

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE**

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

**REPORT BY THE CHAIR OF THE 11TH ANNUAL MEETING OF THE NATIONAL CONTACT
POINTS**

This Report by the Chair of the 11th Annual Meeting of National Contact Points, held on 27-28 June 2011, has been finalised in light of comments received under written procedure by Friday 26 August 2011. It is now submitted for approval and derestriction by the Investment Committee under written procedure. If no further comments are received by c.o.b. Friday 30 September 2011, the report will be considered derestricted and incorporated in the 2011 edition of the "Annual Report on the OECD Guidelines for Multinational Enterprises."

Submissions from stakeholders at the consultations on 28 June 2011 and a summary of the discussions of the OECD Conference on Corporate Social Responsibility of 29 June 2011 will also be included in this publication.

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I. Overview

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

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

3. The update of the Guidelines was formally launched on 4 May 2010 when the terms of reference² were agreed to by the 42 adhering countries to the Guidelines. The update process concluded on 25 May 2011, when U.S. Secretary of State, Hillary Clinton, joined the Ministers from the OECD and developing economies to celebrate the Organization's 50th anniversary and to adopt the results of this new update of the Guidelines. The intense one-year update process, in which a large number of NCPs participated, involved several stakeholders, partner organizations³ and interested non-OECD countries. Major economies⁴ were invited to become full participants in the update process. A separate recommendation designed to combat illicit trade in minerals was also adopted at the 2011 Ministerial Meeting.⁵

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

5. There has been significant convergence of principles in the corporate responsibility field in this past year. In addition to the successful update of the Guidelines, both the unanimous endorsement by the

¹ The Guidelines are a part of the 1976 OECD Declaration on International Investment and Multinational Enterprises. They have previously been revised in 1979, 1984, 1991 and 2000.

² The terms of reference of the update can be found at <http://www.oecd.org/dataoecd/61/41/45124171.pdf>.

³ Notably the International Labour Organization, the International Finance Corporation, the Office of the Special Representative the UN Secretary-General on Human Rights and Transnational Corporation and other Business Enterprises, the UN Global Compact, the International Organization for Standardization and the Global Reporting Initiative.

⁴ China, India, Indonesia, the Russian Federation, Saudi Arabia and South Africa.

⁵ Reproduced at www.oecd.org/daf/investment/mining. See also section V.a.

United Nations Human Rights Council of a new set of Guiding Principles for Business and Human Rights developed by Professor John Ruggie and the update of the International Finance Corporation's Sustainability Framework, show a new global agenda for corporate responsibility based on the broadly shared view that corporate responsibility is no longer a matter of voluntary goodwill, but at the very least, a duty not to cause harm or actively contribute to economic, environmental and social progress of host economies. This duty exists independently of what governments and/or private stakeholders do. The Guidelines, as the most comprehensive voluntary code of conduct developed by governments in existence today, are uniquely positioned to further this global agenda. The 2011 Update of the Guidelines could not have been timelier.

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

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

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

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

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

I.b Highlights of the 2010-2011 Implementation Period

10. This report reviews activities undertaken by 42 adhering governments to the Guidelines to promote and implement the Guidelines over the June 2010-June 2011 period. It is based on individual NCP reports and other information received during the reporting period. It also incorporates the results of this year's NCP Meeting. The report is divided into four additional sections: Section II – Institutional

Arrangements; Section III – Information and Promotion; Section IV – Specific Instances; and Section V – Weak Governance Zones and Conflict-Affected and High-Risk Areas.

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

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

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

14. The third major development is the sharp rise in the number of specific instances raised. 39⁶ new specific instances were raised, more than double the number of specific instances raised in the 2009-2010 implementation period.⁷ A total of ten Final Statements, in addition to one revised Final Statement, were issued.⁸ With 39 new specific instances raised, the total number of instances raised since the 2000 Review exceeds the 250⁹ mark. Of these, 178 have been accepted for consideration and 156 have been concluded or closed. A majority of new specific instances for which location information was available were raised in non-adhering countries. Additionally, half of concluded specific instances for this reporting period concerned specific instances in non-adhering countries. Furthermore, a majority of the new specific instances continue to relate to employment and industrial relations under Chapter V of the Guidelines. A

⁶ Specific instance counts are based on the information provided in the Annual NCP Reports by 41 of the OECD Guidelines adhering countries.

⁷ In the 2009-2010 implementation period, the number of specific instances raised was 17.

⁸ Ten Final Statements were issued in the 2009-2010 implementation period.

⁹ The number of specific instances raised reflects those numbers reported in Annual NCP Reports. Not all NCPs report specific instances which have not been formally accepted.

growing number involves human rights, as well as environmental issues covered by Chapter VI and bribery issues covered by Chapter VII.¹⁰

15. Finally, strengthened and more frequent cooperation between NCPs stands out as a significant development during the implementation period. NCPs are reporting that this increased cooperation serves as a great capacity-building opportunity while it fosters exchange of information and best practices in both specific instances and procedural matters. For example, *Italy* has commented that the strong cooperation with *UK* NCP on a specific instance helped them clarify the practical application of the leader NCP principle agreed on by NCPs in the 2007-2008 reporting period.¹¹

I.c Future Work

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

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

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

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

20. Prof. Dr. Roel Nieuwenkamp, the Chair of the Working Party responsible for the conduct of the update, provided initial views on the work ahead. With respect to unfinished business from the update process, it has already been agreed that a resource document compiling the descriptions and links to instruments and initiatives of potential relevance to the updated Guidelines will need to be developed.

¹⁰ Prior to the 2011 Update of the Guidelines, Employment and Industrial Relation chapter was numbered IV, Environment chapter was numbered V, and Combating Bribery, Bribe Solicitation and Extortion chapter was numbered VI. These are referred to as such in previous versions of this report.

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

Additionally, further work on the application of the Guidelines to multinational financial institutions would need to be conducted in close cooperation with the relevant parties while taking into account relevant developments and principles.¹² Beyond this, the revision to the Council Decision on the Guidelines [C(2000)96/FINAL] has created an ambitious implementation agenda. Increased efforts would need to be made in promotion and information activities on the Guidelines. Peer learning, either around thematic or voluntary country reviews, would need to be more actively pursued. The proactive agenda, which should remain demand driven and broadly supported by stakeholders, would no doubt require new creative work to assist enterprises and stakeholders better assess the implications of the Guidelines recommendations, particularly on due diligence and supply chains. It would also appear highly desirable to intensify and expand the cooperation with major emerging economies and partner organisations to ensure a level playing field between countries and companies. Last, but not least, new resources would need to be provided to give effect to the updated Guidelines.

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

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

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

II. Innovations in NCP structure and procedures

23. Taking into account the information provided, current NCP structures consist of:¹³

- 20 NCP single government departments;¹⁴
- 8 NCP multiple government departments;¹⁵
- 2 bipartite NCP;¹⁶
- 9 tripartite NCPs (involving governments, business and trade unions);¹⁷
- 1 quadripartite NCP (involving governments, business, trade unions and NGOs);¹⁸
- 1 mixed structure of independent experts and government representatives;¹⁹
- 1 structure of independent experts.²⁰

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

- *Canada* has recently developed a communication protocol with the newly established Office of the Extractive Sector CSR Counsellor to address any potential overlap of activities. In addition, the Indian and Northern Affairs Canada (INAC), an organization with expertise on indigenous peoples issues, has been added to the NCP Committee. Furthermore, Canadian NCP has undertaken capacity-building activities, such as inviting a speaker to present a workshop to the NCP on prevention and conflict resolution in CSR-related disputes. Similarly, Canada attended a meeting with UK, Norway, and Netherlands NCPs to discuss specific instances and best practices.
- *Hungary* has moved its NCP operation to the Ministry for National Economy, the International and EU Affairs Department of Deputy State Secretariat for International and EU Affairs. Further reform is planned in the upcoming implementation year with the goal of creating a more effective NCP for better promotion and implementation of the updated Guidelines.

¹³ Iceland's Annual NCP Reports is outstanding. The information used is based on last year's report.

¹⁴ Argentina, Australia, Austria, Chile, Czech Republic, Egypt, Germany, Greece, Hungary, Ireland, Israel, Italy, Mexico, New Zealand, Peru, Poland, Slovak Republic, Spain, Switzerland and United States.

¹⁵ Brazil, Canada, Iceland, Japan, Korea, Portugal, Turkey and United Kingdom.

¹⁶ Romania and Morocco's NCP is comprised of government and business representatives.

¹⁷ Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Slovenia and Sweden.

¹⁸ Finland.

¹⁹ Norway. Norway recently changed its structure to multi-stakeholder, with a 4 member independent panel of experts and a secretariat belonging administratively to the Ministry of Foreign Affairs.

²⁰ Netherlands. In 2007, the Dutch NCP was changed from an interdepartmental office to a structure consisting of four independent experts, which are advised by four advisors from four ministries.

- *Italy* has enlarged its NCP composition to broaden stakeholder involvement. Among new NCP members are the Association of Italian Banks, Confederation of Italian Chambers of Commerce, various local authorities, some SME Associations, and the Italian National Committee of Consumers. Furthermore, the NCP has developed and implemented a new procedural guide for handling specific instances to make the process more accessible and transparent.
- *Netherlands* is following up on the recommendations which were a result of the recently completed voluntary peer review. For example, as part of enhanced stakeholder engagement, the NCP recently welcomed four large accountancy firms as a new and important stakeholder group in its NCP structure. Another new stakeholder group that was added was company staff councils. See section III.b for further details.
- *New Zealand* has added the Ministry of Consumer Affairs to its Liaison Group. In light of the 2011 Update of the Guidelines, a thorough review of all of the procedural procedures is planned for the next implementation year.
- *Norway* has finalized its NCP reform. The new institutional arrangement was based on national public consultations as well as inspiration from the Dutch and UK NCPs. The new NCP consists of a four member panel of independent experts, appointed in their personal capacity and based on their experience. A new Secretariat of two persons was recruited by the Ministry of Foreign Affairs. The new NCP is in substance independent from the Government.
- *Peru* is planning to create a consultative board to ensure that the NCP functions properly and most effectively.
- *Poland* has updated its specific instance complaint procedures. It is also closely collaborating with the National Centre of Mediators and NGOs to implement a promotional campaign titled “I implement OECD Guidelines. Responsible Business.”
- *Portugal’s* NCP has strengthened the relationship between its two agencies, AICEP and DGAE, deepening the specialization of each. This has resulted in better resource allocation, better promotional strategy and a quality-driven relationship with public and private stakeholders.
- *Slovenia’s* NCP has added a representative from the Ministry of Justice to its inter-governmental working group. The NCP has also proposed the adoption of new internal procedural rules regarding specific instances and the procedures for the recommendations of the inter-governmental working group.
- *Spain* has reported that the Ministry of Foreign Trade has initiated reform of the Spanish NCP in order to adapt it to the updated Guidelines.
- *Sweden’s* NCP collaborates with the Swedish Partnership for Global Responsibility, which aims to promote the Guidelines and the UN Global Compact principles. Of note within this initiative is the work of the Swedish Development Cooperation Agency (Sida). Sida is currently finalizing new directive for its activities related to CSR and development and is basing it on the Guidelines. Sida’s new directive, together with the program of Business for Development, will be the base for its direct collaboration with the business sector. Sida will require alignment with the Guidelines in all engagements with business.
- *United States* conducted a rigorous review of its NCP function, which resulted in institutional changes, an expanded outreach, promotional and pro-active agenda and revised procedures for

handling specific instances, consistent with the 2011 Update of the Guidelines. See Box 1.1 for further information.

Box 1.1. United States NCP Reform

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

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

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

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

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

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

The U.S. NCP has also published an updated procedural guide for handling specific instances.²¹ This modified guide is consistent with the updated Guidelines and with the guiding principles of impartiality, predictability, equitability, and compatibility. It also takes into account most of the consensus recommendations of stakeholders in the ACIEP's report of 16 February 2011.

²¹

The updated procedural guide can be found at <http://www.state.gov/documents/organization/167188.pdf>.

III. Information and Promotion

25. Procedural guidance²² calls for NCPs to undertake promotional activities. During the reporting period, NCPs continued to engage in various activities designed to enhance the value of the Guidelines. This section summarizes the main activities described in the individual NCP reports.

III.a Selected promotional activities

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

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

²²

So far, all NCPs have followed procedural guidance of the Guidelines prior to the 2011 Update. New procedures have been introduced in the 2011 Update. For example, the expanded guidance includes the proactive agenda.

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

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

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

interviews on the 2011 Update were published at the Universidad de Chile School of Business Bulletin and on the website of the General Directorate for International Economic Relations.

- *Egypt* has reached out to the major MNEs operating in Egypt and Egyptian MNEs operating abroad to introduce itself and its mission. This communication included passing along a copy of the Guidelines and asking all enterprises to adhere. Foreign commercial chambers operating in Egypt and the Egyptian Industrial Federation have been asked to do the same.
- *Finland* has published on its website an English version of the compilation of guidelines of various international organizations, best practices and a CSR toolbox for SMEs. In addition, the Ministry of Employment and Economy sponsored a seminar and a fair on CSR hosted by the Finnish Business and Society.
- *Germany* has included an informative section on the Guidelines in the 2010 Annual Report on Foreign Investment Guarantees published by PriceWaterhouseCoopers AG, a leading partner of the federal government in managing these guarantees. The Guidelines are also highlighted in the German Governmental Reports on Human Rights, and, with specific reference to the Risk Awareness Tool, in the Governmental Report on Crisis Prevention. Furthermore, the national CSR Forum, Working Group 4, developed recommendations of strengthening CSR in an international and developmental context, calling on the Government to proactively promote the Guidelines. More specifically, work has begun on a handbook for German SME companies which will be finalized and published in the next reporting period.
- *Greece* participated in many seminars and conferences, such as the annual CSR conference organized by the American-Hellenic Chamber of Commerce. The NCP also completed an information dissemination campaign aimed at the businesses that participated in the Arab-Greek Economic Forum organized by the Arab-Hellenic Chamber of Commerce & Development.
- *Ireland's* NCP used the opportunity provided by the 2011 Update to reinvigorate contact with corporate governance experts in the national employers' federation, Irish Business and Employers Confederation (IBEC), in the Irish Congress of Trade Unions (ICTU), and in the NGO community.
- *Israel's* NCP is now cooperating directly with the Investment Promotion Agency to promote the Guidelines through dissemination of promotional materials. A website, designated specifically to the Guidelines and the NCP, is in its final stages. The NCP also promoted the Guidelines through an information booth, oral presentations or participation in panels at various conferences, most notably, Maala Conference 2010, the 4th "Beyond Business" Conference for Social and Environmental Responsibility of Enterprises, the 18th International Conference of the Israeli Society for Quality and The Israchem Exhibition.
- *Italy's* NCP has organized and/or participated in 18 events in outreach to business community, trade unions, and the interested public, significantly improving its visibility. This evident in a 3 percent increase in the number of website users, a 9 percent increase of its webpage views, and a 5 percent increase in email subscriptions to its quarterly online newsletter. Additionally, in partnership with Istituto Tagliacarne, a second part of the project "Stakeholders information and awareness: the OECD Guidelines and CSR principles" has been launched.
- *Korea's* NCP published a shortened version of the Guidelines in Korean. This publication has been distributed to 3000 MNEs through the Korea Trade-Investment Promotion Agency's domestic and overseas networks.

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

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

III.b Follow up to the Dutch Peer Review

28. The NCPs of Canada, Chile, France, Japan and the UK participated in the voluntary Dutch NCP Peer Review, which was carried out in 2009. A final report was issued in March 2010,²³ containing 28 recommendations relating to: (I) the structure of the NCP; (II) the NCP's promotional activities; and (III) the NCP's handling of specific instances. The Dutch NCP has welcomed these recommendations.

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

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

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

III.c OECD Investment Committee work

32. The last implementation period was characterized by the discussion on the 2011 Update of the Guidelines. The update was formally launched on 4 May 2010 when the terms of reference²⁴ were agreed to by the 42 adhering countries to the Guidelines. The process was concluded on 25 May 2011, when U.S. Secretary of State Hillary Clinton joined Ministers from OECD and developing economies to celebrate the Organization's 50th anniversary and adopt the results of this new update of the Guidelines.

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

²³ The peer review report is available on the Dutch National Contact Point website under "Peer-Review." <http://www.oecdguidelines.nl/get-started/peer-review/>

²⁴ The terms of reference of the update can be found at <http://www.oecd.org/dataoecd/61/41/45124171.pdf>.

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

34. The intense one-year update process, in which a large number of NCPs participated, involved several stakeholders, partner organizations²⁵ and interested non-OECD countries. Major economies²⁶ were invited to become full participants in the update process. Two enlarged consultations with stakeholders were held on the occasion of the 2010 Annual Corporate Responsibility Roundtable on 30 June-1 July 2010 and 13 December 2010. In January 2011, the Danish Institute for Human Rights and the Global Report Initiative (GRI) sponsored at the OECD two expert meetings on human rights and disclosure issues. The update process also greatly benefitted from substantive contributions from the UN Special Representative John Ruggie and his team to ensure consistency with the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.

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

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

III.d Other promotion by the OECD

37. The OECD Deputy Secretary-General (DSG) Richard Boucher participated in the Ministerial Session of the UN Global Compact Leaders Summit 2010, on 23 June 2010 in New York. The DSG delivered remarks regarding the OECD and UN Global Compact partnership emphasising ways in which governments can support and incentivize businesses to incorporate poverty reduction into their business models. He also called for an active participation of the UN Global Compact in the update of the Guidelines.²⁷

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

²⁵ Notably the International Labour Organization, the International Finance Corporation, the Office of the Special Representative the UN Secretary-General on Human Rights and Transnational Corporation and other Business Enterprises, the UN Global Compact, the International Organization for Standardization and the Global Reporting Initiative.

²⁶ China, India, Indonesia, the Russian Federation, Saudi Arabia and South Africa.

²⁷ DSG Boucher's speech is available online at www.oecd.org/daf/investment/guidelines.

- OECD presented on the 2011 Update at the 2010 Amsterdam Global Conference on Sustainability and Transparency on 26-28 May 2010.
- OECD attended the EIB Business View on Human Rights Seminar on 4 June 2010 to represent OECD during the discussions on the NCP mechanism and to provide information on the latest developments on the 2011 Update of the Guidelines.
- On 13 October 2010, at the invitation of the Danish Council for CSR, OECD presented on OECD NCP performance and possible improvements to the Procedural Guidance envisaged for the 2011 Update of the Guidelines.
- On 27 October 2010, OECD presented on the Guidelines at the UNIDO Workshop titled "Social & Environmental responsibility of business: the role of small and medium scale enterprises in advancing the global sustainable development agenda."
- OECD presented at the European CSR Multi-Stakeholder Forum Plenary Meeting at the invitation of the European Commission on 30 November 2010. The topic was the Global Dimension of CSR, including Trade and Development Policies.
- The Investment Secretariat made regular progress reports on the update process to the Committee on Corporate Governance, the Employment and Social Affairs Committee, the Environment Policy Committee, the Working Group on Bribery in International Business Transactions, the Consumer Policy Committee, the Committee on Fiscal Affairs and the Working Party on Export Credits and Credit Guarantees and Participants to the Arrangement on Officially Supported Export Credits.

39. Since March 2006, the OECD Investment Newsletter, published three times a year, has kept the larger investment policy community and other stakeholders informed about ongoing Investment Committee work on the Guidelines. A special focus on the newly updated Guidelines was featured in the May 2011 issue. In addition, the Secretariat answered numerous queries about the Guidelines from the media, universities and other interested parties, and continued to improve the OECD website dedicated to the Guidelines.

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

40. Adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1.1 summarises the links that have been established between the Guidelines and such programmes. In particular, *Egypt* is reporting that in March 2011 the General Authority for Investment and Free Zones was moved to be under direct Cabinet supervision from its previous position under the Ministry of Investment. *Italy* is establishing a closer cooperation with INVITALIA, ICE, SACE and SIMEST. These agencies were invited to a special session held by the NCP Committee and encouraged to take an active role in supporting the dissemination of the Guidelines. They will be providing a promotion strategy to the NCP soon. *Slovenia* has reported that all foreign investors that apply for public tender have to declare that the recipient of the co-financing will abide by the Guidelines.

Table 1.1. The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Austrade websites.
Austria	Export credits	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export Credits	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.
Chile	Investment promotion	The Foreign Investment Committee is the agency which promotes Chile as an attractive destination for foreign investment and international business.
Czech Republic	Investment promotion	There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the Czech Republic. The Czech NCP cooperates closely with Czech Invest.
Denmark	Export credits	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the OECD Guidelines and encourages exporters to act in accordance with the OECD Guidelines.
Egypt	Investment promotion	The General Authority for Investment and Free Zones (GAFI) is the Egyptian investment promotion agency. GAFI was under the Ministry of Investment but in March 2011 it became under the supervision of the Cabinet directly. ENCP maintains a close ties with GAFI. Through GAFI ENCP and the Guidelines brochures are distributed.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export credit guarantees and investment insurance	Finland's Export Credit Agency, Finnvera, calls the attention of guarantee applicants to the Guidelines through its web pages and CSR report.
France	Export credits and investment guarantees	Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines (" <i>avoir pris connaissance des Principes directeurs</i> ").
Germany	Investment guarantees	Companies applying for investment guarantees are referred to the Guidelines directly by the application form. In the application process, they have to confirm awareness of this reference by signature. The reference also provides a link to further information on the Guidelines.

