



DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS

**OECD Guidelines for Multinational Enterprises:
2003 Annual Meeting of the National Contact Points**

REPORT BY THE CHAIR

**Meeting held on
23-24 June 2003**

This document reproduces the Report by the Chair of the Annual Meeting of the National Contact Points which was held on 23-24 June 2003. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2003 Edition".

SUMMARY REPORT OF THE CHAIR OF THE MEETING ON THE ACTIVITIES OF NCPS

I. Introduction and Background

The 2003 annual meeting of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) provided an opportunity for NCPs to share their experiences during the third year of implementation since the June 2000 Review. This meeting was held on 23-24 June 2003. Consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and non governmental organisations were also held. A special consultation took place with representatives of the Global Reporting Initiative. The 2003 Roundtable on Corporate Responsibility focused on the role of the Guidelines in enhancing business’ contribution to the fight against corruption.

The present report reviews NCPs activities over the June 2002-June 2003 period. It is based on the discussions held during the third annual meeting of the NCPs (June 23-24, 2003), on individual NCP reports and on other information provided during the period. The report is divided into seven sections. These include: institutional arrangements (section II); information and promotion (section III); and implementation in specific instances (section IV). Section V describes steps taken to date to respond to the UN Expert Panel Report on Illegal Exploitation of Natural Resources in the Democratic Republic of Congo. Section VI describes how the Guidelines institutions have followed up on two issues raised at the June 2002 meetings -- the scope of the Guidelines; and NCP procedures. Section VII – “Summary and considerations for future action” – provides a broad review of the third year of implementation activity and proposes a few specific issues for consideration by Guidelines institutions.

Two main themes emerge from this report. The first is that the third year of Guidelines’ implementation since the 2000 Review has been marked by a clear consolidation of the gains – already noted in last year’s report – in the visibility, stature and “user recognition” of the Guidelines. The Guidelines are now one of the world’s foremost corporate responsibility instruments. They have been cited by heads of state and are the subject of nearly 25,000 web pages (up from under 5,000 last year). This report will show that the implementation procedures are being used to address questions that go to the heart of the current debate on globalisation – for example, some 64 specific instances have been raised that deal with such issues as labour standards, environment and the fight against corruption. The second theme relates to the challenge now facing adhering governments and the many other actors in the Guidelines process – NCPs, businesses, trade unions, NGOs, and adhering and non-adhering governments. Although the Guidelines are now relatively well-known, the challenge will be to ensure that the Guidelines realise their full potential as a vital tool for the international business community and for home and host societies.

II. Institutional Arrangements

The NCP reports show that the institutional arrangements for NCPs were largely stable over the June 2002-June 2003 reporting period. A wide range of organisational forms are in evidence (see Annex). These structures are of the following form:

- 21 NCPs consisting of a single government department;
- 6 NCPs consisting of multiple government departments;
- 8 Tripartite NCPs;

- 2 Quadripartite NCPs.

NCPs noted that they also use other means for organising consultations and expanding the inclusiveness of their activities. For example, a number of countries reported using advisory committees or permanent bodies, whose members include non-government partners. Others stated that they convened regular meetings with business, trade unions and civil society. Still others state that they have had consultations with NGOs or other partners on an informal basis or in reference to specific issues where partners' specific expertise is required.

III. Information and Promotion

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities and to handle enquiries. NCPs have continued to be active in this area. Nearly all NCPs reported further development of their websites on the Guidelines and they have continued to develop promotional material such as brochures and users' guides. They also reported that Guidelines have been translated into at least 23 languages¹.

Promotional activities by NCPs

NCPs continued to promote the Guidelines and to raise awareness of them among national actors. Promotional activities included:

- Outreach to companies and other partners through mailings, distribution of leaflets, organisation of events, etc. (Argentina, Australia, Estonia, France, Germany, Japan, Mexico, New Zealand, Turkey, United Kingdom, United States);
- Consultations with national partners in the Guidelines process that are not members of the National Contact Point (Argentina, Australia, Austria, Brazil, Canada, Czech Republic, Denmark, Finland², Germany, Japan, Hungary, Ireland, Korea, Netherlands, New Zealand, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom, United States);
- Articles in or for the national press and newsletters (Czech Republic, Hungary, New Zealand, Slovak Republic);
- Participation in conferences organised by non-governmental actors (Argentina, Brazil, France, Germany, Ireland, Japan, Korea, Netherlands, Slovak Republic, Switzerland, United States);
- Cooperation with universities, and training or research institutes (Canada, France, Japan, Mexico, Netherlands, Poland, Slovak Republic, Sweden, United States).

Some of the promotional efforts described in the NCP reports include:

Promotion at the WSSD. During the World Summit on Sustainable Development (WSSD), which met in August/September 2002 in Johannesburg, the German Federal Ministry of Economics and Labour and the Federation of German Industries (BDI) took part in the major WSSD-related exhibition that showcased sustainable development experiences also in the context of the Guidelines.

Extractive Industries Transparency Initiative. On June 17, 2003, the Chair of the CIME -- who is also the Dutch NCP -- presented the OECD Guidelines and other OECD integrity instruments, to a high-level multi-stakeholder conference in support of the Extractive Industries Transparency Initiative (EITI), launched at the World Summit for Sustainable Development by Prime Minister Blair and supported in the June 2003 Evian Summit Declaration. The CIME Chair's statement (see the Archive of Communications, document 1) highlights the complementarities between follow-up work on the Guidelines and EITI's efforts to enhance the transparency of extractive industry companies' payments and revenues to host governments.

Direct marketing. The Polish NCP noted that it had modified its promotional practices, moving away from broad events towards a more focused, "direct marketing" approach. For example, an informational lecture on the Guidelines was given at the prestigious Warsaw School of Economics (WSE). WSE students often seek employment with multinational enterprises and therefore constitute a good target group³.

Incorporating the Guidelines into Australian reporting frameworks. The Australian NCP increased its efforts to incorporate the Guidelines into various domestic corporate governance and social responsibility reporting frameworks (e.g. Standards Australia's Corporate Governance, Corporate Social Responsibility and Bribery papers, Australia's Triple Bottom Line Reporting Guidelines, Australia's Environmental Reporting Guidelines and the Australian Securities and Investment Commission's Socially Responsible Investing Disclosure Guidelines).

Swedish Partnership for Global Responsibility. The Swedish NCP described ongoing developments in the "Swedish Partnership for Global Responsibility" (SPGR) – based on the Guidelines and the UN Global Compact and launched last year by the Swedish Prime Minister – as follows:

The [SPGR] Secretariat carries on intensive information work on e.g. international developments in corporate social responsibility, international systems of rules and conventions and practical experience and research results. The Secretariat is also organising and facilitating a wide range of activities such as counselling, in-house training, network building, seminars and workshops. Thirteen seminars and four workshops have been held since the launch in Mars 2002. The seminars and workshops highlight specific geographical or thematic issues such as Core Labour Standards, Business in Conflict, Reporting on Non Financial Information, Business in China, Corruption and Socially Responsible Investment. The Guidelines are a very effective tool in this context.

Companies can join the Swedish Partnership for Global Responsibility by expressing in writing a will to support and strive to fulfil the OECD Guidelines and the nine principles of the Global Compact. Their co-operation is displayed by posting the company's name and a description of its work on the Government website⁴.

European Multi-stakeholder Forum. A number of NCPs (Finland⁵, Ireland) reported contributing to CSR events in connection with the CSR European Multi-Stakeholder Forum. The report by the European Commission described this forum as follows:

The Commission has established a European Multi-Stakeholder Forum on CSR and specific thematic roundtables will meet till spring 2004⁶. The trade and international dimension of CSR is an important part of the agenda. The first meeting of the Roundtable on development aspects of CSR was held on 17 March 2003. DG Trade will organise the second meeting of this Roundtable

on 29-30 September 2003. A third Roundtable will be held in early 2004 on this topic. In parallel, three other Roundtables are meeting to similar timescales:

- *Improving knowledge about CSR and facilitating the exchange of experience and good practice;*
- *Fostering CSR among small and medium sized enterprises;*
- *Diversity, convergence and transparency of CSR practices and tools.*

The OECD Guidelines for Multinational Enterprises are regularly referred to and discussed in the meetings of the various Roundtables and of the Coordination Committee of the Forum. DG Trade is active in the various formats of this process, and seeks to promote the Guidelines, and raise stakeholder awareness of how the processes of specific instances and National Contact Points function.

Promotional activities within governments

Inter-governmental promotional activities undertaken during the June 2002-2003 period included:

- Contacts with embassies, consulates, economic attachés, etc. (Australia, Canada, Estonia, Sweden, United States);
- Presentation of the Guidelines at corporate responsibility events sponsored elsewhere in the government (Australia, Belgium, Canada, Czech Republic, Netherlands, United States);
- Communications with Parliament or Congress (Denmark, Germany, Netherlands, Slovenia, United States);
- Presentation of the Guidelines to other Ministries (Brazil, Canada, Mexico, New Zealand, Switzerland, Turkey).

Reference to the Guidelines by investment promotion, export credit and investment guarantee agencies

Adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds expression in other aspects of national policy. Many adhering governments seek to call attention to the Guidelines by referring to them in various ways in the context of export credit or investment promotion/guarantee programmes. Table 1 summarises the relationships that have been established between the Guidelines and such programmes. Eleven NCPs report that such linkages exist, including the addition of Sweden and Australia (relative the situation described in the 2002 Annual Report). The Spanish report notes that its NCP has provided the relevant agencies with brochures to be used for informing their clients about the Guidelines.

OECD Working Party on Export Credits and Credit Guarantees. At its April 2003 meeting, the OECD's Working Party on Export Credits and Credit Guarantees (ECG) noted that several Members use the Guidelines in export credit and investment guarantee programmes and publicise these on their export credit agencies' websites. After a discussion of various approaches to the relationship between the Guidelines and such programmes, the ECG Members agreed to promote the Guidelines to their clients by providing information.

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

| Country | Programme | Description of link |
|----------------|--|---|
| Australia | Export credit and investment promotion | <p>Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines.</p> <p>The Australian NCP has developed a comprehensive website including access to the Guidelines, related documentation, links to related sites, procedures for lodgement and review of specific instances, a notice-board advertising coming events and a secure site offering its consultation group secure access to official CIME documents.</p> <p>Many Australian government agency web sites provide links to the Australian NCP site.</p> |
| Canada | Export Credits | <p>The Export Development Corporation (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. It also included the Guidelines in its across-Canada tour to promote business ethics.</p> |
| Czech Republic | Investment promotion | <p>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 CR. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.</p> |
| Estonia | Investment promotion | <p>The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.</p> |
| Greece | Investment promotion | <p>The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.</p> |
| Finland | Export promotion | <p>This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.</p> |
| France | Export credits and investment guarantees | <p>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>").</p> |
| Germany | Investment guarantees | <p>A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link</p> |

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| | | to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines. |
| 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. |
| Korea | Trade-investment promotion | The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments. |
| Netherlands | Export credits and investment guarantees | Applicants for these programmes or facilities receive the 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 the Guidelines to the best of their ability. |
| Slovenia | Investment promotion and Export credits and investment guaranties | Both organisations have added links to the NCP web site. Export credits and investment guaranties (SID) call the Guidelines to the attention of outward investors. |
| Sweden | Export credits | The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on bribery, the OECD GL for MNE's and the Swedish Partnership for Global Responsibility |
| United Kingdom | Investment guarantees | Links connect Guidelines website and investment guarantee website. |
| 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. |

High level promotion

G8 Summit. The June 2003 Summit Declaration, made at the heads of state meeting in Evian, contains the following reference to the Guidelines:

We will work with all interested countries on initiatives that support sustainable economic growth, including the creation of an environment in which business can act responsibly. We also welcome voluntary initiatives by companies that promote corporate social and environmental responsibility, such as the OECD Guidelines for Multinational Enterprises and the UN Global Compact principles consistent with their economic interest. We encourage companies to work with other parties to complement and foster the implementation of existing instruments, such as the OECD Guidelines and the ILO 1998 Declarations on Fundamental Principles and Rights at work.

G8 Finance Ministers. The Declaration of G8 finance ministers, meeting at Deauville in May 2003, states the following: “We also encourage voluntary private sector initiatives that foster and complement such international efforts to promote corporate social and environmental responsibility as the OECD Guidelines for Multinational Enterprises and the UN Global Compact”.

OECD Ministerial Meeting. Under the heading “Sharing in the gains – promoting growth and investment in developing countries”, the Chair’s Summary states: “Business must also be partners in the development

process. The OECD Guidelines for Multinational Enterprises have encouraged businesses to take into account not only economic and financial factors, but also the developmental, social and environmental implications of their undertakings”.

The address of the Belgian Minister of Foreign Affairs’ to the Ministerial Meeting referred to the Guidelines and noted in particular, their potential role in clarifying corporate responsibilities for companies operating in conflict zones, with a particular focus on the Democratic Republic of Congo (see section IV, under “The UN Expert Panel Report”).

Address by the President of Ireland. The President of Ireland and the Tánaiste cited the Guidelines in their addresses to a business-led conference on Corporate Responsibility in Dublin in March 2003.

Netherlands. Several ministers in the Netherlands cite the Guidelines in their speeches. Explicit attention was given to the Guidelines by the Minister of Foreign Affairs during a CSR-Europe conference in the Netherlands.

European Parliament Resolution. In May 2003, the European Parliament adopted a Resolution⁷ that refers to the OECD Guidelines and the International Labour Organisation’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as “the two most authoritative internationally agreed standards for corporate conduct”. The statement also “highlights the importance ... of building trust and consensus and support for internationally accepted principles such as the OECD Guidelines for Multinational Enterprises and the Global Reporting Initiative (GRI)...”.

