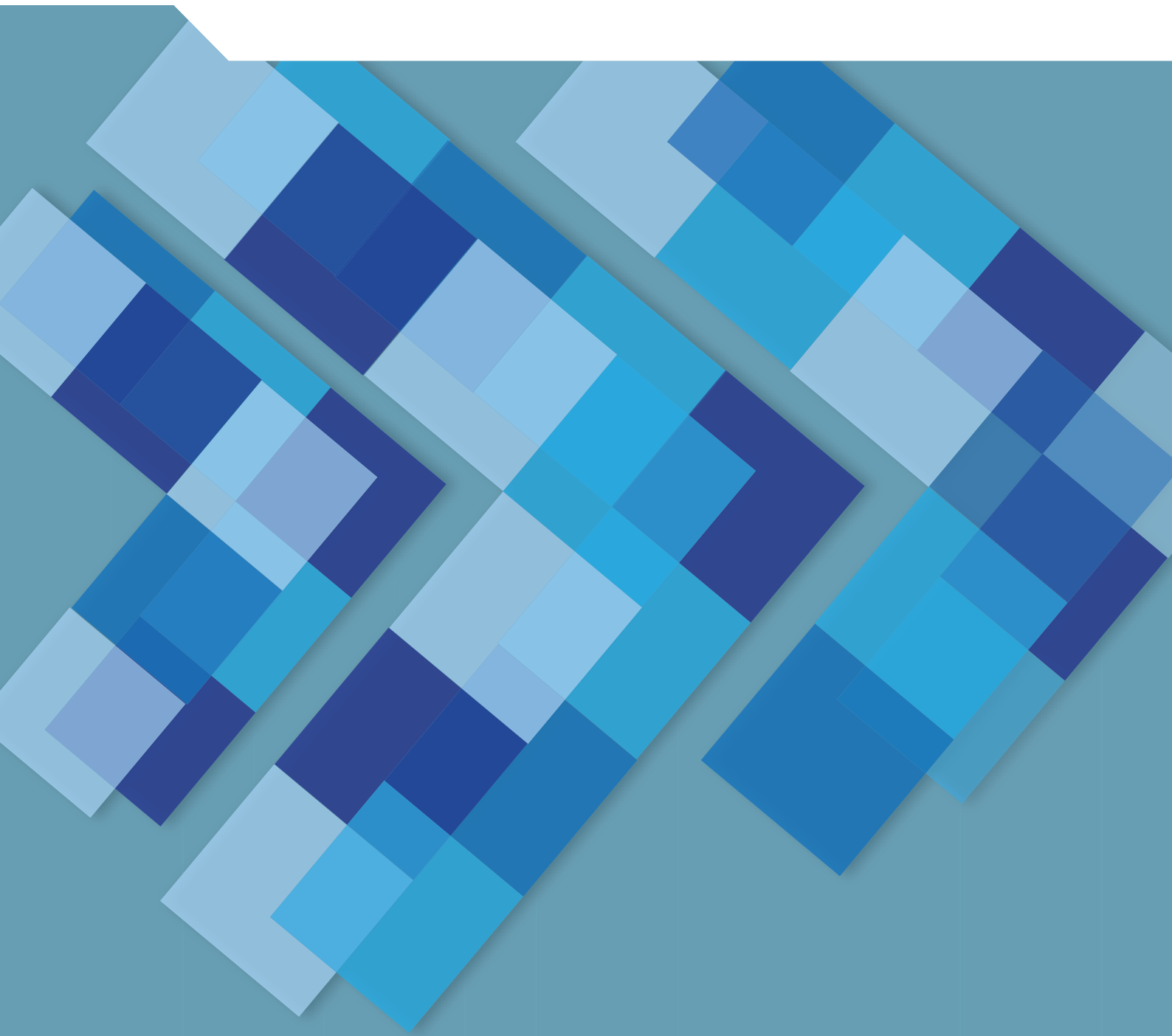
Annual Report on the OECD Guidelines for Multinational Enterprises 2011

A NEW AGENDA FOR THE FUTURE



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Foreword

To many people, international investment by multinational enterprises is what globalisation is all about. Promoting responsible business practices 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 eleventh in a series, describes what adhering governments have done to live up to this commitment over the period June 2010-June 2011. The year's highlight was the adoption on 25 May 2011 at the OECD's 50th Anniversary Ministerial Meeting of a new Revision of the Guidelines.

The main changes include:

- *A new human rights chapter, which is consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.*
- *A new and comprehensive approach to due diligence and responsible supply chain management representing significant progress relative to earlier approaches.*
- *Important changes in many specialised chapters, such as on Employment and Industrial Relations; Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, Disclosure and Taxation.*
- *Clearer and reinforced procedural guidance to strengthen the role of the NCPs, improve their performance and foster functional equivalence.*
- *A pro-active implementation agenda to assist enterprises in meeting their responsibilities as new challenges arise.*

The Report also presents the results of the 2011 Roundtable on Corporate Responsibility held on 29 June 2011. During this event, partner organisations and stakeholders were invited to provide ideas and resources on how to implement the pro-active corporate responsibility agenda associated with the updated Guidelines.

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, Co-ordinator of the Update and Tihana Bule, Policy Analyst in the Investment Division headed by Pierre Poret, of the Directorate for Financial and Enterprise Affairs. Lahra Liberti, Legal Advisor in the Division, was responsible for the section on weak governance and conflict-affected and high risk areas.

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Preface

On 25 May 2011 at the OECD Annual Ministerial Meeting, US Secretary of State Hillary Rodham Clinton presided over the adoption of the 2011 Update of the OECD Guidelines for Multinational Enterprises by the thirty-four OECD and eight non-OECD adhering governments.

On 16 June 2011, the UN Human Rights Council at its seventeenth session unanimously endorsed the Guiding Principles for Business and Human Rights that "operationalise" the 2008 UN "Protect, Respect and Remedy" Framework.

These two events were closely connected. The revised OECD Guidelines are the first inter-governmental instrument to integrate the second pillar of the UN framework – the corporate responsibility to respect human rights. They are also the first to take the Guiding Principles' concept of risk-based due diligence for human rights impacts, and extend it to all major areas of business ethics.

Furthermore, the revised OECD Guidelines reinforce the unique mediation and conciliation facility provided by the OECD National Contact Points, through clearer and more predictable procedural rules and a stronger emphasis on problem prevention and solving. This marks another significant OECD contribution to the implementation of both the Guidelines and the UN Framework.

These developments represent an unprecedented moment of international convergence: convergence in the baseline standards for how businesses should understand and address the social risks of their operations; and convergence in the understanding of how governments should support and promote such responsible business practices. This convergence is further echoed in other international standards, including the ISO 26000 standard on corporate social responsibility and the revised Performance Standards of the International Finance Corporation.

The result is much clearer and more predictable standards that empower enterprises with the necessary processes to meet their social responsibilities and empower stakeholders to hold them to account against reasonable expectations.

In this year of celebration of the OECD 50th Anniversary, we would like to thank all those partner organisations and stakeholders that have contributed to these remarkable results. The same dedication and engagement is now called for to convert this new corporate responsibility agenda into concrete action.

Professor John G. Ruggie,
Former Special Representative
of the UN Secretary-General
for Business and Human Rights

Professor Dr Roel Nieuwenkamp
Chair OECD Investment Committee Working
Party and OECD Guidelines Update

PART I

Report by the Chair of the 11th Annual Meeting of the National Contact Points

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 2010 – June 2011 period.

PART I

Chapter 1

Overview

The National Contact Points (NCPs) of the 42 adhering governments to the OECD Guidelines for Multinational Enterprises (the Guidelines) have met every year since 2001 to share their experiences with the implementation of the Guidelines as they are under the obligation to report annually to the OECD Investment Committee on their performance. NCPs also engage in consultations with the Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and OECD Watch. In addition, a back-to-back conference is organised to help NCPs take into account emerging issues and relevant policy developments in the conduct of their activities.

The June 2010-June 2011 implementation period of the Guidelines, to which this report pertains, was dominated by the fifth update of the Guidelines.[1] Hence, in addition to highlighting how NCPs have conducted their tasks during this period, this report also singles out the issues that NCPs have identified concerning their contribution over the next review period for an effective implementation of the updated Guidelines.

The update of the Guidelines was formally launched on 4 May 2010 when the terms of reference[2] were agreed to by the 42 adhering countries to the Guidelines. The update process concluded on 25 May 2011, when US Secretary of State, Hillary Rodham Clinton, joined the Ministers from the OECD and developing economies to celebrate the Organisation's 50th anniversary and to adopt the results of this new update of the Guidelines. The intense one-year update process, in which a large number of NCPs participated, involved several stakeholders, partner organisations[3] and interested non-OECD countries. Major economies[4] were invited to become full participants in the update process. A separate recommendation designed to combat illicit trade in minerals was also adopted at the 2011 Ministerial Meeting.[5]

Work on the 2011 Update was carried out by the Working Party of the OECD Investment Committee, in which non-OECD adhering countries have full participant status. The Chair of the Working Party was assisted by an Advisory Group of interested adhering governments, representatives of BIAC, TUAC and OECD Watch. The Working Party met five times and the Advisory Group met four times over the October 2010-April 2011 period. The recommendations developed by the Working Party to amend the Guidelines and the related Decision of the Council were approved by the 42 adhering governments at an enlarged session of the Investment Committee held on 29 April 2011. They were transmitted in May 2011 to Council for final adoption.

There has been significant convergence of principles in the corporate responsibility field in this past year. In addition to the successful update of the Guidelines, both the unanimous endorsement by the United Nations Human Rights Council of a new set of Guiding Principles for Business and Human Rights developed by Professor John Ruggie and the update of the International Finance Corporation's Sustainability Framework, show a new global agenda for corporate responsibility based on the broadly shared view that corporate responsibility is no longer a matter of voluntary goodwill, but at the very least, a duty not to cause harm or actively contribute to economic, environmental and social

progress of host economies. This duty exists independently of what governments and/or private stakeholders do. The Guidelines, as the most comprehensive voluntary code of conduct developed by governments in existence today, are uniquely positioned to further this global agenda. The 2011 Update of the Guidelines could not have been timelier.

The 11th NCP Meeting, held on 27-28 June 2011, and the Corporate Responsibility Roundtable, held on 29 June 2011, provided the first opportunity for NCPs and stakeholders to discuss and share their assessment of the results of the 2011 Update. There was general consensus that the 2011 Update achieved its objective of ensuring the continuing role of the Guidelines as a leading corporate responsibility instrument in a global context, both through the substantive content and convergence with internationally recognised standards. It was also acknowledged that the real test will come with the implementation of the revised Guidelines. This will no doubt require sustained efforts by all adhering governments, NCPs, and concerned stakeholders and international partners. Special attention will also need to be given to enhancing cooperation with non-adhering countries, in particular emerging economies. NCPs re-iterated their determination to live up to the challenge.

1.a Main Achievements of the 2011 Update of the Guidelines

The main achievements of the 2011 Update include the incorporation of a new chapter on human rights, based on the Guiding Principles on Business and Human Rights developed by the UN Special Representative for Business and Human Rights, Professor John Ruggie, and a general principle on the need to exercise due diligence to avoid or mitigate negative impacts, notably with respect to the management of supply chains and other business relationships. A new provision encourages enterprises to cooperate in promoting internet freedom. The Guidelines are the first inter-governmental agreement in these areas.

The 2011 Update has also resulted in renewed commitments for respect of labour and environmental standards, combating bribe solicitation and extortion, sustainable consumption and new provisions on tax governance and tax compliance. Implementation procedures have been reinforced with stronger and more predictable rules governing the handling of complaints, greater support for mediation and a proactive agenda to help enterprises and other stakeholders address emerging changes in the area of corporate responsibility.

The inclusion of the proactive agenda, which aims to assist multinational enterprises in better meeting their corporate responsibility challenges in particular situations or circumstances, represents a definitive change of focus in the implementation of the Guidelines. Translating this agenda into concrete actions can be expected to take various forms. Sessions were held both during the 11th NCP Meeting and the Roundtable to solicit views and concrete suggestions from NCPs, businesses, trade unions, OECD Watch and other NGOs, and partner organisations on the prioritisation and implementation of the proactive agenda.

1.b Highlights of the 2010-2011 Implementation Period

This report reviews activities undertaken by 42 adhering governments to the Guidelines to promote and implement the Guidelines over the June 2010-June 2011 period. It is based on individual NCP reports and other information received during the reporting period. It also incorporates the results of this year's 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 – Weak Governance Zones and Conflict-Affected and High-Risk Areas.

Recovery from the financial and economic crisis has been characterised by continuous attention to corporate responsibility. The business community continued to share and promote responsibility for restoring growth and trust in markets. In this context, the 2011 Update of the Guidelines enjoyed high level and widespread expression of support. The NCP reports show that most of the NCP activities undertaken during the implementation period focused on the update process, improving institutional arrangements and increasing stakeholder inclusiveness.

On promotion, NCPs made a considerable effort to not only provide information to key business and community stakeholders, but to also solicit their feedback and incorporate it into the recommendations for the 2011 Update. For this purpose, 40 percent of the reporting countries organized public meetings, while others attended various meetings, seminars, study groups, and symposia organized by businesses, labour unions and NGOs. In particular, *Japan*'s NCP has presented information about the 2011 Update at more than 10 of these.

NCPs have also continued their efforts to improve institutional arrangements and increase stakeholder inclusiveness in their decision-making. *Canada* has added to its NCP Committee the Indian and Northern Affairs Canada (INAC), an organisation with expertise on indigenous peoples issues. *Italy* has developed a new procedural guide for handling specific instances in order to make the process more accessible and transparent. It has also enlarged its NCP composition; among new members are the Association of Italian Banks, Confederation of Italian Chambers of Commerce, and the Italian National Committee of Consumers. *Netherlands* has enhanced stakeholder group engagement by allowing stakeholders a more active role in the meetings. *Norway* has finalized the reform of its NCP, which now consists of a four member panel of independent experts and a new secretariat of two persons recruited by the Ministry of Foreign Affairs. *United States* has also reported considerable effort to reform its NCP structure with the goal of ensuring its independence.

The third major development is the sharp rise in the number of specific instances raised. 39[6] new specific instances were raised, more than double the number of specific instances raised in the 2009-2010 implementation period.[7] A total of ten Final Statements, in addition to one revised Final Statement, were issued.[8] With 39 new specific instances raised, the total number of instances raised since the 2000 Review exceeds the 250[9] mark. Of these, 178 have been accepted for consideration and 156 have been concluded or closed. A majority of new specific instances for which location information was available were raised in non-adhering countries. Additionally, half of concluded specific instances for this reporting period concerned specific instances in non-adhering countries. Furthermore, a majority of the new specific instances continue to relate to employment and industrial relations under Chapter V of the Guidelines. A growing number involves human rights, as well as environmental issues covered by Chapter VI and bribery issues covered by Chapter VII.[10]

Finally, strengthened and more frequent cooperation between NCPs stands out as a significant development during the implementation period. NCPs are reporting that this increased cooperation serves as a great capacity-building opportunity while it fosters exchange of information and best practices in both specific instances and procedural

matters. For example, *Italy* has commented that the strong cooperation with *UK* NCP on a specific instance helped them clarify the practical application of the leader NCP principle agreed on by NCPs in the 2007-2008 reporting period.[11]

1.c Future Work

The 27-28 June 2011 meeting provided NCPs the first occasion to discuss the results of the 2011 Update of the Guidelines and to assess their implications. NCPs expressed general satisfaction with the 2011 Update and considered that the several improvements made to the Guidelines should be conducive in further increasing the role and impact of the Guidelines. NCPs also expressed their readiness to actively participate in the successful implementation of these revisions to the Guidelines.

In particular, NCPs welcomed the incorporation of a new chapter on Human Rights, based on the UN "Protect, Respect and Remedy" Framework and the Guiding Principles unanimously endorsed by the UN Human Rights Council; the adoption of the general operational principle of due diligence, a process through which enterprises can identify, prevent, mitigate and account for how they address actual and potential adverse impacts as an integral part of their internal decision-making and risk management systems; and the confirmed application of the Guidelines to supply chains and other business relationships of multinational enterprises.

NCPs also welcomed the reinforcement of implementation procedures of the Guidelines through clearer and more predictable rules for the handling of complaints, a strong preference for mediated solutions to problems and a more prominent role given to peer learning for furthering the effectiveness of the Guidelines and fostering the functional equivalence of NCPs. Furthermore, they considered the adoption of a proactive agenda aimed at helping enterprises and other stakeholders identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries a welcome change in focus in the application of the Guidelines.

There was broad consensus that these results will have direct consequences for NCPs, which will need to be clarified over the coming months. NCPs welcomed the fact the Working Party of the Investment Committee had already scheduled a discussion on this subject in October 2011. In addition, the OECD Corporate Responsibility Roundtable of 29 June 2011 provided a good opportunity to test ideas with interested stakeholders, international partners, experts and academia.

Prof. Dr. Roel Nieuwenkamp, the Chair of the Working Party responsible for the conduct of the update, provided initial views on the work ahead. With respect to unfinished business from the update process, it has already been agreed that a resource document compiling the descriptions and links to instruments and initiatives of potential relevance to the updated Guidelines will need to be developed. Additionally, further work on the application of the Guidelines to multinational financial institutions would need to be conducted in close cooperation with the relevant parties while taking into account relevant developments and principles.[12] Beyond this, the revision to the Council Decision on the Guidelines [*C(2000)96/FINAL*] has created an ambitious implementation agenda. Increased efforts would need to be made in promotion and information activities on the Guidelines. Peer learning, either around thematic or voluntary country reviews, would need to be more actively pursued. The proactive agenda, which should remain demand driven and broadly supported by stakeholders, would no doubt require new creative work

to assist enterprises and stakeholders better assess the implications of the Guidelines recommendations, particularly on due diligence and supply chains. It would also appear highly desirable to intensify and expand the cooperation with major emerging economies and partner organisations to ensure a level playing field between countries and companies. Last, but not least, new resources would need to be provided to give effect to the updated Guidelines.

NCPs took note of these initial views and re-iterated their willingness to make a meaningful contribution to their realisations. They also made a number of observations. First, that the increased emphasis on peer learning and capacity building activities will involve sharing concrete experiences between various functions of NCPs (such as in the peer learning session at the 11th NCP Meeting). While such peer learning could be achieved by various means (such as bilateral or regional meetings or voluntary peer reviews such as that the one conducted on the Dutch NCP), this may also require changes to NCP working methods and more frequent meetings at the OECD (for example, twice a year). Second, since NCPs would be expected to actively contribute to the implementation of the proactive agenda, ways of concretising this input need to be found. Third, the intensification of cooperation with emerging economies and international partners would have to not only call for greater coordination and cooperation between national actors but also for greater NCP involvement in OECD outreach activities.

Finally, NCPs agreed with the relative urgency of discussing the financial resource implications of the 2011 Update as soon as possible. NCPs noted the commitment made by adhering governments during the update to make available the necessary resources for the implementation of the Guidelines in accordance with their budget priorities and processes. They also recognized the supporting role that could be provided by the OECD.

Notes

1. The Guidelines are a part of the 1976 OECD Declaration on International Investment and Multinational Enterprises. They have previously been revised in 1979, 1984, 1991 and 2000.
2. The terms of reference of the update can be found at *http://www.oecd.org/dataoecd/61/41/45124171.pdf*.
3. Notably the International Labour Organisation, the International Finance Corporation, the Office of the Special Representative the UN Secretary-General on Human Rights and Transnational Corporation and other Business Enterprises, the UN Global Compact, the International Organisation for Standardization and the Global Reporting Initiative.
4. China, India, Indonesia, the Russian Federation, Saudi Arabia and South Africa.
5. Reproduced at *www.oecd.org/daf/investment/mining*. See also section V.a.
6. Specific instance counts are based on the information provided in the Annual NCP Reports by 41 of the OECD Guidelines adhering countries.
7. In the 2009-2010 implementation period, the number of specific instances raised was 17.
8. Ten Final Statements were issued in the 2009-2010 implementation period.
9. The number of specific instances raised reflects those numbers reported in Annual NCP Reports. Not all NCPs report specific instances which have not been formally accepted.
10. Prior to the 2011 Update of the Guidelines, Employment and Industrial Relation chapter was numbered IV, Environment chapter was numbered V, and Combating Bribery, Bribe Solicitation and Extortion chapter was numbered VI. These are referred to as such in previous versions of this report.

11. NCPs agreed that a "leader NCP" should be designated to manage the process when a specific instance involves multiple NCPs. The NCP receiving the first instance takes on the responsibility of obtaining an agreement on an appropriate leader NCP and the process for handling the instance.

12. The International Finance Corporation, UN Human Rights Council, UN Principles for Responsible Investment, UN Environment Programme Finance Initiative, and Equator Principles. The recent developments that should be taken into account could be, for example, the May 2011 revision of the IFC Performance and Environmental Standards and the forthcoming revision of the OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits.

PART I

Chapter 2

Innovations in NCP Structure and Procedures

Taking into account the information provided, current NCP structures consist of:[1]

- 20 NCP single government departments;[2]
- 8 NCP multiple government departments;[3]
- 2 bipartite NCP;[4]
- 9 tripartite NCPs (involving governments, business and trade unions);[5]
- 1 quadripartite NCP (involving governments, business, trade unions and NGOs);[6]
- 1 mixed structure of independent experts and government representatives;[7]
- 1 structure of independent experts.[8]

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

- *Canada* has recently developed a communication protocol with the newly established Office of the Extractive Sector CSR Counsellor to address any potential overlap of activities. In addition, the Indian and Northern Affairs Canada (INAC), an organisation with expertise on indigenous peoples issues, has been added to the NCP Committee. Furthermore, Canadian NCP has undertaken capacity-building activities, such as inviting a speaker to present a workshop to the NCP on prevention and conflict resolution in CSR-related disputes. Similarly, Canada attended a meeting with UK, Norway, and Netherlands NCPs to discuss specific instances and best practices.
- *Hungary* has moved its NCP operation to the Ministry for National Economy, the International and EU Affairs Department of Deputy State Secretariat for International and EU Affairs. Further reform is planned in the upcoming implementation year with the goal of creating a more effective NCP for better promotion and implementation of the updated Guidelines.
- *Italy* has enlarged its NCP composition to broaden stakeholder involvement. Among new NCP members are the Association of Italian Banks, Confederation of Italian Chambers of Commerce, various local authorities, some SME Associations, and the Italian National Committee of Consumers. Furthermore, the NCP has developed and implemented a new procedural guide for handling specific instances to make the process more accessible and transparent.
- *Netherlands* is following up on the recommendations which were a result of the recently completed voluntary peer review. For example, as part of enhanced stakeholder engagement, the NCP recently welcomed four large accountancy firms as a new and important stakeholder group in its NCP structure. Another new stakeholder group that was added was company staff councils. See section III.b for further details.
- *New Zealand* has added the Ministry of Consumer Affairs to its Liaison Group. In light of the 2011 Update of the Guidelines, a thorough review of all of the procedural procedures is planned for the next implementation year.

- *Norway* has finalized its NCP reform. The new institutional arrangement was based on national public consultations as well as inspiration from the Dutch and UK NCPs. The new NCP consists of a four member panel of independent experts, appointed in their personal capacity and based on their experience. A new Secretariat of two persons was recruited by the Ministry of Foreign Affairs. The new NCP is in substance independent from the Government.
- *Peru* is planning to create a consultative board to ensure that the NCP functions properly and most effectively.
- *Poland* has updated its specific instance complaint procedures. It is also closely collaborating with the National Centre of Mediators and NGOs to implement a promotional campaign titled "I implement OECD Guidelines. Responsible Business."
- *Portugal*'s NCP has strengthened the relationship between its two agencies, AICEP and DGAE, deepening the specialization of each. This has resulted in better resource allocation, better promotional strategy and a quality-driven relationship with public and private stakeholders.
- *Slovenia*'s NCP has added a representative from the Ministry of Justice to its inter-governmental working group. The NCP has also proposed the adoption of new internal procedural rules regarding specific instances and the procedures for the recommendations of the inter-governmental working group.
- *Spain* has reported that the Ministry of Foreign Trade has initiated reform of the Spanish NCP in order to adapt it to the updated Guidelines.
- *Sweden*'s NCP collaborates with the Swedish Partnership for Global Responsibility, which aims to promote the Guidelines and the UN Global Compact principles. Of note within this initiative is the work of the Swedish Development Cooperation Agency (Sida). Sida is currently finalizing new directive for its activities related to CSR and development and is basing it on the Guidelines. Sida's new directive, together with the program of Business for Development, will be the base for its direct collaboration with the business sector. Sida will require alignment with the Guidelines in all engagements with business.
- *United States* conducted a rigorous review of its NCP function, which resulted in institutional changes, an expanded outreach, promotional and pro-active agenda and revised procedures for handling specific instances, consistent with the 2011 Update of the Guidelines. See Box 1.1 for further information.

Box 2.1. **United States NCP Reform**

In July 2010, the Assistant Secretary for the US Department of State's Bureau of Economic, Energy and Business Affairs (EEB) launched an initiative to review the US NCP function, in conjunction with the 2011 Update of the Guidelines. The overall purpose of the initiative was to improve the US NCP's effectiveness, visibility, accessibility, transparency and accountability to ensure the US NCP is operating consistently with the Guidelines.

Box 2.1. **United States NCP Reform** *(cont.)*

The initiative included publishing a notice in the US Federal Register requesting public comments and announcing a public meeting, which was held on 2 November 2010. The EEB Assistant Secretary asked the US Federal Advisory Committee on International Economic Policy (ACIEP) to undertake a thorough review of the US NCP and to provide recommendations on how to improve its functioning. The ACIEP presented its recommendations formally on 16 February 2011. The EEB Assistant Secretary also recruited a senior officer to be the first full-time dedicated US NCP.

The US NCP function was moved from EEB's Office of Investment Affairs, which is responsible for the formulation of US investment policy, including policies related to the Guidelines update, to the Office of the Assistant Secretary, further ensuring the US NCP undertakes its responsibilities in a more wholistic manner and independently of the State Department's investment-related policy operations.

At the 20 June 2011 meeting of the ACIEP, the EEB Assistant Secretary announced improvements to the US NCP function as a result of the year-long review and reform initiative. The improvements incorporate the updates in the Guidelines and most of the consensus recommendations in the ACIEP's report. They include structural modifications to the US NCP, as well as expanded procedures for handling specific instances, consistent with the guiding principles of impartiality, predictability, equitability, and compatibility with the Guidelines. Going forward, the US NCP will also focus on a more "positive, pro-active" approach to promoting the Guidelines that will seek to identify, analyze and resolve potential problems in order to avert adverse impacts, and will endeavour to increase general outreach activities. All of these improvements are designed to increase the US NCP's visibility, accessibility, transparency and accountability.

The US NCP will continue to be headed by a senior career officer housed within the EEB Bureau at the State Department. In addition, the US NCP staff will be supplemented by an experienced policy analyst on corporate social responsibility matters assigned by the State Department's Bureau of Democracy, Human Rights and Labor. The US NCP is currently being integrated into a newly created corporate social responsibility (CSR) team within EEB's Office of Economic Policy Analysis and Public Diplomacy, which will enable the US NCP to draw upon the existing expertise of officers who already work on CSR issues and to maximize the use of existing resources and contacts for outreach and promotion.

In order to provide for the periodic review of the work of the US NCP by stakeholders, the EEB Assistant Secretary will ask the ACIEP to establish a US NCP Stakeholder Council under its Subcommittee on Investment to provide advice and assistance through the ACIEP to the US NCP on strategies, policies and procedures related to the US NCP's responsibilities, as well as to work closely with the US NCP on a "positive, pro-active" approach to promoting the Guidelines. The EEB Assistant Secretary will consult with the ACIEP on the duties, composition and other issues related to the establishment of the US NCP Stakeholder Council.

The US NCP has also published an updated procedural guide for handling specific instances.[1] This modified guide is consistent with the updated Guidelines and with the guiding principles of impartiality, predictability, equitability, and compatibility. It also takes into account most of the consensus recommendations of stakeholders in the ACIEP's report of 16 February 2011.

1. The updated procedural guide can be found at *http://www.state.gov/documents/ organisation/167188.pdf*.

Notes

1. Iceland's Annual NCP Reports is outstanding. The information used is based on last year's report.
2. Argentina, Australia, Austria, Chile, Czech Republic, Egypt, Germany, Greece, Hungary, Ireland, Israel, Italy, Mexico, New Zealand, Peru, Poland, Slovak Republic, Spain, Switzerland and United States.
3. Brazil, Canada, Iceland, Japan, Korea, Portugal, Turkey and United Kingdom.
4. Romania and Morocco's NCP is comprised of government and business representatives.
5. Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Slovenia and Sweden.
6. Finland.
7. Norway. Norway recently changed its structure to multi-stakeholder, with a 4 member independent panel of experts and a secretariat belonging administratively to the Ministry of Foreign Affairs.
8. Netherlands. In 2007, the Dutch NCP was changed from an interdepartmental office to a structure consisting of four independent experts, which are advised by four advisors from four ministries.

PART I

Chapter 3

Information and Promotion

Procedural guidance[1] calls for 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.

3.a Selected promotional activities

Majority of promotional activities undertaken during the reporting period have closely related to the 2011 Update of the Guidelines. Continuing last year's theme, majority of NCPs not only provided information to the business and community stakeholders, but also consulted with them to solicit their feedback to be incorporated into the 2011 Update itself.

- *Argentina*'s NCP organized an event (Encuentro del PNC Argentino con ONGs: Revisión de las Líneas Directrices de la OCDE para Empresas Multinacionales) in September 2010, hosted by the Ministry of Foreign Affairs, International Trade and Worship, to consult with many well-known Argentinean NGOs and government officials from several Ministries regarding the 2011 Update.
- *Australia*'s NCP held two meetings, one in Sydney and one in Melbourne, to consult major businesses and NGO stakeholders on the 2011 Update. In addition, information was provided in all foreign investment approvals for business proposals.
- *Canada* formally consulted 21 organisations representing various groups of interest leading up to the issuance of the Terms of Reference in 2010. Following that, the Canadian NCP continued to undertake a number of activities to ensure that Canada's position benefited from a broad range of perspectives. Most notably, in September 2010, the Canadian NCP hosted a one-day meeting in Ottawa with a number of representatives from industry, labour and civil society organisations and several Federal government departments. This session helped develop Canada's position on key issues and led to the recommendation proposal put forth by Canada regarding stakeholder engagement. Throughout the entire process, individual stakeholder groups were contacted as specific issues arose, and debriefing sessions were held following update sessions.
- *Chile* organized 10 multi-stakeholder informal meetings on the 2011 Update with 22 delegations from business, trade unions, NGOs and academia..
- *France* used the 2011 Update process as an opportunity to engage in in-depth consultations with its members and businesses about the nature, organisation and functioning of the NCP as well as the content of the Guidelines. The updated Guidelines could eventually lead to an update of the NCPs procedural rules.
- *Germany*'s NCP regularly meets with the Ministerial Group on the OECD Guidelines as well as the Working Party on the OECD Guidelines, composed of representatives of Federal Ministries, business organisations, trade unions and civil society NGOs. These meetings are generally held annually, but due to the work on the 2011 Update, additional meetings were held.

- *Greece* cooperated closely with several governmental departments for the 2011 Update, such as the General Secretary of Trade and the General Directory of Private Investments of YPOIAN, the Ministry of Finance, the Ministry of Environment, Energy and Climate Change.
- *Ireland*'s NCP established a dedicated multi-stakeholder mechanism comprising of representatives of Divisions within the Department of Jobs, Enterprise, and Innovation, State Agencies, the Irish Business and Employer's Confederation, Irish Congress of Trade Unions and Professional and Trade Organisations, and the NGO community, as well as representatives of the range of relevant Government Departments, for the purpose of ensuring a comprehensive and coherent national position in the 2011 Update of the Guidelines.
- *Japan*'s NCP has presented information about the Guidelines at more than 10 meetings, seminars, study groups, and symposia organized by various businesses, labour unions and NGOs.
- *Mexico*'s NCP has worked closely with other government agencies such the Ministry of Foreign Affairs and the Ministry of Labor and Social Welfare in order to foster dialogue intra-governmentally regarding the promotion and implementation of the Guidelines.
- *New Zealand*'s NCP has published news of the 2011 Update on its website. A mid-review update was also sent to organisations known to have an interest, including businesses, unions, and some New Zealand headquartered MNEs. A publicity campaign is planned with the NCP Liaison Group members for the next reporting period.
- *Sweden* consults a multi-stakeholder group before and after each Annual NCP Meeting. Two meetings were held during 2010, during which this reference group was briefed on the 2011 Update. In addition, the Swedish Confederation of Professional Associations (Saco) in March 2011 arranged a study tour to the OECD for 25 national officers; the program included a review of the process of updating the Guidelines.
- *Switzerland* increased contact with all stakeholders. NCP's consultative group, which includes representatives of social partners, employer organisations, multinational enterprises, NGOs as well as of several government agencies, met three times. The NCP also engaged in several other meetings with the aforementioned stakeholders to further discuss issues related to the 2011 Update of the OECD Guidelines one-on-one.
- *Turkey*'s Advisory Committee to the NCP held a public meeting about the 2011 Update. Business, labour unions, civil society and universities all participated.

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

- *Canada*'s government officials continue to make reference to the Guidelines in a variety of fora. Examples include the Prospectors and Developers Association of Canada International Convention, the United Nations, the Intergovernmental Forum on Mining, and the Inter-American Development Bank Annual Meeting and Business Forum.
- *Chile* is planning on increasing its cooperation with regional NCPs in order to promote a regional conversation. Furthermore, the NCP organized special discussions and workshops with the Chamber of Production and Trade, Ernst and Young, Diego Portales University, Andres Bello University, Catholic University and Pedro de Valdivia University. NCP's editorials and interviews on the 2011 Update were published at the Universidad de

Chile School of Business Bulletin and on the website of the General Directorate for International Economic Relations.

- *Egypt* has reached out to the major MNEs operating in Egypt and Egyptian MNEs operating abroad to introduce itself and its mission. This communication included passing along a copy of the Guidelines and asking all enterprises to adhere. Foreign commercial chambers operating in Egypt and the Egyptian Industrial Federation have been asked to do the same.
- *Finland* has published on its website an English version of the compilation of guidelines of various international organisations, best practices and a CSR toolbox for SMEs. In addition, the Ministry of Employment and Economy sponsored a seminar and a fair on CSR hosted by the Finnish Business and Society.
- *Germany* has included an informative section on the Guidelines in the 2010 Annual Report on Foreign Investment Guarantees published by PriceWaterhouseCoopers AG, a leading partner of the federal government in managing these guarantees. The Guidelines are also highlighted in the German Governmental Reports on Human Rights, and, with specific reference to the Risk Awareness Tool, in the Governmental Report on Crisis Prevention. Furthermore, the national CSR Forum, Working Group 4, developed recommendations of strengthening CSR in an international and developmental context, calling on the Government to proactively promote the Guidelines. More specifically, work has begun on a handbook for German SME companies which will be finalized and published in the next reporting period.
- *Greece* participated in many seminars and conferences, such as the annual CSR conference organized by the American-Hellenic Chamber of Commerce. The NCP also completed an information dissemination campaign aimed at the businesses that participated in the Arab-Greek Economic Forum organized by the Arab-Hellenic Chamber of Commerce and Development.
- *Ireland*'s NCP used the opportunity provided by the 2011 Update to reinvigorate contact with corporate governance experts in the national employers' federation, Irish Business and Employers Confederation (IBEC), in the Irish Congress of Trade Unions (ICTU), and in the NGO community.
- *Israel*'s NCP is now cooperating directly with the Investment Promotion Agency to promote the Guidelines through dissemination of promotional materials. A website, designated specifically to the Guidelines and the NCP, is in its final stages. The NCP also promoted the Guidelines through an information booth, oral presentations or participation in panels at various conferences, most notably, Maala Conference 2010, the 4th "Beyond Business" Conference for Social and Environmental Responsibility of Enterprises, the 18th International Conference of the Israeli Society for Quality and The Israchem Exhibition.
- *Italy*'s NCP has organized and/or participated in 18 events in outreach to business community, trade unions, and the interested public, significantly improving its visibility. This evident in a 3 percent increase in the number of website users, a 9 percent increase of its webpage views, and a 5 percent increase in email subscriptions to its quarterly online newsletter. Additionally, in partnership with Istituto Tagliacarne, a second part of the project "Stakeholders information and awareness: the OECD Guidelines and CSR principles" has been launched.

- *Korea*'s NCP published a shortened version of the Guidelines in Korean. This publication has been distributed to 3000 MNEs through the Korea Trade-Investment Promotion Agency's domestic and overseas networks.
- *Lithuania* has decided that the state owned enterprises have to ensure the implementation of the Guidelines in order to increase their operational transparency.
- *Mexico*'s NCP has utilized the cooperation agreement between the Ministry of Economy and the European Union called PROTLCUEM (Facilitation Project on the Free Trade Agreement between The European Union and Mexico) to develop a paper on CSR for European companies operating in Mexico, which is available on the Ministry's website.
- *Morocco* is currently developing a booklet on the revised Guidelines. This booklet will be used for promotional activities and will also be distributed at events organized by the Moroccan Investment and Development Agency (MIDA). MNEs that sign investment agreements will also receive a copy. Furthermore, the NCP had a chance to promote the Guidelines at 44 events organized by MIDA.
- *Netherlands* has delivered over 10 presentations and workshops on international CSR, the Guidelines and the NCP. Of note are the Seminar on International CSR, responsible chain management and human rights with 10 sector associations, VNO-NCW; Meeting Dutch NGO's on CSR (CSR Platform), attended by 20 NGOs; and a New Year event CSR Netherlands/Sustainable Trade Initiative, attended by 500 Entrepreneurs (mainly SMEs) and CSR experts. The NCP has also assisted Dutch embassies inform local companies and organisations about the Guidelines and the NCP. In collaboration with CSR Netherlands and the Dutch government, CSR passport, a booklet with basic information on international CSR, has been developed. The next step is a shared internet portal on CSR for Dutch embassies. See also section III.b.
- *Peru* published a two-fold brochure titled *Peru in the OECD*, which highlights Peru's signatory obligations of the Declaration on International Investment and Multinational Enterprises, the Guidelines and NCP tasks. Peru has also organized eight national and international events for promotion of the Guidelines in which over 450 people participated. Furthermore, through contact with seven international missions and delegations visiting Peru, the NCP has had a chance to present information to over 115 companies.
- *Poland*'s NCP has allotted substantial resources to the promotion of the Guidelines through media materials. During the reporting period, the NCP has distributed 5000 Guideline booklets, 10000 CDs and 5000 brochures covering NCP activities.
- *Romania*'s NCP engaged with the *Business Journal*, a weekly business information magazine. A brief summary of the mission and responsibilities of the Romanian Centre for Trade and Foreign Investment Promotion, where the technical Secretariat of the NCP is located, was published in several editions of the journal. In addition, in Romania Info Business (2011 edition), published by Romanian Centre for Trade and Foreign Investment Promotion, a special chapter is dedicated to the NCP and its functions. Furthermore, the NCP has liaised with the academic community through presentations to the students of the Romania-American Academy and Advancia-Negocia.
- *Slovak Republic* has chosen a proactive approach for the reporting period, starting with a broader stakeholder involvement. It is currently experimenting with their increasing engagement to see how NCP performance will be impacted. This approach also contributes to increased transparency and accountability of the NCP.

- *Slovenia* is now requesting that all foreign investors which apply for public tender declare that the recipient of the co-financing will abide by the Guidelines and the principles laid down in the Declaration on International Investments and Multinational Enterprises.
- *Spain*'s NCP has participated in the Working Party on Transparency of the State Council for Corporate Social Responsibility (CERS) and the Working Party for the Fight against Corruption and Transparency in the Spanish Global Compact Network. NCP also had a chance to present at two conferences at the Spanish Confederation of Business Organisations (CEOE) and Transparency International Spain.
- *Sweden*'s NCP member, the Swedish Trade Federation, launched its new CSR tool called "Responsible Business Management." The Federation has also visited Turkey to learn more about Turkish market opportunities and to establish contact with its counterparts, Turkish export and employers organisations. In addition, Sweden has continued to encourage Swedish companies and their business partners abroad to do business without resorting to corruption. Various seminars were arranged in China and in Russia based on the anti-corruption web portal, www.business-anti-corruption.com, parts of which have been translated to Russian and Chinese. As a result of the seminars last year, an e-learning programme in Russia is being developed.
- *Switzerland*'s NCP is distributing a flyer intended for MNEs and other stakeholders summarising the Guidelines as well as the function of the Swiss NCP. This flyer has been disseminated through different channels after its publication in April 2010 and is now distributed at conferences, meetings and other occasions involving the NCP. The flyer is available in the three official Swiss languages and in English.
- *Turkey* organized four seminars, namely for assistant experts of the Undersecretariat of Treasury, experts and auditors of the Treasury, Turkish Economic Counsellors and Trade attaches, and for students of Ankara University's Trade and Banking Law Certificate Program.
- *United Kingdom*'s NCP delivered a presentation on the Guidelines at a meeting for UK businesses organised by the International Chamber of Commerce. It also participated in an event on conflict minerals, organised by the UK Foreign and Commonwealth Office, which provided a useful opportunity to raise awareness of the Guidelines and the Risk Awareness Tool among UK MNEs and SMEs in the mining sector. Furthermore, the NCP held a stakeholder event with businesses, trade unions and NGOs to take stock of the progress made in updating the Guidelines.
- *United States* is expanding and updating the NCP website and informational materials and is planning on undertaking outreach and promotional activities as recommended by the US Federal Advisory Committee on International Economic Policy. In doing so, the NCP will rely on the suggestions and support of stakeholders, particularly the NCP Stakeholder Council, in order to target key emerging issues identified by stakeholders and to amplify the impact of NCP activities. The US Department of State's Bureau of Economic, Energy and Business Affairs is also reviewing and updating training materials for economic and commercial officers overseas, including training them for outreach on the updated Guidelines to local business, labour and civil society stakeholders.
- *European Commission* is currently preparing for the adoption of a new Communication on corporate social responsibility intended for publication later in 2011.

3.b Follow up to the Dutch Peer Review

The NCPs of Canada, Chile, France, Japan and the UK participated in the voluntary Dutch NCP Peer Review, which was carried out in 2009. A final report was issued in March 2010,[2] containing 28 recommendations relating to: (I) the structure of the NCP; (II) the NCP's promotional activities; and (III) the NCP's handling of specific instances. The Dutch NCP has welcomed these recommendations.

In regard to the structure of the NCP, new considerations for appointing NCP members have been taken into account. NCP stakeholders agreed that independence, impartiality and communication skills of its members are more important than all inclusive stakeholder representation. At the same time, the NCP has sought to enhance engagement with stakeholders. One of the steps taken was allowing separate stakeholder groups to participate in the preparation of the semi-annual stakeholder meetings by giving them an active role, for example by bringing in discussion items, by giving a presentation, or by moderating a workshop.

In regard to the promotional activities, the Dutch NCP is increasing cooperation with other NCPs in order to share experiences and communication tools. First steps have been taken by exchanging information on institutional arrangements, mediation experiences, communication plans and tools of the Dutch NCP with the Norwegian NCP, the Danish CSR centre (in relation to the Danish NCP reform), and the UK NCP. Other recommendations that the Dutch NCP has acted on regard availability of multi-lingual information, tools and cooperation with embassies. A CSR policy tool that helps companies gain insight into their current CSR activities, assess their value, and determine what other CSR activities they would like to implement was developed and translated into English. Cooperation with Dutch embassies has strengthened and has resulted in joint outreach efforts in China, Colombia, Panama, Vietnam, India, Turkey, Egypt, Gulf region and Eastern Europe.

In regard to dealing with specific instances, the NCP is experimenting with a new pre-emptive, more informal approach in which the NCP seeks to bring parties together at an early stage without the requirement of a formal notification. The NCP in this case acts as an independent mediator which creates more room for parties to talk about common interests.

3.c OECD Investment Committee work

The last implementation period was characterized by the discussion on the 2011 Update of the Guidelines. The update was formally launched on 4 May 2010 when the terms of reference[3] were agreed to by the 42 adhering countries to the Guidelines. The process was concluded on 25 May 2011, when US Secretary of State Hillary Clinton joined Ministers from OECD and developing economies to celebrate the Organisation's 50th anniversary and adopt the results of this new update of the Guidelines.

Work on the update was carried out by the Working Party of the OECD Investment Committee, in which non-OECD adhering countries have full participant status. Prof. Dr. Roel Nieuwenkamp, the Chair of the Working Party, was assisted by an Advisory Group of interested adhering governments, representatives of BIAC, TUAC and OECD Watch. The Working Party held five sessions on 6-7 October 2010, 15-17 December 2010, 16-17 February 2011, 23-25 March 2011 and 27-29 April 2011. The Advisory Group held preparatory meetings on 13-14 September 2010, 17-18 November (hosted by the Netherlands in Amsterdam), 26-27 January 2011 (hosted by France at the Quai d'Orsay), 17-

18 March 2011. The recommendations developed by the Working Party to amend the Guidelines and the related Decision of the Council were approved by the 42 adhering governments at an enlarged session of the Investment Committee presided by the Chair of the Investment Committee on 29 April 2011. They were transmitted shortly thereafter to Council for final adoption.

The intense one-year update process, in which a large number of NCPs participated, involved several stakeholders, partner organisations[4] and interested non-OECD countries. Major economies[5] were invited to become full participants in the update process. Two enlarged consultations with stakeholders were held on the occasion of the 2010 Annual Corporate Responsibility Roundtable on 30 June-1 July 2010 and 13 December 2010. In January 2011, the Danish Institute for Human Rights and the Global Report Initiative (GRI) sponsored at the OECD two expert meetings on human rights and disclosure issues. The update process also greatly benefitted from substantive contributions from the UN Special Representative John Ruggie and his team to ensure consistency with the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.

Special efforts to strengthen cooperation with other leading corporate responsibility instruments were made. A Memorandum of Understanding (MoU) signed on 13 December 2010 by the OECD Secretary-General Richard Boucher and GRI Chairman Mervyn King established a three year program to encourage companies to use both the Guidelines and the GRI Sustainability Reporting Framework and to strengthen cooperation in common areas of mutual interest.

In addition, officers of the Investment Committee continued to actively relate with influential governmental and non-governmental players in support of the update. On 4 October 2010, the Chair of the Investment Committee convened a "Friends of the OECD Guidelines for Multinational Enterprises" meeting to discuss the challenges and opportunities of the update process, the benefits of mediation as a dispute solving mechanism, and stakeholder inputs. Professor John Ruggie addressed the Investment Committee on that occasion to give an update on his UN mandate. The Chair of the Working Party held consultations with Indian and South African officials in July 2010.

3.d Other promotion by the OECD

The OECD Deputy Secretary-General (DSG) Richard Boucher participated in the Ministerial Session of the UN Global Compact Leaders Summit 2010, on 23 June 2010 in New York. 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.[6]

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

- OECD presented on the 2011 Update at the 2010 Amsterdam Global Conference on Sustainability and Transparency on 26-28 May 2010.
- OECD attended the EIB Business View on Human Rights Seminar on 4 June 2010 to represent OECD during the discussions on the NCP mechanism and to provide information on the latest developments on the 2011 Update of the Guidelines.

- On 13 October 2010, at the invitation of the Danish Council for CSR, OECD presented on OECD NCP performance and possible improvements to the Procedural Guidance envisaged for the 2011 Update of the Guidelines.
- On 27 October 2010, OECD presented on the Guidelines at the UNIDO Workshop titled "Social and Environmental responsibility of business: the role of small and medium scale enterprises in advancing the global sustainable development agenda."
- OECD presented at the European CSR Multi-Stakeholder Forum Plenary Meeting at the invitation of the European Commission on 30 November 2010. The topic was the Global Dimension of CSR, including Trade and Development Policies.
- The Investment Secretariat made regular progress reports on the update process to the Committee on Corporate Governance, the Employment and Social Affairs Committee, the Environment Policy Committee, the Working Group on Bribery in International Business Transactions, the Consumer Policy Committee, the Committee on Fiscal Affairs and the Working Party on Export Credits and Credit Guarantees and Participants to the Arrangement on Officially Supported Export Credits.

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. A special focus on the newly updated Guidelines was featured in the May 2011 issue. 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.

3.e 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. In particular, *Egypt* is reporting that in March 2011 the General Authority for Investment and Free Zones was moved to be under direct Cabinet supervision from its previous position under the Ministry of Investment. *Italy* is establishing a closer cooperation with INVITALIA, ICE, SACE and SIMEST. These agencies were invited to a special session held by the NCP Committee and encouraged to take an active role in supporting the dissemination of the Guidelines. They will be providing a promotion strategy to the NCP soon. *Slovenia* has reported that all foreign investors that apply for public tender have to declare that the recipient of the co-financing will abide by the Guidelines.

Table 3.1. **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.

Table 3.1. **The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes** *(cont.)*

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 cooperates 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 was under the Ministry of Investment but in March 2011 it became under the supervision of the Cabinet directly. 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 ("*avoir pris connaissance des Principes directeurs*").
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 *Guidelines* 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 (*http://www.efpolis.gr*), the and the Export Credit Insurance Organisation (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, and export credits are available. Cross links support the quick search for relevant OECD documents.
Israel	"Invest in Israel" – Investment Promotion Center	The site of Israel's Investment Promotion Centre has a direct link to the Israeli NCP web site where the OECD Guidelines are available electronically. The NCP works in close cooperation with the Investment Promotion Center
Italy	Export credits	The Italian NCP works closely with SACE (the Italian Agency in charge of insuring export credit) and contributes to its activities. SACE published the Guidelines on its website and introduced the acknowledgment declaration of companies on the Guidelines in its procedures. The Italian NCP also involved in its activities ICE (National Institute for the promotion of export. SIMEST (Financial Company for export support), and Invitalia (Inward Investment Agency). These organisations are disseminating the Guidelines among enterprises and publishing them on their websites. Together with the Guidelines they are promoting the risk-awareness tool in conflict areas.
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 Organisation (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.

Table 3.1. **The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes** *(cont.)*

Lithuania	Investment promotion	"Invest Lithuania" Agency (http://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) cooperates closely with the "Invest Lithuania" Agency. Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19th of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy: *http://www.ukmin.lt/en/investment/invest-promotion/index.php*
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 cooperation 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. Applicants for the PSI programme have to prepare a CSR policy plan based on the OECD Guidelines (*http://www.oesorichtlijnen.nl/aan-de-slag/maak-mvo-beleid/*).
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: *http://www.giek.no/giek_en/default.asp?menu=610&page=277&cells=0*
Peru	Investment Promotion	The Peruvian NCP is located in the Investment Promotion Agency- PROINVERSION, which provides information and guidance services to foreign investors on the Peruvian business environment including information of the OECD Guidelines and the NCP tasks.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIiIZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIiIZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.
Portugal	Exports and Investment Promotion	AICEP – Portugal Global is a Business Development Agency responsible for the promotion of exports, the internationalisation of Portuguese companies, especially SMEs and for inbound foreign investment. The Guidelines are part of the information given to all companies.
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (*www.mae.ro*) and the Romanian Agency for Foreign Investments (ARIS) (*www.arisinvest.ro*). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCP's web page include: ● Policy framework for Investment; ● OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Romanian Agency for Foreign Investment edited, among other specific promotional materials, the brochure entitled "Frequently Asked Questions – An Overview", including a separate chapter on Romanian National Contact Point and OECD Guidelines for Multinational Enterprises.
Slovenia	Promotion and awareness of OECD Guidelines	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Slovenian NCP promoted the OECD Guidelines through preparation of speeches. Foreign investors which apply for public tender declare that the recipient of the co-financing will abide by the OECD Guidelines for Multinational Enterprises and the principles laid down in the Declaration on International Investments and Multinational Enterprises.

Table 3.1. **The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes** *(cont.)*

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 Untied States provides information on the Guidelines to applicants for their programmes in support of US business activities abroad.

Notes

1. So far, all NCPs have followed procedural guidance of the Guidelines prior to the 2011 Update. New procedures have been introduced in the 2011 Update. For example, the expanded guidance includes the proactive agenda.
2. The peer review report is available on the Dutch National Contact Point website under "Peer-Review."*http://www.oecdguidelines.nl/get-started/peer-review/*
3. The terms of reference of the update can be found at *http://www.oecd.org/dataoecd/61/41/45124171.pdf*.
4. Notably the International Labour Organisation, the International Finance Corporation, the Office of the Special Representative the UN Secretary-General on Human Rights and Transnational Corporation and other Business Enterprises, the UN Global Compact, the International Organisation for Standardization and the Global Reporting Initiative.
5. China, India, Indonesia, the Russian Federation, Saudi Arabia and South Africa.
6. DSG Boucher's speech is available online at *www.oecd.org/daf/investment/guidelines*.

PART I

Chapter 4

Specific Instances

4.a. Recent Trends and Developments

262[1] requests to consider specific instances have been raised with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been raised: Argentina (7), Australia (4), Austria (5), Belgium (13), Brazil (22), Canada (11), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (18),[2] Germany (13), Hungary (1), Ireland (2), Israel (2), Italy (6), Japan (4), Korea (7), Luxembourg (3),[3] Mexico (3), Netherlands (21), New Zealand (2), Norway (6), Peru (3), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (16), Turkey (3), United Kingdom (24), and United States (32). 39 new specific instances were raised, more than double the number of specific instances raised in the 2009-2010 implementation period. A total of ten Final Statements, in addition to one revised Final Statement, were issued.

Annex 3 shows that 178 specific instances have been actively taken up and considered to date by NCPs.[4] 156 of these have been concluded or closed. Most specific instances dealt with Chapter V (Employment and Industrial Relations). A rising number of specific instances also involved violation of human rights. Complaints relating to Chapter VI (Environment) have also increased over the past few years. The only Guidelines chapter that has not been referenced in any specific instance is Chapter IX (Science and Technology).

In accordance with the trends of previous years, 65 percent of new specific instances raised for which location information was available were raised in non-adhering countries. Additionally, half of concluded specific instances for this reporting period concerned specific instances in non-adhering countries. For new specific instances raised for which details of the complaint were available, the most cited chapters were Chapter II (General Policies) and Chapter V (Employment and Industrial Relations). Cited sectors ranged across a diverse spectrum: extractive, textiles, food services, automotive, forestry, starch/derivatives, energy, and telecommunications. Furthermore, the majority of new specific instances raised were brought forward by non-governmental organisations.

In addition to the rise of the submitted specific instances, strengthened and more frequent cooperation between NCPs stands out as a significant development during the reporting period. For example, *Germany* is cooperating with *Switzerland, France* and *UK* NCPs. *Switzerland* is reporting close contact with several other NCPs (*e.g. Germany, France, Canada, Netherlands, UK*) in order to coordinate activities regarding specific instances raised and to exchange information as well as experiences on the functioning of the NCP. *Italy* has commented that the strong cooperation with *UK* NCP on a specific instance helped them clarify the practical application of the leader NCP principle. *Norway*'s NCP has met and consulted with the Dutch and British NCPs in connection with the establishment of the new structure for the Norwegian NCP. In addition, they maintain contact with Chilean and Canadian NCPs in regard to specific instances. *Peru* is also reporting that it is coordinating with the *US* NCP on a specific instance where the Peruvian NCP leads the proceeding and the *US* NCP plays a supporting and collaborative role. The *UK* NCP hosted an event in December 2010

between NCPs aimed at sharing best practice on the implementation of the Guidelines. Since 1 July 2010, the UK NCP has also transferred four complaints to other NCPs.

At the 11th NCP Meeting, a number of issues for clarification were brought up. *Norway*, in particular, brought up the expected timeframe for the implementation of the revised Guidelines, retroactive application of the revised Guidelines, and handling of specific instances brought against NGOs. The Chair of the Update Process clarified that during the update process, it was informally agreed that the implementation of the revised Guidelines would be expected to take place within six months of the update, according to international custom, with no retroactive application. The NCPs agreed on the principle that the revised Guidelines could be implemented within six months and could be applied retroactively only if both parties agreed to do so. The NCPs all agreed that these points of clarification merited further discussion and that they should be brought to the attention of the Investment Committee Working Party delegates at their next meeting in October 2011.

Regarding handling specific instances brought against NGOs, some NCPs expressed the opinion that if the organisation is a non-commercial actor or not an enterprise, the complaints against it were not in the scope of the Guidelines. This view supported that if the proceedings allowed complaints against various actors it would be hard to preclude complaints against entities that are definitely outside of the scope of the Guidelines, for example, foreign governments. Furthermore, a point was made that non-governmental organisations did not participate in the update process of the Guidelines with the view that this tool would be used against them. Other NCPs thought the type of activities that actors are engaged in are more important than their governance structure. For example, it is possible for a non-governmental organisation to be involved in business activities that could be covered by the scope of the Guidelines. An example was given of a large NGO headquartered in one of the adhering countries that wants to have its print work done by a company in a non-adhering country. Some NCPs thought that the Guidelines should apply in such cases. While all NCPs recognized that further discussion on this topic is needed, Norway did receive support for the view that the specific instance that prompted this discussion did not fall within the scope of the Guidelines.

4.b. Peer Learning

The implementation procedures of the updated Guidelines reinforce the important role of peer learning for furthering the effectiveness of the Guidelines and fostering the functional equivalence of NCPs. In addition, at their June 2010 meetings, NCPs agreed to devote more time to the lessons to be learned from concrete cases and in particular, why certain specific instances have produced satisfactory outcomes and why others have not.

A "peer learning session" was accordingly held during the 11th NCP Meeting. Caroline Rees, who advised Professor John Ruggie, the UN Special Representative of the United Nations Secretary-General for Business and Human Rights, on his mandate and who has led the research on the Access to Remedy pillar of the "UN Framework," including the creation of the BASESwiki online resource on non-judicial mechanisms,[5] moderated this session. The discussion drew on the revised Procedural Guidance for considering specific instances of the updated Guidelines.

The discussion was based on specific instances presented by the Canadian, Peruvian and UK NCPs to illustrate typical challenges encountered by established and new NCPs in handling specific instances. The specific instances discussed were diverse across regions,

sectors, final outcomes, and parties involved. The Canadian NCP presented two specific instances involving the mining sector in non-adhering countries in Latin America and Asia, one regarding environmental and community issues and other regarding environmental issues . The UK NCP presented two specific instances, one involving the tobacco sector in Asia regarding labour issues and one involving the consumer sector in Asia regarding labour issues, both in non-adhering countries. The Peruvian NCP presented two specific instances, one involving the telecommunications sector regarding labour issues in Latin America in an adhering country and other involving the mining sector regarding environmental issues in Latin America in an adhering country. Final outcomes for all of these specific instances are as diverse as their sectors and regions; some are still pending, while others have been resolved either with or without an agreement.

The discussion proved to be very useful for both peer learning and capacity-building needs of recently established NCPs and seven prospective adherents to the Declaration.[6] The points that were touched upon spanned a range of issues and proved to be a great way to delve deep into problems faced at all stages[7] of the specific instance procedure. Among problems discussed were fact-finding, ensuring transparency and impartiality, substantive complaints as a part of collective action problems, field visits, parent/subsidiary relationships, use of external experts, final statements as tools, resource allocation, institutional arrangements and parallel proceedings. The descriptions below are collective lessons learned and recommendations from the session.

On the broad issue of fact-finding in both initial and later stages of the specific instance procedure, it was recognized that fact-finding could impose a considerable burden on NCP resources and should be handled carefully to ensure impartiality and transparency. One way to manage both issues could be to use an inter-departmental approach as a way of pooling resources and increasing credibility, for example by creating a working party with members from different government departments with different expertise. Another way to help with resource allocation could be to engage in fact-finding missions only in the later stages of the specific instance, for example, only if good offices fail. Introducing external experts might also be one way to increase the favourable perception of the NCP impartiality. Issues when the substance of a complaint is part of a bigger set of challenges (for example, water resources) were also discussed, especially when the business activities take place in non-adhering countries. Ways to address this could include engaging diplomatically with those governments and potentially enlisting large aid agencies for technical assistance.

A group of issues around field visits was also discussed. Many NCPs thought that benefits of field visits were that NCPs could get a broader view of the situation while directly engaging with the affected communities. It was also recognized that the opportunity to speak with local management could be more constructive than engaging solely with the corporate parent as the local management might have immediate motivations to resolve the alleged issues. However, it was recognized that engaging with the corporate parent has many benefits (and may be fruitful in light of their particular reputational exposure) and should be explored accordingly.

It was suggested that the basis for a field visit should be a readiness for dialogue by both parties and/or agreed terms of reference. On the one hand, these pre-set conditions might have to be in place because undertaking a field visit without them might be dangerous in certain circumstances. For example, safety of persons performing the field

visit might be compromised, particularity in non-adhering states where the NCPs might be viewed to have a different role than they actually do. On the other hand, a point was raised that if there is forewarning of the visit, it might alter the information that is presented to the NCP and increase the possibility that the field visit is used for political purposes.

The question of who would perform a field visit was also discussed. In addition to the NCPs, others identified included independent experts, UN experts, and embassy officials with the caveat that both perceived and actual impartiality are extremely important factors. Overall, the conclusion was that decisions on conducting field visits should be taken on a case-by-case basis and that assessing the benefits and risks for each specific instance would be more beneficial than either making field visits mandatory or excluding the possibility altogether.

It was also recognized that many times the push against dialogue and good offices by either party was rooted in the fear of engaging in an unknown process. A set of NCP experiences showed that there was real benefit in building capacity of the "weaker" side in order to build their confidence in the proceedings. This does not at all imply a disadvantage for the other party and sufficient measures should be taken to ensure impartiality. Building confidence could be as simple as providing more information to the "weaker" party about the form of good offices or could extend to ensuring they have advice, training or other support necessary to participate on an equal basis.

A significant part of the discussion focused on handling parallel proceedings and the use of NCP good offices. Some NCPs require substantiated explanation as to why the specific instance should be suspended in light of parallel proceedings, while others look for a withdrawal from the parallel case in order to proceed. In any case, there was consensus that there should be a clear added value to continuing the specific instance. Issues to weigh when making the decision to suspend the specific instance were discussed. NCPs mentioned that such a decision could be based on the effectiveness and credibility of the parallel proceeding. For example, if parallel proceedings were characterized by unknown timelines and uncertain judicial processes the NCP might choose to proceed. Other NCPs mentioned that hiring lawyers to advise on how to avoid encroaching on the parallel proceeding might be a useful practice. Breaking down complaints into parts and tackling those parts that are not covered by the parallel proceedings could also be a way to handle parallel proceedings. Furthermore, the legal *versus* ethical grounding of the court case and specific instance might be enough to allow for continuation of the specific instance. Explaining the non-adjudicative nature of the specific instance to both parties was also said to have benefits. Timeframes were identified as a big challenge, especially given that some court cases take years to resolve, while the revised Guidelines call for NCPs to try to conclude the proceeding within 12 months of when it was received. Overall, there was a sense that the NCP's good offices role could be used to help resolve the issue despite parallel proceedings and that, despite difficulties presented by parallel proceedings, there could be value to engaging with the parties.