Greece	Investment promotion	The <i>Guidelines</i> are available on the portal www.mnec.gr as well as on the websites of the Ministry of Foreign Affairs (www.agora.gr), the Invest in Greece Agency (www.investingreece.gov.gr), the General Secretariat of Consumers Affairs (http://www.efpolis.gr), the and the Export Credit Insurance Organization (ECIO) (www.oaep.gr).
Hungary	Investment promotion	The site of Investment and Trade Development Agency has links to the Ministry for National Economy, EXIMBANK, MEHIB, and other ministries where important OECD documents on bribery, anti-corruption, and export credits are available. Cross links support the quick search for relevant OECD documents.
Israel	"Invest in Israel" - Investment Promotion Center	The site of Israel's Investment Promotion Centre has a direct link to the Israeli NCP web site where the OECD Guidelines are available electronically. The NCP works in close cooperation with the Investment Promotion Center
Italy	Export credits	<p>The Italian NCP works closely with SACE (the Italian Agency in charge of insuring export credit) and contributes to its activities. SACE published the Guidelines on its website and introduced the acknowledgment declaration of companies on the Guidelines in its procedures.</p> <p>The Italian NCP also involved in its activities ICE (National Institute for the promotion of export. SIMEST (Financial Company for export support), and Invitalia (Inward Investment Agency). These organisations are disseminating the Guidelines among enterprises and publishing them on their websites.</p> <p>Together with the Guidelines they are promoting the risk-awareness tool in conflict areas.</p>
Japan	Trade-investment promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the Ministry of Foreign Affairs (MOFA); Ministry of Health, Labour and Welfare (MHLW); and the Ministry of Economy, Trade and Industry (METI). The Japan External Trade Organization (JETRO) website, the ASEAN-Japan Centre website and the Nippon Export and Investment Insurance (NEXI) website are also linked to the summary, full texts of the Guidelines, introduction of the Japanese NCP activity including its procedures and promotion.
Korea	Trade-investment promotion	OECD Guidelines can be found at the MKE (Ministry of Knowledge Economy) website (www.mke.go.kr). MKE promotes trade and investment.
Lithuania	Investment promotion	"Invest Lithuania" Agency (http://www.businesslithuania.com) operates in the Republic of Lithuania and provides information on the Lithuanian business environment to foreign investors. It has prepared an information package that is passed to all foreign investors considering investing within the territory of Lithuania. The Lithuanian NCP (at the Ministry of Economy) cooperates closely with the "Invest Lithuania" Agency. Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19 th of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy: http://www.ukmin.lt/en/investment/invest-promotion/index.php
Mexico	Investment Promotion	The Mexican NCP is located within the Directorate General for Foreign Investment in the Ministry of Economy, which is responsible for Mexico's participation in the Investment Committee as well as in different international organisations, among other activities. The guidelines can be found on the website. Mexico's investment promotion agency - PROMEXICO - works in close cooperation with this Department.

Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability. Applicants for the PSI programme have to prepare a CSR policy plan based on the OECD Guidelines (http://www.oesorichtlijnen.nl/aan-de-slag/maak-mvo-beleid/).
New Zealand	Export Credit promotion	New Zealand's Export Credit Office (ECO) mentions the OECD MNE Guidelines on its website. The ECO also provides a link to both the OECD Guidelines and the New Zealand NCP's website.
Norway	Guarantee Institute for Export Credits (GIEK)	GIEK has developed its own social responsibility policy which is posted on its website. For more information please see: http://www.giek.no/giek_en/default.asp?menu=610&page=277&cells=0
Peru	Investment Promotion	The Peruvian NCP is located in the Investment Promotion Agency-PROINVERSION, which provides information and guidance services to foreign investors on the Peruvian business environment including information of the OECD Guidelines and the NCP tasks.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIIZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.
Portugal	Exports and Investment Promotion	AICEP – Portugal Global is a Business Development Agency responsible for the promotion of exports, the internationalisation of Portuguese companies, especially SMEs and for inbound foreign investment. The Guidelines are part of the information given to all companies.
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (www.mae.ro) and the Romanian Agency for Foreign Investments (ARIS) (www.arisinvest.ro). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCP's web page include: <ul style="list-style-type: none"> • Policy framework for Investment; • OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Romanian Agency for Foreign Investment edited, among other specific promotional materials, the brochure entitled "Frequently Asked Questions - An Overview", including a separate chapter on Romanian National Contact Point and OECD Guidelines for Multinational Enterprises.
Slovenia	Promotion and awareness of OECD Guidelines	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Slovenian NCP promoted the OECD Guidelines through preparation of speeches. Foreign investors which apply for public tender declare that the recipient of the co-financing will abide by the OECD Guidelines for Multinational Enterprises and the principles laid down in the Declaration on International Investments and Multinational Enterprises.

Slovak Republic	Investment promotion	NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in Slovak language at Ministry's webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both business environment and investment opportunities. The investors entering the Slovak republic who had been awarded with governmental incentives are to commit themselves to keep the Guidelines (part of the awarding decision).
Spain	Investment guarantees	CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on environment, the rules on bribery, the OECD Guidelines for MNE's and the Swedish Partnership for Global Responsibility.
Switzerland	Export credits insurance	The Swiss Export Risk Insurance (SERV) promotes corporate responsibility principles. On its website, it provides information regarding the Guidelines and their implementation mechanism (www.serv-ch.com).
Turkey	FDI	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for investment policy making. The Treasury's website provides information on the Guidelines.
United Kingdom	Export credits and investment insurance	The Export Credits Guarantee Department's (ECGD) website contains links to the website of the UK National Contact Point.
United States	Export and import credits and investment guarantees	The Export-Import Bank of the United States provides information on the Guidelines to applicants for their programmes in support of U.S. business activities abroad.

IV. Specific Instances

IV.a. Recent Trends and Developments

41. 262²⁸ requests to consider specific instances have been raised with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been raised: Argentina (7), Australia (4), Austria (5), Belgium (13), Brazil (22), Canada (11), Chile (6), Czech Republic (5), Denmark (3), Finland (4), France (18),²⁹ Germany (13), Hungary (1), Ireland (2), Israel (2), Italy (6), Japan (4), Korea (7), Luxembourg (3),³⁰ Mexico (3), Netherlands (21), New Zealand (2), Norway (6), Peru (3), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (16), Turkey (3), United Kingdom (24), and United States (32). 39 new specific instances were raised, more than double the number of specific instances raised in the 2009-2010 implementation period. A total of ten Final Statements, in addition to one revised Final Statement, were issued.

²⁸ Specific instance counts are based on the information provided in the Annual NCP Reports by 41 of the OECD Guideline adhering countries. Annual NCP Report is outstanding from Iceland. Not all NCPs report specific instances which have not been formally accepted.

²⁹ France has had a significant increase in the number of specific instances it received in this implementation period. Six new specific instances have been raised in the past year as opposed to none in the previous five years.

³⁰ Prior to this implementation period, Luxembourg had never received requests to consider specific instances.

42. Annex 3 shows that 178 specific instances have been actively taken up and considered to date by NCPs.³¹ 156 of these have been concluded or closed. Most specific instances dealt with Chapter V (Employment and Industrial Relations). A rising number of specific instances also involved violation of human rights. Complaints relating to Chapter VI (Environment) have also increased over the past few years. The only Guidelines chapter that has not been referenced in any specific instance is Chapter IX (Science and Technology).

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

44. In addition to the rise of the submitted specific instances, strengthened and more frequent cooperation between NCPs stands out as a significant development during the reporting period. For example, *Germany* is cooperating with *Switzerland*, *France* and *UK* NCPs. *Switzerland* is reporting close contact with several other NCPs (e.g. *Germany*, *France*, *Canada*, *Netherlands*, *UK*) in order to coordinate activities regarding specific instances raised and to exchange information as well as experiences on the functioning of the NCP. *Italy* has commented that the strong cooperation with *UK* NCP on a specific instance helped them clarify the practical application of the leader NCP principle. *Norway*'s NCP has met and consulted with the Dutch and British NCPs in connection with the establishment of the new structure for the Norwegian NCP. In addition, they maintain contact with Chilean and Canadian NCPs in regard to specific instances. *Peru* is also reporting that it is coordinating with the *U.S.* NCP on a specific instance where the Peruvian NCP leads the proceeding and the *U.S.* NCP plays a supporting and collaborative role. The *UK* NCP hosted an event in December 2010 between NCPs aimed at sharing best practice on the implementation of the Guidelines. Since 1 July 2010, the *UK* NCP has also transferred four complaints to other NCPs.

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

46. Regarding handling specific instances brought against NGOs, some NCPs expressed the opinion that if the organization is a non-commercial actor or not an enterprise, the complaints against it were not in the scope of the Guidelines. This view supported that if the proceedings allowed complaints against various actors it would be hard to preclude complaints against entities that are definitely outside of the

³¹ The number of specific instances actively taken up by NCPs is the number of specific instances listed in Annex 3, adjusted for specific instances that are listed more than once because more than one NCP was involved and more than one NCP reported on the specific instance in the list. Annual NCP Reports is outstanding from Iceland.

scope of the Guidelines, for example, foreign governments. Furthermore, a point was made that non-governmental organizations did not participate in the update process of the Guidelines with the view that this tool would be used against them. Other NCPs thought the type of activities that actors are engaged in are more important than their governance structure. For example, it is possible for a non-governmental organization to be involved in business activities that could be covered by the scope of the Guidelines. An example was given of a large NGO headquartered in one of the adhering countries that wants to have its print work done by a company in a non-adhering country. Some NCPs thought that the Guidelines should apply in such cases. While all NCPs recognized that further discussion on this topic is needed, Norway did receive support for the view that the specific instance that prompted this discussion did not fall within the scope of the Guidelines.

IV.b. Peer Learning

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

48. A “peer learning session” was accordingly held during the 11th NCP Meeting. Caroline Rees, who advised Professor John Ruggie, the UN Special Representative of the United Nations Secretary-General for Business and Human Rights, on his mandate and who has led the research on the Access to Remedy pillar of the “UN Framework,” including the creation of the BASESwiki online resource on non-judicial mechanisms,³² moderated this session. The discussion drew on the revised Procedural Guidance for considering specific instances of the updated Guidelines.

49. The discussion was based on specific instances presented by the Canadian, Peruvian and UK NCPs to illustrate typical challenges encountered by established and new NCPs in handling specific instances. The specific instances discussed were diverse across regions, sectors, final outcomes, and parties involved. The Canadian NCP presented two specific instances involving the mining sector in non-adhering countries in Latin America and Asia, one regarding environmental and community issues and other regarding environmental issues. The UK NCP presented two specific instances, one involving the tobacco sector in Asia regarding labour issues and one involving the consumer sector in Asia regarding labour issues, both in non-adhering countries. The Peruvian NCP presented two specific instances, one involving the telecommunications sector regarding labour issues in Latin America in an adhering country and other involving the mining sector regarding environmental issues in Latin America in an adhering country. Final outcomes for all of these specific instances are as diverse as their sectors and regions; some are still pending, while others have been resolved either with or without an agreement.

50. The discussion proved to be very useful for both peer learning and capacity-building needs of recently established NCPs and seven prospective adherents to the Declaration.³³ The points that were touched upon spanned a range of issues and proved to be a great way to delve deep into problems faced at all stages³⁴ of the specific instance procedure. Among problems discussed were fact-finding, ensuring transparency and impartiality, substantive complaints as a part of collective action problems, field visits,

³² Available at http://baseswiki.org/en/Main_Page.

³³ Columbia, Costa Rica, Russia, Jordan, Serbia, Tunisia and Ukraine were invited to attend the 11th Meeting of the National Contact Points.

³⁴ Three stages of the specific instance procedure are initial assessment, good offices, and conclusion of proceedings.

parent/subsidiary relationships, use of external experts, final statements as tools, resource allocation, institutional arrangements and parallel proceedings. The descriptions below are collective lessons learned and recommendations from the session.

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

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

53. It was suggested that the basis for a field visit should be a readiness for dialogue by both parties and/or agreed terms of reference. On the one hand, these pre-set conditions might have to be in place because undertaking a field visit without them might be dangerous in certain circumstances. For example, safety of persons performing the field visit might be compromised, particularity in non-adhering states where the NCPs might be viewed to have a different role than they actually do. On the other hand, a point was raised that if there is forewarning of the visit, it might alter the information that is presented to the NCP and increase the possibility that the field visit is used for political purposes.

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

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

56. A significant part of the discussion focused on handling parallel proceedings and the use of NCP good offices. Some NCPs require substantiated explanation as to why the specific instance should be suspended in light of parallel proceedings, while others look for a withdrawal from the parallel case in

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

57. The NCPs noted that the clarification in the revised Guidelines on the necessity of a final statement even when no agreement is reached is a very useful contribution of the 2011 Update. NCPs discussed using final statements as a tool to incentivize cooperation. For example, willingness to state in the final statement whether the Guidelines were breached was recognized as one factor that might weigh in the cost/benefit analysis of the parties' decision to engage in the NCP procedure. In addition, actively using a statement to reflect whether there was cooperation could be a way to incentivize the parties to dialogue as there are clear benefits to dialogue even if agreement is not reached in the end. An example was given of a company that ended up adopting the principles outlined in the Guidelines after the specific instance was concluded, as a way to manage risks.

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

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

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

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

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

61. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the “Guidance”) was approved by the Investment Committee and the Development Assistance Committee in December 2010.³⁵ The Guidance has been turned into a formal OECD Council Recommendation adopted at Ministerial Level on 25 May 2011. The Recommendation on the Due Diligence Guidance is addressed to OECD Members and non-Member adherents to the OECD Declaration on International Investment and Multinational Enterprises. Argentina, Brazil, Latvia, Lithuania, Morocco, Peru and Romania have adhered to the Recommendation. While not legally-binding, this Recommendation reflects the common position and political commitment of adhering countries to actively promote the observance of the Guidance by companies operating in and from their territories and support its effective integration into corporate management systems.

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

63. The Guidance was developed with the in-depth engagement from OECD and African countries, industry, civil society, as well as the United Nations. On 29-30 September, OECD countries and members of the ICGLR held a joint meeting on responsible supply chains of minerals from conflict areas.³⁶ High-level officials from OECD and ICGLR countries, as well as Brazil, Malaysia and South Africa attended the meeting along with key industry players and civil society. At that meeting, ICGLR ministers of the minerals sector recommended the adoption of the Guidance by ICGLR Heads of State at the ICGLR Special Summit against the Illegal Exploitation of Natural Resources while industry participants pledged to integrate the Guidance into their own management systems.

64. The eleven Heads of State and Government of the ICGLR did endorse the Guidance in the Lusaka Declaration,³⁷ which was adopted on 15 December 2010 at the ICGLR Special Summit. In the Declaration, the ICGLR Heads of State and Government called on companies sourcing minerals from the

³⁵ The Recommendation of the Council on Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and the full text of the OECD Due Diligence Guidance can be downloaded at www.oecd.org/daf/investment/mining.

³⁶ See the **web** page for the joint meeting, available at: http://www.oecd.org/document/41/0,3746,en_2649_34889_45793897_1_1_1_1,00.html.

³⁷ Leaders signing the Lusaka Declaration are from Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia. For a full text of the Lusaka Declaration, see <http://www.oecd.org/dataoecd/33/18/47143500.pdf>.

Great Lakes Region to comply with the Guidance and further directed the ICGLR Secretariat and the Regional Committee on Natural Resources to integrate the OECD Due Diligence Guidance into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources. Within the framework of the formal cooperation established between the OECD and the ICGLR as a result of a formal Memorandum of Understanding signed between the two Organisations, the standards and processes of the Guidance have already been integrated into the ICGLR Regional Certification Mechanism, thus creating a level-playing field for all economic actors operating in and sourcing minerals from the Region.

65. The United Nations Security Council supported taking forward the due diligence recommendations contained in the final report of the United Nations Group of Experts on the Democratic Republic of the Congo, which endorses and relies on the Guidance.³⁸

66. While the finalisation of Guidance is only just complete, considerable work has already begun to disseminate, promote and ensure its effective implementation by companies. The United Kingdom's Foreign and Commonwealth Office has prominently featured the Guidance on a specialised website for conflict minerals.³⁹ The U.S. Securities and Exchange Commission is due to adopt the implementing regulations of reporting requirements under Dodd-Frank Sec.1502⁴⁰ on conflict minerals towards the end of 2011. In that regard, the U.S. Securities and Exchange Commission has already referenced the Guidance in its draft rules issued in December 2010, and in a wide show of report, stakeholders have called on them to continue to rely on and reference the Guidance in its final rules.⁴¹ The OECD and the ICGLR co-hosted a regional workshop in Goma, eastern Democratic Republic of the Congo ("DRC") on 15 March 2011 to start disseminating and implementing the due diligence recommendations on the ground. The workshop was attended by many stakeholders, including central and local Government agencies of the DRC, the UN, local industry operating on the ground and local civil society organisations.

67. On 5-6 May 2011, the ICGLR, OECD and the UN Group of Experts on the DRC held a joint meeting in Paris on the implementation of the Guidance in Africa's Great Lakes region.⁴² Participants in the ICGLR-OECD-UN GoE joint meeting included OECD, ICGLR and other partner countries, international organisations, industry at every level of the mineral supply chain, international and local civil society organisations, expert consultancy groups and other independent experts. At that meeting, participants recognised the significant progress made through the OECD-hosted working group on due diligence for conflict-free mineral supply chains, and agreed on a concrete actions plan to effectively implement the Guidance, which participants agreed would cultivate constructive corporate engagement in Africa's Great Lakes Region.

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

³⁸ See United Nations Security Council resolution S/RES/1952(2010) adopted on 29 November 2010.

³⁹ See www.fco.gov.uk/conflictminerals.

⁴⁰ See link to the "Dodd-Frank Wall Street Reform and Consumer Protection Act" which contains Title XV, Sec. 1502: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>. Accessed June 2011.

⁴¹ See comments on the SEC website, available at <http://www.sec.gov/comments/s7-40-10/s74010.shtml>.

⁴² See the web page for the joint meeting, available at: http://www.oecd.org/document/11/0,3746,en_2649_34889_47684171_1_1_1_1,00.html.

V.b OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

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

ANNEX 1.
STRUCTURE OF THE NATIONAL CONTACT POINTS

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

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

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	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Chile	<p>The Directorate of International Economic Relations is responsible for coordinating and managing of specific instances.</p> <p>Other departments and agencies participate as required according to the subject of any specific instance submitted.</p>	Ministry of Foreign Affairs, Directorate of International Economic Relations		The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Industry and Trade	<p>Ministry of Labour and Social Affairs Ministry of Finance Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank</p> <p>CzechInvest</p>	The NCP works in co-operation with the social partners. The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment Ministry of Foreign Affairs	Ministry of the Environment Ministry of Economic and Business Affairs	
Egypt	Single Department	Ministry of Investment	<p>Ministry of Foreign Affairs Ministry of Trade and Industry Ministry of Administrative Ministry of Finance Ministry of Labour Egyptian Labour Trade Union Ministry of Environmental Affairs</p>	

	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 Export Agency Ministry of Foreign Affairs Ministry of Justice Enterprise Estonia Estonian Employers Confederation Confederation of Estonian Trade Unions Estonian Chamber of Commerce and Industry	The NCP continues in co-operation with the business, trade unions and other NGO representatives
Finland	Quadri-partite with several ministries and civil society partners, as business and labour organisations, NGO's	Ministry of Employment and the Economy	Ministry of Foreign Affairs Ministry of Social Affairs and Health Ministry of Environment The Prime Minister's Office The Confederation of Finnish Industries (EK) The Central Organization of Finnish Trade Unions (SAK) The Finnish Section of the International Chamber of Commerce (ICC) FinnWatch The Finnish Confederation of Professionals (STTK) Akava – Confederation of Unions for Professional and Managerial Staff Federation of Finnish Enterprises The Finnish Consumers' Association WWF Finland The Evangelical Lutheran Church of Finland Tapiola Group PwC Ltd., Finland Finnish Business & Society	The Finnish Committee on CSR (set on 16 October 2008) established by the Government Decree (591/2008) on 9 September 2008 operates under the auspices of the Ministry of Employment and the Economy, and the Committee replaces the MONIKA Committee (established by Government Decree 335/2001). The Committee on CSR focuses on the issues of CSR and on the promotion of the guidelines of the OECD and of the other international organisations. The Committee on CSR had 3 meetings over the review period.

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment	The Department of Communications, Energy and Natural Resources Departments of Foreign Affairs, Finance, Justice and Law Reform Department of the Environment, Heritage and Local Government Office of the State Solicitor. IDA- Ireland, Enterprise Ireland	The NCP also works in close cooperation with the NGO Community and with the main employers and business representative organisations.
Israel	Single Department	Ministry of Industry, Trade and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee is composed of representatives from those ministries mentioned in the previous column. A Steering Group has been established, comprising of representatives from a wide variety of stakeholders from the civil society, as well as business and employee organisations. The Steering Group objective is to create a detailed recommendation for NCP's Communication Plan, with the aim of enhancing the promotion and dissemination of the Guidelines. The bodies involved in the Steering Group are expected to also actively assist the NCP in its outreach efforts.
Italy	Single Department	General Directorate for Industrial Policy and Competitiveness, Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Labour, Welfare and Health Ministry of Agriculture and Forest Policy Department of International Trade (Ministry of Economic Development)	The NCP works in close collaboration with representatives of social organisations. The NCP Committee includes members of the trade unions and business associations. Please note that regarding its structure, after the Ministerial Decree of March the 18th 2011, the NCP Committee includes representatives of the Permanent Regions' Conference, the Italian Banks Association (ABI), the National Confederation of Crafts and Small and Medium-Sized Enterprises (CNA) and (Confapi), the professional association of the Italian Craft Industry (Confartigianato) and the Italian association of Chambers of Commerce, Industry, Handcraft and Agriculture (Unioncamere) .

