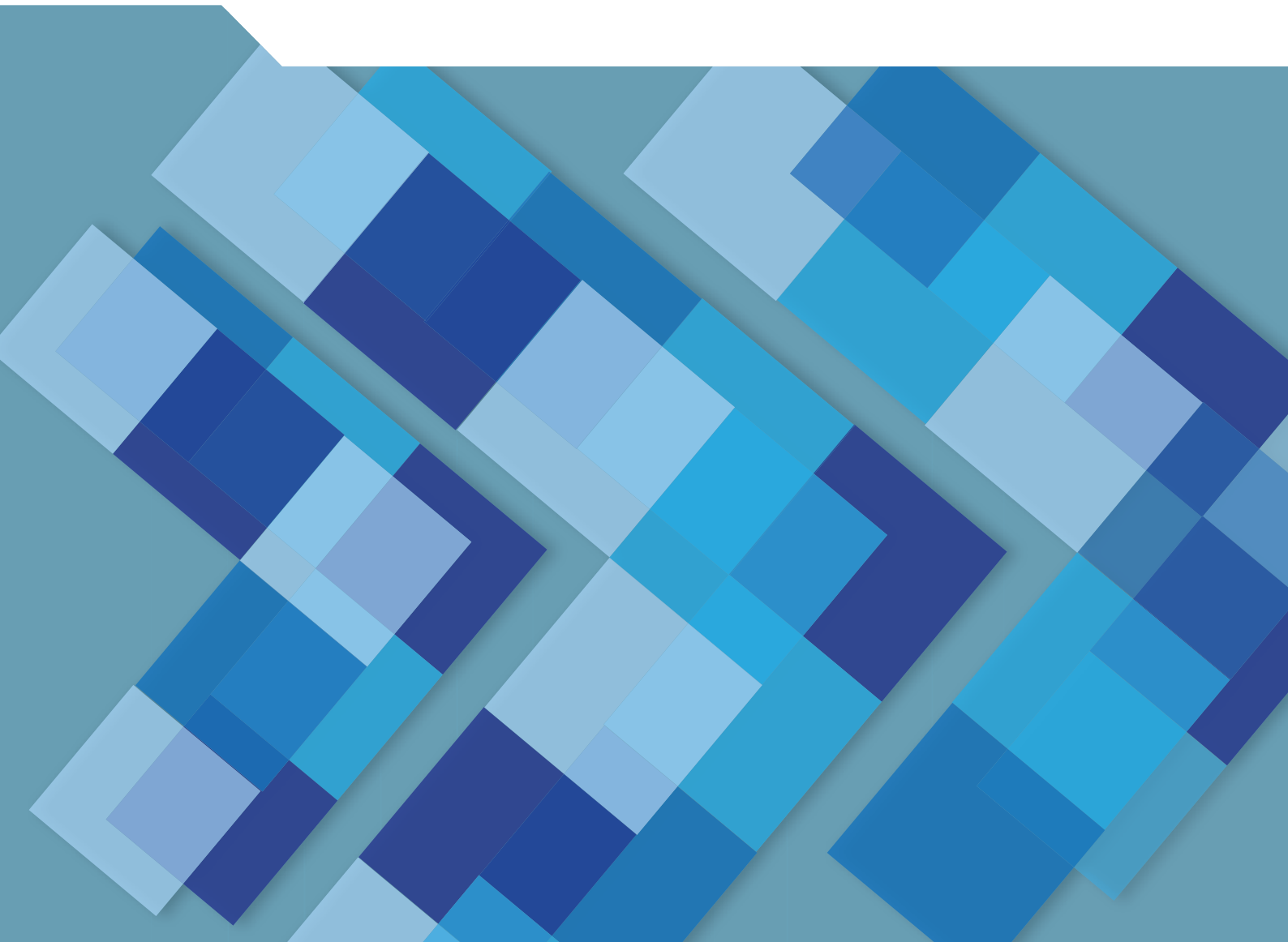




# Annual Report on the OECD Guidelines for Multinational Enterprises 2012

**MEDIATION AND CONSENSUS BUILDING**





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MEDIATION AND CONSENSUS BUILDING

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## Foreword

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

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

*This Annual Report, the twelfth in a series, and the first since the Guidelines were updated in May 2011, describes what adhering governments have done to live up to their commitments from June 2011-June 2012.*

*National Contact Points (NCPs), the government offices responsible for implementing the Guidelines, have identified improving mediation skills as a high priority. In addition to highlighting the mediation and consensus building activities of NCPs, this report presents the results of a special session with mediation experts at the June 2012 NCP meeting which allowed participants to share experiences and learn more about effective methods of informal problem-solving.*

*The Annual Report has been approved by the NCPs and the Investment Committee. The material for this publication was prepared by Marie-France Houde, Head of the OECD Guidelines for Multinational Enterprises, Alberta Fumo, Policy Analyst, and Sara Rahman, Trainee, in the Investment Division of the Directorate for Financial and Enterprise Affairs. The section on weak governance and conflict-affected and high risk areas was prepared by Lahra Liberti, Head of the Due Diligence Project, and Tyler Gillard, Legal Expert in the Division.*



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## Introduction

The National Contact Points (NCPs) of the 44<sup>1</sup> adhering governments to the OECD *Guidelines for Multinational Enterprises* (the *Guidelines*)<sup>2</sup> have met regularly 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 in furthering the effectiveness of the *Guidelines*.<sup>3</sup> They have also held regular consultations with accredited stakeholders<sup>4</sup> and partner organisations<sup>5</sup> to seek feedback on every implementation cycle of the *Guidelines* and suggestions for the next cycle. Roundtables have been organised to help NCPs take into account emerging issues and relevant policy developments in the conduct of their activities.

This report reviews the activities undertaken to promote the observance of the *Guidelines* during the implementation cycle of June 2011-June 2012. This was the first year of implementation of the updated *Guidelines*. The 2011 Update of the *Guidelines* was adopted on 25 May 2011 during the ministerial celebration of OECD's 50th anniversary. As reported extensively in the last year's annual report,<sup>6</sup> the 2011 Update brought important changes to the coverage of the *Guidelines* and it reinforced NCP functions and procedures in order to ensure a continuing leading role of this instrument in the promotion of responsible business conduct worldwide. While these achievements received wide international recognition and praise, they also raised strong expectations that the revised *Guidelines* will be implemented in full.

This past year's implementation cycle was characterised by a strong mobilisation towards a timely and effective implementation of the updated *Guidelines*. The Working Party of the Investment Committee, responsible for the Update, met on 5-6 October 2011 and 21-23 March 2012 to discuss, under the leadership of the Netherlands,<sup>7</sup> the general orientation and organisation of the work on the *Guidelines*. NCPs met on 8 December 2011 and 19-20 June 2012 under the chairmanship of the Head of the Japanese NCP and the Head of the Norwegian NCP,<sup>8</sup> respectively, to discuss steps taken or contemplated by the NCPs to implement their duties under the revised *Guidelines* and the new implementation procedures. Stakeholders and partner organisations were invited to provide views on how to move the implementation agenda forward. A first capacity building session on mediation was organised during the June 2012 NCP meeting. Colombia's Minister of Trade and the Director General and Executive Officer of India's Institute of Corporate Affairs were invited as special guests. The OECD Secretary-General, Mr. Angel Gurría, and Deputies Secretary-General, Mr. Richard A. Boucher, Mr. Yves Leterme, and Mr. Rintaro Tamaki, as well as several high-level government officials spoke on several occasions on the unique features of the *Guidelines*. The Secretariat provided continuous analytical and logistical assistance, for which the NCPs expressed their gratitude and support. The results of this intensive first year of implementation of the updated *Guidelines* are summarised in the following paragraphs.

## Highlights of the reporting period

### **Rising profile of the Guidelines**

The updated *Guidelines* continued to enjoy a high level of visibility and uptake. Chancellor Angela Merkel referred to the unique features of the *Guidelines* on the occasion of the release of the Annual Report 2011 of the Global Compact. The *Guidelines* are the first set of internationally recognised principles and standards cited in the renewed EU strategy 2011-14 for Corporate Social Responsibility to be followed by European enterprises.<sup>9</sup> In February 2012, the American Bar Association adopted a resolution endorsing the “Human Rights” provisions of the *Guidelines*.<sup>10</sup> Several interventions by the former Special Representative of the UN Secretary-General for Business and Human Rights and the two reports of the UN Working Group on Business and Human Rights<sup>11</sup> have reiterated the unique role of the *Guidelines* and their implementation procedures among leading international corporate instruments and the historical opportunity to convert an unprecedented convergence in the baseline standards of corporate responsibility into concrete action. The OECD Secretary-General has highlighted the importance of the *Guidelines* for the so-called corporate social license to operate and the promotion of an open and forward looking business environment.<sup>12</sup>

### **Expanded number of adherents**

Colombia and Tunisia became the 43rd and 44th adherents to the *Guidelines* on 8 December 2011 and 23 May 2012, respectively. Their adherence to the *Guidelines* was presented as a key component of their reform processes for improving business climate and promoting economic development in harmony with societal expectations. Two additional applications from Costa Rica and Jordan are being processed and the Russian Federation is on an accession path to the OECD. With these new adherents, large segments of Latin America, the Middle East and the North Pole region would become “Guidelines zones”.

### **Prioritising communication and promotion**

NCPs are widely known as the “implementation arm” of the *Guidelines*, the most comprehensive corporate responsibility instrument developed by governments. NCPs, therefore, have a major responsibility in communicating and raising awareness among enterprises and other interested parties about the purpose and content of this instrument, and in explaining their role in assisting corporations to meet their corporate responsibility challenges. The adoption of the updated *Guidelines* has made these tasks even more critical than in previous years.

NCPs fulfilled these responsibilities by updating and upgrading their websites, translating the *Guidelines* in their national languages, producing brochures and other informational material, multiplying opportunities to present and promote the *Guidelines*, reaching out to embassies, strengthening their relations with stakeholders, answering enquiries, and tracking awareness of the *Guidelines* through business surveys. They have also gathered high-level political support for the *Guidelines* and encouraged policy coherence in the implementation of credit and investment promotion and guarantee programmes.

Accredited stakeholders were invited for the first time to report their contributions to the implementation of the *Guidelines*. They too have been instrumental in disseminating the updated *Guidelines* among their constituencies through brochures, user guides, articles, webcasts, speaking engagements, training sessions, and advice on the use of the specific

instance facility. They played a particularly valuable role in raising awareness and building knowledge on the *Guidelines* in new adhering countries (Morocco) and non-adhering countries (Croatia, India, Malaysia, Senegal and Viet Nam). TUAC launched a dedicated website on the *Guidelines*. BIAC and OECD Watch also upgraded their websites to reflect the outcome of the 2011 Update.

### **Continuous rise in the number of specific instances: 300 since 2000<sup>13</sup>**

As in recent years, numerous NCPs have been dealing with alleged non-observances of the *Guidelines*. In the last 12 months, 28 new specific instances were raised and 24 were concluded, involving 16 NCPs overall. This brings the total number of specific instances considered since 2000 to 300. 40 are estimated to be under active consideration.

The newly raised specific instances concerned issues in both adhering and non-adhering countries, with an almost equal division between the two. The largest number of new specific instances originated from NGOs, with human rights, labour and environment as predominant issues. The non-adhering countries and territories concerned by new specific instances in the reporting period were Algeria, Cameroon, the Democratic Republic of Congo, India, Kosovo, Mongolia, Montenegro, Nigeria, Uzbekistan, Western Sahara, and Yemen. The increased complexity of specific instances prompted an intensification in NCP co-operation. In regard to concluded specific instances, NCPs issued 13 final statements and 11 additional statements (to conclude the procedures at the end of the initial assessment). In addition, the first two successfully mediated specific instances under the revised “Procedural Guidance” were reported to the OECD.

### **Innovations in institutional arrangements**

In 2012, the 43rd NCP for the *Guidelines* was established. Colombia, after consulting with several other NCPs, opted for a monopartite structure for its NCP, supported by a multi-stakeholder board. 20 out of 37 monopartite NCPs reviewed this year have established multi-stakeholders bodies with advisory or oversight functions to engage stakeholders and relevant experts and to help them perform their duties. Denmark has completed the restructuring of its NCP to an independent structure similar to the Dutch and the Norwegian NCP model.

### **Peer learning and capacity building**

Peer learning and capacity building activities continued to expand as a privileged tool for improving NCP performance and fostering their functional equivalence.

Japan’s NCP volunteered to be the first NCP to be reviewed under the updated *Guidelines*. This peer review was conducted in Tokyo on 15-17 April 2012 by a 6 NCP team, chaired by the Norwegian NCP and composed of five other NCPs (Germany, Mexico, the Netherlands, the United Kingdom, and the United States). Representatives of TUAC and OECD Watch joined some sessions that were open to stakeholders. Japan was commended for undergoing this exercise as a two-way multi-stakeholder peer learning process designed to give a unique insight on Japanese business culture. The review team welcomed the leadership role of Japan’s NCP in promoting the *Guidelines* in Asia, its commitment to engage with stakeholders more actively, and its intention to continue improving its institutional arrangements. It was also noted that the increased workload resulting from the 2011 Update could justify an increase in the resources allocated to the Japanese NCP in the future.

The June meeting of the NCPs included a thematic peer learning session on mediation to allow NCPs to discuss current mediation capacity and ongoing development of the NCP mediation facility. The session included presentations by the Consensus Building Institute (CBI), the World Bank, and several individual NCPs. CBI introduced a draft *NCP Mediation Manual*, an unofficial document commissioned by the NCPs of the Netherlands, Norway, and the United Kingdom to serve as a tool for guiding NCPs in determining where mediation may be useful and how it may be executed. The World Bank introduced a proposal by the Harvard Kennedy School to develop a collaborative mediators database. Finally, individual NCPs discussed current mediation capacity, focusing on four representative specific instances that were successfully mediated. Roundtable discussions highlighted current challenges in mediation including finding an outside mediator, establishing trust in the NCPs, and allocating funds for mediation. The parties involved in one of the mediations were on-hand to discuss their own experiences in using the NCP mediation facility.

The World Bank explained a proposal by the Harvard Kennedy School to create a global mediators database. The World Bank discussed a major problem in current development projects, namely that trained and knowledgeable professionals are in short supply to mediate project-stalling conflicts and that they are difficult to locate due to insufficient informational infrastructure. Given the demand for problem-solving professionals to facilitate development projects globally, a collaborative mediators network could be an interesting investment for organisations and enterprises that regularly make use of mediators, including NCPs. The World Bank discussed some of the issues that would need to be addressed in concretising this proposal (such as free-riders and quality control) and NCPs agreed to discuss it further at an appropriate opportunity in the future.

The Swedish Chair of the OECD co-operation programme with Middle East and North African (MENA) countries presided over side meetings with Egypt, Jordan, Morocco, and Tunisia to assess their needs as new adherents to the *Guidelines* and welcomed the offer of participating NCPs “to coach” their MENA colleagues in order to become fully operational.

### **Launching the proactive agenda**

In addition to reinforcing “problem solving”, the 2011 Update added an important “prospective dimension” to the implementation of the *Guidelines*, referred to as the “proactive agenda”. Proactive agenda aims to assist enterprises in meeting their corporate responsibility challenges under the *Guidelines* in particular situations, contexts, or issues. By its nature, the work needs to be demand driven, add value, avoid duplication with other initiatives and collaborative efforts, and rely on a multi-stakeholder co-operative process.<sup>14</sup>

The launch of the proactive agenda was a recurrent theme of the meetings of the Working Party and NCPs. The discussions identified the clarification of the due diligence responsibilities of the financial sector and the application of the new *Guidelines* provision on stakeholder engagement as the first two possible projects for this work. The Netherlands and Canada/Norway, respectively, were commended for taking the lead in developing draft proposals for these two projects for the consideration by adhering governments. They were also commended for sponsoring, as a first step, a gap analysis of existing guidance on these issues. Partnership Africa Canada completed a literature review on stakeholder engagement in the extractive sector in May 2012. Some discussions were also held on responsible investment in agricultural supply chains and Internet freedom, with the participation of FAO and the Global Network Initiative. Discussion about the proactive agenda will be pursued over the next year.

### **OECD supporting role**

During the 2011-12 *Guidelines* implementation cycle, the OECD Secretary-General and his Deputies, the Chair of the Working Party of the Investment Committee, members of the Bureau of this Committee and the OECD Secretariat made numerous public interventions on the 2011 Update. Priority was given to strengthening co-operation with partner organisations and emerging economies. Outreach events were organised in China and Indonesia, and OECD co-organised with ILO and UNCTAD an inter-agency consultation on CSR in global value chains. Consultations were held with the Indian Institute of Corporate Affairs on future co-operation. An MOU between the OECD and the International Co-ordination Committee on Human Rights Institutions is under active consideration.<sup>15</sup>

Immediately after the 2011 Update (and upon request of several governments and stakeholders), the Secretariat developed a comparative table of the 2000 and 2011 *Guidelines* text. This document was prepared to facilitate understanding of the changes introduced by the 2011 Update, as well as translation in national languages of the modified provisions. As part of the immediate follow-up activities to the 2011 Update, the Secretariat also developed a resource document compiling descriptions and links to a number of responsible business conduct instruments and initiatives, which from the perspective of adhering governments are relevant to the *Guidelines* and their implementation.<sup>16</sup>

The Secretariat was acknowledged for making good progress towards positioning itself as a central hub to collect *Guidelines*-related information for NCPs and the public at large: it developed a new Framework to assist NCP reporting on activities in light of changes introduced by the 2011 Update to the *Guidelines* and related Procedures. In particular, a template to collect precise information on each specific instance was introduced, as a starting point for the development of an online database of specific instances, which NCPs agreed would be, together with the upcoming website dedicated to the *Guidelines*, the main Secretariat way to support NCP information and promotion activities.

### **Priorities for the next implementation cycle**

While good progress was made in identifying the priorities and working arrangements for implementing the updated *Guidelines*, NCPs widely acknowledged that the past year had been a year of transition and that the next reporting cycle will constitute the first real test on how the updated *Guidelines* are consolidated and implemented. In order to keep momentum and measure up to expectations, NCPs will need to pursue various tasks simultaneously, with special priority given to information and promotion, specific instances, peer learning and outreach.

The persistent lack of knowledge about the *Guidelines* (as demonstrated by various surveys)<sup>17</sup> as compared to other instruments and initiatives suggests that communication and promotion will need to remain a top priority for years to come. Despite the rise in NCP promotional activities in the past year, it is often pointed out that succinct and user-friendly material on the *Guidelines* appears to be lacking. Moreover, the proliferation of information on websites, guides or leaflets and the release of different unofficial translations – even in the same language – have increased the risk of incoherent or even inaccurate messages regarding the *Guidelines*. The preparation of a short explanatory brochure on the *Guidelines* is clearly desirable, and NCPs welcomed the fact that the OECD intends to produce this publication in the coming year. NCPs also welcomed the launch of a dedicated website and specific instances database by the end of this year. The website

and database present two advantages: a) they will create a centralised resource hub for all *Guidelines* users; and b) they will provide the example to follow for NCPs and stakeholders for their own websites and facilities, thus bringing greater consistency in the information generally produced by NCPs on the *Guidelines*. NCPs also welcomed OECD's initiative to produce a single Spanish and Arabic version of the *Guidelines*, in co-operation with Spanish speaking and MENA NCPs.

Regarding peer learning, NCPs agreed that the successful horizontal and thematic peer learning sessions conducted in the last two years and the voluntary country reviews of the Dutch and Japanese NCPs call for actively pursuing these two types of activity in the next implementation cycle. The exchange of experiences with specific instances should remain a permanent feature of NCP meetings, and individual NCPs should play a more active role in organising and moderating future thematic or horizontal peer learning exercises such as the one to be conducted by Austria on mediation in September 2012. In addition, at a minimum, one voluntary country peer review should be conducted every year. NCPs welcomed the fact that Norway has volunteered to be reviewed in 2013. A number of other NCPs were also considering participating in similar exercises either in the next 24 months (Morocco, Poland, Sweden, Switzerland) or in the near future (Belgium, Brazil, Canada, Chile, Colombia, the Czech Republic, France, Latvia, Romania, Slovenia and the United States). NCPs also welcomed and encouraged regionally-focused peer learning and capacity building events (such as the one that will be organised by the European Commission in co-operation with the Chilean NCP, in early fall in Santiago), as well as "coaching activities" of new NCPs by more experienced ones as is presently the case for new MENA NCPs.

On outreach, NCPs agreed to continue to make use of any available opportunity to promote the *Guidelines* in emerging economies and other developing countries. This is not only important for the promotion of a level playing field among enterprises but also for the proper functioning of the specific instances mechanism as an increasing number of complaints raised with NCPs relate to enterprise operations in these countries. NCPs welcomed the initial contacts established at the Annual Meeting with the Indian Institute of Corporate Affairs and the interest expressed on both sides to work more closely on responsible business conduct issues. They also expressed their appreciation to the OECD and ESCAP for sponsoring a special event on the *Guidelines* during the prestigious 2012 Asia-Pacific Business Forum which will be hosted by Malaysia in Kuala Lumpur on 14-16 October 2012.

Regarding outreach activities, NCPs welcomed the recent upgrade of the Annual Roundtable on Corporate Responsibility to a Global Forum on Responsible Business and the establishment of a separate Working Party on Responsible Business Conduct. These developments will raise the visibility of the *Guidelines* and provide more opportunities to engage with major emerging economies and other developing countries in a fruitful dialogue around the corporate responsibility principles and standards promoted by the *Guidelines*.

On the proactive agenda, NCPs reiterated their support for this innovative work on the *Guidelines* and their willingness to contribute to its implementation as the Investment Committee will see most useful and appropriate.

NCPs were informed about the tight budgetary situation of the OECD and the urgent need of additional voluntary contributions to implement in full the work programme of the *Guidelines* proposed by adhering countries for the 2013-14 biennium. They particularly welcomed the recent and forthcoming voluntary contributions of Austria, Japan, the Netherlands, Norway, and Sweden.

## Notes

1. These are the 34 OECD countries and 10 non-OECD countries, namely Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Peru, Romania and Tunisia.
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, 2000 and 2011.
3. Cf. Sections I.1 and I.3 of the May 2011 Amendment to the Council Decision on the Implementation Procedures, *OECD Guidelines for Multinational Enterprises*, 2011 edition, [www.oecd.org/daf/internationalinvestment](http://www.oecd.org/daf/internationalinvestment). Prior to the update, NCPs were required to meet annually.
4. The three accredited stakeholders are the Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) to the OECD, and OECD Watch, an international network of more than 80 civil society organisations playing an advisory role to the OECD.
5. The OECD has *inter alia* developed working relationships with the ILO, the World Bank, the UN Working Group on Business and Human Rights, the UN Global Compact, UN Finance Initiative, the Global Reporting Initiative, and the International Coordinating Committee of Human Rights Institutions.
6. [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
7. Prof. Dr. Roel Nieuwenkamp presided over the negotiations on the 2011 Update and he currently chairs the Working Party of the Investment Committee.
8. The Chair of the NCP meetings is determined on a rotational basis. The Chair of the December 2011 Meeting was Mr. Toru Shimizu, Head of the Japanese NCP and Chair of the June 2012 Meeting was Ms. Hege Røttingen, Head of Secretariat of the Norwegian NCP.
9. Downloadable at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.
10. Downloadable at [www.abanow.org/wordpress/wp-content/files\\_flutter/13285631422012mm109.pdf](http://www.abanow.org/wordpress/wp-content/files_flutter/13285631422012mm109.pdf).
11. Downloadable at [www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#GA](http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#GA).
12. Downloadable at [www.oecd.org/investment/guidelinesformultinationalenterprises/](http://www.oecd.org/investment/guidelinesformultinationalenterprises/).
13. The specific instance facility became operational after the 2000 Revision of the *Guidelines*.
14. As described in Section VII this approach has successfully been followed for developing the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, which was officially adopted by the OECD Council on 25 May 2011 at the Ministerial Meeting as part of a Council Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected High-Risk Areas.
15. The text of the OECD-ICCMOU has been finalised by both parties and is expected to be signed in Jordan in early November 2012 during the 11th International Conference of the International Coordinating Committee of National Human Rights Institutions.
16. Downloadable at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/ResourceDocumentWeb.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/ResourceDocumentWeb.pdf)
17. NCPs conducting surveys on the knowledge of the OECD *Guidelines* and the NCP in 2011-12 implementation cycle were Canada, New Zealand, Norway, Spain, and the United Kingdom.





## Chapter 1

# Annual Report presented by the Chair at the June 2012 meeting of NCPs

*Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences in performing and promoting the implementation of the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines. This report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2011-June 2012 period.*

## 1.1. Innovations in NCP structures and procedures

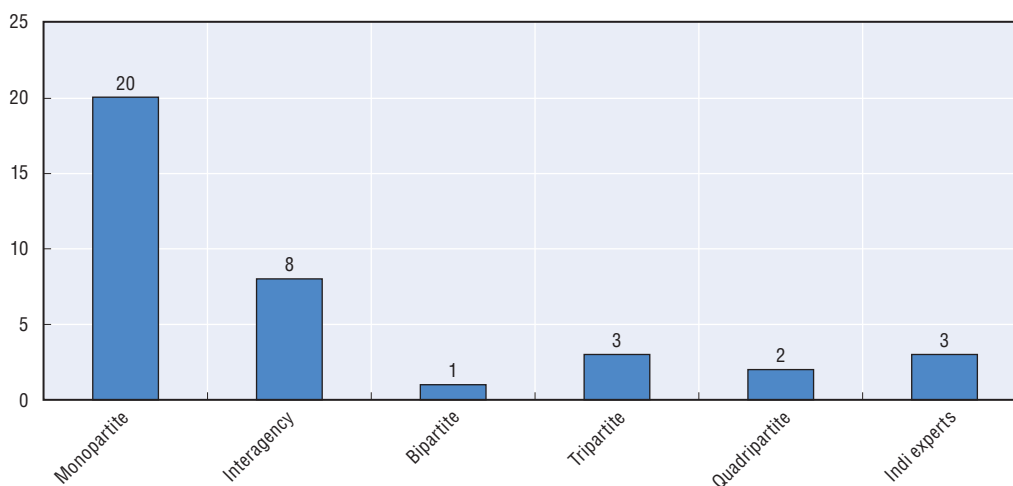
### Overview

In light of the new Common Reporting Framework developed for this year's reporting period, NCPs have been invited to provide information on their internal structure based on six possible options:

- Monopartite: the NCP is composed of one or more representatives of one Ministry.
- Interagency: the NCP is composed of one or more representatives of two or more Ministries.
- Bipartite: the NCP is composed of one or more representatives of Ministry/Ministries and of representative/s of business association/s or trade union/s.
- Tripartite: the NCP is composed of one or more representatives of Ministry/Ministries, business association/s and trade union/s.
- Quadripartite: the NCP is composed of one or more representatives of Ministry/Ministries, business association/s, trade union/s and non-governmental organisation/s.
- Independent expert body: the NCP is composed only of independent experts.

Information received shows that the most common structure chosen by NCPs is the monopartite structure (adopted by Argentina, Australia, Austria, Chile, Colombia, the Czech Republic, Estonia, Germany, Greece, Hungary, Israel, Italy, Mexico, Morocco, New Zealand, Peru, Poland, the Slovak Republic, Spain, the United States), followed by the interagency option (Brazil, Canada, Japan, Korea, Portugal, Slovenia, Switzerland, the United Kingdom), the tripartite (Belgium, France, Sweden), quadripartite (Finland and Latvia) and bipartite (Romania). Finally, three NCPs opted for a structure composed of independent experts (Denmark, the Netherlands and Norway).

Figure 1.1. NCP structure



Source: OECD Investment Division.

### Newly established NCPs

Among recently established NCPs, it should be noted that:

- Morocco's NCP, which is located in the *Agence Marocaine de Développement des Investissements* (AMDI), has adopted a monopartite structure. The current structure intends to allow the NCP to adequately promote the OECD *Guidelines*. At the same time, there are consultations being held at the governmental level to duly consider possible structural innovations in order to reinforce NCP efficiency with regard to the handling of specific instances.

#### Box 1.1. The National Contact Point of Colombia

On 8 December 2011, Colombia became the 43rd adherent to the OECD Declaration on International Investment and Multinational Enterprises. As a new adherent, Colombia also committed to establish an NCP responsible for promoting the observance of the *Guidelines*.

The NCP was officially created on 13 June 2012. Located in the Ministry of Trade, Industry, and Tourism, it has a monopartite structure and a multi-stakeholder advisory board with four members from the private sector, NGOs, labour unions and academia. This board also oversees NCP activities.

The Ministry of Trade, Industry, and Tourism has allocated resources to hire one person to head the NCP. In addition, public funds have been secured to design and publish promotional materials. Public funds are being used to conduct promotional activities in Bogota and other cities around the country. In the future, based on the type and volume of specific instances, more resources could be made available to the NCP should the work on specific instances require it.

### Innovations in NCP structures and procedures

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

- *Austria*: following the 2011 Update, a wide consultation process on the future organisation of the Austrian NCP involving all relevant institutions, social partners and stakeholders was launched. As a result of this process, a new unit was created within the Federal Ministry of Economy, Family and Youth (BMWFJ) that took over the functions of the Austrian NCP on 1 March 2012. In addition, the former NCP Advisory Committee was re-organised.
- *Brazil*: the NCP is currently composed of 9 ministries (Finance; Foreign Affairs; Labour and Employment; Planning, Budget and Management; Justice; Environment; Science and Technology; Development, Industry and Trade; and Agriculture) and the Central Bank. A proposal regarding the restructuring of the Brazilian NCP is under consideration. The restructure would potentially involve removing the Ministry of Agriculture from the Inter-Ministerial Group and the inclusion of the Office of the Comptroller General and the Secretariat for Human Rights.
- *Czech Republic*: it is envisioned that the NCP's current monopartite structure will be formally transformed into a quadripartite structure.
- *Denmark*: the Danish Government has proposed a new law to strengthen the current NCP. The law is in process in Parliament and is expected to come into force by 1 November 2012. The present tripartite NCP will become a mix of Independent Expert

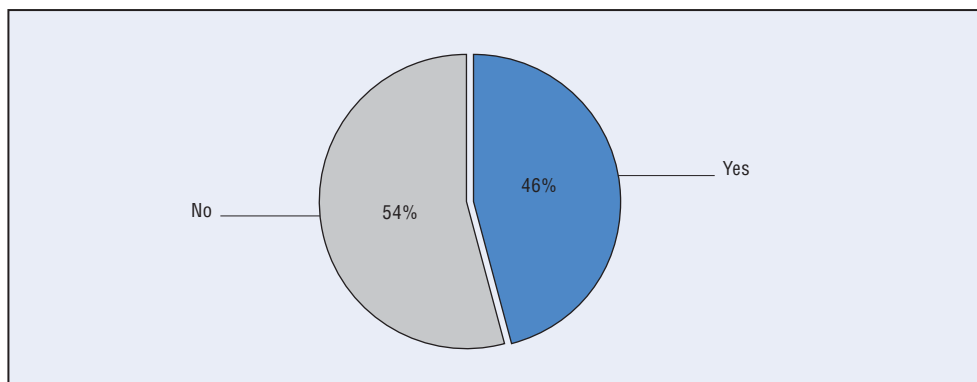
Body and Tripartite body without Ministerial representation. In particular, all members will be appointed by the Minister of Business and Growth, and will include representatives of the Confederation of Danish Industry, the Danish Confederation of Trade Unions, the Danish 92 Group, and will also include an expert with relevant CSR insight. Though there will be no formal advisory body, the law will oblige the NCP to consult with relevant expert organisations on a case-by-case basis.

- *Spain*: in light of the 2011 Update, the NCP considered modifying its structure. The new institutional set is currently under approval. It will be an interagency NCP, located in the State Secretary of Commerce. It will include the Ministry of Economy and Competitiveness; Foreign Affairs and Co-operation; Industry, Energy and Tourism; and the Government Council for Corporate Social Responsibility. The NCP will also include an advisory body, including two representatives from the business sector, two from trade unions and two from the NGO sector. The oversight body will be the Ministry of Economy and Competitiveness.
- *European Commission*: at present, the European Contact Point operates as an *ad hoc* network of OECD-Guidelines and (CSR) relevant departments within the Commission. This network would make up the core of any formal structure at a later stage, possibly including a board or inter service group including at least the Directorates General for Enterprise and Industry, Employment, Internal Market, Environment, Development, External Action, Justice and Trade (and possibly open to others interested as driven by content). It may also consider quadripartite format, taking advantage of synergies with ongoing CSR initiatives that involve stakeholders, EU member states and relevant OECD work that is related to the *Guidelines*.

### **The role of advisory and oversight bodies**

Almost half of all NCPs have either an advisory or an oversight body, with the advisory body being the most frequent option. Out of the 37 reporting NCPs, 14 have an advisory body, and 3 additional ones have an oversight body, with Colombia, Romania, and the United Kingdom having a body performing both advisory and oversight functions.

Figure 1.2. **Focus on advisory and oversight bodies**



Source: OECD Investment Division.

In general, the presence of an advisory body with representatives of other government agencies can be useful to NCPs, allowing them to improve the overall co-ordination of government action in the field of responsible business conduct. It can also help NCPs handle specific instances more effectively, as it allows them to make use of a wide variety of professional skills of other government bodies. The inclusion of stakeholders (whether business, trade unions, or NGOs) can also help NCPs in their task of promoting the *Guidelines* and identifying areas of interest with respect to the proactive agenda.

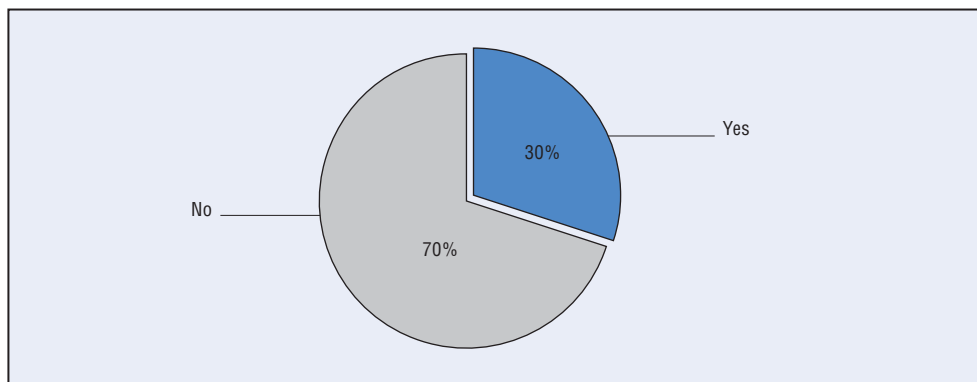
Selected examples of the advisory bodies' structures and functions are as follows:

- Austria's new NCP Steering Committee is chaired by a senior official of the BMWFJ and includes representatives of the Federal Chancellery, the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Federal Ministry for European and International Affairs, the Federal Ministry of Finance, the Austrian Federal Chamber of Labour, the Austrian Trade Union Federation, the Federation of Austrian Industries, the Austrian Federal Economic Chamber, the Austrian Chamber of Agriculture, an Austrian-based member organisation of OECD Watch, as well as one external expert in the field of extrajudicial dispute resolution. It held its constituting session on 3 May 2012.
- Chile's is in the process of defining a new structure.<sup>1</sup> The NCP had access to the expert opinion of an Advisory Body until the end of 2011. This Advisory body was composed of representatives from different Ministries and Agencies of the Government, NGOs, private sector and labour organisations. The NCP was not dependent on the Advisory Body.
- Germany's NCP holds regular meetings 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 to discuss: a) current issues related to the *Guidelines*; b) how to improve the dissemination of the *Guidelines*; and c) the working methods of the NCP. The Working Party on the OECD *Guidelines* meets usually once a year under the chairmanship of a senior official of the Federal Ministry of Economics and Technology to discuss all *Guidelines*-related issues.
- Israel has an interagency advisory body, which includes representatives from the Ministries of Foreign Affairs, Treasury, Justice, and Environmental Protection, as well as additional governmental entities invited on a case-by-case basis.
- Italy NCP's Advisory Committee has consultative tasks and is composed of several Ministries (Foreign Affairs, Environment, Economy and Finance, Justice, Labour and Welfare, Agriculture and Forest), the Department of International Trade (MED), the Conference of Regions, representatives of national trade unions (CGIL, CISL, UIL) and business associations (Confindustria, Confapi, CNA, Confartigianato), the Italian Association of Chambers of Commerce (Unioncamere), and the National Council on Consumers (CNUC).
- The United States NCP's Stakeholder Advisory Board is comprised of 14 members that represent business, organised labour, academia, and environmental and human rights groups. It will provide recommendations on promotion of the *Guidelines*, the proactive agenda, and operations of the NCP office. The US NCP also chairs a monthly meeting of the US NCP Interagency Working Group (IWG), comprised of other relevant US Government agencies, to consult on technical and specific instance-related issues.

### Human resources and budget

Following the 2011 Update of the *Guidelines*, and despite the current international crisis that is affecting several OECD and non-OECD countries, 30% of surveyed National Contact Points are considering obtaining additional human or financial resources.

Figure 1.3. **Potential future increase in human or financial resources**



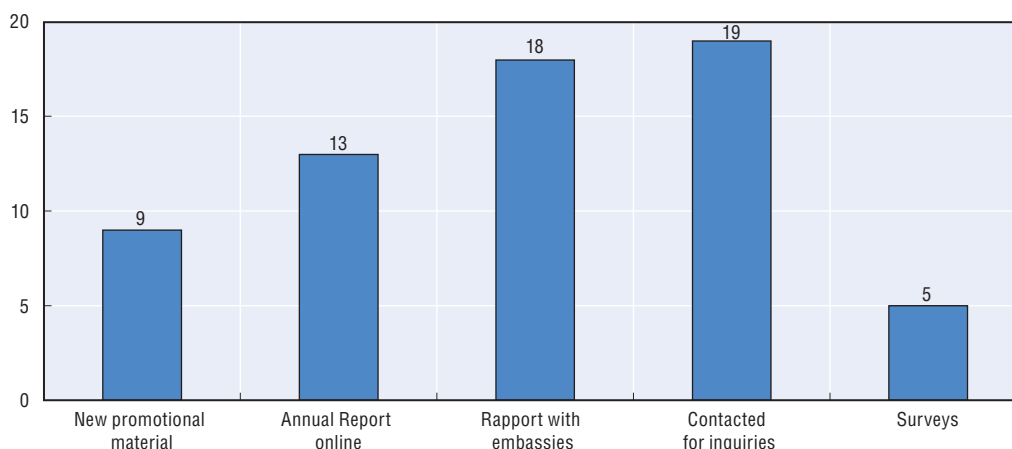
Source: OECD Investment Division.

### 1.2. Information and promotion activities

In light of the 2011 Update, NCPs have been charged this year with informing stakeholders, businesses, and government representatives of the updates in the *Guidelines* and the developments related to NCP structures, functions, and services. To do this, NCPs have updated their websites, enhanced their web presence, published and distributed brochures and informational handouts, and organised and attended numerous events that have presented opportunities for promoting the *Guidelines* and for developing relationships with stakeholders and enterprises:

- All NCPs provide online information on the *Guidelines*.

Figure 1.4. **Highlights on communication and promotion activities**



Source: OECD Investment Division.

- The *Guidelines* are available in the following languages: *Czech, Dutch, English, Finnish, French, German, Greek, Hebrew, Hungarian, Italian, Japanese, Korean, Norwegian, Polish, Portuguese,<sup>2</sup> Slovak, Slovene, Spanish,<sup>3</sup> and Swedish.*
- NCPs that have produced or are producing new pamphlets and other promotional media: *Canada, Colombia, Germany, Hungary, Italy, New Zealand, Norway, Poland, and the United States.*
- NCPs with annual reports available online: *Australia, Canada, Estonia, Hungary, Israel, Italy, the Netherlands, New Zealand, Norway, Poland, Portugal, Switzerland, and the United Kingdom.*
- NCPs that have collaborated with embassies: *Australia, Canada, Colombia, France, Germany, Greece, Israel, Italy, Japan, Morocco, Norway, Portugal, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States.*
- NCPs that have received inquiries from stakeholders: *Brazil, Canada, Chile, France, Germany, Greece, Hungary, Italy, Japan, Morocco, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States.*
- NCPs that have conducted or collaborated on surveys: *Canada, New Zealand, Norway, Spain, and the United Kingdom.*

### **Selected promotional activities**

- *Argentina's* NCP organised an event at the Ministry of Foreign Affairs on 24 November 2011 to promote the *Guidelines* among relevant Argentine governmental agencies, trade unions, NGO's, business associations, and other stakeholders.
- *Australia* has made copies of the *Guidelines* available to major business bodies, union organisations, and other stakeholders. All foreign investors that submit proposals which have to be approved by the Australian government are given advice on their obligations under the *Guidelines*.
- The official launching of the *Colombian* NCP took place on 13 June 2012. It presented an opportunity for all Colombian stakeholders to discuss the *Guidelines* and learn from the experience of other NCPs, including Canada, the United Kingdom, and the Netherlands.
- *Denmark's* NCP presented the *Guidelines* at a seminar for Danish lawyers in December 2011. It also gave a guest lecture on the *Guidelines* at the University of Copenhagen in April 2012 and contributed to the Danish presidency's EU conference on business and human rights.
- *Finland's* NCP held a high-level seminar on the updated *Guidelines* in April 2012, which included a keynote speaker from the OECD and representation from the business, labour, and NGO sectors. Human rights were a highlighted topic at the seminar.
- *Germany* has made a *Guidelines* leaflet and additional information on the *Guidelines* available to all of its 80 Chambers of Industry and Commerce, 61 German bilateral Chambers of Industry and Commerce abroad, 19 Offices of the Delegates/Representatives of German Industry and Commerce and their 39 subsidiary offices worldwide. An introduction to the *Guidelines* and a download of the leaflet are available on all German Chambers of Industry and Commerce websites. Companies with a concrete investment interest in non-adhering countries are also informed about CSR. In addition, the *Guidelines* are mentioned in major chamber publications on foreign investment topics. In December 2011, the NCP presented information about itself and the updated *Guidelines* at the International Conference on CSR held by the German Ministry of Labour and Social Affairs.

- Hungary's NCP promoted the *Guidelines* in an interview in a Hungarian daily paper organised by the NCP for the Deputy State Secretary for international affairs. The NCP also issued a brochure in Hungarian giving a short explanation of the *Guidelines*. The brochure is to be accessible to all relevant stakeholders in printed and electronic format.
- Israel's NCP has published and disseminated brochures focusing on different aspects of the *Guidelines*. The NCP has a long term promotional plan for the *Guidelines* that includes integrating a lecture about the *Guidelines* into academic and professional courses for future and current managers, publishing articles in professional magazines, and presenting the *Guidelines* to relevant companies through one-on-one meetings or site presentations.
- Japan's NCP volunteered to be the first subject of a peer learning/review under the updated *Guidelines*, with participation by the NCPs of Germany, Mexico, the Netherlands, Norway, the United Kingdom, and the United States. The review was conducted from 17-19 April 2012, and it provided an opportunity for Japanese business, labour unions, and NPOs to learn more about the *Guidelines* and their implementation procedures. Representatives of TUAC and OECD Watch also joined some sessions that were open to stakeholders.
- Korea's NCP held its sixth Sustainability Management Conference in November 2011 to raise awareness of the *Guidelines* and encourage compliance.
- Latvia's Employers' Confederation (LDDK), a stakeholder representative of Latvia's NCP, has co-ordinated with the UN Global Compact Local Network to promote Global Compact principles and to encourage companies to report on CSR. LDDK, together with other organisations from the public and private sectors including NGOs, signed a Memorandum of Understanding based on relevant policy documents including the OECD *Guidelines*.
- Mexico's NCP updated its website early this year in order to facilitate research into its functions and activities by stakeholders, partner organisations, and the public.
- Morocco's NCP published an electronic newsletter in English, French, and Spanish promoting the *Guidelines* to more than 1 500 enterprises, notably multinational enterprises operating in various sectors including finance, industry, telecommunications, information, and tourism.
- New Zealand's NCP recently researched New Zealand Internet pages for references to the *Guidelines* in order to request from the organisations mentioning the *Guidelines* to update their websites in light of the 2011 Update. The NCP regularly releases media statements promoting the *Guidelines*, the most recent of which was sent to 42 multinational enterprises headquartered in New Zealand and to ten relevant NGOs. The statement was also picked up by business organisations, law firms, unions, and local news websites.
- The Netherlands' NCP has appointed a communication manager to co-ordinate the promotional activities of the NCP. The Communication manager is placed at the independent national CSR knowledge centre MVO Nederland in order to make use of the centre's outreach programmes involving companies, sector associations, business and other stakeholders. In co-operation with the NCP members, the communication manager prepares a communication strategy focusing on promotion of the *Guidelines* to Dutch companies via intermediary business organisations such as sector associations and the Dutch Agency for International Business and Cooperation (EVD).



- Norway's NCP has varied and intensified its promotional media since the new independent structure with Secretariat was established in March 2011. Based on the negative findings of a survey on knowledge about the *Guidelines* among Norwegian companies, the NCP scaled up information activities, launched a new website, a new periodical newsletter, and made an informational film for distribution among business with the aim of increasing further awareness of the *Guidelines* and the NCP. In addition, the NCP and Secretariat conducted two open meetings with all stakeholders, held numerous presentations and lectures in Norway and abroad. Case scenario and a dilemma board game for presentations to students was also developed. The Norwegian NCP was also asked to chair the NCP delegation to the OECD NCP Peer Review of Japan this past April.
- Peru's NCP, in October 2011, developed a brochure titled "Peru in the OECD", which includes information about Peru's tasks as an adherent to the *Guidelines*. The NCP published and distributed this brochure to participants from both the public and private sectors in meetings and activities for investment promotion. Such events have included a tax workshop as well as a business summit for Chinese/Latin co-operation.
- Poland's NCP is in the process of creating a comprehensive online database where interested parties may find information about legal acts and practice in the field of CSR.
- Slovenia's NCP has established a partnership with JAPTU (Public Agency of the Republic of Slovenia for Entrepreneurship and Foreign Investments) to promote the *Guidelines* to foreign investors. The NCP is developing its web presence and is planning a seminar this fall aimed at promoting the *Guidelines* to the Slovene business community, worker organisations, NGOs and other interest parties.
- Spain's NCP has joined a new working group of the State Council of Corporate Social Responsibility (CERSE), where it has presented the *Guidelines* to representatives from public administration, business, trade unions, and NGOs. The NCP has distributed brochures detailing the revised *Guidelines*, making them available to the Spanish Confederation of Enterprise Organisations (CEOE), the union CC.OO, the Spanish Confederation of Consumers, and other interested parties.
- Switzerland's NCP published an article in German and French in the monthly journal *Die Volkswirtschaft/La vie économique*. All major modifications of the updated *Guidelines* are laid out and explained in this publication. The article moreover illustrates the work of the Swiss NCP on specific instances and the major challenges in the field of CSR for the future. This article was integrated and widely distributed in a special edition of *Die Volkswirtschaft/La vie économique* for the high-level 50th year celebrations of the OECD in Fribourg, Switzerland in October 2011.
- The United States' NCP has updated and expanded the content of its website in line with recommendations from the 2011 Update and the revision of the US NCP procedures. The NCP also produced and distributed a fact sheet summarising the *Guidelines* and the role and function of the NCP.
- The European Commission's relevant departments have hosted the High-Level Group on CSR and the Multi-Stakeholder Forum and *ad hoc* events with stakeholders.