The NCPs noted that the clarification in the revised Guidelines on the necessity of a final statement even when no agreement is reached is a very useful contribution of the 2011 Update. NCPs discussed using final statements as a tool to incentivize cooperation. For example, willingness to state in the final statement whether the Guidelines were breached was recognized as one factor that might weigh in the cost/benefit analysis of the parties' decision to engage in the NCP procedure. In addition, actively using a statement to reflect whether there was cooperation could be a way to incentivize the parties to dialogue as there

are clear benefits to dialogue even if agreement is not reached in the end. An example was given of a company that ended up adopting the principles outlined in the Guidelines after the specific instance was concluded, as a way to manage risks.

It was, however, also recognized that adhering governments to the Guidelines have differing views about the appropriateness of making determinations of whether the Guidelines have been observed or not in NCP final statements. The United States recalled that during the update process a decision was made by governments not to explicitly encourage or authorize the NCPs to make such determinations in their final statements. The United States expressed the view that the practice was difficult to reconcile with a procedure based upon "good offices" and that the objectives of those that advocate it would be equally well served by making recommendations on how to better fulfill the objectives of the Guidelines. The United States noted that the procedural guidance allows flexibility for NCPs. The NCPs, therefore, have considerable latitude in developing their own procedures within the framework of the Guidelines to best suit their own legal, political and cultural circumstances. The United States noted the relevance of these differences and the outcome of the Update to discussions of functional equivalence and peer learning. Germany and the United Kingdom expressed the view that the updated Guidelines do not prohibit assessments on a company's compliance with the Guidelines, and they explained that, in some instances (such as when conciliation/mediation fails or is declined), this may be necessary in order to make meaningful recommendations to a company. In their view, it would not be logical to make recommendations to a company on how to bring its practices into line with the Guidelines without first indicating if the company has departed from those Guidelines.

Recently established NCPs and prospective adherents were also given an opportunity to highlight issues and challenges encountered in defining their institutional arrangements. The importance of perceptions of impartiality and actual impartiality and the allocation of resources were once again underlined. In addition to the institutional arrangements mentioned above, the importance of the location of the NCP was mentioned as important. For example, the NCP should be located so as to have the power and weight to convene different actors (if necessary) and move the proceedings along. The prospective adherents found this discussion useful and they reaffirmed their interest in the Guidelines.

At the conclusion of the session, the NCPs agreed that this form of peer learning, including thematic peer reviews and voluntary country reviews, is a useful way to move forward for exchanging experiences and they called for more concrete action to actually realize the peer learning opportunities. It was recognized that more often meetings were needed. The frequency of the meetings could be, at the very least, twice a year either in Paris or at a regional location. This issue will be brought forward to the October 2011 Investment Committee Working Party meeting.

Notes

1. Specific instance counts are based on the information provided in the Annual NCP Reports by 41 of the OECD Guideline adhering countries. Annual NCP Report is outstanding from Iceland. Not all NCPs report specific instances which have not been formally accepted.
2. France has had a significant increase in the number of specific instances it received in this implementation period. Six new specific instances have been raised in the past year as opposed to none in the previous five years.

3. Prior to this implementation period, Luxembourg had never received requests to consider specific instances.

4. The number of specific instances actively taken up by NCPs is the number of specific instances listed in Appendix D, adjusted for specific instances that are listed more than once because more than one NCP was involved and more than one NCP reported on the specific instance in the list. Annual NCP Reports is outstanding from Iceland.

5. Available at *http://baseswiki.org/en/Main_Page*.

6. Columbia, Costa Rica, Russia, Jordan, Serbia, Tunisia and Ukraine were invited to attend the 11th Meeting of the National Contact Points.

7. Three stages of the specific instance procedure are initial assessment, good offices, and conclusion of proceedings.

PART I

Chapter 5

Weak Governance Zones and Conflict-Affected and High-Risk Areas

5.a OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the "Guidance") was approved by the Investment Committee and the Development Assistance Committee in December 2010.[1] The Guidance has been turned into a formal OECD Council Recommendation adopted at Ministerial Level on 25 May 2011. The Recommendation on the Due Diligence Guidance is addressed to OECD Members and non-Member adherents to the OECD Declaration on International Investment and Multinational Enterprises. Argentina, Brazil, Latvia, Lithuania, Morocco, Peru and Romania have adhered to the Recommendation. While not legally-binding, this Recommendation reflects the common position and political commitment of adhering countries to actively promote the observance of the Guidance by companies operating in and from their territories and support its effective integration into corporate management systems.

The Guidance aims to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices and to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector. The Guidance is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas.

The Guidance was developed with the in-depth engagement from OECD and African countries, industry, civil society, as well as the United Nations. On 29-30 September, OECD countries and members of the ICGLR held a joint meeting on responsible supply chains of minerals from conflict areas.[2] High-level officials from OECD and ICGLR countries, as well as Brazil, Malaysia and South Africa attended the meeting along with key industry players and civil society. At that meeting, ICGLR ministers of the minerals sector recommended the adoption of the Guidance by ICGLR Heads of State at the ICGLR Special Summit against the Illegal Exploitation of Natural Resources while industry participants pledged to integrate the Guidance into their own management systems.

The eleven Heads of State and Government of the ICGLR did endorse the Guidance in the Lusaka Declaration,[3] which was adopted on 15 December 2010 at the ICGLR Special Summit. In the Declaration, the ICGLR Heads of State and Government called on companies sourcing minerals from the Great Lakes Region to comply with the Guidance and further directed the ICGLR Secretariat and the Regional Committee on Natural Resources to integrate the OECD Due Diligence Guidance into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources. Within the framework of the formal cooperation established between the OECD and the ICGLR as a result of a formal Memorandum of Understanding signed between the two Organisations, the standards and processes of the Guidance have already been integrated into the ICGLR Regional Certification Mechanism, thus creating a level-playing field for all economic actors operating in and sourcing minerals from the Region.

The United Nations Security Council supported taking forward the due diligence recommendations contained in the final report of the United Nations Group of Experts on the Democratic Republic of the Congo, which endorses and relies on the Guidance.[4]

While the finalisation of Guidance is only just complete, considerable work has already begun to disseminate, promote and ensure its effective implementation by companies. The United Kingdom's Foreign and Commonwealth Office has prominently featured the Guidance on a specialised website for conflict minerals.[5] The US Securities and Exchange Commission is due to adopt the implementing regulations of reporting requirements under Dodd-Frank Sec.1502[6] on conflict minerals towards the end of 2011. In that regard, the US Securities and Exchange Commission has already referenced the Guidance in its draft rules issued in December 2010, and in a wide show of report, stakeholders have called on them to continue to rely on and reference the Guidance in its final rules.[7] The OECD and the ICGLR co-hosted a regional workshop in Goma, eastern Democratic Republic of the Congo ("DRC") on 15 March 2011 to start disseminating and implementing the due diligence recommendations on the ground. The workshop was attended by many stakeholders, including central and local Government agencies of the DRC, the UN, local industry operating on the ground and local civil society organisations.

On 5-6 May 2011, the ICGLR, OECD and the UN Group of Experts on the DRC held a joint meeting in Paris on the implementation of the Guidance in Africa's Great Lakes region.[8] Participants in the ICGLR-OECD-UN GoE joint meeting included OECD, ICGLR and other partner countries, international organisations, industry at every level of the mineral supply chain, international and local civil society organisations, expert consultancy groups and other independent experts. At that meeting, participants recognised the significant progress made through the OECD-hosted working group on due diligence for conflict-free mineral supply chains, and agreed on a concrete actions plan to effectively implement the Guidance, which participants agreed would cultivate constructive corporate engagement in Africa's Great Lakes Region.

The OECD will also coordinate a multi-stakeholder process for the development of the new Supplement on Gold to be submitted to the OECD Investment Committee and Development Assistance Committee by the end of 2011.

5.b 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. Australia, Canada, Finland, Hungary, Ireland, Japan, New Zealand, Norway, Portugal, and Sweden all promote the Tool through their websites. France refers to the Tool in its missions to the United Nations. Germany references the Tool on the web and also refers to it *vis-à-vis* enterprises, stakeholders and academia. Italy uses the Tool as a reference document for the NCP activities related to bilateral industrial cooperation. Switzerland's NCP also promotes the Tool through its webpage. The Swiss NCP took different opportunities during discussions with Swiss MNEs to refer to it. On 29 March 2011, the UK NCP participated in an event on conflict minerals, organised by the UK Foreign and Commonwealth Office, which proved to be a good opportunity to raise awareness of the Tool among UK MNEs and SMEs in the mining sector.

Notes

1. The Recommendation of the Council on Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and the full text of the OECD Due Diligence Guidance can be downloaded at *www.oecd.org/daf/investment/mining*.
2. See the web page for the joint meeting, available at: *www.oecd.org/daf/investment/mining*.
3. Leaders signing the Lusaka Declaration are from Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia. For a full text of the Lusaka Declaration, see *www.oecd.org/dataoecd/33/18/47143500.pdf*.
4. See United Nations Security Council resolution S/RES/1952(2010) adopted on 29 November 2010.
5. See *www.fco.gov.uk/conflictminerals*.
6. See link to the "Dodd-Frank Wall Street Reform and Consumer Protection Act' which contains Title XV, Sec. 1502: *www.sec.gov/about/laws/wallstreetreform-cpa.pdf*. Accessed June 2011.
7. See comments on the SEC website, available at *www.sec.gov/comments/s7-40-10/s74010.shtml*.
8. See the web page for the joint meeting, available at: *www.oecd.org/daf/investment/mining*.

ANNEX I.1

Statements released by the National Contact Points, June 2010-June 2011

This Annex reproduces the statements issued by the National Contact Points concerning specific instances during the reporting period, in accordance with the Procedural Guidance, Implementation in Specific Instances of the Implementation Procedures section of the Guidelines. The Procedural Guidance provides that NCPs will "at the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available" by issuing a) a statement when the NCP decides that the issues raised do not merit further consideration; b) a report when the parties have reached agreement on the issues raised; and c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures.

- Public Statement by the Australian National Contact Point on the Xstrata Coal Pty Ltd (XSTRATA) Specific Instance
- Public Statement by the Canadian National Contact Point on the Marlin mine in Guatemala Specific Instance
- Public Statement by the German National Contact Point on the Neumann Gruppe GmbH Specific Instance
- Public Statement by the Irish and Dutch National Contact Points on the Corrib Gas project Specific Instance
- Public Statement by the Swiss National on the Triumph Specific Instance
- Public Statement by the United Kingdom National Contact Point on the Allied Workers' Associations against Unilever plc (Doom Dooma factory – Assam – India) Specific Instance
- Public Statement by the United Kingdom National Contact Point on the BAE Systems plc Specific Instance
- Public Statement by the United Kingdom National Contact Point on the Roll Royce Group plc. Specific Instance
- Public Statement by the United Kingdom National Contact Point on the Airbus S.A.S. Specific Instance
- Public Statement by the United Kingdom National Contact Point on the BTC PIPELINE Specific Instance
- Public Statement by the United Kingdom National Contact Point on the British American Tobacco Malaysia Berhad (Malaysia) Specific Instance

Statement by the Australian NCP

Public Statement by the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises on the Xstrata Coal Pty Ltd (XSTRATA) Specific Instance

The Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises (Guidelines) promotes the principles of the Guidelines and provides a forum for concerned parties to discuss issues relevant to any specific matter or case which may arise.

On 12 October 2010 the ANCP received a complaint raising a number of concerns regarding the activities of a multinational company, Xstrata Coal Pty Ltd (XSTRATA) from an Australian Trade Union – Construction, Forestry, Mining, Energy Union – Mining and Energy Division (CFMEU). XSTRATA is a wholly owned subsidiary of a multinational corporation Xstrata plc.

Xstrata plc operates a highly decentralised corporation with responsibility and accountability devolved to commodity businesses. Sales and marketing of commodities produced by Xstrata plc globally is undertaken by a separate company which is the largest shareholder in Xstrata plc.

Complaint

The CFMEU's complaint was set out in its notice of 11 October 2010 of a specific instance matter. At **Attachment A** is a schedule of the alleged breaches of the Guidelines by XSTRATA claimed by the CFMEU.

The CFMEU in its specific instance notice contended that these breaches of the Guidelines had come about through "numerous tactics to weaken or restrict collective bargaining, requiring or promoting individual employment contracts, failure to consult on major workplace restructuring including redundancies, and failure to actively redeploy workers made redundant."

The CFMEU also contended that Xstrata plc had entered into anti-competitive arrangements with its major shareholder that were disadvantageous to other shareholders including the CFMEU.

In support of its contentions the CFMEU provided specific details of numerous incidents, including via sworn statements.

The CFMEU in its notice of complaint documented that there had been a number of industrial disputes which resulted in formal proceedings under the *Fair Work Act 2009(Cwth)* (the Australian national industrial relations law). In addition, CFMEU commented that compliance with Australian law did not constitute compliance with the Guidelines and that the Guidelines represent supplementary principles and standards of a non- legal character.

The outcomes sought by the CFMEU were:

1. That XSTRATA remedy the specific breaches of the Guidelines. Where remedy of a past action is not possible, that the company formally commits to no further similar breaches.
2. That XSTRATA commit to working constructively and cooperatively with the CFMEU on matters of mutual concern, and specifically commit to constructive collective bargaining negotiations to reach agreements on wages and working conditions, especially with respect to employment security and the workplace rights of union members.

3. That Xstrata plc cease its anti-competitive practices with respect to exclusive marketing arrangements with its major shareholder. That all marketing contracts be subject to competitive tendering or similar transparent and arms-length commercial arrangements.

At Attachment B is an extract from XSTRATA's response to the notice of specific instance made by the CFMEU.

Process

ANCP met with CFMEU, on 30 November 2010, to discuss the specific instance. The CFMEU further outlined a history of industrial disputation between CFMEU and XSTRATA's subsidiary operating units over a range of issues at particular mining operations in eastern Australia. It was noted that CFMEU had publicly announced its lodging of the complaints made under the Guidelines on a number of websites and in the Australian media. CFMEU undertook that going forward it would treat all discussions on this matter as being confidential. A representative of the Australian Government's Department of Education, Employment and Workplace Relations attended this meeting.

Separately on 30 November 2010, XSTRATA met with ANCP and challenged that there were any breaches of the Guidelines as alleged by CFMEU. A representative of the Australian Government's Department of Education, Employment and Workplace Relations also attended this meeting.

At the time that the complaints were made both parties agreed separately that there were no outstanding industrial issues as these had been resolved, largely through the formal provisions of Australia's industrial relations system, at times following a deal of industrial disputation. The CFMEU asserts that the formal resolution of these disputes within the limits of Australian law does not constitute resolution of these issues which it contends are breaches of the Guidelines.

Both parties agreed that at the enterprise level there was ongoing contact between CFMEU and local enterprise managers of XSTRATA. Some of this interaction was constructive and resulted in positive outcomes. However in some workplaces interaction was fraught with disputation, resulting in legal action to resolve issues. Some of the actions by parties to these disputes and/or their agents appears to have led to a high level of distrust and antipathy between XSTRATA and the CFMEU at the corporate level.

The ANCP outlined its role to both parties. In particular, that the Guidelines are voluntary and do not allow for any arbitral or judgemental role by the ANCP. The ANCP's role is limited to using its good offices to bring the parties together to explore resolution of issues at hand, possibly through mediation. This process relies on the good will of all parties involved.

CFMEU expressed its willingness to engage in a mediation process. XSTRATA did not see any value in engaging in a mediation process with the CFMEU through the ANCP, however was willing to engage with the CFMEU at the enterprise level.

During the first quarter of 2011 draft copies of this statement were provided to CFMEU and XSTRATA for comment.

Following receipt of comments from the parties on the draft statement the ANCP held telephone discussions with XSTRATA and the CFMEU;

- In conversation with the ANCP on 14 April 2011, XSTRATA reiterated the points it had already made, especially that 16 of its enterprises had negotiated, albeit at times after

disputation, enterprise agreements with the CFMEU. XSTRATA maintained its position regarding a mediation process with the CFMEU; largely because of issues relating to confidentiality with the CFMEU, and a perceived lack of good faith and goodwill shown by the CFMEU and continued to see no point in meeting with the CFMEU.

- Separately on 21 April 2011, the CFMEU continued to press for a mediation process with XSTRATA to resolve its specific instance complaints.
  - ❖ It was noted that the CFMEU has given a guarantee of confidentiality of all future discussion regarding this matter.
- In its comments on the initial draft statement the CFMEU *inter alia* indicated that the draft statement did not represent adequate application of implementation procedures under the Guidelines and that it would proceed to the OECD Investment Committee for clarification if these deficiencies were not addressed. The ANCP noted this possibility.

In discussing the matter with the both XSTRATA and the CFMEU, the ANCP expressed disappointment with XTRATA's refusal to enter into face to face discussions with the CFMEU about this matter. The ANCP has been unable to bring the parties together to address the alleged breaches raised by the CFMEU and therefore the ANCP is unable to fulfil its key role of seeking to resolve possible issues arising from the Guidelines through mediation. The ANCP continues to offer its services towards resolving the issues and would consider reopening this specific instance if both parties were to agree.

Canberra, 8 June 2011

Box I.1.1. **CFMEU allegations of breaches of the OECD Guidelines for Multinational Enterprises**

- That XSTRATA breached Part IV, 1(a), (2)(a) and 2(c) of the OECD Guidelines: enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:
  - *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)* Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.
  - *c)* Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern.
- That XSTRATA breached Part IV, (6) of the OECD Guidelines: "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."

Box I.1.1. **CFMEU allegations of breaches of the OECD Guidelines for Multinational Enterprises** *(cont.)*

- That XSTRATA breached Part IV, (8) of the OECD Guidelines: "Enable authorised representatives of their employees to negotiate on collective bargaining or labour management relations issues and allow parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters."
- That Xstrata plc had breached Part IX of the OECD Guidelines: "Enterprises should, within the framework of applicable laws and regulation, conduct their activities in a competitive manner."

Box I.1.2. **XSTRATA'S RESPONSE TO COMPLAINTS**

XSTRATA responded as follows:

1. XSTRATA and Xstrata plc were committed to complying with the laws of the countries within which they operated and supported the OECD Guidelines for Multinational Enterprises.
2. XSTRATA's decentralised operating model was well known to CFMEU. XSTRATA intended to continue the arrangement whereby industrial matters were managed and engaged upon locally to its mining operations. XSTRATA has maintained this position in meetings with CFMEU officials.
3. XSTRATA noted that its operating units have a long history of collective bargaining and agreement making with CFMEU and other trade unions. XSTRATA acknowledged that at times negotiations leading to such agreement making were fraught and had at times led to industrial disputation of varying degree. All such negotiations at the time of the advice from XSTRATA had been resolved either directly or through the appropriate legal mechanisms.
4. XSTRATA also made particular note of vilification of it and its staff, directors and some shareholders in websites established and managed by CFMEU. It is understood that these actions are subject to actions before the Australian authority established to hear complaints of such nature.
5. XSTRATA on behalf of Xstrata Plc noted that in its original prospectus issued in 2002 prior to its listing on the London Stock Exchange the marketing and sales arrangements for its commodities through its principal shareholder were clearly made public and that these arrangements meet the requirements of the UK Listings Authority. XSTRATA advised that all related party transactions between Xstrata plc and its principal shareholder are reported in Xstrata plc's accounts in accord with appropriate reporting principles. XSTRATA rejected that these arrangements were anti competitive within the scope of Part IX of the OECD Guidelines for Multinational enterprises.
6. XSTRATA advised that it did not consider mediation a viable means of addressing CFMEU's complaint given the level of distrust between the parties over a number of issues including maintenance of confidentiality and good faith.

Statement by the Canadian NCP

Final Statement of the Canadian National Contact Point on the Notification dated December 9, 2009, concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises

Executive Summary

On December 9, 2009, Frente de Defensa San Miguelense (FREDEMI), a Guatemalan NGO, assisted by Centre for International Environmental Law (CIEL), an NGO based in Washington D.C. (the "notifiers"), filed a request for review with the Canadian National Contact Point (NCP). A number of issues were raised in relation to the Marlin Mine in Guatemala, owned and operated by Canadian company Goldcorp Inc.

The issues raised related to the implementation of Paragraph 2 of the General Policies (Chapter II) of the OECD Guidelines which states that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments". The notifiers indicated that they were seeking the closure of the mine and a statement from the NCP.

The NCP's initial assessment was that the issues raised merited further examination. Pursuant to the process outlined in the Guidelines, the NCP offered its "good offices" to facilitate a dialogue between the parties. The offer was accepted by the company. However, the notifiers declined the offer. The NCP attempted to explore whether the notifiers would be willing to participate in facilitated dialogue without any confidentiality requirements. The notifiers also declined the NCP's second offer of facilitated dialogue with more flexible confidentiality requirements and reiterated their request for a full investigation of the facts, including a field visit to San Miguel Ixtahucán, and for the NCP to issue a "robust final statement".

The NCP's position is that communication and dialogue between the company and the notifiers are essential to the resolution of any disputes. This message has been conveyed to the parties throughout the process.

Therefore, the NCP recommends that the parties participate in a constructive dialogue in good faith with a view to addressing the issues raised. The sooner the parties agree to engage in a meaningful dialogue, the better it will be for all concerned.

The NCP considers this specific instance to be closed.

Should the circumstances change the NCP remains available to provide assistance to facilitate a dialogue.

Introduction to the OECD Guidelines for Multinational Enterprises

The OECD *Guidelines* ("the Guidelines") are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Each OECD Member State is obliged to establish a National Contact Point (NCP) for purposes of promoting the Guidelines and dealing with specific instances involving allegations of non-observance of the Guidelines by multinational enterprises.

Upon receiving a request for review in relation to a specific instance and allegations of non-observance of the Guidelines, an NCP will conduct an initial assessment with a view to determining whether the issues raised merit further examination. If the NCP's conclusion is that the issues raised merit further examination, the NCP will then offer its "good offices" as a platform for facilitated discussion between the parties in an attempt to resolve the issues. If the parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes recommendations as appropriate, on the implementation of the Guidelines.

It is important to note that the Guidelines are not laws. Similarly, the NCPs are not law enforcement agencies or courts. The primary value-added of the NCPs is the facilitation of dialogue for purposes of resolving disputes.

Additional information on the Guidelines can be found in Box I.1.3. The Terms of Reference of the Canadian NCP are attached in Box I.1.4.

Specific Instance

On December 9, 2009, two members of Frente de Defensa San Miguelense (FREDEMI, The Front in Defense of San Miguel Ixtahuacán) along with representatives of the Washington, D.C.-based Centre for International Environmental Law (CIEL) (*www.ciel.org*), Amnesty International, MiningWatch Canada, and Breaking the Silence met with members of Canada's National Contact Point (NCP) in Ottawa, and delivered to the NCP a request for review in relation to the Marlin Mine in Guatemala that is operated by Goldcorp Inc. The request for review was also posted on the CIEL website the same day. (*http://ciel.org/Hre/Guatemla_Canada_9Dec09.html*).

In its submission, FREDEMI alleges that Goldcorp Inc. has not observed the Guidelines at the Marlin mine. In particular, FREDEMI refers to Paragraph 2 of the General Policies (chapter II) which states that enterprises should "*respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments*".

FREDEMI claims that Goldcorp's operations at the Marlin mine are not consistent with Guatemala's obligations to respect the rights to life, health, water, property, to be free from racial discrimination, and to free, prior and informed consent. Specifically, the notifiers assert that:

1. Goldcorp's land acquisition violates the communal property rights and the right to free, prior, and informed consent of the people of San Miguel Ixtahuacán (SMI).
2. Structural damage to houses caused by Goldcorp's use of explosives and heavy equipment violates the right to property of those owners.
3. Water contamination resulting from Goldcorp's mining activities violates the right to health of the people of SMI.
4. Goldcorp's overconsumption of water for its operations violates the communities' right to water.
5. Goldcorp retaliation against anti-mine protesters violates their right to life and security of person.

In its initial submission, FREDEMI states that there is no trust between the company and the affected communities. For this reason, they are not requesting the NCP to facilitate access to alternative dispute resolution.

Instead, the notifiers ask the NCP to undertake an investigation into Goldcorp's activities at the Marlin mine and issue a statement to ensure the company's compliance with the Guidelines.

Specifically, the notifiers seek Goldcorp's commitment to:

- "Suspend all mining operations and close the mine;
- Terminate its plans to expand the mine;
- Cease its intimidation and persecution of community members;
- Submit to ongoing, third-party monitoring of water contamination;
- Establish an escrow account with sufficient funds to finance the environmental restoration and continuous water treatment needed after the closure of the Marlin mine; and
- Adopt a corporate policy to respect the right of indigenous peoples to free prior and informed consent."

The Marlin Mine

The Marlin Mine, located about 300 kilometres northeast of Guatemala City, is a gold and silver operation that uses both open pit and underground mining methods. It employs 1,905 workers, of which 98% are Guatemalan residents. The Marlin deposit was discovered in 1998 by Montana Exploradora, S.A. and was later purchased by Francisco Gold Corporation in 2000. In 2002, Francisco Gold Corporation merged into Glamis Gold Ltd and control of the deposit passed to Glamis Gold. Construction of the mine began in 2004, after the Guatemalan government issued environmental permits and licenses. Goldcorp and Glamis Gold Ltd merged in 2006 and control of the mine passed to Goldcorp. Goldcorp Inc. is a Canadian company headquartered in Vancouver, British Columbia. The Marlin Mine is operated in Guatemala by Goldcorp Inc.'s subsidiary company, Montana Exploradora S.A.

The Marlin Mine has been the subject of numerous studies, inquiries and reports over the years. Some of these studies, inquiries and reports have been undertaken by civil society organisations, while others were sponsored or conducted by the company, international institutions or the Government of Guatemala.

In 2004, the International Finance Corporation (IFC) provided a $45 million loan to Montana Exploradora, S.A. to develop the mine. In addition, the IFC assisted in the planning and implementation of Montana Exploradora S.A.'s environmental and social programs. The IFC's Office of the Compliance Advisor/Ombudsman (CAO) investigated a complaint in relation to the Marlin Mine, submitted by communities in the Sipacapa municipality in 2005. The CAO recommended that the two parties should engage in dialogue to achieve a resolution of the dispute.

In May 2010, the Inter-American Commission on Human Rights (IACHR) of the Organisation of American States granted "Precautionary Measures" for the 18 Mayan indigenous communities surrounding the Marlin Mine, calling on the Government of

Guatemala to temporarily suspend the operation of the mine until further investigations can be undertaken. In June, the Government of Guatemala announced that it would initiate the administrative process to suspend operations at the mine. The Guatemalan Minister of Energy and Mines has been assigned responsibility for following up on processes related to the Marlin Mine. In this respect, an official, inter-Ministerial evaluation of the alleged conditions at the mine site is being conducted.

In May 2010, a scientific report on toxic metals was released by Physicians for Human Rights and the Department for Environmental Health at the University of Michigan. The report identified the need for a rigorous human epidemiological study and an enhanced and expanded ecological study. It also recommended the establishment of an independent oversight panel.

In May 2010, Goldcorp released a Human Rights Assessment report regarding the Marlin Mine. The Assessment report was commissioned by Goldcorp and prepared by On Common Ground Consultants Inc. On the basis of an eighteen-month study, the report made a series of recommendations which Goldcorp initially responded to in June 2010. Subsequently, in October 2010, Goldcorp issued an update of the company's actions undertaken to date with respect to the recommendations. Goldcorp has also committed to issuing a series of regular updates describing the progress, challenges, and future expectations as Goldcorp implements the recommendations of the Assessment report. Goldcorp has posted related documentation onto the company's website. Goldcorp also adopted a human rights policy in October, 2010. However, during a conference call that the NCP had with the notifiers on November 22, 2010, it appeared that the notifiers were unaware of these developments in the company's policies and corresponding changes in practices. The notifiers indicated that they were unaware of any Spanish translation of these documents.

These and other studies and proceedings clearly demonstrate the extent of stakeholder interest in the mine and the impacts of its operations. The NCP is aware of the existence of these and other studies and proceedings, but they did not influence the decisions of the NCP with respect to the initial assessment and the NCP's performance of its mandate.

Consideration of the Specific Instance

Upon meeting with the notifiers and receiving their submission, the Canadian NCP forwarded the request for review to Goldcorp Inc. and asked for a response that could be shared with the notifiers. Goldcorp provided a response to the NCP, confirming its commitment to the NCP process, including facilitated alternative dispute resolution.

The NCP was not in a position to verify the technical details of many of the submitted reports. However, the NCP's initial assessment was that the issues raised merited further examination. The NCP believed that there should be a dialogue between the parties in order to attempt to resolve the issues raised. Accordingly, on March 23, 2010, the NCP Chair signed two letters informing the parties of the initial assessment of the NCP and offered the NCP's "good offices" to "facilitate access to consensual and non-adversarial means to assist in dealing with the issues". The NCP proposed to hold a meeting, or series of meetings if required, in Ottawa.

The letter of March 24, 2010, to FREDEMI contained the following paragraph:

"*The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering 'whether the issues raised merit further examination'. The NCP has carried out its initial assessment by reviewing the documentation which you submitted, as well as the response from Goldcorp Inc. The matters raised have a lengthy history and are complex in nature. Keeping in mind that the NCP is not a court or tribunal, and that it is dedicated to the objective of contributing to the resolution of issues that arise in relation to the implementation of the OECD Guidelines, the NCP has concluded that the issues which you raised merit further*

examination. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in your submission."

The letter further went on to state:

"*If the parties are willing to participate, the NCP will proceed to draft the terms of reference for such a meeting which will include asking both parties to agree to maintain the confidentiality of information tabled and shared during the proceedings*."

Goldcorp responded to the NCP's offer on March 26, 2010, and indicated that it was willing to participate in the NCP facilitated dialogue process.

On April 23, 2010, the notifiers responded by declining the NCP offer of facilitated dialogue. In its letter, FREDEMI stated that the conditions did not exist for an open and constructive dialogue with Goldcorp. Furthermore, FREDEMI indicated that agreeing to participate in a closed-door meeting with Goldcorp would create further tensions and divisions within their community.

On May 14, 2010, Goldcorp provided a letter to the NCP that was shared with the notifiers on May 17, 2010. The letter indicated that Goldcorp was disappointed that FREDEMI declined the NCP's offer to facilitate a dialogue with Goldcorp. Further, the letter stated:

"*To the extent that FREDEMI's refusal to participate in a dialogue facilitated by the NCP is because of the initial meeting would be a 'closed-door meeting in Canada,' Goldcorp confirms its willingness to meet with FREDEMI and the NCP in an open format at a location convenient for all parties*."

In an attempt to explore whether the conditions referred to above by the notifiers could be altered in such a way that FREDEMI would be willing to participate in a dialogue with Goldcorp, the NCP sent a letter to the notifiers on July 2, 2010. With respect to the question of confidentiality, the letter stated:

"*Canada's NCP acknowledges the concerns raised by FREDEMI and remains hopeful that FREDEMI will reconsider its position and consent to a facilitated dialogue. We understand the difficulties an organisation would face were it unable to share with its key community stakeholders the information obtained in a dialogue with another party. With this in mind, we would like to clarify that the confidentiality of proceedings would not prevent FREDEMI, acting as the representative or agent of the interested communities, from consulting with such communities before and after a dialogue. As the interested parties on whose behalf you are acting, community members are entitled to receive relevant information related to this specific instance; however, they are also expected to keep such information confidential. A good faith dialogue to resolve difficult and controversial issues requires that there be certain rules around how information shared in proceedings is used*."

Goldcorp was copied on the letter to the notifiers and subsequently wrote to the NCP on July 9, 2010, reiterating Goldcorp's position outlined in its letter of May 14, 2010, that it was willing to be accommodating on the issues of confidentiality. This letter was forwarded to the notifiers on July 12, 2010.

On August 20, 2010, the notifiers replied by letter, again declining the possibility of a facilitated dialogue with Goldcorp. In its letter, FREDEMI stated that the clarification of the application of confidentiality partly addressed procedural concerns. However, FREDEMI was not prepared to deviate from its position that in order to address human rights concerns, the Marlin Mine must be closed. FREDEMI's view was that a dialogue would only

result in delays. FREDEMI instead urged the NCP to proceed with a full investigation and field visit followed by the issuance of a final statement.

At this stage it became evident that the notifiers and Goldcorp had irreconcilable positions. While the notifiers wished the Marlin Mine to be closed and were unwilling to participate in any facilitated dialogue, Goldcorp wished to remain open and participate in facilitated dialogue.

The NCP sent a letter dated October 6, 2010, to the notifiers and copied Goldcorp indicating that it was proceeding to draft a final statement. In this letter, the NCP indicated that it is not in a position to carry out a field visit. Subsequently, on November 22, 2010, the NCP held a conference call with CIEL and FREDEMI members in Guatemala. During this conference call, the members of FREDEMI provided a number of testimonials about their experiences and concerns with the mine. They repeated that they were not interested in participating in a dialogue with Goldcorp and they wanted the mine to close. During the call, the NCP informed the representatives that it was preparing a draft statement which would be forwarded for comments. The NCP was asked if it would be providing a Spanish translation of the entire draft statement for the benefit of the community members. On December 13, 2010 the NCP informed FREDEMI that further to its provision of courtesy unofficial Spanish translations of letters throughout this process, it decided that it would provide courtesy unofficial translations of the Executive Summary and Recommendations portions of the draft statement. This procedure is consistent with the approach taken with regard to translations during consultations with aboriginal communities in Canada regarding environmental impact assessments. The NCP also held a meeting on November 23, 2010 with a Goldcorp official and a mine employee who was a resident of the community around the mine. The employee described their life in the community and their work at the mine. A detailed chronology of events can be found in Box I.1.5.

The Canadian NCP listened to both sides in this dispute and attempted to bring the parties together for purposes of engaging in a dialogue to address and resolve the issues that have been raised. The NCP regrets that these efforts have not been successful.

Although the notifiers declined the NCP's offer of facilitated dialogue, the NCP's initial assessment was that the issues raised merited further examination. With regard to the issues raised by the notifiers in the specific instance, the NCP is of the view that the lack of communication, and possible miscommunication, between the parties is a significant contributing factor to the overall problem. Generally, mining companies which undertake significant operations should endeavour to use effective communication strategies in order to engage the communities affected by the mine and to disseminate information of a technical or scientific nature. This process and activity is a critical element of corporate social responsibility which, if managed successfully, may benefit all parties concerned. At the same time, community members should be willing to engage with the company. A lack of effort by either party can lead to erroneous perceptions and misunderstanding, lack of trust, opposition and grievances.

The NCP recognizes that, over the years, the Marlin mine operations have changed hands, and that this has contributed to the deepening of the lack of trust among some communities. The building of trust in such circumstances constitutes an even greater challenge which requires a corresponding effort on both sides.

In this regard, the NCP would like to acknowledge Goldcorp's willingness to engage in the NCP process. The NCP encourages Goldcorp to continue to issue its regular updates on

the implementation of the recommendations in Human Rights Assessment Report prepared by On Common Ground.

Recommendation

The NCP's position is that communication and dialogue between the company and the notifiers are essential to the resolution of any disputes. This message has been conveyed to the parties throughout the process.

Therefore, the NCP recommends that the parties participate in a constructive dialogue in good faith with a view to addressing the issues raised. The sooner the parties agree to engage in a meaningful dialogue, the better it will be for all concerned.

The NCP considers this specific instance to be closed.

Should the circumstances change the NCP would be willing to provide assistance to facilitate a dialogue.

May 3, 2011

Box I.1.3. **Information on the OECD Guidelines for Multinational Enterprises**

The Guidelines constitute a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

Although many business codes of conduct are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

Adhering countries comprise all 33 OECD member countries, and 9 non-member countries (Argentina, Brazil, Egypt, Estonia, Latvia, Lithuania, Morocco, Peru and Romania). The Investment Committee has oversight responsibility for the Guidelines which are one part of a broader OECD investment instrument – the Declaration on International Investment and Multinational Enterprises. The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.

Because of the central role it plays, the effectiveness of the National Contact Point 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.

More information may be obtained about the Guidelines at: *www.oecd.org/daf/investment/guidelines*

For a copy of the Guidelines, see *http://www.oecd.org/dataoecd/43/29/48004323.pdf*

Box I.1.4. **Terms of Reference for Canada's National Contact Point for the OECD Guidelines For Multinational Enterprises**

Introduction

The Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) constitute a well-established and authoritative set of international standards in the realm of corporate social responsibility (CSR). The Guidelines form a key component of the Government of Canada's overall CSR policies. Canada is an adhering country to the OECD Guidelines and is required to maintain a National Contact Point for purposes of furthering the effectiveness of the Guidelines.

Definitions

In this Terms of Reference, the following terms shall be defined as follows:

Department: means federal departments of the Government of Canada

CIDA: Canadian International Development Agency.

DFAIT: Foreign Affairs and International Trade Canada.

EC: Environment Canada.

Finance: Finance Canada.

Guidelines: OECD Guidelines for Multinational Enterprises.

HRSDC: Human Resources and Skills Development Canada.

IC: Industry Canada

INAC: Indian and Northern Affairs Canada.

NCP: the National Contact Point for the OECD Guidelines for Multinational Enterprises. The Canadian NCP consists of an interdepartmental committee which is supported by a Secretariat housed at DFAIT. References to the NCP are to the interdepartmental committee.

NRCan: Natural Resources Canada.

Permanent Members: Departments of the Government of Canada who are permanent members of the NCP interdepartmental committee.

Primary Contact: Individual at a Department who is the main contact person or liaison official with respect to the NCP.

Specific instance: The term "specific instance" is one derived from the OECD Guidelines. Any individual, organisation, or community ("stakeholder") that believes a corporation's actions or activities have breached the Guidelines may lodge a formal request for review regarding a "specific instance" with the NCP of the relevant country. Hence, a specific instance refers to allegations by stakeholders of an "issue or situation" that it is believed to constitute the non-observance of the Guidelines by multinational enterprises.

Background

The Guidelines are a government-endorsed comprehensive set of recommendations for multinational enterprises on principles and standards for responsible business conduct. The Guidelines are voluntary and are not intended to override local laws and legislation.

Canada has been an adhering country since the OECD adopted the Guidelines in 1976. The OECD Council Decision of 1991 created the requirement for all countries adhering to the Guidelines to maintain an NCP. The revisions to the Guidelines in 2000 set out the recommended Procedural Guidance for the NCPs.

Box I.1.4. **Terms of Reference for Canada's National Contact Point for the OECD Guidelines For Multinational Enterprises** *(cont.)*

Purpose

The purpose of this Terms of Reference document is to provide a guide for the composition and operations of the Canadian NCP. Moreover, its adoption is expected to contribute to the transparency and accountability of the NCP's operations.

Role and Responsibilities of the NCP

The primary documents that outline the role and responsibilities of the NCPs are the "Procedural Guidance" chapter of the Guidelines, as well as the "Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises."

According to the Procedural Guidance notes for the OECD Guidelines, the role of the NCP is "to further the effectiveness of the Guidelines", while the responsibilities of the NCP consist of:

i) making the Guidelines known and available;

ii) raising awareness of the Guidelines;

iii) responding to enquiries about the Guidelines;

iv) contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, and;

v) reporting annually to the OECD Investment Committee.

Core Criteria of Operations

The NCP will operate in accordance with the core criteria of visibility, accessibility, transparency and accountability, as recommended by the OECD Procedural Guidance.

Institutional Structure

Canada's NCP is an interdepartmental committee composed of federal government departments. The NCP may elect to alter its composition if such alteration is agreed to by all permanent members of the NCP.

The NCP may, as required, create *Ad Hoc* Working Groups to perform specific activities in carrying out the NCP mandate.

Chairperson and Vice-Chairperson

The NCP shall be chaired by a Director General level representative of DFAIT.

The NCP shall designate a Vice-Chairperson, from among the Permanent Members of the committee other than DFAIT NCP Secretariat, who shall be at least at the Director level.

The Vice-Chair shall assume the role of the Chairperson when the Chairperson is absent.

Secretariat

The NCP Secretariat function shall be provided by DFAIT.

Membership

Permanent Members: The Permanent Members of the Committee are CIDA, DFAIT, EC, Finance, HRSDC, IC, INAC, and NRCan.

New Permanent Members: The NCP may by consensus accept new members.

Primary Contact: Each Permanent Member shall designate one of its employees to act as the Primary Contact.

Box I.1.4. **Terms of Reference for Canada's National Contact Point for the OECD Guidelines For Multinational Enterprises** *(cont.)*

The Primary Contacts will be responsible for liaising with the NCP and notifying the Secretariat of changes in representation or membership, as well as sharing information, providing appropriate input and coordinating views internally within their respective Departments. The Primary Contact person for each Department, or their proxy, with the respective Department's approval, shall be the primary person with authority to express the views of the respective Department at NCP meetings.

The Chair of the NCP shall not be considered the Primary Contact for DFAIT. DFAIT shall designate another official to act as the Primary Contact for DFAIT.

Observers / Resource Persons: Each Department may have a number of operating units with an interest in NCP matters. The Primary Contact of each Department shall determine whether representatives of other units within their Department may participate in NCP meetings as an observer or resource person.

The Primary Contact for each Department shall ensure that the Secretariat is notified of the proposed participation of any additional Departmental representatives as either Observers or Resource Persons.

Ad Hoc Members: The NCP may seek to engage the participation of representatives from other federal government Departments on a case by case basis. In such situations, the respective Department may be invited to participate in the NCP's work, and to contribute their knowledge and expertise on any particular subject matter as required.

Meetings

Calling of Meetings: The NCP shall meet at least twice annually, or as considered to be appropriate and necessary by the Chairperson.

The Secretariat, on behalf of the Chairperson, shall send meeting notices to the Primary Contact of each of the Permanent Members notifying them of meeting dates and times.

Any Permanent Member of the NCP may request a meeting of the NCP at any time through the Chairperson.

Quorum: Quorum shall be necessary for an NCP meeting to take place. Quorum shall consist of a gathering of the Primary Contacts, or their proxies, from at least fifty per cent plus one (50% +1) of the Permanent Member Departments.

Decision-Making: Decisions may need to be made by the NCP from time to time on questions relating to the NCP's fulfillment of its role and other matters. Each of the Permanent Members shall be able to express their views at NCP meetings through their Primary Contacts, or their proxies. The NCP will make every effort to make decisions based on consensus. Where a consensus cannot be reached, the majority shall prevail.

Specific Instances

Specific Instances shall be dealt with in accordance to the process outlined in the Guidelines, as well as in the procedures and protocols documents that are posted on the Canadian NCP website, as they may be amended from time to time.

Confidentiality

In order to facilitate the work of the NCP and in line with the OECD Guidelines Procedural Guidance notes, the NCP and all those invited to participate in its proceedings from various Departments shall take appropriate steps to protect sensitive business and other information.

Box I.1.4. **Terms of Reference for Canada's National Contact Point for the OECD Guidelines For Multinational Enterprises** *(cont.)*

Reporting

The Secretariat shall manage the website content for Canada's NCP, as well as prepare and disseminate individual meeting reports and an annual report for submission to the OECD Investment Committee pursuant to the OECD requirements.

All Permanent Members shall be consulted and asked to contribute to the preparation of the annual report.

Resources

Permanent Members of the NCP shall, as necessary, endeavour to contribute resources (both human and financial) to the operations of the NCP for purposes of ensuring the timeliness and effectiveness of its work.

For more information about the Canadian NCP, see: *www.ncp.gc.ca* or *www.pcn.gc.ca*.

Box I.1.5. **Chronology of Events**

- December 9, 2009: The notifying party FREDEMI (and CIEL) came to Ottawa and met with the NCP to submit their request for review. The request states that the notifiers are not seeking facilitated dialogue but that the NCP undertake an investigation and make a statement. This message was also stated during the meeting. Following the meeting with the NCP FREDEMI held a press conference.
- December 16, 2009 Letter acknowledging receipt of the submission was sent to FREDEMI.
- January 22, 2010: NCP sends letter to Goldcorp informing them of the submission from FREDEMI and requesting a response.
- February 19, 2010: Goldcorp Inc. provided their response to the submission.
- February 24, 2010. NCP held a meeting and discussed the specific instance. A Working Group (subcommittee) was formed to conduct the initial assessment and make a presentation to the NCP for purposes of assisting the NCP in concluding an initial assessment. The Working Group met several times (March 2, March 11) to consider the documentation from both parties.
- March 25, 2010: NCP communicated its initial assessment of the submission to both parties in letters dated March 24, 2010. Both parties were informed that the NCP considered the issues raised to merit further examination and offered to facilitate a dialogue. The parties were asked to reply by April 7, 2010.
- March 26, 2010: Goldcorp responded that they were willing to participate in the NCP's process.
- April 9, 2010: A Spanish copy of the Goldcorp's response of February 19 was forwarded to CIEL. CIEL was also requested to reply to the NCP's offer in its letter of March 25 by April 23, 2010
- April 23, 2010. FREDEMI provided its response and declined the offer of facilitated dialogue. The letter refered to the initial submission and repeated that they are not requesting the NCP to facilitate dialogue but instead urge the NCP to conduct a field visit and issue a statement.
- May 14, 2010. Goldcorp submitted a letter indicating its willingness to participate in a meeting without any confidentiality conditions. This letter was shared with FREDEMI on May 17, 2010.
- June 1, 2010. NCP held a meeting with Dina Aloi of Goldcorp. The meeting was held at Ms. Aloi's request. The minutes were prepared and subsequently shared with FREDEMI.
- July 2, 2010. The NCP sent FREDEMI a letter clarifying that the NCP's understanding of the confidentiality requirements would not prevent FREDEMI, acting as representatives or agents of interested communities, from consulting with their communities. The letter asked whether they would reconsider the offer of facilitated dialogue and requested a reply by August 2, 2010.
- July 9, 2010. Goldcorp was copied on the letter to FREDEMI and sent a letter (July 9) indicating that FREDEMI should be informed that Goldcorp is prepared to waive the confidentiality conditions for a meeting. This letter from Goldcorp was subsequently forwarded to FREDEMI on July 12.
- July 29, 2010. NCP received a number of documents from Goldcorp and shared these with FREDEMI. FREDEMI requested additional time to reply to the letter of July 2.

Box I.1.5. **Chronology of Events** *(cont.)*

- August 4, 2010. At Goldcorp's request, the NCP held a meeting with Dina Aloi and Valerie Pascale of Goldcorp. Minutes were prepared and shared with FREDEMI on August 16.
- August 20, 2010. FREDEMI replied to the NCP's letter of July 2 by again declining the offer of facilitated dialogue and repeating that they wish the Marlin Mine to be closed and urge the NCP to conduct a full investigation including a field visit.
- October 7, 2010. NCP sent a letter dated October 6, 2010 to FREDEMI (copy to Goldcorp) stating that the NCP is now proceeding to draft a statement. The letter contained an offer for a conference call with FREDEMI to address a concern expressed in their August 20 letter that the NCP had one meeting more with Goldcorp than with FREDEMI and may not have the full understanding of the situation.
- November 22, 2010. NCP held a conference call with CIEL and FREDEMI members in Guatemala. FREDEMI members provided a number of testimonials about their experiences and concerns with the mine. The NCP informed the representatives that it is preparing a draft statement which will be forwarded for comments.
- November 23, 2010. Two Goldcorp representatives met with some members of the NCP and made a presentation about the mine and community relations.

Statement by the German NCP

Final declaration by the German National Contact Point for the OECD Guidelines for Multinational Enterprises regarding a complaint by Wake up and Fight for Your Rights Madudu Group and FIAN Deutschland against Neumann Gruppe GmbH

On 15 June 2009, Wake up and Fight for Your Rights Madudu Group, Uganda, and FIAN Deutschland e.V. (the complainants) submitted a complaint against Neumann Gruppe GmbH to the German National Contact Point for the OECD Guidelines for Multinational Enterprises.

The OECD Guidelines for Multinational Enterprises, as part of the OECD Declaration on International Investment and Multinational Enterprises, present recommendations for responsible corporate conduct in the case of investment abroad and function on a voluntary basis. The governments of the OECD Member Countries and other participating countries have committed themselves by way of their respective National Contact Points to promoting the use of this voluntary code of conduct and to helping to arrive at solutions to complaints via confidential mediation involving relevant partners.

The main substance of this complaint was accusations of expulsion by force and without adequate compensation by the Ugandan military prior to the establishment of a coffee plantation by the subsidiary of Neumann Gruppe, the Kaweri Coffee Plantation, and of a lack of willingness on the part of the company, as the beneficiary of the resettlement, to engage in dialogue and to exert influence on the Ugandan government.

Basically, the complainants made the following demands of Neumann Gruppe:

1. to engage in dialogue with the complainants;
2. to contribute to an agreement on how a solution can be achieved in the case;
3. to help to speed up the court proceedings;
4. to use its possibilities to exert influence on the Ugandan government with a view to the Ugandan government participating in a trialogue with the complainants and Kaweri Coffee Plantation/ NG, and
5. to participate itself in this trialogue.

After careful preliminary review, on 28 August 2009 the German National Contact Point accepted for in-depth consideration the questions that had been raised, and obtained detailed statements from both parties. Thanks to the mediation and an invitation by the German National Contact Point, a constructive dialogue commenced and both sides were able to present their respective view of this case. To this end, it held discussions both with the complainants and with Neumann Gruppe. The German Embassy in Kampala was also actively involved.

A joint final discussion mediated by the German National Contact Point and the relevant federal ministries took place in Berlin on 8 December 2010. Both parties are also opponents in a court case in Uganda, and both parties expressed a manifest desire to contribute to a resolution of the dispute in this court case. Here, both parties are considering the possibility of an out-of-court settlement.

On the basis of the rapprochement achieved in the discussion on 8 December 2010, both parties should continue their efforts to achieve an out-of-court settlement.

In the discussion on 8 December 2010, it became clear that Neumann Gruppe has since met the main demands cited above. It also drew attention to the non-profit-making welfare programmes of the Hanns R. Neumann Foundation, to which it is closely related and which credibly underlines its intensive commitment to coffee-producing countries.

The German National Contact Point recognises these efforts, and requests the parties to keep it informed about the case.

In the context of the investigation by the National Contact Point, there were no indications that Neumann Gruppe could not believe in good faith that it had acquired the land for use as the Kaweri Coffee Plantation from the Ugandan Investment Authority free of encumbrances and claims of third parties. In the view of the German National Contact Point, the parties should work together to further strengthen the relationship of trust between the Kaweri Coffee Plantation / Neumann Gruppe and those affected. To this end, the German National Contact Point sees an urgent need for the complainants to refrain from public attacks against Neumann Gruppe and to actively take up the offer of in-court and out-of-court negotiations towards an amicable settlement.

The German Embassy in Kampala will continue to follow the case, and German Ambassador Klaus Dieter Düxmann will continue to be available as a contact.

Berlin, 30 March 2011

For the National Contact Point

Head of Division J. Steffens

Federal Ministry of Economics and Technology

Statement by the Irish and Dutch NCP

Final Statement of the Irish and Netherlands National Contact Points (NCPs) on the notification dated 21st August, 2008 concerning the Corrib Gas project, pursuant to the OECD Guidelines for Multinational Enterprises

Introduction to the OECD Guidelines

The OECD Guidelines for Multinational Enterprises are a set of recommendations of the governments of the 31 OECD member states plus 11 other countries to enterprises operating in and from their territory. They set out voluntary principles and standards to guide companies in their international operations. While implementation of the Guidelines themselves is voluntary, each OECD Member State is, however, obliged to establish a National Contact Point (NCP) to deal with notifications of groups or individuals of alleged violations of the Guidelines by an enterprise in a specific situation. If an NCP, after conducting an initial assessment, decides that the notification merits further consideration, the NCP provides for a platform for discussion on the issues raised, where it can play a mediating role. If parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes, where appropriate, recommendations on the implementation of the Guidelines.[1]

On 21 August 2008, the Irish and Dutch NCPs were asked to consider an issue in relation to the development of a gas find off the west coast of Ireland – the "Corrib Gas project". The complaint related to the environmental, health and safety and human rights aspects of the activities of the developers.

While the Irish NCP has the primary responsibility in relation to this specific instance because of the location of the specific instance, the Dutch NCP was asked to cooperate with the Irish NCP, because Shell's parent company is based in The Netherlands. It was decided that the Irish and Dutch NCP should co-operate in handling the specific instance. Since the Consortium also consists of a US and a Norwegian company, the NCPs of those OECD countries were also informed. The Canadian NCP was informed following Vermilion Energy Trust's acquisition of Marathon's interest in the Consortium.

The Irish NCP is located in the Department of Enterprise, Trade and Innovation,[2] although the scope of the Guidelines covers several Government Departments and Agencies. The Dutch NCP is an independent entity.

The specific instance

Notifiers: Pobal Chill Chomain et al.

The lead notifier is Pobal Chill Chomain, a community group in North Mayo, Ireland. The notification is supported by Action from Ireland (AFRI), an Irish NGO, and its French counterpart Sherpa, hereafter together referred to as "the Notifiers".

Enterprise: Shell Exploration and Production Ireland Limited (SEPIL) et al.

The notification was directed against the oil companies promoting the venture (Shell Exploration and Production Ireland Limited (SEPIL), Statoil Exploration Ireland Limited, and Marathon International Petroleum Hibernia Limited) hereafter the Consortium. In July 2009, Vermilion Energy Trust of Canada announced that it had acquired Marathon's 18.5% interest in the Corrib gas project.

Date of Notification: 21 August 2008

Content of the Notification

Pobal Chill Chomain *et al.* alleged that the operations of the Consortium:

1. posed a safety risk to residents due to the proximity of high pressure pipelines in an unstable field;
2. posed a risk to the local drinking water supply and will be discharging chemicals in to air and water;
3. would negatively affect an intricate and ancient drainage system ("bogland");
4. violated the right to private life of local residents due to the presence and actions of Gardai;
5. would negatively affect local capacity building due to effects on tourism and fishing opportunities;
6. were developed while lacking the possibility of public participation in decision making.

The Notifiers alleged that the Consortium violated the following provisions of the Guidelines:

- Chapter V – Environment, paragraph 2 and 3;[3]
- Chapter II – General Policies, paragraph 2, and 3.[4]

The Notifiers also sought to determine whether or not there had been compliance with domestic, EU and international legal rules and principles.

References in relation to the Irish Government in the Notification

While the Irish Government was not cited as a party to the NCP procedure, the Notifiers alleged that the Irish authorities violated several EU Directives and International legal instruments. They alluded, in particular, to the referral of Ireland by the Commission to the European Court of Justice (ECJ) in 2007 for failures regarding public participation. In addition, Notifiers alleged that Irish Government failed to transpose Environmental Impact Assessments (EIA) Directives into national legislation, citing Case C215/06 Ireland V Commission concerning the construction of wind farms. The Notifiers drew parallels between the latter case and the Corrib Gas Project in relation to project splitting, alleged failures to carry out Environmental Impact Assessments and other aspects.

Administrative and parallel legal procedures

The notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to the Consortium to (further) develop the Corrib Gas field and to undertake work.[5] Nevertheless, as the notification was largely about the alleged failure of the Consortium to adequately address the concerns of the Notifiers, the NCPs were of the opinion that the NCP procedure could provide for an informal platform for discussion on these concerns between the parties involved.

Background to the "Corrib Gas Project" and recent developments

The Corrib Gas Field was discovered in 1996. It is about 70% the size of the existing Kinsale Head gas field off the south coast of Ireland and has an estimated production life of about 15 years. Originally, Enterprise Energy Ireland, a subsidiary to Enterprise Oil, was set to develop the field and had, in 2001, obtained permission by local authorities for a gas processing plant. Shell bought Enterprise Oil in April 2002. Currently, the Corrib Gas Field is

being developed by Shell Exploration and Production Ireland Limited (SEPIL), Statoil Exploration (Ireland) Limited and Vermilion Energy Trust.[6] SEPIL, on behalf of the other partners, acts as implementing developer of the Corrib field, while the other two partners- Statoil and Vermilion – are co –investors in the project.

Since 2001, the Consortium, in accordance with relevant Irish legislation, obtained the requisite consents, licences and planning permissions for the various works associated with the development of the Corrib Gas Field[7]. These works included laying a pipeline from the field to landfall, laying a further pipeline from landfall to an onshore processing facility some miles inland, and the construction of the processing facility itself.

The Corrib Gas Field Plan of Development was approved by former Minister for Marine and Natural Resources, Mr. Frank Fahey T.D., in 2002. Minister Fahey also granted Compulsory Acquisition Orders [CAOs] permitting the Consortium to have access to and use of private land in order to allow for installation of the pipeline. The Consortium secured planning permission for the processing facility at Ballinaboy in October 2004, after a previous application had been rejected by An Bórd Pleanála in 2003.

According to the Notifiers, members of the local community expressed significant safety concerns as work progressed. The Notifiers also stated that opposition to the development plans among local residents grew from 2000 when local residents felt they were not adequately consulted and that they had been misled about the safety of the gas pipeline.

The relationship between the Consortium and the local community deteriorated sharply in 2005 when five local landowners refused to allow the Corrib developers to proceed with construction work relating to the onshore section of pipeline at Ballinaboy. As this was judged to be in contravention of the CAOs, the five local men were subsequently found to be in contempt of court and were jailed for 94 days. In response to this development, in September 2005 the Irish Government announced the establishment of a formal mediation process, designed to address concerns in relation to the Corrib project. This was chaired by Peter Cassells, former Secretary General of the Irish Congress of Trade Unions.

In addition, the following month, October 2005, the Irish Government appointed Advantica Ltd., a UK engineering consultancy, to carry out an independent safety review of the onshore section of the gas pipeline to address community concerns in relation to pipeline safety. Their report published in January 2006, contained a number of recommendations, one of which limits the pressure in the onshore pipeline to 144 bar.

In July 2006, Peter Cassells concluded in his report that:

"*Following seven months of intensive discussions with the Rossport 5 and Shell and detailed consultations with the local community, I have with regret concluded that, despite their best efforts, the parties are unable to resolve the differences between them. I have also concluded, given the different positions on the project and the different approaches to mediation, that no agreement is likely in the foreseeable future.*"[8]

Mr. Cassels recommended that the route of the onshore section of the Corrib Gas Pipeline be modified "*in the vicinity of Rossport to address community concerns regarding proximity to housing*"[9], and also that "*consent to operate the pipeline should not be granted to Shelluntil the limitation on the pressure in the pipeline to 144bar has been implemented*".[10]

From his discussions with a wide range of people in the area, Mr Cassells also concluded "*that the majority of people in Rossport, the wider Erris area and County Mayo are in favour of the project*".[11] The Notifiers rejected this finding as based on inadequate consultation and information.

With regard to the recommendation in both the Cassells and Advantica reports on the pressure in the pipeline, the Consortium subsequently confirmed that it would put in place measures to reduce the maximum pressure in the onshore section of the pipeline to 144 bar.

Recent developments

In November 2008, the Minister for Communications, Energy and Natural Resources, Mr. Eamon Ryan T.D., and the Minister for Community, Rural and Gaeltacht Affairs, Mr. Eamon O'Cuiv T.D., jointly announced the establishment of a new Government-backed initiative on the Corrib gas project entitled the "Community Forum for the Development of North-West Mayo". The Forum is intended to act as a vehicle to facilitate (a) discussion on economic and social issues pertaining to the North Mayo Erris area, and (b) discussion of issues relating to the Corrib project including matters of local concern in relation to its implementation, including environmental issues, fishing rights, details of consents, policing etc. The Forum was not constituted as a decision-making body. Its overall objective is to ensure that interested parties are accorded the opportunity to directly engage in dialogue, by bringing together local community and interest groups, the Consortium and representatives of its local workforce, Government Ministers concerned and representatives of Government Departments, County Council, locally elected representatives and the Garda Siochana (police). A retired senior civil servant with extensive experience in mediation and conciliation, Mr. Joe Brosnan, was appointed to chair the Forum.

The administrative situation regarding the route of the pipelines continues to evolve; following the recommendations of the mediation process led by Mr. Peter Cassells, the Consortium modified its plans and subsequently submitted new applications for authorisation for development of the Corrib Gas Field. The Consortium selected a new route for the onshore pipeline, following a 14-month selection process, which involved 11 months of public consultation. In April 2008, applications for approval for the preferred route were submitted to An Bórd Pleanála, under the Planning and Development (Strategic Infrastructure) Act 2006, and the Minister for Communications, Energy and Natural Resources under Section 40 of the Gas Act 1976-2000. These were subsequently withdrawn by the Corrib developers in December 2008, to allow for some minor modifications to be made to the preferred route. In February 2009, the Consortium submitted revised applications for the onshore portion of the pipeline to An Bórd Pleanála, the Department of Communications, Energy and Natural Resources and the Department of Agriculture Fisheries and Food (DAFF), seeking a wider route corridor as well as minor realignments of the preferred route.

In November 2009, An Bórd Pleanála asked Shell Ireland to make several safety changes, particularly to 5.6km of the 9km pipeline which it considered would be too close to homes for safety. Shell was given until the end of May 2010 to address the concerns. It would then have to submit a modified environmental impact statement; the altered application will then go to another public hearing before a report would be sent back to An

Bórd Pleanala. Should the developer decide to comply with the An Bord Pleanála invitation, a new application to the Minister for Communications, Energy and Natural Resources with respect to permission to construct the pipeline pursuant to Section 40 of the Gas Act, 1976, as amended will be necessary. A new application to the Minister for the Environment, Heritage and Local Government for a Foreshore Licence will also be necessary. Both applications would be subject to a statutory public consultation process

On 4 March 2010, the Irish High Court ruled that two members of the Rossport community were entitled to proceed with their counter-claim against Shell regarding the validity of ministerial consent given eight years ago for the Shell Corrib gas pipeline. As far as the NCPs are aware this decision has not to date been appealed.

Consideration of the notification under the OECD Guidelines

As stated in section 2, the notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to further develop the Corrib Gas field and to undertake work.[12] Nonetheless, on 19 February 2008, the Irish and Dutch NCPs decided that the issues raised merited their further consideration within the limitations of the mandate of NCPs. Due to the role of the Irish Government in the situation with regard to considering the Consortium's application for consent to further develop the Corrib Gas project, coordination of the decision on NCP involvement was a lengthier process than originally anticipated.

The NCPs made it clear to the Notifiers that adjudication on whether a private entity or a State has acted in compliance with domestic, EC or international law is beyond the competence of NCPs, and that in relation to parallel legal and administrative proceedings, the NCPs would not to be in a position to comment on those, and therefore would have to act within this limitation.[13]

The NCPs identified the facilitation of the resolution of the dispute as being of utmost importance and accordingly they offered a platform for discussion at which the Notifiers and the Consortium, under the guidance of the NCPs, would have the opportunity to discuss their mutual interests in resolving their differences.