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	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 (MOFA) Ministry of Health, Labour and Welfare (MHLW) Ministry of Economy, Trade and Industry (METI)		Since 2002 the Japanese NCP has been organised as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental office, with several ministries	Foreign Investment Subcommittee, Ministry of Knowledge Economy	Ministry of Strategy and Finance Ministry of Foreign Affairs and Trade Ministry of Environment Ministry of Labour, etc	
Latvia	The OECD Consultative Board - Interministerial body including representatives of business & labour organisations	Economic Policy Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Employer's Confederation of Latvia Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Mexico	Single Department	Ministry of Economy	PROMEXICO Ministry of Labour	The NCP works in close co-operation with other concerned departments within the government on an "as requested basis depending on the nature of the specific project.
Morocco	Bipartite	Moroccan Investment and Development Agency	Agency Moroccan Development Investment (AMDI) Ministry of Economic Affairs and General (maeg) General Confederation of Enterprises in Morocco (CGEM)	
Netherlands	Independent Board	Ministry of Economic Affairs, Agriculture and Innovation (NCP Secretariat)	Ministry of Social Affairs and Employment Ministry of Infrastructure and Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders. The board consists of four persons including a chairman with each a background in one of the various stake holding groups in society.
New Zealand	Single Department	Ministry of Economic Development	Department of Labour Ministry of Consumer Affairs Ministry for the Environment Ministry of Foreign Affairs and Trade Ministry of Justice New Zealand Trade and Enterprise	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Section for Economic and Commercial Affairs Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Trade and Commerce Norwegian Confederation of Trade Unions Confederation of Norwegian Enterprise	A process of re-organising and strengthening the NCP is currently taking place. The re-organized NCP is expected to be launched by the summer /fall of 2010. For further information concerning the re-organization, please see under A – Institutional arrangements, in Norway's Annual report.

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	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Peru	Single Department	Private Investment Promotion Agency of Peru - PROINVERSION		Regarding the organization of the Peruvian NCP, on July 1st 2009, the Board of Directors of PROINVERSION approved the following structure for the NCP: i) The Board of Directors of PROINVERSION would act as the top decision level ii) The Executive Office would act as the Secretariat through the Investment Facilitation and Promotion Division
Poland	Single Department	Polish Information and Foreign Investment Agency (PAIIZ)		The Polish Information and Foreign Investment Agency (PAIIZ) is supervised by the Ministry of the Economy.
Portugal	Bipartite Structure	AICEP - Ministry of Economy and Innovation DGAE - Ministry of Economy and Innovation	Ministry of Foreign Affairs Ministry of Finance Ministry of Justice IAPMEI	

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

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	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Spain	Single Department	Secretariat of State for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment and Rural and Marine Affairs Ministry of Justice Ministry of Health and Social Policy Ministry of Labour and Immigration	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	International Trade Policy Department, Ministry for Foreign Affairs	Ministry for Foreign Affairs Ministry of the Environment Ministry of Employment Ministry of Enterprise, Energy and Communications	The Ministry for Foreign Affairs, International Trade Policy Department, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	State Secretariat for Economic Affairs (SECO), Ministry of Economic Affairs	Ministry of Foreign Affairs, Ministry of Finance	The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets at least once a year and is provided with essential information as required. Three supplementary meetings were organized in 2010 and 2011 in order to consult stakeholders regarding the update of the OECD Guidelines.
Turkey	Multi government departments, includes three governmental bodies.	General Directorate of Foreign Investment, Under secretariat of Treasury	Ministry of Foreign Affairs Ministry of Justice	Depending on the issue under debate, the consultation and fact finding processes are extended to other governmental offices. Also an Advisory Committee including academicians, NGOs, representatives from trade unions and business associations helps the NCP in its activities.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
United Kingdom	Two Departments	Department for Business, Innovation and Skills(BIS) and Department for International Development (DFID)	Department for Work and Pensions (DWP), Export Credits Guarantee Department (ECGD), Foreign and Commonwealth Office (FCO)	A Steering Board oversees work of the NCP. The Board includes four external members representing UK businesses, trades unions and NGOs. Other Government Departments and agencies with an interest in the OECD Guidelines are also represented. The Steering Board provides the UK NCP with strategic guidance, but does not become involved in individual specific instances, except to review any allegations of procedural failure. On a day to day level, the NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.
United States	Single Department	Office of the Assistant Secretary, Bureau of Economic, Energy and Business Affairs (EEB), United States Department of State	U.S. State Department Office of the Legal Advisor, Bureau of Democracy, Human Rights, and Labor, Bureau of Oceans, Environment and Science, regional country desks and officers at U.S. embassies and consulates; U.S. Departments of Commerce, Labor, and Treasury; the Office of the United States Trade Representative; the Environmental Protection Agency; and other agencies as required, including Departments of Agriculture and Justice, and the U.S. Consumer Product Safety Commission	The U.S. NCP chairs regular and ad hoc interagency meetings to discuss issues under the Guidelines, including specific instances, and queries other agencies as needed. Business, labour and civil society organisations are consulted via the Advisory Council on International Economic Policy, or individually on an <i>ad hoc</i> basis.

ANNEX 2.
CONTACT DETAILS FOR NATIONAL CONTACT POINTS

Allemagne - Germany

Federal Ministry of Economics and Technology (BMWi)– Auslandsinvestitionen VC3 Scharnhorststrasse 34-37 D-10115 Berlin	Tel: (49-30) 2014 75 21 Fax: (49-30) 2014 50 5378 Email: buero-vc3@bmwi.bund.de Web: www.bmwi.de/go/nationale-kontaktstelle
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Argentine - Argentina

Minister María Margarita Ahumada National Contact Point of Argentina Director of the OECD Co-ordination Unit	Tel: (54-11)4819 7602 /8124 7607 Fax: (54-11) 4819 7566 Email: oejde@mrecic.gov.ar mma@mrecic.gov.ar hjg@mrecic.gov.ar
Ambassador. Hugo Javier Gobbi Director of the Directorate of Special Economic Issues National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship Esmeralda 1212, 9th floor Buenos Aires, Argentina	Web: www.cancilleria.gov.ar/pnc

Australie - Australia

Australian National Contact Point for OECD Guidelines on MNE's Foreign Investment Review Board c/- The Treasury Canberra ACT 2600	Tel: (61-2) 6263 3763 Fax: (61-2) 6263 2940 Email: ancp@treasury.gov.au Web: www.ausncp.gov.au
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Autriche - Austria

Director Export and Investment Policy Division Federal Ministry of Economy, Family and Youth Abteilung C2/5 Stubenring 1 1011 Vienna	Tel: (43-1) 711 00 5180 or 5792 Fax: (43-1) 71100 15101 Email: POST@C25.bmwfi.gv.at Web: www.oecd-leitsaetze.at
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Belgique - Belgium

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Potentiel Economique
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Tel: (32-2) 277 72 82
Fax: (32-2) 277 53 06
Email: colette.vanstraelen@economie.fgov.be
Web: www.ocde-principesdirecteurs.fgov.be
www.oeso-richtlijnen.fgov.be
www.oecd-guidelines.fgov.be

Brésil - Brazil

Brazilian National Contact Point Coordinator
Secretariat for International Affairs
Ministry of Finance
Esplanada dos Ministérios, Bloco P, sala 224
70079-900 Brasília – Distrito Federal Brazil

Tel: (+5561) 3412 1910
Fax: (+5561) 3412 1722
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isabela.andrade@fazenda.gov.br
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Canada

Canada's National Contact Point for the OECD Guidelines
for Multinational Enterprises. (BTS)
Foreign Affairs and International Trade Canada
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Ottawa, Ontario K1A 0G2

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Chili - Chile

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Ministerio de Relaciones Exteriores de Chile
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Corée - Korea

Ministry of Knowledge Economy
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Danemark - Denmark

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www.comercio.es/comercio/bienvenido/Inversiones+Exteriores/Punto+Nacional+de+Contacto+de+las+Lineas+Directrices/pagEspnc.htm

Estonie - Estonia

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Etats-Unis - United States

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Grèce - Greece

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Web: www.mnec.gr/el/ministry/static_content/Dieuthinsi_diethnwn_oikonomikwn_organismwn/02_Link_Tmhmatos_Gama_Odhgies.html

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Ministry for National Economy
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Islande - Iceland

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Israël - Israel

Trade Policy & International Agreements Division
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Italie - Italy

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Japon - Japan

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www.oecd.emb-japan.go.jp/kiso/4_1.htm

International Affairs Division
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Col. Florida, CP 01030		mcastillot@economia.gob.mx
México DF, México	Web:	http://dgie.economia.gob.mx/dgaai/dgaaiing.htm

Norvège - Norway

Ministry of Foreign Affairs	Tel:	(47) 2224 3377
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République Slovaque - Slovak Republic

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République Tchèque - Czech Republic

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Roumanie - Romania

Romanian Centre for Trade and Foreign Investment
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Tel: 40 (021) 318 50 50
 Fax: 40 (021) 311 14 91
 Email: office@traderom.ro
 Web: www.arisinvest.ro/arisinvest/SiteWritter?sectiune=PNC

Royaume-Uni - United Kingdom

UK National Contact Point
 Department for Business, Innovation and Skills (BIS)
 1-19 Victoria Street
 London SW1H 0ET

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 Web: www.bis.gov.uk/nationalcontactpoint

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Suède - Sweden

Swedish Partnership for Global Responsibility
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Suisse - Switzerland

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Commission européenne – European Commission*

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* The European Commission is not formally a “National Contact Point”. However, it is committed to the success of the Guidelines.

La Commission européenne n'est pas formellement un “Point de contact national”. Elle souhaite néanmoins la réussite des Principes directeurs.

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

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

Specific Instances Considered by National Contact Points to Date

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The NCP received a request of non-observance of Guidelines recommendations on bribery and taxation by a Swedish multinational enterprise.	Nov 2007	Argentina	VI. Combating Bribery X. Taxation	Concluded	No	The specific instance concluded on September 26, 2008, due to an alleged breaching in the non-disclosure agreement. On May 20, 2009, a new presentation was made by CIPCE based on alleged new elements considered by them to be in relation to the specific instance. The ANCP attempted to make the enterprise reconsider its position, but the latter was not willing to do so, arguing that it had lost confidence in the NGO's intentions. In conclusion, the specific instance finalized on the 26 of September, 2008.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The NCP received a non-observance of labour relations and bribery by a French multinational enterprise.	Nov 2007	Argentina	II. General Policies IV. Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	The outcomes were conveyed to the public through a paid announcement published in two broadsheet newspapers of nation-wide circulation. It is hereby stated, for informative purposes, that at the beginning of the instance a parallel judicial process regarding the conduct of an official that had been linked to the French multinational enterprise already existed, but this situation did not hinder the development of the instance and its adequate conclusion, which was published in the main journals of Argentina.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	The ANCP received a request from The Institute for Participation and Development of Argentina and Foundation Friend of the Earth of Argentina regarding an alleged non-observance of the OECD Guidelines by a Dutch multinational enterprise.	May 28 2008	Argentina	II. General Policies III. Disclosure V. Environment	Ongoing	No	The complaint was presented to the Argentinean and the Dutch National Contact Points by FOCO/INPADE and Friends of the Earth. The Argentinean National Contact Point (ANCP) notified the enterprise in due time. On September 9 th , 2008, formal admissibility of the complaint was declared. The ANCP held separate meetings with both parties. From the beginning, the enterprise did not accept the Argentinean National Contact Point's good offices, arguing that doing so could affect its position in the Argentinean Federal Courts, due to the existence of parallel proceedings of judicial nature on the same matters. The enterprise requested the ANCP to put on hold the proceedings until the resolution of the ongoing judicial causes. Considering the situation, the Dutch National Contact Point suggested that the parties could try to hold a dialogue on the issues that were not covered by the judicial causes, tackling some issues of 'supra legal' nature.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina (contd)	The ANCP received a request from The Institute for Participation and Development of Argentina and Foundation Friend of the Earth of Argentina regarding an alleged non-observance of the OECD Guidelines by a Dutch multinational enterprise. (Contd)						<i>(Continued from previous page)</i> Regarding this initiative, shared by the ANCP, the parties did not reach an agreement on the scope and content of a possible dialogue. The complainants insisted on giving priority to the discussion of the matters included in the complaint as well as any other topic that could possibly arise over the course of this dialogue, even though they were not included in its formal presentation. The enterprise, in turn, expressed again the reason of the existence of parallel proceedings not to accept informal conversations, informing that the company had already been carrying out social development activities in the neighborhood close to the refinery, to help its residents. For the time being, in view of the deep differences between the parties, both NCPs (the Argentinean and the Dutch National Contact Points) decided that waiting for the decision of the courts is now the best option.
Argentina	The NCP received a non-observance of General Policies and bribery by a German multinational enterprise.	March 2011	Argentina	II – General Policies VI – Combating Bribery	Ongoing	No	

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Australia (The Australian NCP assumed carriage following an agreement with the UK NCP in June 2005)	GSL (Australia) Pty Ltd – an Australian incorporated wholly-owned subsidiary of a UK controlled multinational – Global Solutions Limited.	June 2005	Australia	II. General Policies VII. Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at www.ausnnp.gov.au .
Australia	Australia and New Zealand Banking Group Ltd (ANZ).	August 2006	Papua New Guinea	II. General Policies V. Environment	Concluded	Yes	The NCP concluded that there was no specific instance to answer and issued an official statement which is available on the website at www.ausnnp.gov.au .
Australia	BHP Billiton - resettlement and compensation of the occupants of the land.	July 2007	Colombia	II. General Policies	Concluded	Yes	There was agreement by all parties that the outcome for the community in question provides a viable resettlement program to be achieved. Negotiations for possible resettlement of other communities are ongoing. The statement issued is available on the website at www.ausnnp.gov.au .

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Australia	An Australian company operating in New Zealand - employment relations	Sept 2009	New Zealand	Various	Concluded	Yes	An NZ Trade Union has via its Australian related trade union referred a NZ employment issue to the ANCP. The issue concerns employment of contractors as opposed to employees in New Zealand by an Australian company which is part German owned. NZNCP also received the same complaint and managed this specific issue in concert with the Australian and German NCP's
Australia	Environmental issues – Australian/UK dual listed company operating in Mozambique	October 2010	Mozambique	Various	Suspended	No	The UK NCP is managing this specific instance as the operating division of the dual listed company responsible for the Mozambique operations is headquartered in the UK. Specific instance suspended with other avenues of resolution to complaint are explored.
Australia	Employment and competition issues –Australian Trade union	October 2010	Australia	Various	Ongoing	No	Final consultation with parties being undertaken
Austria	Mining activities.	Nov 2004	Democratic Republic of Congo	Various	Concluded	Yes	No consensus reached.
Austria	Textile industry.	Mar 2006	Sri Lanka	IV. Employment and Industrial relations	Concluded	Yes	No consensus reached.
Austria	Pharmaceutics.	Feb 2008	Austria	IV. Employment and Industrial Relations	Concluded	Yes	Consensus reached.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium.	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.

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

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	GP Garments.	June 2005	Sri Lanka	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Press release in 2007.
Belgium	InBev.	July 2006	Montenegro	I. Concepts and Principles IV. Employment and Industrial Relations		n.a	Complaint withdrawn by trade union.
Belgium	Pharmaceutical company.	January 2008	Belgium	II. General Policies III. Disclosure VI. Combating Bribery VII. Consumer Interests IX. Competition	Concluded	Yes	Press release in 2008. No further examination.
Belgium	DEME	March 2009	India	V. Environment	Concluded	Yes	Press release in 2011
Belgium	BRINK'S	December 2010	Belgium	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	Press release in 2011
Brazil	Workers' representation in labour unions.	26 Sept 2003	Brazil	IV. Employment and Industrial Relations, article 1	Concluded	Yes	Complaint settled.
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	V. Environment	Ongoing	No	Negotiations in dead-lock.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Brazil	Environment and workers' health issues.	8 May 2006	Brazil	V. Environment, articles 1 and 3	Concluded	Yes	After a long mediation, several meetings and contacts held with the opposing parties, on March 25 th 2008, the Brazilian NCP decided to close the complaint held against the multinational enterprise Shell through a comprehensive final Report in Portuguese.
Brazil	Dismissal of workers.	26 Sept 2006	Brazil	IV. Employment and Industrial Relations, article 6	Concluded	Yes	
Brazil	Refusal to negotiate with labour union.	6 March, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 02 (a, b, c), 03 and 08	Ongoing	No	List of questions answered by the enterprise. Awaiting manifestation from the complaining labour union.
Brazil	Dismissal of workers.	7 March, 2007	Brazil	II. General Policies, article 02 IV. Employment and Industrial Relations, articles 1(a), 2(a), 4(a), 7 and 8	Ongoing	No	Termination of proceedings awaiting judiciary decision.
Brazil	Refusal to negotiate with labour union.	19 April, 2007	Brazil	IV. Employment and Industrial Relations, articles 01 (a), 01 (d), 02 (a), 02 (b), 02 (c), 03, 04 (a), 04 (b) and 06.	Ongoing	No	
Brazil	Dismissal of labour union representative without cause.	April, 2007	Paraguay	II. General Policies IV. Employment	Ongoing	No	List of questions sent to the labour union.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Brazil	Lack of negotiations for work agreement.	July, 2007	Brazil	IV. Employment and Industrial Relations	Ongoing	No	List of questions sent to the parties.
Brazil	Induction of conduct of employees during a decided bank strike	September, 2009	Brazil	IV Employment and Industrial Relations, articles 7 and 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Use of legal loopholes to prevent the presence of union leaders at the bank.	September, 2009	Brazil	I. Concepts and Principles, article 7 and IV. Employment and Industrial Relations, article 8	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Brazil	Avoidance of dialogue between the workers union and the company in the case of a dismissal of an employee.	April, 2010	Brazil	IV. Employment and Industrial Relations	Ongoing	No	Under analysis by the Interministerial Group of the Brazilian NPC.
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [www.ncp-pcn.gc.ca/annual_2002-en.asp]. The Swiss company was kept informed of developments.
Canada	Follow-up to allegations made in UN Experts Report on Democratic Republic of Congo.	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country.	Nov 2002	Myanmar	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.
Canada	Complaint from a coalition of NGOs concerning Canadian business activity in a non-adhering country.	May 2005	Ecuador	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	Yes	Following extensive consultation and arrangements for setting up the dialogue, the NGOs withdrew their complaint in January 2005 in disagreement over the set terms of reference for the meeting.
Canada	Submission from a coalition of four community organizations relating to a mine operated by a Canadian-based mining company	December 2009	Guatemala	II. General Policies	Closed	Yes	After an initial assessment the NCP offered its good offices to facilitate dialogue between the two sides. The company accepted the offer and was willing to participate in facilitated dialogue. However, the notifiers were not willing to participate. The NCP issued a final statement in May, 2011 and included it in the annual report..
Canada	Submission from a coalition of local NGOs regarding environmental concerns in the planning process of a mine being developed by a Canadian-based company	March 2010	Mongolia	II. General Policies V. Environment	Closed	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response. After having received the response and numerous additional submissions from both parties, the NCP concluded its initial assessment and informed the parties that the issues raised did not merit further examination. A summary of the initial assessment was posted on the NCP website in May 2011 and included in the annual report.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada	Submission from community NGOs and a Canadian NGO regarding human rights and environmental concerns at a mine operated by a Canadian company.	March 2011	Papua New Guinea	II. General Policies III. Disclosure V. Environment	Open	n.a.	After receiving the submission the NCP notified the MNE and asked them for an initial response. At the time of writing the reply has not yet been received.
Canada Switzerland	A submission was received by the Canadian NCP from two Canadian NGOs regarding a Canadian company with a minority interest in another company in Africa. The Swiss NCP received the same submission from several European NGOs in relation to a Swiss company with the majority interest in the same African company.	April 2011	Zambia	X. Taxation	Open	n.a.	The Canadian NCP and the Swiss NCP have been in contact and agreed that the Swiss NCP would have the lead in the treatment of this matter. The Canadian NCP has analyzed the material received from the parties and provided the Swiss NCP with its views.
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	Oct 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Chile	La Centrale Unitaire de Travailleurs du Chili (CUTCH) dans le cas d'Unilever.	June 2005	Chile	IV. Employment and Industrial Relations V. Environment	Concluded November 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Chile	ISS Facility Services S.A..	April 2007	Denmark	IV. Employment and Industrial Relations	Closed	No	
Chile	Banque du Travail du Perou.	April 2007	Peru	IV. Employment and Industrial Relations	Closed	No	
Chile	Entreprise Zaldivar, subsidiary of the Canadian firm Barrick Gold.	2007	Canada	IV. Employment and Industrial Relations	Closed	No	
Chile	Marine Harvest.	April 2009	Norway	IV. Employment and Industrial Relations V. Environment		No	The NCP is waiting for the formal and written presentation of ONG ECOCEANOS.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices.	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Jan 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Feb 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004.
Denmark	Trade union representation in Danish owned enterprise in Malaysia.	Feb 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America.	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established.
Denmark	Several questions in relation to logging and trading of wood by a Danish enterprise in Cameroon, Liberia and Burma.	Mar 2006	Cameroon, Liberia and Burma	Several chapters (e. g. II, IV, V and IX)	Concluded	Yes	Specific instance initially assessed, specific instance raised by NGO (Nepenthes).
Finland	Finnvera plc/Botnia SA paper mill project in Uruguay.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP concluded on 8 Nov 2006 that the request for a specific instance did not merit further examination. The nature of Finnvera Oy's special financing role and the company's position as a provider of state export guarantees (ECA) was considered.
Finland	Botnia SA paper mill project in Uruguay / Botnia SA/Metsa-Botnia Oy.	Dec 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Combating Bribery	Concluded	Yes	Finland's NCP considered on 21 Dec 2006 that Botnia SA/Metsa-Botnia Oy had not violated the OECD Guidelines in the pulp mill project in Uruguay.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country.	Jan 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm .
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003, see www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm .
France	Marks and Spencer's announcement of closure of its stores in France.	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	Feb 2003	France	V. Environment III. Disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	Feb 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	Accusation of non-observance of the Guidelines in the areas of environment, “contractual” and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	Oct 2003	Turkey, Azerbaijan and Georgia	II. General Policies	Ongoing	n.a.	In consultation with parties.
France	DRC/SDV Transami – Report by the expert Panel of the United Nations. Violation of the Guidelines by this transport company in the Congo, named in the third report as not having responded to the Panel’s requests for information.	Oct 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Concluded	No	
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	Nov 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn010405.htm .
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	Feb 2005	France	IV. Employment and Industrial Relations	Ongoing		
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise.	August 2010	U.S. Colombia	Chap IV	Ongoing	n.a.	