Many events that NCPs attended this year were organised by stakeholders:

- Brazil's NCP promoted the *Guidelines* at a specially organised sessions at a CUT trade union meeting, in February 2012, at the Ethos International Conference, jointly with a representative of the Ministry of Economic Affairs of the Netherlands, and at a side event of the UN Conference Rio + 20, both in June 2012.
- Colombia's NCP attended the Latin-American Forum on the Fight against Transnational Corruption in March 2012, engaging with the private sector and civil society organisations in order to explain Chapter VII of the *Guidelines*.
- Germany's NCP participated in the international conference "Rights and Accountability – The Way Ahead for Business and Human Rights", which was organised by the University Duisburg-Essen and NGOs, and where the NCP took part in a working group concerning the *Guidelines*.
- Japan's NCP has regularly promoted the *Guidelines* through speaking at events organised by different stakeholders including the three major business associations in Japan, namely Keidanren, Japan Association of Corporate Executives (Keizai Doyukai) and Japan Chambers of Commerce and Industry (JCCI) as well as Rengo. Japan's NCP was also a guest speakers at events organised by the UN Global Compact Japan Network and the Sustainability Forum Japan.
- Morocco's NCP participated in a training workshop in January 2012 that was organised by the International Federation of Organisations of Metal Workers with trade union delegates from Morocco and Tunisia. The workshop presented an opportunity to promote the *Guidelines* to business representatives who were present.
- Norway's NCP hosted two open meetings with all stakeholders, including Ministers, CEOs of major businesses and NGOs during the reporting cycle. It also co-hosted an NCP and Extractive Sector Event in London in March 2012. The event was organised by the Institute for Human Rights and Business and International Council on Mining and Metals. Other examples include lectures at the University of Oslo, Law Faculty, two presentations at the University of Tromsø on the *Guidelines* and indigenous peoples, lecture at BI Norwegian Business School that included development of a dilemma training board game for students, lecture entitled "Responsible Business in rough Places" at the Norwegian School of Economics, lecture at the University of Singapore which included a case scenario approach and key note presentation the Global Compact Nordic Oslo meeting. In addition to the promotional activities of the NCP, the Norwegian CSR Ambassador participated in several events organised by stakeholders in Norway and abroad to support the promotion in Norway of the *Guidelines*.
- The United States' NCP attended several events organised by stakeholders this year, including participation on a panel on the *Guidelines* at a conference organised in November 2011 in San Francisco by Business for Social Responsibility, a briefing to business representatives at the Washington International Business Council in October 2011, and a briefing to civil society representatives at a March 2012 meeting of the Tuesday Group (Washington-based sustainable development and human rights NGOs).

An important aspect of NCPs' evolving functions this year has been tracking awareness of the *Guidelines* among enterprises and capturing progress on the implementation of the *Guidelines*. Several NCPs have made progress with *Guidelines* awareness surveys, collaborating with other NCPs on methodology in order to improve accuracy:

- Canada's Department of Foreign Affairs and International Trade conducted a survey in early 2012 regarding companies' awareness and implementation of CSR standards, including the *Guidelines*. Natural Resources Canada is presently conducting research on CSR, including data related to knowledge of the *Guidelines* by Canadian extractive industries operating abroad.
- Spain's NCP plans on conducting a new survey on *Guidelines* awareness among Spanish companies investing abroad that would indicate potential progress since the last survey the NCP conducted in 2009/10.
- Norway's NCP conducted a survey to gauge *Guidelines* awareness among 600 Norwegian enterprises in June 2011. The survey showed that 48% of participants had some form of international business relations and that nine out of ten of such companies were unfamiliar with both the *Guidelines* and the NCP. The survey showed that awareness was highest among large companies of 500 employees or more, with 30% of such companies having knowledge of the NCP and its national grievance mechanism. To conduct this survey, the Norwegian NCP collaborated with the Spanish NCP, and it has shared its methodology with other NCPs, including the UK NCP, which subsequently conducted a similar survey.

NCPs are also making headway in achieving political recognition for the *Guidelines*, as governments and government officials have made increasing reference to the *Guidelines* when discussing CSR:

- Germany's NCP, on the occasion of the country's national alignment, promoted the *Guidelines* as the most advanced CSR instrument in the EU-Statement for the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises. At the NCP's initiation, the *Guidelines* were similarly referred to in a speech made by Chancellor Angela Merkel on the occasion of the Annual Report 2011 of the Global Compact.
- The Netherlands NCP's improved promotion strategies for the *Guidelines* have coincided with government endorsement. The Dutch government explicitly states that the *Guidelines* are the reference for responsible business conduct abroad.
- Switzerland's NCP is working on achieving political recognition of the *Guidelines* in government agencies. High level Swiss Government representatives have referred to the *Guidelines* on several occasions this year in Switzerland and abroad, and the Swiss Export Risk Insurance (SERV) has provided information about the *Guidelines* and their implementation mechanism on its website.

### **Investment promotion, export credit and investment guarantee agencies**

As shown in Table 1.1, 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. 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 (including the OECD Guidelines) on its website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Austrade websites.
Austria	Export credits.	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees.	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export credits.	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained. EDC also produces an annual GRI report.
Chile	Investment promotion.	The Foreign Investment Committee is the agency that 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 that provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the Czech Republic. The Czech NCP co-operates closely with Czech Invest.
Denmark	Export credits.	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the Guidelines and encourages compliance.
Egypt	Investment promotion.	The General Authority for Investment and Free Zones (GAFI) is the Egyptian investment promotion agency. GAFI was formerly under the Ministry of Investment, but in March 2011 it moved under the direct supervision of the Cabinet. ENCP maintains close ties with GAFI, and both bodies distribute brochures on the Guidelines.
Estonia	Investment promotion.	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export credit guarantees and investment insurance.	Finland's Export Credit Agency, Finnvera, calls the attention of guarantee applicants to the Guidelines through its webpages and CSR report.
France	Export credits and investment guarantees.	Firms applying for export credits or investment guarantees are systematically informed of the Guidelines through the insurance application form supplied by the body in charge of managing these programmes (COFACE), which applicants are asked to sign and in which they must declare, inter alia, that they have "read and understood the OECD Guidelines".
Germany	Investment guarantees.	Companies applying for investment guarantees are referred to the Guidelines directly on 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 website of the Ministry for Development, Competitiveness, Infrastructure, Transport and Networks ( <a href="http://www.mindev.gov.gr/?p=6732">www.mindev.gov.gr/?p=6732</a> ). The "Invest in Greece Agency SA", the General Secretariat of Consumers Affairs, and the Export Credit Insurance Organization (ECIO) have links to the Ministry.
Hungary	Investment promotion.	Important OECD documents on bribery, anti-corruption, and export credits are available on the websites of EXIMBANK, MEHIB, and different ministries. Cross links support the quick search for relevant OECD documents.
Israel	"Invest in Israel" – Investment Promotion Center.	The website of Israel's Investment Promotion Center has a direct link to the Israeli NCP website where the OECD Guidelines are available electronically. The NCP works in close co-operation with the Investment Promotion Center.
Italy	Export credits.	The Italian NCP works with SACE (the Italian Agency for export credit). In its CSR strategy SACE engaged to promote the Guidelines among business operators and stakeholders. The Italian NCP also involved SIMEST (Company for Export Financial Support), INVITALIA (Inward Investments Agency), and ITALIA (Outward Investments Promotion Agency, formerly called ICE) in its activities. These organisations have published the Guidelines on their websites and are disseminating them among enterprises asking for public financial support. Together with the Guidelines, the ECAs are promoting the Risk-Awareness Tool in Weak Governance Zones.
Japan	Trade-investment promotion.	The Guidelines (basic text 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). While they do not directly refer to the Guidelines, several Japanese organisations, such as the Japan Bank for International Cooperation (JBIC), the Japan International Cooperation Agency (JICA), and Nippon Export and Investment Insurance (NEXI), refer to other related OECD instruments on their websites.
Korea	Trade-investment promotion.	The Guidelines can be found on the MKE (Ministry of Knowledge Economy) website ( <a href="http://www.mke.go.kr">www.mke.go.kr</a> ). MKE promotes trade and investment.
Latvia	Investment promotion.	The summary of the Guidelines and the text are available on the website of the Ministry of Foreign Affairs of Latvia: <a href="http://www.mfa.gov.lv/lv/Arpolitika/Ekonomiskas-attiecibas/Starpt-ekon-org/OECD/4258/">www.mfa.gov.lv/lv/Arpolitika/Ekonomiskas-attiecibas/Starpt-ekon-org/OECD/4258/</a> . The Guidelines are also available on the following webpages: <a href="http://www.lddk.lv">www.lddk.lv</a> (Employers' Confederation of Latvia), <a href="http://www.ilgtspejasindeks.lv">www.ilgtspejasindeks.lv</a> (Special website for the Sustainability Index) and <a href="http://www.liaa.gov.lv/lv/eksportetajiem/eksporta_tirgi/noderiga_informacija/">www.liaa.gov.lv/lv/eksportetajiem/eksporta_tirgi/noderiga_informacija/</a> (Latvian Investment and Development Agency).

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

Lithuania	Investment promotion.	The "Invest Lithuania" Agency ( <a href="http://www.businesslithuania.com">www.businesslithuania.com</a> ) 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 (located at the Ministry of Economy) co-operates closely with the "Invest Lithuania" Agency. Investment Promotion Programme for the period of 2008-13 was adopted by the Government on 19 December 2007. The goal of the programme is to improve Lithuania's investment environment in general and to establish an efficient system for the promotion of direct investment, focusing on long term economic and social development. The entire text of the Investment Promotion Programme can be found on the webpage of the Ministry of Economy: <a href="http://www.ukmin.lt/en/investment/invest-promotion/index.php">www.ukmin.lt/en/investment/invest-promotion/index.php</a> .
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 and in different international organisations, among other activities. The Guidelines can be found on the website. Mexico's investment promotion agency – PROMEXICO – works in close co-operation with this Department.
Netherlands	Export credits and investment guarantees.	Applicants for Dutch business 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 ( <a href="http://www.oesorichtlijnen.nl/aan-de-slag/maak-mvo-beleid/">www.oesorichtlijnen.nl/aan-de-slag/maak-mvo-beleid/</a> ).
New Zealand	Export credit promotion.	New Zealand's Export Credit Office (ECO) mentions the OECD MNE Guidelines on its website. ECO also provides a link to both the OECD Guidelines and the New Zealand NCP's website. The New Zealand Overseas Investment Office website provides these links as well.
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: <a href="http://www.giek.no/giek_en/default.asp?menu=610&amp;page=277&amp;cells=0">www.giek.no/giek_en/default.asp?menu=610&amp;page=277&amp;cells=0</a> .
Peru	Investment promotion.	The Peruvian NCP is located in the Investment Promotion Agency- PROINVERSION, which provides foreign investors with guidance services and information relating to the Peruvian business environment including information on the OECD Guidelines and the NCP's activities.
Poland	Investment promotion.	The Polish NCP is located in the investment promotion agency (PAIIZ). PAIIZ helps investors to enter the Polish market and to capitalise on business opportunities in Poland. It guides investors through all essential administrative and legal procedures a project involves; it also supports firms that are already active in Poland. PAIIZ provides rapid access to complex information relating to legal and business matters regarding investments, and it helps business find appropriate partners, suppliers, and 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 in-bound foreign investment. The Guidelines are included in the information given to all companies.
Romania	Trade and foreign investment promotion.	The Romanian NCP is located within the Romanian Centre for Trade and Foreign Investment Promotion. The NCP's webpage was developed starting from the investment promotion central site. The Guidelines (basic texts) are available electronically on the site of the Romanian Centre for Trade and Foreign Investment Promotion ( <a href="http://www.romtradeinvest.ro">www.romtradeinvest.ro</a> ). Other useful documents posted on the RNCP's webpage include: Policy framework for Investment; OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.
Slovenia	Promotion and awareness of the Guidelines.	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the Guidelines are established in Slovenian policies. Foreign investors that apply for public tender must 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.
Slovak Republic	Investment promotion.	The Slovak NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in the Slovak language on the Ministry's webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both the business environment and investment opportunities. Investors investing in the country who have already been awarded governmental incentives must commit to comply with the Guidelines.
Spain	Export credits and investment guarantees.	CESCE (the export credits body which manages investment guarantees) and COFIDES (a development funding corporation) provide all applicants for aid or investment guarantees with copies of the Guidelines (in both paper and electronic format).
Sweden	Export credits.	The Swedish Export Credits Guarantee Board provides all customers with information on the rules on environment and bribery, the Guidelines, 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 about the Guidelines and their implementation mechanism ( <a href="http://www.serv-ch.com">www.serv-ch.com</a> ).
Turkey	FDI.	The Turkish NCP is located within the General Directorate of Incentive Implementation and Foreign Investment (Ministry of Economy), the authorised body for investment policy-making. Translation of the updated Guidelines was sent to related institutions. The final version of the translation will be published on the website of the Ministry.
United Kingdom	Export credits and investment insurance.	The Export Credits Guarantee Department's (ECGD) website contains links to the website of the UK National Contact Point.
United States	Export and import credits and investment guarantees.	The Export-Import Bank of the United States provides information on the Guidelines to applicants for their programmes in support of US business activities abroad.

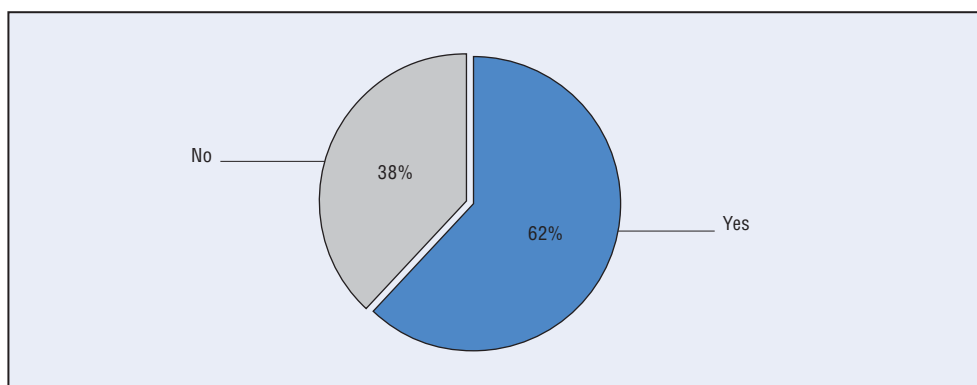
Source: OECD Investment Division.

### 1.3. Specific instances

#### **Internal procedures to handle specific instances**

The majority of NCPs (23 out of 37) responded positively to the question of whether they developed internal procedures to handle specific instances. Within this majority, 12 have already revised their existing procedures or aligned their newly developed procedures to the 2011 OECD Procedural Guidance. The remaining 11 are planning to do so.

Figure 1.5. **NCP procedures for handling specific instances**



Source: OECD Investment Division.

Among the 14 NCPs that do not currently have internal procedures to handle specific instances, 5 stated that they are already holding internal and stakeholder consultations to discuss content and details of the procedures they will adopt. Regarding communication and availability of NCP procedures to handle specific instances, 21 out of 23 NCPs have made their procedures available online in their national language/s. Some NCPs have made an English translation available as well.

#### **Recent trends and developments on specific instances**

300<sup>4</sup> requests to consider specific instances have been raised with NCPs since the June 2000 review. Between June 2011 and June 2012, the new specific instances raised required an initial assessment and the offer of good offices.

Individual NCP reports indicate that the following total numbers of specific instances have been raised since 2000: Argentina (11), Australia (6), Austria (5), Belgium (14), Brazil (22), Canada (12), Chile (7), the Czech Republic (5), Denmark (3), Finland (4), France (19), Germany (14), Hungary (1), Ireland (2), Israel (2), Italy (7), Japan (5), Korea (8), Luxembourg (3), Mexico (3), the Netherlands (23), New Zealand (2), Norway (9), Peru (3), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (17), Turkey (3), the United Kingdom (26), and the United States (44).

24 specific instances were concluded in this reporting period: 12 that were pending as of June 2011 and 12 that were received and concluded in this reporting period.

Regarding outcomes (Annex I), NCPs issued 13 final statements, while in 11 specific instances NCPs considered that the initial assessment was sufficient to conclude the procedures. Among the latter, it should be noted that 3 specific instances were concluded by a transfer to another NCP after initial assessment.

Results were communicated to parties and made public on the relevant NCP websites.<sup>5</sup>

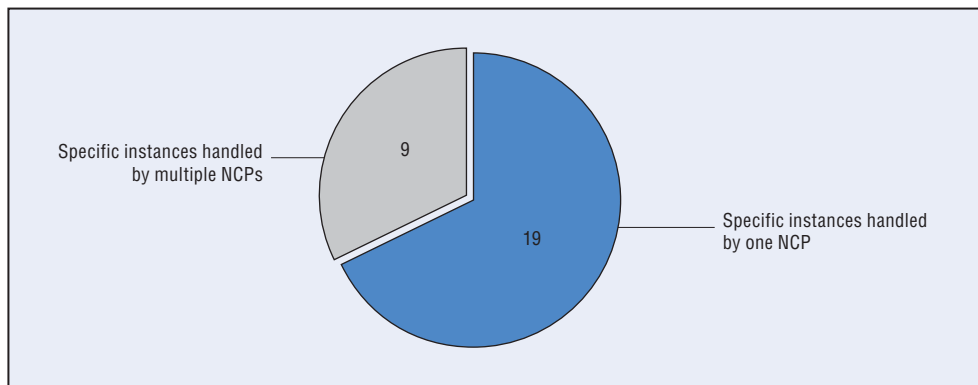
### Focus on new specific instances

In the reporting period, 28 new specific instances were raised:

- 12 are under initial assessment.
- 4 are in the “assistance to parties” phase.
- 12 are concluded (8 after initial assessment, 4 with a final statement).

Overall, 16 NCPs were involved in these specific instances and in light of increasingly complex issues, co-operation and communication among the NCPs has increased. In one third of cases reported this year, NCPs co-operated or are currently co-operating.

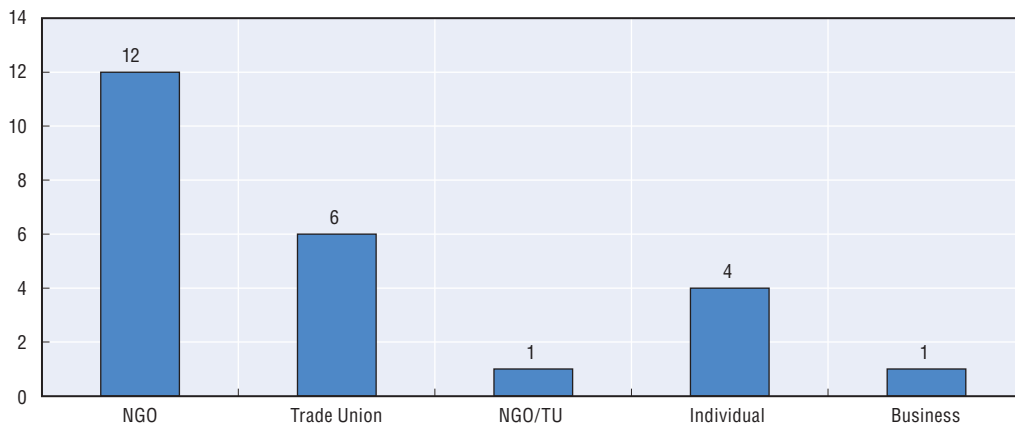
Figure 1.6. **NCP co-operation on specific instances**



Source: OECD Investment Division.

Regarding the source of the request to consider an alleged non-observance of the Guidelines, the majority of specific instances originated from NGOs, followed by Trade Unions and individuals. In the reporting period, two requests were jointly raised by NGOs and Trade Unions and one request was raised by an enterprise.

Figure 1.7. **Source of specific instances**

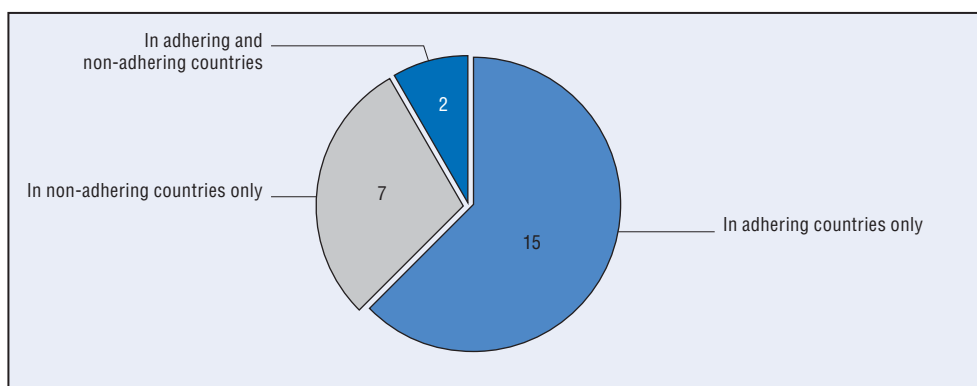


Note: Out of the 28 new specific instances, 4 of them were either transferred to another NCP or handled by two NCPs.  
Source: OECD Investment Division.

Of the newly raised specific instances, 15 cited alleged non-observance of the *Guidelines* exclusively in adhering countries; 7 in non-adhering countries and 2 concerned both adhering and non-adhering countries. The non-adhering countries and territories concerned by the corporate activities reported to NCPs as allegedly not being consistent with the *Guidelines* were: Algeria, Cameroon, India, Kosovo, Mongolia, Nigeria, RDC, Western Sahara, and Yemen.

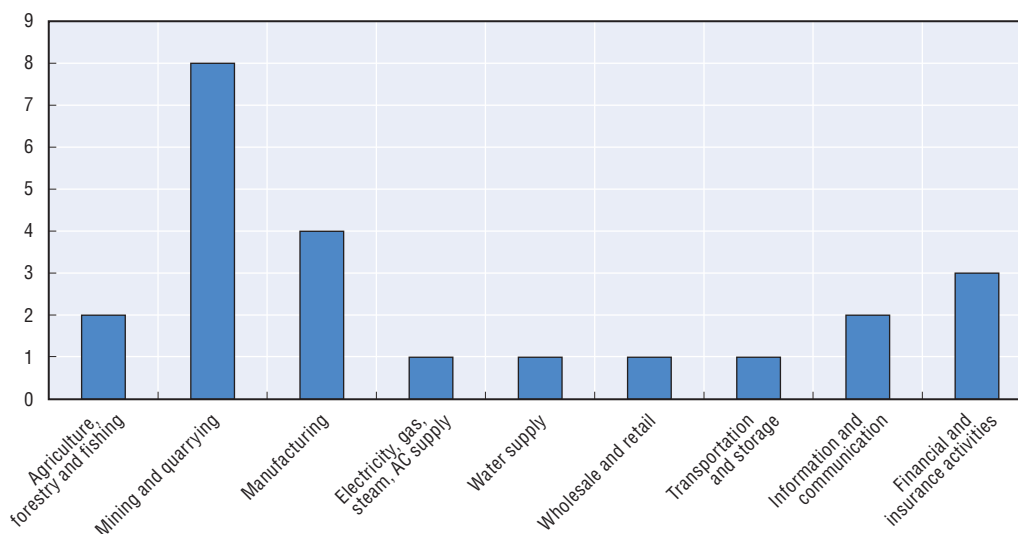
Concerning industrial sectors, 9 areas were interested by new specific instances in the 2011-12 period, with a strong concentration on the Mining and quarrying sector, followed by Manufacturing and the Financial and insurance sectors. The Information and communication sector, as well as the Agriculture, forestry and fishing one, were mentioned in 2 specific instances each.

Figure 1.8. Location of specific instances



Note: Out of the 28 new specific instances, 4 of them were either transferred to another NCP or handled by two NCPs.  
Source: OECD Investment Division.

Figure 1.9. Industrial sectors indicated in specific instances

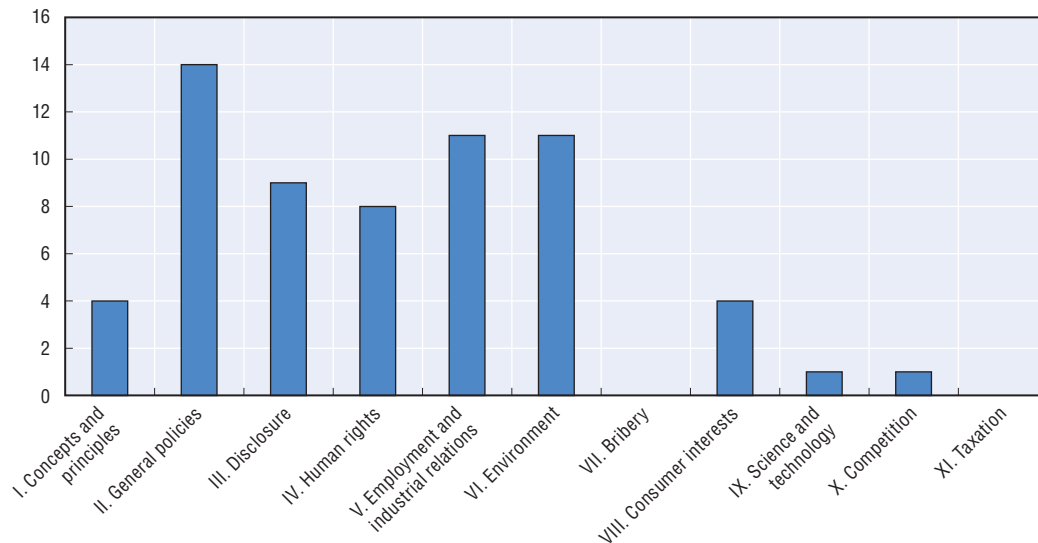


Note: One new specific instance was reported as non related to any industrial sector.  
Source: OECD Investment Division.



In the reporting period, NCPs were called to examine requests that addressed, on average, three chapters of the *Guidelines*. The most frequently addressed chapters were: General policies, Employment and industrial relations, and Environment. The newly introduced chapter on Human Rights was cited in 8 of the 28 new specific instances.

Figure 1.10. **Chapters of the *Guidelines* most frequently cited in specific instances**



Source: OECD Investment Division.

#### 1.4. Peer learning/review of Japan's NCP<sup>6</sup>

Japan was the first NCP to volunteer for a peer learning/review under the updated *Guidelines*. The NCPs from Germany, Mexico, the Netherlands, Norway, the United Kingdom, and the United States conducted the exercise, which took place in Tokyo on 17-19 April 2012.<sup>7</sup> Representatives of TUAC and OECD Watch joined some sessions which were open to stakeholders.

The review team welcomed the leadership role of Japan's NCP in promoting the *Guidelines* in Asia and its commitment to actively engage with stakeholders to further the use of the *Guidelines* by Asian companies.

Also, in agreement with the Japanese NCP, the review team developed a set of recommendations, and highlighted lessons learned, in three different areas: a) institutional arrangements; b) promotion; and c) the functioning of the specific instance facility, particularly regarding budget provisions. The present section summarises the team's main findings.

##### **Institutional arrangements**

The Japanese NCP is an interagency body composed of the Ministry of Foreign Affairs (MOFA), the Ministry of Economy, Trade and Industry (METI) and the Ministry of Health, Labour and Welfare (MHLW). MOFA hosts the NCP and co-ordinates the work on the *Guidelines*, METI supports business activities in overseas markets, and MHLW provides advice on labour issues.

An Advisory Body, the NCP Committee of Japan, was created in 2008 to assist the Japanese NCP. It consists of the NCP itself, the Japan Business Federation (Keidanren), which is a member of BIAC, and the Japanese Trade Union Confederation (Rengo), which is a member of TUAC. The Committee meets regularly, in principle four times per year.

### **Structure of Japan's NCP**

The current NCP structure seems appropriate in assigning each member Ministry a specific role depending on its specific competency. At the same time, the *Guidelines* touch upon numerous and complex RBC issues and their implementation procedures can be demanding, particularly in light of the results of the 2011 Update.

The Japanese Government, through its various Ministries, offers a wide range of skilled professionals who could provide additional beneficial inputs to the NCP's activities. Either the creation of an informal NCP sub-committee body for a permanent exchange of information and mutual support or the inclusion of other Ministries as members of the NCP could be actively considered by the Japanese authorities.

### **Functional equivalence**

The Japanese NCP's efforts to fulfil its functions according to the criteria established by the Procedural Guidance of the *Guidelines* are going in the right direction. In order to facilitate the enhancement of its public profile and its activities in relation to the *Guidelines*, the NCP is invited to enhance web-communication on its current activities. In this regard, it could look at the approach to communication from the new OECD dedicated website on the *Guidelines*. Japan's NCP is also invited to consider the possibility of making its Annual Report available on this website, as well as circulating it more widely within the Japanese government.

### **Relationship with stakeholders and international organisations**

The Japanese NCP has succeeded in the challenging task of developing good and stable relations with a wide range of national stakeholders and relevant international initiatives. Such co-operation is recognised as a key contributing factor to the effectiveness of the NCP activities and as such, the performance of Japan's NCP in this regard should be highly commended.

In providing practical support to the NCP for raising awareness of the *Guidelines*, business associations are fundamental partners. It would then seem appropriate to increase their active involvement in the NCP Committee, for example by inviting the Japanese Association of Business Executives (Keizai Doyukai) and the Japanese Chambers of Commerce and Industry to become members.

### **Information and promotion**

The Japanese NCP developed a specific two-page brochure on the updated *Guidelines* and the Japanese NCP. Also, in 2011, it completed the Japanese translation of the *Guidelines* official text, updated its Procedural *Guidelines*, and made available both the Japanese and English versions on its website ([www.mofa.go.jp/mofaj/gaiko/csr/housin.html](http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html)).

In the last two years, the Japanese NCP was often invited as a guest speaker to various meetings organised by stakeholders, mainly at the national level. The NCP also took care of keeping the embassies network duly informed, and it responded to several enquiries about the *Guidelines*.

### ***Guidelines information and promotion – focus on non-adhering countries***

The Japanese NCP has made a great effort to developing appropriate printed material and to promote the *Guidelines* in non-adhering countries. It managed to take part in several international meetings, including one such meeting in Viet Nam, and it developed an inclusive process to actively involve the embassies network.

Given the role of Japan as a major source of FDI in Asia, the Japanese NCP is therefore encouraged to actively pursue these activities with a sustained degree of commitment and energy.

### ***Co-operation with stakeholders to promote the use of the Guidelines***

Co-operation is important to maximise the positive impact of each promotional event. One possible avenue for enhancing this impact would be to develop, in close co-operation with stakeholders, a clear list of priority issues and target countries. This would also help increase coherence between the various promotional events of stakeholders and provide a basis for mutual assistance in this regard.

### ***Results of promotion***

Because of their traditional concern for RBC, Japanese enterprises are a fertile soil for the *Guidelines*. There is a paradox, however, in the fact that the *Guidelines* seem to be less known than other leading initiatives. Japan might therefore consider the feasibility of undertaking a survey on knowledge and use of the *Guidelines* by Japanese multinational enterprises. This could provide a useful tool for increasing the effectiveness of the promotional activities of Japan's NCP.

### ***The specific instances facility***

A stronger involvement of business and social partners in the NCP promotional activities would also be highly beneficial in developing and sharing the right message concerning the NCP's role, as a venue for constructive dialogue and dispute prevention on RBC issues.

Japan's NCP has so far accepted four specific instances, all concerning employment and industrial relations issues. It is co-operating with the United States on one specific instance which concerns environment and rights of indigenous people and which was raised in the United States. Three specific instances relate to the activities of Japanese companies in non-adhering countries (Malaysia, the Philippines, and Indonesia). One specific instance was recently completed and the results of the procedures are available on the OECD website.<sup>8</sup>

### ***Core criteria for functional equivalence***

The Japanese NCP should be commended for actively using the Japanese concept of “*Sampo Yoshi*” (triple satisfaction; to the customer, to society and to the company) in the promotion of the *Guidelines*. It may also wish to use the concept as an aid in dealing with specific instances. The Japanese NCP is encouraged in this context to continue to highlight that the over-reaching framework of the *Guidelines* is based on internationally recognised standards.

In light of the 2011 Update, the Japanese NCP may also wish to continue to draw on other NCP experiences with the implementation of the new guiding principles for implementation in specific instances. In particular, it may consider further ways to enhance the application of these principles.

### **Mediation**

The Japanese NCP is to be commended for its willingness to play a positive and active role at all stages of the specific instances procedures.

Mediation is a complex and critical issue for NCPs and an NCP's ability to create trust and the enabling environment necessary for dialogue and mediation is key. Sharing experiences during the field visit was highly beneficial to all participants. It was agreed that special efforts should be deployed, notably at the OECD, to build the mediation capacity of NCPs.

### **Parallel proceedings**

The Japanese NCP has paid due attention not to interfere with existing judicial proceedings and did not receive any complaints in this regard from any of the parties involved in the four specific instances it handled thus far.

For the future, the NCP is invited to assess the provision in its *Procedural Guidelines* that states that specific instances related to concluded judicial proceedings will not be examined. It is recommended that such cases should still be taken into consideration for a possible initial assessment in light of the possibility, *inter alia*, that they might present aspects not treated at the legal level.

### **Transparency and confidentiality**

The Implementation Procedures of the *Guidelines* provide that NCPs should consult with stakeholders on the public release of information provided in a specific instance, but it is within the NCP's discretion to make the final decision on the content of the final statement or report.

The review team welcomed the intention of the Japanese NCP to be as transparent as possible as provided by the Japanese *Procedural Guidelines*. It also invited the Japanese NCP to release its future statements or reports not only on the OECD website but also on its own website.

### **Resources and budget**

MOFA officials are in charge of the *Guidelines* implementation as well as of representing the Japanese government at the OECD Investment Committee. The NCP does not have an exclusive budget earmarked for its activities. Neither does it have any full-time member of staff exclusively allocated to activities related to the *Guidelines*.

The Japanese NCP is to be commended for remarkable achievements so far with limited available resources. The review team felt that the increased workload that could result in the future from the implementation of the 2011 Update could most likely justify an increase in the resources allocated to the Japanese NCP.

## 1.5. Outreach: Co-operation with India

In light of the recent and important developments in the field of CSR in India, Mr. B. Chatterjee, Director-General and CEO of the Indian Institute of Corporate Affairs, was invited to make a key note presentation to NCPs at their June meeting. This section presents the main points he made on that occasion.

The Government of India is currently formulating a CSR strategy that targets national development goals. Whereas India's GDP growth rate is very encouraging, it needs to be maintained for at least the next two decades to address the large existing poverty pockets. For this reason, India is looking at a multifaceted approach to development, where CSR based on synergies between the government; civil society and companies has a key role.

In July 2011, the Indian Ministry of Corporate Affairs released the *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities* (NVGs). NVGs, developed through a multi-stakeholder consensus building process that lasted over two years, look at Business Responsibility as a holistic concept integrated with core business<sup>9</sup> and are applicable to large and small businesses, including Indian companies operating abroad.

The NVGs are aligned with the frameworks and instruments developed by the main international organisations active in the field of RBC, in particular the UN, ISO, ILO and the OECD. Concerning the latter, both the Indian and OECD *Guidelines* aim to promote the positive contribution by enterprises to economic, environmental and social progress (the OECD worldwide, the NVGs for companies operating in India and Indian companies operating abroad); have a voluntary character and are not legally enforceable; and converge on fundamental issues, such as the following:

- Human rights: both refer to the International Bill of Human Rights and to national laws.
- Labour: both promote fundamental rights at work as recognised in the ILO Declaration on Fundamental Principles and Rights at Work from 1998, with the difference that the Indian *Guidelines* do not specifically mention them.
- Environment: both include pollution control, resource management, and intellectual property rights, underlining the importance of taking into account environmental impacts.
- Consumer interests: both *Guidelines* instruct adherence to required standards.
- Disclosure: emphasised by both *Guidelines*.

On the point of disclosure, the Indian Government is currently defining a framework that will help companies with disclosing their CSR projects. Such framework will be compatible with the requirements set in the Companies Bill, which is expected to be approved by the end of 2012. The Bill bears a specific importance for the CSR national strategy, as it currently contains a provision, namely Clause 135, which:

- Seeks to provide that every company having a specified net worth, turnover or net profit during any financial year shall institute a Corporate Social Responsibility Committee of its Board.
- Sets that the composition of such Committee shall be included in the Board's Report.
- Provides that the Board shall endeavour to ensure that at least two per cent of average net profits of the company made during three immediately preceding financial years shall be spent on such policy every year.
- Sets that if the company fails to spend such amount the Board shall give in its report the reasons for not spending.

The Indian Government is also developing a clear set of criteria according to which companies' plans and projects will be able to be classified as Responsible Business. Those criteria are as follows: the impact made by CSR activities should be quantified to the best possible extent with reference to base line surveys; objectives should be clear and a specific budget allocated; concerning project management, strong support is given to outsourcing the projects and their evaluation to NGOs and specialised agencies.

The Government of India's support of the practical development of companies' CSR projects is not limited to the setting of reference criteria. The Indian Institute of Corporate Affairs is planning to create a National CSR Hub to undertake advocacy, research, promotion and development activities. The Hub will serve several purposes. It will at once be a database on all CSR projects and initiatives of companies; an accreditation centre of external independent agencies/specialists/consultants for project review; and a training and think tank centre, with which Governments adhering to the OECD *Guidelines* are looking forward to co-operating.

Participants highly appreciated Mr. Chatterjee intervention and particularly welcomed the opportunity to further exchange views on responsible business conduct issues, as this dialogue is not only a key element for the promotion of a level playing field among enterprises but also for the proper functioning of the specific instances mechanism. They welcomed the prospect of a high level conference to be organised in Spring 2013 on these subjects.

## 1.6. The OECD supporting role

### **Resource document on useful instruments and initiatives for the updated Guidelines**

In the 2011 Chair Report to Council on the results of the 2011 Update, the need for further work in several areas was highlighted, starting with the preparation of a resource document on instruments and initiatives useful to clarifying the *Guidelines*. It was acknowledged that the number of such instruments and initiatives far surpassed the possibility for introducing explicit references to all of them in the revised text of the *Guidelines*. It was therefore agreed that, as part of follow-up work on the updated *Guidelines*, a resource document needed to be prepared.

Meant primarily to be useful to enterprises, the resource document, adopted in March 2012 by the Working Party of the Investment Committee, presents descriptions and links to relevant reference instruments and initiatives and is intended to remain a flexible document.<sup>10</sup>

### **Common reporting framework**

In accordance with the Procedural Guidance,<sup>11</sup> NCPs must report annually to the Investment Committee on the nature and results of their activities to further the effectiveness of the *Guidelines*, including reporting on implementation activities in specific instances.

NCPs submit their information by filling a standard questionnaire developed by the OECD Secretariat. This framework was designed by the Secretariat to assist NCPs in preparing their national reports, which then provide the basis for preparing the Chair's Annual Report to the OECD Council on the Activities of the NCPs.

For the 2011-12 reporting cycle, the Secretariat developed a new Framework to reflect changes introduced with the 2011 Update to the *Guidelines* and related Procedures. In particular, the questionnaire comprises both quantitative and qualitative questions and it is built around three main sections, i.e. institutional arrangements, promotion and

communication activities and specific instances. Concerning the latter, a template to collect basic information on each specific instance as well as a set of specific questions – developed according to the three phases for the handling of requests, i.e. initial assessment, assistance to parties and conclusion of procedures – were introduced.

Following the first implementation of the new Reporting Framework and comments made by NCP delegations at their June meeting, a slightly revised set of questions will be prepared for the 2012-13 reporting cycle.

### **Website dedicated to the Guidelines**

In light of the 2011 Update, which has confirmed the importance of promotional activities by NCPs for furthering the effectiveness of the *Guidelines* and of the related OECD supporting role, NCPs have agreed on a set of projects aimed at reinforcing OECD communication tools.

The development of a website dedicated to the *Guidelines* has emerged as a priority. At present, the information on the *Guidelines* is provided on the OECD Investment website. In addition to reproducing the text of the *Guidelines* in various languages, the current site includes the annual Chair's Report on the Implementation of the *Guidelines* as well as the proceedings and supporting documentation of OECD Corporate Responsibility Roundtables. The final statements of NCPs are also posted on this website.

There is general agreement that a more visible, elaborated and self-standing website with a separate URL identification is needed to support the work on the *Guidelines*. This new website on the *Guidelines* will be designed to become a central point for information on all matters relating to this instrument and a cross reference point to appropriate national links. It will provide detailed information on NCP institutional arrangements and implementation procedures and will present information on the inter-linkages between the *Guidelines* and other leading corporate responsibility instruments. It will also provide up-to-date information on the activities of adhering governments and stakeholders for raising awareness of the *Guidelines* and supporting the proactive agenda.

### **Database on specific instances**

Following the revision of the "Procedural Guidance" in 2011, NCPs are now expected to make the results of every specific instance procedure publicly available, taking into account the need to protect sensitive business and other stakeholder information. This clearly requires some adjustments in the way the information on the outcome of the specific instances has been presented until now. Moreover, even prior to the 2011 Update, the desirability of developing a more detailed database on specific instances was acknowledged in support of peer learning and capacity building.

In particular, the database structure approved by the Investment Committee and NCP delegates in the first half of 2012 will allow users to extract up-to-date information on the role played by NCPs and will further enhance the transparency and public accessibility of their activities. The database will be designed as a tool to:

- Disseminate up-to-date and accurate information on specific instances, as communicated by NCPs.
- Provide access to aggregated data on specific instances, highlighting main issues and trends.
- Support co-operation among NCPs, by providing access to useful information, e.g. identification of which NCP to contact for consulting on similar issues.

## 1.7. Weak governance zones and conflict-affected and high-risk areas

In addition to the promotional activities on the *Guidelines*, adhering governments (and the European Commission) have continued to report activities to raise awareness and promote the use of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones: Austria, Belgium, Canada, Colombia, Finland, Israel, Italy, Japan, New Zealand, Norway, Portugal, Romania, Switzerland, the United States. This past year's activities on weak governance zones and conflict-affected areas have mainly focussed on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter "the Guidance").

### ***Due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas***

This Guidance is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict and high-risk areas, providing a common set of government-backed expectations throughout the supply chains of tin, tungsten, tantalum and gold. It is also a good example of how the due diligence and supply chain provisions of the updated OECD *Guidelines* (based on the second pillar of and the United Nations Framework "Protect, Respect and Remedy" and the Guiding Principles for its Implementation) can be translated into operational terms in a given context (conflict-affected and high-risk areas) and with regard to specific risks of adverse impacts associated with particular sectors and products (minerals) thus making a concrete contribution to the OECD *Guidelines'* proactive agenda.

On 25 May 2011, the Council adopted a Recommendation inviting adhering governments to the Declaration to actively disseminate information on the Guidance and promote its use. The thirty-four OECD governments and eight non-OECD governments (Argentina, Brazil, Colombia, Latvia, Lithuania, Morocco, Peru and Romania) have adhered to this Recommendation.

Over the period June 2011-June 2012, adhering governments to the Recommendation (Australia, Canada, Finland, Germany, Israel, Japan, Korea, Latvia, New Zealand, Norway, Switzerland) reported various measures to promote the Guidance (publication on governments or NCP websites, brochures, translation, special events...). The US Under-Secretaries of State Hormats and Otero issued a statement promoting the Guidance as a means of performing due diligence, including for fulfilment of related statutory obligations in the United States. The Norwegian NCP referenced the Guidance in its final statement for the specific instance regarding Intex when it recommended that Intex include "the potential for engagement in conflict-affected areas as part of the due diligence process".<sup>12</sup>

### ***New Supplement on Gold***

In addition to the Supplement on Tin, Tungsten and Tantalum adopted in December 2010, a new Supplement on Gold was finalised in Spring 2012. A Drafting Committee composed of representatives of OECD and partner countries, industry and civil society organisations contributed to the elaboration of due diligence recommendations tailored to the various actors in the gold supply chain (gold miners, exporters, refiners, gold traders and recyclers, bullion banks, manufacturers and jewellers and other downstream users). The Supplement benefited from input received from the public through an online consultation held from 5 December 2011 until 13 January 2012. It was endorsed by the OECD-hosted working group on gold on 2 February 2012 and approved by the OECD



Investment Committee and Development Assistance Committee on 6 April 2012 and adopted on 17 July 2012 by the OECD Council as part of the Revised Recommendation on the Due Diligence Guidance.

The successful finalisation of the Supplement has already translated into significant buy-in and ownership over results. Gold industry and trade organisations such as World Gold Council, London Bullion Market Association, the Responsible Jewellery Council, Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) and most recently the Dubai Multi-Commodities Centre's (DMCC) have developed standards and tools that will operationalise the Supplement on Gold within their specific segments of the supply chain.

### **Implementation of the Guidance**

The Council Recommendation instructs the Investment and Development Assistance Committees to monitor the implementation of the Recommendation on Due Diligence Guidance. The pilot implementation phase of the Supplement on Tin, Tungsten and Tantalum began in July 2012 while the implementation programme on the new Supplement on Gold was launched in May 2012. OECD, partner countries, industry and civil society organisations have embarked on a reflection exercise for establishing a transparent and accountable governance structure for this process to move forward. A multi-stakeholder “Interim Governance Group” is being set up with the mandate to design a proposal for a new governance for the OECD-hosted due diligence initiative. It is expected that the proposal will be submitted for consideration to the next joint plenary forum on due diligence implementation scheduled for November 2012.

### **Launch of the implementation programme of the Supplement on Gold**

The first meeting of the OECD-hosted multi-stakeholder forum on implementation of due diligence in the gold supply chain was held on 2-3 May 2012, with more than 200 representatives from OECD and partner countries, the gold industry and civil society participating. Participants agreed that the implementation programme would include three general activities: i) reporting on the measures taken by companies to implement due diligence and engaging in a peer learning process to share experiences and identify good practices to overcome common challenges; ii) within the context of the implementation of the Busan Partnership for Effective Development Cooperation, sharing experiences and seeking feedback on country-specific projects led by interested host-governments designed to set up secure pipelines of responsibly-produced gold and economically viable opportunities for artisanal mined gold; and iii) raising awareness and building capabilities on due diligence implementation in key partner non-OECD countries (such as India, the United Arab Emirates).

### **Tracking progress in the implementation of the Supplement on Tin, Tantalum and Tungsten (3Ts)**

Since August 2011, 100 companies and industry associations, both upstream and downstream in the 3Ts supply chain, have volunteered to participate in the implementation phase of the 3T Supplement and to report to the joint OECD-ICGLR-UNGoE Forum on implementation of due diligence in the Great Lakes Region. By engaging in a “learning by doing” process, participating companies “know and show” how to implement due diligence

### Box 1.2. Participants that disclosed their participation in the pilot implementation phase of the Supplement on Tin, Tantalum and Tungsten

	Companies		Industry associations
Downstream industry	Alcatel Lucent	Oracle	AIAG (Automotive Industry Action Group) EICC and GeSI (Electronic Industry Citizenship Coalition and Global e-Sustainability Initiative) IPC (Association Connecting Electronics Industries)
	Alpha (Cookson)	Panasonic Corporation	
	AMD	Research in Motion	
	Boeing Company	Royal Philips Electronics	
	Circuit Connect	Plansee Group Service GmbH	
	Epic Technologies	Siemens AG	
	Flextronics	Texas Instruments	
	Ford Motor Company	TriQuint	
	Foxconn	UNISEM	
	Freescale	United Technologies Corporation	
	General Electric Company		
	Hewlett-Packard		
	KEMET		
	Lockheed Martin Corporation		
	Nokia		
	Northrop Grumman		
	Upstream industry	Africa Smelting Group Sprl	
A.M.R. Mugote et frères		G.M.C. Sprl	
AMUR II		Huaying Comptoir	
ANEMISA		KM Kasado	
ANEMNKI		La Découverte	
C.D.M.C.		Metachem	
Chemaf Sprl		Minerals Supply Africa	
CMM		Minserve	
COMIDER		Comptoir Nguma	
COMIMPA		Phoenix Metals	
COPAMIK		REMEX Minerals Ltd.	
Cronimet		RWANDA RUDNIKI Ltd.	
Cuba Kairenga		SOMIMA	
Ets KALINDA		Tinco Investments Ltd.	
Ets Munsad Minerals		TTT Mining	
Ets Panju		Volcano	
FECOMIRWA		Wolfram Mining and Processing Ltd.	

