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Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises

REPORT BY THE CHAIR OF THE 2010 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS

This Note by the Secretariat is submitted for discussion under item 2 of the agenda of the Annual Meeting of the NCPs on 29 June 2010 [DAF/INV/NCP/A(2010)1]. It aims to provide background material for the Annual Report to the Investment Committee by the Chair of the Annual Meeting of the National Contact Points.

Afterwards, the report revised in light of NCPs' discussions in June will be submitted to the Investment Committee for de-restriction. NCPs are also invited to submit their written factual corrections and other comments to the Secretariat by 9 July 2010.

The final version of the Chair's Report, together with the submissions by BIAC, TUAC and OECD Watch at the consultations on 29 June 2010, will be incorporated in the 2010 edition of the "Annual Report on the OECD Guidelines for Multinational Enterprises". This publication will also include a summary of the discussions at the OECD Conference on Capacity Building on 28 June 2010 and Corporate Responsibility on 30 June 2010 and 1 July 2010. This summary will be submitted for approval and derestriction by the Investment Committee under written procedure.

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TABLE OF CONTENTS

I. Overview	3
A special year	3
Highlights of the 2009-2010 reporting period.....	4
The next implementation year	5
II. Innovations in NCP structure and procedures.....	6
III. Recent developments in information and promotional activities	8
IV. Active use of the “specific instance” facility	20
V. Implementation of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.....	21
ANNEX 1. STRUCTURE OF THE NATIONAL CONTACT POINTS	24
ANNEX 2. CONTACT DETAILS FOR NATIONAL CONTACT POINTS	36
ANNEX 3. SPECIFIC INSTANCES CONSIDERED BY NATIONAL CONTACT POINTS TO DATE	45
ANNEX 4. STATEMENTS RELEASED BY NCPS, JUNE 2009-JUNE 2010.....	78
ANNEX 5. EXCHANGE OF LETTERS BETWEEN THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT AND THE OECD SECRETARY-GENERAL.....	148
Letter by the Prosecutor of the International Criminal Court	148
Reply by the OECD Secretary-General	150
ANNEX 6	152
UN GLOBAL COMPACT AND OECD INTENSIFY COLLABORATION PRESS RELEASE.....	152

[I. Overview¹

A special year

1. Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences promoting the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines. In addition, a back-to-back Roundtable with practitioners is organised to assist NCPs to better understand emerging issues and policy developments relevant to the Guidelines. This year’s annual meetings, the tenth since the 2000 Review of the Guidelines, went beyond the standard annual agenda. It was also on this occasion that the work on the update the Guidelines commenced.

2. On 30 April 2010, the 42 adhering governments to the Guidelines agreed on the terms of reference (TORs) for carrying out an update of the Guidelines “to ensure their continued role a leading international instrument for the promotion of responsible business conduct.”² At the 2010 Ministerial Council Meeting, Ministers “welcomed the formal launch of the update of the Guidelines and noted the important role they play in contributing to responsible business conduct, and thus to broad societal support for open markets.”³ The aim is to complete the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting.

3. Two special back-to-back capacity-building sessions were organised on 28 June 2010, prior to the Annual NCP meeting, in co-operation with the International Labour Organization (ILO) and the Consensus Building Institute. The ILO labour session highlighted the relationship between international labour standards and the Guidelines and provided examples of how ILO can support NCP efforts to resolve disputes involving employment and industrial relations, the most widely used chapter of the Guidelines. The Consensus Building Institute session provided a forum to discuss basic elements of effective mediation and how mediation is being incorporated into the processes of other multilateral institutions around the world. This session also specifically addressed how the specific instance facility of the Guidelines could make better use of existing mediation techniques. Results from both of these sessions will directly feed into the update of the Guidelines.

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

¹ To be revised in light of the discussion at the Annual NCP Meeting.

² DAF/INV/NCP(2010)1.

³ 2010 Ministerial Conclusions, C/MIN(2010)6/FINAL, paragraph 12.6.

Highlights of the 2009-2010 reporting period

5. This report essentially serves to review activities used to promote and implement the Guidelines, undertaken by adhering governments, over the June 2009 – June 2010 period. It is based on individual NCP reports⁴ and other information received during the reporting period and incorporates the results of this year's Annual NCP Meeting. The report is divided into four additional sections: Section II – Institutional Arrangements; Section III – Information and Promotion; Section IV – Specific Instances; and Section V – Activities related to OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

6. This year's implementation cycle of the Guidelines witnessed a partial recovery from the financial and economic crisis; a recovery characterized by continuous attention to corporate responsibility. Under this observation, concern for the renewed enforcement of ethical standards contained in leading international corporate responsibility instruments, coupled with less complacency with their shortcomings, increased. In this context, the strategic role of the OECD Guidelines and the prospect of a new update enjoyed high level and widespread expressions of support.

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

8. Beyond expanding inclusivity and procedural transparency, a number of NCPs have also solicited feedback from key stakeholders. Italy, Norway, Peru, Poland and Spain have all taken action to request feedback focused on awareness of the Guidelines, effectiveness in practice and self-surveys aimed to measure corporate adherence to the Guidelines. Through these activities, and other promotional initiatives, NCP outreach to businesses has grown significantly during this reporting period. Engaging with universities, and their departments focused on responsible business, has also gained popularity throughout 2009-2010. Currently about 45 percent of NCPs are actively working with regional universities. Benefits from these relationships include not only increased awareness of the Guidelines among young professionals, but also research assistance, especially around soliciting and aggregating corporate feedback.

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

10. Although the number of specific instance requests was slightly lower this past year than in the 2008-2009 implementation cycle of the Guidelines, this does not appear to signal a decline in support for

⁴ Reproduced in DAF/INV/NCP(2010)1.

the specific instances facility. With [17]⁵ new cases raised, the total number of requests since the 2000 Review exceeds the 200 mark. Of these, [163] have been accepted for consideration and [136] have been concluded or closed. While a majority of the new cases continue to relate to employment and industrial relations under Chapter IV of the Guidelines, a growing number have come to involve Chapter II, as it pertains to Human Rights, and environmental issues covered by Chapter V. Specific instances raised across multiple NCPs have also increased. Addressing these cases seems to have become smoother and more productive as NCP roles have become more defined with the rise in cross-country instances. The rise of specific instances in non-OECD adhering countries has also continued. However, the most noticeable development during the reporting period was the increased recourse to mediation as a means for resolving specific instances. [8] specific instances were managed through mediation during this time frame, and in a majority of cases, resulting in positive outcomes for all parties involved.

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

12. The prospect of a new update of the Guidelines received high attention in other circles as well. In his latest report to the UN Human Rights Council on further steps to operationalize the “protect, respect and remedy” framework, the UNSRSG reiterated the potential of the NCP mechanism in providing effective remedy for human rights violations. He also indicated his intention to continue to liaise with the OECD on the update the Guidelines.⁶ The consultation process on the update of the Guidelines also benefitted from written submissions by accredited stakeholders (BIAC, TUAC, OECD Watch), international organisations (IFC, ILO) and other stakeholders (Amnesty International, Consumers International, Global Reporting Initiative International Bar Association and Transparency International) as well as various OECD bodies. Senior OECD officials gave key note addresses at high level international meetings.

The next implementation year

13. The Annual NCP Meeting of 29 June 2010 marked the tenth anniversary of the 2000 Revision of the Guidelines. Looking back at their experience over these past ten years, the NCPs acknowledged the importance of peer knowledge sharing and discussion of good practices, effective promotion the Guidelines, reinforcement of the mediation capacities and resources of NCPs and clarification of their role in handling complex specific instances and/or parallel legal proceedings. They welcomed the fact that these issues were included in the terms of reference for the update and reiterated their readiness to actively contribute to this process. They also agreed that they should continue their efforts to improve their own performance, notably by drawing on the “good tips” resulting from the volunteer peer review of the Dutch NCP and recent successful mediated cases.^{7]}

⁵ Specific instance counts supplied in [brackets] indicate numbers which are not yet finalized as the Investment Committee is awaiting the submission of missing NCP Annual Reports.

⁶ “Business and Human Rights: Further steps toward the operationalisation of the “protect, respect and remedy framework”, A/HRC/14/27 (9 April 2010), paragraphs 13 and 98.

⁷ This paragraph will be revised in light of the NCP discussion of 29 June 2010.

II. Innovations in NCP structure and procedures

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

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

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

- *Canada* is currently developing a number of documents, including a Terms of Reference for the Interdepartmental NCP Committee and a Procedures Guide, as part of a toolkit to increase the organisations vigour and operational effectiveness as a result of the Dutch Peer Review.
- *Czech Republic* has relocated NCP operations from the Ministry of Finance to the Ministry of Industry and Trade.
- *Egypt* has added the Ministry of Environmental Affairs to their Advisory Committee. They have also drafted, and translated into Arabic, the rules and procedures for the Specific Instances, aided by other NCPs and OECD Watch.
- In *Estonia*, the NCP has been restructured and is now found under the Economic Policy Division in the Economic Development Department allowing the Estonia NCP to take a more active role with enterprises. This is a move from the European Union and International Co-operation

⁸ Argentina, Australia, Austria, Chile, Czech Republic, Egypt, Germany, Greece, Ireland, Israel, Italy, Mexico, New Zealand (with a Liaison Group consisting of government, business and trade unions representatives), Peru, Poland, Slovak Republic, Spain, Switzerland and United States.

⁹ Brazil, Canada, Hungary, Iceland, Japan, Korea, Portugal and United Kingdom.

¹⁰ Romania's NCP is comprised of government and business representatives.

¹¹ Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Slovenia, Sweden and Turkey. Several of these also have multiple governmental department NCPs.

¹² Finland.

¹³ Norway is currently in the process of restructuring their NCP to reflect a mixed structure of four independent appointed experts, including a leader, and two full-time secretariats, all localized outside of the government, while administrative responsibility and financial resources for the NCP will rest with the government.

¹⁴ In 2007, the Dutch NCP has been changed from an interdepartmental office to a mixed structure consisting of four independent experts and four advisors from four ministries.

Department; both departments are housed under the Ministry of Economic Affairs and Communications.

- *Germany's* NCP is creating a handbook, to be finalized in conjunction with the update to the Guidelines, which should include information on the interrelation between the OECD Guidelines, ILO Tripartite Declaration and UN Global Compact. Additionally, Procedural Guidance explaining the handling of specific instance procedures in the German structure has been made available on the German NCP web page along with summarized reasoning for the rejection of specific instances.
- In *Hungary* the Secretariat of the Hungarian NCP was transferred from the Department of Enterprise Development to the Business Environment Department of the Ministry for National Development and Economy.
- *Israel* has established a Steering Group comprised of stakeholder representatives from civil society, as well as business and employee organizations. The Steering Group's objective is to create a detailed recommendation for the NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the MNEs Guidelines and to actively assist the NCP in its outreach efforts.
- *Japan* has established an advisory panel including the largest Japanese business community, Japan Business Federation (Nippon Keidanren), and the largest Japanese labour union, Japanese Trade Union Confederation (Rengo), in order to exchange opinions regularly concerning the quarterly activity of the NCP.
- *New Zealand's* NCP has added the Ministry of Justice and the Treasury to its Liaison Group.
- *Norway* is in the process of restructuring its NCP, with a focus on independence, as a result of their white paper titled, "Corporate Social Responsibility in a Global Economy". (Box 1)

Box 1. A Follow Up on Norway's White Paper: Corporate Social Responsibility in a Global Economy

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

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

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

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

- *Peru* has added two Ministers to its Steering Council, growing from 5 to 7 Ministers, with the addition of the Minister of Trade and Tourism and the Minister of Production. The NCP is also planning to organize joint activities with the UN Global Compact Peruvian Chapter to promote the OECD Guidelines; more than 60 companies based in Peru are actively participating in this initiative.
- *Portugal's* NCP is working with Association on Business Ethics (APEE), the Portuguese focal point for UN Global Compact, to promote the OECD Guidelines thorough its established network Global Compact Portuguese Network (RPGC).
- The *European Commission*, with the entry into force of the Lisbon Treaty on 1 December 2009, is competent for EU foreign direct investment as part of common commercial policy (Treaty on the Functioning of the European Union (TFEU), article 207(1) and article 3(1)). The European Commission has launched the implementation process of this new competence, which will take into account Corporate Social Responsibility and the OECD Guidelines. Directorate General (DG) Trade Unit B1 is responsible for investment issues and overall coordination of corporate social responsibility for DG Trade and follows the work of the OECD Investment Committee.

III. Recent developments in information and promotional activities

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

III.a Selected promotional activities

17. In addition to the activities reported in paragraphs 19 and 20 below, promotional developments worth underlining include:

- *Argentina – Focused on responsible business.* Several corporate responsibility related events were held in Argentina this past year, focusing on responsible business and promotion of the Guidelines: September 2009 NGO's, Norwegian and Argentinean enterprises participated in a Corporate Responsibility seminar, October 2009 focus was on multi-sector alliances with regard to contribution to competitiveness, innovation and sustainable development, December 2009 and May 2010 the CEDHA (Centre for Human Rights and Environment) and INCASUR (National Institute of Studies and Social Formation of the South) organised two NGO forums.
- *Austria – Promoting business and human rights.* On 17 June 2009, the Oesterreichische Kontrollbank AG (OeKB) hosted a discussion, where Professor John Ruggie, UNSRSG, delivered a keynote about "Business and Human Rights".
- *Brazil – Initiative to inform.* The Brazilian NCP is planning to focus attention on comprehensively disseminating the OECD Guidelines to MNEs through the use of a consolidated database, which will contain contact details for all Brazilian MNEs and the name of the individual responsible for their CSR department.
- *Canada – Globally funding corporate responsibility initiatives.* The Department of Foreign Affairs and International Trade Canada (DFAIT) created a CSR Fund in 2009 to assist Canadian offices in Canada and abroad with client CSR promotion and facilitate engagement with host-governments, communities, indigenous organizations, NGOs and other stakeholders in CSR-related initiatives through CSR seminars, the development of mining toolkits and the other CSR tools. In 2009 the CSR Fund, totaling \$180,000, was used for 35 CSR-related projects at Canadian missions around the world. This year, the CSR Funds resources have been increased to \$250,000, which is being used for 49 CSR-related projects.
- *Chile – Targeting trade and transparency.* The Chilean NCP hosted several meetings with multinational companies with regards to trade, transparency, and integration impact.
- *Denmark – National outreach.* The Danish Contact Point has become a repeat guest lecturer at the University of Copenhagen on a course in international labour law and CSR. The Danish NCP Secretariat also conducted a presentation for the Permanent ILO Committee of the Danish Ministry of Employment as well as for 12 representatives from NGO's.
- *Egypt – Championing the Guidelines through foreign investment and universities.* Egypt has continued to act as a regional representative for the Guidelines. While continually promoting Guideline awareness, they have liaised with the Chairman of General Authority for Investment (GAFI) to include NCP publications with materials distributed to potential foreign investors, and with the Gerhart Center for Philanthropy and Civic Engagement at the American University in Cairo (AUC), which has launched a corporate sustainability capacity building program. On 23 March 2010 the government held the Third Annual CSR Conference in Cairo focused on "Transparency & Reporting on CSR practices, Towards Sustainable Competitive Environment".
- *Estonia – Engaging responsibly though commerce and industry.* In autumn 2009 in the Gazette of the Estonian Chamber of Trade and Industry published an article introducing the Guidelines and the functional principles of the NCP, including the contacts of the Estonian NCP and

references to the work of other NCPs. In March 2010 the Estonian NCP organized a workshop for Estonian entrepreneurs in order to present the OECD Guidelines.

- *France – Consulting with NGOs.* A meeting with about thirty NGOs was held on 9 September 2009 to discuss the revision of the Guidelines and take into consideration NGO perspectives on the evolution of the NCP, especially with regards to the specific instance handling process.
- *Germany – Aiming to strengthen responsible business on an international scale.* The German NCP has promoted the Guidelines during this reporting period through presentations, lectures, preparation of speeches and active participation in responsible business-related events organized by stakeholders and multistakeholder initiatives, governments, universities, et al. The Guidelines are highlighted in the context of the German Governmental Reports on Human Rights and, with specific reference to the *Risk Awareness Tool*, in the Governmental Report on Crisis Prevention. Additionally, work on a handbook for German companies has begun to further promote the Guidelines and give special guidance to small and medium sizes enterprises with interpreting and implementing the Guidelines in their commercial activities abroad.
- *Italy – Promotional partnering.* On 10 February 2010, the results of the two research projects, assigned in 2009 to Bocconi University in Milan and to LUISS University in Rome, were presented at the Ministry of Economic Development which was open to interested stakeholders. On 27 April 2010, the Italian NCP partnered with “Istituto Tagliacarne” to host the initial meeting resulting from the research project: “Stakeholders’ information and awareness: the OECD Guidelines and CSR principles”.
- *Korea – Targeting responsible business.* In December 2009, the Korean NCP participated in a corporate responsibility forum for Korean companies, hosted by the National Assembly. Participants were briefed on the activities of the NCP and its future policy direction.
- *Peru – Profiling the Peruvian NCP.* On 16 April 2010, Peru consolidated their NCP, ProInversión, through a series of workshops and a formal presentation of the OECD Guidelines. This event was attended by over 100 representatives from the Peruvian and foreign business communities, the diplomatic community and other stakeholders interested in Peru’s implementation of the Guidelines. As part of the promotional activities, the NCP prepared and distributed a survey on the investment climate in Peru and the OECD Guidelines among the workshop attendees. The survey confirms the positive contribution of the Guidelines in further enhancing the positive investment climate of Peru. Reasons for this included the fact that the Guidelines can help settle solutions between stakeholders, generate confidence, provide good examples and establish guidance on responsible business conduct.
- *Portugal – Responsible investing abroad.* Portugal’s NCP is currently analysing and evaluating Portuguese direct investment abroad against OECD Guidelines and OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones amongst targeted Portuguese multinationals, investors and enterprises that operate in specific and relevant markets, generating further awareness and promotion of the tools.
- *Poland – Incorporating feedback.* On 29 September 2009, PAIiZ, in cooperation with British-Polish Chamber of Commerce (BPCC) and the Responsible Business Forum (FOB) and the Foundation CentrumCSR.PL, organized a conference on the OECD Guidelines for Multinational Enterprises to discuss the newly launched OECD PNCP’s programme “I implement OECD Guidelines – Responsible Business 2009”. The aim of the programme is to promote responsible business practice as demonstrated by international companies operating in Poland who follow the

guidelines as part of their responsible business strategies. The program should also encourage companies active in Poland to implement OECD guidelines and to promote them in everyday business practices.

- *Slovenia – Maximising impact through NGOs.* Slovenia's NCP established working contacts with non-governmental organizations (such as the Chamber of Commerce of Slovenia, the Employers' Federation and trade unions) in order to discuss additional promotion activities for the Guidelines.
- *Spain – Encouraging the Guidelines abroad and soliciting feedback.* This year the Spanish NCP presented the Guidelines to the Advisory Commission on International Trade Negotiations chaired by the Secretary of State for Trade, an event that was open to social partners, NGOs and other civil society organizations. The NCP also presented the Guidelines as part of a panel discussion on "Business and Human Rights" organized by Amnesty International Spain. Additionally, this year the NPC began conducting a survey among the top 200 Spanish companies investing abroad, to determine how well the Guidelines are known to the audience they serve. The survey also asked companies to indicate additional information that they would like to find within the text of the Guidelines and with the functioning of the NCP.
- *Sweden – Building and promoting a CSR-tool.* In December 2009, the Swedish Trade Federation launched its new CSR-tool towards member companies called "Responsible Business Management". The concept consists of a brochure and workshops covering four areas: the responsible employer, good market ethics, taking responsibility for the environment & the climate and responsible purchasing and supply chain management. Throughout 2010 they have carried out several activities for the Swedish SMEs in the responsible business arena, including participation in seminars on how companies can practically incorporate ethical and environmental practices and adhere to the Guidelines in the day-to-day business.
- *United Kingdom – Leveraging technology.* The UK NCP worked with COI (Central Office for Information) and the BIS (Department for Business, Innovation, and Skills) Communications team to put together an awareness campaign on the Guidelines making use of communication media, which the UK NCP had not previously explored, including an electronic bulletin sent to 35,000 decision makers within large corporate companies responsible for ensuring that their organisation meets required standards and conform to relevant legislation, advertising on news websites, electronic mailing to CSR contacts in large companies and direct mailing of the NCP booklet to some 1,150 large multinational companies in the UK.
- *European Commission –Targeting Asia.* European Commission Delegations to Japan and Singapore have been particularly active in promotion of the OECD Guidelines. In March 2010, the delegation participated in the 20st GISPRI (Global Industrial and Social Progress Research Institute) Conference entitled "Evolving CSR – societal roles of companies in the new market economy" which gathered approximately 200 businesspeople. The Delegation in Singapore organised a seminar entitled "CSR – Its place in business and world" in conjunction with the Institute of Southeast Asian Studies in March 2010. The Delegation also works with the ASEAN network on responsible business.

18. *Other promotional activities undertaken by NCPs during the reporting period.*¹⁵

- 76% of NCPs have liaised with companies via contacts or presentations to individual companies or business associations, individual consultations and organisation of meetings with national partners.
- 24% of NCPs have utilized newsletters, articles in the press or other promotion through the media.
- 53% have participated in conferences with non-governmental actors.
- 66% have developed promotional material and mailings.
- 100% have established an NCP website.
- 45% of NCPs have liaised with universities in promotional support of the Guidelines.

19. *Promotional activities within governments include:*¹⁶ (see Figure 2)

- 53% of NCPs utilize promotion through presentations to government departments or agencies by high-level officials.
- 16% promote and train embassy and consular staff.
- 47% of NCPs focus on Trade and Investment promotion missions and activities.
- 13% of NCPs Promote to overseas development agencies.
- 68% are answering questions from Parliaments, Ombudsmen or other government bodies and are promoting the Guidelines to foreign embassies.

III.b National Contact Points Peer Review

20. During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review. The NCPs of Canada, Chile, France, Japan and the United Kingdom participated in the Dutch NCP Peer Review, which was carried out in the fall of 2009, and presented to the OECD Investment Committee Working Group on 24 March 2010.

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

¹⁵ Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period.

¹⁶ Percentages are based on the number of NCPs who submitted an annual report for the 2009-2010 reporting period.

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

23. Several lessons learned were drawn from the review process, such as the importance of overall promotional activities and several challenges relating to the NCP specific instance procedure. A few of the highlighted challenges relating to the specific instance procedure are establishment of clear and appropriate timelines for initial assessments, examinations and issuing final statements, management of parallel procedures, (local) fact finding and the need for better protection of persons or organisations logging complains where fear of retaliation over the notification exists. The NCPs also found that the structural change, to an Independent NCP Board, quite useful and recommend this structural modification to other NCPs that wish to reconsider their structure.