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	The NCP received a request of non-observance of Guidelines recommendations on employment and general policies by a French enterprise.	October 2010	Ouzbekistan	Chap IV Chap II	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise.	November 2010	Benin Canada	Chap IV	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment, environment, human rights by a French multinational enterprise.	December 2010	Cameroun	Chap II Chap IV Chap V	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise	February 2011	U.S.	Chap IV	Ongoing	n.a.	
France	The NCP received a request of non-observance of Guidelines recommendations on employment by a French multinational enterprise	March 2011	France	Chap IV	Ongoing	n.a.	
Germany	Labour conditions in a manufacturing supplier of Adidas-Salomon.	Sept 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Although the parties could not agree on all facts of the particular instance, they agreed to conclude the case with the resolve to continue dialogue and without further recommendations by the NCP. See www.bmwi.de/go/oecd-nks .

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The Complainants alleged, <i>inter alia</i> , breach of the principle of <i>bona fide</i> negotiations. Parties agreed on an amicable settlement including withdrawal of court proceedings. NCP formulated expectation that dialogue is continued. See www.bmwi.de/go/oecd-nks . http://www.bmwi.de/go/oecd-nks .
Germany	Child labour in supply chain.	Oct 2004	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Based on a formal declaration by the company to more actively combat child labour the NCP closed the instance, announcing to monitor these efforts. The company since then has set up a diversified ChildCareProgram. See www.bmwi.de/go/oecd-nks .
Germany	Adjustment of a companies' policy (production of cars) to considerations of climate change.	May 2007	Various Germany	V. Environment	Concluded	n.a.	The specific instance was rejected due to a lack of possible violation of the <i>Guidelines</i> , the company, <i>inter alia</i> , acting in accordance with extensive national laws. http://www.bmwi.de/go/oecd-nks .
Germany	Alleged breaches of anti-corruption Guidelines in the context of supply transactions within the framework of the UN Oil for Food Programme.	June 2007	Iraq	VI. Combating Bribery	Concluded	n.a.	The initial assessment found that the inquiry referred solely to non-recurring supply transactions and that, in the absence of an investment nexus or supply chain responsibility, the <i>Guidelines</i> did not apply. In addition, the NCP drew the attention to pending criminal proceedings, http://www.bmwi.de/go/oecd-nks .

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

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Ireland	Allegations of non compliance with environmental, health and safety grounds. Allegations of failure to comply with human rights provisions.	August 2008	Ireland	V. Environment II. General Policies	Concluded	Yes	As the Dutch NCP also dealt with this, with Ireland as lead, a joint final statement by the Irish and Dutch NCPs was published on 30 July 2010. (The Norwegian Canadian and U.S.NCPs are kept informed of developments.) The NCPs concluded that: the given the positions of both parties in relation to the location of the gas processing plant, a mediatory attempt on the basis of this main demand would not yield any results; and that since 2005, the consortium had improved its practices from the earlier stages in the project and shown willingness to address health and safety concerns.
Israel	UN Expert Panel Report – Democratic Republic of Congo.	2003	Democratic Republic of Congo	Not specified in Report	Concluded	No	Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from DRC.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Israel	Allegation of non compliance of a U.S. company operating in Israel, in collaboration with Israeli companies, with regard to a large project in the energy sector	May 2010	Israel	V. Environment	Concluded	n.a.	During the initial assessment by the NCP, there was a change in circumstances, following which the complaint was no longer relevant. Nevertheless, the NCP provided the complainants with access to an official source in order for them to gain the specific information that they were seeking from the alleged non compliant company. The case was closed with the complainants' consent.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Italy (Accusation of non-observance of Guidelines recommendations on human and labour rights, environment.	2003	Turkey, Azerbaijan Georgia	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	yes	In 2011 a revised final statement by the UK NCP closed this case, that involved companies from different Countries including Italy and UK. In compliance with the “ <i>leader NCP</i> ” principle, established by the IC and provided for in the 2011 updated Guidelines, the case had been completely managed by the UK NCP (see below, UK BTC pipeline case) and the Italian NCP adhered to its decisions. The UK NCP, in 2007, issued its final statement, that, afterwards underwent a revision for procedural reasons. As to some general questions raised, during the revision, before the Italian NCP by the Italian complainant, the UK NCP stated that there were no room for addressing them, as they were unrelated do the revision. The Italian NCP notified the parties of the closure of the case.
Italy	Accusation of non-observance of Guidelines recommendations on human and labour rights.	2005	China	IV Employment and Industrial Relations	Concluded	n.a	Following an enquiry by the Italian NCP, there was no connection between the accused firm and an Italian firm.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights and competition.	2007	Italy	IV Employment and Industrial Relations IX. Competition	Concluded	n.a.	The instance was concluded with an agreement with involved company.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Italy	Accusation of non-observance of Guidelines recommendations on labour rights.	2007	Italy, India	IV. Employment and Industrial Relations	Concluded	n.a.	The multiparty instance was closed thanks to a successful mediation process with the Indian government led by a former representative of the Government of the other NCP involved.
Italy	Accusation of non-observance of Guidelines recommendations on human rights, environment and contribution to host country's progress.	2007	India	II. General Policies V. Environment	Concluded	n.a.	The initial assessment led to the rejection of the instance. There was no involvement of the Italian firm in the project referring to which the alleged violations were made.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company.	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Philippines subsidiary of a Japanese company.	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Initial assessment was made and the Japanese NCP is in consultation with the parties concerned. There is a parallel legal proceeding.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Japanese subsidiary of a Swiss-owned multinational company.	May 2006	Japan	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	After the initial assessment was made, the Japanese NCP held consultations with the parties concerned including the Swiss NCP. There is a parallel legal proceeding.
Korea (consulting with U.S. NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector.	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.

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Korea (consulting with Switzerland)	A Swiss-owned multinational enterprise's labour relations.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. The Swiss NCP issued an intermediate press statement: http://www.seco.admin.ch/news/00197/index.html?lang=en .
Korea	Korean company's business relations in Malaysia's wire rope manufacturing sector.	2003	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	Korea's NCP is engaged in Guidelines promotion and Specific Instances implementation in accordance with the rule for Korea's NCP, which was established in May 2001.
Korea	Companies from guidelines adhering countries that are present in Korea.	2007	Korea	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	
Korea	Korean companies in non-adhering countries.	2007	Philippines	I. Concepts and Principles III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Ongoing		Parallel legal proceeding is under way in non-adhering host country.
Korea	Two Korean companies operating in a non-adhering country.	2008	Myanmar	II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment	Concluded	No	After conducting an initial assessment, the NCP determined that additional investigation was unwarranted.
Korea	Company based in an adhering country operating in Korea.	2009	Korea	IV. Employment and Industrial Relations	Concluded	No	An initial assessment found that the involved company had not violated the Guidelines.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Korea	Companies from guidelines adhering countries that are present in Korea.	2010	Korea	III.Disclosure IV.Employment and Industrial Relations	Concluded	No	An initial assessment found that the involved company had not violated the Guidelines.
Mexico	Closing of a plant.	2002	Mexico	IV. Employment and Industrial relations	Concluded	n.a.	The conflict was settled on 17 Jan 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican <i>Llanti Systems</i> and a co-operative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and <i>Llanti Systems</i> bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Mexico	Dismissal of Workers.	November 2008	Mexico	IV. Employment and Industrial Relations	Concluded	Yes	After a thorough analysis the NCP concluded that there was no evidence that the Company violated Chapter IV of the Guidelines.
Netherlands	Adidas' outsourcing of footballs in India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 www.oecd.org/dataoecd/33/43/2489243.pdf .

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

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

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Travel agencies organising tours to Myanmar.	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see www.oecdguidelines.nl (in Dutch).
Netherlands	Treatment of the employees of an Irish company in the Netherlands.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	The NCP decided that the specific instance, raised by a Dutch labour union, did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.
Netherlands	Introduction of a 40 hrs working week in an affiliate in the Netherlands of an American company.	Oct 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Treatment of employees and trade unions in a subsidiary of a Dutch company in Chile.	July 2005	Chile	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	Labour Union requested the Dutch NCP to inquire after the follow up of an Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile.
Netherlands, Brazil (lead)	Storage facility in Brazil of a Dutch multinational and its American partner: alleged improper seeking of exceptions to local legislation and endangering the health of employees and the surrounding community.	July 2006	U.S.	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	Please be referred to Brazilian overview of cases.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Storage facilities in the Philippines of a Dutch multinational: alleged improper influencing of local decision making processes and of violating environmental and safety regulations.	May 2006	Philippines	II. General Policies III. Disclosure IV. Employment and industrial Relations VI. Combating Bribery	Concluded	Yes	For long, local legal proceedings caused an on-hold status for the NCP proceedings. Mediation appeared to be impossible after a change in local regulations that made the relocation of the storage facilities no longer inevitable. Final statement august 2009: http://www.oesorichtlijnen.nl/wp-content/uploads/final_statement_shell_pandacan_14_july_2009.pdf
Netherlands	Request by NCP of the USA to contact Dutch parent company of an American company, with regard to an instance concerning trade union rights.	July 2006	USA	IV. Employment and Industrial Relations	Concluded	n.a	Report of the meeting between Dutch NCP and the Dutch company was sent to the NCP of the USA. In April 2007 an agreement was reached between parties.
Netherlands	Maltreatment of employees and <i>de facto</i> denial of union rights at a main garment supplier in India of a Dutch clothing company.	October 2006	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes, although the statement does not go into the merits of the case.	After successful mediatory beyond NCP-level between complainants and the Indian company, the specific instance was withdrawn on February 5, 2007.
Netherlands, UK (lead)	Abuse of local corporate law by a subsidiary of a Dutch/British multinational, in order to dismiss employees without compensation.	October 2006	India	I. Concepts and principles IV. Employment and Industrial Relations	Concluded	Yes	Please be referred to UK NCP overview of cases.
Netherlands, Argentina (lead)	Alleged violation of environmental standards and ineffective local stakeholder involvement by subsidiary of Shell, Shell CAPSA.	June 2008	Argentina	II. General Policies V. Environment	Pending	No	Please be referred to Argentinean overview of cases.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands, Ireland (lead), Norway, USA	Pipeline laying project of Shell Ireland E&P, Statoil and Marathon allegedly violating human rights and environmental standards.	August 2008	Ireland	II. General Policies V. Environment	Concluded	Yes	Please be referred to Irish overview of cases.
Netherlands	Alleged violation of local land property law and environmental pollution (air, noise) by a Pakistani Joint Venture of Dutch SHV Holding NV at a newly build store in Karachi.	October 2008	Pakistan	II. General Policies V. Environment	Concluded	Yes	For final statement see: http://www.oecdguidelines.nl/ncp/closedcomplaints/ .
Netherlands (lead), consulting with UK NCP	Amnesty International, Friends of the Earth (FoE) International, and FoE Netherlands allege that Royal Dutch Shell made false, misleading and incomplete statements about incidents of sabotage to its operations in the Niger Delta and the sources of pollution in the region	January 2011	Nigeria	III Disclosure V Environment VII Consumer interest	Ongoing	No	Accepted by the NL NCP, pre-assessment meetings ongoing
Netherlands, Luxembourg NCP (lead)	Friends of the Earth (FoE) Europe and Liberia-based Sustainable Development Institute (SDI)/FoE Liberia allege that ArcelorMittal has breached the OECD Guidelines with regard to its management of its County Social Development Fund	January 2011	Liberia	II General policies VI Combating bribery	Initial assessment in progress	No	January, 2011, the NL NCP received a notification against Arcelor Mittal. As Arcelor Mittal is based in Luxembourg the notification has been forwarded to the Luxembourg NCP, after intensive contact between the NL NCP and the Luxembourg NCP and in agreement with the notifying parties. The NL NCP has offered its expertise and assistance, if required.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
New Zealand	Activities of a financial institution.	October 2007	Papua New Guinea	II. General Policies V. Environment	Concluded	No	An initial assessment was conducted into a complaint regarding an MNE operating in a non-adhering country. The MNE was headquartered in an adhering country, and that country's NCP had previously considered the specific instance. The NZ NCP concluded that there was not a sufficient New Zealand link to the instance, so the complaint did not warrant further examination by the NZNCP. Toward effective operation of the Guidelines, the NZNCP passed relevant documents to the NCP in the country where the MNE is headquartered.
New Zealand	Employment practices of an enterprise in the telecommunications sector.	September 2009	New Zealand	II. General Policies IV. Employment and Industrial Relations VII. Consumer Interests X. Taxation	Concluded	N/A	The NZNCP undertook an initial assessment, in consultation with the Australian and German NCPs. The NZNCP concluded that the issues raised in the complaint did not warrant further examination, and decided not to proceed further. The NZNCP also encouraged the parties to meet to discuss differences in their understanding of the circumstances giving rise to the complaint.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases.	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay.	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.
Norway	Accusation of non-observance of Guidelines recommendations on transparency regarding financial information/environmental information. First case where the GL has been applied to the financial sector.	2006	Uruguay		Concluded	Yes	

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

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	Accusations that the company systematically breaches the Guidelines' article 5.3 by not taking into account in its decision-making process the foreseeable environmental, health and safety-related consequences of its aquaculture activities. According to the complaint, the company should have foreseen the problems based on its expertise from Norway. It is also alleged that the company is using scientific uncertainty in order to avoid carrying out remedial measures.	19 May 2009		I.General Policies II. General policies IV. Employment and Industrial Relations V. Environment	Ongoing		In contact with the parties. The NCP has been in contact with the Canadian and Chilean NCP. The NCPs were asked for an assessment of the issues raised in relation to the operation of a subsidiary of a Norwegian aquaculture company operating in Canada and Chile. Both assessed that the issue merited further examination. The Norwegian NCP has the lead on the matter. The Canadian and Chilean to be kept informed of developments
Peru	Central Unica de Trabajadores del Peru – CUT claims an alleged violation of the Guidelines regarding mining workers rights, in the closure of a mine managed by a subsidiary of a multinational Swiss company.	23 March 2009	Peru	IV. Employment and Industrial Relations	Ongoing	N.A.	As formal procedures regarding this case have been initiated before Peruvian administrative and judicial instances, the NCP considers it may not initiate a parallel process. Notwithstanding, the NCP will promote the possibility of reaching conciliation within the framework of the regular judicial procedure.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Peru	The Peruvian Unitary Confederation of Workers and the Trade Union of the Telecommunications activity SITENTEL, claims that Telefonica del Peru Group refuses to initiate negotiations to reach collective agreements on employment conditions.	17 Nov 2010	Peru	IV. Employment and Industrial Relations	Ongoing	N.A.	The NCP has been in contact with representatives from SITENTEL and Telefonica del Perú. Moreover, the Peruvian NCP is evaluating the issue with the Ministry of Labour and Employment Promotion..
Peru	CooperAccion, Movimiento por la Salud en LA Oroya, Forum Solidadidad, OXFAM claims an alleged violation of the Guidelines regarding environment and public health by an American mining company.	17 February 2011	Peru	II. General Policies (section 1,2 and7) III. Disclosure (section 2, 4.e, and 5a andb) V. Environment (section Ia, 2,3,5 and 8)	Ongoing	N.A.	The NCP is evaluating the claim and has held a first meeting with the representatives of the claimants. A similar meeting will be hold with the representatives of the company. The Peruvian NCP is also evaluating the participation of the USA NCP.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2002	Poland	IV. Employment and Industrial Relations	Closed	No	NCP was in contact with representatives of the trade union and the company. However the board of the company stated that none of the charges take place in the company. Therefore no reconciliation action was possible in such situation. The case was consequently then closed in 2005.

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec 2004	Peru	IV. Employment and Industrial Relations	Concluded		
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector.	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 www.oecd.org/dataoecd/16/34/15595948.pdf .
Sweden (consulting with Norway)	Applying the guidelines to the financial sector, liability by part-financing of construction of paper mill.	Nov 2006	Uruguay	II. General Policies III. Disclosure V. Environment	Concluded	Yes	The Swedish NCP issued a statement in January 2008 http://www.sweden.gov.se/content/1/c6/09/65/71/9e9e4a6b.pdf .
Switzerland (consulting with Canada)	Impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company.	2001	Zambia	II. General Policies V. Environment	Concluded	No	The specific instance was dealt with by the Canadian NCP (see information there). The Swiss company was kept informed of developments.
Switzerland (consulting with Korea)	Swiss multinational Nestlé's labour relations in a Korean subsidiary.	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	The specific instance was dealt with by the Korean NCP (see information there). The Swiss NCP acted as a mediator between trade unions, the enterprise and the Korean NCP. The Swiss NCP issued an intermediate press statement.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary.	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region.	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment and Industrial Relations	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
Switzerland (consulting with Australia and UK)	Activities of Swiss based multinational company and co-owner of the coal mine "El Cerrejon" in Colombia.	2007	Colombia	Several chapters, including: I. Concepts and Principles (incl. Human Rights) II. General Policies V. Environment VI. Combating Bribery	Concluded	Yes	The Australian NCP is in the lead to deal with the specific instance. The Swiss NCP issued a final statement on its website: http://www.seco.admin.ch/ncp/reports
Switzerland	Swiss multinational Nestlé's labour relations in a Russian subsidiary.	2008	Russia	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in September 2008: http://www.seco.admin.ch/ncp/reports

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Switzerland	Swiss multinational Nestlé's labour relations in an Indonesian subsidiary.	2008	Indonesia	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in June 2010: http://www.seco.admin.ch/ncp/reports
Switzerland	Swiss multinational Triumph's labour relation in the Philippines and in Thailand	2009	Philippines/ Thailand	IV. Employment and Industrial Relations	Concluded	Yes	The Swiss NCP issued a final statement in January 2011: http://www.seco.admin.ch/ncp/reports
Switzerland	Activities of three Swiss multinational enterprises in Uzbekistan	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP received a submission concerning two Swiss enterprises in October 2010, and another submission in December 2010 regarding the activities of a third enterprise.
Switzerland (consulting with Canada)	Activities of a subsidiary in Zambia co-owned by a Swiss and a Canadian multinational enterprise	2011	Zambia	II. General Policies X. Taxation	Ongoing	n.a.	The Canadian NCP and the Swiss NCP have been in contact and agreed that the Swiss NCP would have the lead in the treatment of this matter.
Turkey	Activities of a Dutch/UK multinational company in transportation sector.	Nov 2008	Turkey	IV. Employment and Industrial Relations	Pending	No	At the initial assessment stage.
United Kingdom	Anglo American - issues arising from the privatisation of the copper industry in Zambia during the period 1995 -2000.	2002	Zambia	II. General Policies IV. Employment and Industrial Relations IX. Competition	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	BTC Corporation – issues related to the construction of the Baku-Tbilisi-Ceyhan (BTC) pipeline.	2003	Azerbaijan, Georgia, Turkey	I. Concepts and Principles II. General Policies III. Disclosure V Environment	Concluded	Yes	See Revised Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases

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United Kingdom	National Grid Transco – issues arising from the privatisation of the copper industry in Zambia	2003	Zambia	I. Concepts and Principles II. General Policies III. Disclosure IV. Employment and Industrial Relations V Environment VI. Combating Bribery VII. Consumer Interests IX. Competition X. Taxation	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Oryx Natural Resources – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	De Beers – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	Avient – issues raised in the October 2003 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo	2003	Democratic Republic of the Congo	This was not specified in the Panel Report	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	BAE Systems – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Airbus – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Rolls-Royce – issues related to disclosure of lists of agents.	2005	United Kingdom	VI. Combating Bribery.	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	DAS Air - alleged failure to apply due diligence when transporting minerals and alleged breach of UN embargo.	2005	Democratic Republic of the Congo	I. Concepts and Principles II. General Policies	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases

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United Kingdom	UK registered multinational – issues related to trade union representation.	2005	Bangladesh	IV. Employment and Industrial Relations	Concluded	No (because the complaint was rejected at the Initial Assessment stage – the parties have therefore not been named)	See the Initial Assessment at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Peugeot - issues related to the closure of the Ryton manufacturing plant.	2006	United Kingdom	IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	G4S - issues related to pay, dismissal, leave and health & safety entitlements.	2006	Mozambique , Malawi, Democratic Republic of the Congo, Nepal	II. General policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Sewri factory) – Employment issues related to the transfer of ownership, and subsequent closure, of the Sewri factory.	2006	India	I. Concepts and principles IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	Afrimex - alleged payments to armed groups and insufficient due diligence on the supply chain.	2007	Democratic Republic of the Congo	II. General policies IV. Employment and Industrial Relations VI. Combating Bribery	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Doom Dooma factory) - issues related to employees' right to representation.	2007	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	British American Tobacco – issues related to employees' right to representation.	2007	Malaysia	IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Vedanta Resources – impact of a planned bauxite mine on local community.	2008	India	II. General Policies V. Environment	Concluded	Yes	See Final Statement and Follow Up Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Rahim Yar Khan factory) – dismissal of temporary employees seeking permanent status in the factory.	2008	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Unilever (Khanewal factory) – issues related to status of temporary employees.	2009	Pakistan	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	See Final Statement at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Compass Group – issues related to the establishment of a union branch.	2009	Algeria	IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at http://www.bis.gov.uk/nationalcontactpoint/cases

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	BHP Billiton – issues related to environmental impact of aluminium smelter.	2010	Mozambique	II. General Policies III. Disclosure V. Environment	Suspended	n.a.	Conciliation/mediation (conducted by the Compliance Advisor Ombudsman of the World Bank) under way. See Initial Assessment at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	Cargill Cotton Ltd – allegations of child and forced labour in harvesting cotton.	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at http://www.bis.gov.uk/nationalcontactpoint/cases
United Kingdom	ICT Cotton Ltd – allegations of child and forced labour in harvesting cotton.	2010	Uzbekistan	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Conciliation/mediation under way. See Initial Assessment at http://www.bis.gov.uk/nationalcontactpoint/cases
United States, consulting with French NCP	Employee representation.	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Employee representation.	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.

