



Annual Report on the OECD Guidelines for Multinational Enterprises 2010

**CORPORATE RESPONSIBILITY:
REINFORCING A UNIQUE INSTRUMENT**



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Please cite this publication as:

OECD (2010), *Annual Report on the OECD Guidelines for Multinational Enterprises 2010: Corporate responsibility: Reinforcing a unique instrument*, OECD Publishing.
<http://dx.doi.org/10.1787/mne-2010-en>

ISBN 978-92-64-09138-2 (print)

ISBN 978-92-64-09139-9 (PDF)

Corrigenda to OECD publications may be found on line at: www.oecd.org/publishing/corrigenda.

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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 tenth in a series, describes what adhering governments have done to live up to this commitment over the period June 2009-June 2010. This year's report also marks, ten years after the 2000 Review, the start of a new update of the Guidelines with a view to ensuring its continuing role as the leading international instrument for the promotion of responsible business conduct.

The Report presents, in addition, the main findings and supporting material for the 2010 Roundtable on Corporate Responsibility devoted to the theme of "Launching an Update of the OECD Guidelines for Multinational Enterprises". Discussions focused on three core issues for consideration during the update: supply chains, human rights and climate change.

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 Shannon Griffin, Consultant in this Division.

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PART I

Guidelines Implementation

PART I
Chapter 1

Report by the Chair of the 2010 Annual Meeting of the NCPs

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. 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. This report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2009-June 2010 period.

I. Overview

I.a. Launching the update of the Guidelines

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences 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 annual meetings, the tenth since the 2000 Review of the Guidelines, went beyond the standard annual agenda. It was also on this occasion that the work on the update the Guidelines commenced.

This report reviews activities undertaken by adhering governments to promote and implement the Guidelines, over the June 2009-June 2010 period. It is based on individual NCP reports and other information received during the reporting period and incorporates the results of this year’s Annual NCP Meeting. The report is divided into four additional sections: Section II – Institutional Arrangements; Section III – Information and Promotion; Section IV – Specific Instances; and Section V – Activities related to OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

On 30 April 2010, the 42 adhering governments to the Guidelines agreed on the terms of reference (TORs) for carrying out an update of the Guidelines “to ensure their continued role as leading international instruments for the promotion of responsible business conduct.”¹ At the 2010 Ministerial Council Meeting, Ministers “welcomed the formal launch of the update of the Guidelines and noted the important role they play in contributing to responsible business conduct, and thus to broad societal support for open markets.”² The aim is to complete the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting.

Two special back-to-back capacity-building sessions were organised on 28 June 2010, prior to the Annual NCP meeting, in co-operation with the International Labour Organization (ILO) and the Consensus Building Institute. The ILO session highlighted the relationship between international labour standards and the Guidelines and provided examples of how ILO can support NCP efforts to facilitate the resolution of disputes involving employment and industrial relations, the most widely used chapter of the Guidelines. The Consensus Building Institute session provided a forum to discuss basic elements of effective mediation and how mediation is being incorporated into the processes of other multilateral institutions around the world. This session also specifically addressed how the specific instance facility of the Guidelines could make better use of existing mediation techniques and ways of reinforcing NCP capacities in this area. These two capacity-building sessions, the results of which will be directly fed into the update of the Guidelines, were well received by all NCPs.

The 10th Annual OECD Corporate Responsibility Roundtable held on 30 June-1 July (morning) 2010 took the form of three “brainstorming” sessions on Human Rights, Supply Chains and Environment/Climate Change. These discussions provided the opportunity to solicit substantive input from various governments and stakeholders to clarify or provide further guidance on the application of the Guidelines in these three areas. They were supported by two key submissions prepared by Professor John Ruggie,³ the Special Representative of the UN Secretary-General for Business and Human Rights (UNSRSG), a background paper on corporate supply chain practices by the research and consulting firm, Business for Social Responsibility (BSR) and a background paper based on a company survey by contributors to the OECD Investment and Environment Policy Committees on “Engaging the private sector in support of a low carbon future”. A summary of these proceedings will be published in the 2010 edition of the “Annual Report on the OECD Guidelines for Multinational Enterprises”.

I.b. Highlights of the 2009-2010 reporting period

This year’s implementation cycle of the Guidelines witnessed a partial recovery from the financial and economic crisis – a recovery characterised by continuous attention to corporate responsibility. Concern for the renewed observance of ethical standards contained in leading international corporate responsibility instruments, coupled with less complacency with their shortcomings, increased. In this context, the role of the OECD Guidelines and the prospect of a new update enjoyed high level and widespread expressions of support.

The NCP reports show that NCPs have continued their efforts to further the effectiveness of the Guidelines. In some countries, the efforts have focused on improving institutional arrangements and increasing stakeholder inclusiveness. Norway, in particular, has reported considerable effort around the reform of their NCP structure, which serves to increase NCP independence and financing. Israel has increased stakeholder inclusiveness through the establishment of external steering committees and advisory panels comprised of businesses, employee organisations and civil society. Canada has developed a procedural guide for members of the Canadian interdepartmental Committee on the Guidelines, which includes a component around the management of specific instances.

Beyond expanding inclusivity and procedural transparency, a number of NCPs have also solicited feedback from key stakeholders. Italy, Norway, Peru, Poland and Spain have all taken action to request feedback focused on awareness of the Guidelines, effectiveness in practice and self-surveys aimed to measure corporate observance of the Guidelines. Through these activities, and other promotional initiatives, NCP outreach to businesses has grown significantly during this reporting period. Engaging with universities, and their departments focused on responsible business, has also gained popularity throughout 2009-2010. Currently about 42 percent of NCPs are actively working with regional universities. Benefits from these relationships include not only increased awareness of the Guidelines among young professionals, but also research assistance, especially around soliciting and aggregating corporate feedback.

During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review, which was carried out in the fall of 2009. The peer review, carried out by the NCPs of Canada, Chile, France, Japan and the United Kingdom, was regarded as a great success and a truly valuable learning experience by all NCPs involved.

The final report was presented to the OECD Investment Committee Working Group on 24 March 2010, containing twenty-eight recommendations. Several lessons learned were drawn from the review process, such as the importance of overall promotional activities and several challenges relating to the NCP specific instance procedure. A number of NCPs also found the Independent Board structure of the Dutch NCP quite useful and suggested further exploration and consideration of the merits of this structure.

In addition, greater attention has been given to the synergies between the promotional activities of the Guidelines and other corporate responsibility instruments. This is apparent in the promotion of corporate responsibility like-tools in Germany, the leveraging of established UN Global Compact networks to further promote the Guidelines in Peru and Portugal and the implementation of the Canadian corporate responsibility strategy for the Canadian international extractive sector. A number of NCPs report to have promoted the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones as a companion instrument to the Guidelines and to closely follow the work on the new pilot project on due diligence in mining and mineral sectors.

The number of specific instance requests was slightly lower this past year than in the 2008-2009 implementation cycle of the Guidelines. 17⁴ new specific instances were accepted for consideration by NCPs. A total of 10 Final Statements were issued by 6 NCPs. With 17 new cases raised, the total number of requests since the 2000 Review exceeds the 200⁵ mark. Of these, 160⁶ have been accepted for consideration and 138 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, a growing number have come to involve Chapter II, as it pertains to Human Rights, as well as environmental issues covered by Chapter V. Specific instances raised across multiple NCPs have also increased. Addressing these cases seems to have become smoother and more productive as NCP roles have become more defined with the rise in cross-country instances. The rise of specific instances in non-OECD adhering countries has also continued. However, the most noticeable development during the reporting period was the increased recourse through mediation as a means for resolving specific instances. 9 specific instances were managed through mediation during this time frame, and in a majority of cases, resulted in positive outcomes for all parties involved.

Throughout the duration of this year's Annual Meeting, capacity building sessions and Corporate Responsibility Roundtable, NCPs placed a considerable emphasis on the unique value of the specific instance facility as a problem solving mechanism. They emphasised the importance of facilitating access to conciliation and mediation – either by the NCPs themselves or through a third-party resource – once a specific instance has been formally accepted for consideration by an NCP. NCPs also proposed that final statements should be used to acknowledge positive mediated outcomes where possible or to make helpful recommendations where appropriate, lending towards better fulfilment of the Guidelines' expectations. With regard to NCPs procedures, there is broad consensus that homogeneity should not be viewed as an end in itself, since NCPs need the flexibility built into the functional equivalence principle in order to adapt their procedures to national contexts and circumstances. Predictability, on the other hand, was clearly considered to be more important for ensuring due process. This part of the discussion focused on more structured timeframes of specific instance handling, further clarity in formally accepting and rejecting raised cases as well as resource constraints confronted by NCPs. There was also agreement that the mediation and adjudication phases are mutually exclusive processes.

In addition, the question was raised of whether NCPs should include in annual reports specific instances which are still in the initial assessment phase or where the NCP has decided after the initial assessment not to offer its good offices to assist the parties. Some countries for example, report such specific instances whereas other NCPs noted they did not. NCPs agreed that adequate consideration of procedural issues should be a central priority for the update of the Guidelines.

Outreach efforts to promote the Guidelines continued to expand throughout 2009-2010. Special focus has been in Asia, notably South East Asia, and by country, China, India, Indonesia and South Africa. A special chapter in the investment policy review of Indonesia was devoted to the role of the Guidelines in promoting responsible business conduct. Several emerging markets and other non-OECD countries also contributed to the consultation process leading to the launch on the update of the Guidelines.

The prospect of a new update of the Guidelines received high attention in other circles as well. In his latest report to the UN Human Rights Council on further steps to operationalize the “protect, respect and remedy” framework, the UNSRSG reiterated the potential of the NCP mechanism in providing effective remedy for human rights violations. He also indicated his intention to continue to liaise with the OECD on the update the Guidelines.⁷ The consultation process on the update of the Guidelines also benefitted from written submissions by accredited stakeholders (BIAC, TUAC, OECD Watch), international organisations (IFC, ILO) and other stakeholders (Amnesty International, Consumers International, Global Reporting Initiative, International Bar Association and Transparency International) as well as various OECD bodies.⁸ Senior OECD officials gave key note addresses at high level international meetings.

I.c. The next implementation year

The Annual NCP Meeting of 29 June 2010 marked the tenth anniversary of the 2000 Revision of the Guidelines. Looking back at their experience over these past ten years, the NCPs acknowledged the importance of peer knowledge sharing and discussion of good practices, effective promotion of the Guidelines, reinforcement of the mediation capacities and resources of NCPs and clarification of their role in handling complex specific instances and/or parallel legal proceedings. They welcomed the fact that these issues were included in the terms of reference for the update and reiterated their readiness to actively contribute to this process. They also agreed that they should continue their efforts to improve their own performance, notably by drawing on the “good tips” resulting from the voluntary peer review of the Dutch NCP and recent successful mediated cases. They considered that more analysis of how NCPs have dealt with past specific instances could be helpful in considering options for improving the effectiveness of the specific instance facility during the update of the Guidelines and invited the Secretariat to circulate a compilation of the exemplary cases highlighted in past Annual NCP Reports for future reference.

Beyond NCP capacity building and refining procedural guidance, the update to the Guidelines will also address content updates related to two priority topics, namely, expanding the Guidelines’ guidance on human rights taking into account the “Protect, Respect and Remedy” framework developed by the UNSRSG and clarification of the application of the Guidelines to supply chain relationships.

II. Innovations in NCP structure and procedures

Taking into account the structural changes that occurred in the June 2009-June 2010 period, current NCP structures now consist of:

- 20 NCP single government departments;⁹
- 8 NCP multiple government departments;¹⁰
- 2 bipartite NCP;¹¹
- 9 tripartite NCPs (involving governments, business and trade unions);¹²
- 1 quadripartite NCP (involving governments, business, trade unions and NGOs); and
- 2¹³ mixed structure of independent experts and government representatives.¹⁴

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

- *Canada* is currently developing a number of documents, including a Terms of Reference for the Interdepartmental NCP Committee and a Procedures Guide, as part of a toolkit to increase the organisations vigour and operational effectiveness as a result of the Dutch Peer Review.
- *Chile* plans to decentralise their specific instance handling process and dedicate a special group to this function.
- *Czech Republic* has relocated NCP operations from the Ministry of Finance to the Ministry of Industry and Trade.
- *Egypt* has added the Ministry of Environmental Affairs to their Advisory Committee. They have also drafted, and translated into Arabic, the rules and procedures for the Specific Instances, aided by other NCPs and OECD Watch.
- In *Estonia*, the NCP has been restructured and is now found under the Economic Policy Division in the Economic Development Department allowing the Estonia NCP to take a more active role with enterprises. This is a move from the European Union and International Co-operation Department; both departments are housed under the Ministry of Economic Affairs and Communications.
- *Germany's* NCP is creating a handbook, to be finalised in conjunction with the update to the Guidelines, which should include information on the interrelation between the OECD Guidelines, ILO Tripartite Declaration and UN Global Compact. Additionally, Procedural Guidance explaining the handling of specific instance procedures in the German structure has been made available on the German NCP web page along with summarized reasoning for the rejection of specific instances.
- In *Hungary* the Secretariat of the Hungarian NCP was transferred from the Department of Enterprise Development to the Business Environment Department of the Ministry for National Development and Economy. Following the governmental changes in May 2010, the NCP Secretariat is acting in the Ministry for National Economy.
- *Israel* has established a Steering Group comprised of stakeholder representatives from civil society, as well as business and employee organisations. The Steering Group's objective is to create a detailed recommendation for the NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the MNEs Guidelines and to actively assist the NCP in its outreach efforts.

- Italy is reorganizing their NCP to broaden stakeholder associations with an increased focus on SMEs and supply chain implications.
- New Zealand's NCP has added the Ministry of Justice and the Ministry of Consumer Affairs to its Liaison Group.
- Norway is in the process of restructuring its NCP, with a focus on independence, as a result of their white paper titled, "Corporate Social Responsibility in a Global Economy". (Box 1.1)

Box 1.1. A Follow Up on Norway's White Paper: Corporate Social Responsibility in a Global Economy

As a follow-up to its January 2009 White Paper "Corporate Social Responsibility in a Global Economy", the Norwegian Government has evaluated possible models for re-organising and strengthening their NCP. A proposal outlining alternative models was sent as part of a public hearing last summer (July 2009) and it received comments from 22 different institutions/organisations.

The comments were carefully reviewed and reflected in a model for a re-organised NCP, which was approved by the Government on 15 April 2010. The re-organised NCP will consist of 4 members, including a leader, and serve as an Independent Board. As with the present NCP, the members will hold this as an additional assignment and not as a full time occupation; the members shall serve in their personal capacity. A Secretariat of 2 full time employees will be established.

The member selection process will be open and transparent. Relevant civil society organisations, employees, and employers organisations have been invited to suggest candidates. The Ministry of Foreign Affairs and the Ministry of Trade and Industry will appoint the leader of the NCP and, based on the suggested candidates, appoint the three remaining members.

In addition to dealing more effectively with specific instances, this revised structure will also enable the NCP to put more emphasis on information activities regarding the Guidelines. The re-organised NCP is expected to be launched by the summer/fall of 2010 and will be provided with substantially increased financial resources enabling it to make use of independent advice and expertise. The anticipated outcome of this re-organisation is a strengthened and more independent NCP.

- Peru has added two Ministers to its Steering Council, growing from 5 to 7 Ministers, with the addition of the Minister of Trade and Tourism and the Minister of Production. The NCP is also planning to organize joint activities with the UN Global Compact Peruvian Chapter to promote the OECD Guidelines; more than 60 companies based in Peru are actively participating in this initiative.
- Portugal's NCP is working with Association on Business Ethics (APEE), the Portuguese focal point for UN Global Compact, to promote the OECD Guidelines thorough its established network Global Compact Portuguese Network (RPGC).
- The United States has established a new NCP position within the US State Department's Bureau of Economic, Energy and Business Affairs, reporting directly to its Principal Deputy Assistant Secretary. The NCP was hired to devote full time to the responsibilities of the NCP. A longer-term assessment of ways to improve the function of the US NCP is also under way, which will involve substantial outreach to stakeholders and the broader public in this regard.

- The *United Kingdom* introduced new follow-up procedures, in September 2009, to reflect actions taken by parties following Final Statements, which were used for the first time in December 2009.
- The *European Commission*, with the entry into force of the Lisbon Treaty on 1 December 2009, is competent for EU foreign direct investment as part of common commercial policy (Treaty on the Functioning of the European Union (TFEU), article 207(1) and article 3(1)). The European Commission has launched the implementation process of this new competence, which will take into account Corporate Social Responsibility and the OECD Guidelines. Directorate General (DG) Trade Unit B1 is responsible for investment issues and overall coordination of corporate social responsibility for DG Trade and follows the work of the OECD Investment Committee.

III. 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.

III.a. Selected promotional activities

In addition to the activities reported in paragraphs 21 and 22 below, promotional developments worth underlining include:

- *Argentina – Focused on responsible business.* Several corporate responsibility related events were held in Argentina this past year, focusing on responsible business and promotion of the Guidelines: September 2009 NGO's, Norwegian and Argentinean enterprises participated in a Corporate Responsibility seminar, October 2009 focus was on multi-sector alliances with regard to contribution to competitiveness, innovation and sustainable development, December 2009 and May 2010 the CEDHA (Centre for Human Rights and Environment) and INCASUR (National Institute of Studies and Social Formation of the South) organised two NGO forums.
- *Austria – Promoting business and human rights.* On 17 June 2009, the Oesterreichische Kontrollbank AG (OeKB) hosted a discussion, where Professor John Ruggie, UNSRSG, delivered a keynote about "Business and Human Rights".
- *Brazil – Initiative to inform.* The Brazilian NCP is planning to focus attention on comprehensively disseminating the OECD Guidelines to MNEs through the use of a consolidated database, which will contain contact details for all Brazilian MNEs and the name of the individual responsible for their CSR department.
- *Canada – Globally funding corporate responsibility initiatives.* The Department of Foreign Affairs and International Trade Canada (DFAIT) created a CSR Fund in 2009 to assist Canadian offices in Canada and abroad with client CSR promotion and facilitate engagement with host-governments, communities, indigenous organisations, NGOs and other stakeholders in CSR-related initiatives through CSR seminars, the development of mining toolkits and the other CSR tools. In 2009 the CSR Fund, totaling USD180 000, was used for 35 CSR-related projects at Canadian missions around the world. This year, the CSR Funds resources have been increased to USD250 000, which is being used for 49 CSR-related projects.

- *Chile – Targeting trade and transparency.* The Chilean NCP hosted several meetings with multinational companies with regards to trade, transparency, and integration impact.
- *Denmark – National outreach.* The Danish Contact Point has become a repeat guest lecturer at the University of Copenhagen on a course in international labour law and CSR. The Danish NCP Secretariat also conducted a presentation for the Permanent ILO Committee of the Danish Ministry of Employment as well as for 12 representatives from NGO's.
- *Egypt – Championing the Guidelines through foreign investment and universities.* Egypt has continued to act as a regional representative for the Guidelines. While continually promoting Guideline awareness, they have liaised with the Chairman of General Authority for Investment (GAFI) to include NCP publications with materials distributed to potential foreign investors, and with the Gerhart Center for Philanthropy and Civic Engagement at the American University in Cairo (AUC), which has launched a corporate sustainability capacity building program. On 23 March 2010 the government held the Third Annual CSR Conference in Cairo focused on “Transparency and Reporting on CSR practices, Towards Sustainable Competitive Environment”.
- *Estonia – Engaging responsibly through commerce and industry.* In autumn 2009 in the Gazette of the Estonian Chamber of Trade and Industry published an article introducing the Guidelines and the functional principles of the NCP, including the contacts of the Estonian NCP and references to the work of other NCPs. In March 2010 the Estonian NCP organized a workshop for Estonian entrepreneurs in order to present the OECD Guidelines.
- *France – Consulting with NGOs.* A meeting with about thirty NGOs was held on 9 September 2009 to discuss the revision of the Guidelines and take into consideration NGO perspectives on the evolution of the NCP, especially with regards to the specific instance handling process.
- *Germany – Aiming to strengthen responsible business on an international scale.* The German NCP has promoted the Guidelines during this reporting period through presentations, lectures, preparation of speeches and active participation in responsible business-related events organized by stakeholders and multistakeholder initiatives, governments, universities, *et al.* The Guidelines are highlighted in the context of the German Governmental Reports on Human Rights and, with specific reference to the Risk Awareness Tool, in the Governmental Report on Crisis Prevention. Additionally, work on a handbook for German companies has begun to further promote the Guidelines and give special guidance to small and medium sizes enterprises with interpreting and implementing the Guidelines in their commercial activities abroad.
- *Italy – Promotional partnering.* On 10 February 2010, the results of the two research projects, assigned in 2009 to Bocconi University in Milan and to LUISS University in Rome, were presented at the Ministry of Economic Development which was open to interested stakeholders. On 27 April 2010, the Italian NCP partnered with “Istituto Tagliacarne” to host the initial meeting resulting from the research project: “Stakeholders’ information and awareness: the OECD Guidelines and CSR principles”.
- *Korea – Targeting responsible business.* In December 2009, the Korean NCP participated in a corporate responsibility forum for Korean companies, hosted by the National Assembly. Participants were briefed on the activities of the NCP and its future policy direction.
- *Peru – Profiling the Peruvian NCP.* On 16 April 2010, Peru consolidated their NCP, ProInversión, through a series of workshops and a formal presentation of the OECD

Guidelines. This event was attended by over 100 representatives from the Peruvian and foreign business communities, the diplomatic community and other stakeholders interested in Peru's implementation of the Guidelines. As part of the promotional activities, the NCP prepared and distributed a survey on the investment climate in Peru and the OECD Guidelines among the workshop attendees. The survey confirms the positive contribution of the Guidelines in further enhancing the positive investment climate of Peru. Reasons for this included the fact that the Guidelines can help settle solutions between stakeholders, generate confidence, provide good examples and establish guidance on responsible business conduct.

- *Portugal – Responsible investing abroad.* Portugal's NCP is currently analysing and evaluating Portuguese direct investment abroad against OECD Guidelines and OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones amongst targeted Portuguese multinationals, investors and enterprises that operate in specific and relevant markets, generating further awareness and promotion of the tools.
- *Poland – Incorporating feedback.* On 29 September 2009, PAIIZ, in cooperation with British-Polish Chamber of Commerce (BPCC) and the Responsible Business Forum (FOB) and the Foundation CentrumCSR.PL, organized a conference on the OECD Guidelines for Multinational Enterprises to discuss the newly launched OECD PNCP's programme "I implement OECD Guidelines – Responsible Business 2009". The aim of the programme is to promote responsible business practice as demonstrated by international companies operating in Poland who follow the guidelines as part of their responsible business strategies. The program should also encourage companies active in Poland to implement OECD guidelines and to promote them in everyday business practices.
- *Slovenia – Maximising impact through NGOs.* Slovenia's NCP established working contacts with non-governmental organisations (such as the Chamber of Commerce of Slovenia, the Employers' Federation and trade unions) in order to discuss additional promotion activities for the Guidelines.
- *Spain – Encouraging the Guidelines abroad and soliciting feedback.* This year the Spanish NCP presented the Guidelines to the Advisory Commission on International Trade Negotiations chaired by the Secretary of State for Trade, an event that was open to social partners, NGOs and other civil society organisations. The NCP also presented the Guidelines as part of a panel discussion on "Business and Human Rights" organized by Amnesty International Spain. Additionally, this year the NPC began conducting a survey among the top 200 Spanish companies investing abroad, to determine how well the Guidelines are known to the audience they serve. The survey also asked companies to indicate additional information that they would like to find within the text of the Guidelines and with the functioning of the NCP.
- *Sweden – Building and promoting a CSR-tool.* In December 2009, the Swedish Trade Federation launched its new CSR-tool towards member companies called "Responsible Business Management". The concept consists of a brochure and workshops covering four areas: the responsible employer, good market ethics, taking responsibility for the environment and the climate and responsible purchasing and supply chain management. Throughout 2010 they have carried out several activities for the Swedish SMEs in the responsible business arena, including participation in seminars on how companies can practically incorporate ethical and environmental practices and adhere to the Guidelines in the day-to-day business.

- *Switzerland – Utilizing publications.* In April 2010, the Swiss NCP published a flyer for multinational companies summarising the Guidelines as well as the role of the NCP. The flyer has been disseminated through several internet pages of the Swiss Government, Swiss embassies and different business associations, and is available in the three official languages of Switzerland as well as in English.
- *United Kingdom – Leveraging technology.* The UK NCP carried out an awareness campaign on the Guidelines, including an electronic bulletin sent to 35 000 decision makers within large companies, advertising on news websites, and direct mailing of the UK NCP booklet to some 1 150 large multinational companies in the UK. This booklet has proved to be a useful tool in raising awareness of the Guidelines, with over 3 300 copies circulated to stakeholders since it was published in October 2009, at various meetings, events and seminars. The booklet has also been translated into French and Spanish: all three versions of the booklet are available in electronic format on the UK NCP website.
- *European Commission – Targeting Asia.* European Commission Delegations to Japan and Singapore have been particularly active in promotion of the OECD Guidelines. In March 2010, the delegation participated in the 20st GISPRI (Global Industrial and Social Progress Research Institute) Conference entitled “Evolving CSR – societal roles of companies in the new market economy” which gathered approximately 200 businesspeople. The Delegation in Singapore organised a seminar entitled “CSR – Its place in business and world” in conjunction with the Institute of Southeast Asian Studies in March 2010. The Delegation also works with the ASEAN network on responsible business.

Other promotional activities undertaken by NCPs during the reporting period included:¹⁵

- 76% of NCPs have liaised with companies via contacts or presentations to individual companies or business associations, individual consultations and organisation of meetings with national partners.
- 22% of NCPs have utilized newsletters, articles in the press or other promotion through the media.
- 51% have participated in conferences with non-governmental actors.
- 63% have developed promotional material and mailings.
- 100% have established an NCP website.
- 42% of NCPs have liaised with universities in promotional support of the Guidelines.

Promotional activities within governments include:¹⁶

- 54% of NCPs utilize promotion through presentations to government departments or agencies by high-level officials.
- 17% promote and train embassy and consular staff.
- 51% of NCPs focus on Trade and Investment promotion missions and activities.
- 15% of NCPs Promote to overseas development agencies.
- 68% are answering questions from Parliaments, Ombudsmen or other government bodies and are promoting the Guidelines to foreign embassies.

III.b. National Contact Points Peer Review

During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review. The NCPs of Canada, Chile, France, Japan and the United

Kingdom participated in the Dutch NCP Peer Review, which was carried out in the fall of 2009, and presented to the OECD Investment Committee Working Group on 24 March 2010.

The objectives of the peer review were to: (I) evaluate the structure, practice, effect and results of the Dutch NCP; (II) to create a learning process for all participating NCPs; (III) to assess issues which may serve as useful input into any possible future revision of the OECD Guidelines; and (IV) to provide a review report which may be used as input for the Dutch NCP's preparation of its own evaluation report for the Dutch Parliament by the end of 2010. Apart from these four goals, the project has proved to be a valuable, ad-hoc learning platform for all participating NCPs.

The peer review team carried out the review through a series of meetings with stakeholders, a questionnaire survey, review of documents and discussions. A final report was issued in March 2010, containing twenty-eight recommendations relating to: (I) the structure of the NCP; (II) the NCP's promotional activities; and (III) the NCP's dealing with specific instances. The peer review report is available at the website of the Dutch NCP¹⁷.

Several lessons learned were drawn from the review process, such as the importance of overall promotional activities and several challenges relating to the NCP specific instance procedure. A few of the highlighted challenges relating to the specific instance procedure are establishment of clear and appropriate timelines for initial assessments, examination and issuing final statements, management of parallel procedures, (local) fact finding and the need for better protection of persons or organisations logging complaints where fear of retaliation over the notification exists. A number of NCPs also found the structural change in the Dutch NCP to an Independent Board, of great interest and deserving further reflection. Finally, although the main goal of a peer review is evaluative in nature, much of the additional value of this NCP peer review was the peer learning platform that was promoted during the six month peer review process. This experience was well received by all parties involved; the review team would like to encourage other NCPs to also initiate knowledge sharing and mutual learning events, either through general review or more thematic discussions.

III.c. 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 1.1 summarises the links that have been established between the Guidelines and such programmes. Twenty-eight NCPs report that such links exist.

In response to a recommendation made by the Joint Committee on Human Rights of the UK Parliament, in the light of evidence to it from Professor John Ruggie, UNSRSG, the UK Government is seeking multilateral agreement to a formal requirement that Export Credit Agencies should take into account whether to provide support for a company that has received a negative final statement from a National Contact Point under the OECD Guidelines for Multinational Enterprises in their decision-making. To that end it has proposed that appropriate text should be included in the next version of the OECD Council Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits, which is currently under consideration by the OECD Export Credits Group.

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 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.
Egypt	Investment promotion	The General Authority for Investment and Free Zones (GAFI) is the Egyptian investment promotion agency. GAFI is under the Ministry of Investment. ENCP maintains a close ties with GAFI. Through GAFI ENCP and the Guidelines brochures are distributed.
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 credit guarantees and investment insurance	Finland's Export Credit Agency, Finnvera, calls the attention of guarantee applicants' to the Guidelines through its web pages and CSR report.
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 (" <i>avoir pris connaissance des Principes directeurs</i> ").
Germany	Investment guarantees	Companies applying for investment guarantees are referred to the Guidelines directly by the application form. In the application process, they have to confirm awareness of this reference by signature. The reference also provides a link to further information on the Guidelines.
Greece	Investment promotion	The <i>Guidelines</i> are available on the portal www.mnec.gr as well as on the websites of the Ministry of Foreign Affairs (www.agora.gr), the Invest in Greece Agency (www.investingreece.gov.gr), the General Secretariat of Consumers Affairs (www.etpolis.gr), the and 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 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 Ministry of Foreign Affairs (MOFA); Ministry of Health, Labour and Welfare (MHLW); and the Ministry of Economy, Trade and Industry (METI). 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	"Invest Lithuania" Agency (www.businesslithuania.com) 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 "Invest Lithuania" Agency. Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19 th 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 Mexico's participation in the Investment Committee as well as in different international organisations, among other activities. 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.
Norway	Guarantee Institute for Export Credits (GIEK)	GIEK has developed its own social responsibility policy which is posted on its website. For more information please see: www.giek.no/giek_en/default.asp?menu=610&page=277&cells=0
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ). 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. PAIIZ 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: <ul style="list-style-type: none"> ● 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	CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) 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	The Export Credits Guarantee Department's (ECGD) website contains links to the website of the UK National Contact Point.
United States	Export and import credits and investment guarantees	The Export-Import Bank of the United States provides information on the Guidelines to applicants for their programmes in support of US business activities abroad.

III.d. OECD Investment Committee work

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

Preparing for an update of the Guidelines. The past implementation year on the Guidelines saw a strong mobilisation of the Investment Committee and its Working Party on the preparation for an update of the Guidelines. At the 2009 Annual Meeting, with the tenth anniversary of the 2000 Review of the Guidelines approaching, NCPs recommended that “adhering governments to the Guidelines review the experience gained with a view to defining terms of reference for a possible update of the instrument”. At the 24-25 June 2009 OECD Council Meeting at Ministerial level, ministers from OECD and non-member countries welcomed “further consultation on the updating of the OECD Guidelines to increase their relevance and clarify private sector responsibilities”.

In October 2009, the Working Party of the Investment Committee considered a preliminary list of issues for an update during the session and decided on an extensive process of consultation, which included stakeholders, interested non-adhering countries, concerned international organisations and OECD bodies. Comprehensive consultations with BIAC, TUAC, OECD Watch and other stakeholders were organised in October and December 2009, back-to-back with the Global Forum on International Investment, and again with BIAC, TUAC and OECD Watch in March 2010. Consultations with major non-adhering emerging economies and other countries were also held in December 2009. In addition, written contributions were received from international organisations (IFC and ILO), accredited (BIAC, TUAC, OECD Watch) and several other stakeholders (Amnesty International, Consumers International, Global Reporting Initiative, International Bar Association and Transparency International) as well as from OECD bodies (Committee on Consumer Policy, Committee on Employment, Labour and Social Affairs, Environment Policy Committee, Committee on Financial Markets, Committee on Fiscal Affairs, Corporate Governance Committee and Working Group on Bribery in International Business Transactions).

The terms of reference for the update were developed by the Working Party of the OECD Investment Committee at its March 2010 session, where non-OECD adhering governments to the Declaration had full participant status. The TORs were approved under the written procedure on 30 April 2010 by all adhering governments at the level of the Investment Committee in its enlarged session. At their Ministerial Council Meeting of 27-28 May 2010, Ministers “welcomed the formal launch of the update of the Guidelines and the note the important role they play in contributing to responsible business conduct, and thus to broad societal support for the open markets.”¹⁸

The purpose of the update of the Guidelines is to ensure their continued role as a leading international corporate responsibility instrument for the promotion of responsible conduct. The terms of reference cover substantive, procedural and institutional issues related to the Guidelines. Priorities for the update include more elaborated guidance on the application of the Guidelines to human rights, including if deemed appropriate, in a dedicated chapter of the Guidelines, the clarification of the application of the Guidelines to supply chains and the improvement of the implementation of the Guidelines to enhance awareness, visibility and a more widespread use and effective use of the Guidelines, including in non-adhering countries. The work on the update was scheduled to start on the occasion of the June 2010 Annual Meeting of the National Contact Points (NCPs) with the broad aim of completing the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting. Consultations with stakeholders and non-adhering countries will be integral to the update process.

Co-operation with other corporate responsibility instruments. On 27 October 2009, it was announced that “following its participation in the 2009 Annual Meeting of the National Contact Points, the UN Global Compact invited its Local Network Focal Points in countries that adhere to the OECD Guidelines for Multinational Enterprises to actively explore collaborative opportunities with NCPs. Additionally, Focal Points were encouraged to seek advice and guidance from NCPs, particularly regarding follow-up procedures for OECD Guidelines implementation.” The Amsterdam Global Conference on Sustainability and Transparency, organised by the GRI on 26-27 May 2010, highlighted the importance of the Guidelines as a benchmark for reporting corporate responsibility actions. The Chair of the Working Party of the Investment Committee, the CSR Ambassador of Norway and a representative of the OECD Secretariat were invited as guest speakers to a special session dedicated to the Guidelines.¹⁹

Promoting responsible business conduct in Asia. The “Regional Conference on Corporate Responsibility: Why Responsible Business Conduct Matters”, organised by the OECD and ESCAP in close cooperation with ILO, the UN Global Compact and the GRI, was held in Bangkok from 2-3 November 2009. The conference attracted more than 200 participants from 16 countries across Asia and the Pacific with a focus on how to ensure that the private sector could be most effectively harnessed to drive long-term economic growth, environmental sustainability and social progress. Discussion included the respective roles of governments, business and other stakeholders in promoting RBC in OECD and ESCAP contexts, best practices from OECD and non-OECD countries in engaging in RBC activities and relating them to corporate governance, as well as the supporting role of the leading international corporate responsibility initiatives in promoting international responsible business. The conference also addressed the plans to update the Guidelines in 2010. The discussions confirmed that the Guidelines are well placed to assist Asia-Pacific firms strengthen trust and harmony in societies where they work and thus make them more profitable and sustainable. The results of this event were presented by Vice-Chair of the Investment Committee to the Committee on Trade and Investment of the Economic and Social Commission for Asia on 6 November 2009. OECD Watch organised a back-to-back capacity building and training seminar with representatives of Asian NGO community 4-6 November 2009.

III.e. Other promotion by the OECD

High level interventions by the OECD on the role of the Guidelines. On 10 November 2009, in Stockholm, the Deputy Secretary-General Aart de Geus delivered a key note speech at the 2009 EU Conference on Corporate Social Responsibility. The speech highlighted the Guidelines and their contribution to Professor Ruggie’s “Protect, Respect and Remedy Framework” for Business and Human Rights.

The OECD Deputy Secretary-General Richard Boucher participated in the Ministerial Session of the UN Global Compact Leaders Summit 2010, on 23 June 2010, in New York, NY. The DSG delivered remarks regarding the OECD and UN Global Compact partnership emphasising ways in which governments can support and incentivize businesses to incorporate poverty reduction into their business models. He also called for an active participation of the UN Global Compact in the update of the Guidelines. DSG Boucher also chaired a discussion on the Guidelines and responsible business conduct at the USCIB Global Investment Conference in Washington in March 2010²⁰.

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 French CSR Ambassador represented the OECD at the 8th meeting of ISO/TBM/WG SR held in Copenhagen, Denmark on 5-17 May 2010 which approved the version WG SR N191 of Draft International Standard (DIS) version of ISO 26000, Guidance on social responsibility and agreed to send it to the Editing Committee for editing, and then to forwards it to ISO/CS no later than 30 June 2010 for registration as FDIS for ballot.²¹
- On 23 March 2010, the Egyptian Government held the Third Annual CSR Conference in Cairo, which focused on “Transparency and Reporting on CSR practices, Towards Sustainable Competitive Environment”. The OECD was represented by the Netherlands’ NCP and addressed reporting and disclosure under the OECD Guidelines.
- On 16 April 2010, the OECD presented the Guidelines in a workshop held by ProInversión, which served to consolidate ProInversión as the new Peruvian NCP. The workshop addressed topics including implementation experiences, the role of the National Contact Point and the importance of the Guidelines for the consolidation of the Peruvian investment climate.
- The OECD dialogue and co-operation with the economies of Southeast Asia continued. In May of 2009 a publication titled “Active in Southeast Asia” was disseminated promoting the Guidelines as they pertain to Corporate Governance in reference to state-owned enterprises (SOEs) and how to improve governance frameworks in the Asian economic, legal and regulatory context.
- The OECD worked with Indonesia on their approach to encouraging responsible business conduct at the 48th Meeting of the ASEAN Coordinating Committee on Investment in Penang, on 22 April 2010.
- The Guidelines were also recognized in the “King Report on Governance for South Africa” (King III) published in 2009, by the Institute of Directors in Southern Africa in regards to their international importance in addressing sustainability issues.²²

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.

IV. Active use of the “specific instance” facility

IV.a. Number of specific instances

224²³ 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 (18), Canada (9), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (12), Germany (12), Hungary (1), Ireland (2), Israel (1), Italy (5), Japan (4), Korea (7), Mexico (3), Netherlands (19), New Zealand (2), Norway (6), Peru (1), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (12), Turkey (3), United Kingdom (21), and United States (26).

Appendix E shows that 160 specific instances have been actively taken up and considered to date by NCPs.²⁴ 138 of these have been concluded or closed. Most specific instances dealt with Chapter IV (Employment and Industrial Relations). A rising number of cases also involved violation of human rights, a majority of them within the resources sector. Complaints relating to Chapter V (Environment) have also increased over the past few years. The only Guidelines chapter that has not been referenced in the context of a specific instance is Chapter VIII (Science and Technology). Smoother and more productive consultations among NCPs stand out as significant developments during the reviewed period. In particular, the New Zealand NCP reports working closely with assistance from Germany and Australia, on a recent initial assessment involving the employment practices of an enterprise in the telecommunications sector in New Zealand. The rise of specific instances in non-OECD adhering countries has also continued. The most noticeable development during the reporting period, however, was the increased recourse to mediation as a means for resolving specific instances. 9 specific instances were managed through mediation during this time frame, in a majority of cases resulting in positive outcomes for all parties involved.

IV.b. 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 Cerrejon Coal in Colombia. Cerrejon Coal is jointly owned by BHP-Billiton, Anglo-American and Xstrata. The complaint to the Australian NCP related specifically to BHP-Billiton but because of the joint ownership the Australian NCP consulted with the Swiss and UK NCPs to resolve this specific instance. This instance was suspended pending a report commissioned by the mining company's management and shareholders to review the firm's social engagement. 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. The settlement included a package of compensation and sustainable projects. In this context, it was agreed that the issues relating to Tabaco have been satisfactorily resolved. The agreement between Cerrejon and the former residents of Tabaco is a significant, positive outcome that has been welcomed by all parties.

There are several other communities which may need to be resettled and with which formal agreements are still being considered, but the process of consultation is proceeding. As a follow up to the mediation procedures in February 2009, it was confirmed that Cerrejon would agree to engage an independent facilitator to work with individual communities to provide an oversight role where the communities were seeking independent support.

Argentina – The specific instance regarding ACCOR, a corporate services company, was brought to the attention of the Argentinean NCP on 28 November 2007, by National Deputy, Dr. Héctor P. Recalde and his legal representative, Dr. Hugo Wortman Jofre. The instance cited Chapters II (General Policies), IV (Employment and Industrial Relations) and VI (Combating Bribery) of the OECD Guidelines. This specific instance was concluded on 5 March 2009, through cooperative means on behalf of both parties, which the NCP finds mutually satisfactory. The outcome was published in two broadsheet newspapers of nation-wide circulation.

United Kingdom – In 2009, the UK NCP published four final statements. Two of these statements, concerning the activities of UNILEVER PLC in Pakistan, reflect the successful outcome of mediation sponsored by the UK NCP. The alleged breaches of Chapter II (General policies) and Chapter IV (Employment and Industrial Relations) were brought to the OECD, the first instance in October 2008, and the second in March 2009, by a trade union (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)). The UK NCP accepted the complaints and commenced a conciliation/mediation process between the parties using an independent mediator in an effort to reach a mutually acceptable resolution. The result of the independent conciliation mediation process was an exemplary success as both parties undertook specific commitments with regard to the issues presented.

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

Adhering countries have continued to disseminate and promote the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. The United Kingdom provides explicit reference and links to the tool in the business and human rights toolkit sent by the British Foreign and Commonwealth Office to its overseas posts to assist them in the handling of complaints they may receive on the behaviour of UK companies in weak governance zones. Germany references the Risk Awareness Tool in its government reports on crisis prevention and Norway included reference to the tool in its 2009 white paper "*Corporate Social Responsibility in a Global Economy*". Sweden has translated the tool into Swedish for wider dissemination to Swedish enterprises operating in weak governance zones, and the Swedish Minister for Trade has strongly emphasized the importance of the tool in the Swedish Parliament. More adhering countries have added the Risk Awareness Tool to their NCP or corporate responsibility websites (Switzerland, New Zealand).

Developing countries are increasingly making active use of the OECD Risk Awareness Tool to shape their own policies. The International Conference on the Great Lakes Region (ICGLR) has recognized its usefulness as a source of guidance for the implementation of the ICGLR Protocol against the illegal exploitation of natural resources.²⁵ The Government of the Democratic Republic of the Congo agreed to use it to enhance transparency and accountability in the extractive sector.

In his 2010 report, the Special Representative of the UN Secretary General on business and human rights, Professor John Ruggie, highlighted the Risk Awareness Tool as a notable case where governments provided meaningful assistance to enterprises operating in conflict-affected areas.²⁶ The Tool was also included in the list of cross-sectoral intergovernmental initiatives listed in the Draft ISO 26000 Guidance on Social Responsibility.²⁷

The OECD Secretariat has continued to actively promote the Risk Awareness Tool. The OECD Deputy Secretary-General Aart de Geus stressed the due diligence approach taken in the Risk Awareness Tool at the EU Conference on Corporate Social Responsibility which was held in Stockholm on 10 November 2009. The OECD Secretariat was invited to join the "Task Force" on the illegal exploitation of natural resources in the Great Lakes Region,²⁸ and participated in meetings in both OECD and African countries, building support for the implementation of the OECD Risk Awareness Tool in the mining sector.

V.a. Pilot project on due diligence in the mining and minerals sector

On 6 October 2009 the Investment Committee and the Development Assistance Committee approved a joint project to implement the Risk Awareness Tool in the mining and minerals sector.²⁹ An OECD-hosted multi-stakeholder working group was set up with the mandate to develop practical due diligence guidance for responsible business conduct in conflict-affected and high-risk areas. The working group consists of OECD member and partner countries, international organisations, industry and trade organisations, mining companies, mineral trading and processing companies, brand end-user companies and civil society organisations.

The OECD Secretariat convened a private sector consultation on 8 December 2009 that mobilised views from leading mining, smelting and trade organisations and informed the development of further work on due diligence in the mining and minerals sector by the OECD-hosted working group. The working group agreed to structure its work around two pillars: develop due diligence guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas, with particular regard to the Democratic Republic of Congo (DRC), and undertake a stock taking of due diligence tools in the mining sector. The OECD will coordinate this exercise in order to identify possible gaps and inform future work for developing practical guidance on responsible mining.

Since then, members of the OECD-hosted working group have engaged into constructive dialogue through an OECD-hosted web platform to develop draft due diligence guidance for responsible supply chain management of minerals from conflict-affected and high-risk areas.

As a result of a multi-stakeholder expert meeting held on 28 April 2010, the OECD hosted a working group and invited experts adopted a five step due diligence framework articulated as follows: strengthen company management systems, including chain of custody tracking system over the mineral supply chain; identify facts and assess risk in the supply chain; design and implement mitigation strategies by establishing improvement plans or discontinuing engagement with suppliers; ensure independent third-party audit; report on supply chain due diligence and findings. Participants commended the draft guidance and recognised its added-value as providing a global framework on responsible supply chain management of conflict commodities encompassing all actors involved, beyond mineral, country or regional specific initiatives.

The UN Group of Experts on the Democratic Republic of the Congo relied on the OECD draft guidance's definition of risk-based due diligence and endorsed the proposed draft due diligence five step framework in its 2010 interim report to the UN Security Council.³⁰

The International Conference on the Great Lakes Region (ICGLR) recognised the OECD guidance as a key contribution to ICGLR efforts to combat the illegal exploitation of natural resources in the Great Lakes Region. ICGLR countries recognised that the OECD guidance on due diligence is complimentary and will feed into the ICGLR initiative on certification that will be submitted to the Summit of the ICGLR 11 Heads of States in Kinshasa in November 2010. The OECD and the ICGLR will jointly organise a conference to be held in Nairobi, Kenya on 29-30 September 2010 to finalise the draft due diligence guidance on responsible supply chain management of conflict minerals. This event will bring together key players in the supply chain of tin-tantalum-tungsten and gold as well as representatives of OECD, partner countries, international and civil society

organisations. A final draft will be presented to the OECD Investment Committee for approval in fall 2010.

This work also contributes to further advancing G20 Pittsburgh commitments to fight corruption, money laundering, terrorist financing and the illicit outflow of capital from developing countries.

Notes

1. Available at www.oecd.org/daf/investment/guidelines.
2. 2010 Ministerial Conclusions, C/MIN(2010)6/FINAL, paragraph 12.6.
3. John Ruggie, "Updating The Guidelines for Multinational Enterprises Discussion Paper", paper presented at the 10th OECD Roundtable On Corporate Responsibility Discussion Paper, OECD, Paris, France, 30 June 2010.
John Ruggie, "The Corporate Responsibility to Respect Human Rights in Supply Chains", paper presented at the 10th OECD Roundtable On Corporate Responsibility Discussion Paper, OECD, Paris, France, 30 June 2010.
4. Specific instance counts are based on the information provided in the NCP Annual Reports by 40 of the OECD Guideline adhering countries, NCP Annual Reports are outstanding from Iceland and Luxembourg.
5. The number of specific instances raised reflects those numbers reported in NCP Annual Reports. Not all NCPs report cases which have not been formally accepted.
6. Four additional specific instances were added from the UK NCP, these instances were raised during the 2004-2005 reporting period and though included in the total specific instances raised count, they are not reflected in the new instances for the 2009-2010 reporting period.
7. "Business and Human Rights: Further steps toward the operationalisation of the 'protect, respect and remedy framework'", A/HRC/14/27 (9 April 2010), paragraphs 13 and 98.
8. Committee of Consumer Policy, Committee for Employment, Labour and Social Affairs, Environment Policy Committee, Committee on Financial Markets, Committee on Fiscal Affairs, Corporate Governance Committee, and the Working group on Bribery in International Business Transactions.
9. Argentina, Australia, Austria, Chile, Czech Republic, Egypt, Germany, Greece, Hungary, Ireland, Israel, Italy, Mexico, New Zealand (with a Liaison Group consisting of government, business and trade unions representatives), Peru, Poland, Slovak Republic, Spain, Switzerland and United States.
10. Brazil, Canada, Iceland, Japan, Korea, Portugal, Turkey and United Kingdom.
11. Romania and Morocco's NCP is comprised of government and business representatives.
12. Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Slovenia and Sweden. Several of these also have multiple governmental department NCPs.
13. Finland and Norway are currently in the process of restructuring their NCPs to reflect a mixed structure of four independent appointed experts, including a leader, and two full-time secretariats, all localized outside of the government, while administrative responsibility and financial resources for the NCPs will rest with the government.
14. 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.
15. Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period. Iceland and Luxembourg NCP Annual Reports are outstanding.
16. Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period. Iceland and Luxembourg NCP Annual Reports are outstanding.
17. The Netherlands National Contact Point, "Peer-Review", The Netherlands National Contact Point website, www.oecdguidelines.nl/get-started/peer-review/.
18. Available at www.oecd.org/daf/investment/guidelines.

19. The Global Reporting Initiative (GRI), “The Amsterdam Global Conference on Sustainability and Transparency”, Amsterdam GRI Conference website, www.amsterdamgriconference.org/glance, accessed July 2010
20. See Annex 1.4 for a transcript of these two speeches which are also available online at www.oecd.org/daf/investment/guidelines.
21. International Organization for Standardization (ISO), “News and Media”, International Organization for Standardization website, www.iso.org/iso/pressrelease.htm?refid=Ref1294, www.iso.org/iso/pressrelease.htm?refid=Ref1299, and www.iso.org/iso/pressrelease.htm?refid=Ref1321, accessed July 2010.
22. The Institute of Directors in Southern Africa (IoDSA), “King Code of Governance Principles” (King III), IoDSA website. <http://african.ipapercms.dk/IOD/KINGIII/kingiiiireport/>, accessed July 2010.
23. Specific instance counts are based on the information provided in the NCP Annual Reports by 40 of the OECD Guideline adhering countries, NCP Annual Reports are outstanding from Iceland and Luxembourg. The number of specific instances raised reflects those numbers reported in NCP Annual Reports. Not all NCPs report cases which have not been formally accepted.
24. The number of specific instances actively taken up by NCPs is the number of specific instances listed in Appendix E, adjusted for specific instances that are listed more than once on the list because more than one NCP was involved and more than one NCP reported on the specific instance in the list.
25. www.oecd.org/daf/investment/mining.
26. See Report of the UNSGSR “Business and Human Rights: Further steps toward the operationalization of the ‘protect, respect and remedy’ framework”, A/HRC/14/27 (9 April 2010), footnote 30.
27. Draft International Standard ISO 26000 Guidance on Social Responsibility (ISO/DIS 26000), Table A1: Examples of cross-sectoral initiatives, Section 1: Intergovernmental initiatives.
28. The “Task Force” on the illegal exploitation of natural resources in the Great Lakes Region was set up to foster exchange of information on current initiatives, identify gaps and make recommendations for decision-making bodies where possible. The Task Force, initially composed of the United Nations, the United States, 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), Roeland van de Geer, is acting as the Task Force’s Secretariat.
29. www.oecd.org/daf/investment/mining.
30. See Interim report of the Group of Experts on the Democratic Republic of the Congo, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009) [S/2010/252 (25 May 2010), paragraphs 67-68-69].

