civil society."*[49]

Key issues for consideration in the revision of the Guidelines

The following key issues should be addressed in the Guidelines' revision. The list should be seen as indicative, not exhaustive.

General:

- The revision process must be a transparent and inclusive process involving NGOs, BIAC and TUAC on an equal footing and would ideally involve wider consultation including stakeholders from non-OECD countries.
- A revision would need to take into account the manifold interrelated developments in the global economy and consider what needs to be improved for more stringent implementation and effective application of the OECD Guidelines to all MNEs and all their activities, including finance, trade and global production networks.
- The framework of UN Special Representative on business and human rights, Professor John Ruggie, could be used as a starting point for a revision to ensure specific provision for human rights. Further, an upgrade should address the shortcomings, identified by Professor Ruggie, that are preventing the Guidelines from meeting their full potential. These include: the potential conflict of interests due to NCPs' institutional set-up, the lack of resources to investigate complaints, the lack of training to provide effective mediation, unclear timeframes and the lack of transparent outcomes.
- The OECD must offer leadership in these efforts to ensure that the standards, principles and scope of the Guidelines are not diluted and narrowed but strengthened and enhanced.

Content issues that need to be addressed:

- It is imperative to strengthen the human rights provision – possibly through a "dedicated chapter", rather than by the enumeration of a list of rights in the text. Concrete provisions on human rights duties and standards should be stated in the Guidelines.
- The supply chain provision requires significant strengthening. This could be in either a "dedicated chapter" of in the commentary. Reference to supply chain transparency must be strengthened in other chapters, such as the Disclosure and Consumer Interest provisions.
- There is a need for a provision that is clearer on the relationship between companies and the local population, specifically including the rights of indigenous peoples. The Guidelines lack clarity on what demands companies should meet in engaging with local communities in relation to social and environmental damage and hazards to health. Further detail of what constitutes adequate and timely consultation with local stakeholders should be provided on the basis of existing best practices, such as free, prior and informed consent.
- The Employment chapter would be strengthened through harmonisation with the ILO Decent Work Agenda and the ILO Declaration on Social Justice for a Fair Globalization.
- The current environmental chapter needs revision to ensure the policy developments and available knowledge on climate change over the last decade is better integrated into clear guidance of what is expected from individual companies in this regard.
- Greater clarity should be provided about the due diligence steps that companies are expected to adopt along their supply chains, in particular in situations of weak governance and conflict zones.
- The Disclosure chapter should be strengthened to reflect the importance of due diligence in corporate governance and responsible business conduct.

Revision of the Procedural Guidance:

- The Procedural Guidance needs to be strengthened to give greater direction to the institutional structure and functioning of NCPs. OECD Watch would like to bring again to the attention the Model NCP that was developed in 2007, which provides valuable recommendations in this regard.[50]
- A revision of the Procedural Guidance should ensure that all NCPs meet the minimum requirements identified by Professor Ruggie for effective non-judicial mechanisms: legitimate, accessible, predictable, equitable, rights-compatible, and transparent.
- The Procedural Guidance should address the issue of parallel legal proceedings. OECD Watch's position is that the existence of parallel proceedings should not automatically result in the NCP suspending its process on the related complaint. The NCP should only suspend the complaint if there is strong evidence that continuation of the NCP process may prejudice parallel proceedings.
- The Procedural Guidance should include mechanisms to ensure a "race to the top" among NCPs through a peer review mechanism. Lessons and recommendations resulting from the Dutch NCP's peer review experience could provide a valuable basis for discussion.
- Finally, the Investment Committee must strengthen its oversight role and implement a serious monitoring system to evaluate NCPs' compliance with minimum institutional and operational standards. This is imperative if the inconsistency and lack of functional equivalence in NCPs' structure, functioning and results is to be reduced.

These suggestions for improvement are provided at this point to demonstrate that a review of the Guidelines is timely and has the support of OECD Watch. They are not, at this stage, a complete inventory of suggested improvements. OECD Watch looks forward to active participation in a review.

OECD Watch activities in this review period

Throughout the 2008/09 period, the OECD Watch Secretariat, Coordinating Committee and individual OECD Watch members have actively promoted the OECD Guidelines and participated in a wide range of related corporate accountability events. Some activities include:

Training and capacity building

- Austrade Advisers Conference, Lorne, Victoria, Australia, September 2008 (230 Austrade officials).
- Diplomacy Training Program capacity building workshop, Manila, Philippines, September 2008 (35 civil society participants).
- OECD Watch capacity building seminar, Buenos Aires, November 2008 (40 civil society participants).
- University of Melbourne Faculty of Law, February 2009 (20 masters students of Law).

OECD Watch submissions to the OECD Investment Committee:

- "OECD Watch comments on 'Review of NCP Performance: Preliminary Findings'", April 2008.
- "Effective Application of the OECD Guidelines to the Financial Sector", March 2009.

- "OECD Watch response to the OECD Public Online Consultation on Corporate Governance and the Financial Crisis", April 2009.
- "The OECD Guidelines for MNEs: Are they 'fit for the job'?", June 2009.

Presentations:

- Australian Centre for Human Rights Education, RMIT University, Melbourne, August 2008.
- ILO Decent Work Conference and side event, Oslo, September 2008.
- German Green Party "Business as usual?" conference, Berlin, November 2008 (Event on occasion of 60 Anniversary of General Declaration on Human Rights).
- Responsible Investment in Australia (RIiA), Melbourne, November 2008.
- ForUM multi-stakeholder conference and NGO side event, Oslo, February 2009.
- Australian Centre for Corporate Social Responsibility (ACCSR) Annual Conference, Sydney, February 2009.
- Norwegian Ministry of Foreign Affairs/Norwegian Compact, Oslo, April 2009.
- OECD Global Forum "The Crisis and Beyond", Paris, June 2009.

Advice and support:

- OECD Watch has advised and supported NGOs from Australia, Philippines, Korea, Bangladesh, Liberia, Colombia, Norway, Switzerland, Pakistan, Netherlands, Ireland, France, Italy, UK, Democratic Republic of Congo, Germany, Malawi, Peru, Romania in preparing, filing, and following-up on OECD Guidelines specific instances.
- OECD Watch has continued to work closely with trade unions in the Netherlands, India, Australia, Norway, Germany and Argentina.
- OECD Watch has continued to advise business and government representatives in the Netherlands, Norway, Australia, Argentina, Germany, and France.

About OECD Watch

OECD Watch is an international network of civil society organisations promoting corporate accountability. The purpose of OECD Watch is to inform the wider NGO community about the policies and activities of the OECD's Investment Committee and to test the effectiveness of the OECD Guidelines for Multinational Enterprises.

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6. Contribution by Practitioners on the Application of the Guidelines in the Financial Sector

Introduction

At the request of the Working Party of the Investment Committee (ICWP), a discussion was convened on 24 March 2009 with representatives of leading financial corporate responsibility initiatives to seek their views on how their experiences with these instruments might help to clarify the application of the OECD Guidelines for Multinational Enterprises (MNE Guidelines) to the financial sector, particularly regarding the relations of financial institutions with clients and investment partners. It was recalled that this reflection had been initiated following requests for consideration of complaints to National Contact Points (NCP) involving the financing activities of financial institutions. The questions submitted for the discussion are reproduced in the Box.

The present note summarises the contributions of invited presenters. They were Ms. Motoko Aizawa (Advisor on Corporate Standards, International Finance Corporation Business Advisory Services), Mr. Herman Mulder (former VP of ABN AMRO and current member of the Dutch NCP), Mr. Stephen Hine (Head of Responsible Investment Development, EIRIS) and Mr. Matt Christensen (Executive Director, Eurosif – European Sustainable Investment Forum). The invited presenters contributed insight from their involvement with the *IFC Policy and Performance Environmental and Social Standards* (last revised in 2006), the *Equator Principles* (2003, 2006), and the *UN Principles of Responsible Investment*. *OECD Watch* also made a special written submission for the discussion.[51]

The foundation: Reviewing the existing tools

Though the finance sector has just recently begun to address environmental, social and governance (ESG) issues, there is a growing realisation not only that financial institutions can use their leverage to have a large impact in these areas but that responsible financial risk management *should* more directly integrate these extra-financial factors into normal decision-making processes. Several tools have been developed over the past decade to integrate ESG concerns into financial sector practices.

The IFC Performance Standards: The IFC Performance Standards are a set of social and environmental standards created to guide IFC lending, equity investment, and advisory services. The Standards require IFC borrowers to have a risk management system to assess, identify, and manage material risks in the following seven areas: labour and working conditions, pollution and climate change, community health, safety and security, involuntary resettlement, indigenous peoples, cultural heritage, and biodiversity. The standards also require borrowers to engage with local communities and to report on performance in these areas regularly. The IFC provides training and support to institutions looking to adopt the Standards and also promotes business-to-business learning through the Community of Learning program. The IFC is currently considering a revision of the Performance Standards to address more thoroughly issues such as human rights, water and climate change.

The Equator Principles: The Equator Principles are a set of social and environmental benchmarks derived from the IFC's Performance Standards that are used to manage ESG risks in private sector project finance investments over USD 10 million. The Principles represent an industry-wide effort, initially signed by 10 banks in 2003 and now counting 67 financial institutions as signatories, of which 15 are from emerging markets.[52]

Adherence to the Principles is voluntary; however, signatories are required to report annually on social and environmental performance, including accounts of instances when adherence to the Principles impacted investment decisions. The IFC acts as a resource institution, conducting outreach to financial institutions and promoting the Principles through the Community of Learning program, which is open to Equator Principles signatories, OECD export credit agencies, and the European development institutions that apply the IFC standards.

UN Principles for Responsible Investment (UNPRI): Developed in 2005, UNPRI provides a framework for institutional investors and asset managers to integrate ESG considerations into their investment activities, including decision-making, ownership practices and disclosure policies. UNPRI promotes the view that these extra-financial, ESG issues can impact the financial performance of investment portfolios; therefore the management of these risks should be a core part of the fiduciary responsibility of investors. Over 360 assets owners, investment managers, and professional service partners representing over USD 14 trillion in assets under management have signed on to the Principles.[53] UNPRI works to engage with these investors by providing training and resources, and by facilitating communication amongst investors and other stakeholders.

The opportunity: "A crisis is a terrible thing to waste"[54]

The invited speakers stated that international organisations need to engage with the financial sector given its systemic role in society, and that the current financial crisis makes doing so even more pressing.

Poor governance and a lack of comprehensive risk management contributed to the financial crisis. While the outbreak of the financial crisis is rooted in several public and private failures, poor governance and a lack of comprehensive risk management in the financial sector were contributing factors. Finance has historically been one of the most regulated industries, but even the prevailing regulations failed to prevent the crisis. It was argued by presenters that what the financial sector needs now is a shift in mindset, away from "short-termism" towards long-term strategy and away from a consideration only of financial metrics towards more comprehensive management of diverse risks. To be successful over time, all companies, and finance firms in particular, need to consider not only the financial risks of today, but also the ESG issues that could quickly transform into credit or reputational risks tomorrow. The current crisis suggests that it is not only the potential for short-term financial return, but also the sustainability of those returns over time that should guide investment decision-making.

The crisis, however, has provided a pressing reason to transform thinking in the financial sector. The current experience suggests that "business as usual" is not working for the broader public nor is it working to build a profitable financial sector. This has provided an opportunity to ask "What went wrong? How do we fix it?" In order to take advantage of this opportunity, we need to avoid the temptation to implement "quick fixes" that change little and instead work towards transforming business. Finance firms, eager to rebuild their reputations, should now take the lead in sustainable development supported by governments and other stakeholders.

The OECD is in a good position to support this transformation. Similar to the role of the IFC in the development of the Equator Principles, the real advantage of the OECD is its significant "convening power" – its ability to bring the various key players in the financial sector together to create a new framework that is agreed upon by the invited speakers. This cohesion has been critical to the implementation of the Equator Principles, as individual financial institutions would have been hesitant to adopt the Principles without simultaneous action from their peers. The representative for the Equator Principles spoke in favour of a role for governments and international organisations as "convenors and incubators" for a new banking system, and also cited the OECD's unique non-judicial grievance mechanism as an additional tool that makes the OECD well-suited for further engagement with the financial sector on ESG issues.

The challenge: Understanding the complicating factors

There seem to be three major complicating factors relating to the application of the MNE Guidelines to the financial sector.

First, the definition of the "sphere of influence" of financial institutions with regard to their clients and business partners remains unclear. While multinational financial institutions are covered under the MNE Guidelines, there is a question about the extent to which they can be held accountable for the business practices of their clients and business partners when engaging in investment, lending, and other related activities. The presenters agreed that while financial institutions cannot be held accountable for all of the actions of their clients, they do bear some responsibility as they may have the capacity to review ESG risks as part their due diligence processes. The IFC deals with this issue by attempting to trace the use of proceeds from its investments. If the IFC is able to trace the funds for use in a particular project (*e.g.* the construction of a particular hospital), then it applies its Performance Standards at the project level. If the IFC is unable to trace the use of proceeds (*e.g.* if the funds were directed to a general company account), the IFC applies the Standards at the company level and focuses on its overall management systems. Other speakers suggested using a measure of a financial institution's influence over its business partners to determine accountability. The OECD could perhaps make use of these existing models to craft its own methodology for the application of the Guidelines to the financial sector.

Second, the OECD Guidelines cover many "home countries" but very few "host countries". The invited speakers suggested that the OECD needs to develop a strategy to increase awareness of financial institutions in countries that have not adhered to the Guidelines, particularly emerging market countries, of the principles and standards of the Guidelines in order to promote their use in these countries. This has been a challenge for the Equator Principles, which have struggled to attract signatories from emerging market countries, though this may be changing with the addition in October 2008 of Industrial Bank Co., the first Chinese institution to adopt the Principles, and the current chairmanship of the Equator Principles Financial Institutions Steering Committee by Banco Itau, a Brazilian financial institution.

Third, transparency and disclosure are amongst the most important and relevant issues for the financial sector, but are also the most contentious to pursue with financial institutions. In applying the Guidelines, adhering countries will need to craft a process that allows financial institutions to fulfil their client confidentiality requirements while simultaneously providing sufficient disclosure and reporting on their own operations and the relevant operations of their clients. While financial institutions have, historically, been reluctant to abide by transparency requirements, the recent financial crisis suggests that increased transparency in the financial sector is necessary to improve governance. The

G20 discussions have also highlighted the importance of increased transparency to restore confidence to the international financial system.

The future: Envisioning the role of the OECD and OECD Committees

Building on this understanding of the current landscape, its opportunities and its challenges, the speakers provided several additional thoughts for continued action on the application of the MNE Guidelines to the financial sector.

Frame ESG issues as "material risks" and corporate responsibility as "comprehensive risk management". It was observed that the concept of corporate governance is shifting, broadening beyond the immediate issues of independent boards and annual reports to include the consideration of ESG issues that can impact financial returns. This new mindset is particularly applicable to financial institutions, and the OECD and its non-member partners can further develop and articulate this link between corporate governance, responsible business, and comprehensive risk management as it crafts a framework for the application of the MNE Guidelines to the financial sector. One presenter suggested that financial institutions could be encouraged to publicly report a "Market Risk Forecast", covering the economic and ESG risks that they face and the steps taken by their institutions to manage them along with supporting measures that could be taken by regulators, policy-makers and other investors.

Use the convening power of the OECD to encourage broad participation. It was considered that the OECD has the ability to bring a truly diverse set of actors to the discussion table, and it should exercise this convening power to engage institutions from both OECD and non-OECD countries. These should include not only financial institutions, but also regulatory agencies, research firms, credit rating agencies, academic organisations, unions, and other actors who are part of the financial system. In order for the Guidelines to be effective, they will need to reach not only the investment decision-makers, but also those that research and rate investments amongst others, thus it is necessary to engage all parts of the financial system. The invited speakers suggested that the OECD and other adhering countries should be as "inclusive as possible" when crafting a policy for the application of the OECD Guidelines to the financial sector, soliciting non-adhering country feedback in an effort to promote their participation in the eventual application of the Guidelines.

Find the balance between voluntary engagement and accountability. The Guidelines are most effective when they are used as a positive tool for business decision-making and not solely as a complaint mechanism. It is important that the OECD and other adhering countries, like the IFC with the Equator Principles, engage with financial firms to encourage and support compliance with the Guidelines through trainings and other outreach activities, playing the role of resource institution rather than regulatory agency. However, it is also important to maintain accountability even in a voluntary system. Organisations have used several methods to provide "teeth" to the application of investment guidelines: the UN Global Compact has removed signatories who have failed to comply with its reporting requirements, UNPRI requires public reporting of compliance with its guidelines, and the OECD's NCP mechanism allows for the release of a public statement after conclusion of, or failure to reach, a mediated solution.

Box. **Application of the OECD MNE Guidelines to the Financial Sector: Issues for Discussion**

A. What are the roles and main operational modalities of the IFC Policy and Performance Environmental and Social Standards, the Equator Principles and the UN Principles on Responsible Investment?

Banks and institutional investors constitute the two main sources of investment money and have also developed the two major instruments for promoting business ethics and corporate responsibility in the financial sector: the *Equator Principles* (EP) and the *UN Principles of Responsible Investment* (UNPRI). The IFC helped conceive the first set of EP (EP1) and the *IFC Performance and Environmental Standards* constitute a leading example of the corporate responsibility standards promoted by a multilateral organisation with regard to project finance. A common theme underlying the three reviewed financial corporate responsibility instruments is that financial institutions have both the power and a social duty to exercise a decisive influence or leverage on the use of the money lent or invested in companies.

The IFC Standards and the EP apply to project finance above a certain amount (USD 10 million) and aim to ensure that these projects are developed in a manner that is socially responsible and reflects sound environmental management practices. The UNPRI provides a framework for institutional investors and asset managers to integrate social, environmental and governance considerations into their investment activities (including decision-making processes, ownership policies and practices and disclosure of ESG issues by investees). Over 60 global financial institutions and 378 institutional investors, investor managers and professional service providers have signed on to the EP and UNPRI.

Invited speakers were invited to comment on:

1. How the "responsibilities" or "commitments" of financial institutions are being defined or assessed under the three instruments. In particular, what criteria or considerations are being used? How the issues of due diligence and avoidance of complicity are being addressed?
2. Measures or steps recommended for integrating ESG considerations into the governance structure and decision-making processes of financial institutions and that of their clients or business partners.
3. The importance of transparency and accountability and the role played by the instruments' disclosure and reporting requirements.
4. IFC and EP signatories' experiences with handling grievances on particular investment projects.

B. What more is needed to ensure responsible business conduct in the financial sector?

A number of observers suggest that ensuring trust in the financial sector and securing its viability in the longer run may require the adoption of more socially responsible and economically sustainable strategies by the financial industry.

Invited speakers were encouraged to share their views on:

1. The ESG areas the financial industry could consider strengthening in the future.
2. How the three reviewed instruments could be modified to increase their influence and effectiveness.
3. The role that governments could play in promoting more responsible conduct on the part of financial institutions and assisting their efforts in this area. In particular, how the NCP mechanism could be enhanced to address complaints under the OECD MNE Guidelines.

C. How the OECD could help support responsible banking and investment in the future.

Invited speakers were invited to comment on:

1. Whether the OECD MNE Guidelines need to be made more explicit or whether to develop guidance on the corporate responsibilities of the multinational financial institutions to assist NCPs fulfil their duties under the OECD Guidelines.
2. Given the attention given to the integration of ESG considerations in the mainstream operations and corporate structures of financial institutions, what analytical work might the OECD Investment Committee undertake in this area?

Notes

1. The Committee on Consumer Policy, the Environment Policy Committee and the Committee on Financial Markets.
2. In Subparagraphs b) and c) of document C (2008)170, the Council "welcomed NCP's increased efforts to further the effectiveness of the Guidelines for MNEs and encouraged adhering governments to ensure that NCPs have adequate resources to sustain these efforts."
3. Argentina, Australia, Czech Republic, Egypt, Germany, Greece, Luxembourg, Ireland, Israel, Italy, Mexico, New Zealand (with a Liaison Group consisting of government, business and trade unions representatives), Poland, Slovak Republic, Spain, Switzerland and United States.
4. Brazil, Canada, Chile (under current plans), Hungary, Japan, Iceland, Korea, Slovenia, Portugal, Turkey, and United Kingdom.
5. Romania's NCP is comprised of government and business representatives.
6. Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Norway, and Sweden. Several of these also have multiple governmental department NCPs.
7. Finland.
8. In 2007, the Dutch NCP has been changed from an interdepartmental office to a mixed structure consisting of four independent experts and four advisors from four ministries.
9. The report by the Working Party of the Investment Committee "Review of NCP Performance: Key Findings" analyses the structural changes that have occurred since the 2000 Revision of the Guidelines.
10. Conclusions of the G8 Social Summit, Rome, March 31, 2000.
11. For further details refer to pages 23-24 of the 2008 Annual Report of the OECD Guidelines for Multinational Enterprises which can be accessed at *www.oecd.org/daf/investment/instruments*.
12. The "Global Standard of the 21st Century", Remarks by the Angel Gurria, OECD Secretary-General, Rome, 12 May 2009. *www.oecd.org/findDocument/0,3354,en_2649_34487_1_119802_1_4_1,00.html*.
13. Business ethics and OECD principles: What can be done to avoid another crisis? Remarks by Angel Gurria, OECD Secretary-General, delivered at the European Business Ethics Forum (EBEF), Paris, 22 January 2009.
14. The number of specific instances actively taken up by NCPs is the number of specific instances listed in Part 3 of Chapter 1, adjusted for specific instances that are listed more than once on the table because more than one NCP was involved and more than one reported on the specific instance in the table.
15. The OECD Secretariat was invited to speak at this meeting. The report is available at *www.bhforum.org/pdf/BHF-CBE%20Meeting%20Report,October%2023-24%202008.pdf*.
16. The letter to the OECD by the International Conference on the Great Lakes Region is reproduced in Part 5 of Chapter 1.
17. UNSC Resolution 1857, 22 December 2008 on the situation concerning the Democratic Republic of the Congo.
18. The "Task Force" on the illegal exploitation of natural resources in the Great Lakes Region was set up as an informal group to foster exchange of information on current initiatives, identify gaps and make recommendations for decision-making bodies where possible. It held its first meeting in February 2009. The Task Force, initially composed of the United Nations, the United States and the European Commission and EU member states, now includes other interested countries and international organisations. For the time being, the Office of the Special Representative for the Great Lakes Region of the European Union (EUSR) is acting as the "Task Force" Secretariat.
19. The Chair has noted that since the Annual Meeting, the L'Aquila G8 Summit has provided further political support for this work. Paragraph 131 c) of the G8 Leaders Declaration: Responsible Leadership for a Sustainable Future of 8 July 2009 specifically "encourages all firms operating in the extractive sector and in weak governance zones to adopt international corporate social responsibility guidelines, such as the OECD Guidelines on Multinational Enterprises." In this respect and with reference to the Great Lakes Region, the G8 Declaration also "welcomes the efforts of the International Conference on the Great Lakes Region to tackle illegal exploitation of natural resources and encourages the OECD, the United National and the Global Compact to work

with the Conference and engage with key stakeholders to further develop practical guidance for business operating in countries with weak governance."

20. 2005 Annual Report on the OECD Guidelines for Multinational Enterprises, pages 84-92.
21. *www.bhpbilliton.com/bbContentRepository/cerrejonPanel.pdf*.
22. *www.bhpbilliton.com/bbContentRepository/cerrejonapril2008.pdf*.
23. *www.cerrejoncoal.com/formas/2191/scgeng.pdf*.
24. Suliman Ali Baldo Testimony at the House Committee on International Relations.
25. Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, A/56/327, 31 August 2001.
26. Amnesty International, June 2001, "Democratic Republic of Congo – Torture: a weapon of war against unarmed civilians", pp. 21-23.
27. *www.un.org/News/dh/latest/drcongo.htm*.
28. *www.publications.parliament.uk/pa/cm200506/cmselect/cmintdev/923/923we11.htm*.
29. *www.parliament.the-stationery-office.com/pa/cm200506/cmselect/cmintdev/923/923ii.pdf*.
30. The IDC was appointed by House of Commons to examine expenditure, administration and policy of DFID and its associated public bodies. IDC website: *www.parliament.uk/parliamentary_committees/international_development/committee_remit.cfm*.
31. *www.publications.parliament.uk/pa/cm200506/cmselect/cmintdev/923/923we10.htm*.
32. 1.3 of OECD Guidelines for Multinational Enterprises *www.csr.gov.uk/oecddoc/OECDGuidelinestextDocA.pdf*.
33. *www.grandslacs.net/doc/2343.pdf*.
34. Professor John Ruggie is the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
35. *www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf*.
36. *www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/DRC%20S2007%20423.pdf.*
37. *www.pole-institute.org/documents/regard19_anglais.pdf*.
38. Promotion and Protection of all Human Rights, Civil Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008.
39. Promotion and Protection of all Human Rights, Civil Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008.
40. March 2009 meeting held at Chatham House and supported by the Norwegian Government.
41. The OECD Regional Roundtables, which are organised annually to promote these instruments in Asia, Russia and Latin America have not in the past made reference to the MNE Guidelines. Similarly, recent guidance prepared by the Steering Group on Corporate Governance fails to refer to the MNE Guidelines.
42. The IMF's Generally Accepted Principles and Practices for Sovereign Wealth Funds – the "Santiago principles" – do not include any reference to OECD standards, including the MNE Guidelines.
43. These have recently been reviewed to include a new reference to the MNE Guidelines.
44. *www.unpri.org*.
45. Contributions to this report were received from Argentina (CEDHA, CIPCE, FARN; Hugo Wortman Jofre); Australia (Brotherhood of St Laurence), Belgium (GRESEA), Germany (Germanwatch, Transparency International Germany); India (Cividep); Korea (Korean House for Solidarity); Netherlands (SOMO); Norway (Future in our Hands, ForUM); Peru (Plades), Romania (AUR – ANSRU);

Switzerland (ASK); United Kingdom (RAID, Global Witness), United States (EarthRights International).