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

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

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States, consulting with German NCP	Employment and industrial relations.	August 2006	United States	IV. Employment and Industrial Relations	Inactive	No	No response from last inquiries to parties.
United States, consulting with Austrian NCP	Employment and industrial relations.	November 2006	United States	IV. Employment and Industrial Relations	Concluded	No	U.S. NCP closed the specific instance when the initiating party ceased representing the employees of the company in question
United States	Employment and Industrial Relations.	8 Sept 2008		IV. Employment and Industrial Relations	Concluded	No	Declined due to lack of investment nexus.
United States	Employment and Industrial Relations	April 2009	Philippines	IV Employment and Industrial Relations	Concluded	No	U.S. NCP declined involvement after concluding issues raised were not amenable to resolution under the Guidelines.
United States	Employment and Industrial Relations	October 2009	Korea	IV Employment and Industrial Relations	Concluded	No	Parties reached agreement and withdrew specific instance petition
United States	Employment and Industrial Relations	November 2009	Korea	III Disclosure and IV Employment and Industrial Relations	Concluded	No	Initiating party declined to agree to involvement of Korean NCP, where all parties and activities were located. The U.S. NCP declined involvement after concluding that the issues raised do not merit further consideration under the Guidelines.
United States	Environment	April 2010	Mongolia	II General Policies/Sustainable Development and V Environment	Ongoing	No	Canadian NCP has taken primary responsibility based on fact that lead MNE is headquartered in Canada
United States	Employment and industrial relations	April 2010	Papua New Guinea	III. Disclosure IV Employment and Industrial Relations	Concluded	No	U.S. NCP declined involvement after concluding issues raised were not amenable to resolution under the Guidelines.

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NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States, consulting with French NCP	Employment and Industrial Relations	August 2010	Colombia and the United States	IV Employment and Industrial Relations	Ongoing	n/a	French NCP has taken primary responsibility on Colombia-based issues because MNE headquartered in France; consulting with U.S. NCP on U.S.-based issues.
United States	Employment and Industrial Relations	October 2010	Philippines	IV. Employment and Industrial Relations	Concluded	No	The U.S. NCP declined involvement pending outcome of imminent union elections.
U.K NCP, consulting with U.S. NCP	Employment and Industrial Relations	October 2010	Uzbekistan	IV. Employment and Industrial Relations	Ongoing	n/a	U.K. NCP has taken primary responsibility. U.S. NCP stands ready to assist.
United States	Employment and Industrial Relations	January 2011	United States	III. Disclosure IV. Employment and Industrial Relations	Ongoing	n/a	U.S. NCP consulting with parties and other USG agencies, including Department of Labor; initial assessment
Peru United States	Environment and Human Rights	February 2011	Peru	II. General Principles III. Disclosure V. Environment	Ongoing	n/a	U.S. NCP consulting with Peru NCP and with parties.
United States	Employment	May 2011	India	III. Disclosure IV. Employment and Industrial Relations	Ongoing	n/a	U.S. NCP consulting with parties; initial assessment
United States, consulting with Japan	Environment and Human Rights	May 2011	United States	II. General Principles III. Disclosure V. Environment	Ongoing	n/a	U.S. NCP consulting with parties and Japan NCP in order to make initial assessment.

Note: n.a. = not applicable

ANNEX 4.
STATEMENTS RELEASED BY NCPS, JUNE 2010-JUNE 2011

This Annex reproduces the statements issued by the National Contact Points concerning specific instances during the reporting period, in accordance with the Procedural Guidance, Implementation in Specific Instances of the Implementation Procedures section of the Guidelines. The Procedural Guidance provides that NCPs will “at the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available” by issuing a) a statement when the NCP decides that the issues raised do not merit further consideration; b) a report when the parties have reached agreement on the issues raised; and c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures.⁴³

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

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Annex 4 is pending finalization as the OECD Secretariat awaits the submission of missing NCP Annual Reports. Reports from Iceland and Luxembourg are outstanding.

- Public Statement by the United Kingdom National Contact Point on the British American Tobacco Malaysia Berhad (Malaysia) Specific Instance

Statement by the Australian NCP

Canberra, 8 June 2011

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

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

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

COMPLAINT

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

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

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

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

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

The outcomes sought by the CFMEU were:

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

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

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

PROCESS

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

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

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

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

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

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

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

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

- In conversation with the ANCP on 14 April 2011, XSTRATA reiterated the points it had already made, especially that 16 of its enterprises had negotiated, albeit at times after disputation, enterprise agreements with the CFMEU. XSTRATA maintained its position regarding a mediation process

with the CFMEU; largely because of issues relating to confidentiality with the CFMEU, and a perceived lack of good faith and goodwill shown by the CFMEU and continued to see no point in meeting with the CFMEU.

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

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

ATTACHMENT A

CFMEU allegations of breaches of the OECD Guidelines for Multinational Enterprises

- That XSTRATA breached Part IV, 1(a), (2)(a) and 2(c) of the OECD Guidelines: enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:
 - 1.a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.
 - 2.a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.
 - c) Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern.'
- That XSTRATA breached Part IV, (6) of the OECD Guidelines: 'In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions.'
- That XSTRATA breached Part IV, (8) of the OECD Guidelines: 'Enable authorised representatives of their employees to negotiate on collective bargaining or labour management relations issues and allow parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.'
- That Xstrata plc had breached Part IX of the OECD Guidelines
"Enterprises should, within the framework of applicable laws and regulation, conduct their activities in a competitive manner."

ATTACHMENT B

XSTRATA'S RESPONSE TO COMPLAINTS

XSTRATA responded as follows:

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

Statement by the Australian NCP

Canberra, 10 August 2011

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

The specific instance complaint alleged breaches of:

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

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

- Each of the projects which are the subject of the complaint are in Argentina.
- The NGO making the complaint is based in Argentina
- The key [Company] representatives that have day to day decision making responsibilities for these projects are based in Argentina.
- Spanish is the first language of the proponents of the complaint and the [Company] representatives with day to day responsibility for the projects.

- The ANCP is not in the best position to assess whether the actions by [Company] in relation to the projects is valid or illegal under Argentine law – this will have some bearing on any consideration of the matter under the Guidelines.

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

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

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

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

Statement by the Canadian NCP

**Canadian National Contact Point
For The OECD Guidelines for Multinational Enterprises**

**Final Statement of the Canadian National Contact Point on the Notification dated December 9, 2009,
concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational
Enterprises
May 3, 2011.**

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1. Information on the OECD Guidelines for Multinational Enterprises
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3. Chronology of Events

1. Executive Summary

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

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

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

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

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

The NCP considers this specific instance to be closed.

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

2. Introduction to the OECD Guidelines for Multinational Enterprises

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

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

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

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

Additional information on the Guidelines can be found in Annex 1. The Terms of Reference of the Canadian NCP are attached in Annex 2.

3. Specific Instance

On December 9, 2009, two members of Frente de Defensa San Miguelense (FREDEMI, The Front in Defense of San Miguel Ixtahuacán) along with representatives of the Washington, D.C.-based Centre for International Environmental Law (CIEL) (www.ciel.org), Amnesty International, MiningWatch Canada, and Breaking the Silence met with members of Canada's National Contact Point (NCP) in Ottawa, and delivered to the NCP a request for review in relation to the Marlin Mine in Guatemala that is operated by Goldcorp Inc. The request for review was also posted on the CIEL website the same day. (http://ciel.org/Hre/Guatemala_Canada_9Dec09.html).

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

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

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

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

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

Specifically, the notifiers seek Goldcorp’s commitment to:

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

4. The Marlin Mine

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

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

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

In May 2010, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States granted "Precautionary Measures" for the 18 Mayan indigenous communities surrounding the Marlin Mine, calling on the Government of Guatemala to temporarily suspend the operation of the mine until further investigations can be undertaken. In June, the Government of Guatemala announced that it would initiate the administrative process to suspend operations at the mine. The Guatemalan Minister of Energy and Mines has been assigned responsibility for following up on processes related to the Marlin Mine. In this respect, an official, inter-Ministerial evaluation of the alleged conditions at the mine site is being conducted.

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

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

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

5. Consideration of the Specific Instance

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

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

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

"The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering "whether the issues raised merit further examination". The NCP has carried out its initial assessment by reviewing the documentation which you submitted, as well as the response from Goldcorp Inc. The matters raised have a lengthy history and are complex in nature. Keeping in mind that the NCP is not a court or tribunal, and that it is dedicated to the objective of contributing to the resolution of issues that arise in relation to the implementation of the OECD Guidelines, the NCP has concluded that the issues which you raised merit further examination. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in your submission."

The letter further went on to state:

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

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

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

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

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

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

"Canada's NCP acknowledges the concerns raised by FREDEMI and remains hopeful that FREDEMI will reconsider its position and consent to a facilitated dialogue. We understand the difficulties an organization would face were it unable to share with its key community stakeholders the information obtained in a dialogue with another party. With this in mind, we would like to clarify that the

confidentiality of proceedings would not prevent FREDEMI, acting as the representative or agent of the interested communities, from consulting with such communities before and after a dialogue. As the interested parties on whose behalf you are acting, community members are entitled to receive relevant information related to this specific instance; however, they are also expected to keep such information confidential. A good faith dialogue to resolve difficult and controversial issues requires that there be certain rules around how information shared in proceedings is used."

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

On August 20, 2010, the notifiers replied by letter, again declining the possibility of a facilitated dialogue with Goldcorp. In its letter, FREDEMI stated that the clarification of the application of confidentiality partly addressed procedural concerns. However, FREDEMI was not prepared to deviate from its position that in order to address human rights concerns, the Marlin Mine must be closed. FREDEMI's view was that a dialogue would only result in delays. FREDEMI instead urged the NCP to proceed with a full investigation and field visit followed by the issuance of a final statement.

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

The NCP sent a letter dated October 6, 2010, to the notifiers and copied Goldcorp indicating that it was proceeding to draft a final statement. In this letter, the NCP indicated that it is not in a position to carry out a field visit. Subsequently, on November 22, 2010, the NCP held a conference call with CIEL and FREDEMI members in Guatemala. During this conference call, the members of FREDEMI provided a number of testimonials about their experiences and concerns with the mine. They repeated that they were not interested in participating in a dialogue with Goldcorp and they wanted the mine to close. During the call, the NCP informed the representatives that it was preparing a draft statement which would be forwarded for comments. The NCP was asked if it would be providing a Spanish translation of the entire draft statement for the benefit of the community members. On December 13, 2010 the NCP informed FREDEMI that further to its provision of courtesy unofficial Spanish translations of letters throughout this process, it decided that it would provide courtesy unofficial translations of the Executive Summary and Recommendations portions of the draft statement. This procedure is consistent with the approach taken with regard to translations during consultations with aboriginal communities in Canada regarding environmental impact assessments. The NCP also held a meeting on November 23, 2010 with a Goldcorp official and a mine employee who was a resident of the community around the mine. The employee described their life in the community and their work at the mine. A detailed chronology of events can be found in Annex 3.

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

Although the notifiers declined the NCP's offer of facilitated dialogue, the NCP's initial assessment was that the issues raised merited further examination. With regard to the issues raised by the notifiers in the specific instance, the NCP is of the view that the lack of communication, and possible miscommunication, between the parties is a significant contributing factor to the overall problem. Generally, mining companies which undertake significant operations should endeavour to use effective communication strategies in order to engage the communities affected by the mine and to disseminate information of a technical or

scientific nature. This process and activity is a critical element of corporate social responsibility which, if managed successfully, may benefit all parties concerned. At the same time, community members should be willing to engage with the company. A lack of effort by either party can lead to erroneous perceptions and misunderstanding, lack of trust, opposition and grievances.

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

In this regard, the NCP would like to acknowledge Goldcorp's willingness to engage in the NCP process. The NCP encourages Goldcorp to continue to issue its regular updates on the implementation of the recommendations in Human Rights Assessment Report prepared by On Common Ground.

6. Recommendation

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

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

The NCP considers this specific instance to be closed.

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

ANNEX 1: Information on the OECD Guidelines for Multinational Enterprises

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

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

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

Because of the central role it plays, the effectiveness of the National Contact Point is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent

and accountable manner. These four criteria should guide National Contact Points in carrying out their activities.

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

For a copy of the Guidelines, see <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

ANNEX 2: Canadian NCP Terms of Reference

**TERMS OF REFERENCE
CANADA'S NATIONAL CONTACT
POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

Introduction

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

1. Definitions

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

Department: means federal departments of the Government of Canada

CIDA: Canadian International Development Agency.

DFAIT: Foreign Affairs and International Trade Canada.

EC: Environment Canada.

Finance: Finance Canada.

Guidelines: OECD Guidelines for Multinational Enterprises.

HRSDC: Human Resources and Skills Development Canada.

IC: Industry Canada

INAC: Indian and Northern Affairs Canada.

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

NRCan: Natural Resources Canada.

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

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

Specific instance: The term "specific instance" is one derived from the OECD Guidelines. Any individual, organisation, or community ("stakeholder") that believes a corporation's actions or activities have breached the Guidelines may lodge a formal request for review regarding a "specific instance" with the NCP of the

relevant country. Hence, a specific instance refers to allegations by stakeholders of an "issue or situation" that it is believed to constitute the non-observance of the Guidelines by multinational enterprises.

2. Background

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

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

3. Purpose

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

4. Role and Responsibilities of the NCP

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

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

- i. making the Guidelines known and available;
- ii. raising awareness of the Guidelines;
- iii. responding to enquiries about the Guidelines;
- iv. contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, and;
- v. reporting annually to the OECD Investment Committee.

5. Core Criteria of Operations

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

6. Institutional Structure

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

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

7. Chairperson and Vice-Chairperson

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

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

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

8. Secretariat

8.1. The NCP Secretariat function shall be provided by DFAIT.

9. Membership

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

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

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

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

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

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

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

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

10. Meetings

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

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

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

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

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

11. Specific Instances

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

12. Confidentiality

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

13. Reporting

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

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

14. Resources

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

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

ANNEX 3: Chronology of Events

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

with their communities. The letter asked whether they would reconsider the offer of facilitated dialogue and requested a reply by August 2, 2010.

- July 9, 2010. Goldcorp was copied on the letter to FREDEMI and sent a letter (July 9) indicating that FREDEMI should be informed that Goldcorp is prepared to waive the confidentiality conditions for a meeting. This letter from Goldcorp was subsequently forwarded to FREDEMI on July 12.
- July 29, 2010. NCP received a number of documents from Goldcorp and shared these with FREDEMI. FREDEMI requested additional time to reply to the letter of July 2.
- August 4, 2010. At Goldcorp's request, the NCP held a meeting with Dina Aloï and Valerie Pascale of Goldcorp. Minutes were prepared and shared with FREDEMI on August 16.
- August 20, 2010. FREDEMI replied to the NCP's letter of July 2 by again declining the offer of facilitated dialogue and repeating that they wish the Marlin Mine to be closed and urge the NCP to conduct a full investigation including a field visit.
- October 7, 2010. NCP sent a letter dated October 6, 2010 to FREDEMI (copy to Goldcorp) stating that the NCP is now proceeding to draft a statement. The letter contained an offer for a conference call with FREDEMI to address a concern expressed in their August 20 letter that the NCP had one meeting more with Goldcorp than with FREDEMI and may not have the full understanding of the situation.
- November 22, 2010. NCP held a conference call with CIEL and FREDEMI members in Guatemala. FREDEMI members provided a number of testimonials about their experiences and concerns with the mine. The NCP informed the representatives that it is preparing a draft statement which will be forwarded for comments.
- November 23, 2010. Two Goldcorp representatives met with some members of the NCP and made a presentation about the mine and community relations.

Statement by the German NCP

Final declaration* by the National Contact Point for the OECD Guidelines for Multinational Enterprises regarding a complaint by Wake up and Fight for Your Rights Madudu Group and FIAN Deutschland against Neumann Gruppe GmbH
Berlin, 30 March 2011

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

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

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

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

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

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

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

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

In the discussion on 8 December 2010, it became clear that Neumann Gruppe has since met the main demands cited above. It also drew attention to the non-profit-making welfare programmes of the Hanns R.

Neumann Foundation, to which it is closely related and which credibly underlines its intensive commitment to coffee-producing countries.

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

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

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

Berlin, 30 March 2011

For the National Contact Point
Head of Division J. Steffens
Federal Ministry of Economics and Technology

* Figure I C 3 of the Procedural Guidance of the OECD Guidelines

Statement by the Irish and Dutch NCP

Irish National Contact Point for the OECD Guidelines for Multinational Enterprises.

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

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Section 1 – Introduction to the OECD Guidelines

The OECD Guidelines for Multinational Enterprises are a set of recommendations of the governments of the 31 OECD member states plus 11 other countries to enterprises operating in and from their territory. They set out voluntary principles and standards to guide companies in their international operations. While implementation of the Guidelines themselves is voluntary, each OECD Member State is, however, obliged to establish a National Contact Point (NCP) to deal with notifications of groups or individuals of alleged violations of the Guidelines by an enterprise in a specific situation. If an NCP, after conducting an initial assessment, decides that the notification merits further consideration, the NCP provides for a platform for discussion on the issues raised, where it can play a mediating role. If parties involved do not reach agreement on the issues raised, the NCP issues a statement, and makes, where appropriate, recommendations on the implementation of the Guidelines.⁴⁴

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

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

The Irish NCP is located in the Department of Enterprise, Trade and Innovation,⁴⁵ although the scope of the Guidelines covers several Government Departments and Agencies. The Dutch NCP is an independent entity.

⁴⁴ Also see the Annex to this statement.

⁴⁵ Formerly known as the Department of Enterprise, Trade and Employment.

Section 2 – The specific instance

Notifiers: Pobal Chill Chomain et al.

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

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

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

Date of Notification: 21 August 2008

Content of the Notification

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

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

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

- *Chapter V – Environment, paragraph 2 and 3;*⁴⁶

⁴⁶

Chapter 5: Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

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

a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise (...);

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts (...).

- *CHAPTER II – GENERAL POLICIES, PARAGRAPH 2, AND 3.*⁴⁷

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

References in relation to the Irish Government in the Notification

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

Administrative and parallel legal procedures

The notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to the Consortium to (further) develop the Corrib Gas field and to undertake work.⁴⁸ Nevertheless, as the notification was largely about the alleged failure of the Consortium to adequately address the concerns of the Notifiers, the NCPs were of the opinion that the NCP procedure could provide for an informal platform for discussion on these concerns between the parties involved.