Main issues for consideration by the NCPs

Of the six issues brought in the original notification, two emerged as the main items of contention in the NCP procedure which could be discussed, insofar as they fall within the scope of the OECD Guidelines. These two issues relate to:

1. the location of the Corrib Gas terminal in Ballinaboy, Co Mayo due to health and safety concerns of the local community; and
2. the extent to which the Corrib developers sufficiently engaged in consultations on health and safety impacts with the community in planning the development of the Corrib Gas Field.

The NCPs therefore focussed on these two issues in their meetings with the parties. As mentioned already, the NCPs are not competent to investigate compliance with national, EU and other international obligations of either a private or legal entity or the state. The role of the NCPs in this instance was therefore to create a platform for dialogue on issues, which may raise underlying questions of legal interpretation or compliance; the scope of

the OECD Guidelines and competence of the NCP would however limit the ability of the NCPs to comment on such issues if the dialogue failed to lead to agreement.

The positions of the parties

Following their decision that the notification merited further consideration, the Irish and the Dutch NCP engaged in consultations with the Notifiers and with representatives of Shell Ireland acting on behalf of the Consortium, in order to assess the options for a mediatory attempt. In this light, the Irish and Dutch NCPs met separately on 21 April, 2009, in Dublin with representatives of the Notifiers and with Shell Ireland respectively.

Relocation of the onshore processing facility

In the preparatory meetings for mediation the NCPs found that parties disagreed strongly on the question of the location of the onshore processing facility. As in the prior mediatory attempt by Mr. Peter Cassells in 2005, neither of the parties was willing to abandon its position.

Notifiers continued to strongly disagree with the current location of the onshore processing facility and the pipeline in Ballinaboy. They insisted "that the local community had repeatedly demonstrated its willingness to compromise on its original demand that the processing facility should be established at sea, proposing instead that it should be located in a more remote onshore area, such as Glinsk."

For their part, the Consortium rejected any proposal to relocate the facility given the state of completion of the construction. They stated that "the current location was chosen after careful consideration of several options and that it thus far received all necessary government authorisation and licences."

The Consortium maintained their position that they would not move the project to another location, and stressed that they had already agreed to revise the pipeline route on the basis of the recommendations made by former mediator Mr. Peter Cassells. The modified pipeline route was now to be located at a minimum distance of 140 metres from the houses in the Rossport area, instead of the originally planned 70 metres. The Consortium stated that "they had submitted their revised application for the onshore pipeline route which had been selected following a 14-month selection process, involving 11 months of public consultation. This application was further revised, seeking a wider route corridor as well as realignments of the preferred route, and resubmitted in February 2009."

Also following the recommendations by Mr. Peter Cassells and Advantica with regard to the pressure of the pipeline itself, the Consortium stated that "a third safety valve would be built in the pipeline which regulates the pressure within the pipes, to address the health and safety concerns of the local community."

Meaningful dialogue with the public

On this issue parties were equally divided and unable to bridge their differences. The Notifiers held that "the Consortium never held a meaningful dialogue with the local community in Rossport, as meetings were not sufficiently publicised, took place in inconvenient locations, and were not sufficiently informative. This was particularly the case in the initial uptake of the planning of the development of the Corrib Gas Field."

For their part, the Consortium stated that "these meetings were organized according the regulations of the Government and had been announced in *inter alia* local newspapers, and that everyone was given the opportunity to ventilate concerns orally and/or in writing." The Consortium also acknowledged that the way in which Shell Ireland presented the project during consultations with the local community in the early stages of its involvement in the project did give the impression that there was little room for modifications to adjust to local concerns, which most likely contributed to a sense of mistrust by parts of the community. The Consortium acknowledged that if these early stages could have been redone, it would have acted differently.

Findings of the NCPs: no apparent options for mediation

The issue of the location of the gas processing plant was the main demand of the Notifiers in this NCP procedure. The NCPs regrettably concluded from their discussions with parties and from studying the documentation in relation to the case that the parties seemed to be irreconcilable in relation to the location of the gas processing plant. Both sides had adopted very fixed positions regarding the relocation of the onshore facility and accordingly the NCPs concluded that a mediatory attempt on the basis of this main demand would not yield any results.

In light of the apparent impasse in relation to both issues, the NCPs wrote to the Notifiers on 24 September 2009, setting out their findings and asking whether the Notifiers saw any merit in continued resort to the good offices of both the Irish and Dutch NCPs, taking account of the limited possibilities under the OECD Guidelines and the fact that the Irish authorities have stated that the Corrib developers obtained all of the necessary statutory permissions.[14] The Notifiers have responded on 9 January 2010, regretting that the mediation efforts of the NCPs had not been successful and requesting the NCPs to issue a final statement in which their notification would be reviewed in the light of the OECD Guidelines.

NCPs' Conclusions

Conclusion with regard to relocation

As no options for the resolution of the dispute appeared available, the NCPs are now required to issue a statement. It should be noted that it is beyond the competence of the NCPs to make statements on the validity of the location or the way it was chosen, which are legal issues, given the voluntary nature of the OECD Guidelines, as mentioned in section 4. As noted in Section 3, the Irish High Court has recently ruled that members of the local community can challenge the administrative authorisation for the development and location of the pipelines by the Irish authorities.

The NCPs noted that according to the Consortium the modified pipeline proposed by the Consortium will be located at a distance from the houses in the Rossport area that goes beyond the standards and practice in other operations in Europe, including the Netherlands. The NCPs also noted that the Notifiers felt they had already compromised by agreeing on an *onshore* processing facility rather than an *offshore* facility, but they strongly disagreed with the location currently opted for, *i.e.* Rossport and Ballinaboy. The NCPs regret therefore that it appeared impossible to explore conditions with the parties involved on the basis of mutual interests that could lead to the resolution of the dispute on the location of the processing plant.

Conclusion with regard to meaningful dialogue with local communities

The NCPs investigated whether the Consortium engaged in a meaningful dialogue with the public in the development of the Corrib Gas project, as recommended in Chapter V, paragraph 2, of the OECD Guidelines. The Department the Communications, Energy and Natural Resources provided the NCPs with useful information in this regard.

The availability of information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.[15] Furthermore, enterprises should consider to exceed the basic requirements with regard to the disclosure of environmental information.[16]

In the case of the Corrib Gas project, the Irish Government authorities as well as Shell itself organised several meetings in the locality while the Consortium set up a local agency where people could go with questions or concerns relating to the Corrib Gas project.[17] Recently, the independent planning authority An Bórd Pleanála has requested further adjustment of the Consortium's application for consent for the revised onshore pipeline route on the basis of local concerns over health and safety aspects.[18]

As Shell Ireland itself acknowledged, communication with local stakeholders in the early stages of the project was not sufficient, which has led to a situation of mistrust amongst some members of the local community. However, the Consortium has voluntarily followed up on all recommendations made by former mediator Mr. Peter Cassells and engineering consultancy firm Advantica Ltd. while it was already granted permission to lay the onshore pipeline at closer distance than is currently planned. Therefore, it could be stated that in the early stages, dialogue with local stakeholders was not in accordance with the spirit of the OECD Guidelines, but since 2005, the Consortium has improved this and has shown willingness to address health and safety concerns, of which the revised route for the onshore part of the pipeline seems the clearest proof.

Final remarks and recommendations

In the course of this notification procedure the NCPs came across some issues, which it would like to address in general.

1. The contentious issues were not only subject to legal and administrative procedures, they were also subject to earlier unsuccessful mediation attempts. It seemed that parties had fixed their position based on desired outcome, rather than focussing on exploring other possibilities for resolution of the issues. The NCPs take the view that in such circumstances "good offices" or mediation may not be suitable fashions of dispute resolution.
2. On the basis of EU and their national legislation, the governments of the EU Member States have an obligation to put in place legislation to ensure adequate consultation. The issue as to whether an EU government has adequately implemented and applied national and EU legislation is a legal one and can be addressed through judicial system, including the European Court of Justice.

Nonetheless, enterprises have a *responsibility to respect* the rights of those (groups of) people on which their activities have an impact. In order to become aware of potential

negative impacts and to appropriately and adequately address such impacts, companies are expected to exercise *due diligence* in the broad sense of the concept, as set out by UN Special Representative for business and human Rights, professor John Ruggie.[19] Consultation with stakeholders can be part of due diligence, even more so in those situations where government organized consultations are unusual in the development of new projects.

When an enterprise in the EU, *e.g.* in its exercise of due diligence, is faced with concerns of local stakeholders over their situation and rights, the enterprise has the responsibility to consider, where appropriate, going beyond what is legally required when it comes to holding consultations with the local community. This is precisely what is recommended in chapter V of the OECD Guidelines with regard to health and safety aspects of an enterprise's activities.

Dublin, 30 July 2010.

Dympna Hayes

Irish National Contact Point

Mr F.W.R. Evers

Dutch National Contact Point

Box I.1.6. **Further Reflections**

Following the mediatory attempt in this case, the Irish and Dutch NCPs would recommend as a good practice that in future, NCPs, upon receipt of a notification regarding concerns over adequate stakeholder involvement, ask an enterprise for its fulfilment of its due diligence process and discuss the results with the stakeholder who made the notification. If such a discussion cannot be found to lead to resolution of the dispute, an NCP should draft a final statement in which the alleged circumstances and the action or inaction of the enterprise are viewed in light of the recommendations made in the OECD Guidelines.

Statement by the Swiss NCP

Closing Statement by the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance regarding Triumph in the Philippines and in Thailand

Background

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

Proceeding of the NCP

The NCP received a written request dated on 2 December 2009 to consider a specific instance regarding factory downsizing in Thailand and factory closures on the Philippines involving Body Fashion (Thailand) Ltd. (BFT) as well as Triumph International (Philippines) Inc. (TIPI) and Star Performance Inc. (SPI). All factories are respectively were fully owned by Triumph International, which has its headquarters in Switzerland.

The specific instance was submitted jointly by a group of four parties: Triumph International Thailand Labour Union (TITLU), which is the union representing workers at BFT; Thai Labour Campaign; Bagong Pagkakaisa ng mga Manggagawa sa Triumph Int'l. Phils. Inc. (BPMTI), which was the union representing workers of TIPI; and Defend Job Philippines Organisation Inc. In addition, the TIE Bildungswerk Germany was indicated to take the role of an advisor of the above-mentioned four parties.

The concerns raised in the submission were particularly related to layoffs in June 2009 due to the closure of two factories in the Philippines (1663 workers) as well as the reduction in capacity at a production center in Thailand (1959 workers). The parties submitting the specific instance argued that Triumph enforced this large-scale restructuring not because of economic difficulties but to constrict labour union activities. Furthermore, the submitting parties stated that unions were neither informed in advance of the restructuring nor involved in the process of reduction of workplaces. Finally, they asserted that financial compensation was not paid according to applicable law and the collective bargaining agreements (CBA).

In their submission, the submitting parties claimed noncompliance with the following Chapters of the OECD Guidelines: Chapter ll: General Policies, para. 9; Chapter lV: Employment and Industrial Relations, para. 1, 2, 3, 6, 8; Chapter Vll: Consumer Interests, para. 4.

On 18 December 2009, Triumph explained in its written reaction to the submission addressed to the NCP that the company had to undergo a major restructuring program. Therefore, the company decided to close or downsize its three worst performing factories, which turned out to be BFT, SPI and TIPI. Triumph assured that its actions were entirely in accordance with the applicable law, the CBA as well as the OECD Guidelines and disagreed with the claims made in the submission. In addition, it was explained that Triumph met all its obligations to employees, including a notice period that significantly exceeded the requirements of applicable law, full wage payment during the notice period and severance pay in excess of legal requirements.

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

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

On 23 December 2009, the NCP requested further information from the submitting parties in order to get a clearer picture of the situation described in the submission.

On 16 February 2010, the NCP concluded its initial assessment and informed parties concerned that it found the issues raised under Chapter IV of the OECD Guidelines to be relevant and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Triumph to have acted inconsistently with the Guidelines. Furthermore, the NCP offered its good offices to facilitate a dialogue between parties concerned with the aim of reaching a mutually acceptable outcome.

In March 2010, the NCP received through the Swiss Embassy in Thailand the copy of a Thai court decision. Almost 300 dismissed workers had taken legal action, asking the court to determine whether Triumph had to pay special compensation according to the CBA. The court rejected the claim and concluded, based on its interpretation of the respective passage of the CBA, that Triumph was not obliged to pay such special compensation.

On 1 April 2010, Triumph accepted the offer of the NCP to facilitate a dialogue and suggested a framework and conditions for such discussions. The NCP forwarded this proposal to the submitting parties in the Philippines and in Thailand for comment. On 1 June 2010, the NCP obtained a joint reply from the submitting parties. While they welcomed Triumph's willingness to engage in a dialogue they did not agree on all elements of the suggested framework. Triumph reacted with a written response dated on 30 June 2010 which was forwarded by the NCP to the submitting parties. They sent their second written reply to the NCP on 29 September 2010. Although the NCP tried to facilitate an agreement on the framework for the dialogue it came to the conclusion that it was not possible to reach such an agreement taking into account the exchange of written positions over a period of several months. While there was a general agreement to discuss issues raised in the submission under Chapter IV of the Guidelines, there remained disagreement on whether to reopen discussions on financial compensation paid to dismissed workers. The NCP decided therefore to conclude the proceeding and to draft its final statement.

During the proceeding, the submitting parties requested the NCP to conduct possible facilitation or mediation meetings in Thailand and/or in the Philippines. As an alternative option the NCP was asked to provide funding for travel expenses to Switzerland and translation costs to the submitting parties. The NCP was not in a position to comply with these requests. According to its established practice, the NCP is holding its meetings in Switzerland. Furthermore, the NCP is not in the position to provide any funds to the parties.

Outcome of the Proceeding

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

Conclusions

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

The NCP thanks both parties for engaging in the process.

Berne, 14 January 2011

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc (Doom Dooma factory – Assam – India)

Background

OECD Guidelines for Multinational Enterprises

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.

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.

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

The UK NCP complaint process is broadly divided into the following key stages:

a) 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;

b) Conciliation/mediation OR 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;

c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;

d) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: *http://www.bis.gov.uk/nationalcontactpoint*.

Complaint from the IUF

On 19 October 2007 the "International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations" (IUF) wrote on behalf of the "All-India Council of Unilever Unions" of India, 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 Hindustan Unilever Limited, an India based company ("Unilever"), which is a subsidiary of Unilever plc (a UK registered company).

The concerns raised by the IUF relate to the operations of Unilever's Doom Dooma factory in Assam (India) and were specifically related by the IUF to the following provisions within the Guidelines:

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

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*".

c) Chapter IV(7): "[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] *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*".

The IUF's main allegation was that Hindustan Unilever's management at the Doom Dooma factory had failed to respect the right of their employees to be represented by a legitimate trade union by requiring employees to renounce their membership of the Hindustan Lever Workers Union (PPF), and instead join the Hindustan Unilever Democratic Workers Union, which the IUF alleged had been established by the management following a lockout announced by management on 15 July 2007.

Response from Unilever

Unilever denied all of the allegations made by the IUF. In particular, Unilever submitted that the Hindustan Unilever Democratic Workers Union was created by Doom Dooma's factory employees who themselves thought the PPF's actions to be illegal. Unilever also questioned whether the PPF's leadership was acting with the support of the majority of their members during the course of the dispute.

UK NCP Process in this Specific Instance

On 19 October 2007, the IUF submitted the complaint to the UK NCP. On 10 April 2008, the UK NCP completed the Initial Assessment on the complaint accepting for further consideration the alleged breach of Chapters IV(1)(a) and IV(7) of the Guidelines, but not of Chapter II(2). In particular, the Initial Assessment concluded that the UK NCP would

attempt to facilitate a negotiated settlement on the process to be used to establish which union represents the majority of workers at the Doom Dooma factory. **The acceptance of this Specific Instance for further consideration by the UK NCP *does not* mean that the UK NCP considers that Unilever acted inconsistently with the Guidelines**.

On 20 June 2008, the UK NCP suspended the complaint process under the Guidelines in the light of the decision of the PPF to petition the High Court in India for a supervised election to determine which union represents workers for collective bargaining purposes at Unilever's Doom Dooma factory[20].

Between November 2009 and February 2010, the UK NCP reviewed this Specific Instance in the light of its parallel proceeding guidance (which was endorsed by the UK NCP's Steering Board on 16 September 2009[21]). Having sought the views of both parties, the UK NCP informed both parties on 5 March 2010 that it would apply the guidance to this Specific Instance and progress the complaint in accordance with the UK NCP's complaint procedure[22]. The UK NCP offered, and both parties accepted, conciliation/mediation.

The UK NCP appointed ACAS[23] arbitrator and mediator John Mulholland to serve as conciliator-mediator. An initial conciliation meeting took place on 21 May 2010 in London. The parties met again on 7 July 2010 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. The attached agreement refers to the application of a secret ballot at Doom Dooma factory. The UK NCP understands that agreement for the application of the secret ballot could not be obtained in India.

Outcome of the Conciliation

Following discussions which took place between 7 July 2010 and 29 September 2010, the 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

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 Doom Dooma 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.

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

18 October 2010 URN 10/1228

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

Box I.1.7. **Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) relating to Doom Dooma Factory, Assam, India**

Unilever has committed to establishing a process that is acceptable to the IUF and local union (CITU) representatives to enable all workers at the Doom Dooma factory in Assam, India to confirm membership of a trade union organisation of their choice.

This process must enable all individual workers to participate without fear of intimidation, physical violence, discrimination or other disciplinary repercussions. The outcome must be verifiable and validated by an independent third party who is acceptable to all parties.

Unilever, the IUF and its affiliated members will agree to abide by the outcome of this process.

The Application of a Secret Ballot

In the first instance, Unilever will pursue agreement by the State Government of Assam (including the State Labour Commissioner) to support the holding of a "free and fair" election at the factory by means of a secret ballot. Unilever has already contacted and written to the relevant Government Ministers and will now accelerate efforts to obtain their consent by no later than 21 July 2010.

Subject to the agreement of the State authorities a date for holding a secret ballot will be fixed during August 2010. In order to ensure the integrity of the secret ballot an independent third party District Court Judge (retired) Dharya Saikia (Dibrugarh District Court) has been proposed by the IUF to help oversee and validate the outcome.

Unilever will agree to cover the costs and ensure the safety of Dharya Saikia (and any associated members of his team) in the undertaking of this role.

All "confirmed" permanent workers (excluding probationary workers) would be eligible to participate in the secret ballot. Those workers who are currently under suspension would be able to exercise their right to vote by postal ballot.

Three copies of the register of all the workmen will be provided, one for each of the unions and one with the independent third party who will act as the presiding officer for the election, and the attendance of workers who have exercised the right to vote will be recorded.

Unilever will identify a safe and secure venue for the secret ballot and ensure adequate security is provided (in an area just outside main gate of the factory). Voting will be held on a work day and conducted between 08.00 and 17.00hrs.

In casting their ballot workers would be eligible to vote for the Hindustan Unilever Sramik Shangha, the Hindustan Lever Workers Union or "none of the above".

Three representatives of Hindustan Unilever Sramik Sangha and three representatives of Hindustan Lever (PPF) Workers Union will be allowed to be present at the venue where the election is held.

The vote will be tallied and the result publicly announced on the same day as the election. The results will be notified to and verified by the State Labour Commissioner. The results will also be communicated to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises.

If no agreement can be obtained from the State authorities and/or if there is a legal challenge by another party (namely INTUC local union) to block progress, it may not be possible to convene a secret ballot process at the factory in a timely or expedited manner.

Box I.1.7. **Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) relating to Doom Dooma Factory, Assam, India** *(cont.)*

The Application of an alternative Verification Process

In this event, both Unilever and the IUF are in agreement that an alternative "verification" process to enable all workers to confirm their preferred union membership is necessary.

The verification process should be pursued under the "Code of Discipline" procedure that is a recognised voluntary procedure for resolving Trade Union organisation membership disputes in India.

Unilever and the IUF agree that 100% of all confirmed permanent workers should participate. Interviews will be carried out with suspended workers but these will be done at a location outside of the factory premises that is mutually agreed between management and the Hindustan Lever (PPF) Workers' Union.

Unilever will identify a safe and secure venue for the verification process within the factory. Interviews will be held on a work day and conducted between 08.00 and 17.00hrs. Workers not on duty shall be allowed to enter the factory to participate in the verification process.

A mutually agreed independent third party of high repute in India shall be appointed to oversee and manage this verification process. A nominated officer representing the State Government should also be invited to then note and record the outcome of this process.

A procedure for monitoring the verification process as it takes place shall be agreed upon by the independent third party in consultation with local union and management representatives in order to ensure the credibility and transparency of the verification process.

The independent third party will need to be agreed by both Unilever and the IUF. It is proposed that a short list of suitable candidates (approx 5-6 names) be drawn up by no later than Friday 16th July 2010. Both Unilever and the IUF can nominate suitable candidates who should be confirmed by no later than 2 August 2010.

It is proposed that the individual workers be interviewed solely by the independent third party or his/her nominee.

This process should once again guarantee that all workers can express a preference without risk of intimidation, physical violence, discrimination or other disciplinary repercussions.

Workers will be invited to declare whether they wish to belong to and be represented by the Hindustan Unilever Sramik Shangha, the Hindustan Lever Workers Union or "none of the above".

A commencement date for the individual interviews will be set in agreement with the independent third party, the IUF and Unilever. The interview process should take no longer than 5 working days to complete. The outcome must be verifiable and validated by the credible and trusted independent third party.

The outcome should be made public and shared with all relevant stakeholders (including the UK National Contact Point for the OECD Guidelines for Multinational Enterprises).

Unilever and the IUF will agree to accept and abide by the outcome for future collective bargaining purposes.

Box I.1.7. **Agreement between Unilever and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) relating to Doom Dooma Factory, Assam, India** *(cont.)*

The Deduction of Trade Union Membership Dues

Unilever has already agreed to halt the deduction of trade union membership dues (15 rupees) that are currently deducted each month on behalf of the Hindustan Unilever Sramik Sangah (INTUC).

The Company had sought to cease deductions on 2 July 2010 but following representations by INTUC to the Assam State Labour Commissioner were legally obliged to reinstate these deductions pending the outcome of a conciliation procedure initiated on 3 July.

A conciliation meeting with the State Labour Commissioner, Unilever and INTUC has been set for 12 July 2010. INTUC has threatened an indefinite period of strike action should the deduction of fees not be reinstated. Unilever has made it clear that the deduction of membership dues is wholly "discretionary" and that as a result of numerous written representations the will of individual workers can no longer be verified.

Unilever is committed to ceasing the deduction of membership fees for any trade union organisation as soon as possible. A further attempt to cease deductions will be made in August but the company may face the risk of further litigation should no agreement be forthcoming under the conciliation procedure. The IUF for its part has made it clear that all "illegal" deductions must cease in August irrespective of the legal situation that the Company faces given the lack of progress that has been made to date.

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

Nick Dalton

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

Ron Oswald

General Secretary, IUF

London, 7 July 2010

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint from Corner House against BAE Systems PLC

Summary of the conclusions

- The UK NCP concludes that Chapter VI(2) of the Guidelines requires the disclosure of a list of agents (meaning disclosure of the identity of agents) and that this should be provided upon request from the relevant competent authorities. The UK NCP considers that Chapter VI(2) does not require disclosure of agents' commissions. The UK NCP also concludes that the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
- The UK NCP considers that if BAE Systems (BAE) did refuse to disclose a list of agents to the UK Export Credits Guarantee Department (ECGD) when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.
- BAE stated that it acted in compliance with ECGD's procedures during the relevant period, but the UK NCP has been unable to verify with the ECGD whether BAE disclosed a list of agents on each occasion that it made an application for support to the ECGD between May and October 2004. There is evidence that suggests that BAE may have refused to disclose a list of agents to the ECGD when making applications to it for support between May and October 2004. However, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether BAE did refuse to disclose a list of agents to the ECGD when making applications for support during this period and accordingly that it is unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines in this respect.
- The UK NCP concludes that BAE did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance did not constitute a breach of Chapter VI(2) of the Guidelines.
- The ECGD introduced new anti-corruption procedures on 1 July 2006. These procedures include a requirement on applicants to disclose their list of agents to the ECGD if agents are acting in relation to the project for which support is sought. The ECGD has stated that, since those procedures were introduced, no applicant has refused to comply with ECGD's requirements. In light of this and also the steps taken by the company to combat bribery, the UK NCP does not consider that it is appropriate to make any recommendations to BAE Systems. This Final Statement therefore concludes the complaint process under the Guidelines.

Background

OECD Guidelines for Multinational Enterprises

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relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

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.

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4. Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: *http://www.bis.gov.uk/nationalcontactpoint*.

Details of the parties involved

The complainant. Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.

The company. BAE Systems plc is a UK registered multinational delivering products for air, land and naval forces as well as advanced electronics, security, information technology solutions and customer support services. The company is listed in the FTSE 100.

Complaint from Corner House

On 4 April 2005, Corner House submitted a complaint to the UK NCP under the Guidelines in relation to BAE's operations in the United Kingdom in the period from November 2003 to October 2004.

There are two aspects to Corner House's complaint:

a) Firstly, that BAE refused, in the period from November 2003 to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:

- In November 2003, BAE allegedly refused to provide details of its agents (namely, the agents' names and the amount of the commissions) to the ECGD.
- The ECGD allegedly wrote to the company in March 2004 advising BAE about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance. BAE allegedly wrote to the ECGD on 24 May 2004 expressing concerns about ECGD's new procedures.
- On 30 July and on 9 August 2004, several aerospace companies including BAE allegedly stated to the ECGD that agents' details needed to remain confidential.
- On 12 August 2004, the ECGD allegedly wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.

b) Secondly, that BAE sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:

- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE, Airbus and Rolls-Royce[24], allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
- On 7 October 2004, at a meeting with the ECGD, BAE allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
- On 29 October 2004, the ECGD allegedly gave written confirmation to BAE, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

Corner House submitted that BAE's alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should[25]:

"*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*".

UK NCP process

On 4 April 2005, Corner House submitted to the UK NCP a complaint against BAE Systems, Airbus and Rolls-Royce under the Guidelines.

When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled "UK National Contact Point Information Booklet"[26] to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: "*In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate* […] *Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution*"[27].

The UK NCP considered that Corner House's submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.

On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD's consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD's new procedures came into effect on 1 July 2006.

The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009[28]. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure[29].

On 15 December 2009, the UK NCP wrote to BAE and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/mediation in order to pave the way to a mutually satisfactory outcome of the complaint. In its letter of 29 January 2010, BAE did not address the UK NCP's proposal for professional conciliation/mediation.

Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked BAE to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1 July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

Response from BAE systems plc

In its response of 14 April 2010, BAE invited the UK NCP to reject the complaint on the following grounds.

Firstly, BAE explained that, through the CBI, it did raise concerns in the period between March to October 2004 about the ECGD's proposed changes to the anti-bribery procedures

because it considered that the new disclosure requirements put unacceptable burdens on applicants.

Secondly, BAE contended that it acted in compliance with (and pursuant to) a protocol that had been agreed with the UK Government, and that it was under no obligation to act in accordance with any other procedures. Following ECGD's introduction of revised procedures in November 2004, BAE stated that its policy was to comply with these procedures and not the Guidelines because the latter have no legal force, are mere recommendations and are not intended to place an enterprise in a situation where it faces conflicting requirements.

Thirdly, BAE contended that the complaint is wholly without merit and has no applicability to the ECGD's present requirements on applicant companies to disclose details of their advisers. BAE stated that whether it acted contrary to the Guidelines in 2004 is purely a matter of historical interest because, from 1 July 2006, the ECGD introduced new anti-bribery policies which changed the position taken by the ECGD in late 2004.

Fourthly, BAE contended that, as a result of the ECGD having implemented new procedures in July 2006, and the steps taken by exporters (including BAE) to comply with those new procedures, there are no useful recommendations for improvement that the UK NCP can make in its Final Statement.

UK NCP analysis

The analysis of the complaint against BAE will address the following key areas. Firstly, it will explain the meaning and scope of Chapter VI(2) of the Guidelines. Secondly, it will explain whether Chapter VI(2) of the Guidelines is qualified so that disclosure can be withheld on grounds of commercial confidentiality. Thirdly, it will look at what ECGD's policy was on requesting agents' details as part of its application process for export support in the period between November 2003 and October 2004. Fourthly, it will examine whether BAE did refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support between November 2003 and October 2004. Finally, it will address the issue of whether BAE did seek, between November 2003 and October 2004, an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing to disclose a list of agents to the ECGD and, if it did, whether this constituted a breach of the Guidelines.

What is the meaning and scope of Chapter VI(2) of the Guidelines?

Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.

Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter only refers to the disclosure of a "list of agents" (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents' commissions.

The UK NCP therefore rejects Corner House's interpretation that the recommendation extends to other agents' details such as agents' commissions[30]. The UK NCP has therefore not examined whether the company refused to provide details of agents' commissions to the ECGD as this is outside the scope of Chapter VI(2).

The UK NCP considers that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide the information upon request from the competent authority..

Is Chapter VI(2) of the Guidelines qualified so that disclosure can be withheld on grounds of commercial confidentiality?

The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the "Commentary on Combating Bribery". The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the "Commentary on Combating Bribery" annexed to the Guidelines[31] is silent on this particular point.

In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

What was ECGD's policy on requesting agents' details as part of its application process for support in the period between November 2003 and October 2004?

Based on information received from the ECGD, ECGD's policy on requesting agents' details as part of the application process when a company requests support has been as follows:

- Prior to 1 April 2003 – The ECGD did not require the disclosure of agents' names and addresses.
- From 1 April 2003 – The ECGD required all applicants to provide agents' details (including names and addresses).
- From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent's details (including names and addresses).
- From 1 December 2004 – The ECGD amended its requirements in respect of agents' details as follows:
- No agents' details were required provided that any agents' commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
- Agents' details were required in all cases which did not meet the above criteria. The agent's details included the agents' names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.

From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent's details (including the agent's name and address). Applicants may request that the agent's name and address are

provided under "special handling" arrangements to protect the sensitivity of this information.

The UK NCP has considered whether applicants for ECGD's support, including BAE, may have been unaware or unclear about whether ECGD's procedures between November 2003 and October 2004 required them to disclose agents' details.

Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD's policy between November 2003 and October 2004 was to require all applicants to disclose their agents' details to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

The UK NCP also considers that ECGD's disclosure requirements from March 2004 had been clearly communicated to all applicants. The UK NCP has seen a letter dated 4 March 2004 from the ECGD to "all customers" which clearly set out the requirement from 1 May 2004 to disclose to the ECGD the list of agents involved in the project for which support was sought.

Between November 2003 and October 2004 did BAE refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support?

November 2003

Corner House alleges that in November 2003 BAE breached the Guidelines by refusing to provide the ECGD with details about the agents used in the sale of defence equipment to Saudi Arabia for which ECGD's support was sought. Corner House alleges that this constitutes a breach of the Guidelines. According to the newspaper article on which Corner House bases its allegations, the ECGD explained in 2003 that "*BAE submitted new proposals whereby no agents' commission was to be paid under the project*"[32]. This statement implies that either no agent was employed in that particular project or that, if agents were employed, they were not paid any commission. It could also imply that BAE avoided the disclosure requirements by submitting a new application in which it said that no agents were engaged.

The UK NCP has reviewed the newspaper article which the Corner House referred to and considers that the article itself does not contain any evidence or refer to any evidence which the UK NCP could rely upon to reach a conclusion in relation to this allegation. The Corner House has not submitted any further documents in support of this allegation.

The UK NCP has asked the ECGD whether it holds any documents or other information which relate to this allegation. The ECGD stated that, as far as it is aware, in the period between November 2003 and October 2004 BAE complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between November 2003 and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not BAE refused to disclose its list of agents to the ECGD as part of its application for support on the Al Yamamah deal in the course of 2003.

The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether BAE refused to disclose its list of agents in respect of the specific application for support from BAE on the Al Yamamah deal in 2003. Accordingly, it follows

that the UK NCP is unable to make a finding as to whether BAE acted inconsistently with the Guidelines in this respect.

May to October 2004

Corner House refers to a number of documents mainly produced between May and October 2004 in the course of the negotiations between the CBI Solutions Group and the ECGD on ECGD's application process. Corner House argues that these documents prove that BAE refused to disclose its list of agents to the ECGD when applying for support. The UK NCP has examined all the documents referred to by Corner House, together with rest of the evidence received on this complaint. The relevant documents in respect of BAE are outlined below:

a) The UK NCP has seen a letter dated 24 May 2004 from BAE to the ECGD in which BAE expressed concerns "*about ECGD's previous request for detailed information*", that is ECGD's letter dated 4 March 2004 referred to above which set out the requirement to disclose a list of agents involved in the project for which support is sought. In the same letter, BAE confirmed its support for the similar position taken by other manufacturers and their representative bodies.

b) The note of a meeting between the CBI, businesses, and the Department of Trade and Industry and the ECGD on 5 July 2004. The UK NCP has seen this note but it does not make specific reference to BAE's position on the disclosure of its list of agents to the ECGD.

c) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents BAE amongst other manufacturers, to the ECGD in which the aerospace industry found it "*unacceptable*", mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: "*The identities of third party 'agents or intermediaries appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets* […] *Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties.*"

d) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: "*We assume that the only issue outstanding at that point* [*i.e.* 11 August 2004] *will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent*".

e) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: "*ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standards form of contract with agents*".

f) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that "*ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the*

name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment" and that "*These details* [agents' details] *were very commercially sensitive* […] *The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous*".

g) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: "*We are most grateful for the explanation given at our meeting* [meeting of 9 August 2004] *of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD's being aware of an agent's identity, your objection to this is the heightened risk of inadvertent leakage of that information*". In the same letter, the ECGD proposes a secure way for it to collect information about companies' agents.

h) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: "*Although we* [CBI Solutions Group] *are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory agreement forming the basis of that appointment will enable you* [the ECGD] *to take a positive view of the compromise we are offering*".

The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD's application procedures should permit agents' details to be withheld on grounds of commercial confidentiality. However**,** the UK NCP considers that in order to make a finding as to whether there has been a breach of the Guidelines it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between May and October 2004.

The UK NCP notes that, in its response to the complaint, BAE states that it acted in compliance with ECGD's procedures. BAE has not submitted any supporting documents to the UK NCP.

The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that BAE refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between November 2003 and October 2004 BAE complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between November 2003 and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not BAE disclosed a list of agents on each occasion that it made an application for support to the ECGD during this period.

Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 38 above. The UK NCP considers that these documents may suggest that BAE refused to provide a list of its agents to the ECGD when making applications during the period between May and August 2004. For example, the email of 25 August 2004 from the CBI to the ECGD states that "*we* [CBI Solutions Group] *are unable to agree to divulge details of agents to ECGD*" (the CBI Solutions Group included BAE). The UK NCP has also taken into account that it may be considered unlikely that BAE provided information on its agents to the ECGD in the course of applications it made to the ECGD

during this period, while at the same time arguing strongly, either directly or through its business sector representatives, that ECGD's application procedures should have permitted agents' details to be withheld on grounds of commercial confidentiality.

However, the UK NCP considers that the documents referred to in paragraph 38 do not provide conclusive evidence that in specific applications for support between May and October 2004 BAE refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company made applications for support to the ECGD during the period between May and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.

The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether BAE did refuse to disclose a list of agents to the ECGD when making applications for support during the period between November 2003 and October 2004. Accordingly, the UK NCP is unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines in this respect.

The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

Between November 2003 and October 2004 did BAE seek an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD and, if so, does this constitute a breach of Chapter VI(2)of the Guidelines?

BAE has recognised in its response of 14 April 2010 that it did seek an assurance from the ECGD that it could use commercial confidentiality as a justification for withholding its list of agents from the ECGD. The UK NCP has also reviewed copies of several documents which show this, as follows:

a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: "*We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of 'agent' concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)*".

b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: "*We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents' details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point*".

c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from BAE. At the meeting, the CBI Solutions Group states that: "*Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support*". In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents' names, this would not automatically be used by the ECGD as a reason for not giving cover.

The UK NCP has considered whether the fact that BAE sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.

As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.

However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary[33], while recommending multinationals to "*avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues*", expressly recognises "*an enterprise's right to seek changes in the statutory or regulatory framework*".

In light of the above, the UK NCP concludes that, BAE's actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

Conclusions

On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:

a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents' commissions, and that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.

b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

c) That, between November 2003 and October 2004, ECGD's policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

d) The UK NCP considers that it does not have sufficient evidence to make a finding as to whether BAE refused to disclose its list of agents in respect of its application for support on the Al Yamamah deal in 2003.

e) That although the UK NCP has seen documents which suggest that BAE may have refused to disclose its list of agents to the ECGD when making specific applications for support between May and October 2004, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether BAE did refuse to disclose a list of agents to the ECGD when making applications for support during this period. Accordingly, the UK NCP considers that it is unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines in this respect.

f) That BAE did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

The company's current practices

The ECGD has stated that BAE has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.

BAE's corporate responsibility measures are accessible through BAE's web portal. The UK NCP has reviewed BAE's initiatives to discourage bribery within the company. In particular, the UK NCP notes the following measures taken by BAE which are of particular significance in relation to Chapter VI(2) of the Guidelines.

Firstly, BAE states on its website that it has committed itself to act on all the recommendations contained in the 2008 report of the Woolf Committee[34]. The UK NCP understands that the Woolf Committee was a committee appointed by BAE's board of directors, and chaired by Rt Hon The Lord Woolf of Barnes, to report publicly on the company's ethical policies and processes. Recommendations 11[35], 13[36] and 22[37] of the Woolf Committee refer to the selection, appointment and management of advisers[38] (*i.e.* agents), the prohibition of facilitation payments (to be implemented progressively), and the need for the company to be as open and transparent as possible. BAE states that in response to these recommendations it has[39]: created a Business Development Adviser Compliance Panel, chaired by independent third parties, for the review and assessment of adviser appointments; clarified the company's Facilitation Payments Policy to the effect that employees are prohibited from making facilitation payments irrespective of whether or not they are permitted by local laws, and must decline and report any request for such payment; committed to being as open as practicable with external stakeholders.

Secondly, the UK NCP notes that BAE's global code of conduct states that: "*We have made it clear that when we are bidding for or negotiating a contract we will […] disclose information required by law or regulation*"[40]*; that* "*We will only appoint advisers of known integrity and require that their conduct meets our standards at all time […] We demand that all of our advisers, consultants, and distributors comply withour policies*"[41]; and that "*We will not make facilitation payments and will seek to eliminate the practice in countries in which we do business*"[42].

Thirdly, the UK NCP understands that BAE has established a strong internal corporate responsibility enforcement mechanism. BAE states that its managing director for corporate responsibility reports directly to the Chief Executive and ensures that the company's corporate responsibility objectives are implemented as part of the company's operations and a corporate responsibility committee assists its board of directors in monitoring and reviewing BAE's corporate responsibility policy, including BAE's compliance with anti-corruption laws and regulations[43].

Recommendations to the company and follow up

Where appropriate, the UK NCP may make specific recommendations to a company so that its conduct may be brought into line with the Guidelines going forward. In considering whether to make any recommendations, the UK NCP has taken into account that it was unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines, and

that the ECGD introduced anti-corruption procedures on 1 July 2006 which include a requirement to disclose the applicant's list of agents to the ECGD. The company has stated that it complies with these procedures in all cases and the ECGD has confirmed that it is not aware of any cases in which the company has not complied with the procedures.

Accordingly, the UK NCP does not consider that it is appropriate to make any recommendations to BAE. This Final Statement therefore concludes the complaint process under the Guidelines.

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint from Corner House against Rolls-Royce Group PLC

Summary of the Conclusions

- The UK NCP concludes that Chapter VI(2) of the Guidelines requires the disclosure of a list of agents (meaning disclosure of the identity of agents) and that this should be provided upon request from the relevant competent authorities. The UK NCP considers that Chapter VI(2) does not require disclosure of agents' commissions. The UK NCP also concludes that the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
- If Roll-Royce did make applications between April and October 2004, and if it did refuse to disclose a list of agents to the UK Export Credits Guarantee Department (ECGD), then this would have constituted a breach of Chapter VI(2) of the Guidelines.
- There is evidence which shows that Rolls-Royce strongly opposed the introduction of a requirement to disclose a list of agents to the ECGD when making applications for support. This suggests that, if Rolls-Royce had made applications for support during the relevant period (between April and October 2004), it may have been reluctant to disclose a list of agents to the ECGD. However, Rolls-Royce has stated that it made no applications to the ECGD between April and October 2004. The UK NCP has been unable to verify this with the ECGD, and considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce made applications for support to the ECGD during the relevant period and, if it did, whether it refused to disclose a list of agents. Accordingly, the UK NCP is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.
- The UK NCP concludes that Rolls-Royce did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance did not constitute a breach of Chapter VI(2) of the Guidelines.
- The ECGD introduced new anti-corruption procedures on 1 July 2006. These procedures include a requirement on applicants to disclose their list of agents to the ECGD if agents are acting in relation to the project for which support is sought. The ECGD has stated that, since those procedures were introduced, no applicant has refused to comply with ECGD's requirements. In light of this and also the steps taken by the company to combat bribery, the UK NCP does not consider that it is appropriate to make any recommendations to Rolls-Royce. This Final Statement therefore concludes the complaint process under the Guidelines.

Background

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.

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.

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

The UK NCP complaint process is broadly divided into the following key stages:

a) 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;

b) Conciliation/mediation OR 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;

c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;

d) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: *http://www.bis.gov.uk/nationalcontactpoint*.

Details of the parties involved

The complainant. Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.

The company. Rolls-Royce Group plc (Rolls-Royce) is a UK registered company providing integrated power systems for use on land, at sea, and in the air. The company is listed in the FTSE 100.

Complaint from Corner House

On 4 April 2005, Corner House submitted a complaint to the UK NCP under the Guidelines in relation to Rolls-Royce's operations in the United Kingdom in the period from April to October 2004.

There are two aspects to Corner House's complaint:

a) Firstly, that Rolls-Royce refused, in the period from April to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:

- The ECGD allegedly wrote to the company in March 2004 advising Rolls-Royce about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance.
- Rolls-Royce allegedly wrote to the ECGD on 23 April 2004 stating that the new disclosure requirements on agents were not acceptable.
- At a meeting between ECGD and industry groups on 5 July 2004, Rolls-Royce allegedly supported Airbus in stating that it would not provide any agents' details to the ECGD because it had entered into confidentiality agreements with its agents and regarded these arrangements as a matter between the company and the agents.
- On 30 July and on 9 August 2004, several aerospace companies including Rolls-Royce allegedly stated to the ECGD that agents' details needed to remain confidential.
- On 12 August 2004, the ECGD allegedly wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.

b) Secondly, that Rolls-Royce sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:

- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE Systems, Airbus and Rolls-Royce[44], allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
- On 7 October 2004, at a meeting with the ECGD, Rolls-Royce allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
- On 29 October 2004, the ECGD allegedly gave written confirmation to BAE Systems, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

c) Corner House submitted that Rolls-Royce's alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should[45]:

"*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*".

UK NCP process

On 4 April 2005, Corner House submitted to the UK NCP a complaint against BAE Systems, Airbus and Rolls-Royce under the Guidelines.

When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled "UK National Contact Point Information Booklet"[46] to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: "*In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate* […] *Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution*"[47].

The UK NCP considered that Corner House's submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.

On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD's consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD's new procedures came into effect on 1 July 2006.

The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009[48]. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure[49].

On 15 December 2009, the UK NCP wrote to Rolls-Royce and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/mediation in order to pave the way to a mutually satisfactory outcome of the complaint. On 29 January 2010, Rolls-Royce declined this offer.

Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked Rolls-Royce to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1 July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

Response from Rolls Royce Group PLC

On 15 April 2010, Rolls-Royce stated that the complaint from Corner House should be rejected on the grounds that between April and October 2004 Rolls-Royce made no applications to the ECGD for support for overseas sales and therefore it cannot be found to

have breached Chapter VI(2) of the Guidelines. Rolls-Royce also stated that it has been complying with the requirements set out in ECGD's application procedures introduced on 1 July 2006 (which require the disclosure of agents' details to the ECGD) and therefore the UK NCP cannot make any useful recommendations to the company.

UK NCP analysis

The analysis of the complaint against Rolls-Royce will address the following key areas. Firstly, it will explain the meaning and scope of Chapter VI(2) of the Guidelines. Secondly, it will explain whether Chapter VI(2) of the Guidelines is qualified so that disclosure can be withheld on grounds of commercial confidentiality. Thirdly, it will look at what ECGD's policy was on requesting agents' details as part of its application process for export support in the period between April and October 2004. Fourthly, it will examine whether Rolls-Royce did refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support between April and October 2004. Finally, it will address the issue of whether Rolls-Royce did seek, between April and October 2004, an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing to disclose a list of agents to the ECGD and, if it did, whether this constituted a breach of the Guidelines.

What is the meaning and scope of Chapter VI(2) of the Guidelines?

Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.

Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter only refers to the disclosure of a "list of agents" (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents' commissions.

The UK NCP therefore rejects Corner House's interpretation that the recommendation extends to other agents' details such as agents' commissions[50]. The UK NCP has therefore not examined whether the company refused to provide details of agents' commissions to the ECGD as this is outside the scope of Chapter VI(2).

The UK NCP considers that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide the information upon request from the competent authority.

Is Chapter VI(2) of the Guidelines qualified so that disclosure can be withheld on grounds of commercial confidentiality?

The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the "Commentary on Combating Bribery". The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the "Commentary on Combating Bribery" annexed to the Guidelines[51] is silent on this particular point.

In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

What was ECGD's policy on requesting agents' details as part of its application process for support in the period between April and October 2004?

Based on information received from the ECGD, ECGD's policy on requesting agents' details as part of the application process when a company requests support has been as follows:

a) Prior to 1 April 2003 – The ECGD did not require the disclosure of agents' names and addresses.

b) From 1 April 2003 – The ECGD required all applicants to provide agents' details (including names and addresses).

c) From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent's details (including names and addresses).

d) From 1 December 2004 – The ECGD amended its requirements in respect of agents' details as follows:

- No agents' details were required provided that any agents' commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
- Agents' details were required in all cases which did not meet the above criteria. The agent's details included the agents' names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.

e) From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent's details (including the agent's name and address). Applicants may request that the agent's name and address are provided under "special handling" arrangements to protect the sensitivity of this information.

The UK NCP has considered whether applicants for ECGD's support, including Rolls-Royce, may have been unaware or unclear about whether ECGD's procedures between April and October 2004 required them to disclose agents' details.

Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD's policy between April and October 2004 was to require all applicants to disclose their agents' details to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

The UK NCP also considers that ECGD's disclosure requirements from March 2004 had been clearly communicated to all applicants. The UK NCP has seen a letter dated 4 March 2004 from the ECGD to "all customers" which clearly set out the requirement from 1 May 2004 to disclose to the ECGD the list of agents involved in the project for which support was sought.

Between April and October 2004 did Rolls-Royce refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support?

Corner House refers to a number of documents produced between April and October 2004 in the course of the negotiations between the CBI Solutions Group and the ECGD on ECGD's application process. Corner House argues that these documents prove that Rolls-Royce refused to disclose its list of agents to the ECGD when applying for support. The UK NCP has examined all the documents referred to by Corner House, together with rest of the evidence received on this complaint. The relevant documents in respect of Rolls-Royce are outlined below:

The UK NCP has seen a letter dated 23 April 2004 from Rolls-Royce to the ECGD, in response to ECGD's letter dated 4 March 2004 referred to above (which set out the requirement to disclose a list of agents involved in the project for which support is sought), in which the company states that: "*Neither the new declarations in relation to Agents nor the new audit rights in relation to Agents Commissions are acceptable*".

The note of a meeting, seen by the UK NCP, between the CBI, businesses (including Rolls-Royce), and the Department of Trade and Industry and the ECGD on 5 July 2004, states that: "*Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce*". The same note states that: "*ECGD expressed surprise that companies were now refusing to provide additional information on agent's commission that it required since most of these details had been specified in ECGD application forms since April 2003*".

The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents Rolls-Royce amongst other manufacturers, to the ECGD in which the aerospace industry found it "*unacceptable*", mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: "*The identities of third party 'agents or intermediaries' appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets* […] *Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties*."

In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: "*We assume that the only issue outstanding at that point* [*i.e.* 11 August 2004] *will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent*".

a) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: "ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standards form of contract with agents".

b) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that "ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment" and that "These details [agents' details] were very commercially sensitive […] The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous".

c) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: "We are most grateful for the explanation given at our meeting [meeting of 9 August 2004] of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD's being aware of an agent's identity, your objection to this is the heightened risk of inadvertent leakage of that information". In the same letter, the ECGD proposes a secure way for it to collect information about companies' agents.

d) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: "Although we [CBI Solutions Group] are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory agreement forming the basis of that appointment will enable you [the ECGD] to take a positive view of the compromise we are offering".

The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD's application procedures should permit agents' details to be withheld on grounds of commercial confidentiality. However, the UK NCP considers that, in order to make a finding as to whether there has been a breach of the Guidelines, it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between April and October 2004.

The UK NCP notes that in its response to the complaint Rolls-Royce states that: "*[…] Rolls-Royce's position is simply stated. Rolls-Royce made no applications to ECGD in respect of which export credit support was provided for overseas sales during this period. Accordingly, we do not consider that any complaint can be sustained against the company for non-compliance with Chapter VI paragraph 2 of the OECD Guidelines*". Rolls-Royce has stated that because it made no applications to the ECGD, there are no supporting documents which it could produce in relation to its position.

The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that Rolls-Royce refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between April and October 2004 Rolls-Royce complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between April and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not Rolls-Royce made any applications to the ECGD for support during this period (and, if it did, whether it disclosed a list of agents).

Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 30 above and Rolls-Royce's statement that it made no applications during the relevant period. The UK NCP considers that the documents referred to in paragraph 30 show that Rolls-Royce strongly opposed the introduction of a requirement to disclose a list of its agents to the ECGD when making applications for support. For example, the note of a meeting on 5 July 2004 (which the UK NCP has seen) between the CBI, the Department of Trade and Industry, the ECGD and businesses (including Rolls-Royce) states that: "*Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce*". This suggests that, if Rolls-Royce had made applications for support during the relevant period (between April and October 2004), it may have been reluctant to provide information on its agents to the ECGD, given that it had been arguing strongly, either directly or through its business sector representatives, that ECGD's application procedures should have permitted agents' details to be withheld on grounds of commercial confidentiality.

However, the UK NCP considers that the documents referred to in paragraph 30 do not provide conclusive evidence as to whether Rolls-Royce submitted specific applications for support between April and October 2004, and, if it did, whether it refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company made applications for support to the ECGD during the period between April and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.

The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it did refuse to disclose a list of agents to the ECGD. Accordingly, the UK NCP is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.

The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

Between April and October 2004 did Rolls-Royce seek an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD and, if so, does this constitute a breach of Chapter VI(2)of the Guidelines?

The UK NCP has reviewed copies of several documents which show that Rolls-Royce did seek an assurance that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD, as follows:

a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: "*We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of 'agent' concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)*".

b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: "*We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the*

names and addresses of agents and that cover will not be refused simply because Agents' details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point".

c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from Rolls-Royce. At the meeting, the CBI Solutions Group states that: "*Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support*". In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents' names, this would not automatically be used by the ECGD as a reason for not giving cover.

The UK NCP has considered whether the fact that Rolls-Royce sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.

As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.

However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary[52], while recommending multinationals to "*avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues*", expressly recognises "*an enterprise's right to seek changes in the statutory or regulatory framework*".

In light of the above, the UK NCP concludes that, Rolls-Royce's actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

Conclusions

On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:

a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents' commissions, and that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.

b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

c) That, between April and October 2004, ECGD's policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this

requirement applied if agents or other intermediaries were involved in the project for which support was sought).

d) That, if Rolls-Royce had made applications for support to the ECGD between April and October 2004, the documents which the UK NCP has seen, suggest that Rolls-Royce may have been reluctant to disclose its list of agents to the ECGD. However, Rolls-Royce has stated that it made no applications to the ECGD during this period. The UK NCP has been unable to verify this with the ECGD and considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it refused to disclose a list of agents to the ECGD. Accordingly, the UK NCP considers that it is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.

e) That Rolls-Royce did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

Tthe company's current practices

The ECGD has stated that Rolls Royce has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.

Rolls-Royce's policy on corporate responsibility is accessible through the company's web portal. In respect of the issues covered by Chapter VI(2) of the Guidelines, the UK NCP notes that the company's published "Global Code of Business Ethics"[53] states that: "*We* [Rolls-Royce] *only appoint intermediaries to represent our interests in the sales process who can demonstrate they fully comply with the principles of this Code and avoid bribery and corruption. We actively manage these intermediaries to ensure they continue to comply with these principles*"[54]. The Code also states that: "*We* [Rolls-Royce] *will: require any intermediaries in the sales process to comply with a code of ethics that is at least comparable to ours and to applicable laws; conduct thorough due diligence and only select intermediaries that meet our ethical requirements; only make payments to intermediaries that are proportionate, proper and legitimately due in relation to the services provided; ensure that internal controls are in place to prevent bribery and corruption; and ensure staff receive training to prevent bribery and corruption*"[55]. The Code recognises the need to apply the higher standards it sets out: "*Where the guidance in this Code conflicts with any applicable local laws you should follow the higher standard, ensuring always that local laws are satisfied*"[56].

The UK NCP understands that Rolls-Royce has established an "Ethics Reporting Line" which allows employees to report in confidence alleged breaches of the company's "Global Code of Business Ethics" and that reports are then examined by the company's Director of Risk, the Head of Business Ethics and Compliance, and the Director of Security. The UK NCP also understands that an Ethics Committee[57], composed of independent non-executive directors, monitors the reporting line and the connected investigations, as well as the company's overall compliance with the "Global Code of Business Ethics".

Recommendations to the company and follow up

Where appropriate, the UK NCP may make specific recommendations to a company so that its conduct may be brought into line with the Guidelines going forward. In considering

whether to make any recommendations, the UK NCP has taken into account that it was unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines, and that the ECGD introduced anti-corruption procedures on 1 July 2006 which include a requirement to disclose the applicant's list of agents to the ECGD. The company has stated that it complies with these procedures in all cases and the ECGD has confirmed that it is not aware of any cases in which the company has not complied with the procedures.

Accordingly, the UK NCP does not consider that it is appropriate to make any recommendations to Rolls-Royce. This Final Statement therefore concludes the complaint process under the Guidelines.

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint from Corner House against Airbus S.A.S.

Summary of the conclusions

- The UK NCP concludes that Chapter VI(2) of the Guidelines requires that a list of agents is kept and that this list should be disclosed (meaning disclosure of the identity of the agents) upon request from the relevant competent authorities. The UK NCP considers that Chapter VI(2) does not require disclosure of agents' commissions. The UK NCP also concludes that the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
- The UK NCP considers that if, when requested to do so by the UK Export Credits Guarantee Department (ECGD), Airbus did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.
- Airbus stated that it did not act contrary to the Guidelines during the period between May and October 2004 and the ECGD continued to provide cover in respect of applications that were made to it, but the UK NCP has been unable to verify with the ECGD whether Airbus disclosed a list of agents on each occasion that it made an application for support to the ECGD between May and October 2004. There is evidence that suggests that Airbus may have refused to disclose a list of agents to the ECGD, on the grounds of commercial confidentiality, when making applications to it for support between April and October 2004. However, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether Airbus did refuse to disclose a list of agents to the ECGD when making applications for support during this period and accordingly that it is unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines in this respect.
- The UK NCP concludes that Airbus did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance did not constitute a breach of Chapter VI(2) of the Guidelines.
- The ECGD introduced new anti-corruption procedures on 1 July 2006. These procedures include a requirement on applicants to disclose their list of agents to the ECGD if agents are acting in relation to the project for which support is sought. The ECGD has stated that, since those procedures were introduced, no applicant has refused to comply with ECGD's requirements. In light of this, the UK NCP does not consider that it is appropriate to make any recommendations to Airbus. This Final Statement therefore concludes the complaint process under the Guidelines.

Background

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.

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.

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

The UK NCP complaint process is broadly divided into the following key stages:

a) 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;

b) Conciliation/mediation OR 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;

c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;

d) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website:

http://www.bis.gov.uk/nationalcontactpoint.

Details of the parties involved

The complainant. Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.

The company. Airbus S.A.S. (Airbus) is a European aircraft manufacturer based in France, with operations in the UK, and makes applications for support to the ECGD in respect of civil aircrafts.

Complaint from corner house

On 4 April 2005, Corner House submitted a complaint to the UK NCP under the Guidelines in relation to Airbus' operations in the United Kingdom in the period from April to October 2004.

There are two aspects to Corner House's complaint:

a) Firstly, that Airbus refused, in the period from April to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:

- The ECGD wrote to the company in March 2004 advising Airbus about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance. Airbus wrote to the ECGD on 7 April 2004 stating that the fees paid to agents constituted commercially sensitive information.
- At a meeting between the ECGD and industry groups on 5 July 2004, Airbus allegedly stated that it would not provide any agents' details to the ECGD because it had entered into confidentiality agreements with its agents and regarded these arrangements as a matter between the company and the agents.
- On 30 July and on 9 August 2004, several aerospace companies including Airbus allegedly stated to the ECGD that agents' details needed to remain confidential.
- On 12 August 2004, the ECGD wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.
- Airbus wrote to the ECGD on 31 August 2004 stating that contracts with agents were part of the company's commercial know-how and had to be kept confidential.

b) Secondly, that Airbus sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:

- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE Systems, Airbus and Rolls-Royce[58], allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
- On 7 October 2004, at a meeting with the ECGD, Airbus allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
- On 29 October 2004, the ECGD gave written confirmation to BAE Systems, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

Corner House submitted that Airbus' alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should[59]:

"*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*".

UK NCP process

On 4 April 2005, Corner House submitted to the UK NCP a complaint against BAE Systems, Airbus and Rolls-Royce under the Guidelines.

When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled "UK National Contact Point Information Booklet"[60] to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: "*In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate* […] *Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution*"[61].

The UK NCP considered that Corner House's submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.

On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD's consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD's new procedures came into effect on 1 July 2006.

The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009[62]. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure[63].

On 15 December 2009, the UK NCP wrote to Airbus and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/ mediation which might have paved the way to a mutually satisfactory outcome of the complaint. Airbus did not respond to this offer.

Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked Airbus to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1 July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

Response from Airbus S.A.S.

On 15 April 2010, Airbus invited the UK NCP to reject the complaint on the following grounds:

a) That Chapter VI(2) of the Guidelines does not require companies to disclose information relating to agents' remuneration to the competent authorities..

b) That Airbus was acting in compliance with the Guidelines in the period between April and October 2004 and that it cannot be criticised for engaging in negotiations with the ECGD in order to protect its commercial interests and the confidentiality of third parties which the ECGD itself accepted as legitimate concerns. Airbus submitted that the position it took during the negotiations cannot be regarded as a breach of the Guidelines.

c) That, during the course of the negotiations with the ECGD between April and October 2004, Airbus continued to receive guarantees from the ECGD. The company submitted that if the ECGD had considered that Airbus had failed to provide sufficient information it could have rejected the application, but it did not do so.

d) That circumstances have fundamentally changed since the complaint was made. Airbus submitted that, in July 2006, the ECGD adopted new procedures to which the company has adhered since their introduction. Therefore, the issues raised in the complaint are moot.

e) That there are no recommendations that the UK NCP could appropriately make in respect of Airbus because Airbus has always acted in conformity with the Guidelines and adheres to the procedures introduced by the ECGD in July 2006.

UK NCP analysis

The analysis of the complaint against Airbus will address the following key areas. Firstly, it will explain the meaning and scope of Chapter VI(2) of the Guidelines. Secondly, it will explain whether Chapter VI(2) of the Guidelines is qualified so that disclosure can be withheld on grounds of commercial confidentiality. Thirdly, it will look at what ECGD's policy was on requesting agents' details as part of its application process for export support in the period between April and October 2004. Fourthly, it will examine whether Airbus did refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support between April and October 2004. Finally, it will address the issue of whether Airbus did seek, between April and October 2004, an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing to disclose a list of agents to the ECGD and, if it did, whether this constituted a breach of the Guidelines.

What is the meaning and scope of Chapter VI(2) of the Guidelines?

Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.

Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter only refers to the disclosure of a "list of agents" (meaning

disclosure of the identity of agents) and does not extend to disclosing details of agents' commissions.

The UK NCP therefore rejects Corner House's interpretation that the recommendation extends to other agents' details such as agents' commissions[64]. The UK NCP has therefore not examined whether the company refused to provide details of agents' commissions to the ECGD as this is outside the scope of Chapter VI(2).

The UK NCP considers that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide the information upon request from the competent authority.

Is Chapter VI(2) of the Guidelines qualified so that disclosure can be withheld on grounds of commercial confidentiality?

The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the "Commentary on Combating Bribery". The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the "Commentary on Combating Bribery" annexed to the Guidelines[65] is silent on this particular point.

In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

What was ECGD's policy on requesting agents' details as part of its application process for support in the period between April and October 2004?

Based on information received from the ECGD, ECGD's policy on requesting agents' details as part of the application process when a company requests support has been as follows:

a) Prior to 1 April 2003 – The ECGD did not require the disclosure of agents' names and addresses.

b) From 1 April 2003 – The ECGD required all applicants to provide agents' details (including names and addresses).

c) From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent's details (including names and addresses).

d) From 1 December 2004 – The ECGD amended its requirements in respect of agents' details as follows:

- No agents' details were required provided that any agents' commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
- Agents' details were required in all cases which did not meet the above criteria. The agent's details included the agents' names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.

e) From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent's details (including the agent's name and address). Applicants may request that the agent's name and address are provided under "special handling" arrangements to protect the sensitivity of this information.

The UK NCP has considered whether applicants for ECGD's support, including Airbus, may have been unaware or unclear about whether ECGD's procedures between April and October 2004 required them to disclose agents' details.

Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD's policy between April and October 2004 was to require all applicants to disclose their agents' details to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

The UK NCP also considers that ECGD's disclosure requirements from March 2004 had been clearly communicated to all applicants. The UK NCP has seen a letter dated 4 March 2004 from the ECGD to "all customers" which clearly set out the requirement from 1 May 2004 to disclose to the ECGD the list of agents involved in the project for which support was sought.

Between April and October 2004 did Airbus refuse to disclose its list of agents to the ECGD when making applications to the ECGD for support?