24. Finally, although the main goal of a peer review is evaluative in nature, much of the additional value of this NCP peer review was the peer learning platform that was promoted during the six month peer review process. This experience was well received by all parties involved; the review team would like to encourage other NCPs to also initiate knowledge sharing and mutual learning events, either through general review or more thematic discussions.

III.c Investment promotion, export credit and investment guarantee agencies

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

¹⁷ The Netherlands National Contact Point, "Peer-Review," The Netherlands National Contact Point website, <http://www.oecdguidelines.nl/get-started/peer-review/>

Table 1. The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Austrade websites.
Austria	Export credits	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export Credits	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.
Chile	Investment promotion	The Foreign Investment Committee is the agency which promotes Chile as an attractive destination for foreign investment and international business.
Czech Republic	Investment promotion	There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the Czech Republic. The Czech NCP (at the Ministry of Finance) co-operates closely with Czech Invest.
Denmark	Export credits	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the OECD Guidelines and encourages exporters to act in accordance with the OECD Guidelines.
Egypt	Investment promotion	The General Authority for Investment and Free Zones (GAFI) is the Egyptian investment promotion agency. GAFI is under the Ministry of Investment. ENCP maintains a close ties with GAFI. Through GAFI ENCP and the Guidelines brochures are distributed.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export credit guarantees and investment insurance	Finland's Export Credit Agency, Finnvera, calls the attention of guarantee applicants" to the Guidelines through its web pages and CSR report.
France	Export credits and investment guarantees	Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines (" <i>avoir pris connaissance des Principes directeurs</i> ").
Germany	Investment guarantees	Companies applying for investment guarantees are referred to the Guidelines directly by the application form. In the application process, they have to confirm awareness of this reference by signature. The reference also provides a link to further information on the Guidelines.

Greece	Investment promotion	The <i>Guidelines</i> are available on the portal www.mnec.gr as well as on the websites of the Ministry of Foreign Affairs (www.agora.gr), the Invest in Greece Agency (www.investingreece.gov.gr), the General Secretariat of Consumers Affairs (http://www.efpolis.gr), the and the Export Credit Insurance Organization (ECIO) (www.oaep.gr).
Hungary	Investment promotion	The site of Investment and Trade Development Agency has links to the Ministry for National Development and Economy, EXIMBANK, MEHIB, and other ministries where important OECD documents on bribery, anti-corruption, export credits are available. Cross links support the quick search for relevant OECD documents.
Israel	Investment Promotion Centre	The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.
Italy	Export credits	The Italian NCP is in regular contact with SACE (the Italian association in charge of insuring export credit) and contributes to its activities.
Japan	Trade-investment promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, MHLW, and METI Japan. The Japan External Trade Organization (JETRO) website, the ASEAN-Japan Centre website and the Nippon Export and Investment Insurance (NEXI) website are also linked to the summary, full texts of the Guidelines, introduction of the Japanese NCP activity including its procedures and promotion.
Korea	Trade-investment promotion	OECD Guidelines can be found at the MKE (Ministry of Knowledge Economy) website (www.mke.go.kr). MKE promotes trade and investment.
Lithuania	Investment promotion	"Invest Lithuania" Agency (http://www.businesslithuania.com) operates in the Republic of Lithuania and provides information on the Lithuanian business environment to foreign investors. It has prepared an information package that is passed to all foreign investors considering investing within the territory of Lithuania. The Lithuanian NCP (at the Ministry of Economy) co-operates closely with the "Invest Lithuania" Agency. Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19 th of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy: http://www.ukmin.lt/en/investment/invest-promotion/index.php
Mexico	Investment Promotion	The Mexican NCP is located within the Directorate General for Foreign Investment in the Ministry of Economy, which is responsible for the negotiation of BIT's and for Mexico's participation in Investment Committee's in different international organisations. The guidelines can be found on the website. Mexico's investment promotion agency - PROMEXICO - works in close co-operation with this Department.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
New Zealand	Export Credit promotion	New Zealand's Export Credit Office (ECO) mentions the OECD MNE Guidelines on its website. The ECO also provides a link to both the OECD Guidelines and the New Zealand NCP's website.
Norway	Guarantee Institute for Export Credits (GIEK)	GIEK has developed its own social responsibility policy which is posted on its website. For more information please see: http://www.giek.no/giek_en/default.asp?menu=610&page=277&cells=0

Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIiZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIiZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.
Portugal	Exports and Investment Promotion	AICEP – Portugal Global is a Business Development Agency responsible for the promotion of exports, the internationalisation of Portuguese companies, especially SMEs and for inbound foreign investment. The Guidelines are part of the information given to all companies.
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (www.mae.ro) and the Romanian Agency for Foreign Investments (ARIS) (www.arisinvest.ro). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCP's web page include: <ul style="list-style-type: none"> • Policy framework for Investment; • OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Romanian Agency for Foreign Investment edited, among other specific promotional materials, the brochure entitled "Frequently Asked Questions - An Overview", including a separate chapter on Romanian National Contact Point and OECD Guidelines for Multinational Enterprises.
Slovenia	Promotion and awareness of OECD Guidelines	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Slovene NCP has just been reconstructed and will perform various promotional activities mostly in second half of the year 2009 (e.g. translation into Slovene language, first public appearance, printing and distribution of Guidelines).
Slovak Republic	Investment promotion	NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in Slovak language at Ministry's webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both business environment and investment opportunities. The investors entering the Slovak republic who had been awarded with governmental incentives are to commit themselves to keep the Guidelines (part of the awarding decision).
Spain	Investment guarantees	CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on environment, the rules on bribery, the OECD Guidelines for MNE's and the Swedish Partnership for Global Responsibility.
Switzerland	Export credits insurance	The Swiss Export Risk Insurance (SERV) promotes corporate responsibility principles. On its website, it provides information regarding the Guidelines and their implementation mechanism (www.serv-ch.com).
Turkey	FDI	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for investment policy making. The Treasury's website provides information on the Guidelines.
United Kingdom	Export credits and investment insurance	The Export Credits Guarantee Department's (ECGD) website contains links to the website of the UK National Contact Point.

United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.
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III.d OECD Investment Committee work

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

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

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

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

30. The purpose of the update of the Guidelines is to ensure their continued role as a leading international corporate responsibility instrument for the promotion of responsible conduct. The terms of reference cover substantive, procedural and institutional issues related to the Guidelines. Priorities for the update include more elaborated guidance on the application of the Guidelines to human rights, including if deemed appropriate, in a dedicated chapter of the Guidelines, the clarification of the application of the

¹⁸ http://www.oecd.org/document/33/0,3343,en_2649_34889_44086753_1_1_1_1,00.html

Guidelines to supply chains and the improvement of the implementation of the Guidelines to enhance awareness, visibility and a more widespread use and effective use of the Guidelines, including in non-adhering countries. The work on the update was scheduled to start on the occasion of the June 2010 Annual Meeting of the National Contact Points (NCPs) with the broad aim of completing the update in 2011, if at all possible, by the time of the 2011 Annual NCP Meeting. Consultations with stakeholders and non-adhering countries will be integral to the update process.

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

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

III.e Other promotion by the OECD

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

34. The OECD Deputy Secretary-General Richard Boucher participated in the Ministerial Session of the UN Global Compact Leaders Summit 2010, on 23 June 2010, in New York, NY. The DSG delivered remarks regarding the OECD and UN Global Compact partnership emphasising ways in which

¹⁹ The Global Reporting Initiative (GRI), “The Amsterdam Global Conference on Sustainability and Transparency,” Amsterdam GRI Conference website, <http://www.amsterdamgriconference.org/glance>, accessed July 2010

governments can support and incentivize businesses to incorporate poverty reduction into their business models. He also called for an active participation of the UN Global Compact in the update of the Guidelines. DSG Boucher also chaired a discussion on the Guidelines and responsible business conduct at the USCIB Global Investment Conference in Washington.

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

- The French CSR Ambassador represented the OECD at the 8th meeting of ISO/TBM/WG SR held in Copenhagen, Denmark on 5-17 May 2010 which approved the version WG SR N191 of Draft International Standard (DIS) version of ISO 26000, Guidance on social responsibility and agreed to send it to the Editing Committee for editing, and then to forwards it to ISO/CS no later than 30 June 2010 for registration as FDIS for ballot.²⁰
- On 23 March 2010, the Egyptian Government held the Third Annual CSR Conference in Cairo, which focused on “Transparency & Reporting on CSR practices, Towards Sustainable Competitive Environment”. The OECD was represented by the Netherland’s NCP and addressed reporting and disclosure under the OECD Guidelines.
- On 16 April 2010, the OECD presented the Guidelines in a workshop held by ProInversión, which served to consolidate ProInversión as the new Peruvian NCP. The workshop addressed topics including implementation experiences, the role of the National Contact Point and the importance of the Guidelines for the consolidation of the Peruvian investment climate.
- The OECD dialogue and co-operation with the economies of Southeast Asia continued. In May of 2009 a publication titled “Active in Southeast Asia” was disseminated promoting the Guidelines as they pertain to Corporate Governance in reference to state-owned enterprises (SOEs) and how to improve governance frameworks in the Asian economic, legal and regulatory context.
- The OECD worked with Indonesia on their approach to encouraging responsible business conduct at the 48th Meeting of the ASEAN Coordinating Committee on Investment in Penang, on 22 April 2010.
- The Guidelines were also recognized in the “King Report on Governance for South Africa” (King III) published in 2009, by the Institute of Directors in Southern Africa in regards to their international importance in addressing sustainability issues.²¹

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

²⁰ International Organization for Standardization (ISO), “News and Media,” International Organization for Standardization website, <http://www.iso.org/iso/pressrelease.htm?refid=Ref1294>, <http://www.iso.org/iso/pressrelease.htm?refid=Ref1299>, and <http://www.iso.org/iso/pressrelease.htm?refid=Ref1321>, accessed July 2010

²¹ The Institute of Directors in Southern Africa (IoDSA), “King Code of Governance Principles” (King III), IoDSA website. <http://african.ipapercms.dk/IOD/KINGIII/kingiiiireport/>, accessed July 2010

IV. Active use of the “specific instance” facility

IV.a Number of specific instances

37. [226]²² requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been filed: Argentina (6), Australia (3), Austria (5), Belgium (12), Brazil (18), Canada (9), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (12), Germany (12), Hungary (1), Ireland (2), Israel (1), Italy (5), Japan (5), Korea (8), Mexico (3), Netherlands (19), New Zealand (2), Norway (6), Peru (1), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (12), Turkey (3), United Kingdom (20), and United States (32).

38. Annex 3 shows that [163] specific instances have been actively taken up and considered to date by NCPs.²³ [136] of these have been concluded or closed. Most specific instances dealt with Chapter IV (Employment and Industrial Relations). A rising number of cases also involved violation of human rights, a majority of them within the resources sector. Complaints relating to Chapter V (Environment) have also increased over the past few years. The only Guidelines chapter that has not been referenced in the context of a specific instance is Chapter VIII (Science and Technology). Smoother and more productive consultations among NCPs stand out as significant developments during the reviewed period. In particular, the New Zealand NCP reports working closely with assistance from Germany and Australia, on a recent case involving the employment practices of an enterprise in the telecommunications sector in New Zealand. The rise of specific instances in non-OECD adhering countries has also continued. The most noticeable development during the reporting period, however, was the increased recourse to mediation as a means for resolving specific instances. [8] specific instances were managed through mediation during this time frame, in a majority of cases resulting in positive outcomes for all parties involved.

IV.b Selected specific instances described in NCP reports

39. *Australia* – In July 2007, the Australian NCP received a request regarding alleged non-observance with several provisions of the OECD Guidelines by mining company Cerrejon Coal in Colombia. Cerrejon Coal is jointly owned by BHP-Billiton, Anglo-American and Xstrata. The complaint to the Australian NCP related specifically to BHP-Billiton but because of the joint ownership the Australian NCP consulted with the Swiss and UK NCPs to resolve this specific instance. This instance was suspended pending a report commissioned by the mining company’s management and shareholders to review the firm’s social engagement. The company appointed an independent facilitator in August 2008, and by December 2008, an agreement was reached between the company and the residents of Tabaco in regard to legacy issues and a way forward. The settlement included a package of compensation and sustainable projects. In this context, it was agreed that the issues relating to Tabaco have been satisfactorily resolved. The agreement between Cerrejon and the former residents of Tabaco is a significant, positive outcome that has been welcomed by all parties.

40. There are several other communities which may need to be resettled and with which formal agreements are still being considered, but the process of consultation is proceeding. As a follow up to the mediation procedures in February 2009, it was confirmed that Cerrejon would agree to engage an

²² Specific instance counts supplied in [brackets] indicate numbers which are not yet finalized as the Investment Committee is awaiting the submission of missing NCP Annual Reports.

²³ The number of specific instances actively taken up by NCPs is the number of specific instances listed in Annex 3, adjusted for specific instances that are listed more than once on the Annex table because more than one NCP was involved and more than one reported on the specific instance in the Annex table.

independent facilitator to work with individual communities to provide an oversight role where the communities were seeking independent support.

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

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

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

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

44. Developing countries are increasingly making active use of the OECD Risk Awareness Tool to shape their own policies. The International Conference on the Great Lakes Region (ICGLR) has recognized its usefulness as a source of guidance for the implementation of the ICGLR Protocol against the illegal exploitation of natural resources.²⁴ The Government of the Democratic Republic of the Congo agreed to use it to enhance transparency and accountability in the extractive sector.

45. In his 2010 report, the Special Representative of the UN Secretary General on business and human rights, Professor John Ruggie, highlighted the Risk Awareness Tool as an exceptional case where governments provided meaningful assistance to enterprises operating in conflict-affected areas.²⁵ The Tool

²⁴ <http://www.oecd.org/dataoecd/44/60/44686130.pdf>

²⁵ See Report of the UNSGSR "Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework", A/HRC/14/27 (9 April 2010), footnote 30,

was also included in the list of cross-sectoral intergovernmental initiatives listed in the Draft ISO 26000 Guidance on Social Responsibility.²⁶

46. The OECD Secretariat has continued to actively promote the Risk Awareness Tool. The OECD Deputy Secretary-General Aart de Geus stressed the due diligence approach taken in the Risk Awareness Tool at the EU Conference on Corporate Social Responsibility which was held in Stockholm on 10 November 2009. The OECD Secretariat was invited to join the "Task Force" on the illegal exploitation of natural resources in the Great Lakes Region,²⁷ and participated in meetings in both OECD and African countries, building support for the implementation of the OECD Risk Awareness Tool in the mining sector.

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

47. On 6 October 2009 the Investment Committee and the Development Assistance Committee approved a joint project to implement the Risk Awareness Tool in the mining and minerals sector.²⁸ An OECD-hosted multi-stakeholder working group was set up with the mandate to develop practical due diligence guidance for responsible business conduct in conflict-affected and high-risk areas. The working group consists of OECD member and partner countries, international organisations, industry and trade organisations, mining companies, mineral trading and processing companies, brand end-user companies and civil society organisations.

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

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

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

²⁶ Draft International Standard ISO 26000 Guidance on Social Responsibility (ISO/DIS 26000), Table A1: Examples of cross-sectoral initiatives, Section 1: Intergovernmental initiatives.

²⁷ The "Task Force" on the illegal exploitation of natural resources in the Great Lakes Region was set up to foster exchange of information on current initiatives, identify gaps and make recommendations for decision-making bodies where possible. The Task Force, initially composed of the United Nations, the United States, the European Commission and EU member states now includes other interested countries and international organisations. For the time being, the Office of the Special Representative for the Great Lakes Region of the European Union (EUSR), Roeland van de Geer, is acting as the Task Force's Secretariat.

²⁸ www.oecd.org/daf/investment/mining

and recognised its added-value as providing a global framework on responsible supply chain management of conflict commodities encompassing all actors involved, beyond mineral, country or regional specific initiatives.

51. The UN Group of Experts on the Democratic Republic of the Congo relied on the OECD draft guidance's definition of risk-based due diligence and endorsed the proposed draft due diligence five step framework in its 2010 interim report to the UN Security Council.²⁹

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

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

²⁹ See Interim report of the Group of Experts on the Democratic Republic of the Congo, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009) [S/2010/252 (25 May 2010), paras. 67-68-69].

**ANNEX 1.
STRUCTURE OF THE NATIONAL CONTACT POINTS**

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Argentina	Single department	OECD Co-ordination Unit - National Directorate of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		The NCP has been co-ordinated with other government departments, business, labour and civil society and having in mind the experiences that has got from these Contact Points and its conviction that other areas of government might be involved, is working hard to present a new scheme in order to fulfil the complexities of incoming presentations.
Australia	Single department	Foreign Investment and Trade Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds community consultations with business, trade unions and other NGO representatives.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economy, Family and Youth	Other divisions of the Federal Ministry of Economy Family and Youth The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	
Brazil	Interministerial body composed of 8 ministries and the Central Bank	Ministry of Finance	Ministry of Foreign Affairs Ministry of Labour and Employment Ministry of Planning, Budget and Management Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Ministry of Agriculture Brazilian Central Bank	Representatives from other government offices can be asked to participate as well as other entities. In April 2007, the Brazilian NCP issued a decision to regularly invite CUT, the largest Brazilian labour union, to the forthcoming meetings. Other institutions have also been invited to the NCP meetings, like the NGO ETHOS Institute, the National Confederation of Industry – CNI, and the SOBEET (Brazilian Society for Transnational Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	Foreign Affairs and International Trade Canada	Industry Canada Human Resources and Social Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an “as required” basis, e.g., Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Chamber of Commerce, the Canadian Labour Congress and the Confédération des syndicats nationaux. The Interdepartmental Committee is chaired by DFAIT at the Director General level.

DAF/INV/NCP(2010)1

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Chile	<i>On a mis en place un modèle ou le PNC est dans le Département OCDE qui dépend du Ministre des Affaires Etrangères. Le PNC a la responsabilité de la coordination et le suivi des cas spécifiques. Les autres instances de l'Administration Publique prennent la responsabilité de traiter les cas selon les thèmes concernés par chaque cas soumis au PNC</i>	Ministry of Foreign Affairs, Directorate of International Economic Relations		The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Finance	Ministry of Labour and Social Affairs Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners. The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment Ministry of Foreign Affairs	Ministry of the Environment Ministry of Economic and Business Affairs	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Egypt	Single Department	Ministry of Investment	Ministry of Foreign Affairs Ministry of Trade and Industry Ministry of Administrative Ministry of Finance Ministry of Labour Egyptian Labour Trade Union Ministry of Environmental Affairs	
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Export Agency Ministry of Foreign Affairs Ministry of Justice Enterprise Estonia Estonian Employers Confederation Confederation of Estonian Trade Unions Estonian Chamber of Commerce and Industry	The NCP continues in co-operation with the business, trade unions and other NGO representatives

DAF/INV/NCP(2010)1

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Finland	Quadri-partite with several ministries and civil society partners, as business and labour organisations	Ministry of Employment and the Economy	Ministry of Foreign Affairs Ministry of Social Affairs and Health Ministry of Environment The Prime Minister's Office The Confederation of Finnish Industries (EK) The Central Organization of Finnish Trade Unions (SAK) The Finnish Section of the International Chamber of Commerce (ICC) FinnWatch The Finnish Confederation of Professionals (STTK) Akava – Confederation of Unions for Professional and Managerial Staff Federation of Finnish Enterprises The Finnish Consumers' Association WWF Finland The Evangelical Lutheran Church of Finland Tapiola Group Finnish Business & Society	The new Finnish CSR Committee (set on 16 October 2008) established by the Government Decree (591/2008) on 9 September 2008 operates under the auspices of the Ministry of Employment and the Economy, and the Committee replaces the MONIKA Committee (established by Government Decree 335/2001). The CSR Committee focuses on the issues of CSR and on the promotion of the guidelines of the OECD and of the other international organisations. The Committee on CSR had 5 over the review period.
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and six Trade Union Federations are part of the NCP.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Germany	Single Department with close inter-ministerial cooperation in specific instances procedures	Federal Ministry of Economics and Technology	Federal Foreign Office Federal Ministry of Justice Federal Ministry of Finance Federal Ministry of Economic Co-operation Federal Ministry of Environment, Nature Conservation and Nuclear Safety Federal Ministry of Labour and Social Affairs Federal Ministry of Food, Agriculture and Consumer Protection	The NCP works in close co-operation with other Federal ministries, the social partners and NGOs. In specific instances procedures, NCP decisions and recommendations are agreed upon between all ministries represented in the 'Ministerial Group on the OECD Guidelines' (see previous column), with a particular involvement of the Federal ministry or ministries primarily concerned by the subject matter. In addition, the participating ministries meet at regular intervals to discuss (a) current issues relating to the OECD Guidelines, (b) how to improve the dissemination of these Guidelines and (c) the working methods of the National Contact Point. The same applies to the 'Working Party on the OECD
Greece	Single Department	Unit for International Investments, Directorate for International Economic Development and Co-operation, General Directorate for International Economic Policy, Ministry of Economy Competitiveness and Shipping		The Unit for International Investments, part of the Directorate for International Economic Developments and Co-operation, in the General Directorate for International Economic Policy of the Ministry of Economy, Competitiveness and Shipping, is designated as the NCP.
Hungary	Interdepartmental Office	Ministry for National Development and Economy	Ministry of Finance	
Iceland	Interdepartmental Office	Ministry of Business Affairs		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment	The Department of Communications, Energy and Natural Resources Office of the State Solicitor.	

DAF/INV/NCP(2010)1

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee is composed of representatives from those ministries mentioned in the previous column. A Steering Group has been established, comprising of representatives from a wide variety of stakeholders from the civil society, as well as business and employee organisations. The Steering Group objective is to create a detailed recommendation for NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the Guidelines. The bodies involved in the Steering Group are expected to also actively assist the NCP in its outreach efforts.
Italy	Single Department	General Directorate for Industrial Policy and Competitiveness, Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Labour, Welfare and Health Ministry of Agriculture and Forest Policy Department of International Trade (Ministry of Economic Development)	The NCP works in close collaboration with representatives of social organisations and its Committee also includes members of the most important trade unions and business associations. Please note that regarding the NCP structure, the NCP national Committee will soon include representatives of the Permanent Regions' Conference, the Italian Banks Association (ABI), the National Confederation of Crafts and Small and Medium-Sized Enterprises (CNA), the professional association of the Italian Craft Industry (Confartigianato) and the Italian association of Chambers of Commerce, Industry, Handcraft and Agriculture (Unioncamere).
Japan	Interministerial body composed of three ministries	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		Since 2002 the Japanese NCP has been organised as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental office, with several ministries	Foreign Investment Subcommittee, Ministry of Knowledge Economy	Ministry of Strategy and Finance Ministry of Foreign Affairs and Trade Ministry of Environment Ministry of Labour, etc	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Latvia	The OECD Consultative Board - Interministerial body including representatives of business & labour organisations	Economic Policy Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Employer's Confederation of Latvia Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		The NCP works in close co-operation with other concerned departments.
Netherlands	Independent Board	Ministry of Economic Affairs (NCP Secretariat)	Ministry of Social Affairs and Employment Ministry of Housing, Spatial Planning and Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders. The board consists of four persons including a chairman with each a background in one of the various stake holding groups in society.