ANNEX 1.A1

Statements released by NCPs, June 2009-June 2010

This Annex reproduces the statements issued by the National Contact Points during the reporting period concerning specific instances, in accordance with the Procedural Guidance on the implementation of the Guidelines in specific instances, which 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 Austrian National Contact Point on the GPA-DJP against Novartis Institutes for BioMedical Re-search GmbH and Co. KG Specific Instance.
- Public statement by the Austrian NCP on the ITBLAV against Global Sports Lanka/the GST holding company.
- Public statement by the Dutch NCP on the Pilipinas Shell Petroleum Corporation (PSPC) Specific Instance.
- Public statement by the Mexican NCP on the Industria Vidriera del Potosi (IVP) Specific Instance.
- Public statement by the Norwegian NCP on the Kongsberg Automotive Specific Instance.
- Public statement by the Swiss NCP on the Cerrejon Coal Mine Specific Instance.
- Statement by the Swiss NCP on theNestlé Indonesia, Panjang Coffee Processing Plant Closing Statement.
- Public statement by the UK NCP on the Unilever Rahim Yar Khan factory Specific Instance.
- Public statement by the UK NCP on the Survival International against Vedanta Resources plc Specific Instance.
- Follow up statement by the UK NCP on the Survival International against Vedanta Resources plc Specific Instance.
- Public statement by the UK NCP on the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations against Unilever plc on India’s Sewri factory Specific Instance.
- Public statement by the UK NCP on the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations against Unilever plc on Pakistan’s Khanewal factory Specific Instance.

Statement by the Austrian NCP

Final statement by the Austrian National Contact Point for the OECD Guidelines for Multinational Enterprises: GPA-DJP against Novartis Institutes for BioMedical Re-search GmbH and Co. KG

On 5 February 2008, the *Gewerkschaft der Privatangestellten Druck-Journalismus-Papier* (Union of Private Employees – Print, Journalism and Paper, GDA-DJP) filed a written complaint with the Austrian National Contact Point (the “Contact Point”) concerning alleged breaches of points 3 and 6 of the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises (the “Guidelines”) in connection with the closure of Novartis’ research centre in Vienna.

The GDA-DJP complained about the closure, announced on 18 December 2007, of Novartis’ research centre in Vienna, which employed 240 researchers, on the grounds that closure was avoidable and the adverse effects would have been greatly mitigated if more notice had been given and stakeholder representatives had been consulted. More specifically, the GDA-DJP complained that neither the works council nor the workforce had been given any kind of notice before 18 December 2007 that the site was under threat or could be closed. The timing of the announcement and the fact that it was made by means of a video message were also criticised. Further criticism was made of the lack of information about the “Forward” internal restructuring programme (particularly significant under the circumstances), under which an evaluation of the Vienna research centre had been carried out in the summer of 2007.

After identifying the respondent and assessing its competence, the Contact Point transmitted the complaint to Novartis Institutes for BioMedical Research GmbH and Co. KG (“Novartis Institutes”) for comment.

Novartis Institutes stated on 26 March 2008 that the matters to which the complaint related had already been discussed before the National Economic Commission, established within the Federal Ministry for the Economy, the Family and Youth (at the time the Federal Ministry for the Economy and Employment), but that it was nevertheless willing to respond.

Internal enquiries revealed that a written request to introduce a procedure under Section 112.1.1 of the Labour Constitution Act to decide on the referral to the National Economic Commission was submitted by the Novartis Institutes works council on 3 January 2008 via the ÖGB (Austrian trades union federation), GPA-DJP.

The National Economic Commission’s task is to make proposals to foster agreement between a works council and company management. Before the formal referral to the National Economic Commission, informal attempts to find a solution had been made, as is customary in such cases. These informal contacts helped to improve the basis for dialogue between employees and employers and led to internal negotiations. In April 2008, in the course of these negotiations between management and employee representatives, a solution involving a redundancy plan was found. Consequently, on 9 April 2008 the Novartis Institutes works council, via the ÖGB, GPA-DJP, withdrew the referral to the National Economic Commission. As a mutually satisfactory agreement had been found at this preliminary stage, a formal referral to the National Economic Commission and the introduction of a procedure under the Labour Constitution Act became superfluous.

In response to an enquiry, the GPA-DJP subsequently informed the Contact Point that the complaint under the Guidelines still stood. In the interests of effective application of the Guidelines, the Contact Point decided to continue to process the complaint and on 19 May 2008 asked Novartis Institutes for a further response, which was received on 13 June 2008.

In its response, Novartis Institutes explained that the message to the workforce from Dr. Mark C. Fishman on 18 December 2007 was transmitted by video because the measures concerned several of the company's sites and Dr. Fishman could not be present in person at all of them. According to Novartis Institutes, after the video message the local manager, Dr. Jan E. de Vries, explained the details that were known to him at the time. Dr. de Vries had learnt the outcome of the Vienna research centre evaluation on 13 December 2007 and had told the works council about it on the same day. The works council had neither made representations nor sought consultation. Once the relevant decision had been taken in Basel, the works council and then the workforce were informed on 18 December 2008 of the forthcoming closure of the Vienna research centre and the works council was invited to engage negotiations on a redundancy plan.

Concerning "Forward", Novartis Institutes pointed out that the groupwide programme launched on 18 October 2007 had entailed a global review of the measures that the company could envisage in order to make the necessary adaptations to the challenges facing the pharmaceutical industry. The options were presented to Novartis' board of directors on 12 December 2007 and, taking up one of them, the decision was made to evaluate the Vienna research centre.

Novartis Institutes argues that it complied with its notification requirement promptly and in accordance with the relevant provisions of the Labour Constitution Act. The assertion that the closure was avoidable and that the adverse effects would have been greatly mitigated if more notice had been given and stakeholder representatives had been consulted was unfounded and inaccurate. Novartis Institutes therefore rejected all allegations that it had breached the Guidelines.

In the light of this response, the Contact Point made an initial assessment of the complaint in accordance with point I.C.1 of the Procedural Guidance, concluding that the issues raised merited further examination. The parties were informed of this in a letter dated 16 June 2008.

On 17 June 2008, the Contact Point put a number of questions arising from the Novartis Institutes response to the GPA-DJP. The Contact Point received an answer on 7 July 2008.

The GPA-DJP explained that it had not made representations on 13 December 2007 because Dr. de Vries had said he knew nothing more about the evaluation and that a decision had been announced for 18 December 2007. In the end, on 18 December 2007, no member of the senior management team had been available for consultation in the two hours between the time when the works council was informed and the time when the workforce was informed. Furthermore, the workforce had been notified only of the forthcoming closure and of the intention to negotiate a redundancy plan. The closure date of 30 June 2008 was not revealed until 22 January 2008, after representations by the works council. Overall, the GPA-DJP complains that it had been presented with a *fait accompli*, that it had therefore not been able to exercise its rights of consultation and that it had not been possible to take any measures to secure the future of the site.

Following this response and after carefully examining the facts, the Contact Point considers that it has been provided with sufficient information and, in agreement with GPA-DJP and Novartis Institutes, concludes as follows.

- On 18 December 2007, Novartis Institutes notified the works council then the workforce of the forthcoming closure of its Vienna research centre. The works council had been informed on 13 December 2007 of an evaluation of the research centre.
- The first issue was whether this procedure was consistent with the recommendation in point 3 of the Guidelines chapter on Employment and Industrial Relations to “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.”
- The second issue was whether this procedure was consistent with the recommendation in point 6 of the same chapter, namely “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.”
- Concerning point 3, the Contact Point finds that the works council was notified of the decision about the evaluation of the Vienna research centre on 13 December 2007, one day after the board of directors took the decision. However, the notification contained no information about the contents, purpose or timetable of the evaluation, on the basis of which the closure of the site was announced just six days later. This made it if not wholly impossible then at least much more difficult for the employees and the works council “to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole”.
- Concerning point 6, the Contact Point finds that the lapse of time, and especially the fact that only six days passed between the decision to evaluate the Vienna research centre and the announcement of its closure, suggests that decisions under the “Forward” programme, and in all events the evaluation decision on 13 December 2007, had already been taken on the basis of “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”. The question was whether employee representatives and, where appropriate, the relevant authorities were “provide[d] [with] reasonable notice of such changes”. The Guidelines state that “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.” That did not happen in this case, as a result of which the employee representatives were not able to propose any alternatives to the closure the site.
- On the other hand, at the same time as announcing the decision to close the site on 18 December 2008, Novartis Institutes expressed its willingness to negotiate a redundancy plan for the staff concerned. The management and employee representatives

also agreed to refer the plan to the National Economic Commission, established within the Federal Ministry for the Economy and Employment (now the Federal Ministry for the Economy, the Family and Youth), as a result of which the Novartis Institutes works council withdrew its referral to the National Economic Commission under Section 112.1.1 of the Labour Constitution Act. In this respect the course of action taken by Novartis Institutes is consistent with the Guidelines recommendation that in the cases referred to in point 6, companies should “co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.”

- The Contact Point has no evidence that the local management of Novartis Institutes did not do everything it could to comply with the Guidelines recommendations. In fact, it was notified of the relevant decisions taken by the parent company board only shortly before the employees and their representatives.
- Point 3 of the Guidelines chapter on Concepts and Principles states that “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.”
- In light of this, the Contact Point is instigating an internal assessment of Novartis’ decision-taking and notification procedures with the aim of identifying where they can be improved.

The Contact Point thanks the representatives of Novartis Institutes for BioMedical Research GmbH and Co. KG, of GPA-DJP and of the National Economic Commission for their positive and constructive cooperation.

17 July 2009

Statement by the Austrian NCP

Final statement by the Austrian National Contact Point for the OECD Guidelines for Multinational Enterprises: ITBLAV represented by Dr. René Schindler against Global Sports Lanka/the GST holding company

On 27 March 2006 Dr. René Schindler, employed by the Metal, Textile and Food Trades Union within the Austrian trade union confederation, filed written complaints, on behalf of the International Textile, Clothing and Leather Workers Association (ITBLAV), with the Austrian national contact point (hereinafter: contact point) against Global Sports Lanka/the GST holding company (the owners), whose head office is located in Antiesenhofen, for alleged breaches of the “Employment and Relations between the Social Partners” part of the OECD guidelines for multinational enterprises (hereinafter: guidelines). This related to an internal employment conflict which occurred in 2002 in Sri Lanka at Global Sports Lanka (known at that time as North Sails Lanka) following changes in the remuneration system.

The complainant claimed that, in March 2002, North Sails Lanka changed the remuneration system without consulting the employees and to the latter’s detriment, which ultimately led to work stoppages and protests. North Sails Lanka, on the other hand, it is claimed, proceeded with a series of lay-offs, whereby a total of 207 employees are said to have lost their jobs. It is also claimed that North Sails Lanka demanded that employees who requested reinstatement following government intervention, sign – as a pre-condition – a written statement distancing them from the instigators of the protests.

The contact point regarded itself, in respect of the GST holding company, whose head office was based in Austria, as responsible for dealing with the complaints, irrespective of the fact that Global Sports Lanka was transferred into the GST holding company’s ownership only in 2005.

The contact point thus communicated the complaints immediately to the GST holding company, which commented upon them as early as April 2006, disputing the alleged violations. The works council is said to have been informed of the changes in the remuneration system and to have raised no objections. The lay-offs made are said to have been justified by disciplinary breaches. Many former employees are said simply not to have returned to work at the conclusion of the employment conflict despite the fact that the possibility was open to them. A written explanation of the complaint type is said not to have been demanded.

Dr. René Schindler and Mr Thomas Berger, CEO of the GST holding company, however, endeavoured at first to achieve an agreement. The contact point kept itself informed of progress. When, on 17 November 2006 Dr. Schindler informed the contact point, however, that these bilateral efforts had failed, an initial evaluation of the complaints was carried out immediately, in agreement with point I.C.1. of the procedural instructions to the guidelines, which showed that the questions thrown up justified more detailed examination. Both parties were informed of this on 29 November 2006, along with the OECD Secretariat.

After the demands were formalised on Dr. Schindler’s side on 9 February 2007, a discussion was held at the Federal Ministry for Economic Affairs and Labour on 1 March 2007 between the contact point, Mr. Berger, other representatives of the GST holding company and Global Sports Lanka, during which additional documents were also

submitted. On 3 May 2007 a further discussion took place at the Ministry for Economic Affairs and Labour between the contact point and Dr. Schindler. Following this the contact point endeavoured, in conjunction with the two parties, to engineer room for a compromise and suggested a discussion between the two parties, moderated by the contact point, but which did not take place.

In order to bridge the continued highly differing points-of-view, the contact point sent both parties a draft agreement on 16 August 2007 in which a compromise was suggested for the two main points of conflict, i.e. trades union activity at Global Sports Lanka and the approach in respect of former Global Sports Lanka employees, along with requirements for making the agreement a reality. Dr. Schindler and Mr. Berger finally commented on this in November 2007, the comments made containing substantial reservations corresponding to the differing points-of-view. The contact point continued to endeavour, irrespective of this, to achieve a consensual solution.

In September 2008, however, a compromise agreement was reached between Global Sports Lanka and 19 former employees but it was not possible to achieve a consensual solution.

Ultimately the following needed to be examined, therefore:

- whether the action of Global Sports Lanka (formerly known as North Sails Lanka)/the GST holding company corresponds to the recommendation in point 1.a) of the *“Employment and Relations between the Social Partners”* part *“to respect the right of 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.”*
- furthermore, whether the action corresponds to the recommendation in point 2.a) of the part quoted, *“Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.”*
- furthermore, whether it corresponds to the recommendation in point 2.c) of the quoted part, *“Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern.”*
- furthermore, whether it corresponds to the recommendation contained in point 8 of the referenced part, *“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.”*

Unfortunately the information and resources to obtain information available to the contact point do not enable it to make a reliable statement on these points. Rather, in this case, at best, only the legally valid conclusion of the litigation pending in Sri Lanka will be able to provide more accurate information. The factual entitlement to the claim of objective breaches of the guidelines cannot, therefore, be judged by the contact point. Interrupting processing of the claims for the duration of the parallel proceedings in Sri Lanka, however, seemed neither productive nor reasonable, especially as the time scales involved are of the order of years. The contact point thus abstains from any statement on whether the breaches of the guidelines claimed actually took place.

Nevertheless, the contact point considers it appropriate, on the basis of the information available, to formulate the following recommendations:

The contact group welcomes the compromise agreement between Global Sports Lanka and 19 former employees of the company and recommends

- fitting observation of the OECD guidelines for multinational enterprises and, specifically, the “Employment and relations between social partners” part in the future arrangement of the internal employment relations at Global Sports Lanka;
- carefully examining all possibilities of achieving an amicable solution to the points of conflict resulting from the employment conflict which occurred in 2002 and which remain unresolved;
- additionally, striving to achieve a fair compromise agreement to the employment law proceedings still pending in Sri Lanka, at least insofar as no valid conviction is forthcoming in the pending criminal proceedings;
- otherwise, allowing for a preferred reinstatement of those employees laid off by Global Sports Lanka following the employment conflict, insofar as they wish to be reinstated and insofar as the actual personnel requirements of Global Sports Lanka allow;
- irrespective of the activity of the works council which exists within Global Sports Lanka, giving the FTZ&GSEU and any other interested trades unions the chance to inform the employees of Global Sports Lanka appropriately about their activity and to recruit them, should they so wish, as members;

The contact point thanks both parties to the proceedings for their good and constructive cooperation.

Vienna, 17 July 2009

Statement by the Dutch NCP

Final statement of the Dutch NCP on the “Complaint on the violations of Pilipinas Shell Petroleum Corporation (PSPC), pursuant to the OECD Guidelines for Multinational Enterprises”

Issues of the complaint

On May 16, 2006, the Dutch NCP received a “Complaint on the violations of Pilipinas Shell Petroleum Corporation (PSPC), pursuant to the OECD Guidelines for Multinational Enterprises”. Complainants are: The Fenceline Community for Human Safety and Environmental Protection, a not-for-profit organisation, based in Pandacan, City of Manila; Milieudefensie (Friends of the Earth Netherlands) and the (Netherlands-based) Friends of the Earth International. They allege that Pilipinas Shell Petroleum Corporation (PSPC), a Philippine subsidiary of Royal Dutch Shell, violated specific provisions of the Guidelines. Specifically when it continued operations of its oil facilities in Pandacan, Manila, it was in violation of a local ordinance (No. 8027) that existed at that time.

The issues raised in the complaint are:

- I) manipulation of local government;
- II) concealment of a. negotiations and b. environmental/health risks of activities;
- III) lack of specific plans to mitigate the hazards at the oil depot.

Complainants allege that PSPC violated the following provisions of the Guidelines:

Chapter II, Sec. 5 and Sec. 11, on seeking exemptions not contemplated in the statutory and regulatory framework, and improper involvement in local political activities;

Chapter VI on bribery or undue advantage to obtain or retain business or other improper advantage;

Chapter III, Sec. 4(e) on disclosure of information on material foreseeable risk factors;

Chapter V, Sec. 2 on providing information on potential environmental, health and safety impacts of activities on employees and the affected communities; and

Chapter V, Sec. 5 and Sec. 6 on contingency plans for serious environmental and health damage, and adopting standards for environmental performance.

In their complaint, which was brought before the NCP, the notifiers called for the following:

“(…) Given the seriousness of PSPC/Shell’s alleged breaches to the OECD Guidelines, we request that PSPC/Shell:

- comply with Ordinance No. 8027 by completely removing its oil depot from Pandacan and relocating it where it would not put the people’s health and safety at risk;
- assume responsibility for the health problems of the people of Pandacan that were a result, partly or otherwise, of the maintenance of the oil depot therein;
- assume complete responsibility for the contamination of the soil in Pandacan where its oil facilities are located;
- actively monitor and improve the air quality around its facilities;
- desist from engaging in deceptive campaigns to gain support for the retention of its facility;

- desist from involvement in bribery and local political activities;
- provide information to the public regarding the potential risks of its operations and involve the local community in decision-making;
- improve and upgrade its equipment, and continuously enhance the training of its people in disaster preparedness and management, to respond to oil leakages and other accidents.”

After its decision on the admissibility of the complaint, in meetings with the notifiers, the NCP explained that its dealing with the complaint would selectively be a forward looking process. Taking the allegedly violated guidelines as a starting point, it would try to verify the facts and try to organize interaction between PSPC and the complainants, aimed at addressing the issues raised. The NCP made clear that it is not in a position to enforce compliance with local legislation nor can it press for notifiers’ specific demands with PSPC. The issues behind the demands can be put on the agenda of a mediatory attempt. The NCP also clarified that the mediation process is voluntary and it relies on the goodwill of parties to participate in the process.

Admissibility of the Complaint

On July 3, 2006 the NCP evaluated the complaint as admissible under the specific instance procedure of the OECD Guidelines for Multinational Enterprises. The existence of parallel (legal) procedures formed no argument for the NCP to abstain from involvement per se. The NCP was careful not to interfere with local governmental or legal procedures in the Philippines; the NCP, being a public body, fully respects the legal autonomy of other countries. However, the OECD Guidelines set out the OECD member states’ expectations of corporate conduct that is generally not regulated by legislation in a specific situation. Therefore, issues such as setting up and maintaining a proper dialogue with local stakeholders, can still be dealt with by an NCP, parallel to a local legal procedure.

The degree to which the complainants are representative of the stakeholders of the firm was not an issue in the assessment of the admissibility of the case. After all, the relevant issue for accepting a complaint for a specific instance procedure of the OECD Guidelines for Multinational Enterprises is whether the respondent company is in compliance with the guidelines, regardless of how many people filed or support the complaint.

Summary of facts

1. PSPC has maintained and operated an oil terminal in Pandacan since 1914. Chevron Philippines, Inc., previously ‘Caltex’ (Chevron) and Petron Corporation (Petron) also have oil terminals in the 36-hectare area of Pandacan, and have been operating there for decades as well. When the oil terminals were built, the area was sparsely populated. Pandacan is an old community. The Catholic church around which the old community developed was built in the 1730s and is in close proximity to the oil depot. Over the decades, Pandacan has become a highly densely occupied residential and commercial area, with houses and buildings sprouting up practically along the fence of the oil terminals.
2. In the aftermath of the terrorist attacks in the United States in 2001 and in light of the growing threats in the Philippines, the incumbent Mayor of Manila announced that the oil terminals posed a danger to the safety of Manila residents and urged the closure of

these terminals. The City Council conducted several consultations, in which the results of a research by the National Center for Disease Prevention and Control of the Department of Health were put forward. It issued a report stating that the levels of aromatic hydrocarbons such as benzene in the depot area are elevated to a level deemed unsafe by the US EPA, although it could not be determined if the elevated levels were caused by the depot itself, the transport in and out of the depot or other reasons. During the hearings, the Fire Chief of Manila bore testimony to the Manila City Council, stating that PSPC operated in violation of a number of health and safety codes.

3. On the basis of the testimonies and consultations, on 28 November 2001, the Council passed Ordinance No. 8027, reclassifying the area of the oil terminals from “industrial” to “commercial”. As a consequence, the oil companies were ordered to cease operations of the oil terminals by 28 June 2002. The validity of the local business permits of the oil companies were shortened to 30 June 2002.
4. On 26 June 2002, two days prior to the deadline, the oil companies entered into a Memorandum of Understanding (MOU) with the Mayor and the Department of Energy (DOE), allowing the oil companies to continue operations, but on a scaled-down basis. The MOU was ratified twice by the City Council through resolutions, at first in July 2002 and again in January 2003, each time with a definite period for continuing scaled-down operations. In the January 2003 resolution, the MOU was set to expire on April 30, 2003.
5. A complaint for graft and corruption was filed against the signatories of the MOU in August 2002 for non-enforcement of the Ordinance and executing the MOU that was contrary to the Ordinance. The complaint was dismissed without prejudice by the Ombudsman, who noted that the MOU was ratified by the same City Council that passed the Ordinance.
6. In the meantime, on 4 December 2002, Social Justice Society (SJS), consisting of residents of Pandacan, filed a Petition for Mandamus before the Supreme Court to compel the Mayor to enforce the Ordinance.
7. In March 2003, 40 out of 43 Barangay chiefs of the Pandacan area of Manila issued a Position Paper in support of retaining the oil terminals in Pandacan. Three Barangay chiefs did not sign the position paper. It was presented by PSPC to the City Council on 28 March 2003. The Position Paper contained, *inter alia*, requests for material assistance such as scholarships, employment, medical missions, and gift-giving during Christmas, Fiesta and other special occasions.
8. Another complaint of violation of anti-graft and corruption laws was filed before the Ombudsman against the Barangay chiefs who signed the Position Paper. The Ombudsman dismissed the complaint and the subsequent motion for reconsideration. The Supreme Court affirmed the decision of the Ombudsman in appeal.
9. On 25 April 2003, several days prior to the expiration of the MOU, PSPC filed a case before the Regional Trial Court (RTC) in Manila, to prohibit the Mayor from enforcing the Ordinance, claiming it was invalid. The other two oil companies filed similar separate cases. The trial courts issued injunctions swiftly and asked parties to maintain the *status quo*.
10. In the meantime, PSPC started scaling down its operations, removed LPG storage and created a buffer zone around the Pandacan oil terminal. The buffer zone is now known as “Green Zone” or “Linear Park”.

11. On 16 May 2006, Fenceline Community and Friends of the Earth filed a complaint before the Dutch National Contact Point, alleging that Royal Dutch Shell, through its subsidiary, PSPC, had violated the OECD Guidelines for Multinational Enterprises.
12. On 16 June 2006, the Council of Manila approved a new comprehensive zoning ordinance, Ordinance No. 8119, which reiterated the reclassification of Pandacan as a commercial area and ordered the oil terminals to terminate operations. The oil companies again sought the nullification of the Ordinance before the trial courts in Manila.
13. On 7 March 2007, the Supreme Court issued a decision on the Mandamus case filed by Social Justice Society, in which the petitioners' claim was sustained, hence ordering the Mayor of Manila to enforce Ordinance No. 8027. It was only after the Supreme Court issued this decision that the oil companies and the Department Of Energy sought to intervene in a motion for reconsideration, referring to the Court of the trial court cases and the new zoning ordinance.
14. After accepting the intervention/motion, the Supreme Court issued a Resolution on 13 February 2008, reiterating its earlier decision that Ordinance No. 8027 was a valid exercise of power to ensure the safety of the residents of Pandacan. In reference to the recent developments, the Court noted that the MOU had expired and that Ordinance No. 8119 was consistent with Ordinance No. 8027, although the latter was specific to Pandacan and should prevail with regard to deadlines and other details. The Court also overruled the injunctions issued earlier by the trial courts against the enforcement of Ordinance No. 8027. The Court, in considering the practical implications of an order for immediate implementation of the Ordinance and the cessation of operations of the oil terminals, required the oil companies to submit a relocation plan to the trial court in Manila within a non-extendible period of ninety (90) days.
15. On 27 February 2008, PSPC and its joint venture partners submitted a Motion for Reconsideration to the Supreme Court, explicitly stating that "*The Intervenors' questioning of the validity of Manila City Ordinance No. 8027 should not be construed as an abject refusal to relocate*"; it was meant as an objection against the authorizing effect of the Supreme Court Resolution on 'spot zoning' ordinances, that force the relocation of the oil industry, or any other industry on the "*caprices of local governments*".
16. On 13 May 2008, in compliance with the Supreme Court order, PSPC (with Chevron Philippines, Inc. (Chevron)) submitted a comprehensive relocation plan to the trial court in Manila. No action was taken by the court, pending resolution of the motion for reconsideration filed by the oil companies before the Supreme Court.
17. On 25 February 2009, the Regional Trial Court ordered PSPC and Chevron Philippines, Inc. (Chevron) to inform the Court as to the status of the implementation of their comprehensive plan and the relocation schedule for the transfer of the Pandacan Terminal within 15 days.
18. On 28 February 2009, the Supreme Court wrote a *finis* to the Pandacan Oil Depot case, in which it denied with finality the Motion for Reconsideration (dated 27 February 2008) of the three oil companies Chevron Philippines, Inc. (Chevron), Petron Corporation (Petron), and Pilipinas Shell Petroleum Corporation (Shell). The Court took judicial cognizance of the oil firms having begun with the orderly phase-out of the oil depots with the submission of the requisite plans and reports to the Manila Regional Trial Court.
19. On 14 May 2009, the Manila City Council approved a new Ordinance (7177), allowing the oil companies to stay at Pandacan and continue operating in Manila. This ordinance

supersedes Ordinance 8027, which was passed in 2001 and reclassified Pandacan as a commercial rather than an industrial area, and 2006's Ordinance 8119, which gave medium and heavy industries seven years to vacate the city. The ordinance met with opposition from a number of Pandacan and other Manila residents, including in the form of protests in front of the oil depot, a march to city hall led by church groups and statements by Catholic church leaders.

20. On 28 May 2009, the Mayor of Manila signed Ordinance No. 7177. He explicitly stated that before he reached the decision, he met with all the stakeholders, including businessmen and Manila residents. He said he received similar feedback, which all point to allowing oil depots and other business establishments that will be affected by Ordinance 8027 to remain in the capital city.

Evaluation of the complaint

The following issues are raised in the complaint:

- I) manipulation of local government;
- II) concealment of negotiations with government and environmental/health risks of activities;
- III) lack of specific plans to mitigate the hazards at the oil depot.

I. Manipulation of local government

The allegation is anchored in the following sections of the Guidelines:

- Chapter II, Sec. 5 and Sec. 11, on seeking exemptions not contemplated in the statutory and regulatory framework, and improper involvement in local political activities;
- Chapter VI on bribery or undue advantage to obtain or retain business or other improper advantage.

After careful consideration of the evidence submitted, the NCP found that PSPC did communicate with officials of the City of Manila to seek deferment of the implementation of Ordinance No. 8027. The NCP notes that the dealings with the city officials were with the official participation of the Department of Energy and the two other affected oil companies, and that the results were reflected in official public acts (Resolutions of the City Council) that responded to the concerns of the energy sector as a whole. In this context, the NCP has neither the impression that PSPC was seeking improper exemption from the regulatory framework in order to gain an unfair advantage or special favour, nor that the meetings were intended to improperly intervene in local politics.

Bribery and corruption are serious crimes and must be evaluated from a legal perspective. The notifiers have the burden of proving beyond a reasonable doubt that such actions occurred. The NCP notes that the accusations of bribery against public officials were considered and decided by the appropriate Philippine authorities. The NCP respects and defers to the findings of these Philippine authorities. The affidavits presented to the NCP, alleging PSPC's improper involvement in the preparation of the Position Paper which was issued on 28 March 2003, by Barangay Chief Executives of Pandacan, are not supported by other findings necessary for verification of these statements, despite all explicit opportunities given to complainants to submit corroborative evidence. The NCP notes that the Barangay Chief Executives requested assistance from the oil companies in that Position

Paper, but that there was no evidence that PSPC made any promises to provide the requested assistance in exchange for the expression of support to retain the facility.

According to the NCP the custom of caring for one's neighbours and gift-giving has apparently been adapted to corporate behaviour in the form of community programs, as part of corporate social responsibility. Based on documentary evidence submitted and interviews held with source persons identified by the parties, the NCP cannot conclude that PSPC's acts of gift-giving were intended to bribe or corrupt public officials in order to gain an improper advantage.

However, the NCP notes that there are misinterpretations within some sectors in the local communities in Pandacan about the purpose of PSPC's community programs and the reach of its benefits and beneficiaries, which fed allegations of bribery and improper conduct. From discussions with PSPC, the NCP learned that PSPC recognizes the possible adverse effects of dependency on community programs on effective and critical stakeholder engagement. Community support programs like these are also found in other countries and under different circumstances.

The NCP holds that PSPC has not been able to avoid the impression of having a secondary agenda in its contacts with the Barangays. Although there is no proof of compromising promises made to individual persons, under politicized circumstances "community support" may be perceived by opponents as "bribery" or "undue involvement in local decision making".

The NCP strongly recommends a dialogue between PSPC and its local stakeholders (not only its immediate fenceline communities) about transparent and undisputed conduct. The outcome of this dialogue could guide PSPC in its future engagement with the community at Pandacan, both in its communication on Health, Safety and Environment (HSE) issues and in local community involvement and supportive initiatives. The NCP also recommends that PSPC urge the other two oil companies to coordinate their community relations programs, because the communities rightly see the oil depot operations and risks as a unit, regardless of the fact that there are three companies now operating in a joint-venture.

II. Concealment of negotiations with the government and environmental/health risks of activities

The allegations relate to the following provisions in the Guidelines:

- Chapter III, Sec. 4(e) on the obligation to disclose of information on material foreseeable risk factors;
- Chapter V, Sec. 2 on the obligation to provide information on potential environmental, health and safety impacts of activities on employees and the affected communities.

The NCP finds that for the years in which the alleged violations took place, there are no records of official findings of environmental or health violations by PSPC in its oil depot operations. With respect to environmental data about PSPC before 2003, the Asuncion report pointed to testimony that PSPC was found in violation of health and safety codes. However, no supporting evidence was presented to the NCP to confirm the truth or falsehood of statements made therein. NCP heard of reports that noxious gases were released from the oil depots, affecting residents across the Pasig River. However, in interviews, the NCP learned there were no scientific or official findings that the oil companies, PSPC in particular, were responsible. A study by the Department of Health showed that there are increased levels of certain aromatic hydrocarbons in the air, but it is unclear whether or to what extent this can be attributed to the operation of the oil depot.

As part of its validation mission in 2008, The NCP asked the Dienst Centraal Milieubeheer Rijnmond (DCMR Environmental Protection Agency (DCMR)) to visit PSPC to assist the NCP in its evaluation of general safety of the PSPC Facility and the environmental management of the PSPC Facility at the Pandacan depot. The DCMR has extensive expertise in the Rotterdam harbour which has a huge petroleum industry. The NCP did not receive permission to include the other part of the oil depot. The specific aims and results of this DCMR-survey are reproduced in the next paragraph of this statement.

With respect to PSPC's obligation to disclose to or inform the public of health, safety and environmental risks, and of contingency plans, the NCP notes that PSPC has made efforts thereto, through its website and through community information and capacity-building programs. However, it appears that the reach of the community information programs is limited to the three communities immediately adjacent to PSPC. Given that other Pandacan communities are also potentially at risk, albeit possibly to a lesser extent, NCP strongly recommends that PSPC expand its information program and consultation to other potentially affected communities in Pandacan. Moreover, the NCP takes the view that PSPC's communication with stakeholders had too much of an information-giving nature, instead of substantive consultations and discussions of risks and responses. Despite efforts of PSPC to communicate with the surrounding Barangay about the health and safety aspects of its activities in Pandacan, people living around the Pandacan site are understandably sensitive to information concerning their life and health. In as far these worries relate to PSPC's activities, there is a need for more dialogue. For this purpose, PSPC has already hired an independent Health Panel, in partnership with the University of the Philippines National Institute of Health, to provide "an external perspective on risk assessment, methodology, analysis and conclusions on environment related initiatives at the PSPC facilities in Pandacan." However, the community members interviewed were unaware of this, thereby suggesting a need for greater involvement of the community in the work of the Health Panel.

Many of the recommendations of the OECD Guidelines require only vaguely specified corporate action such as "adequate and timely consultation" (Chapter V par. 2 sub b.) without further appraisal of what constitutes *adequate* and *timely* consultation. When trying to match the actual actions of PSPC with what could be expected on the basis of the OECD Guidelines, one can either look at what constitutes (in this case) an adequate and timely consultation under the local circumstances, or from the perspective of the homeland. Companies may advocate local practice as the leading perspective, but this would not further the objective of the OECD Guidelines – good corporate conduct in a level playing field – at all. Therefore, the NCP underlines that the OECD guidelines imply that the standard for communication with stakeholders should be derived from the practices and legal systems common to the home OECD countries, and not from local practices and legislation.

III. Lack of specific plans to mitigate the hazards at the oil depot.

The allegation is made with respect to:

- Chapter V, Sec. 5 and Sec. 6 on contingency plans for serious environmental and health damage, and adopting standards for environmental performance.

The NCP notes that between 2003 and 2006 PSPC implemented a scaling down and restructuring of operations in Pandacan. PSPC showed the NCP what measures it had taken

to ensure that the scale-down was in accordance with the company's worldwide environmental and safety standards, including the proper clean-up and disposal of toxic wastes.

Even though it is reassuring that the necessary scale-down and clean-up was implemented, the NCP cannot confirm that PSPC operated in accordance with the strictest environmental and safety standards prior to the clean-up. The NCP takes the view that, the adjustments were made not as a matter of good practice to apply the best level of health and safety measures in every country where the multinational in question is operating, as recommended in the OECD Guidelines. Instead, they were imposed by means of a City Council zoning ordinance that originated from fear for the environmental and safety hazards attributed to the oil depot. As mentioned before, for an OECD-country-based multinational it is not enough to simply comply with local law and permits; in specific instances, the OECD Guidelines should be taken as the more authoritative guide to proper conduct. As the commentary to the Guidelines states: "the basic premise of the Guidelines is that enterprises should act as soon as possible, in a pro-active way, to avoid, for instance, serious or irreversible environmental damages from their activities."

Furthermore, from interviews with notifiers and community members, it appears that people in the Pandacan community are not fully aware of the measures which have been taken during the scaling down, and for what reason. In fact, community members are generally unaware of specific plans to mitigate hazards or respond to emergencies brought about by oil depot operations.

With respect to the safety of the oil depot operations, the NCP determined that PSPC, in light of the concerns that led to the passing of Ordinance 8027 on 28 November 2001 in the City Council of Manila, made substantial adjustments to the installations and the layout of the Pandacan site. However, this does not dispel the actual safety concerns of the notifiers. For this reason, the NCP involved the DCMR in an assessment of the Pandacan oil depot in its current form and to determine whether it can be considered "in accordance with internationally accepted health and safety-criteria". This "technical fact finding mission" was aimed at:

General

- Assisting the NCP in evaluation of (a) general safety of the Shell Facility and (b) environmental management of the Shell Facility.

Visual inspection of the Shell Facility

- Gathering information on the nature and quantities of the substances in storage.
- Making an inventory on site of the precautionary measures that are in place to reduce the risk of fire and explosions and to manage exposure and environmental emissions and to discuss these measures.
- Gaining insight into the safety management system, emergency control procedure, and the maintenance inspection system, including self-reporting on environmental performance.
- Gaining insight in the management of soil and the ground water environmental impact.

Assessment of the Shell Facility Design (desk study)

- Assessment of the information gathered with regard to the design and the applied measures with reference to API standards with an emphasis on:
 - ❖ storage tanks;
 - ❖ loading and unloading facilities – facilities such as tank pits to catch spillage;
 - ❖ provisions for fire fighting.

The Making of Quantitative Risk Assessments and Comparison with Risk Standards (desk study)

- Statements by the DCMR including calculated risk contours from the quantitative risk assessment (QRA).
- Calculation of risks based on the information from PSPC. In the absence of international standards, current Dutch methodology will be used for these calculations. This methodology will be adjusted to local conditions wherever possible.
- Assessment of the risks in light of the prevailing norm in the Netherlands, the UK, Canada and Australia (in the absence of international guidelines) and, wherever possible, an assessment of the risks in light of local policies and international industry practices.

The DCMR concluded that, at the time of inspection (November 13, 14, 17 and 18, 2008):

- “The design, including of fire-fighting equipment, level of maintenance, good housekeeping and the operation, of the PSPC facility fulfils EU and USA standards.
- Adequate safety and environmental management systems are in place.
- The emission of volatile organic components (especially benzene) into the atmosphere from the PSPC truck loading facility will be eliminated by a modern vapour-recovery-system due to start up in December 2008.¹
- The external risk of the PSPC facility is acceptable according to Dutch and other international standards.”

Although the NCP accepts the conclusions of the DCMR report (ordered by the NCP itself), it cannot form its own opinion on the outcome as it had no access to any supporting findings; the NCP accepted this limitation in the interest of progress in the mediation process.

Trucking

The DCMR conclusions indicate that the PSPC part of the oil depot as an already existing structure itself does not conflict with international safety standards, such as those applied in the Netherlands. However, according to the NCP, a newly designed oil depot with a concomitant amount of traffic similar to the Pandacan site would be inconceivable in the Netherlands under the present circumstances.

Although not mentioned in the complaint, the NCP finds the transportation of oil products of particular concern. Although PSPC has taken certain measures, the NCP urges PSPC to continue addressing the issue of dangerous traffic in a pro-active way. The safety

1. This vapour-recovery-system is indeed operational, according to Shell.

of tankers on the road needs the continuous attention of PSPC and PDSI (Pandacan Depot Services Inc). The NCP holds the opinion that PSPC and its joint venture partners should actively involve people who live in the neighbourhood. The NCP urges PSPC to weigh the issue of dangerous traffic travelling through densely populated areas seriously in its decision making process for relocation.

Relocation

The NCP has observed that the crux of the issues raised is the concern for health and safety. For a certain group of residents, relocation of the oil depot outside of Pandacan has become the major issue. To them the ultimate mitigating measure for health and security concerns is the removal of the oil depot operations. During its fact-finding mission in November 2008, the relocation process as a possible issue for mediation was put forward by the NCP from the beginning. For the notifiers, the inclusion of this issue is a pre-condition for any mediation. PSPC made specific statements before the Supreme Court that it will adhere to its statements before the Supreme Court that it will comply with the order to relocate (ref. Annex 1).

Although a large part of the discussions of the NCP with PSPC during the mission in November 2008 was devoted to exploring the numerous complexities of a possible relocation process, the NCP discovered to its surprise in May 2009 that PSPC did not consider the relocation process as a suitable topic for mediation. The NCP regrets this unexpected change of commitment from PSPC.

If PSPC had unequivocally declared before the Supreme Court that it has decided to relocate, its decision would have been the root of a clear, transparent and orderly relocation plan consistent with its obligations to adhere to the best behavioural standards of the OECD Guidelines.

The NCP takes the view that PSPC should communicate more proactively and openly with all its stakeholders about its motives, strategies and considerations, in order to strengthen the basis of mutual confidence between the enterprise and the society in which it operates. For the NCP, the primarily positive image of PSPC's pursuit of responsible business conduct has been blurred by an impression of opportunistic behaviour in a continually changing political environment.

Information Exchange

With respect to sharing of information during the NCP process, the parties were understandably less candid with each other than with the NCP. The conditions imposed on the NCP by Shell on sharing information with the notifiers interfered with the NCP's ability to probe for possible mutually acceptable solutions. The stipulated condition, that the DCMR should only report its most general conclusions to the NCP, is an example of this. The NCP was surprised by (and regrets) PSPC's reluctance to share more information with its stakeholders. Transparency is the core of a dialogue with stakeholders regarding corporate social responsibility. In general, it is also in the long-term interest of the firm, because it helps generate public support for its activities. The NCP of course respects commercial interests and arrangements with joint venture partners, but is convinced that in similar cases in OECD countries much more information is shared with stakeholders. The NCP is of the view that the high standards for disclosure of non-financial information, including environmental reporting, as encouraged by the OECD Guidelines have not been met in this specific instance. In the Commentary on Chapter III, "Disclosure", the guidelines

explicitly state: “To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public’s increasingly sophisticated demands for information”. Furthermore, they also state that this disclosure may also cover information on the activities of subcontractors, suppliers or joint venture partners. Due to the confidentiality requirements of PSPC, it is now still impossible to say anything about the compliance of the entire oil depot with the standards that the DCMR applies to PSPC. It is a public duty of all oil depot operators to be as open as possible with its stakeholders in relation to health, safety and security matters.

Closing Remarks

- PSPC’s joint venture (JV) partners were not addressed in this specific instance, whereas the OECD guidelines directly apply to one of them and are relevant to their conduct in the unresolved relocation issue. However, this does not dismiss PSPC’s from its responsibility to act in accordance with the OECD guidelines, both individually and in cooperation with its joint venture partners. Based on Shell’s 2008 Sustainability Report, the NCP knows that Shell acknowledges this responsibility: “In JVs we do not control, we do not have the power to set the standards. So instead, we encourage the JV to operate in line with our values. We expect the JV to apply business principles and an HSE commitment and policy materially equivalent to our own. We also share our experience in managing safety, environmental and social issues. This includes how we carry out integrated environmental and social impact assessments before beginning significant work on a project, and our approach to building transparent working relationships with external stakeholders. If a JV cannot work in line with our values, principles and standards in this area within a reasonable time, we review the relationship.”
- Furthermore, the NCP emphasizes that it cannot judge the health and safety-situation of the entire oil depot. It urges PSPC to engage an independent DCMR-like study for the parts of the oil depot that were not involved in the present complaint.
- Finally, the NCP notes that the allegations of improper conduct by PSPC, with respect to its dealings with local officials, will continue for as long as the relocation issue is unresolved. The NCP believes that an initiative by PSPC, in close consultation with its stakeholders, to clarify and reiterate its plan to move out of Pandacan, as it has stated in public court documents, should be the backbone of a mediated agreement that eliminates the concerns expressed in the complaint.

14 July 2009

Box 1.A1.1. The NCP Process

The role of the NCP

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. In accordance with the Procedural Guidance for the OECD Guidelines, the NCP made an initial assessment of whether the issues raised merit further examination. In doing so, the NCP took account of the following:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- the relevance of applicable law and procedures;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

On 3 July, 2006, the NCP decided that the complaint of 15 May 2006 is admissible as a specific instance, and, in a joint effort with notifiers and Shell/PSPC, will try to establish the facts and find a mutually agreeable solution. For this purpose, the NCP consulted these parties, sought advice from the relevant authorities and experts, consulted the British National Contact Point, looked at cases that have been dealt with by other NCPS,* and offered mediation, with the agreement of the parties involved.

Please note that “further reflections” on dealing with this specific instance are presented by the NCP in Annex 2 of the Final Statement.

Global overview of the procedure

In the second half of 2006, the NCP held numerous bilateral discussions with Shell/PSPC and with complainants, in order to unravel the complexity of the issues submitted. Throughout the procedure, both parties put a lot of effort into providing the NCP with the requested information. Nevertheless, additional input appeared to be necessary.

According to the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, “enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country. In the event *Guidelines*-related issues arise in a non-adhering country, NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the firm in the home country, and, as appropriate, government officials in the non-adhering country”.

In the first months of 2007, after consulting the parties involved, the NCP prepared a fact-finding mission to Manila, including assistance by experts of the DCMR, which was paid for by the NCP. On 7 March 2007, the Supreme Court of the Philippines announced a decision in favor of Social Justice Society and Mr Cabigao and Mr. Tumbokon, stating that Ordinance 8027 should be enforced and implemented. PSPC and the other two involved oil companies asked the Court to intervene and to reconsider the decision. Because PSPC wanted to avoid inappropriate parallel proceedings on the relocation of the oil depot, given the developments at the Supreme Court case, the NCP had to decide to postpone its visit to Manila. Pending the decision of the Supreme Court, the NCP procedure was put “on hold” for more than six months.

In the meantime, the newly formed independent NCP took office. It applied a broader interpretation to the issue of “parallel proceedings”. On 28 November 2007, the members of the recently reformed NCP (appointed 4 July 2007) met with representatives of both parties in order to get acquainted with one another and to discuss the ongoing standstill in the process. During this joint meeting, the NCP and parties involved decided, *inter alia*, that Shell/PSPC and notifying parties would inform the NCP on their opinions on two issues: firstly on the usefulness and added value to the NCP procedure of a mission to Manila by the NCP and

* As published on the OECD website.

Box 1.A1.1. **The NCP Process** (cont.)

two independent technical advisors while the case was still pending before the Supreme Court. Secondly they would express their views on a joint meeting between the NCP, PSPC and the local notifying partners during the mission, in which the facts and arguments stated in the notification and Shell/PSPC's reaction would be discussed.

After receiving the reactions of both parties, the NCP drafted a "Terms of Reference" for both parts of the mission to be planned and proposed to call on the services in Manila of Mr. La Viña, paid for by the NCP, for additional background information, research and identification of options for mediation, in preparation of the NCP visit. Mr. La Viña has a long record of objectivity and independence, and an outstanding reputation in mediation processes, in the Philippines and internationally. Both parties agreed to involve Mr. La Viña as an advisor to the NCP.

On 13 February 2008, the Supreme Court ordered the implementation of Ordinance 8027 of the City of Manila, requiring PSPC, Chevron and Petron to relocate. The Supreme Court used strong language in the orders:

"We are also putting an end to the oil companies' determination to prolong their stay in Pandacan despite the objections of Manila's residents. As early as October 2001, the oil companies signed a MOA with the DOE obliging themselves to:

... undertake a comprehensive and comparative study ... [which] shall include the preparation of a Master Plan, whose aim is to determine the scope and timing of the feasible location of the Pandacan oil terminals and all associated facilities and infrastructure including government support essential for the relocation such as the necessary transportation infrastructure, land and right of way acquisition, resettlement of displaced residents and environmental and social acceptability which shall be based on mutual benefit of the Parties and the public.

Now that they are being compelled to discontinue their operations in the Pandacan Terminals, they cannot feign unreadiness considering that they had years to prepare for this eventuality.

Just the same, this Court is not about to provoke a crisis by ordering the immediate relocation of the Pandacan Terminals out of its present site. The enforcement of a decision of this Court, especially one with far-reaching consequences, should always be within the bounds of reason, in accordance with a comprehensive and well-coordinated plan, and within a time-frame that complies with the letter and spirit of our resolution. To this end, the oil companies have no choice but to obey the law."

PSPC and its joint venture partners recognized the importance of this relocation decision in the text of the Preliminary Statement to the Motion for Reconsideration that they submitted to the Supreme Court on 27 February 2008, which reads:

"This Motion for reconsideration is not intended to delay the resolution of this case. Intervenors will submit to the Regional Trial Court of Manila – Branch 39 ("RTC"), a comprehensive plan and relocation schedule within the non-extendible period of ninety (90) days as ordered by this Honorable Court in its Resolution, without prejudice to the resolution of this Motion for Reconsideration.

Intervenors wish to state that they have never refused to leave Pandacan. Intervenors recognize that an indefinite and permanent stay in Pandacan is no longer possible given the current urban developments in the area. Still, and notwithstanding the best of intentions, finding an alternative site equaling the strategic location of Pandacan has proven to be impossible. To aid them in this endeavour, they precisely sought the help of the National Government through the Department of Energy ("DOE"). However, for lack of any viable site for relocation, despite diligent efforts to find one, the Intervenors have, in the meantime, been constrained to stay.

The Intervenors' questioning the validity of Manila City Ordinance No. 8027 should not be construed as an abject refusal to relocate. ..."

On 14 March 2008, Shell/PSPC wrote a letter to the NCP in which it states that following the 13 February 2008 ruling of the Supreme Court "PSPC [would] leave Pandacan" and that this meant that the "root issue of the OECD complaint [had] been dealt with". Furthermore, it indicated that the four remaining issues (engagement and community programs; gift giving; evacuation and site safety; security and disclosure of confidential product information) should be discussed with the notifiers in a future oriented mediation process.

Box 1.A1.1. **The NCP Process** (cont.)

The NCP accepted this as an opportunity to move forward in dealing with the specific instance. In order to prepare for a first mediation meeting it called in the DCMR and Mr. La Viña to assist. Unfortunately, it proved difficult to reach agreement between notifiers and Shell/PSPC on the Terms of Reference for the assignments of the DCMR and Mr. La Viña. The parties appeared to have differing views on the scope, confidentiality and orientation (towards the past or future) of the surveys. In the meantime, the NCP nevertheless took responsibility for Mr. La Viña to commence his work as an advisor to the NCP.

On 17 April 2008, based on a comparison of issues (to be) dealt with in the Philippine legal system and the issues put forward in the complaint, the NCP presented its preliminary conclusions on the Pandacan situation following the Supreme Court ruling. Shell/PSPC reacted, stating that, *inter alia*, an assessment of its Pandacan facilities would no longer be relevant now that the Supreme Court ruled that the oil depot had to be relocated. Besides, there was uncertainty about the role the Regional Trial Court would reserve for itself with respect to monitoring the required relocation plan. The NCP postponed its mission to Manila that was planned for the end of May.