Source: OECD Investment Division.

by sharing experiences, lessons learned and tools used to implement due diligence. They are also building their due diligence capabilities that will help them meet relevant reporting obligations and the expectations of customers, regulators and the public at large.

Findings from the first and second reporting cycles presented at the second and third meetings of the ICGLR-OECD-UN GoE joint forum on implementation of due diligence in the tin, tantalum and tungsten supply chains, respectively held on 29-30 November 2011 and 3-4 May 2012,<sup>13</sup> show that where implemented (notably in the Katanga province of the Democratic Republic of the Congo and Rwanda), due diligence has contributed to the creation of islands of mineral traceability, innovative models for responsible sourcing (e.g. closed pipe or vertically integrated supply chains), improved mining sector governance and increased exports and taxes collected by host governments. The attitude of upstream companies is gradually shifting from general reluctance to carry out due diligence without a viable market to sell their minerals to constructive engagement to restore trust and build confidence of buyers with a view to creating demand for their minerals. The decision by the Government of the DRC in September 2011 to integrate the OECD Due Diligence

Guidance into the DRC national legal framework and the follow-up action taken to suspend the activities of two non-OECD compliant exporters in May 2012 in the Kivu provinces partially explain change in local corporate patterns.

On the downstream side of the supply chain, regulatory pressure has been the main driver for due diligence implementation so far. Downstream companies are currently focusing on emerging practices and tools that would enable them to overcome the main challenges related to due diligence implementation because of the breadth (*i.e.* a large number of transactions involving 3Ts) and the depth (the number of supplier tiers between the participating company and the smelter) of their supply chains.

The OECD Secretariat has continued to actively promote the Guidance by organising or participating in various workshops, conferences and seminars, including the joint ICGLR-OECD joint regional workshop on due diligence for responsible mineral supply chains (10 November 2011), the annual Precious Metals Conference hosted by the London Bullion Market Association (September 2011), the Dubai City of Gold Conference (November 2011), the 2012 Mining Indaba in Capetown (February 2012), the “Extractives Workshops” hosted by the Electronics Industry Citizenship Coalition and the Global e-Sustainability Initiative (September 2011 and April 2012) and the meeting of the International Task Force against the illegal exploitation of natural resources co-ordinated by the EU (March 2012).

## Notes

1. The new structure of the Chilean NCP is currently under consideration. Therefore, there are still some details under discussion.
2. Available versions were published by Brazil and Portugal.
3. The OECD is producing a single Spanish version of the *Guidelines* in co-operation with Spanish speaking NCPs.
4. Specific instance counts are based on the information provided in the Annual NCP Reports by 37 of the adhering countries to the *Guidelines* (Colombia and Tunisia have adhered to the *Guidelines* in recent months).
5. Exceptions to this common behaviour were statements related to specific instances received prior to the 2011 Update of the *Guidelines* and handled according to the 2000 Implementation Procedures. It should also be noted that some NCPs make public the results of both the initial assessment, stating that the specific instance requires further examination, and the following final statement.
6. The complete Report is available at [www.oecd.org/investment/guidelinesformultinationalenterprises/ncps.htm](http://www.oecd.org/investment/guidelinesformultinationalenterprises/ncps.htm).
7. The field visit was preceded by an intense preparatory work (background notes, questionnaires addressed to the reviewed NCP and to national stakeholders) developed by Japan's NCP, in co-operation with the OECD Secretariat.
8. [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises).
9. In particular; the NVGs contain 9 principles: Principle 1: Ethics, Transparency and Accountability; Principle 2: Providing Goods and Services that are sustainable over entire Life Cycle; Principle 3: Well-being of Employees; Principle 4: Being Responsive towards Stakeholders, especially the disadvantaged; Principle 5: Respecting and Promoting Human Rights; Principle 6: Protecting and Restoring the Environment; Principle 7: Responsible Policy Advocacy that enhances Public Good; Principle 8: Supporting Inclusive Growth and Development; and Principle 9: Providing Value to Customers responsibly.
10. [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/ResourceDocumentWeb.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/ResourceDocumentWeb.pdf).
11. Section D.

12. See Final Statement, Complaint from the Future In Our Hands (Fioh) against Intex Resources ASA and the Mindoro Nickel Project, the Norwegian National Contact Point for the OECD *Guidelines for Multinational Enterprises*, 28 November 2011, p. 47, available at [www.regjeringen.no/upload/UD/Vedlegg/ncp/intex\\_final.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/intex_final.pdf).
13. The upstream and downstream reports from the first cycle, along with the meeting agenda and background materials, are available on the webpage for the second meeting of the ICGLR-OECD-UNGoE joint forum, available at [www.oecd.org/daf/investment/mining](http://www.oecd.org/daf/investment/mining). The upstream and downstream reports from the second cycle, along with the meeting agenda and background materials, are available on the webpage for the third meeting of the ICGLR-OECD-UNGoE joint forum, available at [www.oecd.org/daf/investment/mining](http://www.oecd.org/daf/investment/mining).

## Chapter 2

# Mediation and consensus building

*Following the 2011 update of the OECD Guidelines for Multinational Enterprises, NCPs have been charged with expanded responsibilities in their role as informal problem solvers in corporate responsibility disputes. Improving mediation skills has been identified as a high priority for NCPs. A special session with mediation experts at the 2012 NCP meeting allowed participants to share experiences and learn about effective methods of informal problem-solving.*

### 2.1. Promoting the added value of mediation

With the 2011 Update of the *OECD Guidelines for Multinational Enterprises*, NCPs have been charged with expanded responsibilities in their role as informal problem solvers in corporate responsibility disputes. The June 2011-June 2012 cycle has seen 28 new specific instances, each with its own challenges and potential for further learning and contribution to best practices. While NCPs need to develop their own capacities for effective mediation, they can also build upon their shared experience in resolving specific instances and enhance their collective capacity to solve corporate responsibility problems so as to encourage an effective adherence to the *Guidelines*.

One of the most significant changes brought by the Update was the increased emphasis on regular peer learning activities as a means of improving NCP general performance. The June 2012 meeting provided the first meaningful opportunity to conduct a focused peer learning and capacity building session on mediation under the revised *Guidelines*. This session confirmed the great importance for NCPs to exchange on a regular basis ideas and questions about effective methods of informal problem-solving of issues arising under the *Guidelines*.

The mediation capacity building session included presentations from the Consensus Building Institute (CBI), the World Bank, and several NCPs discussing their own experiences with mediation. CBI introduced its *NCP Mediation Manual*, commissioned by the NCPs of the Netherlands, Norway, and the United Kingdom.<sup>1</sup> The organisation encouraged NCPs to use the *Mediation Manual* as an informative resource that can help guide specific instance procedures.

The core of the peer learning session focused on an open and frank discussion of NCPs' own experiences with mediation under specific instances. The Swiss NCP raised specific questions concerning the selection of mediators, terms of reference for mediations, transparency, confidentiality, and challenges posed by a party's refusal to engage in dialogue. The UK and Dutch NCPs each discussed a successful mediation they have facilitated along with insights of lessons learned. This year's meeting also gathered for the first time all the parties involved in a specific instance mediation (Germaq). The Norwegian NCP introduced the specific instance, and each party discussed their experience with the NCP mediation facility. NCPs and stakeholders took this opportunity to share lessons learned and raise questions bearing need of further examination.

The June NCP meeting showed that NCPs and other international problem-solvers have found an acute need for their mediation capacities. There was a broad consensus that the OECD has a unique role to play in supporting NCPs in building these capacities. This role could be fulfilled by offering forums for peer learning and discussion as well as gathering, organising, and centralising information on specific instances. Through the efforts and initiatives discussed and presented at the June meeting, the OECD would be able to actively promote the added value of mediation.

## 2.2. Mediation in theory: The NCP Mediation Manual

In February 2012, the NCPs of the Netherlands, Norway, and the United Kingdom sponsored the development of a Mediation<sup>2</sup> Manual by the Consensus Building Institute (CBI). CBI is a not-for-profit organisation empowering stakeholders – public and private, government, and community – to resolve issues, reach durable agreements, and build relationships.<sup>3</sup> The manual is meant to serve as a tool and resource for NCPs as they develop their role as problem solvers through specific instance procedures.

### **Aims of the Mediation Manual**

The *Mediation Manual* seeks “to provide clarity on whether, when, and how NCPs can use mediation and other informal problem-solving methods to resolve claims in specific instances”.<sup>4</sup> The manual does not create new responsibilities for NCPs in handling specific instance procedures. Rather, it is a source that NCPs can draw from in order to facilitate the work they already do: “setting up a problem-solving process to create a situation in which enterprises and other stakeholders effectively adhere to the *Guidelines*”.<sup>5</sup> For every step of the specific instance procedure, the manual delineates useful measures NCPs can take to enhance the productivity of each stage, clarify which specific instances can lead to successful mediations, and effect the most constructive dialogues in those cases. Finally, the manual is also meant to be used to inform public officials in signatory countries of “how NCPs can use informal problem-solving to resolve outstanding conflicts between their citizens and multinational enterprises operating within their borders”.<sup>6</sup>

### **Content of the Mediation Manual**

The manual divides the specific instance procedure into five stages: initial assessment, pre-mediation assessment meetings, stakeholder assessment, mediation, and wrapping up.

#### **1) Initial assessment**

The manual divides the initial assessment stage into two parts: determining whether the issue merits further consideration and determining how to undertake further examination of the issue. For the first determination, the manual recommends that NCPs focus solely on whether the enterprise involved is one for which the NCP has an oversight role, whether the party raising the specific instance has a legitimate interest in the matter, and whether consideration of the specific instance would further the purposes and effectiveness of the *Guidelines*. For the second determination, the manual suggests using a problem-solving approach rather than a formal findings approach in order to avoid dismissing potentially admissible specific instances. Instead of asking whether a specific *Guideline* has been breached and conducting fact-finding at this stage, the NCP should examine the context of the submission and investigate whether the enterprise’s corporate responsibility toward the notifying stakeholder has been invoked in the situation.

The manual also emphasises the importance of conducting a holistic review, using all available sources including embassies; especially when it appears vulnerable stakeholder groups may not be able to adequately voice their views of the situation. The manual offers suggestions concerning parallel proceedings and specific instances that arise in non-adhering countries. It again emphasises the use of a problem-solving approach rather than a formal findings one in order to gain flexibility so that no admissible specific instance is overlooked. Finally, it highlights the importance of maintaining consistency with regards to confidentiality and the information gathered at this stage of the procedure.

Confidentiality may be important at the early stages of a procedure to encourage parties to enter the process. In the case of an enterprise's refusal to co-operate, it is also important to maintain a consistent method of disseminating information.

### **2) Pre-mediation meetings**

The pre-mediation meetings stage addresses a number of important factors in successful mediation including explaining the process to potential participants, establishing credibility and impartiality, and determining whether mediation will lead to a positive outcome. The NCP itself should take steps to increase the parties' perception that it is credible and neutral. While the exact role of the NCP will vary from situation to situation, the NCP will likely take on the responsibility of managing and/or supervising the problem-solving process. At this stage, the NCP should not make evaluative decisions regarding the submission or attempt to mediate. Instead, the NCP should: clarify the problem-solving options for the participants; discuss the issues at pre-mediation meetings; ensure that the parties have the authority to make commitments and agreements; decide whether or not to proceed with a full stakeholder assessment and mediation; offer non-examination means of resolution, assist the parties in mapping out the stakeholder assessment and mediation processes; and collaborate with other NCPs if this would be helpful.

### **3) Conducting a stakeholder assessment**

If an NCP and the relevant parties decide to move forward with the informal problem-solving process, the NCP should conduct a stakeholder assessment to better understand the parties' perceptions and concerns before determining whether successful mediation is plausible and if so, how the mediation process should be designed. A thorough stakeholder assessment will: define the issues to be addressed; determine the representatives of the stakeholders; clarify what types of commitments the representatives can make; identify additional parties that would be useful in facilitating the mediation such as national governments or other influential stakeholders; clarify procedural challenges; examine the substantive concerns and claims of the parties to determine whether mediation is likely to be successful; and, if successful mediation is plausible, design the most suitable method of informal problem-solving to which both parties can agree.

The manual recommends that NCPs select a credible and competent assessor to conduct the Stakeholder Assessment. An assessor should be viewed as impartial and be able to analyse, summarise, and report its findings in a way that all stakeholders and the NCP will find clear, accurate, and fair. NCPs might decide to use an assessor from inside the NCP office, or use someone external. Before the Assessment takes place, the NCP should work with the assessor and the parties to establish a confidentiality agreement. The assessor's subsequent interviews with the parties should: educate stakeholders about the NCP's role; build rapport and establish trust; explore stakeholder perceptions of the specific instance; identify areas of convergence and divergence in stakeholders' interests and perceptions; identify missing stakeholder groups; solicit stakeholder reactions to problem-solving methods; and restate and confirm the main points of the interviews with the interviewees. The assessor should be prepared to conduct as many interviews as necessary in order to reach a broad and representative set of stakeholders that might include parent enterprises, joint venture partners, government agencies, financial institutions and investors, community organisations, local residents, foreign embassies, and business community members.



If key parties (particularly those whose co-operation is essential for success) agree to a problem solving agenda that will lead to a binding agreement, and if sufficient resources are available to support the problem-solving process, the assessor can recommend that the mediation should go forward.

#### 4) *Mediation*

The manual uses “mediation” to refer to both mediation and conciliation, the two informal problem-solving mechanisms included in the *Guidelines*. Mediation, distinguished from conciliation, refers to a process by which a neutral mediator helps opposing parties communicate with and understand one another and, if possible, reach an agreement that satisfies participants’ needs. Conciliation involves a more directive approach by the conciliator, integrating his or her own substantive expertise to promote a mutually acceptable resolution, often emphasizing factual or legal findings and sometimes discouraging direct dialogue between parties. Both can lead to lasting agreements between the parties involved.

After conducting the stakeholder assessment, an NCP should be able to determine which type will be more suitable in the specific instance procedure. NCP mediation, as distinguished from external mediation (performed outside the specific instance and not engaging the NCP), provides a state-based grievance mechanism that should be easily accessible to all stakeholders. Additionally, NCP mediation is advantageous for the substantive expertise NCPs can provide in the areas of international trade and investment. Unlike external mediation, it is specifically intended to uphold the *OECD Guidelines*, which hold corporations to a high performance standard, and it is overseen by government.

In the NCP mediation process, whether the NCP and the involved parties select an outside mediator or decide to use the NCP as a mediator, the mediator should be neutral, credible, professionally skilled and accredited, substantively knowledgeable, culturally and linguistically competent, and experienced with international mediation guidance standards. The manual discusses the advantages and disadvantages of internal *versus* external mediators. The mediation process should clarify the parties’ expectations, establish trust and solid rapport, and develop a plan for progress on the issue. The manual recommends that parties clarify their “best alternative to a negotiated agreement” before the mediation begins so that they can determine their minimum requirements before they engage in a dialogue. The mediation will explore issues and interests, generate options for agreements, and develop an agreement to which participants are capable of committing. The mediation should also result in an agreement that balances confidentiality with transparency.

#### 5) *Wrapping up*

The last stage of a mediation involves finalisation of the agreement through a final statement issued by the NCP. The NCP will often help the parties produce a written agreement (as described in the mediation section of the manual), but this is not always the case. In the case of an unsuccessful mediation, the NCP will if necessary continue to examine the case and then issue a final statement containing its findings and recommendations of implementation of the *Guidelines* as appropriate. The NCP should also be prepared to follow up and oversee progress on the agreement if the parties agree to this.

### 2.3. Next steps toward developing NCP best practices

NCPs have made significant progress in developing their role as problem-solvers in the corporate responsibility context, building on shared experiences and self-assessment and

taking into account the experiences and views of government and stakeholders. The *Mediation Manual*, drawing from NCP experiences with specific instances and leading international guidance on mediation, can serve as a useful tool both for NCPs with an established history of successfully mediated cases and for NCPs who have not yet mediated a specific instance. An important next step for all NCPs is to continue to capture the lessons learned from each mediation process and build upon those lessons for future mediations. The NCP mediation workshop hosted by Austria in Salzburg on 23-25 September 2012 will provide another excellent opportunity for NCPs to share their insights and strengthen their capacities in this process.

## 2.4. Mediation in practice: Case studies

The mediation capacity building session provided an opportunity for NCPs to closely examine three specific instances where NCPs have been successful at facilitating mediation (mediation or conciliation). The cases selected for discussion covered a wide range of *Guidelines* issues: labour rights, human rights, environmental impact, and responsible supply chain. They also touched on procedural issues including the involvement of multiple NCPs and the selection of outside mediators.

### a. Unilever

**NCP:** UK.

**Host country:** India.

**Specific instance submitted by:** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations.

**Enterprise:** Unilever PLC.

**Subject area:** Trade unions.

**Submission received:** 19 October 2007.

**Final statement issued:** 7 July 2010.

The union raised a specific instance on behalf of one of its affiliates, the "All-India Council of Unilever Unions", concerning the operations of Hindustan Unilever Limited (Unilever), based in India and a subsidiary of Unilever PLC, which is registered in the UK. The concerns related to the operations of Unilever's Doom Dooma factory in Assam, India, in particular concerning union elections and choice of union membership. The UK NCP offered its good offices and proceeded to design a mediation strategy, but progress was slow due to legal concerns from lawyers on both sides of the dispute.

On 20 June 2009, over two years after the specific instance was raised, the UK NCP suspended the specific instance procedure in light of a union petition to the High Court in India calling for supervised union elections. Between November 2009 and February 2010, the UK NCP reviewed the specific instance with regard to the *Guidelines*' parallel proceeding guidance and decided, after seeking the views of both parties, to apply the guidance to this specific instance and proceed with the mediation process.

The NCP appointed John Mulholland, from the Advisory, Conciliation and Arbitration Service, to preside over the mediation. An initial conciliation meeting took place in London in May 2010, and the parties met again in July. The parties were able to come to an agreement through conciliation, which took three months, and the UK NCP was not required to carry out a substantive examination of the enterprise's activities. The parties'

agreement included provisions for secret ballots and fair elections as well as a solution to a conflict concerning wage deductions for union membership. The parties agreed that the full text of the agreement could be published and that they would both monitor implementations from the national and international levels.

### **Take away**

The UK NCP emphasised its pragmatic approach to mediation. NCP flexibility allowed the parties to pursue whichever avenue of mediation would most effectively solve the problem. The NCP offered its good offices, allowing the involved parties the option of mediating with the NCP or using an outside mediator at whatever location the parties preferred, onsite at the NCP headquarters or elsewhere. In this instance, the parties opted for a mediator from the list provided by the NCP at the expense of the NCP. The NCP was not involved in the mediation discussions, only entering the process to issue its final statement and follow-up plan. The NCP indicated that the UK Government's provision of its own mediator database as well as funding for outside mediation were instrumental in the mediation's success. The NCP also spoke about one of the unintended consequences of the mediation, namely that Unilever and the NCP have developed a co-operative relationship after the mediation experience.

Due to the parallel proceeding and the involvement of lawyers on both sides of the dispute, progress with the NCP mediation was slow. By promoting mediation as a non-judicial mechanism that nonetheless achieves due process, NCPs may be able to encourage parties to approach mediation from a non-judicial problem-solving standpoint.

### **b. Nidera Holding**

**NCP:** The Netherlands.

**Host country:** The Netherlands/Argentina.

**Specific instance submitted by:** CEDHA and INCASUR Foundation (both Argentinian), SOMO (based in the Netherlands), and Oxfam Novib.

**Enterprise:** Nidera Holding B.V. Netherlands.

**Subject area:** Worker protection.

**Submission received:** 27 June 2011.

**Final statement issued:** 3 February 2012.

The NGOs maintained that Nidera failed to observe the *Guidelines* in Argentina in the "hiring of temporary workers for detasseling corn under conditions that did not seem to meet internationally and nationally recognised worker protection standards. More specifically, the non-observance concerned health and safety conditions, wages, and submission and dependence".<sup>7</sup> The notifiers requested the Dutch NCP to offer its good offices in order to facilitate a dialogue between the notifiers and Nidera to create a CSR policy to be implemented in all Nidera enterprises globally.

After an initial assessment, the NCP organised a meeting with Nidera and the notifying parties, to which it also invited representatives of other organisations that deal with responsible business conduct. In this meeting Nidera presented its achievements and plans in CSR while the actual notification was not discussed. After the meeting the parties to the notification decided to have a bilateral conversation, not involving the NCP but keeping it informed. In the two months following the meeting, Nidera met with the

notifiers, managing to agree on the their main request that Nidera set up a human rights policy that includes due diligence as described by the *Guidelines* and the United Nations' Guiding Principles for Business and Human Rights.

### **Take away**

This is a case in which the host country is also an adherent to the *Guidelines*. Though the notification was not made to the Argentinean NCP, the notifiers did forward their notification to that office. When the Dutch NCP offered good offices, the Argentinean NCP was informed and continued to receive briefs on the Dutch NCP's progress. Both NCPs emphasised the importance of co-operation between their offices in achieving a successful mediation.

The NCPs stressed that because the issue involved a review of the enterprise's policy and not a fact-finding endeavour, it was necessary that the home country take the lead. The Dutch NCP recounted the history of the conflict between Nidera and the NGOs, who were engaged in a media campaign. Through dialoguing with the parties individually, the NCP was able to clarify that the NGOs raising the specific instance did not seek an opinion from the NCP on the events in Argentina; rather, they wanted to use the NCP process to pressure Nidera to institute a strong CSR policy. For this reason, the NCP did not investigate the substance of the conflict; it did not issue a statement as to whether or not the *Guidelines* had been breached. Instead, the NCP helped to guide a mediation that resulted in the company creating a serious CSR policy, based on the *Guidelines* that it would apply to its global operations. Both parties seemed to be happy with the outcome, and the Dutch government complimented the parties in an official reaction.

### **c. Cermaq**

**NCP:** Norway.

**Host country:** Chile.

**Specific instance submitted by:** Friends of the Earth Norway, Forum for Environment and Development (FORUM) (both Norwegian).

**Enterprise:** Cermaq ASA.

**Subject area:** Indigenous people's rights, trade unions, environmental due diligence.

**Submission received:** 19 May 2009.

**Final statement issued:** 10 August 2011.

All three parties in a specific instance concluded by mediation; the two complainants and the company, were invited to the NCP Annual Meeting in Paris 20 June 2012 to present and discuss their experiences with the Norwegian NCP. This specific instance concerned Cermaq's policies and its subsidiaries' practices in the fish farming industry in Chile and Canada and alleged contributions that unsustainable fish farming activities had made to the collapse of Chile's fish industry and the outbreak of disease in certain fish populations. "The complaint maintained that Cermaq had acted in violation of the *Guidelines*, claiming it did not take adequate account of indigenous peoples' rights, that it engaged in discriminating trade union practices, and that it conducted flawed environmental due diligence."<sup>8</sup> Cermaq rejected these claims, alleging that it was unaware of any such violations. During 2010 the Norwegian NCP was reformed. After the establishment of the independent Norwegian NCP 1 March 2011, it offered its good offices for mediation. All three parties accepted the NCP proposal for a

framework for the mediation, including the stated goal to reach a joint statement, terms of reference on how the mediation was to proceed which *i.a.* included a draft timeframe and the requirement of commitment at the CEO and board level of all three parties.

The parties stressed that engaging in mediation allowed them to influence the outcome of the NCP investigation. Cermaq wanted to protect its reputation as a responsible enterprise, and the NGOs wanted concrete changes in Cermaq's policies to impact salmon-farming practices in the company's subsidiaries in Canada and Chile. The NCP conducted the mediation in a cost-efficient manner, with chair of the NCP as a mediator and its headquarters as the location. The process of preparation for mediation lasted more than a month, though the mediation meeting between the parties took only one day. This meeting was thoroughly prepared by the NCP Secretariat by mapping the respective interests of all stakeholders, both in Norway and abroad, as well as several meetings and extensive telephone contact with the respective parties.

The NCP praised the parties for their willingness to engage in dialogue and for their ability to make concessions in coming to an agreement that would achieve concrete results on the implementation of CSR practices. In August 2011, the parties agreed on a joint statement describing how Cermaq would operate according to the precautionary principle, honoring indigenous peoples' rights, human rights, and labour rights. The joint statement was crafted so as to acknowledge that Cermaq had engaged in unsustainable farming practices but also to recognise that Cermaq had made contributions to knowledge development to make the Chilean fishing industry more sustainable. The NGOs commended Cermaq for the improvements it had made to its operations both in Chile and globally. In its final statement, the NCP invited all parties to present implementation of the joint statement in their respective organisations in 2012.

### **Take away**

The two parties agreed that the structure the NCP provided to the conflict was helpful in achieving resolution, and they appreciated the competence of the NCP in arranging and framing discussions. The mediator in this instance, Hans Petter Graver, chair of the NCP and professor of law and dean at the University of Oslo, was credited by all parties for much of the mediation's success.

The NGOs highlighted that their perception of NCP independence and impartiality was of particular importance when they entered the mediation. Before the re-structuring of the Norwegian NCP in March 2011, the NCP was part of the Norwegian Ministry of Foreign Affairs' section responsible for promoting Norwegian exports and industries abroad, and a key Minister in the Norwegian government had been chair of the Cermaq board for much of the time relevant to the complaint. The NGOs perceived the change in structure of the NCP as an opportunity to get a balanced review of its complaint and the issues it concerned. The Norwegian NCP provided a consultant to the NGOs soon after the new, reorganised NCP took office in March 2011, which the NGOs said was helpful but orchestrated too late in the mediation process. They indicated that there was a significant divide between the two parties' resources to prepare for mediation and that the specific instance process would have been fairer if the NCP had offered support with investigation and mediation at an earlier stage.

Both the NGOs and Cermaq discussed problems with gathering information as well as achieving trust in the opposing party. The NGOs perceived that the company was only willing to release information that was favourable to the company, whereas the company

mentioned that it was difficult to recover information from its old archives. The NGOs emphasised that the conflict had a nearly ten-year old history, and that they had been unsuccessful in managing to engage the company in dialogue throughout that time. Cermaq mentioned its surprise when it was notified of the specific instance because the company had never been contacted by any of the listed NGOs about the complaint, indicating that prior awareness of all parties involved would have been helpful in building trust in the process.

Cermaq was confident that it had not breached the *Guidelines*, which factored into its decision to enter mediation. It took the allegations seriously and involved management in the process as soon as the NCP offered its good offices. The CEO was involved throughout the process, attending every meeting and showing a commitment to resolving the issue. The chair of the company's board also participated in several of the meetings. There was consensus among the parties and the NCP that the involvement of the company's management was important in coming to a successful agreement. Cermaq indicated that its trust in the mediator was not solely linked to the independence of the NCP, but more importantly to the mediator's professionalism and competence.

Concerning the final agreement, the NGOs commended Cermaq for instituting reporting mechanisms that would allow it to measure the environmental and social sustainability of its practices. The joint agreement included a follow-up meeting convened by the NCP where all parties were to report on progress related to the mediated outcome. The NGO underscored that a follow-up to the specific instance was of the utmost importance. They were concerned that neither they nor the NCP would be able to monitor a more thorough follow-up. All parties agreed that including more details on monitoring in the joint statement could have made the follow-up process more predictable, and enabled better co-ordination and a higher level of trust between the parties.

After the conclusion of the case, the NCP invited the parties to complete feedback forms on the process. The NCP discussed the feedback forms to see which aspects of the process were most constructive and which could be improved in its own procedures. It used that input in the development of the *Mediation Manual* that it co-commissioned with the UK and the Netherlands. This was the new NCP's first experience with mediation, which it was bent at extracting as much learning experience from as possible.

## 2.5. Lessons learned from the case studies

The NCP discussion during the capacity building session produced a number of insights as well as questions to be discussed further at future NCP meetings.

### **Insights**

#### ***NCP independence and impartiality***

NCPs noted that their connection with government represented an opportunity and a challenge in being effective problem-solvers. The government connection can add weight and impact to the mechanism, but at the same time, experience has shown that some parties do not view the government as an impartial actor around development and other issues. This can impact the NCP's ability to be perceived as a credible mechanism to address grievances. NCPs discussed different ways in which they have addressed these concerns, including rearranging the structure of the NCP and using independent mediators. NCPs noted that there was no one right approach to addressing these issues.

Many NCPs noted they have a structure that includes multiple stakeholders or independent oversight bodies so as to promote greater perceived credibility. It was agreed that flexibility in mediation is important in any circumstance because the NCP should be able to design the best possible method of mediation. Offering different options can help ensure trust in the NCP mediation process. A budget for mediation can allow NCPs to hire outside mediators both for convenience when the specific instance takes place in a remote location and for flexibility when the parties prefer a mediator not affiliated with the NCP or with a national government.

NCPs discussed instances where members of an NCP had affiliations with enterprises implicated in specific instances, and it was recommended that in such circumstances, such as in the Cermaq case,<sup>9</sup> the NCP member concerned should not be involved in the case in any way. This does not preclude the NCP itself from offering good offices, and indeed the NCP should proceed with the instance if it is admissible and provide the parties with a variety of problem-solving options.

#### ***Involvement of top-level management***

Participants in the capacity building session highlighted the positive impact that the involvement of an enterprise's top-level management can have in a mediation process. Such involvement allows both parties to more fully understand each other, promoting mutual trust and understanding. Many participants voiced a preference for the involvement of managers rather than legal departments because an exclusive focus on legal concerns can have a suppressive effect on a mediation dialogue.

#### ***NCP co-operation and involvement of the home country NCP***

Nidera Holding and Cermaq were both cases that took place in countries with NCP offices of their own, yet in both instances, the home country took the lead in facilitating mediation while the host country offered valuable co-operation. In the Cermaq case, this was due to the notifiers' demand for changes in the parent company's policies. Such departures from the *Guidelines'* recommendation that host countries take the lead, if possible, can be justified when the home-country NCP leadership can more effectively engage the enterprise's decision-makers. In specific instances involving a company's headquarters, it can even be necessary for the home country to take the lead. In all cases, co-operation is necessary between home country and host country NCP's, and NCP's must be flexible in allocating responsibility in a way that will most effectively resolve the specific instance. The lead NCP should make sure to keep other involved NCPs duly informed. When cases are primarily handled by NCPs in home countries, it is also important that the results, such as mediated agreements, are duly presented and their implementation discussed with communities and stakeholders potentially affected by the implementation.

#### ***Equality in the mediation process***

There was concern that some parties might require NCP assistance in preparing for mediation. In these circumstances, it may be useful for NCPs to devote part of their budget to assisting parties with information and resources that would enable them to come to the mediation table prepared to reach an agreement.

### ***Due process, but not a legal proceeding***

The NCP specific instance instrument is not a legal proceeding, and many of its advantages lie in its use of pragmatism over legal recourse. Largely free from the financial and temporal costs of litigation, NCP mediation seeks to solve problems as efficiently as possible and to find lasting solutions that are built upon the real needs of the parties concerned. NCP mediation can often offer a wider array of creative solutions to a dispute than can a legal proceeding, and it is meant to serve as a more accessible form of dialogue between enterprises and other stakeholders. NCP mediation is not meant to preclude litigation if parties choose to enter a legal process or have already chosen to do so; rather, it is a problem-solving option meant to broaden the possibilities of dispute resolution and strengthen adherence to the *Guidelines* and where relevant give access to remediation to potential victims of violation of the *Guidelines* involving companies.

NCPs have found that when a specific instance procedure begins to resemble a legal proceeding with the involvement of lawyers and legal instruments, mediation can be stalled or left incomplete. An enterprise might engage its legal department due to the financial consequences at stake or to parallel proceedings that may be influenced by the specific instance procedure. Sophisticated enterprises with a view toward the added value of mediation may be more willing to engage in an NCP mediation process and may even have their own internal mechanisms that can aid in resolving the dispute. The OECD can help encourage enterprises to engage in the mediation process by disseminating clear information on the role of the specific instance facility and emphasizing confidentiality and due diligence when promoting the NCP's activities.

### ***Topics for further discussion***

#### ***Selecting an outside mediator***

In situations where the NCP and the parties seek to use an independent mediator, NCPs discussed the difficulty of selection – especially when the mediation is to take place in a remote location and stakeholder preferences are difficult to determine. This process can consume valuable time and resources, but it may be strategically facilitated. NCPs should consult with each other and with local governments, embassies, and stakeholders to locate appropriate mediators. Parties to a mediation may also be asked to submit their own nominees. Some NCPs expressed an interest in developing their mediator networks, and the OECD can work on building its own database of mediators in various regions and with a broad range of language and subject expertise.

#### ***Terms of reference***

Framing terms of reference for mediation can be a simple process or a complex one, depending on what the NCP chooses for any given situation. NCPs differ in the degree to which this process is streamlined, the details the process includes, and the ideologies by which the process is guided. Often, the NCP must draft the terms of reference itself, relying on information gathered from pre-mediation meetings with stakeholders and the enterprise. When an NCP uses the services of an outside mediator, the mediator will sometimes draft the terms independently of the NCP. At other times, the NCP will work with the mediator or on its own to establish what mediation parameters best suit the parties. Terms of reference include but are not limited to: the setting of the mediation, the topics to be discussed, and an agreement on confidentiality. The OECD can design its own template for terms of reference that the NCPs can modify appropriately for each specific instance.



### ***Consensus and consent***

Trust and consent in the mediation process is crucial for a successful outcome, and parties must agree to the subjects that will be discussed, trusting that confidentiality will be respected and agreements upheld. Questions arose as to the extent to which an NCP should be flexible in its selection of topics to be discussed during a mediation. While it is essential that parties agree to the terms of a mediation, a mediation dialogue that bypasses relevant concerns raised in a specific instance may not be constructive. It is important for NCPs to distinguish between a mediation design that can lead to a positive dialogue and one that cannot.

### ***Budgeting for mediation***

Mediation by external mediators can be an expensive undertaking, and it can be difficult to establish a budget for mediation that may or may not be required in any given year. A contingency fund established by each NCP and/or by the OECD may be a solution to this problem.

### ***Freedom of information***

The NCPs that successfully has solved cases through mediation have published the outcome of the mediation and the procedural *Guidelines*, but kept the details during the mediation process confidential. Because many governments have freedom of information acts that require them to make certain documents publicly available, confidentiality can become a challenge in NCP mediation. Some NCPs have found ways to manage this problem by signing confidentiality agreements to return sensitive information to an enterprise after mediation has taken place. This is an area that NCPs need to discuss further with their governments and with their constituencies.

### ***Framing a problem-solving dialogue***

The success of NCP mediation efforts relies largely on the willingness of enterprises to engage in a problem-solving dialogue, but enterprises may be wary of entering a dialogue that is framed in a way that they perceive as pre-judged against them. Some NCPs have attempted to deal with this problem by using the words “notification” and “notifier” rather than “complaint” and “complainant”. The Procedural Guidance does not specifically endorse any terminology in this regard; it simply stipulates that in order for an NCP to offer good offices, the issue must be substantiated in a way that makes further examination appropriate. This does not necessarily mean that an enterprise has failed to observe the *Guidelines*, however, and further promotion and education on the NCP mediation facility can help to make this clear.

The NCP’s recommendations and commentary will vary from situation to situation, but the results of every submitted specific instance will be published at the conclusion of the procedure in a manner the NCP deems appropriate. In the case of a specific instance that the NCP determines to not merit further examination, the NCP may withhold the identity of the enterprise involved. However, this approach may not always be possible, for instance if the information already is posted on OECD Watch’s website, if notifications are subject to Freedom of Information regulation or if the notifier decides to share the notification itself with the media before informing the NCP or before the NCP has had the possibility to agree upon confidentiality with both parties. Furthermore, to ensure the tax payers support for the NCP system, more detailed information about what the NCP is doing may be beneficial in some societies. The public nature of the specific instance process may

lead to apprehension among enterprises when given the option of NCP mediation, but it is also an incentive to act in good faith and approach the mediation table ready to solve the problem. Framing the dialogue so that enterprises understand an NCP's commitment to confidentiality and due diligence can effectively build enterprise trust in the NCP mediation facility.

### ***Monitoring and follow-up of agreements***

There is still little experience monitoring agreements facilitated by NCPs, and few examples of parties having agreed on how to monitor joint statements or agreements between them. However, based on the few examples available, there is a need to clarify the NCP's role in monitoring and follow-up. Mediated agreements should not lead to expectations that NCPs should follow-up on a mediated agreement in an unforeseeable timeframe. On the other hand, the parties may need assistance from a third party to monitor or facilitate monitoring of an agreement. To avoid confusion and distrust, some NCPs' experience shows that it would be an advantage if the parties agree upon and detail how monitoring and follow-up should happen, including the NCP's role in this, in their joint statement or agreement. Agreement on monitoring and implementation will ensure predictability for all parties involved and may lead to increased trust amongst all stakeholder groups in the implementation of these non-judicial agreements and over time to the NCP as a mediating institution.

## **2.6. Developing a global mediator network: A presentation by the World Bank**

The World Bank delivered a presentation on a proposal by the Harvard Kennedy School's Corporate Social Responsibility Initiative (CSRI) to develop a global mediator network with co-operation from various participants including international organisations, multi-national enterprises, and local communities and NGOs. Many development projects around the world – both private and publicly-financed – experience delays related to conflicts over land, water, and labour issues, i.e. “non-technical” risks. The drivers for this conflict are either not going away or increasing (demographics, pressures on land, poverty, etc.) and will continue to drive growing international demand for conflict-sensitive professionals trained in informal problem-solving. Such professionals include mediators, conflict resolution experts and adaptive management professionals.

Unfortunately, the availability of skilled mediators is limited, as is the awareness among mediators of user needs and requests for assistance. The World Bank noted that there are several efforts underway to address the information gap, including informal networks, the Bases wiki, the Company-Community Dialogue Facilitators Forum, Hugo CSR, the Geneva Peacebuilding Platform and others, but there is not yet any shared database of global professionals.

The Harvard Proposal to establish a global mediators network with shared access and contribution by a variety of members including organisations like the World Bank and the OECD as well as representatives from the private sector and local communities and NGOs would enable broader access to users, increase availability of skilled professionals, create peer-to-peer learning, improve efficiency for users, and offer a single entry point from which to access the network. However, there are challenges in setting up such a structure that would need to be discussed and addressed by potential users.

Key challenges cited by the World Bank include: i) the need for some type of quality control over the group of professionals that offer the services through the network; ii) the extent to which the network is free and open to all users or requires a financial commitment upfront to access; iii) how to develop new capacity among professionals; and iv) the free-rider problem in creating incentives for users to share their contacts with the network. While each of these demands a longer discussion, it was agreed that none of the issues were insurmountable.

Delegations generally felt that a collaborative mediators network could be an interesting investment for organisations and enterprises that regularly make use of mediators, including NCPs. They noted that a number of issues still need to be addressed in concretising this proposal (such as free-riders and quality control). NCPs agreed to revisit this proposal at an appropriate time in the future.

### Notes

1. Downloadable at: [http://cbuilding.org/sites/cbi.drupalconnect.com/files/CBI\\_NCP\\_Mediation\\_Manual\\_July\\_2012.pdf](http://cbuilding.org/sites/cbi.drupalconnect.com/files/CBI_NCP_Mediation_Manual_July_2012.pdf).
2. The Manual uses “mediation” to include both mediation and conciliation, the two types of informal problem-solving enumerated by the *Guidelines’* “Procedural Guidance”.
3. CBI website: [www.cbuilting.org](http://www.cbuilting.org).
4. *Mediation Manual*, 19.
5. *Mediation Manual*, 16.
6. *Mediation Manual*, 20.
7. Final Statement, quoting the Notification of Specific Instance by Notifiers, Part II, p. 3, 26 June 2011.
8. *Norwegian NCP 2011/2012: Annual Report*.
9. One of the members of the new NCP was also board member of the company. To avoid potential conflicts of interest he declared himself disqualified from handling the case and did not participate in any discussions in the NCP related to the case nor in the actual mediation. This is in line with the voluntary declarations by all the Norwegian NCP members to perform their duties with impartiality. The declarations are published on [www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp\\_taushet\\_e.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp_taushet_e.pdf).



## ANNEX 1

### *Statements released by the National Contact Points, June 2011-June 2012*

- *Australia*
- *Brazil*
- *Germany*
- *Japan*
- *The Netherlands*
- *Norway*
- *Switzerland*
- *The United Kingdom*
- *The United States*

## Public statement by the Australian NCP on the transfer of a specific instance involving an Australian-headquartered enterprise to the Argentinean NCP

On 1 June 2011, the Australian National Contact Point for the OECD *Guidelines* (ANCP) received a specific instance complaint from an Argentine non government organisation regarding the activities of a multinational enterprise (based in Australia) in Argentina. That Australian based company in turn is a wholly owned subsidiary of a multinational European company.

The specific instance complaint alleged breaches of:

- Chapter II: General Policies, Paragraphs 1, 6 and 7, “due to non-sustainable approaches to development by the destruction of critical environmental resources; due to failure to comply with due diligence and showing inadequate corporate governance of sensitive environmental impacts and concern by stakeholders; due to failure to generate a relationship of confidence and mutual trust between the enterprise and society”.
- Chapter III: Paragraphs 1, 2, 4 and 5, “due to the failure to provide timely and reliable information about its impacts; due to providing *extremely poor scientific rigor* to its assessments; due to failure to publish objectives relative to impacts to (the environment); due to failure to provide statements on mitigation plans; due to failure to provide information concerning legal compliance with national and provincial (environment) protection laws”.
- Chapter V: Paragraphs 1, 3, 4, 5, 6 and 8, “due to failure to provide adequate and timely environmental information about [environment] impacts, objectives, and monitoring data; due to failure to communicate information about impacts; due to failure to address and assess decision-making about impacts; due to failure to include (specific issues) in environmental assessments; due to failure to consider scientific risk (to the environment) in (the company’s) exploratory phase; due to failure to produce a contingency plan; due to failure to adopt best available technologies to avoid (environmental) impacts; due to failure to contribute to the implementation of the (national and provincial environmental laws)”.

Following initial contact with the Australian based company the ANCP discussed the matter with the Argentine Nation Contact Point and determined that the specific instance complaint should be transferred to the Argentine National Contact Point on the basis that:

- Each of the projects which are the subject of the complaint are in Argentina.
- The NGO making the complaint is based in Argentina.
- The key (Company) representatives that have day to day decision making responsibilities for these projects are based in Argentina.
- Spanish is the first language of the proponents of the complaint and the (Company) representatives with day to day responsibility for the projects.
- The ANCP is not in the best position to assess whether the actions by (Company) in relation to the projects is valid or illegal under Argentine law – this will have some bearing on any consideration of the matter under the *Guidelines*.

Whilst (the Company) is headquartered in Australia, it is the Argentine offices of (the Company) which have carriage of the projects included in the specific instance complaint. Some of the legal issues surrounding these matters are not within the scope of the OECD *Guidelines* but do weigh heavily in the background when considering such matters.

In addition, it is noted that the recently superseded 2000 *Guidelines* (at p. 58, Paragraph 13) and the new 2011 (p. 78) versions of the *Guidelines* state that: “Generally, issues will be dealt by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level.” There is no compelling reason to depart from this principle in relation to this specific instance, notwithstanding the request that this specific instance be dealt with by the Australian NCP.

The ANCP will provide support to the Argentine NCP in resolving this complaint as requested.

This statement has been prepared having regard to the confidentiality guidance published by the ANCP and in the guidance to the *OECD Guidelines for Multinational Enterprises*.

Canberra, 10 August 2011

## Public statement by the Australian NCP on the transfer of a specific instance involving an Australian-headquartered enterprise to the Chilean NCP

On 11 January 2012, the Australian National Contact Point for the OECD *Guidelines* (ANCP) received a specific instance complaint from a Chilean auto parts manufacturer regarding the activities of a joint venture mining operation operated and largely owned by multinational enterprises, based in Australia and the United Kingdom, in Chile.

The specific instance complaint alleged breaches of:

- Paragraph 3 of Chapter 2 – General Policies of the *Guidelines* – 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.
- Paragraph 6 of Chapter 2 – General Policies of the *Guidelines* – Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
- Paragraph 13 of Chapter 2 – General Policies of the *Guidelines* – 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*.

The ANCP discussed the matter with the Chilean National Contact Point and determined that the specific instance complaint should be transferred to the Chilean National Contact Point on the basis that:

- the joint venture mining operation which is the subject of the complaint is in Chile;
- the key (Company) representatives that have day to day decision making responsibilities for these projects are based in Chile;
- Spanish is the first language of the proponents of the complaint and the (Company) representatives with day to day responsibility for the projects; and
- the ANCP is not in the best position to assess whether the actions by (Company) in relation to the projects is valid or illegal under Chilean law – this will have some bearing on any consideration of the matter under the *Guidelines*.

Whilst the joint venture is owned and operated largely by Australian interests it is the Chilean offices of the joint venture which have carriage of the matter included in the specific instance complaint. Some of the legal issues surrounding these matters are not within the scope of the OECD *Guidelines* but do weigh heavily in the background when considering such matters.

In addition, it is noted that the *Guidelines* state: “Generally, issues will be dealt by the NCP in whose country the issue has arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level” (2011, p. 78). There is no compelling reason to depart from this principle in relation to this specific instance, notwithstanding the reference to the ANCP.

The ANCP will provide support to the Chilean NCP in resolving this complaint as requested.

This statement has been prepared having regard to the confidentiality guidance published by the ANCP and in the guidance to the OECD *Guidelines for Multinational Enterprises*.

Canberra, 1 March 2012



## **Final statement by the Brazilian NCP on the complaint by the Central Union of Workers (CUT), on behalf of trade union members of the Workers Network at BASF South America, against the company BASF SA**

It came to the attention of this National Contact Point (NCP) on 19 April 2010, the complaint object of the Complaint NCP No. 03/2010, sent by the Central Union of Workers (CUT), on behalf of trade unions members of the Workers Network at BASF South America, against the company BASF SA. CUT is a trade union based in São Paulo, Brazil.

According to the claimants, the company BASF SA used legal loopholes, nominally the mechanism of Prohibitory Interdict, to prevent the presence of union leaders in their units, and did not use the channel of Social Dialogue at the time of the dismissal for cause of a legitimately elected workers' representative.

Because of the alleged practices, the claimants denounced violations committed by the multinational corporation to the *OECD Guidelines for Multinational Enterprises*, particularly to the chapter on Employment and Industrial Relations. Claimants considered BASF SA particularly disrespectful to the following recommendation:

#### *IV. Employment and Industrial Relations*

*Enterprises should, within the applicable law, regulations and prevailing labor relations and employment practices and applicable international labor standards in:*

*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; (...)*

In a preliminary analysis by this National Contact Point, it was concluded that the complaint presented elements that kept thematic relevance to the topics addressed by the *OECD Guidelines for Multinational Enterprises*, contained focus sufficiently circumscribed and had a list of supporting documents that could be verifiable by objective criteria. As a result, the NCP decided to accept the complaint and to communicate the fact to the NCPs of the host countries of the company BASF SA, and to the OECD.