DAF/INV/NCP(2010)1

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
New Zealand	Single Department	Ministry of Economic Development	Department of Labour Ministry of Consumer Affairs Ministry for the Environment Ministry of Foreign Affairs and Trade Ministry of Justice New Zealand Trade and Enterprise	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Section for Economic and Commercial Affairs Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Trade and Commerce Norwegian Confederation of Trade Unions Confederation of Norwegian Enterprise	A process of re-organising and strengthening the NCP is currently taking place. The re-organized NCP is expected to be launched by the summer /fall of 2010. For further information concerning the re-organization, please see under A – Institutional arrangements, in Norway’s Annual report.
Peru	Single Department	Private Investment Promotion Agency of Peru - PROINVERSION		Regarding the organization of the Peruvian NCP, on July 1st 2009, the Board of Directors of PROINVERSION approved the following structure for the NCP: i) The Board of Directors of PROINVERSION would act as the top decision level ii) The Executive Office would act as the Secretariat through the Investment Facilitation and Promotion Division
Poland	Single Department	Polish Information and Foreign Investment Agency (PAIiZ)		The Polish Information and Foreign Investment Agency (PAIiZ) is supervised by the Ministry of the Economy.
Portugal	Bipartite Structure	AICEP - Ministry of Economy and Innovation DGAE - Ministry of Economy and Innovation	Ministry of Foreign Affairs Ministry of Finance Ministry of Justice IAPMEI	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Romania	Bipartite Structure	<p><i>Co-ordination</i> Ministry of SMEs, Trade and Business Environment Ministry of Foreign Affairs</p> <p><i>Executive function</i> Ministry of SME's, Trade and Business Environment - Directorate for Business Environment and Liberal Professions Romanian Agency for Foreign Investment</p> <p><i>Technical secretariat</i> Ministry of Foreign Affairs Romanian Agency for Foreign Investment</p>	Ministry of Foreign Affairs Ministry of Economy Ministry of Public Finance Ministry of Justice and Citizens' Freedoms Ministry of Education, Research and Innovation Ministry of Labour, Family and Social Protection Ministry of Transportation and Infrastructure Ministry of Regional Development and Housing Ministry of Environment Ministry of SME's, Trade and Business Environment Romanian Agency for Foreign Investment Business Environment Unit Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.
Slovak Republic	Single Department	Ministry of Economy	Slovak Investment and Trade Development Agency (SARIO) Ministry of Finance Ministry of Labour, Social Affairs and Family (both Ministries are investment aid providers)	Strategic investment department is a single department in the Ministry of Economy, under the Section of strategy.
Slovenia	Tripartite, with several ministries	Ministry of the Economy	Other ministries, agencies, local communities, NGOs	The Slovene NCP has been just reconstructed and is therefore in its opening phase.

DAF/INV/NCP(2010)1

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Spain	Single Department	General Secretariat for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment and Rural and Marine Affairs Ministry of Justice Ministry of Health and Social Policy Ministry of Labour and Immigration	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	International Trade Policy Department, Ministry for Foreign Affairs	Ministry for Foreign Affairs Ministry of the Environment Ministry of Employment Ministry of Enterprise, Energy and Communications	The Ministry for Foreign Affairs, International Trade Policy Department, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs	Ministry of Foreign Affairs	The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets in principle once a year and is provided with essential information as required.
Turkey	Tripartite, includes three governmental bodies.	General Directorate of Foreign Investment, Under secretariat of Treasury	Ministry of Foreign Affairs Ministry of Justice	Depending on the issue under debate, the consultation and fact finding processes are extended to other governmental offices. Also an Advisory Committee including academicians, NGOs, representatives from trade unions and business associations helps the NCP in its activities.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
United Kingdom	Two Departments	Department for Business, Innovation and Skills(BIS) and Department for International Development (DFID)	Department for Work and Pensions (DWP), Export Credits Guarantee Department (ECGD), Foreign and Commonwealth Office (FCO)	A Steering Board oversees work of the NCP. The Board includes external members drawn from outside Government, selected for their experience in business, employee relations and issues of concern to NGO's including representatives of the national organisations of workers and employers. Other Government Departments and agencies with an interest in the OECD Guidelines are also represented. The Steering Board provides the UK NCP with strategic guidance, but does not become involved in individual cases, except to review any allegations of procedural failure. On a day to day level, the NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.
United States	Single Department	Office of Investment Affairs, Bureau of Economic, Energy and Business Affairs (EEB), United States Department of State	U.S. State Department Bureau of Democracy, Human Rights, and Labor; U.S. Departments of Commerce, Labor, and Treasury; the Office of the United States Trade Representative; the Environmental Protection Agency; and other agencies as required, including Departments of Agriculture and Justice, and the U.S. Consumer Product Safety Commission	The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an <i>ad hoc</i> basis.

**ANNEX 2.
CONTACT DETAILS FOR NATIONAL CONTACT POINTS**

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Argentine - Argentina

Ambassador Rodolfo I. Rodríguez Deputy Director of the National Directorate for Economic International Negotiations Director of the OECD Co-ordination Unit Minister. 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: oejde@mrecic.gov.ar rro@mrecic.gov.ar hjg@mrecic.gov.ar jpw@mrecic.gov.ar fag@mrecic.gov.ar Web: www.cancilleria.gov.ar/pnc
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Director Export and Investment Policy Division Federal Ministry of Economy, Family and Youth Abteilung C2/5 Stubenring 1 1011 Vienna	Tel: (43-1) 711 00 5180 or 5792 Fax: (43-1) 71100 15101 Email: POST@C25.bmwfi.gv.at Web: www.oecd-leitsaetze.at
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www.comercio.es/comercio/bienvenido/Inversiones+Exteriores/Punto+Nacional+de+Contacto+de+las+Lineas+Directrices/pagEspnc.htm

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www.minefi.gouv.fr/directions_ser_vices/dgtp/pcn/pcn.php
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Grèce - Greece

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www.oecd.emb-
japan.go.jp/kiso/4_1.htm](http://www.mofa.go.jp/mofaj/gaiko/oecd/www.oecd.emb-japan.go.jp/kiso/4_1.htm)

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République slovaque - Slovak Republic

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* 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.

ANNEX 3.
SPECIFIC INSTANCES CONSIDERED BY NATIONAL CONTACT POINTS TO DATE

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

Specific Instances Considered by National Contact Points to Date

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The NCP received a request from the Argentine Banking Association (Asociación Bancaria Argentina) a trade union regarding an Argentine subsidiary of the Banca Nazionale del Lavoro (BNL) S.A of the banking sector.	Dec 2004	Argentina	II. General Policies IV. Employment and Industrial Relations	Concluded	No	The instance after the acquisition of the BNL by another multinational bank (HSBC) of 100% of the stock has not been followed up. Since last year no new presentations have been made and the NCP has closed its involvement in the case.
Argentina	The NCP received a request from the Argentine Miller's Labour Union (Unión Obrera Molinera Argentina) regarding an alleged non-observance of the OECD Guidelines by CARGILL S.A. a multinational operating in the food sector.	Nov 2006	Argentina	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Both parties reached a solution and the agreement was formalised on July 31, 2007.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The NCP received a request of non-observance of Guidelines recommendations on bribery and taxation by a Swedish multinational enterprise.	Nov 2007	Argentina	VI. Combating Bribery X. Taxation	Concluded	No	The specific instance concluded on September 26, 2008, due to an alleged breaching in the non-disclosure agreement. On May 20, 2009, a new presentation was made by CIPCE based on alleged new elements considered by them to be in relation to the specific instance. The ANCP attempted to make the enterprise reconsider its position, but the latter was not willing to do so, arguing that it had lost confidence in the NGO's intentions. In conclusion, the specific instance finalized on the 26 of September, 2008.
Argentina	The NCP received a non-observance of labour relations and bribery by a French multinational enterprise.	Nov 2007	Argentina	II. General Policies IV. Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	The outcomes were conveyed to the public through a paid announcement published in two broadsheet newspapers of nation-wide circulation. It is hereby stated, for informative purposes, that at the beginning of the instance a parallel judicial process regarding the conduct of an official that had been linked to the French multinational enterprise already existed, but this situation did not hinder the development of the instance and its adequate conclusion, which was published in the main journals of Argentina.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The ANCP received a request from The Institute for Participation and Development of Argentina and Foundation Friend of the Earth of Argentina regarding an alleged non-observance of the OECD Guidelines by a Dutch multinational enterprise.	May 28 2008	Argentina	II. General Policies III. Disclosure V. Environment	Ongoing	No	The complaint was presented to the Argentinean and the Dutch National Contact Points by FOCO/INPADE and Friends of the Earth. The Argentinean National Contact Point (ANCP) notified the enterprise in due time. On September 9 th , 2008, formal admissibility of the complaint was declared. The ANCP held separate meetings with both parties. From the beginning, the enterprise did not accept the Argentinean National Contact Point's good offices, arguing that doing so could affect its position in the Argentinean Federal Courts, due to the existence of parallel proceedings of judicial nature on the same matters. The enterprise requested the ANCP to put on hold the proceedings until the resolution of the ongoing judicial causes. Considering the situation, the Dutch National Contact Point suggested that the parties could try to hold a dialogue on the issues that were not covered by the judicial causes, tackling some issues of 'supra legal' nature. Regarding this initiative, shared by the ANCP, the parties did not reach an agreement on the scope and content of a possible dialogue. The complainants insisted on giving priority to the discussion of the matters included in the complaint as well as any other topic that could possibly arise over the course of this dialogue, even though they were not included in its formal presentation. The enterprise, in turn, expressed again the reason of the existence of parallel proceedings not to accept informal conversations, informing that the

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Australia (The Australian NCP assumed carriage following an agreement with the UK NCP in June 2005)	GSL (Australia) Pty Ltd – an Australian incorporated wholly-owned subsidiary of a UK controlled multinational – Global Solutions Limited.	June 2005	Australia	II. General Policies VII. Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at www.ausncp.gov.au .
Australia	Australia and New Zealand Banking Group Ltd (ANZ).	August 2006	Papua New Guinea	II. General Policies V. Environment	Concluded	Yes	The NCP concluded that there was no specific instance to answer and issued an official statement which is available on the website at www.ausncp.gov.au .
Australia	BHP Billiton - resettlement and compensation of the occupants of the land.	July 2007	Colombia	II. General Policies	Concluded	Yes	There was agreement by all parties that the outcome for the community in question provides a viable resettlement program to be achieved. Negotiations for possible resettlement of other communities are ongoing. The statement issued is available on the website at www.ausncp.gov.au .
Austria	Mining activities.	Nov 2004	Democratic Republic of Congo	Various	Concluded	Yes	No consensus reached.
Austria	Textile industry.	Mar 2006	Sri Lanka	IV. Employment and Industrial relations	Concluded	Yes	No consensus reached.
Austria	Pharmaceutics.	Feb 2008	Austria	IV. Employment and Industrial Relations	Concluded	Yes	Consensus reached.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium.	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A..	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	Forrest Group.	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The case was handled in together with the NGO complaint.
Belgium	Forrest Group.	Nov 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment IX. Competition	Concluded	Yes	Press release in 2005.
Belgium	Tractebel-Suez.	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Concluded	Yes	Press release in 2005.
Belgium	KBC/DEXIA/ING.	Mai 2004	Azerbaijan, Georgia and Turkey	I. Concepts and Principles II. General Policies III. Disclosure V. Environment			UK NCP.
Belgium	Cogecom.	Nov 2004	Democratic Republic of Congo	I Concepts and Principles II. General Policies IV. Employment	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Belgolaise.	Nov 2004	Democratic Republic of Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems.	Nov 2004	Democratic Republic of Congo	I. Concepts and Principles II. General Policies X. Taxation	Concluded	Yes	Press release in 2006.
Belgium	GP Garments.	June 2005	Sri Lanka	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Press release in 2007.
Belgium	InBev.	July 2006	Montenegro	I. Concepts and Principles IV. Employment and Industrial Relations		n.a	Complaint withdrawn by trade union.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	Pharmaceutical company.	January 2008	Belgium	II. General Policies III. Disclosure VI. Combating Bribery VII. Consumer Interests IX. Competition	Concluded	Yes	Press release in 2008. No further examination.
Brazil	Workers' representation in labour unions.	26 Sept 2003	Brazil	IV. Employment and Industrial Relations, article 1	Concluded	Yes	Complaint settled.
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	V. Environment	Ongoing	No	Negotiations in dead-lock.
Brazil	Environment and workers' health issues.	8 May 2006	Brazil	V. Environment, articles 1 and 3	Concluded	Yes	After a long mediation, several meetings and contacts held with the opposing parties, on March 25 th 2008, the Brazilian NCP decided to close the complaint held against the multinational enterprise Shell through a comprehensive final Report in Portuguese.
Brazil	Dismissal of workers.	26 Sept 2006	Brazil	IV. Employment and Industrial Relations, article 6	Concluded	Yes	
Brazil	Refusal to negotiate with labour union.	6 March, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 02 (a, b, c), 03 and 08	Ongoing	No	List of questions answered by the enterprise. Awaiting manifestation from the complaining labour union.
Brazil	Dismissal of workers.	7 March, 2007	Brazil	II. General Policies, article 02 IV. Employment and Industrial Relations, articles 1(a), 2(a), 4(a), 7 and 8	Ongoing	No	Termination of proceedings awaiting judiciary decision.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Brazil	Refusal to negotiate with labour union.	19 April, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 01 (d), 02 (a), 02 (b), 02 (c), 03, 04 (a), 04 (b) and 06.	Ongoing	No	
Brazil	Dismissal of labour union representative without cause.	April, 2007	Paraguay	II. General Policies IV. Employment	Ongoing	No	List of questions sent to the labour union.
Brazil	Lack of negotiations for work agreement.	July, 2007	Brazil	IV. Employment and Industrial Relations	Ongoing	No	List of questions sent to the parties.
Brazil	Prevention of manifestation of bank strike.	September, 2009	Brazil	IV Employment and Industrial Relations, articles 7 and 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Use of legal loopholes to prevent the presence of union leaders at the bank.	September, 2009	Brazil	I. Concepts and Principles, article 7 and IV. Employment and Industrial Relations, article 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Prevention of dialogue between the workers union and the company in the case of a dismissal of an employee.	April, 2010	Brazil	IV. Employment and Industrial Relations	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [www.ncp-pcn.gc.ca/annual_2002-en.asp]. The Swiss company was kept informed of developments.
Canada	Follow-up to allegations made in UN Experts Report on Democratic Republic of Congo.	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country.	Nov 2002	Myanmar	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.
Canada	Complaint from a coalition of NGOs concerning Canadian business activity in a non-adhering country.	May 2005	Ecuador	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	Yes	Following extensive consultation and arrangements for setting up the dialogue, the NGOs withdrew their complaint in January 2005 in disagreement over the set terms of reference for the meeting.
Canada	Submission from a coalition of four community organizations relating to a mine operated by a Canadian-based mining company	December 2009	Guatemala	II. General Policies	Ongoing	n.a.	After an initial assessment the NCP offered its good offices to facilitate dialogue between the two sides. The parties have replied and the NCP is considering the next steps.
Canada	Submission from a coalition of local NGOs regarding environmental concerns in the planning process of a mine being developed by a Canadian-based company	March 2010	Mongolia	II. General Policies V. Environment	Ongoing	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response.
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	Oct 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Chile	La Centrale Unitaire de Travailleurs du Chili (CUTCH) dans le cas d'Unilever.	June 2005	Chile	IV. Employment and Industrial Relations V. Environment	Concluded November 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Chile	ISS Facility Services S.A..	April 2007	Denmark	IV. Employment and Industrial Relations	Closed	No	
Chile	Banque du Travail du Perou.	April 2007	Peru	IV. Employment and Industrial Relations	Closed	No	
Chile	Entreprise Zaldivar, subsidiary of the Canadian firm Barrick Gold.	2007	Canada	IV. Employment and Industrial Relations	Closed	No	
Chile	Marine Harvest.	April 2009	Norway	IV. Employment and Industrial Relations V. Environment		No	The NCP is waiting for the formal and written presentation of ONG ECOCEANOS.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices.	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Jan 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Feb 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004.
Denmark	Trade union representation in Danish owned enterprise in Malaysia.	Feb 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America.	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Denmark	Several questions in relation to logging and trading of wood by a Danish enterprise in Cameroon, Liberia and Burma.	Mar 2006	Cameroon, Liberia and Burma	Several chapters (e. g. II, IV, V and IX)	Concluded	Yes	Specific instance initially assessed, specific instance raised by NGO (Nepenthes).
Finland	Finnvera plc/Botnia SA paper mill project in Uruguay.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP concluded on 8 Nov 2006 that the request for a specific instance did not merit further examination. The nature of Finnvera Oy's special financing role and the company's position as a provider of state export guarantees (ECA) was considered.
Finland	Botnia SA paper mill project in Uruguay / Botnia SA/Metsa-Botnia Oy.	Dec 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP considered on 21 Dec 2006 that Botnia SA/Metsa-Botnia Oy had not violated the OECD Guidelines in the pulp mill project in Uruguay.
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country.	Jan 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm .
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003, see www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm .
France	Marks and Spencer's announcement of closure of its stores in France.	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	Feb 2003	France	V. Environment III. Disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	Feb 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.
France	Accusation of non-observance of the Guidelines in the areas of environment, “contractual” and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	Oct 2003	Turkey, Azerbaijan and Georgia	II. General Policies	Ongoing	n.a.	In consultation with parties.
France	DRC/SDV Transami – Report by the expert Panel of the United Nations. Violation of the Guidelines by this transport company in the Congo, named in the third report as not having responded to the Panel’s requests for information.	Oct 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Concluded	No	
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	Nov 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn010405.htm .
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	Feb 2005	France	IV. Employment and Industrial Relations	Ongoing		

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Germany	Labour conditions in a manufacturing supplier of Adidas-Salomon.	Sept 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Although the parties could not agree on all facts of the particular instance, they agreed to conclude the case with the resolve to continue dialogue and without further recommendations by the NCP. See www.bmwi.de/go/oecd-nks .
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The Complainants alleged, <i>inter alia</i> , breach of the principle of <i>bona fide</i> negotiations. Parties agreed on an amicable settlement including withdrawal of court proceedings. NCP formulated expectation that dialogue is continued. See www.bmwi.de/go/oecd-nks .
Germany	Child labour in supply chain.	Oct 2004	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Based on a formal declaration by the company to more actively combat child labour the NCP closed the instance, announcing to monitor these efforts. The company since then has set up a diversified ChildCareProgram. See www.bmwi.de/go/oecd-nks .
Germany	Adjustment of a companies' policy (production of cars) to considerations of climate change.	May 2007	Various Germany	V. Environment	Concluded	n.a.	The specific instance was rejected due to a lack of possible violation of the <i>Guidelines</i> , the company, <i>inter alia</i> , acting in accordance with extensive national laws. http://www.bmwi.de/go/oecd-nks .

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Germany	Alleged breaches of anti-corruption Guidelines in the context of supply transactions within the framework of the UN Oil for Food Programme.	June 2007	Iraq	VI. Combating Bribery	Concluded	n.a.	The initial assessment found that the inquiry referred solely to non-recurring supply transactions and that, in the absence of an investment nexus or supply chain responsibility, the <i>Guidelines</i> did not apply. In addition, the NCP drew the attention to pending criminal proceedings, http://www.bmwi.de/go/oecd-nks .
Germany	Complaint that support for the Olympic torch relay would lead to human rights violations.	April 2008	China	II. General policies	Concluded	n.a.	The specific instance was rejected due to lack of investment nexus and because the actions named in the inquiry did not constitute or directly link to possible human rights violations. http://www.bmwi.de/go/oecd-nks
Germany	Eviction of local population by host government's military forces in order to vacate land for a multinational companies' plantation	June 2009	Uganda	II. General Policies	Ongoing	n.a.	Specific Instance was accepted but parallel legal proceedings, third party involvement (host country) and location in non-adhering country make mediation difficult.
Germany	Multi-faceted complaint with a main focus on the impacts of the electricity companies' policy on the environment and on consumer interests	Oct 2009	Germany	II. General Policies V. Environment VII. Consumer Interests	Concluded	n.a.	The initial assessment found that the complaint was based on an extensive interpretation of the <i>Guidelines</i> and partial misinterpretation of some facts. http://www.bmwi.de/go/oecd-nks
Germany/ Sweden	Indigenous rights allegedly affected by large windmillprojekt; responsibility of financial institution	April 2010	Sweden	II. General Policies	Ongoing	n.a.	Swedish NCP requested to take the lead.
Hungary	Personal injury occurred in the plant of Visteon Hungary Ltd. Charge injury arising from negligence.	June 2006	Hungary	IV Employment and Industrial Relations	Concluded	Yes	A joint statement was signed by the MoET and Visteon Hungary Ltd on 20 February 2007 but only released on 14 May 2007 when attempts to agree a trilateral statement were not successful.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Ireland	Allegations of non compliance with environmental, health and safety grounds. Allegations of failure to comply with human rights provisions.	August 2008	Ireland	V. Environment II. General Policies	Ongoing	n.a	The Dutch NCP is also dealing with this, with Ireland as lead. The Norwegian and US NCPs are kept informed of developments.
Israel	UN Expert Panel Report – Democratic Republic of Congo.	2003	Democratic Republic of Congo	Not specified in Report	Concluded	No	Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from DRC.
Italy- UK	Accusation of non-observance of Guidelines recommendations on human and labour rights, environment.	2003	Turkey, Azerbaijan Georgia	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	Currently waiting for the leader NCP final statement.
Italy	Accusation of non-observance of Guidelines recommendations on human and labour rights.	2005	China	IV Employment and Industrial Relations	Concluded	n.a	Following an enquiry by the Italian NCP, there was no connection between the accused firm and an Italian firm.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights and competition.	2007	Italy	IV Employment and Industrial Relations IX. Competition	Concluded	n.a.	The instance was concluded with an agreement with involved company.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights.	2007	Italy, India	IV. Employment and Industrial Relations	Concluded	n.a	The multiparty instance was closed thanks to a successful mediation process with the Indian government led by a former representative of the Government of the other NCP involved.
Italy	Accusation of non-observance of Guidelines recommendations on human rights, environment and contribution to host country's progress.	2007	India	II. General Policies V. Environment	Concluded	n.a.	The initial assessment led to the rejection of the instance. There was no involvement of the Italian firm in the project referring to which the alleged violations were made.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	Feb 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company.	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Philippines subsidiary of a Japanese company.	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Initial assessment is made and the Japanese NCP is in consultation with parties concerned. There is a parallel legal proceeding.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Japanese subsidiary of a Swiss-owned multinational company.	May 2006	Japan	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	After the initial assessment was made, the Japanese NCP has consultations with parties concerned including the Swiss NCP. There is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector.	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprise's labour relations.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. The Swiss NCP issued an intermediate press statement: http://www.seco.admin.ch/news/00197/index.html?lang=en .
Korea	Korean company's business relations in Malaysia's wire rope manufacturing sector.	2003	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	Korea's NCP is engaged in Guidelines promotion and Specific Instances implementation in accordance with the rule for Korea's NCP, which was established in May 2001.
Korea	Companies from guidelines adhering countries that are present in Korea.	2007	Korea	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Korea	Korean companies in non-adhering countries.	2007	Philippines	I. Concepts and Principles III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Ongoing		
Korea	Two Korean companies operating in a non-adhering country.	2008	Myanmar	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment	Concluded	No	After conducting an initial assessment, the NCP determined that additional investigation was unwarranted.
Korea	Company based in an adhering country operating in Korea.	2009	Korea	IV. Employment and Industrial Relations	Concluded	No	An initial assessment found that the involved company had not violated the Guidelines.
Mexico	Closing of a plant.	2002	Mexico	IV. Employment and Industrial relations	Concluded	n.a.	The conflict was settled on 17 Jan 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican <i>Llanti Systems</i> and a co-operative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and <i>Llanti Systems</i> bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Mexico	Dismissal of Workers.	November 2008	Mexico	IV. Employment and Industrial Relations	Concluded	Yes	After a thorough analysis the NCP concluded that there was no evidence that the Company violated Chapter IV of the Guidelines.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Adidas' outsourcing of footballs in India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 www.oecd.org/dataoecd/33/43/2489243.pdf .
Netherlands	Dutch trading company selling footballs from India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues.	July 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties agreed on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found in English on www.oesorichtlijnen.nl .
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands.	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala.	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the U.S.A..	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company.	Aug 2002	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	As the Dutch affiliate went bankrupt and the management went elsewhere neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from bilateral consultations and courts' rulings (www.oesorichtlijnen.nl).
Netherlands (consulting with Chile)	On the effects of fish farming.	Aug 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the Democratic Republic of Congo.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV. Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned. (www.oesorichtlijnen.nl)
Netherlands	Closure of an affiliate of an American company in the Netherlands.	Sept 2003	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union.	Aug 2004 - April 2005	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, through its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar.	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see www.oesorichtlijnen.nl (in Dutch).