Promotional activities by the OECD Secretariat

On 4 April 2003, Secretary General Donald Johnston held an informal Roundtable on Corporate Responsibility. This event was attended by senior OECD officials and selected practitioners in the corporate responsibility field. Participants discussed general trends in corporate responsibility practices and how the effectiveness of the Guidelines might be enhanced. Some of the themes developed at the Roundtable were: there is evidence of evolution, progress and construction of a common view of appropriate business conduct in some areas; the credibility of many voluntary initiatives remains an open question; many actors still seek a more appropriate allocation of roles between government and business actors; and further enhancement of the transparency of the Guidelines process will help to raise public awareness of the instrument. The Roundtable discussions are summarised in the Archive of Communications, document 2.

The OECD Secretariat accepted invitations to participate in more than 30 meetings as part of its contribution to the promotion of the Guidelines. These included events organised by business associations and investment managers, think tanks, adhering governments, NGOs and trade unions. In addition, the Guidelines were promoted at the OECD Global Forum on International Investment; the OECD Agricultural Directorate’s conference on “The Changing Dimensions of the Food Economy”; at the International Energy Agency’s conference series on oil development in the Caspian Sea region; and at the OECD Conference on “Maximising the Benefits of Globalisation for Africa” held in Dakar. Guidelines texts were also included in the “Key Information Brochure” for the OECD Ministerial Meeting; and the OECD Policy Brief on the Guidelines was updated.

IV. Implementation in specific instances

The OECD Council Decision of June 2000 instructs the NCPs to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for

discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised. Thus, the “specific instances” procedure provides a channel for promoting observance of the Guidelines’ recommendations in the context of individual companies’ operations.

The NCP annual report for the 2002-2003 period shows that many new specific instances were raised and that several were concluded.

Specific instances – nature and outcomes

Some 64 “specific instances” of alleged non-observance of the Guidelines by individual companies have been filed with NCPs. Individual NCP reports showed the following number of specific instances since the 2000 Review: Austria (2), Belgium (1), Brazil (1), Canada (4), Chile (1), Czech Republic (2), Denmark (2), Finland (1), France (9), Germany (5), Japan (3), Korea (2), Mexico (1), Netherlands (10), Norway (1), Poland (2), Sweden (2), Switzerland (1), Turkey (1), United Kingdom (2), United States (11). In some cases, these specific instances are being or have been considered by more than one NCP – thus, a given specific instance could be included in the counts of two or more NCPs.

According to the information available in individual annual reports, most specific instances concern Chapter IV (Employment and Industrial Relations). However, some deal with such issues as combating corruption, political involvement and environment. About two thirds of the instances involved companies’ operations in non-adhering countries. Approximately 10 requests to consider specific instances have not been accepted by NCPs – sometimes because the matter was considered adequately covered by parallel legal proceedings. In 2003, two of the findings have been made public through NCP press releases (see the Archive of Communications, documents 3 and 4).

Specific instances described in individual NCP reports

In their 2003 reports, some NCPs chose to provide more details and background on the nature and their handling of specific instances. A selection of these detailed descriptions follows:

Denmark. The Danish NCP has received two requests to consider specific instances. In February 2002, a trade union federation raised a specific instance relating to the situation of Malaysian workers in a Danish owned enterprise. An appeals case on the same matter is pending in the Malaysian Supreme Court. In April 2003, a workers’ organisation raised another specific instance involving the situation of workers in Danish-owned banana plantations in Ecuador and Belize. The Danish NCP has not concluded its consideration of these specific instances yet.

Germany. One specific instance raised with the German NCP concerned business operations in another adhering country and has been referred to the NCP of that country. The German NCP is supporting the other NCP (e.g. by providing assistance with conciliatory talks). With respect to another instance – this one in a non-adhering country -- the NCPs initial assessment was that the Guidelines were not directly applicable due to lack of an ‘investment nexus’. Nevertheless, in view of the specifics of the case, the German NCP has facilitated conciliatory talks. The NCP reports that, so far, these seem to have aided the parties involved to view the matter in a more objective way and to have created an atmosphere that may lead to further cooperation of the parties concerned. The German NCP also refers to a recent specific instance directed at a bank for its financing of a large infrastructure. This project is in a non-adhering country. The instance raises the more general issue of the applicability of the Guidelines to financial service providers (other NCPs also expressed an interest in this issue during the meetings).

Korea. The Korean NCP report provided details of a specific instance in Sri Lanka. It concerns a Sri Lanka/Korean joint venture -- 50% owned by the Korean company -- which fired four workers for their union organisation activities. Although the joint venture contract states that the Sri Lankan partner is in charge of labour-management, the Korean NCP recommended that the Korean company share "the responsibility as co-manager" and that the company "conform to the OECD Guidelines and resolve its labour disputes."

Mexico. The Mexican NCP has been asked to consider a German company's closing of a production site in the state of Jalisco. Trade unions argue that the closure is in breach of Mexican law and is not in conformity with the employment and industrial relations chapter of the Guidelines. They assert that it was carried out without prior notification or consultation with the workers. The company argues that the closure was in conformity with Mexican law. The legality of strike activity related to the closure is currently under consideration in Mexican courts. The NCP has met with representatives from the trade union as well as with representatives from the company in order to hear their points of view. It has also contacted the Ministry of Labour in order to exchange opinions regarding the application of Mexican labour law and the law's interaction with the Guidelines. The Mexican NCP hopes "these efforts will be useful to clarify the facts surrounding the closure of the plant."

Netherlands. The Netherlands NCP looked into NGO allegations of child labour in a leading sporting goods company's outsourcing operations in India. The NCP found that, even though the issues brought to its attention probably still exist in the Indian sporting goods industry at large, the company encourages its suppliers to act in a socially responsible manner. The parties to the specific instance agreed to continue the dialogue on monitoring systems for the company's codes of conduct. See the Archive of Communications, document 3, for the full text of the joint statement by the Dutch NCP, the company and the NGO.

Norway. In 2002, a trade union federation raised a specific instance involving a Norwegian maritime insurance company (P&I club) in the Philippines and Indonesia. The federation had received complaints that in personal injury and death cases, the company refused "to pay contractual benefits to Seafarers in the absence of the Seafarer or his family granting a complete and full release, not only for contractual benefits, but for any causes of action at law". In addition, complaints had been received that the Norwegian company had refused to honour the vessels owner's obligation to provide basic health care benefits for injured Seafarers. In October 2002, the NCP focused on making an initial assessment of whether the issues raised by the federation merited further examination. The NCP concluded that the Norwegian company had not been in contradiction with the Guidelines and that the issue did not merit further examination.

Poland. The Polish NCP report notes two specific instances, both involving the "Employment and Industrial Relations" Chapter. In the first, the NCP started mediation through correspondence, but this turned out not to be sufficient. The NCP is in constant contact with both sides and has also contacted the German NCP with request for help in contacting the German owner of the Polish company, (hoping that its influence on the Polish Board of Directors could convince both sides to co-operate). In the letter from the German owner, it was claimed that there is no conflict in the company. Another issue -- this time in relation to observance of Chapter IV by a construction company -- was raised by a trade union from the construction sector. Correspondence has been started and the board was informed about the Guidelines. Since the NCP has not received more specific information on the complaint, no further steps have been taken.

Sweden. In February, 2003, the Swedish NCP was asked by two NGOs to consider the operations of two Swedish companies in Ghana in relation to the human rights and environmental provisions of the Guidelines. Since the material submitted by the NGOs was incomplete, the NCP collected information from the companies concerned, from the Swedish Metalworkers Union, from the Embassy of Sweden in Nigeria and from a Ghanaian NGO. The NCP held a number of meetings, including separate meetings

with the NGOs and the enterprises concerned, as well as a joint information meeting with all parties. The two enterprises and the Swedish Metalworkers Union travelled to the area to investigate. The Swedish NCP concludes that, although environmental and social problems exist in connection with mining in Ghana, the roles played by the two companies in these problems is limited. The NCP finds that the companies “have not failed to comply with the OECD Guidelines in respect of human rights and environmental considerations.” At the same time, the NCP found that the companies’ on-site personnel did not have adequate knowledge of their responsibilities under the Guidelines and encouraged the companies “to enhance knowledge of the Guidelines, both internally and externally.” The full text of the Swedish NCP statement is available in the Archive of Communications, document 4.

V. The UN Expert Panel Report on the Illegal Exploitation of Natural Resources in the Democratic Republic of Congo

In October 2002, a report of the Expert Panel was presented to the United Nations Security Council, which included a discussion of the role of enterprises operating in the Democratic Republic of Congo (DRC). This report referred prominently to the Guidelines. In particular, the report alleges that 85 companies – including 57 companies based in 10 adhering countries – have not observed the Guidelines.

At its December 2002 session, the CIME considered the Expert Panel’s report. Upon a mandate of the Committee, the Chair wrote a letter to the attention of the Security Council, expressing the wish of adhering governments to co-operate with the United Nations on the Guidelines issues raised by the Panel report and asking for access to the information on which the Panel's conclusions on OECD-based enterprises' roles in DRC were based in order to enable the CIME and NCPs to meet their responsibilities. Clarification of the nature and procedures of the Guidelines was also provided.

In April 2003, Representatives of countries adhering to the Guidelines met in Paris with members of the Expert Panel to consider possible co-operation. The meeting followed adoption by the United Nations Security Council in January 2003 of Resolution 1457, which requested the Panel to provide information to the OECD Committee on International Investment and Multinational Enterprises (CIME) and to the NCPs of the countries in which the companies listed in the report are based. The meeting was reported to have contributed to mutual understanding of respective work and procedures and led to agreement to take steps to pursue effective co-operation⁸.

During the June meeting, NCPs discussed the way the co-operation between the Panel, CIME and the NCPs has developed. Although there was general satisfaction that relations were established and that they had an opportunity to meet members of the Panel in April, there was concern that thus far no exchange of information has taken place. Some NCPs reported that they had been in contact with enterprises named in Annex III of the October 2002 report. Others mentioned that they had approached the Panel by various means, asking for information. The good offices of the CIME Chair have also been used for this purpose. However, since no additional information had been received at the time of the meeting, the NCPs felt that they were not in a position to address the question how the OECD Guidelines should be implemented by individual enterprises in the specific circumstances of the DRC. The NCPs asked the CIME Chair to write a follow-up letter to the Chair of the Panel, Ambassador Kassem.

VI. Follow-up on issues raised at the June 2002 Meetings

The Chair’s summary from the 2002 Annual Report highlights two issues raised by BIAC, TUAC, or NGOs during last years meetings: 1) the scope of the Guidelines; and 2) NCP procedures.

Scope of the Guidelines

The question of the scope of the Guidelines – the definition of the activities to which the Guidelines are thought to apply – was raised during the NCP meetings, the consultations and the 2002 Roundtable. The issue was also raised and discussed in all subsequent consultations held during the reporting period. The CIME and its Working Party held several exchanges of views and surveyed delegates' positions on this issue. The principal themes that emerged from these extensive discussions, exchanges of views and surveys are summarised in the attached Background Paper on the Scope of the Guidelines. Following its April 2003 meeting, the CIME issued a statement on this issue:

In considering this issue, the CIME has sought to protect and enhance the credibility and effectiveness of the Guidelines and to remain true to the agreement reached among adhering governments at the 2000 Review after extensive consultations with the business, trade union and NGO communities.

The Guidelines are a multifaceted instrument and the Committee found it useful to consider this issue with reference to the following, which does not aim to change the balance reached during the 2000 Review:

- *First, the Guidelines are an Annex of the OECD Declaration on International Investment and Multinational Enterprises. The fact that they are part of the Declaration and that oversight responsibility for them has been assigned by the Council to the CIME -- the body charged with responsibility for the Organisation's work on investment and multinational enterprises -- indicates the investment intent of the drafters of the instrument.*
- *Second, the Guidelines are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with responsible business conduct. These principles reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines. As such, these values are relevant to the activities of multinational enterprises. Thus, as it has already done in a number of areas, the international community may continue to draw on the values underlying the Guidelines in other contexts.*
- *Third, the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship. In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances.*

NCP Procedures

The question of National Contact Point (NCP) procedures arose on several occasions during the June 2002 NCP meeting, consultations and Roundtable. The Procedural Guidance provides that "NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the

objective of functional equivalence.” The Report of the Chair of the 2002 NCP meeting states the following:

Some NCPs are developing procedures for their activities and a few have published such procedures. The NCP discussions suggest that there are differences in how NCPs approach their responsibilities. For example, NCPs differ in how they handle confidentiality and transparency in relation to specific instances. Practices differ in relation to disclosure of information while the instance is being considered and after it has been concluded. There appears to be a need for exchange of information on NCP practices and procedures.

Over the June 2002-June 2003 reporting period, the CIME and the Working Party on the Declaration undertook to consider this issue. At its September 2002 meeting, the CIME decided to gather information about NCP procedures through the use of a questionnaire; to use the results to facilitate a discussion of NCP procedures at the next annual NCP meeting; and to refer the matter to its Working Party for action.

The Working Party developed a questionnaire on NCP procedures and decided that focusing on procedures for specific instances would be useful (but that this would not preclude subsequent consideration of other procedural matters at a later date). The questionnaire was then distributed to NCPs and posted on the NCPs’ Electronic Discussion Group. At its April 2003 meeting, the WPD held a preliminary exchange of views on NCP procedures and took note of the replies to the questionnaire that had been received thus far. The Working Party asked the Secretariat to prepare a synthesis paper of the issues identified in the responses to the questionnaire and the debate in the Working Party meeting. This synthesis is reproduced in the attached Background Paper on NCP Procedures.