Corner House refers to a number of documents produced between April and October 2004 in the course of the negotiations between the CBI Solutions Group and the ECGD on ECGD's application process. Corner House argues that these documents prove that Airbus refused to disclose its list of agents to the ECGD when applying for support. The UK NCP has examined all the documents referred to by Corner House, together with rest of the evidence received on this complaint. The relevant documents in respect of Airbus are outlined below:

a) The UK NCP has seen a letter dated 7 April 2004 from Airbus to the ECGD in which Airbus expresses concerns about "*the new application form*", as outlined in ECGD's letter dated 4 March 2004 referred to above (which set out the requirement to disclose a list of agents involved in the project for which support is sought). In the same letter, Airbus states that: "*As you can imagine, details of fees, if any, paid to consultants in connection with assistance or services they provide, constitutes commercially sensitive information. We feel very strongly that our network of consultants is part of our competitive advantage and that it is therefore inappropriate, in our view, to disclose this information outside our organisation*". This letter shows Airbus's concerns in relation to the disclosure of commissions paid to agents. The UK NCP could find no references in this letter to Airbus's position in relation to the disclosure to the ECGD of its list of agents.

b) The note of a meeting, seen by the UK NCP, between the CBI, businesses (including Airbus), and the Department of Trade and Industry and the ECGD on 5 July 2004, states that: "*Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved* […] *It was prepared to show ECGD the form of its standard agency agreement but would not provide any details as to how such agreements were*

modified for particular transactions". The same note states that: "*ECGD expressed surprise that companies were now refusing to provide additional information on agent's commission that it required since most of these details had been specified in ECGD application forms since April 2003*".

c) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents Airbus amongst other manufacturers, to the ECGD in which the aerospace industry found it "*unacceptable*", mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: "*The identities of third party 'agents or intermediaries' appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets* […] *Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties.*"

d) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: "*We assume that the only issue outstanding at that point* [*i.e.* 11 August 2004] *will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent*".

e) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: "ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standard form of contract with agents".

f) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that "*ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment*" and that "*These details* [agents' details] *were very commercially sensitive* […] *The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous*".

g) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: "*We are most grateful for the explanation given at our meeting* [meeting of 9 August 2004] *of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD's being aware of an agent's identity, your objection to this is the heightened risk of inadvertent leakage of that information*". In the same letter, the ECGD proposes a secure way for it to collect information about companies' agents.

h) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: "Although we [CBI Solutions Group] are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/

advisory agreement forming the basis of that appointment will enable you [the ECGD] to take a positive view of the compromise we are offering".

i) In a letter dated 31 August 2004, which the UK NCP has seen, from Airbus to the ECGD, Airbus states that: "The level of fees paid [to agents] varies from contract to contract and we are unwilling to make any statements regarding the size of payments made. The same confidentiality requirement applies to the disclosure of whether or not Airbus employs a consultant on a given campaign".

The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD's application procedures should permit agents' details to be withheld on grounds of commercial confidentiality. However, the UK NCP considers that, in order to make a finding as to whether there has been a breach of the Guidelines, it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between April and October 2004 and requested to do so by the ECGD.

The UK NCP notes that, in its response to the complaint, Airbus states that: "*During the period to which the Complaint relates, Airbus did not act contrary to the Guidelines but merely engaged (together with other parties) in a legitimate negotiation with ECGD about the provision of information in connection with applications to ECGD*". Airbus also states that:"*[…] in the period of May 2004 to November 2004, whilst discussions were ongoing, ECGD continued to provide cover in respect of applications which were made to it. It was, of course, open to ECGD to reject applications that there were made to it by Airbus in this period had it considered such applications to be deficient in terms of the information that was provided. ECGD did not do so*". Airbus has not submitted any supporting documents to the UK NCP.

The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that Airbus refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between April and October 2004 Airbus complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between April and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not Airbus disclosed a list of agents, if any, on each occasion that it made an application for support to the ECGD during this period.

Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 30 above. The UK NCP considers that these documents may suggest that Airbus refused to provide a list of its agents to the ECGD when making applications during the period between April and August 2004. For example, the note of a meeting on 5 July 2004 (which the UK NCP has seen) between the CBI, the Department of Trade and Industry, the ECGD and businesses (including Airbus) states that: "*Airbus insisted that it will not provide any details relating to its agents*". The UK NCP has also taken into account that it may be considered unlikely that Airbus provided information on its agents to the ECGD in the course of applications it made to the ECGD during this period, while at the same time arguing strongly, either directly or through its business sector representatives, that ECGD's application procedures should have permitted agents' details to be withheld on grounds of commercial confidentiality.

However, the UK NCP considers that the documents referred to in paragraph 30 do not provide conclusive evidence that in specific applications for support between April and October 2004 Airbus refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company when making applications for support to the ECGD during the period between April and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.

The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether Airbus did refuse to disclose a list of agents to the ECGD when making applications for support during the period between April and October 2004. Accordingly, the UK NCP is unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines in this respect.

The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

Between April and October 2004 did Airbus seek an assurance from the ECGD that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD and, if so, does this constitute a breach of Chapter VI(2)of the Guidelines?

Airbus has recognised in its response of 15 April 2010 that it did seek an assurance from the ECGD that it could use commercial confidentiality as a justification for withholding its list of agents from the ECGD. The UK NCP has also reviewed copies of several documents which show this, as follows:

a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: "*We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of 'agent' concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)*".

b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: "*We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents' details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point*".

c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from Airbus. At the meeting, the CBI Solutions Group states that: "*Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support*". In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents' names, this would not automatically be used by the ECGD as a reason for not giving cover.

The UK NCP has considered whether the fact that Airbus sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.

As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.

However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary[66], while recommending multinationals to "*avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues*", expressly recognises "*an enterprise's right to seek changes in the statutory or regulatory framework*".

In light of the above, the UK NCP concludes that, Airbus' actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

Conclusions

On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:

a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents' commissions, and that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.

b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

c) That, between April and October 2004, ECGD's policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

d) That although the UK NCP has seen documents which suggest that Airbus may have refused to disclose its list of agents to the ECGD when making specific applications for support between April and October 2004, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether Airbus did refuse to disclose a list of agents to the ECGD when making applications for support during this period. Accordingly, the UK NCP considers that it is unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines in this respect.

e) That Airbus did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

The company's current practices

The ECGD has stated that Airbus has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose

a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.

The UK NCP notes that Airbus is a participant in the UN Global Compact which includes, amongst its ten principles, businesses' commitment to work against corruption in all its forms, including extortion and bribery.

Recommendations to the company and follow up

Where appropriate, the UK NCP may make specific recommendations to a company so that its conduct may be brought into line with the Guidelines going forward. In considering whether to make any recommendations, the UK NCP has taken into account that it was unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines, and that the ECGD introduced anti-corruption procedures on 1 July 2006 which include a requirement to disclose the applicant's list of agents to the ECGD. The company has stated that it complies with these procedures in all cases and the ECGD has confirmed that it is not aware of any cases in which the company has not complied with the procedures.

Accordingly, the UK NCP does not consider that it is appropriate to make any recommendations to Airbus. This Final Statement therefore concludes the complaint process under the Guidelines.

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

Statement by the UK NCP

Final revised statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the specific instance: BTC pipeline

22 February 2011

The BTC Pipeline Specific Instance was one of the first complaints raised with the UK NCP in 2003 and resulted in a Final Statement in 2007. Following a procedural review by the UK NCP Steering Board this original Final Statement was withdrawn.

The Review Committee found that the UK NCP's failure to provide an opportunity for the complainants to see and comment on a report by the company's largest shareholder BP meant that it had acted unfairly. This report addressed compensation and grievance concerns identified in a 2005 Field Visit by the UK NCP and was an important part of the UK NCP's decision-making in relation to certain parts of the complaint.

In line with the recommendations of the Review Committee, the UK NCP liaised with the parties to reach agreement that the complainants would be provided with an opportunity to see and comment on the BP report. This included mediation on the subject of a mutually acceptable partner in Turkey with whom the Complainants could share the BP report. The revised Final Statement includes the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the non-disclosure of BP report. In addition, in line with the recommendations of the Review Committee, this revised Final Statement also provides a balanced summary of the position of all the parties and sets out the reasons for each of the UK NCP's conclusions. The complaint as a whole has not been substantively reopened and the UK NCP has only considered information relating to the original 2003 complaint.

Summary of the conclusions

Complaints 1, 2, and 5 – Negotiation and constraints of the BTC legal framework – Not reopened and no change.

The BP report addressed compensation and grievance concerns and did not address the negotiation and constraints of the BTC legal framework. Accordingly, the UK NCP has not substantively reopened complaints 1, 2 and 5.

The UK NCP considers that the negotiations between the company and the host governments were conducted appropriately, that the company did not seek or accept exemptions not contemplated in the statutory or regulatory framework, and that company did not undermine the ability of the host governments to mitigate serious threats.

The UK NCP considers that the company engaged constructively with concerns that the overall BTC framework would undermine human rights by agreeing that new legislation could introduce additional requirements benchmarked against evolving EU, World Bank and international human rights standards. The company also addressed concerns of how the BTC legal framework would be interpreted in practice by negotiating additional policy undertakings, confirming that the BTC framework would not constrain host governments in protecting human rights but that it would legally preclude the company from seeking compensation for new legislation required by international treaties. Accordingly, the UK NCP considers that in relation to complaints 1, 2 and 5 the company did not breach the Guidelines.

Complaint 3 – Compensation process – Reopened and no change.

The BP report addressed compensation and grievance concerns, including concerns over rural development projects. Accordingly, the UK NCP has substantively reopened complaint 3.

The UK NCP considers that the company took a comprehensive and proactive approach to compensation and rural development, and that individual concerns raised during the Field Visit do not represent a systematic failure to promote sustainable development in breach of the Guidelines.

While compensation and rural development differed between villages the UK NCP consider that some degree of variation was inevitable as a consequence of local participation in consultation and implementation, in addition to variation arising from differing land types, land use and market value. In response to identified risks of inconsistency the company made pro-active efforts to establish due diligence procedures over the compensation, rural development and grievance process, contributing to an ongoing resolution of complaints and assisting local partners to improve their capability. Accordingly, the UK NCP considers that in relation to complaint 3 the company did not breach the Guidelines.

Complaint 4 – Consultation and grievance process – Reopened and changed

The BP report addressed compensation and grievance concerns, including concerns of intimidation by local partners undermining the BTC consultation and grievance process. Accordingly, the UK NCP has substantively reopened complaint 4.

While the UK NCP considers that the BTC framework was established in accordance with the Guidelines, there were potential weaknesses in the local implementation of this framework regarding consultation and monitoring. These potential weaknesses arose from the company's distinction between complaints raised through the formal grievance and monitoring channels from complaints raised by other means.

In one particular region, these potential weaknesses seem to have contributed to shortfalls in effective and timely consultations with local communities, such that **the company failed to identify specific complaints of intimidation against affected communities by local security forces where the information was received outside of the formal grievance and monitoring channels, and, by not taking adequate steps in response to such complaints, failed to adequately safeguard against the risk of local partners undermining the overall consultation and grievance process**. Accordingly, the UK NCP considers that in relation to complaint 4 the company's activities in this particular region were ***not*** in accordance with Chapter V paragraph 2(b) of the Guidelines.

Recommendations

Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of these specific complaints of intimidation of villagers who spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation in this region, and therefore **recommends that the company consider and report on ways that it could**

strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.

Background

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.

The Guidelines are not legally binding. 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.

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

The UK NCP complaint process was revised in April 2008 following public consultation. The BTC Specific Instance was one of the first complaints raised with the UK NCP in 2003 and was first considered under the previous complaint process.

The UK NCP issued an original Final Statement on 15 August 2007. The result was to dismiss all alleged breaches of the OECD Guidelines.

This 2007 Final Statement was procedurally reviewed by the UK NCP Steering Board (*http://www.bis.gov.uk/files/file49676.doc*). As recommended by the Review Committee, the 2007 Final Statement has been withdrawn and reconsidered in light of the review.

Review of the original Final Statement

The procedural review identified a flaw in the process followed by the UK NCP; namely, that the UK NCP published the Final Statement without giving the complainants the opportunity to read or comment on a report by the company's largest shareholder BP on concerns about the implementation of the BTC compensation and grievance process.

These implementation concerns were identified during a Field Visit by the NCP to all three host countries in August-September 2005. The Field Visit was undertaken in recognition that there existed significant factual difference between the parties and that additional information gathering would enhance the UK NCP's understanding of the issues. The Field Visit included face-to-face discussions with a number of host government officials, representatives of five villages and individual villagers affected by the pipeline. The UK NCP does not have investigatory powers and during the Field Visit the UK NCP simply took note of what was said, without challenging the information received or questioning the interviewees. During this Field Visit the UK NCP heard allegations that some villagers were not receiving the compensation they had expected and that some villagers had complained of poor local implementation of the overall processes of consultation and grievance resolution.

Following this Field Visit the UK NCP held a meeting with both parties where it was agreed that BP (the lead contractor in the BTC project) would investigate and report back on these implementation concerns. This BP report was provided in confidence to the UK NCP and was not shared with the complainants. The UK NCP relied upon the BP report in the decision-making process, and the original Final Statement quoted some redacted portions of the BP report but did not reflect any comments by the complainants on the BP report.

Following the publication of the original Final Statement the complainants sought a review on procedural grounds. The UK NCP Steering Board found that the UK NCP acted unfairly by not giving the complainants the opportunity to comment on the BP report, and recommended:

- That the original Final Statement be withdrawn and reconsidered in the light of the review;
- That BP be asked to reconsider consent to share the report with the complainants;
- In the absence of such consent, the NCP consider to what extent it can rely on the report in reaching its decision;
- That the revised Final Statement set out in balanced terms the positions of the two parties, and set out the reasons for the UK NCP's conclusions on the points it considers are relevant for its decision;
- That, throughout the process, the parties are kept informed of what the UK NCP expects to achieve;
- The UK NCP Steering Board reminded the parties that the review process was not an appeal and only addressed procedural aspects of the handling of the complaint, and not at all its substance. That remains the exclusive function of the UK NCP;
- The UK NCP Steering Board noted that whether the directions recommended by the review would result in substantive reappraisal is also for the UK NCP alone to determine;
- That the review is not an invitation to reopen the complaint generally;
- That the UK NCP make clear whether it decides to seek information or comments from the parties, and if so, on what topic and when;
- That the UK NCP should set a realistic but tight timetable for finally concluding this Specific Instance under the OECD Guidelines, which provide for a way of resolving differences.

In line with the recommendations of the review, the original Final Statement was withdrawn and the UK NCP liaised with the parties to reach agreement that the complainants would be provided with an opportunity to see and comment on the BP report, and on the terms under which the BP report would be shown to the complainants. This agreement included arrangements for local partners of the complainants to check the contents of the BP report, with the UK NCP sponsoring professional mediation on the subject of a mutually acceptable partner in Turkey.

The complainants have now been given the opportunity to read and comment on the BP report, and the company has been given the opportunity to respond to the complainants' comments. This revised Final Statement provides a balanced summary of the position of all the parties and includes the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the non-disclosure of the BP report.

Details of the parties involved

The complainants

Friends of the Earth

Milieudefensie (Friends of the Earth Netherlands)

The Corner House

Baku Ceyhan Campaign

Platform

Kurdish Human Rights Project

The company

BTC Corporation ("the company") oversees the construction and operation of the Baku-Tblisi-Ceyhan (BTC) pipeline, an oil infrastructure project crossing the three host countries of Azerbaijan, Georgia and Turkey.

BTC is managed by BP Exploration (Caspian Sea) Ltd, which owns 30.1%. The other shareholders are: the State Oil Company of Azerbaijan (25%), Chevron (8.9%), Statoil (8.7%), Turkish Petroleum (6.5%), ENI (5%), Total (5%), Itochu Inc (3.4%), Inpex (2.5%), ConocoPhillips (2.5%) and Hess (2.3%)

The BTC project operates within a hierarchical legal and policy framework outlined below:

- The Constitutions of the Republics of Azerbaijan, Georgia and Turkey for the elements of the project within each State;
- The requirements of the Project Agreements, including Intergovernmental Agreements (IGAs) between the three host countries and BTC Corporation, and Host Government Agreements (HGAs) between the individual host countries and BTC Corporation. Referred to collectively as the Prevailing Legal Regime (PLR);
- Collective policy statements by the host governments and the company, including the Joint Statement;
- The Human Rights Undertaking, a unilateral policy statement by the company;
- National legislation and international conventions in force in the host countries, to the extent that they do not conflict with the standards above;
- Applicable Lender Environmental and Social Policies and Guidelines of the World Bank and UK Export Credit Guarantee Department (ECGD);
- Corporate Policies of BP (the lead contractor) and Botas (the Turkish contractor).

The BTC project included the construction and operation of the pipeline and, of direct relevance to this complaint, a compensation programme for land owners and users affected by pipeline construction. This compensation programme was developed through consultations with affected land owners and users, and was implemented through local partners with a grievance process to resolve disputes over compensation.

- To illustrate the scale of the consultation process, the company submits that in one host country this involved public meetings in 11 locations, with a consultation document sent directly to 90 organisations and published on-line. The consultation document was also sent to villages and meetings held at various locations along the pipeline. 3000 comments were received in response, with the host government then consulting on an updated proposal document. In another host country, consultation involved

community level, regional level and national level meetings, with 1624 people interviewed through household questionnaires, including questionnaires distributed at local construction camps. In response, the complainants dispute the accuracy of these figures and submit that of the consultation which did take place fewer than 2% was face-to-face consultation.

- To illustrate the scale of the grievance process, in one country this included 2100 land related and 400 social grievances from the period since the 2003 complaint until the 2005 Field Visit. 70% of these grievances were finally agreed and paid compensation and 20% were not agreed (the remaining 10% of grievances were passed to the host government as not directly related to the BTC project).

Summary of the complainants' position

The 2003 complaint alleged that the company exerted undue influence on the regulatory framework (Chpt I, par 7), sought and accepted exemptions related to social, labour, tax and environmental laws nChpt II, para 5), failed to operate in a manner contributing to the wider goals of sustainable development (Chpt V, para 1), failed to adequately consult with communities affected by the project (Chpt III, para 1 and Chpt V, para 2a and 2b) and undermined the host governments' ability to mitigate serious threat to the environment and human health and safety (Chpt V, para 4). The complainants' position can be summarised as follows:

i) *Exerting undue influence*: specifically that the company exerted an undue influence on the process of negotiating and drafting the terms of HGAs with the governments of Azerbaijan, Georgia and Turkey, thereby circumscribing the right of those countries to prescribe the conditions under which multinational enterprises operate within their jurisdictions;

ii) *Seeking exemptions*: specifically that, in exerting undue influence on the terms of the HGAs, the company sought exemptions with respect to environmental, health and safety, labour and taxation legislation;

iii) *Sustainable development*: specifically that the company failed to take due account of the need to protect the environment, public health and safety, generally to conduct their activities in a manner contributing to the wider goals of sustainable development;

iv) *Disclosure and consultation with affected communities*: specifically that the company failed to provide timely, reliable and relevant information concerning its activities available to all communities affected by the project, and that the company failed to consult adequately with affected communities;

v) *Undermining the Host Government's ability to mitigate serious threats*: specifically that in exerting undue influence through the terms of the HGAs the company undermined the host governments' ability to mitigate serious threats to the environment and human health and safety.

The complainants' comments on the BP report (on the concerns identified in the Field Visit) can be summarised as follows:

i) The company did not investigate the full range of compensation concerns identified in the Field Visit. The BP report confirms that only a minority of affected villages raising complaints with the UK NCP were contacted, and in some cases only the village leader was contacted.

ii) The company breached confidentiality of villagers raising grievances by discussing their cases with village leaders and local journalists.

iii) There was a lack of a systematic approach to compensation and grievances, resulting in an inconsistent process and unrealistic expectations and confusion over procedural channels and legal rights.

iv) The subsequent concessions by the company show that the original consultation and compensation process was inadequate. Following the 2003 complaint the company has paid extensive compensation and agreed significant limitations to land use following complaints made under its own grievance mechanism and via the separate EBRD mechanism.

v) The BP report was limited to individual compensation complaints and failed to address systematic flaws in compensation and consultation. In addition, the BP report does not address broader concerns relating to human rights and environmental concerns raised during the Field Visit. For example, local NGO concerns over a lack of transparency in the negotiation of HGAs and constraints placed by HGAs on host government's environmental consultation procedures.

vi) There was a lack of a systematic approach to grievances resulted in local policing problems, including intimidation of those trying to complain. Despite the company's local economic influence they didn't monitor policing undertaken in their interests, as they undertook to do under the Voluntary Principles of Security and Human Rights.

vii) BP failed to update the UK NCP on alleged breaches of environmental standards; namely curtailed environmental impact assessments and excessive nitrous oxide emissions. These breaches illustrate the chilling effect of the BTC legal framework.

Summary of the company's position

The company rejects all of the complainants' allegations that it has breached the Guidelines. The company's position can be summarised as follows:

i) *Exerting undue influence*: The company state that the HGAs were properly negotiated over a long period of time and that participating host governments were advised by external advisors. Furthermore, BTC point to well-established precedents for the enactment of specific legal regimes applicable to strategically important projects;

ii) *Seeking exemptions*: The company does not accept that it breached the Guidelines by seeking or accepting exemptions to local laws. The Project Agreements create a binding mechanism under which the company is required to adhere to international best practice and EU standards as they develop over time. The project establishes a model for international best practice and regulation that host countries may build on overt time. The Joint Statement by the company and the host governments sets out the international standards to which they are committed in the areas of human rights, security, labour and environmental standards;

iii) *Sustainable development*: The company note that issues of sustainable development are addressed in the commitments set out in the Joint Statement. The Joint Statement specifically states that it would be incorrect to interpret that the Project Agreements exempt the project from world-class environmental standards, since such an interpretation would neither reflect the intentions of the signatories nor the manner in which all the Project Agreements would be applied. The company also notes that, in

addition to the compensation programme, it financed a number of community-based projects along the route of the pipeline to support rural development in line with its commitment to corporate social responsibility;

iv) *Consultation with affected communities*: The company has conducted a consultation and disclosure process unprecedented in scope, and designed to comply with international best practices. The company states that overall more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted;

v) *Undermining the Host Government's ability to mitigate serious threats*: The company notes that the project's environmental and social responsibility rests with BTC, which is obligated through the Project Agreements to construct and operate the pipeline in an environmentally and socially responsible manner that complies with international standards. The company adds that under the Human Rights Undertaking it recognises the ability of host governments to enact human rights or health and safety legislation that are reasonably required in the public interest in accordance with domestic law, provided that this new legislation is not more stringent that the highest of the EU standards referred to in the Project Agreements. The company states that it is legally precluded from seeking compensation from the host governments in circumstances where the government acts to fulfil its obligations under international treaties in respect of human rights, health and safety, labour and the environment.

The company's response to the complainants' comments (regarding the BP report on concerns identified during the Field Visit) can be summarised as follows:

i) The BP report only listed visits where the company was following up specific complaints mentioned in Field Visit. Local liaison officer consulted other villages.

ii) The company discussed certain cases with third parties due to these cases involving grievances that were being considered by the local courts. To avoid any perception of the company putting pressure on the villagers themselves while they were using the grievance process, the company investigated the cases indirectly via village leaders.

iii) The company took a pro-active approach to consultation and monitoring, engaging a network of local liaison officers to reach owners and users of land affected by the project. The company also took steps to support the grievance process, distributing free written guidance on the procedure, arranging for payment of individual court fees if compensation was disputed, and sponsoring a number of local NGOs to monitor how the process was being implemented.

iv) Individual problems were inevitable in a project affecting 0.75m people. Major administrative processes take time but the company took a pro-active stance in resolving problems and has settled the vast majority. To illustrate, if a villager died without their claim being resolved, any due payments were made to their heir.

v) The BP report only addressed compensation issues identified in Field Visit, as agreed in an NCP meeting with all parties.

vi) Variation in compensation was largely determined by differing land types, land use and market value.

vii) The BP report noted that complaints of intimidation and pressure by the sub-contractor had not been raised through the monitoring or grievance processes, which included opportunities for complaints to be raised during village visits and land exit protocols. The company had directly asked various land owners on a number of

occasions whether they ever felt pressured to accept the compensation offered, and has always been told that the land owners have never felt so pressured. There were no specific allegations of landowners being put under pressure to accept inadequate compensation have been raised but the company will investigate these if raised.

viii) In addition to the formal monitoring and grievance procedure, the company guarded against the risk of local intimidation via NGO observers who monitored the overall process.

ix) The company notes that it is unaware of any interrogations by local security forces and that no such complaints have been raised. The Joint Statement commits both the host governments and the company to the goal of promoting respect for and compliance with human rights principles, with the legal framework confirming that all pipeline security operations must be concluded in accordance with these principles and related international norms such as the Voluntary Principles of Security and Human Rights (the Voluntary Principles). The company also notes that a number of challenges to the level of compensation had been brought in the courts and comments that this demonstrates that land owners were aware of and willing to assert their rights, despite the alleged intimidation.

x) The company has apologised for not providing an update on alleged breach of environmental standards. UK NCP was able to issue the 2007 Final Statement without this information so the company believe that it was not vital to the UK NCP conclusions.

UK NCP Analysis and Conclusions

Complaints 1, 2 and 5: negotiation and constraints of the BTC legal framework

- Chpt 1, para 7 – exerting undue influence;
- Chpt 2, para 5 – seeking or accepting exemptions;
- Chpt V, para 4 – undermining the host government's ability to mitigate serious threats

The 2007 Final Statement had found that the host governments had access to external expert advice during the negotiations and commented that it was sensible for any commercial organisation seeking to operate in countries where a legal framework does not exist to liaise with governments in developing laws that may be necessary to control their commercial activities. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

In their comments on the BP report the complainants drew attention to concerns raised during the Field Visit by a local NGO of a lack of transparency in the negotiation of the BTC legal framework, and that the BTC legal frame workplaced constraints on host governments' environmental consultation procedures. The complainants critique the BP report as being flawed by being limited to individual compensation issues and not addressing these broader concerns.

UK NCP Analysis

This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to see and comment on the BP report. The BP report

addressed compensation and grievance concerns identified in the Field Visit and did not address concerns relating to the negotiation and impact of the BTC legal framework. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions on these issues in the original Final Statement and accordingly these aspects of the complaint have not been substantively re-opened. However, in accordance with the Review Committee's recommendations, the revised Final Statement sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaints 1, 2 and 5.

In addition to the complainant's comments on the BP report, the UK NCP received material regarding a related complaint against an Italian company involved in the BTC Consortium. Having reviewed this material and discussed the issue with the Italian NCP, the UK NCP understands that this related complaint is exclusively concerned with the negotiation and constraints of the BTC legal framework and applies to the behaviour of the BTC Consortium as a whole. This revised Final Statement does not address additional allegations made since 2003, either by the BTC complainants or by other complainants.

UK NCP Conclusions on Complaints 1, 2 and 5

While the Guidelines do not specifically discuss Host Government Agreements and stabilisation clauses, they are clear that there should not be any contradiction between multinational investment and sustainable development. The Commentaries to the Guidelines note that "MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments" (Commentary on General Policies, para 4). The Commentaries to the Guidelines also note that "there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons" (Commentary on General Policies, para 7). HGAs are a feature of the statutory and regulatory framework of many countries as they are commonly used to facilitate major infrastructure projects. In contrast to many IGAs and HGAs established at the time, the BTC legal framework did not seek to freeze the company's regulatory liability or automatically exempt the company from future legislation. Rather, the BTC legal framework set an upper limit of the project's future regulatory liability. This upper limit was open-ended and evolving, which allowed for standards in new legislation to be taken into account up to the highest EU, World Bank and international human rights standards.

Both the company and host governments were represented by professional legal and policy advisors to take forward extensive negotiations of first the BTC legal framework and subsequently the BTC policy framework. The company responded to NGO concerns over the interpretation of the BTC legal framework by establishing this wider policy framework, by negotiating the Joint Statement and making a unilateral Human Rights Undertaking. The Joint Statement confirmed that the BTC legal framework's references to host government protection of project facilities and personnel would not require the host governments to take actions in breach of human rights norms or prevent the host governments from taking actions to protect human rights. The Human Rights Undertaking confirmed that the company was legally precluded from seeking compensation for new legislation required by international treaties.

The UK NCP considers that the company engaged constructively with concerns that the overall BTC framework would undermine human rights by agreeing that new

legislation could introduce additional requirements benchmarked against an evolving upper level of EU, World Bank and international human rights standards. The company also addressed concerns as to how the BTC legal framework would be interpreted in practice by negotiating additional policy undertakings, confirming that the BTC framework would not constrain host governments in protecting human rights but that it would constrain the company from seeking compensation for new legislation required by international treaties.

The UK NCP remains of the view that the negotiations between the company and the host governments were conducted appropriately, that the company did not seek or accept exemptions not contemplated in the statutory or regulatory framework, and that company did not undermine the ability of the host governments to mitigate serious threats. **On these three complaints the UK NCP remains of the view that the company did not breach the Guidelines.**

The issue of Host Government Agreements and stabilisation clauses has been raised in the context of OECD Working Party negotiations on the Update to the Guidelines. In terms of this Update, the UK supports clearer, practical guidance to assist multinationals in respecting human rights using a due diligence and risk awareness process. While not relevant to the 2003 complaint, in 2008 the UN Special Representative of the UN Secretary-General on Business and Human rights (UNSRSG), Professor John Ruggie, and the World Bank's International Finance Corporation published a joint discussion paper on "Stabilisation Clauses and Human Rights"[67]. This discussion paper raised concerns about HGAs that exempted investment projects from any future changes in human rights law and commended Human Rights Undertakings that benchmark against the highest of domestic, EU or international standards and that prohibit compensation for legislation required by international obligations as emerging best practice.

Complaint 3: compensation process

- Chpt V, para 1 – sustainable development

The 2007 Final Statement had found that in preparing the project framework the company took major steps to address concerns about broad sustainable development issues and took a number of actions to contribute to the development of local communities. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

In their comments the complainants critique the BP report as not addressing all the individual compensation issues raised during the Field Visit, not addressing concerns of systemic flaws in the overall compensation and grievance process, and not addressing environmental concerns in one of the host countries.

UK NCP Analysis

This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to see and comment on the BP report. The BP report addressed individual compensation and grievance issues identified in the Field Visit, including concerns relating to rural development projects in addition to the legal compensation process. Therefore, the UK NCP considers that the procedure failure did

affect the conclusions on these issues in the original Final Statement and accordingly this aspect of the complaint (*i.e.* the compensation process) has been substantively re-opened. In accordance with the Review Committee's recommendations, the revised Final Statement also sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaint 3.

The 2007 Final Statement had found that the company had taken major steps to address the environmental impacts of the BTC project. During the Field Visit local NGOs in Turkey noted that they were "initially very sceptical about an oil company's ability to do biodiversity conservation, but now consider BTC has made an outstanding contribution to conservation NGOs". Local NGOs also noted that the local sub-contractor had been perceived as having a poor environmental record but subsequent to joining the BTC project this sub-contractor was planning to work to BTC project standards on future pipeline contracts.

Following the submission of the 2003 complaint the complainants alleged that Turkish environmental impact assessments were curtailed to meet the timetable set by the project's legal framework, and that permitted nitrous oxide emissions in Turkey exceeded the EU benchmark required by the project's legal framework. This allegation was repeated in the complainants' critique of the BP report.

This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to comment on the BP report. The BP report addressed compensation and grievance concerns identified in the Field Visit and did not address concerns relating to allegations of curtailed environmental impact assessments or excessive emissions. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions on these issues in the original Final Statement and accordingly this aspect of complaint 3 (*i.e.* allegations relating to environmental impact assessments and excessive emissions) has not been substantively re-opened. However, in accordance with the Review Committee's recommendations, the revised Final Statement sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on this part of complaint 3.

A key point of difference between the parties is whether differences in compensation and rural development projects arose from a systematic flaw in the overall compensation process, or from the varying circumstances of individual villages. In light of the positions of both parties the UK NCP has considered this question in terms of the company's response to concerns of inconsistent local application of the overall BTC framework.

In addition to the payment of compensation to landowners whose land was impacted by the pipeline, the company submits that it undertook a Community Investment Programme (CIP) to support rural development along the route of the pipeline. The company states that the CIP was not a legal requirement on the company but was undertaken in line with its commitment to corporate social responsibility. The complainants drew attention to reliance in the BP report on signed protocols to demonstrate that CIP rural development projects were implemented fully and consistently, noting that signed protocols are not evidence that the CIP was undertaken or completed. The company agrees that protocols alone are not sufficient but refers to other

documentation that shows that CIP rural development projects were undertaken and gradually completed.

- In some cases complaints seem to have arisen because of misunderstandings over the scope of products and services agreed. In one example, the complainants' refer to a complaint made by villagers during the Field Visit who were promised an irrigation system that had not been installed, with the final CIP log entry referring to "a meeting with the [local village headman] on activities not completed". In this case the BP report noted that the local partner had provided cement and technical support to the establishment of an irrigation channel, as agreed in the protocol.
- In some cases complaints seem to have arisen because the company implemented the CIP but the villagers were unsatisfied with the results. In one example, the complainants drew attention to misconstrued complaints in the BP report, where in response to villager complaints of ineffective livestock project the company provided details of livestock inseminated under the CIP. The complainants critique the BP report as having misconstrued the complaint as the villagers were not disputing that the project took place but were questioning if it was effectively implemented as few livestock became pregnant, and noted that since 2007 the Turkish Government has taken over the insemination project.
- In some cases complaints seem to have arisen because compensation claims were examined but rejected by the company. In one example, the complainants drew attention to complaints that houses and a local historical building had been damaged by vibration from project vehicles using local roads and that none of the company's local partners had contacted the villagers about their complaint. The BP report noted that the project vehicles were routed to avoid significant monuments and that local partners undertook vibration monitoring and found that it is unlikely that project vehicles are the primary cause of the damage to these structures.

During the Field Visit a number of local NGOs in Turkey expressed concerns that the local sub-contractor was not consistently implementing the BTC project framework. One local delivery partner NGO commented that "BP has good intentions but sometimes the subcontractors did not live up to these". In another host country, a number of local NGOs and affected villagers alleged that "local executive powers abuse their position to their own and family's benefit", including village leaders redrawing the map of ownership to benefit their families or not passing on information discussed with company representatives.

The company acknowledged this risk of inconsistency in compensation and rural development, with a local BP representative in Turkey noting that "uptake of the Community Investment Programmes is varied. All villages are different and sometimes it [was] dependant on personalities within the village". The company also recognised the risk that local partners might lack the capability to implement the CIP framework effectively, with a 2005 company evaluation report noting that "in most cases the level of coaching and support [for local NGOs implementing the CIP] has been underestimated" and that "BTC took chances and opted to work with NGOs and partners previously unknown to itself, and in full cognisance some were not even tested on the ground in the business of development".

The Field Visit heard of extensive measures taken by the company to establish an effective compensation and grievance process. The UK NCP heard local NGOs in one country praise the BTC project framework as "best practice which they would like to

see repeated", while another local delivery partner NGO commented that "BP is not a development organisation but in this case they have made great efforts in the environmental and social areas". BTC project representatives described how the company provided support and monitoring for the grievances process, including paying for complainants legal costs if compensation disputes were taken to court, and sponsoring local NGOs to monitor the implementation of the compensation and grievance processes.

UK NCP Conclusions on Complaint 3

Having considered the complainants' comments on the BP report, and the company's response to these comments, the UK NCP remains of the view that BTC acted in such a manner as to contribute to sustainable development, in accordance with the Guidelines.

While compensation and rural development projects differed between villages the UK NCP consider that some degree of variation was inevitable as a consequence of local participation in consultation and implementation, in addition to variation arising from differing land types, land use and market value. In response to identified risks of inconsistency the UK NCP considers that the company made pro-active efforts to establish due diligence procedures over the compensation, rural development and grievance process, contributing to an ongoing resolution of complaints and assisting local partners to improve their capability. For example, the UK NCP considers that CIP protocols were part of wider company efforts to implement the overall compensation and rural development process and, while not preventing individual cases of misunderstanding and dissatisfaction, use of such protocols helped minimise and resolve these issues. On this basis, **the UK NCP considers that the individual compensation issues raised during the Field Visit (including those whose status is still in dispute between the parties) do not represent a systematic failure to promote sustainable development and therefore this does not give rise to a breach of the Guidelines.**

The UK NCP does not see any grounds for making recommendations to the company in respect of these complaints. While not relevant to consideration of the 2003 complaint, the UK NCP notes that a large number of the compensation, rural development and grievance cases have been resolved since the 2003 complaint, following completion of various village-wide CIP projects and as the company gained on-the-ground experience in the various host countries.

Complaint 4: consultation and grievance process

- Chpt III, para 1;
- Chpt V, para 2a and 2b – disclosure and consulting with affected communities

The 2007 Final Statement had found that the company carried out an extensive consultation process and took serious steps to ensure that the consultation was effective and transparent. The 2007 Final Statement also found that, in all but a handful of cases, complaints raised during the Field Visit were without foundation. The UK NCP has considered whether this conclusion was affected by the non-disclosure of the BP report by considering information relating to the original 2003 complaint in light of the positions of the two parties.

In their comments the complainants critique the BP report as not addressing concerns of systemic flaws in the consultation and grievance process, resulting in unrealistic

expectations and confusion over procedural channels and legal rights. The complainants also critiqued the BP report for dismissing complaints made by two villages during the Field Visit of intimidation of villagers by the local sub-contractor, as these complaints had not been raised through the company's grievance and monitoring procedures. The complainants also critiqued the BP report for not investigating complaints made by one village during the Field Visit of intimidation by local security forces.

UK NCP Analysis

This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to comment on the BP report. The BP report did not address concerns relating to the public reporting of company information. Therefore, the UK NCP considers that the procedure failure did not affect the conclusions in the original Final Statement on the Chapter III complaint regarding disclosure or the Chapter V para 2a complaint regarding the provision of adequate and timely information to employees and the public on the impacts of company activities. These parts of complaint 4 (*i.e.* allegations relating to disclosure) have therefore not been substantively re-opened.

The BP report did address a number of individual grievances raised during the Field Visit, the overall consultation and grievance process, and complaints of intimidation including a local sub-contractor putting pressure on villagers to accept inadequate compensation and of local security forces putting pressure on villagers not to raise grievances. The procedure failure therefore did affect the withdrawn 2007 Final Statement conclusions on the Chapter V para 2b complaint regarding consultation and accordingly this aspect of complaint 4 (*i.e.* allegations relating to the compensation and grievance process) has been substantively re-opened. In accordance with the Review Committee's recommendations, the revised Final Statement also sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaint 4.

Having received a copy of the BP report, the complainants submitted detailed comments (summarised above) in relation to the company's consultation and grievance process. In particular, the complainants highlighted what they considered to be lack of a systematic approach to grievances which they submit resulted in local policing problems including intimidation of those trying to submit complaints. A key point of difference between the parties is whether the company's consultation and grievance process was sufficiently pro-active and responsive to individual villagers, or complacent about the risk that *bona fide* grievances would not be identified by the formal process. In light of the positions of both parties, the UK NCP has considered this question in terms of what steps the company took to safeguard the consultation and grievance process from being undermined by local officials, security forces and sub-contracting organisations.

Taking into account all of the circumstances, the UK NCP does not consider that the company was complacent about the risks of local implementation or failed to commit sufficient resource to the consultation and grievance process. The company acknowledged that individual short-falls was inevitable in a programme of the size of BTC and denied that they had taken a defensive or passive approach to complaints. As noted above, the company sponsored local NGOs to monitor the grievance process and paid for legal costs arising from disputed compensation. The company also submits that it directly asked various land owners on a number of occasions whether they ever felt pressured to accept

the compensation offered, and has always been told that the land owners have never felt so pressured.

However, despite these safeguards, during the Field Visit the UK NCP heard of complaints that villagers in one region of Turkey had been pressured to accept compensation and intimidated to not raise grievances by local sub-contractors and security forces. The company's claim to be unaware of such complaints, both prior to and following the Field Visit, raises questions as to the adequacy of the monitoring and grievance process. The UK NCP has therefore considered how the company responded to these complaints.

Complaints of Intimidation

The general complaints of pressure and intimidation by the local sub-contractor to accept inadequate compensation were investigated by the company, by confirming with various landowners at various times that they did not feel pressured to accept inadequate compensation. While not taking a view on the substance of these general complaints, the UK NCP considers that on this issue the company took adequate steps to safeguard the risk of local partners undermining the process.

The UK NCP considers that, based on the information available to it, neither the general nor the specific complaints of intimidation by local security forces were investigated adequately by the company. The BP report noted that no complaints of intimidation had been raised through the formal monitoring or grievance processes and that individual grievances from these villages had still been pursued through the company-sponsored legal dispute process, despite the alleged intimidation not to do so.

In its response to the complainants' comments on this issue, the company emphasised the lack of specific complaints. The BP report also emphasised the company's use of systematic visits to each village with NGO monitoring of this process. The UK NCP considers that this focus on general systems and the sampling approach noted in the company's investigation of alleged pressure to accept inadequate compensation puts additional reliance on the adequacy of the formal monitoring and grievance process.

The two villages that made these complaints during the Field Visit were both in the north-east of Turkey. The UK NCP acknowledges the challenges of monitoring the behaviour of local security forces in a region characterised by a significant Kurdish population and ethnic tensions, and notes that a local delivery partner NGO acknowledged "the possibility that some of the Kurdish community manipulate these [compensation] difficulties as an opportunity to promote their case". However, the UK NCP considers that the company's due diligence preparations could have identified a heightened risk of intimidation and led to additional efforts in compensatory checks and monitoring. The UK NCP notes that concerns over potential human rights abuses by local security forces had been identified in the negotiation of the overall BTC framework.

The UK NCP did not witness the alleged intimidation but was both told of similar general complaints before visiting particular village and was later told of specific complaints of intimidation against these villagers after they met with the UK NCP. The UK NCP also witnessed close supervision of this particular village by the local sub-contractor, officials, politicians and security forces, despite the UK NCP's request to visit the village unaccompanied. The supervision by local officials and security forces was explained as being due to security concerns, but supervision by the local sub-contractor and politicians was perceived by the villagers as being intended to deter them from discussing grievances

over compensation with the UK NCP. While not taking a view on the substance of these complaints of intimidation by the local sub-contractor, the UK NCP considers that they indicate that the villages might be unwilling to report complaints of intimidation by the local security forces to the company's local partners, possibly including NGOs appointed to monitor the grievance process.

While both pipeline security and criminal investigations are the responsibility of host governments, the Joint Statement committed the company to implement the responsibilities set out in the Voluntary Principles on Security and Human Rights (the Voluntary Principles). The Voluntary Principles are referred to in the OECD Risk Analysis Tool for Weak Governance Zones (RAT), as guidance for companies operating in situations of heightened risk and seeking to apply heightened care in managing investments and dealing with public sector officials. While the company made general efforts to provide local security staff with general training on human rights, it is unclear whether the company took specific steps in relation to these complaints. Both general efforts and specific steps are required by the Voluntary Principles.

Voluntary Principles – Interactions between companies and public security

- Security Arrangements – "Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities"
- Deployment and Conduct – "Companies should use their influence to promote the following principles with public security: … (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining,…"
- Responses to Human Rights Abuses – "Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence".

While the company submits that it took steps to investigate the general complaints of intimidation by the sub-contractor, including particular enquiries with landowners in these villages, it is unclear whether the company took any steps to investigate the specific complaints of intimidation by local security forces. It is also unclear whether the company took steps to obtain further details about these complaints from the villagers, the local security forces or the host governments. Both the BP report and the company's response to the complainants' comments note that the company was unaware of any interrogation of villagers by local security forces and that no formal complaints have been raised subsequent to the Field Trip through the formal grievance and monitoring process. However, the company's response also acknowledges the specific complaints made during the Field Visit and notes that the company takes any such allegations very seriously and would investigate any such complaints that arose through the formal grievance and monitoring process. The company has not challenged the credibility of the complaints made during the Field Visit and the UK NCP therefore understands the company to be distinguishing complaints made during the Field Visit from complaints raised through the monitoring or grievance processes.

It is also unclear whether the company took any steps to report these specific complaints of intimidation by local security forces, encourage investigation by the host authorities or support action to strengthen existing safeguards. The company's response to

the complainants' comments noted that the local security forces may undertake investigations "where unusual events occur", but does not give any indication that the company encouraged investigation of the complaints. The company's response notes that the local security forces have been trained by international experts but does not give any indication of whether the company has supported additional training in response to the complaints.

UK NCP Conclusions on Complaint 4

Having considered the complainants' comments on the BP report, and the company's response to these comments, the UK NCP has reconsidered its original view on the complaint that BTC failed to adequately consult with affected communities.

While the UK NCP considers that the BTC legal framework was established in accordance with the Guidelines, there were potential weaknesses in the local implementation of this framework regarding consultation and monitoring. These potential weaknesses arose from the company's distinction between complaints raised through the formal monitoring and grievance processes from complaints raised through other channels. In one particular region of north-east Turkey, this potential weakness seems to have contributed to shortfalls in effective and timely consultations with local communities.

The Guidelines recommend that companies ensure that in practice the consultation which it undertakes with affected communities is adequate. The RAT guidance to companies operating in situations of heightened risk, such as those operating in regions of conflict or working with more vulnerable communities, recommends that companies take additional steps to assess and guard against these risks. More generally, the Guidelines recommend that companies encourage their sub-contractors and other partners to act in accordance with the Guidelines (General Policies, para 10). Given the general risk of human rights abuses by pipeline security identified in the Joint Statement and the particular regional challenges recognised by nearly all participants in the Field Visit, the UK NCP considers that the company's due diligence preparations could have identified and mitigated an additional risk of intimidation by local partners. The UK NCP acknowledges that the company took some steps to mitigate this risk by appointing NGOs to monitor the formal process. However, the UK NCP considers that the risk was exacerbated by the company distinguishing between complaints raised through the formal monitoring and grievance process from complaints raised through other channels. The UK NCP considers that this distinction was a general weakness in the company's monitoring and grievance process that, in the particular region of north-east Turkey, led to a specific failure to identify complaints of intimidation against affected communities where the information was received outside of the formal grievance and monitoring channels.

The company's response to specific complaints of intimidation made during the Field Visit is also unclear and does not seem to accord with the Joint Statement commitment to ensure that all pipeline security operations are in accordance with the Voluntary Principles. The UK NCP does not take a view on the substance of the alleged intimidation, but does consider that the company's reference to general preventive measures is not a sufficient response to the specific complaints of intimidation identified during the Field Visit. Furthermore, as noted above, general complaints of intimidation by the local sub-contractor suggest that villagers in this region might be unwilling to report complaints of

intimidation to the company's local partners, possibly including NGOs appointed to monitor the formal process. On this basis the UK NCP does not consider that the lack of corroborating information from the company's formal monitoring and grievance channels provide sufficient reason for the company to fail to take adequate steps to address the specific complaints raised outside of the formal process. The UK NCP considers that the company's failure to act in response to these specific complaints represents an inadequate safeguard against the risk of local partners in this region undermining the overall consultation and grievance process.

In light of the above, the UK NCP considers that the company's activities in one region were not in accordance with Chapter V para 2b of the Guidelines regarding consultations with affected communities, in (a) failing to identify specific complaints of intimidation against affected communities by local security forces where the information was received outside of the formal grievance and monitoring channels, and (b), in not taking adequate steps to respond to such complaints, failing to adequately safeguard against the risk of local partners in this region undermining the overall consultation and grievance process.

Good practice

The UK NCP considers that the overall BTC framework includes a number of examples of good practice, including:

- Responding to concerns over the BTC legal framework by negotiating a wider policy framework that confirmed that the HGAs did not exempt the project from all future legislation but set an upper limit of the project's future regulatory liability benchmarked against the highest of domestic, EU or international standards. This policy framework also legally precluded the company from seeking compensation for legislation required by international obligations;
- Responding to risks of inconsistency in the compensation, rural development and grievance process by establishing due diligence procedures and assisting local partners to develop their capacity. These due diligence procedures included NGO monitoring of the compensation and grievance process, use of Community Investment Programme protocols to minimise and resolve misunderstandings and dissatisfaction, and paying for legal costs arising from disputed compensation.

Recommendations

The UK NCP's complaint handling procedures explain that the NCP may make recommendations where appropriate. UK NCP recommendations are intended to assist companies in bringing their activities into line with the Guidelines going forward. This Final Statement is restricted to the 2003 complaint and the BTC pipeline project.

Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of the specific complaints of intimidation of villagers that spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation by local security forces in this region of north-east Turkey, and therefore **recommends that the company consider and report on ways that it could strengthen procedures to identify and respond to reports**

of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.

As noted above (para 55), the Voluntary Principles is referred to in the RAT which suggests a number of responses available for companies seeking to apply heightened care in managing investments and dealing with public sector officials:

RAT reference to Voluntary Principles –

- "Does the company consult regularly with public security in the host country, home and host governments and local communities about the impact of their security arrangements?"
- "What policies does the company have for recording and reporting credible allegations of human rights violations? How does it plan to protect the security and safety of the sources of such information?"

While not relevant to the 2003 complaint, the work of UNSRSG Professor Ruggie has identified due diligence as a means for companies to translate in operational terms the corporate responsibility to respect human rights. As recommended by the UNSRSG, due diligence should be understood as a dynamic ongoing process involving engagement and communication with relevant stakeholders in order to identify, prevent and address actual or potential risks, with a view to avoiding or minimising human rights impacts. Due diligence is therefore also a learning process to distinguish between genuine mistakes, where the challenge is to learn the lessons and avoid any repetition, from wilful or careless breaches.

In accordance with paragraph 6.1 of the current UK NCP 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 a substantiated update on the company's progress towards meeting these recommendations and then publish a follow up statement reflecting the parties' response and, where appropriate, the UK NCP's conclusions thereon. The UK NCP asks both parties to provide an update on this recommendation by 8 June 2011.

Final Statement from the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises on the complaint from the Malaysian Trade Union Congress against British American Tobacco Malaysia Berhad (Malaysia)

Summary of the conclusions

- The UK NCP took the view that it could not examine the ruling of 29 October 2007 of the Malaysian Director General of Trade Unions, nor the Malaysian Ministry of Human Resources' decisions of 14 December 2006 and 8 March 2007, without expressing a view on the legal merits of these acts. This would have the risk, in the light of Chapter IV of the Guidelines, of reaching different conclusions from those reached by the Malaysian authorities. This would have had the effect of purporting to override Malaysian law, or of placing British American Tobacco Malaysia Berhad (BATM) in a situation where it faced a conflict between the requirements of the UK NCP's conclusions and Malaysian law. This would be contrary to the Guidelines. The UK NCP also had no means to determine whether the weakening of the "British American Tobacco Employees' Union" (BATEU) was a motivating factor for BATM's re-classifications, without calling into question the two rulings of the Malaysian Ministry of Human Resources. This action would have been contrary to the Guidelines. Therefore, the UK NCP did not examine the allegations under paragraphs 8(a), 8(b), 8(c) and 8(e) below, and, as a result, it cannot reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.
- The UK NCP however concludes that BATM failed to uphold the higher standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines by failing adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions. The UK NCP therefore concludes that BATM breached Chapter IV(8) of the Guidelines.
- Although the UK NCP could ascertain the expected and recommended standards on employment and industrial relations in Malaysia, it could not reliably determine whether BATM's practices in this instance were consistent with the standards of employment and industrial relations actually observed by comparable employers in Malaysia in similar situations. Therefore, the UK NCP has insufficient evidence to determine whether or not BATM acted consistently with Chapter IV(4)(a) of the Guidelines.
- In order to assist BATM in minimising the risk of committing the same breaches of the Guidelines in the future, the UK NCP recommends that British American Tobacco PLC should encourage BATM to establish a permanent and regular process to consult and inform its employees on issues of mutual concern before key decisions of mutual concern are taken by management. Such process should be endorsed by both management and employees (and their representatives, where they exist). Both parties are asked to provide the UK NCP with a substantiated update by 6 June 2011 on measurable progress towards BATM's implementation of this recommendation.

Background

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.

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.

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.

UK NCP complaint procedure

The UK NCP complaint process is broadly divided into the following key stages:

a) 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;

b) Conciliation/mediation OR 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;

c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;

d) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: *http://www.bis.gov.uk/nationalcontactpoint*.

Details of the parties involved

The complainant. The "Malaysian Trades Union Congress" (MTUC) is the recognised federation of trade unions representing workers in Malaysia[68]. The MTUC brought the complaint on behalf of the BATEU, an affiliate of the MTUC[69].

The company. British American Tobacco PLC is a UK registered multinational involved in the manufacture, distribution or sale of tobacco products. The company is listed in the FTSE 100. The allegations contained in the complaint from the MTUC were directed against BATM. The majority of BATM's shares are held by British American Tobacco PLC and by British American Tobacco Holdings (Malaysia) BV. British American Tobacco Holdings

(Malaysia) BV is wholly owned by British American Tobacco PLC[70]. Therefore, British American Tobacco PLC is BATM's controlling company.

Complaint from the Malaysian Trade Union Congress

On 11 December 2007, the MTUC submitted a complaint, on behalf of the BATEU, to the UK NCP under the Guidelines in relation to BATM's operations in Malaysia. The MTUC made the following allegations:

a) That in August 2006 BATM re-classified "process technicians", a non-managerial role, as "process specialists", a managerial role, whereas there was in fact little difference between the two roles.

b) That during 2006 BATM re-classified "trade marketing and distribution representatives", a non-managerial role, as either "trade marketing representatives" (TMRs) or "sales and distribution representatives" (SDRs), both managerial roles, whereas there was in fact little difference between the old and new roles.

c) That the effect and intention of the re-classifications described above was to reduce BATEU's membership by some 60% because under Malaysian law the BATEU may only represent employees in non-managerial roles, and may not represent workers employed by any company other than BATM. The MTUC alleged that this virtually eliminated BATEU's bargaining strength for the purpose of signing collective agreements and also reduced the number of workers covered by the collective agreements signed to date.

d) That BATM was required under the applicable collective agreements to consult the BATEU about the re-classifications described above, but that it failed to do so adequately or at all, and that it harassed union members into applying for the reclassified non-unionised positions.

e) That on 29 October 2007, at BATM's request, the Director General of Trade Unions (DGTU) ruled that the BATEU could not represent employees of both BATM and its subsidiaries, notwithstanding that the BATEU had done so for many years previously. The BATEU subsequently applied for a judicial review of that ruling and, on 15 July 2010, the Malaysian High Court ruled in favour of the DGTU. The UK NCP understands that the BATEU has appealed this ruling.

The MTUC submitted that BATM's alleged conduct as summarised above was contrary to the following chapters of the Guidelines[71]:

"*Chapter 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.

[…]

4(a). Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

[…]

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.

Response from British American Tobacco

BATM responded to the MTUC's allegations by stating:

a) In relation to the claim at 8(a) above, that the BATEU asked the Director General of Industrial Relations (DGIR) to investigate whether process specialists were correctly defined as managerial posts. Following the DGIR's investigation, in late 2006 or 2007, the Malaysian Ministry of Human Resources ruled that they were. The BATEU has subsequently applied for a judicial review of that ruling and that application remains pending.

b) In relation to the claim at 8(b) above, that BATM asked the DGIR to investigate whether TMRs and SDRs were correctly defined as managerial posts. On 14 December 2006, the Malaysian Ministry of Human Resources ruled that they were.

c) In relation to the allegations at paragraph 8(c) above, that the re-classifications of "process technicians" and "trade marketing and distribution representatives" were made in order to enhance the company's efficiency and effectiveness, involve greater responsibility and were therefore correctly reclassified at managerial level.

d) In relation to the allegations in paragraph 8(d) above, that BATM respects trade unions' rights and freedom of association; that workers were not forced to apply for the new positions; and that BATM was not required to consult the BATEU on the creation of managerial posts (but that BATM however notified the BATEU of potential redundancies).

e) In relation to the allegations in paragraphs 8(d) and 8(e) above, that under Malaysian law, a single union cannot represent employees in both managerial and non-managerial roles; and that, as a result, the BATEU can only represent employees in non-managerial roles because its collective agreement with BATM only covers employees in non-managerial roles. As a result, the BATEU cannot legally represent "process specialists", "trade marketing representatives" and "sales and distribution representatives".

f) In relation to the allegations in paragraph 8(e) above, that under Malaysian law a single union cannot represent the employees of both a parent company and its subsidiaries, and that the DGTU's ruling of 29 October 2007 was therefore correct, notwithstanding BATEU's earlier representation of staff from both BATM and its subsidiaries. In this case, "process specialists" are formally employed by the "Tobacco Importers and Manufacturers Sdn. Berhad" (TIM), a subsidiary of BATM; "trade marketing representatives" and "sales and distribution representatives" are formally employed by the "Commercial Marketers and Distributors Sdn. Bhd" (CMD), also a subsidiary of BATM.

UK NCP process

The UK NCP received the complaint from the MTUC on 11 December 2007. British American Tobacco PLC and BATM responded to the allegations on 13 December 2007,

9 January 2008 and 28 January 2008. On 9 April 2008, the UK NCP published its Initial Assessment accepting the complaint from the MTUC as a Specific Instance under the Guidelines. The UK NCP agreed to consider the alleged breach by BATM of the following Chapters of the Guidelines: IV(1)(a), IV(4)(a), and IV(8). The UK NCP also clarified that Chapters IV(1)(a) and IV(8) covered the two key issues raised in the MTUC's complaint: (a) whether the restructuring undertaken by BATM intentionally caused a reduction in the membership of the BATEU; and (b) whether consultation with the BATEU took place before and during the restructuring. The UK NCP did not accept for consideration the alleged breach of Chapter IV(7) because no supporting evidence was provided by the MTUC.

On 9 April 2008, the UK NCP also offered professional conciliation/mediation to the parties in order to facilitate an amicable solution to the complaint. On 15 April 2008, British American Tobacco PLC (and on 15 May 2008, BATM) declined the offer of conciliation/ mediation on the ground of ongoing legal proceedings in Malaysia. Therefore, on 21 April 2008, the UK NCP suspended the complaint process in the light of ongoing legal proceedings in Malaysia.

Between November 2009 and April 2010, the UK NCP reviewed this Specific Instance in the light of its parallel proceeding guidance (which was endorsed by the UK NCP's Steering Board on 16 September 2009[72]). Having sought the views of both parties, the UK NCP informed both parties on 6 April 2010 that it would apply the guidance to this Specific Instance and progress the complaint in accordance with the UK NCP's complaint procedure[73]. The UK NCP offered again conciliation/mediation to the parties.

On 20 April 2010, BATM declined the offer on the grounds of ongoing legal proceedings in Malaysia and asked the UK NCP to reconsider its decision to progress the complaint. On 30 July 2010, the UK NCP wrote to the parties informing them that, in light of the explanation for the restructuring provided by BATM and the subsequent official rulings by Malaysian authorities, the UK NCP considered that it would be unproductive to examine further the question of whether the restructuring undertaken by BATM intentionally caused a reduction in the membership of the BATEU (issues 8(a), 8(b) and 8(c) in the list of MTUC's claims above). However, the UK NCP considered that it would be appropriate to continue to examine whether consultation with the BATEU should have, and did, take place before and during the restructuring (issue 8(d) in the list of claims above), and, if consultation did not take place, whether that constituted a breach of the Guidelines. The UK NCP also asked both parties to submit by 13 September 2010 any document that the UK NCP should examine in relation to the complaint from the MTUC. BATM responded to this request on 6 September 2010. The MTUC did not respond to this request. On 23 November 2010, the UK NCP asked the parties to submit by 7 December 2010 supplementary information in relation to the complaint. Both parties responded to this request.

All the evidence received by the UK NCP on this complaint has been shared with the parties.

UK NCP analysis

The analysis of the complaint against BATM will address the following key areas. Firstly, it will explain the UK NCP's reasoning behind the decision to exclude some elements of the MTUC's complaint from the examination process. Secondly, it will clarify the meaning of "adequate consultation". Thirdly, it will examine the issue of whether

BATM should have consulted the BATEU, whether the BATEU was adequately consulted before and during the restructuring, and whether BATM harassed union members into applying for the reclassified non-unionised positions.

Elements of the complaint not examined by the UK NCP

In the course of correspondence with the UK NCP, the parties confirmed that the following two judicial reviews related to the complaint were pending in Malaysia:

a) Judicial review requested by the BATEU of the DGTU's ruling of 29 October 2007 that the BATEU could not represent employees of both BATM and its subsidiaries. The UK NCP understood that on 15 July 2010, the Malaysian High Court ruled in favour of the DGTU but that the BATEU subsequently appealed this ruling. At the time of writing, the appeal is still pending.

b) Judicial review requested by the BATEU of the decision of 8 March 2007 of the Malaysian Ministry of Human Resources that process specialists were correctly defined as managerial posts. At the time of writing, the ruling is still pending.

In addition, BATM confirmed that it asked the DGIR to investigate whether TMRs and SDRs were correctly defined as managerial posts. On 14 December 2006, the Malaysian Ministry of Human Resources ruled that they were. This decision has not been judicially reviewed.

The Guidelines[74] clearly state that: "*Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements*".

In light of the above, the UK NCP took the view that it could not examine the DGTU's ruling of 29 October 2007, nor the Malaysian Ministry of Human Resources' decisions of 14 December 2006 and 8 March 2007, without expressing a view on the merits of these acts, with the risk, in the light of Chapter IV of the Guidelines, of reaching different conclusions from those reached by the Malaysian authorities. This would have had the effect of purporting to override Malaysian law, or of placing BATM in a situation where it faced a conflicting requirement between the UK NCP's conclusions and Malaysian law, which is contrary to the Guidelines. Therefore, the UK NCP did not examine the allegations made by the MTUC under paragraphs 8(a), 8(b), and 8(c) above.

The UK NCP also considered whether it could usefully examine the MTUC's allegation under paragraph 8(c) above. In particular, the UK NCP noted that, in its response of 30 May 2007 to the general secretary of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), which includes the BATEU amongst its affiliates[75], British American Tobacco PLC stated that "*Changes in the business environment have led BATM to implement a range of initiatives to restructure their operations as well as their workforce, in order to enhance efficiency and effectiveness*" and that "*the Industrial Relations Department of Malaysia has conducted an investigation on the claim of 'union-busting' and we* [British American Tobacco PLC] *have been notified that after due investigation, there is no basis for this claim.*"

On 9 January 2008, British American Tobacco PLC further clarified that "Over the years, BATM has sought to enhance production efficiency and has accordingly introduced more sophisticated machines. This has generated a need to replace Process Technicians with a smaller group of more highly skilled specialists who would not be purely machine operators but would manage the entire process as part of self-managing teams […] BATM decided that the way forward was for it to market and distribute BATM's products directly and have its own personnel to do this […] As such, the functions and responsibilities of the existing TM&D [Trade Marketing and Distribution] Reps will also change to reflect the level of professionalism required by BATM of TM&D Reps and in future to provide more professional and dynamic service in marketing and distribution activities". On 28 January 2008, British American Tobacco PLC also stated that "the self managed team concept role of Process Specialists has been successfully implemented in countries such as Brazil, South Korea, Chile and Venezuela".