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Treatment of the employees of an Irish company in the Netherlands.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	The NCP decided that the specific instance, raised by a Dutch labour union, did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.
Netherlands	Introduction of a 40 hrs working week in an affiliate in the Netherlands of an American company.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Treatment of employees and trade unions in a subsidiary of a Dutch company in Chile.	July 2005	Chile	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	Labour Union requested the Dutch NCP to inquire after the follow up of an Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile.
Netherlands	Storage facility in Brazil of a Dutch multinational and its American partner: alleged improper seeking of exceptions to local legislation and endangering the health of employees and the surrounding community.	July 2006	USA	II. General Policies IV. Employment and Industrial Relations	Pending	n.a	The Dutch NCP has referred the notifying NGO to the NCP in Brazil and has offered its assistance in the handling of the instance.
Netherlands	Storage facilities in the Philippines of a Dutch multinational: alleged improper influencing of local decision making processes and of violating environmental and safety regulations.	May 2006	Philippines	II. General Policies III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Pending	No	Local legal proceedings caused an on-hold status for the NCP proceedings. Continuation is expected to take place in September.
Netherlands	Request by NCP of the USA to contact Dutch parent company of an American company, with regard to an instance concerning trade union rights.	July 2006	USA	IV. Employment and Industrial Relations	Closed	n.a	Report of the meeting between Dutch NCP and the Dutch company was sent to the NCP of the USA. In April 2007 an agreement was reached between parties.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Maltreatment of employees and <i>de facto</i> denial of union rights at a main garment supplier in India of a Dutch clothing company.	October 2006	India	II. General Policies IV. Employment and Industrial Relations	Closed	Yes, although the statement does not go into the merits of the case.	After a successful mediatory attempt beyond NCP-level between complainants and the Indian company, the specific instance was withdrawn on February 5, 2007.
Netherlands	Abuse of local corporate law by a subsidiary of a Dutch/British multinational, in order to dismiss employees without compensation.	October 2006	India	IV. Employment and Industrial Relations	Pending before UK NCP	n.a	Case was brought to both the Dutch and UK NCP. The instance was decided admissible for the UK NCP. Facilitating role by the Dutch NCP.
Netherlands, Argentina (lead)	Alleged violation of environmental standards and ineffective local stakeholder involvement by subsidiary of Shell, Shell CAPSA.	June 2008	Argentina	II. General Policies V. Environment	Pending	No	Please be referred to Argentinean overview of cases.
Netherlands, Ireland (lead), Norway, USA	Pipeline laying project of Shell Ireland E&P, Statoil and Marathon allegedly violating human rights and environmental standards.	August 2008	Ireland	II. General Policies V. Environment	Pending	No	The SI was brought to both the Irish and the Dutch NCP, which accepted the SI jointly. All parties involved were heard in late April 09, new steps are under consideration.
Netherlands	Alleged violation of local land property law and environmental pollution (air, noise) by a Pakistani Joint Venture of Dutch SHV Holding NV at a newly build store in Karachi.	October 2008	Pakistan	II. General Policies V. Environment	Pending	No	After admissibility the NCP met with the MNE. Currently the NCP awaits the response of notifier on questions of the NCP.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
New Zealand	Activities of a financial institution.	October 2007	Papua New Guinea	II. General Policies V. Environment	Concluded	No	An initial assessment was conducted into a complaint regarding an MNE operating in a non-adhering country. The MNE was headquartered in an adhering country, and that country's NCP had previously considered the specific instance. The NZ NCP concluded that there was not a sufficient New Zealand link to the instance, so the complaint did not warrant further examination by the NZNCP. Toward effective operation of the Guidelines, the NZNCP passed relevant documents to the NCP in the country where the MNE is headquartered.
New Zealand	Employment practices of an enterprise in the telecommunications sector.	September 2009	New Zealand	II. General Policies IV. Employment and Industrial Relations	Initial assessment in progress	N/A	The SI was also brought to the attention of the Australian and German NCPs, and the New Zealand NCP is cooperating with them in handling the SI.
Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases.	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay.	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	Accusation of non-observance of Guidelines recommendations on transparency regarding financial information/environmental information. First case where the GL has been applied to the financial sector.	2006	Uruguay		Concluded	Yes	
Norway	In connection with a lockout, the company chose to hire labour from local community in order to keep the factory running. The primary concern was an alleged breach of the OECD Guidelines Ch. IV, to hire alternative labour during a lockout.	25 Nov 2008		IV. Employment and Industrial Relations	Concluded	Yes	<p>The NCP concluded the instance. The majority of the NCP concluded that the company did not breach the Guidelines, but the company is advised to observe Norwegian practices and traditions in labour disputes. A statement and press released were issued:</p> <p>http://www.regjeringen.no/upload/UD/Vedlegg/ncp_statement.pdf</p> <p>http://www.regjeringen.no/en/dep/ud/Whats-new/news/2009/ocd_breach.html?id=564255</p>
Norway	Accusations of violation of the Guidelines with regard to incomplete and misleading information about the environmental consequences of future mining operations. A contention that a Memorandum of Agreement with the authorities from 1999 is invalid, and that the process to obtain consent from the indigenous population is invalid.	26 Jan 2009		II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Ongoing		In contact with the parties.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	<p>Accusations that the company systematically breaches the Guidelines' article 5.3 by not taking into account in its decision-making process the foreseeable environmental, health and safety-related consequences of its aquaculture activities.</p> <p>According to the complaint, the company should have foreseen the problems based on its expertise from Norway. It is also alleged that the company is using scientific uncertainty in order to avoid carrying out remedial measures.</p>	19 May 2009		<p>I. General Policies II. General policies IV. Employment and Industrial Relations V. Environment</p>	Ongoing		<p>In contact with the parties. The NCP has been in contact with the Canadian and Chilean NCP. The NCPs were asked for an assessment of the issues raised in relation to the operation of a subsidiary of a Norwegian aquaculture company operating in Canada and Chile. Both assessed that the issue merited further examination. The Norwegian NCP has the lead on the matter. The Canadian and Chilean to be kept informed of developments</p>
Peru	<p>Central Unica de Trabajadores del Peru – CUT claims an alleged violation of the Guidelines regarding mining workers rights, in the closure of a mine managed by a subsidiary of a multinational Swiss company.</p>	23 March 2009	Peru	IV. Employment and Industrial Relations	Ongoing	N.A.	<p>As formal procedures regarding this case have been initiated before Peruvian administrative and judicial instances, the NCP considers it may not initiate a parallel process. Notwithstanding, the NCP will promote the possibility of reaching conciliation within the framework of the regular judicial procedure.</p>
Poland	<p>Violation of workers' rights in a subsidiary of a multinational enterprise.</p>	2002	Poland	IV. Employment and Industrial Relations	Closed	No	<p>NCP was in contact with representatives of the trade union and the company. However the board of the company stated that none of the charges take place in the company. Therefore no reconciliation action was possible in such situation. The case was consequently then closed in 2005.</p>

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2004	Poland	IV. Employment and Industrial Relations	Closed	No	According to the claim, the board despite previous declaration of respect for dialogue, failed to engage in constructive negotiations to reach agreement with the representation of the trade union. Contrary to the law, the president of the trade union was dismissed. NCP was in constant contact with the representation of the employees, and has contacted the company. Despite numerous tries no answer has yet been given to the NCP. The case was consequently then closed in 2006.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise.	2006	Poland	IV. Employment and Industrial Relations	Closed	No	The representatives of aggrieved party and their witnesses have been questioned. In October 2007 the witnesses of the accused were being questioned at the court and the verdict was returned in May 2008 at the latest. The managers were acquitted of sexual harassment and proved guilty of infringing the regulations of the IV chapter of the Guidelines. The case was consequently closed.
Portugal	Closing of a factory.	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec 2004	Peru	IV. Employment and Industrial Relations	Concluded		

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector.	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 www.oecd.org/dataoecd/16/34/15595948.pdf .
Sweden (consulting with Norway)	Applying the guidelines to the financial sector, liability by part-financing of construction of paper mill.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment	Concluded	Yes	The Swedish NCP issued a statement in January 2008 http://www.sweden.gov.se/content/1/c6/09/65/71/9e9e4a6b.pdf .
Switzerland (consulting with Canada)	Impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	2001	Zambia	II. General Policies V. Environment	Concluded	No	The specific instance was dealt with by the Canadian NCP (see information there). The Swiss company was kept informed of developments.
Switzerland (consulting with Korea)	Swiss multinational Nestlé's labour relations in a Korean subsidiary.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	The specific instance was dealt with by the Korean NCP (see information there). The Swiss NCP acted as a mediator between trade unions, the enterprise and the Korean NCP. The Swiss NCP issued an intermediate press statement: http://www.seco.admin.ch/news/00197/index.html?lang=en .
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary.	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region.	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
Switzerland (consulting with Australia and UK)	Activities of Swiss based multinational company and co-owner of the coal mine "El Cerrejon" in Colombia.	2007	Colombia	Several chapters, including: I. Concepts and Principles (incl. Human Rights) II. General Policies V. Environment VI. Combating Bribery	Concluded	Yes	The Australian NCP is in the lead to deal with the specific instance
Switzerland	Swiss multinational Nestlé's labour relations in a Russian subsidiary.	2008	Russia	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in September 2008: http://www.seco.admin.ch/themen/00513/00527/02584/02586/index.html?lang=de .
Switzerland	Swiss multinational enterprise's labour relations in an Indonesian subsidiary.	2008	Indonesia	IV. Employment and Industrial Relations	Ongoing	n.a.	
Switzerland	Swiss multinational enterprise's labour relation on the Philippines and in Thailand	2009	Philippines/ Thailand	IV. Employment and Industrial Relations	Ongoing	n.a.	
Turkey	Activities of a Dutch/UK multinational company in transportation sector.	Nov 2008	Turkey	IV. Employment and Industrial Relations	Pending	No	At the initial assessment stage.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	BP (et al.) – various alleged breaches of the OECD Guidelines in the construction of the Baku-Tbilisi-Ceyhan (BTC) pipeline.	2003	Azerbaijan, Georgia, Turkey	II.5 Exemption from Regulation, III.1 Disclosure, V.1 Environmental management, V.2a Information on environmental health/safety V.2b Community consultation, V.4 Postponement of environmental protection measures	Ongoing	n.a	At the request of the parties this case was reviewed by the UK NCP's Steering Board. The outcome of the review is available at: http://www.bis.gov.uk/nationalcontactpoint . As a result of the review the UK NCP will re-considering the original Final Statement
United Kingdom	Activities of Oryx Minerals alleged in a UN Expert Panel Report.	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	See: http://www.bis.gov.uk/nationalcontactpoint
United Kingdom	Activities of De Beers in UN Expert Panel Report.	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	See: http://www.bis.gov.uk/nationalcontactpoint
United Kingdom	Activities of National Grid/Transco.	2004	Democratic Republic of Congo	Various	Concluded	Yes	See: http://www.bis.gov.uk/nationalcontactpoint
United Kingdom	Activities of Avient	2004	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	See http://www.bis.gov.uk/nationalcontactpoint
United Kingdom	BAE Systems – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.
United Kingdom	Airbus – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.
United Kingdom	Rolls-Royce – issues related to disclosure of lists of agents.	2005	United Kingdom	VI(2) Combating bribery.	Ongoing	n.a	The complaint process has reached Final Statement stage.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	DAS Air - alleged failure to apply due diligence when transporting minerals and alleged breach of UN embargo.	2005	Democratic Republic of Congo	II.1 Achieving sustainable development. II.2 Human rights II.10 Encourage business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the guidelines.	Concluded	Yes	Finalised July 2008. Final Statement can be found at: http://www.bis.gov.uk/nationalcontactpoint .
United Kingdom	Coats – issues related to employees' right of representation.	2005	Bangladesh	IV. Employment and Industrial Relations.	Under Review	n.a.	The UK NCP is considering the application of its parallel proceeding guidance to this complaint.
United Kingdom	Anglo American - issues arising from the privatisation of the copper industry in Zambia during the period 1995 -2000.	2005	Zambia	Various	Concluded	Yes	Finalised May 2008. Final Statement can be found at http://www.bis.gov.uk/nationalcontactpoint .
United Kingdom	Peugeot - issues related to the closure of the Ryton manufacturing plant.	2006	United Kingdom	IV. Employment and Industrial Relations	Concluded	Yes	Finalised February 2008. Final Statement can be found at: http://www.bis.gov.uk/nationalcontactpoint .
United Kingdom	G4S - issues related to pay, dismissal, leave and health & safety entitlements.	2006	Mozambique Malawi Democratic Republic of Congo Nepal	II. General policies IV. Employment and Industrial Relations	Concluded	Yes	The UK NCP piloted the use of a professional mediator for this complaint. Through mediation, the parties reached an agreement and resolved the complaint with a mutually satisfactory outcome. Final statement can be found at: http://www.bis.gov.uk/nationalcontactpoint .
United Kingdom	Unilever (Sewri factory) – Employment issues related to the transfer of ownership, and subsequent closure, of the Sewri factory.	2007	India	I. Concepts and principles IV. Employment and Industrial Relations	Concluded	Yes	Finalised November 2009. Final Statement can be found at: http://www.bis.gov.uk/nationalcontactpoint .

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	Afrimex - alleged payments to armed groups and insufficient due diligence on the supply chain.	2007	Democratic Republic of Congo	II. General policies IV Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	Finalised August 2008. Final Statement can be found at: http://www.berr.gov.uk/nationalcontactpoint .
United Kingdom	Unilever (Doom Dooma factory) - issues related to employees' right to representation.	2007	India	IV. Employment and Industrial Relations	Ongoing	n.a	Initial Assessment can be found at: http://www.bis.gov.uk/nationalcontactpoint . The status of this case was reviewed following the application of the UK NCP's parallel proceeding guidance.
United Kingdom	British American Tobacco – issues related to employees' right to representation.	2007	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a	Initial Assessment can be found at: http://www.bis.gov.uk/nationalcontactpoint . The status of this case was reviewed following the application of the UK NCP's parallel proceeding guidance.
United Kingdom	Vedanta Resources – impact of a planned bauxite mine on local community.	2008	India	II. General Policies V. Environment	Concluded	Yes	Finalised in September 2009. Final Statement and Follow Up Statement can be found at: http://www.bis.gov.uk/nationalcontactpoint . This was the first case where the UK NCP implemented a Follow Up process and issued a Statement based on the comments provided by the parties
United Kingdom	Unilever (Rahim Yar Khan factory) – dismissal of temporary employees seeking permanent status in the factory.	2009	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	n.a	Finalised November 2009 (through successful mediation). Final Statement can be found at: http://www.bis.gov.uk/nationalcontactpoint .

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States, consulting with French NCP	Employee representation.	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Employee representation.	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Investigate the conduct of an international ship registry.	November 2001	Liberia	II. General Policies III. Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the conduct in question was being effectively addressed through other appropriate means, including a United Nations Security Resolution.
United States, consulting with French NCP	Employment and industrial relations, freedom of association and collective bargaining.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, multiple NCPs	Business in conflict zones, natural resource exploitation.	October 2002	Democratic Republic of Congo	Numerous	Concluded	No	UN Panel Report concluded that all outstanding issues with the U.S.-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the US companies.
United States, consulting with German NCP	Employee relations in global manufacturing operations.	November 2002	Global, focus on Vietnam & Indonesia	IV. Employment and Industrial Relations	Concluded	No	U.S. NCP declined involvement, concluded that the issues raised were being adequately addressed through other means.
United States consulting with French NCP	Employment and industrial relations, collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Concluded	Yes	Specific instance resolved under U.S. labor law; NCP released final statement at http://www.state.gov/e/eeb/rls/othr/2007/84021.htm .
United States, consulting with German NCP	Employment and industrial relations, collective bargaining representation.	June 2003	United States	IV. Employment and Industrial Relations	Concluded	No	Trade Union has chosen not to pursue matter further.
United States, consulting with Mexican NCP	Employment and industrial relations, collective bargaining, freedom of association.	July 2004	Mexico	IV. Employment and Industrial Relations	Concluded	No	Remanded to Mexican NCP based on fact that specific instance occurred in Mexico.

DAF/INV/NCP(2010)1

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States, consulting with Dutch NCP	Employment and industrial relations.	August 2004	United States	II. General Policies IV. Employment and Industrial Relations VII. Consumer Interests	Concluded	No	U.S. NCP declined involvement after initial assessment due to lack of investment nexus; parties later reached agreement under U.S. labor law.
United States	Business in conflict zones, natural resource exploitation.	August 2004	Democratic Republic of Congo	Numerous	Concluded	No	U.S. NCP declined involvement after concluding that the UN Panel of Experts report had resolved all outstanding issues with respect to US companies involved.
United States	Employment and industrial relations.	August 2004	United States	IV. Employment and Industrial Relations	Concluded	No	Company declined NCP assistance.
United States	Employment and industrial relations.	September 2004	United States	IV. Employment and Industrial Relations	Concluded	No	Company declined NCP assistance.
United States	Employment and industrial relations.	March 2005	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement under U.S. labor law and withdrew specific instance petition.
United States	Employment and industrial relations.	May 2005	United States	IV. Employment and Industrial Relations	Concluded	No	Specific instance resolved through other procedures under U.S. law.
United States	Employment and industrial relations.	March 2006	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement under U.S. labor law and withdrew specific instance petition.
United States, consulting with Polish NCP	Employment and industrial relations, sexual harassment	May 2006	Poland	IV. Employment and Industrial Relations	Concluded	No	Remanded to Polish NCP based on fact that specific instance occurred in Poland.
United States	Employment and industrial relations.	June 2006	United States	IV. Employment and Industrial Relations	Concluded	No	Specific instance resolved through other procedures under U.S. labor law.
United States, consulting with German NCP	Employment and industrial relations.	August 2006	United States	IV. Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment.
United States, consulting with Austrian NCP	Employment and industrial relations.	November 2006	United States	IV. Employment and Industrial Relations	Concluded	No	U.S. NCP closed the specific instance when the initiating party ceased representing the employees of the company in question
United States	Employment and Industrial Relations.	8 Sept 2008		IV. Employment and Industrial Relations	Concluded	No	Declined due to lack of investment nexus.
United States	Employment and industrial relations	July 2009	Philippines	IV Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States	Employment and industrial relations	October 2009	Korea	IV Employment and Industrial Relations	Concluded	No	Parties reached agreement and withdrew specific instance petition
United States	Employment and industrial relations	October 2009	Korea	III Disclosure and IV Employment and Industrial Relations	Ongoing	No	Korean NCP has taken primary responsibility based on fact that specific instance occurred in Korea
United States	Environment	April 2010	Mongolia	II General Policies/Sustainable Development and V Environment	Ongoing	No	Canadian NCP has taken primary responsibility based on fact that lead MNE is headquartered in Canada
United States	Employment and industrial relations	April 2010	Papua New Guinea	IV Employment and Industrial Relations	Ongoing	No	In contact with parties; initial assessment

ANNEX 4.
STATEMENTS RELEASED BY NCPS, JUNE 2009-JUNE 2010

This Annex reproduces the statements issued by the National Contact Points during the reporting period concerning specific instances, in accordance with the Procedural Guidance on the implementation of the Guidelines in specific instances, which provides that “if the parties involved do not reach agreement on the issues raised in the specific instance, the NCP will issue a statement and make recommendations as appropriate on the implementation of the Guidelines” and also that “after consultation with the parties involved, make publicly available the results of the specific instance procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.”¹

- Public statement by the Austrian National Contact Point on the GPA-DJP against Novartis Institutes for BioMedical Re-search GmbH & Co. KG Specific Instance
- Public statement by the Austrian National Contact Point on the ITBLAV against Global Sports Lanka/the GST holding company
- Public statement by the Dutch National Contact Point on the Pilipinas Shell Petroleum Corporation (PSPC) Specific Instance.
- Public statement by
- Public statement by the Norwegian National Contact Point on the Kongsberg Automotive Specific Instance.
- Public statement by the Swiss National Contact Point on the Cerrejon Coal Mine Specific Instance.
- Public statement by the United Kingdom National Contact Point on the Unilever Rahim Yar Khan factory Specific Instance.
- Public statement by the United Kingdom National Contact Point on the Survival International against Vedanta Resources plc Specific Instance.
- Follow up statement by the United Kingdom National Contact Point on the Survival International against Vedanta Resources plc Specific Instance.
- Public statement by the United Kingdom National Contact Point on the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations against Unilever plc on India’s Sewri factory Specific Instance.
- Public statement by the United Kingdom National Contact Point on the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations against Unilever plc on Pakistan’s Khanewal factory Specific Instance.