On 29 July 2008, the NCP arranged a joint video-conference with Shell/PSPC and notifiers to discuss the draft report and recommendations of Mr. La Viña. Taking into account the comments made by both parties, Mr. La Viña finalized his report to the NCP on 14 August, 2008.

On 19 September 2008, the NCP presented to both parties a comprehensive overview of the NCP process, resulting in a proposed agenda for a mediation mission from November 10 to 14. The reactions of both parties to this overview and agenda were critical and they urged the NCP to revalidate or verify some “facts”. Although most of the disputed issues could theoretically be resolved during a mediation attempt, the mediation mission had to be postponed. The reason for this was the incompatibility of time schedules of the representatives of all parties involved. However, the NCP took advantage of the opportunity to conduct a fact-finding mission instead of a mediation mission during the period from November 10 to 14 which had already been scheduled. During this mission the status of some possibly relevant, but disputed facts could be confirmed. Furthermore, the NCP hired the DCMR to visit Pilipinas Shell Petroleum Corporation for assistance in the evaluation of the general safety of the PSPC Facility and the environmental management of the PSPC Facility at the Pandacan depot. PSPC gladly cooperated, but also insisted that the DCMR and NCP sign quite restrictive confidentiality agreements.

During this mission, NCP members Mrs. J.F.G. Bunders and Mr. H. Mulder interviewed or spoke with:

- management and advisors to the management of PSPC;
- the independent Health Panel established by PSPC;
- local residents of Barangay 830, 833 and 834, and their captains;
- a member of the Manila City Council;
- representatives of the Fenceline Community;
- a representative of the Front to Oust the Oil Depot;
- a professor of the Polytechnic University of The Philippines.

No representative from Friends of the Earth was available during the mission.

All of the information derived from talks with PSPC employees and from the DCMR investigation was declared strictly confidential by PSPC, which NCP accepted, although this confidentiality was stricter than the confidentiality already prescribed in the procedural guidance of the OECD guidelines for multinational enterprises. The NCP and the DCMR had signed separate confidentiality agreements for that purpose.

In order to prepare for a mediation attempt, the NCP paid special attention to issues that might arise between PSPC/PDSI and the notifiers concerning stakeholder engagement during the relocation process and monitoring of the relocation process.

Box 1.A1.1. **The NCP Process** (cont.)

On 18 December 2008, the NCP received a letter from PSPC, in response to the NCP's request to come up with proposals for "a way forward" in dealing with the specific instance under the OECD guidelines. The letter does not mention "relocation" as a possible issue in the NCP process.

In light of the economic crisis, the Manila City Council started discussions **in early 2009** on a new Ordinance (7177), which would allow the oil companies to stay at Pandacan and continue operating in Manila. This ordinance superseded Ordinance 8027, which was passed in 2001 and reclassified Pandacan as a commercial instead of an industrial area, and Ordinance 8119 passed in 2006 which gave medium and heavy industries seven years to vacate the city.

In the meantime, the NCP prepared its draft evaluation of the complaint, to be shared with both parties in two parallel drafting rounds, in preparation of its final mediation mission, scheduled for 15 to 17 April. Unfortunately, there was some delay, due to uncertainty about the way in which the results of the DCMR investigation could be shared with the notifiers. On 9 March and 27 March 2009 the NCP arranged teleconferences with PSPC and the notifiers respectively, in which it shared its evaluation of the complaint in a point-by-point fashion, while covering all issues raised in the complaint.

PSPC prefers to reserve its reaction to the evaluation points until it receives the full text of the evaluation. In a letter dated 23 March 2009, it calls (among other things) for parallel legal procedures because it was not open to mediation on the topic of relocation.

On 2 April 2009, the NCP received an elaborate and constructive written reaction to the evaluation from the notifiers. The notifiers remain open to potential mediation efforts by the NCP and believe that such efforts will have to focus largely on the relocation issue. Furthermore, the notifiers have many questions regarding the conclusions of the DCMR investigation.

On the same day, PSPC published an advertisement in several major daily newspapers in which it counters the view of some that the entire Pandacan oil depot is a safety and health threat to Manila residents, states that its own community survey shows overwhelming support for the depot's continued stay and expresses its willingness to listen and respond to stakeholders' questions.

On 14 April 2009, during another teleconference with the NCP, PSPC confirmed that it considered relocation of the Pandacan depots as not being an appropriate topic for mediation. The NCP requested PSPC's cooperation in getting answers to the questions the notifiers had regarding the DCMR's conclusions. In a letter, PSPC confirmed its position with respect to relocation as a mediation topic but promised cooperation in answering the questions of the notifiers. The NCP asks PSPC to reconsider its position with respect to relocation as a topic for mediation. It called off its mediation mission to Manila.

On 17 April 2009, the NCP received the notifiers' questions. The notifiers expressed their concern about PSPC's call for parallel legal procedures. With the help of the DCMR and PSPC, answers are provided on 28 April 2009.

On 7 May 2009, the NCP receives a letter from PSPC stating that:

- PSPC cooperated with the NCP over the past three years in trying to resolve the issues put forward by the notifiers;
- during the process, it made many clarifying comments and constructive suggestions to reach an orderly conclusion to the complaint;
- it nevertheless maintains that relocation of the Pandacan depot is not an appropriate proper topic for mediation between the NCP, notifiers and PSPC, for the following reasons:
 - ❖ local parallel proceedings and political activity on relocation;
 - ❖ any relocation activity would be commercially sensitive and PSPC is linked with its joint venture partners who are not involved in the NCP procedure;
 - ❖ a discussion of business decisions falls outside of the scope of the OECD guidelines;

Box 1.A1.1. **The NCP Process** (cont.)

- discussions within the NCP procedure should be restricted to the matters brought forward in the complaint and mentioned in the point-by-point draft evaluation:
 - ❖ manipulation;
 - ❖ concealment of negotiations with government and environmental and health risks of activities;
 - ❖ lack of specific plans to mitigate the hazards of the oil depot.

On 10 May 2009, the NCP asked the notifiers whether they still see merit in a mediatory attempt by the NCP on issues mentioned in the point-to-point draft evaluation, if 'relocation' will not be part of the discussions.

On 13 May 2009, the notifiers replied that they unfortunately see no value in further mediation efforts by the NCP if the issue of relocation will not even be discussed. They are disappointed that Shell/PSPC refuses to include the critical issue of relocation in the discussion and mediation that are part of the NCP procedure. They feel that the relocation issue is at the core of the problems raised in the complaint and that it cannot be separated from the other issues. Aside from this, they regret among other things the frequent and unjust call by PSPC for parallel proceedings and for confidentiality in relation to business information. The notifiers advise the NCP to prepare its final statement on the Pandacan case.

On 14 May 2009, the NCP informed both parties that it unfortunately had to conclude that there is no scope left for its mediatory attempts. Furthermore, it explained the procedure by which it will prepare its final statement.

Box 1.A1.2. **Further Reflections**

Field visit and independent assessment

The NCP's visit to Manila in November 2008 was crucial for a better understanding of the (political) environment in which PSPC operates and in which the people in the Barangays' neighbouring the oil depot (including some of the complainants) live. Many living in the Barangays adjacent to PSPC expressed their interest in a prolonged stay of the oil depot, notwithstanding the associated potential risks. Unfortunately, due to PSPC's early call for "parallel proceedings", it took a long time before a visit could take place. The primary goal of this visit was to establish the possibility of a mediation process. In this mission the NCP was assisted by the experts of DCMR, who made an independent assessment of the health and safety situation at the Pandacan oil depot, which was of invaluable importance. On certain important issues, this allowed the NCP to distinguish between facts and perceptions.

Proceedings parallel to the NCP process

It is important to avoid counterproductive interference of an NCP process by conducting parallel (legal) proceedings. If one of the parties claims that it will be negatively influenced in one way or another by the NCP process, it is its own responsibility to decide whether this influence is significant enough to halt the NCP process and refuse to consider progress by mediation. PSPC argued for "parallel proceedings" on several occasions, which significantly delayed the progress of the case. The NCP feels that part of the explanation for PSPC's decision to argue for "parallel proceedings" might be the difficulty of finding the right balance between policy standards and legal requirements for corporations and the legitimate rights of society. Statutory law is of a different nature than the OECD guidelines. The guidelines relate to the "gentlemen's behaviour", *i.e.* the decency, of PSPC, and not to enforceable obligations; they "provide voluntary principles and standards for responsible business conduct consistent with applicable laws". The NCP believes that PSPC has neglected to acknowledge the room for manoeuvre offered by a voluntary mediation process, as well as the potentially beneficial effects in legal court cases of actually engaging in such a process in a timely fashion (pro-actively).

Box 1.A1.2. Further Reflections (cont.)

The key benefit of a mediation process over a legal process is that less time is potentially invested in determining the absolute and objective nature of facts; it focuses on reaching a mutual beneficial agreement. In a mediation agreement it is not relevant whether a party behaved culpably in the past (*ex tunc*). After all, it improves its behavior (*ex nunc*) and that is what counts. In many cases, a mediation approach saves face, time and money.

Including joint venture partners

Another obstacle to a successful mediation agreement seems to be the fact that the complaint was exclusively aimed at PSPC. The other joint venture partners were not addressed in this specific instance under the OECD guidelines. This probably reduced the willingness of and possibilities for PSPC to enter into far-reaching arrangements. After all, PSPC is commercially, operationally and legally intertwined with its joint venture partners. Not involving the other joint venture partners also interfered with the NCP's ability to do its job effectively, as the DCMR conclusions are now not determining the safety of the oil depot as a whole. The NCP urges notifiers of an alleged violation of the OECD guidelines for multinationals by a joint venture company to involve as many partners of the joint venture as possible. However, in order to be effective, such an inclusive approach requires active cooperation between NCP's from different countries, not to mention a specific instance involving a local joint venture partner in a country not adhering to the OECD Guidelines.

The role of the parent company

For Shell International, the decentralized commercial and legal responsibility of local subsidiaries is a crucial element of its business philosophy. Local management should feel responsible for solving local problems, without the comfort of a parent company that will intervene when things go seriously wrong. According to the NCP, this is justifiable from a more narrow management point of view, but when international governance standards require more than just compliance to local law there is a role to play for the parent company. In this specific instance, Shell International cannot ignore its own ultimate responsibility and accountability concerning local operations of subsidiaries. The NCP agrees with the Special Representative of the Secretary-General of the United Nations on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, who stated that "leadership from the top is essential", which means, according to the NCP, that the parent company of a multinational should actively promote pro-active observance by its subsidiaries of the spirit of the OECD guidelines for multinational enterprises.

Statement by the Mexican NCP

Statement by the Mexican National Contact Point for the OECD Guidelines for Multinational Enterprises concerning the Industria Vidriera del Potosí (IVP) specific instance

Lic. Rubén Laredo Palomares

Industria Vidriera del Potosí, S.A. de C.V.

C. Valentín Marín

Sindicato Único de Trabajadores de la Empresa Industria Vidriera del Potosí, S.A. de C.V.

In relation to the complaint submitted by the Union “Sindicato Único de Trabajadores de la Industria Vidriera del Potosí, S.A. de C. V.” (“SUTEIVP”) before Mexico’s National Contact Point, regarding possible violations to the OECD Guidelines for Multinational Enterprises (Guidelines) made by the Company “Industria Vidriera del Potosí” (IVP), this National Contact Point issues the following:

Decision

This NCP has assessed the facts and findings of the instance and it has concluded that:

- According to the information submitted by the parties and by the Labor authorities in México, it is to note that the main facts of the case have been studied and solved totally by the correspondent jurisdictional authorities. Thus, this NCP is not able to assess or comment on those matters beyond its competence or the national laws and regulations.
- This NCP considers that there are no elements to support the Specific Instance since the evidence and documentations submitted by the parties and authorities involved have not demonstrated violations of the Guidelines.

The decision set out above is issued in consequence of the following statements:

The OECD Guidelines and their Implementation

1. The Guidelines are voluntary recommendations to promote good behavior and good practices of responsible business conduct from multinational enterprises. The Guidelines are not in any way aimed to substitute domestic legislation and they do not establish additional requirements to those set out within the laws and regulations for the operation of multinational enterprises.
2. The guidelines try to improve the following aspects of the entrepreneurial activity; employment and industrial relations; environment; combating bribery; consumer interests; science and technology; competition; and taxation.
3. Country members, adhered to the OECD guidelines, have the commitment to promote its observance. Because of the above, each member country has to implement a National Contact Point (NCP). For instance, the “implementation procedures, of the OECD Guidelines for Multinational Enterprises” sets out among others the following elements:

... 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:

“Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.”

In this sense, the paragraph 15 of the “Commentary of the Implementation Procedures of the OECD Guidelines for Multinational Enterprises” sets:

“Following its initial assessment, the NCP is expected to respond to the party or parties having raised the issue. If the NCP decides that the issue does not merit further consideration, it will give reasons for its decision.”

Background

1. In January 2008 the Mexican office of the OECD received a complaint submitted by the SUTEIVP relating to probable violations of the OECD guidelines by the “IVP” an alleged subsidiary of GRUPO MODELO, S.A.B. de C.V., SUTEIVP affirmed the existence of violations to the specific chapter of the Guidelines on “Employment and Industrial Relations”, referring in particular that on 26 January 2008, IVP made the dismissal of More than 260 workers by closing one of the furnaces of the company.
2. In November 2008, the NCP, which was then under the responsibility of the General Directorate of External Commerce of the Ministry of Economy was acknowledged of the case. The NCP requested information to the Ministry of Labor and Social Welfare related to the specific instance since there were some ongoing trials before Mexican tribunals.
3. On April 1st 2009, the NCP was assigned to the Directorate General of Foreign Investment. In order to obtain all the necessary information from the parties involved, the NCP met in several occasions with IVP, the SUTEIVP and the Ministry of Labor and Social Welfare.
4. On July 13 2009, a questionnaire denominated “questionnaire for the initial evaluation” was sent to the IVP and SUTEIVP. This questionnaire asked both parties to provide further data and information. In a document dated August 7th 2009, IVP answered the questionnaire and presented several annexes to complement the information submitted. In the other hand SUTEIVP submitted a file dated August 14th 2009 (which was outdated, since our office had set a date limit) with many annexes that include a CD with video files and pictures but the document did not contain answers to the questionnaire.
5. The NCP contacted also the Mexican office of the International Labor Organization (ILO) since SUTEIVP said that there was a complaint pending before this Organization pertaining to the same event. The SUTEIVP argued that the matter was still pending without giving more information. Furthermore, IVP said the matter had been dismissed by ILO. The NCP consultation with the ILO office in México confirmed that SUTEIVP complaint had been dismissed.

These Works concluded on December 8th 2009.

Considerations

Mexico’s NCP has decided that all submitted facts, do not constitute violations to the Guidelines as it is detailed in the following:

1. There are no elements of violation of Section 1, paragraph a) of Chapter IV of the Guidelines, due to the fact that the Ministry of Labor and Social Welfare informed the NCP that the new Union “*Sindicato Autónomo de Trabajadores y Empleados de Comercio, Industria, Agencias Aduanales y Similares de la República Mexicana (Sindicato Autónomo)*” obtained ownership of the

Collective Bargaining Agreement through the legal procedure followed before the labor authority (Federal Board on Conciliation and Arbitration).

2. There are no elements of violation of Section 1, paragraph d) of Chapter IV of the Guidelines, because SUTEIVP wanted the NCP to make a recognition of a discriminatory element due to the fact that the company did not take into consideration some recommendations of SUTEIVP in order to give preference in hiring people that bore any relationship to the employees of the company and people over 34 years old. The Union recognized that they were only recommendations but not constituted commitments to the company.
3. There are no elements of violation of Section IV.2 of the Chapter IV of the Guidelines regarding the providing of necessary means to achieve effective collective agreements, or facilities for Union officials to the full development of their functions, since there is a Collective Bargaining Agreement (Contract Law) recognized by the labor authorities, so that shows that there was opportunity for achieving an effective Collective Agreement.
4. There are no elements of violation to the Section IV. a) of Chapter IV of the Guidelines, under the argument that IVP did not maintain more favorable conditions to the SUTEIVP than those maintained with the “Nueva Fabrica Nacional de Vidrio”. That is because this NCP does not have the power of ruling labor conditions already ruled by a Collective Bargaining Contract recognized by the labor authorities. Furthermore, as set before the implementation of the Guidelines, the NCP is not beyond national laws and regulations.
5. There are no elements of violation with respect to Section IV.6 of Chapter IV of the Guidelines, in relation with the argument that IVP verbally announced the closing of one of the furnaces of the company. The Ministry of Labor and Social Welfare said in a conciliation meeting previously held with parties, that SUTEIVP refused to present its position regarding the closure of the furnace, as well as to lift the corresponding minute. Also, this NCP found in the information submitted by the parties that this closure was notified in advance before being executed, which is shown with a circular statement submitted by SUTEIVP to this NCP.

Also, it is important to note that due to the absence of violations of the Guidelines, the NCP decided not to pursue the development of the analysis of the investment linkages of IVP.

Finally, Mexico's NCP thanks the involved parties, as well as the Ministry of Labor and Social Welfare, for their contributions and for their cooperation and willingness.

Signed
Arturo Rivera Magaña

Ccp. Felipe Duarte Olvera. Subsecretario de Competitividad y Normatividad. Secretaría de Economía. Para conocimiento.

Daniel Ludlow Kuri. Jefe de la Unidad de Asuntos Internacionales. Secretaría del Trabajo y Previsión Social. Para conocimiento Relacionado con su oficio 114/1/DCI/0831.

Israel Octavio Torres López. Director General Adjunto de Asuntos Internacionales. DGIE. SE. Para conocimiento.

Alejandro Duclaud G. de Castilla. Representante de la empresa. Mismo fin.

Luis M. Díaz Mirón A. Apoderado de la empresa. Mismo fin.

Francisco Retama. Representante del SUTEIVP. Mismo fin.

13 January 2010

Statement by the Norwegian NCP

Statement by the Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises concerning a complaint against Kongsberg Automotive for breach of the OECD Guidelines for Multinational Enterprises

On 25 November 2008, the Norwegian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises received a complaint from The Norwegian United Federation of Trade Unions (Fellesforbundet), regarding Kongsberg Automotive's actions relating to its subsidiary Kongsberg Driveline System – Van Wert Facility, in Ohio, USA. Fellesforbundet submits that these actions are in breach of Chapter IV of the OECD Guidelines, *inter alia* paragraph 1a) on the right to engage in constructive negotiations. The complaint primarily concerns whether the hiring of alternative labour during a lockout, which was accepted by the parent company Kongsberg Automotive, is a breach of the OECD Guidelines.

Background:

The OECD Guidelines for Multinational Enterprises are recommendations addressed by the governments of OECD member countries to multinational enterprises operating in or from adhering countries. They contain voluntary principles and standards for responsible business conduct in many different areas, and give guidance on how companies should proceed in the countries they are engaged in. The purpose of the Guidelines is to promote sustainable development by encouraging companies to respect human rights, take responsibility for the environment and social development, fight corruption, etc.

According to the Guidelines, adhering countries are to set up National Contact Points (NCPs), which are to promote the Guidelines, handle enquiries relating to the Guidelines and help to resolve issues submitted to them concerning compliance with the Guidelines. The NCPs may, for example, provide a forum for discussions between interested parties, discuss matters that are covered by the Guidelines and help to resolve problems that may arise between companies and employees or in other areas covered by them.

The NCP in Norway is made up of representatives of the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise.

The recommendation in question in this case is Chapter IV of the OECD Guidelines, on *Employment and Industrial Relations*, paragraph 1a), where it is stated that enterprises should “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”. Other recommendations mentioned in the complaint from Fellesforbundet include Chapter IV, paragraph 2a), where it is stated that enterprises should “provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements”, and Chapter IV, paragraph 2b), which states that enterprises should “provide information to employee representatives which is needed for meaningful negotiations on conditions of employment”. Finally, mention is made of Chapter IV, paragraph 3, according to which enterprises should “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". The Norwegian NCP has limited its assessment to Fellesforbundet's main submission, concerning the use of lockout in combination with hired labour.

The NCP has communicated by letter with Kongsberg Automotive and Fellesforbundet, and held a meeting with both parties on 25 March 2009 to discuss the complaint and assist the parties in resolving the issue.

Kongsberg Automotive's operations in Ohio, USA:

Kongsberg Automotive acquired the company Van Wert Facility in Ohio at the turn of the year 2007–2008. The factory produces gearshift system components for the US automobile industry. At the time of the acquisition, there were ongoing negotiations at the factory concerning employment conditions and pay. During the negotiations, a number of demands were put forward, both by the employer and by the employees. After a while the negotiations deteriorated, leading to a labour dispute, which resulted in Kongsberg Driveline Systems – Van Wert Facility locking out its employees on 2 April 2008. During the lockout, the factory hired temporary labour in order to continue production.

Moreover, it was subsequently decided that production at the Van Wert Facility should be moved to Mexico. From August 2009, there will not be any operations in Ohio.

The parties' arguments:

Fellesforbundet submits that the parent company Kongsberg Automotive's acceptance of the use of hired labour during a lockout is in breach of the OECD Guidelines for Multinational Enterprises. *Fellesforbundet* argues that the employees at the production plant have no remedies at their disposal if the enterprise can continue its operations during a lockout without this having consequences for production. In *Fellesforbundet's* view, this practice is therefore in breach of the right to collective bargaining, and thus also of core ILO conventions (ILO Conventions Nos. 87 and 98). Since Kongsberg Automotive's corporate management in Norway accepts responsibility for this situation, it is *Fellesforbundet's* view that the corporate management could also have contributed to achieving a different outcome.

Kongsberg Automotive points out that its dispute with the employees in Van Wert has been subject to a hearing by the National Labor Relations Board (NLRB) in Cleveland, Ohio. The claims and arguments being invoked by *Fellesforbundet* were largely also put to the NLRB. The complaint was rejected on 31 July 2008. The ruling was appealed to the Office of Appeals General Counsel of the NLRB, which rejected the appeal. The dispute must therefore be deemed to have been finally decided pursuant to the country's domestic laws, and should not be subject to a new hearing pursuant to the OECD's rules. *Kongsberg Automotive* therefore principally requests that the case should be dismissed.

Kongsberg Automotive refutes all of *Fellesforbundet's* allegations, and submits that the use of hired labour during a lockout is not in breach of the OECD Guidelines, nor is it contrary to Norwegian law. It calls attention to the provisions of the Norwegian Basic Agreement concerning employees' duty to contribute to increased productivity. There are no such agreements in the US. In *Kongsberg Automotive's* view, if a lockout is to be an effective tool, it must be combined with the use of hired labour.

The Norwegian NCP's assessment:

In its assessment, the Norwegian NCP was split into a majority made up of representatives from the Ministry of Foreign Affairs, the Ministry of Trade and Industry and the Confederation of Norwegian Enterprise, and a minority consisting of the representative from the Norwegian Confederation of Trade Unions (LO).

The majority of the Norwegian NCP refers to the following passage in the OECD Guidelines: "When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. Generally, issues will be dealt with by the NCP in whose country the issue has arisen."

In the light of the fact that the use of hired labour took place at Kongsberg Automotive's subsidiary in Ohio, the majority of the Norwegian NCP is of the view that the issue should have been dealt with by the US NCP. We have tried in vain on a number of occasions to contact the US NCP. Since no reply has been forthcoming from the US, we have chosen to consider the case on its merits.

The majority of the Norwegian NCP has considered its task to be to assess:

1. whether the fact that the dispute has been dealt with by the NLRB in the US should lead to the case being dismissed by the Norwegian NCP, and
2. Fellesforbundet's complaint that using hired labour during a lockout is in breach of Chapter IV, paragraph 1a), of the OECD Guidelines, on the right to engage in constructive negotiations.

Re: 1): The OECD Guidelines are to be regarded as recommendations to companies to operate in a sustainable and responsible manner. There is generally correspondence between the Guidelines and national legislation and/or practice, but not necessarily. The Norwegian NCP is therefore in principle of the view that complaints concerning breaches of the Guidelines must be considered independently, in the light of the wording and purpose of the Guidelines. Decisions made by national bodies are of course taken into account in the Norwegian NCP's assessment, but in principle they are not decisive. The Norwegian NCP has therefore chosen to deal with the case.

Re: 2): The OECD Guidelines are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct in a range of areas, consistent with applicable laws and conventions.

The majority of the Norwegian NCP refers to the fact that the question of a lockout in combination with hired labour has been subject to judicial review in the US, and that a final ruling has been made whereby the practice has been found to be lawful. A lockout and the subsequent use of hired labour would also be lawful in Norway. However, this would not be in keeping with the Norwegian labour practices that have developed over many years.

The OECD Guidelines do not directly address the issue of lockout in combination with the hiring of alternative labour. The relevant recommendations in the Guidelines are based on core ILO Conventions Nos. 87 and 98, which Fellesforbundet refers to in its complaint. Neither of these says anything about the right to replace permanent employees with other workers in connection with a lockout. We have been unable to find any statements from ILO bodies that directly address this issue. However, a report drawn up by the ILO Committee of Experts at the request of the ILO Governing Body in 1994, *Freedom of Association and Collective Bargaining: The right to strike*, states the following: "A special problem arises when legislation or practice allows enterprises to recruit workers to replace

their own employees on legal strike. The difficulty is even more serious if, under legislative provisions or case-law, strikers do not, as of right, find their job waiting for them at the end of the dispute. The Committee considers that this type of provision or practice seriously impairs the right to strike and affects the free exercise of trade union rights.”

In a similar vein, Article 8 of ILO Private Employment Agencies Recommendation 188 states that: “Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.”

The statements quoted above concern workers who are on strike, not subject to a lockout. Nevertheless, the majority of the Norwegian NCP is of the view that replacing employees in a labour dispute with other workers is not in keeping with the intentions of the various ILO instruments. However, we have no grounds for saying that this is in breach of Conventions Nos. 87 and 98.

On this basis, the majority of the Norwegian NCP has found that Kongsberg Automotive’s conduct in connection with the dispute cannot be said to constitute a breach of the OECD Guidelines. Nonetheless, we question whether the company’s conduct in the case concerned was compatible with the concept of corporate social responsibility (CSR) that is gradually gaining international acceptance.

The Norwegian NCP notes that the concept of CSR is continuously evolving and changing, and refers in this context to Report No. 10 (2008–2009) to the Storting, on corporate social responsibility in a global economy. Society’s demands and expectations concerning business practices are different now from what they were when the OECD Guidelines were last revised, almost ten years ago. Kongsberg Automotive is a Norwegian company, rooted in Norwegian labour traditions, and its actions must be assessed in the light of how CSR is perceived in a Norwegian context. In the Norwegian NCP’s view, it has become part of Norwegian parent companies’ corporate social responsibility to encourage their foreign subsidiaries to observe Norwegian labour traditions insofar as is practicable. In Norway, using hired labour during a labour dispute would not be in keeping with Norwegian practices and traditions. The Norwegian NCP recommends that Kongsberg Automotive takes such considerations into account should a similar situation arise in the future.

The minority of the Norwegian NCP submits as follows: the representative from the Norwegian Confederation of Trade Unions (LO) interprets Fellesforbundet’s complaint as a complaint regarding the actions of the parent company Kongsberg Automotive’s corporate management in Norway. The complaint centres on the issue whether the Norwegian parent company Kongsberg Automotive has acted in breach of the OECD Guidelines by accepting responsibility for a plan to use lockout in combination with hired labour. The matter must therefore be dealt with by the NCP in Norway.

For the sake of clarity, the LO representative notes that the Norwegian NCP has dealt with three cases, one of which (Aker Kværner in 2005) involved a complaint against a wholly-owned US company. The matter was dealt with without reservation by the Norwegian NCP. CSR efforts in subsequent years, including on the responsibility of parent companies, have merely confirmed that this was the correct thing to do.

In the LO representative’s view, it is important as a matter of principle to examine the scope of Norwegian parent companies’ responsibility. As far as the OECD Guidelines are concerned, it is natural to start by looking at matters companies are able to influence. Responsibility can be most clearly attributed to companies for matters over which they

have a decisive influence or control. The LO representative is of the view that there is no basis in the Guidelines for claiming that the actions of parent companies, including managing their subsidiaries, are not covered by the Guidelines and therefore cannot be appealed against to the NCP in the parent company's home country. Interpreting the OECD Guidelines as applying primarily to the actions of subsidiaries would, in the view of the LO representative, considerably restrict the scope of the Guidelines and undermine Norway's position in this area.

With regard to the question of whether the NLRB's handling of the case in the US should lead to dismissal by the Norwegian NCP, the LO representative would like to point out that the fact that the merits of the case have been considered by the NLRB and found not to be in breach of US domestic law is irrelevant in this context, since the US has not ratified ILO Conventions Nos. 87 and 98, which are fundamental to the complaint.

The LO representative refers to Report No. 10 to the Storting: "Several factors are decisive when an NCP handles complaints (known as "specific instances") regarding companies' compliance with the Guidelines. Among other things, it must consider how the complaint relates to national legislation, how corresponding complaints have been dealt with previously and whether the processing of the complaint contributes to implementation of the Guidelines" (p. 66 of the English translation).

The Guidelines presuppose respect not only for the law, but also for national rules in a broader sense, and aim to encourage the "positive contribution which multilateral enterprises can make to economic, social and environmental progress" (Paragraph 2).

Thus, the fact that a lockout and the subsequent hiring of alternative labour is lawful in the US, and is not explicitly prohibited in Norway either, is not decisive. The use of hired labour in connection with a lockout is incompatible with the rules governing Norwegian labour relations, and this has been the case since the early 1930s. There is no question but that the discontinuation of such practices in Norway constituted social progress.

In the LO representative's view, the logical consequence of the 1994 statement of the ILO Committee of Experts and ILO Recommendation 188 is that the use of alternative labour in combination with a lockout undermines the rights set out in the ILO conventions to an even greater degree.

The LO representative concludes that the parent company Kongsberg Automotive's acceptance of a lockout of some 300 employees in connection with wage negotiations combined with the hiring of alternative labour is a breach of the OECD Guidelines in that it is a breach of non-statutory law and Norwegian tradition and culture in this area.

Yours faithfully

Norwegian Contact Point for the OECD Guidelines for Multinational Enterprises

Are-Jostein Norheim
Ministry of Foreign Affairs

Vidar Lindefjord
Confederation of Norwegian Enterprise

Tom Hugo-Sørensen
Ministry of Trade and Industry

Gro Granden
Norwegian Confederation of Trade Unions

Copy: Kongsberg Automotive, Dyrmyrgata 45, 3601 Kongsberg
28 May 2009

Statement by the Swiss NCP

Statement by the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance Cerrejon Coal Mine, Columbia

The National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises promotes the observance of the principles of the Guidelines and discusses with the parties concerned all relevant issues so as to contribute to the resolution of any specific problems, which might arise.

On 2 July 2007, the Australian NCP (ANCP) received a submission on a specific instance regarding the Cerrejon coal mine in Columbia partially owned by Anglo American, BHP Billiton and Xstrata. The submission was lodged by an Australian lawyer, representing parties concerned in Columbia. Specifically it was 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. Furthermore, it was stated that five other communities in the region are suffering the effect of a policy designed to make living unviable in the area and to drive the population out. On 28 September 2007, the Australian NCP accepted the matters raised.

On 4 October 2007, the Swiss NCP received a similar complaint from the Swiss NGO "Arbeitsgruppe Schweiz-Kolumbien" (ask), which was also assessed as substantiated as well as relevant under the Guidelines and accepted by the Swiss NCP.

Due to the fact that different stakeholders were involved in the complaint, the ANCP organized a meeting in London on 9 October 2007. The meeting was attended by the two complainants, representatives of Anglo American, BHP Billiton and Xstrata, the Australian, Swiss and UK NCPs as well as the Columbian Solidarity Campaign. Participants decided that the specific instance should be dealt with on an integrated basis and the ANCP agreed to take the lead in handling the issue.

Since October 2007, various meetings and exchanges of information took place under the leadership of the ANCP. The Swiss NCP kept close contact to the ANCP. In addition, several follow-up meetings with the Swiss NGO ask took place in order to exchange information and consult on the ongoing proceeding.

On 12 June 2009, after extensive consultation with all parties involved the ANCP published a final statement summarizing the procedural steps and outcomes of the specific instance (see attachment). The Swiss NCP fully supports this statement and takes it as the basis to formally close this specific instance. In the opinion of the Swiss NCP, the mediation process has been successfully led by the ANCP.

The Swiss NCP would like to take the occasion to thank all parties involved for the good cooperation.

Attachment: Statement by the Australian NCP (www.oecd.org/dataoecd/4/35/43175359.pdf)

15 July 2009

Statement by the Swiss NCP

Statement by the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance Nestlé Indonesia, Panjang Coffee Processing Plant Closing Statement

Background

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

Proceeding of the NCP

2. On 10 November 2008, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) submitted a specific instance to the NCP on behalf of one of its affiliates, the Union of Nestlé Indonesia Panjang Workers (SBNIP). The submission concerned a labour dispute at the Panjang coffee processing plant owned by PT Nestlé Indonesia, a subsidiary of Nestlé SA (Switzerland). IUF claimed that Nestlé Panjang management was acting in a manner inconsistent with the Guidelines by not respecting the rights of the local trade union SBNIP and refusing to engage in collective bargaining and, in particular, to negotiate wages.

3. The concerns raised by IUF were related to the following provisions of the Guidelines:

Chapter IV 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;

Chapter IV 2 (b): Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;

Chapter IV 2 (c): Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

4. In its written response, submitted to the NCP on 26 November 2008, Nestlé denied all allegations. Referring to Nestlé Group's Corporate Business Principles it affirmed that Nestlé recognized the rights to collective bargaining and the rights of its employees to join, or not join, trade unions.

5. On 5 January 2009, the NCP concluded its initial assessment and informed both parties that it found the issues raised to be relevant under the OECD Guidelines and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Nestlé to have acted inconsistently with the Guidelines. Furthermore, the NCP offered its good offices with the aim of reaching a mutually acceptable outcome.

6. After both parties accepted the NCP's offer to contribute to the solution of the controversial issues, the NCP requested additional information, held separate discussions with both parties and met with representatives of Nestlé on 21 April 2009 in Berne. The NCP was informed that parties attempted to reach an agreement at the local level in Indonesia. However, because of a delay in progress, the NCP arranged a joint meeting with IUF and representatives of Nestlé on 28 August 2009 in Geneva. At this meeting, it was agreed to

concentrate further discussions on the main issue of collective bargaining and wage negotiations, and both parties reached a mutual understanding on how to resolve this outstanding issue.

7. There was disagreement about the allegations made in the submission relating to the non-respect of union rights, in particular the intimidation of union members and the involvement of the management in the creation of a second union (FKBNIP). Since the two parties had a different perception of the events in the past and presented the factual situation in a very different way the NCP was not in the position to make a full assessment of the situation and to draw any conclusions.

8. Following the meeting in Geneva, the NCP stayed in regular contact with both parties in order to exchange information on further developments and progress made in resolving the outstanding issue. On 16 October 2009, a follow-up meeting with IUF, involving also a representative of the workers in Indonesia, took place in Berne. Finally, the NCP was informed that parties in Indonesia had reached an agreement to include wages into the 2010-2011 collective bargaining agreement (CBA).

9. Nevertheless, negotiations on the CBA did not start up to date. Recently, the second union FKBNIP, which has been created in 2007, requested to be included into the negotiations according to the national law. However, upholding the allegations of non-respect of union rights and management support for FKBNIP SBNIP argued that it was the only recognized bargaining partner and refused to collaborate with FKBNIP. Nestlé, on the other hand, denied any support to FKBNIP and emphasised the need to include – if requested – both unions into the bargaining process in order to be compliant with the national union rights. Although the NCP tried to contribute to the de-blocking of the situation, no agreement on this issue could be reached.

Outcome of the Proceeding

10. It was the main objective of the dialogue facilitated by the NCP to find an agreement on collective bargaining and wage negotiations at the Panjang plant in Indonesia. At the joint meeting on 28 August 2009 in Geneva, representatives from IUF and Nestlé reached an understanding which paved the way for resolving these issues. After the meeting, parties in Indonesia have confirmed their commitment to include wages and wage scales in the 2010-2011 CBA. Unfortunately, negotiations on this new CBA have not yet started.

11. Although parties concerned agreed to concentrate discussions in the NCP process on the issue of wage negotiations, allegations of non-respect of union rights are upheld and are actually blocking the start of the bargaining process. Since facts on the respect or non-respect of union rights were presented in very diverging ways, the NCP was not in the position to make a full assessment of the situation and further contribute to the solution of the conflict.

Conclusions

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

13. The NCP is recommending to Nestlé and IUF to continue its regular dialogue and to motivate unions and management at the Panjang plant in Indonesia to start the negotiation process on the 2010-2011 CBA.

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

24 June 2010

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc on Pakistan's Rahim Yar Khan factory

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

2. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:

- 1) 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 UK NCP will use this information to decide whether further consideration of a complaint is warranted.
- 2) Conciliation/mediation/examination – If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will investigate the complaint in order to assess whether it is justified.
- 3) Final Statement – if a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has investigated the complaint it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website www.berr.gov.uk/nationalcontactpoint.

Complaint from the IUF

5. On 27 October 2008 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) brought a complaint to the UK NCP on behalf of one of its affiliates, the National Federation of Food, Beverage and Tobacco Workers of Pakistan, and the Action Committee for the Dismissed Workers of Unilever

Rahim Yar Khan. The complaint concerned the operations of Unilever Pakistan Ltd at its factory in Rahim Yar Khan in Pakistan. Unilever Pakistan Ltd is a subsidiary of a UK registered company, Unilever plc.

6. The concerns raised by the IUF related to the following provisions within the Guidelines:

- a) Chapter II(1): [Enterprises should] “contribute to economic, social and environmental progress with a view to achieving sustainable development.”
- b) Chapter IV(1)(a): [Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment 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.”

7. The IUF alleged that Unilever was operating in a manner inconsistent with the Guidelines by terminating the contracts of 292 temporary employees seeking permanent employee status, within a context of intimidation and with the direct aim of preventing trade union membership. The IUF alleged that the employees were dismissed and replaced with agency contract workers in order to employ workers on inferior terms and conditions and render employment at the factory even more precarious. The IUF claimed that there was already a lack of job security in the factory due to the systematic reduction in permanent employment and the promotion of temporary and casual labour with the aim of weakening trade union representation, and that this prevented Unilever from contributing to economic and social progress with a view to achieving sustainable development.

Response from Unilever

8. Unilever denied all allegations that its conduct was inconsistent with the Guidelines. The company claimed that the terminations of the contracts were part of the reorganisation and restructuring of Unilever Pakistan’s operations to achieve operational efficiency and cost competitiveness and were not made with the aim of preventing trade union membership. It contended that its outsourcing decision at Rahim Yar Khan, resulting in the hire of agency contract workers, was made further to agreements with the local bargaining agent and the recognised trade union at the factory, the Unilever Employees Federation of Pakistan, who did not support IUF’s complaint.

UK NCP Process in this Specific Instance

9. On 27 October 2008 the IUF submitted the complaint to the UK NCP. On 15 December 2008, the UK NCP published its Initial Assessment in which it accepted the Specific Instance. **Acceptance of this Specific Instance by the UK NCP does not mean that the UK NCP considers that Unilever operated inconsistently with the Guidelines.**

10. The UK NCP then contacted both parties to confirm whether they were willing to accept the UK NCP sponsored conciliation/mediation process with the aim of reaching a mutually acceptable outcome. Both parties asked the UK NCP to delay proceeding to conciliation/mediation while they attempted to reach agreement through bilateral meetings outside the UK NCP complaint process.

11. Because of a lack of progress in the bilateral meetings, on 3 March 2009, the IUF asked the UK NCP to arrange and facilitate conciliation/mediation. The UK NCP appointed ACAS² Arbitrator and Mediator John Mulholland to serve as conciliator-mediator.

12. An initial conciliation/mediation meeting took place on 29 April 2009 in London. The parties met again on 26 May and 24 June 2009, in London. The meetings were chaired by Mr Mulholland. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The full text of the agreement reached by the parties is attached as an annex to this Final Statement.

Outcome of the Conciliation

13. On 24 June 2009, both parties reached an understanding which paved the way for the agreement attached to this Final Statement. Both parties have agreed that the full text of the agreement can be published and that there are no outstanding issues from the IUF's original complaint which need to be examined by the UK NCP. The parties also agreed that the implementation of the attached agreement will be jointly monitored by Unilever and the IUF at national and international levels.

UK NCP Conclusions

14. Following the successful conclusion of the conciliation process by Mr John Mulholland and the agreement reached by the parties, the UK NCP will close the complaint in respect of the Rahim Yar Kahn factory and no examination on the allegations contained in IUF's complaint will take place.

15. The UK NCP congratulates both parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the discussions.

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass
Dal Dio,
Sergio Moreno
URN 09/1221

13 August 2009

2. Advisory, Conciliation and Arbitration Service.

Box 1.A1.3. Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) relating to Rahim Yar Khan Factory, Pakistan

Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) relating to Rahim Yar Khan Factory, Pakistan

1. Unilever will establish an additional 120 permanent posts at Rahim Yar Khan.
2. Within this number, those with confirmed secondary educational qualifications from an agreed list will be appointed on contracts commencing as of 24th June 2009.
3. Those workers on the list lacking confirmed secondary educational qualifications shall each receive a scholarship equivalent to 1yr's basic salary (based on a minimum monthly income of 8 000 Pakistan Rupees¹) for a period of 12 months and will be offered a permanent employment contract on attainment of a secondary school certificate (Level 10).
4. For those workers who do not have a Level 9 educational qualification Unilever will provide funding to achieve this qualification within 12 months. Subject to attainment of a Level 9 qualification, Unilever will provide funding for a further 12 months to achieve a Level 10 qualification. The same terms and conditions set out in paragraph 3 would apply.
5. In the interim these positions would be guaranteed to be held open.
6. It is agreed that the employment position of any individuals who do not obtain the relevant educational qualification will, at the end of the scholarship period, be subject to dialogue between the IUF and Unilever².
7. All employees (including those with a stay order) will receive standard permanent employee contracts and appropriate employee bank account declaration forms/documentation. Copies will be provided to the IUF.
8. The balance of the 120 employees will be selected applying established Unilever selection criteria. Those workers who were dismissed in October 2007 who are offered permanent employment will receive a one off payment of 50 000 Pakistan Rupees conditional on their written confirmation of withdrawal of any related court cases.
9. Those workers who will undertake educational training will also be eligible for a payment of 50 000 Pakistan Rupees on receipt of a written confirmation of withdrawal of any related court cases.
10. These payments would be made within one month of receipt of such written confirmation.
11. Those remaining workers of the total dismissed in October 2007 who are not offered permanent employment will be offered by Unilever a one off lump sum payment of 200 000 Pakistan Rupees each (2), conditional on their written acceptance that current related legal action would be withdrawn and no future actions would be taken in the courts.
12. Unilever guarantees that the following terms will be respected:
 - a) Those appointed from the "Action Committee for the Dismissed Workers of Unilever Rahim Yar Khan" (Action Committee) will not be subject to any discriminatory or intimidatory action as a result of their membership of the Action Committee.
 - b) The IUF and its affiliates will be entitled to exercise full representational functions within the plant without interference by the management.

The implementation of this agreement will be jointly monitored by Unilever and the IUF at national and international levels.

London, 24th June 2009

1. It is agreed that this will also include retrospective provident and gratuity rights when qualified and employed. Medical cover will be provided, if legally possible through the company scheme, and if not through social security for the duration of the scholarship.
2. Any employee who after completion of the scholarship period fails to attain the necessary qualification will receive a payment of 150 000 Pakistan Rupees each.

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from Survival International against Vedanta Resources plc

Summary of the Conclusions

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) upholds Survival International's allegation that Vedanta Resources plc (Vedanta) has not complied with Chapter V(2)(b) of the Guidelines. The UK NCP concludes that Vedanta failed to put in place an adequate and timely consultation mechanism fully to engage the Dongria Kondh, an indigenous community who would be directly affected by the environmental and health and safety impact of its plans to construct a bauxite mine in the Niyamgiri Hills, Orissa, India.
- The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations about the construction of the mine, or to use other mechanisms to assess the implications of its activities on the community such as an indigenous or human rights impact assessment. Vedanta therefore failed to develop and apply effective self-regulatory practices to foster a relationship of confidence and mutual trust between the company and an important constituent of the society in which it was operating.
- The UK NCP also upholds Survival International's allegation that Vedanta has not behaved consistently with Chapter II(2) of the Guidelines. The UK NCP concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultations on the construction of the bauxite mine; it did not consider the impact of the construction of the mine on the rights and freedoms of the Dongria Kondh, or balance the impact against the need to promote the success of the company. For these reasons, Vedanta did not respect the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

Background

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5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website www.berr.gov.uk/nationalcontactpoint.

Details of the parties involved

6. The complainant. Survival International is a UK based NGO which seeks to support tribal peoples worldwide through educational programmes, advocacy and campaigns to protect their rights. One of its stated objects is to promote for the public benefit the human rights of indigenous peoples established by United Nations covenants and declarations.

7. The company. Vedanta is a UK registered mining company operating directly or through subsidiaries in India, Zambia and Australia. Vedanta's activities focus on aluminium, copper, zinc, lead and iron mining. The company is listed in the FTSE 100. Vedanta has a controlling stake in a number of subsidiaries³ but only two are relevant to the complaint: Sterlite Industries (India) Limited (Sterlite Industries), based in Mumbai (Maharashtra) 59.9% of which is controlled by Vedanta; and Vedanta Aluminium Limited, based in Lanjigarh (Orissa), 70.5% of which is owned directly by Vedanta, and 29.5% of which is owned by Sterlite Industries.

8. Survival International's complaint focuses on the construction of a bauxite mine near Lanjigarh (Kalahandi and Rayagada Districts – Orissa – India). This project was originally proposed by Sterlite Industries on the basis of an existing agreement between Vedanta Aluminium Limited and Orissa Mining Corporation Limited, a company owned by the State of Orissa. Vedanta Aluminium Limited applied to the Supreme Court of India for clearance on the project. Following the Supreme Court of India's Order of 23 November 2007, Vedanta Aluminium Limited's application was dismissed but Sterlite Industries (and only Sterlite Industries) was granted leave to re-apply. In August 2008, the Supreme Court granted Sterlite Industries clearance for the use of forest land for bauxite mining subject to final approval from the Indian Ministry of Environment and Forests. Sterlite Industries

3. See www.vedantaresources.com/uploads/vedanta-group-structure-lar.jpg.

therefore formally retains the lead on the Lanjigarh project. Neither Vedanta nor the complainant dispute that overall responsibility for the Lanjigarh project rests with Vedanta.

Complaint from Survival International

9. On 19 December 2008, Survival International brought a complaint to the UK NCP in relation to the operations of Vedanta in the Niyamgiri Hills, situated in the State of Orissa (India).

10. Survival International made the following allegations in respect of Vedanta's planned construction of an open pit bauxite mine in the Niyamgiri Hills:

- a) Vedanta has failed to consult with an indigenous group affected by its operations, the Dongria Kondh,⁴ who live within 4 to 5 Km from the mine but revere as sacred the area on which the mine is being built, and depend for their livelihood on the area affected by the mine's operations. Survival International alleges that Vedanta has failed to consider the implications of its activities in respect of the Dongria Kondh. For example, it has not commissioned an indigenous rights impact assessment with the full participation and engagement of the Dongria Kondh, nor does it have a human rights or indigenous people policy. Survival International appears to have brought its complaint on behalf of the Dongria Kondh, as opposed to other local indigenous communities, because they are the community most vulnerable to the effects of the construction of the mine.
- b) As a result of the allegations summarised in paragraph 10(a), Vedanta has failed to respect India's international commitments under the United Nations (UN) International Covenant on Civil and Political Rights [Articles 2(1), 18, 27], the UN Convention on the Elimination of All Forms of Racial Discrimination [Articles 5(c), 5(d)(v), 5(e)], the Convention on Biological Diversity [Article 8(j)], and the UN Declaration on the Rights of Indigenous People (Articles 12, 18, 19 and 32).
- c) As a result of the allegations summarised in paragraph 10(a), Vedanta has breached India's domestic law, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

11. Survival International alleged that Vedanta's conduct is contrary to the following provisions of the Guidelines:

Chapter 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:

[...]

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

[...]

II(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.

Chapter V. Environment

4. Some sources refer to this community as the "Dongaria Kondh" or as "Dongaria Kandha".

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:

[...]

V(2) Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

[...]

(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.”

Response from Vedanta Resources plc

12. Vedanta set out its response in respect of the complaint from Survival International in two letters addressed to the UK NCP (dated 20 January and 13 February 2009). In these letters, Vedanta denied that it has breached the Guidelines and asked the UK NCP not to accept Survival International’s complaint on the basis of the following assertions:

- a) Survival International has not provided evidence that it has the backing of the local community to bring this complaint. According to Vedanta, most of the local community supports the mine project.
- b) The mine project has already been approved by the Supreme Court of India and by the State of Orissa (which is in joint venture with Sterlite Industries on this project). The Supreme Court of India already considered the impact of the project on the local community, including the consultation process, and also identified significant benefits for the local community as a result of the project.
- c) Vedanta already ensures that its operations comply with corporate social responsibility standards and annually publishes a “Sustainable Development Report” to reflect its progress in this area. In respect of the mine project, Vedanta commissioned a comprehensive Environmental Impact Assessment from Tata AIG Risk Management Services Limited which concluded that the project will have a positive impact on the local community. Vedanta also stated that the Wildlife Institute of India confirmed that the Dongria Kondh do not inhabit the area of the future mine.
- d) Vedanta consulted the local communities under the supervision of the local District Magistrates in June 2002 (in the district of Kalahandi) and February-March 2003 (in the two districts of Kalahandi and Rayagada). The company also explained that the State of Orissa conducted a separate consultation process with the local communities. Vedanta stated that the Supreme Court of India “was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately”. Vedanta also supported the re-settlement of those families displaced by its operations in the area, and is committed to its Integrated Village Development Programme.

UK NCP process

13. The UK NCP received the complaint from Survival International on 19 December 2008. On the same day, the UK NCP sent the complaint to Vedanta which responded on 20 January and on 13 February 2009.

14. The UK NCP met with Survival International on 27 January 2009 to discuss the complaint against Vedanta and explain the UK NCP's complaint process. Vedanta was unable to meet the UK NCP within the allocated timeframe before the publication of the Initial Assessment on the complaint. Therefore, the UK NCP and Vedanta communicated by an exchange of e-mails and letters.