The UK NCP also noted that, on 24 March 2008, the MTUC stated to the UK NCP that: "Neither MTUC nor the BAT Employees Union oppose company's effort to restructure for greater efficiency. But every action by the company since August 2006, is carried out with ulterior motive – To destroy the 44 years old union. At that time in August 06 the union was suspicious of company's motive".

The UK NCP noted that, according to the MTUC, the practical effects of the re-classifications have been a reduction of the BATEU's bargaining strength because Malaysian law does not allow the same union to represent employees in both managerial and non-managerial roles. However, the UK NCP also noted that the Malaysian Ministry of Human Resources ruled, on 14 December 2006, that TMRs and SDRs were correctly defined as managerial posts, and, on 8 March 2007, that process specialists were correctly defined as managerial posts.

In light of the above, the UK NCP concluded that it had no means of determining whether the weakening of the BATEU was a motivating factor (or one of the reasons) for BATM's re-classifications, without reopening the issues subject to the two rulings of the Malaysian Ministry of Human Resources. This action would have been contrary to the Guidelines.

Therefore, the UK NCP did not examine the allegation from the MTUC under paragraphs 8(a), (b) (c) or (e) above. The UK NCP was therefore unable to reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.

What does "adequate consultation" mean?

The Commentary to Chapter IV of the Guidelines states that: "This chapter opens with a chapeau that includes a reference to 'applicable' law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national, sub-national, as well as supra-national levels of regulation of employment and industrial relations matters […] The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work"[76].

The UK NCP noted that the ILO's "Tripartite declaration of principles concerning multinational enterprises and social policy"[77], originally adopted in 1977 and subsequently amended in 2000 and 2006, states that: "*In multinational as well as in national enterprises, systems*

devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining" (paragraph 57).

Chapter IV(8) of the Guidelines reflects the above principle by recommending that enterprises should "*allow the parties* [that is, authorised representatives of the employees] *to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters*".

Chapter IV(4)(a) of the Guidelines recommends enterprises to "*observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country*". The UK NCP noted Malaysia's 1975 "Code of conduct for industrial harmony"[78] (the Malaysian Code) which was agreed by the MTUC and the then Malaysian Council of Employers' Organisations (now the Malaysian Employers' Federation) under the auspices of the then Malaysian Ministry of Labour and Manpower (now Ministry of Human Resources). The Malaysian Code is voluntary and not legally enforceable but can be deemed to reflect Malaysia's expected standards of employment and industrial relations because it was agreed by both employers and employees' representative bodies, and because it is still promoted by the Malaysian Ministry of Human Resources. This Ministry's website currently states that: "*The Code of Conduct exhorts management and unions to recognise the human relations aspect of industrial relations. It stresses that it is only with an abundance of goodwill, combined with constant consultation and communication between the parties involved, that we can hope to contain the destructive expression of industrial conflict and encourage a more equitable and efficient system for the benefit of those involved and the community at large. The Code has been agreed after numerous meetings between representatives of the Malaysian Trade Union Congress and the Malayan Council of Employer's Organisations held under the auspices of the then Ministry of Labour and Manpower. The agreed Code, endorsed voluntarily by both employers' and employees' organisations commend both employer and employees to observe and comply with its provisions*"[79].

The stated aim of the Malaysian Code is "*To lay down principles and guidelines to employers and workers on the practice of industrial relations for achieving greater industrial harmony*" (clause 1[80]). Clause 6[81] of the Malaysian Code states that: *[the Malayan Council of Employers' Organisation as representatives of employers generally and the Malaysian Trades Union Congress as representatives of workers generally] Hereby endorse, with the collaboration and approval of the Ministry of Labour and Manpower, this Code of Conduct for Industrial Harmony and commend both employers and workers in Malaysia to observe and comply with its provisions.* Clause 7[82] further states that: *[the Malayan Council of Employers' Organisation as representatives of employers generally and the Malaysian Trades Union Congress as representatives of workers generally] Hereby further endorse and commend the observance and compliance by both employers and workers, of such industrial relations practices as may be agreed, from time to time, between the Malayan Council of Employers' Organisation as representatives of employers generally and the Malayan Trades Union Congress as representatives of workers generally and accepted by the Ministry of Labour and Manpower.* Document I ("*Areas for co-operation and agreed industrial relations practices (under Clause 7 of the Code of Conduct for Industrial Harmony*"), annexed to the Malaysian Code, states that: "*Good employer-employee relations is dependent upon efficiency. Employees' efficiency may be enhanced if (a) they are kept informed on matters which concern them; and (b) their views are sought on existing practices and on proposed changes which would affect them*" (paragraph 43[83]). Document I further clarifies that: "*The employer has an important role in this and, in particular, he should (a) ensure that management personnel regard it as one of their*

principal duties to explain to those responsible to them plans and intentions which will affect them. (It is of great importance that this chain of communication should be effective down to each supervisor and through him to each individual employee); […] (c) ensure that arrangements for consultation with workers or their representatives are adequate and are fully used" (paragraph 44[84]). Paragraph 47[85] states that: "*Methods of communication and consultation should suit the particular circumstances within the undertaking. The most important method is by word of mouth through regular personal contact between managers and employees at all levels. This could be supplemented by: […] regular consultation between managers and other means established for the purpose.*"

The final section of Document I is titled "*Joint Consultation and Works Committee*" and states that "*Consultation between employer and employees or their trade union representatives at the floor level would be useful in all establishments or undertakings, whatever their size.*" (paragraph 48[86]); and that "*The employer should take the initiative in setting up and maintaining regular consultative arrangements best suited to the circumstances of the establishment in co-operation with employees' representatives and the trade union concerned.*" (paragraph 49[87]). It concludes by stating that: "*As far as is practicable every establishment or undertaking should have a recognised machinery for consultation through the establishment of a works committee comprising employer's and employees' representatives at floor-level. The employer's and the employees' representatives or trade union should agree to: (a) a formal constitution which sets out the Committee's aims and functions, its composition and that of sub-committees, if any, arrangements for the election of representatives and rules of procedure; (b) enable the committee to discuss the widest possible range of subjects of concern to employees, paying particular attention to matters closely associated with the work situation; (c) ensure that all members of the committee have enough information to enable them to participate effectively in committee business, and that the committee is used as a medium for a genuine exchange of views and not merely as a channel for passing information on decisions already taken; (d) make arrangements to keep all employees informed about the committee's discussions.*" (paragraph 50[88]).

The UK NCP also noted that the Malaysian Ministry of Human Resources' publication titled "Harmony at the workplace"[89] recommends that "*The management should take the initiative to establish a negotiating machinery between the employer and employees as well as their trade unions so as to improve relations between them and facilitate problem solving*" (p. 7); and states that "*Industrial relations deals with people and thus industrial relations problem is essentially human problem which at time requires humane consideration and the application of large doses of common sense solution in resolving them, without compromising the enforcement aspect of the laws*" (p. 11).

In light of the above, the UK NCP concluded that "adequate consultation" should follow the approach reflected in, amongst other instruments, the Malaysian Code and the Malaysian Government's publication "Harmony at the workplace", and should be a regular process which enables workers and employers (either directly or through their representatives) to consider together issues of mutual concern; in order to be meaningful, such process should take place before the final decisions affecting employees have been taken.

Should consultation with the BATEU have taken place? Was the BATEU adequately consulted (if at all) before and during the restructuring? Did BATM harass union members into applying for the reclassified non-unionised positions?

The UK NCP examined the allegation from the MTUC under paragraph 8(d) above. In particular, the UK NCP examined three key issues: A) whether consultation with the BATEU should have taken place; B) whether the BATEU was adequately consulted (if at all) before and during the restructuring; and C) whether BATM harassed union members into applying for the reclassified non-unionised positions.

a) Should consultation with the BATEU have taken place?

By BATM's own admission, the BATEU was, up to 29 October 2007, the union representing all relevant BATM employees. On 28 January 2008, British American Tobacco PLC stated that: "*After the merger in November 1999* [of Rothmans of Pall Mall Malaysia and the Malaysian Tobacco Corporation into BATM]*, upon application by BATEU, the Director General of Trade Union (DGTU) approved BATEU as BATM's in-house union, representing the unionised employees of BATM, Tobacco Importer and Manufacturers Sdn. Bhd (TIM) and Commercial Marketers and Distributors Sdn. Bhd (CMD), respectively. BATM worked with BATEU on all matters involving unionised employees of BATM and its subsidiaries*".

On 6 September 2010, BATM stated that both BATEU's constitution and Article 13 of the BATEU-BATM collective agreement prevent the BATEU from representing employees in managerial, executive and confidential capacities. Therefore, BATM argued that it was under no legal obligation to consult the BATEU regarding the establishment of the managerial positions of process specialists, TMRs and SDRs.

The UK NCP has not seen BATEU's constitution. On 21 January 2011, BATM confirmed that Article 13 of the collective agreement states that "*This Agreement shall cover all employees employed by the Company except for the following categories of employees: a) Directors and Managers b) Executives (including Trainee Executives and Executives on probation) c) Confidential Secretaries d) Confidential Staff e) Security Staff f) Temporary Staff g) Employees on first probation;*" and that Article 11.1 of the collective agreement states that "*The Company recognizes the British American Tobacco (Malaysia) Berhad Employees Union as the sole collective bargaining body in respect of salaries, wages and other terms and conditions of employment covered in this Agreement for all employees except for those excluded under Article 13 of this Agreement*." On 8 February 2011, the MTUC drew the UK NCP's attention to Article 7.2 of the collective agreement which states that: "*Company means British American Tobacco (Malaysia) Berhad or any other name by which the Company is called arising from a change of name and all subsidiaries involved in the manufacture, sale, import and distribution of tobacco products*." The parties clearly dispute these issues. It would be outside of the remit of the UK NCP to make a determination on whether consultation with the in-house union is mandatory in all circumstances under Malaysian law.

The UK NCP, however, noted that Chapter IV(8) of the Guidelines recommends enterprises to "*allow the parties* [that is, authorised representatives of the employees] *to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters*". The BATEU was the in-house union at the time, and there was no other union representing the newly created positions of process specialists, TMRs and SDRs. The creation of the new positions can be considered a matter of mutual concern since it was likely to affect (and did affect) both the BATEU and BATM.

As outlined above, the Malaysian Code reflects the host country's expected employment and industrial standards, and does recommend that workers' views are sought on existing practices and on proposed changes which would affect workers. The UK NCP considered that the re-classifications are an example of a proposed change affecting BATM's employees.

In light of the above, the UK NCP concluded that, although BATM may not have been under a legal obligation in Malaysia to consult the BATEU over the re-classifications, the Guidelines, supported by Malaysia's own voluntary standards of employment and industrial relations, did require such consultation. Therefore, the BATEU should have been adequately consulted on the re-classifications. The UK Government encourages 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.

b) Was the BATEU adequately consulted (if at all) by BATM before and during the restructuring?

BATM stated in its letter to the UK NCP of 6 September 2010 that: "*BAT Malaysia (BATM) held consultations with BATEU throughout the period August 2006 and January 2007, despite the fact that there was no legal requirement under local law and regulation for us to consult BATEU either before, during or after the restructuring […] Our engagement with BATEU reflects our commitment to good employment practices as set out in our Group Employment Principles*".

BATM also attached a "chronological timeline of consultation" related to the establishment of the new positions. The UK NCP understood from BATM that the "process specialist" role was advertised to staff on 25 August 2006 and was established from 18 September 2006, and that the TMR and SDR roles were established from 1 January 2007. The UK NCP examined BATM's chronology of events and could find some evidence of BATM informing the BATEU about the creation of the new roles. In particular:

a) On 25 August 2006, BATM advertised the new "process specialist" role in the internal notice boards. According to the MTUC, on 28 August 2006, the process specialist role was also advertised via BATM's internal e-mail as management positions.

b) On 30 August 2006, BATM met the BATEU to explain the "process specialist" role.

c) On 1 September 2006, BATM provided more detailed information to the BATEU on the "process specialist" role.

d) On 5 September 2006, BATM discussed with the BATEU the union's concerns over the "process specialist" role, particularly it being a managerial role.

e) On 6 September 2006, the BATEU wrote to BATM expressing concerns over the "process specialist" role. On 11 September 2006, BATM confirmed that the "process specialist" role was a managerial role.

f) On 8 January 2007, BATM held a briefing session with the BATEU on the created posts of TMRs and SDRs.

With the exceptions highlighted in paragraph 43, all of the meetings and correspondence between BATM, the BATEU and the MTUC in the period after the establishment of the new positions, appeared to be related to the complaint filed on 3 October 2006 by the BATEU with the DGIR alleging "union busting" behaviour on the part of BATM, and the Malaysian Ministry of Human Resources' decisions, on 14 December 2006, that TMRs and SDRs were correctly defined as managerial posts, and, on 8 March 2007, that process specialists were correctly defined as managerial posts. As a result of these events, the UK NCP took into account that the relationship between BATM

and the BATEU might have deteriorated and that, under these circumstances, BATM might have been discouraged from engaging the BATEU in respect of the establishment of the new positions.

However, in its complaint of 11 December 2007, the MTUC stated that "*Despite the existence of a collective agreement, the Union* [the BATEU] *was not notified of any job creations*". The MTUC also acknowledged in the complaint that "*on 1 September 2006 Company made a feeble attempt to justify the action*". On 25 November 2010, the MTUC clarified that BATM did not consult the BATEU before taking the final decision to create the new positions, and before advertising the new role of process specialist on 25 August 2006, and establishing the new roles of TDRs and SDRs from January 2007. On 6 December 2010, BATM confirmed that it did not consult the BATEU on the creation of the new positions before 25 August 2006.

The UK NCP could find no evidence of consultation with the BATEU before BATM finalised its decision to create the new positions and advertised the new role of process specialist on 25 August 2006. All of the evidence seen by the UK NCP showed that BATM made attempts to inform the BATEU about the re-classifications after advertising the roles, but there is no evidence of BATM seeking BATEU's views on the re-classifications before BATM finalised its decision to carry them out and advertised the new positions.

For the reasons set out in paragraph 41 above, the UK NCP did not accept that the lack of consultation with the BATEU could be justified by the fact that Malaysian law might not make consultation with the BATEU mandatory in all circumstances.

In light of the above, the UK NCP concluded that BATM failed to uphold the standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines because it failed adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions.

Although the UK NCP could ascertain the expected and recommended standards on employment and industrial relations in Malaysia, it could not reliably determine whether BATM's practices in this instance were consistent with the standards of employment and industrial relations actually observed by comparable employers in Malaysia in similar situations. Therefore, the UK NCP has insufficient evidence to determine whether or not BATM acted consistently with Chapter IV(4)(a) of the Guidelines.

c) Did BATM harass union members into applying for the reclassified non-unionised positions?

In the evidence submitted by the MTUC on 29 February 2008, the MTUC included an undated letter to the General Secretary of the BATEU, allegedly signed by 163 of BATEU's members which states that: "*we* [BATM's employees] *were given a 'new contract' and was forced to sign without giving any option to accept or reject the new contract. We as employees strongly feel that we should be given an option to exercise our 'rights'. We were not even given time to think over the new offer or discuss this matter with our Union officials*". In a letter dated 15 January 2007 from the BATEU to BATM, which the UK NCP has seen, the BATEU stated that: "*Our members were forced to sign a new contract* [in relation to the new roles of TMRs and SDRs] *when they are already covered by the existing terms and conditions of the Collective Agreement. Our members were also not given any option to accept or reject the new contract. Our members were also denied their rights to seek advice, clarifications or given sufficient time to consider the new contract*". BATM denied these allegations.

The UK NCP had no means to verify the information above and therefore concluded that there was insufficient evidence to find that BATM harassed its employees into accepting the newly created positions.

Conclusions

On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:

a) That, as the UK NCP did not examine the allegations under paragraphs 8(a), 8(b), 8(c) and 8(e) above, it cannot reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.

b) That "adequate consultation" should follow the approach reflected in, amongst other instruments, the Malaysian Code and the Malaysian Government's publication "Harmony at the workplace", and should be a regular process which enables workers and employers (either directly or through their representatives) to consider together issues of mutual concern; in order to be meaningful, such process should take place before the final decisions affecting employees have been taken.

c) That, although BATM may not have been under a legal obligation in Malaysia to consult the BATEU over the re-classifications, the Guidelines, supported by Malaysia's own voluntary standards of employment and industrial relations, set a higher standard than what may have been required under domestic law. Therefore, the BATEU should have been adequately consulted on the re-classifications.

d) That BATM failed to uphold the higher standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines because it failed adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions. However, the UK NCP had insufficient evidence to determine whether BATM acted inconsistently with Chapter IV(4)(a) of the Guidelines.

e) That there is insufficient evidence to find that BATM harassed its employees into accepting the newly created positions.

In light of the above, the UK NCP concludes that BATM breached Chapter IV(8) of the Guidelines. The UK NCP cannot reach any conclusion on whether BATM complied with Chapters IV(1)(a) and IV(4)(a) of the Guidelines.

Examples of good company practice

British American Tobacco PLC's corporate responsibility measures are accessible through the company's web portal. The UK NCP has reviewed British American Tobacco PLC's initiatives on employment and industrial relations. In particular, the UK NCP notes the following measures taken by British American Tobacco PLC which are of particular significance in relation to Chapter IV(8) of the Guidelines.

The "Statement of employment principles"[90] (the Statement) clearly indicates that British American Tobacco PLC expects and encourages its subsidiaries to implement the principles set out in the Statement. In particular:

a) Paragraph 2.1.2 states: "*We respect both freedom of association and freedom of non-association. We acknowledge the right of employees to be represented by local company recognised Trades Unions, or other bona fide representatives, and for these, where appropriate, to consult with the*

relevant company – within the framework of applicable law, regulations, the prevailing labour relations and practices, and company procedures. We acknowledge the activities of recognised worker representative bodies such as Trades Unions (where such activities are practiced in accordance with national law) and we ensure that they are able to carry out their representative activities within agreed procedures".

b) Paragraph 3.1.3 states: "*BAT [British American Tobacco] undertakes restructuring in a responsible manner. Any of our global Operating Companies involved in restructuring will explain the initiatives that make change necessary to its employees and all appropriate groups and bodies, in accordance with local laws and regulations*".

British American Tobacco PLC has published its approach towards supply chain companies, which states that: "*supply partners should expect the following from their relationship with us: […] A joint approach to pursuing improvements in the supply chain, through education, training and the sharing of good practice. Group companies will uphold British American Tobacco policies and will encourage, and where appropriate, help supply partners to embrace them*"[91]. It further clarifies that: "*we – and our supply partners – need to uphold and demonstrate high standards of integrity, accountability and business practice […] We believe that, as a responsible business, we should do more than ensure that we exhibit best practice in the workplace; we should also use our influence to raise standards, secure product integrity and spread best practice in our supply chain and in the tobacco industry overall. We hope that our supply chain partners will assist us in this regard*"[92].

Recommendations to the company and follow up

Where appropriate, the UK NCP may make specific recommendations to a company so that its future conduct may be brought into line with the Guidelines. In considering whether to make any recommendations, the UK NCP has taken into account that BATM was found to have breached the Guidelines, and that consulting the BATEU on the re-classifications would not be useful at this stage because the new positions have now been established.

The UK NCP however considers that BATM risks breaching the Guidelines again in the future unless it changes its approach in consulting employees (and their representatives). To this effect, the UK NCP recommends that British American Tobacco PLC should encourage BATM to establish a permanent and regular process to consult and inform its employees on issues of mutual concern before key decisions of mutual concern are taken by management. Such process should be endorsed by both management and employees (and their representatives, where they exist).

Both parties are asked to provide the UK NCP with a substantiated update by 6 June 2011 on measurable progress towards BATM's implementation of the recommendation in paragraph 58 above. The UK NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the UK NCP's conclusions thereon. The substantiated 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

Victoria 3.1 – 3rd floor

1, Victoria Street

London SW1H 0ET

United Kingdom

e-mail: *uk.ncp@bis.gsi.gov.uk*

4 March 2011

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick Van Benschoten, Sergio Moreno

Notes

1. See Box I.1.6
2. Formerly known as the Department of Enterprise, Trade and Employment.
3. *Chapter* 5: 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:

   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 (…);

   3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts (…).
4. *Chapter 2*: 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: (…)

   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.
5. A full description of the administrative procedures for the Corrib Gas Field Development can be found on: *http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm*
6. On June 24, 2009 Vermilion Energy Trust of Canada announced that it had entered into an agreement to acquire Marathon's 18.5% interest in the Corrib gas project. Vermilion subsequently issued a press release on July 30, 2009 announcing the closing of the transaction.
7. The consent to lay the pipeline under section 40 of the Gas Act 1946 is currently under legal challenge. This original consent remains valid pending a decision by the High Court to the contrary, but may be moot as the Consortium is currently seeking a new consent following their decision to modify the route of the pipeline.
8. Introduction to the report by Mr. Peter Cassells
9. 7.2 of the Recommendations
10. 7.1 of the Recommendations
11. Section 6 of the report by Mr. Peter Cassells
12. In addition, a full description of the administrative procedures for the Corrib Gas Field Development can be found on the website of the Irish Department of Communication, Energy and Natural Resources; *http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm*
13. In their letter of the 19 February 2008, the Irish and Dutch NCPs advised the Complainants that :

    " *(…) The NCPs are aware of the legal proceedings with the Irish High Court that are also related to the Corrib Gas project. The NCPs, as mentioned above, are not in a position to deal with legal questions and must therefore, act within this limitation. Consequently, in dealing with this specific instance, the NCPs, acting in accordance with the OECD Guidelines, are not constrained in examining all aspects this specific instance. The*

NCPs are of the opinion that consideration of this specific instance will contribute to the purpose and effectiveness of the Guidelines in their entirety. Accordingly, the issue raised with the NCPs are considered bona fide and relevant to the implementation of the Guidelines (…)"

14. See footnote 6.

15. OECD Guidelines for Multinational Enterprises, Commentary on the Environment, paragraph 35.

16. OECD Guidelines for Multinational Enterprises, Commentary on Disclosure, paragraph 12.

17. In November-December 2001, a written consultation round was organized and made public in (local) newspapers and a first meeting was organised in Mayo County in that same period. The independent licensing authority An Bórd Pleanála also held public consultations and will continue to do so in the process for granting permission to the Consortium for the onshore part of the pipeline. The Consortium opened a public information office early 2001 in Bangor Erris, which was later moved to Belmullet, which houses five 'community liaison officers' who engage in direct contact with members of the local community.

18. An Bórd Pleanála website: *http://www.pleanala.ie/casenum/GA0004.htm*.

19. *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008. Mr. Ruggie summarizes the content of a due diligence process on human rights aspects as follows; "*Considered in that spirit, human rights due diligence comprises four components: a statement of policy articulating the company's commitment to respect human rights; periodic assessments of actual and potential human rights impacts of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking as well as reporting performance.*" Keynote Address by SRSG John Ruggie, "*Engaging Business: Addressing Respect for Human Rights*", sponsored by the US Council for International Business, US Chamber of Commerce and International Organisation of Employers, Atlanta, 25 February 2010.

20. The UK NCP understands from the IUF that the High Court in India has delivered its judgment in February 2010 and ruled that it had no jurisdiction to supervise a union representation election for the Doom Dooma workers, but that there was nothing to impede such an election taking place should the parties so wish.

21. *http://www.bis.gov.uk/files/file53069.pdf*

22. *http://www.bis.gov.uk/files/file53070.pdf*

23. Advisory, Conciliation and Arbitration Service.

24. The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

25. OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

26. Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at *http://www.bis.gov.uk/files/file10209.pdf* - visited on 21 July 2010).

27. *UK National Contact Point Information Booklet*, *op.* cit., p. 12.

28. OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference *DAF/INV/NCP/RD(2009)3*, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): *www.tuac.org/en/public/index.phtml* and *http://oecdwatch.org/*.

29. *http://www.bis.gov.uk/files/file53070.pdf* (visited on 21 July 2010)

30. Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

31. OECD, *Commentary on Combating Bribery*, in "Commentary on the OECD Guidelines for Multinational Enterprises", paragraphs 43-47, pp. 48-49 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

32. Evans, R., Leigh, D., *Millions risked in BAE contract*, Guardian, 27 November 2003 (downloadable from *http://www.guardian.co.uk/uk/2003/nov/27/freedomofinformation.saudiarabia* - visited on 21 July 2010).

33. *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, *op.* cit., paragraph 6, p. 40 (available at *www.oecd.org/dataoecd/56/36/1922428.pdf*- visited on 21 July 2010).

34. Woolf Committee, *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, May 2008 (downloadable from *http://ir.baesystems.com/investors/storage/woolf_report_2008.pdf* - visited on 21 July 2010).

35. *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, *op.* cit., p. 47.

36. *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, *op.* cit., p. 48.

37. *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, *op.* cit., p. 53.

38. On advisers see also *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, *op.* cit., Appendix J, pp. A77-A82.

39. BAE Systems, *Progress against Woolf Committee recommendations*, *http://www.baesystems.com/CorporateResponsibility/ResponsibleBusinessConduct/ProgressagainstWoolfCommitteeRecommendations/index.htm* (visited on 21 July 2010).

40. BAE Systems, *Being a responsible company – what it means to us – Code of Conduct*, p. 48 (downloadable from *http://www.baesystems.com/BAEProd/groups/public/documents/bae_publication/bae_pdf_759of003_001.pdf* - visited on 21 July 2010).

41. *Being a responsible company – what it means to us – Code of Conduct*, *op.* cit., p. 50.

42. *Being a responsible company – what it means to us – Code of Conduct*, *op.* cit., p. 52.

43. BAE Systems, *Corporate Responsibility Committee - Terms of reference*, 6 December 2005, paragraph 6.2, p. 2 (downloadable from *http://bae-systems-investor-relations-2009.production.investis.com/corporate-governance/~/media/Files/B/BAE-Systems-Investor-Relations-2009/PDFs/board-committees/tor_crc.pdf* – visited on 21 July 2010).

44. The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

45. OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

46. Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at *http://www.bis.gov.uk/files/file10209.pdf* - visited on 21 July 2010).

47. *UK National Contact Point Information Booklet*, *op.* cit., p. 12.

48. OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference *DAF/INV/NCP/RD(2009)3*, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): *www.tuac.org/en/public/index.phtml* and *http://oecdwatch.org/*.

49. *http://www.bis.gov.uk/files/file53070.pdf* (visited on 21 July 2010)

50. Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

51. OECD, *Commentary on Combating Bribery*, in "Commentary on the OECD Guidelines for Multinational Enterprises", paragraphs 43-47, pp. 48-49 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

52. *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, *op.* cit., paragraph 6, p. 40 (available at *www.oecd.org/dataoecd/56/36/1922428.pdf*- visited on 21 July 2010).

53. Rolls-Royce Group plc, *Global Code of Business Ethics*, June 2009 (available at *http://www.rolls-royce.com/Images/ethicscode_eng_tcm92-13314.pdf* - visited on 23 June 2010).

54. *Global Code of Business Ethics*, *op.* cit., p. 26.

55. *Global Code of Business Ethics*, *op.* cit., p. 27.

56. *Global Code of Business Ethics*, *op.* cit., p. 92.

57. Rolls-Royce Group plc, *Ethics Committee Terms of Reference*, 11 September 2008 (available at *http://www.rolls-royce.com/Images/ethics_tcm92-12993.pdf* - visited on 23 June 2010).

58. The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

59. OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

60. Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at *http://www.bis.gov.uk/files/file10209.pdf* - visited on 21 July 2010).

61. *UK National Contact Point Information Booklet*, *op.* cit., p. 12.

62. OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference *DAF/INV/NCP/RD(2009)3*, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): *www.tuac.org/en/public/index.phtml* and *http://oecdwatch.org/*.

63. *http://www.bis.gov.uk/files/file53070.pdf* (visited on 21 July 2010)

64. Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

65. OECD, *Commentary on Combating Bribery*, in "Commentary on the OECD Guidelines for Multinational Enterprises", paragraphs 43-47, pp. 48-49 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 21 July 2010).

66. *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, *op.* cit., paragraph 6, p. 40 (available at *www.oecd.org/dataoecd/56/36/1922428.pdf*- visited on 21 July 2010).

67. http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/$FILE/Stabilization+Paper.pdf

68. International Trade Union Confederation (ITUC), *List of affiliated organisations*, 21 June 2010 (available at *http://www.ituc-csi.org/IMG/pdf/No_36_-_Appendix_1_-_Affiliated_Organisations-2.pdf* , visited on 10 December 2010).

69. Malaysian Trade Union Congress, *http://www.mtuc.org.my/affliates.htm*, visited on 10 December 2010.

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71. OECD, *OECD Guidelines for Multinational Enterprises*, pp. 17-18 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 10 December 2010).

72. UK NCP, *Approach of the UK NCP to Specific Instances in which there are parallel proceedings*, available at *http://www.bis.gov.uk/files/file53069.pdf*, visited on 10 December 2010.

73. UK NCP, *UK National Contact Point (NCP) procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises*, available at *http://www.bis.gov.uk/files/file53070.pdf*, visited on 10 December 2010.

74. OECD, *Commentary on the OECD Guidelines for Multinational Enterprises*, paragraph 2, p. 39 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 10 December 2010).

75. IUF, *IUF Affiliates*, *http://cms.iuf.org/?q=node/506*, visited on 10 December 2010.

76. OECD, *Commentary on the OECD Guidelines for Multinational Enterprises*, paragraph 19, p. 43 (downloadable from *www.oecd.org/dataoecd/56/36/1922428.pdf* - visited on 10 December 2010).

77. ILO, *Tripartite declaration of principles concerning multinational enterprises and social policy*, 28 March 2006 (available at *http://www.ilo.org/empent/Whatwedo/Publications/lang—en/docName—WCMS_094386/index.htm* - visited on 10 December 2010).

78. Malaysian Ministry of Human Resources, *Code of conduct for industrial harmony and areas for co-operation and agreed industrial relations practices – document I (under clause 7 of the Code of Conduct for Industrial Harmony)*, Malaysia, 1975, reprinted in 2008.

79. Malaysian Ministry of Human Resources, *Promote Code of Conduct for Industrial Harmony*, *http://jpp.mohr.gov.my/index.php?option=com_content&task=view&lang=en&id=40&Itemid=56* (visited on 10 December 2010).

80. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 3.

81. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 4.

82. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 5.

83. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 29.
84. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 29.
85. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 31.
86. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 31.
87. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 31.
88. *Code of Conduct for Industrial Harmony*, *op.* cit., p. 32.
89. Department of Industrial Relations (Malaysia Ministry of Human Resources), *Harmony at the workplace*, 2008 (downloadable from *http://jpp.mohr.gov.my/images/stories/jppm/Keharmonian_Di_Tempat_Pekerjaan.pdf* - visited on 10 December 2010).
90. British American Tobacco PLC, *Statement of employment principles* (available at *http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO725ECW/$FILE/medMD623F3V.pdf?openelement* – visited on 10 December 2010).
91. British American Tobacco PLC, *Our philosophy of supplier partnerships,* p. 4 (available at *http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO725ECW/$FILE/medMD6RWDFF.pdf?openelement* – visited on 10 December 2010).
92. *Our philosophy of supplier partnerships*, *op.* cit, pp. 4-5.

ANNEX I.2

OECD 50th Anniversary Ministerial Meeting Statements and Other Speeches

Remarks at the Commemoration of the 50th Anniversary of the OECD on Guidelines for Multinational Enterprises

Hillary Rodham Clinton, Secretary of State

OECD Conference Centre, Paris, France, May 25, 2011

Next, we turn to the OECD New Guidelines for Multinational Enterprises. For over 35 years, these guidelines have occupied a unique space within the world of corporate social responsibility. They are the only ones formally endorsed by governments, 42 at last count. And they do bring together labor, civil society, and business to create the broadest possible consensus behind them. This is truly the work of a global policy network in action.

This year's updated guidelines include an important new chapter on human rights, drawing on the work of UN Special Representative John Ruggie. These guidelines help companies ensure their dealings with third parties do not cause or contribute to human rights violations.

And let me now invite those who will be formalizing this very important step forward, because after all, if you look at these guidelines, they will be helping us determine how supply chains can be changed so that it can begin to prevent and eliminate abuses and violence. We're going to look at new strategies that will seek to make our case to companies that due diligence, while not always easy, are absolutely essential. And I think now we can turn to the people that will represent this new commitment. I'd like to invite Joris Oldenziel, Rich Trumka, and Charles Heeter to join us on stage. Each represents business, labor, or civil society, and they've all made important contributions.

And I was particularly pleased to see a recommendation that businesses act as partners in promoting a free and open internet. We've seen the results of what happens when we see repression being exercised on the internet, so this is a very big step forward.

The countries adhering to the Declaration on International Investment and Multinational Enterprises are all OECD members, plus Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania, adopting the amended Guidelines for Multinational Enterprises.

The OECD Council now adopts the amended decision on the OECD Guidelines for Multinational Enterprises. And here I note that Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania adhere to this decision.

Next, moving to the adoption of the Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the OECD Council adopts the recommendation, and I note that Argentina, Brazil, Latvia, Lithuania, Morocco, Peru, and Romania adhere to this recommendation. And Brazil has made a statement which will be included in the summary record and in the final text of the recommendation.

Each of these agreements reflects a great deal of consensus-building and hard work, and I think we should be especially grateful to those who are standing here on the stage. I think we all look forward to working closely with you and others committed to raising standards for corporate social responsibility, just as we have done today.

Thank you very, very much.

BIAC statement on the adoption of the update of the OECD Guidelines for Multi-National Enterprises at the OECD Ministerial Council Meeting on 25 May 2011

BIAC has always considered the OECD Guidelines for Multi-National Enterprises an important guidance instrument on Corporate Social Responsibility (CSR) for companies doing international business. The Guidelines are an internationally recognised reference document on CSR.

BIAC has been closely involved in the 2010–11 update process of the Guidelines. During this process significant changes were made to the Guidelines, particularly in the fields of human rights, due diligence, supply chains and procedural guidance. Thus the process came close to a substantive revision. Although the new text increases the expectations put on business in a number of aspects, the central concerns of business have been addressed in a constructive way. BIAC is therefore in a position to state that it can accept the final text as negotiated by OECD member states.

The success of the updated Guidelines will, to a large extent, depend on their ability to contribute to a global level playing field for business. This issue has become more important today than in 2000, the time of the last revision of the Guidelines. The markets of the global economy are highly integrated and many competing companies are not based in countries that adhere to the Guidelines.

BIAC therefore urges the OECD to undertake determined efforts to promote convergence between the Guidelines and the business conduct of enterprises of non-adhering countries. To that effect, enhanced outreach efforts by the OECD, recognition of the individual efforts of non-adhering countries and dialogue on convergence constitute the most promising road forward.

BIAC considers it crucial that the Guidelines remain part of the OECD Declaration on International Investment and Multinational Enterprises. This highlights that the Guidelines are part of a mutual commitment. On the one hand, adhering Governments commit themselves in the Declaration to promote an open and predictable investment climate by implementing measures such as ensuring national treatment of MNEs and avoiding conflicting requirements on MNEs. On the other hand, companies are recommended to commit themselves to applying the standards of corporate social responsibility elaborated in the Guidelines.

BIAC supports an effective implementation of the updated Guidelines. To that end, it is committed to constructively assist affiliated companies to follow the recommendations of the updated Guidelines, alongside efforts undertaken by the OECD, member states and National Contact Points to promote the Guidelines. BIAC is also committed to developing a positive pro-active agenda with a view to assisting companies in understanding and following the Guidelines.

TUAC statement on the update of the OECD Guidelines for Multinational Enterprises on 25 May 2011

The completion of the Update of the OECD Guidelines for Multinational Companies represents an important opportunity for the OECD. The updated Guidelines contain a number of positive new elements including a chapter on Human Rights, the unequivocal application of the Guidelines to suppliers and other business relationships, the broadened scope of the Employment chapter, stronger rules governing the functioning of the National Contact Points (NCPs) and an enhanced role for the OECD in implementing the Guidelines.

TUAC considers that these elements significantly increase the relevance of the Guidelines and their potential to raise the standard of responsible business conduct in a global context. The success of the Update now depends on its prompt and full implementation both by adhering governments and by the OECD.

Adhering governments must first and foremost upgrade the structures and procedures of their NCPs. The NCPs are the public face of the Guidelines. How they function under the updated Guidelines will be the yardstick by which the global public measures success. NCPs must consign to the past their reputation for a patchy and often poor performance and operate to a higher common standard, building on the new principles of impartiality and predictability. TUAC urges NCPs to establish multi-stakeholder oversight or advisory bodies, if they have not already done so. It also calls on NCPs to sign up for peer review and, in consultation with external stakeholders, identify priorities for peer learning and conduct activities to promote the Guidelines.

The new Guidelines significantly strengthen the role of the Investment Committee and the OECD Secretariat with regard to outreach, reporting, peer learning, capacity-building, peer review and promotion. These commitments cannot be discharged within the existing resource limitation. TUAC calls on the OECD to increase the level of financial support commensurate with these responsibilities. It also urges the Investment Committee to assess the adequacy of its existing structures and whether there is a need to establish a new dedicated Working Group to implement the updated Guidelines.

TUAC commends the Chair of the Working Party of the Investment Committee, Prof. Dr. R. Nieuwenkamp, for inviting TUAC, BIAC and OECD Watch to join the Chair's Advisory Group for the Update. TUAC considers that this increased the legitimacy of the process and calls on the OECD to follow this precedent in the future, but in conjunction with full public consultation. TUAC also urges the Investment Committee to upgrade its consultation processes and provide for the participation of TUAC, BIAC and OECD Watch in peer learning, peer review and the proactive agenda.

It is incumbent on the OECD and adhering governments to ensure that the updated Guidelines fulfil their potential and promote greater responsible business conduct in a global context, thereby continuing to be a leading international instrument in this regard. TUAC, BIAC and OECD Watch also have a significant contribution to make. TUAC, its affiliates and global union partners stand ready to play their part.

OECD Watch statement on the update of the OECD Guidelines for Multinational Enterprises

Improved content and scope, but procedural shortcomings remain

Summary and key outcomes

OECD Watch welcomes the changes to the OECD Guidelines that confirm and broaden the scope of the instrument to the global activities and all business relationships of MNEs. The new text introduces valuable provisions on human rights, workers and wages, and climate change. It establishes that enterprises should avoid causing or contributing to adverse impacts through their own activities or through business relationships, and it recommends that companies exercise due diligence to ensure they live up to their responsibilities. However, despite the references to impartiality and equal treatment, the changes to the implementation procedures, which should be the cornerstone of the Guidelines, fall far short of what is needed to ensure that they are an effective and credible instrument. This update missed a once-in-a-decade opportunity to provide for a system capable of ensuring observance through investigative powers and the ability to impose some kind of sanction when the Guidelines are breached. In the absence of minimum standards to ensure that the Guidelines are consistently applied, it will be up to National Contact Points to step up to the plate and demonstrate their commitment and ability to resolve disputes and help provide remedies for those adversely affected by corporate misconduct. OECD Watch will continue to seek and advocate for instruments and mechanisms that effectively enforce corporate accountability and curb corporate abuses.

Improvements to the Guidelines

- A general principle that enterprises should always exercise due diligence in matters related to the
- Guidelines
- A general principle that enterprises should avoid causing or contributing to adverse impacts
- A general principle that enterprises must take steps to avoid negative impacts throughout their business relations, even when the enterprise has not caused or contributed to the harm
- Reference to the need for meaningful stakeholder engagement by enterprises
- Confirmation that the Guidelines apply to all sectors of the economy, including the financial sector
- References to the need for enterprises to reduce and report on greenhouse gas emissions
- The introduction of the principles of impartiality and equitability for NCPs dealing with complaints
- Strengthened provisions on transparency requirements for NCPs, including in final statements
- OECD Watch permission to request clarification from the Investment Committee on NCP performance and interpretation of the Guidelines

Fundamental shortcomings

- Weak language, including numerous "where appropriate" caveats and disclaimers, that provides enterprises with loopholes and gives wide discretionary power to individual NCPs
- Failure to ensure the predictability of the instrument by requiring NCPs to make a statement on the validity of a complaint and observance of the Guidelines when mediation has failed
- Lack of specification of NCP requirements to monitor and follow-up recommendations and agreements
- Failure to ensure that breaches of the Guidelines or refusal to engage in the mediation process have consequences for enterprises
- No assurance of effective NCP performance through mandatory oversight or peer review mechanisms.
- No guarantees that conflicts of interests will be avoided through the housing of NCPs
- No explicit reference to Indigenous Peoples' right to free, prior and informed consent
- No reference to country-by-country reporting
- Lack of social and environmental disclosure requirements in line with international best practice

The update in context

At the OECD Ministerial Council Meeting on the 25th of May, 2011, the OECD is celebrating its 50th anniversary and reflecting on its various achievements. The anniversary session will include the adoption of the update of the OECD Guidelines for Multinational Enterprises. The aim of the update was to ensure the Guidelines' role as a leading international instrument for the promotion of responsible business conduct.

OECD Watch, a global network of over 80 civil society organisations, welcomes the update as a timely and necessary revision of an instrument that had failed to reach its full potential to adequately address the adverse impacts of multinational enterprises on individuals, communities and the environment. Over the past decade, OECD Watch has consistently identified shortcomings and provided constructive suggestions to improve the implementation of the OECD Guidelines.

In addition, recent developments in the field of international corporate accountability confirmed OECD Watch's assessment of the limited effectiveness of the OECD Guidelines. For example, the recent work of UN Special Representative John Ruggie identified the existence of a global governance gap with regard to corporate accountability for human rights abuses and noted that instruments like the OECD Guidelines were failing to fill this gap. It was thus clear at the start of the update process that a giant leap forward was needed if the OECD Guidelines were to remain relevant and become truly effective in resolving grievances.

The update process

OECD Watch values the opportunity provided by the OECD Investment Committee (IC) to make a contribution to the update process and take part in the Advisory Group to the Chair of the update. The Investment Committee's exemplary form of stakeholder

consultation was not practiced by all other OECD bodies entrusted with the update of Guidelines' specialized chapters. Consultation processes with OECD Watch, other stakeholders and external experts should be more than a token gesture and provide for a meaningful engagement. A further concern shared by OECD Watch with various stakeholders and international organisations is that the update process was rushed and lacked public consultation. As a result, no broader public discussion on the merits of proposals could take place on highly relevant issues such as indigenous people's rights and (integrated) social and environmental reporting provisions fit for the 21st century. Due to restrictive time pressures, the intended alignment of the Guidelines with the most up to date international instruments and best practices relevant to corporate accountability (such as reference to Free, Prior and Informed Consent as in the International Finance Corporation Performance Standards) remain incomplete.

Improvements and missed opportunities in scope and content

The update has resulted in a number of significant advances in the Guidelines, in particular with regard to the **broadening of the scope of the Guidelines** to include all business relationships, not just those in which an investment relation was present. The update has confirmed and broadened the scope of the application to global activities of MNEs and their subsidiaries and business relationships and a wider group of workers within that realm.

New general policies make clear that enterprises should always **carry-out due diligence** to avoid causing or contributing to adverse impacts and address such impacts when they occur. The Guidelines further stipulate enterprises should not turn a blind eye to adverse impacts throughout their business relationships even if they have not contributed to that impact, but instead seek to prevent or mitigate those impacts.

The broad application of the principle of due diligence throughout the enterprise's own activities and **throughout their business relationships** on matters covered by the Guidelines is a major achievement. More than just to do no harm, enterprises should act and take preventative measures to avoid causing and contributing to adverse impacts. Enterprises will have to significantly increase their efforts to take their social and environmental impacts into account in their investment decisions and business relationships.

OECD Watch welcomes the addition of a paragraph on **meaningful stakeholder engagement**, which should be considered as an integral part of appropriate due diligence processes and therefore read in conjunction with those paragraphs. Meaningful stakeholder engagement involves consultation with affected and potentially affected stakeholders in decision making processes throughout the entire cycle of the enterprise's activities and implies that enterprises should provide the public and stakeholders with adequate, measureable, verifiable and timely information on the actual and potential impacts of the activities of the enterprise.

A fundamental shortcoming is the **lack of explicit reference to community consultation and consent processes**. Given the disproportionate and often irremediable harm caused by business enterprises, particularly within the extractives industry, on the rights and interests of Indigenous Peoples, a reference to international standards including the right to Free, Prior and Informed Consent should have been included.

The **update failed to significantly improve the disclosure chapter**. It is particularly disappointing that guidance on country-by-country reporting has not been included. Given the legislation on this issue in the United States and an on-going process in Europe concerning country-by-country reporting for EU-based companies, it appears that the OECD Guidelines will fall short of corporate transparency and disclosure developments, before they leave the printing press. Similarly, the update failed to include social and environmental disclosure requirements in line with international best practice.

The addition of a **separate human rights chapter** containing standards on the minimum expected conduct of enterprises with regards to human rights constitutes a major step forwards. It specifies that enterprises should respect internationally recognized rights, references corporate complicity and respect for international humanitarian law. The new text establishes that enterprises should respect human rights wherever they operate, that enterprises should avoid causing or contributing to human rights abuses. A dedicated human rights due diligence provision recognizes the need to involve rights-holders, aimed at identifying and preventing or mitigating risks posed by the enterprise to the rights of individuals and communities. The text refers, in a nonexclusive manner, to the International Bill of Human Rights and UN instruments dealing with the rights of Indigenous Peoples, persons belonging to national, ethnic, religious and linguistic minorities, women, children, persons with disabilities and migrant workers and their families.

The terminology in the **employment chapter** has been aligned with the 1977 ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy (Revised 2006) so that the **Guidelines now clearly apply to a wide group of workers**. A further positive addition is the introduction of a clause stipulating that wages should at least meet the **basic needs of workers** and their families. While not covering the notion of a living wage, this provision will be of use for addressing issues in global supply chains and in the informal sector, where low wages often lead to excessive overtime and child labour.

Minimal changes were made to the **environment chapter**, but one important improvement is the inclusion of provisions encouraging enterprises to **reduce and report on greenhouse gas emissions** in order to address climate change. These provisions should be viewed in the context of the UN Framework Convention on Climate Change and other "international environmental commitments". Another positive addition is a clause stating that enterprises should avoid negative impacts on the environment or, where unavoidable, to mitigate them. The update unfortunately missed an opportunity to bring the OECD Guidelines in line with current best practice regarding cumulative environmental impact assessments and early warning systems.

The **bribery chapter** benefited from the inclusion of key aspects of the OECD's 2009 "Recommendations of the Council on Further Combating Bribery in International Business Transactions". However, the update failed to encourage enterprises to adopt policies **prohibiting all forms of bribery and corruption** and have their leadership publicly articulate a commitment not to use or tolerate any form of bribery or corruption to obtain or retain business. By limiting the Guidelines to countering bribery and not addressing broader acts of corruption, the updated Guidelines fall short of the UN Convention against Corruption.

Increasing attention is being paid to the issue of **taxation** as an important element of responsible business conduct, and it is positive that the updated Guidelines include a new

provision encouraging enterprises to treat **tax governance and tax compliance as important elements of their oversight and broader risk management systems**. It is clear that tax is an increasing area of risk for companies, and their boards should consider tax as part of their contribution to the societies in which they operate. OECD Watch also welcomes the amendment to the Guidelines taxation chapter that suggests that companies should comply with both the letter and the spirit of the law. OECD Watch calls on adhering governments to prevent enterprises from exploiting legal loopholes with a view to avoiding tax.

Procedural Guidance: few guarantees for effective implementation

OECD Watch has consistently stressed the importance of improving the procedures of the NCPs, in particular in dealing with specific instances. Positive changes to the text may not make a significant difference on the ground unless backed up by more predictable and credible procedures to ensure improved and more coherent NCP performance.

The update has resulted in a number of improvements in the Procedural Guidance including provisions for: **indicative timescales** for the completion of cases; stronger **cooperation between home and host country NCPs**; strengthened provisions on **transparency** requirements for NCPs, including in final statements, capacity building and promotion of the Guidelines. The update confirmed that **adhering governments make a binding commitment** to implement the OECD Guidelines, and that they should make available the necessary human and financial resources to effectively fulfill those commitments.

Despite the inclusion of references to **impartiality and equal treatment** of all parties by NCPs, the update failed to prescribe procedural aspects related NCPs and the handling of complaints that would ensure that these principles are fully observed by all NCPs. This is a disappointment that casts doubt upon the future effectiveness of the Guidelines. OECD Watch contends that these principles will only be meaningful if adhering countries upgrade NCP institutional arrangements and procedures to ensure impartiality, equitability and predictability. It goes without saying that single-department NCPs housed at the finance, economics, or investment departments of governments without any oversight body do not have the perceived credibility and impartiality that is now required from NCPs.

The predictability of the instrument as a whole remains at risk due to the lack of procedures to ensure effective and coherent implementation. This is particularly the case due to the update's **failure to clarify the NCP's role in making determinations on the observance of the Guidelines** when mediation has failed. Such a determination should be based on an examination of the facts and arguments. The new Guidelines still do not ensure that NCPs will make a final statement on the validity of a complaint, a minimum requirement for any credible complaint mechanism. Similarly, the updated Guidelines remain ambiguous with regard to the **NCP's role in monitoring and following up** on their own recommendations and agreements reached between the parties. This would have effectively strengthened the instrument and promoted greater observance.

The advisory bodies, and now also OECD Watch, have the right to request clarifications from the Investment Committee on NCP performance and interpretation of the Guidelines. However, this does not compensate for the **lack of mandatory oversight or peer review**

mechanisms for NCPs. Nevertheless, OECD Watch will not hesitate to exercise its right to seek clarification in order to improve the performance of individual NCPs.

Last but not least, the update failed to ensure that adhering governments' binding commitment to implement the OECD Guidelines is achieved by attaching consequences to breaches of the Guidelines. This would have supported the IC position on and interest in pursuing policy coherence. Regrettably, there are still no effective sanctions in case of breaches of the Guidelines, thereby compromising their effectiveness.

The way forward

OECD Watch considers that the revision process achieved some important gains, but missed an opportunity to ensure that the OECD Guidelines become the leading international instrument for promoting corporate accountability and curbing negative impacts of business decisions and operations. Consequently, civil society organisations cannot rely on this instrument for guaranteeing responsible business conduct and effective remedies. OECD Watch will continue to seek and advocate for stronger instruments and mechanisms that provide real opportunities for ensuring corporate accountability. At the same time, OECD Watch calls on individual NCPs to take concrete steps to improve their performance.

Despite fundamental procedural shortcomings, OECD Watch believes that the update comes with an obligation and opportunity for the OECD and adhering countries to enhance the effectiveness of this unique instrument for promoting responsible business conduct in the global context. Yet all remains dependent on the political will of adhering governments, their NCPs, and the OECD Investment Committee to promote MNEs adherence to the Guidelines. Civil society will ultimately measure the success of the update based on the Guidelines' effectiveness in helping to avoid and resolve conflicts between MNEs and communities, individuals, and workers, and in providing effective remedies for victims of corporate abuses.

OECD Watch will continue to monitor the functioning of NCPs, in particular their efforts to resolve specific instances of violations of the Guidelines, as well as their proactive efforts to ensure enterprises take all necessary steps to identify, prevent and mitigate any adverse impacts from their activities. The alignment of the updated Guidelines with the SRSG's Protect, Remedy and Respect Framework and Guiding Principles makes it appropriate that the future implementation of the Guidelines should be carefully monitored and assessed by whichever special procedure the Human Rights Council chooses to adopt as a successor to Professor Ruggie's mandate.

GRI Statement on the Launch of the OECD Guidelines for Multinational Enterprises on 25 MAY 2011

The OECD will launch updates to its Guidelines for Multinational Enterprises on 25 May 2011 at the OECD Ministerial Council Meeting with Ms. Hillary Clinton, US Secretary of State and Chair of the Ministerial Meeting, and Mr. Nicolas Sarkozy, President of France. The Global Reporting Initiative (GRI) supported the updating process by contributing to consultations. GRI welcomes the updates and believes they will help change organisational behavior, encouraging the transition to a sustainable global economy, in line with GRI's vision. GRI now looks forward to the implementation of the updated guidance.

In December 2010, GRI announced a partnership with the OECD to give companies worldwide greater guidance and support on how to conduct their business responsibly and report on their sustainability performance. The partnership aims to help companies make greater use of the OECD Guidelines for Multinational Enterprises and the GRI Sustainability Reporting Framework, bringing increased coherence and consistency to their efforts to act more responsibly and be more transparent about their sustainability.

GRI believes that today's updates to the OECD Guidelines for Multinational Enterprises, which include an expanded section on human rights, a new approach to due diligence and supply chains, and references to disclosure, reflect important changes in the field of sustainability and responsible business conduct.

Teresa Fogelberg, Deputy Chief Executive of the Global Reporting Initiative, said: "Today's updates mark a huge milestone for the OECD and for sustainability in general. This is the only government-led sustainability framework for companies and disclosure now plays a key role. This is great news, and we believe it will drive transparency and, ultimately, a sustainable global economy. However, I had hoped for stronger content on disclosure."

In particular, GRI makes the following comments:

- **GRI welcomes the broadened scope of the Guidelines** with a new Chapter on Human Rights in line with the policy framework put forward by the United Nations Special Representative of the Secretary General on Business and Human Rights, John Ruggie

In March 2011 the Global Reporting Initiative launched expanded guidance for reporting on human rights building on this policy framework. A new introduction and new content for the Disclosure on Management Approach re-emphasizes the role of human rights in sustainability. New Indicators cover assessment of operations and grievance remediation.

- **GRI welcomes content on disclosure of financial and non-financial information**, which plays a key role in Chapter III of the updated Guidelines. GRI welcomes useful clarifications in the Disclosure Chapter, including the alignment with OECD Corporate Governance Principles.
- **The GRI Sustainability Reporting Guidelines** provide guidance at a global level as mentioned in the Commentary to the text of the OECD Guidelines. It is therefore unfortunate that paragraph 4 of the updated Guidelines states: "Enterprises should apply high quality standards for (…) non-financial disclosure, including environmental and social reporting, *where they exist*."

- **GRI is pleased that the updated Guidelines invite** the OECD Investment Committee to continue to work closely with stakeholders and partner organisations, and that the OECD Investment Committee will pursue a proactive agenda to promote the effective use of the principles and standards in the Guidelines
- **GRI looks forward to the resource document** that will be produced, bringing together descriptions and links to a wide range of relevant instruments and initiatives that are relevant to the OECD Guidelines, including the GRI Sustainability Reporting Guidelines
- **GRI is pleased that the Committee will seek opportunities to collaborate** with advisory bodies, OECD Watch and other international partners and stakeholders to encourage positive contributions that multinational enterprises can make to economic, environmental and social progress with a view to achieving sustainable development

The Global Reporting Initiative is already referenced in the Commentary to the OECD Guidelines.

- **GRI welcomes that the Chair of the Working Party** of the OECD Investment Committee encourages the Committee to intensify cooperation with emerging economies in order to create a level playing field

The Global Reporting Initiative's Sustainability Reporting Guidelines are applied globally. The geographical scope goes beyond OECD's 43 member countries. GRI has regional representation – Focal Points – in Australia, Brazil, China, India, and the USA, and is investigating a potential Focal Point in South Africa.

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

Remarks at OECD Investment Committee

Professor John G. Ruggie

Special Representative of the UN Secretary-General for Business and Human Rights

Paris, 4 October 2010

I am very pleased and honored to be here with you this afternoon. I have read the Chair's proposals for updating the Guidelines carefully, and congratulate you on the progress you have already achieved in a relatively short period of time. And of course I'd like to encourage you to continue in the same vein, and at the same pace, as you bring the update to a successful conclusion.

I have the greatest respect for the fact that the Guidelines were already out there in 1976; that their standards and procedures were revised in 2000; and that you are now aligning them to reflect the past decade's evolution of business models, business needs and practices, and international standards. The relationship between my UN mandate and the OECD in this last phase has been a close one. I am particularly heartened that my work under the auspices of the UN Human Rights Council has been useful to you in relation to the addition of a human rights chapter, your proposals for responsible supply chain conduct, and your plans for procedural improvements.

Let me quickly bring you up to date on my mandate and then, if I may, offer a few remarks about the GLs update.

My mandate was created in 2005 by the then UN Commission on Human Rights, following the failure of a prior effort by a subsidiary body to draft an instrument called the Norms on Transnational Corporations and Other Business Enterprises. Essentially, this had sought to impose on companies, directly under international law, the same range of human rights duties that states have accepted for themselves under treaties they have ratified. The proposal collapsed when the Commission declined to act on it. Instead, the Secretary-General at the time, Kofi Annan, was asked to appoint a Special Representative to start afresh.

My strategic objectives are two-fold. The first is to reduce the incidence of corporate-related human rights harm to the maximum extent and in the shortest period of time possible. This means that I did not begin with some idealized design of the perfect global regulatory system. I started with the lay of the land and have sought to identify ways to improve significantly current performance by states and companies alike. This led me to conduct extensive research and to convene wide-ranging and inclusive consultations—more than forty to date, across five continents, since I began in 2005. I have listened carefully and drawn extensively on views and experiences that all stakeholders have shared with me.

My second objective is to help level the playing field. Although the number of public and private initiatives in business and human rights has increased rapidly in recent years, they have not acquired sufficient scale to reach a tipping point, to truly shift markets. One major reason has been the lack of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge—be they states, businesses, affected individuals and communities, or civil society at large.

Therefore, when I was requested to make recommendations to the Human Rights Council in 2008, I made only one: that it endorse what I called a conceptual and policy framework—the Protect, Respect and Remedy framework. In itself, this would hardly resolve all outstanding business and human rights challenges. But it was my hope that it would provide a common foundation from which thinking and action by all stakeholders would generate cumulative progress over time. The Human Rights Council was unanimous in welcoming the framework, and extended my mandate another three years with the task of "operationalizing" and "promoting" it.

The framework rests on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, judicial and non-judicial.

The framework's normative contribution is not in the creation of new legal obligations but in elaborating the implications of existing standards and practices for states and businesses; integrating them into a single and coherent template; and helping us to identify where current understandings of state duties and corporate responsibilities fall short and how they should be improved.

Following a round of stakeholder consultations this month, I will prepare the concrete guidance that the Human Rights Council has requested on the framework's implementation— a set of "Guiding Principles for the implementation of the Protect, Respect and Remedy framework." This will be posted on the Internet for comments and then finalized early next year. I am also preparing an options paper for the Council on how it might most effectively follow up on my mandate when it ends in June 2011.

I understand that you have had some discussion about the phasing of our respective efforts. Should you delay your work until mine is finalized? There is no need to do so. No principle is contemplated in the Guidelines update that is not already encompassed by the 2008 Protect, Respect and Remedy framework. Some of your commentary will be more detailed than mine because you are dealing with an instrument that is adhered to by 42 states and which addresses the responsibilities of transnational corporations, whereas my mandate includes the duties of all states and the responsibilities of all types of business enterprises.

In short, there is no need for you wait until the conclusion of my mandate for you to conclude yours.

Let me quickly enumerate some additional key points to which we may want to return in discussion.

My mandate requires me to address a broad range of state regulatory action, including judicial measures. Yours more narrowly concerns governments providing policy guidance to companies. Nevertheless, it would be highly desirable if the updated Guidelines could remind states that they are the primary human rights duty bearers under international law—that corporate responsibility is not a substitute for effective state policies, regulation and adjudication.

My view of due diligence is somewhat less discretionary than yours. The commentary in the Chair's proposal "encourages" companies, and indicates steps that "may" be included. I would not want to be overly prescriptive of detailed steps either. But my view of

the principle is robust. If a company does not know, and cannot show, that it respects human rights, then the claim that it respects rights is just that—a claim, not a fact. And making a claim that is not supported by facts can have bad consequences for the company and for stakeholders who rely on it being true. It is impossible for a company to know and show that it respects rights unless it has processes in place to assess and address the human rights risks of its activities and relationships. This isn't a matter of law, but of logic. Of course, the scale and complexity of these processes will vary with the size of companies and the circumstances of their operations.

Heightened due diligence is required in weak governance zones, in areas affected by conflict, and where the human rights of vulnerable groups may be at particular risk. In such contexts, there is a need for companies' to be aware of the implications of humanitarian law and standards for particular "at risk" groups. I welcome the efforts made in the proposed update of the Guidelines in these directions.

Company-level grievance mechanisms are mentioned in the commentary, but their importance to the responsibility to respect would suggest that they need to be recognized in the Guidelines themselves.

For aggrieved individuals and communities, such mechanisms are essential to providing the possibility of early response and remedy for any harm they have suffered, avoiding the delays that so often make remediation that much harder.

For companies, grievance mechanisms perform two key functions. First, they serve as early warning systems, providing companies with ongoing information about their current or potential human rights impacts from those impacted. By analyzing trends and patterns in complaints, companies can identify systemic problems and adapt their practices accordingly. Second, by making it possible at least for some grievances to be addressed directly, they may prevent their escalation into campaigns and law suits.

And for the OECD as a whole, having effective and legitimate grievance mechanisms at the company level adds the likely bonus of reducing the burden on National Contact Points.

So if ever there was a win-win-win solution—for victims, companies and NCPs—company-level grievance mechanisms are it.

Needless to say, such grievance mechanisms must not undermine legitimate trade unions and effective social dialogue mechanisms, nor impede access to other means of achieving remedy.

I have two comments on supply chains. First, it is worth including a reminder in the Guidelines that suppliers have the same responsibility to respect human rights as any other business enterprise. Second, in a buyer-supplier relationship it is important to be clear that the corporate responsibility to respect human rights applies irrespective of whether or not a buyer has leverage over a supplier. The responsibility to respect is determined by whether an enterprise causes or contributes to human rights harm through its own activities or through its relationships with other parties, including suppliers. Leverage comes into play after the fact of adverse impacts is established, to determine how the buyer is able to respond. A buyer cannot exercise leverage it does not have; therefore it should find other ways to meet its responsibility to respect.

On procedural issues, I welcome the reference in the Chair's proposals to the criteria that non-judicial grievance mechanisms should meet to ensure their effectiveness and credibility—and this of course includes the NCPs. Permit me to add two thoughts.

First, governments can do much more to assist one another and business enterprises through information sharing and jointly addressing real dilemma situations, such as business operations in weak governance and conflict zones. Good practices and bad experiences both should inform future conduct. The NCP mechanism would increase its utility to all stakeholders considerably by becoming a more dynamic and inter-linked learning network.

Second, there is an oblique reference in the Chair's proposals to government follow-up to NCP negative findings. Allow me to be a little less circumspect about this key issue. As matters now stand, even where an NCP finds an egregious violation, under many current arrangements the company remains eligible to receive various forms of public advantage (such as export credit and investment insurance), without any conditions being imposed on it. Ignoring such breaches entirely may well contravene states' own obligation to encourage companies to comply with the Guidelines. And by implicitly rewarding companies that do the wrong thing it disadvantages those that play by the rules.

Official consequences of NCP's negative findings need not be punitive. Depending on the case at hand, they could involve the government assisting the company in developing appropriate policies and practices. But for egregious violations, or for those who refuse to collaborate with the government, surely the option of denial of public advantages must be kept on the table.