After the acceptance of the complaint, BASF SA was asked to make their comments to the allegations, a necessary step to further the analysis on the issue.

In 19 October 2010, BASF SA sent a reply to the Letter No. 125/2010/SAIN/MF-DF, in which it presented clarifications on each point of the complaint and requested the filing of the complaint. According to BASF SA, the strike, which initiated after the signing of the Collective Agreement, ended naturally. Since the strike did not have total support from employees and did not observe some legal formalities, a regional Labor Court (*Tribunal Regional do Trabalho*) dismissed the strike as abusive and, in consequence, BASF SA resorted to the legal mechanism of Prohibitory Interdict.

On 28 August 2011, the NCP received a formal letter from the Central Union of Workers (CUT) and from the Workers Network at BASF South America requesting the suspension and the cancellation of the complaint. Also, the NCP received a letter of commitments made between BASF SA and representatives of the Network INTRAB (InterTrade Union of National Workers at BASF).

BASF SA and its workers committed, among other things, to improve the conditions of the dialogue between the representatives of workers and the enterprise in case of warning and/or suspension of the representatives, and even in cases of dismissal for cause, and the participation of the Workers Network in the integration of new employees, on the occasion of integration meetings.

In light of the above, the NCP decided to close this complaint, noting that the NCP avails itself to make the necessary efforts to help the parties in this case, in event of any new facts, or if parties envisage specific aspects in which the NCP performance can be useful to contribute towards an understanding.

To the knowledge of all.

28 August 2011

National Contact Point, Ministry of Finance, Ministry of External Affairs, Ministry of Planning, Budget and Management, Ministry of Labor and Employment, Ministry of Justice, Ministry of the Environment, Ministry of Science and Technology, Ministry of Development, Industry and Foreign Trade, Ministry of Agriculture, Livestock and Supply, Central Bank of Brazil.

## **Joint final statement by the German NCP, the European Center for Constitutional and Human Rights (ECCHR) and Otto Stadlander GmbH on the complaint by the ECCHR against Otto Stadlander GmbH/Bremen**

On 22 October 2010, the European Center for Constitutional and Human Rights (ECCHR) and the Uzbek-German Forum for Human Rights e.V. (hereinafter “the complainants”) lodged a complaint with the German National Contact Point for the *OECD Guidelines for Multinational Enterprises* against Otto Stadlander GmbH/Bremen (hereinafter “the respondent”). At the same time, the ECCHR lodged OECD complaints against Swiss, British and French cotton traders with their respective National Contact Points.

The *OECD Guidelines for Multinational Enterprises*, which are implemented on a voluntary basis and form part of the OECD Declaration on International Investment and Multinational Enterprises, are recommendations encouraging responsible entrepreneurial behaviour. The governments of OECD member countries and other participating countries have committed themselves, via their respective National Contact Points, to promoting the implementation of this code of conduct and helping to resolve complaints by means of a confidential mediation process involving relevant partners.

The primary element of the complaint brought before the German National Contact Point was the assertion that the respondent, by purchasing Uzbek cotton from state-owned companies in Uzbekistan, was supporting/profitting from child labour. The complaint also asserted that the respondent was able, as a result of its business links, directly to exert influence on those responsible for cotton production in the Uzbek government and had failed to use that influence to pursue a critical dialogue on the issue of child labour or contribute in any other way to the improvement of the situation.

The complainants demanded, specifically, that the respondent:

1. Boycott Uzbek cotton for as long as the problem of child labour remains unresolved.
2. Call on Uzbekistan to accept an ILO observer mission during the harvest in Autumn 2011.
3. Take all conceivable steps to prevent the use of child labour in cotton production in Uzbekistan.
4. Disclose the quantities of Uzbek cotton that it imports every year, as well as details of its clients.

The German National Contact Point carried out a thorough assessment of the background to the complaint. Statements were obtained and discussions were held.

Prior to the decision to conduct an in-depth assessment, the German National Contact Point thoroughly investigated the facts of the matter in discussions with the respondent’s chief executive on 11 April 2011 and discussions with representatives of the ECCHR on 15 April 2011. Both sides had already been given the opportunity to express their points of view in a written statement. Finally, talks were held on 21 July 2011 on the premises of the German National Contact Point, bringing together representatives of both the complainant and the respondent.

The federal government read the reports of continued use of child labour in the Uzbek cotton industry in 2010 with considerable concern. Child labour is a particularly serious violation of children’s human rights. The federal government is resolute in its opposition to all forms of child labour. It therefore calls, both bilaterally and within the European Union, for an end to the use of child labour in the harvesting of cotton in Uzbekistan and has demanded, both in international fora and in bilateral talks, that the Uzbek authorities

take effective steps to abolish this practice. The federal government will keep up the pressure on Uzbekistan with a view to putting an end to the use of child labour in the harvesting of cotton.

Despite the absence of an investment nexus, the German National Contact Point found the complaint, in principle, to be sufficiently relevant to merit an in-depth assessment.

### **Point 1**

On the basis of the documentation and information provided by Otto Stadtländer GmbH, the German National Contact Point is convinced that the respondent – contrary to the assertions made in the complaint – has not been supplied directly by Uzbek state-owned companies for 16 years, instead purchasing central Asian cotton exclusively from wholesalers. Although around 5% of the cotton supplied on the basis of those contracts is Uzbek cotton, the purchaser is scarcely able to influence matters in this regard given the structure of those transactions. There is no national import ban on Uzbek cotton. Consequently, the demands made in Point 1 are without justification.

### **Point 2**

In 2010, the ILO's most senior decision-making body, the International Labour Conference (ILC), decided to send a high-level ILO observer mission to Uzbekistan. There was a broad consensus on this matter, with both the majority of employer and employee associations and the majority of governments supporting this move. The 2011 ILC also saw in-depth discussions regarding Uzbekistan's violation of Convention 182 on the prohibition of the worst forms of child labour. The situation in Uzbekistan was considered to be one of six particularly serious cases. The 2011 ILC again saw employer and employee associations and numerous governments call on Uzbekistan to allow the ILO's observer mission to go ahead. Thus far, Uzbekistan's government has refused to allow this high-level observer mission to proceed.

So, constant political pressure is being exerted on Uzbekistan's government by the international community. Thus far, however, all efforts have been in vain. Consequently, the degree of influence that can be exerted on the Uzbek government by individual companies is generally extremely limited – especially in this case, where the respondent does not trade directly with the relevant state-owned companies in Uzbekistan. Thus, the demands made by the complainants in Point 2 are not feasible. Nevertheless, we continue to urge companies to do whatever they can to prevent the use of child labour.

### **Point 3**

Given the current market situation – a real seller's market, with cotton in short supply – it generally appears very difficult to influence those responsible for Uzbekistan's cotton trade from the buyer side. The respondent only deals with relatively small amounts of Uzbek cotton, which – contrary to the assertions made by the complainant, as indicated in relation to Point 1 – it does not purchase directly from state-owned companies in Uzbekistan. This was acknowledged by the complainant in two statements dated 17 and 18 November 2010. The respondent asserted that the company's employee in Tashkent had no direct links to decision-makers in the Uzbek government and was not involved in the agreement of specific transactions.

Otto Stadtlander GmbH is a founding member of the Association of Cotton Merchants in Europe (ACME), which has, on a number of occasions, called on Uzbekistan's leaders to end the practice of child labour, most recently by means of a letter to the Minister for Foreign Trade dated 17 June 2011. That letter calls on Uzbekistan, among other things, to enter into dialogue with the ILO, UNICEF and European retail trade associations and allow ILO and UNICEF observer missions to operate during the cotton harvest.

The respondent has also announced that it will voluntarily implement the Code of Conduct for the Textile and Fashion Industry drawn up by the Textile and Fashion Confederation and make trading partners aware of that fact (*e.g.* when concluding contracts). These *Guidelines* governing entrepreneurial activity incorporate the ILO's core labour standards, and thus the prohibition of child labour.

The firm also intends to join the UN Global Compact network, which has included the abolition of child labour as one of its ten fundamental principles. Every company participating in the UN Global Compact network is required to provide, on an annual basis, a publicly available written progress report detailing the current state of affairs as regards the company's implementation of those fundamental principles.

The respondent has also pledged to do whatever it can in the course of its business activities, when relevant opportunities arise or contact is made with relevant persons, as well as in the appropriate fora, to make clear its opposition to child labour and seek to ensure that cotton resulting from child labour is not purchased. Finally, the respondent has declared its willingness, in order to raise its employees' awareness of this issue, to provide internal training on the issue of risk management in the supply chain (particularly as regards child labour in the cotton sector) in order to implement appropriate measures wherever possible within the supply chain. One year after the publication of this decision, Otto Stadtlander GmbH will report to the German National Contact Point on the steps taken in this regard. The measures detailed above fulfil the demands made by the complainants in Point 3.

#### **Point 4**

The respondent has co-operated with the German National Contact Point and provided comprehensive data regarding its business activities. However, the respondent has justifiably refused to comply with the complainants' demand that it reveal its clients, citing the protection of trade secrets. Thus, the demands made in Point 4 have partially been met, with the remainder regarded as unjustified.

The two sides have, following mediation by the National Contact Point, agreed on this final statement. The complainants pledge to refrain from publicly criticising the respondent's previous corporate policies as regards the trading of Uzbek cotton. This does not include the expression of opinions relating to human rights violations in Uzbekistan that have no discernible link with the respondent or its corporate policies. The complainants will make clear in a press statement that their assertion that the respondent purchases large amounts of Uzbek cotton direct from state-owned companies in Uzbekistan has proven to be erroneous. As regards those claims, the complainants regret any damage done to the respondent's reputation by the reporting of the complaint procedure in the media.

Berlin, 1 November 2011

For the National Contact Point, Ministerial Counsellor Joachim Steffens, Federal Ministry of Economics and Technology.

Berlin, 7 November 2011

For the complainants, Dr. Miriam Saage-Maaß, European Center for Constitutional and Human Rights (ECCHR).

Berlin, 17 November 2011

For the respondent, Mr. Rainer Hammer, Otto Stadtlander GmbH.

## The initial assessment by the Japanese NCP on the specific instance at Top Thermo Mfg. (Malaysia) Sdn. Bhd.

### **Raised issues and intervention requests**

The Malaysian Trades Union Congress (MTUC), as requested by its affiliated union, the Metal Industry Employees' Union (MIEU), (MTUC and MIEU are hereinafter referred to as "the complainants") submitted a complaint dated 12 March 2003 to the Japanese National Contact Point of the *OECD Guidelines for Multinational Enterprises* (hereinafter referred to as "the Japanese NCP").

The issues raised are described below in Section 1, they refer to an alleged violation of the *OECD Guidelines for Multinational Enterprises* (hereinafter referred to as "the Guidelines") by Top Thermo Mfg. (Malaysia) Sdn. Bhd. (hereinafter referred to as "TTM"), additionally, a request for assistance to the Japanese NCP is described below in Section 2.

### **1) Issues raised**

1. TTM dismissed the organiser.
2. TTM openly adopted discriminatory practices against union members.
3. TTM refused to extend co-operation to Human Resources Ministry officials.
4. TTM obstructed the process of recognition.
5. TTM refused to accept the Industrial Relations Department's ruling on membership scope of MIEU.
6. TTM continues to defy the Human Resources Minister's order to recognise the union.
7. TTM has caused frustration and delay by abusing the legal process.

### **2) Requests for assistance**

The complainants asked the Japanese NCP to provide assistance and urgent intervention to resolve the above-mentioned issues.

### **Consideration of the initial assessment**

Following the submission of the complaint, described above in Section 1, and taking into consideration the progress of judicial procedures in Malaysia, the Japanese NCP conducted fact-findings with the collaboration of the Japanese Embassy in Malaysia and exchanged opinions with the parties involved. Based on the findings, the Japanese NCP made an initial assessment questioning "whether the issues raised merit further examination" in accordance with the *Guidelines*.

The results of the consideration are as follows:

1. The complainants involved in the issues are the Malaysian Trades Union Congress English Translation (MTUC) and the Metal Industry Employees' Union (MIEU), which is affiliated to MTUC. The alleged enterprise is Top Thermo Mfg. (Malaysia) Sdn. Bhd. (TTM), which is an associated company of the Thermos KK., and based in Japan.
2. The issues raised, described above in Section 1, are material and substantiated and they are related to violations of employees' rights.

3. Regarding judicial procedures in Malaysia, TTM had lost the case in March 2010. The main issue of dispute was whether MIEU has a qualification as a representative union of TTM employees, and MIEU had been recognised as the union representing TTM's employees under the procedures. After that, MIEU proposed a draft collective agreement to TTM in June 2010, and MIEU and TTM concluded the agreement in July 2011.
4. The raised issues have been solved among the parties involved by the above-mentioned conclusion of the collective agreement between MIEU and TTM, while MTUC and MIEU both expressed that they would not ask the Japanese NCP for further assistance, and TTM also expressed its recognition that there was no special problem on their industrial relationship.

### **Conclusion of the initial assessment**

As mentioned above in Section 2(2)(iv), and because there is no room for the Japanese NCP to contribute further in addressing the issues raised, the Japanese NCP concludes that the issues raised "do not merit further consideration". The Japanese NCP welcomes that the issues have been successfully settled thanks to a constructive compromise among the parties involved. The Japanese NCP would like to pay tribute to the efforts made by the parties concerned.

16 February 2012

Japanese NCP of the *OECD Guidelines for Multinational Enterprises*, Director, OECD Division, Economic Affairs Bureau, Ministry of Foreign Affairs.

Deputy Assistant Minister for International Affairs, International Affairs Division, Minister's Secretariat, Ministry of Health, Labour and Welfare.

Director, Trade and Investment Facilitation Division, Trade and Economic Co-operation Bureau, Ministry of Economy, Trade and Industry.



## Final statement by the Dutch NCP on the specific instance notified by CEDHA, INCASUR Foundation, SOMO and Oxfam Novib concerning Nidera Holding B.V.

### Introduction

Countries adhering to the *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are under the obligation to set up National Contact Points that undertake promotional activities, handle enquiries and contribute to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances.

This report describes the procedures initiated and the good offices offered by the Netherlands National Contact Point for the *OECD Guidelines* (hereafter: NCP) after receipt of a notification by a collective of four NGOs from Argentina and the Netherlands regarding the human rights policy and due diligence procedures of a Dutch multinational enterprise. Early December 2011, parties involved informed the NCP of their mutual agreement and requested the NCP to formally finalise the specific instance procedure.

### Notification and parties involved

On 27 June 2011, the Netherlands NCP received a notification from the Argentinean NGO “Centro de Derechos Humanos y Ambiente” (CEDHA), also on behalf of the Argentinean “International Institute of Studies and Social Training of the South (INCASUR), the Netherlands based NGOs Stichting Onderzoek Multinationale Ondernemingen (SOMO) and Oxfam Novib (hereafter collectively: the Notifiers). A copy of the notification was forwarded by the NCP to the Argentinean NCP.

The notification concerned the alleged non-observance of the *Guidelines* by the Dutch-based multinational Nidera Holding B.V. and its Argentinean subsidiary Nidera SA (hereafter: the Enterprise). The Enterprise’s activities in which the alleged non-observance took place concerned the adoption by Nidera (the parent company) of “a policy commitment to respect human rights and follow due diligence procedures at the highest management levels of the company”. According to the Notifiers, the need for this was reflected in “hiring of temporary workers for detasseling corn under conditions that did not seem to meet the standards for the protection of workers and of internationally recognised and enforced human rights in the Republic of Argentina”.<sup>1</sup> More specifically, the non-observance concerned health and safety conditions, wages, and submission and dependence.

Notifiers requested the NCP to offer its good offices in order to facilitate a dialogue between Notifiers and the Enterprise that would lead to the Enterprise’s adoption and implementation of a “company-wide human rights policy that includes a concrete due diligence procedure for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations, in particular regarding the hiring and employment processes of the temporary workers in detasseling operations”.<sup>2</sup>

### Procedures initiated by the NCP

By letter of 16 August 2011, the NCP informed the parties that it accepted the notification for further examination under the NCP procedures while clearly noting that this acceptance in itself did not imply that the NCP supports the substantiation of an apparent breach of the *Guidelines* as described by Notifiers. The NCP considered that an offer of its good offices as requested by Notifiers would help the Enterprise and its stakeholders with its development of a human rights policy and its human rights due diligence procedure in accordance with the *Guidelines*.

A copy of the acceptance letter was sent to the Argentinean NCP, which responded swiftly by expressing its gratitude for the information received and interest in following the proceedings of the notification. Meanwhile the Netherlands' embassy in Buenos Aires was kept informed and consulted during the course of the handling of the notification.

On 28 September 2011, the NCP organised a meeting with the Enterprise and Notifiers, to which representatives of other organisations that deal with responsible business conduct were also invited by the NCP. During the meeting, the CEO of the Enterprise, accompanied by the CFO and CSR responsible, explained how the Enterprise in their view complies with the *OECD Guidelines* and controls its operations and described its comprehensive CSR approach (including CSR and human rights standards).

Notifiers welcomed the efforts and commitment the Enterprise had undertaken and shown, but also pointed out that they would like to take a more elaborated look at the Enterprise's CSR policies. The CEO expressed his willingness to engage in a dialogue with Notifiers and other stakeholders, which he considered part of the Enterprise's process of regular review of its CSR policies with a view to further improvement and development.

In the two months that followed the meeting of 28 September, parties met bilaterally and managed to agree on Notifiers' main request, the setting up of a human rights policy that includes due diligence as described by the *Guidelines* and the United Nations' Guiding Principles for Business and Human Rights. The mutual agreement comprised of agreement over the Enterprise's human rights policy, its human rights due diligence procedure, monitoring, its supply chain approach, and grievance mechanism.

The parties informed the Netherlands NCP about their mutual agreement by letter of 2 December 2011, and requested the NCP to draft its final report. Parties also requested the NCP to issue a position regarding transparency and confidentiality in light of the *Guidelines* and the specific instance procedure.

### **Remarks of the NCP**

Regarding transparency and confidentiality in the specific instance procedure, the NCP has always been of the opinion that the mere fact that an enterprise is involved in a specific instance procedure and the allegations that led its stakeholders to file the notification ought to be publicly available information. Information shared and opinions expressed within the specific instance procedure are however confidential. This distinction was first developed during the NCP's dealing with the notification concerning the G-Star notification in 2006 and was further confirmed during the NCP's peer evaluation in 2009.<sup>3</sup>

Article C4 of the *OECD Guidelines Procedural Guidance* in this regard reads that the NCP will: "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."

The Commentary (No. 21) on the Procedural Guidance additionally reads: “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*.”

The NCP would like to congratulate the parties with their mutually agreed solution and wishes to praise the Enterprise with its forthcoming policies on human rights and its openness towards stakeholders in shaping these policies, especially given the fact that the concept of due diligence in the framework of business and human rights is still new and requires exploration and context-specific adaptation. Also the Notifiers deserve credit for their open and constructive attitude during the proceedings of this notification.

After having agreed on a human rights policy including a human rights due diligence procedure the Enterprise will now face the surely challenging task of putting them into practice throughout its activities and business relations worldwide. In this regard, the NCP is glad to see that the agreement also includes provisions on monitoring, through for example stakeholder consultations and on-site visits.

With a view to learning from the handling of the specific instance and monitor progress on this successfully finalised NCP procedure, the NCP would like to invite parties to inform the NCP on their practical experiences with the Enterprise’s human rights policy one year after publication of this report.

The Hague, 3 February 2012

Frans W.R. Evers, LL.M, Chairman; Pr. Dr. Joske Bunders, member.

National Contact Point for the OECD *Guidelines* The Netherlands.

Agreement between Nidera Holdings B.V. and CEDHA, SOMO, Oxfam-Novib and INCASUR, 25 November 2011: [http://oecdwatch.org/cases/Case\\_220/1000/at\\_download/file](http://oecdwatch.org/cases/Case_220/1000/at_download/file).

## Notes

1. Notification of Specific Instance by Notifiers, Part II, p. 3, 26 June 2011.
2. Notification of Specific Instance by Notifiers, Part III, p. 7, 26 June 2011.
3. More information on [www.oecdguidelines.nl/get-started/peer-review/](http://www.oecdguidelines.nl/get-started/peer-review/).

## **Final statement by Norwegian NCP on the complaint from the Norwegian Society for the Conservation of Nature/Friends of the Earth Norway, and Forum for Environment and Development against Cermaq ASA (mainstream Canada and mainstream Chile)**

### ***The Norwegian NCP's conclusions***

Following the successful conclusion of the mediation process by the Norwegian NCP and the joint statement by the parties, the Norwegian NCP will close the complaint in respect of Mainstream Canada and Mainstream Chile. No further examination of the allegations in the complaint will be made by the Norwegian NCP.

The Norwegian NCP congratulates all parties on reaching a mutually acceptable outcome and for constructively engaging in discussions to reach this agreement. In particular, the involvement of the respective parties' boards and CEOs was positive for the process.

The joint statement was reached and signed on 1 July 2011 following mediation by the head of the Norwegian NCP, Dean and Professor Hans Petter Graver, and officially signed on 10 August 2011. The full text of the agreement is attached as an annex to this statement.

All parties have agreed that the full text of the agreement can be published. Since the *Guidelines* are not legally binding, the agreement between the parties is not appropriate for litigation purposes.

The Norwegian NCP strongly recommends that the parties to the complaint continue the dialogue established during the mediation process. All three parties are invited to meet with the NCP in April 2012, to give an update on the implementation of the joint statement.

### ***The Norwegian NCP process in this specific instance***

As a consequence of the Government's decision to reform the Norwegian NCP to follow up on the white paper on corporate social responsibility [Report No. 10 (2008-09) to the Storting], this specific instance was handled by two Norwegian NCPs. The former NCP handled the specific instance from 19 May 2009 to 28 February 2011. On 1 March 2011 the Norwegian NCP was reorganised, with a new independent panel of experts forming the main body and a Secretariat organised administratively under the Ministry of Foreign Affairs. The new NCP had its constituent meeting and formally agreed to handle the specific instance on 30 March 2011. The new NCP met all three parties on 13 April 2011. The meeting was concluded with a renewed offer of good offices to all parties to mediate with the goal achieving a joint statement. The NCP conducted the mediation itself, without any expenses accrued for any party involved. The new NCP requested further clarifications from the parties, including a list of remaining questions to the company. The NCP requested the complainants to analyse the company's forthcoming Sustainability Report in the light of the complaint. Both Cermaq ASA and the complainants provided the NCP with the requested documentation by 9 May. All parties agreed to mediation by 30 May. Mediation took place between 20 and 29 June. A consultant was hired to support the Secretariat in providing guidance to parties involved in the mediation process in line with Norwegian Public Administration Act Section 11 on the general duty of public offices to provide guidance to parties. All three parties participated constructively. In particular the NCP appreciates the involvement of the Secretary-General of Norwegian Society for the Conservation of Nature/Friends of the Earth Norway (Friends of the Earth Norway), Jan Thomas Odegard, Board Director of Cermaq ASA Baard Mikkelsen, CEO of Cermaq ASA Geir Isaksen and after 1 March 2011 the Director-General of Forum for Environment and

Development Elin Enge. Agreement on a joint statement was successfully reached on 1 July 2011 and officially signed on 10 August 2011. For details of the Norwegian NCP process in this specific instance please see Box 2.

### Box 1. **Mediation outcome: Joint Statement**

**1st July 2011**

**Joint Statement by Cermaq ASA, Norwegian Society for the Conservation of Nature/Friends of the Earth Norway\* and Forum for Environment and Development (ForUM)**

Based on the complaint of 19 May 2009 and the *OECD Guidelines for Multinational Enterprises*, the National Contact Point for Responsible Business arranged for mediation between the parties. Friends of the Earth Norway, The Forum for Environment and Development (ForUM) and Cermaq ASA are in agreement that:

- The sustainable use of natural resources, including the precautionary principle and accountability in meeting social and environmental challenges, is crucial for the aquaculture industry's future.
- The Chilean aquaculture industry, including Cermaq, should have been operated in a more sustainable manner before the fish health crisis in Chile in 2007. Since 2007, Cermaq has undertaken constructive measures in their own business operations and contributed in developing knowledge making the industry more sustainable.
- The complaint by Friends of the Earth Norway and ForUM included claims about Cermaq and its business that have been refuted.
- Future co-operation and contacts shall be based on mutual trust and clarification of facts.

**The aquaculture industry in Chile**

Where government regulation does not ensure the sustainability of aquaculture, the industry should take its share of responsibility. Cermaq acknowledges that the aquaculture industry in Chile, including Cermaq's aquaculture activities, was not sustainable as it was operated before the fish health crisis in 2007. The density of fish farms was too high in several places in Region X (10) of Chile, and the procedures required to prevent disease in fish were insufficient.

There is a connection between the way aquaculture has been carried out in Chile and spread of fish diseases that led to the collapse of the industry in Chile in 2007. Sufficient account was not taken of the precautionary principle. Rapid growth in the industry combined with a lack of regulation contributed, and the national authorities did not have adequate regulation of the biological and operational conditions in Chile. Warnings were issued that the situation could lead to environmental and fish health problems. Retrospectively, Cermaq believes it would have been desirable for the industry and Cermaq before 2007 to have been stronger advocates for the development of a more sustainable framework for the industry. In Norway at the same time, knowledge concerning an appropriate regulatory framework for the industry was available and this would have provided a starting point for efforts to influence legislation in Chile.

Friends of the Earth Norway and ForUM recognise that Cermaq has learned from the crisis in Chile and has made positive changes in procedures to prevent fish disease in Chile and in Cermaq's global business. Cermaq agrees with Friends of the Earth Norway and ForUM that the fish health crisis in Chile illustrates that the dissemination of best practice across its operations globally is important to ensure sustainability and improvement of operating procedures.

### Box 1. **Mediation outcome: Joint Statement** (cont.)

#### **The basis for sustainable aquaculture**

Cermaq emphasises that its *Guidelines* for ethics and social responsibility, as determined by its Board, has endorsed the *OECD Guidelines for Multinational Enterprises*. *Cermaq's Guidelines of Ethics and Social Responsibility* provides that the company has a responsibility for people, communities and environment affected by its activities, and that Cermaq activity should be organised so as not to undermine the potential for future production based on the same resources. In addition, Cermaq is member of the UN Global Compact. Based on these values, Cermaq has endorsed the following:

- In keeping with the government of Norway's White Paper on Active Ownership [Report No. 13 (2010-11) to the Storting "Active Ownership"], Cermaq will aim for leadership in social responsibility in the aquaculture industry. Cermaq will strive for excellence on environmental initiatives in its industry, including by contributing to the development and use of environmentally friendly technology.
- Cermaq has drawn lessons from the collapse in Chile, including a more structured approach to the exchange of knowledge and best practice between companies in the group regardless of business location.
- Based on internal and external, recognised research, and in line with the precautionary principle (as defined in the *OECD Guidelines for Multinational Enterprises*, including discussion of scientific uncertainty), Cermaq will further develop its efforts to minimise the risk of inflicting serious environmental damage on their surroundings.
- After the fish health crisis in Chile, Cermaq has contributed to new and important knowledge on the fish disease infectious salmon anemia (ISA) through projects to internal and external researchers, and through the establishment of a new research laboratory in Chile. Friends of the Earth Norway and ForUM recognise that this has provided new insights that are important for Cermaq and the industry, and provides a basis for better prevention of transmission of ISA and prevention of fish diseases.
- Cermaq has integrated human rights in the company's *Guidelines* for social responsibility and respects human rights in line with *OECD Guidelines*, Chapter II, 10-12 and Chapter IV, including by avoiding to infringe the human rights of others and to remedy violations of human rights where they occur both as a result of the company's own operations and in its supply chain.
- Cermaq respects indigenous rights in line with ILO Convention 169 and the UN Declaration of Indigenous Peoples (UNDRIP). Cermaq's operations in areas with indigenous peoples in Chile, Canada and Norway will be in accordance with the provisions of these agreements. Cermaq will seek to enter into mutually beneficial agreements with indigenous people in all areas where their rights are affected by Cermaq's operations, including in Chile.
- Cermaq respects and promotes worker rights in foreign countries as in Norway, as embodied in the eight ILO core conventions of the "Declaration of Fundamental Principles and Rights at Work", including the right to freedom of association and collective bargaining. Cermaq will continue to participate in round table conferences organised by the *Observatorio Laboral y Ambiental de Chiloé* (Olach).
- Cermaq will continue reporting against sustainability indicators, which are anchored at the level of its board, based on Global Reporting Initiative (GRI) and customised indicators specifically designed for the business of aquaculture. Cermaq intends to continue the practice of external verification by an independent third party. In the further development of its qualitative and quantitative indicators, Cermaq will draw on feedback from both internal and external sources, including groups who may be affected by the business.

Bård Mikkelsen, Chairman of the Board; Lars Haltbrekken, Chairman of the Board.

Cermaq ASA Friends of the Earth Norway.

Andrew Kroglund Chairman of the Board, Forum for Environment and Development (ForUM).

Mediation by Hans Petter Graver Head of Norway's National Contact Point for Responsible Business, Dean and Professor, Department of Private Law, University of Oslo.

\* Hereinafter Friends of the Earth Norway.

### Box 2. Summary of the Specific instance before the Norwegian NCP

**Complainants:** The Norwegian Society for the Conservation of Nature/Friends of the Earth Norway and Forum for Environment and Development.

**Company concerned:** Cermaq ASA with subsidiaries Mainstream Scotland (shares sold 25 August 2010), Mainstream Canada and Mainstream Chile.

**Case:** Salmon farming in Canada and Chile.

**Status:** Concluded through mediation by NCP Norway with joint statement.

**OECD Guidelines (2000 version) chapter(s) and paragraph(s):** Chapter II, Paragraphs 2, 7/Chapter IV, Paragraphs 1a, d, 4/Chapter V, Paragraphs 2, 3, 4.

#### Details of the parties involved

The Norwegian Society for the Conservation of Nature is a Norwegian registered NGO affiliated with the international network Friends of the Earth International. It was established in 1914, and advocates responsible management of natural resources in Norway and internationally. It is also a member of the other complainant, the umbrella organisation Forum for Environment and Development.

Forum for Environment and Development (hereinafter ForUM) is a Norwegian think-tank, and a national and international contact point for the co-ordination of policy initiatives and recommendations. ForUM represents 51 NGOs in Norway, and has a broad network of international partners. It is also represented in OECD Watch.

Cermaq ASA (hereinafter Cermaq) has its main office in Norway and is among the world's leading fish farming and fish feed companies. Salmon and trout are farmed in and shipped from Norway, Scotland, Canada and Chile. The company was listed on the Oslo Stock Exchange in 2005. The Norwegian Ministry of Trade and Industry has a 43.5% shareholding. Cermaq has 3 277 employees (2009), around 2 100 in Chile and 350 in Canada. As of July 2011, its salmon farming activities are carried out by the subsidiaries Mainstream Norway, Mainstream Canada and Mainstream Chile. Cermaq bought Mainstream Chile in 2000. Most of Mainstream Chile's salmon farming activities are in Region XI (11) (2011), while coho and trout are mainly farmed around Chiloé Island in Region X (10). Activities in Canada were concentrated on the west coast of Vancouver Island in British Columbia until 2005, when Cermaq bought fish farming facilities from the Canadian enterprise Heritage on the east coast of Vancouver Island.

#### Summary of the complaint and response

OECD Guidelines (2000-version)	Complaint in brief	Company's response in brief
<p><b>Chapter II, Paragraphs 2 and 7</b> 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:</p> <p><b>Chapter II, Paragraph 2</b> Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments</p> <p><b>Chapter II, Paragraph 7</b> Enterprises should 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.</p>	<p>Allegations of inadequate consideration of indigenous people's rights in Canada and Chile and of inadequate routines for contact and dispute arbitration with other interested parties in the areas they have activities.</p>	<p>Cermaq participates in several dialogues with interest groups and local communities, and has developed communication Guidelines including for dialogue and conflict resolution.</p>

## Box 2. Summary of the Specific instance before the Norwegian NCP (cont.)

OECD Guidelines (2000-version)	Complaint in brief	Company's response in brief
<p><b>Chapter IV, Paragraphs 1(a), 1(d) and 4</b> Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:</p> <p><b>Chapter IV, Paragraph 1(a)</b> 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.</p> <p><b>Chapter IV, Paragraph 1(d)</b> Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.</p>	<p>Allegations of unfounded dismissals, attempts to prevent employees joining trade unions, and pay and bonus systems that discriminate women.</p>	<p>Cermaq has documented that allegations of dismissals were not substantiated. The company expresses a positive attitude towards trade unions.</p>
<p><b>Chapter IV, Paragraphs 4(a) and 4(b)</b> Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:</p> <p><b>Chapter IV, Paragraph 4(a)</b> Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.</p> <p><b>Chapter IV, Paragraph 4(b)</b> Take adequate steps to ensure occupational health and safety in their operations.</p>	<p>Alleged inadequate safety routines for employees and contracted workers.</p>	<p>All Cermaq companies are either already certified or will within a specified date be certified to OHSAS 18001, a certification for health and safety. Moreover, investigations by the Chilean authorities of lethal accidents amongst contracted divers concluded that the Cermaq company in question was not responsible.</p>
<p><b>Chapter V, Paragraphs 2, 3 and 4</b> Enterprises should establish and maintain a system of environmental management appropriate to the enterprise, including collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities, establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives</p> <p><b>Chapter V, Paragraph 2</b> Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:</p> <p>a) provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting in progress in improving environmental performance; and</p> <p>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.</p> <p><b>Chapter V, Paragraph 3</b> Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.</p> <p><b>Chapter V, Paragraph 4</b> 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.</p>	<p>Alleged lack of preparedness against salmon escaping, the spread of lice and the spread of Infectious Salmon Anaemia (ISA). Also alleged inadequate communication and consultation with the communities that are directly affected by the company's environmental policy.</p> <p>Alleged failure to take into account in its decision-making processes the foreseeable environmental, health and safety consequences of its aquaculture activities, and alleged use of scientific uncertainty as a reason for postponing measures to prevent or minimise serious damage to the environment.</p>	<p>Cermaq has implemented risk management and accountability systems related to sustainable use of natural resources and environmental challenges in its subsidiaries. Cermaq referred to the industry's regulatory framework in Chile before 2007, available knowledge about ISA, and the way in which it has collaborated with environmental scientists. Cermaq has also initiated its own research on the spread of fish diseases, especially Infectious Salmon Anaemia (ISA).</p>



## Box 2. Summary of the Specific instance before the Norwegian NCP (cont.)

### Details of the Norwegian NCP process in this specific instance

The complaint was received on 19 May 2009 and concluded on 1 July 2011. Fifteen months passed from the date the complaint was accepted as a specific instance until agreement was reached. During these 15 months, the NCP was reformed as a follow-up to the Government's white paper on corporate social responsibility. Prior to 1 March 2011, the Norwegian NCP consisted of representatives from the Norwegian Confederation of Trade Unions, the Confederation of Norwegian Enterprise and the Norwegian authorities. The Secretariat was run by the Ministry of Foreign Affairs.

On 1 March 2011, the Norwegian NCP was reorganised. The new NCP is made up of an independent panel of four experts. Also a Secretariat was organised administratively under, but no longer run by, the Ministry of Foreign Affairs. The new NCP held its constituent meeting and formally accepted to handle the specific instance on 30 March 2011.

In the Cermaq specific instance, the NGOs stated that they wanted the policies of Cermaq's Headquarters to change so that the operations abroad would be adjusted in a consistent manner. The company agreed and so did the Norwegian, Chilean and Canadian NCPs. During the investigation both under the former and the reformed NCP, contact has been maintained with the Chilean and Canadian NCPs. A draft of this statement was shared with and altered according to input from these NCPs. The Norwegian NCP much appreciates the willingness of the Chilean and Canadian NCPs to collaborate and share their comments.

### Process before 1 March 2011

The complainants requested an independent evaluation of the company's policies and practices with regard to the alleged breaches of the *Guidelines*. The Norwegian NCP responded by obtaining relevant reports from the Norwegian Institute of Marine Research and the Norwegian Scientific Committee for Food Safety.

In addition to the original complaint, the complainants also presented further documentation of the alleged breaches in Spanish. Due to limited resources, the Norwegian NCP decided not to translate this additional documentation.

Ever since they first received the complaint, the company denied all allegations of breaches of the OECD *Guidelines*. A series of meetings in the NCP both with the complainants and with the company during 2010 and January 2011 resulted in three requests from the NCP to the company for additional documentation. The company responded to all three requests with extensive documentation. The documentation was shared with the complainants, who did not consider that all questions had been answered by the company.

With reference to the inequalities in terms of resources for following up the complaint and the company's response, the complainants repeated their request for further independent evaluation which was supported by one of the representatives of the NCP; the representative of the Norwegian Confederation of Trade Unions.

### Process after 1 March 2011

Following the reorganisation of the Norwegian NCP, the new NCP met with all three parties on 13 April 2011. The Norwegian NCP obtained extensive additional documentation from all parties. The complainants still requested further independent evaluation. The NCP considered the most important aspects of the case, especially those concerning the environment, to be well examined, including by a report from the Institute of Marine Research. To ensure efficient use of resources, also because the case was submitted nearly two years ago, the NCP decided not to initiate further investigations. The meeting was concluded with a renewed offer of good offices to all parties with the goal of achieving a joint statement. It was also agreed that prior to the proposed mediation, the company would clarify a few remaining questions. The complainants agreed to analyse the company's forthcoming Sustainability Report in the light of the complaint. Both Cermaq and the complainants provided the NCP with the requested documentation by the date agreed upon by the parties. Preparations for mediation, including contact with all three parties were made between 1 and 20 June 2011. Mediation with the parties took place between 20 and 29 June 2011. The NCP decided to conduct mediation itself without any accrued expenses for any parties involved. On 21 June, the Secretariat assigned Mark Taylor from the Norwegian Institute for Labour and Social Research (Fafo) to provide assistance during the mediation. The NCP found the assistance from Mr. Taylor, who held telephone meetings with all three parties as well as with the NCP Secretariat, to be helpful in the last stage of the specific instance and the mediation.

### Box 2. Summary of the Specific instance before the Norwegian NCP (cont.)

All three parties participated constructively in the mediation. Agreement on a joint statement was successfully reached on 30 June 2011 and signed on 1 July by Board Director of Cermaq, Bård Mikkelsen, Board Director of Friends of the Earth Norway, Lars Haltbrekken and Board Director of ForUM, Andrew Kroglund. The joint statement was also signed by mediator and head of the Norwegian NCP, Professor Hans Petter Graver.

#### The parties agreed to publicise the joint statement on 10 August 2011

#### Chronology of the specific instance

19 May 2009	NCP Norway receives complaint.
24 August 2009	Cermaq submits the company's response.
14 September 2009	NCP Norway asks for collaboration and comments from NCP Chile and NCP Canada.
Undated 2009	NCP Chile states that NCP Norway should handle the specific instance, and expresses its willingness to collaborate.
3 December 2009	NCP Canada expresses its willingness to collaborate if further examinations take place.
4 March 2010	The Norwegian NCP accepts the complaint as a specific instance.
7 June 2010	The NCP meets with Cermaq and the Friends of the Earth Norway.
14 June 2010	The NCP requests additional documentation from Cermaq (first request).
28 June 2010	Cermaq responds to the request of 14 June.
21 September 2010	The NCP receives report from the Norwegian Institute for Marine Research on the environmental situation and challenges in the period 2000 – 2006.
21 September 2010	The NCP receives report from the Norwegian Scientific Committee for Food Safety on risk factors relating to the spread of Infectious Salmon Anaemia (ISA).
25 November 2010	The NCP requests additional documentation from Cermaq (second request).
1 December 2010	Cermaq requests by email a meeting with the NCP.
10 December 2010	The NCP meets with Cermaq.
22 December 2010	The NCP receives response from Cermaq to the request of 25 November 2010.
14 January 2011	The NCP requests additional documentation from Cermaq regarding labour dispute (third request).
21 January 2011	The NCP receives response from Cermaq to the request of 14 January 2011.
1 February 2011	The NCP meets with Friends of the Earth Norway.
3 February 2011	The NCP requests further documentation from Cermaq (fourth request).
14 February 2011	The NCP receives response from Cermaq to the request of 3 February 2011.
15 February 2011	The NCP receives assessment from Friends of the Earth Norway of the additional documentation from Cermaq received by the NCP on 14 January.
22 March 2011	The NCP receives a summary of documentation from Cermaq and the company's updated ethical <i>Guidelines</i> .
1 March 2011	New NCP Secretariat in place.
30 March 2011	The new NCP is constituted and formally accepts the case.
13 April 2011	The new NCP meets with all three parties and makes a renewed offer of good offices with the aim of agreeing on a joint statement. Prior to decision on the offer of mediation, the company agrees to answer a few remaining questions from the NCP. The Friends of the Earth Norway agrees to assess Cermaq's forthcoming Sustainability Report for 2010.

**Box 2. Summary of the Specific instance before the Norwegian NCP (cont.)**

15 April 2011	The NCP sends questions to Cermaq as agreed on 13 April.
9 May 2011	The NCP receives Cermaq's answers to the questions of 15 April and the assessment of Cermaq's Sustainability Report from Friends of the Earth Norway.
25 May 2011	The NCP proposes a mediation process.
27 May 2011	The NCP receives confirmation that Cermaq accepts the proposed mediation process.
30 May 2011	The NCP receives confirmation that Friends of the Earth Norway and ForUM accept the proposed mediation process.
6 June 2011	The NCP sends draft joint statement to the parties.
8 June 2011	Cermaq shares edited joint statement with the NCP.
14 June 2011	The complainants share edited joint statement with the NCP.
20 June 2011	The NCP Secretariat meets with the complainants to prepare for mediation.
21 June 2011	The NCP Secretariat meets with Cermaq to prepare for mediation.
21 June 2011	The NCP Secretariat assigns researcher Mark Taylor to provide assistance in the mediation process.
21 June 2011	The NCP shares a second draft joint statement based on the parties' input sent by the NCP Secretariat and Mr. Taylor.
22 June 2011	Mr. Taylor sends a third draft joint statement to the NCP.
23 June 2011	NCP mediation with ForUM, Friends of the Earth Norway and Cermaq led by the head of the NCP, Professor Hans Petter Graver.
23 June 2011	As agreed during the mediation, Cermaq shares a fourth draft joint statement based on comments from all parties.
27 June 2011	The NCP Secretariat meets with Friends of the Earth Norway.
27-29 June 2011	Consultations take place between the complainants, and between the complainants and Cermaq. Mr. Taylor continues to assist the NCP Secretariat.
30 June 2011	Agreement on the joint statement reached.
1 July 2011	Joint statement signed by all three parties.
10 August 2011	Official signing by all three parties and the mediator.
11 August 2011	Publication of the joint statement.

### Box 3. Procedures according to the OECD Guidelines

#### **General information about the Norwegian NCP's application of the OECD Guidelines for Multinational Enterprises**

Updated OECD *Guidelines for Responsible Business Conduct* were adopted at Ministerial level on 25 May 2011. The agreement between the parties is based on the updated *Guidelines*.

The *Guidelines* comprise a set of voluntary principles and standards for responsible business conduct in various 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*, 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.

#### **General information about the Norwegian NCP complaint procedure**

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

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation or examination – If a case is accepted, the Norwegian NCP offers 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, the Norwegian NCP will examine the complaint in order to assess whether it is justified.
3. Final statement – If a mediated settlement has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the *Guidelines* have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements and follow-up statements, are published on the Norwegian NCP's website: [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

## Initial assessment and final conclusion by the Norwegian NCP on the complaint from 129 Roma in Kosovo against Norwegian Church Aid

### Summary

129 Roma in Kosovo allege that Norwegian Church Aid (NCA) is in breach of the OECD *Guidelines* on general policies, human rights and environment for not having prevented exposure to serious and lethal health risks due to detrimental conditions in the camp that it managed. NCA was responsible of managing the camp, first on behalf of UNMIK as responsible authority and later on behalf of the local government. The camp was established before NCA took over as camp manager, and has been a facility where the Roma families are free to live or leave. NCA informs that it has used the information on health risks, including the level of lead poisoning, in its advocacy work towards the UN and EU in Kosovo for the relocation of Roma families away from the area and closure of the camps, without avail.

The Norwegian NCP concludes that this specific instance is not against an enterprise in the sense of the OECD *Guidelines for Multinational Enterprises*, and thus is inadmissible.

The Norwegian NCP received support for this assessment at the OECD Annual NCP Meeting 27 June 2011.<sup>1</sup> The Norwegian NCP has not considered the substance of the claim or whether the OECD *Guidelines* have been breached, as it is concluded that the complaint does not merit further consideration by the Norwegian NCP.

### The complaint

The Norwegian NCP received on 22 June 2011, a complaint against a Norwegian NGO, Norwegian Church Aid. The complaint was submitted by Dianne Post, Attorney at Law in the US on behalf of 129 Roma individuals.

The specific sections of the *Guidelines* that the complainants consider the company to be breaching are as follows: Chapter II; General Policies (A), No. 1, 2, 5, 10, 11, 12 and 14, and Commentary, p. 22, Chapter IV; Human Rights, No. 1, 2, 3, 4, 5 and 6, and Chapter VI; Environment, No. 3, 4 and 5.

The complaint concerns the conditions in the camps, including unhealthy lead levels in the water and the contaminated ground resulting in health emergencies. *Inter alia*, the complainants became seriously ill; some children were born with retardation and other damages. Some women, as a consequence, felt forced to conduct high risk abortions, some self-induced. Medical examinations of the Roma concerned found high levels of toxic lead and other heavy metals, including antimony, arsenic, cadmium, zinc, vanadium and magnesium, as well as low levels of selenium, essential for inactivating toxic heavy metals. At least three people, but perhaps as many as 33 have died from lead related symptoms. In addition to the problems related to the dangerous placement of the camps, inhabitants reported frequently foraging through the garbage in search for food and inability to meet their basic hygienic requirements. It is alleged that NCA knew of the harm to the internally displaced Roma and was asked to assist their removal to a safe place for treatment and to obtain necessary medical assistance, which the Roma claim that NCA ignored.

The complaint sums up that NCA, as an enterprise has a responsibility to do due diligence in seeking to end or mitigate violations of human rights as outlined under the *Guidelines*. The factual question is whether NCA did that. The Roma say no; NCA says yes. The complainant argues that the factual question should be examined by the Norwegian NCP.

### **Norwegian Church Aid's response to the complaint**

Norwegian Church Aid informs that it acted as camp manager with responsibilities for maintenance, management, activities for children and women as well as providing health services with nurse and established health clinic in the Roma Mahala area from 1999-2009. In addition NCA constructed housing facilities for Roma in the Roma Mahala area, in total 96. NCA was initially not camp manager of Osterode, and daily operations were run by the Roma people themselves. Upon request of the Roma and then secondly by agreement with UNMIK, NCA accepted camp management in 2005, and became a mentor-facilitator for camp committees, service provider of water, sanitation, food, social services, medical education support, shelter maintenance.

NCA maintained high standards and were advocates for the return process and for medical lead remediation of Roma impacted by lead pollution after living six years on Zitkovac factory area prior to moving to Osterode in 2006.