15. The UK NCP published its Initial Assessment of the complaint on 27 March 2009. The assessment is downloadable from the UK NCP's website www.berr.gov.uk/nationalcontactpoint.

16. On 6 April 2009, Vedanta declined the UK NCP's offer of conciliation/mediation. As a result, the UK NCP informed both parties on 9 April 2009 that it would move to an examination of the complaint. The UK NCP asked both parties to provide evidence to support their position in respect of the complaint by 8 May 2009. This deadline was extended at Vedanta's request. Survival International submitted a great deal of evidence in support of its allegations but Vedanta submitted no evidence in support of the claims made in its responses of 20 January and 13 February 2009, save for a copy of its 2008 Sustainable Development Report.

17. The UK NCP was disappointed by Vedanta's decision not to engage fully with the UK NCP's complaint process. The UK NCP was particularly disappointed with Vedanta's refusal to take up its offer of sponsored professional conciliation/mediation, and Vedanta's failure to provide any evidence during the examination stage to support its position in respect of the complaint.

18. The UK NCP invited evidence from other relevant UK Government Departments, business and trade union's organisations, and civil society, however none was provided.

UK NCP analysis

19. Most of the evidence in this case comes from the complainant. The UK NCP considered all the evidence submitted by Survival International and decided that it was appropriate to give greater weight to the independent sources in that evidence because they were more likely to provide an impartial view or account of events. The UK NCP considers that the evidence provided by Survival International together with evidence it collected through its own research was sufficient to make a determination on whether Vedanta breached the Guidelines.

Standing of Survival International as the complainant

20. The UK NCP's Initial Assessment of 27 March 2009⁵ sets out its reasons for deciding that Survival International is an appropriate body to bring the complaint. It considers that there is no need to address this issue again in this Final Statement.

5. See www.berr.gov.uk/nationalcontactpoint.

The Lanjigarh Project

21. Sterlite Industries commissioned Tata AIG Risk Management Services Ltd to carry out a Rapid Environmental Impact Assessment on the construction of the mine.⁶ According to the environmental impact assessment report, the Lanjigarh project includes the construction of an aluminium refinery, supported by a power plant, and of a nearby bauxite⁷ mine (situated approximately 5 km south of Lanjigarh) having approximately 73-75 million tons of mining reserve to ensure supply of raw material to the refinery at a competitive price for about 23-25 years of life of the project. According to Vedanta's preliminary results of 7 May 2009,⁸ the refinery has been completed and is being operated at near rated capacity. The refinery's raw material is currently being sourced from Bharat Aluminium Company Ltd (BALCO),⁹ based in Korba (Chhattisgarh – India). Vedanta owns 51% of the shares in BALCO. The UK NCP understands that work on the construction of the bauxite mine has not yet started but that Vedanta expects to have the mine operational by mid 2010.¹⁰ A bauxite mine's conveyor (to transport the bauxite from the Lanjigarh mine to the refinery) is also expected to be operational by mid 2010.

Do the Dongria Kondh inhabit the land affected by the mine and will the mine have an impact upon them?

22. The UK NCP focused its analysis exclusively on the Dongria Kondh because Survival International's complaint centres on this indigenous group. The complainant mentions other indigenous groups, such as the Kutia Kondh and the Desia Kondh, which may have been consulted about the construction of the refinery but focuses on the issue of whether the Dongria Kondh have ever been consulted about the construction of the bauxite mine.

23. There is substantial evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee indicating that the Dongria Kondh do inhabit the Niyamgiri Hills. Evidence from the Central Empowered Committee and Sterlite Industries' own environmental impact assessment suggests that the environment in which the Dongria Kondh live, and their traditional way of life, are going to be affected by the Lanjigarh mining project, and that the construction of the mine may involve displacement of local tribal people, of which the Dongria Kondh are a part.

24. According to the Census of India 2001, carried out by India's Office of the Registrar General and Census Commissioner (under India's Ministry of Home Affairs), the Kondh are one of the Scheduled Tribes of the State of Orissa.¹¹ The Census of India 2001 also confirms that the Kondh (without specifying how many of them are Dongria) are the largest Scheduled Tribe in both the Districts of Kalahandi¹² and Rayagada¹³ which are the districts mainly affected by the Lanjigarh project. The "Scheduled tribe atlas of India", published as part of the 2001 census, does state that the Dongria Kondh's population in Orissa,

6. Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, page 1-3 of the executive summary.

7. A type of rock from which aluminium is produced.

8. See slide 12 of www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

9. Vedanta Resources plc, *Annual Report 2009*, 23 June 2009, page 13.

10. *Ibid*, page 12.

11. http://censusindia.gov.in/Tables_Published/SCST/ST%20Lists.pdf.

12. www.censusindia.gov.in/Dist_File/datasheet-2126.pdf.

13. www.censusindia.gov.in/Dist_File/datasheet-2127.pdf.

combined with the population of Primitive Tribal Groups¹⁴ in Orissa, is 1 140 374,¹⁵ and that most Kondh across India are located in Orissa, particularly the former 1991 administrative divisions of Koraput (now split into Rayagada, Koraput, Malkangiri and Nabarangapur), and Kalahandi.¹⁶ However, these figures are drawn from the 1991 census and may not reflect the current populations of Dongria Kondh in the region.

25. An extensive study on the Dongria Kondh conducted in 2002 by a group of academics mainly based in Bhubaneswar (Orissa)¹⁷ also confirms that the Dongria Kondh inhabit the District of Rayagada, at the border with the Kalahandi District in an area roughly comprised within Muniguda (to the east) and Chatikona (to the south). According to a map included in the study, entitled “Project area Dongria Kondh Development Agency”, Dongria Kondh villages exist close to the border with the District of Kalahandi (towards Lanjigarh) within 6 miles (or less) of the proposed mine site.¹⁸

26. According to the 2002 study, “Dongria Kondh say that the environment of Niyamgiri Hill range dragged them to settle there”.¹⁹ The same study also states that the Dongria Kondh “never moved to the peaks of the mountains as such places are regarded as the abodes of Niyamraja’s kin”²⁰ and that “each village in the Dongria habitat is located at the foot of a hill and named after an important hill”.²¹ The 2002 study also states that Niyamraja is regarded by the Dongria Kondh as God and ruler of the Niyamgiri Hills and the Dongria Kondh’s first ancestor. These observations suggest that the Dongria Kondh do revere the Niyamgiri Hills, including the mine’s proposed site, as sacred. They also suggest that Dongria Kondh villages are likely to have been built at the foot, rather than the top of the hills, which in turn suggests that, because of its high altitude, parts of the actual mine’ site may not be inhabited by the Dongria Kondh but that Dongria Kondh villages may be located at lower altitudes nearby.

27. The Wildlife Institute of India is an independent body based at Dehradun (India) since 1982 with a mandate to train government and non-government personnel, carry out research, and advise on matters of conservation and management of wildlife resources.²² The UK NCP received a copy of the Wildlife Institute of India’ study on the proposed Lanjigarh mine from the complainant.²³ The version of the study examined by the UK NCP is the version reproduced by the Environmental Protection Group (EPG) Orissa.²⁴ In the version of the study examined by the UK NCP, the Wildlife Institute of India acknowledges that the Dongria Kondh inhabit the Niyamgiri Hills, that their economy is forest-based (as

14. According to the Census of India 2001, Primitive Tribal Groups are indigenous groups not formally listed as Scheduled Tribes but effectively constituting part of a Scheduled Tribe.

15. Census of India 2001, *Scheduled tribe atlas of India*, Government of India, 2004, page 95.

16. *Ibid*, page 84.

17. Mihir K. Jena, Padmini Pathi, Jagganath Dash, Kamala K. Patnaik, Klaus Seeland, *Forest tribes of Orissa – lifestyle and social condition of selected Orissan tribes – Volume 1, the Dongria Kondh*, D.K. Printworld (P) Ltd, New Delhi, 2002.

18. *Ibid*, page 13.

19. *Ibid*, page 12.

20. *Ibid*, page 12.

21. *Ibid*, page 286.

22. <http://wii.gov.in>.

23. S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006.

24. The UK NCP has asked the Wildlife Institute of India for a copy of the report but has not yet received one.

well as reliant on agriculture, labour, and animal husbandry), and that they are a “primitive and schedule tribe of the state”.²⁵

28. The Central Empowered Committee was established by the Supreme Court of India in 2002 with a broad task to monitor and ensure the compliance of the orders of the Supreme Court concerning the subject matter of forests and wildlife and other issues arising out of said orders.²⁶ In its “Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa” of 21 September 2005, the Central Empowered Committee states that “[It is seen that] Dongaria Kandha tribe resides in Niyamgiri Hills. As per the applicants, they have unique culture, they worship Niyamgiri Hills, are dependent on it for their survival and that undertaking of mining at Niyamgiri Hills will result in extinction of the tribe”²⁷ and that “The project is based on and is totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which is an important wildlife habitat, part of elephant corridor, a proposed wildlife sanctuary, having dense and virgin forest, residence of an endangered Dongaria Kandha tribe, a source of many rivers/rivulets”.²⁸

29. Sterlite Industries’ own rapid environmental impact assessment acknowledges that Scheduled Castes and Tribes inhabit the study area (that is, an area within 10 Km from the mine)²⁹ but it does not specify whether the Dongria Kondh are amongst these tribes. The assessment states that: “Kalahandi District has 17% SCs [Scheduled Castes] and 29% STs [Scheduled Tribes] against the State [of Orissa] average of 16% SCs and 22% STs. In case of Rayagada District, percentage of ST population is as high as 56% which indicates the complete domination of tribal population”.³⁰

30. The environmental impact assessment also acknowledges that the project would entail the displacement of some people and states that the “exact number [of displaced people] will be available after detailed enumeration”³¹ and that “Tribal localities are scattered in the hills in one to six-seven houses at place”.³² The assessment also acknowledges that tribes form about 47.9% of the total population of the area affected by the project (that is, an area within 10 Km of the project’s site)³³ and equally states the need for a “Resettlement and Rehabilitation Plan” to address any population displacement³⁴ in compliance with Orissa’s Resettlement and Rehabilitation Policy.³⁵

31. In its submission to the Central Empowered Committee before the Committee’s September 2005 report referred above, the State of Orissa claims that the Dongria Kondh do reside in the Niyamgiri Hills but approximately 10 km away (in the District of Rayagada) from the Lanjigarh project’ site and that, for this reason, the Dongria Kondh’s traditional livelihood will not be affected by the mining activities. In a submission to the Supreme

25. S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006, page 16.

26. <http://cecindia.org/aboutcec.html>.

27. Central Empowered Committee, *Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa*, 21 September 2005, page 43.

28. *Ibid*, page 44.

29. Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, p. 7 of the executive summary, and page 2.7-1.

30. *Ibid*, page 2.7-1.

31. *Ibid*, page 2.7-3.

32. *Ibid*, page 2.5-1.

33. *Ibid*, page 7 of the executive summary.

34. *Ibid*, page 9 of the executive summary.

35. www.orissa.gov.in/revenue/R_R_Policies/Relief_and_Rehabilitation.htm.

Court of India in response to the Central Empowered Committee's report of 21 September 2005, the State of Orissa again denies that the Dongria Kondh inhabit the Lanjigarh project' site in the District of Kalahandi because the Dongria Kondh live in other parts of the Niyamgiri Hills.

32. The UK NCP is unclear as to whether the State of Orissa' submissions are only focusing on the construction of the aluminium refinery but, in respect of the proposed site of the bauxite mine, there is no doubt that the project's affected area covers both the Districts of Kalahandi and Rayagada thus well within the Dongria Kondh's living space. The UK NCP also considers it unrealistic to regard the project's affected area as confined to the site of the mine or even to an area within 10 km from the mine, as if the mine could be built and exploited with no impact beyond this radius. The mere building of the mine and connecting roads for a venture of this magnitude would, by themselves, affect the communities living in the Niyamgiri Hills, including the Dongria Kondh, for several more miles around the mine. In addition, the UK NCP is concerned that the views of the State of Orissa may be influenced by the fact that the Orissa Mining Corporation Limited, a State of Orissa owned company, is in joint venture with Sterlite Industries on the construction of the bauxite mine in the Niyamgiri Hills. For these reasons, the UK NCP decided to give greater weight to the evidence from the Central Empowered Committee.

33. Vedanta itself appears to overlook or contradict itself on the issue of whether the Dongria Kondh inhabit the project affected area. In its response to the UK NCP dated 20 January 2009 the company states that *"It should also be noted that the Wildlife Institute of India, at the direction of the MoEF [Ministry of Environment and Forests of India], independently ascertained and specifically confirmed that the Dongria Kondh do not inhabit the proposed mining site"*.³⁶ It then states in the same response that *"As previously mentioned, the Court [Supreme Court of India] also examined the Public Consultation process carried out by the State Government officials and was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately"*.³⁷

34. The UK NCP is unable to verify beyond doubt whether the area covered by the bauxite mine itself is permanently inhabited or only revered as a religious place by the Dongria Kondh although the 2002 study conducted by academics suggests that it is revered and may not be wholly inhabited and that the Dongria Kondh tend to live in the foot hills. The UK NCP also cannot make a determination on the exact distance of each Dongria Kondh's village from the bauxite mine (which is disputed by the parties). However, based on the evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee, the UK NCP believes it is tenable to conclude that the Dongria Kondh inhabit the Niyamgiri Hills and land affected by the Lanjigarh mine project.

Were the Dongria Kondh consulted?

35. The decision about the construction of a bauxite mine in the Niyamgiri Hills appears to have been taken by the company without adequate and timely consultation with the Dongria Kondh.

36. Paragraph 6.10 of Vedanta's letter to the UK NCP dated 20 January 2009. The version of the Wildlife Institute of India' study examined by the UK NCP does not contain this statement but actually confirms that the Dongria Kondh inhabit the Niyamgiri Hills.

37. Paragraph 7.2 of Vedanta's letter to the UK NCP dated 20 January 2009.

36. Sterlite Industries' August 2002 environmental impact assessment³⁸ indicates that the decision to build the mine was taken purely on economic grounds, that is: the economic development of the region, the presence of large quantities of good quality bauxite, and an existing bauxite mining lease agreement between Sterlite Industries and Orissa Mining Corporation Limited. The report does not indicate that the views of any of the affected local communities have been considered as a factor in determining the location of the mine and adjacent structures, nor do alternative locations seem to have been considered in any detail.

37. Vedanta states in its letter to the UK NCP of 20 January 2009 that local communities were consulted in June 2002 and February-March 2003. There is evidence that these consultations have taken place. However, the first consultation in June 2002 only covers the construction of the refinery. In the letter of 6 June 2002 from the Office of the District Collector of the District of Kalahandi to affected land owners of the proposed Lanjigarh aluminium refinery project, the District Collector gives notice of the land acquisition for the construction of the refinery in the Kalahandi District and also explains that displaced families would be compensated and resettled. The letter asks for any complaint to be sent in writing to the Office of the Revenue Inspector in Lanjigarh by 22 June 2002. The letter also informs the recipients that a public consultation would take place on 26 June 2002. It is unclear from the letter who the affected land owners are and whether the Dongria Kondh are amongst them.

38. The UK NCP also received evidence of a consultation with the local community in April 2009 on the expansion of the aluminium refinery. According to the proceedings of the public hearing,³⁹ the meeting was attended by 400 people but only 117 signed the attendance sheet and 27 actually spoke. It is unclear how many representatives or members of the Dongria Kondh actually attended (or were aware of the meeting). According to Survival International, a member of the Dongria Kondh, Lodu Sikaka (identified as "Lada Majhi" in the meeting's minutes) did attend and spoke against the Lanjigarh project as a whole. Lada Majhi's statement is recorded in the minutes:

"Saluting the people present, he said about the Niyamgiri Hills. He said that the hill is their mother as they are depending on the hill for the livelihood. He questioned the authorities whether they can afford to pay 5 lakh rupees for each tree of lemon, turmeric, etc. He further claimed that the government should not compromise with the foreign company. Even if all accepts the Niyamgiri project but the villagers will never agree on that and they will never allow to operate 'Niyam giri danagar (mine)'".

39. There is no evidence to suggest that the consultation on the construction of the refinery included consultation on the construction of the bauxite mine. As explained above, the Lanjigarh project includes the building of a power plant, a refinery and a bauxite mine. The UK NCP understands that the refinery and power plant are already operational. The refinery is currently using raw material brought in from other mines. Whilst the use of locally mined material may be more efficient and economical (because, for example, it may require less journeys by truck and shorter distances to cover), the UK NCP considers it

38. Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002*, pages 1-2, and 14 of the executive summary.

39. *Proceedings of the public hearing of M/S Vedanta Aluminium Limited for its expansion of alumina refinery from 1.0 MPTA to 6.0 MPTA on 25.04.2009 at 10AM at: Village Belemba (opposite VAL SWITCH YARD), Lanjigarh, District Kalahandi.*

reasonable to conclude that the operation of the refinery is not dependent on the construction of the bauxite mine in the Niyamgiri Hills, therefore consultation on one does not imply consultation on the other.

40. The consultations of February and March 2003 did cover the construction of the bauxite mine in the two Districts of Kalahandi and Rayagada. According to the proceedings of the public hearing in February 2003,⁴⁰ the meeting concluded, amongst other issues, that “*The public in general supported the setting up of the industries and operation of mines*” and that “*Local people should be adequately trained and employment opportunity should be generated*” but only 10 people, including the meeting’s chair, signed the attendance sheet for this meeting and only 6 people actually commented during the meeting. According to the proceedings of the public hearing in March,⁴¹ the meeting concluded, amongst other issues, that the “*local people in general supported the setting up of the mines except two nos NGOs*” and that “*the project proponent should take all preventive measures, so that surrounding environment should not be affected and should contact vigorously with local people as well as local elected body*”. Notice of the March meeting was published in a local newspaper and about 30 people signed the “oral deliberators” sheet.

41. The February-March 2003 consultations covered the construction of the bauxite mine but appear, on the basis of the available evidence, to have been poorly attended. In addition, there is no evidence that the Dongria Kondh were aware or attended the public hearings. The poor attendance of these meetings may have been due to the fact that notice of the meetings was, on the available evidence, only given in writing, in local newspapers and in English.

42. The UK NCP did not receive or find any evidence that shows that Vedanta had attempted to engage any of the local indigenous communities affected by the refinery or by the mine by, for example, taking into account that some members of the affected communities may have been illiterate and therefore unable to either read the notice or send written complaints. Vedanta’s own 2002 environmental impact assessment states that literacy levels in Orissa are generally low (49.1%) and are even lower (19.7%) in the study area (that is, an area within 10 km from the proposed mine).⁴² The “Scheduled tribe atlas of India”⁴³ states that the literacy rate amongst Scheduled Tribes is: 37.37% in Orissa, between 30.01 and 45.00% in the District of Kalahandi, and between 12.91 and 30.00% in the District of Rayagada. The rural literacy rate (that is, the percentage of rural literates among Scheduled Tribes) is even lower: 36.13% in Orissa, between 30.01 and 40.00% in the District of Kalahandi, and between 12.63 and 30.00% in the District of Rayagada.

43. Taking into consideration the Dongria Kondh’s traditional way of life and livelihood, Vedanta’s own data and the Census of India 2001 data, it is reasonable to assume that many members of the Dongria Kondh, may not be able to read and write and that more accessible means of communication should have been used in order to engage them effectively.

40. *Proceedings of the public hearing conducted in respect of M/S Sterlite Industries (India) Limited for its proposed alumina refinery captive power plant and bauxite mine held at the Office of Special Officer, Kutia Kandha Development Agency, Lanjigarh, Kalahandi on 07.02.2003.*

41. *Proceedings of the public hearing of M/S Sterlite Industries (India) Limited for its bauxite mines on 17.03.2003 at P.W.D. Inspection Bungalow, Muniguda, Dist. Rayagada.*

42. *Tata AIG Risk Management Services Ltd, Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002, page 2.7-1.*

43. *Census of India 2001, Scheduled tribe atlas of India, Government of India, 2004, pages 33, 35.*

44. The Guidelines state that enterprises should “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” [Chapter V(2)(b)]. The UK NCP considers that Article 10 of the “Akwe: Kon Guidelines”, produced by the Secretariat of the Convention on Biological Diversity in 2004,⁴⁴ provides a good indication of what constitutes an “adequate and timely” consultation with indigenous groups because it takes into account the specific needs of indigenous people like the Dongria Kondh and enables companies practically to take these needs into account when consulting indigenous groups.

45. Article 10 of the “Akwe: Kon Guidelines” states that:

“The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely nonliterate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements”.

46. From the available evidence, it is tenable to conclude that Vedanta did not employ the Dongria Kondh language or means of communication other than written in the February-March 2003 consultations on the construction of the mine.

47. The Central Empowered Committee provides further indication of the lack of an adequate and timely consultation with the Dongria Kondh. The Committee stated that:

*“the alumina refinery project should have been allowed to be constructed only after carrying out in depth study about the effect of the proposed mining from Niyamgiri Hills on water regime, flora and fauna, soil erosion and on the Dongria Kandha tribes residing at Niyamgiri Hills and after careful assessment of the economic gains vis-à-vis environmental considerations [...] In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to the project from environmental/ecological/forest angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site”.*⁴⁵

48. However, in its submission to the Supreme Court of India in response to the Central Empowered Committee’s report of 21 September 2005, the State of Orissa rejects the conclusions of the Central Empowered Committee’s report. In particular, it states that local communities, through village assemblies (called Gram Sabha) or their representatives (called Gram Panchayat), were consulted about the Lanjigarh refinery project and the

44. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

45. Central Empowered Committee, Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa, 21 September 2005, page 45.

consultation meetings were advertised on two leading local newspapers (and individual notices were issued to “land losers”), and captured in video recordings.

49. As explained above, the UK NCP only found evidence of two consultations on the construction of the mine in February and March 2003. However, neither of these consultations can be considered adequate for the reasons also explained above. The UK NCP has not found any evidence, either in documentary form or video recordings, that confirms that the Dongria Kondh were consulted in an adequate and timely manner and that their views had been collected and taken into account.

50. In its letter to the UK NCP of 20 January 2009, Vedanta states that it is in constant touch with the “Dongria Kondh Development Agency”, a State of Orissa’s sponsored body, to “actively associate itself in the process of development of the resources of the Dongria Kondh.”⁴⁶ The UK NCP was unable to find, nor has it received any evidence from Vedanta, on the company’s role in or engagement with this agency and whether the agency was used to consult the Dongria Kondh fully on the construction of the bauxite mine.

51. In the same letter to the UK NCP, Vedanta also suggests that the State of Orissa carried out a separate consultation with the local communities affected by the Lanjigarh project. The UK NCP was unable to find nor has received any evidence on the scope and outcome of this consultation process, other than the consultations carried out in June 2002, February-March 2003 and April 2009 examined above.

Did the Supreme Court of India deal with the issue of consultation with the local communities (of which the Dongria Kondh are part)?

52. Contrary to Vedanta’s claims in its response to the UK NCP, the two rulings of the Supreme Court of India of 23 November 2007⁴⁷ and 8 August 2008,⁴⁸ referred in Vedanta’s letters to the UK NCP, do not appear to have addressed the issue of whether local communities, of which the Dongria Kondh are part, have been adequately consulted on the Lanjigarh project by the company.

53. In the 2007 Order, the Supreme Court of India set out its rationale for dismissing Vedanta Aluminium Limited’s application to use forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh and it also suggested the conditions under which Sterlite Industries (and only Sterlite Industries) could re-submit an application to the Court. These conditions refer to Sterlite Industries’ acceptance of a comprehensive rehabilitation package which includes: the creation of a “Special Purposes Vehicle” jointly by the State of Orissa, Sterlite Industries and Orissa Mining Corporation Limited, which would report annually to the Central Empowered Committee and would oversee the implementation of the “Rehabilitation Package”; Sterlite Industries’ contribution to a Wildlife Management Plan for the conservation and management of wildlife around Lanjigarh’s bauxite mine; and Sterlite Industries’ submission of a statement to the Central Empowered Committee listing, amongst others, the people who will lose their land as a result of the construction of the mine and who will need to be “observed on permanent basis”.

54. The Court’s Order also reproduces a number of suggestions made by the State of Orissa which include the establishment of a Rehabilitation Project for affected families based on the Orissa Rehabilitation and Resettlement Policy 2006 and the preparation of a

46. Paragraph 4.3 of Vedanta’s letter to the UK NCP dated 20 January 2009.

47. Supreme Court of India, Order in I.A. No. 1324 and 1474, 23 November 2007.

48. Supreme Court of India, Order in I.A. No. 2134 of 2007, 8 August 2008.

comprehensive plan for the “development of tribals in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle”. Finally, the Court weighs the principle of sustainable development with the need for economic development, and concludes that “courts are required to balance development needs with the protection of the environment and ecology [...] Mining is an important revenue generating industry. However, we cannot allow our national assets to be placed into the hands of companies without proper mechanism in place and without ascertaining the credibility of the User Agency”.

55. In the 2008 Order, the Supreme Court of India notes Sterlite Industries’ acceptance of the rehabilitation package suggested in the 2007 Order and grants the company clearance for the use of forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh, subject to final approval from India’s Ministry of Environment and Forests.

56. Neither Order suggests that the Supreme Court of India ruled (or was asked to rule) specifically on the need to consult local and indigenous communities, of which the Dongria Kondh are part. The UK NCP is not aware of whether consultation with indigenous groups is mandatory under Indian law, however Chapter V(2)(b) of the Guidelines does recommend consultation with communities directly affected by a multinational enterprise’s environmental, health and safety policies and their implementation. The UK Government expects UK registered companies operating abroad to abide by the standards set out in the Guidelines as well as to obey the host country’s laws.

Did Vedanta make any assessment of the impact the construction of the mine would have on the Dongria Kondh?

57. The UK NCP did not find nor has received any evidence from the company that it carried out an assessment of the impact of the construction of the mine on the Dongria Kondh or any other indigenous community which might be affected, even without their participation. Sterlite Industries’ environmental impact assessment does include an analysis of the “socio-economic environment” of the study area (a 10 km radius from the proposed mine) but does not address the impact of the mine on the Dongria Kondh.

Vedanta’s alleged failure to respect India’s international human rights commitments

58. Both India and the UK are parties to the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological Diversity. Indigenous rights have also been recognised in the UN Declaration on the Rights of Indigenous People adopted by the UN General Assembly on 13 September 2007.

59. Articles 2(1), 18, and 27 of the UN International Covenant on Civil and Political Rights respectively cover: non-discrimination in the enjoyment of civil and political rights, freedom of religion, and the rights of ethnic minorities. Articles 5(c), 5(d)(v), 5(e) of the UN Convention on the Elimination of All Forms of Racial Discrimination respectively cover: non-discrimination in the enjoyment of political rights, non-discrimination in the enjoyment of the right to own property, and non-discrimination in the enjoyment of economic, social and cultural rights. Article 8(j) of the Convention on Biological Diversity covers the protection of indigenous communities. Articles 12, 18, 19 and 32 of the UN Declaration on the Rights of Indigenous People respectively cover: indigenous groups’ right to practice their religion and for protection of their religious sites, indigenous groups’ right to participate in decision-making affecting their rights, consultation with indigenous

groups, and indigenous groups' right to determine their development priorities and to consent to the exploitation of their land.

60. As explained above, Vedanta does not appear to have engaged the Dongria Kondh in adequate and timely consultations about the impact the construction of a bauxite mine in the Niyamgiri Hills would have on their enjoyment of the rights and freedoms described above. In addition, there is no evidence that Vedanta took any other measures to assess, either in its own 2002 environmental impact assessment or through other means, the impact of the proposed mine on the rights and freedoms described above. For these reasons, it is reasonable to conclude that the company did not take adequate steps to respect the rights and freedoms of those affected by its activities consistently with the international instruments of which India is a party, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological Diversity.

61. By only considering the project's economic factors, Vedanta appears not to have balanced the need to promote the success of the company with the clear expectation set out in the Guidelines that companies should respect the human rights of the people affected by the company's economic activities consistent with the host government's international obligations and commitments. While the UK NCP acknowledges the difficulty of UK multinational companies, including Vedanta, to keep track of the international human rights obligations both of the UK and of the host countries in which they operate, companies should nonetheless establish a system that helps them assess and keep track of the human rights impact of their economic activities.

62. Vedanta also does not appear to have a concrete human rights policy or to have in place a mechanism for assessing the impact of its operations on human rights (and indigenous rights) in spite of its published commitments: "[Our people and community policies, which are applied across all of our group companies, are to:] Strive to actively enter into dialogue and engagement with our stakeholders [...] Manage our businesses in a fair and equitable manner, meeting all our social responsibilities as a direct and indirect employer and respect the human rights of all of our stakeholders [...] Align our activities with the principles in the Convention on the Rights of the Child of the United Nations and Convention 138 of the International Labour Organisation."⁴⁹

Vedanta's alleged violation of India's domestic law

63. The UK NCP has not examined the alleged breach by Vedanta of India's law and regulations, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Although Chapter V(2)(b) of the Guidelines recommends that enterprises should engage in adequate and timely communication and consultation within the framework of laws and regulations in the countries in which they operate, Survival International did not demonstrate that the legislation in question placed any obligations on companies to consult with local communities affected by their activities. It is outside the UK NCP's remit to determine companies' violation of local law and regulations with no reference to the Guidelines.

49. www.vedantaresources.com/policies.aspx.

Conclusions

64. Having examined the evidence, the UK NCP could not find any record of the views of the Dongria Kondh about the construction of the bauxite mine in the Niyamgiri Hills ever having been collected and/or taken into consideration by the company. Evidence from the Census of India 2001, academic research, the Wildlife Institute of India, and the Central Empowered Committee suggests that the Dongria Kondh inhabit and have a direct interest in the land affected by the bauxite mine. The Supreme Court of India did not rule (nor was it asked to rule) on the need to consult local indigenous communities.

65. The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter V(2)(b) of the Guidelines. The project has an environmental and health and safety impact on the Dongria Kondh. Evidence from the Central Empowered Committee and Sterlite Industries' environmental impact assessment shows that the Lanjigarh mining project would affect the environment in the Niyamgiri Hills which are home to (and are revered as sacred by) the Dongria Kondh, and may cause the displacement of some local people, of which the Dongria Kondh are a part. The UK NCP concludes that Vedanta has not complied with the Guidelines because it has to date failed to put in place an adequate and timely consultation mechanism to engage fully the Dongria Kondh about the potential environmental and health and safety impact of the construction of the mine on them.

66. The UK NCP upholds Survival International's allegation that Vedanta failed to act consistently with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to put in place any general human rights or indigenous rights policies or a mechanism, such as an indigenous (or human) rights impact assessment, to assess the impact of the construction of the mine on the Dongria Kondh. It also concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultation about the construction of the mine. For these reasons, the company has so far failed to develop and apply an effective self-regulatory practice to foster a relationship of confidence and mutual trust between the company and the Dongria Kondh, a constituent of the society in which it operating.

67. The UK NCP also upholds Survival International's allegation that Vedanta has behaved inconsistently with Chapter II(2) of the Guidelines because: it failed to engage the Dongria Kondh in adequate and timely consultations on the impact that the construction of the bauxite mine would have on their recognised rights and freedoms; and it did not take any other measures to consider the impact of the construction of the mine on those rights and freedoms, or to balance the impact against the need to promote the success of the company. For these reasons, Vedanta has not respected the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

Examples of good practice by the company

68. The company's 2008 and the recently published 2009 Sustainable Development Reports are commendably based on the Global Reporting Initiative's (GRI) G3 Guidelines and on selected GRI indicators addressing economic performance, environmental performance, labour practices and decent work performance, human rights performance, society performance, and product responsibility performance.

69. The UK NCP noted with interest Vedanta's pilot scheme, mentioned in Vedanta's website,⁵⁰ to encourage selected suppliers to respect human rights and the company's intention to roll out this scheme to all suppliers by 2012.

70. Equally noteworthy is Vedanta's decision to align its 2009 sustainable development report to the 10 principles of the UN Global Compact, and to the International Finance Corporation's Performance Standards on Social and Environmental Sustainability.

71. In its 2009 Preliminary Results, Vedanta confirmed its commitment to sustainable development⁵¹ focusing in particular on the areas of education, health, livelihood, agriculture and social forestry, and integrated village development.

Recommendations to the company and follow up

72. With the aim of assisting Vedanta in bringing its practices in line with the Guidelines, the UK NCP makes the following recommendations:

Recommendation 1

73. Vedanta should immediately and adequately engage with the Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine, access of the Dongria Kondh to the project affected area, ways to secure the Dongria Kondh's traditional livelihood, and exploring alternative arrangements (other than re-settlement) for the affected Dongria Kondh's families. The company should respect the outcome of the consultation process.

74. As a guide on how to pursue the consultation process, Vedanta should refer to the "Akwe: Kon Guidelines – Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities",⁵² produced by the Secretariat of the Convention on Biological Diversity in 2004. At a minimum, the company is expected to advertise the consultation in a language and form that can be easily understood by the Dongria Kondh therefore ensuring the participation of the maximum number of Dongria Kondh (and their representatives) in the consultation.

Recommendation 2

75. Vedanta should include a human and indigenous rights impact assessment in its project management process. In doing so, Vedanta should pay particular attention to the creation of an adequate consultation process, prior to the finalisation and execution of a project, with indigenous groups potentially affected by the company's activities. This measure would minimise the risk of failure in balancing the host country and the UK international human rights obligations with the duty to promote the success of the company. It is also essential that the human and indigenous rights impact assessment and consultation procedures do not remain a "paper policy" but are translated into concrete procedures and actions on the ground.

50. See page 7 of www.vedantaresources.com/uploads/griindex.pdf.

51. Slide 22 of Vedanta's preliminary results (7 May 2009) available on www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

52. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

76. John Ruggie is the Special Representative of the Secretary General of the UN on the issue of human rights and transnational corporations and other business enterprises. In this capacity, John Ruggie is widely considered a leading authority on the issue of business and human rights and has provided good practical advice to companies on how to ensure that they respect human rights while engaging in economic activities. In April 2008, John Ruggie reported to the UN that, in order to ascertain whether they are respecting human rights, companies require “*due diligence – 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.*”⁵³

77. In an April 2009 report to the UN, John Ruggie also stated: “What is the appropriate scope of a company’s human rights due diligence process, the range of factors it needs to consider? Three are essential. The first is the country and local context in which the business activity takes place. This might include the country’s human rights commitments and practices, the public sector’s institutional capacity, ethnic tensions, migration patterns, the scarcity of critical resources like water, and so on. The second factor is what impacts the company’s own activities may have within that context, in its capacity as producer, service provider, employer and neighbour, and understanding that its presence inevitably will change many pre-existing conditions. The third factor is whether and how the company might contribute to abuse through the relationships connected to its activities, such as with business partners, entities in its value chain, other non-State actors, and State agents.”⁵⁴

78. To this effect, Vedanta should consider implementing John Ruggie’s suggested key steps for a basic human rights due diligence process:⁵⁵

- Adopting a human rights policy which is not simply aspirational but practically implemented.
- Considering the human rights implications of projects before they begin and amend the projects accordingly to minimise/eliminate this impact.
- Mainstreaming the human rights policy throughout the company, its subsidiaries and supply chain.
- Monitoring and auditing the implementation of the human rights policy and company’s overall human rights performance.

79. Further assistance on how to develop a practical human rights policy can be found on the UN website on business and human rights.⁵⁶ The Akwe: Kon Guidelines, mentioned above, can be used as a point of reference for carrying out indigenous groups’ impact assessments. As benchmarking, Vedanta may also consider the May 2008 “Position statement

53. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraph 25.

54. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and human rights: Towards operationalizing the “protect, respect and remedy framework”*, United Nations, 22 April 2009, paragraph 50.

55. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraphs 59-64.

56. www2.ohchr.org/english/issues/globalization/business/list.htm.

on mining and indigenous peoples”⁵⁷ of the London based International Council on Mining and Metals which commits the Council’s members to:

“Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle. Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-the-ground exploration. Engagement, wherever possible, will be undertaken through traditional authorities within communities and with respect for traditional decision-making structures and processes.

[...]

Designing projects to avoid potentially significant adverse impacts of mining and related activities and where this is not practicable, minimising, managing and/or compensating fairly for impacts. Among other things, for example, special arrangements may need to be made to protect cultural property or sites of religious significance for Indigenous People.

[...]

Through implementation of all of the preceding actions, seek broad community support for new projects or activities. ICMM members recognize that, following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted”.

80. To repeat, whichever self-regulatory practices Vedanta chooses to adopt in order to minimise the risk of further breaches of the Guidelines in the future, it is essential that these practices, particularly the human and indigenous rights impact assessments and the adequate and timely consultation with all the affected communities of a project, do not remain “paper statements” but are translated into concrete actions on the ground and lead to a change in the company’s behaviour.

81. Both parties are asked to provide the UK NCP with an update by 29 December 2009 on the implementation of the UK NCP’s recommendations listed in this Final Statement. The update should be sent to the UK NCP in writing to the following address:

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Department for Business, Innovation and Skills

Bay 4133
1, Victoria Street
London SW1H 0ET
United Kingdom
e-mail: uk.ncp@bis.gsi.gov.uk

82. The UK NCP will publish on its website a further statement reflecting the parties’ responses.

25 September 2009
UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Rowland Bass, Dal Dio, Sergio Moreno
URN: 09/1373

57. www.icmm.com/page/208/indigenous-peoples.

Statement by the UK NCP

Follow up to Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from Survival International against Vedanta Resources plc

1. This Follow Up Statement reflects the parties' responses on the implementation of the recommendations contained in the Final Statement dated 25 September 2009⁵⁸ on the complaint from Survival International against Vedanta Resources plc (Vedanta) under the OECD Guidelines for Multinational Enterprises (the Guidelines). In accordance with the published complaint procedure,⁵⁹ the UK National Contact Point (NCP) for the Guidelines has summarised (but not carried out an examination of) the information provided by the parties. The publication of this statement is the final stage in this Specific Instance.

2. The UK NCP encourages Vedanta and Survival International to engage with each other in order to achieve a mutually satisfactory outcome.

Background

OECD Guidelines for Multinational Enterprises

3. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

4. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

5. The Guidelines are implemented in adhering countries by NCPs which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

Follow up to Final Statements by the UK NCP

6. The UK NCP's complaint procedure, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website (www.bis.gov.uk/nationalcontactpoint).

7. In accordance with paragraph 5.4 of the complaint procedure, where the Final Statement includes recommendations to the company, the UK NCP will specify a date by which both parties are asked to provide the UK NCP with an update on the company's progress towards meeting these recommendations and then publish a follow up statement reflecting the parties' response.

Summary of the Recommendations to the Company Contained in the Final Statement

8. In the Final Statement dated 25 September 2009 on the complaint from Survival International against Vedanta, the UK NCP made recommendations to Vedanta with the

58. www.berr.gov.uk/files/file53117.doc.

59. www.berr.gov.uk/files/file53070.pdf.

aim of assisting the company in bringing its practices in line with the Guidelines. These can be summarised as follows:

1. Vedanta should immediately and adequately engage with the indigenous group Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine, access to the project affected area, ways to secure the Dongria Kondh's traditional livelihood, and exploring alternative arrangements (other than re-settlement) for the affected families. As a guide to how to pursue the consultation process, Vedanta should refer to the consultation process outlined in the "Akwe: Kon Guidelines"⁶⁰ produced by the Secretariat of the Convention on Biological Diversity in 2004.
2. Vedanta should include a human and indigenous rights impact assessment in its project management process and in doing so should pay particular attention to the creation of an adequate consultation process, prior to the finalisation and execution of the project, with indigenous groups potentially affected by the company's activities. Vedanta should consider implementing John Ruggie's suggested key steps for a basic human rights due diligence process⁶¹ and may also consider the May 2008 "Position statement on mining and indigenous peoples"⁶² of the London based International Council on Mining and Metals.

9. The UK NCP also stressed that whichever self-regulatory practices Vedanta chooses to follow, it is essential that these are translated into concrete actions on the ground, particularly in relation to the human and indigenous rights impact assessments and consultation with the affected communities.

10. The UK NCP asked both parties to provide an update on the implementation of these recommendations by the company by 29 December 2009. The UK NCP stated that it would then publish a further statement reflecting the parties' responses. The UK NCP has summarised the responses received from the parties below.

Summary of the Submission from Survival International

11. On 23 December 2009 (with supplementary comments on 22 February 2010), the UK NCP received Survival International's update on Vedanta's implementation of the recommendations outlined above. This can be summarised as follows.

12. According to Survival International's submission, Survival International's team (the team) visited Orissa from 3 to 11 December 2009. The team reported that access to the area affected by the project was obstructed by people allegedly paid by Vedanta to prevent the team from meeting the Dongria Kondh and this meant that the team had to access the area using another route. The team visited Muniguda, Trilochanapur and three Dongria Kondh's villages closest to the mine site: Phuladumer, Palaberi, and Lakhpadar.

13. According to Survival International's submission, the team reported that residents of Phuladumer, Palaberi and Konakadu (the latter is another Dongria Kondh's village not visited by the team) had been served with notices stating that the state authorities would be acquiring the land for "public purposes". The team then visited Trilochanapur where it reported that one of its guides had their motorcycle vandalised and that a heated exchange

60. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

61. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraphs 59-64.

62. www.icmm.com/page/208/indigenous-peoples.

took place between the guides and some of the villagers who claimed to object to the team's presence there and had allegedly been paid by Vedanta. Survival International reported that Vedanta had allegedly warned the local police authorities and press about Survival International's and other foreign NGOs' movements in Orissa with the aim of creating unrest.

14. According to Survival International's submission, the team held informal interviews with members of the Dongria Kondh whilst in Orissa and reported that Vedanta's representatives had not made any recent visits to the villages of Phuladumer, Palaberi, Lakhpadar, Konakadu, Gorta or Golagola (or, to their knowledge, any of the other villages) and that nobody from the company had been in contact to explain the basic facts about the mining project (such as its precise location and the impact it would have on the local population) or to seek their views. The team reported that it had spoken to several NGOs who were active in the area and that none of them were aware of any initiatives from Vedanta to discuss the project with the Dongria Kondh. The team also reported that it was informed that the village of Lakhpadar had been visited by two men, allegedly sent by Vedanta, who promised the head of the village that wells and roads would be constructed and other useful work carried out if the village supported the construction of the mine.

15. Survival International's conclusion is that Vedanta has declined to alter its conduct in any way following the recommendations made by the UK NCP in the Final Statement. Survival International stated that Vedanta has not yet commissioned a human and indigenous rights impact assessment and has made no attempt to engage with the Dongria Kondh. According to Survival International, the Dongria Kondh they visited and many others living in close proximity to the site of the proposed mine, will be immediately and detrimentally affected by any mining operations that are allowed to take place there.

Summary of the Submission from Vedanta

16. On 29 December 2009 (with supplementary comments on 26 February 2010), the UK NCP received Vedanta's response on its implementation of the recommendations outlined at paragraph 8 above. This can be summarised as follows.

17. According to Vedanta's submission, there will be no displacement from the proposed mining project as there is no inhabitation at the proposed mining site.

18. According to Vedanta's submission, the construction of the bauxite mine is being progressed in compliance with Indian law and regulations, in joint venture with the Government of Orissa and with the approval of the Supreme Court of India and central government. Vedanta reported that a "Special Purpose Vehicle" had been set up to deliver the project, as instructed by the Supreme Court of India, to ensure that some resources generated go towards developing local infrastructures. Vedanta also highlighted the development opportunities provided by the project, including the creation of new jobs and local infrastructure.

19. According to Vedanta's submission, the company has in place a policy for engaging with local communities and is already engaging with the Dongria Kondh through the Orissa-Government-sponsored Dongria Kondh Development Agency (DKDA) and will continue this relationship. Vedanta reported that the DKDA has developed a five-year plan to facilitate the Indian government's objectives to improve the resources of the Dongria Kondh (including through access to educational and medical facilities), following consultation with 62 Dongria Kondh villages, local NGOs and anthropologists. Vedanta

reported that it is working with the DKDA to facilitate the delivery of its development objectives. Vedanta stated that the consultation process which the Indian authorities and Vedanta's subsidiary carried out as part of the regulatory approval process with the local communities was advertised in the local vernacular (in accordance with Indian law).

20. Vedanta concluded that its consultation processes comply fully with Indian legal requirements and are already in line with the UK NCP's recommendations contained in the Final Statement of 25 September 2009.

21. Vedanta denied that it has paid local villagers to obstruct Survival International's activities or to object to their presence in Orissa. Vedanta also denied that it has made any promises in return for the villagers' support of the mining project.

12 March 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass,

Dal Dio,

Sergio Moreno

URN 10/778

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc on India's Sewri factory

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

2. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:

- 1) 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 UK NCP will use this information to decide whether further consideration of a complaint is warranted.
- 2) Conciliation/mediation/examination – If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified.
- 3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint, it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.

5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website www.bis.gov.uk/nationalcontactpoint.

Complaint from the IUF

6. On 3 October 2006 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) brought a complaint to the UK NCP and the Dutch NCP on behalf of one of its affiliates, the Hindustan Lever Employees Union

(HLEU). The complaint concerned the selling of Hindustan Lever Limited's⁶³ Sewri factory in Mumbai (India) to Bon Limited and the factory's subsequent closure in July 2006. Hindustan Lever Limited is a subsidiary of a UK registered company, Unilever plc.

7. The concerns raised by the IUF related to the following provisions within the Guidelines:

- a) Chapter I(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".
- b) Chapter IV(6): "[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] 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 cooperation to mitigate the effects of such decisions".

8. The IUF alleged that Unilever was operating in a manner inconsistent with the Guidelines by transferring ownership of the Sewri factory, which the IUF claimed was effected in order to close the facility and terminate the employment of all the union's members. The IUF alleged that aspects of the transfer represented a breach of Indian law and that this fact meant that Unilever had acted inconsistently with Chapter I(7) of the Guidelines. According to the IUF, Unilever also breached Chapter IV(6) of the Guidelines because it had failed to provide reasonable notice to the employees and their representatives about the transfer of ownership of the factory and the termination of the employment contracts.

Response from Unilever

9. Unilever denied all allegations that its conduct was inconsistent with the Guidelines. In particular, Unilever contended that the decision to close the Sewri factory was based solely on economic factors, that is to ensure Hindustan Lever Limited's competitiveness. Unilever explained that both Hindustan Lever Limited and Bon Limited offered favourable voluntary retirement schemes to all employees, exceeding the statutory legal obligations and market practice in India. Unilever also explained that Hindustan Lever Limited's management made several attempts at an amicable settlement with HLEU.

UK NCP process in this specific instance

10. On 3 October 2006 the IUF submitted the complaint to the UK NCP and to the Dutch NCP. On 12 January 2007, the UK NCP formally agreed to take responsibility of this case. On 15 May 2007, the UK NCP published its Initial Assessment in which it accepted the Specific

63. Now "Hindustan Unilever Limited".

Instance. Acceptance of this Specific Instance by the UK NCP does not mean that the UK NCP considers that Unilever operated inconsistently with the Guidelines.

11. On accepting the complaint, the UK NCP did not consider itself to be in a position to judge whether Indian law had been broken. In any event, the Indian courts were determining the compatibility of various issues raised in the complaint with Indian law. The UK NCP accepted this Specific Instance in order to assist the parties to reach a negotiated settlement on the situation of the 782 employees in the Sewri factory who did not originally accept the Voluntary Retirement Scheme (VRS) offered in respect of the factory's closure.

12. Between May 2007 and October 2009, at the request of the parties, the complaint was effectively (albeit not formally) suspended to allow negotiations on the matter of the 782 employees in the Sewri factory and other related matters to take place in India without the direct involvement of the UK NCP. On 13 October 2009, both parties informed the UK NCP that they had reached a mediated settlement in India outside of the UK NCP's process, addressing all the issues raised in IUF's original complaint.

UK NCP conclusions

13. The UK NCP will close the complaint in respect of the Sewri factory and no examination on the allegations contained in IUF's complaint will take place.

14. The UK NCP congratulates both parties for their efforts in encouraging discussions in India leading to a mutually acceptable outcome.

9 November 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Rowland Bass
Dal Dio
Sergio Moreno
URN 09/1529

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc on Pakistan's Khanewal factory

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

2. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:

- 1) 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 UK NCP will use this information to decide whether further consideration of a complaint is warranted;
- 2) Conciliation/mediation/examination – If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
- 3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint (because conciliation/mediation is refused or fails to achieve an agreement), it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.

5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website www.bis.gov.uk/nationalcontactpoint.

Complaint from the IUF

6. On 6 March 2009 the "International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations" (IUF) wrote on behalf of the "National Federation of Food, Beverage and Tobacco Workers" of Pakistan, an IUF affiliate, to the UK

NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of Unilever Pakistan Ltd, a Pakistan based company (“Unilever”), which is a subsidiary of Unilever Plc (a UK registered company).

7. The concerns raised by the IUF relate to the operations of Unilever’s factory in Khanewal and were specifically related by the IUF to the following provisions within the Guidelines:

- a) Chapter II(1): “[Enterprises should] *Contribute to economic, social and environmental progress with a view to achieving sustainable development*”.
- b) Chapter II(4): “[Enterprises should] *Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees*”.
- c) Chapter II(9): “[Enterprises should] *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*”.
- d) Chapter IV(1)(a): “[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment 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*”.

8. The IUF alleged that Unilever had deliberately constructed a system of employment at its Khanewal factory based almost exclusively on temporary workers and was refusing to change the workers’ status from temporary to permanent after the mandatory nine-month period of continuous service, allegedly in breach of Pakistan’s employment law. The IUF explained that temporary workers do not have the same access to collective bargaining as permanent workers in Pakistan and also do not receive the same benefits. The IUF also alleged that those temporary workers demanding permanent status and who petitioned the Punjab Labour Court No. 9 in Multan had been subject to threats, coercion and violence from members of management.

Response from Unilever

9. Unilever denied any breach of the Guidelines and stated that, in line with the industry’s practice in Pakistan and South East Asia, and to keep operations effective and competitive, it does employ independent service providers for non-core operations at the Khanewal factory. Unilever stated that it cannot be held responsible for the work status of workers employed by independent local service providers and that it insists upon service providers complying with Unilever’s Business Partner Code⁶⁴ and with Pakistan’s law. Unilever also stated that employees of Unilever’s independent service providers are free to form their own unions separate from Unilever Employees Federation of Pakistan (which can only represent Unilever’s permanent staff in the country). Unilever denied that workers were subject to threats, coercion or violence.