¹ Annex 4 Statements Released by NCPs, June 2009 - June 2010, is pending finalization as the Investment Committee is awaiting the submission of missing NCP Annual Reports

Statement by the Austrian NCP

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

17 July 2009

Insert translation TA00097705

Statement by the Austrian NCP

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

17 July 2009

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

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

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

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

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

After the demands were formalised on Dr. Schindler's side on 9 February 2007, a discussion was held at the Federal Ministry for Economic Affairs and Labour on 1 March 2007 between the contact point, Mr. Berger, other representatives of the GST holding company and Global Sports Lanka, during which additional documents were also submitted. On 3 May 2007 a further discussion took place at the Ministry for Economic Affairs and Labour between the contact point and Dr. Schindler. Following this the contact point endeavoured, in conjunction with the two parties, to engineer room for a compromise and suggested a discussion between the two parties, moderated by the contact point, but which did not take place.

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

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

Ultimately the following needed to be examined, therefore:

- whether the action of Global Sports Lanka (formerly known as North Sails Lanka)/the GST holding company corresponds to the recommendation in point 1.a) of the *"Employment and Relations between the Social Partners"* part *"to respect the right of the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions."*
- furthermore, whether the action corresponds to the recommendation in point 2.a) of the part quoted, *"Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements."*
- furthermore, whether it corresponds to the recommendation in point 2.c) of the quoted part, *"Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern."*
- furthermore, whether it corresponds to the recommendation contained in point 8 of the referenced part, *"Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters."*

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

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

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

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

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

Vienna, 17 July 2009

*Statement by the Dutch NCP***Final statement of the Dutch NCP on the “Complaint on the violations of Pilipinas Shell Petroleum Corporation (PSPC), pursuant to the OECD Guidelines for Multinational Enterprises”***14 July 2009***Contents**

Issues of the complaint	84
Admissibility of the Complaint	85
Summary of facts	85
Evaluation of the complaint	87
I. Manipulations of local government.....	88
II. Concealment of negotiations with government and environmental/health risks of activities.....	89
III. Lack of specific plans to mitigate the hazards at the oil depot.....	90
Trucking	92
Relocation	92
Information Sharing	92
Closing Remarks	93
 ANNEX 1: THE NCP PROCESS	 94
The role of the NCP	94
Global overview of the procedure.....	94
 ANNEX 2: FURTHER REFLECTIONS.....	 100
Field visit and independent assessment.....	100
Proceedings parallel to the NCP process.....	100
Including joint venture partners	100
Role of the parent company	101

Issues of the complaint

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

The issues raised in the complaint are:

- I. Manipulation of local government;
- II. Concealment of a. negotiations and b. environmental/health risks of activities;
- III. Lack of specific plans to mitigate the hazards at the oil depot.

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

1. Chapter II, Sec. 5 and Sec. 11, on seeking exemptions not contemplated in the statutory and regulatory framework, and improper involvement in local political activities;
2. Chapter VI on bribery or undue advantage to obtain or retain business or other improper advantage;
3. Chapter III, Sec. 4(e) on disclosure of information on material foreseeable risk factors;
4. Chapter V, Sec. 2 on providing information on potential environmental, health and safety impacts of activities on employees and the affected communities; and
5. Chapter V, Sec. 5 and Sec. 6 on contingency plans for serious environmental and health damage, and adopting standards for environmental performance.

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

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

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

- Provide information to the public regarding the potential risks of its operations and involve the local community in decision-making;
- Improve and upgrade its equipment, and continuously enhance the training of its people in disaster preparedness and management, to respond to oil leakages and other accidents.”

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

Admissibility of the Complaint

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

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

Summary of facts

1. PSPC has maintained and operated an oil terminal in Pandacan since 1914. Chevron Philippines, Inc., previously ‘Caltex’ (Chevron) and Petron Corporation (Petron) also have oil terminals in the 36-hectare area of Pandacan, and have been operating there for decades as well. When the oil terminals were built, the area was sparsely populated. Pandacan is an old community. The Catholic church around which the old community developed was built in the 1730s and is in close proximity to the oil depot. Over the decades, Pandacan has become a highly densely occupied residential and commercial area, with houses and buildings sprouting up practically along the fence of the oil terminals.
2. In the aftermath of the terrorist attacks in the United States in 2001 and in light of the growing threats in the Philippines, the incumbent Mayor of Manila announced that the oil terminals posed a danger to the safety of Manila residents and urged the closure of these terminals. The City Council conducted several consultations, in which the results of a research by the National Center for Disease Prevention and Control of the Department of Health were put forward. It issued a report stating that the levels of aromatic hydrocarbons such as benzene in the depot area are elevated to a level deemed unsafe by the US EPA, although it could not be determined if the elevated levels were caused by the depot itself, the transport in and out of the depot or other reasons. During the hearings, the Fire Chief of Manila bore testimony to the Manila City Council, stating that PSPC operated in violation of a number of health and safety codes.

3. On the basis of the testimonies and consultations, on 28 November 2001, the Council passed Ordinance No. 8027, reclassifying the area of the oil terminals from “industrial” to “commercial”. As a consequence, the oil companies were ordered to cease operations of the oil terminals by 28 June 2002. The validity of the local business permits of the oil companies were shortened to 30 June 2002.
4. On 26 June 2002, two days prior to the deadline, the oil companies entered into a Memorandum of Understanding (MOU) with the Mayor and the Department of Energy (DOE), allowing the oil companies to continue operations, but on a scaled-down basis. The MOU was ratified twice by the City Council through resolutions, at first in July 2002 and again in January 2003, each time with a definite period for continuing scaled-down operations. In the January 2003 resolution, the MOU was set to expire on April 30, 2003.
5. A complaint for graft and corruption was filed against the signatories of the MOU in August 2002 for non-enforcement of the Ordinance and executing the MOU that was contrary to the Ordinance. The complaint was dismissed without prejudice by the Ombudsman, who noted that the MOU was ratified by the same City Council that passed the Ordinance.
6. In the meantime, on 4 December 2002, Social Justice Society (SJS), consisting of residents of Pandacan, filed a Petition for Mandamus before the Supreme Court to compel the Mayor to enforce the Ordinance.
7. In March 2003, 40 out of 43 Barangay chiefs of the Pandacan area of Manila issued a Position Paper in support of retaining the oil terminals in Pandacan. Three Barangay chiefs did not sign the position paper. It was presented by PSPC to the City Council on 28 March 2003. The Position Paper contained, *inter alia*, requests for material assistance such as scholarships, employment, medical missions, and gift-giving during Christmas, Fiesta and other special occasions.
8. Another complaint of violation of anti-graft and corruption laws was filed before the Ombudsman against the Barangay chiefs who signed the Position Paper. The Ombudsman dismissed the complaint and the subsequent motion for reconsideration. The Supreme Court affirmed the decision of the Ombudsman in appeal.
9. On 25 April 2003, several days prior to the expiration of the MOU, PSPC filed a case before the Regional Trial Court (RTC) in Manila, to prohibit the Mayor from enforcing the Ordinance, claiming it was invalid. The other two oil companies filed similar separate cases. The trial courts issued injunctions swiftly and asked parties to maintain the status quo.
10. In the meantime, PSPC started scaling down its operations, removed LPG storage and created a buffer zone around the Pandacan oil terminal. The buffer zone is now known as “Green Zone” or “Linear Park”;
11. On 16 May 2006, Fenceline Community and Friends of the Earth filed a complaint before the Dutch National Contact Point, alleging that Royal Dutch Shell, through its subsidiary, PSPC, had violated the OECD Guidelines for Multinational Enterprises.
12. On 16 June 2006, the Council of Manila approved a new comprehensive zoning ordinance, Ordinance No. 8119, which reiterated the reclassification of Pandacan as a commercial area and ordered the oil terminals to terminate operations. The oil companies again sought the nullification of the Ordinance before the trial courts in Manila.
13. On 7 March 2007, the Supreme Court issued a decision on the Mandamus case filed by Social Justice Society, in which the petitioners’ claim was sustained, hence ordering the Mayor of Manila to enforce Ordinance No. 8027. It was only after the Supreme Court issued this decision that the oil companies and the Department Of Energy sought to intervene in a motion for reconsideration, referring to the Court of the trial court cases and the new zoning ordinance.

14. After accepting the intervention/motion, the Supreme Court issued a Resolution on 13 February 2008, reiterating its earlier decision that Ordinance No. 8027 was a valid exercise of power to ensure the safety of the residents of Pandacan. In reference to the recent developments, the Court noted that the MOU had expired and that Ordinance No. 8119 was consistent with Ordinance No. 8027, although the latter was specific to Pandacan and should prevail with regard to deadlines and other details. The Court also overruled the injunctions issued earlier by the trial courts against the enforcement of Ordinance No. 8027. The Court, in considering the practical implications of an order for immediate implementation of the Ordinance and the cessation of operations of the oil terminals, required the oil companies to submit a relocation plan to the trial court in Manila within a non-extendible period of ninety (90) days.
15. On 27 February 2008, PSPC and its joint venture partners submitted a Motion for Reconsideration to the Supreme Court, explicitly stating that “*The Intervenors’ questioning of the validity of Manila City Ordinance No. 8027 should not be construed as an abject refusal to relocate*”; it was meant as an objection against the authorizing effect of the Supreme Court Resolution on ‘spot zoning’ ordinances, that force the relocation of the oil industry, or any other industry on the “*caprices of local governments*”.
16. On 13 May 2008, in compliance with the Supreme Court order, PSPC (with Chevron Philippines, Inc. (Chevron)) submitted a comprehensive relocation plan to the trial court in Manila. No action was taken by the court, pending resolution of the motion for reconsideration filed by the oil companies before the Supreme Court.
17. On 25 February 2009, the Regional Trial Court ordered PSPC and Chevron Philippines, Inc. (Chevron) to inform the Court as to the status of the implementation of their comprehensive plan and the relocation schedule for the transfer of the Pandacan Terminal within 15 days.
18. On 28 February 2009, the Supreme Court wrote a *finis* to the Pandacan Oil Depot case, in which it denied with finality the Motion for Reconsideration (dated 27 February 2008) of the three oil companies Chevron Philippines, Inc. (Chevron), Petron Corporation (Petron), and Pilipinas Shell Petroleum Corporation (Shell). The Court took judicial cognizance of the oil firms having begun with the orderly phase-out of the oil depots with the submission of the requisite plans and reports to the Manila Regional Trial Court.
19. On 14 May 2009, the Manila City Council approved a new Ordinance (7177), allowing the oil companies to stay at Pandacan and continue operating in Manila. This ordinance supersedes Ordinance 8027, which was passed in 2001 and reclassified Pandacan as a commercial rather than an industrial area, and 2006’s Ordinance 8119, which gave medium and heavy industries seven years to vacate the city. The ordinance met with opposition from a number of Pandacan and other Manila residents, including in the form of protests in front of the oil depot, a march to city hall led by church groups and statements by Catholic church leaders.
20. On 28 May 2009, the Mayor of Manila signed Ordinance No. 7177. He explicitly stated that before he reached the decision, he met with all the stakeholders, including businessmen and Manila residents. He said he received similar feedback, which all point to allowing oil depots and other business establishments that will be affected by Ordinance 8027 to remain in the capital city.

Evaluation of the complaint

The following issues are raised in the complaint:

- I. Manipulation of local government;
- II. Concealment of negotiations with government and environmental/health risks of activities;
- III. Lack of specific plans to mitigate the hazards at the oil depot.

I. Manipulation of local government

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

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

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

Bribery and corruption are serious crimes and must be evaluated from a legal perspective. The notifiers have the burden of proving beyond a reasonable doubt that such actions occurred. The NCP notes that the accusations of bribery against public officials were considered and decided by the appropriate Philippine authorities. The NCP respects and defers to the findings of these Philippine authorities. The affidavits presented to the NCP, alleging PSPC's improper involvement in the preparation of the Position Paper which was issued on 28 March 2003, by Barangay Chief Executives of Pandacan, are not supported by other findings necessary for verification of these statements, despite all explicit opportunities given to complainants to submit corroborative evidence. The NCP notes that the Barangay Chief Executives requested assistance from the oil companies in that Position Paper, but that there was no evidence that PSPC made any promises to provide the requested assistance in exchange for the expression of support to retain the facility.

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

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

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

The NCP strongly recommends a dialogue between PSPC and its local stakeholders (not only its immediate fenceline communities) about transparent and undisputed conduct. The outcome of this dialogue could guide PSPC in its future engagement with the community at Pandacan, both in its

communication on Health, Safety and Environment (HSE) issues and in local community involvement and supportive initiatives. The NCP also recommends that PSPC urge the other two oil companies to coordinate their community relations programs, because the communities rightly see the oil depot operations and risks as a unit, regardless of the fact that there are three companies now operating in a joint-venture.

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

The allegations relate to the following provisions in the Guidelines:

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

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

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

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

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

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

The allegation is made with respect to:

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

The NCP notes that between 2003 and 2006 PSPC implemented a scaling down and restructuring of operations in Pandacan. PSPC showed the NCP what measures it had taken to ensure that the scale-down was in accordance with the company’s worldwide environmental and safety standards, including the proper clean-up and disposal of toxic wastes.

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

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

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

General

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

Visual inspection of the Shell Facility

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

Assessment of the Shell Facility Design (desk study)

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

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

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

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

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

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

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

Trucking

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

Although not mentioned in the complaint, the NCP finds the transportation of oil products of particular concern. Although PSPC has taken certain measures, the **NCP urges PSPC to continue addressing the issue of dangerous traffic in a pro-active way**. The safety of tankers on the road needs the continuous attention of PSPC and PDSI (Pandacan Depot Services Inc). The NCP holds the opinion that PSPC and its joint venture partners should actively involve people who live in the neighbourhood. **The NCP urges PSPC to weigh the issue of dangerous traffic travelling through densely populated areas seriously in its decision making process for relocation.**

Relocation

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

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

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

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

Information Exchange

With respect to sharing of information during the NCP process, the parties were understandably less candid with each other than with the NCP. The conditions imposed on the NCP by Shell on sharing information with the notifiers interfered with the NCP's ability to probe for possible mutually acceptable solutions. The stipulated condition, that the DCMR should only report its most general conclusions to the NCP, is an example of this. The NCP was surprised by (and regrets) PSPC's reluctance to share more

information with its stakeholders. Transparency is the core of a dialogue with stakeholders regarding corporate social responsibility. In general, it is also in the long-term interest of the firm, because it helps generate public support for its activities. The NCP of course respects commercial interests and arrangements with joint venture partners, but is convinced that in similar cases in OECD countries much more information is shared with stakeholders. **The NCP is of the view that the high standards for disclosure of non-financial information, including environmental reporting, as encouraged by the OECD Guidelines have not been met in this specific instance.** In the Commentary on Chapter III, ‘Disclosure’, the guidelines explicitly state: “To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public’s increasingly sophisticated demands for information”. Furthermore, they also state that this disclosure may also cover information on the activities of subcontractors, suppliers or joint venture partners. Due to the confidentiality requirements of PSPC, it is now still impossible to say anything about the compliance of the entire oil depot with the standards that the DCMR applies to PSPC. It is a public duty of all oil depot operators to be as open as possible with its stakeholders in relation to health, safety and security matters.

Closing Remarks

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

ANNEX 1

THE NCP PROCESS

The role of the NCP

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

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

On 3 July, 2006, the NCP decided that the complaint of 15 May 2006 is admissible as a specific instance, and, in a joint effort with notifiers and Shell/PSPC, will try to establish the facts and find a mutually agreeable solution. For this purpose, the NCP consulted these parties, sought advice from the relevant authorities and experts, consulted the British National Contact Point, looked at cases that have been dealt with by other NCPs,² and offered mediation, with the agreement of the parties involved.

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

Global overview of the procedure

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

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

In the **first months of 2007**, after consulting the parties involved, the NCP prepared a fact-finding mission to Manila, including assistance by experts of the DCMR, which was paid for by the NCP. On **7 March 2007**, the Supreme Court of the Philippines announced a decision in favor of Social Justice Society and Mr Cabigao and Mr. Tumbokon, stating that Ordinance 8027 should be enforced and implemented. PSPC and the other two involved oil companies asked the Court to intervene and to

² As published on the OECD website.

reconsider the decision. Because PSPC wanted to avoid inappropriate parallel proceedings on the relocation of the oil depot, given the developments at the Supreme Court case, the NCP had to decide to postpone its visit to Manila. Pending the decision of the Supreme Court, the NCP procedure was put 'on hold' for more than six months.

In the meantime, the newly formed independent NCP took office. It applied a broader interpretation to the issue of "parallel proceedings". On **28 November 2007**, the members of the recently reformed NCP (appointed 4 July 2007) met with representatives of both parties in order to get acquainted with one another and to discuss the ongoing standstill in the process. During this joint meeting, the NCP and parties involved decided, *inter alia*, that Shell/PSPC and notifying parties would inform the NCP on their opinions on two issues: firstly on the usefulness and added value to the NCP procedure of a mission to Manila by the NCP and two independent technical advisors while the case was still pending before the Supreme Court. Secondly they would express their views on a joint meeting between the NCP, PSPC and the local notifying partners during the mission, in which the facts and arguments stated in the notification and Shell/PSPC's reaction would be discussed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On **19 September 2008**, the NCP presented to both parties a comprehensive overview of the NCP process, resulting in a proposed agenda for a mediation mission from November 10 to 14. The reactions of both parties to this overview and agenda were critical and they urged the NCP to revalidate or verify some

'facts'. Although most of the disputed issues could theoretically be resolved during a mediation attempt, the mediation mission had to be postponed. The reason for this was the incompatibility of time schedules of the representatives of all parties involved. However, the NCP took advantage of the opportunity to conduct a fact-finding mission instead of a mediation mission during the period from **November 10 to 14** which had already been scheduled. During this mission the status of some possibly relevant, but disputed facts could be confirmed. Furthermore, the NCP hired the DCMR to visit Pilipinas Shell Petroleum Corporation for assistance in the evaluation of the general safety of the PSPC Facility and the environmental management of the PSPC Facility at the Pandacan depot. PSPC gladly cooperated, but also insisted that the DCMR and NCP sign quite restrictive confidentiality agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2

FURTHER REFLECTIONS

Field visit and independent assessment

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

Proceedings parallel to the NCP process

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

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

Including joint venture partners

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

The role of the parent company

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

Statement by the Mexico NCP

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

13 January 2010

Lic. Rubén Laredo Palomares
Industria Vidriera del Potosí, S.A. de C.V.

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

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

DECISION

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

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

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

THE OECD GUIDELINES AND ITS IMPLEMENTATION

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

“... The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organizations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP, will:

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

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

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

BACKGROUND

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

These Works concluded on December 8th 2009.

CONSIDERATIONS

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

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

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

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

SIGNED
ARTURO RIVERA MAGAÑA

Cep. Felipe Duarte Olvera. Subsecretario de Competitividad y Normatividad. Secretaría de Economía. Para conocimiento.
Daniel Ludlow Kuri. Jefe de la Unidad de Asuntos Internacionales. Secretaría del Trabajo y Previsión Social. Para conocimiento Relacionado con su oficio 114/1/DCI/0831.
Israel Octavio Torres López. Director General Adjunto de Asuntos Internacionales. DGIE. SE. Para conocimiento.
Alejandro Duclaud G. de Castilla. Representante de la empresa. Mismo fin.
Luis M. Díaz Mirón A. Apoderado de la empresa. Mismo fin.
Francisco Retama. Representante del SUTEIVP. Mismo fin.

*Statement by the Norwegian NCP***Statement by the Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises concerning a complaint against Kongsberg Automotive for breach of the OECD Guidelines for Multinational Enterprises***28 May 2009*

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

Background:

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

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

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

The recommendation in question in this case is Chapter IV of the OECD Guidelines, on *Employment and Industrial Relations*, paragraph 1a), where it is stated that enterprises should “respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions”. Other recommendations mentioned in the complaint from Fellesforbundet include Chapter IV, paragraph 2a), where it is stated that enterprises should “provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements”, and Chapter IV, paragraph 2b), which states that enterprises should “provide information to employee representatives which is needed for meaningful negotiations on conditions of employment”. Finally, mention is made of Chapter IV, paragraph 3, according to which enterprises should “provide information to employees and their representatives which

enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole". The Norwegian NCP has limited its assessment to Fellesforbundet's main submission, concerning the use of lockout in combination with hired labour.

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

Kongsberg Automotive's operations in Ohio, USA:

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

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

The parties' arguments:

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

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

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

The Norwegian NCP's assessment:

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

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

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

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

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

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

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

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

The OECD Guidelines do not directly address the issue of lockout in combination with the hiring of alternative labour. The relevant recommendations in the Guidelines are based on core ILO Conventions Nos. 87 and 98, which Fellesforbundet refers to in its complaint. Neither of these says anything about the right to replace permanent employees with other workers in connection with a lockout. We have been unable to find any statements from ILO bodies that directly address this issue. However, a report drawn up by the ILO Committee of Experts at the request of the ILO Governing Body in 1994, *Freedom of Association and Collective Bargaining: The right to strike*, states the following: “A special problem arises when legislation or practice allows enterprises to recruit workers to replace their own employees on legal strike. The difficulty is even more serious if, under legislative provisions or case-law, strikers do not, as of right, find their job waiting for them at the end of the dispute. The Committee considers that this type of provision or practice seriously impairs the right to strike and affects the free exercise of trade union rights.”

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

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

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

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

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

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

In the LO representative's view, it is important as a matter of principle to examine the scope of Norwegian parent companies' responsibility. As far as the OECD Guidelines are concerned, it is natural to start by looking at matters companies are able to influence. Responsibility can be most clearly attributed to companies for matters over which they have a decisive influence or control. The LO representative is of the view that there is no basis in the Guidelines for claiming that the actions of parent companies, including managing their subsidiaries, are not covered by the Guidelines and therefore cannot be appealed against to the NCP in the parent company's home country. Interpreting the OECD Guidelines as applying primarily to the actions of subsidiaries would, in the view of the LO representative, considerably restrict the scope of the Guidelines and undermine Norway's position in this area.

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

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

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

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

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

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

Yours faithfully

Norwegian Contact Point for the OECD Guidelines for Multinational Enterprises

Are-Jostein Norheim
Ministry of Foreign Affairs

Tom Hugo-Sørensen
Ministry of Trade and Industry

Vidar Lindefjeld
Confederation of Norwegian Enterprise

Gro Granden
Norwegian Confederation of Trade Unions

Copy: Kongsberg Automotive, Dyrmyrgata 45, 3601 Kongsberg

Statement by the Swiss NCP

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

15 July 2009

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

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

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

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

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

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

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

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

Statement by the United Kingdom NCP

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

13 August 2009

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

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

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

UK NCP complaint procedure

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

(1) Initial Assessment - this consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;

(2) Conciliation/mediation/examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will investigate the complaint in order to assess whether it is justified;

(3) Final Statement – if a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has investigated the complaint it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website <http://www.berr.gov.uk/nationalcontactpoint>.