⁴⁷ *Chapter 2: Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should: (...)*

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

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

⁴⁸ A full description of the administrative procedures for the Corrib Gas Field Development can be found on: <http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm>

Section 3 – Background to the ‘Corrib Gas Project’ and recent developments

The Corrib Gas Field was discovered in 1996. It is about 70% the size of the existing Kinsale Head gas field off the south coast of Ireland and has an estimated production life of about 15 years. Originally, Enterprise Energy Ireland, a subsidiary to Enterprise Oil, was set to develop the field and had, in 2001, obtained permission by local authorities for a gas processing plant. Shell bought Enterprise Oil in April 2002. Currently, the Corrib Gas Field is being developed by Shell Exploration and Production Ireland Limited (SEPIL), Statoil Exploration (Ireland) Limited and Vermilion Energy Trust.⁴⁹ SEPIL, on behalf of the other partners, acts as implementing developer of the Corrib field, while the other two partners- Statoil and Vermilion - are co –investors in the project.

Since 2001, the Consortium, in accordance with relevant Irish legislation, obtained the requisite consents, licences and planning permissions for the various works associated with the development of the Corrib Gas Field⁵⁰. These works included laying a pipeline from the field to landfall, laying a further pipeline from landfall to an onshore processing facility some miles inland, and the construction of the processing facility itself.

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

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

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

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

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

⁴⁹ On June 24, 2009 Vermilion Energy Trust of Canada announced that it had entered into an agreement to acquire Marathon's 18.5% interest in the Corrib gas project. Vermilion subsequently issued a press release on July 30, 2009 announcing the closing of the transaction.

⁵⁰ The consent to lay the pipeline under section 40 of the Gas Act 1946 is currently under legal challenge. This original consent remains valid pending a decision by the High Court to the contrary, but may be moot as the Consortium is currently seeking a new consent following their decision to modify the route of the pipeline.

*“Following seven months of intensive discussions with the Rossport 5 and Shell and detailed consultations with the local community, I have with regret concluded that, despite their best efforts, the parties are unable to resolve the differences between them. I have also concluded, given the different positions on the project and the different approaches to mediation, that no agreement is likely in the foreseeable future.”*⁵¹

Mr. Cassells recommended that the route of the onshore section of the Corrib Gas Pipeline be modified *“in the vicinity of Rossport to address community concerns regarding proximity to housing”*⁵², and also that *“consent to operate the pipeline should not be granted to Shell until the limitation on the pressure in the pipeline to 144bar has been implemented”*.⁵³

From his discussions with a wide range of people in the area, Mr Cassells also concluded *“that the majority of people in Rossport, the wider Erris area and County Mayo are in favour of the project”*.⁵⁴ The Notifiers rejected this finding as based on inadequate consultation and information.

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

Recent developments

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

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

⁵¹ Introduction to the report by Mr. Peter Cassells

⁵² 7.2 of the Recommendations

⁵³ 7.1 of the Recommendations

⁵⁴ Section 6 of the report by Mr. Peter Cassells

of Communications, Energy and Natural Resources and the Department of Agriculture Fisheries and Food (DAFF), seeking a wider route corridor as well as minor realignments of the preferred route.

In November 2009, An Bórd Pleanála asked Shell Ireland to make several safety changes, particularly to 5.6km of the 9km pipeline which it considered would be too close to homes for safety. Shell was given until the end of May 2010 to address the concerns. It would then have to submit a modified environmental impact statement; the altered application will then go to another public hearing before a report would be sent back to An Bórd Pleanála. Should the developer decide to comply with the An Bord Pleanála invitation, a new application to the Minister for Communications, Energy and Natural Resources with respect to permission to construct the pipeline pursuant to Section 40 of the Gas Act, 1976, as amended will be necessary. A new application to the Minister for the Environment, Heritage and Local Government for a Foreshore Licence will also be necessary. Both applications would be subject to a statutory public consultation process

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

Section 4 – Consideration of the notification under the OECD Guidelines

As stated in section 2, the notification to the NCPs was preceded by and parallel to administrative procedures for authorisation to further develop the Corrib Gas field and to undertake work.⁵⁵ Nonetheless, on 19 February 2008, the Irish and Dutch NCPs decided that the issues raised merited their further consideration within the limitations of the mandate of NCPs. Due to the role of the Irish Government in the situation with regard to considering the Consortium's application for consent to further develop the Corrib Gas project, coordination of the decision on NCP involvement was a lengthier process than originally anticipated.

The NCPs made it clear to the Notifiers that adjudication on whether a private entity or a State has acted in compliance with domestic, EC or international law is beyond the competence of NCPs, and that in relation to parallel legal and administrative proceedings, the NCPs would not be in a position to comment on those, and therefore would have to act within this limitation.⁵⁶

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

Main issues for consideration by the NCPs

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

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

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

⁵⁵ In addition, a full description of the administrative procedures for the Corrib Gas Field Development can be found on the website of the Irish Department of Communication, Energy and Natural Resources; <http://www.dcenr.gov.ie/Natural/Petroleum+Affairs+Division/Corrib+Gas+Field+Development/Corrib+Gas+Field+Development.htm>

⁵⁶ In their letter of the 19 February 2008, the Irish and Dutch NCPs advised the Complainants that :

“ (...) The NCPs are aware of the legal proceedings with the Irish High Court that are also related to the Corrib Gas project. The NCPs, as mentioned above, are not in a position to deal with legal questions and must therefore, act within this limitation. Consequently, in dealing with this specific instance, the NCPs, acting in accordance with the OECD Guidelines, are not constrained in examining all aspects this specific instance. The NCPs are of the opinion that consideration of this specific instance will contribute to the purpose and effectiveness of the Guidelines in their entirety. Accordingly, the issue raised with the NCPs are considered bona fide and relevant to the implementation of the Guidelines (...)”

however limit the ability of the NCPs to comment on such issues if the dialogue failed to lead to agreement.

Section 5 – The positions of the parties

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

Relocation of the onshore processing facility

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

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

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

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

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

Meaningful dialogue with the public

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

For their part, the Consortium stated that “these meetings were organized according the regulations of the Government and had been announced in *inter alia* local newspapers, and that everyone was given the opportunity to ventilate concerns orally and/or in writing.” The Consortium also acknowledged that the

way in which Shell Ireland presented the project during consultations with the local community in the early stages of its involvement in the project did give the impression that there was little room for modifications to adjust to local concerns, which most likely contributed to a sense of mistrust by parts of the community. The Consortium acknowledged that if these early stages could have been redone, it would have acted differently.

Findings of the NCPs: no apparent options for mediation

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

In light of the apparent impasse in relation to both issues, the NCPs wrote to the Notifiers on 24 September 2009, setting out their findings and asking whether the Notifiers saw any merit in continued resort to the good offices of both the Irish and Dutch NCPs, taking account of the limited possibilities under the OECD Guidelines and the fact that the Irish authorities have stated that the Corrib developers obtained all of the necessary statutory permissions.⁵⁷ The Notifiers have responded on 9 January 2010, regretting that the mediation efforts of the NCPs had not been successful and requesting the NCPs to issue a final statement in which their notification would be reviewed in the light of the OECD Guidelines.

⁵⁷

See footnote 7.

Section 6 – NCPs’ Conclusions

Conclusion with regard to relocation

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

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

Conclusion with regard to meaningful dialogue with local communities

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

The availability of information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.⁵⁸ Furthermore, enterprises should consider to exceed the basic requirements with regard to the disclosure of environmental information.⁵⁹

In the case of the Corrib Gas project, the Irish Government authorities as well as Shell itself organised several meetings in the locality while the Consortium set up a local agency where people could go with questions or concerns relating to the Corrib Gas project.⁶⁰ Recently, the independent planning authority An Bórd Pleanála has requested further adjustment of the Consortium’s application for consent for the revised onshore pipeline route on the basis of local concerns over health and safety aspects.⁶¹

⁵⁸ OECD Guidelines for Multinational Enterprises, Commentary on the Environment, paragraph 35.

⁵⁹ OECD Guidelines for Multinational Enterprises, Commentary on Disclosure, paragraph 12

⁶⁰ In November-December 2001, a written consultation round was organized and made public in (local) newspapers and a first meeting was organised in Mayo County in that same period. The independent licensing authority An Bórd Pleanála also held public consultations and will continue to do so in the process for granting permission to the Consortium for the onshore part of the pipeline. The Consortium opened a public information office early 2001 in Bangor Erris, which was later moved to Belmullet, which houses five ‘community liaison officers’ who engage in direct contact with members of the local community.

⁶¹ An Bórd Pleanála website: <http://www.pleanala.ie/casenum/GA0004.htm>.

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

Section 7 – Final remarks and recommendations

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

1. The contentious issues were not only subject to legal and administrative procedures, they were also subject to earlier unsuccessful mediation attempts. It seemed that parties had fixed their position based on desired outcome, rather than focussing on exploring other possibilities for resolution of the issues. The NCPs take the view that in such circumstances ‘good offices’ or mediation may not be suitable fashions of dispute resolution.

2. On the basis of EU and their national legislation, the governments of the EU Member States have an obligation to put in place legislation to ensure adequate consultation. The issue as to whether an EU government has adequately implemented and applied national and EU legislation is a legal one and can be addressed through judicial system, including the European Court of Justice.

Nonetheless, enterprises have a *responsibility to respect* the rights of those (groups of) people on which their activities have an impact. In order to become aware of potential negative impacts and to appropriately and adequately address such impacts, companies are expected to exercise *due diligence* in the broad sense of the concept, as set out by UN Special Representative for business and human Rights, professor John Ruggie.⁶² Consultation with stakeholders can be part of due diligence, even more so in those situations where government organized consultations are unusual in the development of new projects.

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

Dublin, 30 July 2010.



Dymphna Hayes

Irish National Contact Point



Mr F.W.R. Evers

Dutch National Contact Point

⁶² *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008. Mr. Ruggie summarizes the content of a due diligence process on human rights aspects as follows; “*Considered in that spirit, human rights due diligence comprises four components: a statement of policy articulating the company’s commitment to respect human rights; periodic assessments of actual and potential human rights impacts of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking as well as reporting performance.*” Keynote Address by SRSR John Ruggie, “*Engaging Business: Addressing Respect for Human Rights*”, sponsored by the U.S. Council for International Business, U.S. Chamber of Commerce and International Organization of Employers, Atlanta, 25 February 2010.

Annex I

FURTHER REFLECTIONS

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

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines for Multinational Enterprises (MNEs) are a set of recommendations addressed by member countries of the OECD to enterprises. They set out voluntary principles and standards under which companies should implement in their international operations.

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

The Guidelines contain non-binding recommendations by governments to multinational enterprises operating in the adhering countries. They are part of the OECD Declaration on International Investment and Multinational Enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable (Paragraph 1 of Concepts and Principles). The General Policies (Chapter II) require that enterprises aim to meet certain principles and standards. The commentary notes that the Guidelines are not a substitute for local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character (paragraph 2 of the Commentary).

Chapter V of the Guidelines deals with the environment. They require, inter alia, that enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, take due account of the need to protect the environment, public health and safety and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

Under the Guidelines, each OECD member state is obliged to establish a National Contact Point (NCP) to deal with notifications of alleged violations of the Guidelines by groups or individuals to assess whether the notification is admissible, and, if so, to offer mediation between the parties.

Insofar as the NCP's are concerned, the OECD Council adopted a decision which addresses, inter alia, the role of the NCP's. Their role is to further the effectiveness of the Guidelines and they shall operate in accordance with the core criteria of visibility, accessibility, transparency and accountability (Procedural Guidance, paragraph I). In relation to 'specific instances' (this is the term used in the OECD text to describe a 'notification, however for ease of reference in this statement, the term 'notification' is used throughout), the NCP will offer a forum for discussion and

to assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.

Statement by the Swiss NCP

Closing Statement: Specific Instance regarding Triumph in the Philippines and in Thailand

Berne, 14 January 2011

Background

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

Proceeding of the NCP

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

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

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

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

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

7. The company specifically rejected allegations regarding union busting activities. Furthermore, it was stated that clear and comprehensive information of all changes were provided to unions. However, it was underlined that Triumph was unable to give notice prior to taking the decision to restructure operations

as doing so would have required the company to advise all production centers worldwide that layoffs were being considered. This would have created mass destabilization and significant harm to the health of the enterprise as a whole.

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

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

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

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

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

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

Outcome of the Proceeding

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

Conclusions

15. Following the outcome of the NCP proceeding, the NCP will close the specific instance.
16. The NCP thanks both parties for engaging in the process.

Statement by the UK NCP

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations against Unilever plc (Doom Dooma factory – Assam – India)

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided into the following key stages:
 - (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - (4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.
5. The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website:

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

Complaint from the IUF

6. On 19 October 2007 the “International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations” (IUF) wrote on behalf of the “All-India Council of Unilever Unions” of India, an IUF affiliate, to the UK NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of Hindustan Unilever Limited, an India based company (“Unilever”), which is a subsidiary of Unilever plc (a UK registered company).

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

- (a) Chapter II(2): “[Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should] *Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments*”.
- (b) Chapter IV(1)(a): “[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] *Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions*”.
- (c) Chapter IV(7): “[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] *In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises’ component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise*”.

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

RESPONSE FROM UNILEVER

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

UK NCP PROCESS IN THIS SPECIFIC INSTANCE

10. On 19 October 2007, the IUF submitted the complaint to the UK NCP. On 10 April 2008, the UK NCP completed the Initial Assessment on the complaint accepting for further consideration the alleged breach of Chapters IV(1)(a) and IV(7) of the Guidelines, but not of Chapter II(2). In particular, the Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement on the process to be used to establish which union represents the majority of workers at the Doom Dooma factory. **The acceptance of this Specific Instance for further consideration by the UK NCP does not mean that the UK NCP considers that Unilever acted inconsistently with the Guidelines.**

11. On 20 June 2008, the UK NCP suspended the complaint process under the Guidelines in the light of the decision of the PPF to petition the High Court in India for a supervised election to determine which union represents workers for collective bargaining purposes at Unilever's Doom Dooma factory⁶³.

12. Between November 2009 and February 2010, the UK NCP reviewed this Specific Instance in the light of its parallel proceeding guidance (which was endorsed by the UK NCP's Steering Board on 16 September 2009⁶⁴). Having sought the views of both parties, the UK NCP informed both parties on 5 March 2010 that it would apply the guidance to this Specific Instance and progress the complaint in accordance with the UK NCP's complaint procedure⁶⁵. The UK NCP offered, and both parties accepted, conciliation/mediation.

13. The UK NCP appointed ACAS⁶⁶ arbitrator and mediator John Mulholland to serve as conciliator-mediator. An initial conciliation meeting took place on 21 May 2010 in London. The parties met again on 7 July 2010 in London. The meetings were chaired by Mr Mulholland. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The full text of the agreement reached by the parties is attached as an annex to this Final Statement. The attached agreement refers to the application of a secret ballot at Doom Dooma factory. The UK NCP understands that agreement for the application of the secret ballot could not be obtained in India.

OUTCOME OF THE CONCILIATION

14. Following discussions which took place between 7 July 2010 and 29 September 2010, the parties reached the agreement attached to this Final Statement. Both parties have agreed that the full text of the agreement can be published and that there are no outstanding issues from the IUF's original complaint which need to be examined by the UK NCP. The parties also agreed that the implementation of the attached agreement will be jointly monitored by Unilever and the IUF at national and international levels.

UK NCP CONCLUSIONS

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

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

18 October 2010

URN 10/1228

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

⁶³ The UK NCP understands from the IUF that the High Court in India has delivered its judgment in February 2010 and ruled that it had no jurisdiction to supervise a union representation election for the Doom Dooma workers, but that there was nothing to impede such an election taking place should the parties so wish.

⁶⁴ <http://www.bis.gov.uk/files/file53069.pdf>

⁶⁵ <http://www.bis.gov.uk/files/file53070.pdf>

⁶⁶ Advisory, Conciliation and Arbitration Service.

ANNEX

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

1. Unilever has committed to establishing a process that is acceptable to the IUF and local union (CITU) representatives to enable all workers at the Doom Dooma factory in Assam, India to confirm membership of a trade union organisation of their choice.
2. This process must enable all individual workers to participate without fear of intimidation, physical violence, discrimination or other disciplinary repercussions. The outcome must be verifiable and validated by an independent third party who is acceptable to all parties.
3. Unilever, the IUF and its affiliated members will agree to abide by the outcome of this process.

The Application of a Secret Ballot

4. In the first instance, Unilever will pursue agreement by the State Government of Assam (including the State Labour Commissioner) to support the holding of a 'free and fair' election at the factory by means of a secret ballot. Unilever has already contacted and written to the relevant Government Ministers and will now accelerate efforts to obtain their consent by no later than 21 July 2010.
5. Subject to the agreement of the State authorities a date for holding a secret ballot will be fixed during August 2010. In order to ensure the integrity of the secret ballot an independent third party District Court Judge (retired) Dharya Saikia (Dibrugarh District Court) has been proposed by the IUF to help oversee and validate the outcome.
6. Unilever will agree to cover the costs and ensure the safety of Dharya Saikia (and any associated members of his team) in the undertaking of this role.
7. All 'confirmed' permanent workers (excluding probationary workers) would be eligible to participate in the secret ballot. Those workers who are currently under suspension would be able to exercise their right to vote by postal ballot.
8. Three copies of the register of all the workmen will be provided, one for each of the unions and one with the independent third party who will act as the presiding officer for the election, and the attendance of workers who have exercised the right to vote will be recorded.
9. Unilever will identify a safe and secure venue for the secret ballot and ensure adequate security is provided (in an area just outside main gate of the factory). Voting will be held on a work day and conducted between 08.00 and 17.00hrs.
10. In casting their ballot workers would be eligible to vote for the Hindustan Unilever Sramik Sangha, the Hindustan Lever Workers Union or 'none of the above'.
11. Three representatives of Hindustan Unilever Sramik Sangha and three representatives of Hindustan Lever (PPF) Workers Union will be allowed to be present at the venue where the election is held.

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

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

The Application of an alternative Verification Process

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

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

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

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

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

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

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

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

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

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

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

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

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

The Deduction of Trade Union Membership Dues

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

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

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

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

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

Signed by:

Nick Dalton

Ron Oswald

(V.P., H.R. Global Supply Chain, Unilever) (General Secretary, IUF)

London, 7 July 2010

Statement by the UK NCP

Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Complaint from Corner House against BAE Systems plc

SUMMARY OF THE CONCLUSIONS

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

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

2. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided into the following key stages:
 - (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - (4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.
5. The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website:
<http://www.bis.gov.uk/nationalcontactpoint>.

DETAILS OF THE PARTIES INVOLVED

6. **The complainant.** Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.
7. **The company.** BAE Systems plc is a UK registered multinational delivering products for air, land and naval forces as well as advanced electronics, security, information technology solutions and customer support services. The company is listed in the FTSE 100.

COMPLAINT FROM CORNER HOUSE

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

- a) Firstly, that BAE refused, in the period from November 2003 to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:
- In November 2003, BAE allegedly refused to provide details of its agents (namely, the agents' names and the amount of the commissions) to the ECGD.
 - The ECGD allegedly wrote to the company in March 2004 advising BAE about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance. BAE allegedly wrote to the ECGD on 24 May 2004 expressing concerns about ECGD's new procedures.
 - On 30 July and on 9 August 2004, several aerospace companies including BAE allegedly stated to the ECGD that agents' details needed to remain confidential.
 - On 12 August 2004, the ECGD allegedly wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.
- b) Secondly, that BAE sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:
- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE, Airbus and Rolls-Royce⁶⁷, allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
 - On 7 October 2004, at a meeting with the ECGD, BAE allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
 - On 29 October 2004, the ECGD allegedly gave written confirmation to BAE, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.
10. Corner House submitted that BAE's alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should⁶⁸:

"Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities".

UK NCP PROCESS

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

⁶⁷ The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

⁶⁸ OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

12. When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled “UK National Contact Point Information Booklet”⁶⁹ to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: *“In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate [...] Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution”*⁷⁰.
13. The UK NCP considered that Corner House’s submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.
14. On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD’s consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD’s new procedures came into effect on 1 July 2006.
15. The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009⁷¹. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure⁷².
16. On 15 December 2009, the UK NCP wrote to BAE and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/mediation in order to pave the way to a mutually satisfactory outcome of the complaint. In its letter of 29 January 2010, BAE did not address the UK NCP’s proposal for professional conciliation/mediation.
17. Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked BAE to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1 July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

⁶⁹ Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at <http://www.bis.gov.uk/files/file10209.pdf> - visited on 21 July 2010).

⁷⁰ *UK National Contact Point Information Booklet*, op. cit., p. 12.

⁷¹ OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference DAF/INV/NCP/RD(2009)3, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): www.tuac.org/en/public/index.phtml and <http://oecdwatch.org/>.