UK NCP process in this specific instance

10. On 6 March 2009, the IUF submitted the complaint to the UK NCP. Unilever provided its response on 15 May 2009. On 9 June 2009, the UK NCP published its Initial

64. www.unilever.com/aboutus/purposeandprinciples/business_partner_code/.

Assessment in which it accepted the Specific Instance. **Acceptance of this Specific Instance by the UK NCP does not mean that the UK NCP considers that Unilever operated inconsistently with the Guidelines.**

11. The UK NCP then contacted both parties to confirm whether they were willing to accept the UK NCP sponsored conciliation/mediation process with the aim of reaching a mutually acceptable outcome. Both parties accepted the offer so the UK NCP appointed ACAS⁶⁵ arbitrator and mediator John Mulholland to serve as conciliator-mediator. An initial conciliation meeting took place on 15 October 2009 in London. The parties met again on 21 October 2009 in London. The meetings were chaired by Mr Mulholland. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The full text of the agreement reached by the parties is attached as an annex to this Final Statement.

Outcome of the conciliation

12. On 21 October 2009, both parties reached the agreement attached to this Final Statement. Both parties have agreed that the full text of the agreement can be published and that there are no outstanding issues from the IUF's original complaint which need to be examined by the UK NCP. The parties also agreed that the implementation of the attached agreement will be jointly monitored by Unilever and the IUF at national and international levels.

UK NCP Conclusions

13. Following the successful conclusion of the conciliation process by Mr John Mulholland and the agreement reached by the parties, the UK NCP will close the complaint in respect of the Khanewal factory. The UK NCP will not carry out an examination of the allegations contained in IUF's complaint or make a statement as to whether there has been a breach of the Guidelines.

14. The UK NCP congratulates both parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the discussions.

20 November 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Rowland Bass
Dal Dio,
Sergio Moreno
URN 09/1570

65. Advisory, Conciliation and Arbitration Service.

Box 1.A1.4. Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) concerning the Khanewal factory, Pakistan

1. The IUF and Unilever have agreed there will be a significant change in the model of employment at Khanewal based on a combination of directly employed permanent labour in non-seasonal manufacturing and contract agency workers (labour engaged through third party service providers) for ancillary, non-manufacturing and seasonal positions.

2. Under the terms of this agreement, Unilever will establish 200 permanent positions at Khanewal. This is in addition to the existing 22 positions at this facility.

3. Those confirmed through this selection process will be appointed on contracts commencing as of 15th October 2009.

4. To ensure a fair and transparent selection procedure for the appointment of these permanent positions, the IUF and Unilever will form a committee at national level to oversee and implement the process.

5. The Selection of workers shall be made on the basis of seniority and skill. However, the committee shall focus its discussions on the 237 members of the "Action Committee" (members of Unilever Mazdoor Union Khanewal) with particular priority given to the 177 who are part of the manufacturing group (i.e. core and non-core roles) in relation to the 200 permanent jobs.

6. Unilever shall ensure that the third party service provider companies provide appropriate payment to their employees both who receive permanent positions and who do not receive permanent positions in settlement of any outstanding statutory payments. This assurance includes Unilever's agreement to assume responsibility for the payment of any and all payments not met by the service provider within the time frame specified. A lump sum payment, as detailed in point 10 below, will be made in lieu of individually derived payments inclusive of gratuity.

7. The list of employees eligible for this payment will be agreed by the committee, but shall exclude any service provider employees who were not registered/enrolled before August 2008 and shall apply only to those of this number who remain enrolled as of 15 Oct 2009.

8. It shall also exclude employees where full documentary proof of full statutory payments having already been made can be provided. Any individual issues arising, relating to eligibility to payments will be agreed by the committee.

9. The terms of the one off lump sum payments are as follows:

I. Payment for third party service provider employees working in manufacturing core/non-core roles who receive permanent positions from Unilever Pakistan: Rs. 50 000.00

II. Payment for third party service provider employees working in manufacturing core/non-core roles but who do not receive permanent positions but continue working with the service providers: Rs. 150 000.00

III. Payment for third party service provider employees in ancillary roles who will not be eligible for permanent positions but continue working with the service providers: Rs. 100 000.00

10. Any of the Action Committee members who as a consequence of the selection process are not selected for permanent positions shall be subject to dialogue between the IUF and Unilever regarding current employment and future placements. However, they shall continue to be employed as service provider employees with all legally mandated benefits and will not be subject to any discrimination or harassment, so long as contract employment is required within the core and non core areas.

11. Unilever Pakistan shall also ensure that the third party service providers have paid all legally mandated payments to the Employees' Old Age Benefits Institution (EOBI) and the social security system for all their employees. This assurance includes Unilever's agreement to assume responsibility for the payment of any and all such legally mandated payments not met by the service provider within the timeframe specified.

Box 1.A1.4. Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) concerning the Khanewal factory, Pakistan (cont.)

12. These payments will be made within 30 days of the finalising of the list of the eligible employees by the committee. The list shall be finalized within 15 days of the signing of this agreement.

13. At the conclusion of the employment selection process all Action Committee members at the time of receiving signed appointment letters shall give signed undertakings to withdraw all related court cases. All payments agreed in relation to the 237 members of the Action Committee will be made immediately upon withdrawal of their petitions. The draft of the undertaking and the withdrawal of petitions to be submitted by the individuals shall be mutually agreed by the committee at national level.

14. Unilever confirms its intention of continuing operations at Khanewal and makes a commitment to invest in these operations. This will include implementation of automation or other efficiency measures to ensure business viability, subject to the normal consultation requirements as defined in law. In this respect Unilever will fulfill its obligations under the OECD guidelines on multinational enterprises, in particular article iv.6.

15. No member of the Action Committee will be subject to any discriminatory or recriminatory action as a result of their membership of the Action Committee.

16. Both Unilever and Action Committee members commit to a process of ongoing dialogue. The IUF and its affiliates will be entitled to exercise full representational functions within the plant, within the pertinent legal framework, without interference by the management.

17. Implementation of this agreement will be monitored by the IUF and Unilever at national, regional and global levels.

Nick Dalton
V.P., H.R. Global Supply Chain, Unilever

Ron Oswald
General Secretary, IUF

London, October 21, 2009

ANNEX 1.A2

High-level OECD speeches at international conferences

Access to Remedies and the OECD Guidelines for Multinational Enterprises

Aart de Geus, OECD Deputy Secretary-General

**2009 EU Conference on Corporate Social Responsibility
Stockholm, 10 November 2009**

Ambassador Are-Jostein Norheim, Distinguished Representatives of the European Union institutions, Distinguished Speakers and Participants, good afternoon.

I would like to express our thanks to the Swedish Presidency and the European Commission for inviting the OECD to contribute to the 2009 edition of the European Annual Conference on Corporate Social Responsibility.

The “Protect, Respect and Remedy Framework” developed by Professor Ruggie, Special Representative of the UN Secretary-General on Business and Human Rights, is the driving theme of this Conference. This Framework is consistent with, and in fact supported by, the OECD’s approach to encouraging responsible business conduct.

To quote Professor Ruggie, the OECD Guidelines for Multinational Enterprises are “the most widely applicable set of government-endorsed standards related to corporate responsibility and human rights”. In light of the experience with the OECD Guidelines and in particular the role of the National Contact Points (NCPs), I have been asked to speak on the third pillar of Professor Ruggie’s Framework: Access to Remedies.

But before I say more on this particular function of the NCPs, let me first mention four contributions of the Guidelines to this Framework.

OECD contribution to the “Protect, Respect and Remedy Framework” for human rights

Firstly, the Framework goes a long way in putting to rest the protracted debate we carried over for many years as to whether corporate responsibility is to be obligatory or voluntary. It is clearly a combination of both. Enterprises must respect human rights, whether or not they are bound to do so by domestic law, or when human rights are poorly protected by governments. This is why the OECD and the Guidelines use the general term of “responsible business conduct” to define corporate responsibility as consisting of both obeying the law, observing internationally-agreed standards and responding to other societal expectations.

Secondly, the “Protect, Respect and Remedy” Framework makes the case why the state duty to protect human rights, the corporate responsibility to respect human rights and access to remedies are intrinsically linked. Failure to act on one principle inevitably weakens the effectiveness of the other two. Efforts need to be deployed on all fronts. The OECD also takes this comprehensive approach. In 2006 some 60 OECD and non-member countries developed the Policy Framework for Investment in which Chapter 7 sets out the government policies needed to promote responsible business conduct, including respect of human rights. At the same time, the OECD Guidelines set out the standards and principles of such conduct, and conciliation and mediation facility is provided through the National Contact Points.

Thirdly, the Framework recommends that companies should work upstream to prevent the occurrence of human rights abuse. Businesses need to follow with diligence processes to ensure their activities do no harm. Due diligence is the approach advocated in the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones adopted by the OECD Council in 2006. The OECD has now embarked on the implementation phase of this Tool by developing practical guidance on due diligence for mining companies.

Fourth, the importance of remedies. The Framework underlines the importance of grievance mechanisms to ensure that wrongful acts are not left unpunished. There can be of various kinds of redress, judicial or non-judicial, ombudsman or even company based. The OECD Guidelines provide for a state-based non-judicial remedy mechanism.

So my conclusion is that the principles of the Framework are effectively reflected in the OECD instruments.

Let me now turn to what the Guidelines have to offer in respect of access to remedy.

About the OECD Guidelines

The OECD Guidelines are recommendations addressed by adhering governments to their multinational enterprises wherever they operate. They cover all major areas of business ethics, including human rights. These draw on universally shared values and norms such as those promoted by the Universal Declaration on Human Rights and the ILO Conventions, as well as instruments developed at the OECD, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Thirty OECD Members, Brazil and ten other non-OECD countries have so far adhered to the Guidelines. The adherence of a forty second country – Morocco – is due to take effect at this end of this month.

A unique non-judicial redress mechanism

The Guidelines are well known for their so-called “specific instance” facility.

The “specific instance” facility is a state-based non-judicial mechanism to assist in non-adversarial resolution of issues that arise from the implementation of the Guidelines. It provides the possibility for any interested parties to submit allegations of human rights violation by multinational enterprises to NCPs, which are government agencies established by the adhering countries and charged with promoting the Guidelines.

NCPs must assess the merits of the complaints, offer their good offices to conciliate and mediate good faith allegations of non-observance of the Guidelines and make recommendations as appropriate. NCPs decisions are not binding on the parties. They carry, however, the weight of governments, which companies and interested parties don't usually take on lightly.

The record?

The interest in the “specific instance” facility has been steadily growing over the years. Since the last revision of the Guidelines in 2000, over 150 specific instances have been considered by NCPs, and half of them have been concluded. Most of these cases have dealt with employment and industrial relations issues, but more recently publicised cases have involved violation of human rights.

With time NCPs have become more confident in developing procedures for handling complaints, understanding their good offices for mediation, and formulating recommendations. Some NCPs, like the Dutch and UK NCPs, have also introduced important changes to their institutional arrangements.

Outcomes suggest that the “specific instance” facility can make a difference. Recent examples include:

- In December 2008, G4S, the world’s largest security firm and second global private employer reached an exemplary agreement with UNI Global Union. Thanks to mediation of the UK NCP, the agreement commits G4S to improve labour conditions of workers in Malawi, Mozambique, Nepal and the DRC.
- In July 2009, in the complaint filed against Philipinas Shell Petroleum Corporation, the Dutch NCP found that Shell did not apply the best level of health and safety measures in regard to the Pandacan oil depot and recommended that it be attentive to local communities’ concerns.
- In September 2009, following the complaint from Survival International against Vedanta Resources plc, the UK NCP found that Vedanta did not respect the rights and freedoms of the Dongria Kondh indigenous community consistent with India’s commitments under various human rights instruments.

Another recent development has been the official invitation by the UN Global Compact to its Local Networks in countries adhering to the OECD Guidelines to actively explore collaborative opportunities with the NCPs, including seeking advice and guidance from NCPs regarding follow-up procedures for the OECD Guidelines’ implementation (such as the “specific instance” facility).

Preparing for an update

In the wake of the global financial crisis, when the reputation of business has suffered greatly, the private sector needs more than ever a recognised and respected framework for business ethics to guide its actions. At the June 2009 OECD Ministerial Meeting, ministers “welcomed further consultation on the updating of the Guidelines to enhance their relevance and clarify the responsibilities of the private sector”. Adhering countries have now agreed on a process for conducting this consultation and on a list of issues covering both content and procedures of the Guidelines.

Let me mention three of these issues which are relevant to the “Protect, Respect and Remedy” Framework for human rights.

First, the reinforcement of the human rights component of the Guidelines. Questions submitted for consultation include whether the existing provisions of the Guidelines provide sufficient guidance to companies in the event of conflicting requirements between internationally-recognized standards on human rights and host country policies, or throughout the supply chain, or in relation to the impact on local communities and indigenous people.

Second, we need to carefully consider under which conditions NCPs should take up specific instances in situations where the matter is subject to parallel legal proceedings, taking into account the expected added-value of a non-judicial redress mechanism. Further guidance to NCPs on how to deal with such situations would be warranted.

Third, NCP performance. It has been argued that differences in NCP institutional arrangements, operational modalities and resources may not be compatible with the functional equivalence standard for NCP performance and affect the credibility and effectiveness of the Guidelines.

As we did for the review of the Guidelines in 2000, the adhering countries count on the business, labor and civil society partners for expertise in the consultation process. They will also be seeking an active involvement of emerging economies that have not yet adhered to the Guidelines. A first special meeting with interested parties will be held in early December, on the occasion of the 2009 Global Forum on International Investment in Paris, to identify the need and options for specific revisions to the Guidelines and its implementation procedures.

We look forward to your contributions to the consultations on an update of the OECD Guidelines.

Thank you very much for your attention.

Remarks at the Ministerial Session of the UN Global Compact Leaders Summit 2010

Richard Boucher, OECD Deputy Secretary-General

United Nations Headquarters 23 June 2010 – New York

Ministerial Session: “How can Governments promote business efforts to ensure that markets, commerce, technology and finance advance in ways that benefit economies and society everywhere?”

Ladies and Gentlemen, on behalf of the OECD Secretary-General, I am delighted to join in this 10th anniversary celebration of the UN Global Compact and to participate in this first Ministerial Meeting to discuss the responsibilities of governments in promoting corporate responsibility.

Sustainability and corporate responsibility

Let me begin by recalling that the Millennium Development Goals and the Monterrey Consensus recognised that the best way to lift people from poverty and underdevelopment is to promote a healthy and vibrant private sector. The strong economic performance of the major emerging economies and so many other developing countries prove the point.

Private sector development needs a sound enabling environment to work its magic. But corporate responsibility matters too and governments can lead the way, which is why we are here today.

What can governments do to enhance corporate responsibility?

First, they can be firm about companies’ obligations to obey the law, and encourage them to observe internationally recognised human rights and labour standards and to exercise due diligence in their operations and business relations. Companies should respect the rights of others and mitigating any harm caused.

Second, governments can encourage or partner with enterprises in meeting basic human needs such as water, electricity, roads, schools so long as they – governments – do not relinquish their basic responsibilities to provide these essential services.

Third, as we are discussing today, governments can co-operate with each other across the world and with other stakeholders to press the case that corporate responsibility is essential to sustainable economic development and hence in the interests of all.

Role of the OECD

OECD is active in many dimensions of sustainable development, promoting a healthy enabling business environment sensitive to environmental concerns and the special needs of developing countries.

- The OECD’s *Policy Framework for Investment* has been adopted by more than 60 countries as a practical tool for mobilising domestic and foreign resources. The OECD Principles for Private Sector Participation in Infrastructure offers guidance on how public-private partnerships can be designed to provide essential services to needy people.

- Prompted by the business ethics challenge of the recent financial crisis, OECD Ministers in May this year adopted a Declaration on Propriety and Transparency for the Conduct of International Business and Finance that gives new impetus to OECD work on a range of issues including corporate governance, taxation, competition, corporate responsibility and anti-corruption.
- Ministers also welcomed the decision to launch a substantial update of the *OECD Guidelines for Multinational Enterprises*, which is still the world's most comprehensive international corporate responsibility instrument developed by governments. The aim of the update is to address more thoroughly issues of human rights abuse and company responsibility for their supply chains. It is also planned to strengthen the Guidelines' unique mediation mechanism which operates through National Contact Points designated by each of the 42 participating countries. This mediation mechanism is available to all stakeholders whether from companies, unions, NGOs or governments.

Partnering the UN Global Compact

Finally, let me stress that, with our Guidelines for Multinational Enterprises, we are true partners with the UN Global Compact. Indeed, the two instruments are complementary:

- The UN and the OECD instruments share the same values of business ethics, including human rights, labour and industrial relations, environment and anti-corruption.
- The OECD Guidelines are recommendations addressed by governments to enterprises, while the UN Global Compact provides a public platform for enterprises to express their corporate responsibility engagement.

The planned adoption at this Ministerial meeting of a *governmental declaration by UN members* is a welcome reinforcement of this complementarity.

We also welcome the recent UN announcement encouraging the Global Compact's Local Network of Focal Points to make use of the OECD mediation procedures. For their part, OECD National Contact Points have agreed to encourage multinational enterprises to engage with the UN Global Compact.

Next week in Paris, on the occasion of the *National Contact Points Annual Meeting*, we will begin the process of revising the text of the OECD Guidelines and strengthening the implementation procedures. We have high hopes for this open process which will seek input from many sources, including all stakeholders and governments not yet adhering to the Guidelines. We look forward to the active involvement of our friends from the UN Global Compact.

Thank you

ANNEX 1.A3

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.

Business Industry Advisory Committee (BIAC) Submission

BIAC welcomes the opportunity to provide comments for the Annual Report on the OECD Guidelines for MNEs 2010. BIAC member experience with the implementation of the MNE Guidelines and the performance of the National Contact Points over the past year are generally positive. Also, the important work undertaken by National Contact Points regarding promotion of the MNE Guidelines is in general appreciated.

BIAC continues to view the implementation and promotion of the MNE Guidelines as a priority and BIAC members co-operate closely with national National Contact Points on this matter, and in some countries are part of the NCP itself or sit on an oversight board.

In the past year National Contact Points have in a number of specific instances significantly contributed to resolving issues between stakeholders. However, there is room for improvement within the well-established OECD principle of functional equivalence. In some countries improved timeliness and predictability of the specific instance procedure could be achieved.

In general, in order for the National Contact Points to help enhancing the relevance and benefits of the MNE Guidelines it is necessary that the Guidelines identify the problems to be addressed and assist in developing the best solutions.

Clear criteria for initiating a specific instance process are needed. National Contact Points could for example consider the representativeness, proportionality, standing of the complainants, and initial data (such as noise levels, pollution, affidavits). This would ensure effective and efficient use of resources during the complaint process. In practice, some cases have shown that the notifying party does not represent or only represents a

small group of actual stakeholders, which may raise doubts about the usefulness of extensive attempts at mediation.

The procedures regarding specific instances that are subject to parallel proceedings is seen by business as a challenge for National Contact Points and for the well-functioning of the Guidelines. National Contact Points should therefore not address problems that other national institutions have been specifically designed to address. Clearer guidance for National Contact Points on these issues would be useful.

When parallel proceedings are accepted by all parties, they should be focussed on mediation. The National Contact Point must at the same time not set aside the legal rights or obligations of MNEs: issues that are subject to for example local court procedures should be dismissed from the complaint in the admission phase.

Business is convinced that external mediation would improve the effectiveness of conflict resolution procedures. A separation of roles when dealing with specific instances is also needed, since a National Contact Point simultaneously cannot act as reviewer on the one hand, and mediator on the other. A decision could be received by parties as biased and jeopardize the trust which parties need to have in the National Contact Point for successful mediation. Therefore, a separation of these roles would result in a better outcome.

Complaints should be submitted to one National Contact Point only, and forum shopping by interested parties should be discouraged. The National Contact Point in the country where the violation is alleged to have occurred should receive and deal with the complaint, since submission of complaints to two (or more) National Contact Points leads to confusion and unnecessary complexity. The MNE Guidelines already allow for National Contact Points to consult each other, which creates clear opportunities for consultation and makes dual submissions unnecessary.

Trade Union Advisory Committee (TUAC) Submission

Introduction

1. This 2010 Annual Meeting of National Contact Points falls ten years after the 2000 Review of the OECD MNE Guidelines, which created the National Contact Points and the specific instance procedure. It also marks the beginning of the next revision or Update of the Guidelines. TUAC considers this an excellent opportunity to take stock of the experience to date, the lessons learnt and to identify the priorities for the future.

2. TUAC welcomed the decision of the 2009 OECD Ministerial Council Meeting to instruct the OECD to undertake further consultation on the “updating” of the OECD MNE Guidelines in order “to increase their relevance and clarify private sector responsibilities”.⁶⁶ TUAC also strongly supports the statement of purpose contained in the Terms of Reference: “the purpose of the Update will be to ensure their continued role as a leading international instrument for the promotion of responsible business conduct”.

3. TUAC has already held two internal meetings⁶⁷ with TUAC affiliates, the Global Union Federations (GUFs) and the International Trade Union Confederation (ITUC) to identify trade union priorities for the Update, drawing on the principles and concepts developed by the mandate of the UN Special Rapporteur for Business and Human Rights, Professor John Ruggie. TUAC has already presented its initial positions to the Investment

66. OECD Annual Ministerial Council Meeting, 24-25 June 2009.

67. Held on 2 September 2009 and 16 February 2010.

Committee in October 2009 (see ANNEX 1). These positions are still evolving – key elements are summarised overleaf (see Table 1.A3.1 and 1.A3.2).

4. It is essential that this Update provides an Upgrade in all respects, so as to ensure that the Guidelines and the NCPs are indeed a “*leading international instrument for the promotion of responsible business conduct*” capable of meeting the governance gaps of today’s global economy. This means, first and foremost, strengthening the Procedural Guidance in order to improve the performance of NCPs across the board. The Update must also make it clear that the Guidelines – together with the specific instance procedure – are applicable to a range of business relationships beyond ownership or investment, which include supply chains and non-direct employment relationships.

5. It is also imperative that the Update incorporate those principles and concepts from the work of the Special Representative on Business and Human Rights that would serve to strengthen the effectiveness of the Guidelines in protecting workers and workers’ rights including anchoring the Guidelines in international standards and not just applicable domestic law, including the human rights treaties (see Table 1.A3.3).

Table 1.A3.1. **PROCEDURAL GUIDANCE**

ISSUE	RELATED ISSUES	TRADE UNION POSITION
NATIONAL CONTACT POINTS		
Functional Equivalence	Cross-cutting	Expand the performance criteria to include six criteria of the SRBHR and introduce mandatory and participatory peer review.
Oversight Body	Timescales Parallel legal proceedings	Require NCPs to establish an oversight mechanism.
Right of Appeal		Provide for a right of appeal.
Promotion by NCP	Cross-cutting	Develop a national promotional strategy in conjunction with external stakeholders.
Capacity-building	Training/Burden of proof Resources	Draw up a capacity-building plan.
NCP Cooperation	Parallel legal proceedings Follow-up Consequences	Change the procedures to assign responsibility to the <i>home</i> NCP to provide mediation between the <i>parent company, the affected parties and their international representatives</i> .
Role of the NCP	Consequences Cooperation of the Company	Provide for a two-stage process: first mediation and then, if mediation fails, adjudication (in line with the proposal of OECD Watch).
Confidentiality/ Transparency	Parallel proceedings Cooperation of companies	Include minimum standards of transparency for handling confidential proceedings between parties, as well as for the publication of information including initial/final statements.
Parallel Legal Proceedings	Confidentiality/Cooperation of companies/ National law v international standards	Produce guidance that includes the requirement to show prejudice to the proceedings; require the decision to suspend or reject a case to be subject to external oversight.
Timescales	Parallel proceedings Cooperation of companies Resources/Campaigns	Incorporate maximum timescales into the procedural guidance.
Consequences	Cooperation of the company	Provide information on violations of the Guidelines or failure to cooperate in the process to government departments responsible for public subsidies and national pension funds.
Follow-up Reporting	Oversight	Require NCPs to follow up their recommendations and publicly report on this follow-up Extend NCP reporting requirements to include resources/core performance indicators.
INVESTMENT COMMITTEE		
Peer Review	Cross-cutting	Conduct mandatory peer review including country visits, in-country consultations with trade unions and other stakeholders and public reports.
Promotion		The OECD Investment Committee should develop and implement a three-year promotional programme.
Capacity		The OECD Investment Committee should establish a central capacity-building fund to <i>i)</i> support NCPs in the start-up phase, <i>ii)</i> provide training in core skills and <i>iii)</i> to support fact-finding.

Table 1.A3.2. **SUBSTANTIVE ISSUES**

TRADE UNION PRIORITIES		
ISSUE	RELATED ISSUES	TUAC POSITIONS
Update the Status of the Guidelines	Cross-cutting Corporate Responsibility to Respect	The Guidelines are non-legally enforceable.
Applicable Law vs International Standards	Parallel Proceedings Corporate responsibility to respect	The Guidelines should reference international standards and give guidance on the standards that apply in the event of conflict between national law and international standards.
Supply Chains	Investment Nexus Human Rights Due Diligence Changing Employment Relationships	TUAC supports the inclusion of a human rights chapter, which would strengthen Chapter IV on Employment and Industrial Relations, together with the use of the impact of activities and relationships as a means to strengthen the basis of corporate responsibility including through the supply chain.
Investment Nexus	Supply Chains Due Diligence	TUAC considers it essential that the Update removes the requirement for an investment nexus in line with the UN Framework and the Corporate Responsibility to Respect.
Decent Work	Cross-cutting	Include Decent Work in the text or the commentaries of Chapter II, General Policies, as well as Chapter IV Employment and Industrial Relations.
Changing Employment Relationships	Business relationships Supply Chains Due Diligence	Include new provisions on changing employment relationships in Chapter IV Employment and Industrial Relations, referencing the ILO Employment Relationship Recommendation, 2006 (No. 198).
Living Wage	Changing Employment Relationships Gender	Include new provisions on the Living Wage in Chapter IV Employment and Industrial Relations.

Table 1.A3.3. **ADDITIONAL TECHNICAL REFERENCES**

KEY STANDARDS	CHAPTER	REFERENCE IN
Universal Declaration of Human Rights (1948)	I. Concepts and General Principles New Chapter Human Rights Chapter IV Employment and Industrial Relations	TEXT
International Covenant on Economic, Social and Cultural Rights	I. Concepts and General Principles New Chapter Human Rights Chapter IV Employment and Industrial Relations	TEXT
International Covenant on Civil and Political Rights	I Concepts and General Principles New Chapter Human Rights Chapter IV Employment and Industrial Relations	TEXT
Declaration on Fundamental Principles and Rights at Work (1998)	I. Concepts and General Principles II General Policies IV Employment and Industrial Relations	TEXT
Protect Respect and Remedy: A Framework for Business and Human Rights	I. Concepts and General Principles II General Policies IV Employment and Industrial Relations	TEXT
OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones	I. Concepts and General Principles II General Policies IV Employment and Industrial Relations	COMMENTARIES
IFC Policy and Performance Environmental and Social Standards (2006)	III Disclosure IV. Employment and Industrial Relations V. Environment	COMMENTARIES
Equator Principles	III Disclosure	COMMENTARIES

Table 1.A3.3. **ADDITIONAL TECHNICAL REFERENCES** (cont.)

KEY STANDARDS	CHAPTER	REFERENCE IN
UN Principles of Responsible Investment (2005)	III Disclosure	COMMENTARIES
Global Reporting Initiative	III Disclosure	COMMENTARIES
OECD Principles of Corporate Governance (2004)	III Disclosure	COMMENTARIES
Extractive Industries Transparency Initiative	III Disclosure	COMMENTARIES
ILO Employment Relationship Recommendation, 2006	IV Employment and Industrial Relations	COMMENTARIES
2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (26 November 2009).	VI. Combating Bribery	COMMENTARIES
2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits into the 1997 Revised Recommendation.	VI. Combating Bribery	COMMENTARIES
2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Officials in International Business X. Taxation Transactions	VI. Combating Bribery X. Taxation	COMMENTARIES
United Nations Convention against Corruption (2003)	VI. Combating Bribery	COMMENTARIES
OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2009 edition)	X. Taxation	COMMENTARIES
Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Third edition, 2001)	IV Employment and Industrial Relations	TEXT
2008 ILO Declaration on Social Justice for a Fair Globalization	IV Employment and Industrial Relations	TEXT
Labour Inspection Convention, 1947	IV Employment and Industrial Relations	COMMENTARIES
Labour Inspection (Agriculture) Convention, 1969 (No. 129)	IV Employment and Industrial Relations	COMMENTARIES
R198 Employment Relationship Recommendation, 2006	IV Employment and Industrial Relations	COMMENTARIES

OECD Watch Submission

Introduction: A golden opportunity

The year 2010 is an important year in global corporate responsibility and accountability. The UN Global Compact is marking its 10-year anniversary, the ISO 26000 Guidance on Social Responsibility is being finalised after many years of multi-stakeholder consultations, the International Finance Corporation is reviewing and updating its Policy and Performance Standards on Social and Environmental Sustainability, and Professor John Ruggie, appointed the Special Representative to the UN Secretary-General on Business and Human Rights (SRSG), is in the final full year of his mandate. Perhaps the most significant event, however, is related to the OECD Guidelines for Multinational Enterprises (OECD Guidelines), one of the key international instruments for promoting corporate responsibility. Not only are the OECD Guidelines marking the 10-year anniversary since their last revision in 2000, but June 2010 also finds us on the eve of a new year-long process to revise, update, and upgrade the OECD Guidelines. There view is a make-or-break moment and provides a golden opportunity to ensure that the OECD Guidelines are given the necessary scope and institutional authority to make them an effective corporate accountability tool.

A call for corporate accountability

Not coincidentally, recent years have also witnessed an intensification of concerns regarding the impacts of corporations on human rights, labour rights and the environment. While the private sector can be a powerful driver of economic prosperity and poverty alleviation, a growing body of evidence confirms that, without the necessary due diligence, disclosure and accountability checks, multinational enterprises (MNEs) can have a significant negative impact on workers, communities and the natural environment.⁶⁸ There is now widespread acknowledgement that MNEs are required to be responsible for avoiding or remedying any negative consequences of the full range of their business activities. The principles of “do no harm” and, when things do go wrong, providing a remedy for the victims must be upheld through corporate accountability mechanisms.

The increasing frequency of global crises – with regard to food, climate, energy, and most recently finance and the global economy – has further highlighted the scale of impact that irresponsible and unsustainable business behaviour can have on society. More than ever, there is an urgent need to fully and completely integrate the notion of rights-based sustainable development, with its equally-balanced social, environmental and economic components, into business practice.

Although the rapid expansion in both the number and scope of voluntary corporate social responsibility (CSR) initiatives was initially hailed as a highly promising solution to the shortcomings of state regulation, such initiatives have also been sharply criticised on the grounds that voluntary instruments are inherently incapable of addressing market and regulatory failures. Indeed, recent academic research and the financial crisis indicate that self-regulation and initiatives that rely wholly on a voluntary approach to improving

68. See, for example, M. Yamin, and R.R. Sinkovics, “Infrastructure or foreign direct investment? An examination of the implications of MNE strategy for economic development”, *Journal of World Business* 44(2) (2008), p. 144-157. See also numerous other cases documented on the Business and Human Rights Resource Center website, www.business-humanrights.org.

business behaviour have major limitations.⁶⁹ Therefore, international corporate responsibility and accountability instruments – like the OECD Guidelines – must be significantly strengthened to ensure that business, civil society, and governments succeed in meeting this challenge.

“The Guidelines” – 1976 to 2010

The OECD Guidelines are a multilaterally endorsed, government-backed set of normative standards that aim to promote responsible business conduct among corporations based or operating in adhering countries.⁷⁰ In effect, this means these country governments have “signed up” on behalf of all MNEs based within their borders to uphold the provisions of the Guidelines. Although the original version of the Guidelines dates to 1976, the specific instance mechanism for addressing concerns about company compliance with the Guidelines was only opened up to non-governmental organisations (NGOs) in 2000 as part of a comprehensive revision process. In this complaint mechanism, National Contact Points (NCPs), the governmental bodies charged with promoting adherence to the Guidelines and handling complaints about specific instances of alleged corporate misconduct, should offer their “good offices” to mediate among the parties to a complaint and, ideally, facilitate a mutually-agreed resolution to the conflict. If this is not possible, NCPs are instructed to issue a final statement detailing the facts of the case and offering recommendations to improve adherence to the Guidelines.

Since 2000, NGOs from around the world have used the Guidelines’ specific instance mechanism in the expectation that government involvement in corporate-community disputes would not only help resolve the problems communities and workers are faced with when corporate conduct is poor, but also clearly state the standards expected of corporations wherever they operate. NGOs wanted to test the effectiveness of the Guidelines and the readiness of OECD governments to curb corporate abuses.

OECD Watch, a global network of more than 80 NGOs from 45 different countries promoting corporate accountability, has monitored the implementation and effectiveness of the OECD Guidelines over the past ten years. In its 2005 “Five Years On” report, OECD Watch took stock of experiences and achievements. Now, ten years on, and on the threshold of another revision, it is timely to assess successes and failures and analyse the overall effectiveness of the Guidelines so that lessons drawn can inform the negotiations.

The 2010-2011 review of the OECD Guidelines provides an essential opportunity to incorporate global developments in corporate accountability and to learn from the experience of the global financial crisis. This is an opportunity to revise the Guidelines by implementing real improvements to enhance the instrument’s effectiveness, particularly that of the specific instance mechanism, in promoting responsible business conduct.

69. See, for example, L. Baccaro and V. Mele, “For Lack of Anything Better? International Organizations and Global Corporate Standards”, *Public Administration* (2010), forthcoming.

70. As of June 2010, adhering countries comprise the 31 OECD member countries (Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States), and 11 additional non-OECD adhering countries (Argentina, Brazil, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania, Slovenia).

Conclusions

The wealth of experience in using the OECD Guidelines gathered by NGOs over the past decade informs the conclusions of this report.

Despite the generally disappointing experiences had by NGOs, OECD Watch believes there is still potential for the OECD Guidelines to make a valuable contribution to the enhancement of responsible business conduct.

The OECD Guidelines could partly compensate for the governance gaps created by globalisation. In the ten years since the last review, the Guidelines remain the only government-endorsed instrument at the international level which addresses a comprehensive range of corporate practices and offers a means of raising a complaint. The Guidelines set out principles and standards for responsible business conduct. However, fundamental reforms are necessary if the Guidelines are to reach their full potential. The global financial crisis, which has had such a devastating impact on communities around the world, but especially on the poor and most disadvantaged, has given an added sense of urgency to the revision process. There are renewed calls from governments, parliaments, investors and the general public for greater transparency and increased scrutiny of the private sector and financial institutions. Governments should have the conviction to use this opportunity to transform the instrument into a truly effective dispute resolution mechanism capable of holding even the most powerful corporations to account when they fall short of the standards expected of them.

It is a make-or-break moment. Ten years on, and almost 100 cases later, it is clear to NGOs that the OECD Guidelines largely fail to deal effectively with the present-day social issues, environmental concerns and economic issues that matter to communities affected by the activities and behaviour of multinational enterprises. The statistical analysis in this report provides evidence that NCP handling of specific instances has been uneven, unpredictable and too often ineffectual in resolving the issues in cases raised by NGOs. The lack of effectiveness should be a concern to all stakeholders given the real and serious problems, as exemplified in the case boxes, which represent a cross-section of the types of issues NGOs have raised concerning the practices of adhering country-based companies and their business partners. Affected communities cannot afford to have another ten years in which there is no effective mechanism to hold companies accountable for the negative impacts of their activities.

The experience of the past ten years provides a strong basis for OECD Watch to be able to formulate its proposals for much needed improvements to both the text and the procedures. The revision, scheduled to begin June 2010, should be completed by mid-2011. Over that period OECD Watch will provide more detailed proposals at appropriate intervals as the revision proceeds. As a contribution to the debate on improving procedures and NCP performance, OECD Watch also intends to update its Model NCP. The model was developed in 2007, and there is now a need to update NGO recommendations drawing on the lessons learned and reflecting best practice.

The following recommendations, which will be further elaborated in forthcoming publications, summarize what OECD Watch believes are the most critical issues and challenges for consideration during the review.

1. The OECD Guidelines' provisions must be supplemented to ensure they include key challenges for ensuring responsible business conduct, in the areas of human rights, labour

rights (such as living wage and precarious work) environment, climate change, community relations, taxation (country-by-country reporting), and disclosure.

2. The scope and applicability of the OECD Guidelines must be broadened to include supply chain, trade, finance, and other business relations reflecting the realities of the rapidly expanding segments of global value chains.

3. The institutional set-up of NCPs and their procedures must ensure more harmonised, accessible, predictable, equitable, transparent and impartial when handling complaints.

4. NCPs should have the competence and resources to play an effective mediatory role (or offer professional external mediators), and should have greater authority so that companies engage in the process.

5. NCPs should have the necessary independence, investigative and fact-finding capacities to conduct impartial assessments of complaints.

6. NCPs must be made more accountable through improved disclosure and oversight by the OECD, peer review, parliamentary scrutiny and appeals mechanisms at national as well as OECD level accessible to all stakeholders.

7. NCPs must have the means to follow-up on agreements from mediated outcomes and recommendations from NCP statements.

8. There should be consequences for companies that are found to be in breach of the Guidelines and that refuse to modify abusive behaviour in line with the recommendations in final statements. Such companies should forfeit or be deemed ineligible for state subsidies or guarantees or face other legal, administrative, or financial penalties.

OECD Watch believes that only by adopting these measures will governments ensure that NCPs are properly prepared and equipped to handle complaints effectively. If the review not only fails to address these shortcomings but also reduces the role of NCPs limiting them to a promotional or advisory role, it will further erode the influence and effectiveness of the OECD Guidelines. Governments should be aware that such an outcome might have undesirable, long-term consequences; it would increase global civil society's sense of injustice, frustration, and powerlessness, which could further inflame feelings of anger towards corporations and financial institutions.

This report shows that civil society organisations across the world are continuing to press for global standards and the establishment of an effective remedy to deal with the negative impacts of business operations. The task ahead for the OECD and adhering governments is clear: If the OECD Guidelines are to remain relevant in resolving corporate abuses and promoting responsible business behaviour in the 21st century, then radical reforms are necessary.

ANNEX 1.A4

*UN Global Compact and OECD intensify collaboration***News release: 27 October 2009**

The United Nations Global Compact and the Organisation of Economic Co-operation and Development (“OECD”) have recently begun to enhance their collaborative efforts, particularly in countries that have both Global Compact Local Networks and National Contact Points (“NCPs”) on the OECD Guidelines for Multinational Enterprises.

Following its participation in the 2009 Annual Meeting of the National Contact Points, the UN Global Compact asked its Local Network Focal Points in countries that adhere to the OECD Guidelines for Multinational Enterprises to actively explore collaborative opportunities with NCPs. Additionally, Focal Points were encouraged to seek advice and guidance from NCPs, particularly regarding follow-up procedures for OECD Guidelines implementation.

In an exchange of letters between Georg Kell, Executive Director of the UN Global Compact, and Manfred Schekulin, Chair of the OECD Investment Committee, a mutual interest in closer cooperation was indicated. Following a letter from Mr. Kell in September 2009, Mr. Schekulin agreed that intensifying linkages between Global Compact Local Networks and NCPs was a desirable goal and suggested that “possibilities for achieving this should be further explored”. Mr. Schekulin additionally invited the UN Global Compact to consult in the ongoing process of updating the OECD Guidelines.

The OECD Guidelines for Multinational Enterprises are a comprehensive code of conduct adhered to by the 30 OECD countries, along with 12 non-member countries.⁷¹ Designed to promote positive multinational enterprise action in economic, environmental, and social issues, the OECD Guidelines are a complement to the Global Compact’s Ten Principles. The Guidelines have a unique implementation mechanism as handled by National Contact Points, which includes mediation and conciliation to help resolve investment disputes. This dovetails well with the Global Compact’s focus as a learning initiative and facilitator of dialogue, which helps participants implement policies that embody the Ten Principles.

In November, further collaboration between the OECD and UN Global Compact will occur through the First Asia Pacific Trade and Investment Week (2-6 November, Bangkok) hosted by UNESCAP. This will include a meeting of Global Compact Local Networks led by Marinus Sikkels, in charge of UNESCAP’s regional support hub for the UN Global Compact

71. Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania and Slovenia. Morocco’s adherence will take effect in November 2009.

and former OECD Investment Committee Chair. Also that week, the OECD-UNESCAP Conference on Corporate Responsibility will be held, with discussion focused on synergies between major international corporate responsibility instruments and the upcoming updating of the OECD Guidelines. These meetings provide an excellent opportunity for Global Compact practitioners from Asia and the OECD to share experiences.

ANNEX 1.A5

Improving mediation skills – special session with the Consensus Building Institute

Highlights of the special capacity building session conducted by the Consensus Building Institute on 28 June 2010

The capacity building session led by the Consensus Building Institute (CBI) was devoted to mediation as a means for NCPs to address issues between enterprises and their stakeholders when handling specific instances. It was conducted by CBI founder and MIT Professor Lawrence Susskind and CBI senior associate David Kovick.

The session consisted of four parts. It started with an overview of the theory and practice of mediation; followed by a discussion of obstacles which NCP mediation may face; the third part took the form of a brainstorming on possible revisions of the Guidelines to enhance the role of NCPs and their use of mediation; and the last part discussed the possible next steps on enhancing NCPs' practical abilities to offer mediatory services.

The session was directed at the NCPs, but was also open to non-governmental organisations – BIAC, TUAC and OECD Watch.

Distinctive features of mediation

Mediation is a process in which parties to a dispute seek to negotiate an agreement using a confidential process with the assistance of a neutral facilitator. This process generally requires multiple meetings in which parties accept their mutual interests and shift from an “arguing mode” to a “problem solving mode”. Owing to the fact that the persons at the negotiating table are generally representatives of a wider interest group, a second mediation parallel to the official mediation takes place between the representative and his or her constituencies. The mediator may have to play a role in this second process too by, for example, further explaining the constituencies, the mutual interests and positions of the parties involved.

Mediation differs from other dispute resolution processes in that it leaves control over the process to the parties and has no neutral party with binding power. Both the scope of the issues for negotiation as well as the inclusion of other stakeholders are determined by the parties. A mediation process tends to be confidential, even if the results are public. However, more openness may be applied when all parties involved specifically agree to do so. The focus of the process is on interests rather than on rights. Therefore, mediation outcomes generally do not set precedents.

The benefits of mediation lie in its greater efficiency – mediatory processes tend to take about three weeks – as opposed to lawsuits, for example – its voluntary nature, the greater focus on improving relationships, and the greater opportunity to address the full range of issues of importance to all the key parties. With regard to the latter, the parties involved may come across additional issues during the process and can even then decide to include them in the process as it may improve the chance of coming to an agreement. Other benefits of mediation are the opportunity for more creative solutions that meet the most important needs of the parties and the inclusion of a focus on implementation of measures that address these needs. Monitoring provisions can be part of the agreed implementation measures.

One of the essential elements of mediation is a clearly defined representation of all key interests of stakeholders i. To ensure this representation, an “early work” conflict assessment needs to be conducted in order to identify the relevant interests and interest groups. Within interest groups, representatives need to have authority to agree to and to implement what is agreed upon. The assessment can be carried out by the mediator or, when no mediator has yet been agreed upon, a neutral third party. Other essential elements are a clearly defined agenda set by the parties, the willingness of the parties involved to come to the table and resolve the issue(s) and, lastly, a qualified, credible and neutral facilitator who is acceptable to all parties.

Mediation trends

Currently, the global level of the use of mediation in other multilateral settings is relatively low but rapidly increasing as mediation is more and more incorporated into complaint procedures. Examples include the World Bank, the International Finance Corporation and several United Nations Agencies such as UNCTAD. The trend among the multilateral institutions is to revisit their investigatory mechanisms so as also to include mediation functions. In this way many mechanisms serve dual functions of compliance on the one hand and problem-solving on the other. The institutions are becoming more hybrid in how they conduct their compliance and mediatory roles; the former is generally performed by internal staff, whereas the latter is usually left to a neutral external expert.

Mediation in specific instances

On the basis of a hypothetical case and with the theory of mediation in mind, the NCPs discussed a number of issues they may encounter when dealing with a specific instance, such as the dual functions of NCPs, the inclusion of third parties and the general issue of NCP mediation skills and resources. With regard to resources, it was noted that although an independent, qualified mediator may be expensive, it also significantly saves internal (human) resources of the NCP and other government departments or agencies involved. The CBI suggested that consideration could be given to the idea of the creation of a fund for NCP mediation that would be sponsored by the adhering governments and/or private organisations on an annual basis.

Further discussion focussed on issues to be taken into account in the facilitation of mediation by NCPs. Specific questions suggested by the CBI in this regard concerned the choice and position of the mediator, what findings must be made before mediation is used, how to ensure confidentiality given the responsibility and criterion of transparency for NCPs, the inclusion by an NCP of other parties to a specific instance procedure, and how the costs should be covered.

Possible follow-up

The CBI suggested two possible follow-ups to the capacity building session. The first would involve developing an online mediation course specifically tailored to NCP needs. The second would be for the CBI and NCPs to seek for ways of raising funds for NCP mediation.

PART II

**OECD Roundtable on Corporate
Responsibility:
Launching an Update
of the OECD Guidelines
for Multinational Enterprises**

PART II

Chapter 1

Acknowledgements

The National Contact Points and the co-organiser OECD Committees – the Investment Committee and the Environmental Policy Committee – wish to thank all of those who actively contributed to the OECD Conference on Corporate Responsibility, held in Paris on 30 June 2010 – 1 July 2010 (morning) in conjunction with the tenth annual meeting of the NCPs, particularly the key note speakers:

Mr. Scott CHANG, Senior Manager, Beijing Office, Business for Social Responsibility, Beijing, China

Mr. Dieter HORST, Sustainable Value Chain Initiative Manager, World Business Council for Sustainable Development

Ms. Céline KAUFFMANN, Economist, OECD Investment Division

Ms. Christine LAGARENNE, Sous-directrice de l'Economie des Ressources Naturelles et des Risques, Ministère du Développement Durable, and Vice-Chair of the OECD Environment Policy Committee.

Mr. Jerome LAVIGNE-DELVILLE, Head of Communications on Progress, UN Global Compact

Mr. John MORRISON, Executive Director, Institute for Human Rights and Business

Mr. Roel NIEUWENKAMP, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands and Chair of the Investment Committee Working Party

Mr. Gérald PACHOUD, Special Adviser of the Special Representative of the UN Secretary-General on Business and Human Rights

Mr. Philip REUCHLIN, Personal Assistant to the President, President's Office, World Business Council for Sustainable Development (WBCSD)

Mr. Manfred SCHEKULIN, Director, Export and Investment Policy, Federal Ministry for Economics, Family and Youth and Chair, OECD Investment Committee and Austria's NCP

Mr. Paul SIMPSON, Chief Operating Officer, Carbon Disclosure Project

Mr. Cody SISCO, Manager of Advisory Services, Business for Social Responsibility, Paris, France

Ms. Cristina TÉBAR LESS, Economist, OECD Investment Division

Mr. Auret VAN HEERDEN, President, Fair Labour Association

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

Mr. Manuel BAIGORRI, Director, Social and Environmental Sustainability, Levi Strauss and Co.

Mr. Karl DAUMUELLER, Program Manager and SC SER Lead Auditor, Global Procurement Services, Hewlett-Packard GmbH

Mr. Hugh ELLIOTT, International Government Relations Manager, Anglo American plc

Mr. Steve GRINTER, Education Secretary, International Textile, Garment and Leather Workers' Federation (ITGLWF)

Mr. Clifford HENRY, Director, Corporate Sustainable Development, Procter and Gamble Company

Mr. Richard HOWITT MEP, European Parliament Rapporteur on the European Commission Communication on Corporate Social Responsibility

Mr. Matthew SMITH, Earth Rights International, Thailand

PART II
Chapter 2

Key Findings from the 2010 Annual Roundtable on Corporate Responsibility

This conference was devoted to the theme of “Launching an Update of the OECD Guidelines for Multinational Enterprises”. Discussions took the form of three “brainstorming” sessions on supply chains, human rights and environment/climate change. This chapter provides a summary of these discussions.

The OECD *Guidelines for Multinational Enterprises* (the Guidelines) are recommendations from governments to multinational enterprises regarding voluntary principles and standards for responsible business conduct worldwide. The aim of the 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 forty-two 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 these sessions is to assist NCPs in their tasks of promoting and implementing the Guidelines. This year also marked the launch of the update of the Guidelines, agreed upon by the adhering governments in April 2010, to ensure the continued role of the Guidelines as a leading international instrument for the promotion of responsible business conduct and to respond to a renewed societal focus on corporate responsibility.

The Roundtable took the form of three “brainstorming” sessions on Supply Chains, Human Rights and Environment/Climate Change, with the aim to initiate reflection and solicitation of substantive inputs from business, labour, non-governmental organisations, international organisations, non-adhering governments and academia, on ways of clarifying or providing further guidance on the application of the Guidelines in these areas, as provided by the agreed terms of reference for the update. More particularly:

- The session on Supply Chains was based on a background note by the corporate responsibility research and consulting firm Business for Social Responsibility (BSR) and a discussion paper by Professor John Ruggie, the Special Representative of the UN Secretary-General on Business Human Rights and Transnational Corporations and other Business Enterprises (UNSRSG).
- The session on Human Rights drew upon another key contribution by Professor John Ruggie entitled “Updating the Guidelines for Multinational Enterprises Discussion Paper”.
- The session on Environment/Climate Change was organised in the context of the joint OECD Investment and Environment Policy Committees' project on “Engaging the private sector in support of a low-carbon future”.

The conference was attended by over 350 participants representing 44 countries, including emerging economies (or Enhanced Engagement countries) including Indonesia and Thailand as well as other countries from Asia, Africa and Latin America. Each working session consisted of key note presentations followed by a general discussion with a panel of participants drawn from multilateral organisations, business, labour and civil society

(see Annex A). The following summary of the conference 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.

1. Supply Chains

Creating value through global supply chain relationships, aimed at transforming raw materials into finished products and services for consumers, has become a critical component of MNEs' operations. Geographically fragmented MNE production processes have been rendered possible over the last two decades through substantial trade and capital movement liberalisation and technological advances which have significantly reduced transportation and communication costs. MNEs have increasingly viewed supply chains as a unique opportunity to increase efficiency and profitability, build a local presence in rapidly growing emerging markets and access strategic assets abroad, including skilled workers, technological expertise, knowledge capital and experiences of competitors. Supply chain relationships have been particularly beneficial to small and medium sized enterprises through the creation of new and more stable business opportunities and increased access to foreign strategic assets.