COMPLAINT FROM THE IUF

5. On 27 October 2008 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) brought a complaint to the UK NCP on behalf of one of its affiliates, the National Federation of Food, Beverage and Tobacco Workers of Pakistan, and the Action Committee for the Dismissed Workers of Unilever Rahim Yar Khan. The complaint concerned the operations of Unilever Pakistan Ltd at its factory in Rahim Yar Khan in Pakistan. Unilever Pakistan Ltd is a subsidiary of a UK registered company, Unilever plc.

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

- (a) Chapter II(1): [Enterprises should] contribute to economic, social and environmental progress with a view to achieving sustainable development”.
- (b) Chapter IV(1)(a): [Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices], respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions”.

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

RESPONSE FROM UNILEVER

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

UK NCP PROCESS IN THIS SPECIFIC INSTANCE

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

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

11. Because of a lack of progress in the bilateral meetings, on 3 March 2009, the IUF asked the UK NCP to arrange and facilitate conciliation/mediation. The UK NCP appointed ACAS¹ Arbitrator and Mediator John Mulholland to serve as conciliator-mediator.

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

OUTCOME OF THE CONCILIATION

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

UK NCP CONCLUSIONS

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

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

13 August 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass
Dal Dio,
Sergio Moreno

URN 09/1221

¹ Advisory, Conciliation and Arbitration Service.

ANNEX

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

1. Unilever will establish an additional 120 permanent posts at Rahim Yar Khan.
2. Within this number, those with confirmed secondary educational qualifications from an agreed list will be appointed on contracts commencing as of 24th June 2009.
3. Those workers on the list lacking confirmed secondary educational qualifications shall each receive a scholarship equivalent to 1yr's basic salary (based on a minimum monthly income of 8,000 Pakistan Rupees (1)) for a period of 12 months and will be offered a permanent employment contract on attainment of a secondary school certificate (Level 10).
4. For those workers who do not have a Level 9 educational qualification Unilever will provide funding to achieve this qualification within 12 months. Subject to attainment of a Level 9 qualification, Unilever will provide funding for a further 12 months to achieve a Level 10 qualification. The same terms and conditions set out in paragraph 3 would apply.
5. In the interim these positions would be guaranteed to be held open.
6. It is agreed that the employment position of any individuals who do not obtain the relevant educational qualification will, at the end of the scholarship period, be subject to dialogue between the IUF and Unilever (2).
7. All employees (including those with a stay order) will receive standard permanent employee contracts and appropriate employee bank account declaration forms/documentation. Copies will be provided to the IUF.
8. The balance of the 120 employees will be selected applying established Unilever selection criteria. Those workers who were dismissed in October 2007 who are offered permanent employment will receive a one off payment of 50,000 Pakistan Rupees conditional on their written confirmation of withdrawal of any related court cases.
9. Those workers who will undertake educational training will also be eligible for a payment of 50,000 Pakistan Rupees on receipt of a written confirmation of withdrawal of any related court cases.
10. These payments would be made within one month of receipt of such written confirmation.
11. Those remaining workers of the total dismissed in October 2007 who are not offered permanent employment will be offered by Unilever a one off lump sum payment of 200,000 Pakistan Rupees each (2), conditional on their written acceptance that current related legal action would be withdrawn and no future actions would be taken in the courts.

12. Unilever guarantees that the following terms will be respected:

- a. Those appointed from the “Action Committee for the Dismissed Workers of Unilever Rahim Yar Khan” (Action Committee) will not be subject to any discriminatory or intimidatory action as a result of their membership of the Action Committee.
- b. The IUF and its affiliates will be entitled to exercise full representational functions within the plant without interference by the management.

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

London, 24th June 2009

(1) It is agreed that this will also include retrospective provident and gratuity rights when qualified and employed. Medical cover will be provided, if legally possible through the company scheme, and if not through social security for the duration of the scholarship.

(2) Any employee who after completion of the scholarship period fails to attain the necessary qualification will receive a payment of 150,000 Pakistan Rupees each.

Statement by the United Kingdom NCP

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

25 September 2009

Summary of the Conclusions

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

Background

OECD Guidelines for Multinational Enterprises

1. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

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

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:
 - (1) Initial Assessment – This consists of a desk based analysis of the complaint, the company’s response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation/examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint, it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.
5. The complaints process, together with the UK NCP’s Initial Assessments and Final Statements, is published on the UK NCP’s website <http://www.berr.gov.uk/nationalcontactpoint>

Details of the parties involved

6. **The complainant.** Survival International is a UK based NGO which seeks to support tribal peoples worldwide through educational programmes, advocacy and campaigns to protect their rights. One of its stated objects is to promote for the public benefit the human rights of indigenous peoples established by United Nations covenants and declarations.
7. **The company.** Vedanta is a UK registered mining company operating directly or through subsidiaries in India, Zambia and Australia. Vedanta’s activities focus on aluminium, copper, zinc, lead and iron mining. The company is listed in the FTSE 100. Vedanta has a controlling stake in a number of subsidiaries¹ but only two are relevant to the complaint: Sterlite Industries (India) Limited (Sterlite Industries), based in Mumbai (Maharashtra) 59.9% of which is controlled by Vedanta; and Vedanta Aluminium Limited, based in Lanjigarh (Orissa), 70.5% of which is owned directly by Vedanta, and 29.5% of which is owned by Sterlite Industries.
8. Survival International’s complaint focuses on the construction of a bauxite mine near Lanjigarh (Kalahandi and Rayagada Districts – Orissa – India). This project was originally proposed by Sterlite Industries on the basis of an existing agreement between Vedanta Aluminium Limited and Orissa Mining Corporation Limited, a company owned by the State of Orissa. Vedanta Aluminium Limited applied to the Supreme Court of India for clearance on the project. Following the Supreme Court of India’s Order of 23 November 2007, Vedanta Aluminium Limited’s application was dismissed but Sterlite Industries (and only Sterlite Industries) was granted leave to re-apply. In

¹ See <http://www.vedantaresources.com/uploads/vedanta-group-structure-lar.jpg>

August 2008, the Supreme Court granted Sterlite Industries clearance for the use of forest land for bauxite mining subject to final approval from the Indian Ministry of Environment and Forests. Sterlite Industries therefore formally retains the lead on the Lanjigarh project. Neither Vedanta nor the complainant dispute that overall responsibility for the Lanjigarh project rests with Vedanta.

Complaint from Survival International

9. On 19 December 2008, Survival International brought a complaint to the UK NCP in relation to the operations of Vedanta in the Niyamgiri Hills, situated in the State of Orissa (India).
10. Survival International made the following allegations in respect of Vedanta's planned construction of an open pit bauxite mine in the Niyamgiri Hills:
 - (a) Vedanta has failed to consult with an indigenous group affected by its operations, the Dongria Kondh,² who live within 4 to 5 Km from the mine but revere as sacred the area on which the mine is being built, and depend for their livelihood on the area affected by the mine's operations. Survival International alleges that Vedanta has failed to consider the implications of its activities in respect of the Dongria Kondh. For example, it has not commissioned an indigenous rights impact assessment with the full participation and engagement of the Dongria Kondh, nor does it have a human rights or indigenous people policy. Survival International appears to have brought its complaint on behalf of the Dongria Kondh, as opposed to other local indigenous communities, because they are the community most vulnerable to the effects of the construction of the mine.
 - (b) As a result of the allegations summarised in paragraph 10(a), Vedanta has failed to respect India's international commitments under the United Nations (UN) International Covenant on Civil and Political Rights [Articles 2(1), 18, 27], the UN Convention on the Elimination of All Forms of Racial Discrimination [Articles 5(c), 5(d)(v), 5(e)], the Convention on Biological Diversity [Article 8(j)], and the UN Declaration on the Rights of Indigenous People (Articles 12, 18, 19 and 32).
 - (c) As a result of the allegations summarised in paragraph 10(a), Vedanta has breached India's domestic law, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.
11. Survival International alleged that Vedanta's conduct is contrary to the following provisions of the Guidelines:

“Chapter II. General Policies

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

[...]

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

[...]

II(7): Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

² Some sources refer to this community as the “Dongaria Kondh” or as “Dongaria Kandha”.

Chapter V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

[...]

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

[...]

(b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation”.

Response from Vedanta Resources plc

12. Vedanta set out its response in respect of the complaint from Survival International in two letters addressed to the UK NCP (dated 20 January and 13 February 2009). In these letters, Vedanta denied that it has breached the Guidelines and asked the UK NCP not to accept Survival International’s complaint on the basis of the following assertions:
- a) Survival International has not provided evidence that it has the backing of the local community to bring this complaint. According to Vedanta, most of the local community supports the mine project.
 - b) The mine project has already been approved by the Supreme Court of India and by the State of Orissa (which is in joint venture with Sterlite Industries on this project). The Supreme Court of India already considered the impact of the project on the local community, including the consultation process, and also identified significant benefits for the local community as a result of the project.
 - c) Vedanta already ensures that its operations comply with corporate social responsibility standards and annually publishes a “Sustainable Development Report” to reflect its progress in this area. In respect of the mine project, Vedanta commissioned a comprehensive Environmental Impact Assessment from Tata AIG Risk Management Services Limited which concluded that the project will have a positive impact on the local community. Vedanta also stated that the Wildlife Institute of India confirmed that the Dongria Kondh do not inhabit the area of the future mine.
 - d) Vedanta consulted the local communities under the supervision of the local District Magistrates in June 2002 (in the district of Kalahandi) and February-March 2003 (in the two districts of Kalahandi and Rayagada). The company also explained that the State of Orissa conducted a separate consultation process with the local communities. Vedanta stated that the Supreme Court of India “was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately”. Vedanta also supported the re-settlement of those families displaced by its operations in the area, and is committed to its Integrated Village Development Programme.

UK NCP process

13. The UK NCP received the complaint from Survival International on 19 December 2008. On the same day, the UK NCP sent the complaint to Vedanta which responded on 20 January and on 13 February 2009.
14. The UK NCP met with Survival International on 27 January 2009 to discuss the complaint against Vedanta and explain the UK NCP's complaint process. Vedanta was unable to meet the UK NCP within the allocated timeframe before the publication of the Initial Assessment on the complaint. Therefore, the UK NCP and Vedanta communicated by an exchange of e-mails and letters.
15. The UK NCP published its Initial Assessment of the complaint on 27 March 2009. The assessment is downloadable from the UK NCP's website <http://www.berr.gov.uk/nationalcontactpoint>.
16. On 6 April 2009, Vedanta declined the UK NCP's offer of conciliation/mediation. As a result, the UK NCP informed both parties on 9 April 2009 that it would move to an examination of the complaint. The UK NCP asked both parties to provide evidence to support their position in respect of the complaint by 8 May 2009. This deadline was extended at Vedanta's request. Survival International submitted a great deal of evidence in support of its allegations but Vedanta submitted no evidence in support of the claims made in its responses of 20 January and 13 February 2009, save for a copy of its 2008 Sustainable Development Report.
17. The UK NCP was disappointed by Vedanta's decision not to engage fully with the UK NCP's complaint process. The UK NCP was particularly disappointed with Vedanta's refusal to take up its offer of sponsored professional conciliation/mediation, and Vedanta's failure to provide any evidence during the examination stage to support its position in respect of the complaint.
18. The UK NCP invited evidence from other relevant UK Government Departments, business and trade union's organisations, and civil society, however none was provided.

UK NCP analysis

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

Standing of Survival International as the complainant

20. The UK NCP's Initial Assessment of 27 March 2009³ sets out its reasons for deciding that Survival International is an appropriate body to bring the complaint. It considers that there is no need to address this issue again in this Final Statement.

³ See <http://www.berr.gov.uk/nationalcontactpoint>

The Lanjigarh Project

21. Sterlite Industries commissioned Tata AIG Risk Management Services Ltd to carry out a Rapid Environmental Impact Assessment on the construction of the mine.⁴ According to the environmental impact assessment report, the Lanjigarh project includes the construction of an aluminium refinery, supported by a power plant, and of a nearby bauxite⁵ mine (situated approximately 5 km south of Lanjigarh) having approximately 73-75 million tons of mining reserve to ensure supply of raw material to the refinery at a competitive price for about 23-25 years of life of the project. According to Vedanta's preliminary results of 7 May 2009,⁶ the refinery has been completed and is being operated at near rated capacity. The refinery's raw material is currently being sourced from Bharat Aluminium Company Ltd (BALCO),⁷ based in Korba (Chhattisgarh – India). Vedanta owns 51% of the shares in BALCO. The UK NCP understands that work on the construction of the bauxite mine has not yet started but that Vedanta expects to have the mine operational by mid 2010.⁸ A bauxite mine's conveyor (to transport the bauxite from the Lanjigarh mine to the refinery) is also expected to be operational by mid 2010.

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

22. The UK NCP focused its analysis exclusively on the Dongria Kondh because Survival International's complaint centres on this indigenous group. The complainant mentions other indigenous groups, such as the Kutia Kondh and the Desia Kondh, which may have been consulted about the construction of the refinery but focuses on the issue of whether the Dongria Kondh have ever been consulted about the construction of the bauxite mine.
23. There is substantial evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee indicating that the Dongria Kondh do inhabit the Niyamgiri Hills. Evidence from the Central Empowered Committee and Sterlite Industries' own environmental impact assessment suggests that the environment in which the Dongria Kondh live, and their traditional way of life, are going to be affected by the Lanjigarh mining project, and that the construction of the mine may involve displacement of local tribal people, of which the Dongria Kondh are a part.
24. According to the Census of India 2001, carried out by India's Office of the Registrar General and Census Commissioner (under India's Ministry of Home Affairs), the Kondh are one of the Scheduled Tribes of the State of Orissa.⁹ The Census of India 2001 also confirms that the Kondh (without specifying how many of them are Dongria) are the largest Scheduled Tribe in both the

⁴ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, page 1-3 of the executive summary.

⁵ A type of rock from which aluminium is produced.

⁶ See slide 12 of

http://www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

⁷ Vedanta Resources plc, *Annual Report 2009*, 23 June 2009, page 13.

⁸ Ibid, page 12.

⁹ http://censusindia.gov.in/Tables_Published/SCST/ST%20Lists.pdf

Districts of Kalahandi¹⁰ and Rayagada¹¹ which are the districts mainly affected by the Lanjigarh project. The “Scheduled tribe atlas of India”, published as part of the 2001 census, does state that the Dongria Kondh’s population in Orissa, combined with the population of Primitive Tribal Groups¹² in Orissa, is 1,140,374,¹³ and that most Kondh across India are located in Orissa, particularly the former 1991 administrative divisions of Koraput (now split into Rayagada, Koraput, Malkangiri and Nabarangapur), and Kalahandi.¹⁴ However, these figures are drawn from the 1991 census and may not reflect the current populations of Dongria Kondh in the region.

25. An extensive study on the Dongria Kondh conducted in 2002 by a group of academics mainly based in Bhubaneswar (Orissa)¹⁵ also confirms that the Dongria Kondh inhabit the District of Rayagada, at the border with the Kalahandi District in an area roughly comprised within Muniguda (to the east) and Chatikona (to the south). According to a map included in the study, entitled “Project area Dongria Kondh Development Agency”, Dongria Kondh villages exist close to the border with the District of Kalahandi (towards Lanjigarh) within 6 miles (or less) of the proposed mine site.¹⁶
26. According to the 2002 study, “*Dongria Kondh say that the environment of Niyamgiri Hill range dragged them to settle there*”.¹⁷ The same study also states that the Dongria Kondh “*never moved to the peaks of the mountains as such places are regarded as the abodes of Niyamraja’s kin*”¹⁸ and that “*each village in the Dongria habitat is located at the foot of a hill and named after an important hill*”.¹⁹ The 2002 study also states that Niyamraja is regarded by the Dongria Kondh as God and ruler of the Niyamgiri Hills and the Dongria Kondh’s first ancestor. These observations suggest that the Dongria Kondh do revere the Niyamgiri Hills, including the mine’s proposed site, as sacred. They also suggest that Dongria Kondh villages are likely to have been built at the foot, rather than the top of the hills, which in turn suggests that, because of its high altitude, parts of the actual mine’ site may not be inhabited by the Dongria Kondh but that Dongria Kondh villages may be located at lower altitudes nearby.
27. The Wildlife Institute of India is an independent body based at Dehradun (India) since 1982 with a mandate to train government and non-government personnel, carry out research, and advise on matters of conservation and management of wildlife resources.²⁰ The UK NCP received a copy of

¹⁰ http://www.censusindia.gov.in/Dist_File/datasheet-2126.pdf

¹¹ http://www.censusindia.gov.in/Dist_File/datasheet-2127.pdf

¹² According to the Census of India 2001, Primitive Tribal Groups are indigenous groups not formally listed as Scheduled Tribes but effectively constituting part of a Scheduled Tribe.

¹³ Census of India 2001, *Scheduled tribe atlas of India*, Government of India, 2004, page 95.

¹⁴ Ibid, page 84.

¹⁵ Mihir K. Jena, Padmini Pathi, Jagganath Dash, Kamala K. Patnaik, Klaus Seeland, *Forest tribes of Orissa – lifestyle and social condition of selected Orissan tribes – volume 1, the Dongria Kondh*, D.K. Printworld (P) Ltd, New Delhi, 2002.

¹⁶ Ibid, page 13.

¹⁷ Ibid, page 12.

¹⁸ Ibid, page 12.

¹⁹ Ibid, page 286.

²⁰ <http://wii.gov.in>

the Wildlife Institute of India' study on the proposed Lanjigarh mine from the complainant.²¹ The version of the study examined by the UK NCP is the version reproduced by the Environmental Protection Group (EPG) Orissa.²² In the version of the study examined by the UK NCP, the Wildlife Institute of India acknowledges that the Dongria Kondh inhabit the Niyamgiri Hills, that their economy is forest-based (as well as reliant on agriculture, labour, and animal husbandry), and that they are a "primitive and schedule tribe of the state".²³

28. The Central Empowered Committee was established by the Supreme Court of India in 2002 with a broad task to monitor and ensure the compliance of the orders of the Supreme Court concerning the subject matter of forests and wildlife and other issues arising out of said orders.²⁴ In its "Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa" of 21 September 2005, the Central Empowered Committee states that "[It is seen that] *Dongria Kandha tribe resides in Niyamgiri Hills. As per the applicants, they have unique culture, they worship Niyamgiri Hills, are dependent on it for their survival and that undertaking of mining at Niyamgiri Hills will result in extinction of the tribe*"²⁵ and that "*The project is based on and is totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which is an important wildlife habitat, part of elephant corridor, a proposed wildlife sanctuary, having dense and virgin forest, residence of an endangered Dongria Kandha tribe, a source of many rivers/rivulets*".²⁶
29. Sterlite Industries' own rapid environmental impact assessment acknowledges that Scheduled Castes and Tribes inhabit the study area (that is, an area within 10 Km from the mine)²⁷ but it does not specify whether the Dongria Kondh are amongst these tribes. The assessment states that: "*Kalahandi District has 17% SCs [Scheduled Castes] and 29% STs [Scheduled Tribes] against the State [of Orissa] average of 16% SCs and 22% STs. In case of Rayagada District, percentage of ST population is as high as 56% which indicates the complete domination of tribal population*".²⁸
30. The environmental impact assessment also acknowledges that the project would entail the displacement of some people and states that the "*exact number [of displaced people] will be available after detailed enumeration*"²⁹ and that "*Tribal localities are scattered in the hills in one to six-seven houses at place*".³⁰ The assessment also acknowledges that tribes form about 47.9% of the total population of the area affected by the project (that is, an area within 10 Km of the

²¹ S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006.

²² The UK NCP has asked the Wildlife Institute of India for a copy of the report but has not yet received one.

²³ S. Chowdhary, B. Pandav, *Studies on impact of proposed Lanjigarh bauxite mining on biodiversity including wildlife and its habitat*, Wildlife Institute of India, 2006, page 16.

²⁴ <http://cecindia.org/aboutcec.html>

²⁵ Central Empowered Committee, *Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa*, 21 September 2005, page 43.

²⁶ Ibid, page 44.

²⁷ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa*, August 2002, p. 7 of the executive summary, and page 2.7-1.

²⁸ Ibid, page 2.7-1.

²⁹ Ibid, page 2.7-3.

³⁰ Ibid, page 2.5-1.

project's site)³¹ and equally states the need for a "Resettlement and Rehabilitation Plan" to address any population displacement³² in compliance with Orissa's Resettlement and Rehabilitation Policy.³³

31. In its submission to the Central Empowered Committee before the Committee's September 2005 report referred above, the State of Orissa claims that the Dongria Kondh do reside in the Niyamgiri Hills but approximately 10 km away (in the District of Rayagada) from the Lanjigarh project' site and that, for this reason, the Dongria Kondh's traditional livelihood will not be affected by the mining activities. In a submission to the Supreme Court of India in response to the Central Empowered Committee's report of 21 September 2005, the State of Orissa again denies that the Dongria Kondh inhabit the Lanjigarh project' site in the District of Kalahandi because the Dongria Kondh live in other parts of the Niyamgiri Hills.
32. The UK NCP is unclear as to whether the State of Orissa' submissions are only focusing on the construction of the aluminium refinery but, in respect of the proposed site of the bauxite mine, there is no doubt that the project's affected area covers both the Districts of Kalahandi and Rayagada thus well within the Dongria Kondh's living space. The UK NCP also considers it unrealistic to regard the project's affected area as confined to the site of the mine or even to an area within 10 km from the mine, as if the mine could be built and exploited with no impact beyond this radius. The mere building of the mine and connecting roads for a venture of this magnitude would, by themselves, affect the communities living in the Niyamgiri Hills, including the Dongria Kondh, for several more miles around the mine. In addition, the UK NCP is concerned that the views of the State of Orissa may be influenced by the fact that the Orissa Mining Corporation Limited, a State of Orissa owned company, is in joint venture with Sterlite Industries on the construction of the bauxite mine in the Niyamgiri Hills. For these reasons, the UK NCP decided to give greater weight to the evidence from the Central Empowered Committee.
33. Vedanta itself appears to overlook or contradict itself on the issue of whether the Dongria Kondh inhabit the project affected area. In its response to the UK NCP dated 20 January 2009 the company states that "*It should also be noted that the Wildlife Institute of India, at the direction of the MoEF [Ministry of Environment and Forests of India], independently ascertained and specifically confirmed that the Dongria Kondh do not inhabit the proposed mining site*"³⁴. It then states in the same response that "*As previously mentioned, the Court [Supreme Court of India] also examined the Public Consultation process carried out by the State Government officials and was satisfied that the local communities (of which the Dongria Kondh are a part) had been consulted appropriately*".³⁵
34. The UK NCP is unable to verify beyond doubt whether the area covered by the bauxite mine itself is permanently inhabited or only revered as a religious place by the Dongria Kondh although the 2002 study conducted by academics suggests that it is revered and may not be wholly inhabited and that the Dongria Kondh tend to live in the foot hills. The UK NCP also cannot make a

³¹ Ibid, page 7 of the executive summary.