46. See "The Reality of Rights", *www.corporate-responsibility.org/module_images/reality_of_rights.pdf* .
47. One successful case involves a case by the trade union UNI against G4S for the UK NCP that was successfully settled with the help of an external mediator.
48. Called the Human Rights and Equal Opportunity Commission at the time of the GSL case.
49. See *www.oecd.org/dataoecd/18/47/42446942.pdf*.
50. The OECD Watch Model NCP: *http://oecdwatch.org/publications-en/Publication_2223*.
51. *Effective application of the OECD Guidelines to the financial sector[DAF/INV/WP/RD(2009)2]*.
52. IFC Powerpoint presentation of 24 March 2009.
53. *UNPRI 2008 Report on Progress* (UNPRI, 2008).
54. Quote from a speaker's statement at the 24 March 2009 Working Party meeting.

ANNEX 1.A1

Letter to the OECD by the International Conference on the Great Lakes Region

EXECUTIVE SECRETARIAT
INTERNATIONAL CONFERENCE
ON THE GREAT LAKES REGION

SECRETARIAT EXECUTIF
CONFERENCE INTERNATIONALE
SUR LA REGION DES GRANDS LACS

Ref: Es/L-LM-MW-RC/0365/09
Bujumbura, 23 April 2009

Mr. Angel Gurria
Secretary-General
Organisation for Economic
Co-operation and Development
Paris, France

Dear Secretary-General,

I am writing to you to convey the keen interest of the International Conference on the Great Lakes Region (ICGLR) in developing co-operation with the OECD in order to effectively curb the illegal exploitation of natural resources in the region. For the African Great Lakes Region it is of paramount importance to translate its rich endowment of natural resources from sources of conflict into resources for security, stability and development as outlined in the "Pact on Security, Stability and Development", signed by the eleven Head of States of the International Conference on the Great Lakes Region (ICGLR)at Nairobi on December 15, 2006.

As you may already know, on April 2 and 3 2009, the ICGLR organized the first expert meeting to launch the "Regional Initiative against the Illegal Exploitation of Natural Resources" as part of the implementation of the Pact and its respective "Protocol on the Fight against the Illegal Exploitation of Natural Resources". Let me take this opportunity thank the OECD for taking part in this meeting.

By launching this Initiative, the member states of the ICGLR agreed on a set of measures to combat illegal exploitation of natural resources, through enhancing lega1 cooperation and by creating a regional mechanism for certification of natural resources. This core initiative of the ICGLR is a stepping stone towards socio-economic transformation of the region as well as a contribution to worldwide efforts to put an end to the illegal exploitation of natural resources.

We realize that for this initiative, we need the support of international organisations like the OECD which understand the problems arising out of coordinating and facilitating the efforts of member states with sometimes diverging interest. Therefore, we kindly seek your support and experience in the development and adaptation of integrity tools.

We consider that most of the provisions in such OECD integrity instruments as the OECD Guidelines for Multinational Enterprises and its companion OECD Risk Awareness Tool for investors in weak governance zones are directly relevant to our endeavours. These instruments have some uniquely valuable attributes which are of particular interest to us:

- their international reputation is grounded in the authority of the adhering countries that agreed to implement its provisions,
- these states generate 90% of all foreign direct investment flows globally, and
- they have prominent influence over the conduct of corporations operating under their jurisdictions, as they are home to almost all major extractive industry corporations.

These features have contributed to making OECD integrity instruments the more reputable and useful for the standards-setting conventions presently available to us. We would therefore welcome the opportunity to establish with the OECD how best the OECD Guidelines and the OECD Risk Awareness Tool can be incorporated into our Regional Initiative to harmonize common efforts and counter illegal resource extraction in the region.

I look forward to positive consideration of this proposal by the OECD.

In the meantime, allow me to express to you, Mr. Secretary General, the assurances of our highest consideration.

Yours sincerely

Ambassador Liberata Mulamula

Executive Secretary

Annual Report on the OECD Guidelines for Multinational Enterprises 2009
Annual Report on the OECD Guidelines
for Multinational Enterprises 2009
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Chapter 2

Consumer Empowerment and Responsible Business Conduct

The annual OECD Roundtable on Corporate Responsibility held in Paris on 15 June 2009 was devoted to the theme of Consumer Empowerment and Responsible Business Conduct. Discussions focused on the positive impact responsible consumers exercise on international business and OECD Guidelines for Multinational Enterprises' role in promoting and protecting consumer interests. Special attention was given to supply chains, financial institutions and climate change.

This chapter provides a summary of these discussions.

1. Acknowledgements

The National Contact Points and the co-organiser OECD Committees – the Investment Committee, the Committee on Consumer Policy, the Committee on Financial Markets and the Environmental Policy Committee – wish to thank all of those who actively contributed to the OECD Conference on Corporate Responsibility, "Consumer Empowerment and Responsible Business Conduct," held in Paris on June 15, 2009 in conjunction with the ninth annual meeting of the NCPs, particularly the key note speakers:

Ms. Meglena KUNEVA, Commissioner for Consumer Policy, European Commission.

Mr. Samuel OCHIENG, President, Consumers International.

Ms. Nancy NORD, Commissioner, US Consumer Product Safety Commission.

Mr. Aart DE GEUS, OECD Deputy Secretary General.

And the following invited speakers and respondents from government, business, labour, international, organisations and non-governmental organisations:

Mr. Farid BADDACHE, Europe Director, Business for Social Responsibility.

Mr. Brian BRANCH, Executive Vice President and Chief Operating Officer, World Council of Credit Unions.

Ms. Julie CHAUVEAU, Les Echos.

Ms. Véronique DELI, Chair, OECD Working Party on Global and Structural Policies.

Mr. John EVANS, Secretary-General, Trade Union Advisory Committee to the OECD (TUAC).

Ms. Anne FILY, Head of the Legal and Economic Department, BEUC.

Mr. Erich HARBRECHT, Vice Chair, OECD Committee on Financial Markets.

Mr. Stephen HINE, Head of Responsible Investment Development, EIRIS.

Mr. Yang HONGCAN, Secretary-General, Chinese Consumers Association.

Ms. Céline KAUFFMANN, Economist, OECD Investment Division.

Mr. Bruno LEVESQUE, OECD Financial Affairs Division.

Ms. Serena LILLYWHITE, Brotherhood of St. Laurence and Representative of OECD Watch.

Mr. Vernon MACKAY, Chair of the Working Party of the Investment Committee.

Mr. Marcello MANCA, Vice President and General Manager, Underwriters Laboratories Environment, Inc.

Mr. Dirk MEIJER, Chief Executive of Prosafe, the European Coordination Point on Market Surveillance on Consumer Product Safety.

Ms. Michèle PAPPALARDO, General Commissionner, Grenelle de l'Environnement.

Mr. Bjarne PEDERSEN, Director of Operations, Consumers International.

Mr. Dan REES, Director, Ethical Trading Initiative.

Mr. Udo REIFNER, Head of the Institute for Financial Services, Germany.

Mr. Gordan RENOUF, General Manager, Policy and Campaigns, CHOICE, Australia.

Mr. Jürgen STURM, Secretary-General, European Lamp Companies Federation.

Mr. Christian THORUN, ISO Working Group on Social Responsibility, Federation of German Consumer Organisations.

Mr. Hubert VAN BREMEN, Chairman of the BIAC Consumer Policy Group, Business and Industry Advisory Committee to the OECD (BIAC).

Mr. Cornis VAN DER LUGT, Corporate Responsibility Program, UNEP.

Ms. Mei Li VOS, Dutch MP.

2. Key Findings from the Annual OECD Roundtable on Corporate Responsibility

The *OECD Guidelines for Multinational Enterprises* (the OECD Guidelines) are recommendations from governments to multinational enterprises regarding voluntary principles and standards for responsible business conduct worldwide. The aim of the OECD Guidelines is to ensure that the operations of multinational enterprises are in harmony with government policies, strengthen the basis of mutual confidence between enterprises and the societies in which they operate, help improve the foreign investment climate and enhance the contribution to sustainable development made by multinational enterprises. In order to achieve these goals, the 41 governments adhering to the Guidelines have committed themselves to participating in the Guidelines' unique implementation procedures.

Each year, the OECD holds a Roundtable on Corporate Responsibility to correspond with the annual meeting of the National Contact Points (NCP). Designed to discuss emerging issues and relevant policy developments in corporate responsibility, the objective of the meetings is to assist NCPs in their work promoting and implementing the OECD Guidelines for Multinational Enterprises.

Considering that the OECD Guidelines are the sole existing inter-governmental instrument on corporate responsibility to address consumer interests, the 2009 Roundtable, held on 15 June 2009, was devoted to the subject of "Consumer Empowerment and Responsible Business Conduct". It was organised under the auspices of the OECD Investment Committee in close co-operation with the OECD Committee on Consumer Policy, the OECD Committee on Financial Markets and the OECD Environmental Policy Committee. Building on the results of a 2006 conference in Rotterdam on the topic of business interaction with consumers,[1] the 2009 Roundtable convened representatives of governments, business, labour and other stakeholders to:

- assess the recent evolution of consumer concerns and their impact on business conduct worldwide;
- determine how multinational enterprises integrate, as recommended by the OECD Guidelines, consumer interests into their operations and how they encourage consumers to act more responsibly towards society with due regard to their particular needs and culture;
- discuss the reliability of information provided to consumers and consumer perceptions about the health, safety and sustainability of the products they consume; and

- discuss the pros and cons of various policies and instruments to promote responsible business conduct and raise consumer confidence, and in that context, the role of the OECD Guidelines.

The conference was attended by over 200 participants representing approximately 42 countries, including emerging economies (or Enhanced Engagement countries) such as China, India, and South Africa and other non-member countries. The discussion was divided into an opening session attended by high level officials and six other sessions that explored issues relevant to the conference's focus. Each working session consisted of presentations by a panel of participants drawn from government, multilateral organisations, business, labour and civil society (see Annex A). The following summary is organised according to each session's main theme. The event was held under the Chatham House Rule and this summary conforms to that rule.

Inaugural Session – Consumers can make the global marketplace more responsible

The inaugural session of the Roundtable benefited from keynote presentations by Aart de Geus, Deputy Secretary-General at the OECD, Meglena Kuneva, Commissioner for Consumer Policy at the European Commission, Samuel Ochieng, President of Consumers International, and Nancy Nord, Commissioner of the US Product Safety Commission. The presenters conveyed the following key messages to the participants.

Consumers can and should become more powerful drivers of corporate responsibility. The OECD recognises the strong potential that consumers can exercise on business behaviour through their purchasing decisions. Corporate responsibility action by business over the past several decades has not only been driven by government regulation, investor pressure, CEO charity or their own insight of what should be put on the market but increasingly by consumer demands that environmental, social and governance (ESG) related issues be integrated into the companies' bottom-line calculations. Effective co-ordination amongst consumers, however, is difficult and research shows that they remain motivated primarily by price and quality. This level of concern, however, is highly dependent on the information available and on the context of the consumer behaviour. Consumers need to be energised and have access to the necessary tools to exercise their power more effectively.

Consumers need access to accurate, clear and user-friendly information. Research shows that an increasing number of consumers are interested in social and environmental issues and do want more confidence that the products and services that they are using are consistent with these concerns. Consumers who believe these issues are important have indicated a preference for more reliable and consistent information on the responsibility of companies with regards to such issues. Currently, consumers must filter through a complex variety of certifications and labels. If a more consistent information and certification mechanism existed, consumers would be more able, perhaps even more willing, to change their consumption decisions and direct their purchases towards more responsible suppliers of goods and services.

Consumers also have responsibilities. Consumers have the power to influence environmental and social outcomes. Consumer responsibility is an important counterpart to corporate responsibility: where producers are responsible for the production and sales of goods and services, consumers are responsible for their use and disposal. By shifting consumption patterns towards goods that were produced in a more sustainable manner or by reducing consumption of certain products, consumers can have a direct impact on environmental and social outcomes.

Governments and international organisations can provide support. There are three main areas in which governments and other organisations can have a large impact on the ability of businesses and consumers to create a more environmentally and socially responsible global marketplace. First, governments can support and incentivise businesses to integrate ESG concerns into their operations. This can happen either individually with companies or with entire industries, as was the case with the US toy industry, and it can happen with producers and subcontractors all along the global supply chain. Governments may indeed be more successful if they are supporting responsible supply chain management throughout the production process rather than penalising companies for poor supply management once the products are already being sold. Second, governments can educate the public about responsible consumption and provide incentives designed to shift consumption patterns. Thirdly, governments or international organisations can require or encourage companies to provide increased transparency and information on ESG issues for use by consumers and other stakeholders. In all of these areas, robust national regulatory frameworks that empower consumers, promote disclosure, provide access to simple redress mechanisms for malfunctioning markets and poor business practice, and ensure a transparent and predictable business environment should be a key priority.

What consumers expect from responsible business conduct

There is growing consumer interest in sustainability, however the extent to which interest translates to purchasing decisions is unclear. Research suggests that consumers "intend" to seek out and pay a premium for sustainable products. While this intention is well-documented, it is less certain how often that translates into actual consumer action. Some surveys suggest that consumers are unwilling to pay a premium or sacrifice product quality for increased sustainability, while others estimate that consumers would be willing to pay 5-20% more for responsibly-produced products. Current research also suggests that consumers are more sensitive to negative news regarding corporate responsibility than they are to positive news, and thus are more likely to "punish" companies with poor corporate responsibility records than they are to "reward" companies with good records. At the same time, the sales of some fair trade or locally produced products appear to have held up well in the current economic downturn.

There are many factors beyond product quality and price that drive consumer decision-making and that can be used to encourage responsible consumption. One such factor is the ease of purchasing and using sustainable products and services. Research has shown that consumers are more likely to make responsible purchasing decisions if they do not need to make significant trade-offs in convenience or product performance to do so. An important part of facilitating consumer access to sustainable products is information provision. It was again pointed out in this session that reliable and accurate information regarding the social and environmental characteristics of products is currently difficult for consumers to access. One presenter proposed switching environmental and social performance reporting from the company level to the product level, while others advocated for a standardised reporting system across all products. One success in this area has been the "energy-efficiency" label currently used in the European Union for appliances such as washing machines and dishwashers. Surveys show that the label is one of the first pieces of information consumers consider when purchasing such items.

Social engagement is also important when promoting responsible consumption. While developing sustainable products and proper information systems are important, so too is creating a social movement to promote and encourage responsible consumption. Studies have shown social pressure to be an important factor in consumer decisions as a sense of "if you will, I will" drives much of consumer behaviour. For example, one study observed consumers at a coffee shop and noted that sales of Fair Trade coffee increased dramatically when salespeople specifically prompted customers to consider Fair Trade brands. This increase was even more dramatic when a third party witnessed the sale. Results such as these suggest that non-technical, social aspects can play an important role in driving responsible consumption. Efforts to further this "social movement" are already underway, through internet-based efforts like those on social networking sites like Facebook, and smaller-scale efforts such as local sustainable cooking clubs.

Culture and lifestyle differences do need to be considered when promoting responsible consumption. Several presenters on the panel spoke of the differences that need to be considered when pursuing and encouraging responsible consumption in various regions, and they shared the view that responsible consumption measures need to be developed on a regional basis. For example, a comparison was made between Japan and Europe, two regions that share comparable standards of living but whose consumption patterns result in vastly different levels of environmental impact. For example, in Germany it is estimated than an average consumer uses the equivalent of 80 tonnes of resources per year, whereas a Japanese consumer uses only 40 tonnes of resources per year. The differences are even more apparent when comparing consumption in developed and emerging economies. Consumers in India, for example, make very different consumption decisions than consumers in the United States – they eat far less meat and purchase more locally grown products, however they also consume mostly bottled drinking water as a health safety measure (although the rising levels of affluence of emerging markets may reduce these differences in the future). These examples serve as reminders that responsible consumption efforts will need to fit the context in which consumers make decisions. The discussion also highlighted the importance of corporate responsibility in developing country contexts, where consumer movements and regulatory environments are often less developed.

The business response

Businesses strive to produce products that meet the needs and expectations of their clients. As consumers have become increasingly interested in responsible production and sustainability, businesses have grown more responsive and have worked to meet these new customer and employee expectations. Sustainability considerations are no longer relegated to corporate responsibility departments, but have become a core part of companies' innovation and product development efforts. Consumers increasingly want assurances that companies are "doing no harm", however, this in itself is no longer sufficient. Consumers also want assurance that enterprises endeavour to make a positive contribution in relation to the social and environmental impact of their business. A well known Japanese vehicle manufacturer, for example, began developing a low carbon emission car model in the mid-90s in anticipation of growing customer concern regarding the environmental impact of vehicle emissions. A leading manufacturer of consumer goods created a concentrated laundry detergent whose production and distribution requires fewer resources than other detergents. On the other hand, however, business surveys show that consumers are not willing to make significant concessions on price and quality to account for social and environmental issues. Another constraint is that businesses must look for ways to meet customer expectations on all fronts, which limits the extent to which they can pursue responsible production measures. Consumer awareness of the importance of responsible consumption is crucial and more likely to develop under the pressure of civil society groups.

Businesses can shift consumer behaviour through various mechanisms. Three mechanisms in particular were discussed: developing more sustainable products, influencing consumer choice and product use through marketing, or removing certain products from the market ("choice editing"). Choice editing most often happens at a regulatory level, while businesses themselves tend to focus on product development and marketing efforts. These efforts have proven successful in the past, both at shifting consumer preferences towards more sustainable products but also shifting post-purchase consumer behaviour towards more responsible product use. Advertising or education campaigns that reconcile sustainability with performance have proven to be particularly effective in the case of one leading manufacturer of consumer products.

Businesses can also shift supplier behaviour; however, their reach can be limited at lower levels of the supply chain. One of the biggest challenges to responsible production is the globalised supply chain. Working with suppliers to produce raw materials responsibly and sustainably is difficult, however many businesses have begun to integrate these considerations into their core businesses. One leading company of brand consumer goods said, for example, that confronted with the problem that that some suppliers were contributing to the degradation of rain forests, it worked with other companies to implement a certification system for suppliers that would allow purchases only from the suppliers that were producing responsibly. Other businesses have engaged with civil society monitoring organisations to promote responsible production amongst suppliers. One successful example of such a group is the Clean Clothes Campaign in the textiles industry.

Next steps? While businesses have made significant progress towards more sustainable and responsible production, much work remains. What is needed above all is a broad vision and understanding by actors along the entire spectrum, not just companies themselves, of what can and should be done.

The supply chain challenge

Supply chain management is one of the toughest challenges producers face. It is the area where action is definitely needed, and one that civil society has been particularly vocal on as there is an increasing number of irresponsibly produced products on the market. These can range from products that are produced in an unsustainable manner to products that are actually harmful and dangerous for the consumer. There is a growing understanding amongst producers that avoiding public product recalls or other public product problems is worth expending additional resources to produce safe products responsibly. This has resulted in several successful industry self-regulation initiatives, most notably in the US toy industry in response to product safety concerns and the French marketing industry. However many producers, particularly smaller producers for whom protection of a brand name is not a major concern, are still lagging behind.

There is debate about the best mechanism to incentivise and achieve safer, more sustainable production. One mechanism that was widely discussed is regulation requiring increased disclosure of business operations to channel information on ESG issues to consumers. An example of such a mechanism is the bill being introduced in the Dutch Parliament that would act as a Freedom of Information Act for corporate responsibility information. Under the bill, consumers would be able to demand information from businesses regarding their compliance with ILO standards and UN anti-corruption standards. Businesses would be required to disclose information, but could do so in whatever manner they choose. Another mechanism that was debated was voluntary third-party certification, which is currently conducted in several areas including product safety. A representative from a European organisation that co-ordinates activities in the area of market surveillance on product safety expressed reservations with regard to voluntary or obligatory third party testing schemes. These systems do not appear to add much value and may be used by companies as an excuse for not taking on their own responsibilities. Some, however, found voluntary mechanisms to be insufficient, arguing that increased regulation was necessary to drive more responsible production.

Consumer education and empowerment are necessary pieces of any solution on supply chains. International organisations and governments also need to publicise their standards and complaint mechanisms to ensure that the public knows about them and can access them easily and affordably. On product safety, for example, there is broad evidence that consumers who purchase faulty products fail to report the producers either because they are unaware of the report mechanism or because they purchased an inexpensive product and feel that they "got what they paid for."

Energy consumption and climate change: how can consumers make a difference?

Consumers are important contributors to climate change. In France, for example, a household produces the equivalent of 16 tons of CO_2 per year, of which 52% comes from the production, use and disposal of products for consumption, 26% from transport, 15% from heating and 7% from electricity. Engaging consumers in a meaningful way must be a cornerstone of government and business efforts to build a low carbon future. The Roundtable discussions highlighted the challenges of such engagement, and put forward the specific experience of Consumers International, the European Lamp Companies Federation and the French Government in addressing them. The discussions also built on two background papers by EIRIS[2] and the OECD Secretariat.[3]

A range of business practices to address climate change are emerging. Business attitude towards climate change is driven by a variety of factors, including government policies and regulation and increasing pressure from consumers and other stakeholders. According to EIRIS' research, corporate responses to climate change in consumer-facing sectors vary widely depending on the sector. Currently, electricity companies are leading their peers in terms of disclosure performance, while the residential building sector is lagging behind.

Consumers are looking for guidance. Consumers are not unwilling to act to fight climate change, but many are confused about what they can do and are looking for credible guidance. Consumers International confirms that there are many initiatives to mobilise consumers' interest, including a wide range of company statements on climate change. However, consumers may not trust all information provided by businesses and want more independent assurance of product information. Assurance and verification schemes need to be further developed to help increase consumers' trust and avoid confusing consumers with "pointless self-declared labels, plethoric inadequate information and mixed messages". It is also essential to understand what drives consumer choices and behaviours. Many consumers have already made some easy, close-to-home changes. However, only a minority seems prepared to pay a premium for products with lower carbon emissions. Among the key drivers for consumer behaviour are affordability, access and confidence in corporate information, and availability of alternative products.

Consumers cannot do it alone. While consumers have an important contribution to make to build a low-carbon future, governments and companies must also do their share. Ultimately, actions by governments, companies and consumers are complementary. Domestic lighting, for example, is an area where co-operation between governments, businesses and consumers is necessary to improve energy efficiency. Consumers must switch to energy efficient light bulbs and appliances in their homes, governments can influence consumer choices by establishing regulations or providing incentives, and businesses can support governments and consumers by developing energy efficient products to meet consumer demand and by informing consumers about the environmental impacts of their product consumption and disposal.

The French government is contributing to consumer empowerment by making climate-friendly products more visible, accessible and credible. Visibility is supported through the development of labels, the indication of CO_2 emissions of new vehicles and of energy performance of buildings, and the planned compulsory indication of the carbon footprint of products by 2011. Incentives are provided through tax credits and a "bonus-malus" system[4] (currently applicable to cars, but to be extended in other areas). The government also seeks to strengthen the credibility of climate-related information through a reform of the office in charge of verifying advertisements (Bureau de Vérification de la Publicité), so as to include environmental and consumer NGOs.

Protecting and educating consumers in the financial sector

The financial crisis revealed inadequate consumer protection and education. In many ways, inadequate consumer protection regulation and inadequate consumer awareness lie at the heart of the financial crisis. There is a sense that consumers are being "force-fed" credit and other debt obligations that often are accompanied by opaque and complex interest rate and fee structures that consumers frequently cannot afford. This was the case with many of the sub-prime mortgages that have been a driver in the current financial crisis, but this practice has been in existence for years. There is growing recognition that better early regulation of financial product sales practices, stronger consumer complaint mechanisms, or better consumer education (financial literacy) with regards to financial products and services may have stemmed the spread of "toxic assets" throughout the financial system. For this reason, the financial crisis can be a "teachable opportunity" to build momentum in the industry around this issue of consumer protection and financial education.

Consumer protection regulation is necessary, though the extent of this regulation remains hotly debated. One mechanism could be a requirement for more user-friendly information on the costs, risks, and potential returns of financial products and services. While there is some regulation in this area, the information provided to consumers is often either over-simplified, providing little substantive information, or overly complex and in highly technical language that often obscures the substance. Increasing and improving the information provided to consumers about financial products would enable them to make better decisions. A more controversial proposed regulatory measure is the creation of a body like the Food and Drug Administration in the United States, which would review financial products for "safety" before they are introduced in the market, banning the products that are deemed to be "too risky," though it was agreed that this threshold would be difficult to define. There are other measures that can be taken as well, such as the new laws in the United States banning predatory practices by credit card companies. In this area, it will be important to strike a balance between creating regulation that is strong enough to protect consumers while avoiding regulation that is so burdensome that it prevents financial institutions from serving their clients, particularly those at lower income levels.