Basic infra structure services at Osterode were at a higher level (access to water, electric, heating) than the rest of Mitrovica. NCA had good relations with the IDP Roma, with UN, with Municipality authorises in both the North and the South. When requested by the Roma, NCA intermediated between the Roma and the "Serb National Council" in North Mitrovica.

The Osterode facility is physically integrated in the center of Mitrovica town with residential community apartment blocks being only 20 meters from the gate of Osterode, and local secondary school and centre of town 80-100 meters. In 2005, WHO contracted an American company to make test samples and analysis of the earth levels for lead pollution in Mitrovica town North and South – including Roma Camps Cesmin Lug/Kabljar also including the KFOR base of Osterode. Osterode earth samples (80% of the camp was asphalted and 95% after becoming a Roma IDP center) were tested showing similar high levels of lead pollution as in all of Mitrovica generally and not higher. The single biggest pollution factor for the entire Mitrovica town area was dust blown over the town from the slag piles. All residents in Mitrovica were equally jeopardised. The highest lead levels in North Mitrovica town area were registered in the Bosanska Mahalla area where the NCA office was located at that time.

Norwegian Church Aid advocated since 2000 on behalf of the Roma for appropriate relocations sites, for medical treatment and to find available land and income generating opportunities which would enable all families to be relocated and the camps permanently closed.<sup>2</sup> In addition NCA constructed housing facilities for Roma in the Roma Mahala area in southern Mitrovica. NCA started a job creation programme for Roma in Roma Mahala in order for this location to be more attractive and lives of families more sustainable.

Relocation of the families required available land and construction of houses. The Mitrovica area is a highly politicised and challenging area to get available land for building houses.

NCA sought to find additional land to Roma Mahala since May 2008 by visiting authorities in the north and south. NCA conducted negotiations with the government in Kosovo for making land available and applied to several donors for construction of houses to resettle the last families from Osterode. The last proposal for construction of remaining houses was declined by local authorities in 2009.

NCA finally point out that one of the complainants never lived in any of the N. Mitrovica IDP Roma camps, including Osterode. The individual concerned was hired by NCA in 2006 as a member of the Camp Management Team. He did have previous residence in other Roma IDP Camps in southern Kosovo – but never in N. Mitrovica municipality. At the time of his employment with NCA in 2006 he was asked if he had any prior residence periods in N. Mitrovica camps and/or family in the N. Mitrovica camps. At that time he answered “No” to both enquires, which made him eligible for employment in the management team of the Mitrovica camp.

### **Background**

Before the Balkan conflict (1990-99) the Roma lived in the southern Mitrovica, and after the conflict they lived in three camps in the north of Mitrovica. The camps were located 3 km from the Trepca smelter and 300 meters of two mine tailing sites. The Trepca smelter was established in 1930 and closed in 2000. The extracted metals include zinc, arsenic, lead and cadmium.

In 1999, by request of the Roma leaders, NCA provided some camp management services. In the period 2002-05, Zitovac was considered an ordinary settlement, and not a camp. In this period NCA became lead agency for UNHCR with focus on resettlement. NCA monitored Zitovac in this period but did not run the camp. In 2005, Roma families were relocated from Zitkovac camp to Osterode due to high levels of lead in the camp. The original relocation plan was for Roma to live in Osterode camp for 45 day, up to maximum 1, 5 years while new shelters/dwellings were built after they were relocated from Zitkovac. The camp was run by Roma leaders, who asked NCA to assume the administrative responsibility for the camp, which NCA did in 2005. There was no forced detention in the camp where the Norwegian Church Aid provided health, social and other services. The individuals that lived in the camp could leave if they wanted; there were no guards other than for their own security. However, due to their economic situation and the political situation in general, their choices for alternative places to live were and remain limited.

Norwegian Church Aid closed their operations in Kosovo in 2009. These services were from 1 January 2009 continued by a local NGO by request from local authorities. 1 May 2008, UNMIK transferred the responsibility for the camp management to local authorities.<sup>3</sup>

### **Is Norwegian Church Aid a multinational enterprise in the sense of the OECD Guidelines?**

The Norwegian NCP decides that the complaint is to be based on the OECD *Guidelines* of 2000.<sup>4</sup> The key point in this case is whether there is any enterprise<sup>5</sup> involved in this case or not.

The Norwegian NCP invited the response of the claimant to the draft initial assessment that the claim was beyond the scope of the OECD *Guidelines* on MNEs. The complainant responded promptly,<sup>6</sup> and underscored that to rule out humanitarian groups from the application unjustly narrows the definition of the OECD *Guidelines*. Furthermore that it is irrelevant whether NCA was working under the auspices of the UN. The complaint does not seek to apply OECD *Guidelines* to the UN but only to the behaviour of NCA. NCA is responsible to Norwegian laws and regulations. Finally, the *Guidelines* are clear in General Policies, especially 14, IV and VI that the enterprise has a duty to intercede with relevant stakeholders when human rights are violated even if they themselves are not the violators.

The complainant alleges that Norwegian Church Aid is a multinational enterprise whose acts impact Norway, and that the claim therefore is admissible for the Norwegian NCP for the *OECD Guidelines for Multinational Enterprises*. The complainant admits that Norwegian Church Aid is not a “business” as such, but argues with the fact that Norwegian Church Aid is a Norwegian organisation that receives nearly half its money from public funds and spends most of the money operating internationally in several different countries. It is alleged that Norwegian Church Aid is a mixed enterprise as 50% of its money comes from the state. Furthermore that a plain reading of the OECD text “companies or other entities” show that more than commercial companies were intended to be covered by the *Guidelines*. The narrow interpretation only to commercial companies is not correct since no such limits appear in the *Guidelines*. The claims to follow UN orders are not valid defence, as they have a responsibility in their own function.

Norwegian Church Aid responds that their organisation in general and the project in Kosovo in particular are humanitarian and not for profit and thus that they are not to be considered a multinational enterprise in the sense of the *OECD Guidelines*. They also claim that their responsibility for the situation for the persons concerned was limited as they were providing services for the UN and the state of Kosovo. When they realised that they could not better the situation for the persons they were there to help despite intense efforts, they decided to terminate their project in 2008/09.

### **The Norwegian NCPs assessment**

The Norwegian NCP refers to Chapter I(3) under the 2000 version of the *Guidelines* which points towards a definition of multinationals in the sense of “companies” with an economic focus, operating in more than one country: “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 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*.”

There are no specific references to complaints against non-commercial organisations in the *travaux préparatoires* of the negotiations in 2000.

The OECD Committee on International Investment and Multinational Enterprises (CIME) and its Working Party issued following statement in April 2003 on the scope of the *Guidelines* (2000):

“First, the *Guidelines* are an Annex of the OECD Declaration on International Investment and Multinational Enterprises. The fact that they are part of the Declaration and that oversight responsibility for them has been assigned by the Council to the CIME – the body charged with responsibility for the Organisation’s work on investment and multinational enterprises – indicates the investment intent of the drafters of the instrument.

Second, the *Guidelines* are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with responsible business conduct. These principles reflect common values that underlie a variety of international declarations and



conventions as well as the laws and regulations of governments adhering to the Guidelines. As such, these values are relevant to the activities of multinational enterprises. Thus, as it has already done in a number of areas, the international community may continue to draw on the values underlying the Guidelines in other contexts.

Third, the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship. In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances.”

The Norwegian NCP interprets the scope of the OECD Guidelines in the context of the OECD Guidelines being part of the Investment Declaration, overseen by the OECD Investment Committee and thus that they require a business nexus.

This particular NGO is registered in the Norwegian Official Register, not as a Business Enterprise, but in the Register for Voluntary Organisations. The organisation was registered by Norwegian authorities in 2010 as a non-for profit organisation, based on the organisation’s Articles of Association.

Norway presented the case for the OECD Investment Committee at the Annual Meeting of the NCP in Paris 27 June 2011. Norway received support for the view that it is clear that this specific instance is not against an enterprise in the sense of the *OECD Guidelines for Multinational Enterprises*, and thus is inadmissible. The Norwegian NCP has not considered whether the OECD Guidelines have been breached, as it is concluded that the complaint does not merit further consideration by the Norwegian NCP. Since the *Guidelines* are not legally binding, this assessment is not appropriate for litigation purposes.

### **Final conclusion**

The Norwegian NCP concludes, with the support of the OECD Investment Committee, that this Specific instance does not fall within the scope of the *OECD-Guidelines*.

Oslo, 30 August 2011

Gro Granden, Jan Erik Korssjøen, Elin M. Myrmel-Johansen, Hans Petter Graver (Head).  
Norwegian Contact Point for Responsible Business.

**Box 1. Details of the Norwegian NCP process in this specific instance**

On 22 June 2011, the Secretariat of the Norwegian NCP received the complaint against Norwegian NGO, Norwegian Church Aid from Dianne Post, Attorney at Law in the US on behalf of 129 Roma individuals. The Secretariat the same day acknowledged receipt, forwarded the complaint to the members of the Norwegian NCP and the Secretariat of the Investment Committee of the OECD as well as to the Norwegian Church Aid.

On 28 June, the Secretariat of the NCP presented the case at the plenary session of the OECD Annual NCP Meeting.

30 June, Norwegian Church Aid responded to the Norwegian NCP through telephone and e-mail with information attached.

16 August, the Secretariat of the NCP forwarded a draft Initial Assessment. Response was received from the complainant 17 August and the complained 23 August.

On 30 August, the Specific instance was presented for the members of the Norwegian NCP, of which none were considered disqualified by the NCP which is a collegiate body. The Initial Assessment of the Specific instance was unanimously concluded that the case did not merit further examination by the Norwegian NCP and that the final statement was to be issued and made public. The document was submitted for translation check.

On 26 September all concerned parties were informed about the outcome. The final statement was made public 27 September on [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

## Box 2. Details of the parties involved

### **The Respondent: Norwegian Church Aid**

Norwegian Church Aid began in 1947 as a small fundraising drive by Norwegian churches and is now one of the Nordic countries' largest development aid organisations. It is registered in Norway with its main office in Oslo, with 153 employees in Norway and 622 (959 incl. Darfur) employees abroad. In 2007 revenue was NOK 610.5 million, administration costs NOK 63.3 million (8.8%), international projects constituted 87.1%, administration: 9.6% and fundraising: 3.3%. USD 460 000 of the USD 799 000 budget is from public funding.

The Board of Delegates is the supreme organ of Norwegian Church Aid, and comprises:

- Delegates from each diocese of the Church of Norway.
- Seven members of the Church Council of the Church of Norway (whereof one representative of the Saami Church Council and a youth representative under the age of 25).
- Five representatives of nationwide home mission organisations and organisations for children and youth.
- One representative from each of the following organisations: the Evangelical Lutheran Free Church, the Free Evangelical Congregations, the Baptist Union of Norway, the Norwegian Mission Society, the Salvation Army, the Norwegian Methodist Church and the Pentecostal Movement in Norway.

NORME and Global Aid Network meet as observers.

### **The Complainant (attorney Diane Post on behalf of 129 Roma in Kosovo)**

(129 Individuals are not to be disclosed due to request from the complainant.)

Attorney representing the complainants:

Dianne Post, Attorney at Law  
 1826 E Willetta St, Phoenix, AZ 85006-3047, USA  
 602-271-9019, [postdlpost@aol.com](mailto:postdlpost@aol.com), [www.diannepost.net](http://www.diannepost.net).

Dianne Post has been representing this group of Roma since 2005 when she worked at European Roma Rights Centre in Hungary.

### Box 3. Procedures according to the OECD Guidelines

#### **General information about the Norwegian NCP's application of the OECD Guidelines for Multinational Enterprises**

Updated OECD *Guidelines for Responsible Business Conduct* were adopted at Ministerial level on 25 May 2011. The initial assessment is however based on the previous version of the *Guidelines* as the complaint was submitted before 1 September 2011, when the new version of the *Guidelines* enters into force for the Norwegian NCP.

The *Guidelines* comprise a set of voluntary principles and standards for responsible business conduct in various 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*, while taking into account the particular circumstances of each host country.

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#### **General information about the Norwegian NCP complaint procedure**

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

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2. Conciliation/mediation or examination – If a case is accepted, the Norwegian NCP offers 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, the Norwegian NCP will examine the complaint in order to assess whether it is justified. Fact finding or other services to support the processing of the case may be commissioned by the NCP if deemed necessary by the NCP.
3. Final statement – If a mediated settlement has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the *Guidelines* have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements and follow-up statements, are published on the Norwegian NCP's website: [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

#### Box 4. The response to the complaint (chronology provided by the respondent)

##### **NCA Camp Management for Roma in Kosovo 1999-2005**

In 1999, by request of the Roma leaders, NCA provided some camp management services. These continued until 2002 and then again in 2005.

NCA was the 1st INGO in 2000 (letter from NCA to UNHCR) to protest the relocation of RAE displaced populations to the Zitkovac area due to the possibility of lead pollution. Likewise in the following 2-3 years NCA was a strong advocate for rebuilding of Roma residences in the south, while actively supported reconciliation efforts (N-S Mitrovica) as linked to the issue of the Roma.

In 2005, NCA's Representative sat in the WHO steering committee and advocated for implementation of blood testing and supported and demanded that WHO implement medical remediation. Both of which were implemented in 2005.

NCA was also crucial in blocking all efforts at "sub standard" IDP camps proposed in the South (by S. Mitrovica) and was a strong advocate for international standards in Roma camps and for international standards at Osterode.

##### **Osterode 2005-09**

In December of 2005, NCA was invited by Roma IDP leaders of Cesmin Lug/Kablar, Zitkovac and Leposavic to assume a "camp management role". NCA signed an agreement with the Roman leaders. NCA accepted but informed that – NCA was commitment to international standards, addressing protection and gender issues, human rights and would advocate such with and for the Roma community. Likewise NCA strongly advised all IDP Roma communities to stop illegal battery smelting which was still ongoing.

NCA obtained funds using funds provided to NCA from UNHCR-Angelina Jolie and these services were implemented. NCA also established fire protection training of in-camp "fire wardens" and provided firefighting equipment in all Leposavic, Ziktovac, Cesmin Lug/Kablar camps. Flood relief assistance was also implemented by NCA as Cesmin Lug/Kablar were often impacted by spring flooding of the Ibar river.

In 2005, NCA fire fighting equipment and in camp training at Kblar is primarily responsible for saved lives and a lot of property during the fire that destroyed the camp. Noting that Roma camp residents and using NCA training and fire extinguishers controlled the fire so as to save lives and family property. Leposavic RAE Camp also saved lives using NCA fire fighting equipment and training during the fire of 2007.

In 2005, IDP Roman leaders requested NCA to facilitate information to the Roma from UNMIK and local authorities as Zvecan municipality had issued a closure order for Ziktovac camp due to the factory pollution environmental issues brought up by the international community.

At the same time UNMIK requested NCA to participate as an independent resource protection consultant member in UNMIK Mitrovica Action Team (MAT) planning for eventual relocation of Zitkovac camp which was subject to closure by Zvecan municipality. NCA role as "protection consultant" in UNMIK MAT was requested and approved by IDP Roma leaders who also attended the round table meetings.

December 2005: Norwegian Church Aid is designated by UNHCR as manager of the camps in Cesmin Lug and Osterode. KFOR hands over the Osterode camp (land and housing facilities) to UNMIK.

In 2005, NCA's Representative sat in the WHO steering committee and advocated for implementation of blood testing and supported and demanded that WHO implement medical remediation. Both of which were implemented in 2005.

In 2005 after the analysis of the blood levels – UNMIK approved a very large budget to address medical remediation of lead – this programme provided specialised foods (distributions implemented weekly in 2005-07) that would support remediation . However, the largest budget was for the blood testing and medical remediation programme – organised from Osterode but serving all Roma in Mitrovica municipality (north and south). Medical staff (doctors and nurses) were employed also consultant doctors from WHO.

**Box 4. The response to the complaint (chronology provided by the respondent) (cont.)**

Initially in 2005, the Roma said yes to both the food and medical remediation interventions – and children were being treated at the Mitrovica hospital and clinics. However, after a short time the Roma refused the medical remediation (they continued to get the food distributions). Roma leaders (under a lot of support agitation from Paul Polanski's organisation) demanded that all Roma be provided treatment in Germany and or Canada. As such from 2006 -Roma parents refused to send their children to the medical remediation programme with the hopes that this "pressure" would result in visas for the Roma to go to western European countries.

**2006**

In 2006, UNMIK had several options for relocation of Zitkovac IDPs: to areas outside of Mitrovica and or areas in the North Mitrovica town area or South Mitrovica town. IDP Roma primarily wanted a relocation to Canada and or West Europe. This was unrealistic and outside of the mandate of UNMIK. IDP Roma rejected relocation to areas outside of Mitrovica town areas as many were employed in the town.

IDP Roma were also skeptical about a camp in South Mitrovica – also noting that their security fears were very relevant. NCA also vetoed the South Mitrovica camp proposal concept as forwarded by local authorities as the camp design did not meet International Standards. Likewise the area in South Mitrovica suggested by the local authorities was tested (by an American company) and showed extra high lead pollution levels.

Osterode: Osterode facility in North Mitrovica town offered an area that met the basic criteria of the IDP Roma – to stay in N. Mitrovica center town area. Likewise Osterode had never been used as a factory area and most of the physical areas of the Osterode facility had been previously asphalted thus limiting human contact with polluted land which as noted above is a general problem in all of Mitrovica town.

In Osterode the Roma again requested that NCA implement the Camp management services – as NCA was viewed by the Roma as impartial as a service provider with high professional standards and advocacy.

Originally, many of the IDP Roman were not positive to an Osterode relocation as it was felt that this would weaken the demand to be relocated aboard. However, in March 2006 – Zitkovac and Kablar Roma IDPs decided to relocate to Osterode. UNMIK requested NCA – as Roma Camp Management – to facilitate the relocation exercise. NCA declined stating that this was not a mandate of NCA. NCA did receive the Roma in Osterode and at that time Roma relocated in Osterode requested NCA to assume camp management responsibilities.

**2008**

May 2008: Norwegian Church Aid continues to act as manager of the Cesmin Lug and Osterode camps. Some displaced Roma from the Mahalla have been resident in lead contaminated camps for more than 8 years.

**2009**

January 2009: Norwegian Church Aid hands over management of the Cesmin Lug and Osterode camps to the local NGO Kosovo Agency for Advocacy and Development (KAAD), funded by the Kosovo Ministry of Returns and Communities.

**Notes**

1. OECD National Contact Points Annual Meeting 2011/Chair's Report.
2. Annual report from NCA to UNMIK 2008.
3. Ministry of Communities Returns and Minority Affairs of Kosovo.
4. Cases submitted to the Norwegian NCP after 1st September 2011 will be examined on the basis of the updated OECD Guidelines adopted on 25 May 2011.
5. As understood by the OECD Guidelines of 2000.
6. E-mail, 17 August 2011.

## Final statement by the Norwegian NCP on the Intex Resources Nickel Mining specific instance in the Philippines

### Complaint

The Norwegian Contact Point (NCP) for the *OECD Guidelines for Multinational Enterprises* (MNEs) received a complaint against Intex Resources ASA (Intex) from the Future In Our Hands (FIOH) on 26 January 2009 concerning the Mindoro Nickel Project (MNP) in the Philippines.

FIOH alleges possible breaches of the *OECD Guidelines for MNEs* (the *Guidelines*) on the grounds that:

1. Consultations with indigenous people are flawed and the project contravenes the wishes of the affected community and peoples.
2. Intex has been involved in bribery to facilitate mining exploration permits, and failed to comply with the standards for disclosure set forth by the *Guidelines*.
3. There is a risk of severe environmental damage if the project is materialised, and this has not been communicated appropriately to affected stakeholders.

### Context

- Exploration of approximately one third of the total area for the Mindoro Nickel Project (MNP) has been completed. Intex Resources completed feasibility studies in 2010 to develop this area and transport excavated material to a coastal processing plant. Intex has not responded to the NCPs request as to where the processing plant will be.
- Efforts are under way to secure the permits and authorisation for mining. The project had acquired Free, Prior and Informed Consent (FPIC) certificates from the National Commission for Indigenous People (NCIP), and an Environmental Clearance Certificate (ECC) from the Department of Environment and Natural Resources (DENR). The ECC has been temporarily revoked after local protests and hunger strikes against the project.
- A special committee was set up by the Philippine authorities in November 2009 to investigate the project. The committee has not yet submitted its assessment.
- Intex claims to have followed all instructions from the Philippine authorities, and on that basis claims not to be in breach of the *Guidelines*.

### Basis for the assessment

- The *OECD Guidelines* require that enterprises follow national regulations. The *Commentary to the Guidelines* further states that “compliance with national law though necessary is not sufficient for compliance with the *Guidelines*”.
- While the *Guidelines* do not provide detailed standards to which companies should adhere, companies are expected to consider the views of other stakeholders before, during and at the termination of projects. “Stakeholders” are all those affected by the project. The “project” includes all project components including the mine site, the processing site, residual deposit and transportation routes on land and at sea. In order for stakeholders to decide whether to support the project, they must have access to information about these key components.
- Chapter III of the *Guidelines* include specifications regarding businesses’ activities, including project plans. As the company states that it will adhere to the World Bank/ International Finance Corporations Standards and the Equator Principles, the NCP expects the company to follow these widely recognised guidelines. The IFC Social and

Environmental Performance Standards require companies to identify and engage with stakeholders who may be impacted by, or who have an interest in, the planned or ongoing project.

- The NCP underscores that the OECD *Guidelines* are applicable to enterprises that are still at a planning or exploratory stage of their operations. The *Guidelines*, combined with instruments such as the IFC Performance Standards, address issues that should be a part of a company's due diligence process. Guidance for due diligence is provided in the updated version (2011) of the *Guidelines*. As the complaint was filed in 2009, it is assessed according to the 2000 version of the *Guidelines*. Recommendations for future conduct are based on the revised *Guidelines*.\*
- The basis for the conclusions and recommendations of the NCP is in the footnotes. Key sources include submissions from the company and complainant, an independent Fact-Finding by JSL Consulting (2011), independent reports from Norwegian Institute for Water Research (NIVA) and Tingay Consulting (2011), embassy reports, Philippine legislation, Presidential Decrees and UN documents and other reports.

## **Conclusions**

### ***Community relations and consultations with indigenous peoples***

- In the view of the NCP, the MNP has not been able to foster the necessary relationships of confidence and mutual trust on Mindoro in accordance with the OECD *Guidelines*, Chapter II, Section 7. Two organisations of indigenous peoples, the Kabilogan and the Sadaki, have given Free and Prior Consent (FPIC) to mining. However, opposition remains strong among some indigenous peoples (Alangan and Tadyawan) with ancestral rights to the land.
- Based on the OECD *Guidelines* recommendation to “consider the views of other stakeholders” and other relevant international standards, the NCP takes a broad and inclusive approach to which indigenous peoples companies should consult. Indigenous groups other than those consulted by the company may be affected by the MNP, either at the mine or by related infrastructure. These include not only the part of the tribe that inhabits the land, but also those who use the land according to their tradition and culture.
- The Philippine authorities have approved the FPIC consultations. However, the authorities have also urged Intex to identify primary and secondary Mangyan organisations and additional groups and their priorities and consultation requirements. An NCIP Fact-Finding Team stated on 9 October 2008 that Intex should consult other indigenous peoples if the Environmental Impact Assessment (EIA) proved that such groups would be affected by the project. NCIP Resolution 307 (project AMA-IVB-103) and NCIP Resolution 308, 2008 (project AMA-IVB-101) for Occidental Mindoro recommend that Intex consult more broadly.
- The company has since 2008 invited a broader group of stakeholders to consultations, and it is clear that some groups have not wanted to meet with the company at this point. In the view of the NCP, however, the company should have systematically investigated whether indigenous groups other than the Kabilogan and the Sadaki could be impacted by all project components (mine and infrastructure) at an earlier stage of project planning. The company should also have investigated if the groups with which they have consulted are legitimate representatives of all the affected indigenous peoples.

\* Adopted at the Ministerial level of OECD, 25 May 2011.



- Despite requests from the NCP and recommendations in the Report of JSL Consulting, Intex has not presented a clear, proactive stakeholder engagement strategy. Intex has informed the NCP about its plans to establish the Mindoro Mangyan Development Council to include representatives of the indigenous peoples on Mindoro on the Board for policy direction and development planning. The NCP underlines the importance of implementing these plans and of basing the selection of individuals for the board on existing indigenous decision-making structures.

### **Disclosure and combating bribery**

- According to Chapter VI of the *OECD Guidelines*, “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”. The NCP has not found evidence that establishes that the company has been involved in bribery or corruption.
- The Norwegian NCP notes the findings of a 2008 Fact-Finding Team from the National Commission on Indigenous Peoples (NCIP) that the funding of the local NCIP for “logistical support” does not constitute a violation of the domestic *Guidelines for Free and Prior Informed Consent (FPIC)*. The Fact-Finding Team found, however: “a blatant disregard of, and failure to observe and comply with the procedure which, as a rule, is required in cases when non-NCIP resources are used to finance NCIP-mandated and related activities or projects, such as delineation and titling application activities. Consequently, those involved/concerned should be given the opportunity to explain before any sanction is to be meted.” The NCIP Team found that: “with respect to the amount disbursed by Intex for the resurvey of CADC (Certificate of Ancestral Domain Claim) 024, the NCIP personnel who facilitated the disbursement of funds when no WFP (Work and Financial Plan) and MOA (Memorandum of Agreement) had been duly approved should be made to explain.”
- The NCP finds reason to question the procedures by which the FPIC was obtained from the local communities involved. Intex informs the NCP in a letter dated 27 February 2009 that out of: “Intex’ budget allocation of pesos 2 million for logistics needed to undertake a survey leading to the completion of and the issuance of the Certificate of Ancestral Domain Title (CADT) application of one of the groups in the Mangyan community only pesos 901 399.60 was spent.” Intex also writes that the money was spent: “in accordance with the Work and Financial Plan (WFP) that was prepared by the NCIP.” At this point, Intex had allegedly obtained promises from two groups that they would consent to the mining project. The results of the survey undertaken by the NCIP was to establish these two groups as rightful counterparts to FPIC procedures, and not include other groups with equal claims to the lands.
- The allocation and payment to the local office was linked to the delineation of land of indigenous peoples at a time when Intex was securing a license to mine. The NCP finds that the involvement of Intex in these procedures merits further investigation by appropriate authorities.
- The NCP does not find that Intex has acted inconsistently with the *OECD Guidelines* by supporting a community development project in Alcate to build a 10 million pesos dike. Intex has shown that this is in compliance with local authorities requirements and has disclosed details regarding the project. However, commencing community projects prior to gaining social acceptability may raise doubts as to whether the company is undertaking such projects in order to secure endorsements.

- Intex does not appear to have a transparent, publicly disclosed system for allocating community development funds, and is advised to establish clear criteria and systems for allocating community funding.

### **Environmental information and communication**

- The extraction of minerals and metals requires a careful assessment and disclosure of the potential for direct and indirect environmental impacts. The *Guidelines* Chapter V Section 1 a require enterprises to collect and evaluate: “adequate and timely information regarding the environmental, health, and safety impacts of their activities.” Sharing information and engaging in consultations about environmental, health and safety consequences with the local community and indigenous peoples is a key requirement of the *Guidelines*, and is of particular importance for projects with large and potentially lasting impacts for the environment and people. Intex has committed itself to following World Bank/IFC standards for social and environmental impact assessments.
- The NCP finds that Intex has conducted an Environmental Impact Statement/Environmental Impact Assessment (EIS/EIA) that identifies a number of environmental and social issues associated with the MNP. A draft EIA, according to IFC Performance Standard 1, should describe all of the components of the project, and any “associated facilities” that will be developed by others directly as a result of the project. It should assess impacts and specify impact mitigation and monitoring measures. For any components not fully defined at the time the EIA is conducted, it should set out follow-up assessments and how these will be disclosed. The duration (Mindex, now Intex, received an exploration permit in 1997), size, and complexity of the project speak to the need for a detailed and clear EIA about key aspects of the project.
- The company has not provided the NCP with the EIA but the NCP has seen a draft of the document dated September 2009. The NCP finds that the EIA provides information on the design of some major components of the project in detail and contains a considerable amount of baseline physical and biological information. It provides information on communities on Mindoro that are likely to be directly and indirectly affected by the project. Much of the data has been collected by field surveys and reflects considerable work by the scientists involved.
- The NCP finds, however, that the EIA does not provide adequate information about a number of important aspects of the project. There is an absence of details on waste emissions, modelling of atmospheric emissions, and the potential for marine pollution. There is little information about environmental and social implications of the maintenance road and bridges and whether the route will run through wetlands and biodiversity areas. The location and design of key components do not include details on drainage management at the mine, the residue storage facility, the transport of ore, and transport corridors. The EIA does not contain detailed information on design criteria and the design life of the dam wall and associated structures. Alternative site options are being considered and should be documented and compared in terms of social, environmental, operational, and cost implications.
- The NCP also takes note of claimed lack of information and baseline studies from the Philippine EIA Review Committee. In 2009, the EIA Review Committee noted a lack of baseline information on four of six components of the project, no information on

indicative design and hectarage related to housing/township, poor delineation of impact areas and poor integration among modules “making inference of possible major impacts vague and extremely difficult to evaluate”.

- To fulfil its objective, the EIA needs to be comprehensive; focus on the identification, clarification and objective analysis of issues; and be well-illustrated. The EIA for the MNP could be substantially improved in all of these respects in accordance with the IFC Performance Standards, which require “comprehensive risk and impact evaluations that include the project’s area of influence”.
- The NCP appreciates that the project is still in its planning phase and that the EIA was not completed when the complaint to the NCP was raised in January 2009. Full disclosure of environmental impacts could therefore not be expected at the time. The NCP finds, however, that draft documents and plans should have been made available in line with IFC Performance Standard 1, which requires prior disclosure of relevant and adequate information, including draft documents and plans.
- The NCP finds that the EIA, when completed and before the ECC was issued, was not disseminated according to the procedures set forth by the Environmental Management Bureau (EMB). The Philippine EMB procedural manual states that: “*Prior to public Hearings or Public Consultations, the Proponent is required to give copies of the full EIA Report to the EMB RO and host municipalities; copies of the Executive Summary to the host Barangays; and copies of Project Fact Sheets to other stakeholders for a well-informed participation in the hearing/consultation.*”
- According to the JSL Consulting Report (2011), the EIA of the project was not shared with the Mayor, any of the Municipalities or other local authorities. The Governors and mayors of both provinces informed that they had not seen the EIA. It is not available online and has not been made available in Tagalog or in Mangyan dialects. The NCP furthermore finds that the consent given by indigenous peoples was provided before the EIA was completed and before the design of the project has been finalised. Thus, the consent was not sufficiently informed.
- JSL Consulting reports that local communities in Mindoro fear that mining will exacerbate the flood problems and pollution of rice fields in the area, while others are looking to Intex to invest in flood prevention measures that the local government is not financing. The municipality rejected a Norwegian development assistance (NORAD) flood control project due to local opposition to the Norwegian-owned MNP. Other environmental issues of concern registered by JSL Consulting include potential impacts on biodiversity, water quality, agriculture, and tourism potential.
- The NCP has not found evidence that Intex has clarified to the local population whether proposed mitigations will be sufficient to prevent an increase in landslides, the possible contamination of water sources, where and how waste disposal will be carried out, the location of the processing plant, and details related to the conveyor route and other transportation issues. The NCP finds that such information should be made available to the local population at an early stage of the project in line with the OECD Guidelines and IFC Performance Standard 1, Section 21.
- The NCP finds that Intex has not been proactive in making available technical information and impact studies, including maps and illustrations, which would allow stakeholders to evaluate claims that the MNP will be safe for the environment and the health of the population. The absence of a readily available EIA and other environmental information makes it difficult for the affected community to assess the actual

implications of the project. A presentation of plans for mitigation and monitoring to all concerned stakeholders would be expected in light of the known risks related to mining in vulnerable environments and the information in the EIA.

- Intex has gathered and presented information on environmental and social impacts and mitigations in the Definitive Feasibility Study and the EIA. However, the NCP upholds the allegations of FIOH, finding that the information provided on environmental impacts is incomplete. The NCP expects Intex to provide the public with “adequate and timely information” on the environment, health and safety impacts of the project. The NCP expects Intex to engage in “adequate and timely communication and consultation” with the affected communities on environmental risks. Failing to do so constitutes a breach of Chapter V of the *OECD Guidelines*.

### **Recommendations**

The duty and mandate of the NCP is to make recommendations on the implementation of the *OECD Guidelines* in accordance with the “Procedural Guidance” (Chapter C, No. 3). The NCP recommends that Intex Resources as a minimum acts upon the following recommendations:

- *Conduct due diligence* in relation to the entire project impact area, including associated infrastructure. As part of the due diligence process, identify primary and secondary Mangyan groups potentially affected by MNP.
- *Engage in consultations* with all impacted indigenous peoples in an understandable language and form, respecting the outcome of the consultations. Establish a consultation system to regularly exchange information with all stakeholders.
- *Establish a transparent system* for deciding community spending and disclose systematic information on criteria for planned and implemented projects. In relation to allegations of bribery, inform involved parties about all details such as concerns “logistical support” and the “request for additional funds”.
- *Develop disclosure and reporting plans and systems* in accordance with the IFC Performance Standards and the Global Reporting Initiative (GRI). Base the recently updated *Code of Conduct* and plan for combating corruption on acknowledged international guidelines, and communicate it to the public and in potential contracts.
- *Prepare a revised Environmental and Social Impact Assessment (ESIA or EIA)* that provides a comprehensive and detailed analysis of all the environmental and social implications of all components of the project. The EIA/ESIA should be organised, clearly illustrated and with understandable data and differentiate between significant and less significant risks.
- *Finalise the EIA* in dialogue with all relevant groups directly affected by the company’s operations and *ensure* a review by an independent third party. Make the draft EIA publicly available in local languages, including a summary, and invite all stakeholders to hearings to obtain feedback.
- *Establish a grievance management system* to cover the range of possible grievances including environmental health and safety, labour rights, and community grievances by impacted groups and indigenous peoples.

## Initial assessment by the Norwegian NCP on the complaint from the Norwegian Support Committee for Western Sahara (NSCWS) against the Norwegian Enterprise Group Sjovik AS

### Summary

The Norwegian NCP concludes that this specific instance merits further examination based on the following criteria:

- the complainant is a concerned party with a legitimate interest in the matter raised in the complaint;
- the company is operating internationally;
- the issue raised is material and substantiated;
- there is an apparent link between the enterprise's activities and the issue raised in the specific instance;
- relevant public international law, including court rulings, have been presented; and
- the consideration of this specific instance is found to contribute to the purposes and effectiveness of the *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) Chapter IV on Human Rights.

Accepting the case for further examination does not mean that the company in question has violated the *Guidelines*. The NCP has not considered the substance of the claims or whether the *Guidelines* have been violated.

Following the initial assessment the NCP will invite the parties to a meeting to explore opportunities for further dialogue or mediation. If dialogue or mediation is rejected or proves unsuccessful, the NCP will publish a final statement on whether or not the company has violated the *Guidelines*. The Norwegian NCP Procedures are available at [www.responsiblebusiness.no](http://www.responsiblebusiness.no).<sup>1</sup>

### The complaint

On 5 December 2011, the NCP received a complaint against the Norwegian enterprise group Sjovik AS. The Norwegian Support Committee for Western Sahara (NSCWS) submitted the complaint. Sjovik AS, through its subsidiaries Sjovik Africa AS, Sjovik Morocco SA, is alleged to be in breach of the *Guidelines* by operating a fish vessel and leasing or running a fish processing plant in the Non-Self-Governing Territory of Western Sahara.<sup>2</sup>

The company is accused of breaching the *Guidelines* Chapter IV; Human Rights, No. 1 by having failed to respect the Sahrawi right to self-determination, including the right to be consulted in relation to the exploitation of natural resources. NSCWS demand that the company: 1) withdraws from Western Sahara; 2) recognises the status of Western Sahara as a Non-Self-Governing Territory where the territory's people have the right to self-determination over their natural resources; and 3) maintains dialogue with the Western Sahara Support Committee.

### Response to the complaint from Sjovik AS

Upon the request of the Norwegian NCP, the company confirms its activities in Western Sahara, but responded in an e-mail dated 16 January 2012 that these activities are legally and morally defensible.

In a meeting on 30 January and an e-mail dated 12 February 2012, the company explains that they partnered with a Moroccan company in 2002/03 following a Moroccan initiative to attract foreign investments and expertise. The Sjovik group was granted fishing licenses in the Moroccan “Zone C” outside Western Sahara. The company applied for export credit and guarantees and claims to have received positive signals from the Norwegian government and export credit agency until January 2005. At that time the company was officially informed that the Norwegian government would not support commercial activities in Western Sahara because such support could be interpreted as Norway *de facto* taking sides in the ongoing dispute. At this point, Sjovik states, the company had already committed to further investments in Western Sahara, and decided to find alternative funding.

Sjovik contends that their investments are in a Moroccan company that harvests a renewable resource, which contributes to the benefit of local populations, including Moroccans, Sahrawi and Berbers, in an area in great need of employment and investment. In addition to employment, Sjovik AS emphasises that their company in Morocco has several agreements with the Sahrawi; that the company fishes on Sahrawi quotas and delivers to Sahrawi factories. Furthermore, Sjovik argues that their investments contribute to the transfer of knowledge critical to development of the Dakhla region. According to the company, no payments are made to the Moroccan government for the fishing quota. However, the project finances services offered by regional authorities (Dakhla), such as roads to ports and a factory, the development of port facilities, and the construction of schools, hospitals, and an airport.

### **The Norwegian NCP’s assessment**

In accordance with the OECD Guidelines and the Norwegian NCP procedure for handling complaints, the NCP accepted to handle the complaint based on the following criteria:

- Is the Norwegian NCP the right entity to assess the alleged violation?  
*The Norwegian NCP was the recipient of the complaint concerning the headquarter policies of a Norwegian-registered multinational enterprise group. Western Sahara is claimed by Morocco, while no UN organ has recognised Moroccan sovereignty or status as rightful administering power. Western Sahara is recognised as a Non-Self-Governing Territory under the UN. Morocco is committed to following the Guidelines and has established an NCP. The unresolved territorial issues and the fact that the complaint concerns a Norwegian company favour the acceptance of the complaint by the Norwegian NCP. The Moroccan NCP has been notified about the specific instance.*
- What is the interest of the Western Sahara Support Committee in the matter?  
*The Norwegian Support Committee for Western Sahara supports the rights of the people of Western Sahara and their right to self-determination, in accordance with common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.*
- Is the complaint material and substantiated?  
*The complaint is material and substantiated with references to relevant and applicable public international law regarding the Sahrawi right to self-determination and the right to be consulted about and benefit from natural resources in Western Sahara.*

- Does there seem to be a link between the enterprise's activities and the issue raised in the specific instance?  
*The company confirms and defends their activities in the Non-Self-Governing Territory of Western Sahara.*
- What is the relevance of applicable law and procedures, including court rulings?  
*Applicable law and procedures include inter alia an advisory opinion from the International Court of Justice, resolutions from the UN General Assembly, the UN Convention on the Law of the Sea (UNCLOS) and other UN documents, EU procedures and documents, including EU Parliament Legal Opinions, and the Norwegian Government's recommendations, including the advice to companies not to engage in commercial activities in Western Sahara.*
- How have similar issues been, or are being, treated in other domestic or international proceedings?  
*Similar issues have been dealt with by the Norwegian NCP in 2010<sup>3</sup> and the Council on Ethics of the Government Pension Fund – Global.<sup>4</sup>*
- Would the consideration of the specific instance contribute to the purposes and effectiveness of the Guidelines?  
*The NCP finds that the issues raised in the specific instance would contribute to the purpose and effectiveness of the Guidelines. The Norwegian NCP will in accordance with the Norwegian NCP Procedure for Handling Complaints offer its good offices to the parties.*

#### **Box 1. Details of the Norwegian NCP process in this specific instance**

NCP Norway received the complaint on 5 December 2011. NCP Norway notified the company about the complaint on 6 December 2011 and invited the company to comment on the complaint by 15 January 2012. Both parties received NCP Norway's updated procedures for handling complaints on 12 December 2011.

The NCP began drafting the initial assessment on 19 December 2011 with the intention to accept the case. The parties received a draft Initial Assessment on 17 January 2012, and were invited to comment by 2 February. NSCWS sent their comments on 30 January. Due to a fire incident at the company's main office in Midsund, Norway, Sjovik asked for an extension of the deadline. The company also asked for a meeting with the NCP. NCP Norway met with the company on 30 January and the company sent a comment to the complaint on 10 February. The NCP formally accepted the case and published the Initial Assessment on 8 March 2012.

## Box 2. Details of the parties involved

### The Company: Sjovik AS

The Sjovik Group operates an international fishing enterprise from its base in Midsund, on the northwest coast of Norway. The company operates fishing vessels, produces and exports fish products, participates in shipping and yard operations and other related activities, including participating in other companies with similar operations in Norway and abroad. The Sjovik Group has established a worldwide sales organisation through its network of companies and international partners. The company has the brand Seabay.<sup>1</sup>

The company Sjovik AS and Sjovik Africa control Sjovik Morocco SA.<sup>2</sup> Sjovik Morocco SA operates the vessel Midoy Dakhla-1<sup>3</sup> from the industrial zone Dakhla in the Non-Self-Governing Territory of Western Sahara and trawls for pelagic fish. Sjovik Morocco SA also operates or leases a fish-processing facility in Dakhla.

### The Complainant: The Norwegian support committee for western Sahara

The Norwegian Support Committee for Western Sahara (NSCWS) is a membership organisation, formed in 1993. The ultimate goal of NSCWS is for the Sahrawi population to achieve its legitimate right of self-determination, and participate in a referendum about the future of their country, as stated in UN Security Council Resolutions. The organisation distributes information on the situation in Western Sahara with the main aim of stopping foreign companies with concessions from the Moroccan authorities from doing business in the disputed territory. NSCWS puts pressure on Morocco when Sahrawi civil society is subjected to grave human rights violations.<sup>4</sup>

1. According to the NSCWS, Sjovik was known for the company Seabay Limited in Grimsby in the UK since 1979. The Seabay label was known in Europe as a specialist in various frozen fish products, but the company was closed on 20 January 2008 due to significant losses.
2. AS owns Sjovik Afrika, whose purpose is to own shares in Sjovik Morocco SA which in turn operates one vessel (according to?), Sjovik AS's *Annual Financial Statement 2010*, available at the Bronnoysund Register Centre [www.brreg.no](http://www.brreg.no) Sjovik, obtained 8 December 2011. Sjovik Morocco has its postal address in the Zone Industrielle Hay Essalam, DAKHLA.
3. Midoy Dakhla, registered by DNV, <http://exchange.dnv.com/exchange/main.aspx?extool=vessel&subview=overview&vesselid=10475>, [www.marinetraffic.com/ais/shipdetails.aspx?MMSI=242889000](http://www.marinetraffic.com/ais/shipdetails.aspx?MMSI=242889000), [https://webgate.ec.europa.eu/sanco/traces/output/FFP\\_MA\\_en.pdf](https://webgate.ec.europa.eu/sanco/traces/output/FFP_MA_en.pdf), 5 July 2011.
4. NSCWS also campaigns for increasing Norwegian aid to the refugee camps in Algeria. Until 2005, the organisation worked for the release of Moroccan prisoners of war taken by the Western Sahara liberation movement Front Polisario during the liberation war in the 1970s and 1980s.



### Box 3. **General information about the Guidelines and the Norwegian NCP**

#### **Application of the OECD Guidelines for Multinational Enterprises**

The initial assessment is based on the 2011 version of the *Guidelines* as the complaint was submitted after the updated *OECD Guidelines for Responsible Business Conduct*\* entered into force for the Norwegian NCP on 1 September 2011.

The *Guidelines* comprise a set of principles and standards for responsible business conduct in areas including human rights, 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*, 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.

#### **The Norwegian NCP complaint procedure**

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

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response, and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation or examination – If a case is accepted, the Norwegian NCP offers 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, the Norwegian NCP will examine the complaint in order to assess whether it is justified. The NCP may commission fact-finding or other services to support the processing of the case if deemed necessary.
3. Final statement – If a mediated solution has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the *Guidelines* have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements, and follow-up statements, are published on the Norwegian NCP's website: [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

\* Updated *OECD Guidelines for Responsible Business Conduct* were adopted at Ministerial level on 25 May 2011.

**Notes**

1. [www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp\\_prosedyrer\\_e.pdf](http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp_prosedyrer_e.pdf).
2. The activities take place under the Moroccan flag.
3. A complaint was raised against Fugro-Geoteam for oil exploration activities outside Western Sahara. The complaint was withdrawn before it was formally accepted as a specific instance when Fugro-Geoteam AS announced in a letter to the Norwegian Ministry of Foreign Affairs that it had decided to discontinue the exploration. See [www.responsiblebusiness.no](http://www.responsiblebusiness.no).
4. The Council on Ethics ([www.etikkradet.no](http://www.etikkradet.no)) is an independent advisory body to the Government on negative screening based on ethical criteria from the Norwegian State Pension Fund Global. The Council recommended disinvestment from companies operating within Western Sahara Territory twice: in 2005 related to oil exploration offshore Western Sahara, and in 2010 in regard to the purchasing of phosphates from Western Sahara. Both recommendations on Western Sahara were followed and shares sold by the Norwegian Bank Investment Management (NBIM). The 2005 recommendation was repealed in 2006 after the company documented that the contract with Moroccan authorities was terminated and activities ceased.

## Initial assessment and conclusion by the Norwegian NCP on the complaint from the Climate Network and Concerned Scientists Norway against Statoil

### Summary

The complaint is directed towards the serious challenges presented by greenhouse gas emissions and climate change. The risks associated with major emissions and the cumulative environmental consequences from the oil sands industry are significant.

However, in this Specific Instance the complaint is directed more towards the policy of Canada to allow the development of oil sands rather than at the manner in which Statoil acts within the framework of this policy. The complaint does not concern whether Statoil, in its activities, is in breach of international instruments or national regulations which are covered by the *OECD Guidelines* (hereafter the *Guidelines*). For the NCP to accept the complaint, it would have to specify the manners in which the company has allegedly violated the *Guidelines* and to substantiate their claim with facts. The complaint should be directed toward the practices of the enterprise rather than at the nature of the business sector and national authorities.

The Norwegian NCP thus rejects the complaint on the basis that it does not meet the criteria specified in the *OECD Procedural Guidelines*, nor does it clearly fall within the scope of the *Guidelines*.

The NCP has offered its good offices by holding a meeting with the complainant in August 2011 and by offering the complainant the opportunity to further detail the complaint in December 2011. The complainant did not wish to heed this request.<sup>1</sup>

### The complaint

The NCP received a complaint against the Norwegian enterprise Statoil ASA on 28 November 2011. The Norwegian Climate Network and Concerned Scientists Norway submitted the complaint. The complainants allege that Statoil's oil production in the oil sand fields of Alberta, Canada is in breach of the *Guidelines* as set out in Chapter VI, first paragraph, on the 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.”*

The Norwegian Climate Network and Concerned Scientists Norway claim that Statoil did not consider relevant international agreements (Kyoto Protocol) when the company began its involvement in the oil sands industry in Canada. The complainants claim that Statoil's investments have contributed to the Canadian violation of international agreements between 2008 and 2012 by increasing rather than reducing undisclosed climate gas emissions. They assert that this, in turn, undermines international efforts to limit global warming to a 2 °C increase above pre-industrial levels. They claim that Canada's oil sands must be unexploited if the world is to have a chance of stabilising the climate and limiting global warming to the internationally accepted limit. They contend that Statoil, a state-owned company,<sup>2</sup> has a particular responsibility to withdraw from extractions that undermine other Norwegian climate obligations. The complainants argue for the withdrawal of the company from all oil sands production in Canada based on its incompatibility with the sustainability provisions of the *Guidelines*.