The responses show broad agreement in principle on procedural questions and confidence in the soundness of the Procedural Guidance set forth in the Council Decision and related Commentary. Practices in a number of areas vary from one NCP to another. Selected findings are summarised below:

- *Measures to promote timeliness and efficiency.* NCPs agree that timeliness in handling a specific instance is important. At the same time, some NCPs observed that the issue of timeliness needs to be considered with respect to the specifics of the specific instance under consideration. For example, how much information on the instance is readily available? How divergent or entrenched are the positions of the various parties to the instance? Timeliness might also depend on the actions of others (e.g. the parties themselves or other government offices). NCPs also noted that the proper handling of specific instances is often time consuming and that insistence on rapid treatment of instances could lower the quality of their outcomes. Some NCPs have imposed deadlines on themselves and some ask parties and others to respond within certain timeframes. In contrast, other suggested that the voluntary nature of the Guidelines meant that timeframes could not be insisted on and that NCPs had to resort to “asking nicely”. In some cases, the responses note that the workability of such deadlines remains untested. Some NCPs have observed that the procedures they had developed have proved impracticable and needed revision. Finally, NCPs agreed that timeliness would be less of an issue if parties were kept informed about progress on the handling of specific instances. Indeed, one NGO at the consultations said that it had published statements about an ongoing specific instance – a fact that could raise difficult issues in connection with the confidentiality rules for specific instances – because it had not received news of the instance for more than a year and wanted to ensure that the matter was still on the NCP’s agenda.
- *Measures promoting communication and transparency.* All responding NCPs recognise the importance of transparency. Despite this agreement in principle, the questionnaire responses

suggest that NCPs' practical approaches to transparency vary widely in such areas as: informing parties of the progress in handling specific instances, provision of information to non parties, publication of the fact that a specific instance has been raised, making statements while the specific instance is being considered, publication of the reasons for not agreeing to consider a specific instance, and the naming of parties to a specific instance. At the NCP meeting, there was considerable agreement that the balance between confidentiality and transparency shifts in the course of the consideration of a specific instance – whereas confidentiality is a high priority in the early phases, there should be a presumption in favour of transparency in the concluding phase. Finally, some NCPs expressed an interest in developing a “register” or “database” of specific instances designed to help NCPs share information on the status of specific instances. The Chair proposed that this issue be taken up by the CIME.

- *Responsibility for information provision and challenges in gathering information.* Most NCPs agree that the primary responsibility for information provision rests with the individual or organisation raising the specific instance and with the company concerned. Seven of the 12 experienced NCPs (that is, NCPs that have dealt with at least one specific instance) that responded to the questionnaire have dealt with specific instances involving business operations in non-adhering countries. Two of these observed that information gathering had been a problem in such specific instances. Such problems included language and technical communication difficulties, as well as obtaining information about a trial ongoing in one of the non-adhering countries concerned. At the meeting, one NCP noted that it was considering whether or not to take up a specific instance concerning a broad range of issues about which the party raising the specific instance had no first hand information.
- *The role of national legal, regulatory or administrative procedures.* Ten of the 12 experienced NCPs noted that at least one of their specific instances involved business conduct that was covered by host country laws, regulations or administrative procedures. NCPs differed in their views on whether the fact that a specific instance concerned business conduct covered by host country procedures would influence their decision to agree to consider a specific instance. Nine NCPs state that it would -- or already has -- influenced decisions. One NCP has refused a specific instance on the grounds that it concerned business conduct that was also the subject of a legal procedure. Another accepted a specific instance being dealt with under parallel home country procedures, but had to modify its own procedures as a result. One NCP responded that it “encourages complainants to address their complaints/issues with the MNE directly and with the appropriate regulatory/legal authorities... prior to lodging a complaint with the NCP,” and that it would take such proceedings into account – without necessarily being bound by them -- when determining its approach to specific instances. During the meeting, one NCP stated that making acceptance of a specific instance conditional on first exhausting legal remedies was not, in its view, consistent with its understanding of the role of the Guidelines.

Despite the considerable investment made in consideration of this issue during the June 2002-June 2003 period, the discussions at the June meetings suggested that many questions remain. The consultations showed that the business, trade union and NGO communities and the NCPs agreed that the ultimate objective is that “functional equivalence” -- the objective set forth in the Procedural Guidance – is a meaningful one. With this objective in mind, they also agreed (though for different reasons) that NCP procedures would benefit from continued improvement and refinement. TUAC and NGOs concerns focused on the slowness of responses and lack of transparency of many NCPs. BIAC stressed the need to respect the procedural Guidance (and expressed concern, in particular, about what it saw as a tendency to publicise “instances” that have not yet been concluded). Cooperation among NCPs – with many of the

specific instances being raised with more than one NCP – was also raised as a procedural issue by several NCPs. One of the conclusions of the meeting was that it might be useful for NCPs to continue to learn from each other’s experiences with a view to improving their procedures and making progress on realising the goal of “functional equivalence” among NCPs.

VII. Progress to date and considerations for future action

This draft report suggests that the Guidelines now rank among the world’s foremost corporate responsibility instruments. The third year of Guidelines implementation since the 2000 Review has been marked by consolidation of the gains in the visibility, stature and “user recognition” of the Guidelines. The Guidelines have been cited by heads of state and in the world business press. Their implementation procedures are being used to address questions that go to the heart of the current debate on globalisation – human rights, labour standards and business operations in conflict zones such as the DRC. The number of web pages referring to the Guidelines – currently 25,000 -- has increased by 400 per cent since last year’s report.

But the adhering governments and their partners in the Guidelines process face ongoing challenges when trying to ensure that the Guidelines live up to their potential as a vital instrument for the international business community and for home and host societies. Besides more effective co-operation with other global instruments for corporate responsibility (such as the UN Global Compact and the Global Reporting Initiative), the following issues were identified as areas for possible future work:

Deepening understanding of NCP procedures. Over the past year, the CIME and its Working Party have invested heavily in their consideration of NCP procedures. This discussion has shown that NCPs feel comfortable with the framework provided in the Council Decision and its Procedural Guidance. However, despite this broad agreement on the general framework, there appear to be some significant differences in practice, the reasons for which have not been fully clarified by the survey-based discussions held so far. A case-based approach – whereby an NCP would volunteer to share and discuss experiences with a specific instance that he/she has dealt with -- might provide valuable inputs to ongoing consideration of this issue.

Relationship between Guidelines implementation and national legal, regulatory or administrative procedures. Information provided by NCPs suggests that it is quite common to use the specific instances procedure in parallel with legal, regulatory or administrative procedures. The Japanese delegation to the CIME has circulated a room document requesting that consideration be given to this issue in the context of legal and other procedures in host countries. An added complexity is that, in some cases and for a variety of reasons, these procedures might not be working well. This has already emerged as a challenge for some of the specific instances in non-adhering countries. For example, the Swedish NCP’s statement concerning two Swedish companies’ operations in Ghana (see the Archive of Communications, document 4) notes that the “regulatory framework and judicial institutions” in place in Ghana had “insufficient resources and capacity” to deal with the “environmental and social problems” encountered in that country’s mining sector. During the NCP meetings, the Dutch NCP noted that, even when used in conjunction with effective legal and regulatory institutions, the Guidelines could, in some cases, offer “value-added”. A consideration of the relationship between the Guidelines institutions and legal and regulatory processes might assist NCPs in shaping their approach to this issue.

The Guidelines and Non-adhering Countries. The relationship between the Guidelines and non-adhering countries was discussed in several contexts during the NCP meetings. First, it was mentioned as a challenge for promotion – which groups in non-member host societies should be the target audiences for such promotion? what messages are likely to attract these groups’ interest and cooperation? Second, several specific instances concerning business operations in non-adhering countries have posed challenges

in terms of access to information (Korea and Sweden mention the use of their embassy networks in this connection). Third, the issue of the interaction of the specific instance procedure with non-adhering host country legal and regulatory processes was also raised by several NCPs. More generally, NCPs might want to reflect on how relations with various actors in non-adhering countries might be structured so as to promote progress on the ultimate goal of the Guidelines – to ensure that enterprises’ operations “are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.”

Organising effective two-way co-operation with the UN Expert Panel on the Democratic Republic of Congo. The severity of the crisis in the DRC and the high profile accorded to the Guidelines in the Expert Panel’s report have focused attention on the Guidelines. The challenge for the Guidelines institutions in the coming year will be to be seen as dealing fairly with companies and other actors and, in the process and to the extent possible, making a constructive contribution to broader efforts to improve the situation in the DRC. Business activity in conflict zones raises difficult ethical and economic questions. In addition, procedural difficulties – including access to information -- have been encountered in dealing with the Panel’s allegations.

Notes

- 1 Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Norwegian, Japanese, Korean, Lithuanian, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish, Turkish and the official languages of Belgium and Switzerland.
- 2 In October 2002, the Finnish NCP co-organised (with other Ministries) a conference that was part of the Business Marathon Campaign – sponsored by CSR Europe, the Copenhagen Centre and the International Business Leaders Forum -- which was launched by business leaders after the appeal to business by the European Heads of State at the European Summit in 2000.
- 3 The Polish NCP's annual report states the following: "Promotional and informational lectures on the Guidelines have been held at the Warsaw School of Economics (WSE), the most prestigious economics university in Poland. The audience were [law] students in their last year of studies....WSE students tend to seek employment with companies with foreign capital and therefore constitute the right target group to be informed on the Guidelines. Presentation was held in January 2003 and concerned general information about the Guidelines and more detailed information on the IV chapter – Employment and Industrial Relations, which constitutes the most popular topic of claims raised at the Polish NCP. The audience has shown much interest in the lecture and the NCP answered numerous questions about the Guidelines afterwards".
- 4 www.ud.se/ga.
- 5 The Finnish NCP report notes that, in April 2003, it organised a special seminar on EU-wide strategy for corporate social responsibility and the public role in the promotion of CSR. The seminar brought out views of the European Commission, UK government, Finnish public administration, business and labour organisations and other non-governmental organisations on the challenges of the public authorities in the promotion of CSR. Furthermore, the aim of the seminar was to promote the Guidelines and to offer a discussion forum for the different parties and to give feedback to the Finnish NCP for preparing a special governmental CSR programme.
- 6 See reports and all information available on the Forum at following addresses:
forum.europa.eu.int/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/csr%20ems%20forum.htm
europa.eu.int/comm/enterprise/csr/roundtables.htm
- 7 P5_TA-PROV(2003)0200.
- 8 See OECD news release dated 11 April 2003 [www.oecd.org/daf/investment/guidelines].

Annex

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 | Ministry of Foreign Affairs, International Trade and Worship | | |
| Australia | Single department | Foreign Investment Policy Division of the Ministry of Treasury | Foreign Investment Review Board | The Australian NCP liaises with other government departments as necessary and holds bi-annual interdepartmental meetings chaired by the Australian NCP to discuss Guidelines issues. The NCP holds bi-annual community consultations with business, trade unions and other NGO representatives. In the assessment of specific instances, the NCP may establish a special advisory consultation group of interested parties, including government, members from the business community, labour federations and other NGOs and experts. |
| Austria | Single department | Export and Investment Policy Division, Federal Ministry of Economic Affairs and Labour | Other division of the Federal Ministry of Economic Affairs and Labour The Federal Chancellery and other Federal Ministries concerned | An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business. |
| Belgium | Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments. | Federal Public Service of Economy, PMEs, Middle Classes and Energy | Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Region of Brussels Flemish Region Walloon Region | |

Note This table is based on information provided by the National Contact Points in their 2001, 2002 and 2003 annual reports.
 ** The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|----------------|------------------------------------|--|--|---|
| Brazil | Single department | Ministry of Finance | Ministry of Foreign Relations Ministry of Planning, Budget and Management Ministry of Labour and Employment Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development,, Industry and Trade Brazilian Central Bank | Representatives from other government Offices can be asked to participate as well as Trade Unions, like CUT and "Força Sindical"; NGOs that deal with Ethics, like ETHOS; Industry and Trade Confederations; and other institutions like SOBEET (Brazilian Society For Trans-national Enterprises and Globalisation Studies). |
| Canada | Interdepartmental Committee | | Department of Foreign Affairs and International Trade Industry Canada Human Resources Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency | |
| Chile | Quadrupartite | Ministry of Foreign Affairs, Directorate of International Economic Relations | Ministry of Economics Ministry of Labour General Secretariat of the Presidency | |
| 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. |
| Denmark | Tripartite with several ministries | Ministry of Employment | Danish Agency for Trade and Industry Environmental Protection Agency Ministry of Economic and Business Affairs Ministry of Foreign Affairs | |

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

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|---------|---|--|---|--|
| Estonia | Tripartite with several ministries | Ministry of Economic Affairs | Ministry of Social Affairs Ministry of Environment Estonian Investment Agency Estonian Export Agency Ministry of Foreign Affairs | |
| Finland | Quadri-partite with several ministries and civil society partners | Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Trade and Industry | Ministry of Trade and Industry Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Social Affairs and Health Ministry of Labour Ministry of Environment | <p>The Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Trade and Industry as a wide-scoped forum of public and private representatives for issues related to investments, acts as the Finnish NCP.</p> <p>The MONIKA Committee, which has been established by the Government Decree 335/2001, takes care of the promotion of the Guidelines as important principles of Corporate Social Responsibility and serves as an advisory forum in other issues related to the CIME. The Ministry of Trade and Industry is responsible for the handling of inquiries and the implementation in Specific Instances.</p> <p>The members of the committee come from various ministries, The Bank of Finland, business and labour organisations and NGOs</p> <p>Social partners are represented in the NCP by TT - The Confederation of Finnish Industry and Employers, The Finnish Section of the International Chamber of Commerce (ICC) and the Central Organization of Finnish Trade Unions SAK. The NGOs are represented by the Service Centre for Development Cooperation KEPA.</p> <p>The committee has met several times over the review period.</p> |