New opportunities come with important new responsibility challenges. Beyond the business complexities of managing inventory, quality, safety, etc., supply chains have created significant intricacies around responsible business conduct, increasing risks around several corporate responsibility issues covered by the Guidelines. These risks originate from the business conduct, or misconduct, of the suppliers themselves. For instance, labour conditions in global supply chains, particularly those that extend to developing countries, may not always meet international standards and national regulatory requirements, which can lead to serious human rights abuses. Supply chains can also have significant negative environmental impacts particularly where environmental regulations are lax, price pressures are significant and natural resources are (or are perceived) to be abundant. Additionally, significant bribery risks are known to exist within supply chain relationships. Such misconduct on the part of suppliers can directly affect the profitability and reputation of MNEs. These actions can lead to customer boycotts and other negative repercussions. Ultimately, risks found along the supply chain have broad implications for society as a whole.

Various MNE approaches to responsible supply chain management have emerged as a result. Participants in the supply chain session discussed several responsible supply chain management trends among MNEs, including adoption of corporate codes of conduct, moving from performance monitoring methods to developing risk management approaches and capacity building in their relations with suppliers. There has been a growing trend toward harmonization of codes of conduct and expectations between MNEs and their suppliers. Initiatives like the Global Social Compliance Program aim to establish equivalency of expectations for responsible conduct within supply chains, as well as to create efficiency in monitoring supply chain performance. When the field of supply chain initially developed, MNEs took primarily an audit and compliance based approach to reducing risk by asking suppliers to meet MNE codes of conduct. Over time, there has been a call to demonstrate the value of responsible supply chain practice, for both MNEs and suppliers. This has led many MNEs and their suppliers to participate in multi-stakeholder programs and management trainings that seek to increase supplier capacity and change

larger systems that influence responsible factory practice. The ILO's Better Factories program was cited as a successful example of such a program.

Increased due diligence down the supply chain. More recently, there has also been a growing acknowledgement that many issues of greatest MNE concern occur deep within supply chains, and can be several steps removed from MNEs' direct suppliers. Currently, the issue of conflict minerals, which is the subject of a special OECD pilot project,¹ is of great concern to companies in a range of industries. However, it is a significant challenge for MNEs to trace the source of these minerals back to their origin, which may or may not be a conflict zone. Companies in the food and beverage industry have faced similar issues for years related to child and forced labour deep within their supply chains. As a result, more MNEs are implementing programs that go beyond working with only their direct suppliers and seek to engage those much further down their supply chains in order to address the significant challenges involved in managing supply chains.

Important principles for responsible supply chain management. Participants discussed various concepts referenced in the BSR discussion paper "Supply chains and the Guidelines for Multinational Enterprises", including investment nexus, sphere of influence, due diligence, impact, materiality and continuous improvement, and provided a perspective regarding their usefulness in relation to the update of the Guidelines. In particular, the due diligence concept outlined in "Protect, Respect and Remedy" framework developed by the Special Representative of the UN Secretary-General for Human Rights and Transnational Corporations and other Business Enterprises (UNSRSG) was frequently cited as a very helpful and practical reference guide for MNEs. Some participants also recommended that corporate transparency, accountability and engagement be incorporated into OECD's further guidance on supply chains.

Case Study: A perspective from China. In addition to their discussion paper, BSR also presented a case study on China, which focused on this region – heavily predisposed to supply chains and their implications – and Chinese companies' experiences with corporate tools and practices for managing supply chain risks. China has very much lived the supply chain trends of this past decade, from the increase in audits as a reaction to the sweatshop scandals of the early 2000's, to the politicization and prioritization of climate change over the past few years. The key message, delivered through the experiences of China, was that evolutions in supply chain trends do not necessarily need to evolve in replace of one another, but rather, would have been more effective if new ideas were created to support and build upon the old tools. This strategy embraces the complexity of supply chains and emphasises risk mitigation, value creation and larger societal implications.

Implications for the update of the Guidelines. The Roundtable session on supply chain brought about a range of views on whether and how the guidance provided by the Guidelines on supply chains could be expanded, and the implications of such additional guidance. There was discussion about several options for providing more clarity to companies, both on their responsibilities and on how they can better meet their responsibilities through enhanced management practices. Participants emphasised the importance of management systems to support companies in upholding their responsibilities. They acknowledged that risks and circumstances vary substantially by company, sector and country, and found risk assessments to be a useful tool for a broad range of MNEs. Similarly, the concept of impact is a useful one to help companies understand their responsibilities, how their actions affect their stakeholders and how they

can measure change. Due diligence was again mentioned as a very relevant reference point for responsible supply chain management. Emphasis was also placed on the importance of stable, long term, direct relationships for ensuring responsible business conduct in supply chains; “On the ground” solutions, and in particular the importance of workers’ organisations, were noted for their ability to build effective and lasting solutions to unsatisfactory working conditions. These organisations were called out as a healthy and necessary check, one that ensures basic human rights of workers are protected. At the same time, participants acknowledged that this can be a challenging issue for MNEs to address in their supply chains and that ongoing discussion, engagement, and action is needed. The ILO/IFC Better Work Program was referenced by various sources as a model of multi-stakeholder collaboration in ensuring good working conditions.

Promoting consistent and flexible guidance. A number of Roundtable participants encouraged the OECD to encourage a broader the application and implementation of the Guidelines’ principles and standards. Existing international standards and initiatives related to responsible supply chain management were emphasised, and the suggestion was for the Guidelines to maintain consistency with these other international tools and be cautious to avoid conflicting guidance. There was extensive discussion about how to provide guidance that could apply to all responsible business conduct issues, across all industries, business models and regions in which MNEs operate. The necessity of a flexible approach was raised several times. There is also a need to support leading MNEs and industries while bringing others up to speed, particularly SMEs.

A multistakeholder effort, with a focus on government. Some participants highlighted the importance of the Guidelines with respect to both export-oriented and domestic-oriented manufacturers and service providers. However, in order for the above items to be addressed, the role of government is critical to high functioning supply chains. One of the challenges discussed was the existence of a governance gap, i.e. governments that are unable or unwilling to enforce laws protecting labour, businesses, consumers and the environment. This highlights the need to engage with government to advocate for strong enforcement of the laws related to responsible business conduct. Participants from all sectors emphasised the importance of participating in multi-stakeholder initiatives whereby different actors, including businesses, governments, trade unions and civil society can work together through differentiated roles toward common goals. This form of collaboration was a key theme discussed throughout the supply chains session.

2. Human Rights

The update of the Guidelines poses a unique opportunity to capture emerging practices in the area of human rights and enhance the operationalization of the UNSGSR’s framework on Business and Human Rights. The UNSRSG’s framework on Business and Human Rights (now referred to as the UN framework) is based on the principals “Protect, Respect and Remedy”; all three of these components can be promoted and operationalised by the OECD through the updates to the Guidelines. First, updates to the Guidelines on the topic of human rights could remind adhering governments of their duty to protect human rights and uphold international standards and norms. The update could also reemphasise enterprises’ responsibility to respect human rights by avoiding infringement on those rights. Finally, since the Guidelines offer access to remedy through their unique specific instance facility, the update will provide the opportunity to address adverse human rights impacts that have occurred by MNEs. It was generally recommended that the suggested

approach for the update to the Guidelines on human rights remains consistent with the UN framework. This framework has already been adopted by other international corporate responsibility tools (such as UN Global Compact, ISO 26000, etc.) and updating the Guidelines under similar guise will facilitate its operationalization process, as well as promote consistency between international tools making it easier for companies to subscribe and adhere to its guidance.

More comprehensive guidance on Human Rights is needed from the Guidelines. Currently, Chapter II (General Policies) of the Guidelines has only one specific provision on human rights although aspects of human rights are also covered in other provisions throughout the Guidelines, notably core labour rights under Chapter IV on Employment and Industrial Relations. Many participants suggested that the update should seek to develop more comprehensive text on the application of the Guidelines to human rights, most likely in a separate chapter of the Guidelines, particularly drawing upon the work of the UNSRSG. An additional, dedicated, chapter on Human Rights should serve to further support and provide guidance to specific enterprise operations. It was also suggested that the content added to the Guidelines text, created for the human rights chapter, should consider making reference to specific rights. Additionally, the update should take into account business impacts on human rights, including business impacts on communities, inclusive of indigenous people and possible negative impacts on human rights abuses as well as considerations for human rights abuse in conflict and weak governance zones drawing upon the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

Impacts to enterprises incorporating human rights into their strategy and business models. In order to uphold human rights in business, enterprises need to respect human rights both while operating at home and abroad. To fulfil this requirement to the utmost capacity, the UN framework emphasises that companies should aim to integrate human rights policies into business culture and business practices, inclusive of monitoring and reporting. It was discussed, and generally agreed, that human rights violations can be mitigated through an enterprises' commitment to transparency, ensuring that both human rights are being affectively monitored and upheld. Promoting transparency not only increases accountability but also lends to institutional learning and the ability to leverage best practices and to set corporate standards among enterprises. Conducting human rights risk assessments and proactively subscribing to due diligence processes were key suggested approaches discussed during this Roundtable session for incorporating human rights into corporate policies and practices. Conducting a risk assessment is one of the key operationalization components to the UN framework. Such an assessment help companies identify, prevent and address the human rights impacts of their operations. MNEs also need to be cognisant of conflicting legal requirements and practices between home and host countries and should focus on upholding international standards, keeping in mind that the Guidelines do not replace national law. Although challenging to work with, conflicting requirements do not make it impossible to conduct business in a specific context, and negotiated alternatives are possible. Conflict and weak governance zones poses additional difficulties to enterprises in upholding human rights. In these cases specifically, risk assessments, transparency and due diligence processes become crucial.

The unique role of NCPs on Human Rights. With additional content on Human Rights in the Guidelines, NCPs should continue to support and promote corporate responsibility around human rights: informing enterprises of adhering governments' expectations in

respecting these rights and communicating and promoting common and best practices among enterprises and encouraging them to incorporate them into their business models and cultures. The second role that the NCP can play is with regards to the Guidelines specific instance facility. This role allows the NCP to provide affected parties access to remedy in the event of human rights violations. It is noted that it is through judicial and non-judicial grievance mechanisms that the operationalization of the UN framework could unfold. Recently, there has been an increased focus on the role of NCPs as problem solvers and the use of mediation to manage cases that are accepted as specific instances. This new emphasis on NCPs and the specific instance facility should enhance recognition of human rights and contribute to the remedy of their abuses. The importance of mediation in the underlying management of specific instances is widely recognised as beneficial to the specific instance handling process.

Challenging topics relating to the update and human rights content. This session also highlighted a number of challenges that the NCPs may face with regards to understanding and finding a common ground around the degree with which the NCP may apply consequences to a company who has repeatedly failed in following-up NCP recommendations for observing the Guidelines. This point of debate will be further explored during the update of the Guidelines. There has also been discussion about an appeals process for specific instances, especially for those raised but not accepted during the initial assessment phase. More definition is also been requested around due diligence processes as they relate to supply chains, value chains and the investment nexus² and should be another point expanded upon during the update process, perhaps developing and defining a greater more precise understanding of these ideas and their implications.

There is also a risk that intensified global competition and outsourcing of production can result in a “race to the bottom”. There was broad recognition that outsourcing of production, especially by multinational enterprises, should not diminish their responsibilities with respect to compliance with international labour standards throughout their supply chains. Rights to freedom of association and collective bargaining should be available to all workers without fear of victimisation; the Guidelines should assist in outlining practical ways in which to protect and promote these rights. Likewise, the concept of decent work including living wages, limits on working hours, occupational health and safety and all other elements of the ILO’s core labour standards should be discussed to increase the impact with respect to improvement of conditions for workers, which the Guidelines can contribute to.

3. Climate Change/Environment

The session discussed responsible business conduct in dealing with climate change and whether and how the update of the Guidelines should consider including guidance to enterprises with respect to climate change.

Accounting and disclosure of greenhouse gas emission (GHG). Information collected by the Carbon Disclosure Project, over the past 7 years, shows an important increase in both investors’ interest in climate change and in corporate responses to climate change. There is some evidence of similar trends in emerging economies as well. This increasing interest can be attributed to a range of factors, including regulation and growing awareness and pressure from stakeholders. An increasing number of companies are collecting GHG information related to their activities and are using that information to identify

inefficiencies in energy use, to reduce emissions and identify business opportunities. This practice is in line with recommendations in Chapters II and V of the Guidelines on disclosure and environmental management. Corporate GHG emission information is also useful for investors to understand the impacts of companies on climate change and their capacity to manage the related risks. Some governments find reporting of GHG emissions useful leverage to raise companies' awareness on the issue and spread good emission management practices among smaller companies, such is the case in the UK.

Strengthening the effectiveness of emissions accounting and reporting would involve several factors. First, promoting harmonised accounting GHG standards and methodologies: the Greenhouse Gas Protocol and the ISO consultative process are good pillars for such harmonisation. Second, integrating GHG emission reporting in broader sustainability reporting: ultimately, there would be benefits in consolidating sustainability reporting, including carbon disclosure, and financial reporting. Some participants noted that this is not universally accepted. Finally, ensuring the credibility, reliability and relevance of corporate information through adequate mechanisms, including verification and certification of corporate GHG information are all necessary steps in emissions accounting.

Corporate actions to reduce emissions. While the policy frameworks for driving down carbon emissions needs to be put in place by governments, the private sector, as a major emitter and the main source of innovation, has a crucial part to play. Signatories to the UN Global Compact's "Caring for Climate" initiative are showing leadership and their experience in developing measures to reduce their emissions and develop technologies and know how can help others address theirs. For many companies, the first step in reducing emissions is improving energy efficiency, the "low hanging fruit" which often help reducing both emission and operation costs. Developing and implementing ambitious corporate emission reduction plans involve a range of actions, including establishing emission reduction targets, identifying emission reduction opportunities in all of the company's operations, embedding emissions reduction priorities throughout the company, modifying the procurement processes, and involving the company's management and staff.

More still needs to be done. To reach the needed GHG reductions indicated by the Intergovernmental Panel on Climate Change, as consistent with a rise in temperature that would avoid dangerous climate change, more needs to be done to scale up corporate emission reductions. This could include strengthening environmental impact assessments to better capture the impacts of corporate activity on climate change. Stronger price signals, e.g. through carbon markets and taxes, to motivate companies to go beyond the low-cost emissions reduction measures and to undertake the investments needed to further improve operational efficiency and adopt low-carbon technologies and processes is another approach, and more have been suggested.

Engagement of suppliers in dealing with greenhouse gas emissions. Managing GHG emissions through the supply chain is an emerging area of action, and limited guidance regarding what companies can do to engage suppliers is available. However, consensus is emerging on the need to consider the value chain overall (not only suppliers) and identify emission reduction potentials wherever they are: upstream in the supply chain or downstream in the use and disposal of products. Initiatives have emerged, such as the Sustainable Value Chain Initiative of the World Business Council for Sustainable Development (WBCSD), that aim to promote sustainable management in the value chain

and derive good practices and guidance for increased action. One lesson learned is the need not only to evaluate the segments of value chain in which the most significant emissions reductions can be achieved, but also to raise awareness and develop the capacity within the value chain to reduce emissions.

Key points for an update of the Guidelines. Some participants made a strong call for the need to promote companies' efforts to measure, report and reduce GHG emissions, including through regulations and other instruments in the hands of government, and for streamlining regulatory requirements. In a context of diverse levels of development and stringency of regulatory frameworks and great diversity of corporate practices, the Guidelines for Multinational Enterprises have a role to play as a tool to communicate governments' expectations in relation to climate change: to promote good corporate practices. Some participants pointed to the fact that a number of efforts to report on and reduce emissions have already been taken, consistent with the existing Guidelines. In terms of the update of the Guidelines, discussions highlighted the need to address climate change in the overall context of environmental sustainability. In this respect, some participants mentioned two areas that could use further development: corporate disclosure of GHG information, including the scope and quality of information to disclose; and environmental impact assessment, as an important tool to assess materiality of impacts and risks and to promote due diligence.

4. Conclusion

The Roundtable concluded with a broad consensus to maintain the role of the OECD Guidelines as a leading and relevant international corporate responsibility instrument and a reaffirmed commitment of NCPs and key stakeholders to the update process. The OECD Guidelines are recommendations by the forty-two 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 forty-two adhering countries operate around the world. They also have a unique implementation mechanism in the specific instance facility, through which the National Contact Points are able to offer their good offices for the mediation and conciliation of disputes arising from alleged breaches of the Guidelines. Some 200 "specific instances" have been brought to NCPs' attention since the 2000 Review of the Guidelines, of which 161 have been considered and more than half have been concluded or closed.

Participants welcomed the fact that the update of the OECD Guidelines will provide a unique opportunity to i) provide greater clarity and guidance on areas of uncertainty in the application of the Guidelines, ii) promote consistencies between other international tools, and iii) further improve NCP performance. Participants also highlighted the need to match any potential broadened NCP mandate with an adequate level of resources, and the application of the Guidelines to all types of international companies (including small and medium-sized enterprises). Finally, the issue of promotion and dialogue with non-adhering countries in relation to the Guidelines was considered to be a major priority.

Notes

1. OECD, *Draft Due Diligence Guidance, Pilot Project in the Mining and Minerals Sector: Corporate Due Diligence for Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas*, see www.oecd.org/daf/investment/mining.
2. These topics were also further discussed during the Roundtable session on Supply Chains and more specific commentary can be found on these topics under the Supply Chain summary.

References

- Terms of Reference for an Update of the Guidelines for Multinational Enterprises (www.oecd.org/daf/investment/guidelines).
- OECD Guidelines for Multinational Enterprises (www.oecd.org/daf/investment/guidelines).
- OECD Risk Awareness Tool for Multinational in Weak Governance Zones (www.oecd.org/daf/investment/guidelines).
- OECD project on due diligence for responsible supply chain management of minerals from conflict-affected and high-risk areas (www.oecd.org/daf/investment/mining).
- 2002 Annual Report on the Guidelines for Multinational Enterprises – Responsible Supply Chain Management (www.oecd.org/daf/investment/guidelines).
- 2004 Annual Report on the Guidelines for Multinational Enterprises – Encouraging the Contribution of Business to the Environment (www.oecd.org/daf/investment/guidelines).
- 2005 Annual Report on the Guidelines for Multinational Enterprises – Corporate Responsibility in the Developing World (www.oecd.org/daf/investment/guidelines).
- Report by the UNSRSG, “Protect, Respect and Remedy: A Framework for Business and Human Rights”, A/HR/8/5 (7 April 2008).
- Report of the UNSRSG, “Business and Human Rights: Further steps towards the operationalization of the ‘protect, respect and remedy’ framework”, A/HRC/14/27.
- Report of the UNSRSG, “Clarifying the Concepts of ‘Sphere of Influence’ and ‘Complicity’”, A/HRC/8/16.

ANNEX 2.A1

*Agenda for the Roundtable***“Launching an update of the OECD Guidelines
for Multinational Enterprises”****OECD Conference Centre Paris,
30 June – 1 July (morning) 2010**

Wednesday 30 June	
08:00-09:00	Registration and coffee
OPENING SESSION	
09:00-09:15	Welcoming remarks by OECD
Room CC12	
SESSION ONE: SUPPLY CHAINS	
<p>With the opening of markets, increased capital mobility, advancements in information technology and expanded production facilities in the developing world, supply chains have become a more critical means for bringing products and services to markets. These more complex patterns of production and consumption have not only created new types of commercial risks but have also led stakeholders to demand a more effective oversight of MNEs' supply chain impacts.</p> <p>Recommendation 10 of Chapter II (General Policies) of the Guidelines provides that MNEs should “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines”. In 2003, the Investment Committee issued a statement to the effect that this Recommendation and its commentary link their scope of application to the practical ability of enterprises to influence the conduct of their business partners “with whom they have an investment like relationship”. It added that “in considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances”. Making the existence of an “investment like relationship” a condition for NCPs to accept specific instances raised under Recommendation II.10 has been challenged by trade unions and NGOs.</p> <p>At the same time, Chapter II does not provide recommendations on due diligence steps that MNEs should consider to identify and mitigate risks of negative impacts which could arise from their operations along the supply chain. While the due diligence approach applies to both trade and investment-like activities, risk mitigation steps include consideration of the merits of pro-actively engaging with business partners and, to this end, building business relationships which allow the MNE to influence its supply chain partners' behaviour.</p> <p>The agreed terms of reference for the update (TORs) provides that the update should clarify or develop as appropriate further guidance on the application of the Guidelines to supply chains taking into account the considerations outlined in paragraph 7 of the TORs.</p> <p>This session will discuss emerging corporate tools and practices for managing risks relating to supply chain relationships, and possible implications for the substantive provisions as well as the application of the “specific instances” facility of the Guidelines. In so doing, it seeks to clarify the concept and components of “due diligence” and their articulation with the exercise of influence on business partners and pro-active policies for responsible business conduct along the supply chain.</p> <p>The discussion will be based on a background paper prepared by the corporate responsibility and consulting firm Business for Social Responsibility. An additional resource is the framework being developed by the OECD-hosted working group on due diligence guidance for responsible supply chain management of conflict minerals under five headings: strengthen company management systems; identify facts and assess risk in the supply chain; design and implement mitigation strategies, including establishing improvement plans or discontinuing engagement with suppliers; ensure independent third-party audit; report on supply chain due diligence and findings.</p>	

09:15-13:00 **Chair: Roel Nieuwenkamp**, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands and Chair of the Investment Committee Working Party
Room CC12

a) Corporate tools and practices for managing supply chain risks

Presentation: ScottChang, Senior Manager, Beijing Office, Business for Social Responsibility, Beijing, China

b) From emerging best corporate practices to principles and standards for responsible business conduct

Introduction: Auret van Heerden, President, Fair Labour Association

Lead discussants

Manuel Baigorri, Director, Social and Environmental Sustainability, Levi Strauss and Co.

Karl Daumueller, Program Manager and SC SER Lead Auditor, Global Procurement Services, Hewlett-Packard GmbH

Steve Grinter, Education Secretary, International Textile, Garment and Leather Workers' Federation (ITGLWF)

c) Possible implications for the update of the Guidelines

Introduction: Cody Sisco, Manager of Advisory Services, Business for Social Responsibility, Paris, France

Discussion

12:50-13:00 **Summing up by the Chair**

SESSION TWO: HUMAN RIGHTS

The growing importance of MNEs in the world economy and greater awareness of their human rights impacts have given rise in recent years to various calls for clarifying the scope of corporate responsibility. The "protect, respect and remedy" framework developed by the Special Representative of the UN Secretary-General on Business and Human Rights (UNSRSG) and supported by the Human Rights Council, describes attributes of the "corporate responsibility to respect human rights" and seeks to identify means for operationalising this responsibility.

In accordance with Chapter II on General Policies, "enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments". Internationally recognised labour rights as a component of human rights are covered by Chapter IV on Employment and Industrial Relations. The Guidelines' companion tool – the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones – provides specific guidance on how MNEs may cope with human rights challenges encountered in these more difficult environments, including management of security forces.

In a key note address to National Contact Points in June 2008, the UNSRSG has indicated that the human rights component of the Guidelines could be expanded in a number of areas. Paragraphs 9-10 of the agreed TORs for an update provide that more elaborated guidance on the application of the Guidelines to human rights should be developed, including if deemed appropriate, in a separate chapter of the Guidelines. This session will invite participants to discuss the possible content of such additional guidance drawing, in particular, on a written contribution by the team of the UNSRSG.

15:00-18:00 **Chair: Roel Nieuwenkamp**, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands and Chair of the Investment Committee Working Party
Room CC12

a) Operationalising the corporate responsibility to respect human rights

Keynote speaker: Gérald Pachoud, Special Adviser of the Special Representative of the UN Secretary-General on Business and Human Rights

Discussion

b) Possible implications for the substantive provisions of the Guidelines

Key note speaker: John Morrison, Executive Director, Institute for Human Rights and Business

Lead discussants:

Matthew Smith, Earth Rights International, Thailand

Clifford Henry, Director, Corporate Sustainable Development, Procter and Gamble Company

Hugh Elliott, International Government Relations Manager, Anglo American plc

Rapporteur: Richard Howitt, Member of the European Parliament for the East of England

Discussion

17:45-18:00 **Summing up by the Chair**

Thursday 1 July

SESSION THREE: CLIMATE CHANGE

Effort to achieve a low carbon economy has gained particular momentum in the last few years, and especially, in the run up to the Copenhagen Conference in December 2009. Country commitments to address climate change are multiplying and the importance of “green growth” as the way forward has been highlighted in many forums, including the 2009 and 2010 OECD Ministerial Meetings

Transition to a low-carbon economy has already started and businesses have a major role to play in the process. In accordance with the agreed TORs, the update will consider whether there is a need to clarify or provide additional guidance on the application of the Guidelines to business engagement in addressing the growing concerns over climate change.

This session will invite participants to discuss the following three main issues:

- a) Disclosure: what climate change-related information should companies be expected to report, and according to which standards?
- b) Reducing greenhouse gas emissions: what are the key elements of a corporate plan?
- c) Reaching out: how can companies effectively engage with suppliers to reduce emissions throughout the supply chain?

The discussion will build on a background document by the Secretariat on emerging business practices to reduce GHG emissions.

9:00-12:45

Co-Chairs:

Room CC12

Christine Lagarenne, Sous-directrice de l’Economie des Ressources Naturelles et des Risques, Ministère du Développement Durable, and Vice-Chair of the OECD Environment Policy Committee.

Manfred Schekulin, Director, Export and Investment Policy, Federal Ministry for Economics, Family and Youth and Chair, OECD Investment Committee and Austria’s NCP

“Emerging business practices to reduce GHG emissions”

Presentation by **Céline Kauffmann** and **Cristina Tébar Less**, Investment Division, OECD

a) Corporate disclosure of climate change related information

Keynote speaker: Paul Simpson, Chief Operating Officer, Carbon Disclosure Project

Discussion

b) Reducing greenhouse gas emissions

Keynote speaker: Jerome Lavigne-Delville, Head of Communications on Progress, UN Global Compact

Discussion

c) Engaging with suppliers

Keynote speaker: Philip Reuchlin, World Business Council for Sustainable Development

Discussion

12:45-13:00

Summing up by the Chairs on possible implications for the Guidelines

ANNEX 2.A2

Transition to a low-carbon economy: Public goals and corporate practices¹

While many companies are taking action to address climate change, many others are still lagging behind. Time is ripe for governments to put GHG reduction into the mainstream of business action. Governments have a variety of instruments and tools to unlock the full emission reduction potential of firms, as shown by the new report on *Transition to a Low-Carbon Economy: Public Goals and Corporate Practices*. This report is the main output of a 2-year joint work by the Investment Committee and the Environment Policy Committee on *Engaging the private sector in support of a low-carbon economy* and a major contribution to the OECD Green Growth Strategy.

What constitutes responsible business practice in addressing climate change?

The report explores responsible business practice in addressing climate change and shifting to a low-carbon economy. It summarises policy frameworks, regulations and other drivers of corporate action to reduce greenhouse gas (GHG) emissions and documents how companies are responding to, and anticipating growing expectations in this area.

It builds on principles of responsible business conduct as identified in the Guidelines for Multinational Enterprises to review three key areas of corporate action:

- disclosure of climate change information;
- corporate action to reduce greenhouse gas emissions; and
- corporate engagement of suppliers, consumers and other stakeholders.

The report builds on a range of stakeholder consultations over the period 2009-2010: OECD Roundtables on Corporate Responsibility (June 2009 and July 2010, Paris); ESCAP-OECD Regional Conference on Corporate Responsibility (Bangkok, November 2009); ADBI-OECD Roundtable on Asia's Policy Framework for Investment (Tokyo, April 2010). It also features the results of a 2010 OECD survey on business practices to reduce GHG emissions.

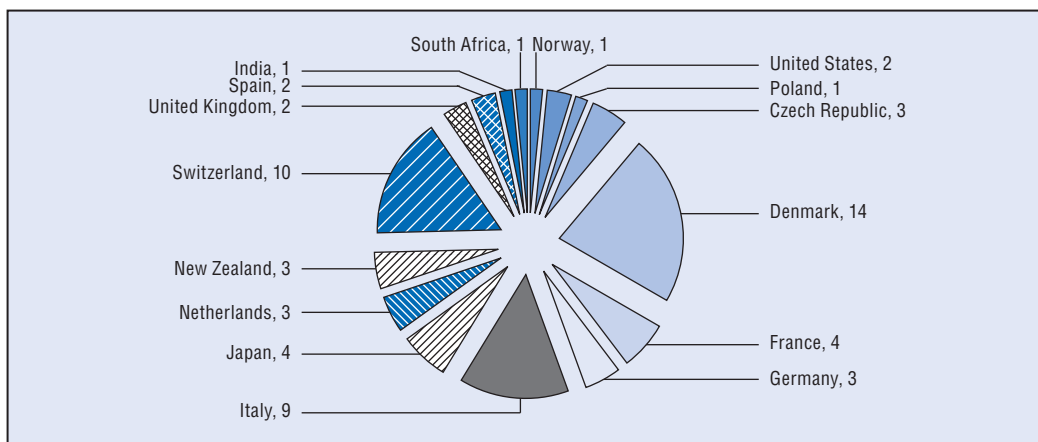
The OECD Survey on business practices to reduce GHG emissions

The Survey was carried out between March and June 2010. It was sent through the OECD Business and Industry Advisory Council (BIAC), to the main business associations in OECD countries. It was also sent through EmNet, the Emerging Markets Network of the

1. This paper was prepared by Céline Kaufmann and Cristina Tébar Less of the OECD Investment Division. The draft text of this publication is available online at www.oecd.org/daf/investment/cc.

OECD Development Centre to a number of large OECD and emerging economies companies. In total, 63 companies from 16 countries responded, covering a broad range of sectors (energy, mining, industry, food, pharmaceutical, financial services). Figure 2.A2.1 shows the number of companies responding from different countries.

Figure 2.A2.1. **Company responses by country to the OECD survey**



Source: OECD Investment Division.

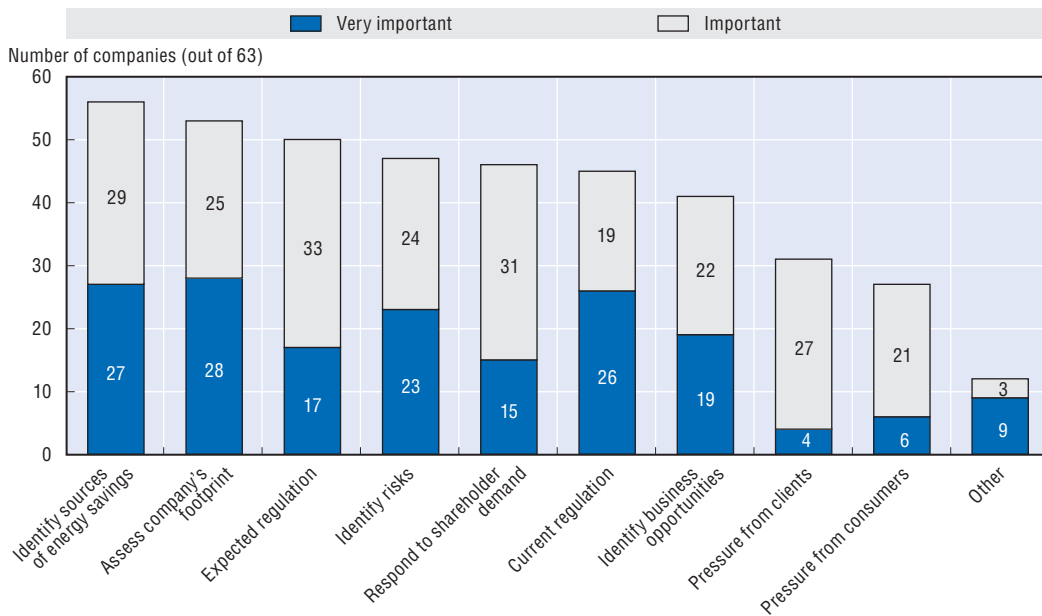
The survey aimed to complement the research by confirming the relevance of some of the key issues raised and obtain information on the frontrunners' perception of difficulties in dealing with climate change challenges and their expectations for further guidance and support from governments. Considering that the questionnaire was widely distributed, the small size of the sample is an interesting result in itself. It may be the sign of a questionnaire fatigue. Feedbacks on the questionnaire confirmed that climate change is an area where large companies are increasingly surveyed. Some companies also pointed out that while answering the survey was relatively quick, internal procedures for verification of the answers and approval were lengthy and could be a disincentive to participate in the exercise. This might be an indication of the care taken by companies in disclosing information on their climate change related activity.

Putting GHG reduction into the mainstream of business action

The report identifies those areas in which more needs to be done to align corporate practices with public goals. As of today, most of the largest companies (4 out of 5 of the Global 500) **measure and disclose** their GHG emissions. This helps them assess their impacts on climate, the associated costs of mitigation and risks, and design emissions reduction plans (Figure 2.A2.2). However, the absence of an internationally-agreed standard for GHG emission reporting at company level limits the comparability of corporate information and raises question about the quality and reliability of the information. There is a need to ensure consistency of GHG accounting methodologies and standards, building on emerging good practices and recognised protocols in this area.

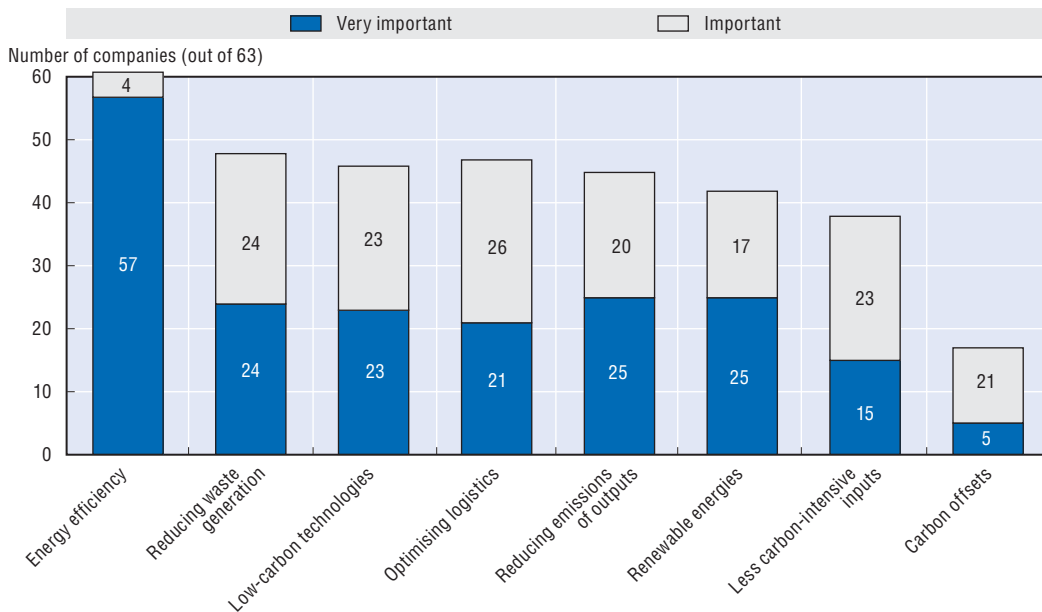
For companies, **reducing GHG emissions** start with energy conservation measures (Figure 2.A2.3). This has both environmental and economic benefits. Other emission-

Figure 2.A2.2. **Motivations for undertaking a GHG inventory**



Source: OECD Investment Division.

Figure 2.A2.3. **Actions taken by companies to reduce GHG emissions**

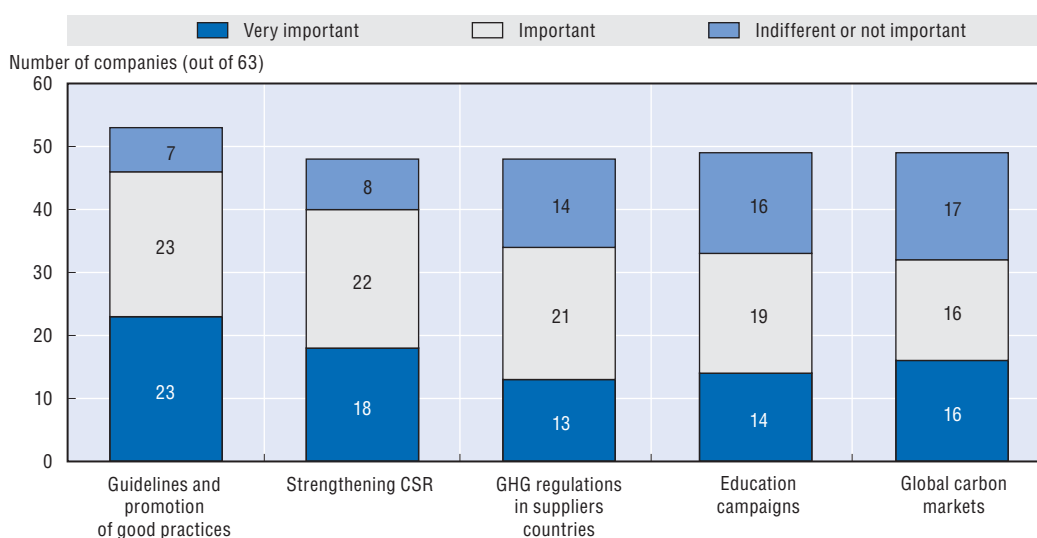


Source: OECD Investment Division.

reduction measures, such as reducing waste generation, adopting low-carbon technologies, optimising logistics and shifting to renewable energies, may be more costly and have a longer return on investment. To implement those, the vast majority of companies require stronger government incentives and signals – such as global emissions trading markets, carbon taxes, regulations and standards.

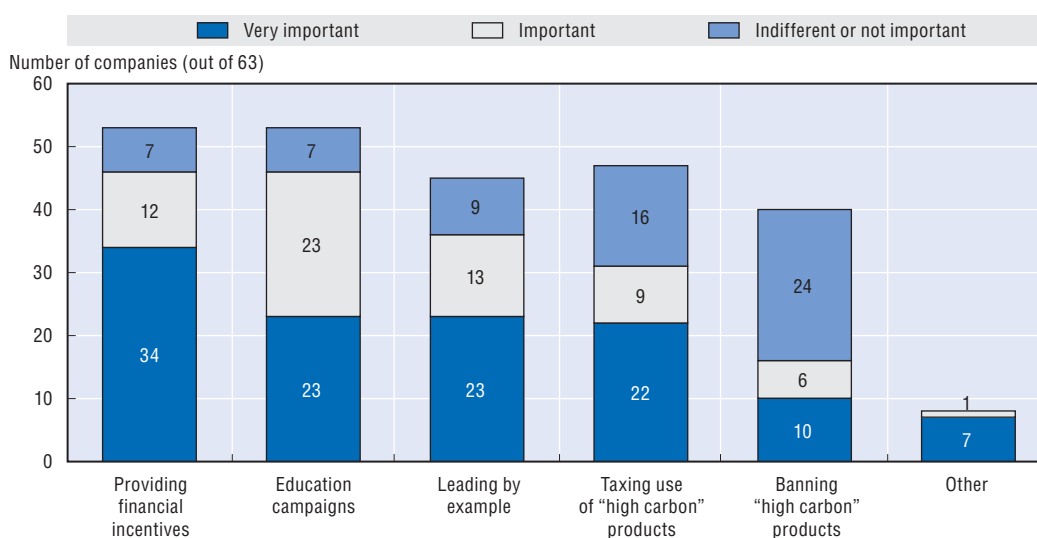
The new frontier of corporate action looks to extend low-carbon strategies **beyond the company's borders**. This is where the bulk of GHG emissions is produced, through the supply chain and the use and disposal of products. Managing emissions in the supply chain and throughout the life-cycle of products is, however, a recent area of public and corporate action. Methodologies and practices are just emerging. Public private partnerships to promote good practices and provide training and capacity building could support companies' efforts to engage their suppliers (Figure 2.A2.4). Greater consumer mobilisation is also crucial and will depend on the combined capacity of governments and companies to provide clear signals and guidance (Figure 2.A2.5).

Figure 2.A2.4. **Usefulness of government measures to engage suppliers**



Source: OECD Investment Division.

Figure 2.A2.5. **Shaping consumer choice**



Source: OECD Investment Division.

ANNEX 2.A3

Discussion paper by Professor John Ruggie on updating the OECD Guidelines for Multinational Enterprises

Paris, 30 June 2010

1. The Special Representative of the United Nations Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG) welcomes the decision of the 42 governments adhering to the OECD Guidelines for Multinational Enterprises to update the Guidelines, and the support for it expressed by all stakeholders groups.

2. This note identifies the main human rights elements the update should include if it is to meet its goal of ensuring “the continued role of the Guidelines as a leading international instrument for the promotion of responsible business conduct”. It also addresses related procedural provisions. The note is based on the “Protect, Respect and Remedy” Framework proposed by the SRSG and welcomed unanimously by the UN Human Rights Council in June 2008.² Its structure broadly follows the agreed terms of reference for the Guidelines’ update.

A. Substantive issues

I. The role of states

3. The Guidelines recognize that socially and environmentally sustainable markets and enterprises require principles and standards for responsible business conduct. While the Guidelines are recommendations addressed by governments to multinational enterprises, they should also affirm the need for states to fulfil their international obligations.

4. The first pillar of the UN “Protect, Respect and Remedy” Framework addresses the state duty to protect against business-related human rights abuse through appropriate policies, regulation and adjudication. Chapter I of the updated Guidelines (Concepts and Principles) similarly should stress that states must perform their required roles, individually and collectively, to ensure that the aims of the Guidelines are met.

2. The Council also extended the SRSG’s mandate with the twin tasks of “operationalizing” and “promoting” the Framework. For the most recent report by the SRSG, see “Further steps toward the operationalization of the ‘Protect, Respect and Remedy’ Framework,” UN document A/HRC/14/27 (9 April 2010), available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

II. Human rights

5. Current language in the Guidelines reflects neither the needs of, nor best practices by, multinational enterprises when facing challenging human rights situations. Moreover, since the last Guidelines revision considerable progress has been achieved in clarifying the business and human rights agenda, as reflected in the UN “Protect, Respect and Remedy” Framework and the strong support it enjoys from governments, business associations and enterprises, trade unions and major NGOs. This combination of factors warrants a separate human rights chapter in the updated Guidelines, replacing current Guideline 2 under General Policies. It could be free-standing or combined with the chapter on Employment and Industrial Relations. The new chapter should reflect the elements of the “corporate responsibility to respect human rights” pillar of the UN Framework, as summarized below.

Foundation

6. The corporate responsibility to respect human rights means to avoid infringing on the rights of others and addressing adverse impacts that may occur. This responsibility exists independently of States’ human rights duties. It applies to all business enterprises in all situations. The new Guidelines chapter should affirm and reinforce this principle.

Scope

7. The scope of the corporate responsibility to respect rights is defined by the actual and potential human rights impacts generated through an enterprise’s own business activities and through its relationships with other parties, such as business partners, entities in its value chain, other non-state actors and state agents.

8. The concept of “corporate sphere of influence” has sometimes been invoked as a basis for determining the scope of enterprises’ human rights responsibilities, rather than their human rights impact. This is problematic. Enterprises may have influence over a broad array of actors and situations, but only in exceptional circumstances should they be held responsible for human rights harms to which they are not linked in some way. Thus, while “corporate sphere of influence” may be a useful construct for enterprises to identify opportunities for contributing to the promotion of human rights, it is of limited utility as a basis for clarifying the scope of their responsibility to respect rights. Nor do promotional endeavors offset an enterprise’s failure to respect human rights across its business activities and relationships.

Content

9. Because business enterprises can impact virtually all internationally recognized rights, the corporate responsibility to respect encompasses the entire spectrum of such rights. In practice, some rights will be more relevant than others in particular industries and circumstances, and therefore will be the focus of heightened attention. But any *ex ante* delimitation of recognized rights that aspires to universal applicability inherently will provide misleading guidance to enterprises.

10. An authoritative enumeration of internationally recognized rights is provided by the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social

and Cultural Rights); coupled with the eight ILO core conventions that form the basis of the Declaration on Fundamental Principles and Rights at Work. While business enterprises cannot violate these instruments as such, because they apply legally only to states, they can adversely impact the rights these instruments recognize. Moreover, those rights are the baseline benchmarks by which other social actors judge enterprises' human rights practices.

11. Depending on circumstances, enterprises may need to consider additional standards: for instance, they should take into account international humanitarian law in conflict-affected areas (which pose particular human rights challenges); and standards specific to "at-risk" or vulnerable groups (for example, indigenous peoples or children) in projects affecting them.

Due Diligence

12. The updated Guidelines should affirm that the appropriate response by business enterprises to managing the risks of infringing the rights of others is to exercise human rights due diligence. This can be a game-changer for enterprises: from "naming and shaming" to "knowing and showing." Naming and shaming is a response by external stakeholders to the failure of enterprises to respect human rights. Knowing and showing is the internalization of that respect by enterprises themselves through human rights due diligence.

13. Drawing on well-established enterprise risk management practices and combining them with what is unique to human rights, the UN Framework lays out the basic parameters of human rights due diligence. Because this process is a means for enterprises to address their responsibility to respect human rights, it must go beyond simply identifying and managing material risks to the enterprise itself, to include the risks its activities and associated relationships may pose to the rights of affected individuals and communities.

14. The complexity of due diligence processes and tools will vary with the size of the enterprise and certain other situational factors. But the same underlying principles should hold. Effective human rights due diligence should be an ongoing process, grounded in a policy commitment to respect human rights. It should include assessing the human rights impacts of the enterprise's activities and relationships; integrating these commitments and assessments into internal control, oversight and management systems; and tracking as well as reporting performance. Because a main purpose of human rights due diligence is enabling enterprises to demonstrate to themselves and to others that they respect rights, a measure of transparency and accessibility to stakeholders is required.

15. The terms of reference for the Guidelines' update indicate that it could also explore the merits of making due diligence one of the general operational principles of Chapter II (General Policies). This should be given serious consideration because it would allow enterprises to manage better all of their social and environmental risks. But if such a principle were to be adopted, the guidance should indicate clearly that human rights risk management differs from commercial, technical and even political risk management in that it involves rights-holders. Therefore, it is an inherently dialogical process that involves engagement and communication, not simply calculating probabilities.

• Supply Chains

16. While all business entities, including suppliers, have the same responsibility to respect human rights, enterprises require more specific guidance on their responsibility for managing human rights challenges posed by their upstream suppliers. The SRSG has submitted a separate discussion paper to this Roundtable outlining a decision logic for enterprises, intended to contribute to the process developing such guidance.³ It differentiates between spot-market transactions and ongoing relationships; is based on the nature of the ongoing relationship; and takes into account the size of the enterprise.

Operational-level Grievance Mechanisms

17. Even where an enterprise has the best internal control, oversight and management system in place, things can go wrong in complex situations and harms do occur. Some require legal recourse but many others can be satisfactorily addressed through effective non-judicial means. These include grievance mechanisms at the level of an enterprise's actual operations.

18. Operational-level grievance mechanisms perform two important functions in relation to the corporate responsibility to respect human rights. First, they make it possible for grievances to be remediated locally and directly, thereby preventing harm from being compounded and grievances from escalating. Second, they constitute an early warning system for enterprises, providing them with ongoing information about current or potential adverse human rights impacts from those impacted. By analyzing trends and patterns in complaints, enterprises can identify systemic problems and adapt their practices accordingly.

19. The Guidelines' update should encourage enterprises to develop or participate in operational-level grievance mechanisms. They could be provided directly by an enterprise, by collaborating with other entities, or by facilitating recourse to a mutually accepted external expert or body. Such mechanisms do not preclude individuals from recourse to state-based mechanisms, including the National Contact Points (NCPs) under the Guidelines, nor should they undermine trade union representation and collective bargaining agreements.

20. The particular arrangements that enterprises should adopt will depend in part on the sectoral, political and cultural context, as well as the scale of their operations and potential impacts. The UN Framework identifies a set of principles that all non-judicial human rights-related grievance mechanisms should meet to ensure their credibility and effectiveness: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency. A seventh principle specifically for operational-level mechanisms involving enterprises is that they should function through dialogue and engagement rather than by the enterprise itself acting as adjudicator. These principles are summarized in Annex I of this discussion paper. Five companies in different regions and industry sectors are testing guidance points for the principles in collaboration with the SRSG.

3. "The Corporate Responsibility to Respect Human Rights in Supply Chains," available at <https://www.oecd.org/dataoecd/17/50/45535896.pdf>.

Managing Legal Ambiguities and Dilemmas

21. Multinational enterprises operate in diverse legal and regulatory environments, as well as in governance contexts that differ in their ability – and sometimes willingness – to enforce existing laws and regulations. Conflicting requirements and variable capacity can create uncertainty and risks for enterprises in meeting their responsibility to respect human rights. Additional guidance through the Guidelines update would be helpful.

22. Weak governance zones are one case in point. Early in his mandate, the Special Representative asked the world's largest international business associations to address this particular challenge. The updated Guidelines should incorporate their response: "All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent."⁴

23. The challenge is more complex where national law conflicts with international standards and where legal compliance may undermine the corporate responsibility to respect human rights. Enterprises should be encouraged in such circumstances to seek ways to respect the spirit of international standards while avoiding outright violation of the law. At the same time, they should ensure that their actions do not exacerbate abuses or the risks to those subject to the abuse.

24. Finally, since the Guidelines were last revised the web of potential corporate liability for complicity in egregious human rights abuses, such as international crimes, has expanded significantly in various national jurisdictions. But enterprises cannot know with certainty where claims might be brought against them. Nor can they know with certainty what precise standards and rules they may be held to because no two jurisdictions are identical in this respect. Rather than leaving this dilemma to chance – or to their CSR programs – enterprises should be advised to treat it as a complex legal compliance risk and act accordingly.

III. Disclosure

25. The terms of reference for the Guidelines' update indicate that it should incorporate relevant disclosure standards. Transparency is an important element of the corporate responsibility to respect human rights, contributing to both accountability and institutional learning. Thus, the update provides an opportunity to highlight the importance of enterprises communicating on their significant human rights risk factors, as well as the measures taken to mitigate those risks. The form that this communication takes may vary with company size and other situational factors. It also should pay due regard to any potential risks it may pose to company staff and stakeholders, and to the legitimate requirements of commercial confidentiality.

B. Procedural provisions

I. Functional equivalence

26. NCPs have the potential to serve as effective grievance mechanisms beyond the operational level. In order to realize this potential, the update should consider

4. International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD, "Business proposals for effective ways of addressing dilemma situations in weak governance zones," available at www.reports-and-materials.org/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf.

incorporating into the guidance for NCPs the principles for effectiveness and credibility outlined in Box 1: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency.