³² Ibid, page 9 of the executive summary.

³³ http://www.orissa.gov.in/revenue/R_R_Policies/Relief_and_Rehabilitation.htm

³⁴ Paragraph 6.10 of Vedanta's letter to the UK NCP dated 20 January 2009. The version of the Wildlife Institute of India' study examined by the UK NCP does not contain this statement but actually confirms that the Dongria Kondh inhabit the Niyamgiri Hills.

³⁵ Paragraph 7.2 of Vedanta's letter to the UK NCP dated 20 January 2009.

determination on the exact distance of each Dongria Kondh's village from the bauxite mine (which is disputed by the parties). However, based on the evidence from the Census of India 2001, academic research, the Wildlife Institute of India and the Central Empowered Committee, the UK NCP believes it is tenable to conclude that the Dongria Kondh inhabit the Niyamgiri Hills and land affected by the Lanjigarh mine project.

Were the Dongria Kondh consulted?

35. The decision about the construction of a bauxite mine in the Niyamgiri Hills appears to have been taken by the company without adequate and timely consultation with the Dongria Kondh.
36. Sterlite Industries' August 2002 environmental impact assessment³⁶ indicates that the decision to build the mine was taken purely on economic grounds, that is: the economic development of the region, the presence of large quantities of good quality bauxite, and an existing bauxite mining lease agreement between Sterlite Industries and Orissa Mining Corporation Limited. The report does not indicate that the views of any of the affected local communities have been considered as a factor in determining the location of the mine and adjacent structures, nor do alternative locations seem to have been considered in any detail.
37. Vedanta states in its letter to the UK NCP of 20 January 2009 that local communities were consulted in June 2002 and February-March 2003. There is evidence that these consultations have taken place. However, the first consultation in June 2002 only covers the construction of the refinery. In the letter of 6 June 2002 from the Office of the District Collector of the District of Kalahandi to affected land owners of the proposed Lanjigarh aluminium refinery project, the District Collector gives notice of the land acquisition for the construction of the refinery in the Kalahandi District and also explains that displaced families would be compensated and resettled. The letter asks for any complaint to be sent in writing to the Office of the Revenue Inspector in Lanjigarh by 22 June 2002. The letter also informs the recipients that a public consultation would take place on 26 June 2002. It is unclear from the letter who the affected land owners are and whether the Dongria Kondh are amongst them.
38. The UK NCP also received evidence of a consultation with the local community in April 2009 on the expansion of the aluminium refinery. According to the proceedings of the public hearing,³⁷ the meeting was attended by 400 people but only 117 signed the attendance sheet and 27 actually spoke. It is unclear how many representatives or members of the Dongria Kondh actually attended (or were aware of the meeting). According to Survival International, a member of the Dongria Kondh, Lodu Sikaka (identified as "Lada Majhi" in the meeting's minutes) did attend and spoke against the Lanjigarh project as a whole. Lada Majhi's statement is recorded in the minutes:

"Saluting the people present, he said about the Niyamgiri Hills. He said that the hill is their mother as they are depending on the hill for the livelihood. He questioned the authorities whether they can afford to pay 5 lakh rupees for each tree of lemon, turmeric, etc. He further claimed that the government should not compromise with the foreign company. Even if all accepts the

³⁶ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002*, pages 1-2, and 14 of the executive summary.

³⁷ *Proceedings of the public hearing of M/S Vedanta Aluminium Limited for its expansion of alumina refinery from 1.0 MPTA to 6.0 MPTA on 25.04.2009 at 10AM at: Village Belemba (opposite VAL SWITCH YARD), Lanjigarh, District Kalahandi.*

Niyamgiri project but the villagers will never agree on that and they will never allow to operate “Niyam giri danagar (mine)””.

39. There is no evidence to suggest that the consultation on the construction of the refinery included consultation on the construction of the bauxite mine. As explained above, the Lanjigarh project includes the building of a power plant, a refinery and a bauxite mine. The UK NCP understands that the refinery and power plant are already operational. The refinery is currently using raw material brought in from other mines. Whilst the use of locally mined material may be more efficient and economical (because, for example, it may require less journeys by truck and shorter distances to cover), the UK NCP considers it reasonable to conclude that the operation of the refinery is not dependent on the construction of the bauxite mine in the Niyamgiri Hills, therefore consultation on one does not imply consultation on the other.
40. The consultations of February and March 2003 did cover the construction of the bauxite mine in the two Districts of Kalahandi and Rayagada. According to the proceedings of the public hearing in February 2003,³⁸ the meeting concluded, amongst other issues, that “*The public in general supported the setting up of the industries and operation of mines*” and that “*Local people should be adequately trained and employment opportunity should be generated*” but only 10 people, including the meeting’s chair, signed the attendance sheet for this meeting and only 6 people actually commented during the meeting. According to the proceedings of the public hearing in March,³⁹ the meeting concluded, amongst other issues, that the “*local people in general supported the setting up of the mines except two nos NGOs*” and that “*the project proponent should take all preventive measures, so that surrounding environment should not be affected and should contact vigorously with local people as well as local elected body*”. Notice of the March meeting was published in a local newspaper and about 30 people signed the “oral deliberators” sheet.
41. The February-March 2003 consultations covered the construction of the bauxite mine but appear, on the basis of the available evidence, to have been poorly attended. In addition, there is no evidence that the Dongria Kondh were aware or attended the public hearings. The poor attendance of these meetings may have been due to the fact that notice of the meetings was, on the available evidence, only given in writing, in local newspapers and in English.
42. The UK NCP did not receive or find any evidence that shows that Vedanta had attempted to engage any of the local indigenous communities affected by the refinery or by the mine by, for example, taking into account that some members of the affected communities may have been illiterate and therefore unable to either read the notice or send written complaints. Vedanta’s own 2002 environmental impact assessment states that literacy levels in Orissa are generally low (49.1%) and are even lower (19.7%) in the study area (that is, an area within 10 km from the proposed mine).⁴⁰ The “Scheduled tribe atlas of India”⁴¹ states that the literacy rate amongst Scheduled Tribes is: 37.37% in Orissa, between 30.01 and 45.00% in the District of Kalahandi, and between 12.91 and 30.00% in the District of Rayagada. The rural literacy rate (that is, the

³⁸ *Proceedings of the public hearing conducted in respect of M/S Sterlite Industries (India) Limited for its proposed alumina refinery captive power plant and bauxite mine held at the Office of Special Officer, Kutia Kandha Development Agency, Lanjigarh, Kalahandi on 07.02.2003.*

³⁹ *Proceedings of the public hearing of M/S Sterlite Industries (India) Limited for its bauxite mines on 17.03.2003 at P.W.D. Inspection Bunglow, Muniguda, Dist. Rayagada.*

⁴⁰ Tata AIG Risk Management Services Ltd, *Rapid environmental impact assessment report for bauxite mine proposed by Sterlite Industries Ltd near Lanjigarh, Orissa, August 2002*, page 2.7-1.

⁴¹ Census of India 2001, *Scheduled tribe atlas of India*, Government of India, 2004, pages 33, 35.

percentage of rural literates among Scheduled Tribes) is even lower: 36.13% in Orissa, between 30.01 and 40.00% in the District of Kalahandi, and between 12.63 and 30.00% in the District of Rayagada.

43. Taking into consideration the Dongria Kondh's traditional way of life and livelihood, Vedanta's own data and the Census of India 2001 data, it is reasonable to assume that many members of the Dongria Kondh, may not be able to read and write and that more accessible means of communication should have been used in order to engage them effectively.
44. The Guidelines state that enterprises should "*engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation*" [Chapter V(2)(b)]. The UK NCP considers that Article 10 of the "Akwe: Kon Guidelines", produced by the Secretariat of the Convention on Biological Diversity in 2004,⁴² provides a good indication of what constitutes an "adequate and timely" consultation with indigenous groups because it takes into account the specific needs of indigenous people like the Dongria Kondh and enables companies practically to take these needs into account when consulting indigenous groups.
45. Article 10 of the "Akwe: Kon Guidelines" states that:

"The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development. Such notification should use all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, mailings, village/town meetings, etc.), take into account the situation of remote or isolated and largely nonliterate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected. Such notification should clearly identify the proponent, contain a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment procedures, and identify obligations under national and subnational laws as well subregional, regional and international agreements".
46. From the available evidence, it is tenable to conclude that Vedanta did not employ the Dongria Kondh language or means of communication other than written in the February-March 2003 consultations on the construction of the mine.
47. The Central Empowered Committee provides further indication of the lack of an adequate and timely consultation with the Dongria Kondh. The Committee stated that: "*the alumina refinery project should have been allowed to be constructed only after carrying out in depth study about the effect of the proposed mining from Niyamgiri Hills on water regime, flora and fauna, soil erosion and on the Dongria Kandha tribes residing at Niyamgiri Hills and after careful assessment of the economic gains vis-à-vis environmental considerations [...]* In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to the project from environmental/ecological/forest

⁴²

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

*angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site”.*⁴³

48. However, in its submission to the Supreme Court of India in response to the Central Empowered Committee’s report of 21 September 2005, the State of Orissa rejects the conclusions of the Central Empowered Committee’s report. In particular, it states that local communities, through village assemblies (called Gram Sabha) or their representatives (called Gram Panchayat), were consulted about the Lanjigarh refinery project and the consultation meetings were advertised on two leading local newspapers (and individual notices were issued to “*land losers*”), and captured in video recordings.
49. As explained above, the UK NCP only found evidence of two consultations on the construction of the mine in February and March 2003. However, neither of these consultations can be considered adequate for the reasons also explained above. The UK NCP has not found any evidence, either in documentary form or video recordings, that confirms that the Dongria Kondh were consulted in an adequate and timely manner and that their views had been collected and taken into account.
50. In its letter to the UK NCP of 20 January 2009, Vedanta states that it is in constant touch with the “Dongria Kondh Development Agency”, a State of Orissa’s sponsored body, to “*actively associate itself in the process of development of the resources of the Dongria Kondh*”.⁴⁴ The UK NCP was unable to find, nor has it received any evidence from Vedanta, on the company’s role in or engagement with this agency and whether the agency was used to consult the Dongria Kondh fully on the construction of the bauxite mine.
51. In the same letter to the UK NCP, Vedanta also suggests that the State of Orissa carried out a separate consultation with the local communities affected by the Lanjigarh project. The UK NCP was unable to find nor has received any evidence on the scope and outcome of this consultation process, other than the consultations carried out in June 2002, February-March 2003 and April 2009 examined above.

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

52. Contrary to Vedanta’s claims in its response to the UK NCP, the two rulings of the Supreme Court of India of 23 November 2007⁴⁵ and 8 August 2008,⁴⁶ referred in Vedanta’s letters to the UK NCP, do not appear to have addressed the issue of whether local communities, of which the Dongria Kondh are part, have been adequately consulted on the Lanjigarh project by the company.
53. In the 2007 Order, the Supreme Court of India set out its rationale for dismissing Vedanta Aluminium Limited’s application to use forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh and it also suggested the conditions under which Sterlite Industries (and only Sterlite Industries) could re-submit an application to the Court. These conditions refer to Sterlite Industries’ acceptance of a comprehensive rehabilitation package which includes: the creation of a

⁴³ Central Empowered Committee, *Report in IA No. 1324 regarding the alumina refinery plant being set up by M/S Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa*, 21 September 2005, page 45.

⁴⁴ Paragraph 4.3 of Vedanta’s letter to the UK NCP dated 20 January 2009.

⁴⁵ Supreme Court of India, Order in I.A. No. 1324 and 1474, 23 November 2007

⁴⁶ Supreme Court of India, Order in I.A. No. 2134 of 2007, 8 August 2008.

“Special Purposes Vehicle” jointly by the State of Orissa, Sterlite Industries and Orissa Mining Corporation Limited, which would report annually to the Central Empowered Committee and would oversee the implementation of the “Rehabilitation Package”; Sterlite Industries’ contribution to a Wildlife Management Plan for the conservation and management of wildlife around Lanjigarh’s bauxite mine; and Sterlite Industries’ submission of a statement to the Central Empowered Committee listing, amongst others, the people who will lose their land as a result of the construction of the mine and who will need to be “*observed on permanent basis*”.

54. The Court’s Order also reproduces a number of suggestions made by the State of Orissa which include the establishment of a Rehabilitation Project for affected families based on the Orissa Rehabilitation and Resettlement Policy 2006 and the preparation of a comprehensive plan for the “*development of tribals in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle*”. Finally, the Court weighs the principle of sustainable development with the need for economic development, and concludes that “*courts are required to balance development needs with the protection of the environment and ecology [...] Mining is an important revenue generating industry. However, we cannot allow our national assets to be placed into the hands of companies without proper mechanism in place and without ascertaining the credibility of the User Agency*”.
55. In the 2008 Order, the Supreme Court of India notes Sterlite Industries’ acceptance of the rehabilitation package suggested in the 2007 Order and grants the company clearance for the use of forest land for bauxite mining on the Niyamgiri Hills in Lanjigarh, subject to final approval from India’s Ministry of Environment and Forests.
56. Neither Order suggests that the Supreme Court of India ruled (or was asked to rule) specifically on the need to consult local and indigenous communities, of which the Dongria Kondh are part. The UK NCP is not aware of whether consultation with indigenous groups is mandatory under Indian law, however Chapter V(2)(b) of the Guidelines does recommend consultation with communities directly affected by a multinational enterprise’s environmental, health and safety policies and their implementation. The UK Government expects UK registered companies operating abroad to abide by the standards set out in the Guidelines as well as to obey the host country’s laws.

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

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

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

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

59. Articles 2(1), 18, and 27 of the UN International Covenant on Civil and Political Rights respectively cover: non-discrimination in the enjoyment of civil and political rights, freedom of religion, and the rights of ethnic minorities. Articles 5(c), 5(d)(v), 5(e) of the UN Convention on the Elimination of All Forms of Racial Discrimination respectively cover: non-discrimination in the enjoyment of political rights, non-discrimination in the enjoyment of the right to own property, and non-discrimination in the enjoyment of economic, social and cultural rights. Article 8(j) of the Convention on Biological Diversity covers the protection of indigenous communities. Articles 12, 18, 19 and 32 of the UN Declaration on the Rights of Indigenous People respectively cover: indigenous groups' right to practice their religion and for protection of their religious sites, indigenous groups' right to participate in decision-making affecting their rights, consultation with indigenous groups, and indigenous groups' right to determine their development priorities and to consent to the exploitation of their land.
60. As explained above, Vedanta does not appear to have engaged the Dongria Kondh in adequate and timely consultations about the impact the construction of a bauxite mine in the Niyamgiri Hills would have on their enjoyment of the rights and freedoms described above. In addition, there is no evidence that Vedanta took any other measures to assess, either in its own 2002 environmental impact assessment or through other means, the impact of the proposed mine on the rights and freedoms described above. For these reasons, it is reasonable to conclude that the company did not take adequate steps to respect the rights and freedoms of those affected by its activities consistently with the international instruments of which India is a party, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Biological Diversity.
61. By only considering the project's economic factors, Vedanta appears not to have balanced the need to promote the success of the company with the clear expectation set out in the Guidelines that companies should respect the human rights of the people affected by the company's economic activities consistent with the host government's international obligations and commitments. While the UK NCP acknowledges the difficulty of UK multinational companies, including Vedanta, to keep track of the international human rights obligations both of the UK and of the host countries in which they operate, companies should nonetheless establish a system that helps them assess and keep track of the human rights impact of their economic activities.
62. Vedanta also does not appear to have a concrete human rights policy or to have in place a mechanism for assessing the impact of its operations on human rights (and indigenous rights) in spite of its published commitments: "[Our people and community policies, which are applied across all of our group companies, are to:] *Strive to actively enter into dialogue and engagement with our stakeholders [...] Manage our businesses in a fair and equitable manner, meeting all our social responsibilities as a direct and indirect employer and respect the human rights of all of our stakeholders [...] Align our activities with the principles in the Convention on the Rights of the Child of the United Nations and Convention 138 of the International Labour Organisation*".⁴⁷

Vedanta's alleged violation of India's domestic law

63. The UK NCP has not examined the alleged breach by Vedanta of India's law and regulations, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Although Chapter V(2)(b) of the Guidelines recommends that enterprises should engage in adequate and timely communication and consultation within the framework of laws and

⁴⁷ <http://www.vedantaresources.com/policies.aspx>

regulations in the countries in which they operate, Survival International did not demonstrate that the legislation in question placed any obligations on companies to consult with local communities affected by their activities. It is outside the UK NCP's remit to determine companies' violation of local law and regulations with no reference to the Guidelines.

Conclusions

64. Having examined the evidence, the UK NCP could not find any record of the views of the Dongria Kondh about the construction of the bauxite mine in the Niyamgiri Hills ever having been collected and/or taken into consideration by the company. Evidence from the Census of India 2001, academic research, the Wildlife Institute of India, and the Central Empowered Committee suggests that the Dongria Kondh inhabit and have a direct interest in the land affected by the bauxite mine. The Supreme Court of India did not rule (nor was it asked to rule) on the need to consult local indigenous communities.
65. The UK NCP upholds Survival International's allegation that Vedanta has not complied with Chapter V(2)(b) of the Guidelines. The project has an environmental and health and safety impact on the Dongria Kondh. Evidence from the Central Empowered Committee and Sterlite Industries' environmental impact assessment shows that the Lanjigarh mining project would affect the environment in the Niyamgiri Hills which are home to (and are revered as sacred by) the Dongria Kondh, and may cause the displacement of some local people, of which the Dongria Kondh are a part. The UK NCP concludes that Vedanta has not complied with the Guidelines because it has to date failed to put in place an adequate and timely consultation mechanism to engage fully the Dongria Kondh about the potential environmental and health and safety impact of the construction of the mine on them.
66. The UK NCP upholds Survival International's allegation that Vedanta failed to act consistently with Chapter II(7) of the Guidelines. It concludes that Vedanta failed to put in place any general human rights or indigenous rights policies or a mechanism, such as an indigenous (or human) rights impact assessment, to assess the impact of the construction of the mine on the Dongria Kondh. It also concludes that Vedanta failed to engage the Dongria Kondh in adequate and timely consultation about the construction of the mine. For these reasons, the company has so far failed to develop and apply an effective self-regulatory practice to foster a relationship of confidence and mutual trust between the company and the Dongria Kondh, a constituent of the society in which it operating.
67. The UK NCP also upholds Survival International's allegation that Vedanta has behaved inconsistently with Chapter II(2) of the Guidelines because: it failed to engage the Dongria Kondh in adequate and timely consultations on the impact that the construction of the bauxite mine would have on their recognised rights and freedoms; and it did not take any other measures to consider the impact of the construction of the mine on those rights and freedoms, or to balance the impact against the need to promote the success of the company. For these reasons, Vedanta has not respected the rights and freedoms of the Dongria Kondh consistent with India's commitments under various international human rights instruments, including the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous People.

Examples of good practice by the company

68. The company's 2008 and the recently published 2009 Sustainable Development Reports are commendably based on the Global Reporting Initiative's (GRI) G3 Guidelines and on selected GRI indicators addressing economic performance, environmental performance, labour practices and decent work performance, human rights performance, society performance, and product responsibility performance.
69. The UK NCP noted with interest Vedanta's pilot scheme, mentioned in Vedanta's website,⁴⁸ to encourage selected suppliers to respect human rights and the company's intention to roll out this scheme to all suppliers by 2012.
70. Equally noteworthy is Vedanta's decision to align its 2009 sustainable development report to the 10 principles of the UN Global Compact, and to the International Finance Corporation's Performance Standards on Social and Environmental Sustainability.
71. In its 2009 Preliminary Results, Vedanta confirmed its commitment to sustainable development⁴⁹ focusing in particular on the areas of education, health, livelihood, agriculture and social forestry, and integrated village development.

Recommendations to the company and follow up

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

Recommendation 1

73. Vedanta should immediately and adequately engage with the Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine, access of the Dongria Kondh to the project affected area, ways to secure the Dongria Kondh's traditional livelihood, and exploring alternative arrangements (other than re-settlement) for the affected Dongria Kondh's families. The company should respect the outcome of the consultation process.
74. As a guide on how to pursue the consultation process, Vedanta should refer to the "Akwe: Kon Guidelines - Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities",⁵⁰ produced by the Secretariat of the Convention on Biological Diversity in 2004. At a minimum, the company is expected to advertise the consultation in a language and form that can be easily understood by the Dongria Kondh therefore ensuring the participation of the maximum number of Dongria Kondh (and their representatives) in the consultation.

⁴⁸ See page 7 of <http://www.vedantaresources.com/uploads/griindex.pdf>.

⁴⁹ Slide 22 of Vedanta's preliminary results (7 May 2009) available on http://www.vedantaresources.com/uploads/vedantafy2009preliminaryresults_print.pdf.

⁵⁰ <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

Recommendation 2

75. Vedanta should include a human and indigenous rights impact assessment in its project management process. In doing so, Vedanta should pay particular attention to the creation of an adequate consultation process, prior to the finalisation and execution of a project, with indigenous groups potentially affected by the company's activities. This measure would minimise the risk of failure in balancing the host country and the UK international human rights obligations with the duty to promote the success of the company. It is also essential that the human and indigenous rights impact assessment and consultation procedures do not remain a "paper policy" but are translated into concrete procedures and actions on the ground.
76. John Ruggie is the Special Representative of the Secretary General of the UN on the issue of human rights and transnational corporations and other business enterprises. In this capacity, John Ruggie is widely considered a leading authority on the issue of business and human rights and has provided good practical advice to companies on how to ensure that they respect human rights while engaging in economic activities. In April 2008, John Ruggie reported to the UN that, in order to ascertain whether they are respecting human rights, companies require "*due diligence – a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it. The scope of human rights-related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities*".⁵¹
77. In an April 2009 report to the UN, John Ruggie also stated: "*What is the appropriate scope of a company's human rights due diligence process, the range of factors it needs to consider? Three are essential. The first is the country and local context in which the business activity takes place. This might include the country's human rights commitments and practices, the public sector's institutional capacity, ethnic tensions, migration patterns, the scarcity of critical resources like water, and so on. The second factor is what impacts the company's own activities may have within that context, in its capacity as producer, service provider, employer and neighbour, and understanding that its presence inevitably will change many pre-existing conditions. The third factor is whether and how the company might contribute to abuse through the relationships connected to its activities, such as with business partners, entities in its value chain, other non-State actors, and State agents*".⁵²

⁵¹ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraph 25.