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

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|---------|------------------------------------|--|---|---|
| France | Tripartite with several ministries | Treasury Department, Ministry of Economy and Finance | Ministry of Labour Ministry of Environment Ministry of Foreign Affairs | |
| Germany | Single Department | Federal Ministry of Economics and Labour | Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment | The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues. |
| Greece | Single Department | Directorate for International Organisations and Policies, Ministry of Economy | | |
| Hungary | Interdepartmental Office | Ministry of Economy and Transport | Ministry of Economy and Transport Ministry of Finance Ministry of Foreign Affairs | In 2002 after the election Ministry of Economic Affairs and the Ministry of Transport and Water Management were merged. The legal successor is the Ministry of Economy and Transport which was restructured and which kept the task of the Secretariat of HINCP. |
| Iceland | Interdepartmental Office | Ministries of Industry and Commerce | | |
| Ireland | Single Department | Enterprise Policy Unit, Department of Enterprise, Trade and Employment | | |
| Israel | Single department | Ministry of Trade, Industry and Labour | Ministry of Foreign Affairs | An Advisory Committee will be composed of representatives from other Federal government departments |
| Italy | Single Department | Direction Générale, Ministry of Production Activities | | |

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

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|-------------|--|--|--|--|
| Japan | Interministerial body composed of three ministries. | Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry | | The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries. |
| Korea | Interdepartmental Office, with regional governments and several ministries | Executive Committee on Foreign Direct Investment | Ministry of Foreign Affairs Ministry of Finance and Economy Korean Trade-Investment Promotion Agency | |
| Lithuania | Tripartite with representatives of business and labour organisations as well as with representatives of government | Ministry of Economics | Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industry | The Lithuanian NCP has recently been reorganised to insure effective collaboration with trade unions and business community. 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 | | |
| Netherlands | Interdepartmental Office | Ministry of Economic Affairs | All departments, especially: Ministry of Social Affairs Ministry of Environment Ministry of Foreign Affairs | Regular consultations with all stakeholders. |
| New Zealand | Single Department | Ministry of Economic Development | All departments, particularly the Ministry of Foreign Affairs and Trade, Department of Labour, Ministry for the Environment and Treasury | . 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. |

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

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|-----------------|-------------------------------------|---|---|--|
| Norway | Tripartite, with several ministries | Department for Trade Policy, Environment and Resources, Ministry of Foreign Affairs | Ministry of Foreign Affairs Ministry of Industry and Trade | |
| Poland | Single Department | Polish Agency for Foreign Investment | | |
| Portugal | Single Department | ICEP Portugal (the Portuguese Promotion Agency) | | |
| Slovak Republic | Single Department | Ministry of Economics | | The NCP belongs as a single department to the Slovak Agency for the Development of Investment and Trade (established as a contributory organisation of the Ministry of Economy). |
| Slovenia | Single Department | Foreign Economic Relations Division, Ministry of the Economy | Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency | The Advisory Committee has considered if a Single department structure is the best solution. No decision has been made, yet. |
| Spain | Single Department | General Secretary for International Trade, Ministry of Economy | Ministry of Environment Ministry of Justice Ministry of Health and Consumption Ministry of Science and Technology Ministry of Labour and Social Affairs | The NCP liaises with representatives of social partners and NGOs. |

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

| | COMPOSITION OF THE NCP | GOVERNMENTAL LOCATION OF THE NCP | OTHER MINISTRIES AND/OR AGENCIES INVOLVED** | COMMENTS AND NOTES |
|----------------|-------------------------------------|---|--|---|
| Sweden | Tripartite, with several ministries | Department for International Trade and Policy, Ministry for Foreign Affairs | Ministry of Industry, Employment and Communications Ministry of Environment Ministry of Justice National Board of Trade | The Ministry for Foreign Affairs, Department for International Trade Policy, 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 | | Co-operation with other government agencies, business, trade unions and NGOs is institutionalised through a liaison group that meets regularly. |
| Turkey | Single Department | General Directorate of Foreign Investment, Undersecretariat of Treasury | | |
| United Kingdom | Single Department | International Investment and Competition Policy Unit, Department of Trade and Industry | Foreign and Commonwealth Office Department for International Development | 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 of the Department of State | | The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an ad hoc basis. |

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

BACKGROUND PAPER ON THE SCOPE OF THE GUIDELINES

Background

At its December 2002 meeting, the Working Party on the Declaration (WPD) held a preliminary exchange of views on the scope of the Guidelines and took note of the replies to a questionnaire circulated prior to the meeting. The Working Party asked the Secretariat to prepare a short summary of the issues identified on the basis of the 22 responses to the questionnaire, on other submissions received and on the debate in the Working Party meeting. This paper responds to that request.

This report is organised around four themes that emerge from the questionnaire responses. The themes involve different aspects of the Guidelines as a corporate responsibility instrument; that is, they are:

- An element of the OECD Declaration;
- Values and principles having broad scope of application;
- Recommendations covering areas such as supply chain;
- Entrusted to international investment officials for implementation.

1.1 An element of the OECD Declaration

The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises, the other elements of which relate to national treatment, conflicting requirements on enterprises and international investment incentives and disincentives.

According to a questionnaire response, “the fact that [the Guidelines] are part of the Declaration ... suggests strongly that [they] target the investment as opposed to trade, activities of MNEs”. The importance of this facet of the Guidelines was highlighted by several member governments and by BIAC during the negotiations leading up to the 2000 Review. BIAC has mentioned it in many of its public statements about the Guidelines. For example, at the June 2001 consultations it stated that “[the Guidelines] are “intended to provide a framework for good business conduct and, as part of the wider OECD Declaration... to encourage a balance of responsibility between international business and governments. The official and clear aim of the Guidelines is to improve the climate for foreign direct investment and to promote the positive contribution that multinational enterprises can bring.”

1.2 Values and principles having broad scope of application

As pointed out at the 2001 Roundtable, the Guidelines’ recommendations draw on and reinforce values, principles and concepts of corporate responsibility that have developed over a period of several decades¹.

¹ See page 54 of the 2001 Annual Report on the OECD Guidelines for Multinational Enterprises.

As such, the Guidelines are part of an evolving framework –expressed in international declarations, codes, conventions or guidelines -- providing guidance for companies and other actors about appropriate conduct.

The Guidelines Preface and Commentaries cite several of these outside sources explicitly (e.g. Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, Agenda 21 and the Copenhagen Declaration for Social Development). They also refer to a number of OECD instruments (e.g. the OECD Bribery Convention, the OECD Principles of Corporate Governance, the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations and the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce). The CIME commentary on the Guidelines chapters also refers to a number of external sources and OECD instruments.

Finally, the recommendations refer to principles and concepts that other actors – individual businesses, business associations, trade unions and NGOs, individual governments and intergovernmental organisations – also use and promote. Often these actors do not refer to the distinction between investment and other activities when discussing the applicability of their principles and concepts. For example, the International Chamber of Commerce’s (ICCs) rules of conduct and corporate practices manual on fighting bribery contain recommendations that are relevant to both trade and investment (e.g. private-to-private bribery, use of agents, political contributions) and that are also dealt with in a similar way by Guidelines recommendations. The “Introduction” to the ICCs Rules of Conduct embodies a broad view of the “business transactions” to which the rules apply.

The Guidelines are part of an evolving framework of values, principles and concepts relevant to the conduct of international business. They support, reinforce and promote this framework inasmuch as they are a tangible expression of the importance that the 37 adhering governments attach to them. The fact that they do this within the context of an international investment agreement, in no way detracts from the broader validity and applicability of the values and principles they express. Conversely, the fact that these values may be applicable to a broad range of business activities does not necessarily imply that the Guidelines themselves must be deemed applicable to this same broad range of activities.

I.3 Recommendations covering areas such as supply chain

Paragraph II.10 of the Guidelines asks enterprises to: “encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.” Paragraph 10 of the commentary -- which provides the CIME perspective on this recommendation -- states:

It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its suppliers or other business partners.... Established or direct business relationships are the main object of this recommendation rather than all individual or ad hoc contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the Guidelines.”

Seven of the 22 questionnaire responses refer to this recommendation. Several responses link the question of applicability of the supply chain recommendation more to the feasibility of “direct influence” than to

investment *per se*. Foreign direct investment gives rise to control (and, therefore, direct influence) but direct influence can stem from other circumstances as well:

- *Structural characteristics (e.g. market power)*. As suggested by the commentary, companies having market power vis-à-vis their suppliers may be able to influence business partners' behaviour even in the absence of investment giving rise to formal corporate control.
- *Other business practices (e.g. certification and product tracing systems)*. Some market arrangements are designed to ensure supplier accountability for particular aspects of performance (often product quality). For example, aircraft manufacturers employ purchasing practices that permit them to control the quality of parts they buy from suppliers -- even if transactions take the form of arms length market purchases. They do this through quality standards, supplier certification and product tracing systems. Such arrangements involve investments in standards, certification and tracing systems, but the supplier-purchaser relationship itself does not involve investment in the traditional sense of foreign direct investment.

The Declaration does not contain a precise definition of investment. The Guidelines' Preface states that: "International business has experienced far-reaching structural changes and the Guidelines themselves have evolved to reflect these changes. [...]Multinational enterprises, like their domestic counterparts, have evolved to encompass a broad range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise". In this context, definitions of business activities such as investment may be quite broad. This suggests that there may be room for flexibility in assessing multinational enterprises' influence and the presence of an investment relationship in the supply chain, depending on the specific circumstances.

At the June 2002 Roundtable, some participants noted that it is often possible for companies to influence supply chain outcomes even if they choose not to do so. In particular, representatives from trade unions and NGOs pointed out that companies can choose to "engineer processes" so as to control supply chain outcomes and can structure their relations with suppliers so as to obtain "power and leverage"². If this view is accepted, then supply chain recommendation would appear to apply not just to actual business situations in which influence is possible, but also to those where it is reasonable to expect the business in question to engineer its processes and to structure its relations with business partners and suppliers in such a way as to be able to influence them. BIAC, while recognising the validity of this point, stressed the need to consider legal concerns and potentially large economic costs. Thus, NGOs' and trade unions' views imply that the potential applicability of recommendation II.10 is very wide indeed.

I.4 International investment officials entrusted to implement the Guidelines

The Guidelines are not only a set of recommendations – they also have distinctive implementation procedures. The June 2000 Council Decision commits adhering countries "to further the implementation of the recommendations contained in the text of the Guidelines." The Decision calls on the CIME and the National Contact Points to undertake certain activities (e.g. promotion, handling enquiries, meeting annually and reporting). Two responses to the questionnaire note that, if it is decided that the Guidelines cover a broader range of activities – trade, for example – it might be reasonable to involve other policy groups (e.g. the OECD Trade Committee or the World Trade Organisation) in their implementation.

² See the 2002 Annual Report on the OECD Guidelines for Multinational Enterprises, page 69.

The resources available to international investment officials are also a consideration. In responding to the questionnaire, one delegation notes that: “including pure trade as relevant to the Guidelines would likely increase the workload of the NCP in a manner that may undermine their effectiveness.” Since the 2000 Review, these resources have included the costs of each of the 37 National Contact Points (who, under the revised Guidelines, were given expanded responsibilities) and the OECD Secretariat administrator time plus associated managerial and secretarial overhead. On a number of occasions, NCPs, CIME Delegates and the OECD Secretariat have noted the growing resource costs of the Guidelines. While resources for Guidelines implementation could be expanded, they will always be a constraint on the amount of implementation that can take place – this may place a practical limit on the scope of the Guidelines implementation procedures.

BACKGROUND PAPER ON NCP PROCEDURES

Introduction

The question of National Contact Point (NCP) procedures arose on several occasions during the June 2002 NCP meeting, consultations and Corporate Responsibility Roundtable. The Committee on International Investment and Multinational Enterprises (CIME) and its Working Party on the Declaration discussed the issue several times during the year – delegates shared information about individual NCP practices, discussed them in the NCPs’ Electronic Discussion Group, and developed and responded to a questionnaire. It was decided that limiting the questionnaire to procedures with respect to specific instances would give a useful focus to the responses without precluding sharing of information on other procedural matters at some future date. NCPs’ replies to the questionnaire were compiled and discussed at the April 2003 meetings. This paper summarises these discussions and the questionnaire responses.

NCP responsibilities and procedures for dealing with specific instances are set forth in the June 2000 Decision of the OECD Council in the form of “Procedural Guidance” and in its associated Commentary. The Procedural Guidance establishes that “NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.” In their ongoing consideration of NCP procedures, Working Party delegates stressed that they do not intend to revise these procedures, but rather to gather information about what NCPs are doing in practice and to learn from each others’ experiences.

Part II provides an overview of the responses. Part III then describes the content of the responses, which are organised under the following headings:

- Individual NCP written procedures or guidance;
- Initiating specific instances;
- Acknowledging receipt;
- Measures to promote timeliness and efficiency;
- Responsibility for information provision;
- The role of national legal, regulatory or administrative procedures;
- Measures promoting communication and transparency;
- Handling of confidential information;
- Consistency of findings across NCPs;
- Solicitation of feedback, training and further opportunities for experience sharing.

II. Overview of the questionnaire responses

Twenty three NCPs responded to the questionnaire. The European Commission also submitted a response, though it is not an NCP. The questionnaire responses fall into two groups -- those provided by NCPs that have already accumulated some experience in dealing with specific instances (12 respondents, referred to as “experienced NCPs” in what follows) and those provided by respondents without any specific instance experience (12 respondents: 11 NCPs referred to as “non experienced NCPs” and the European Commission). Non-experienced NCPs provided responses based on policies they have developed and/or

the procedures they propose to use in dealing with specific instances that they might confront in the future. Experienced NCPs' responses are based both on actual experience and on policy. Acknowledging the value of the various kinds of responses, the Working Party asked the Secretariat to include both types in the synthesis paper, but, where relevant, to make clear the distinction between what NCPs have actually been doing, and what they intend to do. The rationale for the distinction sought included the belief that sometimes procedures prove unworkable when tested and therefore have to be revised. Two NCP responses arrived too late to be included in these tabulations.