Consumer education programs provide a necessary complement to regulation. Research has shown that though consumers believe they are well-equipped to make financial decisions, few understand the technical details (*e.g.* interest rate calculations) well enough to make effective choices. Consumer education efforts, conducted either by the finance institutions themselves or by public or civil society entities, can increase consumers' understanding of their needs, help them to ask the right questions, and can make them better able to avoid predatory or other irresponsible practices from financial institutions. This education can take place at the level of young adults, such as the programs run by the European Coalition for Responsible Credit, or with adults themselves. Lastly, increased access to independent financial advice would be highly beneficial for consumers. Currently, most financial advisors have incentives to sell certain financial products or brands, which can make their advice unhelpful or even potentially harmful to consumers.

Financial institutions will only pursue consumer protection and education efforts if they fit with their business models. Financial institutions face both push and pull forces to address the issues of consumer protection and education, but they will only act on this issue if it helps to further grow their business. Greater regulation in this area and stronger investor pressure will push financial institutions to change their behaviours, but financial institutions are also increasingly interested in consumer education and protection efforts as a way to engage with consumers and to build a stronger brand. To the extent that "trustworthiness" is an effective tool to attract or retain customers, financial institutions may be willing to voluntarily implement consumer protection measures or engage in consumer education activities. Implementing certain consumer protection measures, such as better screening of loan candidates, could also help to reduce risk in the institution's portfolios, which may provide another incentive for financial institutions to act voluntarily. Some non-governmental entities have started to develop independent information on green and ethical financial products.

The OECD and other international organisations can continue to play an important role on this issue, particularly given the highly multinational character of the financial sector. The OECD has already taken the lead on the issue of financial literacy through its Financial Education Program, established in 2002. It has since published the first international report on financial education, Improving Financial Literacy (2005), published several follow-up reports and surveys, and established the International Network on Financial Education, a network of 50 members who advise the OECD on financial education work, and the International Gateway for Financial Education, an online clearinghouse for information on financial education programming.[5] Through these efforts, the OECD Financial Education Program has developed standards, guidelines and principles based on good practices, including a recent elaboration of the Council Recommendation on Good Practices on Financial and Awareness Relating to Credit. Participants welcomed these contributions and suggested that the OECD can further enlarge its reach and impact by including more specific financial education and consumer protection language in the Guidelines for Multinational Enterprises.

The supporting role of the OECD Guidelines

The concluding session of the Roundtable was devoted to the supporting role of the OECD Guidelines. The OECD Guidelines are recommendations by the forty-one adhering governments covering all major areas of business ethics, including corporate steps to obey the law, observe internationally-recognised standards and respond to other societal expectations. They apply wherever enterprises based in the 41 adherent countries operate around the world. They also have a unique implementation mechanism in the specific instance facility, through which the National Contact Points (NCPs) are able to offer their good offices for the mediation and conciliation of disputes arising from alleged breaches of the OECD Guidelines. Some 200 "specific instances" have been brought to NCPs' attention since the 2000 Review of the OECD Guidelines, of which 145 have been considered and half have been concluded.

After hearing reports on the outcome of the three parallel sessions confirming the relevance of Chapter VII of the Guidelines for promoting and protecting consumer interests, participants turned their attention to two main topics: (1) how the OECD Guidelines work with national regulation to create a broader structure for corporate responsibility and (2) what updates could be contemplated to the OECD Guidelines in order to improve their effectiveness. There was a general sense that the Guidelines would benefit from an update, but that the substance and scope of that update would need to be determined.

Government action is necessary to ensure that the OECD Guidelines fulfil their role in supporting and incentivising responsible consumption. While the OECD Guidelines are well-suited to encourage responsible behaviour at the business end, governments may be best positioned to address responsible consumerism in three major ways. First, they can implement a standardised information or benchmarking system that is credible and enforceable to provide greater clarity and information on ESG impacts and compliance to consumers in a way that can be used in consumption decisions. Secondly, they can provide incentives for consumers to purchase more sustainable products and services. Thirdly, they can recognise their own responsibilities as significant users of both goods and services, and as such, promote responsible purchasing and procurement policy and practice. Research has shown that consumers are reluctant to pay a premium for responsibly produced goods. Governments could subsidise sustainable products to eliminate this premium and encourage responsible consumption. Speakers also highlighted the importance of industry self-regulation to complement the private sector's compliance with regulation.

An update of the OECD Guidelines may prove helpful to *i)* provide clarity on several areas of uncertainty in the application of the Guidelines, *ii)* broaden the applicability of the Guidelines to new areas of concern that have emerged over the past decade and current gaps, and *iii)* help to further improve NCP performance.

The particular substantive areas mentioned were:

- Human rights: an update could take into account the work of Special Representative to the UN Secretary General on Business and Human Rights.

- Applicability of the Guidelines to the supply chain.
- Environment, with a particular focus on climate change in response to the growing public attention to the issue.
- Disclosure and transparency requirements, with emphasis on the financial sector, and the social and environmental impact of business practice as a material foreseeable risk.
- Responsible consumption for the "use phase" that follows the production phase in a product's life cycle (*e.g.* proper product choice, judicious resource use, proper disposal). The consumer provisions would also need to be broadened to ensure coverage beyond product health and safety for consumers, and give consideration to the impact of production processes on workers and communities.

Measures to address NCP performance were also seen as important parts of a potential future update. Participants focused on the following areas:

- greater homogeneity in NCP procedures across adherent countries, particularly in areas of case acceptance criteria, parallel proceedings, final statements and the non-adjudicative role of NCPs;
- accountability measures, such as the Dutch peer review mechanism, for NCP proceedings and increased transparency in NCP operations;
- increased promotion of the Guidelines, or "preventive" action, by NCPs through increased engagement and dialogue with private sector actors outside of the mediation role;
- increased stakeholder engagement and formalised structures to enhance effectiveness and accountability;
- increased co-ordination with other OECD and international organisation corporate responsibility efforts (*e.g.* ILO Standards, UN Global Compact, the Global Reporting Initiative).

Several challenging factors to consider when weighing a potential update were also articulated. These included the need to match any potential broadened NCP mandate with an adequate level of resources, consideration of the involvement of non-adherent countries in the update process, and the application of the Guidelines to all types of international companies (including small and medium-sized enterprises).

The Chair closed the Roundtable by thanking all the participants for their contribution to the debate and the OECD for making this possible.

Annex. Conference Programme

OECD Roundtable on Corporate Responsibility

15 June 2009

Opening cession

09:00-10:00
Room CC1

Opening remarks
Aart De Geus, OECD Deputy Secretary-General
Keynote Speeches
Meglena Kuneva, Commissioner, Consumer Policy, European Commission
Samuel Ochieng, President, Consumers International
Nancy Nord, Acting Chairman, US Consumer Product Safety Commission

PLENARY SESSION ONE – WHAT CONSUMERS EXPECT OF RESPONSIBLE BUSINESS CONDUCT

What are the main drivers of consumer behaviour with respect to corporate responsibility and how consumer behaviour can be shaped? Does "corporate responsibility" mean the same thing around the world? How do consumers convey their concerns to business and governments? The session will discuss *inter alia* how more globalized and disaggregated production patterns affect consumer traditional concerns over the health, safety and quality of the products they consume. It will also assert how new concerns (notably on human rights violations, environmental degradation and non-renewable resource depletion) may be modifying consumer habits. The main purpose of the discussion will be to assess how effectively consumers are empowering corporations in responding to their evolving interests as important stakeholders to the OECD Guidelines for Multinational Enterprises.

10:00-11:30

Moderators: Michael Jenkin, Chairman of the OECD Committee on Consumer Policy and **Julia Hailes**, author of The New Green Consumer Guide

Discussants

"***What sustainability attributes drive consumer behaviour?***"
Tom Ewart, Managing Director, Research Network on Business Sustainability, Canada

"***What is the evidence of a growing demand for 'fair trade', 'ethical' and 'green products'?***"
Michael Kuhndt, Head, UNEP/Wuppertal Institute Collaborating Centre on Sustainable Consumption and Production, Germany

"***Do consumers in developed and developing markets share the same interests and what are the main implications if they don't?***"
Eric Briat, General Director, National Institute of Consumption, France
Pradeep S. Mehta, Secretary-General, CUTS International, India
Nguyen Dinh Tai, Director, Central Institute for Economic Management (CIEM), Vietnam

Discussion

PLENARY SESSION TWO – THE BUSINESS RESPONSE

Consumers are no doubt the major driver of business. Business can help consumers maximise their satisfaction through low prices, product safety and quality, innovation and new products. But enterprises also have the "duty to respect" and obligated to comply with regulatory standards, such as on labelling, health, safety and consumer privacy. They are expected in many societies to assist consumers in making informed decisions and to educate them to be more socially responsible. This session will discuss *inter alia* corporate initiatives aimed at developing more environmentally friendly and resource-efficient products or educate consumers to reduce waste or buy greener products. It will focus on good corporate practices in integrating consumer interests into business operations taking into account the recommendations made by the OECD Guidelines.

11:30-13:00

Moderators: Cheryl Hicks, Manager, World Business Council for Sustainable Development.

Discussants

"***What challenges do multinational corporations face in protecting consumers along the supply chain?***"
Colin Hensley, General Manager, Corporate Affairs and Planning Division, Toyota Motor Europe
Anousheh Karvar, French ***Democratic Confederation*** of Labour (Confédération Française Démocratique du Travail, CDFT)

"***What means do companies have to promote socially-responsible consumption?***"
Alison Smith, Associate Director, Procter and Gamble Company
Uwe Bergmann, Head, CSR and Sustainability Steering, Henkel

Discussion

13:00-14:30 **Lunch break**

14:30-16:15 **3 parallel sessions**

PARALLEL SESSION 1 – THE SUPPLY CHAIN CHALLENGE

With the globalization of production, consumers have become more aware of the challenges of ensuring the safety and quality of the products at each point along the supply chain. Health and safety are consumers' top priorities worldwide. In spite of demanding regulatory norms, grave health and safety hazards in internationally-traded consumer products such as food and toys products have occurred, arising public worries and hurting the reputation of producers, retailers and host economies. In addition, consumers are also more conscious that their decisions can have significant human rights implications such as the exploitation of children and workers. Keeping an eye on the OECD Guidelines, what lessons can be learned from recent supply chain failures and how the industry can be more responsive to consumer concerns? How in particular can problems be affectively addressed when they occur in countries which have not adhered to the OECD Guidelines?

14:30-16:15 **Moderator: Dan Rees, Director, Ethical Trading Initiative**

Discussants

"***Responding to supply chain challenges***"
Yang Hongcan, Secretary-General, Chinese Consumers' Association
Farid Baddache, Europe Director, Business for Social Responsibility
Marcello Manca, Vice President and General Manager, Underwriters Laboratories Environment Inc.

"***The supporting role of governments***"
Dirk Meijer, Chief Executive of Prosafe, the European Coordination Point on Market Surveillance on Consumer Product Safety

"***Enhancing consumer awareness and diligence***"
Mei Li Vos, Dutch MP

Discussion

PARALLEL SESSION 2 – ENERGY CONSUMPTION AND CLIMATE CHANGE: HOW CONSUMERS CAN MAKE A DIFFERENCE

Consumers are a powerful ally in the fight against climate change. They can contribute to the reduction of carbon emissions by using available energy more efficiently or moving to climate-safe technologies. For this to happen, however, they need to be sensitized to the impact of their consumption patterns on the environment and have access to affordable clean energy. This also requires the leadership of enterprises and governments in increasing the availability, and reducing the cost, of greener and innovation-led products and encouraging consumers to buy and use them. To take action consumers need to have confidence in claims on climate change that business makes. This parallel session will discuss ways to mobilize consumers in becoming more energy efficient, adopting cleaner technologies and empowering corporations to the climate change cause. It will also discuss how the OECD Guidelines could be used to spread good practices at the international level.

14:30-16:15 **Moderators: Véronique Deli**, Chair, OECD Working Party on Global and Structural Policies, and **Julie Chauveau**, Les Echos

Presentation

Stephen Hine, Head of Responsible Investment Development, (EIRIS**)**
Céline Kauffmann, Economist, OECD Investment Division

Discussants

"***The responsibilities of consumers***"
Bjarne Pedersen, Director of Operations, Consumers International

"***The supporting role of business***"
Jürgen Sturm, Secretary-General, European Lamp Companies Federation

"***The supporting role of governments***"
Michèle Pappalardo, General Commissioner, Grenelle de l'Environnement

Discussion

PARALLEL SESSION 3 – PROTECTING AND EDUCATING CONSUMERS IN THE FINANCIAL SECTOR

The financial crisis has revealed shortcomings in the mechanisms designed to protect consumer interests in some financial markets. Misleading or fraudulent lending practices, inadequate disclosure and excessive risk-taking on the part of both borrowers and lenders are cases in point, as is the failure of regulatory bodies to detect and respond to emerging problems. The discussion will focus on the policies and practices that financial institutions could follow to better protect financial consumers. Specific attention will be paid to the role that financial education and awareness can play in helping consumers to make better financial decisions. The discussion will draw on the work of the OECD Financial Markets Committee.

14:30-16:15 **Moderator: Erich Harbrecht**, Vice Chair, OECD Committee on Financial Markets

Discussants

Udo Reifner, Head of the Institute for Financial Services, Germany
Anne Fily, Head of the Legal and Economic Department, BEUC
Brian Branch, Executive Vice President and Chief Operating Officer, The World Council of Credit Unions
Bruno Levesque, OECD Financial Affairs Division, on *The implementation of the OECD Recommendation on Principles and Good Practices for Financial Education and Awareness*

Discussion

PLENARY SESSION THREE – THE SUPPORTING ROLE OF THE OECD GUIDELINES

Chapter VII of the OECD Guidelines recommends that "*when dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide*". This session will discuss ways in which governments could promote corporate initiatives to protect and promote consumer interests and the desirability of considering possible refinements or additions to the OECD Guidelines.

16:15-17:45	**Moderator: Vernon Mackay**, Chair of the Working Party of the Investment Committee
	Discussants
	"***The role of international standards***" **Christian Thorun*, ISO*** Working Group on Social Responsibility, Federation of German Consumer Organisations
	"***Promoting greater awareness and use of the OECD Guidelines***" **Cornis Van Der Lugt**, Corporate Responsibility Program, UNEP **Gordan Renouf**, General Manager, Policy and Campaigns, CHOICE, Australia
	"***The point of view of stakeholders***" **Hubert Van Bremen**, BIAC, Chairman of the BIAC Consumer Policy Group **John Evans**, Secretary-General, Trade Union Advisory Committee to the OECD (TUAC) **Serena Lillywhite**, Brotherhood of St. Laurence and Representative of OECD Watch
	Discussion
17:45-18:00	**CONCLUDING REMARKS *[Chairs of OECD Investment Committee, Committee on Consumer Policy, Environment Policy Committee and/or Committee on Financial Markets]***

Box 2.1. **Chapter VII of the OECD Guidelines for Multinational Enterprises**

"When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. *Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.*
2. *As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.*
3. *Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.*
4. *Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.*
5. *Respect consumer privacy and provide protection for personal data.*
6. *Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products."*

Box 2.2. **References: Instruments, Recommendations and other related documents**

- *OECD Guidelines for Multinational Enterprises.*
- *OECD Recommendation on Principles and Good Practices for the Financial Education and Awareness.*
- *2003 OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders.*
- *2007 OECD Recommendation on Consumer Dispute Resolution and Redress.*
- *OECD Trade Policy Working Paper No.47, CSR and Trade – Informing Consumers About Social and Environmental Conditions of Globalised Production: Case Studies, 2007.*
- *OECD Analytical Report on Consumer Product Safety, 2008 .*
- *Directive 2005/29/EC on Unfair Commercial Practices (applicable across EU by 12 December 2007).*
- *General Product Safety Directive 2001/95/EC.*
- *The proposal for a Directive on Consumer Rights (adopted by European Commission on 8 October 2008).*

3. The Role of Consumers and Corporations in Tackling Climate Change*

Introduction

Climate change has been widely recognised as one of the most significant challenges facing the global economy. Eurostat, the Statistical Office of the European Communities, based in Luxembourg, indicates that in 2007, the households sector was responsible for 24.6 % of the final energy consumption in the 27 countries of the European Union. It appears that there is potential for improving consumer involvement in tackling climate change through lifestyle change and purchasing preferences.

However, the Intergovernmental Panel on Climate Change's (IPCC) 2007 report states that while consumers can play a critical role, voluntary consumer-facing initiatives by corporations, local and regional authorities, and civil society organisations have had limited impact to date on the national or regional emissions level.

According to a study of 1000 people each from the UK, US and China, by an independent non-profit organisation (NPO) headquartered in the UK, the Climate Group, 66% of people in the UK and 65% in the US could not name a single brand that is taking the lead in tackling climate change, although the data shows that consumer commitment is rising significantly. This could indicate that companies have not provided consumers with sufficient information regarding the climate change impacts associated with their products.

* This paper was commissioned from Ethical Investment Research Service (EIRIS) by the OECD as background information in support of the discussions at the OECD Conference on Corporate Responsibility which took place in Paris on 15 June 2009. The views contained within do not necessarily represent those of the OECD or its member governments. For further information or clarification on any of the issues covered in this paper please contact: Yumika Mochizuki, EIRIS Research Analyst, *yumika.mochizuki@eiris.org*. Information about EIRIS is included at the back of this paper.

Against this background, this paper presents the main findings of EIRIS research on how companies and consumers interact on the issue of climate change and in particular how companies in consumer-facing sectors such as supermarkets, automobiles,[6] residential buildings and electricity interface with consumers to tackle the issue of climate change.

Section I presents an overview of the key drivers in consumer involvement in tackling climate change as well as company responses in the above mentioned four sectors selected for review in the present study. Using the same analytical framework, Sections II to V analyse the performance of each of these sectors.

EIRIS' main findings on consumer trends are as follows:

- Only a minority of consumers are prepared to pay a premium for products with lower carbon emission impact.
- Financial incentives including reduced tax, discounted insurance and cost saving devices seem to be the strongest drivers of consumer involvement in the fight against global warming and climate change.
- Governmental regulations also seem to play a significant role in the purchase of climate-friendly products.
- A wide range of information tools is available for consumers to compare products and to help them make more environmentally-friendly purchasing decisions. However assurance or verification systems of their reliability are not yet sufficiently developed.
- Independent sources of information are regarded by consumers as more credible than companies' claims.

EIRIS' main findings regarding corporate performance are as follows:

- Companies in the electricity sector are the leaders across the four sectors reviewed in the fight against climate change. The sector particularly shows the strongest performance on disclosing climate change impact whereas a large proportion of supermarkets and residential builders have not yet started to engage in public reporting.
- The automobile sector has also become more committed to energy saving cars.
- The residential building sector lags behind significantly with many companies without a basic commitment to address climate change risks.

Sectoral findings:

Supermarkets

- While a wide range of carbon labelling schemes for product lifecycle has been developed, there is a clear need for a more internationally consistent system to increase the comparability of products sold and the transparency of schemes.
- Consumer groups are becoming more active on climate change. This has yet to be translated into consumer purchasing decisions. More proactive consumer involvement in influencing companies is required.

Automobile

- There is a limited level of consumer groups' involvement on climate change in this sector. Stakeholder engagement is a key area for improvement.

- Governments and corporate incentives continue to be a key driver in promoting climate-friendly cars.

Residential buildings

- The complexity of efficiency rating systems seems to be a source of confusion to consumers. The priority should be given to the simplification of these systems and providing the right incentives.
- There is ample room for companies to improve overall commitment and disclosure levels.

Electricity

- This sector shows a high level of commitment by governments, companies and consumer groups.
- However, there is an urgent need to establish a clearer definition of "green electricity" which should be internationally consistent and comparable.

This paper recommends areas for further development:

Governments

- The provision of a clear framework to support consumer action on climate change by establishing targets, incentives and transparent regulations and standards.
- Internationally consistent and comparable rating/labelling standards should be considered.

Companies

- Direct engagement with consumers (and other external stakeholders) should be improved in order to achieve greater credibility.
- Public reporting on climate change related information including product emissions data needs to be strengthened.

Consumer groups and other third party organisations

- Providing unbiased information for consumer decision-making and influencing companies by campaigning and engaging with them are essential.
- Providing independent research, review and verification would add credibility to consumer information.

I. Consumers and Climate Change

Main drivers in consumer-facing sectors

The role of consumer involvement in tackling climate change can vary significantly from voluntary offsets to proactive engagement with companies. According to the report "Consumers, brands and climate change 2008 and 2007" published by the Climate Group, a survey conducted by the Group places private individuals second behind nongovernmental organisations (NGOs) as the major player in helping to reduce climate change impacts, followed by governments and business.[7] This survey also reveals that consumers' own involvement tends to be limited to obvious and easy commitments without additional cost, for example through actions such as turning lights off and washing clothes at lower temperatures. Cost-saving seems in fact to be the main incentive for consumers to buy climate-friendly products such as electricity from renewable sources, hybrid cars or energy efficient homes.

Based on available studies, EIRIS has identified the following five drivers in consumer-facing sectors that could improve the interface between companies and consumers: (1) regulation and standards; (2) communication and engagement; (3) labelling schemes; (4) independent assurance and verification and (5) product innovation and marketing strategies. Detailed information specifically for each of the four sectors will be examined in the following sections.

1) Regulation and standards

In order to encourage companies' commitments to provide consumers with climate-friendly products or services, government-led public policy, regulation, frameworks, support (such as subsidies) and government accreditation programmes under international, national and regional climate change targets are necessary.

Government subsidies such as tax reductions and products including discounted insurance can create and/or increase financial incentives for consumers to choose climate-friendly products where such incentives may not exist or existing incentives are insufficient for consumers.

Additionally, voluntary or mandatory reporting requirements, standards and frameworks can promote companies' public disclosure on climate change related information including both product level and operational level.

2) Communication and engagement

The provision of appropriate and comparable information to consumers is important to promote transparency and choice. In addition, engagement activities with external stakeholders, including consumers and third party organisations, are essential for companies to gauge the external expectations in society. There are broadly two types of initiatives: company-led and consumer-led initiatives. Tables 2.1 and 2.2 below provide some illustrative examples.

Table 2.1. **Company initiatives***

Commitments	Examples
Consumer education and awareness raising	● Carbon calculators on websites ● Providing tips for saving energy through product use
Transparency in public reporting	● Reporting on websites or CSR/environmental reports ● Ensuring that consumers have been fully informed of the climate change impacts associated with companies' products and services
Direct engagement and interaction with consumers	● Conducting regular surveys ● Directly providing information on climate change impact ● Interactive communications ● Providing bespoke advice
Voluntary offsetting	● Products with offsetting *e.g.* an airline's offsetting scheme donating passengers' money to a project which has positive impacts on the environment, or a bank's climate care scheme inviting individuals to personally offset the carbon emissions of a journey or energy use

* Tables presented in this study were compiled by EIRIS based on publicly available information. Further references are included at the back of this paper.

In addition, there are government-led initiatives which include labelling schemes, certification (including assurance) and providing support and frameworks in order to promote consumer involvement to tackle climate change issues.

Table 2.2. **Consumer-led initiatives**

Initiatives	Details	Examples*
Empowering consumers	● Conducting surveys and research ● Policy recommendations ● Consumer protection ● Campaigns	● Consumer International (UK) ● The Ethical Consumer Research Association Ltd (UK) ● Which? (UK) ● Consumer Focus (UK) ● VZBV (Germany), the federation of German consumer organisations ● Consumer Watchdog (US) ● Consumer Federation of America ● CompenCO2 (Belgium)
Consumer education	● Through magazines and websites to provide information on ethical shopping	● New Consumer (UK)
Provision of comparison tools	● Ratings ● Calculations	● Which? (UK) ● Green Consumer Guide (UK) ● Climate Counts (US)
Increasing competitiveness in markets	● Awarding a prize for best practice products and services	● Which? (UK)
Innovation	● Feasibility experiments	● BBC2 Ethical Man (UK)

* The lists of examples are not exhaustive, but representative.

3) Labelling schemes

In order for consumers to make purchasing decisions, comparable information with third party approval or certification gives a clearer indication to consumers.

Current labelling schemes with regard to climate change impacts include labels which indicate the actual amount of GHG (greenhouse gas) emissions by the use of products and life cycle emissions of products, or shows that a product meets climate-friendly criteria. In addition, a variety of energy efficiency ratings have been commonly seen for white goods, buildings and cars.

In Europe, GreenLabelsPurchase is a pilot initiative which aims at increasing greener procurement through the promotion of energy efficient products and awareness-raising. The initiative is supported by the European Commission with 12 institutions[8] in nine European countries. The institutions have established different labelling systems. Through this initiative, these institutions work together to ensure future development to promote consistency and transparency in labels.

Table 2.3 provides examples of energy efficiency labels for general consumer goods and services. Sector-specific labels are explained in the relevant sector section.