Let me stop here for now. Thank you again for your excellent work, and for the opportunity to share these thoughts with you today. I look forward to our discussion.

John G. Ruggie is the Berthold Beitz Professor in Human Rights and International Affairs at Harvard University's Kennedy School of Government and Affiliated Professor in International Legal Studies at Harvard Law School. He also serves as Special Representative of the United Nations Secretary-General for Business and Human Rights. From 1997-2001 he was UN Assistant Secretary-General for Strategic Planning, advising Secretary-General Kofi Annan on efforts at institutional renewal for which Annan and the United Nations were jointly awarded the Nobel Peace Prize in2001. Among other achievements, he was the co-architect of the UN Global Compact and he initiated the UN Millennium Development Goals.

ANNEX I.3

Memorandum of Understanding between the OECD and the Global Reporting Initiative (GRI)

The OECD and GRI,

Considering that the OECD Guidelines for Multinational Enterprises (hereafter referred to as "the OECD MNE Guidelines")[1], which are an integral part of the OECD Declaration on International Investment and Multinational Enterprises (hereafter referred to as "the OECD Declaration"), constitute recommendations addressed by governments to multinational enterprises setting out voluntary standards and principles for responsible business conduct,

Considering that the OECD Decision on the OECD Guidelines for Multinational Enterprises of 27 June 2000 endowed the OECD MNE Guidelines with a unique implementation mechanism in the form of National Contact Points in each adhering country which are responsible, *inter alia*, for the promotion of the Guidelines and for the facilitation of access to consensual and non-adversarial means, such as conciliation or mediation, to assist in the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances;

Considering that GRI is a global multi-stakeholder network of experts from business, civil society, mediating institutions and labour organisations, which has pioneered the development and implementation of the leading international framework for sustainability reporting by private and public organisations on economic, social and environmental impacts (hereafter "the GRI Sustainability Reporting Framework")[2];

Considering that the GRI is supported by and receives input from a large number of governments, including OECD Members;

Considering that the OECD MNE Guidelines and GRI Sustainability Reporting Framework are based on and promote the same internationally agreed standards and principles for responsible business conduct, notably in the fields of social and human rights as well as in economic and environment matters, and that they both support multi-stakeholder engagement;

Considering that the GRI Sustainability Reporting Framework refer to the OECD MNE Guidelines as a benchmark for responsible business conduct reporting and that the Commentary to the OECD MNE Guidelines refers to the GRI as an example of an initiative for reporting standards that enhance the ability of enterprises to communicate on the influence of their activities on sustainable development outcomes;

Considering that the OECD MNE Guidelines and the GRI Sustainability Reporting Framework have received prominent international recognition including by the G8 and the UN, that they are among the most widely referenced global corporate responsibility instruments and that leading corporations extensively use the OECD MNE Guidelines and the GRI Sustainability Reporting Framework in developing their own codes of conduct;

Recalling that the 2003 exchange of letters between the GRI and the OECD Secretary-General acknowledged the existence of significant synergies and complementarities between the two instruments and the desirability of exploiting them further[3]; and that a public document was jointly developed in 2004[4] by the GRI and OECD highlighting these complementarities and providing guidance on how to make use of their synergies;

Noting that the agreed terms of reference for the update of the OECD MNE Guidelines in 2010-2011 [*DAF/INV(2010)5/FINAL*] foresee the involvement of the GRI , notably in regard to the disclosure provisions of the OECD MNE Guidelines, that the GRI has already provided views on the update of the OECD MNE Guidelines and noting that the GRI will be involved in the implementation and dissemination of the updated OECD MNE Guidelines;

Considering that there are related areas in which closer cooperation between the OECD and GRI would be beneficial, including work on responsible supply chain management;

Agree that it is in the mutual interest of the OECD and GRI (hereafter individually referred to as "a Party" and collectively "the Parties") to establish the following Memorandum of Understanding (hereafter referred to as "the MOU"):

Article I

Purpose and Scope

The purpose of the MOU is to establish a programme of cooperation for an initial period of three years to promote greater understanding, visibility and use of the OECD MNE Guidelines and the GRI Sustainability Reporting Framework, to exploit the synergies and complementarities between the two instruments and to develop cooperation between the Parties in other areas of mutual interest. Any activities conducted under this MOU are subject to their inclusion in the Parties' respective programme of work and budget and shall be carried out in accordance with their respective rules and practices.

Article II

Content of the Cooperation Programme

Subject to resource availability, each Party will take appropriate opportunities to support and profile the work of the other Party and encourage its use. The main initiatives or activities envisaged under the cooperation programme include:

On the part of the GRI:

- strengthening efforts to encourage MNEs to refer to the OECD MNE Guidelines in responsible business conduct and sustainability reporting;
- strengthening efforts to encourage MNEs to report their use of the OECD MNE Guidelines using the GRI Sustainability Reporting Framework;
- providing of information, generic support and advice to National Contact Points (NCPs) on the GRI Sustainability Reporting Framework and the role that the Framework can play in promoting and facilitating the effective use of the Guidelines;
- providing of input to the update of the OECD MNE Guidelines;

- profiling of the OECD MNE Guidelines on the GRI website as well as in GRI events, training tools and publications;
- inviting the OECD to be represented in the GRI Governmental Advisory Group, composed of high-level representatives from OECD and non-OECD countries and international governmental organisations;
- providing input on other OECD initiatives of mutual interest including the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas; and
- inviting the OECD to participate in other GRI activities or events of mutual interest including the meetings of the GRI Supply Chain Working Group;

On the OECD side:

- encouraging adhering governments to the OECD MNE Guidelines and NCPs to promote where appropriate and in conformity with the Commentary on the OECD MNE Guidelines, the use of the GRI Sustainability Reporting Framework in relation to disclosure and reporting on the implementation of the OECD Guidelines;
- inviting the GRI to report to the Working Party of the Investment Committee and/or to NCPs as appropriate on trends in sustainability reporting and on the use of the OECD MNE Guidelines in practice;
- actively engaging the GRI in the consultation process on the update of the OECD MNE Guidelines;
- inviting the GRI to the OECD Annual Corporate Responsibility Roundtables;
- profiling as appropriate the GRI Sustainability Reporting Framework on the OECD website as well as in OECD corporate responsibility events and publications;
- referencing the GRI Sustainability Reporting Framework, as appropriate, in other OECD initiatives such as the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas; and
- inviting the GRI to participate in other OECD activities and events of mutual interest including the meetings of the OECD-hosted Working Group on Due Diligence in the Mining and Minerals Sector.

Article III

Status of the MOU

For legal purposes nothing in this MOU shall be construed as creating a joint venture, an agency relationship or a legal partnership between the Parties. No provision of this MOU shall be construed so as to in any way interfere with the respective decision-making processes of the Parties with regard to their own respective work and operation. Each Party will bear its own costs incurred in the implementation of this MOU. This MOU does not represent a commitment of funds on the part of either Party.

Article IV

Consultations

Each Party accepts to enter promptly into consultations at the request of the other Party with respect to any matter arising in relation to this MOU.

Article V

Institutional Framework

After the signature of this MOU, each Party will appoint a staff member who will act as focal point for the implementation of the MOU. The focal point will ensure the implementation of the cooperation programme and facilitate the exchange of information between the Parties on matters of common interest.

Article VI

Intellectual Property Rights

The Parties recognise the importance of protecting and respecting intellectual property rights. The OECD will retain all intellectual property rights relating to the OECD MNE Guidelines and other OECD instruments while the GRI will retain all intellectual property rights relating to the GRI Sustainability Reporting Framework.

Article VII

Implementation, Renewal, Amendment and Termination.

This MOU is concluded for a period of three years starting at the date of its signature by both Parties. It may be renewed by mutual written agreement between the Parties.

This MOU may be amended in writing by mutual agreement of the Parties. It may be terminated by either Party subject to three months' written notice.

Signed in two original copies in English.

Signed on behalf of OECD		Signed on behalf of GRI	
Richard Boucher		Mervyn King	
Deputy Secretary-General,		Chairman of the Board of Directors	
Organisation for Economic Co-operation and Development		Global Reporting Initiative	
Date	13 December 2010	Date	13 December 2010

Notes

1. The text of the OECD MNE Guidelines can be found at *www.oecd.org/daf/investment/guidelines*.
2. Information on the GRI Sustainability Reporting Framework and the latest version of the GRI Guidelines (the G3 Guidelines) can be found at: *http://www.globalreporting.org/ReportingFramework*.
3. Reproduced in 2003 Annual Report on the OECD Guidelines for Multinational Enterprises, pp 81-84.
4. Available at *http://www.oecd.org/dataoecd/25/26/35150230.pdf*.

ANNEX I.4

Memorandum of Understanding between the OECD and the International Conference on the Great Lakes Region (ICGLR)

Background

i) *OECD Initiatives*

The OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter "OECD Due Diligence Guidance"), developed as part of the OECD Pilot Project on Due Diligence in the Mining and Minerals Sector (hereafter "OECD Pilot Project"), is intended to clarify the responsibilities of the private sector in conflict-affected and high-risk areas and provide practical guidance on how enterprises can meet such responsibilities.

The OECD Due Diligence Guidance is based on and is consistent with the OECD Guidelines for Multinational Enterprises, which constitute recommendations addressed by governments to multinational enterprises setting out voluntary standards and principles for responsible business conduct.

The OECD Due Diligence Guidance represents the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected and high-risk areas. The objective of this initiative is to cultivate transparent and sustainable mineral supply chains that enable countries to generate income, growth and prosperity, sustain livelihoods and foster local development through the extraction and trade of their mineral resources.

ii) *ICGLR Initiative against the Illegal exploitation of Natural Resources*

The ICGLR Pact on Security, Stability and Development in the Great Lakes Region (hereafter "ICGLR Pact"), signed by the eleven Heads of State of the ICGLR on 15 December 2006, recognises the illegal exploitation of natural resources in the Great Lakes Region as a serious source of insecurity, instability and conflict as well as a major obstacle to development. The Pact includes, as an integral part, a Protocol against the Illegal Exploitation of Natural Resources.

The ICGLR has launched a Regional Initiative against the Illegal Exploitation of Natural Resources (hereafter "ICGLR Regional Initiative") as part of the implementation of the ICGLR Pact and the above-mentioned Protocol.

iii) *OECD and ICGLR Synergies and Complementarities*

The OECD Pilot Project and the ICGLR Regional Initiative are based on the common objective of preventing the extraction and trade in minerals from being a source of conflict and insecurity, while creating the enabling conditions for a positive contribution by the private sector to sustainable development.

The 2009 G8 Leaders Declaration at L'Aquila has welcomed the efforts of the ICGLR to tackle illegal exploitation of natural resources and encouraged the OECD and other partners to work with the ICGLR and engage with stakeholders to develop practical guidance for business operating in conflict-affected and high-risk areas.

In 2009, there was an exchange between the ICGLR Executive Secretary and the OECD Secretary-General, acknowledging the existence of significant synergies and complementarities between the ICGLR Regional Initiative and the OECD Pilot Project and the desirability of exploring further possibilities for cooperation.

Since that time, the ICGLR has become a member of the OECD-hosted working group on due diligence in the mining and minerals sector and has actively participated in the development of the OECD Due Diligence Guidance.

The OECD and the ICGLR recognised the synergies and complementarities existing between the OECD Due Diligence Guidance and the six tools developed by the ICGLR Regional Initiative at the joint ICGLR-OECD Consultation on Responsible Supply Chain Management of Conflict Minerals held in Nairobi on 29-30 September 2010;

The outcome document of the meeting of ICGLR ministers in charge of mineral resources, issued on 1 October 2010, recognising the complementarities of the OECD Due Diligence Guidance and the tools of the ICGLR Regional Initiative, recommends that the Special Summit of ICGLR Heads of State should adopt the OECD Due Diligence Guidance as the 7th tool of the ICGLR Regional Initiative; and that the ICGLR and OECD should conclude a Memorandum of Understanding in order to establish a framework for cooperation.

In light of this background, the OECD and ICGLR (hereafter individually referred to as "a Party" and collectively "the Parties") agree that it is in their mutual interest to establish the following Memorandum of Understanding (hereafter referred to as "the MOU"):

Article I

Purpose and Scope

The purpose of the MOU is to establish a programme of cooperation for an initial period of 2 years to promote the understanding, visibility and use of the OECD Due Diligence Guidance and the ICGLR Regional Initiative, to take advantage of the synergies and complementarities between the two initiatives and to develop cooperation between the Parties in areas of mutual interest.

Article II

Content of the Cooperation Programme

Subject to resource availability, each Party will take appropriate opportunities to support and profile the work of the other Party and encourage its use. The main initiatives or activities envisaged under the cooperation programme include:

On the part of the ICGLR:

- integrating the OECD Due Diligence Guidance into the six tools of the ICGLR Regional Initiative;
- participating in and cooperating with the OECD during the implementation phase of the OECD Due Diligence Guidance including in the preparation of reports on implementation;
- raising awareness and encouraging relevant companies and actors operating in mineral extraction and trade in the Great Lakes Region to implement the OECD Due Diligence Guidance;
- profiling of the OECD Due Diligence Guidance on the ICGLR website as well as in relevant ICGLR events, tools and publications;
- inviting the OECD to be represented in meetings of the ICGLR Regional Initiative, composed of high-level representatives from ICGLR member countries;
- inviting the OECD to participate in other ICGLR activities or events of mutual interest.

On the OECD side:

- inviting the ICGLR to participate in future work of the OECD Pilot Project, including, *inter alia*, the implementation of the OECD Due Diligence Guidance and the development of a Supplement on Gold and/or Other Precious Metals;
- exploring, in cooperation with the ICGLR, the feasibility of an institutional mechanism to support due diligence by companies, building upon the audit mechanism to be set up under the ICGLR Regional Certification Mechanism;
- profiling of the tools of the ICGLR Regional Initiative on the website of the OECD Pilot Project as well as in related OECD events, tools and publications;
- inviting the ICGLR to participate in other OECD activities or events of mutual interest related to the purpose of the MOU, including, *inter alia*, the OECD Annual Corporate Responsibility Roundtables;
- involving the ICGLR in OECD work on global drivers of conflict and fragility including through the DAC International Network on Conflict and Fragility.

Article III

Status of the MOU

For legal purposes, nothing in this MOU shall be construed as creating a joint venture, an agency relationship or a legal partnership between the Parties. No provision of this MOU shall be construed so as to in any way interfere with the respective decision-making processes of the Parties with regard to their own respective work and operation. Each Party will bear its own costs incurred in the implementation of this MOU. This MOU does not represent a commitment of funds on the part of either Party.

Any activities conducted under this MOU are subject to their inclusion in the Parties' respective programme of work and budget and shall be carried out in accordance with their respective rules and practices.

Article IV

Consultations

Each Party accepts to enter promptly into consultations at the request of the other Party with respect to any matter arising in relation to this MOU.

Article V

Institutional Framework

After the signature of this MOU, each Party will appoint a staff member who will act as focal point for the implementation of the MOU. The focal point will ensure the implementation of the cooperation programme and facilitate the exchange of information between the Parties on matters of common interest.

Article VI

Intellectual Property Rights

The Parties recognise the importance of protecting and respecting intellectual property rights. Each Party will retain all intellectual property rights on its respective work.

Article VII

Implementation, Renewal, Amendment and Termination

This MOU is concluded for a period of two years starting from the date of its signature by both Parties. It may be renewed by mutual written agreement between the Parties.

This MOU may be amended in writing by mutual agreement of the Parties. It may be terminated by either Party subject to three months' written notice.

Signed in two original copies in English.

Signed on behalf of OECD	Signed on behalf of ICGLR
Mr Richard Boucher	Ambassador Liberata Mulamula
Deputy Secretary-General Organisation for Economic	Executive Secretary, International Conference on the Great Lakes Region
Co-operation and Development	
Date 03 December 2010	Date 13 December 2010

PART II

2011 OECD Roundtable on Corporate Responsibility

PART II

Chapter 1

Acknowledgements

National Contact Points (NCPs) and the OECD Investment Committee wish to thank invited participants from government, business, labour, international organisations and non-governmental organisations, particularly the lead speakers and discussants, who actively contributed to the OECD Roundtable on Corporate Responsibility, held in Paris on 29 June 2011 in conjunction with the 11th meeting of the NCPs. Special appreciation goes to their support to the effective implementation of the 2011 Update of the OECD Guidelines for Multinational Enterprises.

Motoko Aizawa, Sustainability Advisor, Business Advisory Services, International Finance Corporation

Shirley van Buiren, Head, Corporate Accountability Working Group, Transparency International, Germany

Carla Coletti, Chair, Trade Union Advisory Committee Working Group on Global Trade and Investment

Kirstine Drew, Trade Union Advisory Committee to the OECD

Conrad Eckenschwiller, Managing Director, UN Global Compact, France

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Paul Lidehäll, International Secretary, Swedish Confederation of Professional Associations

Serena Lillywhite, Mining Advisor, Oxfam Australia

Ricarda McFalls, Chief of Multinational Enterprise Program, International Labour Organisation

Isabela Moori de Andrade, Brazilian National Contact Point

Susan Morgan, Executive Director, Global Network Initiative

Roel Nieuwenkamp, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands, and the Chair of the Update

Claire Methven O'Brien, Danish Institute for Human Rights

Joris Oldenziel, Senior Researcher, SOMO (Centre for Research on Multinational Corporations), and Coordinator, OECD Watch

Isabella Pagotto, Manager, Government Relations and International Organisations, Global Reporting Initiative

Julian Paisey, Policy Advisor, Export Credits Division, OECD

Winand Quaedvlieg, Chair, BIAC Multinational Enterprises Committee

Victor Ricco, Centre for Human Rights and Environment (CEDHA)

Manfred Schekulin, Director, Export and Investment Policy, Austrian Federal Ministry for Economy, Family and Youth, Chair, OECD Investment Committee

Brett Solomon, Executive Director, Access

Lisa Emelia Svensson, Sweden's Ambassador for Corporate Social Responsibility, Swedish National Contact Point

Yanti Triwadiantini, Executive Director, Indonesia Business Links

Lene Wendland, Special Advisor, Office of the High Commissioner for Human Rights

Lucia van Westerlaak, Policy Advisor, Dutch Trade Union Federation

PART II

Chapter 2

Key Findings from the 2011 Roundtable on Corporate Responsibility

The *OECD Guidelines for Multinational Enterprises* (the Guidelines) are the most comprehensive voluntary code of business conduct developed by governments in existence today which should be observed by multinational enterprises wherever they operate in the world. The Guidelines aim to ensure that the operations of multinational 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 made by multinational enterprises to sustainable development.

The Guidelines contain detailed recommendations on human rights, supply chain management, labour relations, environment, combating bribery, bribe solicitation and extortion, consumer interests, competition and taxation. The Guidelines are known for their unique implementation mechanism, the "specific instances" facility, according to which National Contact Points (NCPs) – the government-assigned bodies responsible for the implementation of the Guidelines – can offer their good offices for resolving disputes arising from alleged non-observance of the Guidelines.

The OECD has organised an annual Roundtable on Corporate Responsibility since 2001, in conjunction with the NCP Meeting. The purpose of the Roundtable is to assist NCPs in performing their tasks, taking into account emerging issues and relevant policy developments in corporate responsibility. This year's Roundtable, held on 29 June 2011 in Paris, focused on the implementation of the 2011 Update of the Guidelines. The updated Guidelines, a result of an intense one-year update process which benefitted from an extensive consultation process with stakeholders, were adopted by the 42 adhering governments[1] at the OECD Ministerial Meeting of 25 May 2011. This is the fifth time[2] the Guidelines have been revised to keep up with changes in the landscape for international investment and to ensure the continuing role of the Guidelines as a leading international instrument for the promotion of responsible business conduct in a global context.

The main achievements of the 2011 Update of the Guidelines include:

- A new human rights chapter, consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.
- A new comprehensive approach to due diligence and responsible supply chain management.
- Important changes in many specialised chapters, such as Employment and Industrial Relations; Combating Bribery, Bribe Solicitation and Extortion; Environment; Consumer Interests; Disclosure; and Taxation.
- Clearer and reinforced procedural guidance which strengthens the role of NCPs, improves their performance and fosters functional equivalence.
- Proactive agenda aimed at helping enterprises and other stakeholders address emerging changes in the area of corporate responsibility

The Roundtable discussion was divided in two parts. Part I focused on the main improvements of the 2011 Update and Part II focused on their implementation. Four sessions were held on the following topics:

- New elements in the substantive chapters of the updated Guidelines;
- New elements in the implementation procedures of the Guidelines;
- Supporting the Human Rights chapter; and
- The Proactive Agenda: Stakeholder, Partner Organisation and Emerging Economies perspectives.

The purpose of the discussion was to brainstorm and seek substantive inputs from business, labour, non-governmental organisations, international organisations, non-adhering governments and academia on ways to put the updated Guidelines to work.

The Roundtable was attended by over 200 participants representing 45 countries. Each session consisted of speeches by lead speakers followed by a discussion with a panel of participants from government, business, labour, international organisations and non-governmental organisations. The following summary of the discussions 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. New elements in the substantive chapters of the updated Guidelines

1.1 A Timely Convergence of International Corporate Responsibility Principles

The discussion on the update of the Guidelines began with the general observation that this past year has witnessed a unique convergence of principles in the corporate responsibility field. In addition to the successful update of the Guidelines, the unanimous endorsement by the United Nations Human Rights Council of a new set of Guiding Principles for Business and Human Rights developed by Professor John Ruggie, the update of the International Finance Corporation's Sustainability Framework and the adoption of the ISO 2600: 2010 Guidance on Social Responsibility, all show that a new global agenda for corporate responsibility has emerged based on a broadly shared view that responsible business conduct is no longer a matter of voluntary goodwill, but that, at the very least, a responsibility exists not to cause or actively contribute to the detriment of the economic, environmental and social state of the host economies. This responsibility is independent of what governments and/or private stakeholders do. The Guidelines, as the most comprehensive voluntary code of conduct developed by governments in existence today, are uniquely positioned to further this global agenda. The 2011 Update of the Guidelines could not have been timelier.

1.2 Important Substantive Improvements

There was a general agreement that the 2011 Update has brought important changes to the coverage and application of the Guidelines. A critical success factor for this positive outcome was *stakeholder engagement*, especially involvement by the Advisory Group to the Chair of the Update Process that included representatives of Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and OECD Watch. In addition, consultations with experts and relevant OECD Committees on topics such as taxation, bribery, environment and consumer interests have been crucial in ensuring that the updated Guidelines are a relevant instrument to face modern challenges of the corporate responsibility field.

1.3 New Human Rights Chapter

Turning to the substantive issues, the most important result of the 2011 Update of the Guidelines has been the inclusion of a whole new chapter on human rights. The Guidelines, while the most comprehensive voluntary code of business conduct developed by governments in existence, only had a succinct general recommendation on human rights prior to the update.

The substantive elements of the Human Rights chapter are rooted in a three-prong approach to respecting human rights. First, the enterprises are called upon to respect human rights, meaning they should avoid infringing on human rights of others and should address adverse human rights impacts with which they are involved. Second, within the context of their own activities, enterprises should avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. Third, enterprises should seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

Enterprises should also carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts. This element is rooted in the risk-management business principle and its relevance is strongly anchored in its flexibility, a particularly important factor for the effective implementation of the chapter.

The unanimous UN Human Rights Council endorsement of the Guiding Principles on Business and Human Rights developed by Professor John Ruggie, on which the Guidelines Human Rights chapter is based on, shows an unprecedented global consensus on an issue that, until recently, was polarizing and divisive. The inclusion of the Human Rights chapter in the Guidelines marks an important development toward consolidation of a global standard for corporate responsibility and accountability for human rights. This consolidated emerging standard will not only provide clarity to businesses about their human rights responsibilities, but is also expected to ease the challenges of implementation, which is especially important.

1.4 Supply Chain and Due Diligence

The US Secretary of State, Hillary Clinton, at the adoption of the 2011 Update, remarked that "due diligence, while not always easy, is absolutely essential." It was highlighted that the due diligence approach and supply chain logic that resulted from the discussions on the Human Rights chapter have also been applied to other issues covered by the Guidelines (for example, environment, corruption and employment and industrial relations) making the operational principle of due diligence one of the major substantive improvements in the updated Guidelines.

It was confirmed that this due diligence/supply chain approach also extends the scope of the application of the Guidelines from investment to business relationships, including suppliers, agents and franchises and makes due diligence a part of the overall business risk-management tools. The updated Guidelines recommend that enterprises should carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed. They should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. In addition, they should seek to

prevent or mitigate adverse impacts where they have not contributed to those impacts, when the impacts are nevertheless directly linked to their operations, products or services by a business relationship.

1.5 Stakeholder Engagement and Decent Wages

It was suggested that among many substantive additions to the Guidelines, two areas are likely to be tested. First, the updated Guidelines call for enterprises to engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account when it comes to planning projects or other activities that may significantly impact them. This concept originates from the extractive industry and will from now on be applicable to other sectors. Second, the updated Guidelines call for enterprises to provide the best possible wages, benefits and conditions of work in developing countries where comparable employers may not exist. This provision is consistent with the International Labour Organisation standards but what is its practical meaning under the Guidelines remains to be defined.

1.6 Internet Freedom

The new provision that encourages enterprises to cooperate in promoting internet freedom is not only one the most innovative provisions of the Guidelines, but is also new in comparison with other corporate responsibility instruments. Its underlying rationale is to ensure that the fundamental rights that are protected offline (for example, freedom of expression, including the freedom to seek information and freedom of association and assembly) are also protected online. The endorsement of these same principles by the UN Special Rapporteur in his 2011 Report to the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression was welcomed. The new provision in the Guidelines is clearly a timely contribution on a topic relevant in the global context. Recent events in the Middle East and North Africa region were recalled, noting that while the social media played an important role in the organisation of the protests, it was only a tool and not the source of discontent. Therefore, an in-depth constructive multi-stakeholder collaboration across the whole supply and value chain of the Information, Communication and Technology (ICT) industries was called for in order to clarify how to protect internet freedom. It was also underlined that this should be a multi-stakeholder process and be based on voluntary codes of conduct.

1.7 Stakeholder Reactions

Overall, the stakeholders agreed that the update process has been successful and that the updated Guidelines constitute a significant step forward in the corporate responsibility field.

Business representatives welcomed the new substantive elements introduced in the updated Guidelines because they reflect what enterprises already do in practice. The careful wording of the new provisions and the qualifications they are subject to, in addition to the non-binding character of the Guidelines, allows for flexibility in interpretation and application which is essential to business. Business representatives also welcomed the clarification provided by new provision on conflicting requirements (especially relevant for internet freedom), the inclusion of the general due diligence provision without formal requirements and non-applicability to all chapters, and the limitation of the responsibility to avoid adverse impacts in the supply chain to situations where there is a degree of direct

involvement by the company. As far as the third degree of involvement (direct link by a business relationship) is concerned, it was noted that businesses will need practical guidance on what situations would fall under this description. A point of clarification was also raised on the timeframe for the implementation of the Guidelines, especially since the UN Guiding Principles see implementation as a process.[3]

Labour representatives welcomed new provisions in the Guidelines because, in their view, they strengthen the Guidelines, making them a more modern, eloquent, authoritative and solid instrument. The introduction of the Human Rights chapter, the extension to the scope of application of the Guidelines to supply chains, and the strengthening of the chapter on Employment and Labour Relations and the clear link to human rights were considered to be major improvements. However, these improvements will require significant work in order to be implemented. For example, there has to be a clear understanding of the concept of due diligence, and this will require guidance on how to concretely be put into practice, something both NCPs and companies need. Another example is the new decent wages provision, which now needs to be made a usable provision. Recognition was made that the ILO has already done significant work in this field and that the OECD should draw on it in developing further guidance on the meaning of this provision. It was also suggested that continuous stakeholder involvement would be highly desirable in this regard. As to the initiative on promoting human rights through internet freedom, labour representatives indicated that they are particularly interested in knowing what space will be given to labour rights in this area.

Non-governmental organisations (NGOs) representatives also welcomed the above mentioned updates in the Guidelines and took the opportunity to point out a few others that have not been mentioned. The new subtitle of the Guidelines was recognized as a useful reminder of the global applicability of the Guidelines and the relocation of the commentaries under each chapter in the Guidelines a real improvement for all the users of Guidelines. NGOs representatives also recalled that even though the Guidelines are voluntary, adhering countries have a binding commitment to implement them, a unique feature of the Guidelines as compared to other corporate responsibility instruments. The new recommendation to provide adequate resources for NCPs was seen as a good start for them to function effectively. In addition, they considered that the new recommendation to reduce greenhouse gas emissions, the replacement of the term “employees” by “workers” to cover workers that are not directly employed by the company, and the new decent wages provision were bound to make the Guidelines a stronger and more relevant instrument. Finally, the opportunity given to NGOs representatives to request clarifications from the OECD Investment Committee on the Guidelines was well appreciated.

In addition, NGOs representatives commented on the subjects, which, in their view, were lacking from the update. They particularly concern the disclosure chapter, which, in their opinion, does not capture the progress made in the last ten years in the social and environmental reporting field. Also mentioned were the lack of requirement for country by country reporting, for example, on taxation and the lack of a provision on free, prior and informed consent of the indigenous peoples, a provision that has been included in the recently revised IFC performance standards.

2. New elements in the implementation procedures of the Guidelines

2.1 Helpful Procedural Improvements

Participants were given a detailed account of the new elements in the implementation procedures of the Guidelines and engaged in a general discussion on how to give them effect.

The Update introduced several procedural improvements. At the conceptual level, there are new criteria (impartiality, predictability, equitability and compatibility with the Guidelines) for guiding the structure and work of the NCPs and the expectation that parties involved in complaints must act in good faith. The specific instance mechanism has been also been made more transparent and predictable. There is additional guidance on issuing the results of specific instances regardless of the outcome of the proceeding and communicating these results to the OECD. On dealing with parallel proceedings, an area in which there has been much confusion previously, NCPs must explore the value added of offering good offices while at the same time making sure not to create serious prejudice on those parallel proceedings. There are indicative timeframes, inspired by the predictability criteria, which create an expectation to close a specific instance within the indicative timeframe or explain why that would not be possible. There is also greater support for mediation and assistance to enterprises to address emerging corporate responsibility challenges. The role of peer learning, through voluntary peer reviews or horizontal peer learning has been reinforced to foster functional equivalence among NCPs. In addition, stakeholders will be able to question NCPs fulfilment of their responsibilities when dealing with complaints.

2.2 A More Prominent Role for the OECD

The 2011 Update of the Guidelines has also strengthened the supporting role of the OECD. The promotion and implementation of commonly agreed voluntary standards, such as those contained in the Guidelines, comprise the core of the OECD work and are a part of its institutional DNA. In addition to its traditional role of "quality control" in the implementation of the Guidelines, meaning providing clarification when it was necessary, monitoring NCP activities, and convening NCPs and Corporate Responsibility Roundtables, the OECD will be expected to step up its efforts on peer learning, cooperation with international partners, outreach and moving beyond expressing expectation toward enterprises to offering them the assistance in dealing with dilemmas they face on the ground.

This strengthening of the back office functions of the OECD is welcomed. The focus in the corporate responsibility field has shifted from proliferation of standards to a convergence of standards and a development of a truly global approach to corporate responsibility. The Guidelines have a unique potential to become the leading instrument in this global approach through the alignment with other corporate responsibility instruments. Promotion of a global instrument requires a global approach and should not be left to adhering governments alone.

2.3 Opportunities and Challenges

The discussion focused on helping NCPs identify the opportunities and challenges of good implementation. It was again reiterated that it will be very important for the adhering governments to provide necessary resources to both the NCPs and the OECD in order to

ensure that the updated Guidelines are implemented the best way possible. Adhering countries were also called upon to examine the structure of their NCPs to ensure that the new conceptual criteria mentioned above are well embraced. The NCPs themselves were called upon to make their specific instance procedures as clear as possible, especially when it comes to protecting the position of the complainants. Labour representatives added that this procedural guidance should make sure that the initial frustration in dealing with a complaint is not seen as proof that consensus might not be possible, as consensus should be the result of a process. NCPs should facilitate that process. On a similar topic, one adhering country presented a hypothetical situation in which a complaint is brought against a company down the supply chain and the company pushes back against being responsible especially if their competitors are using the same suppliers. That same delegation thought that it would be very useful to have a tool kit which allowed the NCPs to clearly explain the philosophical principles underpinning the Guidelines.

The OECD was also called upon to provide as much technical assistance to the NCPs as possible, including providing accurate translation of the Guidelines, convening seminars, regional meetings and Roundtables, and partnering with other international organisations. Engaging with non-adhering emerging economies, particularly China and India, was presented as a priority, as emerging economies play a major role in MNE operations. It was especially mentioned that engagement with these economies should be done in the typical OECD way of presenting convincing arguments rather than imposing particular points of view.

Also discussed were the implications on the implementation of the Guidelines of potential differences in the demands and priorities of emerging/developing countries. Flexibility when dealing with issues where these views might diverge was called on. For example, on the application of due diligence on the supply chain and possible disengagement by MNEs in case of supplier non-observance of the Guidelines, disengagement should take place only as a last resort. A haste decision to disengage could have more negative impacts on local economies than continued engagement despite the non-observance of the Guidelines. Another issue that was brought up were possible protectionist measures sometimes disguised as standards, for example, labelling and certification schemes. A point was made that when these standards are unfair and unjustifiable, they call into question the comparative advantage of the country. Labour representatives cautioned that no new standards were invented in the Guidelines; however it was recognized that there are references in the Guidelines to OECD standards (ex. in the tax chapters), standards which are not considered international.

Overall, the stakeholders agreed that the procedural improvements are significant, but have cautioned that the effectiveness of the implementation will be the test. The greater role of the OECD in the implementation should make the implementation easier, but there are many challenged, as well as opportunities, ahead.

3. Supporting the Human Rights chapter

Cooperation between the OECD and institutions working on human rights, including national ones, can significantly support the work of the NCPs and the OECD in effective implementation of the Human Rights chapter. The OECD was encouraged to institutionalise or formalise the working relationship between the UN Human Rights Council and other human rights institutions.

3.1 Cooperation with the United Nations

The convergence of the principles in the Human Rights chapter with the UN Guiding Principles presents an opportunity for significant mutual support and learning on the part of the OECD and the UN. This partnership could be realized through the mandate of a new five member expert Working Group charged with the responsibility of promoting the effective and comprehensive dissemination and implementation of the Guiding Principles. There is a particular provision in the mandate charging the Working Group "to develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors…" Furthermore, an annual forum on business and human rights under the guidance of the Working Group has been established to "discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices." This annual forum shall be open to the participation of all relevant actors and bodies, including from business and civil society and inter-governmental organisations and it will offer the OECD and NCPs an opportunity to engage meaningfully with the UN.

The Office of the High Commissioner for Human Rights (OHCHR) is also developing tools to ensure coherence of approach in the dissemination of the materials on the Guiding Principles and to provide authoritative guidance for their implementation. Because of the convergence of the principles between the Guidelines and the Guiding Principles, the OECD and NCPs should be able to use these materials for their work. For example, the OHCHR is developing an interpretive guidance document for businesses, to be made available in early Fall 2011, which will essentially be a guide to implementation of the Responsibility to Protect, the second pillar, and the associated Access to Remedy pillar. This document will go beyond the commentary of the Guiding Principles and could be useful to NCPs when assessing if the Human Rights chapter of the Guidelines has been observed. Furthermore, the OECD and NCPs could also refer to independent experts and UN special thematic reports.

Another platform for engagement that might be helpful both generally and when it comes to specific instances could be engagement with the UN Global Compact and its network, as UN Global Compact has almost 90 national networks. Reaching out to these networks to seek a better understanding of issues at a local level, for example, might be useful. There are also many tools that the UN Global Compact local networks produce that might be of value to NCPs.

3.2 Cooperation with National Human Rights Institutions

National Human Rights Institutions (NHRIs) are independent, impartial and plural institutions that promote awareness, capacity-building, education, monitoring and dialogue on human rights. Established in 1993 by a recommendation of the UN General Assembly, NHRIs are charged with responsibility to promote and protect human rights on a national level. International Coordinating Committee (ICC) of NHRIs is global network of these institutions with members from all regions of the world.

35 out of 42 adhering countries to the Guidelines have NHRIs. NHRIs are ideally positioned to provide expertise, human rights education and opportunities for stakeholder engagement to the OECD and NCPs. On expertise, a major part of NHRIs work is monitoring

national laws, evaluating their consistency with regional and international human rights standards and reporting on this to relevant supervisory bodies. Therefore, NHRIs have significant legal expertise which in many contexts can be hard to come by. Additionally, NHRIs have a good handle on institutional frameworks, policies and processes at national level, including for example, labour law, social security, health and safety law. This expertise extends to thematic national issues, such as indigenous peoples rights, migrant workers, child labour, disability, environmentally issues impacting human rights, etc. On human rights education, NHRIs have a promotional mandate which notably includes professional education. Many NHRIs are skilled teachers with a lot experience in translating human rights mandates into practical guidance for a range of different audiences, which NCPs and the OECD might find useful. On stakeholder engagement, NHRIs have significant experience with dispute resolution, mediation, conciliation and many also have convening power. NCPs are encouraged to mobilize this capacity of NHRIs in their own activities.

The first concrete step for cooperation between NCPs and NHRIs could be mainstreaming mutual awareness which could be done without necessarily using too many additional resources. This could mean producing an NCP/NHRI information brochure, sharing contact information using web portals, referencing different materials in NCP/NHRIs events among others. Further thought should also be given to signing a Memorandum of Understanding (MoU) between the ICC and OECD. It is very important not to reinvent the wheel when it comes to tools and various materials already available. The possible challenges to the effective implementation of the Guidelines could be lack of resources and capacity on a national level. Perception of legitimacy is also very important; therefore, the OECD and NCPs have been called upon to increase transparency and stakeholder participation in the future human rights work, for example, by disclosing documents more frequently. NHRIs can help in all of these areas.

Priority for the OECD at this stage should be to develop a resource document on the references to other international instrument that were not included in the Guidelines during the update in close cooperation with stakeholders and to provide appropriate guidance on the application of due diligence for human rights.

4. Proactive agenda

Participants generally agreed that the inclusion of the proactive agenda, which aims to assist multinational enterprises in better meeting their corporate responsibility challenges in particular situations or circumstances, represents a definitive welcomed change of gear in the implementation of the Guidelines. Translating this agenda into concrete actions can be expected to take various forms. It could involve developing tailor-made guidance for particular sectors or activities (as envisaged for financial institutions[4]) or categories of firms (such as small and medium-sized enterprises). It could also entail strengthening ties with other leading initiatives for responsible business conduct and engaging with new ones. Additionally, work could be undertaken to intensify collaboration with relevant actors in emerging economies and other interested developing countries. This could imply a more active role for the OECD Investment Committee and the Secretariat and a greater use of OECD stakeholder networks.

This "brainstorming" session, divided in three parts, solicited views and concrete suggestions from business, trade unions, OECD Watch and other NGOs and partner organisations on the prioritisation and implementation of the proactive agenda.

4.1 Stakeholder Perspectives

Business representatives have not yet elaborated a blueprint for the proactive agenda, but business perspective is that the proactive agenda should be distinguished from the normal promotional activities for the Guidelines. The proactive agenda should be proactive and preventive – it should focus on one issue or one sector, but not on one company. The proactive agenda should look at the root cause of problems and then suggest adequate remedies and it should be stakeholder driven. The first projects in the proactive agenda should, in particular, be based on a clear business demand in order to create trust in this process.

Labour representatives also stated that the priority should be given to increasing the public profile of the Guidelines and that one way to do so is to collaborate with social partners and NGOs and to use as best possible their global networks. Three issues were identified that should be treated as priority topics for the proactive agenda: the supply chain and due diligence, the financial sector and decent wages. Regarding the financial sector, one additional issue to be considered is the balance between bank secrecy and transparency. Regarding decent wages, multi-stakeholder approach is required and partnership with ILO is highly recommended.

NGOs stated that an urgent priority in regard to unfinished business from the update is to work on a resource document and to make sure that it does identify relevant initiatives and widely recognised international standards. It would be critical that all key stakeholders are involved in the development of this document, which could significantly contribute to policy coherence. Second, it is critical that financial institution work progresses as planned. Third, supply chain and due diligence is another important area on which more thinking needs to be developed on. This applies to the finance sector work, but also to taxation and, in particular, country by country reporting. Equally, this work should be linked to a common understanding of guidance on decent wages and child labour. Fourth, more specific guidance is needed on sectors and regions where there are growing numbers of non-observance of the Guidelines. NGOs identified extractive sector at the top of the list, followed by agribusiness, palm oil, hydropower and investment in infrastructure. Fifth, in terms of policy coherence, it is important to link into new and emerging mechanisms, for example the Extractive Industry Transparency Initiative, in addition to linking to existing mechanism, such as the UN Global Compact. Furthermore, meaningful stakeholder consultations needs to be more clearly defined and should be based on existing best practices on what it means to meaningfully engage. Finally, on peer learning and peer review, NGOs recommend that it is ensured that relevant stakeholder, including for example, complainants, be included in the discussions.

On other topics discussed was the desirability and feasibility of developing operational guidance for companies on exercising due diligence to counteract the risks of bribery and corruption in all their business transactions and in their relations to third parties, private and public. Tackling bribery and corruption risks proactively would require addressing company behaviour in its entirety from the formulation of anti-bribery and corruption policies and management public commitment to these to company accountability for the effective implementation of the necessary measures to achieve the formulated aims.

4.2 Partner Organisation Perspectives

The International Labour Organisation (ILO) congratulated the OECD for successfully engaging a wide range of stakeholders in the update process and was pleased to see that worker and employer organisations have made significant commitments to take specific and proactive action in promoting the Guidelines. Policy coherence between the labour chapter of the Guidelines and the ILO MNE Declaration has been achieved and the coherence of these instruments is important. In addition to the four core labour standards contained in most corporate responsibility instruments, these two documents raise the bar to include many additional areas related to labour. Both documents are based on legitimate and authoritative standards and in this way provide much needed authoritative guidance on social responsibility helping address some of the challenges to be considered in setting a proactive agenda. The ILO would be prepared to actively contribute to the implementation of the proactive agenda through various means including the ILO Helpdesk for Business, NCP training and capacity building (such as that provided at the 2010 Annual NCP meeting), global and country-level action oriented research, regional events and dialogue (such as the ILO-OECD-ASEAN Conference which is currently planned for November 2011) and joint work with UN Global Compact networks. Bringing more business and other regions into the proactive agenda should be a priority of the proactive agenda.

The International Finance Corporation (IFC) also congratulated the OECD for completing the update of the Guidelines on time after a long process of consultation and recognized that the Guidelines constitute the most comprehensive expression of the multifaceted nature of responsible business operating in a global economy. Among the topics suggested for the proactive agenda are guidance to the financial sector, and guidance to SMEs on the application of the Guidelines. The Guidelines do not exclude multinational financial institutions for their application, but due to their different nature of the aspect in their role as enabler, how the Guidelines are to be implemented by the sector is not evident. Guidance should be available as soon as possible. A series of questions (page 222), were suggested for further consideration in order to help the Committee consider how the Guidelines apply to the financial sector. It would also be important to ensure clarity between the Guidelines and the Common Approaches that bind the OECD export credit agencies and which is currently under review as explained by the Secretariat. These export credit agencies are in close contact with the Equator banks, as they also undergo their process of updating the Equator Principles. Although there are many moving pieces, this is an opportune moment to collaborate with the relevant stakeholders for greater policy coherence for the financial sector.

The Global Reporting Initiative also offered its full support on the implementation of the proactive agenda. The priorities for future work are the development of a third tier resource document referencing other relevant initiative and instruments, more effective tools for measuring progress building on existing experience and tested instruments, increased cooperation between different international organisations and bodies, guidance on specific topics, sectors and activities. GRI is currently developing its fourth generation of Sustainability Reporting Guidelines with the aim to offer better guidance to mainstream reporting.

4.3 Emerging Economies Perspectives

An organisation promoting corporate citizenship and partnership for development in Indonesia spoke at the Roundtable on the state of corporate responsibility in Indonesia, an emerging economy. In the last decade, the corporate responsibility field grew in Indonesia from a low compliance and low enforcement field to include corporate law regulations and many public-private partnerships. Indonesia's business operating environment consists of MNEs, state-owned enterprises and Indonesian companies. A 2009 survey of 50 companies showed that majority of top management of these companies understands corporate responsibility and is involved directly in corporate responsibility initiatives because corporate responsibility is company priority and improves the bottom line.

The Indonesian private sector is concerned however that many international guidelines already exist with too many overlapping regulations which is seen as counter-productive. The challenges of corporate responsibility framework implementation in Indonesia are that there are varying degrees of understanding of what corporate responsibility constitutes among different stakeholders. The challenge is particularly overwhelming for SMEs. The main issues that Indonesia faces are corporate intervention in making of state policy, overlapping responsibilities between corporations and governments, weak law enforcements, and complex problems faced by communities.

5. Concluding remarks by the Chair

The Chair concluded the Roundtable by welcoming the fact that the event had provided a timely opportunity for a wide range of stakeholder to discuss the achievements of the 2011 Update and engage in early brainstorming on the best way to implement them. She assured participants that the various ideas that emerged from the Swedish Smorgasbord will be extremely valuable to the OECD Investment Committee. The Chair thanked all the speakers, discussants and other for making this Roundtable another success.

Notes

1. The 34 OECD Member countries and 8 non-Member countries: Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania. All non-adhering G20 countries were invited to participate in the update process on an equal footing and they made important contributions, as did participants in the regional consultations in Asia, Africa, Latin America and the Middle East and North Africa.
2. The Guidelines are a part of the 1976 OECD Declaration on International Investment and Multinational Enterprises. They have previously been revised in 1979, 1984, 1991 and 2000.
3. It has been informally agreed that the implementation of the revised Guidelines would be expected to take place within six months of the update. The NCPs agreed on this principle at their 11th Meeting and this point of clarification will be brought to the attention of the Investment Committee Working Party delegates at their next meeting in October 2011.
4. A Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas was adopted at the 2011 OECD Ministerial Council Meeting (*www.oecd.org/daf/investment/mining*).

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 (*http://www.oecd.org/daf/investment/mining*)

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 "Guiding Principles on Business and Human Rights: Implementing the United Nations Protect; Respect and Remedy Framework", A/HRC/17/31 (21 March 2011).

ANNEX 2.A1

Agenda for the Roundtable

	AGENDA
08:30-09:30	**Registration and coffee**
09:30-09:45	**Welcoming remarks by the Chair, Dr. Lisa Emelia Svensson**, Sweden's Ambassador for Corporate Social Responsibility, Swedish National Contact Point
	PART I: Main achievements of the 2011 Update
09:45-11:15	**SESSION I: New elements in the substantive chapters of the updated Guidelines**
09:45 **10:30**	**Speakers:** **Roel Nieuwenkamp**, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands, Chair of the Update **Lene Wendland**, Special Advisor, Office of the High Commissioner for Human Rights **Lisa Emelia Svensson**, Sweden's Ambassador for Corporate Social Responsibility, Swedish National Contact Point **Discussants:** **Winand Quaedvlieg**, Chair, BIAC Multinational Enterprises Committee **Carla Coletti**, Chair, TUAC Working Group on Global Trade and Investment **Joris Oldenziel**, Senior Researcher, SOMO (Centre for Research on Multinational Corporations), Co-ordinator, OECD Watch **Discussion**
11:15-12:15	**SESSION II: New elements in the implementation procedures of the Guidelines**
11:15 **11:35**	**Speakers:** **Roel Nieuwenkamp**, Director, Trade and Globalisation, Ministry of Economic Affairs, the Netherlands, Chair of the Update **Manfred Schekulin**, Director, Export and Investment Policy, Austrian Federal Ministry for Economy, Family and Youth, Chair, OECD Investment Committee **Discussants:** **Lucia van Westerlaak**, Policy Advisor, Dutch Trade Union Federation **Brett Solomon**, Executive Director, Access **Ricardo de Guerra de Araujo**, Head, OECD Bureau, Brazilian Embassy to France **Discussion**
	PART II: Implementation issues
12:15-13:00	**SESSION III: Supporting the Human Rights chapter**
This session will discuss how the co-operation between the OECD and institutions working on human rights, including national ones, can support the role of the Guidelines and National Contact Points. On 16 June 2011 the UN Human Rights Council endorsed Professor John Ruggie's new Guiding Principles on Business and Human Rights.	
12:15 **12:35**	**Speakers:** **Lene Wendland**, Special Advisor, Office of the High Commissioner for Human Rights **Claire Methven O'Brien**, Danish Institute for Human Rights **Discussants:** **Adam Greene**, BIAC Multinational Enterprises Committee **Kirstine Drew**, Trade Union Advisory Committee to the OECD **Victor Ricco**, Centre for Human Rights and Environment (CEDHA) **Discussion**
13:00-15:00	**Lunch**

AGENDA	
15:00-17:50	**SESSION IV: The Proactive Agenda**
15:00-16:00	**(a) Stakeholder Perspectives**
15:00 **15:30**	**Winand Quaedvlieg**, Chair, BIAC Multinational Enterprises Committee **Paul Lidehäll**, International Secretary, Swedish Confederation of Professional Associations **Serena Lillywhite**, Mining Advisor, Oxfam Australia **Shirley van Buiren**, Head, Corporate Accountability Working Group, Transparency International, Germany **Discussion**
16:00-17:00	**(b) Partner Organisation Perspectives**
16:00 **16:30**	**Susan Morgan**, Executive Director, Global Network Initiative **Ricarda McFalls**, Chief of Multinational Enterprise Program, ILO **Motoko Aizawa**, Sustainability Advisor, Business Advisory Services, IFC **Julian Paisey**, Policy Advisor, Export Credits Division, OECD **Conrad Eckenschwiller**, Managing Director, French UN Global Compact **Isabella Pagotto**, Manager, Government Relations and International Organisations, Global Reporting Initiative **Discussion**
17:00-17:50	**(c) Emerging Economies Perspectives**
17:00 **17:30**	**Yanti Triwadiantini**, Executive Director, Indonesia Business Links (IBL) **Isabela Moori de Andrade**, Brazilian National Contact Point **Discussion**
17:50-18:00	**Summing up by the Chair of the Roundtable**

ANNEX 2.A2

Contributions for Future Work

Statement by the Representative of the Office of the UN Human Rights Commissioner for human rights

Ms. Lene Wendland

Advisor on Business and Human rights

Office of the UN High Commissioner for Human Rights

Distinguished participants, ladies and gentlemen,

It is an honour for me to be able to address this OECD Roundtable on Corporate Responsibility. I am very grateful for the invitation which marks the first time the Office of the High Commissioner for Human Rights (OHCHR for short) has been requested to participate in discussions at the OECD on corporate responsibility.

Previous engagements between the two organisations have taken place in the context of the OECD's Development Assistance Committee (OECD-DAC), working to integrate human rights within development, aid, governance and poverty reduction policies.

Over the past six years, OECD's engagement with the international human rights machinery on corporate responsibility has been through the work of the Special Representative of the UN Secretary-General, Professor John Ruggie. Already before the UN Human Rights Council had endorsed the UN Guiding Principles on business and human rights, developed by Professor Ruggie, the OECD adopted an updated version of its Guidelines for Multinational Enterprises reflecting Professor Ruggie's work. The inclusion of a human rights chapter in the Guidelines marked an important development towards consolidation of a global standard for corporate responsibility and accountability with regards to human rights.

As you probably all know by now, two weeks ago in Geneva the Human Rights Council followed suit and unanimously endorsed the UN Guiding Principles for Business and Human Rights. It was a historic decision, marking the first time that the Council endorsed a normative document that had not been drafted through an inter-governmental process. The decision was also historic by being the first time an intergovernmental human rights body endorsed a normative document on the issue of business and human rights. The Guiding Principles now constitute an authoritative normative platform which include guidance regarding legal and policy measures that States, in compliance with their existing human rights obligations, can put in place to ensure corporate respect for human rights.

The consensus amongst all 47 members of the Council provides the UN Guiding Principles with strong political legitimacy in all parts of the world, widely beyond the range of OECD countries. The core sponsors of the Human Rights Council resolution were Norway, India, Argentina, Nigeria, and the Russian Federation, all of whom have been core sponsors of Professor Ruggie's mandate since it was established in 2005. In addition to the five core sponsors, a further 39 countries, both members and non-members of the Council, co-sponsored the resolution. These additional sponsors included countries such as USA, Brazil, Colombia, Mexico, the United Kingdom, Canada, Guatemala, Peru, Jordan and Indonesia. The members on the Council who joined the consensus but didn't co-sponsor the resolution included China, Malaysia, Saudi Arabia, Uganda and Chile, to name but a few. In other words countries, from all parts of the world, both developed and developing

countries, OECD and non-OECD countries, joined the consensus or showed their support as non-members by co-sponsoring the resolution.

This unprecedented global consensus on an issue that was until recently particularly polarizing and divisive even by UN standards offers a unique opportunity for both international and national actors to drive the push for change in how business manage and respond to human rights risks and challenges, including by ensuring that impacted individuals and communities have access to an effective remedy to address any harm. In the face of such widespread support at the United Nations, countries will find it difficult to say "this does not concern us" when challenged on their efforts to protect human rights in a corporate context; business enterprises operating anywhere have greater clarity about the nature of their human rights responsibilities and how to meet it, leaving less room for laggards claiming that human rights is not of concern to business; and civil society and impacted communities have a clearer basis on which to monitor, hold to account or engage with business about their human rights performance.

But as John Ruggie himself has said, the Guiding Principles constitute only the end of the beginning. It is only through their effective dissemination and implementation that the Guiding Principles can realize their potential and generate the change on the ground that John Ruggie and all those who have participated in the process over the past six years have been seeking.

For its part, the Human Rights Council decided to establish a five member expert working group to promote the effective and comprehensive dissemination and implementation of the Guiding Principles. The mandate of the Working Group include the following:

- To identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon;
- To provide support for efforts to promote capacity-building and the use of the Guiding Principles
- To conduct country visits (something John Ruggie was never formally mandated to do, even though he travelled extensively over the six years);
- To continue to explore options for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas.

Of particular interest to this meeting may be a provision in mandate of the working group "to develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors…". As it happens, the resolution does not refer to the OECD in the list of international bodies, but this does not mean that the OECD would be excluded. There would be plenty of scope in the mandate of the working group to establish relevant collaboration with the OECD as they go about working on the implementation of the updated Guidelines, including as they relate to human rights. One of the benefits of this alignment of standards in various fora is the possibility to join forces or collaborate to meet the challenges of implementation.

It may also be of interest to this meeting that the HRC resolution furthermore decided to establish an annual forum on business and human rights under the guidance of the Working Group to "discuss trends and challenges in the implementation of the Guiding

Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices."

This annual Forum shall be open to the participation of all relevant actors and bodies, including from business and civil society and intergovernmental organisations. It offers all of you here an opportunity to bring your own experiences of implementing the Guidelines to this UN Forum, to the benefit of both processes.

As for our own role, OHCHR also intends to take advantage of the opportunities created by the greater normative clarity of the roles and responsibilities of both States and business when it comes to business and human rights. As the UN's human rights advocate, OHCHR will seek to continue to provide guidance to both states and business on human rights, and work with all relevant actors to ensure the effective implementation of the Guiding Principles. The High Commissioner has also stressed in a recent address to the International Labour Conference that she wants to continue constructive collaboration with business on human rights, including through our field offices, as business actors move towards implementing their corporate responsibility to respect human rights.

We are currently working on an internal strategy on how best to maximize on the Guiding Principles and more generally enhance our role in the field of business and human rights. This strategy has not yet been finally approved, so I can't elaborate too much on the details. But engagement and collaboration with key organisations like the OECD will form an important part of the strategy, and I see today's meeting as a good beginning of a process of exploring how to work more closely together in the future.

Thank you.

17/4 Human rights and transnational corporations and other business enterprises

Adopted on 16th June 2011

General Assembly

A/HRC/RES/17/4

Distr.: General

Human Rights Council
Seventeenth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
Resolution adopted by the Human Rights Council[1]

The Human Rights Council,

Recalling Human Rights Council resolution 8/7 of 18 June 2008 and Commission on Human Rights resolution 2005/69 of 20 April 2005 on the issue of human rights and transnational corporations and other business enterprises,

Recalling also Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, and stressing that the mandate holder shall discharge his/her duties in accordance with those resolutions and the annexes thereto,

Stressing that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State,

Emphasizing that transnational corporations and other business enterprises have a responsibility to respect human rights,

Recognizing that proper regulation, including through national legislation, of transnational corporations and other business enterprises and their responsible operation can contribute to the promotion, protection and fulfillment of and respect for human rights and assist in channeling the benefits of business towards contributing to the enjoyment of human rights and fundamental freedoms,

Concerned that weak national legislation and implementation cannot effectively mitigate the negative impact of globalization on vulnerable economies, fully realize the benefits of globalization or derive maximally the benefits of activities of transnational corporations and other business enterprises, and that further efforts to bridge governance gaps at the national, regional and international levels are necessary,

Recognizing the importance of building the capacity of all actors to better manage challenges in the area of business and human rights,

1. *Welcomes* the work and contributions of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, and endorses the Guiding Principles on Business and Human Rights: Implementing the

United Nations "Protect, Respect and Remedy" Framework, as annexed to the report of the Special Representative;

2. *Also welcomes* the broad range of activities undertaken by the Special Representative in the fulfillment of his mandate, including in particular the comprehensive, transparent and inclusive consultations conducted with relevant and interested actors in all regions and the catalytic role he has played in generating greater shared understanding of business and human rights challenges among all stakeholders;

3. *Commends* the Special Representative for developing and raising awareness about the Framework based on three overarching principles of the duty of the State to protect against human rights abuses by, or involving, transnational corporations and other business enterprises, the corporate responsibility to respect all human rights, and the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms;

4. *Recognizes* the role of the Guiding Principles for the implementation of the Framework, on which further progress can be made, as well as guidance that will contribute to enhancing standards and practices with regard to business and human rights, and thereby contribute to a socially sustainable globalization, without foreclosing any other long-term development, including further enhancement of standards;

5. *Emphasizes* the importance of multi-stakeholder dialogue and analysis to maintain and build on the results achieved to date and to inform further deliberations of the Human Rights Council on business and human rights;

6. *Decides* to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises, consisting of five independent experts, of balanced geographical representation, for a period of three years, to be appointed by the Human Rights Council at its eighteenth session, and requests the Working Group:

(*a*) To promote the effective and comprehensive dissemination and implementation of the Guiding Principles;

(*b*) To identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders;

(*c*) To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights;

(*d*) To conduct country visits and to respond promptly to invitations from States;

(*e*) To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas;

(*f*) To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children;

(*g*) To work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, the treaty bodies and regional human rights organisations;

(*h*) To develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights, the Global Compact, the International Labour Organisation, the World Bank and its International Finance Corporation, the United Nations Development Programme and the International Organisation for Migration, as well as transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organisations and other regional and subregional international organisations;

(*i*) To guide the work of the Forum on Business and Human Rights established pursuant to paragraph 12 below;

(*j*) To report annually to the Human Rights Council and the General Assembly;

7. *Encourages* all Governments, relevant United Nations agencies, funds and programmes, treaty bodies, civil society actors, including non-governmental organisations, as well as the private sector to cooperate fully with the Working Group in the fulfillment of its mandate by, *inter alia* , responding favourably to visit requests by the Working Group;

8. *Invites* international and regional organisations to seek the views of the Working Group when formulating or developing relevant policies and instruments;

9. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all the assistance necessary to the Working Group for the effective fulfillment of its mandate;

10. *Welcomes* the important role of national human rights institutions established in accordance with the Paris Principles in relation to business and human rights, and encourages national human rights institutions to develop further their capacity to fulfill that role effectively, including with the support of the Office of the High Commissioner and in addressing all relevant actors;

11. *Requests* the Secretary-General to prepare a report on how the United Nations system as a whole, including programmes and funds and specialized agencies, can contribute to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles, addressing in particular how capacity-building of all relevant actors to this end can best be addressed within the United Nations system, to be presented to the Human Rights Council at its twenty-first session;

12. *Decides* to establish a Forum on Business and Human Rights under the guidance of the Working Group to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices;

13. *Also decides* that the Forum shall be open to the participation of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organisations, regional organisations and mechanisms in the field of human rights, national human rights institutions and other relevant bodies, transnational corporations and other business enterprises, business associations, labour unions,

academics and experts in the field of business and human rights, representatives of indigenous peoples and non-governmental organisations in consultative status with the Economic and Social Council; the Forum shall also be open to other non-governmental organisations whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations, including affected individuals and groups, based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, through an open and transparent accreditation procedure in accordance with the Rules of Procedure of the Human Rights Council;

14. *Further decides* that the Forum shall meet annually for two working days;

15. *Requests* the President of the Human Rights Council to appoint for each session, on the basis of regional rotation, and in consultation with regional groups, a chairperson of the Forum, nominated by members and observers of the Council; the chairperson serving in his/her personal capacity shall be responsible for the preparation of a summary of the discussion of the Forum, to be made available to the Working Group and all other participants of the Forum;

16. *Invites* the Working Group to include in its report reflections on the proceedings of the Forum and recommendations for future thematic subjects for consideration by the Human Rights Council;

17. *Requests* the Secretary-General and the High Commissioner to provide all the necessary support to facilitate, in a transparent manner, the convening of the Forum and the participation of relevant stakeholders from all regions in its meetings, giving particular attention to ensuring participation of affected individuals and communities;

18. *Decides* to continue consideration of this question in conformity with the annual programme of work of the Human Rights Council.

33rd meeting

16 June 2011

[Adopted without a vote.]

Statement by the Representative of the International Labour Organisation

Ms. Ricarda McFalls
Chief
Multinational Enterprises Programme
International Labour Organisation

Session IV: The Proactive Agenda – Views from Partner Organisations

I would like to congratulate the OECD on the successful update of the OECD Guidelines. In particular, I would like to recognize your success in both the **process** of the update and the **content** of the update:

Process: The investment committee successfully engaged a wide range of stakeholders in the process and was able to attract and retain enthusiastic participation throughout the past 18 months or so. The process also engaged some of our same constituents, worker and employer organizers into a rich discussion of the issues. I am pleased to see that worker and employer organisations have made significant commitments to take specific and proactive action in promoting the OECD Guidelines, further increasing awareness of the principles contained in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)!

Content: I am delighted by what was achieved in aligning policy coherence between the Labour Chapter of the Guidelines and the MNE Declaration, as the authoritative reference document. We see these two instruments as uniquely complimentary and the update continues to build on this. The MNE Declaration provides explicit guidance to States and Multinational Enterprises on their respective roles and responsibilities in enhancing the positive social and labour effects of the operations of MNEs. The MNE Declaration (more than 30 years old) in this way is inherently coherent with the UN Guiding Principles on Business and Human Rights that we have discussed extensively today.