Responses to the questionnaire on NCP procedures were received from sixteen single government department NCPs, four NCPs that consist of multiple government departments, two NCPs that are tripartite in structure and one quadripartite NCP. Twelve of the respondents had already received one or more specific instances (note that not all NCPs responded to the procedural questionnaire). These 12 NCPs had dealt with a total of 25 specific instances at the time they completed the questionnaire in March 2003.

III. Procedural themes from the questionnaire

This part of the paper summarises the responses received to the questionnaire on NCP procedures, as well as related preliminary discussions, under the procedural themes developed in the questionnaire.

Individual NCP written procedures or guidance

Written procedures setting out standards for the handling of specific instances are included in the Procedural Guidance to the Guidelines. Elaboration of these procedures is provided by the Commentary on the Implementation Procedures. The questionnaire responses suggest that NCPs are broadly satisfied with the Procedural Guidance and confident that it provides a useful basis for managing specific instances. None expressed dissatisfaction with the Procedural Guidance.

Eleven (5 experienced, 6 non-experienced) indicated that they relied only on the Procedural Guidance (though one indicated that individual procedures are needed). One non-experienced NCP indicated that "would prefer to handle matters on a case-by-case basis," and that "[p]rocedures and policies could be developed after some experience has been gained." Other NCPs (5 experienced NCPs and 3 non-experienced NCPs) have developed additional procedures or have elaborated the Procedural Guidance to assist them in handling specific instances and/or for the benefit of the public. In some cases, these are made available on the relevant NCPs website. Three NCPs mentioned that they were in the process of developing procedures.

Initiating specific instances

There appears to be broad support among NCPs that specific instances can be raised by a wide array of interested individuals and organisations. In answer to the question --

"Does the NCP have views on which organisations or individuals may request consideration of a specific instance (e.g. May both domestic and foreign parties raise instances? May all interested parties or only particular organisations such as trade unions raise instances?)?"

-- responses from experienced NCPs included "everyone," "no formal restriction," "we keep an open mind towards any bona-fide request," and "any domestic individual or organisation representing such individual affected directly or indirectly by the specific instance." Some examples of responses from non-experienced NCPs included "all interested parties," "any interested parties" and "requesting parties should have a legitimate interest in the issue, determined on a case-by-case basis." Some NCPs are still considering this issue: five NCPs (4 experienced, 1 not) indicated that they had not (yet) formed a settled

view on this question, and one other experienced NCP indicated a desire for more information on the practices of other NCPs in this regard.

In response to the question “Does the NCP provide guidance on how specific instances should be submitted (e.g. what kind of documentation and justification should be provided),” ten NCPs responded affirmatively. Of these, five were experienced NCPs and five were non-experienced NCPs. Two additional NCPs (1 experienced, 1 not) indicated that they were preparing guidance material. Little information was provided as to what the guidance consists of. However, two of the respondents explicitly mentioned that they had prescribed a format for the initiation of specific instances to assist individuals and organisations wishing to raise specific instances to know what information they should provide. Notwithstanding the format they had developed, these NCPs stated, in their responses to the questionnaire, that they were willing to entertain specific instances raised in other formats, for example, letters.

None of the respondent NCPs have initiated their own specific instance. In response to the question “Has the NCP undertaken consideration of any specific instance on its own initiative?”, all responding NCPs answered no. There appeared to be difference of views as to whether it is possible for NCPs to initiate their own specific instances. One of the non-experienced NCPs stated that it considered the initiative belonged to civil society, while another non-experienced NCP stated that “[i]n principle [the NCP] can do it, if it is necessitated by the circumstances.” Another response stated that “[NCPs] should have the possibility to do so.” One other experienced NCP replied “[i]nsofar, as we observe cases that may later become a specific instance.” The only other elaboration was provided by an experienced NCP that responded “No (but it may).”

Acknowledging receipt

All of the experienced NCPs stressed the importance of acknowledging receipt of a specific instance to the individual or organisation that raised it. One experienced NCP mentioned that it acknowledges receipt with a letter. Another experienced NCP indicated that its policy on this was “under construction.” One non-experienced NCP stated that, since it is government body, “every request is registered and handled as an official document.”

All would inform the company concerned if the specific instance appears to have some merit. Two NCP respondents (1 experienced, 1 not) indicated that they would not inform the company about the existence of the specific instance if it clearly lacked substance. One non-experienced NCP, which has developed deadlines for itself for the handling of specific instances, indicated its intention to “be in contact with the MNE concerned as soon as practicable within the 30 day limit allowed under the [name of NCP] Service Charter for considering whether to proceed with a specific instance.”

Measures to promote timeliness and efficiency

There is broad agreement in principle that timeliness in handling a specific instance is important. However, some NCPs observed that timeliness might be relative to the type of specific instance under consideration and/or might depend on the efficiency of others beyond their control, including the parties themselves and sometimes other offices within the government. There may also be unexpected or unavoidable delays. For example, one NCP found that its efficient handling of a specific instance was impaired because of a reorganisation of the NCP. Suggesting that appropriate steps might vary with the nature of a particular specific instance, two experienced NCPs responded that the particular measures taken depend on the case under consideration. Another experienced NCP qualified its commitment to timeliness with the statement “as far as this possible,” while yet another observed that “it takes time to gather answers”.

Although nine experienced NCPs responded affirmatively to the question “Does the NCP take steps to ensure that the specific instance is handled in a timely manner,” little detail was provided about what steps are being taken. However, one non-experienced NCP responded that it has imposed deadlines on itself: it commits itself to “responding to the issue raised within 30 days of receipt and, if necessary, to undertake an assessment of the issue raised within a further 90 days”. Another non-experienced respondent proposed a specific timeframe: “the NCP should answer within 60 days (45 working days).” Without mentioning explicit deadlines, two other experienced NCPs stated that “A prompt handling is ensured by law” and “The NCP is obliged to handle the specific instance in a timely manner”. However, highlighting that sometimes procedures can prove unworkable in practice and may need revision, another experienced NCP responded that “Despite the existence of such steps [to ensure timeliness], it is not workable”. Another non-experienced NCP responded that “Until specific instances are considered, a definitive answer is not possible”.

One experienced NCP indicated that it sometimes requests parties to respond within certain timeframes: “In certain specific instances, as we have approached a decision, we have asked participants to provide additional information by a given date.” Similarly, one non-experienced NCP stated that, since it is itself a government body, it can only impose deadlines on “similar bodies and organisations,” but that, in the case of other actors, deadlines will be established and parties will be “politely asked” to respect them.

Responsibility for information provision

Eleven respondents (including 5 experienced NCPs) agreed that the primary responsibility for information provision rested with the parties, that is, the individual or organisation that raised the specific instance, and the company or companies concerned. Three NCPs (2 experienced, 1 not) responded that the main responsibility rested with the party that raised the specific instance. Two NCPs (both non-experienced) responded that the main responsibility for information provision depended on the specific instance at hand. Four NCPs, all of which were experienced, responded that the main responsibility for information provision was “shared.” Six respondents (including 3 experienced NCPs) noted the ability of NCPs to conduct their own investigation and seek information from other persons and bodies. Three NCPs (2 experienced, 1 not) explicitly mentioned the possibility of obtaining information from other parts of the government. One non-experienced NCP mentioned the possibility of consulting with other NCPs.

No consensus emerged from the questionnaire responses as to what information or how much is needed to raise a specific instance. However, as already indicated above, some NCPs provide guidance (and/or intend to do so) as to what kinds of information or “proof” is necessary or desirable.

Seven of the 12 experienced NCPs have dealt with specific instances involving alleged conduct in non-adhering countries. Two of these observed that information gathering had been a problem in such cases. Such problems included language and technical communication difficulties, as well as obtaining information about a trial ongoing in one of the non-adhering countries concerned. As a possible means of addressing such problems, one questionnaire response suggested that at least some information gathering problems in non-adhering countries might be ameliorated through use of diplomatic networks, such as embassies or consulates in the countries concerned.

The role of host country legal, regulatory or administrative procedures

Nine of the twelve experienced NCPs responded affirmatively to the question “Did the specific instance involve business conduct that was covered by host country laws, regulations or administrative procedures?” Thus, it appears to be quite common that NCPs consider specific instances that are covered by host country law and procedures.

Parallel legal, regulatory or administrative procedures. NCPs differed in their response as to whether the fact that a specific instance concerned business conduct covered by legal, regulatory or administrative procedures would influence their approach to a specific instance. Nine experienced NCPs felt that it could or has already influenced decisions. For example, one experienced NCP was confronted with a specific instance that concerned business conduct that was also the subject of legal proceedings. In this situation, this NCP felt that it could not proceed in dealing with the specific instance. Another experienced NCP felt that national legal, regulatory or administrative procedures would not affect their decision. Yet another experienced NCP responded that such procedures could have an impact on their decision, but that it would depend on the situation at hand.

Six non-experienced NCPs felt that the fact that a specific instance concerned business conduct covered by other national procedures would influence their decision. One non-experienced NCP responded that it “encourages complainants to address their complaints/issues with the MNE directly and with the appropriate regulatory/legal authorities (where applicable) prior to lodging a complaint with the NCP,” and “We would expect that any outcome from discussions/proceedings with appropriate regulatory or legal authorities would be considered in an assessment by the NCP, but would not necessarily determine the NCP’s final decision.”

Measures promoting communication and transparency

Keeping parties informed. Two thirds of respondents agreed that it was desirable to keep the parties informed of progress in the handling of the specific instance. Of these, eleven were experienced NCPs. However, no information was provided as to how and with what frequency this is being done. Three of the responses were qualified with words such as “to the extent necessary”, “as appropriate” and “if it is needed.” One of the responses suggested the desirability of informing the parties even when there had been no substantial progress so that the parties would know that the NCP was still working on the matter.

Provision of information to actors not party to the specific instance. A number of NCPs indicated they would be willing to provide information to parties not directly involved with the specific instance (e.g. Parliament), if there was a legal obligation to do so and/or where it was consistent with rules or policies concerning the handling of confidential information. Two NCPs (1 experienced, 1 not) mentioned legal obligations as the main consideration governing the provision of information to non parties. An experienced NCP emphasised that it protects the names of the parties in such situations. One non-experienced NCP emphasised that the provision of information to non parties would be decided on a case by case basis, but that Parliamentary questions are always answered. Another non-experienced NCP mentioned that it was a developing a policy on this issue and that confidentiality concerns would be key. Some NCPs (3 experienced, 1 not) indicated that they had reporting or information sharing mechanisms under which they may report on their progress to another government department or seek advice from other officials and sometimes also stakeholders, like NGOs, in a confidential environment. In some countries, freedom of information legislation may apply to some or all of the documents involved in the handling of the specific instance, implying that NCPs may have a legal obligation to make them public. One experienced NCP and one non-experienced NCP mentioned this possibility explicitly in their questionnaire responses.

Publicity in connection with submission of a specific instance. In response to the question “What is the policy regarding publicity in connection with the submission of a case,” no detailed policies were outlined. However, eight respondents (5 experienced NCPs) explicitly mentioned confidentiality concerns in their responses, implying a reluctance to publish such information. Another concern that featured in some of the responses was the need to protect the integrity and effectiveness of the process. One respondent without specific instance experience stated:

In principle, when a case is opened in the NCP, it should be made public that such a case has been opened (e.g. via the NCP website). However, it might not be appropriate in some circumstances, and some exceptions to this rule might occur (e.g. when publicity about the opening of a case would endanger its resolution by possible destruction of proofs or danger for the security of persons, etc.).

An experienced NCP responded that “any public statement on behalf of the NCP should build on consensus of the parties involved.” Another experienced NCP stated that “We have not generally publicized the fact that a case has been submitted.” One non-experienced NCP indicated that it was developing procedures, but that the intention was to release information, where possible, subject to the need to protect confidential information.

Public statements while a specific instance is being considered. NCPs provided more detailed information on their views on making public statements during the consideration of a specific instance. In response to the question “Does the NCP have a view on whether information on specific instances should be made public while they are still being considered,” a variety of positions were articulated, but, once again, there appeared to be broad agreement that protecting the confidentiality and integrity of the process were paramount. Seven respondents used a variant of the term “confidential” in their responses. Fourteen NCPs (8 experienced, 6 not) indicated a reluctance to release any information at all during the consideration of a specific instance. Four NCPs (2 experienced, 2 not) explicitly referred to the Procedural Guidance in responding to this question. Two experienced NCPs expressly mentioned an inverse relationship between publicity and the resolution of specific instances: one suggested that publicity might inhibit the resolution of the specific instance, while the other stated that confidentiality may enhance it. One experienced NCP noted its intention to make public only the existence of a specific instance. Another experienced NCP made a similar suggestion: “basic information that the specific instance is [being] handled could be made available...” Yet another experienced NCP stated that “Information would be made public with the consent of the participating parties, preferably at the conclusion of the instance.” Another respondent without experience in dealing with specific instances suggested that the procedural steps taken in handling a specific instance could be published on the NCP website in a way that would still preserve the confidentiality of the content of the case.

To invite a broad range of responses, the question had not specified whether it was referring to public statements by the NCP, the parties or both. Focusing on the issue of publicity by the parties, one experienced NCP stated that the parties are entirely responsible for their own statements, and another experienced NCP noted that it does not ask the parties to limit their statements.