⁷² <http://www.bis.gov.uk/files/file53070.pdf> (visited on 21 July 2010)

RESPONSE FROM BAE SYSTEMS PLC

18. In its response of 14 April 2010, BAE invited the UK NCP to reject the complaint on the following grounds.
19. Firstly, BAE explained that, through the CBI, it did raise concerns in the period between March to October 2004 about the ECGD's proposed changes to the anti-bribery procedures because it considered that the new disclosure requirements put unacceptable burdens on applicants.
20. Secondly, BAE contended that it acted in compliance with (and pursuant to) a protocol that had been agreed with the UK Government, and that it was under no obligation to act in accordance with any other procedures. Following ECGD's introduction of revised procedures in November 2004, BAE stated that its policy was to comply with these procedures and not the Guidelines because the latter have no legal force, are mere recommendations and are not intended to place an enterprise in a situation where it faces conflicting requirements.
21. Thirdly, BAE contended that the complaint is wholly without merit and has no applicability to the ECGD's present requirements on applicant companies to disclose details of their advisers. BAE stated that whether it acted contrary to the Guidelines in 2004 is purely a matter of historical interest because, from 1 July 2006, the ECGD introduced new anti-bribery policies which changed the position taken by the ECGD in late 2004.
22. Fourthly, BAE contended that, as a result of the ECGD having implemented new procedures in July 2006, and the steps taken by exporters (including BAE) to comply with those new procedures, there are no useful recommendations for improvement that the UK NCP can make in its Final Statement.

UK NCP ANALYSIS

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

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

24. Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.
25. Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter

only refers to the disclosure of a “list of agents” (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents’ commissions.

26. The UK NCP therefore rejects Corner House’s interpretation that the recommendation extends to other agents’ details such as agents’ commissions⁷³. The UK NCP has therefore not examined whether the company refused to provide details of agents’ commissions to the ECGD as this is outside the scope of Chapter VI(2).
27. The UK NCP considers that the words “made available to competent authorities” in Chapter VI(2) mean that companies should provide the information upon request from the competent authority..

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

28. The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the “Commentary on Combating Bribery”. The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the “Commentary on Combating Bribery” annexed to the Guidelines⁷⁴ is silent on this particular point.
29. In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

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

30. Based on information received from the ECGD, ECGD’s policy on requesting agents’ details as part of the application process when a company requests support has been as follows:
 - a) Prior to 1 April 2003 – The ECGD did not require the disclosure of agents’ names and addresses.
 - b) From 1 April 2003 – The ECGD required all applicants to provide agents’ details (including names and addresses).
 - c) From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent’s details (including names and addresses).
 - d) From 1 December 2004 – The ECGD amended its requirements in respect of agents’ details as follows:
 - No agents’ details were required provided that any agents’ commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
 - Agents’ details were required in all cases which did not meet the above criteria. The agent’s details included the agents’ names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.

⁷³ Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

⁷⁴ OECD, *Commentary on Combating Bribery*, in “Commentary on the OECD Guidelines for Multinational Enterprises”, paragraphs 43-47, pp. 48-49 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

- e) From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent's details (including the agent's name and address). Applicants may request that the agent's name and address are provided under "special handling" arrangements to protect the sensitivity of this information.
31. The UK NCP has considered whether applicants for ECGD's support, including BAE, may have been unaware or unclear about whether ECGD's procedures between November 2003 and October 2004 required them to disclose agents' details.
32. Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD's policy between November 2003 and October 2004 was to require all applicants to disclose their agents' details to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).
33. The UK NCP also considers that ECGD's disclosure requirements from March 2004 had been clearly communicated to all applicants. The UK NCP has seen a letter dated 4 March 2004 from the ECGD to "all customers" which clearly set out the requirement from 1 May 2004 to disclose to the ECGD the list of agents involved in the project for which support was sought.

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

November 2003

34. Corner House alleges that in November 2003 BAE breached the Guidelines by refusing to provide the ECGD with details about the agents used in the sale of defence equipment to Saudi Arabia for which ECGD's support was sought. Corner House alleges that this constitutes a breach of the Guidelines. According to the newspaper article on which Corner House bases its allegations, the ECGD explained in 2003 that "*BAE submitted new proposals whereby no agents' commission was to be paid under the project*"⁷⁵. This statement implies that either no agent was employed in that particular project or that, if agents were employed, they were not paid any commission. It could also imply that BAE avoided the disclosure requirements by submitting a new application in which it said that no agents were engaged.
35. The UK NCP has reviewed the newspaper article which the Corner House referred to and considers that the article itself does not contain any evidence or refer to any evidence which the UK NCP could rely upon to reach a conclusion in relation to this allegation. The Corner House has not submitted any further documents in support of this allegation.
36. The UK NCP has asked the ECGD whether it holds any documents or other information which relate to this allegation. The ECGD stated that, as far as it is aware, in the period between November 2003 and October 2004 BAE complied with ECGD's application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between November 2003 and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not BAE refused to

⁷⁵ Evans, R., Leigh, D., *Millions risked in BAE contract*, Guardian, 27 November 2003 (downloadable from <http://www.guardian.co.uk/uk/2003/nov/27/freedomofinformation.saudi-arabia> - visited on 21 July 2010).

disclose its list of agents to the ECGD as part of its application for support on the Al Yamamah deal in the course of 2003.

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

May to October 2004

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

- a) The UK NCP has seen a letter dated 24 May 2004 from BAE to the ECGD in which BAE expressed concerns "*about ECGD's previous request for detailed information*", that is ECGD's letter dated 4 March 2004 referred to above which set out the requirement to disclose a list of agents involved in the project for which support is sought. In the same letter, BAE confirmed its support for the similar position taken by other manufacturers and their representative bodies.
- b) The note of a meeting between the CBI, businesses, and the Department of Trade and Industry and the ECGD on 5 July 2004. The UK NCP has seen this note but it does not make specific reference to BAE's position on the disclosure of its list of agents to the ECGD.
- c) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents BAE amongst other manufacturers, to the ECGD in which the aerospace industry found it "*unacceptable*", mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: "*The identities of third party 'agents or intermediaries' appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets [...] Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties*".
- d) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: "*We assume that the only issue outstanding at that point [i.e. 11 August 2004] will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent*".
- e) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: "*ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in*

compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standards form of contract with agents”.

- f) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that *“ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment”* and that *“These details [agents’ details] were very commercially sensitive [...] The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous”.*
 - g) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: *“We are most grateful for the explanation given at our meeting [meeting of 9 August 2004] of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD’s being aware of an agent’s identity, your objection to this is the heightened risk of inadvertent leakage of that information”.* In the same letter, the ECGD proposes a secure way for it to collect information about companies’ agents.
 - h) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: *“Although we [CBI Solutions Group] are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory agreement forming the basis of that appointment will enable you [the ECGD] to take a positive view of the compromise we are offering”.*
39. The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD’s application procedures should permit agents’ details to be withheld on grounds of commercial confidentiality. However, the UK NCP considers that in order to make a finding as to whether there has been a breach of the Guidelines it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between May and October 2004.
40. The UK NCP notes that, in its response to the complaint, BAE states that it acted in compliance with ECGD’s procedures. BAE has not submitted any supporting documents to the UK NCP.
41. The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that BAE refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between November 2003 and October 2004 BAE complied with ECGD’s application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between November 2003 and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not BAE disclosed a list of agents on each occasion that it made an application for support to the ECGD during this period.

42. Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 38 above. The UK NCP considers that these documents may suggest that BAE refused to provide a list of its agents to the ECGD when making applications during the period between May and August 2004. For example, the email of 25 August 2004 from the CBI to the ECGD states that “we [CBI Solutions Group] *are unable to agree to divulge details of agents to ECGD*” (the CBI Solutions Group included BAE). The UK NCP has also taken into account that it may be considered unlikely that BAE provided information on its agents to the ECGD in the course of applications it made to the ECGD during this period, while at the same time arguing strongly, either directly or through its business sector representatives, that ECGD’s application procedures should have permitted agents’ details to be withheld on grounds of commercial confidentiality.
43. However, the UK NCP considers that the documents referred to in paragraph 38 do not provide conclusive evidence that in specific applications for support between May and October 2004 BAE refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company made applications for support to the ECGD during the period between May and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.
44. The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether BAE did refuse to disclose a list of agents to the ECGD when making applications for support during the period between November 2003 and October 2004. Accordingly, the UK NCP is unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines in this respect.
45. The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

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

46. BAE has recognised in its response of 14 April 2010 that it did seek an assurance from the ECGD that it could use commercial confidentiality as a justification for withholding its list of agents from the ECGD. The UK NCP has also reviewed copies of several documents which show this, as follows:
- a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: “*We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of “agent” concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)*”.
 - b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: “*We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents’ details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point*”.

- c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from BAE. At the meeting, the CBI Solutions Group states that: *“Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support”*. In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents’ names, this would not automatically be used by the ECGD as a reason for not giving cover.
47. The UK NCP has considered whether the fact that BAE sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.
48. As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.
49. However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary⁷⁶, while recommending multinationals to *“avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues”*, expressly recognises *“an enterprise’s right to seek changes in the statutory or regulatory framework”*.
50. In light of the above, the UK NCP concludes that, BAE’s actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

CONCLUSIONS

51. On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:
- a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents’ commissions, and that the words “made available to competent authorities” in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.
 - b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
 - c) That, between November 2003 and October 2004, ECGD’s policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).

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Commentary on the OECD Guidelines for Multinational Enterprises, 2008, op. cit., paragraph 6, p. 40 (available at www.oecd.org/dataoecd/56/36/1922428.pdf- visited on 21 July 2010).

- d) The UK NCP considers that it does not have sufficient evidence to make a finding as to whether BAE refused to disclose its list of agents in respect of its application for support on the Al Yamamah deal in 2003.
- e) That although the UK NCP has seen documents which suggest that BAE may have refused to disclose its list of agents to the ECGD when making specific applications for support between May and October 2004, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether BAE did refuse to disclose a list of agents to the ECGD when making applications for support during this period. Accordingly, the UK NCP considers that it is unable to make a finding as to whether BAE breached Chapter VI(2) of the Guidelines in this respect.
- f) That BAE did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

THE COMPANY'S CURRENT PRACTICES

- 52. The ECGD has stated that BAE has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.
- 53. BAE's corporate responsibility measures are accessible through BAE's web portal. The UK NCP has reviewed BAE's initiatives to discourage bribery within the company. In particular, the UK NCP notes the following measures taken by BAE which are of particular significance in relation to Chapter VI(2) of the Guidelines.
- 54. Firstly, BAE states on its website that it has committed itself to act on all the recommendations contained in the 2008 report of the Woolf Committee⁷⁷. The UK NCP understands that the Woolf Committee was a committee appointed by BAE's board of directors, and chaired by Rt Hon The Lord Woolf of Barnes, to report publicly on the company's ethical policies and processes. Recommendations 11⁷⁸, 13⁷⁹ and 22⁸⁰ of the Woolf Committee refer to the selection, appointment and management of advisers⁸¹ (i.e. agents), the prohibition of facilitation payments (to be implemented progressively), and the need for the company to be as open and transparent as possible. BAE states that in response to these recommendations it has⁸²: created a Business Development Adviser Compliance Panel, chaired by independent third parties, for the review and

⁷⁷ Woolf Committee, *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, May 2008 (downloadable from http://ir.baesystems.com/investors/storage/woolf_report_2008.pdf - visited on 21 July 2010).

⁷⁸ *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, op. cit., p. 47.

⁷⁹ *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, op. cit., p. 48.

⁸⁰ *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, op. cit., p. 53.

⁸¹ On advisers see also *Business ethics, global companies and the defence industry – ethical business conduct in BAE Systems plc – the way forward*, op. cit., Appendix J, pp. A77-A82.

⁸² BAE Systems, *Progress against Woolf Committee recommendations*, <http://www.baesystems.com/CorporateResponsibility/ResponsibleBusinessConduct/ProgressagainstWoolfCommitteeRecommendations/index.htm> (visited on 21 July 2010).

assessment of adviser appointments; clarified the company's Facilitation Payments Policy to the effect that employees are prohibited from making facilitation payments irrespective of whether or not they are permitted by local laws, and must decline and report any request for such payment; committed to being as open as practicable with external stakeholders.

55. Secondly, the UK NCP notes that BAE's global code of conduct states that: "*We have made it clear that when we are bidding for or negotiating a contract we will [...] disclose information required by law or regulation*"⁸³; that "*We will only appoint advisers of known integrity and require that their conduct meets our standards at all time [...] We demand that all of our advisers, consultants, and distributors comply with our policies*"⁸⁴; and that "*We will not make facilitation payments and will seek to eliminate the practice in countries in which we do business*"⁸⁵.
56. Thirdly, the UK NCP understands that BAE has established a strong internal corporate responsibility enforcement mechanism. BAE states that its managing director for corporate responsibility reports directly to the Chief Executive and ensures that the company's corporate responsibility objectives are implemented as part of the company's operations and a corporate responsibility committee assists its board of directors in monitoring and reviewing BAE's corporate responsibility policy, including BAE's compliance with anti-corruption laws and regulations⁸⁶.

RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP

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

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

⁸³ BAE Systems, *Being a responsible company – what it means to us – Code of Conduct*, p. 48 (downloadable from http://www.baesystems.com/BAEProd/groups/public/documents/bae_publication/bae_pdf_759of003_001.pdf - visited on 21 July 2010).

⁸⁴ *Being a responsible company – what it means to us – Code of Conduct*, op. cit., p. 50.

⁸⁵ *Being a responsible company – what it means to us – Code of Conduct*, op. cit., p. 52.

⁸⁶ BAE Systems, *Corporate Responsibility Committee - Terms of reference*, 6 December 2005, paragraph 6.2, p. 2 (downloadable from http://bae-systems-investor-relations-2009.production.investis.com/corporate-governance/~media/Files/B/BAE-Systems-Investor-Relations-2009/PDFs/board-committees/tor_crc.pdf - visited on 21 July 2010).

Statement by the UK NCP

Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Complaint from Corner House against Rolls-Royce Group plc

SUMMARY OF THE CONCLUSIONS

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

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

60. The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
61. The Guidelines are implemented in adhering countries by National Contact Points (NCPs) which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

UK NCP complaint procedure

62. The UK NCP complaint process is broadly divided into the following key stages:
 - (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - (4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.
63. The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website:
<http://www.bis.gov.uk/nationalcontactpoint>.

DETAILS OF THE PARTIES INVOLVED

64. **The complainant.** Corner House Research (Corner House) is a UK registered company carrying out research and analysis on social, economic and political issues.
65. **The company.** Rolls-Royce Group plc (Rolls-Royce) is a UK registered company providing integrated power systems for use on land, at sea, and in the air. The company is listed in the FTSE 100.

COMPLAINT FROM CORNER HOUSE

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

- a) Firstly, that Rolls-Royce refused, in the period from April to October 2004, to disclose the details of its agents and its agents' commissions to the ECGD following ECGD's request to do so. In particular:
- The ECGD allegedly wrote to the company in March 2004 advising Rolls-Royce about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance.
 - Rolls-Royce allegedly wrote to the ECGD on 23 April 2004 stating that the new disclosure requirements on agents were not acceptable.
 - At a meeting between ECGD and industry groups on 5 July 2004, Rolls-Royce allegedly supported Airbus in stating that it would not provide any agents' details to the ECGD because it had entered into confidentiality agreements with its agents and regarded these arrangements as a matter between the company and the agents.
 - On 30 July and on 9 August 2004, several aerospace companies including Rolls-Royce allegedly stated to the ECGD that agents' details needed to remain confidential.
 - On 12 August 2004, the ECGD allegedly wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.
- b) Secondly, that Rolls-Royce sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:
- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE Systems, Airbus and Rolls-Royce⁸⁷, allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
 - On 7 October 2004, at a meeting with the ECGD, Rolls-Royce allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
 - On 29 October 2004, the ECGD allegedly gave written confirmation to BAE Systems, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

68. Corner House submitted that Rolls-Royce's alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should⁸⁸:

"Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities".

⁸⁷ The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

⁸⁸ OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

UK NCP PROCESS

69. On 4 April 2005, Corner House submitted to the UK NCP a complaint against BAE Systems, Airbus and Rolls-Royce under the Guidelines.
70. When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled “UK National Contact Point Information Booklet”⁸⁹ to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: *“In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate [...] Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution”*⁹⁰.
71. The UK NCP considered that Corner House’s submission met the criteria for accepting a complaint under the Guidelines. On 10 May 2005, the UK NCP wrote to the three companies forwarding a copy of the complaint and asking for a written response to the allegations. On 18 May 2005, the UK NCP met with the three companies in order to explain the complaint process under the Guidelines.
72. On 3 August 2005, the UK NCP decided to defer progressing the case until the conclusion of the ECGD’s consultation on its anti-bribery and anti-corruption procedures. The consultation process concluded in March 2006 and ECGD’s new procedures came into effect on 1 July 2006.
73. The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009⁹¹. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure⁹².
74. On 15 December 2009, the UK NCP wrote to Rolls-Royce and Corner House informing them that it was going to progress the complaint in accordance with its published complaint procedure. In the same letter, the UK NCP offered to both parties professional conciliation/mediation in order to pave the way to a mutually satisfactory outcome of the complaint. On 29 January 2010, Rolls-Royce declined this offer.
75. Therefore, on 15 February 2010, the UK NCP informed the parties that it would move to an examination of the complaint. The UK NCP asked the parties to provide evidence to support their positions in respect of the complaint by 15 April 2010. The UK NCP also asked Rolls-Royce to comment on its compliance with the new anti-bribery procedures introduced by the ECGD on 1

⁸⁹ Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at <http://www.bis.gov.uk/files/file10209.pdf> - visited on 21 July 2010).

⁹⁰ *UK National Contact Point Information Booklet*, op. cit., p. 12.

⁹¹ OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference DAF/INV/NCP/RD(2009)3, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): www.tuac.org/en/public/index.phtml and <http://oecdwatch.org/>.

⁹² <http://www.bis.gov.uk/files/file53070.pdf> (visited on 21 July 2010)

July 2006. The UK NCP also asked the ECGD to provide any relevant documents. All the evidence received by the UK NCP was shared with both parties.

RESPONSE FROM ROLLS-ROYCE GROUP PLC

76. On 15 April 2010, Rolls-Royce stated that the complaint from Corner House should be rejected on the grounds that between April and October 2004 Rolls-Royce made no applications to the ECGD for support for overseas sales and therefore it cannot be found to have breached Chapter VI(2) of the Guidelines. Rolls-Royce also stated that it has been complying with the requirements set out in ECGD's application procedures introduced on 1 July 2006 (which require the disclosure of agents' details to the ECGD) and therefore the UK NCP cannot make any useful recommendations to the company.

UK NCP ANALYSIS

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

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

78. Chapter VI(2) of the Guidelines states that enterprises should ensure that the remuneration of their agents is appropriate and for legitimate services only and that, where relevant, enterprises should make available to competent authorities a list of the agents that they employ in relation to transactions with public bodies and state-owned enterprises.
79. Chapter VI(2) provides that companies should disclose a "list of agents". The UK NCP considers that the term "list of agents" in Chapter VI(2) means that companies should disclose the identity of agents. The UK NCP considers that it is clear from the wording of Chapter VI(2) that this Chapter only refers to the disclosure of a "list of agents" (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents' commissions.
80. The UK NCP therefore rejects Corner House's interpretation that the recommendation extends to other agents' details such as agents' commissions⁹³. The UK NCP has therefore not examined whether the company refused to provide details of agents' commissions to the ECGD as this is outside the scope of Chapter VI(2).
81. The UK NCP considers that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide the information upon request from the competent authority.

⁹³ Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

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

82. The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the “Commentary on Combating Bribery”. The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the “Commentary on Combating Bribery” annexed to the Guidelines⁹⁴ is silent on this particular point.
83. In light of the above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities upon request is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.

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

84. Based on information received from the ECGD, ECGD’s policy on requesting agents’ details as part of the application process when a company requests support has been as follows:
- a) Prior to 1 April 2003 – The ECGD did not require the disclosure of agents’ names and addresses.
 - b) From 1 April 2003 – The ECGD required all applicants to provide agents’ details (including names and addresses).
 - c) From 1 May 2004 – The ECGD required all applicants to notify the ECGD whether any agent or other intermediary was involved. If the answer was positive then the applicant was required to provide the agent’s details (including names and addresses).
 - d) From 1 December 2004 – The ECGD amended its requirements in respect of agents’ details as follows:
 - o No agents’ details were required provided that any agents’ commission was not included in the contract price and that any such amount did not exceed 5% of the contract price;
 - o Agents’ details were required in all cases which did not meet the above criteria. The agent’s details included the agents’ names and addresses unless the applicant had valid reasons (to be communicated to the ECGD in writing) for not identifying its agents.
 - e) From 1 July 2006 – following a public consultation, the ECGD requires applicants in all cases to confirm whether any agent or intermediary is acting in relation to the supply contract and, if the answer is positive, to provide the agent’s details (including the agent’s name and address). Applicants may request that the agent’s name and address are provided under “special handling” arrangements to protect the sensitivity of this information.
85. The UK NCP has considered whether applicants for ECGD’s support, including Rolls-Royce, may have been unaware or unclear about whether ECGD’s procedures between April and October 2004 required them to disclose agents’ details.
86. Based on the information provided by the ECGD, the UK NCP considers that it is clear that ECGD’s policy between April and October 2004 was to require all applicants to disclose their agents’ details to the ECGD when applying for support (from 1 May 2004, this requirement

⁹⁴ OECD, *Commentary on Combating Bribery*, in “Commentary on the OECD Guidelines for Multinational Enterprises”, paragraphs 43-47, pp. 48-49 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

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

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

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

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

- a) The UK NCP has seen a letter dated 23 April 2004 from Rolls-Royce to the ECGD, in response to ECGD's letter dated 4 March 2004 referred to above (which set out the requirement to disclose a list of agents involved in the project for which support is sought), in which the company states that: *"Neither the new declarations in relation to Agents nor the new audit rights in relation to Agents Commissions are acceptable"*.
- b) The note of a meeting, seen by the UK NCP, between the CBI, businesses (including Rolls-Royce), and the Department of Trade and Industry and the ECGD on 5 July 2004, states that: *"Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce"*. The same note states that: *"ECGD expressed surprise that companies were now refusing to provide additional information on agent's commission that it required since most of these details had been specified in ECGD application forms since April 2003"*.
- c) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents Rolls-Royce amongst other manufacturers, to the ECGD in which the aerospace industry found it *"unacceptable"*, mainly on the ground of commercial confidentiality, to disclose agents' details to the ECGD as part of the application process for support. The note indicates that: *"The identities of third party 'agents or intermediaries' appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company's commercial assets [...] Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties"*.
- d) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: *"We assume that the only issue outstanding at that point [i.e. 11 August 2004] will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent"*.
- e) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: *"ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on*

overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standards form of contract with agents”.