Table 2.3. **Examples of energy efficiency labels**

Label	Country	Application	Description
Swan label	Norway, Sweden, Finland, Iceland, Denmark.	Over 50 different products (including cars, toiletries, home appliances).	Introduced by the Nordic Council of Ministers in 1989.
GEEA label	Denmark, the Netherlands, Sweden, Switzerland.	Energy efficient appliances (home electronics and office equipment).	GEEA (The Group for Energy Efficient Appliances) label indicates energy consumption level, in association with the European Energy Network (EnR).
The Blue Angel (Der Blaue Engel)	Germany	Environmentally friendly consumer goods and services.	Administered by the Federal Environmental Agency.

4) Independent assurance and verification

In order to increase the transparency and the credibility of information provided by companies, independent verification by credible third party organisations is important for consumers to be confident in their purchasing decisions. A UK consumer organisation, Ethical Consumer, indicates that an accreditation scheme would guarantee that consumers get what they expect. It seems that certification for renewable energy and approval of energy efficiency could give consumers objective ways of measuring their contribution to preventing climate change through their purchasing decisions. Similarly, Consumer International, the global federation of consumer groups, states that consumers want more independent assurance of product information.

Furthermore, a report published in April 2009 ("What assures consumers in an economic downturn?") by AccountAbility, an international institution for sustainability reporting, suggests that there seems to be a significant decrease in consumers' trust in corporate businesses in the current financial climate. Therefore, consumers tend to trust independent methods of assurance more than companies' own promotional claims.

5) Product innovation and marketing strategies

There is growing evidence that consumers take into account the climate change impacts caused by the products they purchase. However, businesses are expected to continue to develop innovative climate-friendly products with the additional features of cost-saving or efficiency to attract consumers who may not be sold on product climate friendliness alone.

Marketing strategy can play a significant role, for instance, by selecting a limited range of products which are "approved" by a company to be energy efficient.

Company response

The following four sectors have been selected for this study: supermarkets, automobile, residential buildings and electricity. These four sectors are considered as having direct contact with, and access to consumers in the household environment.

Within these four sectors, there is a great degree of diversity in product types, the availability of energy-efficient technology, types of consumer interactions, regulatory drivers, the nature and frequency of interaction with consumers, the cost of products, and governments' intervention. Additionally, significant differences can be seen across different regions. However, this paper focuses on an overview of diverse company-consumer interactions.

This paper analyses those companies listed in the FTSE All World Developed Index.[9] This results in a sample of 27 supermarket companies, 31 automobile manufacturers, 24 residential building and 68 electricity companies. This paper uses EIRIS climate change sector classifications[10] which capture the business activity of each company.[11]

EIRIS climate change research assesses companies' responses to the challenge of climate change by employing 24 assessment indicators under four different sections namely: policy and governance (*e.g.* corporate-wide climate change policy, or is board remuneration linked to climate change performance); management and strategy (*e.g.* long or short-term targets); disclosure (*e.g.* the quality of carbon data, or quantified disclosure risks or opportunities) and performance and innovation (*e.g.* year-on-year reduction in GHG emissions, or transformational initiatives such as large scale investment in carbon capture and storage).[12] The grades range from no evidence to limited, intermediate, good and advanced. The good assessment represents companies adequately addressing their climate change impacts. Electricity companies have been classified as having a very high climate change impact while the three others have been identified as high impact sectors. In addition, business sectors such as automobile manufacturers and residential buildings have been identified as having additional impacts associated with their products; therefore, they are expected to meet additional criteria.

Overall response to climate change challenge

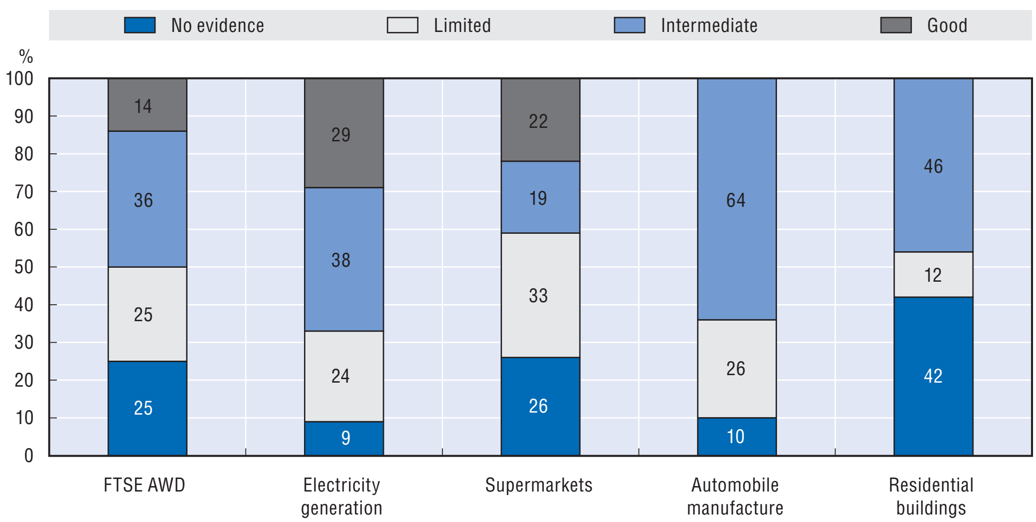
Figure 2.1 below indicates the overall response to climate change challenges by companies in all four sectors and the global average.[13]

The global benchmark is shown in the column on the left, indicating that three-quarters of companies have demonstrated some commitments to tackling climate change. The largest proportion of companies are assessed as intermediate (36%) followed by limited (25%) and no evidence (25%) and good (14%).[14]

Key findings – sector

- Overall, companies in the electricity sector are the leaders among the four sectors.
- Over two-thirds (67%) of the electricity sector is assessed as intermediate or good; for supermarkets 41% achieve intermediate or good and for automobiles and residential buildings there are no companies assessed as good but 64% and 46% assessed as intermediate respectively.
- 26% of supermarkets and 42% of residential buildings companies have not demonstrated any commitment to tackling climate change. This proportion is significantly less for electricity generation and automobile manufacture (9% and 10% respectively).
- No automobile and residential buildings companies scored *good* due to the lack of disclosure on product/service related emissions; these two sectors have been identified as having additional impacts associated with their products. In order for companies in these product related sectors to meet the indicator, estimated amount of GHG/ CO_2 emissions by the use of products needs to be disclosed publicly.

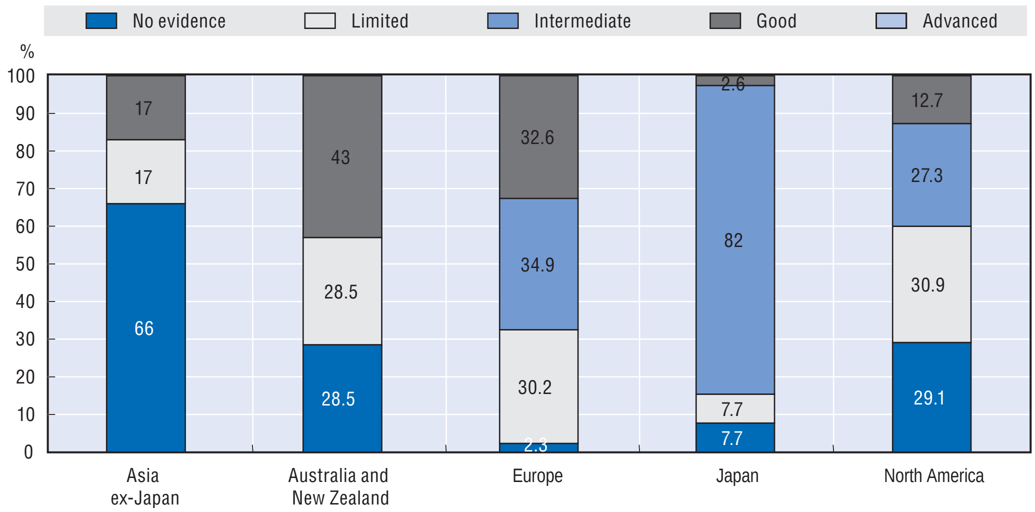
Figure 2.1. **Overall grade for consumer-facing sectors and the global benchmark**



Source: EIRIS.

Figure 2.2 below illustrates the regional comparison of the overall commitments by companies in all four sectors.

Figure 2.2. **Regional comparison (Overall grade)**



Source: EIRIS.

Key findings – regional

- European companies have shown approximately equal distribution between good, intermediate and limited grades, and 97.7% of them have committed to reducing their climate change impact.
- The majority of Asia ex-Japan companies (66%) and almost one-third of both Australia and New Zealand companies (28.5%) and North American companies (29.1%) have, however, no commitment.

Disclosure levels

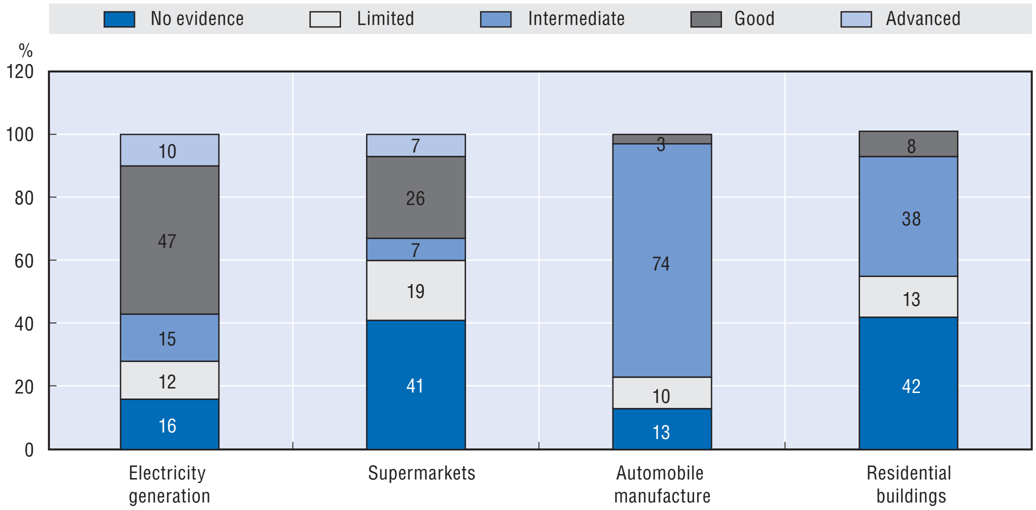
Figure 2.3 below illustrates how companies publicly disclose quantitative data regarding climate change. EIRIS climate change research focuses on eight indicators including actual emissions, trend data, scope of data, verification and quantification of risks.

Key findings – disclosure

- EIRIS research reveals that the electricity sector is also a leader among these four sectors.
- In the supermarket sector, a large proportion of companies (41%) have not publicly disclosed quantitative information on climate change risks including emissions data.
- Similarly, 42% of companies in the residential building sector have not started public disclosure.
- In contract, 87% of automobile companies have committed to public disclosure of quantitative climate risks.

The disclosure section of EIRIS climate change research has an element of independent verification which assesses whether or not the data disclosed by companies is independently verified by external organisations. All of the four sectors show a similar trend for independent verification of data with approximately one-third of all companies independently verifying their data by an external organisation (25.8% of automobile, 38.2% of electricity, 33.3% of residential building and 33.3% of supermarket companies).

Figure 2.3. **Disclosure grade for consumer-facing sectors**

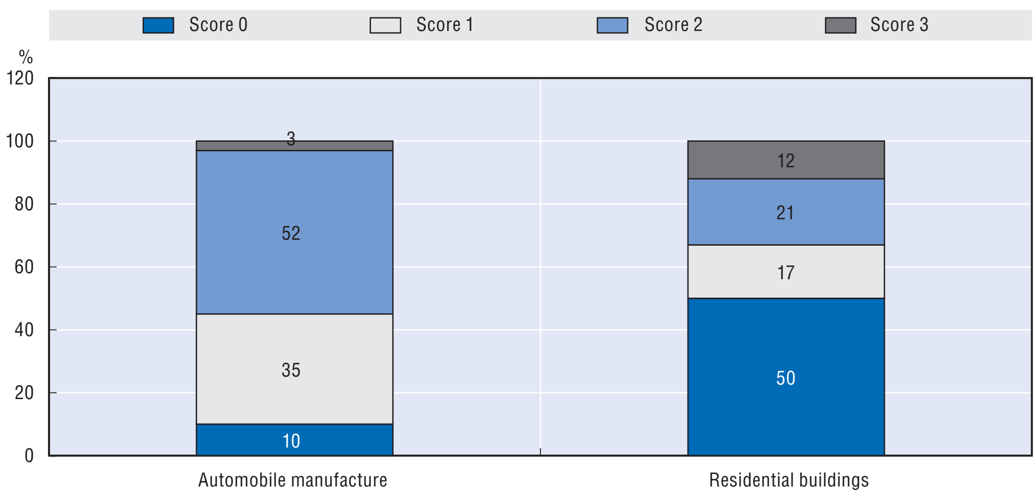


Source: EIRIS.

Product-related climate change risks

Among the four consumer-facing sectors, automobile manufacturers and residential building companies have been identified by EIRIS as having additional impacts associated with their own products *i.e.* cars and houses. EIRIS climate change research includes six additional product-related indicators specifically for these sectors. These include public policy on product-related commitment, targets and public disclosure of total climate change impacts through the use of their products. Figure 2.4 below indicates the levels of commitment to addressing product-related climate change risks by the automobile and residential buildings sectors. The highest score (3) means that a company meets the indicator of public policy on product impact, targets and public disclosure of emissions by all products sold worldwide. Score 2 indicates that a company meets two indicators out of three.

Figure 2.4. **Product-related commitment (Automobile and Residential buildings)**



Source: EIRIS.

Key findings – product

- The majority of automobile companies (90%) have shown evidence of a commitment to addressing product-related risks.
- Half of the companies in the residential building sector have not demonstrated any commitment to product-related climate change risks.
- This indicator was designed to provide external stakeholders with information on the total impact caused by the use of companies' products, however, it seems challenging for companies to grasp the total GHG/CO_2 emissions caused by the use of their own products at this stage.

II. Supermarkets

Background

The supermarket sector can be described as one of the most consumer-facing sectors as the business activities are inseparable from consumers' everyday lives. Supermarkets sell a wide range of products from food to other commodities with a variety of choices in terms of price range and product quality. The main climate change impact associated with products in this sector is through supply chains (agriculture and food production) and distribution methods.

The strongest drivers in consumer involvement in this sector are considered to be awareness raising and labelling systems. Currently, the main communication channel between companies and consumers in this sector appears to be information provided on product packages, including labelling schemes and "approval" by a third party organisation. Consumers' perception of brands' reputations and habitual trends also contributes to their purchasing decisions.

It appears that current consumer involvements in this sector are mainly seen in their purchase behaviours (*e.g.* boycotting or selecting certain products) rather than proactive initiatives to influence companies. Additionally, NGO claims and media reports could influence their purchasing decisions.

Drivers

1) Regulation and standards

One of the recent examples of standards in this sector is PAS (Publicly Available Specification) 2050. PAS 2050 is a newly introduced standard developed by the Carbon Trust, a UK government-funded independent company, Defra (Department for Environment, Food and Rural Affairs) and BSI British Standard to provide a consistent way of counting the greenhouse gas emissions embedded in goods and services throughout their entire lifecycle, from sourcing raw materials, through to manufacture, distribution, use and disposal. Since 2006, the Carbon Trust has worked with 75 product ranges across a wide range of companies including Pepsico, Boots, Innocent, Tesco, Cadbury, Coca Cola, Kimberly Clark, The Co-operative Group and Sainsbury's.

2) Communication and engagement

One of the most significant communication vehicles within this sector seems to be provided mainly by independent consumer groups. This includes research, campaigns, policy recommendations, consumer education and comparison websites. For instance, Which?, a UK based independent consumer group, tests products, provides reviews, publishes unbiased information and campaigns to get a fairer deal for consumers.

Australia's largest consumer group, CHOICE, provides tips to avoid companies' "greenwash" as the reliability of terms such as "sustainable", "natural" and "environmentally friendly" is unclear, based on the investigations they conduct. The Group indicates that there are many green claims that are not supported by evidence. It is also campaigning to ensure that green labels are reliable and transparent.

3) Labelling schemes

The most conventional label seen in supermarkets is the country of origin label which shows the country in which a product is manufactured or produced. There are no internationally consistent rules; therefore, the definition of production stage on labels differs significantly depending on the type of products and national laws. The labels are often presented with vague expressions such as "Made in EU/EC/Asia" without specifying a particular country. Furthermore, these labels are not designed to give a clear indication of the climate change impacts associated with products. Where these do exist there remains the challenge of a lack of internationally consistent rules in labelling whole product ranges. Recent labelling schemes are more specific to climate change impact through products' lifecycle. Table 2.4 summarises examples of labelling schemes for products in supermarkets.

Table 2.4. **Examples of labelling schemes for products in supermarkets**

Label	Organisation	Life-cycle Analysis	Quantification	Other description
Carbon Reduction Label	Carbon Trust (UK)	Yes	Yes	Since 2006, it provides labels on 75 different products.
Certified Carbon Free label	CarbonFund.org (US NPO)	Yes	Yes and No	Regular monitoring conducted by the organisation.
CarbonCounted label	CarbonCounted (Canadian NPO)	No	Yes	The web-based tool was designed to track, quantify and manage carbon content throughout the supply chain.

There has been a negative labelling such as "air-freighted" label. Although this does not provide the actual amount of GHG emissions through products' lifecycle, this attempts to enable consumers to choose products with lower climate change impact. According to the Soil Association, the UK's major certification organisation for organic food, although less than 1% of imported food is air freighted, it contributes to 11% of the carbon emissions from UK food distribution. However, it should be noted that although air-freighted products are more carbon intensive than locally sourced products, farmers and producers in developing countries greatly rely on the income from the exports. It could be said that these labels provide consumers with options for purchasing decisions based on their own priorities.

4) Independent assurance and verification

The three labels mentioned above specify the need of independent verification to achieve the licence and the label. However, only the UK label developed by the Carbon Trust has a specified standard to comply with. Although there is no international standard established, the US and UK labels share some degree of consistency as both provide companies with options to use one of PAS2050 standard, ISO14000 or Greenhouse Gas protocol for life-cycle analysis.

5) Product innovation and marketing strategy

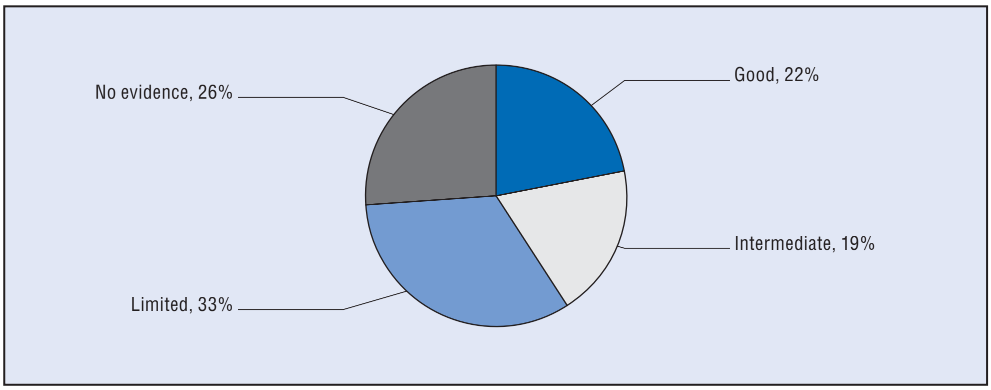
Despite the lack of internationally established ways of labelling climate change impacts on products in supermarkets, it appears that these labels have increasingly become an indicator for consumers to make a purchase decision. In addition to carbon labels, a "choice restriction" strategy seems to be an increasingly popular marketing strategy. For example, the Co-operative Group replaced conventional light bulbs with energy-efficient ones at 50 pilot stores in autumn 2007. Furthermore, the Group will offer only white goods with the highest energy-efficiency ratings.[15]

EIRIS research

Compared with other sectors, consumers have frequent contact with the supermarket industry. Consumers' pressure through consumer groups and increasing the competitiveness of differentiating products by employing labelling schemes are likely to improve the interface between companies and consumers.

Figure 2.5 below shows EIRIS research on the 27 companies in the supermarket industry listed in the FTSE All World Developed. This shows how companies are responding to the current expectations of external stakeholders. Almost a quarter of companies (22%) have been assessed as demonstrating a "good" commitment, 19%; intermediate, 33%; limited and 26% of them have not shown any commitment to the climate change challenge. Based on EIRIS research, it can be said that there seem to be gaps between leaders and laggards in this sector. In other words, some companies have been proactively involved in initiatives to promote transparency concerning the climate change impacts of their products, however, a substantial number of companies have not yet initiated climate change commitments.

Figure 2.5. **Overall grade (Supermarkets)**



Source: EIRIS.

Challenges and potential future development

One of the key drivers in the supermarket sector to improve the interface between consumers and companies could be labelling systems.

It appears that the carbon label has been increasingly regarded as one of the indicators consumers rely on in their purchasing decisions. Along with other labels available in supermarkets such as organic and fair-trade, carbon labels enable consumers to have a greater number of options when making purchasing decisions. This is also helpful for raising consumer awareness of the climate change impacts of the products they purchase.

Although different carbon labels share a certain degree of consistency, there remains a need for an internationally consistent labelling system in order to increase comparability across all products.

There still seems to be scope for consumers to be involved in proactive initiatives for influencing companies.

From companies' perspective, stakeholder engagements including regular surveys and collaborative projects with NGOs could highlight external expectations in society.

III. Automobile manufacturers

Background

According to the European Commission, carbon emissions from passenger cars account for approximately 12% of the European Union's total emissions. The factors involved in the decision-making process of consumer purchasing include financial capacity, design, practical function and fuel efficiency.

In addition to serving a practical function, cars are also considered as often costly status symbols for many people and for those on lower incomes a significant they take up a considerable proportion of their income. Fuel efficiency is not only a factor for climate change impact, but also a significant element for longer-term financial impact for individuals.

The most significant climate change impact in this sector is the high level of carbon emissions caused by the use of cars. Currently, consumers significantly rely on information on fuel efficiency provided by companies and industrial associations.

The frequent use of technical terminology employed in different types of efficiency labels and the lack of internationally consistent and comparable labelling schemes seems to result in the low level of consumer involvement in this sector. There is not much evidence of consumers conveying messages to car manufacturers or pressurising them. However, automobile companies, industrial associations and consumer groups provide a substantial number of comparison websites of fuel efficiency.

Drivers

1) Regulation and standards

Across the different regions, various ways of presenting fuel efficiency have been employed. These are translatable units, however they could cause consumer confusion.

In 1998, European car manufacturers agreed to a voluntary commitment with the European Commission to improve fuel efficiency by reducing average fleet CO_2 emissions to 140 g/km by 2008. They had achieved 163 g/km in 2007. In 2007, the Commission proposed the improvement of efficiency to 130 g/km, plus 10g/km from biofuels by 2012. In April 2009, the European Parliament and of the Council published Regulation (EC) No 443/2009 which specified a long-term target to achieve 95g/km for the year 2020.

In the US, the new political regime led by Barack Obama has set Corporate Average Fuel Economy (CAFE) rules for the 2011 passenger car standard at 30.2 miles per gallon and the light truck standard at 24.1 mpg. This is the first increase in fuel efficiency requirements for passenger cars in the US since 1985.

Table 2.5. **Examples of governmental incentives for consumers in the automobile sector**

Type	Country	Year	Description
Tax exemption	Germany	January 2009	Tax exemption for the first 120 g CO_2/km from 2010 onward, which is set to be lowered to 110 grams from 2013.
Subsidy	France	December 2008	Offering motorists who scrap vehicles that are more than 10 years old EUR 1 000 toward the cost of new cars that are fuel efficient and low polluting.
Subsidy	UK	April 2009	An initiative to help consumers and businesses make the transition to low carbon by providing help worth GBP 2,000 – 5,000 towards buying the first electric and plug-in hybrid cars, expected to be from 2011 onwards.

Similarly in Japan, the Ministry of Economy, Trade and Industry in partnership with the Ministry of Transport introduced the latest fuel efficiency regulation which requires automakers to improve fuel efficiency by an average of 23.5% by fiscal 2015.

In addition to these targets, governments have been attempting to encourage consumers to buy efficient cars by providing financial incentives such as reduced tax, discounted insurance and subsidies, due to the fact that energy efficient cars require advanced technology which potentially imposes financial burdens on consumers. The following table illustrates examples of governments providing financial incentives to consumers.

2) Communication and engagement

Consumer organisations including the Energy Saving Trust, a UK-based non-profit organisation, provide free impartial advice on saving money and fighting climate change to consumers, businesses and the community. This includes information on a new or used car's fuel efficiency as well as providing information on how to be an environmentally friendly driver. Likewise, comprehensive lists of cars' fuel efficiencies and annual fuel costs have been disclosed on the ACT ON CO2 website which is a UK cross-governmental initiative, currently involving the Department of Energy and Climate Change, the Department for Transport and the Department for Communities and Local Government. It aims to help people save money, energy and reduce their carbon dioxide emissions. Similarly, the Vehicle Certification Agency, a UK executive agency of the Department for Transport, discloses an extensive list of car fuel efficiency on its website.

In the US, the Department of Energy, Energy Efficiency and Renewable Energy and the Environmental Protection Agency provide consumers with information on tax exemption, financial incentives and fuel efficiency.