Publication of outcome if no agreement is reached on a specific instance. A number of NCPs indicated that they supported the idea of making a public statement where no agreement was reached between the parties. Four experienced NCPs and two non-experienced NCPs responded affirmatively to the question “If the parties do not reach agreement, does the NCP make a public statement?” A more qualified response was given by another experienced NCP, which indicated that it would make such a statement “provided there is necessity to respond to public statements or reports, or such a statement is seen as useful by the NCP.” A case-by-case approach was also preferred by one of the non-experienced NCPs. Three respondents (including 1 experienced NCP) mentioned the Procedural Guidance in their response. Three experienced NCPs explicitly mentioned that they had not yet encountered a situation where no agreement was reached between the parties.

Publishing outcomes of specific instances. Half of the respondents support the idea of making public the results of the process subject to confidentiality concerns and/or whether it will promote effective implementation of the Guidelines. In response to the question “Does the NCP undertake to make public the results of its consideration of a specific instance,” eight experienced NCPs and four non-experienced

NCPs provided an affirmative response (albeit qualified in some cases). Qualifications mentioned by two experienced NCPs were: “provided [there is] consensus,” and “unless preserving confidentiality is in the best interests of effective implementation.” Similarly, two non-experienced NCPs indicated that they would decide the issue of publishing the results on a case-by-case basis. Another non-experienced NCP indicated that it was developing a policy that would favour release of information but would also take into account the need to protect the confidentiality of some information. Two respondents referred to the Procedural Guidance and/or Commentary as shedding light on the question of the publication of results. Two experienced NCPs responded “No” and one other “Not yet.” A number of respondents provided no response to the question.

Some of the means that have been (or are planned to be) used to make public the outcome of a specific instance include press releases (mentioned by 8 respondents), annual reports (mentioned by one respondent), and statements on the NCP’s website (mentioned by 7 respondents). Another mechanism, suggested by one NCP, was a notice in the official government gazette.

Half of the experienced NCPs had decided not to consider one or more specific instances and 4 of these did not publish their reasons for doing so. A variety of opinions was expressed in response to the question “Does the NCP publish its reasons for deciding not to consider a specific instance?”. One experienced NCP stated that they might publish their reasons if the consensus of the parties was obtained. Another experienced NCP suggested that they might publish the reasons if the circumstances warranted it. Two other experienced NCPs explicitly mentioned that the parties concerned had been informed of the reasons. It was not clear from the responses whether the other experienced NCPs that responded “No” had informed the parties concerned of the reasons, or whether their response referred only to publication more broadly to others beyond the parties to the specific instance.

Five of the non-experienced NCPs indicated that they would provide the reasons to the parties concerned and/or publish the reasons, at least in some circumstances. Two non-experienced NCPs mention a national requirement that it justify its decision. One non-experienced NCP indicated that its intention was to decide whether to publish its reasons for deciding not to consider a specific instance on a case-by-case basis and that the primary factor to be taken into account would be “a judgement as to whether publishing would enhance the overall effectiveness and credibility of the Guidelines.” It anticipated that “[i]n most cases...publishing would be appropriate.”

The questionnaire asked “Does the NCP publish the name of the company involved?” A mixture of responses was received. Five of the experienced NCPs indicated that they had published or would publish the company’s name. One other experienced NCP responded that naming would depend on whether the consensus of the parties had been obtained. Four other experienced NCPs responded in the negative. One other responded “no decision taken yet.” Six other respondents without specific instance experience indicated either support for the publication of company names or a preference for a case-by-case approach depending on confidentiality concerns, the company’s consent, and/or what will best promote effective implementation of the Guidelines. One further non-experienced NCP responded “in principle, no,” that is, it would not publish company names.

Handling confidential information

Two experienced NCPs mentioned having encountered confidential business information thus far in dealing with specific instances. Nevertheless, a variety of responses were received to the question “What steps does the NCP take to protect sensitive business and other information.” The Procedural Guidance, which provides, among other things, that “While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained,” was mentioned by three experienced NCPs as providing direction in this regard. A number of NCPs indicated that they would not reveal such

information, especially during the specific instance process, to persons other than the parties concerned. One experienced NCP stated that it treats all information received as official use only. Four NCPs mentioned that they are or would be guided by administrative rules and/or legal procedures for the handling of confidential information that are already in place across the government generally. Another respondent suggested ensuring that the information is adequately protected on the NCP's premises, as well as asking parties to make a written commitment to respect the sensitivity of the information provided.

It appears that NCPs generally provide (or intend to do so) information received from the person who raised the specific instance with the company concerned and vice versa. Eight experienced NCPs indicated that they shared information provided by the company with the other parties to the specific instance. One of these eight indicated that they required the agreement of the company concerned before sharing the information, another mentioned confidentiality rules that were still to be defined but would govern the handling of sensitive commercial information. Five other respondents without specific instance experience indicated that they would share company information with the other parties, at least in certain circumstances, for example, where it would be consistent with concerns to protect the confidentiality of certain information, with the company's agreement or after consultation with the company, unless the company provided substantive grounds why the information should not be shared, where it is "essential" for understanding the situation, and/or on a case by case basis.

In response to the question "Is the company concerned given a copy of all documents submitted by the organisation or individual making the request" eleven experienced NCPs provided an affirmative response. Of these, one experienced NCP mentioned that it did so where "relevant," while another mentioned that it did so "subject to the agreement of the submitting organization." Two non-experienced NCPs indicated that they relied on the initiator of the specific instance to indicate which information could and could not be released. Confidentiality concerns were also mentioned by another non-experienced NCP as a reason for not providing all such documents to the company. Another non-experienced NCP indicated its intention to adopt a case-by-case approach, but that transparency was its goal.

Consistency of findings across NCPs

A number of views were expressed on the question whether any problem was posed by different NCPs reaching different decisions as to the merit of similar specific instances. A preference for consistency, all other things being equal, was expressed by ten of the respondents. However, one NCP observed that two specific instances are rarely, if ever, the same: "No two specific instances can be identical. What should be avoided is divergence in the interpretation of the Guidelines." Six other NCPs also observed that different outcomes could result from such things as different background facts and circumstances, including different domestic circumstances and policies. One such NCP stated that "The Guidelines were designed to be flexible and adaptable to different domestic circumstances and policies." That same NCP noted that it is possible that the same specific instance could fall into the jurisdiction of more than one NCP.

To promote a higher degree of consistency, three NCPs suggested that NCPs dealing with similar specific instances could perhaps coordinate and cooperate with each other. The possibility of discussing the issue in future meetings was also floated. Some NCPs have already co-operated with other NCPs in the context of dealing with a specific instance. Eight experienced NCPs indicated that one or more of the specific instances they had handled involved another NCP in some way. In some cases, the result was the transfer or referral of a specific instance to another NCP for handling. Whatever measures are adopted to enhance consistency, the importance of maintaining NCPs' independence was also stressed.

Solicitation of feedback, training and further opportunities for experience sharing

Five of the experienced NCPs indicated their openness to feedback, responding affirmatively to the question “After consideration of the specific instance, does the NCP seek feedback from the parties to the instance about its handling of the process?” Four others responded “not yet.” One other experienced NCP noted that feedback has been freely supplied by the parties without the need to formally solicit it. No other specific information was provided about how feedback is being obtained. Five non-experienced NCPs indicated that feedback is something they would be interested in receiving.

Some NCPs expressed a desire for training and/or more opportunities for learning from those NCPs that have dealt with more specific instances, including through the use of case studies. While some NCPs would like to learn from more experienced NCPs now, others felt that such learning opportunities might be more useful later on, once they had encountered some specific instances of their own. NCP and WPD meetings and the EDG were mentioned as fora that already afford opportunities for sharing lessons learned from handling specific instances.

ARCHIVE OF COMMUNICATIONS

Note by the Secretariat: This section reproduces material related to the implementation of the Guidelines which was published between June 2002 and June 2003. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.

- Document 1. Extractive Industries Transparency Initiative Multi-stakeholder Conference
- Document 2. Informal Roundtable on Corporate Responsibility in the Global Economy – Summary
- Document 3. Joint statement by the Netherlands National Contact Point, Adidas and the India Committee of the Netherlands
- Document 4. Statement from the Swedish National Contact Point for OECD Guidelines for multinational enterprises with reference to specific instances received concerning Atlas Copco and Sandvik
- Document 5. Exchange of letters on Democratic Republic of Congo
- Document 6. Exchange of letters on co-operation between Global Reporting Initiative and OECD Secretary General

Document 1. Extractive Industries Transparency Initiative Multi-stakeholder Conference

London, 17 June 2003

*OECD Committee on International Investment and Multinational Enterprises
Statement by Marinus Sikkel, Chair*

As Chair of the OECD Committee on International Investment and Multinational Enterprises, I am pleased that the OECD is participating in today's conference. The general principles of transparency and accountability underpinning the Extractive Industries Transparency Initiative (EITI) are essential to achieving the international community's goal of promoting integrity and sustainable growth in the global economy. The recent G-8 Declaration on Fighting Corruption and Improving Transparency places the fight against corruption and the push for transparency in the context of promoting sustainable development and stronger investment climates in developing countries. The OECD fully subscribes to this goal and the recognition of the important steps governments must take to enhance transparency. It also recognises that multinational enterprises can make an important contribution to the sustainable development of the countries in which they operate and considers that enhanced transparency by multinational enterprises should go hand in hand with improved public sector governance.

OECD's on-going activities in such areas as combating bribery and corruption, promoting improved corporate governance and encouraging corporate responsibility all complement EITI's efforts to enhance transparency:

- The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* requires each signatory to criminalize the bribery of foreign public officials by companies based in its territory. The Convention, and related OECD Recommendations, provides a broad blueprint for eliminating the pernicious practice of foreign bribery by companies to obtain or retain business in other countries.
- Improving corporate governance is another area where the OECD makes a distinctive contribution. The OECD is currently exploring how the *OECD Principles of Corporate Governance* can be applied to state owned assets. This project is of obvious interest to the many state-owned oil and mining companies, whose governance practices also form important parts of the broader transparency picture in extractive industries.
- Transparency is also one of the themes of the *OECD Guidelines for Multinational Enterprises*. The OECD Guidelines are voluntary recommendations to multinational enterprises which are applicable world-wide. All OECD governments, the European Commission and a growing number of non-OECD governments are committed to their effective implementation. They are supported by follow-up procedures which allow discussion among governments, business, trade unions and NGOs of issues relating to implementation of the Guidelines and clarification where needed of the meaning of the Guidelines in specific circumstances.

As part of its work under the Guidelines, the CIME concluded a study on the challenges facing extractive industries as they operate in regions characterised by conflict and widespread human rights abuses. The study's findings are consistent with the premises underlying EITI; it also contrasts contracting practices in OECD and non-OECD countries and highlights the importance of

host government observance of fiscal control standards as well as good governance of state-owned enterprises which are partners of extractive industry foreign companies.

I am glad that the OECD has been given opportunity to participate in preparatory meetings for EITI. I believe that co-operation should continue, consistent with our institutions' respective functions, mandates and procedures.

Document 2. Informal Roundtable on Corporate Responsibility in the Global Economy – Summary

Paris, 4 April 2003

On 4 April 2003, the Secretary General of the Organisation for Economic Co-operation and Development convened a small informal Roundtable on corporate responsibility in the global economy. The objective of the Roundtable was to take stock of progress, to explore ways of enhancing international co-operation in the field of corporate responsibility and to look at how the effectiveness and visibility of the OECD Guidelines for Multinational Enterprises might be enhanced.

I. Corporate responsibility in the global economy

The current global economic context is one of intense activity in the corporate responsibility field. This activity involves a variety of actors – companies of all sorts, business associations, trade unions, NGOs governments and international organisations – and has given rise to a diverse array of outputs – company codes, industry codes, global instruments and management and reporting standards.

Boom or durable phenomenon?

Indeed, this activity is so intense that some participants expressed concern that it might reflect a corporate responsibility “boom” – a reference to acyclical, temporary phenomenon. One reason for this concern was the recent shift from a dynamic global economic situation to a more sombre macroeconomic and geopolitical picture. Despite these concerns, the discussion suggested that corporate responsibility is an issue that is here to stay. Participants stressed that the current intense interest in corporate responsibility is part of an ongoing, well established trend toward more sophisticated treatment of these issues by companies. One participant noted an acceleration of activity since 1995, citing progress in such areas as governance, anti-corruption, environment, socially responsible investing and reporting.

The “plethora of codes” and signs of convergence

While the intense activity in this field is encouraging, it has also led to a “plethora” of codes. Some participants indicated that this could lead to confusion among managers and to accusations of “code shopping”. A corporate responsibility manager at a major multinational enterprise noted that his company handled this problem by integrating the principles and ideas expressed in outside instruments into the internal documents his company uses to communicate with its employees. Under this approach, field managers are confronted with a single company policy and are not asked to decide from among competing codes. The company also publishes the names of the codes and initiatives it is involved in.

Evolution, progress and consolidation

Many participants highlighted the underlying unity of purpose and principle of many of these codes, which reflect in various ways the same framework of international declarations and principles. Several participants’ reinforced OECD research findings by noting that a gradual process of convergence of code content appears to be taking place, at least in some areas (e.g. treatment of core labour standards). Thus, at

least among the major corporations that issue codes, there are indications of progress in the construction of a common view of appropriate business conduct in some areas.

Credibility of most codes is still an open question

One participant expressed concern about there being “too many codes and not enough enforcement”. Thus, despite intense activity and some signs of progress, the credibility of codes of conduct continues to be an important concern.