The coherence of these instruments is important: In addition to the four core labour standards contained in most CSR Instruments, these two documents *raise the bar* to include many additional areas related to labour. (The MNE Declaration covers five broad areas with detailed guidance in the areas of: General Policies, Employment, Training, Conditions of Work and Life, and Industrial Relations). Is it really sufficient for *voluntary initiatives,* as is the case with most CSR initiatives, to only refer to core labour standards – (1) Freedom of Association and Collective Bargaining, (2) Discrimination, (3) Abolition of Child Labour, (4) Elimination of Forced Labour—when these are in fact the very *minimum* number of rights that should offer workers protection as a matter of law?.

The Labour Chapter of the Guidelines and the MNE Declaration are based on legitimate and authoritative standards and in this way provide much needed authoritative guidance on Social Responsibility helping to address some of the challenges to be considered in setting a proactive agenda.

Challenges:

1. The Corporate Social Responsibility landscape is increasingly complex, due to a proliferation of actors and instruments. The lexicon is further confusing as both public

and private initiatives may refer to "standards", "principles", and "codes of conduct" – without clear reference to the legitimacy of these rules. While voluntary initiatives can be useful in translating emerging social norms into practice, the proliferation of these instruments and actors may ultimately undermine their original good intentions. (Example: While understanding the importance of standards, a representative of small-holder growers in East Africa recently reported that as many as 15 different codes and standards requiring separate inspections could be imposed on a single small holder—total cost if fully implemented can equal the entire value of exports).

2. When taking proactive action, are we ***inclusive*** in setting our objectives? Increasingly, the South sees itself as recipients of standards set by the North. In some cases, there are suspicions that the North may be pushing an agenda with possible trade implications. Stakeholder engagement is as critical in the delivery agenda as in the instrument-design process.
3. Do we have clear objectives and do we set roles appropriately? As International Organisations, our focus is necessarily on delivering a public good and making the most of limited public resources entrusted to us. What is an appropriate division of labour between International Organisations and other actors for greatest efficiency? For example, standard-setting and policy-making is a key responsibility for International Organisation. However, NGOs, Civil Society and private consultants can play an important role as in providing guidance to business on effectively implementing these standards.

Opportunities for the proactive agenda:

1. The ILO Helpdesk for Business: On offer to all of you here, this is a free and confidential service that helps employers, workers and governments implement the principles of the MNE Declaration and other ILO standards. In addition to the assistance service, there is a dedicated website with a range of questions and answers from previous Helpdesk users. The website also provides easy navigation to key tools and resources addressed to a business audience. It is now available in English, French, and Spanish –- Translating this service into other important languages would be an excellent investment.
2. NCP Training and Capacity-Building: Last year at this same event, the ILO provided NCPs with introductory-level training on core labour principles. We were not invited to do so this year, but from feedback received, this should be considered at all future opportunities. Not only is there turnover in NCPs, but it provides an opportunity for participants to ask questions and understand more about how to interpret specific instances that they receive. (Funding for dedicated training should be considered by member states: ILO also makes such training available for a fee via ITC-ILO in Turin.)
3. Business School Curricula – The ILO is facilitating networks of business schools to develop materials for onward distribution for business schools which may not have capacity to develop curriculum that adopts recent developments in social responsibility. There is scope to expand the outreach and delivery of this material in fast emerging and developing countries with a high number of graduates entering the market.
4. Global and Country-level Action Oriented Research: There is a need to learn more about how CSR policies are affecting business behavior and delivering best social and development outcomes. What works and why? Country-level, action-oriented MNE research, as carried out by ILO, brings together key constituents to learn about the local environment and then develop joint plans for addressing priority needs. (Co-sharing

resources to expand and strengthen research would be a positive and urgent step in the proactive agenda).

5. Regional Events and Dialogue: Moving the roundtable and stakeholder discussions from Geneva and Paris to Asia, Africa, and Latin America is an immediate step towards addressing the inclusiveness concerns raised earlier. How are instruments applied in these regions? What are the implications of the Update for these regions? What instruments and policies are they developing locally or regionally? The ILO and OECD plan to work with ASEAN for a conference in late 2011. This effort follows up a similar event in 2009. Bringing in the other regions into the proactive agenda should be prioritized as soon as possible.
6. UN Global Compact: We work closely with the UN GLOBAL Compact and can consider how this network might be included in the follow-up activities planned.

Again, many thanks to the Investment Committee for this invitation and for playing an important role in bringing our agencies (and many of the institutions represented here) closer together through this update process.

Statement by the Representative of the International Finance Corporation

Ms. Motoko Aizawa
Corporation Sustainability Advisor
International Finance Corporation

IFC would like to congratulate OECD for completing its update of the MNE Guidelines on time after a long process of consultation. The MNE Guidelines constitute the most comprehensive expression of the multifaceted nature of responsible business operating in a global economy. As such it is very important that the document is up to date and reflects the fast-changing challenges that enterprises face today. The Guidelines address many of these challenges. It is particularly noteworthy that the Guidelines have a fuller expression of human rights, consistent with the Ruggie framework. This is a major achievement of this particular update.

I am pleased to be participating in this discussion on OECD's proactive agenda for the Guidelines so shortly after the completion of the update. Among the topics for the proactive agenda are guidance to the financial sector, and guidance to SMEs on the application of the Guidelines. This development is very welcome and timely for the following reasons:

Many of you are aware that IFC also completed its two and a half year process of updating the Performance Standards. The updated Standards, including new provisions related to climate change, business and human rights, supply chains, and free, prior, and informed consent, among other topics, were unanimously approved by 182 IFC member countries on May 12. We will start to implement the new Standards from January 1, 2012. It is coincidental that we also made commitments to provide guidance notes on the topic of financial intermediaries and SMEs. So the two institutions have a very clear reason for collaboration in the coming months. We look forward to ongoing exchange of ideas in these areas.

For the time being, I would like to share my observations on the Guidelines and their relevance to the financial sector. The updated Guidelines are intended to apply to the financial sector, but how they are to be implemented by the sector is not evident. In order to avoid creating confusion at the National Contact Point level, guidance should be available as soon as possible. I would like to pose a series of questions to illustrate this need.

1. Would the Guidelines benefit from clarifying what is meant by the financial sector?

The financial sector contains many players with different functions. Among those who provide debt finance include commercial banks, non-bank financial institutions, and even microfinance institutions. Among those who provide equity are institutional investors, public sector pension funds, and private equity. There are insurers and reinsurers. Beyond these are service providers who serve the sector, such as rating agencies. These entities could be state-owned, publicly held, privately held, or public-sector funded. Do all or some of them come under the scope of the Guidelines?

2. Would it be helpful to distinguish between the direct actions of the financial sector vs. actions that contribute to others'?

Financial institutions must manage their own business in a responsible manner. They must pay taxes, not engage in corrupt behaviors, and consider the environmental impacts of their direct operations, like accounting for their direct carbon footprint from their buildings and staff, just like anyone else. They also play the role of enabler and contributor by providing funds, and in the process may end up financing businesses that are not operated in a responsible manner. Do the Guidelines also apply to these indirect roles?

3. If the Guidelines apply to the indirect aspects of financial sector operations, is the concept of "use of proceeds" a useful one to draw a line?

The Equator Principles draw their line around project finance because in project finance the use of proceeds is known. This means that the financing proceeds can be traced to specific business activities and the underlying physical assets (this in turn would allow impact assessments with respect to such assets to be conducted). At IFC, our due diligence methodology is different depending on whether the use of IFC financing proceeds is known or not. This is a well-established concept in sustainable finance.

4. For the indirect activities, can the financial sector's responsibility under the Guidelines be discharged through good quality due diligence? What constitutes good due diligence? When does the financial sector bear responsibility for the borrower/investee's lack of responsibility despite good due diligence?

If use of proceeds is known and appropriate due diligence is carried out in relation to the proposed business activity to be financed, has the financial institution properly discharged its duty? Under what method should the financial institution carry out its due diligence? Will due diligence under the Equator Principles or the IFC Performance Standards (which the OECD Export Credit Agencies refer to when they are involved in private sector limited recourse projects via the OECD Common Approaches) be adequate as far as environmental and social due diligence is concerned? Should financial institutions carry out separate due diligence under the MNE Guidelines? In the event that the project or business activity financed is unsuccessful from an environmental or social sustainability perspective, should the financial institution be held accountable for those outcomes despite adequate due diligence?[2] What should trigger such linkage?

5. How should the financial sector demonstrate its due diligence, when the sector is constrained by a legal obligation to keep client information confidential?

The best way to demonstrate quality due diligence is disclosure. But banks are bound by rules of client confidentiality. How should they address this dilemma? With its new Sustainability Policy and Access to Information Policy, IFC will be putting out even more sustainability-related information in the public domain. But there are limits with this approach when it comes to client information. How can the financial sector as a whole move toward greater transparency?

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These questions are important because the financial sector should be clear about its expected conduct and responsibility under the Guidelines; in addition, the questions are relevant for NCPs when they address complaints brought under the Guidelines. Should a NCP always look into the responsibility of the financial institution backing an enterprise, when a complaint against the enterprise is filed? Should this link up happen only sometimes?

It is assumed here that the financial sector would be interested in these questions. However, it is also possible that the answers to these questions may be difficult to provide, or a consensus cannot be reached, in which case it may be preferable to leave the matter open and let the NCP exercise its discretion on a case-by-case basis. Either way, I think the financial sector deserves to be consulted on these matters.

As already stated, as we both move forward with implementation, we will have many issues in common. It would be beneficial for us to work together and exchange information. It would be particularly important that there is clarity between the MNE Guidelines and the Common Approaches that bind the OECD export credit agencies. These ECAs are in close contact with the Equator banks, as they also undergo their process of updating the Equator Principles. Although there are many moving pieces, this is an opportune moment to think about providing clarity and policy coherence for the financial sector. We look forward to an ongoing productive relationship with OECD.

Statement by the Representative of the Danish Institute for Human Rights

Claire Methven O'Brien
Adviser, Human Rights and Business Department
Danish Institute for Human Rights
Coordinator, International Coordinating Committee of National Human Rights Institutions
Working Group on Business and Human Rights

The Danish Institute for Human Rights, as Denmark's National Human Rights Institution, and in our capacity as Chair of the ICC Working Group on Business and Human Rights, welcomes the opportunity to take part in this important discussion of the new Human Rights chapter of the OECD Guidelines for Multinational Enterprises. This follows our active participation in the review process over the last year, including through the contribution of two written submissions, and the Informal Expert Meeting on Human Rights, held in January 2011.[3]

My remarks will address the potential role of National Human Rights Institutions (NHRIs) in supporting more effective implementation of the Guidelines' and, in particular, their new Human Rights chapter, in future.

1. National Human Rights Institutions: What are they?

In 1993, the United Nations' General Assembly approved the *Paris Principles on National Human Rights Institutions*, which recommend that all states should establish, under national law, independent bodies with responsibility to promote and protect human rights.[4] Under the *Paris Principles*, NHRIs engage in activities to promote understanding and awareness of human rights to all sectors of society, including the business community, as well as public bodies, communities and victims of human rights abuses.

Recognising that securing respect for human rights at domestic level requires that institutions responsible for promoting human rights are perceived to be independent and objective, the *Paris Principles* also require each state to ensure pluralist representation of civil society within NHRIs, and to give NHRIs powers to cooperate with government, but also with non-governmental organisations (NGOs), trade unions, professional organisations and others.

The International Coordinating Committee (ICC) of NHRIs is the worldwide association of NHRIs that have been evaluated – via a process of periodic peer review, supported by the Office of the High Commission for Human Rights (OHCHR) – as meeting Paris Principles requirements of independence, impartiality, pluralism, and having adequate powers and resources to fufil their institutional mandate.[5]

NHRIs are strongly anchored in the UN system. While OHCHR acts as a Secretariat to the ICC, NHRIs are also formally supported by the UN Development Programme[6] and regularly cooperate with agencies such as the International Labour Organisation, UNICEF, and international development agencies who recognize NHRIs as key actors in strengthening the rule of law and good governance, especially in post-conflict or other fragile state scenarios.

2. NHRIs: What role on business and human rights?

In its June 2011 Resolution (A/HRC/17/L.17/Rev.1) endorsing the Guiding Principles on Business and Human Rights, the UN Human Rights Council clearly affirmed that business and human rights issues are part of the *Paris Principles* mandate of NHRIs.[7]

In addition, the new UN Guiding Principles recognise that NHRIs perform functions that address all three pillars of the "protect, respect, remedy" framework[8]:

- Concerning the state duty to protect against corporate human rights abuses, NHRIs monitor and advise states on fulfilment of their obligations under international human rights law
- NHRIs can assist towards achievement of the corporate responsibility to respect, *e.g.* through information and guidance materials
- Some NHRIs provide a grievance mechanism for human rights abuses relating to corporate conducts, or certain categories of abuses (*e.g.* employment discrimination, labour disputes). NHRIs may also inform and support alleged victims in seeking a remedy for human rights abuses.

In the ICC's 2010 *Edinburgh Declaration*, NHRIs affirmed a collective commitment further to develop our capacity to engage with business and human rights issues and to take strategic action to address human rights abuses occurring in the corporate sector.[9]

3. OECD Guidelines: What role for NHRIs?

NHRIs are usually relevant institutional actors both in the **home and host countries** of multinational enterprises addressed by the OECD Guidelines:

- 35 out of the 42 adhering states to the OECD Guidelines for Multinational Enterprises have NHRIs[10]
- The majority of countries where MNE conduct has been raised via the specific instances procedure under the OECD Guidelines for Multinational Enterprises have an NHRI.

Here I highlight three capacities – which I will call the "Three Es" – that make NHRIs potentially important actors in promoting implementation of the OECD Guidelines for Multinational Enterprises and in achieving the standards set out in the Guidelines' new Human Rights chapter.

i) Human rights expertise

All NHRIs are required under the UN *Paris Principles* to monitor national laws and policies, to evaluate their consistency with national, regional international human rights standards, and to report on this to supervisory bodies. Accordingly, NHRIs may develop significant expertise on international human rights standards, as well as national regulations relevant to business, such as those in the fields of labour law, social security, planning and health and safety law. In line with local circumstances, individual NHRIs may additionally focus on issues such as indigenous peoples' rights, resettlement, migrant workers and human trafficking and child labour. The new UN Guiding Principles on Business and Human Rights recognize NHRIs functions as providers of independent expertise in highlighting, under the corporate responsibility to respect human rights, that companies may turn to NHRIs for advice regarding "issues of context".

ii) Human rights education

NHRIs' mandate under the *Paris Principles* includes promoting understanding and awareness of human rights, with professional education explicitly identified as part of this. Many NHRIs are skilled in teaching and communicating about human rights standards and their practical application in local contexts. A number of NHRIs have already developed guidance materials and tools that are specifically tailored to the risk profile and needs of business: for example, the Danish Institute for Human Rights' Quick Check and Arc of Human Rights, and the Australian Human Rights Commission's human rights briefings for industry sectors, including financial services and mining – both of which have been highlighted as areas of possible focus as regards the Proactive Agenda.

iii) Stakeholder engagement on business and human rights

Given their status as independent, pluralist institutions, NHRIs are actors with significant convening power across a range of stakeholders, in government, civil society and the private sector. As a result, NHRIs may be able to offer a platform for dialogue on important human rights issues, even if stakeholders are divided on underlying issues. NHRIs' experience in dispute resolution, including via mediation and conciliation, as well as complaints handling, equips them well for this role.

In addition, in the human rights and business field, many NHRIs are already engaged in outreach to relevant actors, including government departments and agencies, regional governance authorities, CSR initiatives, such as the UN Global Compact and Global Compact Local Networks, the Global Reporting Initiative, ISO, trade unions, NGOs at international and national levels, as well as individual companies and industry associations.

4. NHRI role in supporting the Guidelines: concrete proposals

The need for greater coordination at national level on business and human rights related policies and programmes, between organs of government as well as other entities, was a theme consistently highlighted by Prof. John Ruggie as UN Special Representative on Business and Human Rights. In the current financial climate, it is important to ensure that measures to improve awareness and effectiveness of the Guidelines which do not require significant additional resources are captured. Such measures include:

- NCPs / NHRIs Information Note: A short briefing should be developed for NCPs and NHRIs to inform these bodies of each other's respective functions, and to highlight synergies and areas of potential coordination. The ICC Working Group on Business and Human Rights is already preparing a similar briefing document for NHRIs and UNGC Local Networks.
- Websites of the OECD, adhering countries' NCPs, and NHRIs should publish each other's contact information.
- Information about NHRIs, and their functions and potential roles in both home and host countries of MNEs addressed by the Guidelines should be included in the third tier guidance to be produced under the Guidelines, and appropriate references to NHRIs should also be integrated into the parameters of NCP peer review process.
- The OECD should seek to engage the expertise of NHRIs in adhering countries to the Guidelines in further defining and executing the proactive agenda.

- The ICC and OECD should coordinate in relation to key upcoming events on business and human rights including the ICC's Programme of Regional Workshops for NHRIs on Business and Human Rights in 2011/2012, which will see events take place in Cameroon (September 2011), Korea, (October 2011), Guatemala (2012) and Europe (2012).
- To build NCP capacity to address business and human rights issues, the OECD should consider developing a short training programme specific to the mandate and functions of NCPs, which could be delivered regionally, or adapted for use as an e-learning tool. The Danish Institute for Human Rights, on behalf of the ICC Working Group on Human Rights, is currently developing such a course for NHRIs, which could serve as a useful model.
- Consideration should be given to formalizing strategic cooperation between the ICC and OECD via an Exchange of letters or Memorandum of Understanding, based on the precedents set by ICC-UNDP-OHCHR, and OECD-GRI-UNGC memoranda

With regard to the selection of priority issues for the development of additional guidance or supporting activities, within the OECD's programme to promote the Guidelines, I would make two points:

1. Both to avoid confusion and to conserve resources, care must be taken to refer wherever relevant to the extensive guidance materials on business and human rights which already exist: for example, the Voluntary Principles on Security and Human Rights Implementation Guidance Tool, ILO materials relating to Core Labour Standards and the Decent Work Agenda, and standards and tools developed to address the needs of specific industry sectors or risks.
2. Concerning thematic priorities, we would urge the need for attention to be given to indigenous peoples' rights, especially free, prior and informed consent, and also to risks relating to persons with disabilities, women and children, which have not been adequately explained to companies via the Guidelines or Commentary.

5. Transparency

Finally, I would like to highlight a potential obstacle to greater effectiveness of the Guidelines in future. The ICC welcomed the flexibility shown by the Chair in accommodating our participation in the Review process. However, it remains, overall, that procedures for consultation of affected stakeholders and access to documentation during the Review were inadequate. In part due to this, the Guidelines continue to have a very low profile amongst constituencies that need their protection the most, for example, indigenous peoples' organisations, and NGOs representing women, and persons with disabilities.

In the long run, this deficiency will impact negatively on the Guidelines' credibility and legitimacy. At the same time, it deprives NCPs and businesses of important sources of expertise and local knowledge that may be able to assist in problem-solving with respect to particular issues and situations. In line with the OECD's own core value of openness, and its practice in other areas, the OECD should therefore develop and adopt a full stakeholder consultation and disclosure policy, as a priority.

Thank you.

Amnesty International Public Statement on the 2011 Update of the Guidelines[11]

The 2010-11 Update of the OECD Guidelines for Multinational Enterprises has come to an end: the OECD must now turn into effective implementation.

The 2010-11 update of the OECD Guidelines for Multinational Enterprises (the Guidelines) has now come to an end. The revised text will be adopted during the OECD Ministerial Meeting of 25-26 May, 2011. Amnesty International made a sustained contribution to this process in the hope of achieving strong and comprehensive standards on the responsibilities of business enterprises with regards to human rights, and the organisation welcomes the important achievements of the update. At the same time, Amnesty International also wishes to express its disappointment in relation to a number of missed opportunities, and the resulting gaps and shortcomings in the revised text.

As a result of the review process, the Guidelines have a separate human rights chapter containing standards on the minimum expected conduct of enterprises with regards to human rights. This is largely in line with the Guiding Principles of the UN Special Representative on Business and Human Rights,[12] and constitutes a minimum basis for corporate conduct from which stronger, more comprehensive guidance should be elaborated. In this context, the revised Guidelines constitute a significant first step. The new text clearly and unambiguously establishes that enterprises should respect human rights wherever they operate. It explicitly states that enterprises should avoid causing or contributing to human rights abuses, and should put in place and implement adequate human rights due diligence processes to ensure this. Importantly, it is clear in the text that human rights due diligence is a differentiated process from standard corporate risk management processes, aimed at identifying and preventing or mitigating risks posed by the enterprise to the rights of individuals and communities, and not just to their profits. The text points at the International Bill of Human Rights and UN instruments dealing with the rights of Indigenous Peoples, persons belonging to national, ethnic, religious and linguistic minorities, women, children, persons with disabilities and migrant workers and their families as the normative framework by which companies should be guided. Other significant improvements have been introduced elsewhere in the text, such as the clarification on the scope and applicability of the Guidelines, which now clearly extend to an enterprise's impacts throughout its global operations and to all its business relationships, and the responsibility to exercise due diligence to prevent adverse impacts with regards to almost all matters covered in the Guidelines.

While acknowledging the important progress made, Amnesty International would also highlight challenges. Despite the clear statements that enterprises should assess their actual or potential adverse impacts on human rights, the revised text fails to provide guidance on key aspects of what would constitute an adequate impact assessment process. They fail to include adequate standards on disclosure and consultation with affected or potentially affected communities, including specific requirements for consultation with indigenous communities and free, prior and informed consent. The new provision on stakeholder engagement is welcome, but more guidance was necessary to ensure enterprises engage with communities in a manner and spirit that renders this engagement truly meaningful.

Apart from the substantive aspects of the human rights chapter, Amnesty International believes that the greatest shortcomings by far relate to the feeble progress made on the institutional arrangements and implementation procedures of the Guidelines. After 10 years in operation, much has been learnt about what works and what does not work with regards to the functioning of National Contact Points (NCPs). These lessons should have informed the review process with a view to strengthening and providing clearer parameters for NCP performance. The role of NCPs is key to ensuring effective adherence by enterprises to the Guidelines, and therefore for the success of the Guidelines as an instrument. However, the reality is that many NCPs grossly underperform. Although this may be due to the capacity and will of individual NCPs, much is due to the defects and shortcomings of the institutional architecture within which NCPs operate. Measures were required to ensure that those NCPs that lag behind are brought up to at least as high a level as the best performing NCPs. However, the update did not meet expectations in this regard. Despite strong encouragement by NGOs, neither mandatory oversight nor peer review mechanisms are expressly required. There is no clarification about the role of NCPs in making recommendations on observance of the Guidelines or on monitoring and following up on agreements and recommendations. No consequences for companies who fail to comply with the Guidelines or refuse to engage in mediation are specified. The absence of minimum standards to ensure the effectiveness of the implementation procedures and their coherent application across adhering States, risk undermining the value and meaning of the substantive improvements made elsewhere in the Guidelines and with it, the effectiveness and credibility of the instrument as a whole.

Many important issues were not addressed, or where inadequately addressed, due to the accelerated pace of the review process, in which quality was sometimes sacrificed in the name of promptness. This also had an impact on the extent to which key external experts could participate and provide their input, and governments could give them careful consideration. It also meant that groups with a direct stake in the standards under consideration, such as women's or Indigenous Peoples' groups were not consulted. While Amnesty International appreciates the need to adhere to a timely process, we believe that simple measures could have been taken which would have brought more credibility to the review process.

The update process revealed the existing tensions between those governments committed to securing stronger standards on business and human rights, and those less willing to advance standards in this area. Regrettably, many of the laggard governments are already legally bound by UN human rights treaties and as such, are required to take all appropriate measures to protect individuals and communities from the harmful activities of non-state actors, including companies. Amnesty International urges the OECD and adhering states to continue developing standards on business and human rights, building from and capitalizing on the many achievements of this review process, as well as identifying and addressing shortcomings and gaps. The OECD must ensure that any future work in the area of business and human rights takes due account of and is in line with key international standards, developments, and advice in this field. In this regard, it is paramount that the OECD draw from, seek and consider the input and advice of a wide pool of UN experts such as UN Special Rapporteurs and members of Human Rights Treaty Bodies. Furthermore, the OECD must ensure that any new or complementary policy development process is transparent and inclusive, ensuring ample opportunity for

external expert input and advice and consultation with groups with a direct stake in the standards under review.

The OECD and its member states must also ensure that they maintain policy coherence across the various policy areas they work on and that the commitment towards human rights demonstrated in the revised Guidelines is replicated and appropriately reflected in other relevant OECD standards and policies. This is particularly relevant with regards to the current review of the `*Recommendation on Common Approaches on the Environment and Officially Supported Export Credits*' (the Common Approaches).[13] The Common Approaches contain recommendations to member States regarding the standards national Export Credit Agencies (ECAs) should apply with regards to the environmental impact of projects they support, but they currently make no reference to human rights. Standards ECAs impose on projects they support have a direct effect on the manner in which enterprise behave, and it is only logical to expect that the revised Common Approaches reflect the same commitment to ensure enterprises respect human rights as that now embodied in the Guidelines. As a minimum, this document should lay down a due diligence framework to ensure ECAs do not support commercial activity that may cause or contribute to human rights abuses.

Amnesty International views the Guidelines within the broader international efforts to develop standards for holding corporations to account for their adverse impacts on individuals, communities and the environment, wherever in the world they operate. States are bound by international human rights law to protect individuals and communities from abuses of their human rights by non-state actors, including enterprises, and it is in this context that the Guidelines and their practical value must be judged. Going forward, implementation procedures must continue to be examined and revised with a view to rendering them more effective and more coherent across nations. Adhering governments must also ensure relevant government departments take due account of and give teeth to the outcome of specific-instance procedures when deciding, for example, on whether to grant export credits or provide other forms of investment assistance to companies. In the meantime, NCPs must raise their game and show that the resources put into this review have been well spent. As they celebrate the end of this year-long review process and the OECD's 50th anniversary, adhering governments, their NCPs and the OECD Investment Committee must commit to turning the new Guidelines into a practical reality by making sure enterprises abide by their terms in practice.

BIAC Submission

Activities on Raising Awareness of the Updated OECD MNE Guidelines

1. Introduction

The following list provides selected examples of BIAC member organisations' recent and planned future efforts to raise awareness of the updated OECD MNE Guidelines. This list is therefore non-exhaustive and does not take stock of all activities by all BIAC member organisations.

2. Examples

2.1 Confederation of German Employers' Associations (BDA)

BDA has established a CSR working group which also deals with the Guidelines, and it has continuously discussed the update of the Guidelines. Moreover, BDA has regularly sent information to members throughout the update process concerning the changes and the final result.

By the end of June 2011 BDA will actively participate in an OECD event hosted in Berlin on the Guidelines. BDA will continue to advocate the application of the Guidelines amongst its membership in brochures and on the internet, and later this year the organisation will organise an event dedicated to the update of the Guidelines and plans to produce a brochure in collaboration with VNO, providing guidance on how to follow the recommendations of the updated Guidelines.

2.2 Confederation of Netherlands Industry and Employers (VNO-NCW)

VNO-NCW has a committee on multi-national enterprises specifically dealing with the subject of international CSR.

VNO-NCW participated in a stakeholder meeting in early June 2011 to discuss the update of the Guidelines and their implementation. VNO-NCW furthermore published an article in a magazine on international affairs, focusing on the business view of the results of the Guidelines update. Additionally, VNO-NCW is planning information activities on the Guidelines in the autumn, including a.o. the production of a brochure in collaboration with BDA, giving guidance on how to follow the recommendations of the updated Guidelines.

2.3 Swiss Holdings

Economiesuisse, Swissholdings, and the Swiss Employer Federation recently met with government representatives of the Swiss NCP to discuss the next steps after the update of the Guidelines. This discussion focused on the three areas: procedural guidance, the structure of the NCP, and enhanced outreach activities. Swiss business also conducted internal discussions on how the Swiss NCP will enhance its exchange activities with the stakeholders on national level.

These discussions were accompanied by an internal meeting of the Swiss Holdings' working group on compliance. Compliance officers of its member companies met and were given a general update on the updated Guidelines. SwissHoldings plans to increase such

information activities *vis-à-vis* its members. Also co-operation activities with other Swiss business federations are planned, including a possible public event later this year to further inform about and discuss implications of the update for the business sector.

2.4 BIAC Japan (Keidanren)

BIAC Japan has established a task force on the update of the Guidelines, and it has held meetings six times in order to share the latest information with three Japanese ministres composing the Japanese NCP as well as to reflect the business communities' view on the government position. Additionally, Keidanren is a member of Japanese NCP's advisory panel and has taken part in the associated meetings.

At the General Assembly of BIAC Japan held in June 2011, members of BIAC Japan were further informed about the updated Guidelines and that promotion activities are being planned. These activities include a seminar in September 2011 to promote and inform about the updated Guidelines, and the Japanese NCP and a member of BIAC Japan will here explain the substantive changes to the Guidelines. A Japanese version of the revised Guidelines which is now being translated by the Japanese government will also be distributed.

2.5 Confederación Española de Organizaciones Empresariales (CEOE)

During 2009 CEOE's commission for CSR invited the Spanish NCP to a meeting in order to make comments with regard to the Guidelines. The NCP informed representatives of the Spanish business community about the update and prospects of the Guidelines. There is also regular CEOE participation in the annual meetings carried out by the NCP.

Furthermore, CEOE jointly organised a high-level business conference with BIAC and the OECD in March 2011. Information and discussion on the Guidelines was an important part of the conference and it further strengthened the important engagement of the Spanish business community in the work with the Guidelines.

CEOE plan – in co-operation with the Spanish NCP – to distribute the updated Guidelines among its members and to organise a meeting about the implementation of the updated Guidelines.

TUAC Submission

1. Overview

The updated Guidelines contain a number of positive new elements including a chapter on Human Rights, the clear application of the Guidelines to suppliers and other business relationships, the introduction of a general due diligence principle, the broadened scope of the Employment and Industrial Relations Chapter, stronger rules aimed at improving functional equivalence and an enhanced role for the OECD in implementing the Guidelines in particular in relation to peer learning and capacity-building.

TUAC considers that these elements significantly increase the relevance of the Guidelines and their potential to raise the standard of responsible business conduct in a global context. The success of the Update now depends on prompt and full implementation of the new provisions by adhering governments at national level and at the OECD.

Adhering governments must harness the momentum generated by the Update at national and international level to translate the ambition of the Update into reality. They must ensure that the updated Guidelines fulfil their potential and promote greater responsible business conduct in a global context, thereby continuing to be a leading international instrument in this regard.

2. Adhering governments

Adhering governments must first and foremost upgrade the structures and procedures of their NCPs The future functioning of NCPs will be the yardstick for measuring success of the Update. It is essential the implementation of the Updated Guidelines consigns to the past the poor and patchy performance of NCPs.

According to the Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for Multinational Enterprises, there is an informal understanding at the OECD which establishes that: "*when a legal instrument is adapted or revised, a reasonable length of time – approximately six months – is needed in order to implement its provisions*". TUAC calls on all NCPs to review and revise their procedures and structures over the next six months, working with the social partners and other non-governmental organisations, so as to have in place upgraded structures and procedures that, at a minimum, meet the standards of the updated Guidelines, by January 2012. *TABLE 1* sets out ten next steps for adhering governments.

Table 1. **Next Steps For Adhering Governments**[1]

STEPS	*DESCRIPTION*	*REFERENCES*
1. PROVIDE ADEQUATE RESOURCES	Adhering governments must ensure that the resources of the NCP are adequate for undertaking the enhanced functions under the updated Guidelines, including mediation, capacity-building and participating in peer learning.	*Council Decision* *I. National Contact Points* "*Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities…*".

Table 1. **Next Steps For Adhering Governments**[1] *(cont.)*

STEPS	*DESCRIPTION*	*REFERENCES*
2. TRANSLATE THE UPDATED GUIDELINES	NCPs should translate the updated Guidelines and their Commentaries into all national and, as appropriate, local languages in the coming weeks, in line with the Procedural Guidance and the core criteria of accessibility.	*Procedural Guidance* *I. National Contact Points* *B. Information and Promotion* *The National Contact Point will* *1. Make the Guidelines known and available by appropriate means, including through on-line information and in national languages….*
3. SET UP AN ADVISORY, OVERSIGHT OR REVIEW BODY	NCPs should establish an advisory, oversight or review body in line with the recommendation made in the Commentary to the Procedural Guidance and in accordance with NCP best practice, thereby helping to ensure *impartiality*, *predictability* and *equitability* in the handling of specific instances.	*Commentaries to the Procedural Guidance.* *Paragraph 11* "*Regardless of the structure governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks*". *Paragraph 22* *Impartial; NCPs should ensure impartiality in the resolution of the specific instances.* *Predictable: NCPs should ensure predictability…* *Equitable: NCPs should ensure that parties can engage in the process on fair and equitable terms….*
4. CONDUCT A REVIEW OF NCP STRUCTURES	In addition to creating an advisory or oversight body, NCPs should review and revise their structure so as to provide an effective basis for implementing the Guidelines, assure impartiality and to be consistent with the other core criteria and the guiding principles for the handling of specific instances. They should pay particular attention to identifying, disclosing and removing conflicts of interest in line with the requirement to be impartial. *This review of NCP structure should be undertakencollaboratively with the social partners and other non-governmental organisations.*	*Procedural Guidance* *I. National Contact Points* *A. Institutional Arrangements* 1. NCPs will "*be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner, while maintaining an adequate level of accountability to the adhering government*". *Procedural Guidance* *I. National Contact Points* *C. Implementation in Specific Instances* "*The National Contact Point will contribute to the resolution of issues that arise relating to … specific instances, in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.*" *Commentary to the Procedural Guidance* *Paragraph 22* (guiding principles – see above)

Table 1. **Next Steps For Adhering Governments**[1] *(cont.)*

STEPS	*DESCRIPTION*	*REFERENCES*
5. CONDUCT A REVIEW OF NCP PROCEDURES	NCPS should conduct a review to ensure that their procedures are, at a minimum, consistent with the standards set in the updated Guidelines, including the following: introduce indicative *timeframes*; strengthen *cooperation* between home and host country NCPs; develop best practice guidance on *parallel proceedings* in line with the updated text, using the UK procedures as a model; *protect* the identity of the *complainant. This review of NCP procedures should be undertaken collaboratively with the social partners and other non-governmental organisations.*	**Indicative timeframes** *Commentary to the Procedural Guidance* *Paragraph 21* Defines good faith' in the context of the Guideline as *inter alia responding in a timely fashion….* *Paragraph 40* Initial assessment: 3 months; issue of report or statement 3 months; overall timeframe, 12 months. **NCP cooperation** *Commentary to the Procedural Guidance* *Paragraph 23* "*the NCP of the host country should consult with the NCP of the home country…*". **Parallel proceedings** *Commentary to the Procedural Guidance* *Paragraph 26* "*NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are underway, or are available to the parties concerned…*". **Protecting complainants** *Commentary to the Procedural Guidance* *Paragraph 30* The updated Guidelines recognise that there may be a need to *withhold the identity of a party or parties from the enterprise involved.* *Paragraph 38* "*Equally other information such as the identity of individuals involved in the procedures, should be kept confidential…*"
6. PUBLISH NCP PROCEDURES	Publish procedures on the NCP web site in local, *national and international languages* in line with the core criteria of *accessibility*. It is not sufficient to publish procedures in national languages, as this would limit the *accessibility* of the NCP to those able to work in national languages.	*Commentary to the Procedural Guidance* *Paragraph 15* "*NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance…*"
7. STRENGTHEN POLICY COHERENCE	Identify and meet with relevant government departments, including export credit agencies, public procurement departments and pension funds, in order to identify procedures for strengthening policy coherence. NCPs should focus in particular on the steps to be taken where an NCP issues a statement in the event of: i) no agreement being reached; ii) a party refusing to come to the table; iii) providing recommendations on the future implementation of the Guidelines; iv) a finding that a company has breached the Guidelines. The Export Credit Group (ECG) at the OECD is currently undertaking a revision of its Recommendation on Common Approaches' that aims to improve the environmental, social and governance standards of export credit agencies (ECAs). This revision is due to be completed in November 2011. It would therefore be timely if NCPs could meet with their respective ECAs to discuss how procedural and substantive elements of the updated Guidelines text should be reflected in the national procedures of ECAs, as well as the revised Common Approaches.	*Procedural Guidance* *C. Implementation in Specific Instances* "*3.c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures…The NCP will make recommendations on the implementation of the Guidelines, as appropriate, which should be included in the statement….*" *Commentary to the Procedural Guidance:* *Paragraph 37* "*In order to foster policy coherence NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes.*"

Table 1. **Next Steps For Adhering Governments**[1] *(cont.)*

STEPS	*DESCRIPTION*	*REFERENCES*
8. ESTABLISH NATIONAL CONSULTATION AND REPORTING MECHANISMS	The 2000 version of the Guidelines already required NCPs to put in place mechanisms for consultation and reporting at national level, including reporting to national parliaments. The updated Guidelines further strengthen the requirement for the NCP to be accountable. NCPs should conduct regular consultations with external stakeholders and establish mechanisms for national reporting, including to Parliament, and publish all reports, including the report to the OECD on the NCP web site in national languages, as well as international language.	*Commentary to the Procedural Guidance* *Paragraph 9* "*Accountability…nationally parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experience and encourage 'best practices' with respect to NCPs…*" *Procedural Guidance* *I. National Contact Points* *A. Institutional Arrangements* 1. NCPs will "*be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner, while maintaining an adequate level of accountability to the adhering government*".
9. IDENTIFY ISSUES FOR PEER LEARNING AND SIGN UP FOR VOLUNTARY PEER REVIEW	Identify *issues for peer learning* and thematic peer review through consultations at national level with external stakeholders and *sign up for peer review.*	*Commentaries to the Procedural Guidance* *Paragraph 19* "*NCPs will engage in joint peer learning activities. In particular they are encouraged to engage in horizontal, thematic peer reviews and voluntary peer evaluations.*"
10. DRAW UP PROMOTIONAL PLAN TO SUPPORT THE PRO-ACTIVE AGENDA	Draw up a plan for promoting the Guidelines and implementing the proactive agenda in collaboration with the social partners and other non-governmental organisations. The public profile of the OECD Guidelines is low. There is an urgent need to increase significantly the level and effectiveness of promotional activity. One means of doing so it to work collaboratively with the social partners and other non-governmental organisations, so as to harness their global networks for the purposes of promoting and implementing the Guidelines.	*Commentaries to the Procedural Guidance* *Paragraph 18* *…NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:* *a) consider new developments and emerging practices concerning responsible business conduct;* *b) support the positive contributions enterprises can make to economic, social and environmental progress;* *c) participate… in collaborative initiatives to identify and respond to risks of adverse impacts…*

1. *TABLES 1 and 2* use the paragraph numbering for the Commentaries given in the version of the Commentaries that was submitted for approval to the Council in May 2011. The Commentaries of the public version of the updated Guidelines, whilst usefully following the relevant Chapter, do not contain paragraph numbers. TUAC has started working with the new text and find this highly problematic.

3. Investment Committee and the OECD Secretariat

The new Guidelines significantly strengthen the role of the Investment Committee and the OECD Secretariat with regard to outreach, information collation and analysis information, reporting, peer learning, capacity-building, peer review and promotion. These commitments cannot be discharged within the existing resource limitation. TUAC calls on the OECD to increase the level of financial support commensurate with these responsibilities. It also urges the Investment Committee to assess the adequacy of its existing structures and specifically whether there is a need to establish a new dedicated Working Group to implement the updated Guidelines.

TUAC also urges the Investment Committee to upgrade its consultation processes and provide for the participation of TUAC, BIAC and OECD Watch in peer learning, peer review and the proactive agenda. Table 2 sets out ten next steps for the Investment Committee and the OECD Secretariat.

Table 2. **Next steps for the Investment Committee and OECD secretariat**

STEPS	*DESCRIPTION*	*REFERENCES*
1. REINTRODUCE NUMBERING OF THE PARAGRAPHS IN THE COMMENTARIES	The Commentaries in the public version of the Updated Guidelines, *do not include paragraph numbers*. TUAC is already working with trade union partners on the updated Guidelines and has found it extremely difficult to work with the Commentaries due to the lack of numbering. The Commentaries to the Procedural Guidance, which are very long and contain the majority of the improvements made under the Update, are particularly problematic. *TUAC strongly welcomes the new format such that the Commentaries following their respective Chapter, but considers it highly problematic that the Commentaries no longer have paragraph numbers.*	The paragraphs of the Commentaries of the *2000* version of the Guidelines were numbered as were the paragraphs in the document that was submitted for adoption to the *Council in May 2011.*
2. PROVIDE ADEQUATE RESOURCES TO THE OECD SECRETARIAT	The updated Guidelines significantly strengthen the role of the OECD Secretariat including: developing and maintaining a database of cases, facilitating peer learning/peer reviews, capacity-building, training and promoting the Guidelines. The level of resources assigned to the OECD Secretariat must be raised significantly – and quickly – if the secretariat is to have the capacity and the skills to discharge these responsibilities adequately.	*Procedural Guidance* *II Investment Committee* *5. .. The Committee will be assisted by the OECD secretariat…* *b) make available relevant information on recent trends and emerging practices... maintenance of an up-to-date database on specific instances* *c) facilitate peer learning, including voluntary peer evaluations, as well as capacity-building…..*
3. REVIEW THE STRUCTURES OF THE INVESTMENT COMMITTEE	The updated Guidelines also significantly strengthen the role of the Investment Committee. TUAC considers that the Investment Committee should review its structures in light of these new commitments and assess whether there is a need to establish an *Investment Committee Working Group that is dedicated to the Guidelines.*	*Council Decision* *I. National Contact Points* 3. "*The Council Decision now states that National Contact Points shall meet regularly to share experiences and report to the Investment Committee*"
4. UPGRADE CONSULTATION PROCESSES WITH BIAC, TUAC AND OECD WATCH	Enhance consultation processes with TUAC, BIAC and OECD Watch and specifically put in place structures to ensure their participation in peer learning, including peer reviews, and the proactive agenda. The participation of the stakeholders in the Advisory Group to the Chair for the Update has been hailed as a precedent and a success. TUAC urges the Investment Committee to build on this experience.	
5. ESTABLISH CONSULTATIVE STRUCTURES FOR COMPILING THE RESOURCE DOCUMENT	The Chair's Report on the Update of the Guidelines[14] identified the need for further work in a number of areas, including the development of a resource document that would compile all relevant references' (instruments) and initiatives. The Investment Committee should draw up a time-bound plan for completing this work during 2011-2012 that includes the *full participation of TUAC, BIAC and OECD Watch* and provides for *meaningful public consultation.*	*Chair's Report:* "*..as part of the follow-up on the updated Guidelines, a resource document be compiled bringing together descriptions and links to all these references and initiatives….*"
6. IDENTIFY ISSUES FOR PEER LEARNING	The Investment Committee should identify issues for peer learning to be addressed over 2011-2012. TUAC suggests the following: *- Specific instances:* the Investment Committee should follow the practice of the OECD Anti-bribery Working Group and carry out a *tour de table* of cases with a view to sharing experience of handling specific instances; *Refusal to participate in the NCP process*: TUAC is concerned about recent cases of companies refusing to participate in the NCP process. This is a serious problem, especially in view of the priority given to mediation in the updated Guidelines. NCPs should share their experiences on such cases with a view to identifying strategies for strengthening the authority of the NCP.	*Procedural Guidance* *II Investment Committee* *5. .. The Committee will be assisted by the OECD secretariat…* *c) facilitate peer learning…,*
7. DRAW UP A PROGRAMME OF PEER REVIEW	Draw up a programme of peer review starting with 3 countries per year, rising in the medium term to 5 per year. Ensure that the approach, drawing on OECD best practice, is transparent and participatory, concludes with the publication of country reports and provides for follow-up. Also identify thematic issues for horizontal reviews.	

Table 2. **Next steps for the Investment Committee and OECD secretariat** *(cont.)*

STEPS	*DESCRIPTION*	*REFERENCES*
8. IDENTIFY PRIORITIES FOR THE OECD SECRETARAT	The updated Guidelines significantly strengthen the role of the OECD Secretariat with regard to outreach, information collation and analysis information, peer learning, capacity-building, peer review and promotion. The Investment Committee should draw up a time-bound plan setting out priorities that includes the contributions of the stakeholders TUAC, BIAC and OECD Watch.	*Procedural Guidance* *II Investment Committee* *5. .. The Committee will be assisted by the OECD secretariat…* *b) make available relevant information on recent trends and emerging practices... maintenance of an up-to-date database on specific instances* *c) facilitate peer learning, including voluntary peer evaluations, as well as capacity-building…..*
9. STRENGTHEN POLICY COHERENCE AT THE OECD	TUAC considers that there has been insufficient promotion of the Guidelines either within or by other relevant OECD departments over the past decade. It calls on the OECD to provide for internal policy coherence and ensure that other policies and programmes related to the issues covered by the Guidelines, trade, investment or development promote the Guidelines.	In line with OECD and G20 policy commitments on responsible investment.

OECD Watch Submission

Towards Pro-active Implementation of the OECD Guidelines

1. Introduction

OECD Watch welcomes the recent update of the OECD Guidelines for Multinational Enterprises. This submission is a supplement to the OECD Watch May 2011 statement on the update. The earlier statement details the improvements and shortcomings of the "new" OECD Guidelines. This submission outlines OECD Watch's vision for effective implementation and enforcement of the updated Guidelines, and elaborates on recent developments among NCPs.

2. Updated Guidelines: The way forward

OECD Watch welcomes the changes to the OECD Guidelines that confirm and broaden the scope of the instrument to the global activities and all business relationships of MNEs. The new text introduces valuable provisions on human rights, business relationships, workers and wages, and climate change.

However, the updated procedures for the implementation of the OECD Guidelines do not provide adequate assurances, mandatory oversight and peer review mechanisms to ensure consistent, coherent and effective NCP performance. Responsibility rests firmly with individual NCPs and adhering governments to demonstrate real political will to uphold corporate accountability best practice via the state.

This update comes with an obligation and opportunity for the OECD and adhering countries, to strengthen the effectiveness of this unique instrument for promoting responsible business conduct in the global context.

The update provides an ambitious agenda for the OECD Investment Committee and the Secretariat, individual NCPs, enterprises and civil society organisations. As such, OECD Watch recommends active stakeholder engagement to pursue a pro-active agenda to ensure the fullest implementation of the OECD Guidelines by enterprises throughout their activities and relationships.

3. Pro-active agenda for the OECD Investment Committee and Secretariat

The update added a new commitment to the Implementation Procedures, requiring the Committee to pursue a pro-active agenda that promotes the effective observance by enterprises of the principles and standards contained in the Guidelines. OECD Watch urges the Committee to take into consideration the issues highlighted in the Chair's report as particularly worthy of additional work:

- Referencing instruments and initiatives: there is general agreement that as f follow up to the updated Guidelines, a resource document be developed which provides descriptions and links to relevant corporate accountability references and initiatives. OECD Watch assumes the key stakeholders (BIAC, TUAC, OECD Watch) will be actively involved in scoping the reference guide' terms of reference in support of the Investment Committee, and to ensure policy coherence with international standards and principles.

- Supply chains and due diligence. The Working Party has agreed to do further analytical work on the added value of bringing the excluded subject matters (competition, science and technology and taxation) – back into the scope of the supply chain and due diligence provisions. OECD Watch supports the inclusion of the general principle of due diligence in the updated Guidelines. However, as stated by US Secretary of State Hillary Clinton at the Commemoration of the 50th Anniversary of the OECD, "due diligence, while not always easy, is absolutely essential". As such, OECD Watch requests consideration be given to applying a due diligence framework to the Science and Technology, Competition and Taxation provisions. For example, considering the merits of due diligence to avoid anti-competitive practices that adversely affect suppliers and consumers; due diligence to avoid intellectual property rights that adversely affect local communities and indigenous communities; and due diligence to avoid tax evasion and transfer pricing which can adversely affect developing country revenues, thereby undermining their capacity to alleviate poverty and pursue sustainable development initiatives.
- Relevance of the Guidelines for the financial sector. OECD Watch is committed to progressing its work to date (*e.g.* the 2007 OECD Watch Briefing Paper on the OECD Guidelines and the financial sector, and its 2009 Submission "Effective application of the OECD Guidelines to the financial sector") to clarify the implementation of the OECD Guidelines to the financial sector. We welcome the recommendation in the Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for MNEs (Chair's report) to undertake further work in this area. Although the application of the OECD Guidelines to all business sectors was confirmed in the update, the treatment of this issue is limited to a short reference in the commentary on General Policies. Further consideration of the finance sector is needed to better understand "when are financial institutions causing, either directly or indirectly, adverse impacts, and when are they contributing to such impacts, and what steps should they take even if they have not contributed to the impact but are nonetheless associated with abuses"? via clients or services. To address this, financial institutions could make public all social and environmental risk assessments undertaken as part of credit check processes. OECD Watch recognises that the applicability of the OECD Guidelines to financial institutions is not without its challenges particularly with regard to the growing dominance of "new financiers" from countries such as China, Vietnam, Thailand, and others. Work to date by OECD Watch confirms that investment due diligence is challenging yet necessary. OECD Watch agrees with the Chair's report on the need to involve relevant experts and international bodies. For example, OECD Watch members have identified the recent update of the IFC Performance Standards, which recognise the rights of Indigenous Peoples and the need for contract disclosure, as relevant to the financial sector. Similarly, global developments on contract disclosure and the Dodd-Frank Securities and Exchange Commission listing rules, are relevant to financial institutions and will assist in combating bribery and corruption.
- In addition to the proposed work on the finance sector, OECD Watch recommends the Investment Committee commence work in developing sector-specific guidance for the implementation of the OECD Guidelines, to help identify risks of adverse impacts associated with particular products, regions, sectors or industries. OECD Watch can confirm that human rights violations and environmental degradation often occur in the extractive sector, agribusiness (*e.g.* palmoil), hydropower and manufacturing industries such as garments and electronics. The sector specific guidance should be developed in

consultation with stakeholders to reflect the emergence of new industries in developing countries, the speed and scale of development, and their social and environmental challenges.

- Undertake analysis and make policy recommendations for more effective observance by enterprises to the principles and standards contained in the Guidelines through better policy coherence. For example, by making observance to the OECD Guidelines conditional for receiving government support, such as export credits.
- Develop practical guidance for the implementation of new provisions of the OECD Guidelines. OECD Watch proposes that decent wages are an issue that needs further elaboration, given that the updated Guidelines now provide a provision to meet the basic needs of workers and their families in different regions. The OECD could draw from existing methods for calculating living wages, and the experience within Multi-stakeholder Initiatives in addressing the challenges to meet the living wage' standard.
- Develop further guidance on meaningful stakeholder consultations. The Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for MNEs states that "Many delegations stressed during the discussions of the new recommendation on stakeholder consultations (Chapter II.A14) that consultations with Indigenous Peoples may pose special challenges and, for this reason, may require special care. Other delegations emphasised that the groups cited in paragraph 40 of the human rights commentary might also require special care in the context of consultations." Nonetheless OECD Watch considers this a critical component in progressing the responsible business agenda and in further implementing the OECD Guidelines. OECD Watch recommends the Investment Committee commit to developing further guidance on stakeholder consultation, based on existing international best practice to ensure that the consultation is indeed meaningful, inclusive and participatory.
- Start the process of the joint peer learning and peer review in which NCPs will engage as stipulated in the Commentary on the Implementation Procedures. OECD Watch recommends that peer learning activities include the relevant stakeholders involved (such as complainants and defendants in specific instances) to ensure lessons learned by stakeholders are taken into account. OECD Watch recommends the Investment Committee to establish and maintain a log of NCPs signing up for peer review which includes a schedule for implementation, of for example four NCP peer reviews per year.

4. Recommendations to adhering governments and NCPs

OECD Watch recommends that adhering governments:

- Take due account of the changes in the procedural guidance, and assess whether their institutional arrangements and procedures meet the updated the Guidelines. OECD Watch recommends each NCP to evaluate their operations and procedures, and share these findings. This in turn will support the efforts to enhance peer learning. In particular, paragraph one under Institutional Arrangements of the Procedural Guidance to NCPs should be taken into consideration as it stipulates that NCPs be composed and organised in such a way to ensure an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner.
- Ensure policy coherence by providing an inventory of relevant government programmes and policies that need to be advised of all final statements and reports by their NCPs. This will help ensure all relevant governments departments are aware of the OECD

Guidelines and assist in ensuring an all-of-government approach to responsible business conduct.

- Sign up for peer review and share learning's with all NCPs and stakeholders.
- Ensure the NCP is adequately resourced and has the capacity to effectively fulfil its responsibilities for promotion, mediation, translation, examination and fact finding. Furthermore, adhering governments need to support the Programme of Work of the OECD Secretariat of the Investment Committee, to ensure the effective implementation of the strengthened commitments in the updated Guidelines including the pro-active agenda.

4.1 Recommendations to business

OECD Watch notes BIAC's call for a transition period for the implementation of the updated OECD Guidelines by enterprises. OECD Watch welcomes the pro-active approach this implies, where enterprises will assess what the new provisions of the OECD Guidelines mean for their business operations and relationships, including supply chains, and commence implementation of due diligence processes. The updated OECD Guidelines establishes that enterprises should avoid causing or contributing to adverse impacts through their own activities or through business relationships, and it recommends that companies exercise due diligence to ensure they live up to their responsibilities.

OECD Watch calls on all MNEs operating in or from adhering countries to review and disclose their internal risk management systems (including social and environmental impact assessments) and ensure they align with the provisions in the OECD Guidelines regarding general due diligence and, in particular, human rights due diligence. It is critical that risk management systems not only consider the risks to the enterprise, but also, and equally, the risk to individuals, communities and the environment.

Further, OECD Watch draws the business community's attention to the general policy on stakeholder engagement. As agreed, stakeholder engagement should be meaningful, and provide real opportunity for civil society organisations and affected communities to participate and have their views taken into account. This should meet recognised standards for consultation such as equality, respect, timeliness and transparency.

4.2 Follow up by OECD Watch

OECD Watch recognises it plays a key role in progressing the pro-active agenda to assist in the implementation and effectiveness of the Guidelines. The network will continue to monitor the effectiveness of the instrument as a corporate accountability tool and build civil society capacity. To achieve this we will:

- Update our guidance and training material for civil society organisations to reflect the updated provisions and procedures.
- Undertake regional capacity building and training of civil society organisations and strengthen collaboration with southern partners.
- Maintain OECD Watch's database of specific instance filed by NGOs and seek alignment of this information with the database to be developed by the OECD Secretariat.
- Continue to contribute to the work of the OECD Investment Committee and Secretariat, in particular with regards to the pro-active agenda and the identification of risks of adverse impacts in specific sectors and regions.

- Continue to build relationships with relevant stakeholders including multilateral institutions, governments and business, in particular financial institutions and the investment community.
- Exercise, if necessary, our right to request clarification from the Investment Committee when we consider an NCP has failed to fulfil its responsibilities with regard to its handling of specific instances or when we feel the Guidelines have been incorrectly interpreted.

4.3 *OECD Watch 2010-2011 review of NCPs*

During the 2010-2011 implementation cycle, OECD Watch members and other civil society organisations have taken a fresh look at the functioning of "their" NCPs through the lens of the updated OECD Guidelines. From this reflection and analysis, a number of general conclusions regarding the location and structure of NCPs, the resourcing of NCPs, promotion of the Guidelines, and the handling of specific instances can be drawn.

4.4 *Location and structure*

Despite the updated Guidelines' commitment to impartiality, OECD Watch members continue to observe potential and real conflicts of interest related to the current housing and structures of various NCPs. NCPs being located in single ministries or institutions such as ttreasury , economics and investment divisions continue to cause concern.. For example, in the case of the Luxembourg NCP, which is housed in the ministry of Economics, there is a clear conflict of interest as the Minister of Economics is board member of ArcellorMittal against which a case has been filed. Also in cases filed at the German and Swiss NCPs complainants have felt that the NCP location has contributed to a bias towards business.

4.5 *Handling of specific instances*

Complainants have experienced ambiguity regarding the timelines and procedures followed by NCPs. Additionally, inadequate resources of NCPs have hindered progress (such as fact-finding) in various complaints pending in 2010-2011. Requests of various complainants in cases towards to NCP to undertake fact finding or even translate key documents into the language of local groups have not eventuated.

Promotion of the OECD Guidelines

OECD Watch members have participated in several national stakeholder meetings to discuss the update of the OECD Guidelines. Unfortunately, not all NCPs have actively ensured that meaningful and comprehensive input into the update process could be given. Members have also advised that the promotional function of NCPs is hardly exercised and deserve significantly more attention. OECD Watch advises that active and timely engagement with civil society is a key responsibility of NCPs and should as such receive far greater emphasis.

4.6 *Improvements*

Noteworthy improvements have been recognised at the UK NCP. For example, the UK NCP has concluded cases against BP and consortium partners for their involvement in the BTC pipeline running through Turkey, Georgia and Azerbaijan, and the case against BAE Rolls Royce Airbus for allegedly not adhering to the UKs Export Credit Guarantee

Departments (ECGD) new anti-corruption measures. Concluding the cases took respectively 8 and 6 years and their handling varied over the years. Internal changes and new procedures have nevertheless improved the NCP's handling of cases significantly.

Notes

1. The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its seventeenth session (A/HRC/17/2), chap. I.
2. Commentary to Principle 17 of the Guiding Principles on Business and Human Rights notes: However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.
3. Available at: *http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/default.aspx* and *http://humanrights business.org/?f=nhri_working_group*
4. *http://www2.ohchr.org/english/law/parisprinciples.htm*.
5. *http://nhri.ohchr.org/EN/Pages/default.aspx* .
6. *http://hrbaportal.org/wp-content/files/12928848001950-undp-uhchr-toolkit-lr.pdf* .
7. *http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/87/PDF/G1114187.pdf?OpenElement*
8. *http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf*.
9. *http://www.humanrightsbusiness.org/files/1127669666/file/edinburgh_declaration.pdf* .
10. For a full list, see ICC's first Submission to Review of OECD Guidelines: *http://www.humanrights business.org/files/1272852850/file/icc_submission_to_oecd_guidelines_review_251110.pdf* .
11. Dated 23 May 2011, AI Index: IOR 30/001/2011.
12. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/ HRC/17/31, 21 March 2011.
13. *http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=TAD/ECG(2007)9&doclanguage =en*.
14. Report of the Chair of the Working Party of the Investment Committee on the Update of the Guidelines for Multinational Enterprises.

Appendices

APPENDIX A

Declaration on International Investment and Multinational Enterprises

25 May 2011

ADHERING GOVERNMENTS[1]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto[2], having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;

National Treatment

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

	2.	That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;
	3.	That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";
	4.	That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;
Conflicting Requirements	III.	That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto[3].
International Investment Incentives and Disincentives	IV.1.	That they recognise the need to strengthen their co-operation in the field of international direct investment;
	2.	That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
	3.	That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;
Consultation Procedures	V.	That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
Review	VI.	That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

Notes

1. As at 25 May 2011 adhering governments are those of all OECD members, as well as Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. 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 at *www.oecd.org/daf/investment*.

APPENDIX B

OECD Guidelines for Multinational Enterprises: Text, Implementation Procedures and Commentaries

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. 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. The *Guidelines* provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the *Guidelines* make a binding commitment to implement them in accordance with the *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises*. Furthermore, matters covered by the *Guidelines* may also be the subject of national law and international commitments.
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 and the expansion of the Internet economy, service and technology enterprises are playing an increasingly important role in 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. Another key development is the emergence of multinational enterprises based in developing countries as major international investors.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join the countries and regions 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 and creating employment opportunities 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 economic, environmental and social 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 principles and standards 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. Enterprises have also promoted social dialogue on what constitutes responsible business conduct and have worked with stakeholders, including in the context of multi-stakeholder initiatives, to develop guidance for responsible 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 and for other stakeholders. 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 start of this process can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important

ways to this process through the development of standards covering such areas as the environment, the fight against corruption, consumer interests, corporate governance and taxation.

9. 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 enterprises, 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 continuous 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 and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable**.** Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.
2. Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.
3. 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.
4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These enterprises operate in all sectors of the economy. They 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*.

5. 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.
6. 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.
7. 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.
8. 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 or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.
9. 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.
10. 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.
11. Governments adhering to the *Guidelines* will implement 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:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
2. Respect the internationally recognised human rights of those affected by their activities.
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 human rights, 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, including throughout enterprise groups.
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 awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against workers 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. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
11. Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur.
12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.
14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.
15. Abstain from any improper involvement in local political activities.

B. Enterprises are encouraged to:

1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.
2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

Commentary on General Policies

1. The General Policies chapter of the *Guidelines* is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.

2. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the *Guidelines* are one element) to policies affecting them.

3. There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the *Guidelines* are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development.[1]

4. Chapter IV elaborates on the general human rights recommendation in paragraph A.2.

5. The *Guidelines* also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.

6. The *Guidelines* recommend that, in general, enterprises avoid making efforts to secure exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the statutory or regulatory framework. The words "or accepting" also draw attention to the role of the State in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNEs. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters provide examples.

7. The *Guidelines* recommend that enterprises apply good corporate governance practices drawn from the OECD Principles of Corporate Governance. The Principles call for the protection and facilitation of the exercise of shareholder rights, including the equitable treatment of shareholders. Enterprise should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation with stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

8. The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise, the effective monitoring of management and to be accountable to the

enterprise and to the shareholders, while taking into account the interests of stakeholders. In undertaking these responsibilities, the board needs to ensure the integrity of the enterprise's accounting and financial reporting systems, including independent audit, appropriate control systems, in particular, risk management, and financial and operational control, and compliance with the law and relevant standards.

9. The Principles extend to enterprise groups, although boards of subsidiary enterprises might have obligations under the law of their jurisdiction of incorporation. Compliance and control systems should extend where possible to these subsidiaries. Furthermore, the board's monitoring of governance includes continuous review of internal structures to ensure clear lines of management accountability throughout the group.

10. State-owned multinational enterprises are subject to the same recommendations as privately-owned enterprises, but public scrutiny is often magnified when a State is the final owner. The OECD *Guidelines* on Corporate Governance of State-Owned Enterprises are a useful and specifically tailored guide for these enterprises and the recommendations they offer could significantly improve governance.

11. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, there is a strong business case for enterprises to implement good corporate governance.

12. An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Interesting developments in this regard are being undertaken in the financial sector. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals – thereby contributing to sustainable development – is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.

13. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect *bona fide* "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the *Guidelines*.

14. For the purposes of the *Guidelines*, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the *Guidelines*. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The *Guidelines* concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, contributing to' an adverse impact should be interpreted as a substantial contribution,

meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. The term business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. The recommendation in paragraph A.10 applies to those matters covered by the *Guidelines* that are related to adverse impacts. It does not apply to the chapters on Science and Technology, Competition and Taxation.