27. Applied to the NCPs, these principles are sufficiently broad to provide room for the expression of different political cultures and institutional arrangements within adhering countries. Yet they could form the basis for a common understanding among NCPs of what is expected of them; among potential users of what they, in turn, can expect from an NCP process; and how government departments in which NCPs may be housed can manage the potential conflicts among the various roles they are expected to play.

28. The SRSG's has found that the enterprises and other stakeholders participating in his grievance mechanism pilot project derive considerable benefits from the individual and collective learning experience. In the Guidelines context, he believes that all parties similarly would benefit if NCP and Working Party meetings were to become more of a learning forum. Not only would this grow the common knowledge base, but it also would reduce the likelihood of different NCPs subjecting multinational enterprises to significantly different interpretations of common standards and approaches.

II. Admissibility criteria

29. The scope of the Guidelines for Multinational Enterprises is sometimes confused with the admissibility criteria for the consideration of "specific instances" by NCPs. The Guidelines provide principles and standards addressed to all multinational enterprises, whereas the admissibility criteria for "specific instances" concern the narrower question of what types of cases NCPs may agree to examine. The update should clarify this distinction even as it re-examines the admissibility criteria.

30. Currently, NCPs consider roughly 40 percent of the complaints submitted to them to be without substantive merit or falling beyond the Guidelines' purview. A major reason for the latter is the absence of an "investment nexus" – either because the multinational involved is a buyer from, not an equity holder in, the supplier; or it is a lending institution that enabled an operating enterprise's foreign investment, but is not itself the investor.

31. Many participants in the update process consider it important to retain the link between the Guidelines and the Declaration on International Investment and Multinational Enterprises. The SRSG takes no position on this complex issue. Nevertheless, he does urge that the updated Guidelines reflect widely used if not prevalent business models that barely existed when the Guidelines were last revised – as indicated by the fact, for example, that the most rapidly growing segment in world trade in recent years has resulted from intra-firm and related-party transactions.

32. Therefore, whatever is decided about the investment nexus, the update should identify realistic admissibility criteria for "specific instances." In the context of upstream supply chains, it is sometimes suggested that numerical thresholds can be used to determine admissibility – such that a company sourcing less than "x" % of its materials from a supplier or representing less than "y" % of the enterprise's business automatically would fall beyond the Guidelines' purview. This has two major pitfalls:

- Such thresholds are necessarily arbitrary when applied across different business sectors and sizes, and are unlikely to be appropriate in all circumstances;
- Such thresholds risk encouraging suppliers (and enterprises) to game the system by remaining below the threshold that would require enterprises to take responsibility.

33. Further in-depth discussion of these issues is needed. But the final formula should include two considerations. The first is the nature of the relationship between the enterprise and the business entity allegedly committing the harm, generally excluding spot-market transactions but closely examining ongoing relationships. The second is sourcing where it is widely known that serious human rights abuses are associated with a particular locale, product, service, or materials – and where, therefore, it is reasonable to expect an enterprise to take steps to mitigate such abuses to which it is linked in any form, or if it cannot do so then to avoid being linked to them.

34. The role of lenders may be more complex in light of the investment nexus constraint, although broadly similar principles should be applicable. In any event, the update process will need to address the fact that the Guidelines, which are intended as “a leading international instrument”, now lag well behind the standards of other international actors in this respect, including the International Finance Corporation; as well as private sector banks, such as those participating in the Equator Principles, which track the IFC standards.

III. Implementation of specific instances

35. There are few if any official consequences of an NCP finding against an enterprise. For example, in most cases the enterprise could apply immediately for export or investment assistance from the same government. To protect the integrity of the NCP system, the update should consider ways to give weight to NCP findings. The response need not necessarily be punitive. The home government could also work with the enterprise to improve its policies and practices. But where an enterprise fails to cooperate, the default presumption should be that a negative finding will be made public, and that it could affect the enterprise’s access to certain forms of public support and services for a specified period of time.

C. Next steps

36. At the request of the Human Rights Council, the SRSG is developing a set of guiding principles for the operationalization of the “Protect, Respect; Remedy” Framework, which will be presented to the Council in June 2011. He will continue to liaise closely with the OECD on common elements between the Framework and the Guidelines’ update.

Box 2.A3.1. **PRINCIPLES FOR EFFECTIVE NON-JUDICIAL GRIEVANCE MECHANISMS**

Through a survey of existing non-judicial grievance mechanisms and an extensive consultative process around the results, the SRSG identified the following principles for the effectiveness and credibility of non-judicial grievance mechanism. Five companies in different regions and industry sectors are collaborating with the SRSG in pilot projects to test guidance points for the principles:

- **Legitimate:** by having clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.
- **Accessible:** by being publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.
- **Predictable:** by providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.
- **Equitable:** by ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.
- **Rights-compatible:** by ensuring that its outcomes and remedies accord with internationally recognized human rights standards.
- **Transparent:** by providing sufficient transparency of process and outcome to meet the public interest concerns at stake.
- For company-level mechanisms specifically, a seventh principle is that they should operate through dialogue and engagement rather than the enterprise itself acting as adjudicator.

ANNEX 2.A4

*Discussion paper by Professor John Ruggie
on the corporate responsibility to respect human rights
in supply chains*

Paris, 30 June 2010

1. The corporate responsibility to respect human rights means to avoid infringing on the rights of others and addressing adverse impacts that may occur. This responsibility applies across an enterprise's activities and through its relationships with other parties, such as business partners, entities in its value chain, other non-state actors and state agents.⁵

2. Suppliers have the same responsibility to respect human rights as any other business entity. However, this note focuses on enterprises that purchase goods and services from suppliers. It outlines a decision logic for them to manage adverse human rights impacts in their supply chains and meet their responsibility to respect human rights.

3. For the purposes of this note:

- the term “*adverse impact*” refers to any human rights abuse (*e.g.*, violation of labor standards, non-discrimination norms, threats to the physical security of persons) linked to the product or services being provided to the enterprise. It excludes human rights abuses occurring in a supply chain entity that are unrelated to those products or services.
- the term “*relationship*” is used to indicate an on-going association with a supply chain entity.

4. The appropriate response by an enterprise to the risk of contributing to human rights abuse through its supply chain is for it to conduct due diligence on its supply chain relationships to identify risks of actual and potential adverse impacts, and to prevent or mitigate both risks and impacts where they arise.⁶

5. Where human rights abuses in the supply chain are identified, the enterprise should assess:

- a) whether the enterprise is implicated in the abuse solely by the link to the goods or services it procures (*e.g.*, without contribution from the enterprise, the product is

5. This is independent of the State duty to protect against corporate-related human rights abuse by taking appropriate steps to prevent, investigate, punish and redress such abuse.

6. For the SRSG's most recent discussion of the components of ongoing human rights due diligence, see UN document A/HRC/14/27 (9 April 2010), paragraphs 79-86; available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

produced by bonded or child labor; or where an enterprise's external security provider commits human rights violations in protecting company facilities);

- b) whether the enterprise is also contributing to the abuse by its own actions and omissions (e.g., where the buyer demands significant last-minute changes in product specifications without adjusting price or delivery dates, leading to labor standard violations by a supplier in a low-margin business);

6. In the event that the enterprise is contributing to the abuse by its own actions or omissions, the responsibility to respect requires that the enterprise take appropriate steps to address those contributions.

7. The remainder of this paper discusses the action the enterprise should take in the event that it is not contributing by its own actions or omissions, but is implicated by its link to the abuse through the product or services it procures.

8. The most common approaches to date have largely been to rely on clauses in contracts, or to set thresholds on the level of trade below which an enterprise's responsibilities would end. But both these responses have limitations.

- a) Enterprises should indeed have in place measures, such as contract provisions, to require and/or incentivize supply chain entities to respect human rights. This can be a useful step towards preventing or mitigating adverse impacts in the supply chain. However, it is not sufficient to meet the enterprises' responsibilities, absent reasonable evidence that the supply chain entities are both willing and capable of meeting the requirements. Moreover, enforcing contractual requirements beyond the first tier of suppliers can pose additional challenges (see paragraph 17).
- b) The suggestion that numerical thresholds can be used to determine when an enterprise's indirect responsibility for human rights harm should require it to take action – such that a company sourcing less than “x” % of its materials from a supplier or representing less than “y” % of the enterprise's business need not do anything with regard to identified abuse by the supply chain entity – has two major pitfalls:
 - i) Such thresholds are necessarily arbitrary when applied across very different business sectors and sizes, and unlikely to be appropriate in all circumstances;
 - ii) Such thresholds risk encouraging enterprises to game the system and remain below the threshold that would require them to take responsibility.

9. In sum, reliance on contract clauses is insufficient, while reliance on thresholds is fundamentally problematic.

10. Where an enterprise is implicated in human rights abuses solely by the link to products or services it receives, it should take appropriate action to address any impacts identified. What action will be appropriate, in turn, depends on two key variables:

- i) whether the enterprise considers the supply chain entity crucial to its business; and
- ii) whether the enterprise has leverage over the supply chain entity.

11. The supply chain relationship could be deemed “crucial” to an enterprise if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists.

12. Leverage is considered to exist where the enterprise has the ability to affect change in the wrongful practices of the supply chain entity. Leverage may reflect one or more of a number of factors, such as:

- a) whether there is a degree of direct control between the enterprise and the supply chain entity;
- b) the terms of contract between the enterprise and supply chain entity;
- c) the proportion of business the enterprise represents for the supply chain entity;
- d) the ability of the enterprise to incentivize the supply chain entity for improved human rights performance in terms of future business, reputational advantage, capacity-building assistance etc.;
- e) the reputational benefits for the supply chain entity of working with the enterprise, and the reputational harm of that relationship being withdrawn;
- f) the ability of the enterprise to engage other enterprises that work with the supply chain entity in incentivizing improved human rights performance;
- g) the ability of the enterprise to engage local or central government in requiring improved human rights performance by the supply chain entity through implementation of regulations, monitoring, sanctions, etc.

13. Based on the definitions above, the enterprise should assess whether the relationship is crucial and whether it possesses leverage. The combination of these variables will yield different conclusions as to what action should be taken.

Situation A: Where the supply chain entity is crucial and the enterprise possesses leverage, the priority must be to use that leverage to mitigate the abuse. If concerted efforts at mitigation prove unsuccessful, the logical conclusion is that the leverage is in fact not what was imagined, and the consequences for decision-making would move to situation (b) below.

Situation B: Where the supply chain entity is crucial to the enterprise but it lacks leverage to mitigate the abuse, its priority should be to seek ways to increase its leverage to enable mitigation. This could take a number of forms, for example:

- i) offering capacity-building support to the entity to help it address the problems;
- ii) working collaboratively with other enterprises that have relationships with the entity to incentivise improvements;
- iii) working with other enterprises on a broader regional or sectoral basis to incentivise improvements;
- iv) working with local or central government to the same ends.

If these efforts prove unsuccessful, the enterprise will either need to take steps to end the relationship, or it will need to be able to demonstrate that it has done everything reasonably possible to mitigate the abuses, and it also needs to be prepared to face any consequences for its decision to maintain the relationship.

Situation C: Where the supply chain entity is not crucial to the enterprise but the enterprise does have leverage, the enterprise's involvement would require it first to try to use its leverage to mitigate the abuse. If that proves unsuccessful, it can reasonably be expected to take steps toward ending the relationship.

Situation D: Where a supply chain entity is abusing human rights and is neither crucial to the enterprise nor subject to its leverage, the logical conclusion would be for the

enterprise to take steps to end the relationship in order to meet its own responsibility to respect human rights.

14. In complex or contentious situations, enterprises and supply chain entities would be well-advised to seek the insights, advice and even validation of key external stakeholders regarding their options and ultimate choice of action.

15. The decision logic described above can be illustrated in a simple four-cell matrix:

Crucial source/partner	<p>A.</p> <ul style="list-style-type: none"> • Mitigate the abuse. • If unsuccessful. 	<p>B.</p> <ul style="list-style-type: none"> • Seek to increase leverage. • If successful, mitigate abuse. • If unsuccessful, take steps to end the relationship; or be able to demonstrate efforts made to mitigate abuse, recognising possible consequences of remaining.
Non-crucial source/partner	<p>C.</p> <ul style="list-style-type: none"> • Try to mitigate the abuse. • If unsuccessful, take steps to end the relationship. 	<p>D.</p> <ul style="list-style-type: none"> • Take steps to end the relationship.

16. The logic described in the decision matrix can be applied to *existing* supply chain relationships. As for the decision whether to enter into a *new* supply chain relationship with an entity where there is evidence of existing human rights abuses, an enterprise should first assess whether it is likely to be able to mitigate those abuses through its relationship:

- a) If it assesses that it can, it may enter the relationship if it then pursues options for mitigating the abuses, as illustrated by situations A or B in the matrix;
- b) If it assesses that it cannot mitigate abuses identified in that entity it should not enter the relationship.

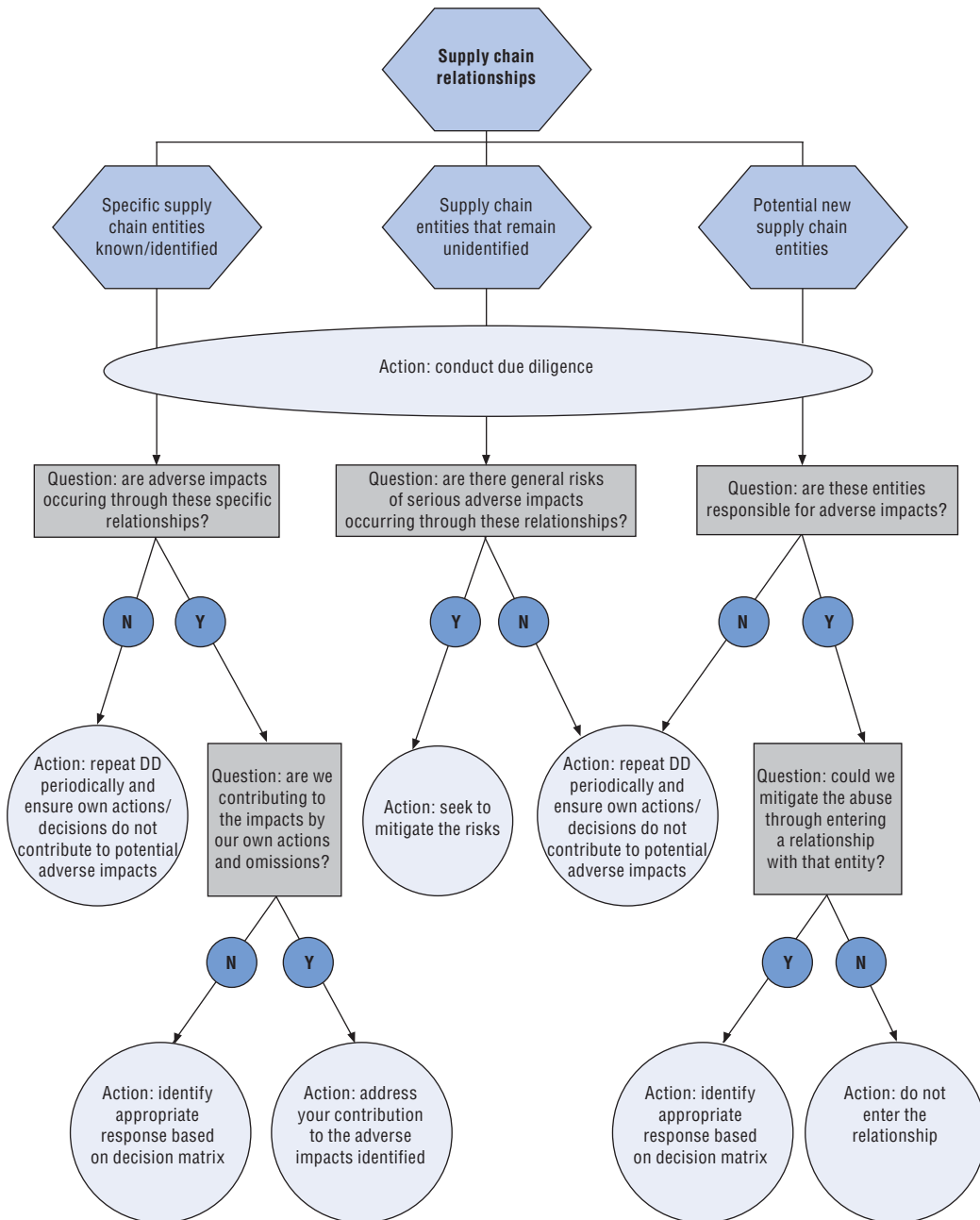
17. An enterprise necessarily knows all of the entities in the first tier of its supply chain. If any of those entities is found to be responsible for human rights abuses, whether directly or indirectly (for instance, in the case of an agent or licensee), the enterprise can apply the logic illustrated by the decision matrix.

18. Beyond the first tier, it can become more difficult for an enterprise to know all the entities in its supply chain and whether any are abusing human rights. With regard to those additional tiers, not knowing about abuses is not a sufficient response *by itself* to allegations of either legal or non-legal complicity if the enterprise should reasonably have known about them through due diligence. Therefore, enterprises should:

- a) use due diligence to identify general areas of risk of serious human rights abuse in their supply chain relationships, drawing on appropriate government, expert and/or stakeholder advice. General risks may be associated with a particular locale or region, or particular products or materials and their known sources;
- b) take action to mitigate any such risks, including by seeking to ensure that intermediary entities in the supply chain are themselves practicing due diligence and maintaining appropriate standards;

c) wherever they identify specific supply chain entities that are abusing human rights, in line with the decision matrix above, take appropriate efforts to mitigate the abuse (directly or through intermediaries in the relationship chain); and if mitigation is impossible, either take steps to end the relationship (whether directly or via intermediaries) or be able to demonstrate efforts made to mitigate the abuse, recognising the possible consequences of maintaining the relationship.

19. The logic of this process for deciding on appropriate action in relation to an enterprise’s direct and indirect adverse impacts is represented in the decision tree below:



ANNEX 2.A5

Discussion paper by Business for Social Responsibility on responsible supply chain management

Paris, 30 June 2010

I. Introduction

1. BSR (Business for Social Responsibility⁷) is pleased to submit this discussion paper on the application of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises to supply chains to the OECD in support of the Annual Meeting of the National Contact Points on 30 June 2010.

2. The purpose of this paper is to provide context and recommendations for discussion at the roundtable on corporate responsibility. This seminar will help clarify and develop appropriate guidance on the application of the OECD Guidelines for Multinational Enterprises (the Guidelines) to supply chain relationships in the context of the update that adhering governments have agreed to undertake in 2010-2011.

II. Supply Chain Opportunities and Challenges and Multinational Enterprise Responses

3. The scale and pace of growth in global supply chains is unprecedented. Trade liberalization, decreased restrictions on capital movement, and technology advances which have sharply lowered transportation and communication costs have enabled geographically fragmented production processes, trade in services, and foreign direct investment by multinational enterprises (MNEs).⁸

7. Business for Social Responsibility (BSR), a leader in corporate responsibility since 1992, works with its global network of more than 250 member companies to develop sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. This paper was prepared by Cody Sisco, Blythe Chorn, Peder Michael Pruzan-Jorgensen, Jeremy Prepisci, and Veronica Booth at BSR. Please contact Cody Sisco at csisco@bsr.org.

8. World Trade Organization, "World trade developments", in *World Trade Statistics 2009*, (2009), www.wto.org/english/res_e/statis_e/its2009_e/section1_e/its09_highlights1_e.pdf.
OECD, *Moving up the Value Chain: Staying Competitive in the Global Economy*, (2007), www.oecd.org/dataoecd/24/35/38558080.pdf.

A. The Value of Supply Chain Relationships for MNEs

4. Supply chain relationships generally create significant value for MNEs. As growing competition in domestic and international markets forces MNEs to become more efficient and to lower costs, sourcing inputs from more efficient producers, either domestically or internationally, can be an opportunity to improve margins. This enhanced efficiency can stem from a number of sources, including lower labor costs, greater access to raw materials, and more advanced manufacturing and service provision processes, among others.

5. Another major motivation for building supply chains is the opportunity for entry into new markets. Demographic shifts and rapid growth in developing economies present tremendous growth opportunities for MNEs. Developing supply chain relationships in these economies allows MNEs to build a local presence in order to build brand awareness, gain market insights, and reduce costs associated with delivering final products and services to local customers.

Box 2.A5.1. Definition of Supply Chain

For the purposes of this paper, the term “supply chain” is used to refer to the network of organisations that cooperate to transform raw materials into finished goods and services for consumers.

Other definitions conceive of supply chains as flows of materials that are processed, transported, and otherwise transformed by a series of organisations into higher value products.

Supply chain and value chain are related but distinct concepts.

The value chain concept was first described and popularized by Michael Porter as a series of activities undertaken by a company that generate and add value to products. These activities include inbound logistics, operations, outbound logistics, marketing and sales, and services, and they are supported by activities including firm infrastructure, human resources management, technology development and procurement. A company’s value chain is part of a larger value system that includes the value chains of upstream suppliers and downstream channels and customers.

Source: See Michael Porter, *Competitive Advantage: Creating and Sustaining Superior Performance*. New York: Free Press, 1980.

6. MNEs also build supply chain relationships to gain access to strategic assets, which include skilled workers, technological expertise, and the presence of competitors and suppliers with valuable knowledge or experience. Access to these assets can improve product and service quality and support innovation. For example, access to foreign knowledge is a key element in shifting research and development (R&D) activities to the supply chain.⁹

9. Wendy Tate, Lisa Ellram, Lydia Bals, and Evi Hartmann, “Offshore Outsourcing of Services: An Evolutionary Perspective”, *International Journal of Production Economics*, 120, (2009): 512-524. Peter Maskell, Torben Pedersen, Brent Petersen, and Jens Dick-Nielsen, “Learning Paths to Offshore Outsourcing – From Cost Reduction to Knowledge Seeking”, DRUID Working Paper 05-17, Danish Research Unit for Industrial Dynamics, Copenhagen Business School, (2007), www3.druid.dk/wp/20050017.pdf.

B. Key Actors and Types of Supply Chain Relationships

7. To maximize these opportunities and to create efficiencies in manufacturing and service provision, MNEs have developed a variety of forms of supply chain relationships. In any one supply chain relationship, there are likely to be a number of unique actors:

- **MNE:** The MNE is the large, global company that is the buyer of a product or service in the supply chain relationship. It may or may not be the ultimate retailer and so may face procurement and sustainability standards required by other MNEs.
- **Supplier:** The supplier is the company, which could be a large, global enterprise or a small or medium-sized business based in one region or locale, which sells goods (including raw materials, semi-finished, component, and intermediary products) or provides services to a MNE. Suppliers that sell directly to a MNE are known as first-tier or direct suppliers.¹⁰ Suppliers that sell to other suppliers are known as sub-tier suppliers; they may be several times removed from the MNE but provide a good or service that is an element of the good or service that is ultimately sold to the MNE.
- **Licensee:** Licensees purchase the rights to use MNEs' brands, usually to produce goods that bear MNEs' intellectual property or to provide services on behalf of MNEs. Licensees may perform the production or service provision in-house or further outsource to a supplier.
- **Agent:** Agents identify and negotiate with suppliers and licensees on behalf of MNEs. Agents typically act fairly independently of MNEs, although each relationship is unique.
- **Trader:** Traders typically make markets for goods and services by purchasing and reselling them, often across geographical boundaries. They typically are not involved in product development, manufacturing, or marketing to consumers.

8. There are also a number of different supply management models, each of which has varying levels of visibility and control over direct and sub-tier supply chain relationships. While supply management approaches vary widely between industries, MNEs, and even among product or service categories within one MNE, models can be generally grouped into four approaches:

- **Transactional:** Generally the shortest of supply chain relationships, transactional supply management models are often characterized by a lack of contact between the MNE and supplier. Rather, products and services are sold through auctions, wholesalers, etc. This model is often used for commodities, one-time buys, and seasonal sourcing.
- **External Management:** Although these supply chain relationships may be more durable than transactional relationships, an external management approach is similarly characterized by the lack of direct interaction between the MNE and supplier. Rather, the MNE provides general specifications and requirements and receives shipment, but a third party manages the entire procurement activity including selecting and managing suppliers. External management approaches are often typical of licensing relationships, where the agent acts as the third party.

10. In some industries, the term "direct" supplier has a different and distinct meaning: a supplier of goods that are incorporated into the finished goods that are provided to consumers. This is distinct from "indirect" suppliers, which are technically first tier suppliers, but that provide goods which do not become part of products to consumers, for example, suppliers of office equipment, information technology services and catering would be considered "indirect" suppliers.

- *Supplier Selection*: The most common supply management model, supplier selection is typified by MNEs which directly approach suppliers, often through a request for quotation (RFQ), and select suppliers based on subsequent analysis and negotiations. Suppliers are often responsible for sourcing materials and services they require to deliver product to the MNE; the MNE typically does not interact with any sub-tier suppliers.
- *Strategic Management*: Generally used with only the most durable, long-term supply chain relationships, a strategic management approach to supply management involves MNEs sourcing from and strategically managing direct, first-tier suppliers. Strategic management can involve making direct investments in suppliers to improve quality through providing training, assigning MNE staff to provide on-site support, and making joint asset investments. MNEs using a strategic management approach often engage with sub-tier suppliers as well to improve production processes, lower costs, and ensure supply continuity.

9. Also, depending on a MNE's internal structure, supply management may be a centralized function or spread across many different product lines and business units. Interactions with suppliers therefore can take many forms, and any one supplier or other supply chain actor may have multiple points of contact within a MNE.

C. The Macroeconomic Impacts of Supply Chain Relationships

10. The emergence of global supply chains has had significant effects on national economies and has resulted in changes in comparative advantage and export specialization. Global supply chains also have significant impacts on employment, productivity, prices, wages, and terms of trade, and these impacts vary across regions and social groups.

11. *Developed economies*. In developed economies, globalization of supply chains may lead to short-term employment losses. While the number of jobs may be large in absolute terms, direct employment impacts are considered to be relatively small in comparison to overall turnover in the labor market due to technological development, changing consumer demands, etc.¹¹ However, supply chain relationships can create greater opportunities for expansion and growth of domestic firms. Global supply chain relationships may allow firms to focus on their core activities and may enable them to expand employment in other areas.

12. Global supply chains also have positive impacts on productivity and may thus increase access to better, cheaper, and more varied goods and services. Supply chain relationships can also lead to increased inflows of foreign direct investment (FDI) to developed economies.

13. *Developing economies*. For developing economies, supply chain relationships can create numerous opportunities for growth. The expansion of global supply chains is clearly linked to the increasing integration of emerging countries into the global economy. Strong growth in manufacturing production has occurred in East Asia and in China, as well as in

11. M.N. Baily and D. Farrel, *Exploding the Myth about Offshoring*, San Francisco: McKinsey Global Institute, 2004.

Sharon Brown and James Spletzer (2005), "Labour Market Dynamics Associated with the Movement of Work Overseas", (paper presented at OECD Workshop on the Globalisation of Production: Impacts on Employment, Productivity and Economic Growth, Paris, 15-16 November 2005).

South Asia and the Middle East. Between 1996 and 2004, for example, Brazil, Russia, India, and China (known as the BRICs) together reported annual growth of 14.1% in manufactured exports, compared to 5.8% for the OECD as a whole. Exports of services are also increasing. Exports have grown more strongly than imports in the BRICs, resulting in an improvement of their trade surpluses.¹²

14. Also, trade data indicates that the BRICs have also become more active in higher-technology industries. Starting from a low base, their trade in high and medium-high-technology industries has risen faster than their trade in total manufacturing. In 2004 for example, average imports and exports in higher-technology industries, such as pharmaceuticals, scientific instruments, aircraft and spacecraft, motor vehicles, chemicals, and machinery and equipment, made up almost 60% of the BRICs' total trade. This evolution will support larger inflows of FDI, increased innovation, and more sophisticated industrial structures.

15. *Small and medium-sized enterprises.* At the enterprise level, participation in global supply chains seems to bring stability to small and medium-sized enterprises (SMEs) in both developed and developing economies. Small firms that succeed in gaining access to a supply chain, and are able to retain their position in a supply chain despite competition, typically have more “staying power” than their peers.¹³

16. The development of global supply chains also offers SMEs new opportunities to expand their business across borders. The fragmentation of production also creates new entrepreneurial possibilities for SMEs that can move quickly and flexibly to fill emerging niches for the supply of novel products and services.¹⁴

17. Finally, through their supply chain relationships with MNEs, some SMEs have gained access to capital, experience, and expertise to enable them to develop into large MNEs themselves.¹⁵ The same trends enabling MNEs to develop supply chain relationships are also expanding SMEs' opportunities to realize efficiencies through supply chains. Similarly to MNEs, SMEs in developing economies are increasingly externalizing activities for production rationalization and resource optimization.¹⁶

D. Responsible Business Conduct Challenges in Supply Chain Relationships

18. Despite the clear opportunities, supply chain relationships can also create significant responsible business conduct challenges for MNEs. Beyond the business complexities of managing inventory, quality, etc., supply chain relationships introduce risks related to responsible business conduct as defined by the OECD Guidelines.

19. *Disclosure.* The complexity of supply chain relationships described above, and the challenges associated with visibility and traceability beyond the first tier of suppliers, creates challenges in knowledge of and disclosure of material information. In particular, MNEs sometimes struggle to identify and communicate foreseeable risk factors in their supply chain relationships.

12. OECD, *Moving up the Value Chain: Staying Competitive in the Global Economy*, (2007), www.oecd.org/dataoecd/24/35/38558080.pdf.

13. OECD, (2007).

14. OECD, *SME and Entrepreneurship Outlook 2005*, Paris: OECD, 2005.

15. Dilek Ayut and Andrea Goldstein, “Developing Country Multinationals: South-South Investment Comes of Age”, In *Industrial Development for the 21st century: Sustainable Development Perspectives*, (New York: UN Department of Economic and Social Affairs, 2007), 85-116.

16. OECD, (2007).

20. Also, MNEs' disclosure of any impacts in their supply chains related to responsible business conduct issues are largely dependent on the accurate disclosure of impacts by suppliers and other actors in supply chain relationships. Historically, it has been challenging for MNEs to capture high-quality data on environmental impacts, labor conditions, and other responsible business conduct issues within the supply chain because often suppliers either do not track or do not want to disclose this information to MNEs.

21. *Employment and industrial relations.* Labor conditions in global supply chains, particularly those that extend into developing countries, often fail to meet international standards and national regulatory requirements and can lead to serious human rights abuses. These abuses may include denial of the freedom of association and collective bargaining, the use of child and forced labor, employee discrimination, excessive work hours, degrading treatment by employers, inadequate health and safety protections, improperly paid wages, and inhibited movement. The causes are numerous – pressures to keep prices low and to meet MNE expectations for short production and delivery schedules, as well as poor enforcement of local and national regulations and low understanding among suppliers and other actors of labor rights standards – and can all create challenges for MNEs in supporting good employment and industrial relations. Additionally, workers' often lack the means to improve their situations, either due to poverty and the lack of other opportunities, or due to their limited understanding of labor rights or limited access to grievance mechanisms or union representation.

22. Poor labor conditions create significant business challenges for MNEs. Low productivity and worker strikes can impact product and service prices and delivery. Negative non-governmental organisation (NGO) campaigns and media coverage damage brands and reputations, threaten employee engagement and retention, and can lead to customer boycotts which directly impact profitability.

23. *Environment.* Environmental impacts in supply chains can be severe, particularly where environmental regulations are lax, price pressures are significant, and natural resources are (or are perceived to be) abundant. These impacts can include toxic waste, water pollution, and hazardous air emissions as well as high energy use and greenhouse gas emissions. The impacts may start at the very beginning of a product or service lifecycle, with the extraction of basic material inputs, but often continue through to the end-of-life when use and disposal also create waste.

24. For MNEs, the challenges associated with negative environmental impacts in supply chains are significant. The potential costs of supplier non-compliance with local and national regulations, including fines and operating interruptions, can create volatility in the price of goods and services and threaten business continuity. And NGO, government, and customer attention to environmental impacts lead to some of the same challenges with negative brand and reputational impacts as are created by poor labor conditions.

25. *Bribery and competition.* Significant bribery and competition risks can exist in supply chain relationships including procurement fraud between MNEs and suppliers who engage in corrupt practices involving governments and other supply chain actors.

26. The direct costs to MNEs of bribery and anti-competitive behavior are considerable, including diminished product quality, but are often dwarfed by indirect costs related to management time and resources spent dealing with issues such as legal liability and damage to a MNE's reputation.

27. *Consumer interests.* Supply chain relationships can also create significant challenges for MNEs in protecting consumer interests. Less direct oversight of product manufacturing and service provision means that MNEs have less ability to effectively influence product content, data protection, and accurate disclosures to consumers.

28. The risks for MNEs in protecting consumer interests are extensive given the potential costs, both directly and to a MNE's reputation, of a product recall or fine for non-compliance with consumer protection regulations.

29. *Science and technology.* While intellectual property (IP) and technology transfer offer important opportunities to advance supply chain relationships and support economic development, the widespread lack of stringent IP protection practices in global supply chains can create real risks for MNEs. IP infringement can lead to direct financial loss and stifle innovation.

E. Current MNE Approaches for Responsible Supply Chain Management

30. At present, there is no universal standard that defines responsible supply chain management for MNEs across all the responsible business conduct issues articulated in the Guidelines. As a result the scope and boundaries of MNE accountabilities for responsible business conduct issues in supply chains are not clearly defined. Instead, a baseline expectation has emerged, primarily driven by stakeholders including international organisations, governments, civil society, and labor groups, that MNEs should seek to uphold a number of legal and voluntary standards in their supply chain relationships including:

- International covenants, declarations, and frameworks that define individuals' rights such as the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, and The International Labour Organization's Declaration on Fundamental Principles and Rights at Work.
- International frameworks and standards that define responsible business conduct such as the OECD Guidelines, the UN Global Compact, and the UN Protect, Respect, Remedy Framework.
- National and local regulations.

31. To meet this expectation, MNEs, often in partnership with governments, NGOs, and other international institutions, have developed a number of different tools and approaches to assess and influence responsible business conduct in their supply chains.

32. Responsible supply chain management programs are generally based on four primary approaches – setting expectations, monitoring and audits, remediation and capability building, and partnership – each of which is implemented using a variety of tools.

33. *Setting expectations.* To set clear expectations with suppliers for responsible business conduct, MNEs use codes of supplier conduct which provide guidelines and direction to suppliers on how the MNE views responsible business conduct and what will be expected of suppliers in the course of the relationship. Codes of supplier conduct typically reference the three types of law and voluntary frameworks described above, and at present, this is the primary application of the OECD Guidelines to supply chain relationships.

Box 2.A5.2. **Prevalence of Responsible Supply Chain Management Approaches**

Because disclosure of MNEs practices related responsible supply chain management is based on an uneven landscape of legal requirements and voluntary standards, there are no comprehensive and authoritative statistics on the prevalence of responsible supply chain management practices. However, there are a few recent research results and survey findings that provide some indication of the extent to which MNEs are applying these approaches.

For example, using an ASSET4 database of environmental, social and governance data on 2 508 global corporations, the Harvard Law School benchmarked public labor and human rights policies relating to global supply chains. Their findings revealed that a significant minority of companies (28 percent) has broadly stated policies in this area, but far fewer have detailed standards or follow-up procedures. However, less than 6 percent of MNEs endorse specific labor standards such as the eight core conventions of the International Labor Organization. Only 6 percent say they monitor suppliers for policy or code compliance or set improvement targets; and only 7 percent describe enforcement procedures.

Source: See Aaron Bernstein and Christopher Greenwald, "Benchmarking Corporate Policies on Labor and Human Rights in Global Supply Chains", *Capital Matters Occasional Paper Series*, No. 5, Pensions and Capital Stewardship Project, Labor and Worklife Program, Harvard Law School, (November, 2009), www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers5.pdf.

34. The consequences for non-compliance with codes can vary significantly – from limited or no action taken by the MNE to requirements to participate in some of the activities described below, such as monitoring or remediation, to consequences for the business relationship, such as suspension of new orders or contract cancellation.

35. *Monitoring and audits.* To assess suppliers' performance against responsible business conduct expectations, MNEs may ask suppliers to complete self-assessments or accept on-site audits. On-site audits may be performed at the facility level or at a supplier's headquarters (if the supplier has multiple facilities) and may be conducted by staff from the MNE or a third-party auditing firm. The scope, length, and frequency of audits vary considerably.

36. *Remediation and capability building.* MNEs use remediation and capability building to address specific areas of non-compliance discovered during the monitoring process and to promote continuous improvement of responsible business conduct.

37. Remediation can include a number of activities including working with suppliers to create a corrective action plan to achieve compliance, defining a roadmap for gradually increasing standards and expectations, and terminating supplier relationships when serious shortcomings on "zero-tolerance" issues are not remedied in spite of repeated notifications.

38. Capability building goes beyond fixing particular non-compliance issues to develop suppliers' overall ability to improve performance on specific responsible business conduct issues over time through an increased understanding of issues and access to resources. Capability building includes a variety of efforts, such as training for supplier personnel and establishment of supplier learning networks.

39. *Partnership.* To build more lasting responsible business conduct in the supply chain, some MNEs are trying to build supplier ownership of responsible business conduct expectations through partnership. Partnership approaches to responsible supply chain management employ many of the tools described, but rather than focusing solely on compliance with a code, partnership emphasizes the development of supplier management systems and creating shared incentives and value through responsible business conduct.

40. For example, some MNEs have begun incorporating evaluation of management systems into their audits and are providing training and consulting for suppliers on management system design. MNEs are also instituting improvement ladders which emphasize a continuous improvement approach to management systems development and provide increased incentives as responsible business conduct is demonstrated, such as recognition of improved performance, preferred supplier status, and reduced frequency of auditing.

41. Partnership approaches to responsible supply chain management are indicative of a significant mindset shift from a focus on basic risk management – value protection – to value creation for MNEs and suppliers. However, they are not yet widely applied by MNEs, even among those that have otherwise strong responsible supply chain management programs.

42. *Implementation.* As alluded to above, the approaches MNEs employ vary tremendously. Most MNEs, at least initially, build responsible supply chain management programs to manage the risks associated with responsible business conduct issues in their supply chains, including negative stakeholder attention and impacts on business continuity. Consequently, the approaches and tools employed, as well as the scope of their application through different tiers of the supply chain, are a function of how MNEs perceive risks in their supply chain relationships rather than a normative decision.

43. To determine which responsible supply management approaches to apply with which suppliers, many MNEs begin by segmenting their supply base based on level of risk to their business. Some MNEs will also consider the level of risk to society and their opportunity to influence or impact suppliers' responsible business conduct based on the type of relationship with each supplier.

44. Most MNEs designing a new responsible supply chain management program focus on setting expectations, and to an extent, monitoring. Even advanced MNEs use these tools as the basis for understanding the extent of responsible business conduct issues in their supply chains, and to engage with their first-tier and sub-tier suppliers. Capability building and management systems tools are used more exclusively with suppliers that are considered more "strategic" by MNEs. These approaches are mainly the province of advanced MNEs who have a more sophisticated understanding of their supply chains, including where the biggest risks and opportunities are, and where investments will create long-term benefits for the buyer as well as the supplier and society.¹⁷

17. Aaron Bernstein, and Christopher Greenwald, "Benchmarking Corporate Policies on Labor and Human Rights in Global Supply Chains", *Capital Matters Occasional Papers*, No. 5, (2009), www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers5.pdf.
UN Global Compact, "Supply Chain Sustainability: A Practical Guide for Continuous Improvement", *The United Nations Global Compact*, (2010).

E. Challenges in Responsible Supply Chain Management

45. While the approaches described above are relatively common and well-established, there are still many complex and deeply rooted challenges that MNEs face in responsible supply chain management.

46. *Defining responsibility.* First and foremost is the challenge noted earlier in this section of defining the responsibility of MNEs for ensuring responsible business conduct in their supply chains. While guidelines such as the UN Protect, Respect, Remedy Framework have made great strides in beginning to clarify the roles of business and government in upholding international legal standards, these advancements have so far focused only on specific aspects of responsible business conduct such as human rights and build on discrete sources of international law and voluntary standards. While the UN Protect, Respect, Remedy Framework clearly applies to supply chain relationships, the implications for what this means in practice is still being defined. In addition, MNE responsibilities related to responsible business conduct issues beyond human rights are also unclear.

47. As a result, the responsible supply chain management efforts described above have been, for the most part, the result of on-going, informal, and *ad hoc* interactions between MNEs and multiple stakeholders, often in reaction to negative events. At present, there is no overarching standard to help MNEs define and manage their responsibilities for all aspects of responsible business conduct – including human rights, labor rights, environmental protection, and good governance – in their supply chains. Thus, current approaches have been developed in the absence of a comprehensive standard, mainly in response to business risks, and based on evolving definitions of good practice.

48. Additionally, as understanding of the complexity of responsible supply chain management has grown over the last twenty years since some of the first responsible business conduct challenges in supply chains came to light, a number of systemic challenges have become evident including weak government enforcement of regulations, the lack of visibility in supply chains, the transactional nature of many supply chain relationships, the lack of bargaining power, poor MNE internal alignment, and weak or perverse incentives for suppliers, among others. While the partnership approach to responsible supply chain management has evolved partly in response to these challenges, there are still considerable barriers to MNE efforts to promote responsible business conduct in supply chains.

49. *Weak government enforcement of regulations.* Although national and local laws are one of the foundations of current responsible supply chain management efforts, they are often a shaky foundation. In many geographies, government policy is poorly enforced, either because governance structures are weak, resources are inadequate, corruption is endemic, or enforcement of responsible business conduct regulation is perceived to be disadvantageous to economic development. For MNEs, this creates complex challenges related to the boundaries between government and MNE responsibility for responsible business conduct and can put MNEs in the tenuous situation of acting as regulator or police officer.

50. *Lack of visibility.* As described above, many MNEs have little visibility into their supply chains because they have minimal direct interaction with the first tier of their supply chains and with sub-tiers. Even where MNEs take a more hands-on approach to managing their supply chain relationships, it is often challenging for MNEs to get a complete and accurate understanding of the sub-tiers of their supply chains. This lack of

visibility makes it difficult for MNEs to identify responsible business conduct challenges and engage with supply chain actors to appropriately address them.

51. *Transactional nature of supply chains.* Similarly, many supply chain relationships are characterized by their transitory nature. In short-term relationships focused on a one-time delivery, possibly of a product that has already been manufactured, there is little opportunity for even well-resourced and highly committed MNEs to assess and address responsible business conduct issues with specific suppliers.

52. *Lack of bargaining power.* Even in longer-term supply chain relationships based on supplier selection or strategic management supply management models, MNEs struggle with a lack of bargaining power to require responsible business conduct in the supply chain. The threat of lost business generally is not a strong deterrent for irresponsible business conduct by suppliers who can often find another buyer with less stringent requirements. Also, MNEs are often hesitant to withdraw business based on irresponsible business conduct because there are significant costs associated with switching suppliers, and in the worst case, a supplier closure has significant negative repercussions for workers and local economies. MNEs may also be unable to offer positive incentives such as preferred contracts or higher prices for responsible business conduct to suppliers.

53. *Poor MNE internal alignment.* There is often an unresolved tension within MNEs between commercial and responsible supply chain management objectives, particularly for purchasing and supply management staff. This tension can be further aggravated by product design that does not account for responsible business conduct issues, such as setting product specifications that require the use of highly toxic chemicals, and logistics complications that create significant time pressures and lead to worker overtime requirements or insufficient rest breaks. Until responsible business conduct issues in the supply chain become a priority for all functions within MNEs, responsible supply chain management efforts may be unintentionally circumscribed by supplier requirements from other parts of the business.

54. *Weak or perverse incentives for suppliers.* The lack of internal alignment can create competing incentives for suppliers as described above. This is exacerbated by many of the responsible supply chain management approaches currently employed by MNEs which focus on negative consequences for non-compliance rather than incentives for improved or consistent performance. In these situations, it is often easier for suppliers to fake compliance using double sets of books, forged certifications, etc. Competing incentives are also introduced by governments – for example, suppliers sometimes use double sets of books to demonstrate a smaller staff and therefore decrease their tax burden or other social contribution requirements.

III. Translating Multinational Enterprise Responses into Broader Operational Principles and Standards for Responsible Supply Chain Management Conduct

A. Opportunities for Defining Responsible Supply Chain Management

55. While the approaches to responsible supply chain management described above generally represent well-intentioned efforts by MNEs and other stakeholders to address emerging and evolving challenges in responsible business conduct in the supply chain, they are limited by the deficit in understanding of what defines MNE responsibility for responsible business conduct in supply chains.

56. MNEs should seek first and foremost to meet international, national, and local laws relevant to legal business conduct in the practices of their supply chains. To clearly define MNEs' responsibilities in responsible supply chain management though, an overarching framework is also needed to define MNEs responsibilities.

57. To effectively promote responsible business conduct throughout supply chains, and to help MNEs to understand how to direct their efforts in order to meet their responsibilities, such a framework needs to take into account the complexity of supply chain relationships, the evolving nature of responsible business conduct issues, and the complicated and overlapping web of international legal and voluntary standards and national and local laws. Therefore, it is limiting to strictly define MNE responsibilities in terms of a particular type of supply chain relationship or supplier tier. For example, some of the most serious responsible business conduct issues, such as forced labor in mines in conflict-affected areas, arise in the sub-tiers of MNEs' supply chains, and a definition of responsibility and responsible supply chain management that is limited to only to the first tier of suppliers would overlook these issues.¹⁸

58. Rather, what is needed is a framework that describes how MNEs themselves should define and manage their responsibilities for responsible business conduct in the supply chain based on their unique supply chain relationships and the responsible business conduct issues that may arise in the context of those relationships. The framework should provide guidance on:

- *Assessment*: how MNEs should identify and understand the full universe of potential responsible business conduct issues in their supply chains.
- *Prioritization*: how MNEs should prioritize these issues to determine what issues, and therefore suppliers, to engage with.
- *Management*: how MNEs should manage prioritized issues.

59. Additionally, such a framework should emphasize that, due the evolving and emerging nature of responsible business conduct issues in the supply chain, responsible supply chain management requires an ongoing, iterative approach to assessment, prioritization, and management of issues.

60. A framework for defining responsible supply chain management should also specify the two types of responsible business conduct issues that MNEs should assess, prioritize, and manage:

- *Risks to society*: potential outcomes that would have a detrimental effect on human rights, labor rights, consumer interests, the environment, economic development and inclusion, and good governance as defined in international legal and voluntary standards.
- *Risks to business*: potential outcomes that would have a detrimental effect on achieving business success including realizing business strategies, meeting financial targets, ensuring business continuity, containing costs, protecting reputation and brand equity, meeting customer and investor expectations, and other sources of business value.

18. The UN Protect, Respect, Remedy Framework pointed out similar challenges with trying to identify a limited set of rights for which they may bear responsibility and concluded that there are few if any internationally recognized rights business cannot impact – or be perceived to impact – in some manner. See John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Human Rights Council, (2008), www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf.

61. As described in Part II, some leading MNEs are also making positive contributions to create value through responsible supply chain management. These MNEs use assessment of responsible business conduct issues in the supply chain to identify present, emerging, and potential risks as well as opportunities for value creation. They prioritize those issues that are important to stakeholders and that have an influence on business success, and engage with suppliers to realize opportunities. While it is important to recognize that responsible supply chain management can make a positive contribution to create value for society as well as for MNEs and suppliers, the assessment, prioritization, and management of opportunities for positive contribution is beyond the scope of MNE baseline responsibility for responsible supply chain management.

62. There are a number of different concepts that MNEs have used for defining and managing baseline responsible business conduct in the supply chain and which may prove useful for establishing a comprehensive framework:

- *Investment nexus*: the practical ability of MNEs to influence the conduct of their business partners with whom they have an investment-like relationship.
- *Sphere of influence*: the scope of power and influence that a MNE has over the decisions and activities of suppliers.
- *Impact*: the positive or negative change resulting from MNEs' decisions and activities.
- *Due diligence*: the process of evaluating (and managing) the risk involved in doing business with an entity prior to establishing and during a relationship.
- *Materiality*: the assessment of the relative importance of an issue based on its impact on MNEs' business strategy as well as its impact on society.
- *Continuous improvement*: the process of identifying and realizing opportunities for performance improvement.

63. Below, each of these concepts is explored in detail and analyzed for usefulness in assessing, prioritizing, and managing responsible business conduct opportunities and risks to business and society.

B. Investment Nexus

64. The concept of investment nexus has been the foundation for guidance developed by the OECD Committee on International Investment and Multinational Enterprises (CIME) on how the Guidelines are intended to apply to supply chains.¹⁹

65. The investment nexus concept is broadly defined as the idea that MNEs' practical ability to influence the conduct of their business partners is based on the extent to which they have an investment-like relationship. Some National Contact Points have given a broad interpretation to the concept of investment nexus, and accepted cases on supply chains and contractual relationships, while others have given the investment nexus a much more narrow interpretation, and therefore excluded similar cases.

66. At present, the OECD is the only international institution that uses the concept of investment nexus. In the OECD CIME statement on the scope of the Guidelines issued in 2003, the concept is used to provide guidance to MNEs on the scope of the applicability

19. OECD, "Statement by the Committee", *Scope of the Guidelines and the Investment Nexus*, (2003), www.oecd.org/document/3/0,3343,en_2649_34889_37356074_1_1_1_1,00.html.

of the Guidelines to supply chain relationships. No other international standard or guidance references the concept.

67. There is an obvious connection between the investment nexus concept and responsible supply chain management. In particular, the concept suggests that MNEs assess and prioritize the responsible business conduct issues that arise in their supply chains based on where they have strong, investment-like relationships.

68. However, the concept is weak in three key ways. First, it does not advise on how to determine if a supply chain relationship is investment-like. The CIME statement on the scope of the Guidelines recommends a “case by case approach ... that takes into all factors relevant to the nature of the relationship and the degree of influence”, which leaves the meaning of investment nexus and investment-like relationships subject to interpretation.²⁰

69. Second, the concept does not provide any guidance on what responsible business conduct issues MNEs should assess, prioritize, and manage. Specifically, it does not distinguish between responsible business conduct risks to society or to business. Third, the investment nexus concept lacks recommendations for MNEs on managing responsible business conduct.

70. Consequently, the concept of investment nexus is too flexible and open to interpretation to be applied as a framework for responsible supply chain management.