In terms of initiatives led by companies, the most common tool provided by companies is the comparison of fuel efficiency. Additionally, manufacturers including Toyota Motor, Mazda Motor, Volkswagen and Volvo provides consumers with tips for fuel consumption saving. Ford Motor's website provides similar tips as well as offset programmes which invest in emissions reduction projects such as the construction of a wind farm in India. General Motors' website also offers a fuel economy calculator.

However, there is not much evidence of companies proactively leading interactive initiatives with consumers. It can be said that the automobile sector is significantly driven by regulations and targets established at national or international levels.

3) Labelling schemes

Providing consumers with information on fuel efficiency and CO_2 emissions on labels is one of the three pillars of the strategy the European Union adopted in 1995 to reduce CO_2 emissions. This was aimed at helping consumers choose vehicles with low fuel consumption. The EU requires dealers of new passenger cars to provide potential buyers with useful information that must be displayed on the car's label, on posters and on other promotional material.

However, a UK based climate change campaigning organisation, We Are Futureproof, has indicated that only three in 10 people understand vital information about fuel efficiency and associated emissions currently shown on car adverts. According to the study, the public prefers a colour-coded scale, which is commonly used for energy efficiency labels on white goods, to understand and compare the fuel efficiency and car emissions.

In March 2009, 50by50, a global fuel economy initiative (GFEI) was launched by the United Nations Environment Programme (UNEP), International Energy Agency (IEA), International Transport Forum (ITF) and FIA Foundation. The initiative aims to reduce fuel consumption per kilometre by 50% by 2050 with intermediate goals in 2020 and 2030. One of the aims is to support awareness initiatives to provide consumers and decision makers with information on options. The GFEI report points out that today's labelling schemes differ significantly across all countries. It recommends that harmonisation of labelling systems is necessary in order to provide consistent signals to consumers.

4) Independent assurance and verification

There are a substantial number of websites which provide comparisons of fuel efficiencies of passengers' cars. Additionally, many companies covered in this study have a list of recent models' fuel efficiencies available on their websites.

Additionally, in many countries including Australia, European Union, Japan, New Zealand and the US, all new cars need to be sold with a label which indicates fuel efficiency and associated emissions. Each governmental agency has established an assessment procedure to oversee the credibility of efficiency figures.

There is not much evidence of the efficiency figures being internationally consistent and comparable as it seems that each country employees own testing criteria for city and highway driving.

5) Product innovation and marketing strategies

In addition to the recent technology developments in "climate-friendly" or lower emission cars including hybrids and electrics, the above mentioned financial incentives set by governments seem to play significant roles in attracting consumers. Moreover, there are discount services/products associated with the purchase of environmentally friendly cars. For example, the Climate Group's "Together" initiative aims to provide both ideas for behavioural changes and practical solutions for consumers to help them reduce their household emissions by one tonne over three years. As part of a commitment to Together initiatives, MORE TH>N, a UK insurance company, has launched Green Wheels which allows consumers to review and monitor reports on their driving style and compare it with other drivers. The Company also offers a 15% discount on car insurance if consumers drive an environmentally friendly car.[16]

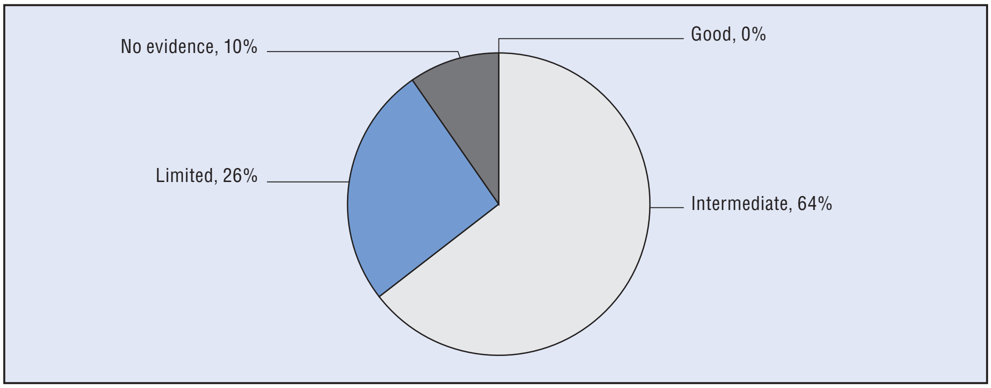
In May 2008, General Motors announced that it had been promoting its trucks more than it should have and was shifting its marketing towards fuel economy and hybrid models. Similarly, the Toyota Prius attracted consumers not only because of its fuel efficiency but also its status as an environmentally friendly vehicle popularised by many celebrities. However, a recent study conducted by AccountAbility suggests that low consumer confidence in business has led to a reduced consumer tolerance for corporate reporting, overstated claims, celebrity endorsements and "greenwash".

EIRIS research

A low level of interaction between companies and consumers has been found in this sector. Figure 2.6 below shows how automobile companies are committed to reducing climate change risks.

- 90% of automobile companies have demonstrated some degree of commitment to global climate change.
- The highest proportion of companies are assessed as intermediate (64%) and no company has been graded as demonstrating a good commitment.

Figure 2.6. **Overall grade (Automobile)**



Source: EIRIS.

Challenges and potential future development

Key findings in this sector include:

- This sector seems to be significantly driven by governmental regulations and specific product targets.
- Governmental interventions, including subsidies, reduced tax and discounted insurance play significant roles in attracting consumers. Furthermore, infrastructural development will be expected to support further development of environmentally-friendly cars including for cars running on electricity or bio-fuels.
- There is not much evidence of companies proactively interacting with consumers apart from the provision of efficiency comparison websites and tips for "eco driving".
- However, EIRIS research shows that 90% of companies have committed to tackling climate change.

Incentivising consumers by both governments and companies will continue to be key driver in promoting climate-friendly cars. In addition to fuel efficiency, there are other decision-making factors for consumers, therefore stakeholder engagement between car makers and consumers will play an important role.

IV. Residential buildings

Background

According to the IEA report, "Worldwide Trends in Energy Use and Efficiency" published in 2008, household sector is responsible for 21% of global carbon dioxide emissions.[17]

Buying a house is a major purchase which involves long-term a long-term financial commitment for individuals. Factors such as location, size and price are the most significant drivers in the purchasing of residential homes. As advanced technology and equipment for energy efficient homes can result in high costs, incentivising consumers by providing subsidies and different price ranges is essential. In addition, the energy efficiency of a house potentially contributes to longer term cost saving. It should be noted that a number of energy saving measures can be retro-fitted to existing buildings and are not only restricted to new build.

According to the World Business Council for Sustainable Development (WBCSD), the sector needs to strengthen building codes and energy labelling to increase transparency for sustainable housing.

Although many countries have their own government accreditation programmes, evidence of proactive engagement between companies and consumers has not been seen. It seems that the lack of comparable and consistent rating standards results in consumers' confusion and losing credibility of efficiency.

Drivers

1) Regulation and standards

In February 2008, the UK government confirmed that a mandatory rating against the Code for Sustainable Homes would be implemented for new homes from May 2008. The code sets minimum standards for energy and water use at each level between 1 and 6. The UK government has set a target of making all new homes zero carbon by 2016.

The European Union's Energy Performance of Buildings Directive was adopted in 2002, and includes minimum requirements for the energy performance of new and large existing buildings, regular inspection of boilers and air conditioning systems and energy performance certification for buildings.

The following table summarises examples of governmental initiatives which could potentially attract consumers to adopt climate-friendly housing.

2) Communication and engagement

In this sector, there are a great number of initiatives led by governmental agencies and industrial associations which aim to increase the energy efficiency of homes. However, there is not much evidence of companies taking a lead, although some companies' websites including Asahi Kasei, Daiwa House Industry, PanaHome, Sekisui Chemical, Sekisui House and others provide information on the installation of insulation systems and energy efficient homes.[18]

Table 2.6. **Examples of governmental initiatives in the residential building sector**

Type	Country	Description
Subsidy and tax incentive	Japan	The Government offers subsidies for the installation of photovoltaic systems for residential buildings. It also offers subsidies for residential fuel cell cogeneration systems and tax incentives.
Eco Loan	France	The Government announced that it would launch in April 2009 an interest-free eco loan of up to EUR 30,000 to increase the use of thermal renewable energy sources and of energy conservation. This only applies to sustainable housing renovations.
Investment in sustainable housing	US	The Government has announced that it will invest about USD 8 bn in energy efficiency efforts as part of the President's American Recovery and Reinvestment Act. The Department of Energy indicates that the fund will support adding more insulation, sealing leaks and modernising heating and air conditioning equipment, which are expected to lead to energy and cost savings.

The Association for Environmentally Conscious Building (AECB), which is a UK organisation aimed at facilitating environmentally responsible practice within buildings, established an initiative, the CarbonLite Programme. This provides tools and knowledge to create low-energy buildings in line with existing and expected future legislation covering both domestic and non-domestic buildings. The Programme provides a practical step-by-step guide aimed at all those practitioners involved in the design, construction and use of low-energy, low-CO_2 emissions buildings.

However, a recent survey of home buyers by Sponge, a UK-based independent network of built environment professionals that campaigns for greater environmental sustainability, found that while the public is willing to adopt a sustainable lifestyle, there is a worrying lack of knowledge about what that means in terms of housing. However, 92% of respondents said they would like to see sustainability features as options on new homes and a further 62% stated that these features should be compulsory. However, approximately 70% of the respondents said they know "little or nothing" about what sustainability meant in this context. It also reveals that while half of the respondents were prepared to pay a small premium for sustainable housing, nine out of ten thought the Government should provide more incentives.

As the survey results suggest, it seems that there are not sufficient communication channels available to give consumers detailed product information on housing, and the incentives to take energy efficiency into account are currently considered weak by consumers.

3) Labelling schemes

In England and Wales, the SAP (Standard Assessment Procedure) is now mandatory for all new homes. The energy rating indicates a building's energy efficiency on a scale of 1 to 100 where 1 is the worst and 100 is a zero energy usage. The rating is based on the energy costs associated with space heating, water heating, ventilation and lighting, less cost savings from energy generation technologies. Other leading green building rating systems include the UK's mandatory Building Research Establishment's Environmental Assessment Method (BREEAM), Leadership in Energy and Environmental Design (LEED) and Green Star in the US and Australia. According to ClimateChangeCorp, an independent news website, the LEED rating is the most widely available in the US, China, India and parts of the Middle East. BREEAM is being applied in Europe and the Middle East. Green Star is common in South Africa, Australia and New Zealand.

Similarly, in the US, the Energy Star programme started in 1992 as a US government programme and subsequently became an international energy-saving programme in

Australia, Canada, Japan, New Zealand and the EU. This was initially started as a labelling scheme for home appliances such as computers and white goods, however, the energy efficiency of residential buildings has been also included in this programme. The Energy Star logo is provided if a product meets stringent efficiency criteria set by the US Environmental Protection Agency and the Department of Energy.

In Australia, there is a similar national rating programme, NatHERS, Nationwide House Energy Rating Scheme. NatHERS is an initiative of the Ministerial Council on Energy and is administered by the Energy Efficiency Working Group and managed by the Department of the Environment, Water, Heritage and the Arts.

In France, the Association HQE (High Environmental Quality) has established building certifications since 2005 which include a certification for houses. Energy efficiency is one of the criteria for the certification which ensures the promotion of environmentally friendly houses. The association also provides practical steps for builders in order to achieve sustainable housing.

4) Independent assurance and verification

As mentioned above, there is currently no internationally applicable metric to rate the efficiency of residential buildings. ClimateChangeCorp also points out that there is no consistent rating system available at the moment, although BREEAM, LEED and Green Star have agreed to develop common metrics for measuring CO_2 emissions from buildings which clearly makes it easier to monitor energy performance.

5) Product innovation and marketing strategies

In October 2008, Sumitomo Trust and Banking and Sekisui House released a joint announcement that the Bank was launching a mortgage policy with a lower interest rate that only applies to those who purchase Sekisui's houses which generate less CO_2 emissions by installing photovoltaic power systems, highly efficient water heaters and heat insulation.

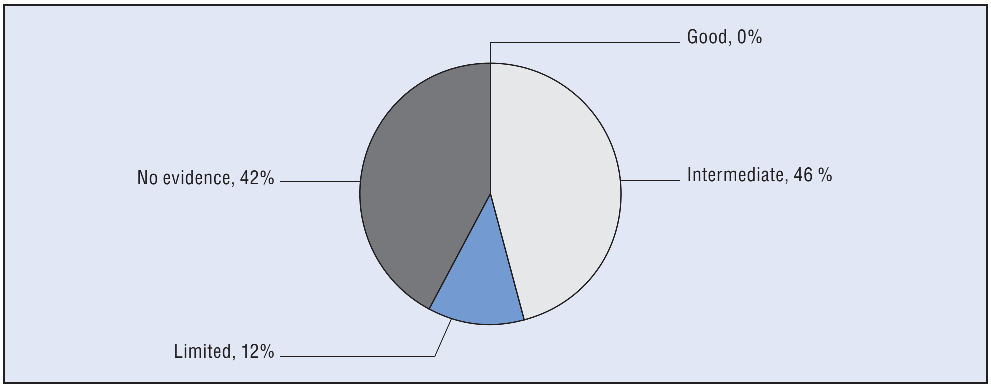
One of the examples of sustainable housing can be seen at Beddington Zero Energy Development (BedZED) which is an environmentally friendly housing development in London, in association with BioRegional, a UK-based independent environmental organisation, London's housing association Peabody Trust and Arup, a global consulting firm. BedZED started in 2001 and currently comprises 100 homes, community facilities and workspace for 100 people. The features include the use of energy only from renewable sources including 777 square meters of solar panels; south-facing buildings to take advantage of solar gain with triple glazed and thermal insulation; and increased water efficiency by using recycled water from rain and eco-friendly transport. The project website indicates that space-heating requirements were 88% less than the national average; hot water consumption has been reduced by 57%; electricity use has been reduced by 25%; mains water consumption has been reduced by 50% and residents' car mileage is 65% less than the national average.

EIRIS research

Figure 2.7 below illustrates the level of commitments by the 24 companies in the residential building sector listed in the FTSE All World Developed Index.

- A large proportion of companies (42%) have not shown any evidence of commitment, whereas the largest proportion of companies is assessed as intermediate (46%).
- No company has achieved a good grade, which requires companies to publicly disclose estimated total amount of emissions generated through their products' lifecycle.
- Based on EIRIS research, it can be said that this sector still has room to improve commitments to climate change risks both through their operational and product impacts.

Figure 2.7. **Overall grade (Residential Buildings)**



Source: EIRIS.

Challenges and potential future development

Key findings in this sector include:

- Similar to the automobile sector, governmental intervention including subsidies seems to play an important role.
- Despite consumer interest, the complexity of terms and efficiency rating systems confuses consumers.
- Different types of accreditation schemes have agreed that they aim to develop a consistent system.
- There is not much evidence of companies proactively engaging with consumers although some companies provide information on the installation of insulation systems and energy efficiency of homes.
- The home insurance and mortgage sector also offers discount services for efficient homes.

Simplifying and harmonising efficiency rating systems and the provision of continuous incentives to consumers would provide consumers with clearer paths to sustainable housing.

As EIRIS research indicates, there is room for companies to improve overall commitment and disclosure levels toward minimising climate change impacts through their products.

V. Electricity Sector

Background

According to the IEA, electricity production is estimated to contribute almost a quarter of global GHG emissions. In today's society, electricity is considered an indispensable commodity in the household environment. The significance of the electricity sector's climate change impact shows that consumers' purchasing decisions can potentially contribute towards the move to a low carbon society. In doing so, consumer involvement in reducing GHG emissions appears to be a key area for both expanding the use of renewable energy and reducing energy use. This section provides in-depth analysis on the electricity sector.

According to Greenpeace, electricity consumption in households differs significantly throughout the world. An average household in the US consumes more than twice as much as an EU household and a Japanese one. It also indicates that a US household uses three times more electricity for lighting and twice as much for refrigerators than in the EU.

In Europe, consumers have a choice of electricity suppliers following the liberalisation of the electricity market, which has enabled consumers to have greater choice in selecting suppliers. It has also resulted in an increase in competitiveness in the market in terms of different types of tariffs, product and service quality. On the other hand, the electricity market is still significantly controlled by certain suppliers in some countries such as Japan.[19]

Factors that form part of consumer decision-making for electricity suppliers are price range, service and delivery quality and contributions to mitigating climate change impacts, as the quality of electricity does not vary.

Third party organisations including consumer groups and NGOs have comparison websites for price ranges and tariffs. Additionally, company communication and marketing through TV adverts, leaflets and websites also provide information.

Compared to the other three sectors, the electricity sector demonstrates the highest level of proactive commitment by both companies and other stakeholders. Companies provide consumers with a wide range of interactive tools which include energy audits and providing bespoke energy saving tips. However, it should be noted that in a number of companies this is mandated by the government as part of national strategies to reduce GHG emissions.

Drivers

1) Regulation and standards

In order to tackle climate change challenges and to secure the future energy supply, governments are attempting to increase the proportion of energy from renewable sources such as wind, solar, biomass, hydro and geothermal power. Table 2.7 highlights examples of governments' targets in promoting the use of renewable energy.

As an example, the Renewables Obligation (RO) was introduced in 2002 in the UK, requiring licensed electricity suppliers to source a specific percentage of the electricity they supply from renewable sources. Suppliers receive RO certificates which can be traded between suppliers to fill the gap between the required percentage of renewable energy and actual performance. For those which do not meet the requirement, they pay into a "buyout" fund administrated by the Office of Gas and Electricity Markets (Ofgem), the gas and electricity regulator.

In addition to the national target, Japan's Top Runner Program law aims to promote energy efficiency in designated products which are used in large quantities and consume a

Table 2.7. **Examples of governments' targets**

Region	Target	Description
EU	20% of electricity from renewables by 2020	EU Renewables Directive requires member states of the EU to adopt national targets based on the target
UK	10% of electricity from renewables by 2010	The EU Directive also requires the member states to guarantee the source of renewable energy by issuing Renewable Electricity Guarantee of Origin (REGOs) certificates.
US	Varies state by state	Renewable Portfolio Standards (RPS) require electric utilities to increase the proportion of renewable energy used to produce electricity. For example, in California the law is 20% renewable by 2010, whereas New York has a 24% requirement by 2013.
Japan	Over 60% of domestic electricity from renewables by 2050	The Year 2050 Renewable Energy Vision aims at generating over 60% of electricity from renewables by 2050.

significant amount of energy, such as appliances and heaters. The law requires manufacturers to meet energy consumption efficiency targets which are based on the value of the most energy-efficient products in the same market. This potentially enables consumers to reduce the use of electricity.

2) Communication and engagement

In general, there seems to be two ways to reduce climate change impacts through the use of electricity: the reduction of energy use and the use of renewable energy. The former requires changes in consumer behaviour such as using efficient light bulbs, reducing "standby" losses, upgrading energy-efficient appliances and installing heat insulation. The latter entails either generating electricity at home through solar panels or small scale hydro-power or choosing an electricity supplier which produces energy from renewable sources.

In terms of changing consumers' behaviour, NGOs and consumer organisations including Greenpeace and the Green Consumer Guide, run by a UK-based independent media company Greenmedia Publishing Ltd, provide consumers with information on how to save energy in the domestic environment. Additionally, these organisations provide comparison websites which clarify the definition of green tariffs and compare tariffs offered by different suppliers.

Electricite de France (EDF) has started several trials on a Smart Meter which records the energy usage of home appliances and lighting and sends that information to customers on their computer, mobile phone or TV. This is aimed at both providing accurate bills for customers and making customers more aware of the energy and cost savings they could make. The Company has set a target of providing all customers with Smart Meters by 2020. Other companies including American Electric Power (AEP), Fortum, Energias de Portugal (EDP) and Contact Energy have started similar services.

3) Labelling schemes

Table 2.8 summarises examples of labelling schemes and certification systems for electricity produced by renewable sources.

Table 2.8. **Examples of labelling/certification systems for renewable electricity**

Country	Label/Certificate	Description
Europe	Eugene[1] (the Eugene Green Energy Standard)	This is a European standard to which green electricity labelling schemes can be accredited to confirm that green electricity is generated from sustainable renewable sources. It is managed by the Eugene Network, an international NPO. Independent third party verification is required. Currently, accredited national energy labels include German OK Power, Finnish Norppa and others.
Germany	OK-Power	Established by the Oko-Institut, World Wild Fund for Nature (WWF) Germany and the Consumer Agency NRW. The label is controlled by independent accredited laboratories every year to maintain the high credibility of the label.
	Gruner Strom Label (Green Electricity Label)	It provides a gold or silver label based on its criteria. Annual control by an independent institution guarantees the compliance with the criteria and increases the credibility of the label.
	TUV mark	It is provided by TUV Management Services GmbH which guarantees that electricity is generated from renewable energy sources.
Finland	Norppa	The label is granted by the Finnish Association for Nature Conservation for energy produced from renewable sources, or energy services supporting energy efficiency.
Sweden	Three different labels available	The three types are: electricity labelled by the Good Environmental Choice Programmes of the Swedish Association for Nature Conservation, the Certified Environmental Product Declaration developed by the Swedish environmental management council and Product Specified Electricity.
US	Green-e	An independent certification and verification programme for renewable energy and greenhouse gas emission reduction. Established by a non-profit Centre for Resources (CRS), aiming at protecting consumers for the voluntary renewable energy market. The verification process audit requires providers of retail Green-e certified renewable energy products to complete an annual third-party verification audit of their renewable energy purchases and sales.

1. It announced that Eugene would cease to exist in its current form although the members and board would continue to work together to promote green energy in Europe. *www.eugenestandard.org/newsletter/36.htm*.

4) Independent assurance and verification

There is a wide range of green tariffs offered by electricity suppliers which will be explained in the next section.

Despite the recent increase in consumer willingness to reduce electricity use to tackle climate change and/or reduce costs, it seems that the transparency and reliability of these tariffs and certification schemes have not been sufficiently addressed. Consumer Focus, a UK-based consumer organisation, indicates that there are no independent accreditation or audit schemes for green energy tariffs to ensure the "greenness" of products and to give consumer confidence.

Although there are many comparison websites which specialise in green electricity, the lack of transparency and assurance could potentially lead to a decrease of consumer confidence in renewable energy.

5) Product innovation and marketing strategies

Consumer Focus points out that the definition of "green electricity" varies significantly from simply supplying renewable electricity to building wind turbines or investing in projects to offset household carbon emissions. The organisation alleges that the "green tariffs" offered by electricity suppliers may actually come from non-renewable sources and therefore consumers must be wary of what companies mean by the term "green."

According to Consumer Focus and Ethical Consumer, the current green tariffs offered by British electricity suppliers have three different types of "green electricity" as indicated in Table 2.9.

EIRIS research

Investors are playing an increasingly important role in driving forward corporate responses to climate change. Investors representing over USD 15 trillion assets have signed

Table 2.9. **Definitions of "green electricity" in the UK**

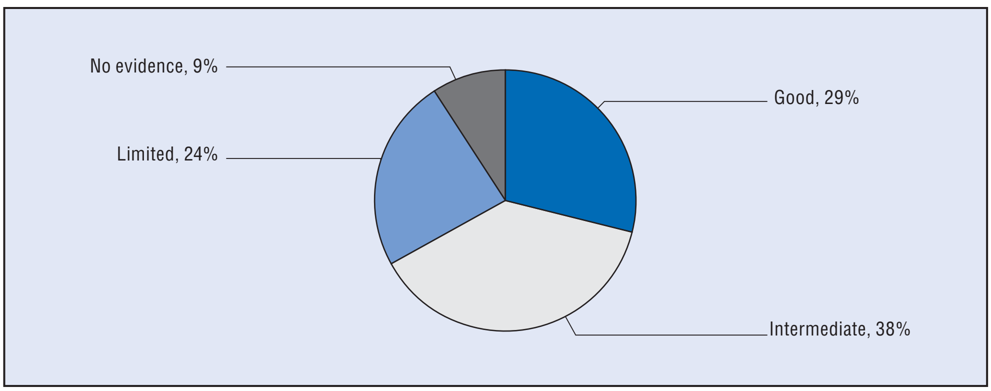
Tariff Type	Actual source of electricity	Details
Green source tariff	A percentage of electricity comes from renewable sources	A supplier guarantees to buy a percentage of electricity (from 10 to 100%) from a renewable generator which uses wind, hydro, biomass, tidal and wave power, geothermal and/or solar. Under the EU Renewable Directive, these tariffs need to be certified by Renewable Electricity Guarantee of Origin (REGOs). Consumers may pay more for this than for a standard tariff.
Fund based tariff	In some cases, energy provided to consumers may be from non-renewable sources.	This is designed to encourage consumers to support the construction of new facilities for renewable generation by deducting contributions from a customer's bill. As well as providing capital to build the renewable supply capacity of the future, fund based tariffs also provide grants for community or other renewable projects such as energy efficiency and awareness raising.
Carbon offset tariff	In some cases, energy provided to consumers may be from non-renewable sources.	This intends to help consumers reduce or offset climate change impacts in the household environment. In general, suppliers make a donation to a carbon reduction project through the collection deducted from a customer's bill.

the United Nations Principles for Responsible Investment (PRI) which promotes the increased disclosure and incorporation of ESG (environmental, social and governance) factors into investment decisions and ownership practices. Investors may engage collectively, for example, the Institutional Investor Group on Climate Change (IIGCC), a European forum for collaboration between pension funds and other institutional investors on climate change related issues, has established a disclosure framework for the electricity sector. Investors may also engage with individual companies to improve corporate performance on climate change.