Participants noted that the credibility of the codes is closely linked to the perceived strength of the pressures and incentives that motivate companies to take them seriously. Although there was a convergence of views on the “business case” for corporate responsibility (e.g. lower capital costs, improved employee and customer loyalty, improved ability to compete in labour markets, enhanced risk management), participants felt that the strength of this case varied by company, sector and issue. The lack of credible monitoring services was cited as a problem. Several participants noted that in situations where overall governance is weak – e.g. in countries such as Myanmar or the Democratic Republic of Congo – putting together a credible corporate responsibility programme can be very difficult.

The search for an appropriate allocation of roles between government and business

Roundtable participants agreed that companies should not be put in a position where they have to assume roles that governments are unable or unwilling to assume. This recalls the many previous Guidelines discussions in which all actors – business, trade unions and NGOs – have agreed about the need to strengthen interaction among the different groups to make the Guidelines work.

In this context, participants also stressed binding and non-binding instruments like guidelines, principles and conventions are clearly complementary to existing regulatory frameworks. Finding the right mix of policies and business practices is now widely recognised to be the real challenge.

In this respect, the discussion pointed to an unmet demand for “services” in the corporate responsibility field – services that would help companies and other actors put together credible initiatives and helping them to distinguish between their responsibilities and those of governments.

II. Responding to the challenges: the emerging role of the OECD Guidelines

The Guidelines – a step in the right direction and a need for further progress

The view of an NGO representative sums up, perhaps, the tenor of the discussion about the Guidelines – he stated that “the Guidelines are an important step in the direction that we want to go”. Adhering governments – working with business, trade unions, NGOs and non-member governments – have made progress in realising the Guidelines’ potential. For example, whereas only two National Contact Points could be characterised as having been functional prior to the 2000 Review, almost all of the National Contact Points are now operating. The specific instance procedure is being used extensively. However, Roundtable participants also noted that the Guidelines are very much a work in progress -- “all actors still have a long way to go”.

Who is the Guidelines' audience?

It was noted that CEO support for the integration of the Guidelines into the management process is crucial. Another important entry point of the Guidelines into a company's management process is the corporate responsibility officer or office. This office will try to pass its message among the factions and profit centres that make up any reasonably large company. Its message will be competing for attention with other messages, concerns and pressures. Seen from this perspective, the role of the Guidelines is to strengthen the hand of these "champions" of corporate responsibility in influencing the day-to-day operations of business.

According to several participants, small and medium sized enterprises should be an important audience for the Guidelines. Most major multinational enterprises already have reasonably advanced systems for dealing with corporate responsibility issues, whereas small and medium sized enterprises are far less likely to have such systems. The Guidelines could help bring this group of companies along. Similar views were expressed with respect to companies based in non-member countries. Thus, the development of communications channels with smaller multinational enterprises and with non-adhering governments were deemed to be high priorities for Guidelines implementation.

Future challenges for Guidelines' institutions and implementation

Participants identified a number of areas for future improvements to Guidelines implementation:

- Promotion. Awareness of the Guidelines remains a problem, though it was also noted that this seems to be a general problem with major instruments of relevance to corporate responsibility.
- Transparency of NCPs and accessibility of information on specific instances.
- Functional equivalence. Unevenness of NCP implementation, with a possible need to strengthen outside review of NCP performance as well as existing peer reviews of NCPs' functions and performance.

In terms of the focus of Guidelines implementation, the following areas were identified as being potentially helpful:

- Documenting the business case for corporate responsibility;
- Promoting corporate responsibility among small and medium sized enterprises engaged in international investment;
- Dialogue on the application of the Guidelines and corporate responsibility issues with non-member countries;
- Continuing work on corporate responsibility issues in the supply chain in developing countries;
- Providing assistance to companies working in weak governance zones – helping them to evaluate whether or not their behaviour is appropriate and providing protection in cases of extortion;

- Creating a corporate responsibility tool kit for use in institutions of higher education (e.g. schools of business and public administration and law schools) which provide access to the “next generation of business leaders”;
- Making use of existing labour relations processes to improve the effectiveness of the Guidelines;
- Using professional associations to raise awareness of the Guidelines.
- Improving understanding of what some of the general principles set forth in the Guidelines recommendations mean in particular business situations.

III. Building international co-operation

Roundtable participants stressed that the division of labour among international organisation and global corporate responsibility instruments should be respected when trying to strengthen international co-operation. For example, participants noted the following features distinguishing three global corporate responsibility instruments:

- *The UN Global Compact's* impetus stems largely from the authority of the United Nations Secretary General and the endorsement by individual companies.
- *The Global Reporting Initiative* offers a reporting framework based on normative principles that are fully compatible with those expressed in the Guidelines.
- *The OECD Guidelines* are a relatively detailed code of conduct with the formal backing of 37 governments representing countries, from which the bulk of international investment originates and which are home to most major multinational enterprises (e.g. 97 of UNCTAD's list of top 100 multinational enterprises). They are also based on a consultative process involving business, trade unions and NGOs.

Participants held varying views on how such cooperation might be organised – some proposed creating a permanent consultation process, while others thought an *ad hoc*, issue-specific approach (e.g. exploring the meaning of corporate responsibility in specific business contexts) would be more promising.

In addition, partnerships with other organisations were proposed – including with the World Trade Organisation, the World Bank and the G8. The World Trade Organisation's potential interest in the Guidelines in the context of the Doha negotiations was mentioned on a number of occasions, although the question on how the Guidelines might be used in such a context remained open. Finally, the G8 – seven of whose members adhere to the Guidelines – was cited as an organisation that might want to follow the process of the implementation of the Guidelines and other instruments to show that its members “lead by example”.

Document 3. Joint statement by the Netherlands National Contact Point, Adidas and the India Committee of the Netherlands

12 December 2002

The issue raised by the India Committee of the Netherlands (ICN) whether Adidas behaves in conformity with the OECD Guidelines for Multinationals has been finalised by the Netherlands National Contact Point (NCP). The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in a socially responsible manner. NCP's role to contribute to the resolution of this issue has been successful. ICN and Adidas both pursue the internationally accepted labour standards and communication between them has been established. NCP will step back from hereon, but may be asked to step back in by either ICN or Adidas in the event that communication between them breaks down. A joint statement regarding this specific instance follows below.

THIS IS A JOINT STATEMENT BY THE NCP, ADIDAS AND ICN:

“Agreement between ICN and Adidas in NCP procedure”

The Netherlands National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines), Adidas and the India Committee of the Netherlands (ICN) have reached an agreement on the question raised by ICN whether Adidas's behaviour as an outsourcer and seller of footballs produced in India is in conformity with the Guidelines.

According to ICN, Adidas failed to encourage its supplier to produce in accordance with the OECD Guidelines. ICN based its question on its report “The Dark Side of Football – Child and adult labour in India's football industry and the role of FIFA (June 2000)” and subsequent fieldwork to which Adidas had never reacted. ICN stated that this report contained enough evidence to strongly suspect that Adidas footballs were produced by workers at lower than minimum wages and without access to trade unions or adequate health and safety standards. In addition, child labour could be involved. ICN therefore asked the Dutch National Contact Point for the Guidelines to contact Adidas on this issue and to study whether Adidas's behaviour was in accordance with the Guidelines.

The National Contact Point first invited both parties individually to clarify their points of view and subsequently organised a tripartite meeting for an open dialogue. This meeting showed that ICN and Adidas agreed on the following:

- Standards to pursue (both ICN and Adidas generally focus on the same internationally recognised labour standards), with some points of discussion remaining, for example on ‘living wages’;
- The need for continuing transparency by Adidas on how it implements these standards;
- The need for continuing external monitoring, disclosure and verification;
- The need for strengthening communication between stakeholders, as Adidas individually but also within the framework of FIFA, and the World Federation of the Sporting Goods Industry;

- The need for ICN to continue taking into account independent, reliable and substantial information provided by the sports industry and other parties. Even though the issues that were brought to NCP's attention by ICN possibly still exist in the Indian sports goods industry at large, the NCP concluded on the basis of the information provided by Adidas that Adidas encourages its suppliers to operate in a socially responsible manner. It does this through its corporate code of conduct, which covers the issues mentioned by ICN. No evidence has been found of child labour used for the production of Adidas footballs.

The implementation of Adidas's corporate code of conduct is monitored in the following ways:

1. The external monitoring agency SGS monitors on child labour and several health and safety measures;
2. Adidas monitors its suppliers internally on compliance with its SOE.

The Fair Labour Association (FLA) as an external auditor checks Adidas's internal monitoring system. It is noted that with respect to Adidas's supplier in India, there has not yet been external monitoring, verification and disclosure by FLA that corroborates Adidas' own monitoring. This is however envisaged in the future. The two parties agreed that communication in the future should be improved, as an important finding during the NCP procedure was this has been lacking in the past. According to ICN, an important contribution to improved communication will be the disclosure of future reporting by FLA on the implementation of the SOE at country and product level. It was noted that if two-way communication would improve, the discussion between Industry and NGO's could reach a higher level of information exchange. Both parties therefore welcomed the opportunity that the NCP had given for a constructive discussion.

The relevant document on the procedure relating to Adidas and ICN can be found on the website of the Dutch NCP: www.oesorichtlijnen.nl

Document 4. Statement from the Swedish National Contact Point for OECD Guidelines for multinational enterprises with reference to specific instances received concerning Atlas Copco and Sandvik

June 2003

On 17 February 2003, the Swedish National Contact Point for OECD Guidelines for multinational enterprises (NCP) received two specific instances from Attac Sweden/Friends of the Earth Sweden concerning the operations of Sandvik and Atlas Copco in Ghana. The organisations were of the opinion that the Swedish enterprises through business relations and active cooperation chiefly with the two mining companies Ashanti Goldfields and Ghana Australian Goldfields, had not complied, inter alia, with the sections of the OECD Guidelines relating to human rights and environmental considerations in the areas where the mining companies operate.

Conclusion

In the light of the information the NCP has had access to and collected, it is the NCP's view that Atlas Copco and Sandvik have not failed to comply with the OECD Guidelines in respect of human rights and environmental considerations. At the same time, the NCP encourages Sandvik and Atlas Copco to remedy the lack of knowledge of the contents of the Guidelines at subsidiaries and among personnel on the spot in Ghana. Based on this and in view of the processes that have been initiated, the NCP draws the conclusion that no further processing of these cases is required.

Consideration of the matter and reasons for the conclusion

NCP's main task is to spread information about and promote the use of the OECD Guidelines for Multinational Enterprises. Furthermore, it is NCP's duty to assist in solving problems that arise through discussion and dialogue with the parties concerned.

All Swedish enterprises should take responsibility for the effects of their activities no matter where in the world they operate. In developing countries, enterprises face special problems and challenges. NCP has examined the specific instances in accordance with the procedural guidance for handling individual cases in countries that are not members of the OECD. Since the material submitted by the organisations reporting the matter was incomplete, NCP has collected information on the issues raised. NCP has studied the information from the enterprises concerned, the Swedish Metalworkers' Union and the Embassy of Sweden in Nigeria. In addition, NCP has acquainted itself with additional information from, *inter alia*, a Ghanaian NGO, the Wassa Association of Communities Affected by Mining.

NCP has held five extra meetings with reference to the specific instances. In addition, separate meetings have been held with the organisations that submitted the specific instances and the enterprises concerned, as well as a joint information meeting with all parties. The two enterprises and the Swedish Metalworkers' Union travelled to the area to investigate the situation. During the time NCP has been engaged in the matter, several processes have been initiated, *inter alia* a dialogue between WACAM and the local mining companies.

The material reveals the environmental and social problems that exist in connection with mining in Ghana but also the existence of established processes in the form of a regulatory framework and judicial

institutions to tackle these problems. However, these processes and institutions wrestle with the difficulties normally associated with developing countries such as, for example, insufficient resources and capacity.

NCP assesses that the roles of Atlas Copco and Sandvik in the individual cases is limited. In the light of the information the NCP has had access to and collected, it is the NCP's view that Atlas Copco and Sandvik have not failed to comply with the OECD Guidelines in respect of human rights and environmental considerations.

A question that has emerged in connection with these cases is how far the responsibility of multinational enterprises extends in relation to business partners and the host country's government. This matter is discussed in section 2:10 of the OECD Guidelines, which says that enterprises should "*Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*" An interpretation of how far responsibility extends under section 2:10 must be made from case to case and be based on the multinational enterprise's possibilities of influencing a business partner or a specific situation.

The information that has emerged indicates that Sandvik's and Atlas Copco's personnel on the spot did not have adequate knowledge of the contents of the OECD Guidelines. The NCP therefore encourages these enterprises to enhance knowledge of the Guidelines both internally and externally.

Lastly, the NCP establishes that the specific instances received and subsequent processing were important for the promotion of the Guidelines. A number of processes have been initiated, the results of which will hopefully be positive for social and environmental developments in the mining industry in Ghana and for Swedish enterprises' increased awareness of these issues.

Members of the following organisations are included in the Swedish National Contact Point:

- *Government Offices (Chairperson for NCP, Sofia Calltorp, Ministry for Foreign Affairs)*
- *Swedish Trade Union Confederation, Swedish Metalworkers' Union, Swedish Union of Clerical and Technical Employees in Industry, Confederation of Professional Employees, Swedish Confederation of Professional Associations (SACO), Confederation of Swedish Enterprise, Swedish Federation of Trade.*

Document 5. Exchange of letters on Democratic Republic of Congo

Letter from the OECD Secretary General to the UN Secretary General

Mr. Donald Johnston
Secretary-General
OECD
2 rue André-Pascal
75775 Paris Cedex 16

DJJ/2003.17.pn

4 February 2003

Dear Secretary-General,

At its session last December, the OECD Committee on International Investment and Multinational Enterprises, which has oversight responsibility for the OECD Guidelines for Multinational Enterprises, took note of the Expert Panel's Report on the illegal exploitation of natural resources in the Democratic Republic of Congo. I am conveying to you the views of the Committee as expressed in the attached letter by its Chair, for your attention and that of the Security Council. This letter was written before the adoption on 24 January of Resolution 1457 by the Security Council. The resolution requests the expert panel to provide information to the Committee and to the National Contact Points for the OECD Guidelines, which is also suggested in the Committee Chair's letter.