⁵² Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and human rights: Towards operationalizing the "protect, respect and remedy" framework*, United Nations, 22 April 2009, paragraph 50.

78. To this effect, Vedanta should consider implementing John Ruggie's suggested key steps for a basic human rights due diligence process:⁵³
- Adopting a human rights policy which is not simply aspirational but practically implemented.
 - Considering the human rights implications of projects before they begin and amend the projects accordingly to minimise/eliminate this impact.
 - Mainstreaming the human rights policy throughout the company, its subsidiaries and supply chain.
 - Monitoring and auditing the implementation of the human rights policy and company's overall human rights performance.
79. Further assistance on how to develop a practical human rights policy can be found on the UN website on business and human rights.⁵⁴ The Akwe: Kon Guidelines, mentioned above, can be used as a point of reference for carrying out indigenous groups' impact assessments. As benchmarking, Vedanta may also consider the May 2008 "Position statement on mining and indigenous peoples"⁵⁵ of the London based International Council on Mining and Metals which commits the Council's members to:
- "Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle. Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-the-ground exploration. Engagement, wherever possible, will be undertaken through traditional authorities within communities and with respect for traditional decision-making structures and processes.*
- [...]
- Designing projects to avoid potentially significant adverse impacts of mining and related activities and where this is not practicable, minimising, managing and/or compensating fairly for impacts. Among other things, for example, special arrangements may need to be made to protect cultural property or sites of religious significance for Indigenous People.*
- [...]
- Through implementation of all of the preceding actions, seek broad community support for new projects or activities. ICMM members recognize that, following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted".*
80. To repeat, whichever self-regulatory practices Vedanta chooses to adopt in order to minimise the risk of further breaches of the Guidelines in the future, it is essential that these practices, particularly the human and indigenous rights impact assessments and the adequate and timely consultation with all the affected communities of a project, do not remain "paper statements" but are translated into concrete actions on the ground and lead to a change in the company's behaviour.

⁵³ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraphs 59-64.

⁵⁴ <http://www2.ohchr.org/english/issues/globalization/business/list.htm>

⁵⁵ <http://www.icmm.com/page/208/indigenous-peoples>

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

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Department for Business, Innovation and Skills
Bay 4133
1, Victoria Street
London SW1H 0ET
United Kingdom
e-mail: uk.ncp@bis.gsi.gov.uk

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

25 September 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass, Dal Dio, Sergio Moreno

URN: 09/1373

Statement by the UK NCP

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

12 March 2010

1. This Follow Up Statement reflects the parties' responses on the implementation of the recommendations contained in the Final Statement dated 25 September 2009¹ on the complaint from Survival International against Vedanta Resources plc (Vedanta) under the OECD Guidelines for Multinational Enterprises (the Guidelines). In accordance with the published complaint procedure², the UK National Contact Point (NCP) for the Guidelines has summarised (but not carried out an examination of) the information provided by the parties. The publication of this statement is the final stage in this Specific Instance.

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

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

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

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

Follow up to Final Statements by the UK NCP

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

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

¹ <http://www.berr.gov.uk/files/file53117.doc>

² <http://www.berr.gov.uk/files/file53070.pdf>

SUMMARY OF THE RECOMMENDATIONS TO THE COMPANY CONTAINED IN THE FINAL STATEMENT

8. In the Final Statement dated 25 September 2009 on the complaint from Survival International against Vedanta, the UK NCP made recommendations to Vedanta with the aim of assisting the company in bringing its practices in line with the Guidelines. These can be summarised as follows:

- 1) Vedanta should immediately and adequately engage with the indigenous group Dongria Kondh seeking, in particular, the Dongria Kondh's views on the construction of the bauxite mine, access to the project affected area, ways to secure the Dongria Kondh's traditional livelihood, and exploring alternative arrangements (other than re-settlement) for the affected families. As a guide to how to pursue the consultation process, Vedanta should refer to the consultation process outlined in the "Akwe: Kon Guidelines"³ produced by the Secretariat of the Convention on Biological Diversity in 2004.
- 2) Vedanta should include a human and indigenous rights impact assessment in its project management process and in doing so should pay particular attention to the creation of an adequate consultation process, prior to the finalisation and execution of the project, with indigenous groups potentially affected by the company's activities. Vedanta should consider implementing John Ruggie's suggested key steps for a basic human rights due diligence process⁴ and may also consider the May 2008 "Position statement on mining and indigenous peoples"⁵ of the London based International Council on Mining and Metals.

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

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

SUMMARY OF THE SUBMISSION FROM SURVIVAL INTERNATIONAL

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

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

³ <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

⁴ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, United Nations, 7 April 2008, paragraphs 59-64.

⁵ <http://www.icmm.com/page/208/indigenous-peoples>

13. According to Survival International's submission, the team reported that residents of Phuladumer, Palaberi and Konakadu (the latter is another Dongria Kondh's village not visited by the team) had been served with notices stating that the state authorities would be acquiring the land for "public purposes". The team then visited Trilochanapur where it reported that one of its guides had their motorcycle vandalised and that a heated exchange took place between the guides and some of the villagers who claimed to object to the team's presence there and had allegedly been paid by Vedanta. Survival International reported that Vedanta had allegedly warned the local police authorities and press about Survival International's and other foreign NGOs' movements in Orissa with the aim of creating unrest.

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

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

SUMMARY OF THE SUBMISSION FROM VEDANTA

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

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

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

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

consultation with 62 Dongria Kondh villages, local NGOs and anthropologists. Vedanta reported that it is working with the DKDA to facilitate the delivery of its development objectives. Vedanta stated that the consultation process which the Indian authorities and Vedanta's subsidiary carried out as part of the regulatory approval process with the local communities was advertised in the local vernacular (in accordance with Indian law).

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

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

12 March 2010

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

URN 10/778

Statement by the UK NCP

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

9 November 2009

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:
 - (1) Initial Assessment – This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation/examination – If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint, it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.
5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website <http://www.bis.gov.uk/nationalcontactpoint>.

Complaint from the IUF

6. On 3 October 2006 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) brought a complaint to the UK NCP and the Dutch NCP on behalf of one of its affiliates, the Hindustan Lever Employees Union (HLEU). The complaint concerned the selling of Hindustan Lever Limited's¹ Sewri factory in Mumbai (India) to Bon Limited and the factory's subsequent closure in July 2006. Hindustan Lever Limited is a subsidiary of a UK registered company, Unilever plc.
7. The concerns raised by the IUF related to the following provisions within the Guidelines:
 - (a) Chapter I(7): *"Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries"*.
 - (b) Chapter IV(6): *"[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions"*.
8. The IUF alleged that Unilever was operating in a manner inconsistent with the Guidelines by transferring ownership of the Sewri factory, which the IUF claimed was effected in order to close the facility and terminate the employment of all the union's members. The IUF alleged that aspects of the transfer represented a breach of Indian law and that this fact meant that Unilever had acted inconsistently with Chapter I(7) of the Guidelines. According to the IUF, Unilever also breached Chapter IV(6) of the Guidelines because it had failed to provide reasonable notice to the employees and their representatives about the transfer of ownership of the factory and the termination of the employment contracts.

Response from Unilever

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

¹ Now "Hindustan Unilever Limited".

UK NCP process in this specific instance

10. On 3 October 2006 the IUF submitted the complaint to the UK NCP and to the Dutch NCP. On 12 January 2007, the UK NCP formally agreed to take responsibility of this case. On 15 May 2007, the UK NCP published its Initial Assessment in which it accepted the Specific Instance. **Acceptance of this Specific Instance by the UK NCP does not mean that the UK NCP considers that Unilever operated inconsistently with the Guidelines.**
11. On accepting the complaint, the UK NCP did not consider itself to be in a position to judge whether Indian law had been broken. In any event, the Indian courts were determining the compatibility of various issues raised in the complaint with Indian law. The UK NCP accepted this Specific Instance in order to assist the parties to reach a negotiated settlement on the situation of the 782 employees in the Sewri factory who did not originally accept the Voluntary Retirement Scheme (VRS) offered in respect of the factory's closure.
12. Between May 2007 and October 2009, at the request of the parties, the complaint was effectively (albeit not formally) suspended to allow negotiations on the matter of the 782 employees in the Sewri factory and other related matters to take place in India without the direct involvement of the UK NCP. On 13 October 2009, both parties informed the UK NCP that they had reached a mediated settlement in India outside of the UK NCP's process, addressing all the issues raised in IUF's original complaint.

UK NCP conclusions

13. **The UK NCP will close the complaint in respect of the Sewri factory and no examination on the allegations contained in IUF's complaint will take place.**
14. **The UK NCP congratulates both parties for their efforts in encouraging discussions in India leading to a mutually acceptable outcome.**

9 November 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass

Dal Dio

Sergio Moreno

URN 09/1529

Statement by the UK NCP

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

20 November 2009

Background*OECD Guidelines for Multinational Enterprises*

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided in three key stages:
 - (1) Initial Assessment – This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation/examination – If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If the UK NCP has examined the complaint (because conciliation/mediation is refused or fails to achieve an agreement), it will prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and recommendations to the company for future conduct, if necessary.
5. The complaints process, together with the UK NCP's Initial Assessments and Final Statements, is published on the UK NCP's website <http://www.bis.gov.uk/nationalcontactpoint>.

Complaint from the IUF

6. On 6 March 2009 the “International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations” (IUF) wrote on behalf of the “National Federation of Food, Beverage and Tobacco Workers” of Pakistan, an IUF affiliate, to the UK NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of Unilever Pakistan Ltd, a Pakistan based company (“Unilever”), which is a subsidiary of Unilever Plc (a UK registered company).
7. The concerns raised by the IUF relate to the operations of Unilever’s factory in Khanewal and were specifically related by the IUF to the following provisions within the Guidelines:
 - (a) Chapter II(1): “[Enterprises should] *Contribute to economic, social and environmental progress with a view to achieving sustainable development*”.
 - (b) Chapter II(4): “[Enterprises should] *Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees*”.
 - (c) Chapter II(9): “[Enterprises should] *Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise’s policies*”.
 - (d) Chapter IV(1)(a): “[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] *Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions*”.
8. The IUF alleged that Unilever had deliberately constructed a system of employment at its Khanewal factory based almost exclusively on temporary workers and was refusing to change the workers’ status from temporary to permanent after the mandatory nine-month period of continuous service, allegedly in breach of Pakistan’s employment law. The IUF explained that temporary workers do not have the same access to collective bargaining as permanent workers in Pakistan and also do not receive the same benefits. The IUF also alleged that those temporary workers demanding permanent status and who petitioned the Punjab Labour Court No. 9 in Multan had been subject to threats, coercion and violence from members of management.

Response from Unilever

9. Unilever denied any breach of the Guidelines and stated that, in line with the industry’s practice in Pakistan and South East Asia, and to keep operations effective and competitive, it does employ independent service providers for non-core operations at the Khanewal factory. Unilever stated that it cannot be held responsible for the work status of workers employed by independent local service providers and that it insists upon service providers complying with Unilever’s Business Partner Code¹ and with Pakistan’s law. Unilever also stated that employees of Unilever’s independent service providers are free to form their own unions separate from Unilever Employees Federation of Pakistan (which can only represent Unilever’s permanent staff in the country). Unilever denied that workers were subject to threats, coercion or violence.

¹ http://www.unilever.com/aboutus/purposeandprinciples/business_partner_code/

UK NCP process in this specific instance

10. On 6 March 2009, the IUF submitted the complaint to the UK NCP. Unilever provided its response on 15 May 2009. On 9 June 2009, the UK NCP published its Initial Assessment in which it accepted the Specific Instance. **Acceptance of this Specific Instance by the UK NCP does not mean that the UK NCP considers that Unilever operated inconsistently with the Guidelines.**
11. The UK NCP then contacted both parties to confirm whether they were willing to accept the UK NCP sponsored conciliation/mediation process with the aim of reaching a mutually acceptable outcome. Both parties accepted the offer so the UK NCP appointed ACAS² arbitrator and mediator John Mulholland to serve as conciliator-mediator. An initial conciliation meeting took place on 15 October 2009 in London. The parties met again on 21 October 2009 in London. The meetings were chaired by Mr Mulholland. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The full text of the agreement reached by the parties is attached as an annex to this Final Statement.

Outcome of the conciliation

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

UK NCP Conclusions

13. **Following the successful conclusion of the conciliation process by Mr John Mulholland and the agreement reached by the parties, the UK NCP will close the complaint in respect of the Khanewal factory. The UK NCP will not carry out an examination of the allegations contained in IUF's complaint or make a statement as to whether there has been a breach of the Guidelines.**
14. **The UK NCP congratulates both parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the discussions.**

20 November 2009

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Rowland Bass

Dal Dio,

Sergio Moreno

URN 09/1570

² Advisory, Conciliation and Arbitration Service.

ANNEX

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

1. The IUF and Unilever have agreed there will be a significant change in the model of employment at Khanewal based on a combination of directly employed permanent labour in non-seasonal manufacturing and contract agency workers (labour engaged through third party service providers) for ancillary, non-manufacturing and seasonal positions.
2. Under the terms of this agreement, Unilever will establish 200 permanent positions at Khanewal. This is in addition to the existing 22 positions at this facility.
3. Those confirmed through this selection process will be appointed on contracts commencing as of 15th October 2009.
4. To ensure a fair and transparent selection procedure for the appointment of these permanent positions, the IUF and Unilever will form a committee at national level to oversee and implement the process.
5. The Selection of workers shall be made on the basis of seniority and skill. However, the committee shall focus its discussions on the 237 members of the "Action Committee" (members of Unilever Mazdoor Union Khanewal) with particular priority given to the 177 who are part of the manufacturing group (i.e. core and non-core roles) in relation to the 200 permanent jobs.
6. Unilever shall ensure that the third party service provider companies provide appropriate payment to their employees both who receive permanent positions and who do not receive permanent positions in settlement of any outstanding statutory payments. This assurance includes Unilever's agreement to assume responsibility for the payment of any and all payments not met by the service provider within the time frame specified. A lump sum payment, as detailed in point 10 below, will be made in lieu of individually derived payments inclusive of gratuity.
7. The list of employees eligible for this payment will be agreed by the committee, but shall exclude any service provider employees who were not registered / enrolled before August 2008 and shall apply only to those of this number who remain enrolled as of 15 Oct 2009.
8. It shall also exclude employees where full documentary proof of full statutory payments having already been made can be provided. Any individual issues arising, relating to eligibility to payments will be agreed by the committee.
9. The terms of the one off lump sum payments are as follows:
 - I. Payment for third party service provider employees working in manufacturing core/non-core roles who receive permanent positions from Unilever Pakistan: Rs. 50,000.00
 - II. Payment for third party service provider employees working in manufacturing core/non-core roles but who do not receive permanent positions but continue working with the service providers: Rs. 150,000.00

- III. Payment for third party service provider employees in ancillary roles who will not be eligible for permanent positions but continue working with the service providers:
Rs. 100,000.00
10. Any of the Action Committee members who as a consequence of the selection process are not selected for permanent positions shall be subject to dialogue between the IUF and Unilever regarding current employment and future placements. However, they shall continue to be employed as service provider employees with all legally mandated benefits and will not be subject to any discrimination or harassment, so long as contract employment is required within the core and non core areas.
 11. Unilever Pakistan shall also ensure that the third party service providers have paid all legally mandated payments to the Employees' Old Age Benefits Institution (EOBI) and the social security system for all their employees. This assurance includes Unilever's agreement to assume responsibility for the payment of any and all such legally mandated payments not met by the service provider within the timeframe specified.
 12. These payments will be made within 30 days of the finalising of the list of the eligible employees by the committee. The list shall be finalized within 15 days of the signing of this agreement.
 13. At the conclusion of the employment selection process all Action Committee members at the time of receiving signed appointment letters shall give signed undertakings to withdraw all related court cases. All payments agreed in relation to the 237 members of the Action Committee will be made immediately upon withdrawal of their petitions. The draft of the undertaking and the withdrawal of petitions to be submitted by the individuals shall be mutually agreed by the committee at national level.
 14. Unilever confirms its intention of continuing operations at Khanewal and makes a commitment to invest in these operations. This will include implementation of automation or other efficiency measures to ensure business viability, subject to the normal consultation requirements as defined in law. In this respect Unilever will fulfill its obligations under the OECD guidelines on multinational enterprises, in particular article iv.6.
 15. No member of the Action Committee will be subject to any discriminatory or recriminatory action as a result of their membership of the Action Committee.
 16. Both Unilever and Action Committee members commit to a process of ongoing dialogue. The IUF and its affiliates will be entitled to exercise full representational functions within the plant, within the pertinent legal framework, without interference by the management.
 17. Implementation of this agreement will be monitored by the IUF and Unilever at national, regional and global levels.

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

Ron Oswald
General Secretary, IUF

London, October 21, 2009

ANNEX 5. EXCHANGE OF LETTERS BETWEEN THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT AND THE OECD SECRETARY-GENERAL

Letter by the Prosecutor of the International Criminal Court

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Le Bureau du Procureur

The Office of the Prosecutor

Mr Angel Gurría
Secretary-General
Organisation for Economic Co-operation
and Development (OECD)
2, rue André Pascal
F-75775 Paris Cedex 16

Ref.: OTP/OECD/031109/LMO-pt

Date: 3 November 2009

Dear Secretary-General,

I am writing to you to communicate the interest of my Office in developing co-operation with the OECD *inter alia* in relation to its Guidelines for Multinational Enterprises and the related National Contact Points (NCPs) mechanism. Such co-operation could contribute to advancing our shared goals of developing accountability for crimes under our jurisdictions, consolidating the rule of law in conflict affected areas and enhancing corporate responsibility.

We are aware of the work of the National Contact Points for the OECD Guidelines in response to the UN Security Council's consideration of the 2002 Expert Panel Report on the DRC. As part of ICC's on-going investigations in the region, we intend to follow up with individual NCPs on information they may have gathered in this context. My Office has accordingly informed the Directorate for Legal Affairs (Mr. Nicola Bonucci) and the Directorate for Enterprise and Financial Affairs (Mr. Pierre Poret).

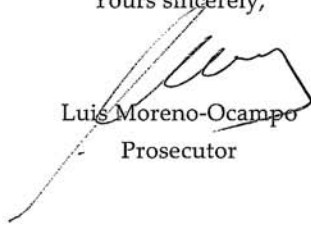
There are other avenues of co-operation which could be pursued as appropriate. These could include *inter alia*:

- Regular contacts and updates on our respective work and activities;
- Possibility for representatives of my Office to participate in an expert capacity in relevant discussions at NCPs meetings organised by the OECD and in projects managed by OECD on corporate contribution to combating illegal exploitation of natural resources;

- Possibility for OECD experts to participate in the OTP Law Enforcement Network activities;
- Exchange of information on request on specific cases in accordance with the respective rules of procedure.

I propose that this letter and your reply form the basis for establishing cooperation, subject to the procedures and work programmes of our respective institutions. For this purpose, I have nominated Ms. Miriam Spittler, Judicial Cooperation Adviser, and Mr. Pascal Turlan, International Cooperation Adviser, as the contact persons within our Office for liaising with the OECD Secretariat on these and related matters.

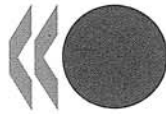
Yours sincerely,

A handwritten signature in black ink, appearing to read 'Luis Moreno-Ocampo', is written over the typed name and title.

Luis Moreno-Ocampo
Prosecutor

Reply by the OECD Secretary-General

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT



ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES

Secretary-General
Secrétaire général

AG/2009.661.ma

2 December 2009

Dear Prosecutor,

I would like to thank you for your letter of 3 November 2009 expressing the interest of your Office in developing co-operation with the OECD in relation to its Guidelines for Multinational Enterprises and other areas.

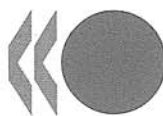
I agree that such co-operation will contribute to advancing our shared goals of promoting corporate accountability, integrity and responsibility.

I agreed that the other avenues of co-operation proposed in your letter should include *inter alia*:

- Regular contacts and update on our respective work and activities;
- Possibility for representatives of your Office to participate in an expert capacity in relevant discussions at NCPs meetings organised by the OECD and in projects managed by OECD on corporate contribution to combating illegal exploitation of natural resources;
- Possibility for OECD experts to participate in the OTP Law Enforcement Network activities;
- Exchange of information on request on specific cases in accordance with the respective rules of procedure and rules on confidentiality.

.../...

Mr. Luis Moreno-Ocampo
Prosecutor
International Criminal Court
Maanweg 174, 2516 AB
The Hague
The Netherlands



Our exchange of letters forms the basis for establishing such cooperation, which remains subject to the procedures and work programmes of our respective institutions.

I have nominated Mr. Pierre Poret, Head of Investment Division in the Directorate for Enterprise and Financial Affairs, and Mr Fabrizio Pagani, Senior Legal Advisor in the Directorate for Legal Affairs, as the contact persons within the OECD Secretariat for liaising with your Office on these and related matters.

I look forward to our future co-operation.

Yours sincerely,

Angel Gurría

ANNEX 6
UN GLOBAL COMPACT AND OECD INTENSIFY COLLABORATION PRESS RELEASE

(New York/Paris, 27 October 2009) – The United Nations Global Compact and the Organisation of Economic Co-operation and Development (“OECD”) have recently begun to enhance their collaborative efforts, particularly in countries that have both Global Compact Local Networks and National Contact Points (“NCPs”) on the OECD Guidelines for Multinational Enterprises.

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

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

The OECD Guidelines for Multinational Enterprises are a comprehensive code of conduct adhered to by the 30 OECD countries, along with 12 non-member countries.³ Designed to promote positive multinational enterprise action in economic, environmental, and social issues, the OECD Guidelines are a complement to the Global Compact’s Ten Principles. The Guidelines have a unique implementation mechanism as handled by National Contact Points, which includes mediation and conciliation to help resolve investment disputes. This dovetails well with the Global Compact’s focus as a learning initiative and facilitator of dialogue, which helps participants implement policies that embody the Ten Principles.

In November, further collaboration between the OECD and UN Global Compact will occur through the First Asia Pacific Trade and Investment Week (2-6 November, Bangkok) hosted by UNESCAP. This will include a meeting of Global Compact Local Networks led by Marinus Sikkel, in charge of UNESCAP’s regional support hub for the UN Global Compact and former OECD Investment Committee Chair. Also that week, the OECD-UNESCAP Conference on Corporate Responsibility will be held, with discussion focused on synergies between major international corporate responsibility instruments and the upcoming updating of the OECD Guidelines. These meetings provide an excellent opportunity for Global Compact practitioners from Asia and the OECD to share experiences.

³ Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania and Slovenia. Morocco’s adherence will take effect in November 2009.