C. Sphere of Influence

71. The concept of sphere of influence is currently the predominant paradigm for responsible supply chain management.

72. While it is difficult to establish the exact meaning of the sphere of influence concept, it is generally used to refer to the scope and extent of power and influence that a MNE has over the decisions and activities of other entities.

73. The concept of sphere of influence is quite prevalent in international principles and standards. For example, the concept of sphere of influence will be included in the final ISO26000 standard in some form, although there are ongoing discussions by the drafting group about how the standard can be aligned with the UN Protect, Respect, Remedy Framework. The ISO26000 drafting group discussed in May 2010 the following definition of sphere of influence: “range/extent of political, contractual, economic or other relationships through which an organisation has the ability to affect the decisions or activities of individuals or organisations.”²¹ In addition, the drafting group recommends that the standard clarify that:

“An organisation does not always have a responsibility to exercise influence purely because it has the ability to do so. For instance, it cannot be held responsible for the impacts of other organisations over which it may have some influence if the impact is not a result of its activities. However, there will be situations where an organisation will have a responsibility to exercise influence. These situations will be determined by the extent to which the organisation’s relationship is contributing to negative impacts.”²²

20. Ibid.

21. ISO, *Copenhagen Discussion Document: Copenhagen Key Topics (CKTs) – 4 May 2010*, (2010), <http://isotc.iso.org/livelink/livelink?func=ll&objId=9180193&objAction=Open>.

74. Additionally, the UN Global Compact refers to sphere of influence to establish the scope of MNE responsibilities for application of the principles contained therein. In this context, sphere of influence was intended as a spatial metaphor: the “sphere” was expressed in concentric circles with MNE operations at the core, moving outward to suppliers, the community, and beyond, with the assumption that the “influence” – and thus presumably the responsibility – of the MNE declines from one circle to the next.²³ The criteria for determine which suppliers fit into which circles was a loose paradigm based on the suppliers’ proximity to the MNE in terms of contractual relationship. However, the Global Compact’s practical guide on supply chain sustainability does not use the concept of sphere of influence.

75. While the link between the concept of sphere of influence and responsible supply chain management is clear, and can in practice be useful for identifying opportunities for positive contributions to responsible business conduct in the supply chain, there is a growing recognition that the concept is flawed both in theory and in practice.

76. First, despite its prevalence, there is still considerable lack of clarity as to the meaning of the concept. Its exact meaning in practice is highly specific to individual MNEs based on a holistic view of the business, its partnerships and relationships with other entities and governmental agencies, its legal structure and organisation, as well as its physical property and operations.²⁴ The vague use of the concept has left it overly flexible and malleable.

77. Further, according to the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “sphere of influence conflates two very different meanings of influence: one is impact, where the MNE’s activities or relationships are causing human rights harm; the other is whatever leverage a MNE may have over actors that are causing harm. The first falls squarely within the responsibility to respect; the second may only do so in particular circumstances.”²⁵ The representative goes on to explain that “anchoring corporate responsibility in the second meaning of influence requires assuming, in moral philosophy terms, that ‘can implies ought’. But MNEs cannot be held responsible for the human rights impacts of every entity over which they may have some influence, because this would include cases in which they were not a causal agent, direct or indirect, of the harm in question. Nor is it desirable to have MNEs act whenever they have influence, particularly over governments.”²⁶

78. As a foundation for responsible supply chain management, application of the concept of sphere of influence does not sufficiently distinguish between risks and MNEs’ capacity to exert influence. It could lead MNEs to miss considerable risks in sub-tiers of supply chains. For example, the most serious responsible business conduct issues in supply chains, e.g. child labor, forced labor, and serious violations of health and safety, often exist in sub-tiers of MNEs supply chains, precisely where influence is weak, but

22. Ibid.

23. John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Human Rights Council, (2008), www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf.

24. Urs Gasser, post on “Corporate Social Responsibility: What is the Meaning of ‘Sphere of Influence?’”, *Law and Information Blog*, entry posted October 25, 2006, <http://blogs.law.harvard.edu/ugasser/2006/10/25/corporate-social-responsibility-what-is-the-meaning-of-sphere-of-in/>.

25. Ruggie, (2008).

26. Ruggie, (2008).

where significant risks may still exist. Consequently, MNE responsible supply chain management programs based on sphere of influence may not prioritize issues that are critical risks to society nor to the business itself.

79. Since the concept of sphere of influence does not provide useful guidance on assessing, prioritizing or managing responsible business conduct risks in the supply chain, and has been largely discredited in the international community, it is insufficient as a framework for responsible supply chain management.

D. Impact

80. The concept of impact is also increasingly referenced as a foundational concept for MNEs' responsible supply chain management programs.

81. The draft ISO26000 standard defines impact as the "positive or negative change to society, economy or the environment, wholly or partially resulting from an organisation's past and present decisions and activities."²⁷

82. Beyond the draft ISO26000 standard, impact is used in many other international standards including the UN Global Compact and the International Finance Corporation's Policy on Social and Environmental Sustainability. In the current debate, impact is often used in place of the idea of influence – the UN Protect, Respect, Remedy Framework suggests that one meaning of influence is the concept of impact, where the MNE's activities or relationships are causing harm. The UN Protect, Respect, Remedy Framework also uses the concept of impact to explain that the scope of corporate responsibility to respect human rights is defined by the actual and potential human rights impacts resulting from a MNE's business activities and the relationships connected to those activities.²⁸

83. The concept of impact has useful links to responsible supply chain management. As a framework, it is a helpful concept for MNEs to employ in evaluating opportunities for positive contributions to responsible business conduct in the supply chain. And unlike sphere of influence, it does not presuppose any geographic or spatial formula.

84. However, based on the current use of the term in international standards and principles, it is unclear if the term is limited to risks to society or if it also encompasses risks to business. While critical to assessing and understanding where MNEs might have a negative impact on society, the former interpretation would leave a gap in guidance on how MNEs should prioritize investments and engagement with suppliers to mitigate these risks based on their potential impact on the business.

85. In practice, the use of impact as a foundational framework for responsible supply chain management may result in MNEs prioritizing engagement on high societal risk issues and overlooking issues that are perceived as lower risk to society but that present serious business risk.

86. Impact is a useful framework for understanding how to prioritize engagement with responsible business conduct issues and suppliers. However, as an independent framework for responsible supply chain management, impact is not an adequate foundation for management.

27. ISO, *Draft International Standard ISO/DIS26000: Guidance on Social Responsibility*, Geneva: ISO, (2009), http://isotc.iso.org/livelink/livelink/fetch/-8929321/8929339/8929348/3935837/ISO_DIS_26000_Guidance_on_Social_Responsibility.pdf?nodeid=8385026&vernum=-2.

28. Ruggie, (2008).

E. Due Diligence

87. The concept of due diligence is often an implicit starting point for MNEs seeking to build responsible supply chain management programs.

88. Although definitions vary to some extent, the ISO26000 drafting group discussed in May 2010 the following definition of due diligence: a “comprehensive, proactive process to identify the actual and potential negative social, environmental and economic impacts of an organisation’s decisions and activities, with the aim of avoiding and mitigating those impacts.”²⁹ There are differing conceptions of due diligence as a management process *versus* an assessment approach that should be part of a larger, more robust management system.

89. Due diligence is currently referenced in a number of international standards and principles. In addition to ISO26000, the UN Global Compact references due diligence in its guidance on the responsibility of business to respect human rights.³⁰ Further, the OECD Pilot Project in the Mining and Minerals Sector is developing “draft due diligence guidance” as a framework for MNEs to manage risks related to the supply chains of minerals sourced from conflicted-affected and high-risk areas.³¹ The UN Protect, Respect, Remedy Framework states that to discharge the responsibility to respect human rights requires due diligence and defines the core elements of human rights due diligence as:

1. having a human rights policy;
2. assessing human rights risks and impacts;
3. integrating human rights throughout a company;
4. having a mechanism to handle grievances; and
5. tracking and reporting performance.³²

90. The concept of due diligence has obvious links to responsible supply chain management. As a conceptual framework, it is useful for helping MNEs assess the issues and consequently which suppliers to engage with on responsible business conduct. Further, the concept as defined by the UN Protect, Respect, Remedy Framework, which has gained considerable traction among MNEs, international organisations, and other stakeholders, also provides guidance on managing human rights issues. Because the UN Protect, Respect, Remedy Framework includes both a definition of responsibility, *i.e.* “do no harm”, as well as more operational guidance in the form of due diligence, it could be a key component of responsible supply chain management.

91. In view of the diversity of responsible business conduct issues covered by the Guidelines, however, the UN Protect, Respect, Remedy Framework concept of due diligence would require further elaboration with regard to providing guidance on other issues beyond human rights, such as the forthcoming guide on due diligence in minerals supply chains from the OECD.³³ Additionally, the concept could be further augmented with

29. ISO, *Copenhagen Discussion Document: Copenhagen Key Topics (CKTs) – 4 May 2010*, (2010), <http://isotc.iso.org/livelink/livelink?func=ll&objId=9180193&objAction=Open>.

30. UN Global Compact, “The Ten Principles: Principle One”, *The United Nations Global Compact*, (2000), www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html – www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html.

31. OECD, *Draft Due Diligence Guidance, Pilot Project in the Mining and Minerals Sector: Corporate Due Diligence for Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas*, (forthcoming).

32. Ruggie, (2008).

practical guidance on the balanced prioritization of risk mitigation efforts. That additional practical guidance should consider both risks to business and to society and should recognize that some environmental or social issues do not necessarily represent an equal risk to business and to society.

92. In practice, due diligence provides guidance to MNEs on the identification and management of risks to both society and business. Additional guidance on prioritization would help companies ensure a balanced mitigation of the broad range of risks related to responsible business conduct.

93. In sum, due diligence is a robust, near-comprehensive approach for assessing and managing responsible business conduct risks, and with some further adjustments, could be the core of an overarching framework for supply chain management.

F. Materiality

94. The concept of materiality is a separate, additional interpretation of the concept of impact that considers both the effects of a responsible business conduct risk on society as well as on a MNE.

95. Materiality is generally defined as the assessment of the relative importance of an issue based on its impact on a MNE's business strategy as well as its impact on society. Originally, the concept pertained to the reporting of business risk to regulators and investors, but has been expanded within the field of responsible business and corporate responsibility to encompass risks to business and society as well as opportunities for value creation. A responsible business materiality assessment begins by identifying all of the possible issues that could arise in the supply chain and then evaluating the potential impact of each issue on a MNE's business success as well as its potential impact on society (using the issue's importance to stakeholders as a proxy) to determine which issues are most material for the MNE and society.

96. The concept of materiality is not yet prevalent in international principles or standards but is increasingly used as a foundation by MNEs in responsible business reporting and strategy. For example, it is a key principle of the Global Reporting Initiative Sustainability Reporting Framework.

97. Although it is still a nascent concept in this field, materiality has clear links to responsible supply chain management. As a framework, it provides strong guidance to MNEs on the evaluation of risks to society and business as well as opportunities.

98. However, materiality does not offer a comprehensive management process for the issues that MNEs determine should be high priority. Accordingly, materiality is inadequate as a comprehensive framework for responsible supply chain management and is most useful for assessment and prioritization.

G. Continuous Improvement

99. Finally, the concept of continuous improvement, while less prevalent in international principles, is also increasingly cited as a basis for MNE responsible supply chain management programs. The UN Industrial Development Organization defines continuous improvement as "a process that identifies opportunities for performance improvement and facilitates their realization through the use of metrics, process development

33. Ruggie, (2008).

methodologies/approaches, project management principles, and reporting tools that support strategic and business plans.”³⁴

100. At present, continuous improvement is only included in a small number of international standards, although the UN Protect, Respect, Remedy Framework references the idea, and emphasizes an iterative approach to due diligence.³⁵ However, continuous improvement is a widely applied business concept embedded in the management systems approach and has been applied to supply chains to address quality concerns. Many MNEs have also begun to use the concept as a basis for aspects of their responsible supply chain management programs, particularly supplier capability building and management systems development.

101. The link between the concept of continuous improvement and responsible supply chain management is therefore apparent. The advantage of continuous improvement is that it provides guidance on applying an iterative approach to assessing, prioritizing, and managing responsible business conduct issues in the supply chain.

102. The concept is limited though because, like sphere of influence, continuous improvement may lead MNEs to focus more on the “can” than on the “ought” – on what they are more easily able to do rather than difficult issues for which they may have responsibility. It also does not offer any clarity on the types of issues – risks to society or risks to business – that should be identified and addressed.

103. In practice, a MNE responsible supply chain program based exclusively on the concept of continuous improvement might over-emphasize “quick wins” and fail to make investments in high-risk responsible business conduct issues and suppliers based on a perception of low likelihood of improvement. The continuous improvement framework applied on its own would also emphasize capability building and management systems development over (more widespread) monitoring, leaving MNEs potentially unaware of risks in unmonitored parts of their supply chains.

104. Although useful as a concept to guide implementation of a responsible supply chain management framework, continuous improvement does not provide clarity on the elements of assessment, prioritization, or management of risks to business and society. Therefore, the concept of continuous improvement is deficient as a comprehensive framework for responsible supply chain management.

H. Towards a Comprehensive Framework for Responsible Supply Chain Management

105. MNE responsible supply chain management should be based on a framework that promotes a strong understanding of where risks to the business and to society exist. Such a framework should also provide guidance on the elements of a robust management system which includes not only assessment of responsible business conduct issues in the supply chain but also processes for appropriately prioritizing and managing those issues.

106. Of the concepts reviewed, the concept of due diligence as defined by the UN Protect, Respect, Remedy Framework provides the strongest foundation for a comprehensive framework for assessing and managing responsible business conduct issues in the supply chain. Due diligence can usefully be augmented with concepts of materiality and continuous improvement that provide additional guidance on the prioritization of responsible supply

34. UNIDO, *SPX Expert Corner: Supply Chain Management Glossary*, www.unido.org/index.php?id=o51310.

35. Ruggie, (2008).

chain issues, clearly specify the necessity of prioritization based on risks to business and to society, and applying a continuous improvement approach to responsible business conduct in the supply chain.

107. The three concepts illustrated below – due diligence, materiality, and continuous improvement – would together create a comprehensive framework. As an overarching framework for responsible supply chain management, due diligence describes the steps MNEs must take to assess, prioritize, and manage responsible business conduct issues in the supply chain. Materiality offers additional guidance specifically on the assessment and prioritization elements of due diligence to ensure that all potential impacts – risks to society as well as to business – are evaluated and prioritized. Continuous improvement provides guidance on implementation of the framework to ensure that MNEs assess, prioritize, and manage evolving and emerging risks.

IV. Developing Guidance on the Application of the OECD Guidelines to Supply Chain Relationships

A. Current Guidance on Responsible Supply Chain Management in the OECD Guidelines

108. At present, the OECD Guidelines for Multinational Enterprises offer limited guidance related to responsible supply chain management. References to suppliers are limited to the General Policies and associated Commentary, the Commentary on Disclosure, the Commentary on Environment, and the Guidance on Competition.

- *General Policies*: MNEs are prompted to “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines” in the General Policies. The Commentary on this General Policy focuses on why this encouragement is important to meeting the objectives of the Guidelines and on the limitations MNEs face in actually doing so. Very little is offered in terms of guidance on how to apply this Policy.
- *Commentary on Disclosure*: Suppliers are also referenced in the Commentary on Disclosure, specifically in relation to social, environmental, and risk reporting.
- *Commentary on Environment*: Additionally, the Commentary on Environment references the importance of engaging with suppliers (among other stakeholders) to build trust in MNEs and “understanding on environmental issues of mutual interest.”
- *Guidance on Competition*: The Guidance on Competition encourages MNEs to “refrain from entering into or carrying out anti-competitive agreements among competitors ... to share or divide markets by allocating customers, suppliers, territories or lines of commerce.”

109. The Guidelines do not provide any definition of supplier or supply chain.

110. Additionally, the Guidelines currently make little use of the concepts described above:

- *Investment nexus*: Investment nexus is currently not referenced at all.
- *Sphere of influence*: The Commentary on the General Policies does refer to influence and scope of influence, which though not defined are presumed to be related to the concept of sphere of influence. The Commentary acknowledges the variation in the extent and the scope of influence that MNEs have, and also specifies that “Established or direct business relationships are the major object of this recommendation rather than all

individual or *ad hoc* contracts or transactions that are based solely on open market operations or client relationships.” However, the Commentary does not provide any guidance on how MNEs can determine what influence they have with suppliers or on responsible business conduct issues. It also does not offer any advice on how MNEs should use their influence in responsible supply chain management.

- *Impact*: The concept of impact is referenced but not in regard to supply chain relationships.
- *Due diligence*: Due diligence is currently not referenced at all.
- *Materiality*: The concept of materiality is referenced but not in regard to supply chain relationships.
- *Continuous Improvement*: The concept of continuous improvement is referenced but not in regard to supply chain relationships.

B. The Imperative for Revisions to the Guidelines on Responsible Supply Chain Management

111. There is clearly an opportunity for the OECD to significantly strengthen the guidance on responsible supply chain management provided by the Guidelines. There is also an obvious imperative to do so.

112. As discussed throughout this paper, there is no universal standard that defines the responsibilities of MNEs for the responsible business conduct issues in supply chains described above, with the exception of the UN Protect, Respect, Remedy Framework which defines responsibilities related to human rights. Not only does this create challenges for MNEs which seek direction for their well-intentioned efforts on responsible supply chain management, it also inhibits accountability for MNEs that have not proactively engaged with responsible business conduct issues in the supply chain. The OECD Guidelines are an appropriate instrument to use to clarify responsible supply chain management for four primary reasons: current relevance to MNEs and stakeholders, comprehensiveness, structure, and implementation mechanism.

113. *Current relevance*. First, as described in Part II, the Guidelines are currently used by MNEs and other stakeholders as a reference point for the baseline expectations of MNEs in responsible supply chain management. Rather than creating a new instrument for responsible business conduct in supply chains, it is more useful to integrate responsible supply chain management into existing instruments.

114. *Comprehensiveness*. The OECD Guidelines are the most comprehensive multilaterally-agreed corporate responsibility instrument currently in existence. The only other similarly comprehensive standard for responsible business conduct, the UN Global Compact, is designed for business rather than government adherence. Other international government standards are limited to specific issues in responsible business conduct.

115. *Structure*. The OECD Guidelines are also structured in a way that facilitates further guidance and clarification on responsible supply chain management, for example through Commentary. Unlike other international standards, which have little room for adjustment and no established regular method for revision, the structure of the Guidelines allow detailed guidance to be added through regular updates.

116. *Implementation mechanism*. Finally, the OECD Guidelines also have a unique implementation mechanism that can be leveraged to help further realization of any

additional guidance on responsible supply chain management. Through their “specific instances” facility, National Contact Points (NCPs) offer support for resolving disputes between MNEs and stakeholders arising from alleged non-observance of the Guidelines. Further considerations for the role of NCPs in relation to responsible supply chain management are examined below.

C. Opportunities to Provide Additional Clarity and Guidance on Responsible Supply Chain Management

117. To provide maximum guidance and clarity on how MNEs should apply the Guidelines in their supply chain relationships, the Guidelines should describe and encourage MNEs to implement a comprehensive framework that outlines how MNEs can assess, prioritize, and manage responsible business conduct issues in the supply chain. As described in Part 2, the three concepts of due diligence, materiality, and continuous improvement could be integrated to create a complete framework.

118. Based on the above analysis of the use of these concepts, it will be critical to clearly define each of these concepts in the Guidelines and to explain how they are intended to complement each other.

119. Additionally, any revision of the Guidelines should include an explanation of what is meant by suppliers and supply chain relationships. This could be included in the Concepts and Principles, where the definition of MNEs is currently addressed, or as part of any of the options described below.

120. There are a number of options to present this framework in the Guidelines:

- *Option 1:* Revise the tenth General Policy and associated Commentary.
- *Option 2:* Revise only the Commentary associated with the tenth General Policy.
- *Option 3:* Revise the Commentary on Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, and Science and Technology.
- *Option 4:* Revise the Commentary on Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, and Science and Technology in combination with Option 1 or 2.
- *Option 5:* Add a special annex on the responsibilities of MNEs in applying the Guidelines to supply chain relationships.

121. Options should be considered based on their ability to provide complete guidance at a level of detail deemed appropriate by adhering governments. For example, edits to the text of the guidelines must be approved by the OECD Council, while the Commentaries are adopted at the level of the Investment Committee. Likely MNE perceptions of the level of importance of the guidance in relation to other elements of the Guidelines should also be considered. Each option is described in detail below.

122. *Option 1.* The most obvious option is to revise and expand on the tenth General Policy and Commentary that specifies that MNEs should encourage suppliers to apply principles of corporate conduct compatible with the Guidelines. This Policy could be considerably strengthened by recommending that MNEs apply the concept of due diligence to assess, prioritize, and manage material responsible business conduct impacts, as defined by the Guidelines, in their supply chain relationships.

123. The Commentary would need to be revised to explain the concept and each element of due diligence – assess, prioritize, and manage. The Commentary would also

need to describe the concepts of materiality and continuous improvement and how they should be applied by MNEs to implement the elements of due diligence.

124. The advantage of this option is that responsible supply chain management would be highlighted as a fundamental obligation of MNEs in meeting the OECD Guidelines. However, the links to specific Guidelines, such as Consumer Interests and Environment, might not be as clear.

125. *Option 2.* The Guidelines could be updated by revising only the Commentary related to the tenth General Policy without revising the Policy itself. The Commentary could be expanded as described above to present the framework of due diligence, materiality, and continuous improvement and describe responsibilities in responsible supply chain management.

126. This option, while somewhat clarifying and strengthening the Guidelines, would not send as strong of a message to MNEs about the necessity of responsible supply chain management as part of meeting the OECD Guidelines.

127. *Option 3.* Guidance on responsible supply chain management could be provided through the Commentary on Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, and Science and Technology. This would necessitate a comprehensive explanation of the framework and descriptions of the concepts of due diligence, materiality, and continuous improvement throughout the Commentary of the Guidelines.

128. While the importance of responsible supply chain management would be emphasized by including it in so many places, the guidance would be somewhat difficult to access and may be perceived as a weak recommendation by MNEs. The guidance might also become repetitive, which would weaken the Guidelines overall by unnecessarily lengthening them.

129. *Option 4.* A revision of the tenth General Policy or the General Policies Commentary could be complemented by additional guidance through changes to the Commentary on Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, and Science and Technology. Because the framework and concepts would be clearly explained in the tenth General Policy and Commentary, it would not be necessary to repeat that information. Rather, the expanded Commentaries could offer more detail on how MNEs should apply the framework specifically to the subject of each chapter.

130. This option would be helpful for providing more detailed guidance on responsible supply chain management and emphasizing its importance throughout the Guidelines. However, it would also disaggregate the guidance and potentially make it more difficult for MNEs to comprehensively identify responsibilities.

131. *Option 5.* Finally, the Guidelines could provide stronger and clearer guidance on responsible supply chain management by adding a special annex on the responsibilities of MNEs in applying the Guidelines to supply chain relationships.

132. Because this would be a new format for the Guidelines, the options for how this could be designed are numerous. In general, an annex could cover many of the topics described above – an overall framework for applying the Guidelines in supply chain relationships and an explanation of how the concepts of due diligence, materiality, and continuous improvement should be applied to assessment, prioritization, and management

of responsible business conduct for responsible supply chain management. An annex could also provide more detailed guidance on how MNEs can apply the framework to the specific topics covered by the Guidelines.

133. The advantage of this option, like the option of strengthening the tenth General Policy and the General Policies Commentary, is that all of the guidance would be captured in one place in the Guidelines and easily accessible. As described, a special annex would also be the most comprehensive of the options discussed. However, the lack of precedent for a special annex could create a challenge with regard to the perception by MNEs. On the one hand, a special annex could be perceived as emphasizing the importance of responsible supply chain management. However, by separating the guidance from the existing guidance and formatting it differently, responsible supply chain management could be interpreted as a topic not integral to the Guidelines. One alternative would be to create a “reference annex” that gathers together the Guidelines text and Commentary from various sections so that these are accessible in one place, though without any official status beyond being a collection of related text that has been approved by adhering governments.

D. Considerations for the Role of the National Contact Points

134. Finally, it is important to consider how revisions to the Guidelines to provide guidance on supply chain relationships might impact the role of the NCPs and whether any additional guidance is needed in Part II of the Guidelines. This implementation mechanism is unique among international responsible business conduct instruments and as such presents unique opportunities to further realization of the guidance provided on responsible supply chain management.

135. The terms of reference for the update of the Guidelines covers procedural provisions and institutional issues related to NCPs, including promotion of the Guidelines, implementation in specific instances, NCP co-operation, and peer learning. In practice, new guidance related to responsible business conduct in supply chains, if adopted by adhering governments, will also require careful consideration of how the NCP mechanism will be affected.

136. Currently, the Procedural Guidance and associated Commentary do not offer any guidance specifically related to MNEs’ application of the Guidelines in supply chain relations.

137. Specific instances of responsible business conduct issues in supply chains will be more difficult to resolve because supply chain relationships are complex and relationships can be unclear. Each specific instance will likely have particular complexities. For example, many suppliers in global MNE supply chains are based in non-adhering countries. The Commentary does however provide some direction on the role of NCPs in the event that Guidelines-related issues arise in a non-adhering country and this will be further expanded by the update process. However, it is important that each specific instance be carefully implemented with due caution and concern for all the parties involved, and in the spirit of shared learning and problem solving.

138. More specifically, NCPs will require information and guidance about responsible business conduct issues in supply chains, responsible supply chain management practices, and guidance in promoting this aspect of the Guidelines. They will also require guidance on implementing the specific instances facility – specifically on which instances to accept,

procedures for further investigation, and guidance on mediation and adjudication, and how to pursue peer learning opportunities. In addition, guidance related to third-party standing will be particularly important given that responsible business conduct issues in supply chains typically involve multiple parties who share responsibility in some way.

139. Given the options for revising the Guidelines described above, resolution of an issue either through mediation or adjudication could require confirmation that MNEs had implemented the responsible supply chain management framework to assess, prioritize, and manage responsible business conduct issues in the supply chain. Mediation and adjudication could center on demonstration of MNE efforts to implement the framework recommended in the Guidelines.

140. To offer further guidance, the Procedural Guidance and Commentary could be expanded to provide detail on which specific elements of the responsible supply chain management framework NCPs should take into account in making an initial assessment of whether the issue raised merits further examination and in crafting a statement and recommendations, if needed.

141. The Procedural Guidance and Commentary could also be revised to further clarify the need for full transparency. Because the issues associated with responsible business conduct in the supply chain continue to evolve, and the framework described above places the onus for defining and managing responsibilities on MNEs, there will be considerable learning opportunities that arise from issues brought to NCPs. Guidance on how to disseminate information on issues that have been raised would support MNE efforts to appropriately implement the responsible supply chain management framework.

V. Conclusion

142. At present, the Guidelines do not adequately reflect the challenges MNEs face in responsible supply chain management or provide appropriate guidance on MNE responsibilities to improve responsible business conduct in global supply chains.

143. The OECD has identified a critical opportunity to strengthen the OECD Multinational Guidelines on the application of the OECD Guidelines to supply chain relationships, which will not only improve the Guidelines themselves but advance the field of international standards and principles that MNEs rely on to improve responsible supply chain management.

144. Guidance should include clear definition of MNEs responsibilities related to responsible business conduct in supply chains and enable MNEs to assess, prioritize, and manage risks to society and risks to business.

145. This topic is rapidly evolving and will likely need more frequent updating and clarification in the future. The June 30th workshop is an important first step to ensuring the Guidelines reflect the latest thinking and practice in responsible supply chain management by MNEs.

APPENDIX

APPENDIX A

Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS¹

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”);

- | | |
|--|---|
| Conflicting Requirements | <ol style="list-style-type: none"> 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; <p>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 hereto³.</p> |
| International Investment Incentives and Disincentives | <p>IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment;</p> <ol style="list-style-type: none"> 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 Review | <p>V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;</p> <p>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.</p> |

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) contribute 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 Investment Committee 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

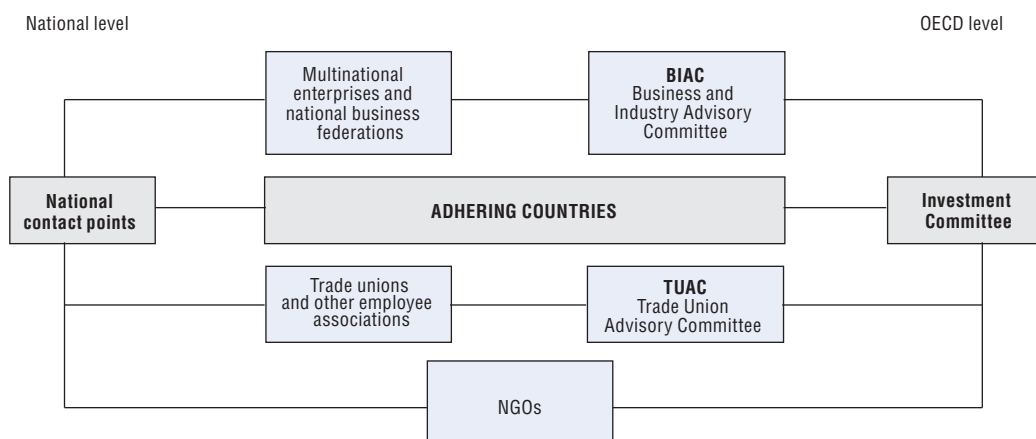
Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises

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

Structure of the National Contact Points

Structure of the National Contact Points

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	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 Contact 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 incoming 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 Economy, Family and Youth	Other divisions of the Federal Ministry of Economy Family and Youth 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 Interdepartmental Committee is chaired by DFAIT at the Director General level.

Structure of the National Contact Points (cont.)

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Chile	The Directorate of International Economic Relations is responsible for coordinating and managing of specific instances. Other departments and agencies participate as required according to the subject of any case submitted.	Ministry of Foreign Affairs, Directorate of International Economic Relations		The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Industry and Trade	Ministry of Labour and Social Affairs Ministry of Finance 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 Trade Union Ministry of Environmental Affairs	
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

Structure of the National Contact Points (cont.)

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Finland	Quadri-partite with several ministries and civil society partners, as business and labour organisations	Ministry of Employment and the Economy	<p>Ministry of Foreign Affairs</p> <p>Ministry of Social Affairs and Health</p> <p>Ministry of Environment</p> <p>The Prime Minister's Office</p> <p>The Confederation of Finnish Industries (EK)</p> <p>The Central Organization of Finnish Trade Unions (SAK)</p> <p>The Finnish Section of the International Chamber of Commerce (ICC)</p> <p>FinnWatch</p> <p>The Finnish Confederation of Professionals (STTK)</p> <p>Akava – Confederation of Unions for Professional and Managerial Staff</p> <p>Federation of Finnish Enterprises</p> <p>The Finnish Consumers' Association</p> <p>WWF Finland</p> <p>The Evangelical Lutheran Church of Finland</p> <p>Tapiola Group</p> <p>Finnish Business and Society</p>	<p>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).</p> <p>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.</p> <p>The Committee on CSR had 5 over the review period.</p>
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	<p>Ministry of Labour</p> <p>Ministry of Environment</p> <p>Ministry of Foreign Affairs</p>	An Employers' Federation and six Trade Union Federations are part of the NCP.
Germany	Single Department with close inter-ministerial cooperation in specific instances procedures	Federal Ministry of Economics and Technology	<p>Federal Foreign Office</p> <p>Federal Ministry of Justice</p> <p>Federal Ministry of Finance</p> <p>Federal Ministry of Economic Co-operation</p> <p>Federal Ministry of Environment, Nature Conservation and Nuclear Safety</p> <p>Federal Ministry of Labour and Social Affairs</p> <p>Federal Ministry of Food, Agriculture and Consumer Protection</p>	The NCP works in close co-operation with other Federal ministries, the social partners and NGOs. In specific instances procedures, NCP decisions and recommendations are agreed upon between all ministries represented in the "Ministerial Group on the OECD Guidelines" (see previous column), with a particular involvement of the Federal ministry or ministries primarily concerned by the subject matter. 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. The same applies to the Working Party on the OECD
Greece	Single Department	Unit for International Investments, Directorate for International Economic Development and Co-operation, General Directorate for International Economic Policy, Ministry of Economy Competitiveness and Shipping		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, Competitiveness and Shipping, is designated as the NCP.
Hungary	Single Department	Ministry for National Economy		
Iceland	Interdepartmental Office	Ministry of Business Affairs		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment	<p>The Department of Communications, Energy and Natural Resources</p> <p>Office of the State Solicitor.</p>	

Structure of the National Contact Points (cont.)

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
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 is composed of representatives from those ministries mentioned in the previous column. A Steering Group has been established, comprising of representatives from a wide variety of stakeholders from the civil society, as well as business and employee organisations. The Steering Group objective is to create a detailed recommendation for NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the Guidelines. The bodies involved in the Steering Group are expected to also actively assist the NCP in its outreach efforts.
Italy	Single Department	General Directorate for Industrial Policy and Competitiveness, 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 Committee also includes members of the most important trade unions and business associations. Please note that regarding the NCP structure, the NCP national Committee will soon include representatives of the Permanent Regions' Conference, the Italian Banks Association (ABI), the National Confederation of Crafts and Small and Medium-Sized Enterprises (CNA), the professional association of the Italian Craft Industry (Confartigianato) and the Italian association of Chambers of Commerce, Industry, Handcraft and Agriculture (Unioncamere).
Japan	Interministerial body composed of three ministries	Ministry of Foreign Affairs (MOFA) Ministry of Health, Labour and Welfare (MHLW) Ministry of Economy, Trade and Industry (METI)		Since 2002 the Japanese NCP has been organised 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	
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.

Structure of the National Contact Points (cont.)

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
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	PROMEXICO Ministry of Labour	The NCP works in close co-operation with other concerned departments.
Morocco	Bipartite	Moroccan Investment and Development Agency	Agency Moroccan Development Investment (AMDl) Ministry of Economic Affairs and General (maeg) General Confederation of Enterprises in Morocco (CGEM)	
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 of Consumer Affairs Ministry for the Environment Ministry of Foreign Affairs and Trade Ministry of Justice New Zealand Trade and Enterprise	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 and Commercial Affairs Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Trade and Commerce Norwegian Confederation of Trade Unions Confederation of Norwegian Enterprise	A process of re-organising and strengthening the NCP is currently taking place. The re-organized NCP is expected to be launched by the summer /fall of 2010. For further information concerning the re- organisation, please see under A – Institutional arrangements, in Norway's Annual report.
Peru	Single Department	Private Investment Promotion Agency of Peru – PROINVERSION		Regarding the organisation of the Peruvian NCP, on July 1st 2009, the Board of Directors of PROINVERSION approved the following structure for the NCP: i) The Board of Directors of PROINVERSION would act as the top decision level ii) The Executive Office would act as the Secretariat through the Investment Facilitation and Promotion Division
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	

Structure of the National Contact Points (cont.)

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Romania	Bipartite Structure	<p><i>Co-ordination</i></p> <p>Ministry of SMEs, Trade and Business Environment Ministry of Foreign Affairs</p> <p><i>Executive function</i></p> <p>Ministry of SME's, Trade and Business Environment – Directorate for Business Environment and Liberal Professions Romanian Agency for Foreign Investment</p> <p><i>Technical secretariat</i></p> <p>Ministry of Foreign Affairs Romanian Agency for Foreign Investment</p>	<p>Ministry of Foreign Affairs</p> <p>Ministry of Economy</p> <p>Ministry of Public Finance</p> <p>Ministry of Justice and Citizens' Freedoms</p> <p>Ministry of Education, Research and Innovation</p> <p>Ministry of Labour, Family and Social Protection</p> <p>Ministry of Transportation and Infrastructure</p> <p>Ministry of Regional Development and Housing</p> <p>Ministry of Environment</p> <p>Ministry of SME's, Trade and Business Environment</p> <p>Romanian Agency for Foreign Investment</p> <p>Business Environment Unit</p> <p>Institute for Economic Research</p> <p>Alliance of Romanian Employers' Association Confederation</p> <p>Chamber of Commerce and Industry of Romania</p>	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	<p>Slovak Investment and Trade Development Agency (SARIO)</p> <p>Ministry of Finance</p> <p>Ministry of Labour, Social Affairs and Family (both Ministries are investment aid providers)</p>	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	<p>Ministry of Environment and Rural and Marine Affairs</p> <p>Ministry of Justice</p> <p>Ministry of Health and Social Policy</p> <p>Ministry of Labour and Immigration</p>	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	International Trade Policy Department, Ministry for Foreign Affairs	<p>Ministry for Foreign Affairs</p> <p>Ministry of the Environment</p> <p>Ministry of Employment</p> <p>Ministry of Enterprise, Energy and Communications</p>	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	Ministry of Foreign 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	Multi government departments, includes three governmental bodies.	General Directorate of Foreign Investment, Under secretariat of Treasury	<p>Ministry of Foreign Affairs</p> <p>Ministry of Justice</p>	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.

Structure of the National Contact Points (cont.)

COMPOSITION OF THE NCP		GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
United Kingdom	Two Departments	Department for Business, Innovation and Skills (BIS) and 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. The Steering Board provides the UK NCP with strategic guidance, but does not become involved in individual cases, except to review any allegations of procedural failure. 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, Energy and Business Affairs (EEB), United States Department of State	US State Department Bureau of Democracy, Human Rights, and Labor; US Departments of Commerce, Labor, and Treasury; the Office of the United States Trade Representative; the Environmental Protection Agency; and other agencies as required, including Departments of Agriculture and Justice, and the US Consumer Product Safety Commission	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 via the Advisory Council on International Economic Policy or individually on an <i>ad hoc</i> basis.

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

APPENDIX E

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.

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. 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 attempted to make the enterprise reconsider its position, but the latter was not willing to do so, arguing that it had lost confidence in the NGO's intentions. In conclusion, the specific instance finalized on the 26 of September, 2008.
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	No	The complaint was presented to the Argentinean and the Dutch National Contact Points by FOCO/INPADE and Friends of the Earth. The Argentinean National Contact Point (ANCP) notified the enterprise in due time. On September 9 th , 2008, formal admissibility of the complaint was declared. The ANCP held separate meetings with both parties. From the beginning, the enterprise did not accept the Argentinean National Contact Point's good offices, arguing that doing so could affect its position in the Argentinean Federal Courts, due to the existence of parallel proceedings of judicial nature on the same matters. The enterprise requested the ANCP to put on hold the proceedings until the resolution of the ongoing judicial causes. Considering the situation, the Dutch National Contact Point suggested that the parties could try to hold a dialogue on the issues that were not covered by the judicial causes, tackling some issues of "supra legal" nature.

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
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.						Regarding this initiative, shared by the ANCP, the parties did not reach an agreement on the scope and content of a possible dialogue. The complainants insisted on giving priority to the discussion of the matters included in the complaint as well as any other topic that could possibly arise over the course of this dialogue, even though they were not included in its formal presentation. The enterprise, in turn, expressed again the reason of the existence of parallel proceedings not to accept informal conversations, informing that the company had already been carrying out social development activities in the neighborhood close to the refinery, to help its residents. For the time being, in view of the deep differences between the parties, both NCPs (the Argentinean and the Dutch National Contact Points) decided that waiting for the decision of the courts is now the best option.
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 .
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	Concluded	Yes	No consensus reached.
Austria	Pharmaceutics.	Feb 2008	Austria	IV. Employment and Industrial Relations	Concluded	Yes	Consensus reached.
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.

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	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	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.
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.

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
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 25 th 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	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.
Brazil	Prevention of manifestation of bank strike.	September, 2009	Brazil	IV Employment and Industrial Relations, articles 7 and 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Use of legal loopholes to prevent the presence of union leaders at the bank.	September, 2009	Brazil	I. Concepts and Principles, article 7 and IV. Employment and Industrial Relations, article 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Prevention of dialogue between the workers union and the company in the case of a dismissal of an employee.	April, 2010	Brazil	IV. Employment and Industrial Relations	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
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.

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.
Canada	Submission from a coalition of four community organisations relating to a mine operated by a Canadian-based mining company	December 2009	Guatemala	II. General Policies	Ongoing	n.a.	After an initial assessment the NCP offered its good offices to facilitate dialogue between the two sides. The parties have replied and the NCP is considering the next steps.
Canada	Submission from a coalition of local NGOs regarding environmental concerns in the planning process of a mine being developed by a Canadian-based company	March 2010	Mongolia	II. General Policies V. Environment	Ongoing	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response.
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 d'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.

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 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.
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)	Concluded	Yes	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.

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	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.
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-Salomon.	Sept 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Although the parties could not agree on all facts of the particular instance, they agreed to conclude the case with the resolve to continue dialogue and without further recommendations by the NCP. See www.bmw.de/go/oeecd-nks .
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The Complainants alleged, <i>inter alia</i> , breach of the principle of <i>bona fide</i> negotiations. Parties agreed on an amicable settlement including withdrawal of court proceedings. NCP formulated expectation that dialogue is continued. See www.bmw.de/go/oeecd-nks . http://www.bmw.de/go/oeecd-nks .
Germany	Child labour in supply chain.	Oct 2004	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Based on a formal declaration by the company to more actively combat child labour the NCP closed the instance, announcing to monitor these efforts. The company since then has set up a diversified ChildCareProgram. See www.bmw.de/go/oeecd-nks .

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	Adjustment of a companies' policy (production of cars) to considerations of climate change.	May 2007	Various Germany	V. Environment	Concluded	n.a.	The specific instance was rejected due to a lack of possible violation of the <i>Guidelines</i> , the company, <i>inter alia</i> , acting in accordance with extensive national laws. www.bmwi.de/go/oecd-nks .
Germany	Alleged breaches of anti-corruption Guidelines in the context of supply transactions within the framework of the UN Oil for Food Programme.	June 2007	Iraq	VI. Combating Bribery	Concluded	n.a.	The initial assessment found that the inquiry referred solely to non-recurring supply transactions and that, in the absence of an investment nexus or supply chain responsibility, the <i>Guidelines</i> did not apply. In addition, the NCP drew the attention to pending criminal proceedings, www.bmwi.de/go/oecd-nks .
Germany	Complaint that support for the Olympic torch relay would lead to human rights violations.	April 2008	China	II. General policies	Concluded	n.a.	The specific instance was rejected due to lack of investment nexus and because the actions named in the inquiry did not constitute or directly link to possible human rights violations. www.bmwi.de/go/oecd-nks
Germany	Eviction of local population by host government's military forces in order to vacate land for a multinational companies' plantation	June 2009	Uganda	II. General Policies	Ongoing	n.a.	Specific Instance was accepted but parallel legal proceedings, third party involvement (host country) and location in non-adhering country make mediation difficult.
Germany	Multi-facetted complaint with a main focus on the impacts of the electricity companies' policy on the environment and on consumer interests	Oct 2009	Germany	II. General Policies V. Environment VII. Consumer Interests	Concluded	n.a.	The initial assessment found that the complaint was based on an extensive interpretation of the <i>Guidelines</i> and partial misinterpretation of some facts. www.bmwi.de/go/oecd-nks
Germany/ Sweden	Indigenous rights allegedly affected by large windmillprojekt; responsibility of financial institution	April 2010	Sweden	II. General Policies	Ongoing	n.a.	Swedish NCP requested to take the lead.
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.

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
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 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.	Initial assessment is made and the Japanese NCP is 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.
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 enterprise's 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		

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
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	Concluded	No	An initial assessment found that the involved company had not violated the Guidelines.
Mexico	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 <i>Llanti Systems</i> 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 <i>Llanti Systems</i> 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	Concluded	Yes	After a thorough analysis the NCP concluded that there was no evidence that the Company violated Chapter IV of the Guidelines.
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).

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 (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.
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, see 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.

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	Maltreatment of employees and <i>de facto</i> 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.
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.
New Zealand	Employment practices of an enterprise in the telecommunications sector.	September 2009	New Zealand	II. General Policies IV. Employment and Industrial Relations	Initial assessment in progress	N/A	The SI was also brought to the attention of the Australian and German NCPs, and the New Zealand NCP is cooperating with them in handling the SI.
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.

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	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	In connection with a lockout, the company chose to hire labour from local community in order to keep the factory running. The primary concern was an alleged breach of the OECD Guidelines Ch. IV, to hire alternative labour during a lockout.	25 Nov 2008		IV. Employment and Industrial Relations	Concluded	Yes	The NCP concluded the instance. The majority of the NCP concluded that the company did not breach the Guidelines, but the company is advised to observe Norwegian practices and traditions in labour disputes. A statement and press released were issued: www.regjeringen.no/upload/UD/Vedlegg/ncp_statement.pdf www.regjeringen.no/en/dep/ud/Whats-new/news/2009/ocd_breach.html?id=564255
Norway	Accusations of violation of the Guidelines with regard to incomplete and misleading information about the environmental consequences of future mining operations. A contention that a Memorandum of Agreement with the authorities from 1999 is invalid, and that the process to obtain consent from the indigenous population is invalid.	26 Jan 2009		II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Ongoing		In contact with the parties.
Norway	Accusations that the company systematically breaches the Guidelines' article 5.3 by not taking into account in its decision-making process the foreseeable environmental, health and safety-related consequences of its aquaculture activities. According to the complaint, the company should have foreseen the problems based on its expertise from Norway. It is also alleged that the company is using scientific uncertainty in order to avoid carrying out remedial measures.	19 May 2009		I. General Policies II. General policies IV. Employment and Industrial Relations V. Environment	Ongoing		In contact with the parties. The NCP has been in contact with the Canadian and Chilean NCP. The NCPs were asked for an assessment of the issues raised in relation to the operation of a subsidiary of a Norwegian aquaculture company operating in Canada and Chile. Both assessed that the issue merited further examination. The Norwegian NCP has the lead on the matter. The Canadian and Chilean to be kept informed of developments
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	N.A.	As formal procedures regarding this case have been initiated before Peruvian administrative and judicial instances, the NCP considers it may not initiate a parallel process. Notwithstanding, the NCP will promote the possibility of reaching conciliation within the framework of the regular judicial procedure.
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.

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
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		
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.

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
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-national 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	Concluded	Yes	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 Nestlé's labour relations in an Indonesian subsidiary.	2008	Indonesia	IV. Employment and Industrial Relations	Concluded	Yes	
Switzerland	Swiss multinational enterprise's labour relation on the Philippines and in Thailand	2009	Philippines/ Thailand	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.
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.1 Disclosure, V.1 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.bis.gov.uk/nationalcontactpoint . As a result of the review the UK NCP will re-considering the original Final Statement
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	See: www.bis.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	See: www.bis.gov.uk/nationalcontactpoint
United Kingdom	Activities of National Grid/Transco.	2004	Democratic Republic of Congo	Various	Concluded	Yes	See: www.bis.gov.uk/nationalcontactpoint

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	Activities of Avient	2004	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	See www.bis.gov.uk/nationalcontactpoint
United Kingdom	BAE Systems – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.
United Kingdom	Airbus – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.
United Kingdom	Rolls-Royce – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.
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.bis.gov.uk/nationalcontactpoint .
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.bis.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 February 2008. Final Statement can be found at: www.bis.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.bis.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	Concluded	Yes	Finalised November 2009. Final Statement can be found at: www.bis.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 Statement can be found at: www.berr.gov.uk/nationalcontactpoint .

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	Unilever (Doom Dooma factory) – issues related to employees’ right to representation.	2007	India	IV. Employment and Industrial Relations	Ongoing	n.a	Initial Assessment can be found at: www.bis.gov.uk/nationalcontactpoint . The status of this case was reviewed following the application of the UK NCP’s parallel proceeding guidance.
United Kingdom	British American Tobacco – issues related to employees’ right to representation.	2007	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a	Initial Assessment can be found at: www.bis.gov.uk/nationalcontactpoint . The status of this case was reviewed following the application of the UK NCP’s parallel proceeding guidance.
United Kingdom	Vedanta Resources – impact of a planned bauxite mine on local community.	2008	India	II. General Policies V. Environment	Concluded	Yes	Finalised in September 2009. Final Statement and Follow Up Statement can be found at: www.bis.gov.uk/nationalcontactpoint . This was the first case where the UK NCP implemented a Follow Up process and issued a Statement based on the comments provided by the parties
United Kingdom	Unilever (Rahim Yar Khan factory) – dismissal of temporary employees seeking permanent status in the factory.	2009	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Finalised November 2009 (through successful mediation). Final Statement can be found at: www.bis.gov.uk/nationalcontactpoint .
United Kingdom	Unilever (Khanewal factory) – issues related to status of temporary employees.	2009	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Finalised November 2009 (through successful mediation). Final Statement can be found at: www.bis.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.

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 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	Concluded	No	Trade Union has chosen not to pursue matter further.
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.
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	Concluded	No	Specific instance resolved through other procedures under US law.
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	Specific instance resolved through other procedures under US labor law.
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	Concluded	No	US NCP closed the specific instance when the initiating party ceased representing the employees of the company in question
United States	Employment and Industrial Relations.	8 Sept 2008		IV. Employment and Industrial Relations	Concluded	No	Declined due to lack of investment nexus.
United States	Employment and industrial relations	July 2009	Philippines	IV Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment

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	October 2009	Korea	IV Employment and Industrial Relations	Concluded	No	Parties reached agreement and withdrew specific instance petition
United States	Employment and industrial relations	October 2009	Korea	III Disclosure and IV Employment and Industrial Relations	Ongoing	No	Korean NCP has taken primary responsibility based on fact that specific instance occurred in Korea
United States	Environment	April 2010	Mongolia	II General Policies/ Sustainable Development and V Environment	Ongoing	No	Canadian NCP has taken primary responsibility based on fact that lead MNE is headquartered in Canada
United States	Employment and industrial relations	April 2010	Papua New Guinea	IV Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment

n.a. = not applicable

APPENDIX F

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* 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 2010

CORPORATE RESPONSIBILITY: REINFORCING A UNIQUE INSTRUMENT

The *Guidelines* are recommendations to international business for conduct in such areas as human rights, labour, environment, consumer protection, the fight against corruption and taxation. 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 42 adhering governments over the 12 months to June 2010 to enhance the contribution of the *Guidelines* to the improved functioning of the global economy.

Ten years after the 2000 revision of the *Guidelines*, work is starting on an update of the *Guidelines* to ensure their continued role as a leading international instrument for the promotion of responsible business conduct. This edition focuses on three core issues for consideration during the update:

- supply chains;
- human rights; and
- climate change.

Please cite this publication as:

OECD (2010), *Annual Report on the OECD Guidelines for Multinational Enterprises 2010*, OECD Publishing. <http://dx.doi.org/10.1787/mne-2010-en>

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