### **Statoil ASA's response to the complaint**

In response to the Norwegian NCP relating to the complaint dated 28 November 2011 and revised 16 January 2012, the company confirms its activities in Canada. Statoil ASA writes that the NCP is not mandated to assess whether countries like Canada honour their legal obligations nationally or internationally, but is tasked to assess whether the OECD *Guidelines* are respected. Furthermore, Statoil ASA contends that the complaint places a one-dimensional focus on Statoil ASA and the oil sands industry in Canada, and disregards CO<sub>2</sub>-emissions from other companies in the same industry and from other sectors. The complaint does not sufficiently concern Statoil ASA's activity, but rather Canada's total GHG-emissions and alleged breach of international agreements, such as the Kyoto Protocol. Finally, it claims that the Canadian NCP is closer to the underlying facts relating to the complaint, and as such would be the right NCP to lead the examination of the complaint.

### **Context**

In June of 2007, Statoil ASA entered the Canadian oil sands industry with the purchase of the North American Oil Sands Corporation ("NAOSC"), and subsequently obtained a licence for an oil sands project to produce 80 000 barrels of oil per day (the Kai Kos Dehseh project). The objective of the project is to operate and continue to develop a steam-assisted gravity drainage ("SAGD") bitumen recovery operation near Conklin, Alberta. Statoil is one of many firms extracting oil from Canadian oil sands. The purchase has given the company access to the oil sands region that spreads over 1 100 km<sup>2</sup> as well as forest areas in the Athabasca region of Alberta.<sup>3</sup>

For background on oil sands extraction in Alberta (Canada) and green house gas emissions, reference is made to Box 1.

### **The Norwegian NCP's assessment**

In accordance with the *Guidelines* and the Norwegian NCP Procedural *Guidelines*, the NCP rejects to handle the complaint on the following basis:

- Is the Norwegian NCP the right entity to assess the alleged violation?

*The Norwegian NCP was designated on 8 January 2012 by the OECD Secretariat as the correct entity to assess the complaint after consultations with the Canadian NCP. The Canadian NCP is to be kept informed throughout the process. The Norwegian NCP received the complaint from two Norwegian NGOs. The complaint concerns bitumen extraction and processing in Canada, but primarily seeks to change policies of a Norwegian-registered multinational enterprise group. The Norwegian NCP is the lead to facilitate communication between the company headquarters and the NGOs, all of which are based in Norway. The Canadian NCP takes a supportive role and will facilitate access to factual information relating to the operation in Canada.*

*The compliance body of the Kyoto Protocol would be the correct entity to assess a failure to fulfil national commitments by an entity party to the Protocol.<sup>4</sup>*

- What is the interest of the complainants in the matter at hand?

*The interest of the Norwegian Climate Network and Concerned Scientists Norway is a shared concern that humankind, especially future generations, will suffer, and biological diversity will be greatly reduced due to the consequences of climate change. The NGOs aim for a Norwegian climate and energy policy that is coherent with the gravity and extent of the climate crisis, as described by the Intergovernmental Panel on Climate Change (IPCC). They argue that the*

extraction of oil sands is incompatible with international efforts to limit global warming to an average increase of 2 °C above pre-industrial levels. The complainants have as a stated interest that the company concerned should withdraw from the oil sands.

- Is the complaint material and substantiated?<sup>5</sup>

The complaint is substantiated by references to the International Panel on Climate Change (IPCC) and reports from research institutions including the Pembina Institute, Columbia University, and the Potsdam Institute for Climate Impact Research. The complaint also makes reference to the Kyoto Protocol. The environment chapter of the Guidelines does not mention the Kyoto Protocol, but refers to the Rio Declaration on Environment and Development, the Aarhus Convention and the ISO Standard on Environmental Management Systems. The complaint would need to focus on a particular breach of the Guidelines linked to the specific company in order to fall within the mandate of the OECD National Contact Point (NCP). The claim should be substantiated with more specific information regarding the manner in which this particular company has allegedly violated the Guidelines. Hence, this complaint is not sufficiently material and substantiated.

- Is there a link between the enterprise's activities and the issue raised in the specific instance?

The complainant alleges a link between the enterprise's activities and Canada's level of emissions in relation to its Kyoto Protocol target. However, it is the responsibility of governments to fulfil their commitments under the Kyoto Protocol and ensure that companies within their territories contribute to this end. The complainants do not show on what basis it is the responsibility of Statoil to ensure that Canada meets its targets, nor how the company in question specifically has contributed to Canada's level of emissions compared to their commitment to the Kyoto protocol.<sup>6</sup> It is not made clear why this particular company, rather than other companies or the local authorities, should bear the responsibility of cumulative GHG emissions from the entire oil sands industry.<sup>7</sup>

- How have similar issues been or are being treated in other domestic or international proceedings?

There are no court cases or decisions that, on the basis of parallel proceedings, rule out OECD NCP involvement in this case.<sup>8</sup>

Other OECD NCPs have rejected complaints similar to the one at hand. For instance, the German NCP has rejected two complaints related to a company's obligations to implement policies aligned with the 2 °C limit as the complaints were not sufficiently substantiated, fell outside the scope of the Guidelines, and would not contribute to the purpose of the Guidelines.<sup>9</sup>

Canada has been under both national and international pressure for not reducing its greenhouse gas emissions in accordance with its Kyoto Protocol target. However, the compliance mechanism for the Protocol would be the correct entity to address Canada's obligations under the Kyoto Protocol.<sup>10</sup>

- Would the consideration of the specific instance contribute to the purpose and effectiveness of the Guidelines?

It is not clear that considering the specific instance would contribute to the purpose and effectiveness of the Guidelines. The complaint has been filed against a company, but ultimately aims to influence Norwegian and Canadian policies. The complaint is based on principled opposition against oil sands extraction as such, whereas the purpose of the Guidelines is to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to improve the foreign investment climate, and to enhance the contribution to sustainable development made by multinational enterprises.

*The Guidelines do not address whether certain business sectors are acceptable but rather provide general guidance for company practice. Engaging in business that violates international conventions, such as in the production of illegal weapons; would be incongruent with the Guidelines. Oil extraction does not inherently qualify as incongruent.*

*The challenge of climate change is daunting, and the risks of major emissions and cumulative environmental consequences from the oil sands industry are significant. However, in this Specific Instance the complaint is aimed more at the policy of Canada to allow the development of oil sands rather than at the manner in which Statoil acts within the framework of this policy. The complaint does not concern whether Statoil, in its activity, is in breach of international instruments or national regulations which are covered by the OECD Guidelines. The complaint would need to focus on breach of the Guidelines linked to the specific company to fall within the mandate of the NCP.*

*On this basis, the NCP finds that handling this specific instance would not contribute to the purpose and effectiveness of the Guidelines. The NCP finds that the specific instance could contribute to the purpose and effectiveness of the Guidelines by making reference to specific company violations of detailed portions of the Guidelines rather than basing the complaint on opposition to a sector at large.*

### Box 1. **Background on oil sands extraction in Alberta and greenhouse gas emissions**

The Canadian oil sands are a major contributor to the world's energy supply<sup>1</sup> and contribute to greenhouse gas emissions.<sup>2</sup> Producing liquid fuels from oil sands requires energy for steam injection and refining. This process generates larger amounts of greenhouse gases per barrel of final product compared to the "production" of conventional oil.<sup>3</sup>

The OECD expects companies to address climate change as part of business practice.<sup>4</sup> In 2007, the Province of Alberta regulated GHG emissions from large industrial facilities, including oil sands operations. Under Alberta's Specified Gas Emitters Regulation, all large emitters were required to reduce the carbon intensity of their energy production by 12%. Those unable to make physical reductions were given the option of a USD 15/tonne compliance payment into a clean energy technology fund or the purchase of an offset in a closely regulated market.<sup>5</sup>

Canada is politically stable and internationally recognised for its business reliability<sup>6</sup> and high technical standard.

The oil sands are regulated by the Province of Alberta – with regulatory authority over resources, environment, First Nations consultation (related to resource development), and surface disturbance. The Canadian federal government has jurisdiction over, and primary regulatory responsibilities for, among others, fish and fish habitat, changes to the navigation of waterways, and migratory birds and endangered species.

Enforcement and monitoring is undertaken by the Energy Resources Conservation Board, as well as Alberta Environment and Water. These departments rely on the industry's self-reporting of emissions, production, and activity related to water usage. The province audits those figures and mounts periodic inspections. Non-compliance is addressed.<sup>7</sup>

The Government of Alberta provides an oil sands information portal, designed to provide real-time information on water usage and air quality monitoring, and other regulatory information on a site-specific basis, including greenhouse gas emissions, and land disturbance and reclamation.<sup>8</sup>

During the course of 2010-11, a series of reports pointed to the health and environmental impacts of oil sand production. For example, the Royal Society of Canada Expert Panel released a 2010 report concerning the health and environmental impacts of oil sands and bitumen production.<sup>9</sup> Major findings in the report included:

- Land reclamation is achievable but is not keeping pace with land disturbance, and current practices for obtaining financial security for reclamation liability may be improved.
- While there is no evidence that oil sands development is impacting the health of residents downstream, more monitoring is required to address concerns from First Nation and other communities.
- It is important that the joint Department of Fisheries and Oceans-Alberta Environment Water Management Framework<sup>10</sup> is implemented and enforced.
- Current evidence does not show the oil sands to be a major threat to water quality; however, there are valid concerns about the current monitoring regime, and the long term and cumulative regional effects on groundwater need more assessment, research, and monitoring.

### Box 1. Background on oil sands extraction in Alberta and greenhouse gas emissions (cont.)

- Technologies for improved tailings management are emerging but have not prevented a growing inventory of tailings ponds.<sup>11</sup> Reclamation and management options for tailings ponds close to wetlands need to be improved.
- Overall, oil sands development has had a minimal impact on ambient air quality; however, concerns about contaminants and acidification in the region are valid.<sup>12</sup>
- Progress has been made by the oil sands industry in reducing direct GHG emissions per barrel of bitumen produced. However, GHG emissions from growing bitumen production create a major challenge for Canada to meet its international commitments to overall GHG emission reduction that current technology options do not resolve.

On 3 February 2012, Canada and the province of Alberta announced the *Joint Canada-Alberta Implementation Plan for Oil Sands Monitoring*, which the Canadian government maintains will provide high-quality, scientifically-rigorous data on the region's water, air, and biodiversity.

1. Of the 2.8 million barrels per day of oil Canada produced in 2010, about 1.5 million barrels per day came from the oil sands according to the Canadian Association of Petroleum Producers (CAPP): [www.capp.ca/getdoc.aspx?DocId=190838](http://www.capp.ca/getdoc.aspx?DocId=190838).
2. Natural Resources Canada informs that the oil sands contributed about 6.5 per cent of Canada's total GHG emissions in 2009, which is equal to 0.1 per cent of global emissions. See also Environment Canada (2011), *National Inventory Report 1990-2009*, the IHS CERA *Energy Dialogue: Canadian Oil Sands Special Report*, Oil Sands, Greenhouse Gases, and European Oil Supply: *Getting the Numbers Right*, April 2011.
3. EU commissioned report from Stanford University Department of Energy Resources Engineering: [https://circabc.europa.eu/d/d/workspace/SpacesStore/db806977-6418-44db-a464-20267139b34d/Brandt\\_Oil\\_Sands\\_GHGs\\_Final.pdf](https://circabc.europa.eu/d/d/workspace/SpacesStore/db806977-6418-44db-a464-20267139b34d/Brandt_Oil_Sands_GHGs_Final.pdf). See also Statoil: [www.statoil.com/no/environmentsociety/environment/climate/pages/globalwarmingmitigation.aspx](http://www.statoil.com/no/environmentsociety/environment/climate/pages/globalwarmingmitigation.aspx), and Joseph J. Romm (2008), *Hell and High Water: The Global Warming Solution*, New York: Harper Perennial, pp. 181-82, ISBN 9780061172137.
4. *Transition to a Low-carbon Economy: Public Goals and Corporate Practices*, [www.oecd.org/daf/internationalinvestment/investmentfordevelopment/transitiontoalow-carboneconomy.htm](http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/transitiontoalow-carboneconomy.htm).
5. According to Canadian authorities (e-mail 31 February 2012) this system of paying instead of reducing emissions has to date resulted in a technology fund dedicated to the development and deployment of GHG reducing technologies that is currently worth USD 257 million, and which continues to grow. Alberta estimates that this system has resulted in nearly 24 million tonnes of avoided GHG emissions since it began operating.
6. See for example Economist Country Reports: [www.economist.com/topics/economist-intelligence-unit](http://www.economist.com/topics/economist-intelligence-unit), Transparency International Corruption Index: <http://cpi.transparency.org/cpi2011/results/>, UN Human Development Index: <http://hdr.undp.org/en/data/map/>.
7. On October 2011, for example, Statoil was fined USD 190 000 for contravening the terms of its water license between 15 December 2008 and 29 May 2009. Statoil pled guilty to the charges. Statoil has fully disclosed information about the case: [www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20\(unsigned\)%20with%20attachments.pdf](http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20(unsigned)%20with%20attachments.pdf). The penalty consisted of a CAD 5 000 fine and a sentencing order in the amount of CAD 185 000 to be put towards the creation of an online training portal to communicate best practices for surface water diversion to the oil and gas industry in Alberta. The fine and the funds for the sentencing order were paid on 17 November 2011.
8. <http://osip.alberta.ca>.
9. Report by the Royal Society of Canada Expert Panel, *Environmental and Health Impacts of Canada's Oil Sands Industry* (December 2010).
10. <http://environment.alberta.ca/01229.html>. The Canadian government informs that the water use demands do not threaten the Athabasca River *per se*.
11. In 2010, Syncrude Canada Ltd. was convicted of charges and fined CAD 3 million related to the deaths of 1 600 ducks in a toxic tailings pond from oil sands operations.
12. Some experts argue that public reporting should in a clearer way include how many metric tonnes CO<sub>2</sub> is emitted pr. barrel bitumen pr. year. Such reporting should be done by each company relating to the individual project site in a manner that communicates easily to the public the cumulative effects of several companies operating in one area.



### Box 2. Details of the Norwegian NCP process in this specific instance

The complaint was received on 28 November 2011. NCP Norway notified the company about the complaint on 28 December 2011 and invited the company to comment on the complaint by 16 January 2012. NCP Norway sent updated *Procedural Guidelines* to the company on 12 December 2011.

### Box 3. Details of the parties involved

#### **The company: Statoil ASA**

Statoil is an international energy company with operations in 36 countries. Statoil is headquartered in Norway with 20 000 employees worldwide, and listed on the New York and Oslo stock exchanges. Oil sands represent a long-term investment for the company. In 2007, Statoil acquired 100% of the shares in North American Oil Sands Corporation (NAOSC) and operatorship of the Kai Kos Dehseh leases. The company owns interests in 1 129 square kilometres (279 053 net acres) of the oil sands' leases located in the Athabasca region of Alberta.\*

#### **The complainant: the Norwegian Climate Network and Concerned Scientists Norway**

*The Norwegian Climate Network* is a network established to promote a coherent Norwegian climate and energy policy in line with the gravity and extent of the climate crisis, as described by the Intergovernmental Panel on Climate Change (IPCC). *Concerned Scientists Norway (CSN)* is a multi-disciplinary network of scientists concerned about the lack of implementation of sustainable development policies, especially in the light of climate change. CSN is committed *inter alia* to contributing to an explanation of why human influence on nature increases despite scientific based warnings and numerous attempts to mitigate changes; to communicate research-based evidence about the consequences and risks of today's development; and to seek to influence governments and other decision-makers to implement necessary measures.

\* [www.statoil.com/en/about/worldwide/northamerica/canada/Pages/default.aspx](http://www.statoil.com/en/about/worldwide/northamerica/canada/Pages/default.aspx).

#### Box 4. **General information about the Norwegian NCP**

##### **Application of the OECD Guidelines for Multinational Enterprises**

The updated *OECD Guidelines for Responsible Business Conduct* were adopted at the ministerial level on 25 May 2011. The complaint was submitted after 1 September 2011, when the new version of the *Guidelines* entered into force for the Norwegian NCP.

The *Guidelines* comprise a set of voluntary principles and standards for responsible business conduct in various 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*, 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 handling complaints that the *Guidelines* have been breached by multinational enterprises operating in or from their territories.

##### **The Norwegian NCP complaint procedure**

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

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response, and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation or examination – If a case is accepted, the Norwegian NCP offers 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, the Norwegian NCP will examine the complaint in order to assess whether it is justified. Fact finding or other services to support the processing of the case may be commissioned by the NCP if deemed necessary by the NCP.
3. Final statement – If a mediated settlement has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the *Guidelines* have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements, and follow-up statements, are published on the Norwegian NCP's website: [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

## Notes

1. *Inter alia* meeting telephone conversations December 2011 and e-mail exchange 15 December 2011 (complainant Melli/OECD NCP Secretariat). In these contacts the Secretariat informed that, based on experience with the NCP complaint process, complaints that were specific and relating to the design of the project are more likely to be accepted at the Initial Assessment. Examples of such specific and substantiated complaints, available on [www.responsiblebusiness.no](http://www.responsiblebusiness.no), were shared with the complainants in August 2011.
2. Sixty-seven per cent of Statoil ASA's shares are held by the Norwegian government.
3. Statoil Canada Ltd. ("Statoil") is an Alberta corporation. It is a wholly owned subsidiary of Statoil ASA. On 22 November 2010, PTTEP Netherland Holding Limited or PTTEP NL (a subsidiary of PTTEP which is a Thai national petroleum company) formed a partnership with Statoil Canada Ltd. and Statoil Canada Holdings Corp. (the subsidiaries of Statoil ASA or Statoil) to acquire a 40% interest in the Kai Kos Dehseh Oil Sands Project (KKD) in Canada for USD 2 280 million. Statoil holds a 60% interest in SCP and retains the operatorship of KKD. KKD is a significant oil sands deposit in Canada covering an area of 257 200 acres with an estimated 4.3 billion barrels of recoverable Bitumen resources (independently assessed by a leading external petroleum consultant). KKD is an IN-SITU (under surface) oil sands project utilising Steam Assisted Gravity Drainage (SAGD) technology, well established and proven production technique, with an expected project life of over 40 years. KKD is located in Athabasca, Alberta in western Canada, and its attractive acreage position is surrounded by approximately 11 other commercial SAGD projects. KKD has 5 core areas, namely Leismer, Corner, Thornbury, Hangingstone, and South Leismer. In early 2011, the Leismer Project will have an initial production at 18 800 barrels per day (gross) over the next two years. Given the large bitumen resources, a staged development programme is envisaged, which could ultimately bring production levels to over 300 000 barrels per day (gross) from the 5 areas. A second project in the region, known as Corner, is scheduled to start up in 2015 or 2016 and produce 60 000 barrels a day.
4. On 15 December 2011, Canada, according to Article 27 of the Kyoto Protocol, applied to withdraw from the Kyoto Protocol to the United Nations Framework Convention on Climate Change by notifying the United Nations Secretary-General of its decision. Effective 15 December 2012, Canada will cease to be a Party to the Kyoto Protocol. The Canadian notification to the UN Secretary-General is found here: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-a&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-a&chapter=27&lang=en).
5. According to the Norwegian NCP Procedural Guidelines, materiality is understood as a fact that is significant to the issue at hand. Substantiation concerns the extent to which the complaint is supported by proof or evidence.
6. The Kyoto Protocol does not prescribe which specific measures a Party must take to meet its target, and it is also permitted under certain conditions to increase pollution domestically if quotas are bought internationally.
7. The company claims to be operating in compliance with laws and regulations, and also to be in compliance with the Kyoto targets by buying quotas through the European Allowance (EUA) and Certified Emission Reduction (CER) at the stock exchange as well as through participation in CDM (Clean Development Mechanisms), Joint Implementation Projects and the Carbon Disclosure Project.
8. [http://news-p.bna.com/ieln/display/alpha.adp?mode=topics&letter=E&frag\\_id=23313499&item=61438C8D2463D6DD334A1D4B8E7B03FF&prod=ieln](http://news-p.bna.com/ieln/display/alpha.adp?mode=topics&letter=E&frag_id=23313499&item=61438C8D2463D6DD334A1D4B8E7B03FF&prod=ieln), [www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20\(unsigned\)%20with%20attachments.pdf](http://www.statoil.com/no/NewsAndMedia/News/2011/Downloads/Court%20Order%20-%20Final%20(unsigned)%20with%20attachments.pdf).
9. German NCP, 15 March 2010: Greenpeace versus Vattenfall Europe AG, Vattenfall Europe Generation AG and Co. KG and Kernkraftwerk Krümmel GmbH and Co.HG and 20 November 2007: Germanwatch versus Volkswagen.
10. In 2008, the Kyoto enforcement branch examined Canada's compliance: [http://unfccc.int/files/kyoto\\_protocol/compliance/enforcement\\_branch/application/pdf/cc-2008-1-6\\_canada\\_eb\\_decision\\_not\\_to\\_proceed\\_further.pdf](http://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2008-1-6_canada_eb_decision_not_to_proceed_further.pdf). Other UN documents include Canada's annual report to the UNFCCC for 2010: FCCC/ARR/2010/CAN: <http://unfccc.int/resource/docs/2011/arr/can.pdf>, and the decision of the Facilitative branch mandated by the Compliance Committee under Section IV, Paragraph 6(a) to promote compliance and provide for early warning of potential non-compliance (CC/FB/11/2012/1, 18 January 2012): [http://unfccc.int/kyoto\\_protocol/compliance/items/2875.php](http://unfccc.int/kyoto_protocol/compliance/items/2875.php).

## Final statement by the Swiss NCP on Specific instance regarding cotton trade by Ecom Agroindustrial Corp. Ltd. in Uzbekistan

### Background

The *OECD Guidelines for Multinational Enterprises* (the *OECD Guidelines*) are voluntary principles and standards for responsible business conduct, addressed as recommendations by the governments of the 34 OECD member states as well as 8 other states to multinational enterprises operating in or from their territories. 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 22 October 2010 to consider a specific instance under the *OECD Guidelines for Multinational Enterprises* regarding the possible presence of child labor in the supply chain in cotton trade with Uzbek suppliers, involving the Swiss-based enterprise Ecom Agroindustrial Corp. Ltd. (Ecom).

The specific instance was submitted by the European Center for Constitutional and Human Rights (ECCHR), Berlin, Germany, represented in Switzerland by the attorney Guido Ehrler, Basel.

The concerns raised in the submission were related to the use of child labor in the cotton harvest in Uzbekistan. ECCHR stated in its submission that Ecom was buying cotton from the state-run cotton merchants in Uzbekistan and thereby contributing to the systematic and extensive use of child labor. ECCHR furthermore claimed that the enterprise was in a position to influence the Uzbek authorities regarding the use of forced child labor, either alone or in a group of cotton merchants, using existing associations such as the Bremen Cotton Exchange or the International Cotton Advisory Committee (ICAC) and other associations.

In its submission, ECCHR claimed noncompliance of the enterprise with the following chapters of the *OECD Guidelines*:

#### Chapter II: General Policies

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

- *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*
- *Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*

#### Chapter IV: Employment and Industrial Relations

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

- *1.b) Contribute to the effective abolition of child labour.*
- *1.c) Contribute to the elimination of all forms of forced or compulsory labour.*

On 25 November 2010, Ecom explained in its written reaction to the submission addressed to the NCP that it disagreed with the claim of violation of the OECD *Guidelines* and of complicity in child labor. This notwithstanding, Ecom agreed to enter into a confidential dialogue with the submitting party, with the Swiss NCP acting as a facilitator.

In order to explain the role and proceedings of the NCP, the Swiss NCP invited representatives of both parties involved for informal meetings, held at the premises of the NCP in Berne in November 2010 and January 2011.

On 28 March 2011, the NCP concluded its confidential initial assessment and informed parties concerned that it found the issues raised to be relevant under Chapter II and IV of the OECD *Guidelines* and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Ecom to have acted inconsistently with the OECD *Guidelines*. As part of the initial assessment, the NCP offered its good offices to facilitate a dialogue between both parties with the aim of reaching a mutually acceptable outcome.

Both parties accepted the offer of the NCP to facilitate a dialogue. The NCP subsequently prepared a draft framework for such discussions (“Terms of Reference”), which was forwarded to both parties on 24 May 2011. Over the following weeks the NCP finalised the “Terms of Reference” with both parties, in order to provide a mutually agreed framework for a substantial dialogue on the issues raised in the specific instance. Furthermore, the NCP suggested to both parties to have the dialogue facilitated by a professional external mediator, contracted by the Swiss NCP.

Both parties agreed on the “Terms of Reference”, including the date and format of the meeting, as well as on the name of the facilitator. The “Terms of Reference” moreover specified that a representative of the Swiss NCP would assist the mediator and participate in the meeting with both parties on 23 September 2011.

With the permission of both parties, the mediator was provided by the NCP with all the documents relevant to this specific instance. Based on the “Terms of Reference” and this documentation, the mediator independently prepared the dialogue meeting, in close co-operation with both parties.

As laid out in the “Terms of Reference”, the main objective of the dialogue facilitated by the NCP was to reach a high level of mutual understanding of the labor situation in Uzbekistan and companies’ roles in that situation. Furthermore, the parties wanted to explore initiatives that would encourage positive change in Uzbekistan in relation to forced and child labor.

### **Outcome of the proceeding**

The two parties have met on 23 September 2011 for an exchange of views and positions on the issues raised in the specific instance presented to the Swiss NCP by ECCHR. This meeting was facilitated by a mediator. The meeting was held at the premises of the Swiss NCP. The main points of the agreement are:

- Both parties reached a higher level of mutual understanding of the labor situation in Uzbekistan. Both parties acknowledge that there have been serious allegations about the systematic use of forced child labor in Uzbekistan which need to be addressed by the relevant international organisations on a policy level.

- The parties discussed the different and complimentary roles of companies, NGOs and governments and the relevance of both disengagement and engagement. Both parties believe that businesses have a responsibility to take steps within their means to address labor issues in the supply chain.
- The parties explored initiatives that would encourage positive change in Uzbekistan in relation to forced and child labor and agreed to certain steps appropriate to their position.
- The parties moreover agreed to exchange relevant information in the future.

### **Conclusions of the NCP**

Following the dialogue and discussions which took place between September and November 2011, the NCP will close the specific instance.

The NCP thanks both parties for engaging in the process and for their good and constructive co-operation.

Berne, 22 December 2011

## Final statement by the Swiss NCP on specific instance regarding cotton trade by Louis Dreyfus Commodities Suisse SA in Uzbekistan

### Background

The OECD *Guidelines for Multinational Enterprises* (OECD *Guidelines*) are voluntary principles and standards for responsible business conduct, addressed as recommendations by the governments of the 34 OECD member states as well as 8 other states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (NCP) for the OECD *Guidelines* 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 OECD *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 23 December 2010 to consider a specific instance under the OECD *Guidelines* regarding the possible presence of child labor in the harvest of cotton in Uzbekistan, which indirectly involves the Swiss-based enterprise Louis Dreyfus Commodities Suisse SA as a purchaser of cotton from Uzbekistan cotton suppliers.

The specific instance was submitted by the European Center for Constitutional and Human Rights (ECCHR), Berlin, Germany, represented in Switzerland by the attorney Guido Ehrlér, Basel.

The concerns raised in the submission were related to the use of child labor in the cotton harvest in Uzbekistan. ECCHR claimed in its submission that Louis Dreyfus Commodities Suisse SA was buying cotton from the state-run cotton merchants in Uzbekistan and thereby contributing to the systematic and extensive use of child labor. ECCHR furthermore claimed that the enterprise was in a position to influence the Uzbek authorities regarding the use of forced child labor, either alone or in a group of cotton merchants, using existing associations such as the Bremen Cotton Exchange or the International Cotton Advisory Committee (ICAC) and other associations.

In its submission, ECCHR claimed noncompliance of the enterprise with the following chapters of the OECD *Guidelines*:

#### Chapter II: General Policies

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

- *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*
- *Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*

#### Chapter IV: Employment and Industrial Relations

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

- *1.b) Contribute to the effective abolition of child labour.*
- *1.c) Contribute to the elimination of all forms of forced or compulsory labour.*

In order to explain the role and proceedings of the NCP, the Swiss NCP invited representatives of both parties involved for informal meetings, held at the premises of the NCP in Berne in January 2011.

On 28 March 2011, the NCP concluded its confidential initial assessment and informed parties concerned that it found the issues raised to be relevant under Chapters II and IV of the *OECD Guidelines* and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Louis Dreyfus Commodities Suisse SA to have acted inconsistently with the *OECD Guidelines*. As part of the initial assessment, the NCP offered its good offices to facilitate a dialogue between both parties with the aim of reaching a mutually acceptable outcome.

In a statement provided to the NCP on 18 May 2011 for transmission to ECCHR, Louis Dreyfus Commodities Suisse SA stated that it complied with applicable law in the countries and territories in which it operated and that it had raised the issue of child labour with senior Uzbek authorities on repeated occasions. The company stated that it believed that co-ordinated actions of national governments and international trade associations made the most difference in addressing the issue of child labor, but it accepted to have a role to play. The company furthermore declared that in its view engagement on the subject of poor labour practices rather than boycott was a better means to affect real and lasting change.

Both parties accepted the offer of the NCP to facilitate a dialogue. The NCP subsequently prepared together with both parties a confidential framework for such discussions (“Terms of Reference”), which was signed on 14 December 2011. The scope of the “Terms of Reference” is to provide a mutually agreed framework for a substantial dialogue on the issues raised in the specific instance. Furthermore, the NCP suggested to both parties to have the dialogue facilitated by a professional external mediator, contracted by the Swiss NCP.

Both parties agreed on the “Terms of Reference”, including the date and format of the meeting, as well as on the name of the facilitator. The “Terms of Reference” moreover specified that a representative of the Swiss NCP would assist the mediator and participate in the meeting with both parties on 14 December 2011.

With the permission of both parties, the mediator was provided by the NCP with all the documents relevant to this specific instance. Based on the “Terms of Reference” and this documentation, the mediator independently prepared the dialogue meeting, in close co-operation with both parties.

As laid out in the “Terms of Reference”, the main objectives of the dialogue facilitated by the NCP was to discuss the responsibility of companies in the situation of forced-child labour in Uzbekistan and to outline a concrete plan of action to contribute to the abolition of child labour in Uzbekistan. Furthermore, the parties addressed the commitment of companies to co-operate with other business actors, who are involved in work on the abolition of forced child labour in Uzbekistan.

### **Outcome of the proceeding**

The two parties met on 14 December 2011 to discuss the issues raised in the specific instance presented to the Swiss NCP by ECCHR. The meeting was facilitated by a mediator. The meeting was held at the premises of the Swiss NCP. The two parties discussed: i) the



cotton trade in Uzbekistan and the use of forced child labour during the cotton harvest (the “Issue”); and ii) possible steps forward regarding the “Issue”. The parties agree that:

- A significant problem exists in Uzbekistan with regard to the “Issue”.
- In the wake of international pressure the Uzbekistan government has instituted policy changes which should *prima facie* work towards addressing the “Issue”, however such policy changes, as of the date of the specific instance, have either; not been adequately implemented, and/or not adequately addressed the “Issue”.
- Policy coherence across all the relevant stakeholders would be welcome in addressing the “Issue”.
- Cotton traders, as one of the stakeholders, have a role to play in addressing the “Issue”.
- The company will continue to engage with the Uzbekistan authorities and other stakeholders in order to address the “Issue”.
- The parties acknowledge that changes of the nature contemplated take time. If over the course of time ECCHR determines, in consultation with the company and other stakeholders, that engagement with the Uzbekistan authorities (in concert with other initiatives) has failed to adequately address the “Issue” then further consultation between the ECCHR and the company shall take place to assess the current state of the “Issue” and discuss the subsequent steps.

The parties discussed initiatives that would encourage positive change in Uzbekistan in relation to the “Issue” and the parties agreed to take steps towards such change.

### **Conclusions of the NCP**

Following the dialogue and discussions which took place between December 2011 and January 2012, the NCP will close the specific instance.

The NCP thanks both parties for engaging in the process and for their good and constructive co-operation.

Berne, 17 February 2012

## Final statement by the Swiss NCP on specific instance regarding cotton trade by Paul Reinhart AG in Uzbekistan

### Background

The *OECD Guidelines for Multinational Enterprises* (*OECD Guidelines*) are voluntary principles and standards for responsible business conduct, addressed as recommendations by the governments of the 34 OECD member states as well as eight other states to multinational enterprises operating in or from their territories. 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 *OECD 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 22 October 2010 to consider a specific instance under the *OECD Guidelines for Multinational Enterprises* regarding the possible presence of child labor in the supply chain in cotton trade with Uzbek suppliers, involving the Swiss-based enterprise Paul Reinhart AG.

The specific instance was submitted by the European Center for Constitutional and Human Rights (ECCHR), Berlin, Germany, represented in Switzerland by the attorney Guido Ehrler, Basel.

The concerns raised in the submission were related to the use of child labor in the cotton harvest in Uzbekistan. ECCHR stated in its submission that Paul Reinhart AG was buying cotton from the state-run cotton merchants in Uzbekistan and thereby contributing to the systematic and extensive use of child labor. ECCHR furthermore claimed that the enterprise was in a position to influence the Uzbek authorities regarding the use of forced child labor, either alone or in a group of cotton merchants, using existing associations such as the Bremen Cotton Exchange or the International Cotton Advisory Committee (ICAC) and other associations.

In its submission, ECCHR claimed noncompliance of the enterprise with the following chapters of the *OECD Guidelines*:

#### Chapter II: General Policies

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

- *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*
- *Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*

#### Chapter IV: Employment and Industrial Relations

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

- *1.b) Contribute to the effective abolition of child labour.*
- *1.c) Contribute to the elimination of all forms of forced or compulsory labour.*

On 10 January 2011, Paul Reinhart AG explained in its written reaction to the submission addressed to the NCP and to the submitting party that it disagreed with the claim of violation of the OECD *Guidelines* and of complicity in child labor. The enterprise condemns the use of child and forced labor everywhere and endeavors to fully abide by the OECD *Guidelines* and encourages its suppliers to do so as well. Moreover, it stated that it encourages the ongoing transformation process in Uzbekistan and that a suspension of its trade relationship with Uzbek cotton exporters would be counterproductive.

In order to explain the role and proceedings of the NCP, the Swiss NCP invited representatives of both parties involved for informal, bilateral meetings, held at the premises of the NCP in Bern in January 2011.

On 28 March 2011, the NCP concluded its confidential initial assessment and informed parties concerned that it found the issues raised to be relevant under Chapters II and IV of the OECD *Guidelines* and to merit further consideration. At the same time, the NCP recalled that accepting this specific instance did not mean that it considered Paul Reinhart AG to have acted inconsistently with the OECD *Guidelines*. As part of the initial assessment, the NCP offered its good offices to facilitate a dialogue between both parties with the aim of reaching a mutually acceptable outcome.

Both parties accepted the offer of the NCP to facilitate a dialogue. The NCP subsequently prepared a draft framework for such discussions (“Terms of Reference”), which was forwarded to the parties on 23 May 2011. Over the following weeks the NCP finalised the “Terms of Reference” with both parties, in order to provide a mutually agreed framework for a substantial dialogue on the issues raised in the specific instance. Furthermore, both parties signed a separate confidentiality agreement, which was proposed by the enterprise. The NCP suggested to both parties to have the dialogue facilitated by a professional external mediator, contracted by the Swiss NCP.

Both parties agreed on the “Terms of Reference”, including the date and format of the meeting, as well as on the name of the facilitator. The “Terms of Reference” moreover specified that a representative of the Swiss NCP would assist the mediator and participate in the meeting with both parties on 23 September 2011.

With the permission of both parties, the mediator was provided by the NCP with all the documents relevant to this specific instance. Based on the “Terms of Reference” and this documentation, the mediator independently prepared the dialogue meeting, in close co-operation with both parties.

As laid out in the “Terms of Reference”, the main objective of the dialogue facilitated by the NCP was to reach a mutual understanding of participants’ possibilities and ability of influence in Uzbekistan. Furthermore, the parties wanted to explore realistic initiatives for positive changes in cotton industry in Uzbekistan in relation to alleged forced labor and alleged child labor.

### **Outcome of the proceeding**

The two parties have met on 23 September 2011 for an exchange of views and positions on the issues raised in the specific instance presented to the Swiss NCP by ECCHR. This meeting was facilitated by a mediator. The meeting was held at the premises of the Swiss NCP. The main points of the agreement are:

- The parties discussed labor issues and especially the situation in Uzbekistan in relation to child labor acknowledging that there have been several serious allegations about the

systematic use of forced child labor in Uzbekistan. The parties agree that it would be most desirable to have an assessment of such allegations by a relevant international organisation, such as the ILO.

- The parties agreed that cotton traders, as one of the stakeholders, have a role to play in addressing the issue.
- The parties discussed among others possible contributions to relevant multi-stakeholder initiatives and other ongoing initiatives in the cotton sector in general and in Uzbekistan in specific.
- The parties agreed on certain steps with the aim to improve the situation in Uzbekistan.
- Both parties agreed to exchange relevant information in the future.

### **Conclusions of the NCP**

Following the dialogue and discussions which took place between September 2011 and March 2012, the NCP will close the specific instance.

The NCP thanks both parties for engaging in the process and for their good and constructive co-operation.

Berne, 7 March 2012

## **Follow up to the final statement by the UK NCP on the complaint from the Malaysian Trades Union Congress against British American Tobacco Malaysia Berhad (Malaysia)**

This follow up statement reflects one party's response, and the UK NCP's conclusions thereon, on the progress made in the implementation of the recommendation contained in the final statement dated 4 March 2011\* on the complaint from the Malaysian Trades Union Congress (MTUC) against British American Tobacco Malaysia (BATM) under the *Guidelines*. The publication of this statement concludes this Specific Instance.

### **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 governments 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.

#### **Follow up to final statements by the UK NCP**

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

In accordance with Paragraph 6.1 of the complaint procedure, where the final statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the UK NCP with a substantiated update on the company's progress towards implementing these recommendations. The UK NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon.

#### **Recommendation to the company**

In the final statement dated 4 March 2011 on the complaint from the MTUC against BATM, the UK NCP made the following recommendation to BATM in order to assist the company in bringing its practices into line with the *Guidelines*:

*“Paragraph 58. 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*

\* [www.bis.gov.uk/assets/biscore/business-sectors/docs/f/11-774-final-statement-ncp-bat-malaysia.pdf](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/f/11-774-final-statement-ncp-bat-malaysia.pdf).

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).

Paragraph 59. 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."

### **Response from the parties**

The UK NCP received BATM's update dated 2 June 2011, followed by British American Tobacco PLC's letter also dated 2 June 2011. The UK NCP did not receive any response from the MTUC.

In its letter, BATM stated that, in response to the UK NCP's recommendation, it carried out a review of its existing policies and practices, taking into account current Malaysian legislation and industrial practice, related to employees' engagement and consultation. The company explained that the review was conducted by a team of senior managers, including the human resources Director, from February to May 2011. The company's internal review concluded:

1. that the current communication channels within the company between senior management and employees are sufficient and timely, and already include opportunities for employees' feedback; and
2. that BATM's existing policies and practices related to employee engagement and consultation are not formalised and documented. BATM has therefore committed to formalise its current employee engagement and consultation process in the form of guidelines to be adhered to by the company. These guidelines will be implemented by August 2011 and will include engagement and consultation with employees or trades union(s) on matters of mutual concern. BATM explained that the consultation process will include face-to-face meetings, and the company's commitment to respond within 14 days to any concern raised by employees.

British American Tobacco PLC confirmed that it had been in regular and constructive dialogue with BATM and that it is satisfied that BATM's internal review (and its outcomes) have addressed the UK NCP's recommendation.

### **Conclusions**

The purpose of the Follow Up Statement is not to examine again the allegations made against a company under the *Guidelines* but to evaluate the progress made by the company in implementing the UK NCP's recommendation(s) contained in the final statement. This evaluation is based solely on the parties' responses.

In this case, the key element of the UK NCP's recommendation in Paragraph 58 of the final statement dated 4 March 2011 was to encourage BATM to reconsider its approach to consulting employees before key decisions of mutual concern are taken by management.

In light of BATM and British American Tobacco PLC's responses, and in the absence of a response from the MTUC, the UK NCP welcomes the steps taken by BATM to minimise the risk of future breaches of the *Guidelines*. In particular, the UK NCP welcomes the completion of an internal review on the company's practices, and considers that having clear and publicly accessible guidelines on engaging employees on matters of mutual concern will constitute a positive outcome.

The UK NCP remains concerned, however, that BATM's internal review appears to have been conducted by senior managers, without any employee (or trades union representative where they exist) involvement as part of the review committee. In addition, the UK NCP is surprised by the review committee's conclusion that BATM believes its current engagement practices to be sufficient and timely.

The above concerns notwithstanding, the UK NCP supports BATM's steps to increase the transparency of its employee engagement processes, and hopes that BATM's *Guidelines* will be drawn up in close liaison with (and with the endorsement of) BATM's employees (or trades unions where they exist).

8 July 2011

Nick Van Benschoten, Sergio Moreno.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

## **Final statement by the UK NCP on the complaint from the European Centre for Constitutional and Human Rights (ECCHR) against Cargill Cotton Limited (in Uzbekistan)**

### **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 human rights, 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 governments 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:

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation 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.
3. 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*.
4. Follow up – Where the final statement includes such 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' responses and, where appropriate, the NCP's conclusions on those responses.

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: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint).



### **Complaint from the ECCHR and response from Cargill Cotton**

On 1 December 2010, Leigh Day and Co Solicitors, acting on behalf of the ECCHR, wrote to the UK NCP raising a number of concerns which the ECCHR considered constitute a Specific instance under the *Guidelines* in respect of the UK registered company Cargill Cotton Limited (Cargill) in relation to Uzbekistan. The ECCHR alleged that, by buying cotton, allegedly produced through the systematic use of child and forced labour in Uzbekistan, Cargill breached the following Chapters of the *Guidelines*:

*“Chapter II. General Policies*

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

- 1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- 2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*

*[...]*

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

*“Chapter IV. Employment and Industrial Relations*

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

*[...]*

- 1.(b) Contribute to the effective abolition of child labour.*
- 1.(c) Contribute to the elimination of all forms of forced or compulsory labour.”*

More information about the allegations made by the ECCHR in respect of Cargill can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>1</sup>

Cargill wrote to the UK NCP on 21 January 2011 and on 14 February 2011, denying these allegations. More information about Cargill’s response can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>2</sup>

### **UK NCP process in this specific instance**

On 8 March 2011, the UK NCP concluded its Initial Assessment on this complaint,<sup>3</sup> accepting for further consideration the alleged breach by Cargill of Chapters II(1), II(2), II(10), IV(1)(b) and IV(1)(c) of the *Guidelines*. In particular, the Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement on the following issues: Cargill’s policy of buying cotton from Uzbekistan; Cargill’s capacity to influence the government of Uzbekistan in relation to the use of forced and child labour; and Cargill’s disclosure of information related to its purchase of Uzbekistan-origin cotton in Uzbekistan.

**The acceptance of this Specific instance for further consideration by the UK NCP does not mean that the UK NCP considers that Cargill acted inconsistently with the *Guidelines*.**

The UK NCP offered, and both parties accepted, conciliation/mediation. The UK NCP therefore appointed ACAS<sup>4</sup> mediator Dr. Karl Mackie to serve as conciliator-mediator. The parties met at a conciliation meeting in London on 3 June 2011. The meeting was chaired by Dr. Mackie. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The main points of the agreement are:

*“Cargill does not condone the use of abusive, enforced or illegal labour wherever this may occur. It recognises that there have been serious allegations about the systematic use of forced child labour in Uzbekistan and would wish such allegations to be investigated by an appropriate independent international organisation. ECCHR believes that businesses have a responsibility to take active steps to prevent such practices as forced child labour in the supply chain.*

*With this in mind, Cargill and ECCHR have agreed to certain undertakings.*

*ECCHR and Cargill will inform each other and exchange views on a regular basis in the next 12 months.*

*Cargill and ECCHR agree to meet in 12 months time to review progress against the undertakings. This meeting will be hosted and facilitated by the UK NCP appointed mediator.*

*ECCHR wishes it to be noted that, although it is prepared for the time being to drop its request to Cargill for a cessation of trading in Uzbekistan cotton, it still believes that this remains a possible and appropriate course of action if other change efforts prove unsuccessful.”*

### **Outcome of the conciliation**

Following discussions which took place between 3 and 24 June 2011, the parties reached an agreement. Both parties have also agreed that no outstanding issues from the ECCHR's original complaint need to be examined by the UK NCP.

### **UK NCP conclusions**

Following the successful conclusion of the conciliation process by Dr. Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in the ECCHR'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.

11 July 2011

Nick Van Benschoten, Sergio Moreno.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

### **Notes**

1. [www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-764-initial-assessment-ncp-cargil-cotton.pdf](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-764-initial-assessment-ncp-cargil-cotton.pdf).
2. *Ibid.*
3. *Ibid.*
4. Advisory, Conciliation and Arbitration Service.

## **Final statement by the UK NCP on the complaint from the European Centre for Constitutional and Human Rights (ECCHR) against ICT Cotton Limited (in Uzbekistan)**

### **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 human rights, 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 governments 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:

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation 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.
3. 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*.
4. Follow up – Where the final statement includes such 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' responses and, where appropriate, the NCP's conclusions on those responses.

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: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint).