15. The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the *Guidelines*, and the severity of its adverse impacts. Specific recommendations for human rights due diligence are provided in Chapter IV.

16. Where enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence.

17. To avoid causing or contributing to adverse impacts on matters covered by the *Guidelines* through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting. Entities in the supply chain are often multinational enterprises themselves and, by virtue of this fact, those operating in or from the countries adhering to the Declaration are covered by the *Guidelines*.

18. In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact.

19. If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.

20. Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.

21. The *Guidelines* recognise that there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers. These are related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise *vis-à-vis* its suppliers or other entities in the supply chain. However, enterprises can also influence suppliers through contractual arrangements such as management contracts, pre-qualification requirements for potential suppliers, voting trusts, and licence or franchise agreements. Other factors relevant to determining the appropriate response to the identified risks include the severity and probability of adverse impacts and how crucial that supplier is to the enterprise.

22. Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the

severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.

23. Enterprises may also engage with suppliers and other entities in the supply chain to improve their performance, in co-operation with other stakeholders, including through personnel training and other forms of capacity building, and to support the integration of principles of responsible business conduct compatible with the *Guidelines* into their business practices. Where suppliers have multiple customers and are potentially exposed to conflicting requirements imposed by different buyers, enterprises are encouraged, with due regard to anti-competitive concerns, to participate in industry-wide collaborative efforts with other enterprises with which they share common suppliers to coordinate supply chain policies and risk management strategies, including through information-sharing.

24. Enterprises are also encouraged to participate in private or multi-stakeholder initiatives and social dialogue on responsible supply chain management, such as those undertaken as part of the proactive agenda pursuant to the Decision of the OECD Council on the OECD *Guidelines* for Multinational Enterprises and the attached Procedural Guidance.

25. Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.

26. Paragraph B.1 acknowledges an important emerging issue. It does not create new standards, nor does it presume the development of new standards. It recognises that enterprises have interests which will be affected and that their participation along with other stakeholders in discussion of the issues involved can contribute to their ability and that of others to understand the issues and make a positive contribution. It recognises that the issues may have a number of dimensions and emphasises that co-operation should be pursued through appropriate fora. It is without prejudice to positions held by governments in the area of electronic commerce at the World Trade Organisation (WTO). It is not intended to disregard other important public policy interests which may relate to the use of the internet which would need to be taken into account.[2] Finally, as is the case with the *Guidelines* in general, it is not intended to create conflicting requirements for enterprises consistent with paragraphs 2 and 8 of the Concepts and Principles Chapter of the *Guidelines*.

27. Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the *Guidelines*, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.

III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. 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. Disclosure policies of enterprises should include, but not be limited to, material information on:
   a) The financial and operating results of the enterprise;
   b) Enterprise objectives;
   c) Major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;
   d) Remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;
   e) Related party transactions;
   f) Foreseeable risk factors;
   g) Issues regarding workers and other stakeholders;
   h) Governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.
3. Enterprises are encouraged to communicate additional information that could include:
   a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the *Guidelines*;
   b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
   c) its performance in relation to these statements and codes;
   d) information on internal audit, risk management and legal compliance systems;
   e) information on relationships with workers and other stakeholders.

1. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Commentary on Disclosure

28. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. 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.

29. The information highlighted in this chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the OECD Principles of Corporate Governance. Their related annotations provide further guidance and the recommendations in the *Guidelines* should be construed in relation to them. The first set of disclosure recommendations may be supplemented by a second set of disclosure recommendations which enterprises are encouraged to follow. The disclosure recommendations focus mainly on publicly traded enterprises. To the extent that they are deemed applicable in light of the nature, size and location of enterprises, they should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held or State-owned enterprises.

30. Disclosure recommendations are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, the *Guidelines* use the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information.

31. The *Guidelines* also generally note that information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. This significantly improves the ability of investors to monitor the enterprise by providing increased reliability and comparability of reporting, and improved insight into its performance. The annual independent audit recommended by the *Guidelines* should contribute to an improved control and compliance by the enterprise.

32. Disclosure is addressed in two areas. The first set of disclosure recommendations calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. Related party transactions and material foreseeable risk factors are additional relevant information that should be disclosed, as well as material issues regarding workers and other stakeholders.

33. The *Guidelines* also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners**.** This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.

34. Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, human rights, labour standards, consumer protection, or taxation. Specialised management systems have been or are being developed and continue to evolve with the aim of helping them respect these commitments – these involve information systems, operating procedures and training requirements. Enterprises are cooperating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises' ability to communicate how their activities influence sustainable development outcomes (for example, the Global Reporting Initiative).

35. Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (for example, poorer communities that are directly affected by the enterprise's activities).

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Commentary on Human Rights

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.

37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context,

ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.

38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.

39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in 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, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

40. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.

41. In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term infringing' refers to adverse impacts that an enterprise may have on the human rights of individuals.

42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. Activities' can include both actions and omissions. Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to

exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.

43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. Business relationships' include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.

44. Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.

45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve. Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in supply chains are provided under paragraphs A.10 to A.12 of the Chapter on General Policies and their Commentaries.

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises have processes in place to enable remediation. Some situations require co-operation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the *Guidelines* and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous

learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the *Guidelines*.

V. Employment and Industrial Relations

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

1. *a)* Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing;

   b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment;

   c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency;

   d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations;

   e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker 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 such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements;

   b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment;

   c) Provide information to workers 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.

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

4. *a)* Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

   b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families;

c) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major employment effects, 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 the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker 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 workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers 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 the workers in their employment 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.

Commentary on Employment and Industrial Relations

47. This chapter opens with a chapeau that includes a reference to "applicable" law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national and international levels of regulation of employment and industrial relations matters. The terms "prevailing labour relations" and "employment practices" are sufficiently broad to permit a variety of interpretations in light of different national circumstances – for example, different bargaining options provided for workers under national laws and regulations.

48. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, last revised in 2006 (the ILO MNE Declaration). The ILO MNE Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD *Guidelines* cover all major aspects of corporate behaviour. The OECD *Guidelines* and the ILO MNE Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO MNE Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration.

However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the *Guidelines* are institutionally separate.

49. The terminology used in Chapter V is consistent with that used in the ILO MNE Declaration. The use of the terms "workers employed by the multinational enterprise" and "workers in their employment" is intended to have the same meaning as in the ILO MNE Declaration. These terms refer to workers who are "in an employment relationship with the multinational enterprise". Enterprises wishing to understand the scope of their responsibility under Chapter V will find useful guidance for determining the existence of an employment relationship in the context of the *Guidelines* in the non-exhaustive list of indicators set forth in ILO Recommendation 198 of 2006, paragraphs 13 (a) and (b). In addition, it is recognised that working arrangements change and develop over time and that enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices. A disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status.

50. These recommendations do not interfere with true civil and commercial relationships, but rather seek to ensure that individuals in an employment relationship have the protection that is due to them in the context of the *Guidelines*. It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in paragraphs A.10 to A.13 of Chapter II on General Policies.

51. Paragraph 1 of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

52. Paragraph 1c) recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high-quality, well-paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy.

53. Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. Convention 29 requests that governments "suppress the use of forced or compulsory labour in all its forms within the shortest possible period", while Convention 105 requests of them to "suppress and not to make use of any form of forced or compulsory labour" for certain enumerated purposes (for example, as a means of political coercion or labour discipline), and "to take effective measures to secure [its] immediate and complete

abolition". At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.

54. The reference to the principle of non-discrimination with respect to employment and occupation in paragraph 1e is considered to apply to such terms and conditions as hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958, the Maternity Protection Convention 183 of 2000, Employment (Disabled Persons) Convention 159 of 1983, the Older Workers Recommendation 162 of 1980 and the HIV and AIDS at Work Recommendation 200 of 2010, considers that any distinction, exclusion or preference on these grounds is in violation of the Conventions, Recommendations and Codes. The term "other status" for the purposes of the *Guidelines* refers to trade union activity and personal characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status. Consistent with the provisions in paragraph 1e, enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.

55. In paragraph 2c) of this chapter, information provided by companies to their workers and their representatives is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

56. The reference to consultative forms of worker participation in paragraph 3 of the Chapter is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the ILO MNE Declaration. Such consultative arrangements should not substitute for workers' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to working arrangements is also part of paragraph 8.

57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment. The ILO

Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the *Guidelines*.

58. The recommendation in paragraph 5 of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph A.4 of the General Policies chapter on encouraging human capital formation. The reference to local workers complements the text encouraging local capacity building in paragraph A.3 of the General Policies chapter. In accordance with the ILO Human Resources Development Recommendation 195 of 2004, enterprises are also encouraged to invest, to the greatest extent practicable, in training and lifelong learning while ensuring equal opportunities to training for women and other vulnerable groups, such as youth, low-skilled people, people with disabilities, migrants, older workers, and indigenous peoples.

59. Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

VI. 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 and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be

consistent with relevant national policies and international environmental commitments; 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 workers with adequate, measureable and verifiable (where applicable) 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 with a view to avoiding or, when unavoidable, mitigating them. 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, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging 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; reduce greenhouse gas emissions; 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, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and

   d) Exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

7. Provide adequate education and training to workers 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.

Commentary on the Environment

60. The text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems.

61. Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure shareholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.

62. In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital and skills, improved customer satisfaction, and improved community and public relations.

63. In the context of these *Guidelines*, "sound environmental management" should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

64. In most enterprises, an internal control system is needed to manage the enterprise's activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.

65. Information about the activities of enterprises and about their relationships with sub-contractors and their suppliers, and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and

communication are particularly appropriate where scarce or at risk environmental assets are at stake either in a regional, national or international context; reporting standards such as the Global Reporting Initiative provide useful references.

66. In providing accurate information on their products, enterprises have several options such as voluntary labelling or certification schemes. In using these instruments enterprises should take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

67. Normal business activity can involve the *ex ante* assessment of the potential environmental impacts associated with the enterprise's activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise's activities and of activities of sub-contractors and suppliers, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.

68. Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a "precautionary approach". None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

69. The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.

70. The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments – they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to consult periodically with stakeholders on the most appropriate ways forward.

71. The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate. In this regard, enterprises should take due account of their social and economic effects on developing countries.

72. For example, multinational enterprises often have access to existing and innovative technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a "demonstration effect" on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefit from available and innovative technologies and practices, is an important way of building support for international investment activities more generally.

73. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

VII. Combating Bribery, Bribe Solicitation and Extortion

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. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates
2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.
3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.
4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by

enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

Commentary on Combating Bribery, Bribe Solicitation and Extortion

74. Bribery and corruption are damaging to democratic institutions and the governance of corporations. They discourage investment and distort international competitive conditions. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare, and it impedes efforts to reduce poverty. Enterprises have an important role to play in combating these practices.

75. Propriety, integrity and transparency in both the public and private domains are key concepts in the fight against bribery, bribe solicitation and extortion. The business community, non-governmental organisations, governments and inter-governmental organisations have all co-operated to strengthen public support for anticorruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is also an essential element in fostering a culture of ethics within enterprises.

76. The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *Anti-Bribery Convention*) entered into force on 15 February 1999. The *Anti-Bribery Convention*, along with the *2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (the *2009 Anti-Bribery Recommendation*), the *2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, and the *2006 Recommendation on Bribery and Officially Supported Export Credits*, are the core OECD instruments which target the offering side of the bribery transaction. They aim to eliminate the "supply" of bribes to foreign public officials, with each country taking responsibility for the activities of its enterprises and what happens within its own jurisdiction.[3] A programme of rigorous and systematic monitoring of countries' implementation of the Anti-Bribery Convention has been established to promote the full implementation of these instruments.

77. The 2009 *Anti-Bribery Recommendation* recommends in particular that governments encourage their enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the *Good Practice Guidance on Internal Controls, Ethics and Compliance*, included as Annex II to the *2009 Anti-Bribery Recommendation*. This *Good Practice Guidance* is addressed to enterprises as well as business organisations and professional associations, and highlights good practices for ensuring the effectiveness of their internal

controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.

78. Private sector and civil society initiatives also help enterprises to design and implement effective anti-bribery policies.

79. The *United Nations Convention against Corruption* (*UNCAC*), which entered into force on 14 December 2005, sets out a broad range of standards, measures and rules to fight corruption. Under the *UNCAC*, States Parties are required to prohibit their officials from receiving bribes and their enterprises from bribing domestic public officials, as well as foreign public officials and officials of public international organisations, and to consider disallowing private to private bribery. The *UNCAC* and the *Anti-BriberyConvention* are mutually supporting and complementary.

80. To address the demand side of bribery, good governance practices are important elements to prevent enterprises from being asked to pay bribes. Enterprises can support collective action initiatives on resisting bribe solicitation and extortion. Both home and host governments should assist enterprises confronted with solicitation of bribes and with extortion. The *Good Practice Guidance on Specific Articles of the Convention* in Annex I of the *2009 Anti-Bribery Recommendation* states that the *Anti-Bribery Convention* should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe. Furthermore, the *UNCAC* requires the criminalisation of bribe solicitation by domestic public officials.

VIII. 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 quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.
5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, *inter alia*, improving the ability of consumers to: *i)* make informed decisions involving complex goods, services and markets, *ii)* better understand the economic, environmental and social impact of their decisions and *iii)* support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.

7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.
8. Take into consideration, in applying the above principles, *i)* the needs of vulnerable and disadvantaged consumers and *ii)* the specific challenges that e-commerce may pose for consumers.

Commentary on Consumer Interests

81. The chapter on consumer interests of the OECD *Guidelines* for Multinational Enterprises draws on the work of the OECD Committee on Consumer Policy and the Committee on Financial Markets, as well as the work of other international organisations, including the International Chamber of Commerce, the International Organisation for Standardization and the United Nations (*i.e.,* the UN Guidelines on Consumer Policy, as expanded in 1999).

82. The chapter recognises that consumer satisfaction and related interests constitute a fundamental basis for the successful operation of enterprises. It also recognises that consumer markets for goods and services have undergone major transformation over time. Regulatory reform, more open global markets, the development of new technologies and the growth in consumer services have been key agents of change, providing consumers with greater choice and the other benefits which derive from more open competition. At the same time, the pace of change and increased complexity of many markets have generally made it more difficult for consumers to compare and assess goods and services. Moreover, consumer demographics have also changed over time. Children are becoming increasingly significant forces in the market, as are the growing number of older adults. While consumers are better educated overall, many still lack the arithmetic and literacy skills that are required in today's more complex, information-intensive marketplace. Further, many consumers are increasingly interested in knowing the position and activities of enterprises on a broad range of economic, social and environmental issues, and in taking these into account when choosing goods and services.

83. The chapeau calls on enterprises to apply fair business, marketing and advertising practices and to ensure the quality and reliability of the products that they provide. These principles, it is noted, apply to both goods and services.

84. Paragraph 1 underscores the importance for enterprises to adhere to required health and safety standards and the importance for them to provide consumers with adequate health and safety information on their products.

85. Paragraph 2 concerns information disclosure. It calls for enterprises to provide information which is sufficient for consumers to make informed decisions. This would include information on the financial risks associated with products, where relevant. Furthermore, in some instances enterprises are legally required to provide information in a manner that enables consumers to make direct comparisons of goods and services (for example, unit pricing). In the absence of direct legislation, enterprises are encouraged to present information, when dealing with consumers, in a way that facilitates comparisons of goods and services and enables consumers to easily determine what the total cost of a product will be. It should be noted that what is considered to be "sufficient" can change over time and enterprises should be responsive to these changes. Any product and environmental claims that enterprises make should be based on adequate evidence and, as

applicable, proper tests. Given consumers' growing interest in environmental issues and sustainable consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices.

86. Business conduct is increasingly considered by consumers when making their purchasing decisions. Enterprises are therefore encouraged to make information available on initiatives they have taken to integrate social and environmental concerns into their business operations and to otherwise support sustainable consumption. Chapter III of the *Guidelines* on Disclosure is relevant in this regard. Enterprises are there encouraged to communicate value statements or statements of business conduct to the public, including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. Enterprises are encouraged to make this information available in plain language and in a format that is appealing to consumers. Growth in the number of enterprises reporting in these areas and targeting information to consumers would be welcome.

87. Paragraph 3 reflects language that is used in the 2007 Council *Recommendation on Consumer Dispute Resolution and Redress*. The Recommendation establishes a framework for developing effective approaches to address consumer complaints, including a series of actions that industry can take in this respect. It is noted that the mechanisms that many enterprises have established to resolve consumer disputes have helped increase consumer confidence and consumer satisfaction. These mechanisms can provide more practicable solutions to complaints than legal actions, which can be expensive, difficult and time consuming for all the parties involved. For these non-judicial mechanisms to be effective, however, consumers need to be made aware of their existence and would benefit from guidance on how to file complaints, especially when claims involve cross-border or multi-dimensional transactions.

88. Paragraph 4 concerns deceptive, misleading, fraudulent and other unfair commercial practices. Such practices can distort markets, at the expense of both consumers and responsible enterprises and should be avoided.

89. Paragraph 5 concerns consumer education, which has taken on greater importance with the growing complexity of many markets and products. Governments, consumer organisations and many enterprises have recognised that this is a shared responsibility and that they can play important roles in this regard. The difficulties that consumers have experienced in evaluating complex products in financial and other areas have underscored the importance for stakeholders to work together to promote education aimed at improving consumer decision-making.

90. Paragraph 6 concerns personal data. The increasing collection and use of personal data by enterprises, fuelled in part by the Internet and technological advances, has highlighted the importance of protecting personal data against consumer privacy violations, including security breaches.

91. Paragraph 7 underscores the importance of enterprises to work with public authorities to help prevent and combat deceptive marketing practices more effectively. Co-operation is also called for to diminish or prevent threats to public health and safety and to the environment. This includes threats associated with the disposal of goods, as well as their

consumption and use. This reflects recognition of the importance of considering the entire life-cycle of products.

92. Paragraph 8 calls on enterprises to take the situations of vulnerable and disadvantaged consumers into account when they market goods and services. Disadvantaged or vulnerable consumers refer to particular consumers or categories of consumers, who because of personal characteristics or circumstances (like age, mental or physical capacity, education, income, language or remote location) may meet particular difficulties in operating in today's information-intensive, globalised markets. The paragraph also highlights the growing importance of mobile and other forms of e-commerce in global markets. The benefits that such commerce provides are significant and growing. Governments have spent considerable time examining ways to ensure that consumers are afforded transparent and effective protection that is not less in the case of e-commerce than the level of protection afforded in more traditional forms of commerce.

IX. 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 sustainable 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.

Commentary on Science and Technology

93. In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving enterprise performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help enhance the economic and social progress in their host countries. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.

94. The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but MNEs may want to consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

X. Competition

Enterprises should:

1. Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anti-competitive effects.
2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:
   a) fix prices;
   b) make rigged bids (collusive tenders);
   c) establish output restrictions or quotas; or
   d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.
3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.
4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

Commentary on Competition

95. These recommendations emphasise the importance of competition laws and regulations to the efficient operation of both domestic and international markets and reaffirm the importance of compliance with those laws and regulations by domestic and multinational enterprises. They also seek to ensure that all enterprises are aware of developments concerning the scope, remedies and sanctions of competition laws and the extent of co-operation among competition authorities. The term "competition" law is used to refer to laws, including both "antitrust" and "antimonopoly" laws, that variously

prohibit: a) anti-competitive agreements; b) the abuse of market power or of dominance; c) the acquisition of market power or dominance by means other than efficient performance; or d) the substantial lessening of competition or the significant impeding of effective competition through mergers or acquisitions.

96. In general, competition laws and policies prohibit: a) hard core cartels; b) other anti-competitive agreements; c) anti-competitive conduct that exploits or extends market dominance or market power; and d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/Final, the anticompetitive agreements referred to in sub a) constitute hard core cartels, but the Recommendation incorporates differences in member countries' laws, including differences in the laws' exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. The recommendations in these *Guidelines* do not suggest that enterprises should forego availing themselves of such legally available exemptions or provisions. The categories sub b) and c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

97. The goal of competition policy is to contribute to overall welfare and economic growth by promoting market conditions in which the nature, quality, and price of goods and services are determined by competitive market forces. In addition to benefiting consumers and a jurisdiction's economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand. Enterprises can contribute to this process by providing information and advice when governments are considering laws and policies that might reduce efficiency or otherwise reduce the competitiveness of markets.

98. Enterprises should be aware that competition laws continue to be enacted, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions. Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

99. Finally, enterprises should recognise that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See generally: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/Final; Recommendation of the Council on Merger Review, C(2005)34. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making and competitive remedies while also permitting cost savings for governments and enterprises.

XI. Taxation

1. 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 both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the

intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

Commentary on Taxation

100. Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history. Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction unless there exists specific legislation designed to give that result. In this case, the enterprise should reasonably believe that the transaction is structured in a way that gives a tax result for the enterprise which is not contrary to the intentions of the legislature.

101. Tax compliance also entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws. Such co-operation should include responding in a timely and complete manner to requests for information made by a competent authority pursuant to the provisions of a tax treaty or exchange of information agreement. However, this commitment to provide information is not without limitation. In particular, the *Guidelines* make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

102. Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the board with regard to tax risk. The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board. A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also to effectively manage tax risk, which can serve to avoid major financial, regulatory and reputation risk for an enterprise.

103. A member of a multinational enterprise group in one country may have extensive economic relationships with members of the same multinational enterprise group in other

countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to or required by law for the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.

104. Transfer pricing is a particularly important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by multinational enterprises) means that transfer pricing is a significant determinant of the tax liabilities of members of a multinational enterprise group because it materially influences the division of the tax base between countries in which the multinational enterprise operates. The arm's length principle which is included in both the OECD Model Tax Convention and the UN Model Double Taxation Convention between Developed and Developing Countries, is the internationally accepted standard for adjusting the profits between associated enterprises. Application of the arm's length principle avoids inappropriate shifting of profits or losses and minimises risks of double taxation. Its proper application requires multinational enterprises to co-operate with tax authorities and to furnish all information that is relevant or required by law regarding the selection of the transfer pricing method adopted for the international transactions undertaken by them and their related party. It is recognised that determining whether transfer pricing adequately reflects the arm's length standard (or principle) is often difficult both for multinational enterprises and for tax administrations and that its application is not an exact science.

105. The Committee on Fiscal Affairs of the OECD undertakes ongoing work to develop recommendations for ensuring that transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises). The OECD Transfer Pricing Guidelines and that Council Recommendation are updated on an ongoing basis to reflect changes in the global economy and experiences of tax administrations and taxpayers dealing with transfer pricing. The arm's length principle as it applies to the attribution of profits of permanent establishments for the purposes of the determination of a host State's taxing rights under a tax treaty was the subject of an OECD Council Recommendation adopted in 2008**.**

106. The OECD Transfer Pricing Guidelines focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The OECD Transfer Pricing *Guidelines* aim to help tax administrations (of both OECD member countries and non-member countries) and multinational enterprises by indicating mutually satisfactory solutions to transfer pricing cases, thereby minimising conflict among tax administrations and between tax administrations and multinational enterprises and avoiding costly litigation. Multinational enterprises are encouraged to follow the guidance in the OECD Transfer Pricing Guidelines, as amended and supplemented[4], in order to ensure that their transfer prices reflect the arm's length principle.

Implementation Procedures of the OECD Guidelines for Multinational Enterprises Decision of the Council on the OECD Guidelines for Multinational Enterprises

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;

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1] and repealed on 27 June 2000 [C(2000)96/FINAL];

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:

I. National Contact Points

1. Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental 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 regularly to share experiences and report to the Investment Committee.
4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.

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"), OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-adhering countries on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the *Guidelines* and in promoting their principles and standards.
4. The Committee shall be responsible for clarification of the *Guidelines*. Parties involved in a specific instance that gave rise to a request for clarification will be given the opportunity to express their views either orally or in writing. 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* and fostering functional equivalence of National Contact Points.
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 and the views expressed by the advisory bodies, OECD Watch, other international partners and non-adhering countries as appropriate.
8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the *Guidelines*. It shall, in particular, seek opportunities to collaborate with the advisory bodies, OECD Watch, other international partners and other stakeholders in order to encourage the positive contributions that multinational enterprises can make, in the context of the *Guidelines*, to economic, environmental and social progress with a view to achieving sustainable development, and to help them

identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

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 (NCPs) 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 and furthering the effectiveness of the *Guidelines*, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the National Contact Points:

1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines* and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.
2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.
3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the *Guidelines*.

B. Information and Promotion

The National Contact Point 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* and their implementation procedures, including through co-operation, as appropriate, with the business community, worker 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, worker organisations, other non-governmental organisations and the public; and
   c) Governments of non-adhering countries.

C. Implementation in Specific Instances

The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances in a manner that is

impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested 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 parties involved.
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, worker organisations, other non-governmental organisations, and relevant experts;
   b) Consult the NCP in the other country or countries concerned;
   c) Seek the guidance of the 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 the parties in dealing with the issues.
3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:
   a) A statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision.
   b) A report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.
   c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

   The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.
4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. 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 or this would be contrary to the provisions of national law.

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 NCP will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.

II. Investment Committee

1. 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.
2. The Committee will, with a view to enhancing the effectiveness of the *Guidelines* and to fostering the functional equivalence of NCPs:
   a) Consider the reports of NCPs.
   b) Consider a substantiated submission by an adhering country, an advisory body or OECD Watch 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, an advisory body or OECD Watch 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*.
   e) Co-operate with international partners.
   f) Engage with interested non-adhering countries on matters covered by the *Guidelines* and their implementation.
3. 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.
4. The Committee will discharge its responsibilities in an efficient and timely manner.
5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:
   a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the *Guidelines*.
   b) collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the *Guidelines* in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances.
   c) facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on

the implementation procedures of the *Guidelines* such as promotion and the facilitation of conciliation and mediation.

d) facilitate co-operation between NCPs where appropriate.

e) promote the *Guidelines* in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the *Guidelines* among non-adhering countries.

Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the Investment Committee is attached to the Council Decision.
2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPs, summarised as follows:
   - Setting up NCPs (which will take account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
   - Making available necessary human and financial resources.
   - Enabling NCPs in different countries to co-operate with each other as necessary.
   - Enabling NCPs to meet regularly and report to the Committee.
3. The Council Decision also establishes the Committee's responsibilities for the *Guidelines*, including:
   - Organising exchanges of views on matters relating to the *Guidelines*.
   - Issuing clarifications as necessary.
   - Holding exchanges of views on the activities of NCPs.
   - Reporting to the OECD Council on the *Guidelines*.
4. The Investment Committee is the OECD body responsible for overseeing the functioning of the *Guidelines*. This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). The Committee seeks to ensure that each element in the Declaration is respected and understood, and that they all complement and operate in harmony with each other.
5. Reflecting the increasing relevance of responsible business conduct to countries outside the OECD, the Decision provides for engagement and co-operation with non-adhering countries on matters covered by the *Guidelines*. This provision allows the Committee to arrange special meetings with interested non-adhering countries to promote understanding of the standards and principles contained in the Guidelines and of their implementation procedures. Subject to relevant OECD procedures, the Committee may also associate them with special activities or projects on responsible business conduct, including by inviting them to its meetings and to the Corporate Responsibility Roundtables.
6. In its pursuit of a proactive agenda, the Committee will co-operate with NCPs and seek opportunities to collaborate with the advisory bodies, OECD Watch, and other international partners. Further guidance for NCPs in this respect is provided in paragraph 18.

I. Commentary on the Procedural Guidance for NCPs

7. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through regular meetings and Committee oversight.

8. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years. By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.

9. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of "functional equivalence". Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the Committee in discussing the conduct of NCPs.

Core Criteria for Functional Equivalence in the Activities of NCPs

Visibility. In conformity with the Decision, adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines*. Governments are expected to publish information about their NCPs and to take an active role in promoting the *Guidelines*, which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its "good offices" in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

Accountability. A more active role with respect to enhancing the profile of the *Guidelines* – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the

public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage "best practices" with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

Institutional Arrangements

10. NCP leadership should be such that it retains the confidence of social partners and other stakeholders, and fosters the public profile of the *Guidelines*.
11. Regardless of the structure Governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.
12. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, worker organisations, other non-governmental organisations, and other interested parties.

Information and Promotion

13. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*.
14. NCPs are required to make the *Guidelines* better known and available online and by other appropriate means, including in national languages. English and French language versions will be available from the OECD, and website links to the *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*.
15. NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed by the NCP.
16. In their efforts to raise awareness of the Guidelines, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, worker organisations, other non-governmental organisations, and other interested parties. Such organisations have a strong stake in the promotion of the Guidelines and their institutional networks provide opportunities for promotion that, if used for this purpose, will greatly enhance the efforts of NCPs in this regard.
17. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: i) other NCPs (reflecting a provision in the Decision); ii) the business community, worker organisations, other non-governmental organisations and the public; and iii) governments of non-adhering countries.

Proactive Agenda

18. In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:
    a) consider new developments and emerging practices concerning responsible business conduct;

b) support the positive contributions enterprises can make to economic, social and environmental progress;

c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

Peer Learning

19. In addition to contributing to the Committee's work to enhance the effectiveness of the *Guidelines*, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.

Implementation in Specific Instances

20. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. This section of the Procedural Guidance provides guidance to NCPs on how to handle specific instances.

21. The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the *Guidelines*.

Guiding Principles for Specific Instances

22. Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:

Impartial. NCPs should ensure impartiality in the resolution of specific instances.

Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the *Guidelines*.

Coordination between NCPs in Specific Instances

23. Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide

appropriate assistance in a timely manner when requested by the NCP of the host country.

24. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.

Initial Assessment

25. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:
    - the identity of the party concerned and its interest in the matter.
    - whether the issue is material and substantiated.
    - whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
    - the relevance of applicable law and procedures, including court rulings.
    - 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*.
26. When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.
27. Following its initial assessment, the NCP will respond to the parties concerned. If the NCP decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision.

Providing Assistance to the Parties

28. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute

informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph C-2a) through C-2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts. Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

29. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.
30. When offering their good offices, NCPs may take steps to protect the identity of the parties involved where there are strong reasons to believe that the disclosure of this information would be detrimental to one or more of the parties. This could include circumstances where there may be a need to withhold the identity of a party or parties from the enterprise involved.

Conclusion of the Procedures

31. NCPs are expected to always make the results of a specific instance publicly available in accordance with paragraphs C-3 and C-4 of the Procedural Guidance.
32. When the NCP, after having carried out its initial assessment, decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved and taking into account the need to preserve the confidentiality of sensitive business and other information. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party.
33. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.
34. If the parties involved reach agreement on the issues raised, the parties should address in their agreement how and to what extent the content of the agreement is to be made publicly available. The NCP, in consultation with the parties, will make publicly available a report with the results of the proceedings. The parties may also agree to seek the assistance of the NCP in following-up on the implementation of the agreement and the NCP may do so on terms agreed between the parties and the NCP.
35. If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

36. The NCP should provide an opportunity for the parties to comment on a draft statement. However, the statement is that of the NCP and it is within the NCP's discretion to decide whether to change the draft statement in response to comments from the parties. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.

37. Statements and reports on the results of the proceedings made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes. This provision does not change the voluntary nature of the *Guidelines*.

Transparency and Confidentiality

38. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see paragraph 9 in "Core Criteria" section, above). However, paragraph C-4 of the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while paragraph C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

Issues Arising in Non-Adhering Countries

39. As noted in paragraph 2 of the "Concepts and Principles" chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.

- In the event that *Guidelines*-related issues arise in a non-adhering country, home 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 enterprise in the home country, and, as appropriate, embassies and government officials in the non-adhering country.
- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.

- The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.
- Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP meetings with a view to building expertise in handling issues arising in non-adhering countries.

Indicative Timeframe

40. The specific instance procedure comprises three different stages:

    1. *Initial assessment and decision whether to offer good offices to assist the parties*: NCPs should seek to conclude an initial assessment within three months, although additional time might be needed in order to collect information necessary for an informed decision.
    2. *Assistance to the parties in their efforts to resolve the issues raised*: If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognising that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consultation with the parties, establish a reasonable timeframe for the discussion between the parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement.
    3. *Conclusion of the procedures*: The NCP should issue its statement or report within three months after the conclusion of the procedure.

41. As a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.

Reporting to the Investment Committee

42. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In this light, NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD *Guidelines* information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in paragraph C-4.

II. Commentary on the Procedural Guidance for the Investment Committee

43. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:

- Discharging its responsibilities in an efficient and timely manner.

- Considering requests from NCPs for assistance.
- Holding exchanges of views on the activities of NCPs.
- Providing for the possibility of seeking advice from international partners and experts.

44. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be questioned by a referral to the Committee. The provision that the Committee shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.

45. The Committee will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the Committee if they have doubt about the interpretation of the *Guidelines* in these circumstances.

46. When discussing NCP activities, the Committee may make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.

47. A substantiated submission by an adhering country, an advisory body or OECD Watch that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* in specific instances will also be considered by the Committee. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.

48. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the Committee to ensure that the meaning of the *Guidelines* would not vary from country to country. A substantiated submission by an adhering country, an advisory body or OECD Watch with respect to whether an NCP interpretation of the *Guidelines* is consistent with Committee interpretations will also be considered.

49. In order to engage with non-adhering countries on matters covered by the Guidelines, the Committee may invite interested non-adhering countries to its meetings, annual Roundtables on Corporate Responsibility, and meetings relating to specific projects on responsible business conduct.

50. Finally, the Committee may wish to call on experts to address and report on broader issues (for example, child labour or human rights) or individual issues, or to improve the effectiveness of procedures. For this purpose, the Committee could call on OECD in-house expertise, international organisations, the advisory bodies, non-governmental organisations, academics and others. It is understood that this will not become a panel to settle individual issues.

Note by the Secretariat: *These commentaries have been prepared by the Investment Committee in enlarged session*[5] *to provide information on and explanation of the text of the Guidelines for Multinational Enterprises and of the Council Decision on the OECD Guidelines for Multinational Enterprises. They are not part of the Declaration on International Investment and Multinational Enterprises or of the Council Decision on the OECD Guidelines for Multinational Enterprises.*

Notes

1. One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs".
2. Some countries have referred to the 2005 Tunis Agenda for the Information Society in this regard.
3. For the purposes of the Convention, a "bribe" is defined as an "…offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business". The Commentaries to the Convention (paragraph 9) clarify that "small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. …".
4. One non-OECD adhering country, Brazil, does not apply the OECD Transfer Pricing Guidelines in its jurisdiction and accordingly the use of the guidance in those Guidelines by multinational enterprises for purposes of determining taxable income from their operations in this country does not apply in the light of the tax obligations set out in the legislation of this country. One other non-OECD adhering country, Argentina, points out that the OECD Transfer Pricing Guidelines are not compulsory in its jurisdiction.
5. Including the eight non-Member adherents to the Declaration on International Investment and Multinational Enterprises.

APPENDIX C

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).

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
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 Indian and Northern Affairs Canada	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.
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 specific instance 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 Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank 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

	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, NGO's	Ministry of Employment and the Economy	Ministry of Foreign Affairs Ministry of Social Affairs and Health Ministry of Environment The Prime Minister's Office The Confederation of Finnish Industries (EK) The Central Organisation of Finnish Trade Unions (SAK) The Finnish Section of the International Chamber of Commerce (ICC) FinnWatch The Finnish Confederation of Professionals (STTK) Akava – Confederation of Unions for Professional and Managerial Staff Federation of Finnish Enterprises The Finnish Consumers' Association WWF Finland The Evangelical Lutheran Church of Finland Tapiola Group PwC Ltd., Finland Finnish Business and Society	The Finnish Committee on CSR (set on 16 October 2008) established by the Government Decree (591/2008) on 9 September 2008 operates under the auspices of the Ministry of Employment and the Economy, and the Committee replaces the MONIKA Committee (established by Government Decree 335/2001). The Committee on CSR focuses on the issues of CSR and on the promotion of the guidelines of the OECD and of the other international organisations. The Committee on CSR had 3 meetings over the review period.
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and six Trade Union Federations are part of the NCP.
Germany	Single Department with close inter-ministerial cooperation in specific instances procedures	Federal Ministry of Economics and Technology	Federal Foreign Office Federal Ministry of Justice Federal Ministry of Finance Federal Ministry of Economic Co-operation Federal Ministry of Environment, Nature Conservation and Nuclear Safety Federal Ministry of Labour and Social Affairs Federal Ministry of Food, Agriculture and Consumer Protection	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		

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment	The Department of Communications, Energy and Natural Resources Departments of Foreign Affiars, Finance, Justice and Law Reform Department of the Environment, Heritage and Local Government Office of the State Solicitor. IDA- Ireland, Enterprise Ireland	The NCP also works in close cooperation with the NGO Community and with the main employers and business representative organisations.
Israel	Single Department	Ministry of Industry, Trade 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. The NCP Committee includes members of the trade unions and business associations. Please note that regarding its structure, after the Ministerial Decree of March the18th 2011, the NCP Committee includes representatives of the Permanent Regions' Conference, the Italian Banks Association (ABI), the National Confederation of Crafts and Small and Medium-Sized Enterprises (CNA) and (Confapi), 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	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy	PROMEXICO Ministry of Labour	The NCP works in close co-operation with other concerned departments within the government on an as requested basis depending on the nature of the specific project.
Morocco	Bipartite	Moroccan Investment and Development Agency	Agency Moroccan Development Investment (AMDI) Ministry of Economic Affairs and General (maeg) General Confederation of Enterprises in Morocco (CGEM)	
Netherlands	Independent Board	Ministry of Economic Affairs, Agriculture and Innovation (NCP Secretariat)	Ministry of Social Affairs and Employment Ministry of Infrastructure 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	Multi-stakeholder with independent panel of four experts	The secretariat is administratively attached to the 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 Forum for Environment and Development	A new and strengthened NCP entered into force as of March 1st 2011. For more information, 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	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Romania	Bipartite Structure	*Co-ordination* Ministry of Economy, Trade and Business Environment Ministry of Foreign Affairs *Executive function* Ministry of Economy, Trade and Business Environment – Directorate for Business Environment Romanian Centre for Trade and Foreign Investment Promotion *Technical secretariat* Ministry of Foreign Affairs Romanian Centre for Trade and Foreign Investment Promotion	Ministry of Foreign Affairs Ministry of Economy, Trade and Business Environment Ministry of Public Finance Ministry of Justice Ministry of Education, Research, Youth and Sports Ministry of Labour, Family and Social Protection Ministry of Transportation and Infrastructure Ministry of Regional Development and Tourism Ministry of Environment and Forests Romanian Centre for Trade and Foreign Investment Promotion Business Environment Unit Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.
Slovak Republic	Single Department	Ministry of Economy	Slovak Investment and Trade Development Agency (SARIO) Ministry of Finance Ministry of Labour, Social Affairs and Family (both Ministries are investment aid providers)	Strategic investment department is a single department in the Ministry of Economy, under the Section of strategy.
Slovenia	Tripartite, with several ministries	Ministry of the Economy	Other ministries, agencies, local communities, NGOs	Some changes of the representatives form different Ministries were made
Spain	Single Department	Secretariat of State for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment and Rural and Marine Affairs Ministry of Justice Ministry of Health and Social Policy Ministry of Labour and Immigration	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	International Trade Policy Department, Ministry for Foreign Affairs	Ministry for Foreign Affairs Ministry of the Environment Ministry of Employment Ministry of Enterprise, Energy and Communications	The Ministry for Foreign Affairs, International Trade Policy Department, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	State Secretariat for Economic Affairs (SECO), Ministry of Economic Affairs	Ministry of Foreign Affairs, Ministry of Finance	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 at least once a year and is provided with essential information as required. Three supplementary meetings were organized in 2010 and 2011 in order to consult stakeholders regarding the update of the OECD Guidelines.
Turkey	Multi government departments, includes three governmental bodies.	General Directorate of Foreign Investment, Under secretariat of Treasury	Ministry of Foreign Affairs Ministry of Justice	Depending on the issue under debate, the consultation and fact finding processes are extended to other governmental offices. Also an Advisory Committee including academicians, NGOs, representatives from trade unions and business associations helps the NCP in its activities.

	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 four external members representing UK businesses, trades unions and NGOs. 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 specific instances, 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 the Assistant Secretary, Bureau of Economic, Energy and Business Affairs (EEB), United States Department of State	US State Department Office of the Legal Advisor, Bureau of Democracy, Human Rights, and Labor, Bureau of Oceans, Environment and Science, regional country desks and officers at US embassies and consulates; 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 chairs regular and *ad hoc* interagency meetings to discuss issues under the Guidelines, including specific instances, and queries other agencies as needed. Business, labour and civil society organisations are consulted via the Advisory Council on International Economic Policy, or individually on an *ad hoc* basis.

APPENDIX D

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 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 specific instance (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.

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 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.

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.	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 9th, 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 *(contd)*	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. *(Contd)*						*(Continued from previous page)* 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.
Argentina	The NCP received a non-observance of General Policies and bribery by a German multinational enterprise.	March 2011	Argentina	II – General Policies VI – Combating Bribery	Ongoing	No	
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*.

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Australia	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*.
Australia	An Australian company operating in New Zealand – employment relations	Sept 2009	New Zealand	Various	Concluded	Yes	An NZ Trade Union has via its Australian related trade union referred a NZ employment issue to the ANCP. The issue concerns employment of contractors as opposed to employees in New Zealand by an Australian company which is part German owned. NZNCP also received the same complaint and managed this specific issue in concert with the Australian and German NCP's
Australia	Environmental issues – Australian/UK dual listed company operating in Mozambique	October 2010	Mozambique	Various	Suspended	No	The UK NCP is managing this specific instance as the operating division of the dual listed company responsible for the Mozambique operations is headquartered in the UK. Specific instance suspended with other avenues of resolution to complaint are explored.
Australia	Employment and competition issues – Australian Trade union (CFMEU)	October 2010	Australia	Various	Concluded	Yes	The ANCP was unable to bring the parties together to address the alleged breaches raised by the complainant. XstrataCoal would not meet with CFMEU national leaders to resolve matter because of alleged unreasonable behaviour by CFMEU. Specific Instance finalised without resolution.
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.

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	Speciality Metals Company S.A..	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group.	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The case was handled in together with the NGO complaint.
Belgium	Forrest Group.	Nov 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment IX. Competition	Concluded	Yes	Press release in 2005.
Belgium	Tractebel-Suez.	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Concluded	Yes	Press release in 2005.
Belgium	KBC/DEXIA/ING.	Mai 2004	Azerbaijan, Georgia and Turkey	I. Concepts and Principles II. General Policies III. Disclosure V. Environment			UK NCP.
Belgium	Cogecom.	Nov 2004	Democratic Republic of Congo	I Concepts and Principles II. General Policies IV. Employment	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.
Belgium	DEME	March 2009	India	V. Environment	Concluded	Yes	Press release in 2011
Belgium	BRINK'S	December 2010	Belgium	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Press release in 2011
Brazil	Workers' representation in labour unions.	26 Sept 2003	Brazil	IV. Employment and Industrial Relations, article 1	Concluded	Yes	Complaint settled.
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	V. Environment	Ongoing	No	Negotiations in dead-lock.

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	Environment and workers´ health issues.	8 May 2006	Brazil	V. Environment, articles 1 and 3	Concluded	Yes	After a long mediation, several meetings and contacts held with the opposing parties, on March 25th 2008, the Brazilian NCP decided to close the complaint held against the multinational enterprise Shell through a comprehensive final Report in Portuguese.
Brazil	Dismissal of workers.	26 Sept 2006	Brazil	IV. Employment and Industrial Relations, article 6	Concluded	Yes	
Brazil	Refusal to negotiate with labour union.	6 March, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 02 (a, b, c), 03 and 08	Ongoing	No	List of questions answered by the enterprise. Awaiting manifestation from the complaining labour union.
Brazil	Dismissal of workers.	7 March, 2007	Brazil	II. General Policies, article 02 IV. Employment and Industrial Relations, articles 1(a), 2(a), 4(a), 7 and 8	Ongoing	No	Termination of proceedings awaiting judiciary decision.
Brazil	Refusal to negotiate with labour union.	19 April, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 01 (d), 02 (a), 02 (b), 02 (c), 03, 04 (a), 04 (b) and 06.	Ongoing	No	
Brazil	Dismissal of labour union representative without cause.	April, 2007	Paraguay	II. General Policies IV. Employment	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	Induction of conduct of employees during a decided 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	Avoidance 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.

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, 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.
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	Closed	Yes	After an initial assessment the NCP offered its good offices to facilitate dialogue between the two sides. The company accepted the offer and was willing to participate in facilitated dialogue. However, the notifiers were not willing to participate. The NCP issued a final statement in May, 2011 and included it in the annual report.
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	Closed	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response. After having received the response and numerous additional submissions from both parties, the NCP concluded its initial assessment and informed the parties that the issues raised did not merit further examination. A summary of the initial assessment was posted on the NCP website in May 2011 and included in the annual report.

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	Submission from community NGOs and a Canadian NGO regarding human rights and environmental concerns at a mine operated by a Canadian company.	March 2011	Papua New Guinea	II. General Policies III. Disclosure V. Environment	Open	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response. At the time of writing the reply has not yet been received.
Canada Switzerland	A submission was received by the Canadian NCP from two Canadian NGOs regarding a Canadian company with a minority interest in another company in Africa. The Swiss NCP received the same submission from several European NGOs in relation to a Swiss company with the majority interest in the same African company.	April 2011	Zambia	X. Taxation	Open	n.a.	The Canadian NCP and the Swiss NCP have been in contact and agreed that the Swiss NCP would have the lead in the treatment of this matter. The Canadian NCP has analyzed the material received from the parties and provided the Swiss NCP with its views.
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 200 5	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.*

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	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003, see *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm.*
France	Marks and Spencer's announcement of closure of its stores in France.	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 *www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm*
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	Feb 2003	France	V. Environment III. Disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	Feb 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.
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		

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	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise.	August 2010	US Colombia	Chap IV	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment and general policies by a French enterprise.	October 2010	Ouzbekistan	Chap IV Chap II	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise.	November 2010	Benin Canada	Chap IV	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment, environment, human rights by a French multinational enterprise.	December 2010	Cameroun	Chap II Chap IV Chap V	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise	February 2011	US	Chap IV	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise	March 2011	France	Chap IV	Ongoing	n.a.	
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.bmwi.de/go/oecd-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, *inter alia*, breach of the principle of *bona fide* negotiations. Parties agreed on an amicable settlement including withdrawal of court proceedings. NCP formulated expectation that dialogue is continued. See *www.bmwi.de/go/oecd-nks.http:///*

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	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.bmwi.de/go/oecd-nks*.
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 *Guidelines*, the company, *inter alia*, acting in accordance with extensive national laws. *http://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 *Guidelines* did not applyIn addition, the NCP drew the attention to pending criminal proceedings, *http://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. *http://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	Concluded	Yes	Specific Instance was accepted but parallel legal proceedings, third party involvement (host country) and location in non-adhering country made mediation difficult. Proceedings were concluded on 30 March 2011 with a Final Declaration by the German NCP.

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	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 *Guidelines* and partial misinterpretation of some facts. *http://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	Concluded	n.a.	Swedish NCP requested to take the lead.
Germany	Complaint against Otto Stadtlander GmbH, a German company dealing with cotton, regarding business activities in Uzbekistan	October 2010	Uzbekistan	II. General Policies	Pending	n.a.	Similar instances have been raised with the British, French and Swiss National Contact Points, with which the German National Contact Point is closely consulting.
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	Concluded	Yes	As the Dutch NCP also dealt with this, with Ireland as lead, a joint final statement by the Irish and Dutch NCPs was published on 30 July 2010. (The Norwegian Canadian and USNCPs are kept informed of developments.) The NCPs concluded that: the given the positions of both parties in relation to the location of the gas processing plant, a mediatory attempt on the basis of this main demand would not yield any results; and that since 2005, the consortium had improved its practices from the earlier stages in the project and shown willingness to address health and safety concerns.
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.

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
Israel	Allegation of non compliance of a US company operating in Israel, in collaboration with Israeli companies, with regard to a large project in the energy sector	May 2010	Israel	V. Environment	Concluded	n.a.	During the initial assessment by the NCP, there was a change in circumstances, following which the complaint was no longer relevant. Nevertheless, the NCP provided the complainants with access to an official source in order for them to gain the specific information that they were seeking from the alleged non compliant company. The case was closed with the complainants' consent.
Italy (	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	Concluded	yes	In 2011 a revised final statement by the UK NCP closed this case, that involved companies from different Countries including Italy and UK. In compliance with the "*leader NCP' principle*, established by the IC and provided for in the 2011 updated Guidelines, the case had been completely managed by the UK NCP (see below, UK BTC pipeline case) and the Italian NCP adhered to its decisions. The UK NCP, in 2007, issued its final statement, that, afterwards underwent a revision for procedural reasons. As to some general questions raised, during the revision, before the Italian NCP by the Italian complainant, the UK NCP stated that there were no room for addressing them, as they were unrelated do the revision. The Italian NCP notified the parties of the closure of the case.
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 was made and the Japanese NCP is in consultation with the 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 held consultations with the 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: *http://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	

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	Korean companies in non-adhering countries.	2007	Philippines	I. Concepts and Principles III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Ongoing		Parallel legal proceeding is under way in non-adhering host country.
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.
Korea	Companies from guidelines adhering countries that are present in Korea.	2010	Korea	III. Disclosure 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 *Llanti Systems* and a co-operative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and *Llanti Systems* bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Mexico	Dismissal of Workers.	November 2008	Mexico	IV. Employment and Industrial Relations	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.

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	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.oecdguidelines.nl*.
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands.	December 200 1	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.oecdguidelines.nl*).
Netherlands (consulting with Chile)	On the effects of fish farming.	Aug 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the Democratic Republic of Congo.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV. Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned. (*www.oecdguidelines.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.

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union.	Aug 2004 – April 2005	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, through its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar.	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see *www.oecdguidelines.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, Brazil (lead)	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	US	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Please be referred to Brazilian overview of cases.

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	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	Concluded	Yes	For long, local legal proceedings caused an on-hold status for the NCP proceedings. Mediation appeared to be impossible after a change in local regulations that made the relocation of the storage facilities no longer inevitable. Final statement august 2009: http://www.oesorichtlijnen.nl/wp-content/uploads/final_statement_shell_pandacan_14_july_2009.pdf
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	Concluded	n.a	Report of the meeting between Dutch NCP and the Dutch company was sent to the NCP of the USA. In April 2007 an agreement was reached between parties.
Netherlands	Maltreatment of employees and *de facto* denial of union rights at a main garment supplier in India of a Dutch clothing company.	October 2006	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes, although the statement does not go into the merits of the case.	After successful mediatory beyond NCP-level between complainants and the Indian company, the specific instance was withdrawn on February 5, 2007.
Netherlands, UK (lead)	Abuse of local corporate law by a subsidiary of a Dutch/British multinational, in order to dismiss employees without compensation.	October 2006	India	I. Concepts and principles IV. Employment and Industrial Relations	Concluded	Yes	Please be referred to UK NCP overview of cases.
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	Concluded	Yes	Please be referred to Irish overview of cases.
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	Concluded	Yes	For final statement see: http://www.oecdguidelines.nl/ncp/closedcomplaints/.

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 (lead), consulting with UK NCP	Amnesty International, Friends of the Earth (FoE) International, and FoE Netherlands allege that Royal Dutch Shell made false, misleading and incomplete statements about incidents of sabotage to its operations in the Niger Delta and the sources of pollution in the region	January 2011	Nigeria	III Disclosure V Environment VII Consumer interest	Ongoing	No	Accepted by the NL NCP, pre-assessment meetings ongoing
Netherlands, Luxembourg NCP (lead)	Friends of the Earth (FoE) Europe and Liberia-based Sustainable Development Institute (SDI)/FoE Liberia allege that ArcelorMittal has breached the OECD Guidelines with regard to its management of its County Social Development Fund	January 2011	Liberia	II General policies VI Combating bribery	Initial assessment in progress	No	January, 2011, the NL NCP received a notification against Arcelor Mittal. As Arcelor Mittal is based in Luxembourg the notification has been forwarded to the Luxembourg NCP, after intensive contact between the NL NCP and the Luxembourg NCP and in agreement with the notifying parties. The NL NCP has offered its expertise and assistance, if required.
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 VII. Consumer Interests X. Taxation	Concluded	N/A	The NZNCP undertook an initial assessment, in consultation with the Australian and German NCPs. The NZNCP concluded that the issues raised in the complaint did not warrant further examination, and decided not to proceed further. The NZNCP also encouraged the parties to meet to discuss differences in their understanding of the circumstances giving rise to the complaint.

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	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases.	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay.	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.
Norway	Accusation of non-observance of Guidelines recommendations on transparency regarding financial information/ environmental information. First case where the GL has been applied to the financial sector.	2006	Uruguay		Concluded	Yes	
Norway	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: *http://www.regjeringen.no/upload/UD/Vedlegg/ncp_statement.pdf* *http://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.

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	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.
Peru	The Peruvian Unitary Confederation of Workers and the Trade Union of the Telecommunications activity SITENTEL, claims that Telefonica del Peru Group refuses to initiate negotiations to reach collective agreements on employment conditions.	17 Nov 2010	Peru	IV. Employment and Industrial Relations	Ongoing	N.A.	The NCP has been in contact with representatives from SITENTEL and Telefonica del Perú. Moreover, the Peruvian NCP is evaluating the issue with the Ministry of Labour and Employment Promotion..
Peru	CooperAccion, Movimiento por la Salud en LA Oroya, Forum Solidadidad, OXFAM claims an alleged violation of the Guidelines regarding environment and public health by an American mining company.	17 February 2011	Peru	II. General Policies (section 1,2 and7) III. Disclosure (section 2, 4.e, and 5a andb) V. Environment (section Ia, 2,3,5 and 8)	Ongoing	N.A.	The NCP is evaluating the claim and has held a first meeting with the representatives of the claimants. A similar meeting will be hold with the representatives of the company. The Peruvian NCP is also evaluating the participation of the USA NCP.

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.	2002	Poland	IV. Employment and Industrial Relations	Closed	No	NCP was in contact with representatives of the trade union and the company. However the board of the company stated that none of the charges take place in the company. Therefore no reconciliation action was possible in such situation. The case was consequently then closed in 2005.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2004	Poland	IV. Employment and Industrial Relations	Closed	No	According to the claim, the board despite previous declaration of respect for dialogue, failed to engage in constructive negotiations to reach agreement with the representation of the trade union. Contrary to the law, the president of the trade union was dismissed. NCP was in constant contact with the representation of the employees, and has contacted the company. Despite numerous tries no answer has yet been given to the NCP. The case was consequently then closed in 2006.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise.	2006	Poland	IV. Employment and Industrial Relations	Closed	No	The representatives of aggrieved party and their witnesses have been questioned. In October 2007 the witnesses of the accused were being questioned at the court and the verdict was returned in May 2008 at the latest. The managers were acquitted of sexual harassment and proved guilty of infringing the regulations of the IV chapter of the Guidelines. The case was consequently closed.
Portugal	Closing of a factory.	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec 2004	Peru	IV. Employment and Industrial Relations	Concluded		

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector.	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 *www.oecd.org/dataoecd/16/34/15595948.pdf*.
Sweden (consulting with Norway)	Applying the guidelines to the financial sector, liability by part-financing of construction of paper mill.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment	Concluded	Yes	The Swedish NCP issued a statement in January 2008 *http://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.
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary.	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region.	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
Switzerland (consulting with Australia and UK)	Activities of Swiss based multi-natio-nal company and co-owner of the coal mine "El Cerrejon" in Colombia.	2007	Colombia	Several chapters, including: I. Concepts and Principles (incl. Human Rights) II. General Policies V. Environment VI. Combating Bribery	Concluded	Yes	The Australian NCP is in the lead to deal with the specific instance. The Swiss NCP issued a final statement on its website: *http://www.seco.admin.ch/ncp/reports*

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	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: *http://www.seco.admin.ch/ncp/reports*
Switzerland	Swiss multinational Nestlé's labour relations in an Indonesian subsidiary.	2008	Indonesia	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in June 2010: *http://www.seco.admin.ch/ncp/reports*
Switzerland	Swiss multinational Triumph's labour relation in the Philippines and in Thailand	2009	Philippines/ Thailand	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in January 2011: *http://www.seco.admin.ch/ncp/reports*
Switzerland	Activities of three Swiss multinational enterprises in Uzbekistan	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP received a submission concerning two Swiss enterprises in October 2010, and another submission in December 2010 regarding the activities of a third enterprise.
Switzerland (consulting with Canada)	Activities of a subsidiary in Zambia co-owned by a Swiss and a Canadian multinational enterprise	2011	Zambia	II. General Policies X. Taxation	Ongoing	n.a.	The Canadian NCP and the Swiss NCP have been in contact and agreed that the Swiss NCP would have the lead in the treatment of this matter.
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	Anglo American – issues arising from the privatisation of the copper industry in Zambia during the period 1995 –2000.	2002	Zambia	II. General Policies IV. Employment and Industrial Relations IX. Competition	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	BTC Corporation – issues related to the construction of the Baku-Tbilisi-Ceyhan (BTC) pipeline.	2003	Azerbaijan, Georgia, Turkey	I. Concepts and Principles II. General Policies III.Disclosure V Environment	Concluded	Yes	See Revised Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	National Grid Transco – issues arising from the privatisation of the copper industry in Zambia	2003	Zambia	I. Concepts and Principles II. General Policies III. Disclosure IV. Employment and Industrial Relations V Environment VI. Combating Bribery VII. Consumer Interests IX. Competition X. Taxation	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases

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	Oryx Natural Resources – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	De Beers – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Avient – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	BAE Systems – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Airbus – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Rolls-Royce – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	DAS Air – alleged failure to apply due diligence when transporting minerals and alleged breach of UN embargo.	2005	Democratic Republic of the Congo	I. Concepts and Principles II. General Policies	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	UK registered multinational – issues related to trade union representation.	2005	Bangladesh	IV. Employment and Industrial Relations	Concluded	No (because the complaint was rejected at the Initial Assessment stage – the parties have therefore not been named)	See the Initial Assessment at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	Peugeot – issues related to the closure of the Ryton manufacturing plant.	2006	United Kingdom	IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	G4S – issues related to pay, dismissal, leave and health and safety entitlements.	2006	Mozambique, Malawi, Democratic Republic of the Congo, Nepal	II. General policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at *http://www.bis.gov.uk/nationalcontactpoint/cases*

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 (Sewri factory) – Employment issues related to the transfer of ownership, and subsequent closure, of the Sewri factory.	2006	India	I. Concepts and principles IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	Afrimex – alleged payments to armed groups and insufficient due diligence on the supply chain.	2007	Democratic Republic of the Congo	II. General policies IV Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Doom Dooma factory) – issues related to employees' right to representation.	2007	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	British American Tobacco – issues related to employees' right to representation.	2007	Malaysia	IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Vedanta Resources – impact of a planned bauxite mine on local community.	2008	India	II. General Policies V. Environment	Concluded	Yes	See Final Statement and Follow Up Statement at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	Unilever (Rahim Yar Khan factory) – dismissal of temporary employees seeking permanent status in the factory.	2008	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Khanewal factory) – issues related to status of temporary employees.	2009	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Compass Group – issues related to the establishment of a union branch.	2009	Algeria	IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	BHP Billiton – issues related to environmental impact of aluminium smelter.	2010	Mozambique	II. General Policies III. Disclosure V. Environment	Suspended	n.a.	Conciliation/mediation (conducted by the Compliance Advisor Ombudsman of the World Bank) under way. See Initial Assessment at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	Cargill Cotton Ltd – allegations of child and forced labour in harvesting cotton.	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at *http://www.bis.gov.uk/nationalcontactpoint/cases*
United Kingdom	ICT Cotton Ltd – allegations of child and forced labour in harvesting cotton.	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at *http://www.bis.gov.uk/nationalcontactpoint/cases*
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.

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	Investigate the conduct of an international ship registry.	November 2001	Liberia	II. General Policies III. Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the conduct in question was being effectively addressed through other appropriate means, including a United Nations Security Resolution.
United States, consulting with French NCP	Employment and industrial relations, freedom of association and collective bargaining.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, multiple NCPs	Business in conflict zones, natural resource exploitation.	October 2002	Democratic Republic of Congo	Numerous	Concluded	No	UN Panel Report concluded that all outstanding issues with the US-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the US companies.
United States, consulting with German NCP	Employee relations in global manufacturing operations.	November 2002	Global, focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	US NCP declined involvement, concluded that the issues raised were being adequately addressed through other means.
United States consulting with French NCP	Employment and industrial relations, collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Concluded	Yes	Specific instance resolved under US labor law; NCP released final statement at *http://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.

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.	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	Inactive	No	No response from last inquiries to parties.
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	April2009	Philippines	IV Employment and Industrial Relations	Concluded	No	US NCP declined involvement after concluding issues raised were not amenable to resolution under the Guidelines.
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	November 2009	Korea	III Disclosure and IV Employment and Industrial Relations	Concluded	No	Initiating party declined to agree to involvement of Korean NCP, where all parties and activities were located. The US NCP declined involvement after concluding that the issues raised do not merit further consideration under the Guidelines.
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	III. Disclosure IV Employment and Industrial Relations	Concluded	No	US NCP declined involvement after concluding issues raised were not amenable to resolution under the Guidelines.
United States, consulting with French NCP	Employment and Industrial Relations	August 2010	Colombia and the United States	IV Employment and Industrial Relations	Ongoing	n/a	French NCP has taken primary responsibility on Colombia-based issues because MNE headquartered in France; consulting with US NCP on US-based issues.

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 2010	Philippines	IV. Employment and Industrial Relations	Concluded	No	The US NCP declined involvement pending outcome of imminent union elections.
U.K NCP, consulting with US NCP	Employment and Industrial Relations	October 2010	Uzbekistan	IV. Employment and Industrial Relations	Ongoing	n/a	U.K. NCP has taken primary responsibility. US NCP stands ready to assist.
United States	Employment and Industrial Relations	January 2011	United States	III. Disclosure IV. Employment and Industrial Relations	Ongoing	n/a	US NCP consulting with parties and other USG agencies, including Department of Labor; initial assessment
Peru United States	Environment and Human Rights	February 2011	Peru	II. General Principles III. Disclosure V. Environment	Ongoing	n/a	US NCP consulting with Peru NCP and with parties.
United States	Employment	May 2011	India	III. Disclosure IV. Employment and Industrial Relations	Ongoing	n/a	US NCP consulting with parties; initial assessment
United States, consulting with Japan	Environment and Human Rights	May 2011	United States	II. General Principles III. Disclosure V. Environment	Ongoing	n/a	US NCP consulting with parties and Japan NCP in order to make initial assessment.

n.a.: not applicable.

APPENDIX E

Contact Details for National Contact Points

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