Figure 2.8 below shows EIRIS research on overall response to climate change in this sector, in response to major drivers such as governmental targets, regulations and investors' pressures.

- Although the largest proportion of the companies has been assessed as demonstrating intermediate commitment, almost one-third of companies have achieved a good assessment.
- In addition, only 9% have yet to make initial climate change commitments. This may be attributed to high climate change risks associated with the sector's operations which significantly rely on fossil fuels.
- However, it can be said that the sector still has not demonstrated sufficient performance in the reduction of actual operational emissions.

Figure 2.8. **verall response (Electricity)**



Source: EIRIS.

Challenges and potential future development

Key findings in this sector include:

- Many companies and consumer organisations provide a substantial amount of climate change related information including tips for reducing energy use at home, efficiency comparisons and green products.
- However, the definitions of "green" products possibly confuse consumers due to the lack of transparency of information provided and the lack of internationally consistent accreditation schemes across the sector.

Increasing transparency in information provided by companies, government initiatives and consumer pressure to lower the price of renewable energy are amongst the key factors for promoting the use of renewable energy. As the definitions of "green" electricity vary, there is a need to establish an internationally applicable definition of "green electricity" alongside accompanying monitoring systems undertaken by an accredited independent organisation.

Box 2.3. **Commitment by electricity companies**

This section analyses how companies that scored the highest assessment for their overall response to climate change are interfacing with consumers on the issue. The nine elements used to assess the companies aim to determine if and how companies are influencing consumer actions to reduce climate change impacts. The elements do not cover all possible initiatives electricity companies can or are undertaking to engage consumers on the issue of climate change but are representative of the broader categories of education, resources and incentives.

The assessments were based on publicly available information on the company websites applicable to residential consumers. Of the electricity companies under evaluation in this paper, 20 scored a grading of "good" for their overall response to climate change and 19 were assessed (as one did not supply electricity to residential customers).

Table 2.10 illustrates that providing energy saving tips to consumers is the most common tool companies offer, followed by emissions/efficiency calculators and smart meters.

The first three elements – energy saving tips, emissions/efficiency calculators and interactive energy efficiency tools gauge the level of general information companies are making available to consumers on actions they can take to reduce their climate change impact. The presence of home energy audits, eco-certified electricity and smart meters determine whether or not the companies are providing specific information to help consumers make climate friendly decisions. Demand side incentives, renewable energy incentives and carbon offset programs identify the companies that are providing consumers with reasons to choose climate friendly options.

Table 2.10. **Consumer interfacing element**

Consumer Interfacing Element	% of companies
Energy saving tips	100
Emissions/Efficiency calculator	63
Interactive energy efficiency tools	53
Home energy audits	32
Eco certified electricity	42
Smart meters	63
Demand side incentives	32
Renewable energy incentives	42
Carbon offset programmes	21

Box 2.3. **Commitment by electricity companies** *(cont.)*

Table 2.11. **Commitments by electricity companies**

Company	Energy saving tips	Emissions/ efficiency calculator	Interactive energy efficiency tools	Home energy audits	Eco certified electricty	Smart meters	Demand side incentives	Renewable energy incentives	Carbon offset programs
AGL Energy (Australia)	X	X			X				
American Electric Power (US)	X	X				X			
CLP Holdings (Hong Kong)	X	X	X		X			X	
Consolidated Edison Holding (US)	X				X		X		
Contact Energy (New Zealand)	X	X	X			X		X	X
Duke Energy (US)	X	X		X		X	X		X
Electricite de France (France)	X	X	X	X		X	X		X
Energias de Portugal (Portugal)	X	X	X			X			
Entergy (US)	X	X	X	X					
EVN (Austria)	X			X					
Fortum (Finland)	X				X	X		X	
FPL Group (US)	X	X	X			X	X	X	
Kansai Electric Power (Japan)	X	X			X				
Oesterreichische Elektrizitaetswirtschafts (Austria)	X								
Origin Energy (Australia)	X	X	X	X	X	X		X	X
Pinnacle West Capital (US)	X		X		X	X		X	
RWE (Germany)	X					X		X	
Scottish and Southern Energy (UK)	X		X			X	X		
Xcel Energy (US)	X	X	X	X	X	X	X	X	
Total	**19**	**12**	**10**	**6**	**8**	**12**	**6**	**8**	**4**

VI. Opportunities for further development and progress

Overall, there still seems to be room to improve the consumer-company interface. Each consumer-facing sector has a variety of market characteristics in terms of product range, the affordability of technology, extent of consumer contact, the availability of energy-efficient products and governmental targets and regulations which contribute to differing levels of engagement. Similarly, there are variations in climate change commitments across different countries and regions.

Raising consumer awareness remains a key challenge across all sectors focused on in this paper. Companies, governments, consumer groups, NGOs and consumers all have a role to play in this.

The following points identify potential areas of focus for each stakeholder group:

Government

- Establishing ambitious yet feasible targets and taking the lead in initiatives.
- Incentivising consumers by providing subsidies and tax reductions.
- Developing a simple and comparable rating standard for product efficiency with regular audits (with expert stakeholders).

- Establishing a consistent definition and standards for "green products" with a set of criteria to comply with, in order to increase transparency (with expert stakeholders).

Companies

- Being aware of the decrease of consumer trust in business sectors in the current financial climate.
- Promoting interactive engagement with consumers.
- Interacting directly with consumers through regular surveys and collaborative projects with NGOs to increase credibility.
- Increasing the transparency and credibility of product emission data through independent verification or assurance.
- Improving public reporting through websites and reports.

Consumer groups and other third party organisations

- Proactively conveying consumers' message to the business sector and governments.
- Working on providing independent research, review, verification or assurance to recover consumer trust.
- Working to improve information for consumer decision-making and influencing companies by publishing unbiased information, campaigning and engaging in collaborative projects.

Annex 1. EIRIS Climate Change Research Methodology

With input from investor groups, NGOs and companies (including WWF, Climate Group, Carbon Trust and IIGCC), EIRIS has developed indicators to assess how companies should best address their climate change impacts and risks. EIRIS indicators cover aspects such as:

- *Governance* – *e.g.* does the company have a corporate-wide climate change policy, or is board remuneration linked to climate change performance.
- *Strategy* – *e.g.* has the company set targets.
- *Disclosure* – covering the quality of carbon data, or quantified disclosure risks or opportunities.
- *Performance* – *e.g.* year-on-year reduction in GHG emissions, or transformational initiatives such as large-scale investment in carbon capture and storage.

These indicators are aggregated into five assessment grades from *no evidence* to *advanced* where *good* is considered to be the level at which companies are adequately addressing the issue of climate change.

Annex 2. Electricity Sector Initiatives

Definitions:

1) Energy saving tips

Companies received credit for this element if they dedicated a section of their website to providing tips on how consumers can make their home more energy-efficient and/or reduce carbon emissions in general. All companies evaluated met the element. For example, AGL energy and EDF have online tools for consumers to identify potential areas of energy/cost saving in the home.

2) Emissions/efficiency calculators

Companies received credit for this element if they provided an online calculator for carbon emissions and/or energy efficiency related calculations. Kansai Electric Power, for instance, provides Eco eLife Check tool on its website that allows consumers to calculate their CO_2 output, compare their results with the average and check their position in a national ranking.

3) Interactive energy efficiency tools

Companies received credit for this element for a resource that provides feedback on improving home energy efficiency based on information provided by consumers. Most resources were web-based and required varying levels of consumer input ranging from electricity bill information to general questions about electricity consumption habits. EDP, CLP Holdings and EDF provide consumers with analysis of their energy consumption and tips for energy saving based on consumers' input/bills.

4) Home energy audits

Companies offering in-home energy audits to consumers met this element. For example, Duke Energy offers eligible homeowners a Home Energy House Call, a free in-house energy analysis.

5) Eco certified electricity

Companies met this element if they offered electricity from renewable sources that are certified by an independent third party system. Companies in this category supply electricity certified by industrial associations, NGOs, a national voluntary certification programme and a national environmental association.

6) Smart Meters

Companies engaged in initiatives to test and/or implement smart meters or similar technology received credit for this element. Smart meters, considered the next generation of electricity and gas meters, provide consumers with real-time information about the energy they are using. The assertion is that smart meters will allow consumers to better manage their energy consumption and make more energy-efficient choices. For example the real-time information would allow consumers to decrease energy consumption in periods of higher rates.

7) Demand side incentives

Companies providing consumers with incentives to reduce the use of electricity received credit for this element. Examples include Consolidated Edison Holding, which administers demand response programmes that involve the temporary reduction and /or shifting of electricity usage, especially during peak demand periods, and rewards participating consumers with financial incentives.

8) Renewable energy incentives

Companies that provide incentives for consumers to sign for renewably sourced electricity received credit for this element. Xcel energy offers Solar Rewards programmes which allow consumers to receive cash back for installing a photovoltaic system at home.

Similarly, Origin Energy offers solar heating for consumers' hot water and solar electricity systems with interest free pay by instalment plans. Norppa electricity sourced from renewable sources by Fortum is priced at the same cost as regular energy from non-renewable sources.

9) Carbon offset programs

Companies offering direct or indirect means to help consumers offset carbon emissions received credit for this element. Two main features were identified in this category: (a) consumers pay extra money to offset their emissions by supporting programmes that reduce or prevent the release of CO_2 emissions, or invest in the future construction of renewable energy related equipment/facilities; (b) a company estimates the emissions produced by consumers' consumption and offsets them through schemes that support a range of verified greenhouse gas offset programmes.

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2. EIRIS (2009), "The role of consumers and corporations in tackling climate change", *www.oecd.org/daf/investment/guidelines*.
3. C.Kauffmann and C. Tebar Less (2009), "Business and climate change: an MNE Guidelines perspective".
4. The "bonus-malus" system provides a subsidy to consumers who buy a car that emits less than 130 grams of CO_2 per kilometer and imposing a penalty on new cars emitting over 160 g/km.
5. The International Gateway for Financial Education can be found here: *www.financial-education.org*.
6. Automobile sector does not include manufacturers of parts.
7. All the sources are included in "References" at the back of this paper.
8. Berliner Energieagentur GmbH (Germany), B.&S.U. Beratungs- und Service-Gesellschaft Umwelt mbH (Germany), O.O.Energiesparverband (Austria), Motiva Oy (Finland), Ente per le Nuove Tecnologie, l'Energia e l'Ambiente (Italy), Building and Civil Engineering Institute ZRMK (Slovenia), Efeko Ltd (Finland), Centre for Energy Efficiency (Bulgaria), Ekodoma (Latvia), Budapest University of Technology and Economics (Hungary), Krajowa Agencja Poszanowania Energii (Poland) and Centre for Environmental Studies Foundation (Hungary).
9. The FTSE All-World Index Series is the Large/Mid Cap aggregate covering 2,700 stocks from the FTSE Global Equity Index Series. This is divided into Developed and Emerging segments, covering 90-95% of the investable market capitalisation. Developed Index covers companies in Europe, North America, Asia and Pacific. *www.ftse.com/Indices/FTSE_All_World_Index_Series/index.jsp*
10. EIRIS has classified companies into over 50 climate change sectors and sub-sectors based on their business activities. Each sector is defined as very high, high, medium or low climate change impact based on the direct, indirect and/or product emissions.
11. The numbers of companies in each sector vary as the analysis in this paper is based on companies listed in the FTSE All World Developed Index.
12. Detailed methodology is explained in Annex 1.
13. Of those listed in the FTSE All World Developed Index, 827 companies have been identified as having very high, high and medium climate change impacts. The global average includes all the sectors including these four consumer-facing sectors.
14. EIRIS has identified both operational and product climate change impact. The overall research primarily considers operational impacts with additional indicators on products specifically for several sectors including automobile manufacture and residential buildings.

15. AccountAbility and Consumers International, "What Assures Consumers on Climate Change", June 2007.
16. In Summer 2009, EIRIS will be launching a website, YourEthicalMoney.org, which includes consumer guide on financial products.
17. The figure disclosed in 2008 report is from 2005, covering activities related to private dwellings. This includes energy-using activities such as space and water heating, cooling, lighting and the use of appliances. This does not include personal transport. *www.iea.org/Textbase/Papers/2008/indicators_2008.pdf*
18. Of those which received "intermediate" grades under EIRIS climate change research.
19. Japanese electricity market was deregulated in 1995, however, it is still controlled by regional suppliers.

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About EIRIS

EIRIS is a leading global provider of independent research into the environmental, social, and governance (ESG), and ethical performance of companies. With over 25 years' experience of conducting research and promoting responsible investment strategies, EIRIS now provides services to more than 100 asset owners and asset managers globally.

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4. Private Sector Contributions to a Low Carbon Future: A Review of Responsible Business Practices and Initiatives*

Introduction

Integration of climate change considerations into corporate strategies has started reshaping the way enterprises carry out their business. In their efforts to address climate change, companies face new opportunities, including developing new technologies and products and accessing new markets. By becoming more energy-efficient, they can also make important savings. In many cases, addressing climate change makes good business sense. But companies also face higher risks in relation to climate change, including increasing legal and regulatory pressure; higher costs as the price of carbon is being internalised; climate-induced disruption of business activity and reputational risk. Ultimately, the balance of costs and opportunities will depend on a variety of factors, including sector specificities, government policies and companies' ability to engage consumers in addressing the climate change challenges.

This paper provides an overview of how business practice is developing in light of the challenges and opportunities of climate change – with a focus on those practices aimed at contributing towards the development of a low carbon economy. It draws on the recent literature and uses the recommendations in the OECD *Guidelines for Multinational Enterprises* (hereafter referred to as the *Guidelines*) as guiding principles to organise the discussion.

Business and climate change – from awareness to action

A recent survey by McKinsey (2008a) on how companies think about climate change, to which over 2000 executives responded, revealed that 60% of executives view climate change as an important consideration within their company's overall strategy, while 70% view it as an important dimension for reputation and brand. Translation into corporate action remains however limited: for 44% of CEOs climate change is not an important item on their agenda, 70% reported that their company does not include climate change targets in the performance review of executives and among the executives reporting that managing environmental issues was important, 60% belonged to companies that had not defined emissions reduction targets. However, 80% of executives expected to be affected by some form of climate change regulation in the coming 5 years.

Business attitude towards climate change is driven by a variety of factors, including government policies and regulation and pressure from consumers and other stakeholders. In recent years, governments in OECD countries have implemented domestic climate policy frameworks, including a mix of policy instruments aimed at mitigating greenhouse gas (GHG) emissions. These policy mixes include market-based instruments, such as taxes and cap-and-trade systems, as well as regulation and information campaigns. Domestic climate policies are evolving, with key milestones still to come, such as the international post-2012 framework that countries are aiming to agree at COP15 in December 2009, in Copenhagen.[1] While companies are facing increasing government measures, an important

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component of the business answer to climate change is also driven by private initiatives to respond to societal expectations communicated by other channels than law (*e.g.*, consumer associations, the press, international organisations, etc.).

An increasing number of companies are taking action to address climate change. As such an example, business leaders of the UN Global Compact recognise their role in fighting climate change and show their determination to take action in a statement called "Caring for Climate".[2] Following the recognition that "climate change is an issue requiring urgent and extensive action on the part of governments, business and citizens…", business leaders commit to "taking practical actions now to increase the efficiency of energy usage and to reduce the carbon burden of our products, services and processes, to set voluntary targets for doing so, and to report publicly on the achievement of those targets annually…".

How can the Guidelines enhance the positive contribution of the private sector to a low carbon economy?

The OECD *Guidelines for Multinational Enterprises* provide a set of principles and standards applicable to multinational and domestic enterprises for responsible business conduct in a variety of areas. The *Guidelines* are recommendations addressed by governments to multinational enterprises, reflecting good practice and aiming to ensure that the operations of companies are in harmony with government policies and that they contribute to sustainable development. Though the *Guidelines* do not specifically address climate change, they cover key areas of corporate activity, which can be seen as having direct or indirect links with climate change, such as environment,[3] information disclosure, combating bribery and science and technology.

In addition, the *Guidelines* benefit from a unique implementation mechanism. National contact points (NCPs) are government offices responsible for encouraging the observance of the *Guidelines* in a national context and for ensuring that they are well known and understood by the national business community and by other interested parties. The NCPs gather information on national experiences with the *Guidelines*, handle enquiries, discuss matters related to the *Guidelines* and assist in solving problems that may arise in this connection. When issues arise concerning implementation of the *Guidelines* in relation to specific instances of business conduct, the NCP is expected to help resolve them. As of June 2009, only one case has been filed alleging the climate change impacts of business activity. It was filed in May 2007 with the German NCP, which found that the company had not violated the *Guidelines*.[4]

Structure of the report

This report explores three broad areas in which business action in fighting climate change is particularly relevant, and where corporate practices have already developed. Each of these areas is also addressed by recommendations contained in various chapters of the *Guidelines*.

As a first step to address climate change, an increasing number of companies have undertaken to **measure, report and verify** the levels of their greenhouse (GHG) emissions. This is an essential step in the assessment of the different climate-related risks faced by a company, but also to understand the company's impact on climate. Measuring GHG emissions is important both for enterprises, governments and other stakeholders. For companies, it constitutes the basis for the development of a corporate climate change strategy and to monitor it. For policy makers, it provides information to compare performance across industries and to develop targeted climate change policies. For other stakeholders, including consumers, it provides a basis to understand the company's carbon footprint and make well informed choices. Financial institutions are also increasingly paying attention to the overall performance of companies in which they invest, – including how they manage climate related risks. Developing and reporting climate-related information raises a number of issues that are also reflected in the recommendations of the *Guidelines*, regarding, *inter alia*, standards for measuring, disclosing and verifying information.

Beyond emission accounting and reporting, enterprises are also **developing corporate strategies to reduce emissions**, and are putting in place mechanisms for the implementation of these strategies. As underlined in the *Guidelines*, long-term progress requires the establishment of measurable objectives and, where appropriate, targets for improved environmental performance. It also requires to continually seek to improve such performance.

Consumers are among the main contributors to climate change, and, together with governments and industry they are also key pillars in the fight against climate change. Consumers are becoming increasingly aware of their role, and many do want to act in a more responsible manner and contribute to reducing their emissions. However, there is still a huge gap between consumer awareness, what consumers declare they are willing to do, and what they actually do. Governments and business have a key role to play in **engaging consumers** to help them effectively contribute to a low carbon economy.

I. Measuring, reporting and verifying emissions

The first step for companies wishing to lower their impact on climate change is to measure their GHG emissions. This information is essential for managers to better understand the challenges faced by the company, to compare emissions across industry, and to put in place a strategy to manage emissions and climate related risks, both within the company and throughout its supply-chain.

Measuring, disclosing and verifying information related to the company's activities are important elements of responsible business conduct, and are given prominence in the *Guidelines* in chapters III on Disclosure and V on Environment. The *Guidelines* notably recommend that enterprises collect and evaluate adequate and timely information regarding their activities, and their environmental impacts; use high quality standards for disclosure of non-financial information including for environmental reporting, and collect adequate information for regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

Developing accurate information on which to base companies' strategies and policies requires a range of tools, including *i)* methodologies for collecting information on GHG emissions; *ii)* reporting frameworks; and *iii)* mechanisms to verify and certify GHG emissions and other GHG performance measures.

Measuring emissions

Enterprises "should establish and maintain a system of environmental management appropriate to the enterprise, including collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities". Chapter V of the *Guidelines* (*Environment*).

The recent business literature leaves little doubt about the importance for companies of collecting information regarding their GHG emissions. According to CERES (2008), "it is becoming increasing vital for companies to begin inventorying emissions associated with their operations". Collecting information about, and measuring its own emissions is key for the company to start developing a strategy towards reducing emissions, but it is also an important way to demonstrate that the company is aware of its impact on climate change, and of the need to start taking some action to mitigate it.

The most widely used accounting tool to measure GHG emissions is the Greenhouse Gas Protocol (GHG Protocol). It was developed in partnership between the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD), and provides an accounting framework for GHG standards, programs and inventories prepared by individual companies (see Box 2.5).[5]

Box 2.5. **The GHG Protocol and ISO Standards**

The **GHG Protocol** Initiative arose when WRI and WBCSD recognized that an international standard for corporate GHG accounting and reporting would be necessary in light of evolving climate change policy. Together with large corporate partners such as British Petroleum and General Motors, WRI introduced a report called "Safe Climate, Sound Business" that identified an action agenda to address climate change, which included the need for standardized measurement of GHG emissions. The first edition of *The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (Corporate Standard)*) was published in 2001. Since then the GHG Protocol has built upon the Corporate Standard by developing a suite of calculation tools to assist companies in calculating their greenhouse gas emissions and additional guidance documents.

In 2006, the **International Organisation for Standardisation** (ISO) adopted the Corporate Standard as the basis for its *ISO 14064-I: Specification with Guidance at the Organization Level for Quantification and Reporting of Greenhouse Gas Emissions and Removals*. The ISO standards ISO 14064 and ISO 14065 provide an internationally agreed framework for measuring GHG emissions and verifying claims made about them so that "a tonne of carbon is always a tonne of carbon". They thus support programmes to reduce GHG emissions and also emissions trading programmes. ISO 14064 is emerging as the global benchmark on which to base such programmes.

ISO, the WRI and the WBCSD have signed a Memorandum of Understanding to work together to promote their GHG accounting and reporting standards.

Source: www.ghgprotocol.org and *www.iso.org/iso/climatechange_2008.pdf*.

The GHG Protocol divides emission sources into three categories:

- **Scope 1 GHG emissions** are direct emissions from GHG sources owned or controlled by the company.
- **Scope 2 GHG emissions** do not physically occur from within the company reporting boundary and are therefore "indirect" emissions. Scope 2 emissions are caused by the organisations consumption of electricity, heat, cooling or steam. This category is often called "purchased electricity" because it represents the most common source of Scope 2 emissions.
- **Scope 3 GHG emissions** are a company's indirect emissions other than those covered in Scope 2. They are from sources that are not owned or controlled by the company, but which occur as a result of its activities.

So far, despite rapid developments in the last decade, carbon measurement and disclosure remain mainly focused on current direct emissions at corporate level. Based on the latest survey carried out by the Carbon Disclosure Project (CDP6),[6] disclosure of indirect emissions (scope 3) is usually pursued by less than half of the companies that disclose direct emissions (see table 1). More elaborate assessment at corporate level, which would include forecasting emissions and/or assessing the risks and opportunities that climate change carries for business (including the risks posed by new regulations, threat of litigation for inaction and physical hazards), as well as the elements of corporate strategies to address risks (including its actions to address climate change and its corporate governance) are increasingly of interest, notably to investors and financiers (see GRI/KPMG, 2007). Measurement and reporting in these areas remain however in their infancy. For example, only 13% among the respondents to CDP6 acknowledged reporting emissions forecasts.

Table 2.12. **Companies disclosing emission information under the CDP6**

Per sector, in %

	Scope 1	Scope 2	Scope 3
Chemicals and Pharmaceuticals	91	89	49
Construction and building products	100	86	43
Manufacturing	70	67	21
Oil and gas	71	60	26
Raw materials, mining, paper and packaging	89	83	33
Transport and logistics	50	50	13
Utilities	89	67	41
Financial Services	64	65	56
Hospitality, leisure and business services	65	71	29
Retail and consumer	71	67	39
Technology, media and telecoms	72	70	46

Source: www.cdproject.net

As of today, only few companies go beyond the accounting of emissions at corporate level to assessing the total amount of GHGs produced throughout the whole life of a product, from its production to its final disposal. Life-cycle assessment of product carbon footprint is nevertheless developing, especially in the retail sector. As shown by OECD (2009), estimating the total amount of GHG emissions produced throughout the life cycle of goods and services (often referred to as the Product Carbon Footprint, PCF) can provide important information and signals on the impact on climate of products and services. It may also help companies to look beyond their own carbon impact to consider a supply chain approach and therefore link with an advanced reporting of companies' emissions such as the disclosure of "scope 3" emissions. However, PCF calculation requires extensive data collection and is demanding on human resources. As of today, there is no internationally agreed LCA methodology and standard, although some are under development. ISO has started developing such a standard (ISO 14067) and the WRI and WBCSD are working on a Product and Supply Chain GHG Accounting and Reporting Standard due for publication in 2010.

Disclosure and reporting

"*Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities (…) and performance.*" Chapter III of the *Guidelines* (Disclosure).

"*Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for nonfinancial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.*" Chapter III of the *Guidelines* (Disclosure).

Enterprises should "provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance." Chapter V of the *Guidelines* (Environment).

Enterprises are "encouraged to communicate additional information that could include: value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes." Chapter III of the *Guidelines* (Disclosure).