I would appreciate it if you could identify a contact point in the United Nations with whom the Chair of the Committee can get in touch in order to pursue co-operation on this matter.

Yours sincerely,

Donald J. Johnston

Mr. Kofi Annan
Secretary-General
United Nations
UN Headquarters
First Avenue at 46th Street
New York, NY 10017

Attachment: The OECD Guidelines for Multinational Enterprises

Letter from the Chair of CIME to the OECD Secretary General

Mr. Marinus W. Sikkel
Chair of the Committee on International Investment and Multinational Enterprises
Head of Investment Policy & International Organisations
Ministry of Economic Affairs
P.O. Box 20101
2500 EC The Hague
Netherlands

Paris, 23 January 2003

Dear Secretary-General,

In my capacity as Chair of the OECD Committee on International Investment and Multinational Enterprises, I am writing to ask you to convey the following views of the Committee to the Secretary-General of the United Nations for the attention of the Security Council.

The Committee has taken note of the Panel of Experts' Final Report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo [S/2002/1146], which refers prominently to the OECD Guidelines for Multinational Enterprises.

The United Nations Security Council's mandate to the Expert Panel is a concrete expression of its concern about the situation in that country. The Committee has the view that multinational enterprises operating in situations of violent conflict and widespread human rights abuses face distinctive challenges. It has had an opportunity to examine these questions in other contexts as part of its work relating to the OECD Guidelines. The Committee welcomes the opportunity to co-operate with the United Nations on the issues raised in the Panel's report relating to the OECD Guidelines.

The Committee appreciates the Panel's recognition of the value of the Guidelines as an international standard. However, certain inaccuracies in relation to the interpretation of the Guidelines might have been avoided if the Committee had been consulted prior to the release of the Panel Report. Therefore the Committee would like to provide some clarification on the nature and status of the Guidelines. The Guidelines are government recommendations to multinational enterprises for responsible business conduct. Governments are committed to promoting the Guidelines and encouraging their observance by multinational enterprises operating in or from their territories. While observance of the Guidelines by enterprises is voluntary and not legally enforceable, each adhering

Mr. Donald Johnston
Secretary-General
OECD
2 rue André-Pascal
75775 Paris Cedex 16

government has undertaken to establish a National Contact Point that deals with all matters relating to the implementation of the Guidelines in the national context, including specific enquiries regarding the activities of individual enterprises. National Contact Points do this on the basis of procedural guidance designed to ensure the effectiveness of the Guidelines. In this process, governments work constructively with interested parties that may include enterprises, trade unions and non-governmental organisations as appropriate, in order to assist the parties in resolving the issues. (A copy of the Guidelines and related provisions is attached.)

The Expert Panel's report calls on governments adhering to the Guidelines to ensure that companies with operations in the DRC are aware of and committed to observing the recommendations set forth in the Guidelines. The adhering governments and the 37 National Contact Points take their role of furthering the effectiveness of the Guidelines very seriously.

The report names companies located in adhering countries that the Panel concludes have not observed the Guidelines. The Committee is concerned about the proper use and application of the Guidelines. In order for the Committee and the National Contact Points to meet their responsibilities, it would be very helpful for them to have access to the information on which the Panel based its conclusions. The Committee stands ready to work with the appropriate United Nations contact on making this information available to the National Contact Points concerned and to explore how co-operation can best be pursued as the Security Council considers follow up to the Panel's report.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Marinus Sikkel', with a long horizontal flourish extending to the right.

Marinus Sikkel
Chair of the OECD Committee on International
Investment and Multinational Enterprises

cc. Delegates of the OECD Committee on International
Investment and Multinational Enterprises

Attachment: The OECD Guidelines for Multinational Enterprises

Letter from the Chair of CIME to BIAC, TUAC and NGOs

Mr. Marinus W. Sikkel
Chair of the Committee on International Investment and Multinational Enterprises
Head of Investment Policy & International Organisations
Ministry of Economic Affairs
P.O. Box 20101
2500 EC The Hague
Netherlands

Paris, 29 January 2003

You have enquired about the course of action envisaged by the OECD Committee on International Investment and Multinational Enterprises (CIME) in relation to the issues raised in the Panel of Experts' report to the United Nations Security Council on the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The report calls on the governments adhering to the OECD Guidelines for Multinational Enterprises to ensure that companies with operations in the DRC are aware of and committed to observing the recommendations set forth in the Guidelines.

The CIME takes this matter very seriously and discussed it at its December meeting. I am pleased to inform you that it has taken the following steps so far:

- In my capacity as Chair of the CIME, I have been mandated to send a letter to the Security Council (see attachment). In that letter, the CIME welcomes the opportunity to co-operate with the United Nations on the Guidelines issues raised by the Panel's report and asks for the information upon which the Panel based its conclusions regarding the role of OECD-based companies named in the report. The letter recalls the voluntary nature of the Guidelines and describes their implementation procedures.
- The Committee agreed on the need for the National Contact Points to ensure appropriate communications among themselves as follow up is undertaken at the national level.
- The OECD Secretariat is preparing a note on questions of principles and interpretation related to the use of the Guidelines by other organisations.
- The Committee may address the generic issue of helping multinational enterprises to observe the Guidelines recommendations in situations of violent conflict and widespread human rights abuses at a later stage, taking advantage of its earlier work in this area (see the *2002 Annual Report on the OECD Guidelines for Multinational Enterprises*, Part I. Annex VII [www.oecd.org/daf/investment/guidelines]).

I thank you for your interest in the OECD Guidelines for Multinational Enterprises and hope that this letter answers your questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Sikkel', with a long horizontal flourish extending to the right.

Marinus Sikkel
Chair of the OECD Committee on International
Investment and Multinational Enterprises

cc. Delegates of the OECD Committee on International
Investment and Multinational Enterprises

Enclosure: letter to the UN Security Council

Document 6. Exchange of letters on co-operation between Global Reporting Initiative and OECD Secretary General

Letter from Global Reporting Initiative to OECD Secretary General

Keizersgracht 209
P.O. Box 10039
1001 EA Amsterdam
The Netherlands
www.globalreporting.org

Tel: +31 (0)20 531 0000
Fax: +31 (0)20 531 0031

H.E. Mr Donald J. Johnson
OECD Secretary-General
Organisation for Economic Cooperation and Development
2, rue André Pascal
75775 Paris Cedex 16
France

21 February 2003

Your Excellency,

I am writing to express the interest of the Global Reporting Initiative (GRI) in exploring with OECD member countries how greater synergy might be achieved between the work of the OECD and the GRI, and in particular how the GRI might most effectively complement the OECD Guidelines for Multinational Enterprises (MNEs).

At the UN World Summit on Sustainable Development (WSSD) last September, your Government with others made a clear commitment in the Plan of Implementation to enhance corporate environmental and social responsibility and accountability. In this context, the GRI was deeply appreciative of the WSSD's specific recognition of the GRI Sustainability Reporting Guidelines as a practical instrument to help business improve its social and environmental performance. We also welcomed other positive official references by the G7, OECD and EU over the last year.

As the world's only multi-stakeholder sustainability reporting organisation, we would like to assure you of our commitment to work with governments, business and other stakeholders to achieve the important sustainable development goals set out at Johannesburg. To this end, and with a view to optimising communication on our shared action agenda, we would specifically like to propose that some form of regular consultation be instigated between OECD governments and the GRI.

Like many of those present in Johannesburg, the GRI welcomed the WSSD's identification of two key elements of a successful response strategy to the challenge of sustainable development. The first of these was the Summit's recognition of the crucial importance of effectively engaging the business community in the collective effort to advance sustainable behaviour. The second element was the emphasis that the

Summit gave to the benefits of promoting solutions-oriented partnerships between the various stakeholder groups to complement government policies and measures.

The GRI has been delighted that the business community itself has responded positively to the GRI's potential in this context. This is reflected in the fact a growing number of leading corporations (including BASF, BHP Billiton, Canon, General Motors and Royal Dutch/Shell) have become GRI reporters, and in the recognition accorded in such reports as the recent World Business Council on Sustainable Development (WBCSD) publication 'Sustainable Development Reporting : Striking the Balance'.

Together with NGO supporters such as Amnesty International, Consumers International, Transparency International and WWF International, as well as leading accounting and labour groups, the GRI provides a unique voluntary framework for advancing these two elements of the WSSD agenda.

At the level of financial markets, we believe that there is also a strong business case for GRI reporting. In the post-Enron period, there is evidence to suggest that progressively greater attention will be given to the ways in which sustainability reporting can improve corporate governance through improved transparency, closer attention to the definition of non-financial risks, and the identification of new business opportunities. According to several leading accounting firms, such non-financial reporting has the additional benefits of reducing stock price volatility and the cost of capital.

A 'Collaborating Centre' of the UN Environment Programme (UNEP), the GRI enjoys high-level support from individual governments, the EU Commission, the World Bank group and the UN Global Compact. As an independent, not-for-profit multi-stakeholder organisation, however, there is no constitutional provision for coordinated government contact or input. While the GRI is yet to determine where it might seek observer status at the intergovernmental organisation level, we are conscious that we share with governments a common agenda and concern to advance voluntary sustainability reporting.

Against this background, and in the light of the OECD MNE Guidelines, which the GRI's own Guidelines neatly complement, we believe there would be merit in using the OECD as a forum for holding consultations between governments and the GRI on sustainability reporting. This would build on a productive relationship of past contacts with your Secretariat, including GRI presentations to various OECD bodies, including the last two OECD Forums.

Such consultations, which could be informal in nature and held at a rhythm to be agreed, might prove an efficient means of enabling governments to track the progress of the GRI and sustainability reporting, to identify and assess emerging policy issues, and to share thinking about future activities. The OECD's expertise in these areas, and the local presence of representation by the business and labour constituencies, make it a potentially attractive option.

With a view to opening a discussion on this matter, we would be grateful if you could advise Paul Hohnen, GRI Director for Strategic Development (hohnen@globalreporting.org) the name of your contact point for future correspondence and suggest how you would wish to take the exchange forward. To facilitate coordination, we are also copying this letter to OECD permanent representatives.

Yours sincerely,

Ernst Ligteringen,
Chief Executive
Global Reporting Initiative

Letter from OECD Secretary General to Global Reporting Initiative

Mr. Donald Johnston
Secretary-General
OECD
2 rue André-Pascal
75775 Paris Cedex 16

DJJ/2003.62.pn

29 April 2003

Dear Dr. Henderson,

I am writing in response to Mr. Ligteringen's letter of 25 February proposing co-operation between the Global Reporting Initiative and the adhering governments to the OECD Guidelines for Multinational Enterprises.

As you know, OECD governments are committed to actively promote the Guidelines. Work in this area represents a distinctive contribution of the Organisation to the follow-up to the World Summit on Sustainable Development in Johannesburg. The OECD shares the GRI's view that it is important to maximise synergies and develop partnership between the OECD Guidelines and other international instruments and, in light of its mandate, the value of its work and its international recognition, I agree that the Global Reporting Initiative should be such a partner. In this regard, I was pleased that at the Roundtable I convened on 4 April, your representative, Paul Hohnen, viewed the Guidelines as the foremost multilaterally-endorsed benchmark for corporate responsibility. I would encourage the GRI to strengthen its efforts to publicise the Guidelines while, for our part, we would reciprocate through efforts to increase the visibility of the GRI reporting standards.

The last two OECD Roundtables organised in conjunction with the Annual Meetings of the National Contacts Points for the Guidelines have already offered occasions for a dialogue with Global Reporting Initiative representatives. I am pleased that the coming Annual Meeting and Roundtable to be held on 23-25 June 2003 will provide an opportunity to renew the experience and to explore how co-operation can be best pursued and deepened in the future.

I suggest that Global Reporting Initiative contact Pierre Poret, the head of the Division servicing the work on the OECD Guidelines [tel: 33 1 45 24 88 56; pierre.poret@oecd.org], in order to discuss the practical modalities of a meeting between Global Reporting Initiative representatives and the Guidelines institutions in June.

Yours sincerely,

Donald J. Johnston

Dr. Judy Henderson
GRI Board of Directors
Keizersgracht 209
1001 EA Amsterdam
The Netherlands

BACKGROUND -- THE ROLE OF THE NATIONAL CONTACT POINTS IN THE IMPLEMENTATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The institutions that promote and implement the Guidelines are set forth in the OECD Council Decision, a binding declaration subscribed to by all adhering countries. The Council Decision requires each adhering government to set up a National Contact Point. These play a key role of any Guidelines institution in establishing the Guidelines as an effective and vital tool for international business (see Diagram below). The National Contact is responsible for promoting the Guidelines in its national context and contributing to a better understanding of the Guidelines among the national business community and other interested parties.

The National Contact Point:

- Responds to enquiries about the Guidelines;
- Assists interested parties in resolving issues that arise with respect to the application of the Guidelines in "individual instances" through the availability of its "good offices" and, if the parties agree, facilitating access to other consensual and non-adversarial means of resolving the issues between the parties. (Comment: more in keeping with the procedural guidance);
- Gathers information on national experiences with the Guidelines and reports annually to the CIME.

Because of its central role, the National Contact Point's effectiveness is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments. The current publication summarises the reports by the individual National Contact Points and provides an overview of the discussions during the second annual meeting of the National Contact Points held in June 2002.

Figure 1. Institutions Involved in Implementing the Guidelines