### **Complaint from the ECCHR and response from ICT Cotton**

On 7 December 2010, Leigh Day and Co. Solicitors, acting on behalf of the ECCHR, wrote to the UK NCP raising a number of concerns which the ECCHR considered constitute a Specific instance under the *Guidelines* in respect of the operations of the UK registered company ICT Cotton Limited (ICTC) in Uzbekistan. The ECCHR alleged that, by buying cotton, allegedly produced through the systematic use of child and forced labour in Uzbekistan, ICTC breached the following Chapters of the *Guidelines*:

*“Chapter II. General Policies*

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

- 1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.*
- 2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*
- 10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.”*

*“Chapter IV. Employment and Industrial Relations*

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

*[...]*

- 1.b) Contribute to the effective abolition of child labour.*
- 1.c) Contribute to the elimination of all forms of forced or compulsory labour.”*

More information about the allegations made by the ECCHR in respect of ICTC can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>1</sup>

ICTC wrote to the UK NCP on 8 February 2011 and firmly rejected all of ECCHR’s allegations. More information about ICTC’s response can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>2</sup>

### **UK NCP process in this specific instance**

On 8 March 2011, the UK NCP concluded its Initial Assessment on this complaint,<sup>3</sup> accepting for further consideration the alleged breach by ICTC of Chapters II(1), II(2), II(10), IV(1)(b) and IV(1)(c) of the *Guidelines*. In particular, the Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement on the following issues: ICTC and the ECCHR’s mutual recognition as reasonable partners in addressing the issues of forced and child labour in Uzbekistan; ICTC’s policy of buying cotton from Uzbekistan; ICTC’s capacity to influence the government of Uzbekistan in relation to the use of forced and child labour; and ICTC’s disclosure of information relating to its operations in Uzbekistan. **The acceptance of this Specific instance for further consideration by the UK NCP does not mean that the UK NCP considers that ICTC acted inconsistently with the *Guidelines*.**

The UK NCP offered, and both parties accepted, conciliation/mediation. The UK NCP therefore appointed ACAS<sup>4</sup> mediator Dr. Karl Mackie to serve as conciliator-mediator. The parties met at a conciliation meeting in London on 2 June 2011. The meeting was chaired by Dr. Mackie. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The main points of the agreement are:

*“ICT notes that ECCHR and other organisations strongly hold the view that there is systematic use of forced child labour in cotton picking in Uzbekistan and for this reason ECCHR believes that cessation of trading is an appropriate step. Although ICT itself does not believe that such systematic abuses are adopted in Uzbekistan and for this reason does not accept the request to cease trading, it acknowledges that it is important to avoid any such practices. It also acknowledges that businesses have a responsibility to take active steps to help to prevent such practices in their industry and to investigate the concerns properly, so that appropriate action can be taken to prevent any such practices if they are shown to occur in the industry either in Uzbekistan or elsewhere. With this in mind, ICT is prepared to take appropriate actions as agreed with ECCHR and ECCHR is prepared to drop the request for cessation of trading for the time being. ICT, supporting human rights and being against any form of systematic abuse of child labour anywhere, would immediately suspend business relations with any supplier who will, beyond reasonable doubt, be found to have used such practices. ECCHR and ICT will inform each other and exchange views on a regular basis in the next 12 months. To review progress on these issues within 12 months and meet ECCHR for a further discussion on lessons learned, and possibilities for further action which might assist progress on the issues above. This meeting will be facilitated by the NCP.”*

### **Outcome of the conciliation**

Following discussions which took place between 2 and 20 June 2011, the parties reached an agreement. Both parties have also agreed that no outstanding issues from the ECCHR's original complaint need to be examined by the UK NCP.

### **UK NCP conclusions**

Following the successful conclusion of the conciliation process by Dr. Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in the ECCHR'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.

11 July 2011

Nick Van Benschoten, Sergio Moreno.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

### **Notes**

1. [www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-765-initial-assessment-ncp-ict-cotton.pdf](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-765-initial-assessment-ncp-ict-cotton.pdf).
2. *Ibid.*
3. *Ibid.*
4. Advisory, Conciliation and Arbitration Service.

## **Final statement by the UK NCP on the complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) against Compass Group PLC on Eurest Algeria Spa (Algeria)**

### **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 human rights, 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 governments 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:

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation 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.
3. 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*.
4. Follow up – Where the final statement includes such 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' responses and, where appropriate, the NCP's conclusions on those responses.

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: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint).

### **Complaint from the IUF and response from Compass Group**

On 14 December 2009, the IUF wrote on behalf of the “Syndicat National Autonome des Personnels de l’Administration Publique” (SNAPAP) 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 Eurest Algeria Spa (Eurest), a subsidiary of the UK-registered company Compass Group PLC (Compass). The IUF alleged that Eurest refused to acknowledge the formation of a union and harassed union members, and therefore acted inconsistently with Chapter IV(1)(a) of the *Guidelines*<sup>1</sup> which states that:

[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.*”

More information about the allegations made by the IUF in respect of Eurest can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>2</sup>

Compass wrote to the UK NCP on 22 January 2010, denying these allegations and confirming its respect for trade unions rights as recommended by the *Guidelines*. More information about Compass’ response can be found in the Initial Assessment which is available on the UK NCP’s website.<sup>3</sup>

### **UK NCP process in this specific instance**

On 28 April 2010, the UK NCP concluded its Initial Assessment on this complaint,<sup>4</sup> accepting for further consideration the alleged breach by Compass of Chapter IV(1)(a) of the *Guidelines*. In particular, the Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement in relation to the issue of the establishment of a union branch at Eurest. **The acceptance of this Specific instance for further consideration by the UK NCP does not mean that the UK NCP considers that Compass acted inconsistently with the *Guidelines*.**

The UK NCP offered, and both parties accepted, conciliation/mediation. The UK NCP therefore appointed ACAS<sup>5</sup> mediator Dr. Karl Mackie to serve as conciliator-mediator. The parties met at three meetings in London on: 24 September 2010, 22 October 2010 and 7 December 2010. The meetings were chaired by Dr. Mackie.

### **Outcome of the conciliation**

Following a series of discussions from 7 December 2010 to 15 January 2012, the IUF and Compass have reached a settlement on issues relating to Eurest’s operations in Algeria. The settlement reinforces ongoing guarantees that workers at Eurest Algeria will be able to exert their rights of freedom of association in line with Algerian law and applicable internationally recognised labour standards. A process has been put in place whereby former named employees of Eurest may apply for suitable future employment with Eurest Algeria. Both parties have also agreed that no outstanding issues from the IUF’s original complaint need to be examined by the UK NCP.

**UK NCP conclusions**

Following the successful conclusion of the conciliation process by Dr. Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in the 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.

1 February 2012

Steven Murdoch, Danish Chopra, Sergio Moreno.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

**Notes**

1. OECD, *OECD Guidelines for Multinational Enterprises*, June 2000, available at [www.oecd.org/daf/international-investment/guidelinesformultinationalemerprises/48004323.pdf](http://www.oecd.org/daf/international-investment/guidelinesformultinationalemerprises/48004323.pdf) (accessed on 17 January 2012).
2. [www.bis.gov.uk/assets/biscore/business-sectors/docs/i/10-1000-initial-assessment-ncp-compass-group-plc.doc](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/10-1000-initial-assessment-ncp-compass-group-plc.doc) (accessed on 17 January 2012).
3. *Ibid.*
4. *Ibid.*
5. Advisory, Conciliation and Arbitration Service.



## Initial assessment by the UK NCP on the complaint from The LEAD Group against Xstrata PLC in the United Kingdom

The UK National Contact Point (NCP) for the *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) has decided that some of the concerns raised by The LEAD Group in its complaint merit further consideration and has decided to *accept* the Specific instance for further consideration. This *does not* mean that the UK NCP considers Xstrata PLC to have acted inconsistently with the *Guidelines*. The UK NCP is accepting for further consideration the alleged breach of the following parts of the 2000 version of the *Guidelines*: Chapeau of Chapter V (Environment); Chapter V(6)(a); and Chapter V(6)(b).

The UK NCP considers that, by accepting this Specific instance, it could help both parties in reaching a conciliated/mediated solution to the issue of Xstrata PLC's role in Innospec Inc's production of the fuel additive "tetraethyl lead" (TEL).

Taking into account the status of the complaint against Innospec Inc. in the US, the UK NCP will formally contact Xstrata PLC and The LEAD Group to ask whether they are willing to engage in conciliation/mediation with the aim of reaching a settlement.

### **The complaint and response**

On 27 August 2011 (with supplementary notes received on 25 October 2011, 29 November 2011 and 9 December 2011), the Australian non-governmental organisation (NGO), The LEAD Group,<sup>1</sup> wrote to the UK NCP raising a number of concerns which it considered constitute a Specific instance under the *Guidelines* in respect of Xstrata PLC (Xstrata)'s operations in the UK.

The LEAD Group alleged that Xstrata had failed to comply with the Chapeau of Chapter VI (Environment) and with Chapters VI(6)(a) and VI(6)(b) of the *Guidelines*,<sup>2</sup> as updated on 25 May 2011, which state that:

*"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:*

*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:*

- 1) 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;*
- 2) 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."*

The LEAD Group made the following two specific allegations in respect of Xstrata:

- That Xstrata supplied lead, extracted from Mount Isa (Australia) and smelted in the UK by Britannia Refined Metals Ltd. (Xstrata's UK subsidiary), to a US-based multinational, Innospec Inc. (Innospec), which in turn used the lead allegedly supplied by Xstrata to produce the environmentally-harmful fuel additive TEL for use in Afghanistan, Algeria, Burma, Iraq, North Korea and Yemen.

- That, following from Paragraph 3(a) above, Xstrata must be presumed to have breached the *Guidelines* if Innospec is found to have breached the *Guidelines* following the conclusion of a parallel complaint process against Innospec in the US.

In their response dated 21 November 2011, Xstrata denied having contravened Paragraph 6 of the *Guidelines*. In particular, Xstrata stated:

- That some of the lead production from Mount Isa is smelted by Britannia Refined Metals Ltd. (BRM), and that BRM did supply lead to Innospec to produce TEL; but that there is no evidence that all of the lead used by Innospec to produce TEL is supplied by Xstrata through BRM.
- That the amount of lead supplied by BRM to Innospec has been in decline for many years indicating a successful approach to phasing out leaded fuels worldwide. Xstrata also explained that, at present, there is no available safe substitute for TEL's usage in the aviation industry.
- That BRM supplied lead to Innospec for the production of TEL additives because Innospec supports the gradual phasing out of these additives worldwide and provides a support programme including remediation and decommissioning of redundant lead facilities. Xstrata also stated that Innospec expects to cease the sale of TEL for use in automotive gasoline in 2012, and that, at the Partnership for Clean Fuels and Vehicles (PCFV) Global Partnership Meeting (GPM) held on 26-27 October 2011 at UNEP (United Nations Environment Programme) Headquarters in Nairobi, it was stated that: "leaded petrol has now been all but phased out globally. There are still a handful of countries that use small amounts that will also phase out in the near future."
- That according to the *Guidelines*, responsible business conduct not only includes contribution to environmental performance but also economic and social progress with a view to achieving sustainable development.

### **The UK NCP process so far**

The UK NCP received The LEAD Group's complaint against Xstrata on 27 August 2011.

As the complaint was filed before 1 September 2011, the UK NCP has considered it under the 2000 version of the *Guidelines*.<sup>3</sup> For the avoidance of doubt, on 3 October 2011, the UK NCP sent to both parties a paper copy of (and the electronic link to) the 2000 version of the *Guidelines*. The UK NCP therefore considered the complaint from The LEAD Group in respect of the Chapeau of Chapter V (Environment) and Chapters V(6)(a) and V(6)(b) of the 2000 version *Guidelines*, which state that:

*"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:*

*Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:*

- a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;*

b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely.”

The LEAD Group’s complaint was primarily against Innospec (in that Innospec had allegedly provided TEL to Afghanistan, Algeria, Burma, Iraq, North Korea and Yemen) and involved Xstrata only to the extent that Xstrata was alleged to have supplied lead (from the UK) to Innospec, which Innospec then used to produce TEL. None of the countries to which Innospec is alleged to have provided TEL is an OECD member, nor are they adhering to the *Guidelines*, therefore it falls to the NCP of the country in which the companies concerned are established to deal with the complaint.

On 26 September 2011, after liaising with all the relevant NCPs (namely the US, Swiss and Australian NCPs), the UK NCP agreed:

- that the US NCP would take the lead in the complaint against Innospec (because Innospec is a US-based company) but the UK and Swiss NCPs would assist the US NCP if so requested, in engaging Innospec’s subsidiaries located respectively in the UK and in Switzerland; and
- that the UK NCP would take the lead in the complaint against Xstrata (because Xstrata is a UK-based company and the alleged breach of the *Guidelines* occurred in the UK) and that the UK NCP would take into account the status of the parallel complaint against Innospec and the complainant’s request first to engage Innospec, before proceeding to engage Xstrata in conciliation/mediation. In considering the complaint against Xstrata, the UK NCP also agreed to keep the Swiss and Australian NCPs closely engaged in the process, and to keep the US NCP updated on the progress of the complaint.

On 3 October 2011, the UK NCP forwarded the complaint to Xstrata and, in accordance with the UK NCP’s published complaint procedure, offered the company the opportunity to submit a preliminary response to the allegations by 1 November 2011.

On 25 October 2011, the complainant submitted substantial supplementary information in support of the complaints. On 25 October 2011, the UK NCP forwarded this information to Xstrata. In view of the supplementary information submitted by The LEAD Group, the UK NCP extended Xstrata’s deadline for submitting a preliminary response until 23 November 2011. Xstrata submitted its preliminary response dated 21 November 2011.

On 29 November 2011 and on 9 December 2011, the complainant submitted additional supporting evidence which the UK NCP forwarded to Xstrata.

Neither party decided to meet with the UK NCP but both parties remained in contact with the UK NCP.

### **UK NCP decision**

The UK NCP has decided that some of the concerns raised by The LEAD Group in its complaint merit further consideration and has decided to accept the Specific instance for further consideration. This does not mean that the UK NCP considers Xstrata to have acted inconsistently with the *Guidelines*.

The UK NCP is accepting for further consideration the alleged breach of the following parts of the 2000 version of the *Guidelines*: Chapeau to Chapter V (Environment); Chapter V(6)(a); Chapter V(6)(b).

As stipulated in Paragraph 14 of the “Commentary on Implementation Procedures of the OECD Guidelines for Multinational Enterprises”,<sup>4</sup> the UK NCP took the following points into account when considering whether The LEAD Group’s concerns merited further consideration:

“A) Identity of The LEAD Group and its interest in the matter:

a.1) The UK NCP is satisfied that The LEAD Group is a legitimate and credible body to make this complaint. The LEAD Group is an NGO based in Australia and works towards the elimination of lead poisoning (and the protection of the environment) across the world. The UK NCP considers that The LEAD Group is directly interested in the issues raised in the complaint and is in a position to supply information about it.

B) Whether the issue is material and substantiated:

b.1) Allegation that Xstrata supplied lead to Innospec and that Innospec used the lead supplied by Xstrata to produce TEL.

b) Amongst the supporting material referred to in the complaint, the UK NCP noted the statement made by The LEAD Group in its own news report dated 4 June 2011 (p. 4): ‘[Xstrata’s UK smelter] supplies the lead to Innospec in the United Kingdom.’”

In a response dated 21 November 2011, Xstrata confirmed that it did supply lead, through BRM, to Innospec for the production of TEL. The UK NCP notes however Xstrata’s submission that there is no evidence to show that Xstrata is Innospec’s sole supplier of lead for the production of TEL.

In light of the above, the UK NCP concludes that the allegations under Paragraph 3(a) above are, within the scope of the Initial Assessment, sufficiently substantiated.

The UK NCP considered The LEAD Group’s contention that Xstrata must be presumed to have breached the Guidelines if Innospec is found to have breached the Guidelines at the conclusion of a parallel complaint process against Innospec in the US.

The UK NCP considered the status of the complaint under the Guidelines against Innospec in the US. As at 29 November 2011, the US NCP has not reached a conclusion on whether Innospec acted in accordance with the Guidelines. The UK NCP does not consider that the UK NCP’s published complaint procedures allow the UK NCP to suspend a complaint before completing the Initial Assessment in order to wait for the outcome of a parallel complaint process run by another NCP. The UK NCP’s published guidance on situations where there are parallel proceedings<sup>5</sup> clearly states at Paragraph 8 that: “The UK NCP will only consider a request [to suspend the complaint process] once a complaint has been accepted for consideration and has become a Specific instance.” In other words, the UK NCP cannot suspend the complaint process before the complaint has actually passed the Initial Assessment stage and has been accepted for further consideration. The rationale for this approach is to avoid creating uncertainty amongst the parties in a situation where the complaint might not even be accepted for further consideration.

In light of the above, the UK NCP concludes that the allegation under Paragraph 3(b) above is not, at present, material to the complaint against Xstrata, and has therefore rejected it.

The above conclusion notwithstanding, the UK NCP will take into account (if available) the outcome of the complaint process in the US against Innospec, as part of the UK NCP’s examination of the allegations against Xstrata. Such examination will only be undertaken if the conciliation/mediation process between The LEAD Group and Xstrata is not successful (or is declined).

### ***Relevance of applicable law and procedures, including court rulings***

The UK NCP is not aware of parallel legal proceedings against Xstrata in respect of the same allegations made by The LEAD Group.

How similar issues have been, or are being, treated in other domestic or international proceedings:

With the exception of the parallel complaint under the *Guidelines* against Innospec in the US, the UK NCP is not aware of other domestic or international proceedings against Xstrata, brought on the basis of the same allegations made by The LEAD Group in this Specific instance.

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*:

One of the stated aims of the *Guidelines*, specifically the role of NCPs, is for the NCP to “offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law”. To this end, the UK NCP considers that, by accepting this Specific instance, it could assist the parties in reaching a conciliated/mediated solution to the issue of Xstrata’s role in Innospec’s production of TEL.

### ***Next steps***

Taking into account the status of the complaint against Innospec in the US, the UK NCP will formally contact Xstrata and The LEAD Group to ask whether they are willing to engage in conciliation/mediation with the aim of reaching a settlement. Subject to their response to this offer, the UK NCP will then liaise with both parties to arrange the conciliation/mediation meetings.

If a conciliated/mediated solution is possible, the UK NCP will reflect the successful outcome of this process in its final statement without making a determination as to whether the company has acted inconsistently with the *Guidelines*.

If a conciliated/mediated settlement is not possible (or the parties do not wish to engage in conciliation/mediation), the UK NCP will conduct a separate examination into the complaint and will reflect in its final statement the outcome of this examination, and a determination of whether the company has acted inconsistently with the *Guidelines*.

16 December 2011

Steven Murdoch, Danish Chopra, Sergio Moreno.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

**Notes**

1. "The Lead Education and Abatement Design Group Incorporated".
2. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf) (accessed on 29 November 2011).
3. OECD, *OECD Guidelines for Multinational Enterprises*, 2000, available at [www.oecd.org/investment/guidelinesformultinationaenterprises/1922428.pdf](http://www.oecd.org/investment/guidelinesformultinationaenterprises/1922428.pdf) (accessed on 29 November 2011). On 25 May 2011, the OECD endorsed an update to the *Guidelines*, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf) (accessed on 29 November 2011). On 29 June 2011, the UK NCP's Steering Board agreed that the UK NCP will apply the updated text with effect from 1 September 2011. The UK NCP's application of the updated *Guidelines* is set out on the UK NCP's website (accessed on 29 November 2011) under: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint) and [www.bis.gov.uk/ukncp-complaints-procedures](http://www.bis.gov.uk/ukncp-complaints-procedures).
4. OECD, *OECD Guidelines for Multinational Enterprises*, 2000, p. 58, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationaenterprises/48004323.pdf) (accessed on 29 November 2011).

## Initial assessment and conclusion by the UK NCP on a specific instance regarding a complaint by Australian NGO “A” against enterprise “B”. This initial assessment concludes the complaint process under the Guidelines

The UK National Contact Point for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided to reject the complaint on the grounds that some aspects of the complaint were not sufficiently substantiated, and further consideration of any aspects of the complaint would not contribute to the purposes and effectiveness of the Guidelines.

### The complaint and response

On 23 December 2011, an Australian non-governmental organisation (“A”) wrote to the UK NCP raising a number of concerns which it considered constitute a Specific instance under the Guidelines in respect of the operations in the UK and in Europe of a UK registered company (“B”).

A alleged that B had failed to comply with the following parts, reproduced below, of Chapter VI (Environment) of the 2011 version of the Guidelines:<sup>1</sup> Chapeau; Chapters VI(1); VI(2); VI(3); VI(6); VI(7); and VI(8):

*“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.

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.”

A made various allegations in respect of B. These allegations can be summarised as follows:

- a) That, by selling the product X<sup>2</sup> containing an environmentally harmful substance (“Y”), B does not take due account of, amongst other factors, the need to protect the environment.
- b) That, had B collected and evaluated information regarding the environmental impact of X, the company would have come to the conclusion that X damages the environment and would have taken steps to stop selling X.
- c) That B does not have target dates for improved environmental performance but has publicly stated that it intends to continue to sell X.
- d) That B has not provided the public or customers with adequate information on the potential environmental, amongst other, impacts of the sale of X in Europe; and does not train distributors and users on the environmental impact of Y.
- e) That B’s assessment, published on the company’s website, of the environmental risk of the use of Y is inaccurate and misleading.
- f) That B has failed to recognise that substituting Y with non-lead additives is a priority to protect the environment from harmful emissions.
- g) That B should explain how the company has contributed to the development of environmentally meaningful and economically efficient public policy.

In its responses of 16 January 2012 and 25 January 2012, B stated that leaded petrol is legal in the UK and that lead additives have not been banned in most countries of the European Union. B also explained that it is a very small and specialist company providing



a lead-based fuel additive to owners of classic and vintage cars for use both on road and in racing. B further claimed:

- a) That its activities actually help the environment by helping to keep old cars in use thus reducing the need to buy (and therefore manufacture) new cars.
- b) That the banning of the sale of leaded fuels in many countries has actually encouraged the production of petrol that is high in the environmentally harmful benzene.
- c) That the residues of the combustion of leaded fuels wash away as harmless lead salts.

### **The UK NCP process so far**

The UK NCP received A's complaint against B on 23 December 2011.

On 11 January 2012, the UK NCP forwarded the complaint to B and, in accordance with the UK NCP's published complaint procedure, offered the company the opportunity to submit a preliminary response to the allegations by 9 February 2012.

B submitted its preliminary response on 16 January 2012 and further clarified its position on 25 January 2012. On 26 January 2012, A submitted comments on the company's response.

On 28 and 29 March 2012 both parties submitted further comments to the UK NCP.

Neither party decided to meet with the UK NCP but both parties remained in contact with the UK NCP.

### **UK NCP decision**

The UK NCP has decided to reject A's complaint against B on the grounds that some aspects of the complaint have not been sufficiently substantiated, and further consideration of any aspects of the complaint would not contribute to the purposes and effectiveness of the *Guidelines*. The reasons for this decision are explained below at Paragraph 11.

In accordance with Section 3.2 of the UK NCP's published complaint procedure,<sup>3</sup> which reflects Paragraph 25 of the "Commentary on Implementation Procedures of the *OECD Guidelines for Multinational Enterprises*",<sup>4</sup> the UK NCP took the following points into account when considering whether A's concerns merited further consideration:

- a) Identity of A and its interest in the matter:
  - a.1) The UK NCP is satisfied that A is a legitimate and credible body to make this complaint. A is an NGO based in Australia and works towards the elimination of lead poisoning (and the protection of the environment) across the world. The UK NCP considers that A is directly interested in the issues raised in the complaint and is in a position to supply information about it.
- b) Whether the issue is material and substantiated:
  - b.1) Within the scope of the Initial Assessment, A has provided sufficient supporting information for the UK NCP to conclude that the issues identified by A in respect of the Chapeau to Chapter VI, and in respect of Chapters VI(2)(a), VI(3) and VI(6) of the *Guidelines* are material and substantiated. A supported its allegations with a number of documents, including: a report of the United Nations Environment Programme (UNEP) evaluating the UNEP-based "partnership for clean fuels and vehicles" (FPVC); a report published on the UNEP's website from the "Alliance to end childhood lead poisoning" on the effects of lead poisoning; and a snapshot of the company's website in which B

confirmed that its product, X, contains Y. The UK NCP notes that just because it has found that these aspects of the complaint are substantiated, this does not mean that it has concluded that the *Guidelines* have been breached.

b.2) However, the UK NCP does not consider that A sufficiently supported the allegations against B under Chapters VI(1), VI(2)(b), VI(7) and VI(8) of the *Guidelines*. In particular:

- i) In relation to Chapters VI(1)(a), VI(2)(b), VI(7) and VI(8) A did not provide sufficient supporting material to indicate that B may not be complying with these recommendations of the *Guidelines*. At the Initial Assessment stage of the complaint process, it is not for the UK NCP to find but for the complainant to produce such supporting evidence.
- ii) In relation to Chapters VI(1)(b) and VI(1)(c), A submitted that B does not include on its website target dates (and regular monitoring) for improved environmental performance in the form of the cessation of the sale of X. From a preliminary review of the facts of the case within the scope of the Initial Assessment, it is clear that B's sole product for sale is X. Therefore, termination of the sale of X could have effectively required the termination of B as a company. Such a target does not appear "appropriate to the enterprise" so as to be required under Chapter VI(1). Furthermore, the general purpose of the *Guidelines* is not to shut multinationals down but: "*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.*"<sup>5</sup>

In the circumstances of this case, considering a complaint that B has failed to set a target for the cessation of the sale of X appears inconsistent with the purposes of the *Guidelines*. In particular, the business carried out by B appears "in harmony" with current government policies, which allow the sale of such products. A has not provided sufficient evidence that there may be a failure to take other measures (appropriate to the enterprise) recommended under VI(1)(b) or VI(1)(c).

- c) Relevance of applicable law and procedures, including court rulings:
  - c.1) The UK NCP is not aware of parallel legal proceedings against B in respect of the same allegations made by A.
  - c.2) The UK NCP notes that the *Guidelines* clearly state<sup>6</sup> that: "*Obedying 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.*"

In light of the above, had the complaint been accepted, the UK NCP would not have determined whether B's sale of X complied with domestic and European Union law in the UK or abroad. However, the UK NCP notes that A has not alleged any breach of the applicable laws.

d) How similar issues have been, or are being, treated in other domestic or international proceedings:

d.1) The UK NCP notes that similar complaints under the *Guidelines* have been submitted by A against a US-based company and a separate UK-based company. Both of these complaints have been separately considered by the US NCP and the UK NCP, respectively. The UK NCP observes that while all complaints have related to Y, the characteristics of the companies involved in each case are different and therefore the treatment of these complaints can only be of limited assistance in determining how to proceed in relation to this Specific instance.

e) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*:

e.1) The UK NCP does not consider that further consideration of A's complaint against B would contribute to the purposes and effectiveness of the *Guidelines*. In reaching this decision, the UK NCP took the following points into account.

e.2) The UK NCP had regard to the acknowledgment in the *Guidelines* that while Governments wish to encourage the widest possible observance of the *Guidelines*, small enterprises may not have the same capacities as large enterprises, and in this regard notes:

i) That B is a very small company which operates in the niche market of vintage and old cars with engines that predate the use of unleaded fuel. Therefore, the UK NCP considers that a change in B's behaviour of the nature sought by A would not significantly affect the global sales of Y (and would not significantly reduce the global level of harm allegedly caused by the use of Y), but would almost certainly cause B's extinction as a viable company since the only product that B currently sells is based on Y. The purpose of the *Guidelines* is not to force companies to close, particularly when a company appears to be operating "in harmony" with current government policies.

ii) That the fact that B sells one product, which is based on Y, would make it virtually impossible for B to reach a mediated settlement with A on the allegations raised in the complaint. Therefore the UK NCP does not consider that further consideration of A's complaint would contribute to the aim of strengthening mutual confidence between enterprises and the societies they operate in.

e.3) The role of NCPs is to further the effectiveness of the *Guidelines*. In respect of Specific instances the main obligation is for the NCP to: "offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law."<sup>7</sup>

For the reasons outlined above, the UK NCP does not consider that further consideration of the issues raised would assist in resolving the issues raised, and therefore would not contribute to the effectiveness of the *Guidelines*.

e.4) That consideration of the allegations raised under Chapters VI(1)(b) and VI(1)(c) would be inconsistent with the purposes of the *Guidelines*.

**Next steps**

This Initial Assessment concludes the complaint process under the *Guidelines*.

14 May 2012

Steven Murdoch, Danish Chopra.

UK National Contact Point for the OECD *Guidelines for Multinational Enterprises*.

**Notes**

1. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf) (accessed on 29 February 2012).
2. The actual name of the product has been omitted to avoid identifying the company.
3. UK NCP, *UK NCP's Procedures for Dealing with Complaints Brought under the OECD Guidelines for Multinational Enterprises*, available at [www.bis.gov.uk/assets/biscore/business-sectors/docs/u/11-1092-uk-ncp-procedures-for-complaints-oecd.pdf](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/u/11-1092-uk-ncp-procedures-for-complaints-oecd.pdf) (accessed on 29 February 2012).
4. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, p. 82, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf) (accessed on 29 February 2012).
5. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Paragraph 1, p. 13, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf) (accessed on 29 February 2012).
6. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Paragraph 2, p. 17, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf) (accessed on 29 February 2012).
7. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Paragraph I(C) of the "Procedural Guidance", p. 72, available at [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalesterprises/48004323.pdf) (accessed on 29 February 2012).

## Final statement by the UK NCP on the complaint from The LEAD Group Inc. against Xstrata PLC (in the UK)

### **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 human rights, 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 governments 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:

1. Initial assessment – This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted.
2. Conciliation/mediation 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.
3. 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*.
4. Follow up – Where the final statement includes such 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' responses and, where appropriate, the NCP's conclusions on those responses.

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: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint).

### **Complaint from The LEAD Group Inc. and response from Xstrata PLC**

On 27 August 2011, the Australian Non-Governmental Organisation (NGO), The LEAD Group Inc.,<sup>1</sup> wrote to the UK NCP raising a number of concerns which it alleged constitute a Specific Instance under the *Guidelines* in respect of Xstrata PLC (Xstrata)'s operations in the UK. The LEAD Group Inc. alleged that Xstrata supplied lead, extracted from Mount Isa (Australia) and smelted in the UK by Britannia Refined Metals Ltd. (Xstrata's UK subsidiary), to a US-based multinational, Innospec Inc., which in turn used the lead allegedly supplied by Xstrata to produce the environmentally-harmful petrol (MOGAS) additive "tetraethyl lead" (TEL) for use in Afghanistan, Algeria, Burma, Iraq, North Korea and Yemen. The LEAD Group Inc. alleged that Xstrata's behaviour was contrary to the Chapeau of Chapter VI (Environment) and Chapters VI(6)(a) and VI(6)(b) of the 2011 version of the *Guidelines*<sup>2</sup> which state that:

*"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:*

[...]

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."

More information about the allegations made by The LEAD Group Inc. in respect of Xstrata can be found in the Initial Assessment which is available on the UK NCP's website.<sup>3</sup>

Xstrata wrote to the UK NCP on 21 November 2011, denying having contravened the *Guidelines*, and stressing that, according to the *Guidelines*, responsible business conduct not only includes contribution to environmental performance but also economic and social progress with a view to achieving sustainable development. More information about Xstrata's response can be found in the Initial Assessment which is available on the UK NCP's website.<sup>4</sup>

### **UK NCP process in this Specific Instance**

On 16 December 2011, the UK NCP concluded its Initial Assessment of this complaint.<sup>5</sup> As the complaint was filed before 1 September 2011, the UK NCP considered it under the 2000 version of the *Guidelines*.<sup>6</sup> The UK NCP accepted for further consideration the alleged breach by Xstrata of the following parts of the 2000 version of the *Guidelines*: Chapeau of Chapter V (Environment); Chapter V(6)(a); and Chapter V(6)(b). The rationale for this decision was set out in the Initial Assessment of 16 December 2011. The Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement in relation to the issue of Xstrata's role in Innospec Inc's production of TEL for MOGAS. **The acceptance of this Specific Instance for further consideration by the UK NCP does not mean that the UK NCP considers that Xstrata acted inconsistently with the Guidelines.**

The UK NCP offered, and both parties accepted, conciliation/mediation. The UK NCP therefore appointed ACAS<sup>7</sup> mediator Dr. Karl Mackie to serve as conciliator-mediator. The parties met in London on 17 February 2012 (The LEAD Group Inc. participated in the meeting by telephone and was represented in London by the UK-based NGO “RAID”<sup>8</sup>). The meeting was chaired by Dr. Mackie.

### **Outcome of the conciliation**

The parties reached an agreement, and the complaint was withdrawn.

### **UK NCP conclusions**

Following the successful conclusion of the conciliation process by Dr. Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in The LEAD Group Inc.’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.

31 May 2012

Steven Murdoch, Danish Chopra.

UK National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

### **Notes**

1. “The Lead Education and Abatement Design Group Incorporated”.
2. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, available at [www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf](http://www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf) (accessed on 29 February 2012).
3. [www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-1451-initial-assessment-lead-group-against-xstrata.pdf](http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-1451-initial-assessment-lead-group-against-xstrata.pdf) (accessed on 23 April 2012).
4. *Ibid.*
5. *Ibid.*
6. OECD, *OECD Guidelines for Multinational Enterprises*, 2000, available at [www.oecd.org/investment/guidelinesformultinationalenterprises/1922428.pdf](http://www.oecd.org/investment/guidelinesformultinationalenterprises/1922428.pdf) (accessed on 23 April 2012). On 25 May 2011, the OECD endorsed an update to the *Guidelines*, available at [www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf](http://www.oecd.org/investment/guidelinesformultinationalenterprises/48004323.pdf) (accessed on 23 April 2012). On 29 June 2011, the UK NCP’s Steering Board agreed that the UK NCP will apply the updated text with effect from 1 September 2011. The UK NCP’s application of the updated *Guidelines* is set out on the UK NCP’s website (accessed on 23 April 2012) under: [www.bis.gov.uk/nationalcontactpoint](http://www.bis.gov.uk/nationalcontactpoint) and [www.bis.gov.uk/ukncp-complaints-procedures](http://www.bis.gov.uk/ukncp-complaints-procedures).
7. Advisory, Conciliation and Arbitration Service.
8. “Rights and Accountability in Development”.

## Final statement by the United States NCP on the specific instance from Lead Education and Abatement Design (LEAD) Group Incorporated against Innospec

### **Background**

The *OECD Guidelines for Multinational Enterprises* (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The *Guidelines* are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the *Guidelines* form one part. Adhering governments have committed to encourage their MNEs to follow the *Guidelines* in their global operations and to appoint a national contact point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the *Guidelines*.

As a part of its function, the US NCP receives concerns raised, in the form of a specific instance, about the business conduct of a MNE operating in or from the United States. It handles such issues in accordance with procedures it has adopted for this purpose. In such circumstances, the NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to matters raised under the *Guidelines*. The NCP's role is to take up issues that are amenable to a consensual resolution under the *Guidelines* and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the *Guidelines*. Consistent with the voluntary nature of the *Guidelines*, the NCP does not make a determination whether a "violation" of the *Guidelines* has occurred, nor does the NCP have legal authority to adjudicate disputes submitted under this process.

### **The specific instance**

On 27 August 2011, The Lead Education and Abatement Design (LEAD) Group Incorporated contacted the US NCP regarding concerns over the manufacture and sale of tetra ethyl lead (TEL), the additive for leaded gasoline, by Innospec, headquartered in Colorado. Innospec is the world's only remaining manufacturer of TEL. The LEAD Group's specific instance filing requested mediation between the two parties, with the goal of ending TEL's sale to and use in the countries that continue to use leaded gasoline, before the end of 2011. The LEAD Group, based on information from the UN Environment Program's Partnership for Clean Fuels and Vehicles, identified those countries as Afghanistan, Algeria, Iraq, Myanmar (Burma), North Korea and Yemen. The LEAD Group also asked that Innospec buy back existing stocks of TEL held in the six countries. The LEAD Group asserted that Innospec's continued sale of TEL was inconsistent with the environmental provisions of the *Guidelines*.

The LEAD Group also asserted that Xstrata, a Swiss-incorporated company, played an important supply chain role in Innospec's activities. The LEAD Group alleged that Xstrata owned a mine in Australia that sent its lead to the UK for refining at BRM, a UK-based smelter, and that BRM served as Innospec's sole source for lead used to produce TEL. The LEAD Group asked that if Innospec would not cease its sale of TEL to the above countries for leaded gasoline, then Xstrata should cease its sale to Innospec of lead for TEL for leaded gasoline. Accordingly, The LEAD Group sent its 27 August specific instance request to the Australian, Swiss, UK and US NCPs.



The four NCPs consulted and agreed the US NCP would take the lead on Innospec-related issues, the UK NCP would lead on Xstrata-related matters, and the Australian and Swiss NCPs would offer support as appropriate. On 30 September, the US NCP notified Innospec of The LEAD Group's complaint. On 30 September, the US NCP separately asked The LEAD Group to identify the precise provisions of the *Guidelines* on which it was basing its request.

On 4 October, Innospec, through its outside counsel, contacted the US NCP. Innospec stated it had had no previous interaction with The LEAD Group, but was aware of its views. Innospec said The LEAD Group's characterisation of Innospec's activities contained a number of inaccuracies and misunderstandings, including regarding how difficult it would be to change from leaded to unleaded gasoline use in the consuming countries under the proposed timeline. Innospec stated that it saw no merit in The LEAD Group's complaint and was considering not engaging in the specific instance process. The NCP confirmed that the specific instance process was voluntary, but suggested Innospec consider whether it would be useful to engage The LEAD Group to discuss their different assessments of the factual circumstances. In accordance with its procedures, the NCP informed Innospec that if Innospec chose not to participate the NCP would note Innospec's decision in a public statement. In an 5 October letter to the US NCP, Innospec declared that it had not sold TEL to Afghanistan, North Korea or Burma.

On 13 October, The LEAD Group responded to the US NCP's 30 September letter, contending that Innospec's actions were inconsistent with the principles in Chapter VI (Environment), specifically Paragraphs 1(a), (b) and (c); 2(a) and (b); 3; 6(a), (b), (c) and (d); 7 and 8.

After further internal consideration, Innospec decided it would be unproductive to engage in the process, stating that it believed The LEAD Group's request to close down all TEL production for leaded gasoline and cease sales prior to the end of 2011 was unrealistic. The NCP informed The LEAD Group on 14 December of Innospec's decision.

### **Recommendation**

After preliminary review, the US NCP determined the issues raised by The LEAD Group merited further consideration under the *Guidelines* and would have been prepared to offer its good offices to assist the two parties to undertake a dialogue to seek a positive resolution. Innospec stated in its 10-K Securities and Exchange Commission report of 2010 that the company expected all sales of TEL for automobile gasoline use to cease in 2012, thus suggesting that its stated plans and the objectives of The LEAD Group were not far apart. The NCP has learned that Innospec now believes sales may continue into 2013.

Under US NCP procedures, acceptance of The LEAD Group's specific instance would not indicate the NCP considered Innospec to have acted inconsistently with the *Guidelines*, but rather that the NCP considered it appropriate to facilitate a discussion between the parties of the issues raised. For Innospec's part, a decision to engage with The LEAD Group under this process would not have implied any *prima facie* admission of conduct inconsistent with the *Guidelines*. Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third-party to assist parties to reach their own resolution of concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for co-operative problem-solving between the parties.

The LEAD Group was prepared to engage in a mediated dialogue. In the end, Innospec declined to participate. The NCP observed the two parties had divergent views – not only with respect to the appropriate approach going forward, but also with respect to the underlying facts of the situation. In particular, Innospec contended The LEAD Group was mistaken in its views in a number of respects, and did not wish to engage on those issues with The LEAD Group. According to Innospec, its decision not to participate was based, in part, on certain earlier public statements by The LEAD Group. Those statements caused Innospec to believe The LEAD Group would not engage in a dialogue in good faith.

The US NCP determined it would be unproductive to offer its good offices, because it would be unable to bring the parties together to address the issues raised. However, the NCP encourages the parties to continue to consider how to achieve the conditions necessary for a good faith dialogue on this matter.

1 February 2012

Alan Yu.

US National Contact Point for the *OECD Guidelines for Multinational Enterprises*.

## Final statement by the US NCP on the complaint from UNITE HERE, AFL-CIO and the International Union of Food Workers against LSG Sky Chefs

### **Background**

The *OECD Guidelines for Multinational Enterprises* (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The *Guidelines* are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the *Guidelines* form one part. Adhering governments have committed to encourage their MNEs to follow the *Guidelines* in their global operations and to appoint a national contact point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the *Guidelines*.

As a part of its function, the US NCP receives concerns raised, in the form of a specific instance, about the business conduct of a MNE operating in or from the United States. It handles such issues in accordance with procedures it has adopted for this purpose. In such circumstances, the NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to matters raised under the *Guidelines*. The NCP's role is to take up issues that are amenable to a consensual resolution under the *Guidelines* and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the *Guidelines*. Consistent with the voluntary nature of the *Guidelines*, the NCP does not make a determination whether a "violation" of the *Guidelines* has occurred, nor does the NCP have legal authority to adjudicate disputes submitted under this process.

### **The specific instance**

On 26 September 2011, the US NCP received a specific instance submission signed jointly by the presidents of UNITE HERE, AFL-CIO and the International Union of Food Workers (IUF). UNITE HERE and its partners raised issues related to LSG Sky Chefs, specifically the consistency of the latter's activities with the recommendations in Chapter II (General Policies), Chapter V (Employment and Industrial Relations), and Chapter VIII (Consumer Interests) of the *Guidelines*. UNITE HERE requested the NCP's assistance to oversee a process of engagement between LSG Sky Chefs' corporate leadership and UNITE HERE to find remedies to the issues it raised.

The US NCP informed the German NCP of the submission, and shared with it all related documents and information. The two NCPs agreed the US NCP should take the lead on this specific instance because the issues raised had occurred in the United States.

On 25 October 2011, the Chief Executive Officer of LSG Lufthansa Service Holding AG, the parent body for LSG Sky Chefs, acknowledged receipt of the specific instance filing, in a letter to the NCP. He asserted that LSG Sky Chefs was in compliance with applicable national law and practice.

At the time of the specific instance submission, the US National Mediation Board (NMB) was overseeing an ongoing negotiations process between LSG Lufthansa and UNITE HERE. Because the NMB was addressing contract negotiations between the parties, the NCP determined it would await the outcome of the NMB process before assessing what, if any, role the NCP might offer to the parties. The NCP did not consider the existence of a parallel

proceeding sufficient reason by itself to decide not to offer its good offices, consistent with the Procedural Guidance of the *Guidelines*. For their part, the parties did not pursue further involvement from the NCP while the NMB process and contract negotiations were ongoing.

On 12 January 2012, UNITE HERE informed the NCP that the two sides reached a tentative collective bargaining agreement. On 17 February, UNITE HERE, after consultation with AFL-CIO and IUF, officially withdrew its specific instance. The NCP considers the matter between the parties is now closed.

1 March 2012

Alan Yu.

US National Contact Point Team for the *OECD Guidelines for Multinational Enterprises*.

## ANNEX 2

*Promotional activities on the Guidelines,  
June 2011-June 2012***Promotional activities conducted or co-organised by NCPs****Argentina**

- Ministry of Foreign Affairs meeting with governmental agencies, trade unions, NGOs, business associations, and other stakeholders, 24 November 2011.

**Austria**

- Two-day international workshop focusing on mediation in co-operation with the Dutch NCP, scheduled September 2012.

**Canada**

- Workshops and information sessions for heads of missions and trade commissioners, presentations to visiting delegations, and internal training, workshops and seminars.

**Colombia**

- Launching of the Colombian NCP, 13 June 2012.
- Engagements with trade associations in the software industry.
- “Expogestión Barranquilla” Conference where the Minister of Trade launched the OECD Investment Policy Reviews and presented the *Guidelines* and NCP.
- CSR Mission to the EU, May 2012.
- Launch of “Yo le juego limpio a Colombia” campaign to encourage fair business by President of Colombia Juan Manuel Santos, 5 June 2012.

**Denmark**

- Seminar for Danish lawyers, December 2011.
- EU Conference on business and human rights, May 2012.

**Estonia**

- Training for Enterprise Estonia consultants, March 2012.

**Finland**

- High level seminar with keynote speaker from the OECD and with representatives from business, labour, and NGOs.

**France**

- Co-operation with MEDEF (Mouvement des Entreprises de France) to promote the *Guidelines* among enterprises.
- Events organised and attended by the Directorate General of the Treasury, including meetings with the Business 20, where the *Guidelines* were promoted and discussed.

**Germany**

- Meeting of the Working Group of the NCP with representatives of trade unions, business associations, and NGOs, 7 November 2011.
- “CSR in International Dialogue” Conference, Ministry of Labour and Social Affairs, 16 December 2011.

**Greece**

- “2012 Meeting: Human Rights and Anti-Corruption” organised by the South-East Europe Global Compact Local Networks.

**Israel**

- Meeting with the Histadrut (General Federation of Workers in the Land of Israel) together with the representative to the permanent delegation of Israel to the OECD and as part of the Inter-governmental Advisory Board to the OECD.
- Meetings with “Maala” (Business for Social Responsibility), the Manufacturers Association, and the Corporate Social Responsibility Institute at the Academic Center of Law and Business.

**Italy**

- Promotional events for the updated *Guidelines* in the Marche, Liguria, Emilia Romagna and Puglia regions, May-December 2011.

**Korea**

- Sixth Sustainability Management Conference to raise awareness of the *Guidelines* and to urge business to comply, November 2011.

**Latvia**

- Regional education courses on “Business sustainability and CSR” for employers.

**Netherlands**

- Stakeholder meetings, November 2011 and Spring/Summer 2012.
- Conference on Responsible Business Conduct jointly organised by the Ministry of Economic Affairs, Agriculture and Innovation, the Ministry of Foreign Affairs and the Dutch Industry Association, 12 December 2011.

**New Zealand**

- Annual liaison group meeting with representatives from unions and business organisations.

**Norway**

- Launch of the new OECD *Guidelines* co-hosted by the Norwegian NCP, the Confederation of Norwegian Enterprises, the Norwegian Confederation of Trade Unions, and the Forum for Environment and Development, 15 June 2011.

- “Business in Development: From Conflict to Collaboration” Conference co-hosted by the NCP, the Peace Research Institute Oslo, and the Business for Peace Foundation, 17 October 2011.
- NCP and Extractive Sector Event co-hosted by the NCP, organised by the Institute for Human Rights and Business and International Council on Mining and Metals, London, 23 March 2012.

### **Peru**

- Events organised or co-organised by ProInversion, the Peruvian agency for private investment: Tax for Works workshop (28 October 2011), V-China-Latin American Business Summit (21-22 November 2011) and the Peru regions forum (13-14 December), all in Lima, and road shows in England, Japan, and Korea (April-May 2012).

### **Portugal**

- Several meetings organised by AIECEP, the Portuguese Investment Agency, for Portuguese companies investing abroad in various markets.

### **Romania**

- Annual meeting of the Romanian economic counsellors abroad, co-hosted by the NCP and the Romanian Center for Trade and Investment Promotion.

### **Spain**

- Workshop on CSR and the *Guidelines* for the Ministry of Economics and Finance.
- Training activities to inform new ministers of superior bodies of the Secretariat of State and Commerce specialised in commerce and investment on the *Guidelines*.

### **Sweden**

- Conferences and seminars as part of the Swedish Partnership for Global Responsibility (SPGR) in San Francisco, Hong Kong (China) and Beijing (Autumn 2011).
- Multi-stakeholder workshop on business and human rights, Stockholm, Autumn 2011.
- International multi-stakeholder round table on Internet freedom, Stockholm, Autumn 2011.
- International multi-stakeholder conference on Internet freedom for global development, Stockholm, April 2012
- Stockholm + 40 conference for ministers, young company representatives and civil society at large on global sustainable development, Stockholm, April 2012.
- Working group to design Nordic strategy on CSR adopted by Nordic Council of Ministers.
- Arctic Council CSR workshop focusing on the *Guidelines* in an Arctic context, organised by the Swedish Presidency, Stockholm, January 2012.

### **Switzerland**

- Seminar focusing on human rights and supply chain due diligence, organised by major Swiss business associations in co-operation with the Swiss NCP and other government offices, 5 March 2012.

- Three meetings with the consultative group of the NCP dedicated to information exchange regarding the follow-up to the *Guidelines* update with participation from all stakeholder groups, June and November 2011 and April 2012.

### **United States**

- Fordham Law School International Law Symposium, New York, October 2011.
- Washington International Business Council meeting, Washington, October 2011.
- Business for Social Responsibility Conference, San Francisco, November 2011.
- OECD National Contact Points and Extractives Sector Conference, London, March 2012
- Tuesday Group (Washington-based sustainable development and human rights NGOs) meeting, Washington, March 2012.