There is an upward trend in corporate reporting of GHG emissions and other climate related information. Based on CDP6, 80% of responding companies[7] acknowledged reporting on GHG emissions in annual corporate reporting in 2008. Between its first report in 2003 (CDP1) and the latest report, in 2008 (CDP6), the level of total disclosed emissions under the CDP rose from 1.8 to 7.4bn tonnes of CO_2 equivalent. This resulted from an increase in the response rate to CDP, an increase in disclosure rates among the Global 500 and the widening scope of covered emissions, to incorporate three different GHG emissions (CO_2, CH_4, N_2O). Among sectors, the gas and electricity utility sector scores highest in term of responding to the CDP (at 93%).

The trend towards increased corporate reporting of GHG emissions can be attributed to a number of factors, including increased awareness of climate change challenges and opportunities, the development of mandatory emission trading markets, such as the European Union Emissions Trading Scheme (EU ETS) and increased regulatory requirements on the disclosure of non financial information.[8]

In the UK, for instance, the Government is committed, under the Climate Change Act 2008, to producing, by October 2009, voluntary guidance on how organisations should measure and calculate their greenhouse gas emissions to assist with their voluntary reporting. The Act also requires the Government to take a decision by April 2012 on whether to introduce regulations on the reporting of greenhouse gas emissions.[9]

Denmark adopted in May 2008 an Action Plan on Corporate Social Responsibility to make it mandatory for the approximately 1100 of its largest companies to report on their progress on corporate social responsibility, including on their actions to address climate change.[10] The requirement to report is notably supported by "The Climate Compass".[11]

Pressure towards more obligatory requirements for corporate reporting is also mounting in the United States, *inter alia,* in response to the growing interest of investors in the risks of climate change for companies. In September 2007, members of the Investor Network on Climate Risk (INCR)[12] sent a petition to the US Securities and Exchange Commission asking that it require publicly held companies to assess and fully disclose their material financial risks and opportunities from climate change. In response to the petition, a Congressional hearing was convened on the role of the SEC in addressing climate change and in July 2008 the Senate Appropriations Committee approved language in the Financial Services Appropriations bill calling on the SEC to issue new guidance on climate-related disclosure. In parallel, the US Environmental Protection Agency (EPA) is developing a rule for mandatory reporting of GHG for suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year, starting in March 2011 (for year 2010).

In other countries, voluntary reporting is promoted and incentivised through a number of mechanisms, including ranking and benchmarking (*e.g.*, in the Netherlands) and awards (*e.g.*, German Sustainability Awards). The UK's ACCA Awards[13] rewards companies for excellence in environmental, social and sustainability reporting. The aim is to identify and reward innovative attempts to communicate corporate performance, although not commenting on performance itself. In 2008, ACCA UK awarded BT Group the best report for displaying a strong integration of sustainability into business strategy and disclosing the GHG emission reduction targets of the company as well as feedback on performance against targets.[14]

Companies have different internal ways to report on their climate change information, including annual reports, sustainability reports, websites and securities filing, in addition to external means such as voluntary registries and benchmarking exercises (see Table 2.13).

Despite the significant efforts made by companies to report on their GHG emissions, the multiplicity of reporting frameworks and methodologies makes it difficult to analyse and compare climate change performance.[15] EIRIS (2008) found that 81% of the 35.6% companies

Table 2.13. **Voluntary reporting frameworks**

	Registries	
World Economic Forum Global GHG Registry	Global initiative to stimulate voluntary disclosure and management by companies of their worldwide climate emissions. The methodological basis for preparing the inventory is the GHG Protocol.	*www.pewclimate.org/we_forum.cfm*
The California Climate Action Registry (CCAR)	Voluntary GHG registry established in 2000 to promulgate standards and tools to measure, report, verify and reduce GHG in California and in the US. To date, 300 corporations, cities, public agencies from California measure, monitor and publically report on GHG emissions, using the CCAR protocols.	*www.climateregistry.org*
	Benchmarking exercises	
Carbon Disclosure Project (CDP)	CDP provides global corporate information on climate change, based on voluntary responses to CDP surveys by companies from the Global 500, FTSE 350 and S&P 500 indices. The information is reported annually in CDP reports (already 6 editions). In addition, CDP produces a Carbon Disclosure Leadership Index ranking the 60 best performing companies.	*www.cdproject.net*
Ceres and RiskMetric Group Climate Change Governance Framework	Checklist addressing corporate response to climate change (including board oversight, management execution, public disclosure, emissions accounting and management), against which 100 US companies were benchmarked in 2006 and 63 consumer and technology companies were assessed in 2008.	*www.ceres.org*

classified as having a high impact for climate change disclosed their GHG emissions. However, only 38% of these companies disclose indication on the scope of data or on the methodology used. Globally, only 9% of companies disclose the scope of their emissions against the GHG Protocol.

Mandatory schemes, such as the European Union Emissions Trading Scheme (EU ETS), have their own reporting guidelines like the European Commission Monitoring and Reporting Guidelines.[16] Other guidelines and reporting frameworks exist that either integrate climate change disclosure within the broader framework of sustainability reporting (such as the Global Reporting Initiative), or provide a sector or country declination (see Table 2.14).

Table 2.14. **Other selected disclosure guidelines**

	Broader reporting frameworks	
Global Reporting Initiative	Guidance for any organisation to disclose their sustainability performance. The GRI addresses a much wider set of issues that emissions reporting. It provides a framework to disclose information on economic, social and environmental performance.	GRI: *www.globalreporting.org*
Global Framework for Climate Risk Disclosure	Framework to encourage standardized climate risk disclosure to investors and its insertion in existing reporting mechanisms (business risks and opportunities resulting from climate change and companies efforts to address them).	Investor Network on Climate Risk: *www.incr.com*
	Country-specific initiatives	
New Zealand Business Council for Sustainable Development	Guide and on-line calculator to help organisations to measure and manage GHG emissions for voluntary purposes. The guide builds on the GHG Protocol to measure the carbon footprint, use that information to reduce footprint, and explore options to offset those emissions that cannot be reduced.	Business Council for Sustainable Development (New Zealand): *www.nzbcsd.org.nz/emissions*
Bilan Carbone	Methodology for corporate GHG accounting and website detailing the methodology and making available a list of certified organisations able to carry out the assessment. The methodology is compatible with ISO 14064, the GHG Protocol and the EC Monitoring and Reporting Guidelines for the EU ETS.	ADEME (France): *www.ademe.fr/bilan-carbone*
	Sector-specific initiatives	
GRI Electric Utility Sector Supplement	Sector-specific disclosure and performance indicators. Expected for 2009.	*www.globalreporting.org/ReportingFramework/SectorSupplements/ElectricUtilities*
Global Climate Disclosure Framework for Electric Utilities	Guidelines to electricity utilities and power generators for presenting information on emissions and on climate change strategy. It complements the GRI Electric Utility Sector Supplement by requiring more detailed information on carbon emissions and corporate strategy to address climate change.	IIGCC, CERES and IGCC: *www.iigcc.org/docs/PDF/Public/Globalelectricutilitiesdisclosureframework.pdf*
Petroleum Industry Guidelines for Reporting GHG Emissions	Guidelines addressed to the petroleum industry to promote consistent and reliable GHG accounting and reporting practices from oil and gas operations. The guidelines build on the GHG Protocol.	IPIECA, API and OGP: *www.ipieca.org/activities/climate_change/downloads/publications/ghg_guidelines.pdf*

In response to increasing demands for standardised reporting guidelines on the inclusion of climate change information in mainstream reports, the Climate Disclosure Standards Board[17] was formed at the 2007 annual meeting of the *World Economic Forum*. CDSB works to develop a globally accepted framework, based on existing standards, for corporate reporting on climate change.

Verifying emissions

> *Enterprises should "establish and maintain a system of environmental management appropriate to the enterprise, including:*
>
> - *Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities.*
> - *Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets."*
>
> Chapter V of the *Guidelines* (Environment).

External verification of emission accounting is becoming increasingly important. Key drivers are the development of mandatory disclosure, as well as the scepticism of consumers and other stakeholders regarding corporate climate change performance. For example, a 2008 consumer survey by Consumers International and AccountAbility found that 70% of respondents in the US and the UK believe that corporate climate change reporting should be verified by independent parties.[18]

Companies are becoming increasingly aware of the importance of adding credibility to their efforts to measure and report on their emissions by having the information externally verified. According to CDP6, 56% of respondents had their emissions verified (72% of respondents publically disclosed GHG emissions). CERES (2008) reports that out of 40 companies they surveyed, 29 also reported using an external auditor or government program to verify their inventory. Verification methods vary from reviewing utility bills provided by the company to on-site reviews of how inventory data is being collected. Beyond official emission registries and voluntary government programs, several private sector players are also involved in this field, which is becoming a growing business.

Mandatory schemes, such as the EU ETS, the Clean Development Mechanism (CDM) and Joint Implementation programmes have third-party assurance processes.[19] A Verification Protocol has been developed by the International Emissions Trading Association, intended as a reference manual for verifiers, to facilitate a uniform, transparent and cost effective verification of installations covered by the EU ETS.[20] According to PriceWaterHouse (2007), by 2007, however, EU-wide standards for verification and accreditation of verifiers had not been implemented yet. More generally, both the recourse by companies to verification of their GHG emissions and the establishment of global emissions verification standards are still at an early stage of development.

The need to substantiate environmental claims is also prompting companies to use certification as an independent confirmation that they have measured and managed their emissions. A range of certification schemes exist (see Table 2.15) which provide a signal of good performance, but vary widely in terms of the performance they certify.

II. Developing corporate strategies to reduce emissions

A proactive business attitude towards climate change is necessary if substantial mitigation of GHG emissions is to be achieved. Proper emissions accounting is a first step in that direction. Beyond that, a pro-active attitude involves developing strategies to manage emissions, but also embedding climate change considerations into the corporate

Table 2.15. **Certification schemes**

Objectives	Requirements	Methodology
Carbon Trust Standard: *www.carbontruststandard.com*		
Launched in June 2008 By Carbon Trust in the UK to encourage good practice in carbon measurement, management and reduction by businesses and public sector organisations.	Organizations must *i)* measure their carbon footprint including their electricity and gas consumption, any onsite fuel consumption (*e.g.* heating oil, diesel, etc.) and fuel consumption of owned vehicles; *ii)* meet an absolute reduction in emissions or a 2.5% per annum reduction in a carbon efficiency benchmark; and *iii)* provide evidence that the organisation is managing carbon in an appropriate manner through effective governance procedures, accurate carbon accounting and carbon management programmes.	The standard builds on the Greenhouse Gas Protocol Corporate Standard and ISO14064-1:2006. To date, 60 (mostly UK-based) organisations have been certified.
Climate Cool Certification: http://climateneutralnetwork.org		
Developed by the Climate Neutral Network for climate neutral products, services, and enterprises, *i.e.* with net-zero impact on global warming.	The first step in obtaining the Climate Cool™ certification is by undertaking an inventory of GHG emissions, using a climate neutral "metrics system" (*http://climateneutralnetwork.org/metrics.php*) paper. Once the enterprise footprint is established, the company can develop an application for climate neutral certification by creating and implementing a portfolio of projects including both internal, on-site reductions and external offset investment projects to mitigate the remaining climate impacts of their operations.	The Network's protocol was developed to be consistent with the GHG Protocol. To date, 8 companies have been certified.
CarbonNeutral: *www.carbonneutral.com*		
Developed by the Carbon Neutral Company for product, service or activity	The certification requires an assessment of CO_2 emissions done by an independent third party, reduction of emissions to net zero through internal reductions (change of a manufacturing process for example) and best practice external reductions (carbon offsetting), a commitment to reduce emissions internally on an on-going basis, to document progress, and to communicate clearly what has been done.	No reference to specific methodology in the CarbonNeutral protocol, although both ISO standards and the GHG Protocol are mentioned in annex.
NoCO2 and LowCO2 Certification: *www.noco2.com.au/web/page/certify*		
NOCO2: Company is carbon neutral and has completely removed its climate change impacts.	This is metered through an engineering audit that quantifies the greenhouse gas emissions impact from all inputs (products, services and labour) consumed. Upon contractually declaring that it will maintain a zero carbon footprint, the company can display the NoCO2 logo.	The *carbon emission assessments*, *life cycle analyses* and reports are conducted in compliance with the ISO 14000 series and the GHG Protocol.
LowCO2: For companies who wish to communicate a percentage reduction in their carbon footprint (displayed on the LowCO2 logo).	This is metered through an engineering audit and emissions monitoring plan. A comprehensive initial emissions audit is fundamental to any claim of carbon reduction. The audit quantifies the greenhouse gas emissions from scope 1 and scope 2 emissions sources, as well as emissions from waste and work related employee travel.	

governance structure, and establishing the necessary mechanisms and incentives to put those strategies and considerations into practice.

Active contribution by business to environmental progress and continuous improvement (involving internalisation of these concerns throughout the company) figure prominently in the *Guidelines*. They notably recommend the establishment of measurable objectives for improved environmental performance, and the development of products, procedures and technologies that can help the companies continually seek to improve corporate environmental performance.

Determining GHG emission reduction objectives and strategies

> *Enterprises should "contribute to economic, social and environmental progress with a view to achieving sustainable development*". Chapter II of the *Guidelines* (General Policies).
>
> *Enterprises should "establish and maintain a system of environmental management appropriate to the enterprise, including: establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives*". Chapter V of the *Guidelines* (Environment).

Managing emissions embeds several steps. First and foremost, it requires that companies adopt quantitative GHG emission reduction targets. The level and timeframe of the target is an indication of the level of the company's commitment to achieve real, measurable progress in addressing climate change. Using publically available information on the Global 300, EIRIS (2008) found that only one quarter of the 35.6% companies classified as having a high impact for climate change published a long-term strategic target to reduce emissions. In 2008, about half (54%) of the 383 companies who responded to CDP6 disclosed emissions reduction targets and 81% reported an emissions reduction programme.

Several types of emission reduction targets exist: *Intensity targets* allow for total emissions to increase with organic growth or acquisitions made by the company. They can be useful for evaluating the efficiency of a company's operations and processes. *Absolute emission targets* are more aggressive, since they impose on the company a level of reduction that does not depend on performance. With *carbon neutrality targets*, companies commit to achieving zero net emissions. To achieve this objective, they may use internal strategies – such as operational efficiency improvement or renewable energy purchases – or external measures such as investing in carbon offset projects.

In OECD countries, more and more companies are led to adopt emission reduction targets in order to comply with newly established carbon regulations or in anticipation of such regulations. Companies are also driven to manage their emissions through the development of carbon markets (see Box 2.6). Some schemes are mandatory (such as the EU Emissions Trading Scheme (EU ETS), others are voluntary (the Chicago Climate Exchange (CCX), but they rely on firm commitments from companies.

Even when not compelled to by regulation, a growing number of companies are entering into or initiating voluntary emission reduction programmes (see Table 2.16). They do so for several reasons, *e.g.*, in anticipation of potential regulatory requirements, to enhance and differentiate their products, to attract investors, and to improve their reputation.

Emission reduction targets can be met in several ways. Internal strategies allow the companies to obtain long-term improvements. They include improving energy efficiency (*e.g.*, through better insulation and energy-efficient lighting), shifting away from fossil energies towards renewable energies, reorganizing the business model to maximize energy savings and minimize carbon production (in the transportation for instance), adopting less carbon intensive inputs and developing less energy intensive products. The low-hanging fruit in GHG reduction terms is generally in energy efficiency.

Box 2.6. **Carbon emission trading markets**

A number of national and sub-national carbon market schemes have been developed or are under development in Europe, the US, Japan and Australia. Although carbon markets are still at an early stage of development, their integration has become an important issue for discussion.[1] The International Emissions Trading Association[2] works for the development of an active, integrated global greenhouse gas market, through promotion of good practices, event organisation and network development.

So far, the largest GHG trading program is the European Union Emissions Trading Scheme (EU ETS).[3] In 2008, it represented 94% of transactions of the allowance-based markets in terms of volume of CO_2 traded and 99% in terms of value. The Climate and Energy Package adopted in December 2008 by the European Parliament aims at strengthening the EU ETS, notably by imposing stronger emission reductions, expanding the scope of the market to include additional GHG and sectors and scaling up auctioning to allocate the allowances.

In the US, trading schemes – which until now, have been the result of State-based and regional initiatives – are likely to be complemented by federal regulation, currently under consideration. Two schemes already exist: the Chicago Climate Exchange (CCX) and the Regional GHG Initiative (RGGI). Members of the CCX have made voluntary commitments to reduce GHG emissions by 6% below 1998-2001 by 2010. The RGGI is a mandatory system or compliance market where 10 US States aim to reduce power sector emissions by 10% below 2009 levels by 2019. The RGGI is notable in that it was the first cap and trade scheme to distribute most allowances (95%) through auctioning.

In October 2008, Japan launched a trial domestic scheme based on voluntary participation in view of the implementation of a mandatory scheme. This constitutes a major shift in Japan's policy, which so far has relied on voluntary commitments, notably by major industries to stabilize CO_2 emissions at 1990 level by 2010 (through the Keidanren Voluntary Action Plan – VAP) and from smaller emitters participating in the Japan Voluntary Trading Scheme (J-VETS).

1. ECO/CPE/WP1(2009)7. The economics of climate change mitigation: how to build the necessary global action in a cost-effective manner? (not published yet).
2. *www.ieta.org*.
3. *http://ec.europa.eu/environment/climat/emission/index_en.htm*

Table 2.16. **Selected voluntary GHG emission reduction programs.**

World Wildlife Fund Climate Savers	Partnership of WWF with leading corporations – including IBM, Nokia, Sony, Coca-Cola and HP – who have agreed to collectively cut carbon emissions by some 14 million tons annually by 2010	*www.worldwildlife.org/climate/climatesavers2.html*
US Environmental Protection Agency Climate Leaders	251 US companies committed to completing a corporate-wide inventory of their GHG emissions, setting aggressive reduction goals, and annually reporting their progress to EPA.	*www.epa.gov/climateleaders*
American Petroleum Institute Voluntary Climate Challenge Programme	Commitment by API-member refining companies to improve their energy efficiency by 10 percent between 2002 and 2012.	*www.api.org/ehs/climate/new/program.cfm*
Association des Entreprises pour la Réduction de l'Effet de Serre	French companies from the industry and energy sectors that committed in 2002 to voluntary GHG emissions reductions over 2003/2007.	
Japan Keidanren Voluntary Action Plan	Voluntary commitment by major Japanese industries to stabilize CO_2 emissions from fuel combustion and industrial processes at 1990 level by 2020.	*www.keidanren.or.jp/japanese/policy/vape/index.html*

For many companies, the most difficult GHG reduction challenge is managing the supply chain. As underlined by the CDP Supply Chain Report 2009, an organisation could be put at risk by the inability of its suppliers to manage the climate-related risks. However, not all areas of the supply chain bear similar impacts, and it might be particularly costly to undertake an extensive analysis of the overall emissions throughout the entire supply chain. Identifying and focusing on the areas of the supply chain where more impact can be achieved may be more efficient. Using a carbon criterion in the procurement decision may also yield important benefits, although looking only at the current emissions of suppliers – without paying due attention to future company climate change actions – may be short-sighted in the current context of companies still adapting to this new priority.

Companies also have the possibility to manage their emissions "externally" through offsetting. The compliance market includes Emission Reduction Units (ERUs) from Joint Implementation (JI), Certified Emissions Reduction (CERs) from the Clean Development Mechanism (CDM) and the Joint Implementation (JI), as well as Assigned Amount Units (AAUs) from emission trading under the Kyoto Protocol.[21]

The voluntary offset market, although in an early stage of development, has grown significantly over the past years. According to the World Bank (2009), between 2007 and 2008, the voluntary market grew from 43 to 54 $MtCO_2$ or USD 263 million to USD 397 million. While in volume the CDM and JI are much larger, emission trading (in $MtCO_2$) on these markets dropped by half in the same period.

To meet demand from business and individuals, a growing number of offset providers have entered the market, with varying degrees of credibility. To respond to uncertainty regarding the quality of offset purchases, a number of certifications and standards are emerging (see Table 2.17). In parallel, benchmarking initiatives are also developing, such as the initiative led by CarbonConcierge[22] based on a carbon offset provider evaluation matrix designed to rate selected North American providers.[23]

Putting emission reduction strategies in practice

Enterprises should "continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

- *adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;*
- *development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;"*

Chapter V of the *Guidelines* (Environment).

Climate change risks and opportunities are increasingly viewed as involving all elements of a business – from operations and product design to supply chain management and the business model itself. Ensuring the necessary changes requires the internalisation of climate considerations throughout the structure of the company and the development of incentive mechanisms to maximize the involvement of all stakeholders: from the board, to the CEO and the employees across departments.

Table 2.17. **Voluntary offset standards**

Scheme	Scope	Methodology
Gold Standard (*www.cdmgoldstandard.org*) Developed by WWF	Offset projects and carbon credits (CDM projects). Focus on renewable energy and energy efficient projects in developing countries.	CDM methodology Certification.
Voluntary Carbon Standard (*www.v-c-s.org*). Developed by Climate Group, IETA and WEF.	Offset projects and carbon credits	The VCS assures buyers that the offset project they purchase are real (have happened), additional (beyond business-as-usual activities), measurable, permanent (not temporarily displace emissions), independently verified and unique (not used more than once to offset emissions). It is based on ISO 14064-3:2006.
Green-e Administered by the Centre for Resource Solutions. (*www.green-e.org*)	Certification for offset sellers. US leading independent certification and verification programme for renewable energy.	
Climate, Community and Biodiversity Standards Founded by 13 NGOs and companies. (*www.climate-standards.org*)	Offset projects. For land-based projects that deliver climate, biodiversity and community benefits.	IPCC Good Practice Guidance and CDM methodology.
Plan Vivo (*www.planvivo.org*)	Offset projects and carbon credits.	Plan Vivo certificates represent units of long-term carbon benefit from sustainable community based forest management and agroforestry plus associated, quantified, environmental and social benefits. Own "Plan Vivo Standards".
Greenhouse Friendly Australian Government Greenhouse Challenge Plus Programme (*www.climatechange.gov.au/greenhousefriendly*)	Certification for offset sellers and carbon-neutral products	Greenhouse Friendly Guidelines: the assessment must be performed in accordance with the current Australian Standard for LCA in the ISO 14040 series.
VER+ (*www.tuev-sued.de/climatechange*) Developed by TÜV SÜD	Offset projects, carbon credits, carbon neutral products	CDM methodology Verification based on monitoring reports from the project developer, conducted by an auditor.
Voluntary Offset Standard European Carbon Investor Services (*www.carboninvestors.org*)		

An example of a pro-active, non-governmental advocacy with corporations on how to mitigate emissions is the corporate framework for climate change governance developed by CERES (see Table 2.16). According to CERES, companies that integrate climate change in their board and executive structure are more likely to maintain the long-term commitment needed to address climate change. Assigning a board member or committee to oversee climate change risks and strategies not only signals a company's strong commitment, but also increases the likelihood of a proactive response to the potential regulatory, financial, reputation and legal risks posed by climate change as well as the potential business opportunities.

Nevertheless, of the 63 companies from the technology and consumer sectors reviewed by CERES (2008), only 15 had tasked board-level committees with environmental oversight and 7 CEOs had taken leadership roles on climate change initiatives. Examples include Nike's Corporate Responsibility Committee, Applied Materials strong CEO leadership in the internal steering committee on sustainability and climate change and Dell's Sustainability Council led by the Corporate Sustainability Director.

In addition to the strong leadership of managerial levels, mobilising employees is a critical step to ensure adequate implementation of climate change strategies and a strong

Table 2.18. **CERES' Climate Change Governance Framework**

Board oversight
Board has explicit oversight responsibility for environmental affairs/climate change
Board conducts periodic review of climate change and monitors progress in implementing strategies
Management Execution
Chairman/CEO clearly articulates company's views on climate change and GHG control measures.
Executive officers are in key positions to monitor climate change and manage response strategies.
Executive officers' compensation is linked to attainment of environmental goals and GHG targets.
Public Disclosure
Securities filings and/or MD&A identify material risks, opportunities posed by climate change.
Public communications offer comprehensive, transparent presentation of response measures.
Emissions Accounting
Company conducts annual inventory of direct and indirect GHG emissions and publicly reports results.
Company has set an emissions baseline by which to gauge future GHG emissions trends.
Company has third party verification process for GHG emissions data.
Emissions management
Company sets aggressive absolute GHG emission reduction targets for facilities, energy use, business travel, and other operations, and achieves these targets on schedule.
Company has implemented company-wide programs to improve the energy efficiency of its operations.
Company currently purchases renewable energy for a significant portion of its energy use and has set targets to increase future renewable energy purchases.
Company pursues strategies to maximize opportunities from product and service offerings related to climate change.
Company has assessed supply chain GHG emissions, engaged with suppliers on controlling emissions, addressed climate impacts of materials/packaging and improved logistics to reduce emissions.

Source: Ceres (2006) and Ceres (2008).

driver towards innovation in the business model. This is consistent with the recommendation in Chapter IV of the *Guidelines* (Employment and Industrial Relations), that enterprises "should provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the (...) enterprise..."

According to the "CEO's guide to climate action" (PriceHouseCoopers, 2008), empowering staff within the company and setting the right internal culture is also important for recruitment. Young workers especially are proving to be an important lever to foster environmentally-friendly corporate initiatives. According to Whitehead Mann research (2008), "pressure for ethical change is coming from the very top and the young, particularly new graduate staff. Conversely, many shareholders and non-executives are indifferent – if not hostile to the debate".

In order to engage employees, some companies have put in place incentives that link compensation to climate-related objectives. For instance, in 2008, out of the 383 companies who responded to CDP6, 59% incorporated carbon targets into remuneration. CERES (2008) confirms this trend, with some 20 companies out of 63 factoring energy or climate change performance into employee compensation. For example, Intel included environmental performance in the bonuses of all employees for 2008. However none of the companies reported by CERES explicitly linked any Chief-level executive compensation to climate change goals.

Beyond the compensation incentive, mobilising staff includes informing, raising awareness, training and interacting to promote innovation, as developed in a guide by Comité 21 on mobilising staff teams in support of sustainable development.[24]

Finally, ensuring the business case for climate change actions is a strong driver to implement the commitments. Indeed some of the easiest strategies that companies can pursue make good business sense. Reaching emission targets through the improvement of internal energy efficiency, the use of less carbon-intensive fuels and materials, and a better management of carbon emissions throughout the supply chain can lead to substantial energy savings and therefore yield a financial return to the company, while addressing environmental concerns. Preserving the company's reputation and anticipating compliance to forthcoming regulation also make good business sense.

III. Engaging consumers

Consumers have an important impact on climate change. Heating houses, using electric appliances, driving cars and travelling, eating and drinking – each of the things that millions of consumers do day after day generates GHG emissions and contributes to climate change. Following governments and industry, consumers are the third key pillar in the fight against climate change. Broadly speaking, governments will develop the policies and put in place the conditions to create new markets for climate-friendlier goods and services; business will develop those new goods and services, and consumers will purchase them, and thus pay a significant part of the bill of a low carbon economy. Engaging consumers is therefore essential for the success of a low carbon economy.

The *Guidelines* provide recommendations on how enterprises should deal with consumer interest, some of which are particularly relevant in the context of corporate climate change strategies, namely: raising consumer awareness, providing consumers with clear and accurate information and developing climate-friendly products and services.

Raising consumer awareness

> *Enterprises should "continually seek to improve corporate environmental performance, by* inter alia *, promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise."* Chapter V of the *Guidelines* (Environment).

Consumers are becoming increasingly aware of their role in contributing to climate change – and of their responsibility in contributing to fight it. Many do want to act in a more responsible manner and reduce the emissions related to their lifestyle and consumer habits. However, there is still a huge gap between consumer awareness, what consumers declare they are willing to do, and what they actually do.

According to a survey of 2734 people in the US and the UK (Consumers International and AccountAbility, 2007), climate change is a mainstream consumer issue: consumers are strongly concerned and are ready to take action. A 2008 survey by McKinsey (2008b) of 7751 consumers in Brazil, Canada, China, France, Germany, India, the UK and the US revealed that more than half of all consumers say they are willing to recycle, buy energy-efficient appliances and to drive more fuel efficient cars. Research by The Climate Group (2008) covering 1000 people in each of the US, UK and China, confirms an increasingly receptive market interested in what companies are doing, and eager to do more. Compared to similar research done in 2007, more people are doing something in the more obvious high-carbon activities such as household energy use and driving, and people who previously did not know what could be done or were not interested in changing their consumption habits, have now changed their food shopping and driving behaviour.

The study by Consumers International and Accountability also shows that only 10% of consumers trust what companies and government tell them about global warming. It says that "corporate and government efforts to inform consumers on climate change are falling on deaf ears, with barely one in ten people in the UK and US believing what they say on the issue". Furthermore, 75% of consumers, although concerned about how their consumption affects climate change, feel paralysed to act beyond small changes around the home (such as turning off stand-by modes and converting to energy-efficient light bulbs). The study indicates that this is due to a lack of understanding about what individuals can do; concerns over the financial cost of acting; a perceived lack of availability, and a mistrust of corporate claims about energy efficient products and services.

Enterprises seem to be aware of the need to raise consumer awareness on the climate change impacts of the goods and services they offer. A survey by McKinsey (2008a) on how companies think about climate change shows that most executives consider climate change is important to consider within their companies overall strategy, and that they are relatively optimistic when anticipating the business prospects that climate change could present. Among the factors influencing companies to take climate change into consideration, "customer requests or preferences" rank second[25] (corporate reputation ranking first and media attention to climate change third, followed by senior executives personal convictions, regulation and investment opportunity).

However, there is surprisingly little said in the recent business literature on how best to engage with customers. A recent "CEO's guide to climate action" (PricewaterhouseCoopers International, 2008) lists, among the five key CEO roles, that of empowering others – "which includes staff, suppliers, stakeholders and other businesses in the sector – but there is no reference to consumers."[26] WBCSD (2009) states that energy efficiency is widely accepted as the most cost-effective way to mitigate climate change and accounts for 50% of the potential to halve energy-related CO_2 emissions by 2050. It lists lack of awareness and information on energy consumption and costs as one of the barriers to the deployment of energy-efficient technologies and practices, and recognises that "there is a need to educate consumers about the financial and environmental benefits of energy conservation, which will support effective consumer decisions."

There is enormous potential for improvements in engaging consumers in the development towards a low carbon economy. Consumer education and awareness raising is the responsibility of both governments and business. Many governments have undertaken to inform consumers about ways to lower their carbon footprints. Examples include the UK's ACT ON CO2 Campaign ("How can I make a difference?"),[27] which provides consumers with an easy-to-use CO_2 calculator for everyday actions (in the home, driving, shopping, etc); the webpage by France's Agence de l'environnement et de la maitrise de l'energie (ADEME) dedicated to the eco-citizen[28] and the information portal by Australia's Department of Climate Change ("Think climate, think change").[29]

A range of business initiatives have also emerged to help educate consumers and inform them of their role in lowering their carbon footprint. Together.com[30] is The Climate Group's consumer engagement campaign, aimed at delivering consumers "easy and affordable ways to fight climate change. It shows how the little action people take in their everyday lives – like switching to energy-saving light bulbs – can make a big difference to both CO_2 emissions and household bills". "A simple switch",[31] a campaign by Philips Lighting, aims at offering more energy-efficient products and providing easily accessible information to consumers on the impacts of the use of the company's products. Tesco's "Greener Living" website contains a wealth of accessible information on climate change and provides suggestions to consumers on how to reduce their carbon footprint.[32] Other enterprises follow a mixed approach – they provide information related to the carbon footprint of their own goods and services on their company websites, as well as links to broader government sponsored information campaigns. One example is the French retailer Monoprix, whose webpage on its own sustainable development policy includes links to the government's energy-saving campaign.[33]

Providing information and empowering consumers

> "*When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels. Enterprises should also provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.*" Chapter VII of the *Guidelines* (Consumer Interests).

To empower consumers and help them make the right choices, they need to be given the necessary information about the goods and services on offer. They also need to be given the means to express their demands. Of course, this does not necessarily mean that informed consumers will actually make the "right" choices: knowing about the health implications of junk food does not deter many people from eating it, and similarly, knowing the carbon footprint of using a car will not make many drivers switch to using public transportation. But being informed is certainly a first, essential, step towards change.

One way companies increasingly use to inform consumers about the climate impact (or carbon footprint) of their products is through their websites. Examples include the description – in terms which are accessible to the average person – of the carbon footprint of their products, by the fruit drink producer Innocent;[34] the shoe maker Timberland,[35] or the special feature on a low carbon society by electronics producer Sharp.[36]

Labels are another way to provide information. Their efficiency, and consumer trust in them, will depend on the trustworthiness of the provider or certifier of the label. As of today, most carbon labels for products are based on private standards and certification schemes. Exceptions are "PAS 2050 ", developed in 2008 by the British Standard Institute and the Carbon Trust and the Carbon Footprint Scheme, launched in 2009 in Japan.

One problem often raised in relation with environmentally-related labels is their number. Another one is their readability (how much and what kind of information can be usefully provided through a label?) and their comparability. There is also a risk of competition between different environmental and social labels. For example, consumers wishing to "do good" and buy the "right" product are increasingly confronted with a range of different labels, and different options: fair trade, organic, locally produced, "no air transport", etc.

Table 2.19. **Examples of carbon labels (at product level).**

Scheme	Stages of life cycle	Methodology	Website
AB Agri GHG modelling	Production (transport, distribution not covered)	Compliant with PAS 2050 and certified by Carbon Trust	*www.llamasoft.com/Guru_GHG.htm*
Climatop	Entire cycle	LCA	*www.climatop.ch*
Carbon Reduction label	All stages (except human inputs, transport to consumers, production of capital goods)	PAS 2050	
CarbonCounted		Aligned with GHG Protocol, ISO 14064 and PAS 2050. Subject to annual verification by a certified auditor.	*www.carboncounted.com*
Carbonlabels.org	Entire cycle	Builds on PAS 2050	*www.carbonlabels.org*
Carbon*Free*	Entire cycle (but capital goods and management operations related to production are optional).	LCA	*www.carbonfund.org*
Climate Conscious Carbon Label	Entire cycle	LCA	*www.climateconservancy.org*
PAS 2050 (British Standard Institute)		Own methodology	*www.bsigroup.com/en/Standards-and-Publications/Industry-Sectors/Energy/PAS-2050*

Source: OECD (2009).

There are many types of consumers, and their readiness to take action in order to reduce their impact on climate change, also varies. The Climate Group (2007, 2008) distinguishes between:

- *Campaigners:* deeply committed but require supporting evidence to trust
- *Optimists:* committed and want to feel good
- *Confused:* undecided and need clarity of why and how
- *Followers:* partially committed and want to look good
- *Unwilling:* accept climate change as an issue but are not prepared to act
- *Rejecters:* actively reject both the issue and taking action

Connecting with all the different types of consumers and delivering a convincing message to all is not easy. Indeed, one of the conclusions from the research by The Climate Group is that, while the majority of surveyed consumers are receptive to businesses engaging them on combating climate change, there is a leadership gap for brands to fill. According to Consumers International and Accountability consumers need to know that "they are doing the right thing" and that "their action matters" – but they also expect others – including governments and business to play a strong role – and to play it seriously. Table 9 below provides some examples of corporate practice that can help assure consumers, including through accessible and clear information.

Table 2.20. **What works in assuring consumers?**

Key principles	Corporate practices in relation to climate change
Consistency. Companies that consumers trust give out the same message in everything they do – through their products, labels and promotions, customer service staff, corporate communications and through partnerships with trusted experts.	**Yahoo**, in developing a strategy for going carbon "neutral" has sought to do this in a way that is not only rigorous and transparent but embedded in its corporate culture.
Linking responsibility, quality and service. Consumers are ready to make efforts to fight climate change, but they also want value for money.	**Toyota** succeeded in marketing its hybrid, Toyota Prius, as a mass market vehicle. Buyers are attracted not only to the car's fuel efficiency but to its iconic status as an environmentally friendly vehicle popularised by many celebrities.
Serious intent. Consumers accept that companies are profit-motivated, but they object when there is a discrepancy between what they say and what they do, or where they appear to be "greenwashing" in their approach.	Few companies are yet able to claim that they have done everything possible to reduce their own impacts But showing a serious intent is a first step. **Innocent** introduces its ethic's policy (which describes i.a. the company's efforts to reduce its emissions), with a humble "We sure aren't perfect, but we're trying to do the right thing."
Trust in the messenger. Companies need to take a broad view of assurance and develop both formal and informal mechanisms to get their message across, not forgetting their own employees as ambassadors of the company.	**News Corporation** uses both the power of individual relationships and mass media to get the climate change message across to consumers. While in the UK, BSkyB engineers have been dropping off low energy light bulbs when they install equipment in people's homes, the company has set up a MySpace channel dedicated to climate change.
Clear information. Companies that people trust provide an ethics-built-in guarantee within their brand and back this up with the right information when and where it is needed help consumers make decisions without having to always "read the small print". Caveats should be avoided – too many asterisks or brackets can make a message lose its power.	**Marks and Spencer's** "Plan A" and **Whole Foods Market** both tie the company's commitments to climate change into its overall brand offering and back it up with further information and endorsements.
Seeing is believing. A picture may be worth a thousand words but a demonstration beats everything. This is also true for high-visibility campaigns that appeal to consumers.	**The Co-operative Group's** Solar Tower in Manchester UK and **Wal-Mart**'s move to put solar panels on the roof of some of its store are key examples where companies have used highly visible demonstrations alongside less visible operational changes and policies. **Tesco** set a target to sell 10 million energy efficient light bulbs in one year. It slahed prices by half – which led to a quadrupling of sales and attainment of its target.

Source: Based on Consumers International and AccountAbility (2007) and Futerra Sustainability Communications (2008).

Shaping consumer demand: offering low carbon goods and services

One way for enterprises to seek to improve their environmental performance is through "*the development and provision of products and services that have no undue environmental impacts, are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely*". Chapter V of the *Guidelines* (Environment).

Put in the context of a low carbon economy, this means that enterprises have the primary responsibility on the carbon footprint of the products and services they offer to consumers, and therefore also have a key role in shaping consumer demand and proposing consumers less carbon intensive choices.

The 2008 consumer survey by The Climate Group reveals strong consumer demand for innovative solutions that will help people reduce their impact on the climate. On the other hand, spending extra money is not being considered as an option by many. Instead, a majority of people is ready to make changes to their lifestyle and invest their time. However, this will not be enough to achieve significant carbon reductions. As the World

Resources Institute (2009) puts it, corporate climate strategies will not succeed in they rely only on consumers to do the right thing. Some climate-conscious consumers will buy low carbon products or make behavioural adjustments, such as turning down their thermostats to save energy. These actions are important, but they alone will not achieve the reductions needed at the pace required. Companies must drive consumer preferences by advancing mass market, low-carbon products and services. They must attract consumers based on cost and performance, in addition to being a "green" or "responsible" product.

Many enterprises have lowered the carbon footprint of their products and services – either because regulation so requires (*e.g.*, GHG emission limits for cars), or out of economic and environmental "common sense". For these products and services to succeed, consumers need to buy them. Government also have a role in enhancing the "carbon friendliness " of products and services and thereby also consumer demand – by setting emission limits, energy performance standards, or by removing products from the market altogether. According to Consumers International and Accountability (2007), over half of surveyed citizens (51.5%) believe governments should be forcing businesses to remove products that are most damaging to global warming, and 70% want claims about climate change by corporations to be independently verified. Among the study's recommendations is that choice reduction policies should be developed for all high impact consumer products and services where viable alternatives exist.

Governments have indeed banned certain products and thus eliminated the need for consumers to choose. One example is Australia's ban of incandescent light bulbs. New construction norms, requiring the use of double glazed windows in new buildings is moving low quality windows out of the market in many countries. Market incentives to replace polluting and inefficient products – cars, heaters, appliances, etc. are paving the way for more carbon friendly alternatives.

However, the role of government in regulating markets is necessarily limited, and business will continue playing a crucial role in offering consumers low carbon goods and services – at a price that consumers are ready to pay, and with a message that consumers are ready to believe. As energy costs rise, companies can differentiate themselves by providing those products that have attributes which are attractive to consumers, while also meeting growing needs for improved efficiency.

Notes

1. The United Nations Framework Convention on Climate Change, 15th Conference of the Parties, to take place on 7-18 December 2009 in Copenhagen.
2. Caring for Climate: *www.unglobalcompact.org/Issues/Environment/Climate_Change*.
3. A report prepared under the aegis of the Environment Policy Committee and the Investment Committee provides detailed information on the tools and approaches available to companies wishing to improve their environmental performance. OECD (2005). "Environment and the OECD Guidelines for Multinational Enterprises. Corporate tools and approaches".
4. Information available at *www.bmwi.de/go/nationale-kontaktstelle*, *www.germanwatch.org* and Report by the Chair of the 2009 Annual meeting of the National Contact Points (DAF/INV/NCP(2009)1/REV2).
5. The Greenhouse Gas Protocol, *www.ghgprotocol.org*.
6. The Carbon Disclosure Project (CDP) is an independent not-for-profit organisation which holds the largest database of corporate climate change information in the world. The data is obtained from

responses to CDP's annual Information Requests, issued on behalf of institutional investors, purchasing organisations and government bodies. Since its formation in 2000, "CDP has become the gold standard for carbon disclosure methodology and process, providing primary climate change data to the global market place." *www.cdproject.net*.

7. 383 companies among the Global 500 responded to the CDP survey in 2008. Although CDP coverage is global, response level from emerging countries' companies remains limited – Russia (0%), India (14%) and China (15%).

8. See notably *www.sustainabilityreporting.eu*.

9. Clause 80 of the 2008 Climate Change Act called for mandatory GHG emissions reporting for 50000 UK organisations but was rejected.

10. Reporting should include three areas: 1) policies on social responsibility including standards or guidelines that the company is using, 2) how the policies are implemented, and 3) an assessment of achievements, and an indication of future expectations.

11. The Climate Compass is a new Climate Alliance methodology to help local authorities establish a climate change action plan in the shortest time: *www.climate-compass.net*.

12. The petition was submitted by a group of investors with USD 1.5 trillion in assets along with Ceres and several other nonprofit organisations. See INCR: *www.incr.com*.

13. *www.accaglobal.com/publicinterest/activities/subjects/sustainability/awards*

14. *www.bt.com/betterworld*

15. For reference, Governments use the IPCC for National Greenhouse Gas Inventories (*www.ipcc-nggip.iges.or.jp/public/2006gl*) to estimate greenhouse gas inventories to report to the UNFCCC.

16. *http://ec.europa.eu/environment/climat/emission/mrg_en.htm*

17. *www.cdsb-global.org*

18. Assure View: The CSR Assurance Statement Review Report, cited by CERES (2008).

19. DNV (Det Norske Veritas Certification (*www.dnv.com)* was the first entity accredited as a verifier under the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Over the past decade DNV has engaged in validation, verification and certification of activities related to the Protocol's Clean Development Mechanism (CDM) and Joint Implementation programmes, and holds a 48% market share of CDM projects so far.

20. *www.ieta.org/ieta/www/pages/getfile.php?docID=1153*

21. *www.ghgonline.org/kyoto.htm*

22. Carbon Concierge (*www.carbonconcierge.com/learn/COPEM-Final.pdf*) is an educational and consultancy organisation that engages small, mid-sized and large businesses, as well as municipalities, to develop and implement climate reduction strategies.

23. Based on the methodology developed by Carbon Concierge, two retail providers came out on top of the list of North American providers: NativeEnergy (*www.nativeenergy.com*) and Climate Trust (*www.climatetrust.org*).

24. Comité 21, " Mobilisation des équipes pour le développement durable ", *www.comite21.org/docs/fluidbook/index.html*.

25. The report does not specify what the term "customers" comprises but it is likely to be larger than consumers, and also refer to the supply chain.

26. The checklist at the end of the section "Empowering others" includes a question, which could be related to consumers, but is more likely to addresses corporate customers: "Are you looking at ways to help your customers reduce their carbon footprint or contribute to climate change solutions?"

27. *http://campaigns2.direct.gov.uk/actonco2/home.html*

28. *http://ecocitoyens.ademe.fr*

29. *www.climatechange.gov.au/index.html*

30. *www.theclimategroup.org/what_we_do/together*

31. *www.asimpleswitch.com/global*

32. *www.tesco.com/greenerliving/cutting_carbon_footprints/default.page*

33. *www.monoprix.fr/Groupe/DeveloppementDurable/Default.aspx* and *www.faisonsvite.fr*
34. *www.innocentdrinks.co.uk/us/ethics/resource_efficient/our_carbon_footprint*
35. *www.timberland.com/corp/Timberland_Climate_Strategy_2009_report.pdf*
36. *www.sharp-world.com/corporate/eco/csr_report/2008pdf/sharp09_14e.pdf*

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APPENDIX

Annual Report on the OECD Guidelines for Multinational Enterprises 2009
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APPENDIX A

Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS[1]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto,[2] having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;

National Treatment

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;
3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";
4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

Conflicting Requirements

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto[3].

International Investment Incentives and Disincentives

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment;

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

Consultation Procedures

V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;

Review

VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

Notes

1. As at 27 June 2000 adhering governments are those of all OECD Members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the Guidelines for Multinational Enterprises is reproduced in Appendix B of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Website *www.oecd.org/daf/investment*.

APPENDIX B

The OECD Guidelines for Multinational Enterprises: Text and Implementation Procedures

Text

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries.

These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working

in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by

adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

4. Enterprises should also disclose material information on:

   1. The financial and operating results of the company;
   2. Company objectives;
   3. Major share ownership and voting rights;
   4. Members of the board and key executives, and their remuneration;
   5. Material foreseeable risk factors;
   6. Material issues regarding employees and other stakeholders;
   7. Governance structures and policies.

5. Enterprises are encouraged to communicate additional information that could include:

A) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;

B) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;

C) Information on relationships with employees and other stakeholders.

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. *a)* Respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;

   b) Contribute to the effective abolition of child labour;

   c) ontribute to the elimination of all forms of forced or compulsory labour;

d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. *a)* Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;

   b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;

   c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. *a)* Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

   b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of *bona fide* negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
   a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
   b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
   c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
   a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
   b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
   a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
   b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
   c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and

d) Research on ways of improving the environmental performance of the enterprise over the longer term.

7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of "off the books" or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

VII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

VIII. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
   a) To fix prices;
   b) To make rigged bids (collusive tenders);

c) To establish output restrictions or quotas; or

d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.

2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Implementation Procedures

Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure,

discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.

3. National Contact Points shall meet annually to share experiences and report to the Investment Committee.

II. The Investment Committee

1. The Investment Committee ("the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. Information and Promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the Guidelines from:
   - *a)* Other National Contact Points;
   - *b)* The business community, employee organisations, other non-governmental organisations and the public; and
   - *c)* Governments of non-adhering countries.

C Implementation in Specific Instances

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
   a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts.
   b) Consult the National Contact Point in the other country or countries concerned.
   c) Seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances.
   d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
4. *a)* In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
   b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each National Contact Point will report annually to the Committee.

2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
   a) Consider the reports of NCPs.

b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.

c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.

d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.

4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

APPENDIX C

Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises

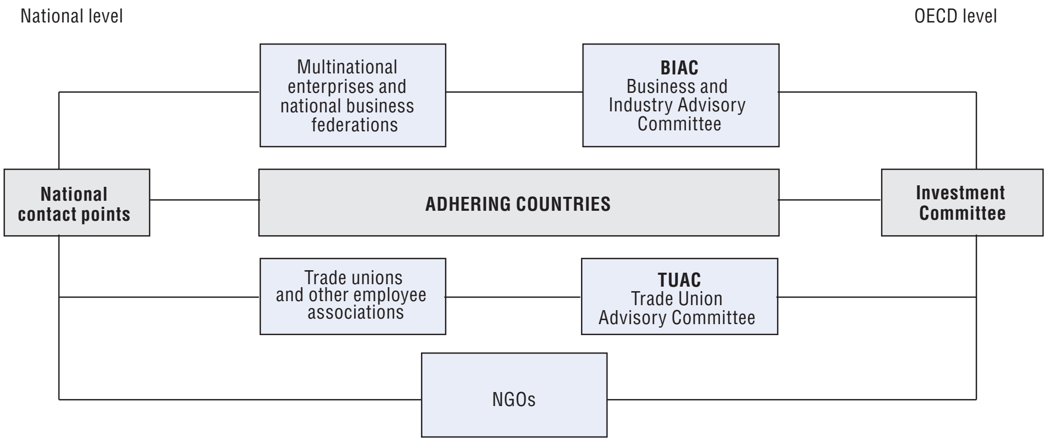
The institutions that promote and implement the Guidelines are set forth in the OECD Council Decision, a binding declaration subscribed to by all adhering countries. The Council Decision requires each adhering government to set up a National Contact Point. These play a key role of any Guidelines institution in establishing the Guidelines as an effective and vital tool for international business (see Diagram). The National Contact is responsible for promoting the Guidelines in its national context and contributing to a better understanding of the Guidelines among the national business community and other interested parties.

The National Contact Point:

- Responds to enquiries about the Guidelines;
- Assists interested parties in resolving issues that arise with respect to the application of the Guidelines in "individual instances" through the availability of its "good offices" and, if the parties agree, facilitating access to other consensual and non-adversarial means of resolving the issues between the parties. (Comment: more in keeping with the procedural guidance);
- Gathers information on national experiences with the Guidelines and reports annually to the Investment Committee.

Because of its central role, the National Contact Point's effectiveness is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments.

Figure C.1. **Institutions Involved in Implementing the Guidelines**



APPENDIX D

Contact Details for National Contact Points

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Notes

1. The European Commission is not formally a "National Contact Point". However, it is committed to the success of the Guidelines.

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Annual Report on the OECD Guidelines for Multinational Enterprises 2009

CONSUMER EMPOWERMENT

The *Guidelines* are recommendations to international business for conduct in such areas as labour, environment, consumer protection and the fight against corruption. The recommendations are made by the adhering governments and, although not binding, governments are committed to promoting their observance. This *Annual Report* provides an account of the actions taken by the 41 adhering governments over the 12 months to June 2009 to enhance the contribution of the *Guidelines* to the improved functioning of the global economy. In nine years, the *Guidelines* have consolidated their position as one of the world's principal corporate responsibility instruments.

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