### **United Kingdom**

- All-Party Parliamentary Group on International Corporate Responsibility, London, November 2011.
- Human Rights event organised by the UK Foreign and Commonwealth Office where NCP presented *Guidelines* and Risk Awareness Tool, March 2012.

## **Activities and events co-ordinated by stakeholders and other entities with NCP participation**

### **Austria**

- Austrian CSR Day hosted by the Austrian Business Council for Sustainable Development (RespACT), 20 September 2011.

### **Brazil**

- Seminar organised by the CUT trade union (Central Única dos Trabalhadores), on the theme “International Complaints: The Functioning of the OECD NCPs, the Commission on Social and Labor Issues of Mercosul and ILO”, on 6 February 2012, in São Paulo.
- “The new *OECD Guidelines for Multilateral Enterprises: Brazilian and Dutch experiences*”, jointly presented by the NCP Brazil and representative of the Netherlands Ministry of Economic Affairs, Agriculture and Innovation, at the Ethos International Conference, on 11 June 2012, in São Paulo.
- Presentation at the event “Promoting a Corporate Responsible Business: the *OECD Guidelines for Multilateral Enterprises*”, co-organised by CEDHA and SOMO, at the UN Conference on Sustainable Development – Rio + 20, on 16 June 2012, in Rio de Janeiro.

### **Canada**

- Annual Prospectors and Developers Association of Canada International Convention.
- Inaugural meeting of the Industry Association Sustainability Council, March 2012.
- Meeting of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development.
- Inter-American Development Bank Annual Meeting and Business Forum.



### **Colombia**

- Latin-American Forum on Fight against Transnational Corruption, March 2012.
- CSR and Human Rights Forum, Universidad de los Andes.

### **Denmark**

- Guest lecture at University of Copenhagen, April 2012.

### **Germany**

- Conference of the German Chambers of Industry and Commerce (DIHK), Bremen, Germany, 14 September 2011.
- “Rights and Accountability. The way ahead for business and human rights” Conference, organised by the University Duisburg-Essen and NGOs.

### **Greece**

- “Government Social Responsibility within the framework of the European GSR Model project” meeting co-organised by the Hellenic Organization for Standardization (ELOT), the European Community Business and Innovation Centre (BIC) of Attica and the Decentralized Administrative Division of Attica.
- Annual Corporate Social Responsibility Conference, American-Hellenic Chamber of Commerce.

### **Italy**

- Seminar on the updated *Guidelines* organised by the CGIL, a trade union organisation.
- Presentation of the 4th edition of “Europe, Social Responsibility and Consumers. Observatory on the styles and trends of consumption” organised by the Consumers’ Forum.
- Forum on CSR organised by the Italian Bankers’ Association (ABI), 26-27 January 2012.
- Seminar at the Ministry of Economic Development attended by NGOs and organised to clarify aspects of the updated *Guidelines*, 16 March 2012.

### **Japan**

- Events organised by Keidanren (Japan Business Federation), Rengo (Japanese Trade Union Confederation), the Sustainability Forum Japan and the UN Global Compact Japan Network respectively.

### **Morocco**

- Training workshop on the *Guidelines* for Moroccan and Tunisian trade union delegates organised by the international federation of metalworkers’ organisations, Casablanca, January 2012.

### **Norway**

- Meeting with the Chinese Delegation of 24 Deans of law faculties to the University of Oslo, 26 August 2011.
- Ministry of Foreign Affairs; “Open House” for Norwegian Ambassadors and Business Representatives, 22 August 2011.
- Indigenous Peoples’ Forum, Tromsø, Norway, 12 October 2011.

- NIMA CSR Conference for purchasers, Oslo, 20 October 2011.
- “Responsible Business in Rough Places”, Rafto Foundation and the Norwegian School of Economics (NHH), Bergen, Norway, 3 November 2011.
- Lecture at BI Norwegian Business School, Executive MBA Programme, 24 November 2011.
- Global Compact Nordic, Oslo, 7 November 2011.
- Seminar on Indigenous Peoples, Kirkenes, Norway, 9 February 2012.
- Expert Conference on Business and Human Rights organised by the Danish Presidency of the Council of the European Union, Copenhagen, 7-8 May 2012.

### **United States**

- US NCP and International Finance Corporation Compliance Advisor Ombudsman Roundtable on dispute resolution and outreach activities, Washington, October 2011.
- US State Department CSR Initiatives Conference, Washington, April 2012.
- US State Department Workshop on Implementation of the UN Guiding Principles on Business and Human Rights, Washington, April 2012.
- US Council for International Business CSR Committee meeting, Washington, May 2012.

### **United Kingdom**

- Business in Development Conference, Oslo, October 2011.
- Rights and Accountability NCP Conference, Berlin, November 2011.
- Governance and Transparency Conference, Oxford University, January 2012.
- London Amnesty International Business and Human Rights Conference, March 2012.
- London Extractives Industries Conference, March 2012.

## **OECD promotional activities**

### **Conferences and other events**

- Matinale Institut RSE Management, 30 June 2012.
- School of Law, University of Witwatersrand and Institute for Human Rights and Business, “Financial Institutions, Human Rights and International Best Practices”, London, 19 July 2011.
- British Institute of International and Comparative Law, Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the International Bar Association, “Business and Human Rights: Implementing the UN Guiding Principles”, 15-16 September 2011.
- Consultations with the Global Reporting Initiative on the elaboration of a linkage document between the *OECD Guidelines for Multinational Enterprises*, the GRI Sustainability Framework and the forthcoming G4 Sustainability Reporting *Guidelines*, Amsterdam, 11-12 September 2011.
- “10<sup>e</sup> Forum Européen pour le Développement Durable et une Entreprise Responsable”, *Les Echos Federer*, 11 October 2011.
- BSR Annual Conference, San Francisco, “Why Business Should Pay Attention to the OECD MNE *Guidelines*”, 1-4 November 2011.
- 2011 UNCTAD-ILO-OECD Roundtable on CSR, Inter-Agency Working Group on the Private Investment and Job Creation Pillar of the G20 Multi-Year Action Plan on Development, Geneva, 9 November 2011.

- Korean Ministry of Knowledge and Economy, 6th Sustainability Management Conference, “Updated OECD Guidelines and Revised IFC Performance Standards”, Seoul, South Korea, 9 November 2012.
- ILO-OECD Dialogue with the Business Community in Indonesia “Responsible and Sustainable Business Practices across Value Chains”, Opening remarks by Deputy Secretary-General Rintaro Tamaki, Jakarta, 30 November 2011.
- “Atelier Perspectives et Solutions”, BSR Paris, *Les Principes directeurs de l’OCDE*, Paris, 7 December 2011.
- 1<sup>re</sup> Journée d’études et d’actualités de l’Institut de la RSO “RSE et RSO : Convergence normative ?”, Faculté de Droit, de Sciences politiques et de Gestion, Université de Strasbourg, Strasbourg, 6 January 2012.
- Workshop on CSR in the Arctic on the *OECD Guidelines for Multinational Enterprises*.
- 26-27 January, Stockholm, Sweden (organised by the Swedish Chairmanship of the Arctic Council).
- *Les principes directeurs de l’OCDE à l’intention des entreprises multinationales*, Association Française pour l’Organisation Internationale du Travail (AFOIT), Paris, 9 March 2012.
- Seminar on the *OECD Guidelines for Multinational Enterprises*, Finnish National Contact Point, Helsinki, 26 April 2012.
- Third High-Level Policy Roundtable on International Investment Policies in Asia: Responsibility and Sustainability, Shanghai, P.R. China organised by the Asian Development Bank Institute (ADBI) and the Organisation for Economic Co-operation and Development (OECD) have co-organised annual policy roundtables on International Investment Policies in Asia, 7-9 May 2012.
- BIAC webcast seminar on the *Guidelines*, Remarks by the OECD Secretary-General Angel Gurría, 9 May 2012.
- FEB/VBO Seminar on International CSR Standards, Remarks by Guest Speaker OECD Deputy Secretary-General Yves Leterme, Brussels, 22 May 2012.
- Remarks by OECD Secretary-General at the Conference organised by the Israeli Ministry of Industry, Trade and Labor and the Ministry of Justice, in collaboration with the Manufacturers Association of Israel: “Corporate Responsibility and Combating Foreign Bribery. OECD requirements, trends in the global arena and implications on business”, Tel Aviv, Israel, June 2012.

### **Publications**

- *OECD Observer*, September 2011, “OECD Guidelines, Better Enterprises for Better Lives”.
- “Harvard Law School Forum on Corporate Governance and Financial Regulation”, Matthew McCabe, *OECD Guidelines for Multinational Enterprises*, Revised 2011.
- “The American Society of International Law”, The 2011 Update of the *OECD Guidelines for Multinational Enterprises*, by Jernej Letnar Cernic, 10 February 2012, Cleangovbiz Initiative, March 2012.
- Chinese version of the *OECD Guidelines* information sheet, May 2012.
- Reference Instruments and Initiatives relevant to the updated *Guidelines*, March 2012.

## ANNEX 3

### Contributions from stakeholders

#### Contribution from BIAC

##### **International promotional activities**

- On 9 May 2012, BIAC delivered a webcast sponsored by Deloitte on the updated *Guidelines* and their implications for responsible business conduct in a global economy with participation from OECD Secretary-General Angel Gurría.

##### **Business association activities by country**

###### **Germany**

- The German Employers' Associations (BDA) and the Confederation of Netherlands Industry and Employers (VNO-NCW) published a joint brochure titled *The 2011 OECD Guidelines for Multinational Enterprises: An introduction for business*.
- "CSR Germany", the CSR Internet portal of Germany's four leading business organisations published information on the updated *Guidelines*.

###### **Japan**

- On 22 June 2011, the Secretariat of the Japanese business association KEIDANREN presented a report to the members of BIAC Japan on the updated *Guidelines* at the General Assembly of BIAC held by Japan.
- On 14 September 2011, the Director of the OECD Division of MOFA (the Japanese Ministry of Foreign Affairs) and the Vice Chairman of the BIAC International Investment and Multinational Enterprises Committee made a presentation on the updated *Guidelines* using the Japanese translation to approximately 200 participating business representatives of KEIDANREN.
- On 6 February 2012, KEIDANREN members discussed the implementation of the updated *Guidelines* with the Japanese NCP.
- On 17 April 2012, the Japanese NCP and KEIDANREN held a dialogue between the peer learning/review team and Japanese enterprises.

###### **Netherlands**

- The German Employers' Associations (BDA) and the Confederation of Netherlands Industry and Employers (VNO-NCW) published a joint brochure titled *The 2011 OECD Guidelines for Multinational Enterprises: An introduction for business*.

- In December 2011, VNO-NCW organised a national conference on the OECD *Guidelines* and the UN Guiding Principles.
- VNO-NCW provided substantial input on the *Guidelines* for an Advisory publication of the Social Economic Council on CSR published June 2012.
- VNO-NCW published: articles on the *Guidelines* in “de Internationale Spectator” (Dutch) and the “Ethical Corporation Magazine”; a section on the OECD *Guidelines* in its book on CSR “Onze Gemeenschappelijke Toekomst” (“Our Common Future”); and an anti-corruption brochure together with the Ministries of Foreign Affairs and Economic Affairs.

### Switzerland

- The Confederation of Swiss Employers, the Federation of Swiss Enterprises (Economiesuisse) and SwissHoldings informed their members of the update to the *Guidelines* via circulars and website updates. The SwissHoldings Working Group offered information on the update through its Working Group “MNE and FDI”.
- On 5 March 2012, the three Swiss business associations organised a seminar on the updated *Guidelines* in which representatives from Swiss business, the Swiss NCP and the public sector reported and discussed implementation of new provisions.

### Israel

- In September 2011, the Annual International Organisation of Employers (IOE) European Members Meeting in Tel Aviv included a Global Policies for Business session conducted by the Manufacturers Association of Israel (MAI).
- Between February and April 2012, MAI translated the German and Dutch industry associations’ brochure *The 2011 OECD Guidelines for Multinational Enterprises: An introduction for business* into Hebrew and released printed and electronic copies to its members and related partners.
- MAI integrated the OECD MNE *Guidelines* into the meetings of the Business Forum (which evolved from the Antibribery Business Forum of MAI) which are held 3-4 times per year.
- MAI hosted seminars addressing the topics of “Risk Management in International Business – How to Foresee and Impede Corruption, Money-Laundering and Fraud” (December 2011) and “MNE *Guidelines* and Antibribery” in co-operation with the Ministry of Industry, Trade and Labor and the Ministry of Justice (June 2012).

## Contribution from TUAC

### International promotional activities

- Article by the TUAC General Secretary on the strengths of the updated OECD *Guidelines* and the need to increase oversight and strengthen the authority of the NCPs, published 7 November 2011 in the Vale Columbia Center for Sustainable International Investment’s *Columbia FDI Perspective*.
- “Rights and Accountability” Conference, participating as panelist in a Working Group on the OECD *Guidelines* alongside the German and UK NCPs and OECD Watch, headquarters of Friedrich-Ebert-Stiftung, Berlin, 21-22 November 2011.
- “Breaking Through: Changing the Rules of the Game” briefing note summarising key elements of the UN Guiding Principles and the 2011 OECD *Guidelines*, circulated by UNI Global, the Global Union Federation representing 20 million service sector workers, to its members.

- “The OECD *Guidelines* and the Extractive Industries” meeting organised by the Institute for Business and Human Rights (IHBR), the Norwegian Ministry of Foreign Affairs, and the International Council on Mining and Metals (ICMM), London, 23 March 2012.
- Speech on the update of the OECD *Guidelines* at the American Bar Association Section of Labor and Employment Law, International Law Committee Midyear Meeting, Multinational Work Relationships and Conflicts in a Time of Crisis and Mobility, Paris, 14 May 2012.
- Speech on the Update of the *Guidelines* at a Conference on the “Normative Power of the OECD”, co-organised by the OECD and l’Institut de Recherche en Droit International et Européen de la Sorbonne (IREDIÉS) and an academic article by TUAC on the normative power of the OECD *Guidelines* written for the conference book.

### **Trade union activities by country**

#### **Belgium**

- Article on the updated *Guidelines* published by the Confédération des syndicats chrétiens (CLC) in its periodical “Vakbeweging”, September 2011.
- Article by the Fédération Générale du Travail de Belgique (FGTB) on the *Guidelines* and the role of the Belgian NCP in providing mediation, published in its monthly magazine, *Syndicats*, January 2012.

#### **Chile**

- On 16-17 July 2011, TUAC, Friedrich-Ebert-Stiftung and CUT-Chile organised a trade union seminar on Chile’s membership in the OECD. Trade unionists from Uni Global Union, CUT-Chile and CUT-Brazil discussed experiences using the OECD *Guidelines* in Latin America. The Chilean NCP was also in attendance.

#### **Japan/Viet Nam**

- In August 2011, RENGO, the Japanese Trade Union Confederation, in co-operation with the Vietnam General Council of Labour (VGCL), translated the 2011 OECD *Guidelines* into Vietnamese for a seminar in Viet Nam.

#### **Netherlands**

- On 12 December 2011, the Dutch trade union confederation FNV participated as a panelist at a meeting on the OECD *Guidelines* organised by the Dutch Government and the Dutch employers’ organisation, VNO-NCW. FNV drew attention to the new provisions on due diligence and wages adequate to meet basic needs of workers and their families. At the industry level, FNV is promoting the OECD *Guidelines* in the Dutch Coal Dialogue, a multi-stakeholder effort to improve the impacts of the coal supply chain on the community, workforce and environment, with particular focus on Colombia and South Africa. The DCD will conduct a gap analysis of the application and implementation of key international standards, including the *Guidelines*. At the workplace level, the FNV has published a CSR checklist, which includes the *Guidelines*, for trade union negotiators and shop stewards. At the company level, FNV has used Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations) provisions of the *Guidelines* on the right to freedom of association in its social dialogue with Dutch MNCs with regard to foreign subsidiaries operating within national law but in violation of the *Guidelines*.

### Norway

- Launch of the updated OECD *Guidelines* at an open meeting for all trade unions and other stakeholders in Oslo, 15 June 2011, co-hosted with the Confederation of Norwegian Enterprise, the Forum for Environment and Development and the Norwegian NCP. Presentations at a ministerial level as well as by leaders of the trade unions and business associations followed by debate.

### Spain

- In 2011, the Spanish national trade union confederation Comisiones Obreras (CCOO) published a report on the OECD *Guidelines* covering: the 2011 Update, including the TUAC statement; the use of the *Guidelines*; the role of the Spanish NCP; and a selection of trade union cases.

### Sweden

- In Spring 2011, the Swedish Trade Union Confederation (LO) and the Swedish Association of Graduate Engineers, both members of the Swedish NCP, participated in a national seminar on the updated OECD *Guidelines*, attended by trade unions, civil society and investors. LO Sweden also gave a presentation on the *Guidelines* to Swedwatch, an NGO working to strengthen the accountability of Swedish businesses. LO Sweden has also promoted the OECD *Guidelines* in its international activities, speaking in December 2011 at an international trade union conference on CSR held in Hanoi and in January 2012 at a workshop on the implementation and promotion of the *Guidelines* in the Arctic context, organised by the Swedish Presidency of the Arctic Council.

### United Kingdom

- On 8 November 2011, the Trade Union Congress (TUC) spoke at the Annual General Meeting of the All Party Parliamentary Group on International Corporate Responsibility alongside the UK NCP, representatives of the Confederation of British Industry (CBI) and OECD Watch.
- On 13 January 2012, TUAC gave a guest lecture on the OECD *Guidelines* at the Centre for International Studies and Diplomacy, School of Oriental and African Studies (SOAS) in London.

### Training trade unionists

TUAC and its affiliate trade unions have hosted and participated in training activities intended to promote understanding of the *Guidelines*, highlight changes in the 2011 Update and explain the role of NCPs.

### Africa

- Joint training seminar on the ILO MNE Tripartite Declaration on Multinational Enterprises and Social Policy and the OECD *Guidelines*, held by the Bureau for Workers Activities at the OLO (ACTRAV) together with the Africa offices of the International Trade Union Confederation (ITUC) and Uni Global Union, 22-24 September 2011.
- Regional seminar on the *Guidelines* with participants from Nigeria, Malawi, South Africa, Tanzania, Zambia and Zimbabwe, including 20 trade unionists representing workers in OECD MNCs, as well as representatives of the Global Union Federations and a small

number of NGOs, held by TUAC, the Friedrich Ebert Stiftung's (FES) Trade Union Competence Centre for sub-Saharan Africa, and FES Zambia, Lusaka, Zambia, 16-17 November 2011.

### **Asia**

- Training session on the *Guidelines* at the ILO International Training Centre in Turin, as part of a 2-week course on "Organising and Collective Bargaining in MNEs", attended by 17 trade unionists from China, India, Indonesia, the Republic of Korea, Malaysia, Nepal, Philippines and Viet Nam, held by TUAC and the International Metalworkers' Federation (IMF), 24 February 2012.

### **Middle East and North Africa**

- Training workshop attended by 45 trade unionists from Algeria, Morocco and Tunisia, including shop stewards from MNCs operating in the steel, electronics, aerospace, food and hotels sectors, held by the International Metalworkers' Federation (IMF), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and TUAC, Casablanca, 24-26 January 2012.

### **Canada**

- Webinar Conference organised by the Canadian Labour Congress (CLC) with presentations and debate by the Chair of the Canadian NCP, a representative from TUAC, the NCP Secretariat and representatives of the Department of Human Resources and Skills Development, Ottawa, 1 November 2011

### **Croatia**

- Training for 12 members of the Multinational Co-ordination Group of the Union of Autonomous Trade Unions of Croatia, who represent workers in OECD MNCs operating in Croatia, provided by TUAC, 16 May 2012.

### **Italy**

- Internal seminar for the 12 National Sectoral Federations and 20 Regional Organisations of the Confederazione Generale Italiana del Lavoro (CGIL) organised by CGIL, 19 September 2011.

### **United States**

- Training session held by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) attended by 15 trade unionists and other partner organisations, including the Solidarity Centre, 31 October 2011.

### **Viet Nam**

- Seminar organised by the Japanese trade union confederation (RENGO) in co-operation with the Vietnam General Confederation of Labour (VGCL), 8-9 August 2011.

### **Developing tools**

In January 2012, TUAC launched its dedicated website on the *Guidelines*, providing a description and analysis of details of all trade union cases submitted since 2000, together with profiles of the NCPs. The site also provides: a list of companies and trade unions



involved in cases; key case statistics including the average number of cases per year and the number and proportion of cases by NCP, host country, *Guidelines* chapter, paragraph and sector; and links to key resources (OECD, NCP and TUAC). The website can be found at [www.tuacoecdmguidelines.org](http://www.tuacoecdmguidelines.org).

TUAC has prepared guides for each training event in which it participates, covering questions related to, *inter alia*, the *Guidelines*, companies to which they apply and how to submit a notification alleging non-compliance.

## **Applying the Guidelines**

### **Cambodia**

In 2011, the Dutch trade union confederation FNV together with LO Denmark (the Danish Confederation of Trade Unions) and the International Trade Union Confederation (ITUC) commissioned the Dutch NGO SOMO to conduct research on the working conditions of the beer promoting women in Cambodia, including on whether wages are adequate to meet the basic needs of the workers and their families, as provided for by Chapter V, Paragraph 4b of the *Guidelines*. OECD and other Asian MNCs require women beer sellers in Cambodia to drink with their customers in order to increase sales and meet their targets. It is hoped that the research will contribute to a debate at the OECD over the meaning of the new provision in the OECD *Guidelines* on adequate wages and its application to vulnerable women workers in the beer sector in Cambodia.

## **Improving NCP performance**

### **OECD**

TUAC has called for the OECD to increase the level of resources made available to the Secretariat of the Investment Committee under the Part 1 Budget, so that it is able to meet the new commitments made under the 2011 Update: promoting the *Guidelines*; supporting peer learning and peer evaluations facilitating capacity-building of the growing number of NCPs; developing a website and case database and supporting the new proactive agenda.

### **Australia**

The Australian Council of Trade Unions (ACTU) has called for the following changes to be made by the Australian NCP: formal representation of trade unions and other stakeholders in the NCP; increased human and financial resources; publication of guidance on parallel proceedings, timescales and co-operation between host and home country NCPs; and the adoption of best practice such that the ANCP should conduct an investigation of a case where mediation is refused or fails.

### **France**

The six trade union members of the French NCP have notified the Minister for the Economy, Finance and Industry of the cancellation of planned meetings of the French NCP, calling for a meeting of the NCP as soon as possible.

### **Germany**

Since the completion of the Update, the Confederation of German Trade Unions (DGB) has held meetings with members of the German Parliament – in particular with the Green Party, the Left Party and the Social Democrats – regarding their proposal to change the

structure of the German NCP after the 2012 election to the Bundestag. The DGB is calling for a formal inter-ministerial structure and the creation of an oversight body in which the DGB is represented.

## Contribution from OECD Watch

### **Work on specific instances**

- OECD Watch members were instrumental in achieving negotiated agreements through the specific instance process on nine occasions this past year. These specific instances included Cermaq (Norwegian NCP); ICT Cotton, Cargill Cotton and Xstrata (UK NCP); Otto Stadlander (German NCP); and Paul Reinhard, ECOM and Louis Dreyfus (Swiss NCP).
- OECD Watch has maintained a website and database devoted to specific instances. Between June 2011 and June 2012, OECD Watch has published three Quarterly Case Updates that provide up-to-date information about the latest developments in specific instances filed by NGOs: June 2011, December 2011 and March 2012. These publications have been distributed to approximately 750 persons per publication. Additionally more than 1 000 visitors have downloaded the Quarterly Case Updates from the OECD Watch website.

### **Production of informational and promotional material on the Guidelines**

- In June 2012, OECD Watch published a pamphlet introducing the content of the *OECD Guidelines for Multinational Enterprises* and the associated specific instance mechanism. The pamphlet is primarily meant for CSOs, workers, communities and individuals affected by irresponsible business conduct who are considering filing an *OECD Guidelines* notification.
- OECD Watch is updating its “Guide to the Guidelines”, which is translated into seven languages. The updated user’s guide will reflect the changes made after the 2011 Update.

### **Presentations and expert contributions on the OECD Guidelines**

- Guest lecture at the University of Melbourne’s Business and Human Rights Conference at the faculty of law and faculty of commerce by Oxfam Australia.
- Guest lecture by OECD Watch Secretariat at Nyenrode Business University IMBA, “Outsourcing responsibility? CSR, Sustainable Development and Supply Chain Responsibility in the Energy Sector”, Breukelen, Netherlands, 5 July 2011.
- Guest lecture by OECD Watch Secretariat at Georgetown Law School, “The Updated *OECD Guidelines for Multinational Enterprises*”, Washington DC, 6 September 2011.
- Expert input by OECD Watch Secretariat at the International Corporate Accountability Roundtable’s First Annual Meeting, Washington DC, 8-9 September 2011.
- Presentation by OECD Watch Secretariat and participation in panel at “Business in development: From conflict to collaboration?” event organised by the Norwegian NCP, the Peace Research Institute Oslo (PRIO) and the Business for Peace Foundation, Oslo, 17 October 2011.
- Presentation by OECD Watch and participation in a panel during the session “The *OECD Guidelines*: Why global businesses should take note” at the Business for Social Responsibility (BSR) 2011 Conference: Redefining Leadership, San Francisco, USA, 2 November 2011.
- Expert input by OECD Watch Secretariat, Germanwatch and Transparency International Germany at “Rights and Accountability: the way ahead for business and human rights”, organised by MISEREOR, ECCHR, the FES, Germanwatch and CorA, Berlin, 21-22 November 2011

- Participation by Rights and Accountability in Development (RAID) in session on “Identifying the conflict and turning the conflict situation into better governance” at the World Legal Forum’s event, “Managing Corporate Conflicts: from threat to opportunity for sustainable business”, The Hague, 6 December 2011.
- Participation by OECD Watch Secretariat in panel discussion with civil society organisations at “Responsible Business Conduct in a Global Context”, organised by the Dutch Ministry of Economic Affairs, Agriculture and Innovation and the Confederation of Netherlands Industry and Employers (VNO-NCW), 12 December 2011.
- Intervention by OECD Watch Secretariat and the Center for Human Rights and Environment (CEDHA) on the potential of the OECD *Guidelines* at the Consultation of the UN Working Group on Business and Human Rights organised by the UN Office of the High Commission of Human Rights (OHCHR), Geneva, 16 January 2012.
- Participation by Transparency International Germany in plenary panel and parallel workshop highlighting the *Guidelines* at “A New Deal – Balancing Corporate and Public Needs” event, organised by Women in European Business, Frankfurt, 14 March 2012.
- Presentation by OECD Watch Secretariat on NGO experiences in OECD *Guidelines* cases related to the extractive sector at the Institute for Business and Human Rights, London, 23 March 2012.
- Participation by Oxfam Australia in panel focusing on the *Guidelines* at a Business and Human Rights Event organised by the Human Rights Law Centre, Melbourne, 4 April 2012
- Presentation by Oxfam Australia in a forum on “the applicability of the updated OECD *Guidelines* to strengthening BHP Billiton’s human rights policy” at the BHP Billiton Stakeholder Forum, Melbourne.

### **Training and capacity building events**

OECD Watch participated in several trainings intended to introduce individuals and communities affected by corporate activity to the OECD *Guidelines* and the specific instance mechanism:

- *India*: On 28-29 March 2012, OECD watch, its Co-ordination Committee Member Cividep and the Mine Labour Protection Campaign organised a two-day capacity-building seminar in Bhubaneswar, India. Twenty-one participants from civic society organisations across India with a focus on the mining sector, including environmental, human rights and labour rights organisations, were in attendance. The seminar focused on the *Guidelines* and the possibilities for affected individuals, communities and workers to use the specific instance mechanism.
- *Malaysia*: OECD Watch Coordination Committee member Oxfam Australia partnered with Diplomacy Training Program (DTP) to help deliver DTP’s “Indigenous Peoples, Human Rights and Advocacy Program”, held on 23 April 2012 in Sabah Malaysia. The training programme was held in partnership with local organisations, the Asia Indigenous Peoples’ Pact, JOAS and the Centre for Malaysian Indigenous Studies. A total of 25 indigenous rights activists from the Asia-Pacific region participated. The programme focused on the rights of indigenous peoples as manifest in various international human rights instruments and advocacy and campaigning strategy development. The programme also included sessions on the right to free, prior and informed consent in recognition that Indigenous Peoples’ rights to land and decision-making on the use of their lands are threatened by large scale

mining, logging and agriculture. In addition to learning about the specific instance mechanism, participants were introduced to other domestic and international remedies for violations of the rights of indigenous peoples including the Universal Periodic Review and other UN processes.

- *Senegal*: From 24-25 May 2012, OECD Watch and its Coordination Committee member Lumière Synergie pour le Développement organised a two-day capacity building seminar in Dakar, Senegal. The seminar had a regional focus and sought to take an important step toward enhancing regional collaboration on the *Guidelines* and Corporate Accountability in general. Similar to the capacity building seminar in India, this seminar focused on the OECD *Guidelines* for MNEs and the possibilities for affected individuals, communities and workers to use the specific instance mechanism. 26 participants from 11 African countries attended and shared their experiences with the presence of multinational enterprises in their countries. Special attention was given to the importance of human rights, due diligence and stakeholder engagement in the extractive industry.

## ANNEX 4

## Memorandum of understanding between the OECD and the ICC

The ICC and OECD,

*Considering* that the *OECD Guidelines for Multinational Enterprises* (hereafter referred to as “the *OECD MNE Guidelines*”)<sup>1</sup> which are an integral part of the OECD Declaration on International Investment and Multinational Enterprises, constitute recommendations addressed by governments to multinational enterprises setting out voluntary standards and principles for responsible business conduct;

*Considering* that the *OECD MNE Guidelines* are endowed with a unique implementation mechanism in the form of National Contact Points (NCPs) in each adhering country which are responsible for furthering 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 *OECD MNE Guidelines* in specific instances;

*Considering* that the updated *OECD MNE Guidelines* and the related Decision adopted on 25 May 2011 included a new chapter on Human Rights, consistent with the Guiding Principles on Business and Human Rights : Implementing the United Nations “Protect, Respect and Remedy” Framework;

*Considering* that the 2011 Update of the *OECD MNE Guidelines* and the related Decision included the pursuit of a pro-active agenda in collaboration with enterprises, social partners and other stakeholders;

*Considering* that the 2011 Update of the *OECD MNE Guidelines* and the related Decision called upon the OECD Investment Committee to continue to work closely with partner organisations;

*Considering* that the ICC is the global association of National Human Rights Institutions (NHRIs) established according to the UN Paris Principles,<sup>2</sup> as independent and pluralist institutions with the mandate to promote and protect human rights (hereafter referred to as “the NHRI Paris Principles Mandate”);

*Considering*: i) that the UN Human Rights Council in its Resolution 17/4 of June 2011 affirmed the role of NHRIs under the Paris Principles in relation to business and human rights and in addressing all relevant actors; ii) that the UN Guiding Principles on Business and Human Rights recognise the functions of NHRIs across all three pillars of the UN “protect, respect, remedy” framework; and iii) that in its Edinburgh Declaration of 10 October 2010, the ICC undertook proactively to consider new ways in which NHRIs’ mandates can be used to advance the “protect, respect and remedy” framework and to engage with organisations and stakeholders at national, regional and international levels;

Considering that the majority of countries adhering to the OECD MNE *Guidelines* have established a NHRI in accordance with the Paris Principles and successive resolutions of the UN General Assembly and UN Human Rights Council Resolution;

Considering that greater co-ordination, mutual awareness and support between the ICC and the OECD will further the common goal of both organisations of promoting respect by Multinational Enterprises (MNE) and other business enterprises for human rights, and the contribution of such enterprises to human rights-based sustainable development;

Agree that it is in the mutual interest of the OECD and ICC (individually referred to as a “Party” and collectively “the Parties”) to establish the following Memorandum of Understanding (hereafter “MOU”).

## Article 1 Purpose and scope

The purpose of this MOU is to establish a programme of co-operation for an initial period of three (3) years to promote greater understanding, visibility and use of the OECD MNE *Guidelines* and the NHRI Paris Principles Mandate, towards greater respect for human rights in the sphere of business activities, and to exploit the synergies and complementarities between the Parties and to develop co-operation in such areas in support of this goal.

Any activities conducted under this MOU are subject to their inclusion in the Parties’ respective programmes of work and budgets and to the availability of funds. They shall be carried out in accordance with their respective rules and practices.

## Article 2 Content of the co-operation

Subject to resource availability, the collaboration of the Parties will focus on a number of substantive areas, which will include, but not be limited to:

- **Cross-referencing each other’s relevant instruments, functions and work.** The OECD MNE *Guidelines* cover all major areas of social responsibility, including corporate responsibility to respect human rights, and have detailed implementation procedures via NCPs in countries adhering to the OECD MNE *Guidelines*. NHRIs, in home and host states of MNEs, have a legal mandate as independent, pluralist bodies to monitor, promote and protect human rights, including via human rights education and engagement with professional bodies. The OECD and ICC will promote cross-references to each other’s mandates, instruments and work in relevant initiatives, communications and publications.
- **Cross-participation in global relation events.** Raising awareness by governments, businesses, NHRIs and other stakeholders of international principles and standards of business conduct relating to human rights is a priority for both the OECD and ICC. Both the ICC and the OECD have a global audience in their relevant activities. OECD and ICC members’ cross-participation in relevant promotional seminars and events will contribute to more effective promotion of the *OECD Guidelines for Multinational Enterprises* and their implementing procedures, and internationally recognised human rights, as well as fulfilment of the NHRI Paris Principles Mandate. The OECD and ICC agree to consider extending invitations to each other’s relevant events, and in particular the OECD will invite the ICC to the Global Forum on Responsible Business Conduct, subject to the OECD rules, procedures and practices.

- **Experience-sharing and capacity building amongst NCPs and NHRIs.** It is important that NCPs have a good understanding of the principles and standards referred to in the Human Rights chapter of the OECD MNE *Guidelines*, and the role and various functions of NHRIs at national level in both home and host countries of MNEs, in promoting and protecting human rights. It is also important that NHRIs are aware of the OECD MNE *Guidelines* and their implementation procedures. The OECD and ICC will consider engaging in joint capacity building exercises, and sharing national experiences, for example, through regional or national training sessions, or side meetings to the Annual Meeting of NCPs and ICC meetings.
- **Human rights expertise and due diligence.** As recognised by the UN Guiding Principles on Business and Human rights, NHRIs hold expertise on human rights issues, particularly at national level, and can offer relevant advice to both governments and businesses on human rights due diligence requirements in particular contexts. The OECD and ICC undertake to maintain regular dialogue and information sharing in this regard.
- **Continuing dialogue.** The ICC and OECD agree to maintain dialogue with a view to identifying mutually supportive measures to promote effective implementation of the Human Rights chapter of the OECD MNE *Guidelines* and the NHRI Paris Principles Mandate and to review the terms of this MOU accordingly.

### Article 3 Intellectual property

The Parties recognise the importance of protecting and respecting intellectual property rights. This MOU does not grant the right to use materials belonging to, or created by, either Party outside the framework of the collaborative activities contemplated by this MOU. The OECD will retain all intellectual property rights relating to the OECD MNE *Guidelines* and other OECD instruments.

### Article 4 Disclosure

The Parties may disclose this MOU to the public.

Any sharing of confidential information between the Parties will be subject to their respective policies and procedures relating to the disclosure of confidential information. Each Party will take any action to protect confidential and/or classified information of the other Party.

### Article 5 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 6** **Institutional framework**

After the signature of this MOU, each Party will appoint a representative who will act as a focal point for the implementation of this MOU. The focal point will promote the implementation of the co-operation and facilitate exchange of information between the Parties on matters of common interest.

## **Article 7** **Duration**

This MOU will come into force upon signature by both Parties for a period of three (3) years. It may be renewed by mutual written agreement between the Parties.

## **Article 8** **Termination**

The MOU may be terminated by either Party by providing three (3) months prior written notice to the other Party.

Signed on behalf of ICC

Signed on behalf of OECD

### **Notes**

1. The text of the OECD MNE *Guidelines* can be found at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
2. UN General Assembly Resolution 48/134, 4 March 1994, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>.



## ANNEX 5

# Stakeholder engagement and due diligence

## Project background note by Partnership Africa Canada

### Summary

#### Background and objective

In 2011, the OECD revised the *OECD Guidelines for Multinational Enterprises*. The revised *Guidelines* include a provision and corresponding commentary section on stakeholder engagement. This revision reflects a growing international consensus that stakeholder engagement enables companies to identify, prevent, mitigate, monitor and account for the impacts of their activities. This is particularly true in the extractive sector, where company-led activities often have large socio-economic and environmental impacts. Meaningful engagement helps companies forge stakeholder relationships based on trust, respect and mutual benefit, creating the conditions under which a company can obtain and maintain a social license to operate.

To strengthen the revised *OECD Guidelines*, the Canadian and Norwegian National Contact Points (NCPs) are collaborating to develop a User's Guide for extractive companies, providing advice on how to conduct due diligence in stakeholder engagement. Given the growing importance of stakeholder engagement, numerous guides have established best practices, applying equally to companies in all sectors. However, given the unique characteristics of the extractive sector, which include immobile production, a long lifecycle, large financial and infrastructural investments, and extensive impacts, extractive companies benefit from a discussion of best practices that is tailored to the unique challenges and characteristics of the sector. There is particular need for greater guidance on disclosure, supply chain management, indigenous peoples, and small and medium size enterprises (SMEs). These four subthemes, identified by the Canadian and Norwegian NCP groups to be in need of greater study, have been the subject of an extensive literature review conducted by Partnership Africa Canada (PAC). This report not only seeks to inform discussion and identify potential ways forward for an OECD User's Guide on stakeholder engagement and due diligence in the extractive sector, but to complement existing literature.

#### Due diligence and stakeholder engagement

To practice effective due diligence, companies must identify, prevent, mitigate and account for actual and potential adverse impacts of their business. The relationship between stakeholder engagement and due diligence is twofold: firstly, stakeholder engagement can be viewed as a *means* of practicing due diligence and continuously

mitigating potential adverse impacts, particularly on local communities; secondly, extractive companies can practice due diligence *within* stakeholder engagement itself, to ensure that processes do not have negative impacts on local communities. To ensure that engagement processes contribute to diligence while not exacerbating or causing tensions amongst stakeholders, it is critical that companies take into consideration the relationships within and amongst stakeholder groups.

Companies are advised to go beyond one-way information sharing to focus, at a minimum, on two-way communication processes where participants share opinions and viewpoints, with the goal of creating mutual understanding. Two-way engagement processes can include consultation, company-community dialogue, and, in some cases formal relationship building, collaboration and even partnership. Engagement processes necessarily reflect the stage of the project and the capacity of the company, however an OECD User's Guide should recommend that companies strive for a comprehensive, inclusive and mutually beneficial process. Effective engagement processes are both reflective and adaptive, responding to changes within the project, the company, the impacted community, and amongst other stakeholders.

While robust engagement processes can mitigate and/or prevent adverse social and environmental impacts, they can also help a company build local and regional support for a project, thereby reducing reputational and financial risks. By demonstrating genuine good-faith efforts to effectively engage local stakeholders, a company can minimize suspicions, mistrust and related tensions.

### **Disclosure**

Both large multinational companies and SMEs should provide accessible, comprehensive, technically appropriate and culturally sensitive information to local communities at the earliest stage of a project. Companies can improve further on due diligence by ensuring that local community members, including vulnerable groups and indigenous peoples, adequately understand the information provided to them in a way that allows them to fully and meaningfully participate in stakeholder engagement processes. Companies should explain why the company is there and under what authority, as well as the potential outcomes of their activities in a way that does not generate unrealistic community expectations. Companies should be cautious of what information they share and with who, as disclosing certain types of information can increase tensions between stakeholders, raise suspicions, or potentially lead to threats and harassment against individuals or groups.

### **Supply chains**

Companies can improve their due diligence by developing and implementing a responsible supply chain strategy. This requires: establishing strong company management systems, identifying and continuously assessing risks in the supply chain; designing and implementing a strategy to respond to identified risks; carrying out independent third – party audits; and, reporting annually on its supply chain due diligence.\* Companies may also assess opportunities to enhance economic development through local procurement. Supply chain due diligence can help a company manage risk, mitigate harm, and maintain their social

\* As per the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2011).

license to operate. Due diligence can be achieved by implementing a responsible supply chain strategy, supported by a formal policy commitment, sufficient internal human and financial resources, and supplier engagement and capacity building. By engaging both suppliers and stakeholders, companies can adapt and carry out due diligence in a variety of contexts. In so doing, they can also account for their suppliers' differing capacities as well.

Robust due diligence includes contributing to processes that allow a company to enhance its positive impact on the local economy. To expand local economic opportunities and build support for a project, companies can develop a strategy that integrates local SMEs into their supply chain and contributes to the latter's overall capacity.

### ***Indigenous peoples***

Engagement best practices are equally applicable in indigenous communities as they are elsewhere. However, when engaging with indigenous peoples, it is important that facilitators understand and respect the unique context and environment in which they are operating. Indigenous peoples are often among the most marginalised and vulnerable segments of a population, facing different, and sometimes additional risks and project impacts. These may include loss of identity, and loss of traditional land and natural resource-based livelihoods. Where indigenous groups and their traditional or customary lands are directly or indirectly affected by an extractive sector project, constructive partnerships demand early engagement, iterative dialogue and special efforts to generate mutual respect.

When engaging indigenous communities, it is important for companies to identify legitimate indigenous community leaders early in the project. "Legitimate" and "legitimacy", however, can be contested areas. Traditional leaders, elected leaders, informal leaders, leaders of clubs or youth or women may all play an important role in defining a community. It is important, therefore, for companies to broaden their engagement, ensuring that the views of all groups, including women and youth, are heard. Through engagement and research, companies can identify priority issues and the appropriate authorities with whom formal agreements and partnerships should be developed.

### ***Small and Medium Enterprises (SMEs)***

There is generally less guidance in the literature specific to SMEs. Despite fewer financial and human resources, engagement with local communities is particularly important for SMEs as they are often involved at the initial stages of mineral exploration which can have a lasting impact throughout the lifecycle of a project. A number of strategies, some of which are already contained in OECD material, need not be resource intensive.

SMEs can help prepare local communities for the potential outcomes of exploration in a manner that is inclusive of vulnerable groups and does not raise unrealistic expectations. SMEs are often involved in projects that may experience several changes in ownership. It is therefore important that SMEs have a full understanding of the project's prior history when beginning their stakeholder engagement process. Communities often have well formed, if misguided, perceptions of companies and projects, based on past experiences. In addition, because SMEs often sell their projects to a larger company for project development, they can play an instrumental longer-term role, laying the foundation for continuity in the stakeholder engagement processes and practices.

### **Recommendations**

The authors identify opportunities to contribute valuable practical advice and discussion to the broader literature on stakeholder engagement and due diligence in the extractive sector. As a methodology, the authors suggest that the OECD User's Guide consider adopting a multi-stakeholder approach, which could include the creation of a multi-stakeholder advisory group to oversee the preparation of the Guide. The User's Guide would ideally adopt a problem-solving approach, complementing best practices, which inform policy development and organisational orientation, with problem-solving techniques that can help companies adapt or creatively rework best practices to accommodate on-the-ground realities. In addition, it is advised that the User's Guide consider how to make guidance accessible to extractive SMEs. One suggested approach is to generate a series of shorter supplementary booklets on targeted subjects, such as gender or responsible supply chain management in the oil and gas sector.

With regards to themes, the authors note a deficit of guidance on stakeholder engagement and the project lifecycle. One approach might be for the User's Guide to focus on one particular stage in the lifecycle, such as the exploration and development phase. Another approach may be to examine how stakeholder engagement transitions between stages and companies, as a project progresses through the lifecycle. The authors also note a lack of consideration of critical identifiers such as gender, age, ethnicity and race that are intimately tied to local power dynamics. Who speaks for whom when engaging with a community, and who owns, accesses and controls local resources are wrapped up in these everyday politics. In spite of the fact that stakeholder engagement processes can play directly into these identity-based politics, related discussion in the literature remains superficial or under-acknowledged. The OECD User's Guide could attempt to begin to fill some of these identified gaps.

## APPENDIX A

## *Declaration on international investment and multinational enterprises*

25 May 2011

ADHERING GOVERNMENTS<sup>1</sup>

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:

- |   |  |
|---|--|
| <p>OECD <i>Guidelines for Multinational Enterprises</i></p> | <p>I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the <i>Guidelines</i>, set forth in Annex 1 hereto,<sup>2</sup> having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;</p>   |
| <p>National treatment</p>                                   | <p>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”);</p> |

	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. <sup>3</sup>
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 *OECD Guidelines for Multinational Enterprises* is reproduced in Appendix B of this publication.
3. The text of “General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises” is available from the OECD website [www.oecd.org/daf/investment](http://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 Organization 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, co-operative 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.<sup>1</sup>

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 co-ordinate 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.<sup>2</sup> 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.
4. 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 co-operating 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 Organization 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; and 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 ongoing 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 Organization (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 1(c) 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 1(d) 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 1(e) 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 1(e), 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 2(c) 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.<sup>3</sup> 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-Bribery Convention* 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 Organization 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,<sup>4</sup> in order to ensure that their transfer prices reflect the arm's length principle.

## 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.

## Implementation procedures

### 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 *OECD 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*.

### **Co-ordination 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-2(a) through C-2(d). 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-2(c) 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\* to provide information on and explanation of the text of the OECD 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.*

\* Including the eight non-member adherents to the Declaration on International Investment and Multinational Enterprises.

## APPENDIX C

*Contact details for National Contact Points***Allemagne – Germany**

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**Argentine – Argentina**

Minister María Margarita Ahumada National Contact Point of Argentina Director of the OECD Co-ordination Unit Ambassador Hugo Javier Gobbi Director of the Directorate of Special Economic Issues National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship Esmeralda 1212, 9th floor Buenos Aires, Argentina	Tel.: (54-11) 4819 7602/8124 7607 Fax: (54-11) 4819 7566 Email: oecde@mrecic.gov.ar mma@mrecic.gov.ar hjj@mrecic.gov.ar Web: www.cancilleria.gov.ar
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**Australie – Australia**

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**Autriche – Austria**

Austrian National Contact Point for the OECD Guidelines for Multinational Enterprises Federal Ministry of Economy, Family and Youth Referat C2/4a Stubenring 1 1011 Vienna	Tel.: (43-1) 711 00 8316 Fax: (43-1) 711 00 5050 Email: NCP-Austria@bmfj.gv.at Web: www.oecd-leitsaetze.at
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**Belgique – Belgium**

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**Canada**

Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises (BTS) Foreign Affairs and International Trade Canada 125 Sussex Drive Ottawa, Ontario K1A 0G2	Tel.: (1-613) 996-0245 Fax: (1-613) 944-7153 Email: <a href="mailto:ncp.pcn@international.gc.ca">ncp.pcn@international.gc.ca</a> Web: <a href="http://www.ncp.gc.ca">www.ncp.gc.ca</a> <a href="http://www.pcn.gc.ca">www.pcn.gc.ca</a>
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### Danemark – Denmark

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## Grèce – Greece

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1. The European Commission is not formally a “National Contact Point”. However, it is committed to the success of the *Guidelines*.  
La Commission européenne n’est pas formellement un « Point de contact national ». Elle souhaite néanmoins la réussite des Principes directeurs.

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# Annual Report on the OECD Guidelines for Multinational Enterprises 2012

## MEDIATION AND CONSENSUS BUILDING

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