- f) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that *“ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment”* and that *“These details [agents’ details] were very commercially sensitive [...] The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous”*.
- g) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: *“We are most grateful for the explanation given at our meeting [meeting of 9 August 2004] of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD’s being aware of an agent’s identity, your objection to this is the heightened risk of inadvertent leakage of that information”*. In the same letter, the ECGD proposes a secure way for it to collect information about companies’ agents.
- h) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: *“Although we [CBI Solutions Group] are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory agreement forming the basis of that appointment will enable you [the ECGD] to take a positive view of the compromise we are offering”*.

- 89. The UK NCP considers that the documents referred to above clearly show that the company argued strongly (either directly or through its business sector representatives) that ECGD’s application procedures should permit agents’ details to be withheld on grounds of commercial confidentiality. However, the UK NCP considers that, in order to make a finding as to whether there has been a breach of the Guidelines, it is necessary to determine whether the company actually refused to disclose a list of agents to the ECGD when making specific applications to the ECGD for support during the period between April and October 2004.
- 90. The UK NCP notes that in its response to the complaint Rolls-Royce states that: *“[...] Rolls-Royce’s position is simply stated. Rolls-Royce made no applications to ECGD in respect of which export credit support was provided for overseas sales during this period. Accordingly, we do not consider that any complaint can be sustained against the company for non-compliance with Chapter VI paragraph 2 of the OECD Guidelines”*. Rolls-Royce has stated that because it made no applications to the ECGD, there are no supporting documents which it could produce in relation to its position.
- 91. The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that Rolls-Royce refused to disclose a list of agents to the ECGD when making

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

92. Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 30 above and Rolls-Royce's statement that it made no applications during the relevant period. The UK NCP considers that the documents referred to in paragraph 30 show that Rolls-Royce strongly opposed the introduction of a requirement to disclose a list of its agents to the ECGD when making applications for support. For example, the note of a meeting on 5 July 2004 (which the UK NCP has seen) between the CBI, the Department of Trade and Industry, the ECGD and businesses (including Rolls-Royce) states that: *"Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved. It was supported in this by Rolls-Royce"*. This suggests that, if Rolls-Royce had made applications for support during the relevant period (between April and October 2004), it may have been reluctant to provide information on its agents to the ECGD, given that it had been arguing strongly, either directly or through its business sector representatives, that ECGD's application procedures should have permitted agents' details to be withheld on grounds of commercial confidentiality.
93. However, the UK NCP considers that the documents referred to in paragraph 30 do not provide conclusive evidence as to whether Rolls-Royce submitted specific applications for support between April and October 2004, and, if it did, whether it refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company made applications for support to the ECGD during the period between April and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.
94. The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it did refuse to disclose a list of agents to the ECGD. Accordingly, the UK NCP is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.
95. The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

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

96. The UK NCP has reviewed copies of several documents which show that Rolls-Royce did seek an assurance that it could use commercial confidentiality as a reason for refusing disclosure of its list of agents to the ECGD, as follows:
 - a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: *"We accept that*

where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of “agent” concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)”.

- b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: *“We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents’ details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point”.*
 - c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from Rolls-Royce. At the meeting, the CBI Solutions Group states that: *“Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support”.* In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents’ names, this would not automatically be used by the ECGD as a reason for not giving cover.
97. The UK NCP has considered whether the fact that Rolls-Royce sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.
98. As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.
99. However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary⁹⁵, while recommending multinationals to *“avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues”*, expressly recognises *“an enterprise’s right to seek changes in the statutory or regulatory framework”*.
100. In light of the above, the UK NCP concludes that, Rolls-Royce’s actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

CONCLUSIONS

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

⁹⁵ *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, op. cit., paragraph 6, p. 40 (available at www.oecd.org/dataoecd/56/36/1922428.pdf- visited on 21 July 2010).

- a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents' commissions, and that the words "made available to competent authorities" in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.
- b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
- c) That, between April and October 2004, ECGD's policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).
- d) That, if Rolls-Royce had made applications for support to the ECGD between April and October 2004, the documents which the UK NCP has seen, suggest that Rolls-Royce may have been reluctant to disclose its list of agents to the ECGD. However, Rolls-Royce has stated that it made no applications to the ECGD during this period. The UK NCP has been unable to verify this with the ECGD and considers that it does not have sufficient evidence to make a finding as to whether Rolls-Royce did make applications for support to the ECGD during this period and, if it did, whether it refused to disclose a list of agents to the ECGD. Accordingly, the UK NCP considers that it is unable to make a finding as to whether Rolls-Royce breached Chapter VI(2) of the Guidelines in this respect.
- e) That Rolls-Royce did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

THE COMPANY'S CURRENT PRACTICES

- 102. The ECGD has stated that Rolls Royce has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.
- 103. Rolls-Royce's policy on corporate responsibility is accessible through the company's web portal. In respect of the issues covered by Chapter VI(2) of the Guidelines, the UK NCP notes that the company's published "Global Code of Business Ethics"⁹⁶ states that: "*We [Rolls-Royce] only appoint intermediaries to represent our interests in the sales process who can demonstrate they fully comply with the principles of this Code and avoid bribery and corruption. We actively manage these intermediaries to ensure they continue to comply with these principles*"⁹⁷. The Code also states that: "*We [Rolls-Royce] will: require any intermediaries in the sales process to comply with a code of ethics that is at least comparable to ours and to applicable laws; conduct thorough due diligence and only select intermediaries that meet our ethical requirements; only make payments to intermediaries that are proportionate, proper and legitimately due in relation to the services provided; ensure that internal controls are in place to prevent bribery and corruption; and ensure staff receive training to prevent bribery and corruption*"⁹⁸. The Code recognises the need to apply the higher standards it sets out: "*Where the guidance in this Code conflicts with any*

⁹⁶ Rolls-Royce Group plc, *Global Code of Business Ethics*, June 2009 (available at http://www.rolls-royce.com/Images/ethicscode_eng_tcm92-13314.pdf - visited on 23 June 2010).

⁹⁷ *Global Code of Business Ethics*, op. cit., p. 26.

⁹⁸ *Global Code of Business Ethics*, op. cit., p. 27.

applicable local laws you should follow the higher standard, ensuring always that local laws are satisfied”⁹⁹.

104. The UK NCP understands that Rolls-Royce has established an “Ethics Reporting Line” which allows employees to report in confidence alleged breaches of the company’s “Global Code of Business Ethics” and that reports are then examined by the company’s Director of Risk, the Head of Business Ethics and Compliance, and the Director of Security. The UK NCP also understands that an Ethics Committee¹⁰⁰, composed of independent non-executive directors, monitors the reporting line and the connected investigations, as well as the company’s overall compliance with the “Global Code of Business Ethics”.

RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP

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

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

⁹⁹ *Global Code of Business Ethics*, op. cit., p. 92.

¹⁰⁰ Rolls-Royce Group plc, *Ethics Committee Terms of Reference*, 11 September 2008 (available at http://www.rolls-royce.com/Images/ethics_tcm92-12993.pdf - visited on 23 June 2010).

Statement by the UK NCP

Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Complaint from Corner House against Airbus S.A.S.

SUMMARY OF THE CONCLUSIONS

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

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

The Guidelines are not legally binding. However, OECD governments and a number of non OECD members are committed to encouraging multinational enterprises operating in or from their territories to

observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.

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

UK NCP complaint procedure

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

- (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
- (2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
- (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
- (4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.

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

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

DETAILS OF THE PARTIES INVOLVED

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

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

COMPLAINT FROM CORNER HOUSE

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

There are two aspects to Corner House's complaint:

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

- The ECGD wrote to the company in March 2004 advising Airbus about the coming into effect of new anti-bribery and anti-corruption procedures in May 2004, which included a requirement for companies to provide details of their agents and their agents' commissions to the ECGD when applying for a credit guarantee or overseas investment insurance. Airbus wrote to the ECGD on 7 April 2004 stating that the fees paid to agents constituted commercially sensitive information.
 - At a meeting between the ECGD and industry groups on 5 July 2004, Airbus allegedly stated that it would not provide any agents' details to the ECGD because it had entered into confidentiality agreements with its agents and regarded these arrangements as a matter between the company and the agents.
 - On 30 July and on 9 August 2004, several aerospace companies including Airbus allegedly stated to the ECGD that agents' details needed to remain confidential.
 - On 12 August 2004, the ECGD wrote to the aerospace companies stating that there could be no commercial disadvantage in ECGD's being aware of an agent's identity. In the same letter, the ECGD allegedly offered to put in place procedures to ensure the security of this information.
 - Airbus wrote to the ECGD on 31 August 2004 stating that contracts with agents were part of the company's commercial know-how and had to be kept confidential.
- b) Secondly, that Airbus sought an assurance from the ECGD that it could withhold disclosure of its list of agents and agents' commissions to the ECGD on grounds of commercial confidentiality following new procedures being introduced by the ECGD in May 2004. In particular:
- On 25 August 2004, the Confederation of British Industry (CBI) Solutions Group, negotiating on behalf of companies which included BAE Systems, Airbus and Rolls-Royce¹⁰¹, allegedly stated to the ECGD that agents' details would not be provided if there was a justification for not doing so.
 - On 7 October 2004, at a meeting with the ECGD, Airbus allegedly sought an assurance that commercial confidentiality could justify non-disclosure of its agents' names.
 - On 29 October 2004, the ECGD gave written confirmation to BAE Systems, Airbus and Rolls-Royce that using commercial confidentiality for not disclosing agents' details to the ECGD would not be used by the ECGD as a reason for not providing support to the companies.

107. Corner House submitted that Airbus' alleged conduct as summarised above was contrary to Chapter VI(2) of the Guidelines which states that enterprises should¹⁰²:

"Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities".

UK NCP PROCESS

¹⁰¹ The CBI Solutions Group also represented the interests of the British Exporters Association and the British Bankers Association.

¹⁰² OECD, *OECD Guidelines for Multinational Enterprises*, p. 21 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

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

When the complaint was submitted, the UK NCP did not have a published complaint procedure. It did however publish a booklet titled “UK National Contact Point Information Booklet”¹⁰³ to explain the Guidelines and, in broad terms, how the UK NCP would handle a complaint under the Guidelines. The booklet stated that: *“In deciding whether to pursue an issue, the NCP will consult the company in question and also any other interested parties, as appropriate [...] Then if having consulted others as outlined above, the NCP decides that the issue does merit further consideration, we will contact the originator and seek to contribute to its resolution”*¹⁰⁴.

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

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

The UK NCP did not progress the complaint further and the current members of the UK NCP became aware of the existence of this case after it was flagged in a report submitted to the OECD on 12 June 2009¹⁰⁵. The UK NCP then contacted Corner House to ascertain whether it still wished to pursue the complaint. On 4 November 2009, Corner House confirmed that it did. Therefore, the UK NCP decided to progress the complaint in accordance with its complaint procedure¹⁰⁶.

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

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

¹⁰³ Department of Trade and Industry (DTI), *UK National Contact Point Information Booklet*, 28 February 2001 (available at <http://www.bis.gov.uk/files/file10209.pdf> - visited on 21 July 2010).

¹⁰⁴ *UK National Contact Point Information Booklet*, op. cit., p. 12.

¹⁰⁵ OECD, *Submissions by TUAC and OECD Watch - Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises*, document reference DAF/INV/NCP/RD(2009)3, 12 June 2009, page 68. This document is, at the time of writing this Final Statement, still classified by the OECD. However, both TUAC and OECD Watch contributions are available from the following websites (visited on 21 July 2010): www.tuac.org/en/public/index.phtml and <http://oecdwatch.org/>.

¹⁰⁶ <http://www.bis.gov.uk/files/file53070.pdf> (visited on 21 July 2010)

RESPONSE FROM AIRBUS S.A.S.

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

- a) That Chapter VI(2) of the Guidelines does not require companies to disclose information relating to agents' remuneration to the competent authorities..
- b) That Airbus was acting in compliance with the Guidelines in the period between April and October 2004 and that it cannot be criticised for engaging in negotiations with the ECGD in order to protect its commercial interests and the confidentiality of third parties which the ECGD itself accepted as legitimate concerns. Airbus submitted that the position it took during the negotiations cannot be regarded as a breach of the Guidelines.
- c) That, during the course of the negotiations with the ECGD between April and October 2004, Airbus continued to receive guarantees from the ECGD. The company submitted that if the ECGD had considered that Airbus had failed to provide sufficient information it could have rejected the application, but it did not do so.
- d) That circumstances have fundamentally changed since the complaint was made. Airbus submitted that, in July 2006, the ECGD adopted new procedures to which the company has adhered since their introduction. Therefore, the issues raised in the complaint are moot.
- e) That there are no recommendations that the UK NCP could appropriately make in respect of Airbus because Airbus has always acted in conformity with the Guidelines and adheres to the procedures introduced by the ECGD in July 2006.

UK NCP ANALYSIS

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

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

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

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

only refers to the disclosure of a “list of agents” (meaning disclosure of the identity of agents) and does not extend to disclosing details of agents’ commissions.

The UK NCP therefore rejects Corner House’s interpretation that the recommendation extends to other agents’ details such as agents’ commissions¹⁰⁷. The UK NCP has therefore not examined whether the company refused to provide details of agents’ commissions to the ECGD as this is outside the scope of Chapter VI(2).

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

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

The UK NCP considers that if it was intended to make Chapter VI(2) subject to such a qualification then this would be expressly referred to in Chapter VI(2) itself or at the very least in the “Commentary on Combating Bribery”. The UK NCP notes that Chapter VI(2) itself does not state that disclosure can be withheld on grounds of commercial confidentiality. The UK NCP also notes that the “Commentary on Combating Bribery” annexed to the Guidelines¹⁰⁸ is silent on this particular point.

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

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

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

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

¹⁰⁷ Corner House, *Complaint against BAE Systems, Airbus and Rolls-Royce under the OECD Guidelines for Multinational Enterprises*, paragraph 5, p. 2.

¹⁰⁸ OECD, *Commentary on Combating Bribery*, in “Commentary on the OECD Guidelines for Multinational Enterprises”, paragraphs 43-47, pp. 48-49 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 21 July 2010).

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

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

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

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

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

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

- k) The UK NCP has seen a letter dated 7 April 2004 from Airbus to the ECGD in which Airbus expresses concerns about "*the new application form*", as outlined in ECGD's letter dated 4 March 2004 referred to above (which set out the requirement to disclose a list of agents involved in the project for which support is sought). In the same letter, Airbus states that: "*As you can imagine, details of fees, if any, paid to consultants in connection with assistance or services they provide, constitutes commercially sensitive information. We feel very strongly that our network of consultants is part of our competitive advantage and that it is therefore inappropriate, in our view, to disclose this information outside our organisation*". This letter shows Airbus's concerns in relation to the disclosure of commissions paid to agents. The UK NCP could find no references in this letter to Airbus's position in relation to the disclosure to the ECGD of its list of agents.
- l) The note of a meeting, seen by the UK NCP, between the CBI, businesses (including Airbus), and the Department of Trade and Industry and the ECGD on 5 July 2004, states that: "*Airbus insisted that it will not provide any details relating to its agents. It entered into confidentiality agreements with its agents and regarded these arrangements as strictly a matter between the company and the agent involved [...] It was prepared to show ECGD the form of its standard agency agreement but would not provide any details as to how such agreements were modified for particular transactions*". The same note states that: "*ECGD expressed surprise that companies were now refusing to provide additional information on agent's commission that it*

required since most of these details had been specified in ECGD application forms since April 2003”.

- m) The UK NCP has also seen a note dated 30 July 2004 from the aerospace industry, which represents Airbus amongst other manufacturers, to the ECGD in which the aerospace industry found it *“unacceptable”*, mainly on the ground of commercial confidentiality, to disclose agents’ details to the ECGD as part of the application process for support. The note indicates that: *“The identities of third party ‘agents or intermediaries’ appointed by applicants to assist with their marketing is commercially sensitive information and is part of the company’s commercial assets [...] Contracts with third parties may contain confidentiality provisions which prevent disclosure to third parties”*.
- n) In an exchange of e-mails, seen by the UK NCP, between BAE and the ECGD dated 5 August 2004, the ECGD stated: *“We assume that the only issue outstanding at that point [i.e. 11 August 2004] will be the refusal by Airbus, BAES, and Rolls Royce to disclose the name of any agent”*.
- o) An informal internal ECGD note dated 5 August 2004, which the UK NCP has seen, states that: *“ECGD believes that the leading members of the CBI group, ie Airbus, BAES and Rolls Royce, who have formed a common line on the issue of disclosure of agents, are willing to disclose to ECGD: (i) their corporate code of conduct governing the conduct of employees on overseas dealings, which is intended to comply with UK law; (ii) Their standard form of contract with agents, which will enclose anti-bribery and corruption wording in line with UK law and a summary description of the services to be provided by the agent; and (iii) whether commission for an agent is included in their price or not. The large exporters are further willing to offer the following warranties in any new ECGD application form: (i) They are in compliance with UK law; and (ii) If there is a signed agency agreement, it contains anti-bribery and corruption provisions consistent with the spirit of their standard form of contract with agents”*.
- p) The note of a meeting prepared by the ECGD, seen by the UK NCP, between the CBI Solutions Group and the ECGD on 9 August 2004 states that *“ECGD asked for a clear explanation as to why the Aerospace/Defence companies were unable to provide ECGD with the name of their agents/intermediaries. Industry response was that aerospace/defence companies operated in a particular environment”* and that *“These details [agents’ details] were very commercially sensitive [...] The intermediaries themselves may have valid and justifiable reasons for wanting to remain anonymous”*.
- q) In a letter dated 12 August 2004, which the UK NCP has seen, from the ECGD to the CBI Solutions Group, the ECGD states that: *“We are most grateful for the explanation given at our meeting [meeting of 9 August 2004] of why industry places such importance on maintaining the confidentiality of the names of agents. We conclude from this explanation that, while there can be no commercial disadvantage to you in ECGD’s being aware of an agent’s identity, your objection to this is the heightened risk of inadvertent leakage of that information”*. In the same letter, the ECGD proposes a secure way for it to collect information about companies’ agents.
- r) An e-mail, which the UK NCP has seen, from the CBI to the ECGD dated 25 August 2004 states that: *“Although we [CBI Solutions Group] are unable to agree to divulge details of agents to ECGD we hope that the compromise of offering you either details of the due diligence process by which agents/advisers are appointed or the pro-forma agency/advisory*

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

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

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

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

108. The UK NCP has asked the ECGD whether it has any documents which are relevant to the allegation that Airbus refused to disclose a list of agents to the ECGD when making applications for support to the ECGD during this period. The ECGD stated that, as far as it is aware, in the period between April and October 2004 Airbus complied with ECGD’s application procedures in place at the time (which included a requirement to disclose a list of agents). However, the ECGD also stated that, between April and October 2004, it did not keep a central record of all the applications received, and unsuccessful (or withdrawn) applications will have been destroyed. In light of this, the UK NCP has been unable to verify with the ECGD whether or not Airbus disclosed a list of agents, if any, on each occasion that it made an application for support to the ECGD during this period.
109. Therefore, the evidence which is available to the UK NCP is limited to the documents referred to in paragraph 30 above. The UK NCP considers that these documents may suggest that Airbus refused to provide a list of its agents to the ECGD when making applications during the period between April and August 2004. For example, the note of a meeting on 5 July 2004 (which the UK NCP has seen) between the CBI, the Department of Trade and Industry, the ECGD and businesses (including Airbus) states that: *“Airbus insisted that it will not provide any details relating to its agents”.* The UK NCP has also taken into account that it may be considered unlikely that Airbus provided information on its agents to the ECGD in the course of applications it made to the ECGD during this period, while at the same time arguing strongly, either directly or through its business sector representatives, that ECGD’s application procedures should have permitted agents’ details to be withheld on grounds of commercial confidentiality.

110. However, the UK NCP considers that the documents referred to in paragraph 30 do not provide conclusive evidence that in specific applications for support between April and October 2004 Airbus refused to provide a list of agents to the ECGD. In particular, the UK NCP has not received any evidence which clearly shows that the company when making applications for support to the ECGD during the period between April and October 2004, was asked to provide a list of agents by the ECGD, and refused to do so.
111. The UK NCP therefore considers that it does not have sufficient evidence to make a finding as to whether Airbus did refuse to disclose a list of agents to the ECGD when making applications for support during the period between April and October 2004. Accordingly, the UK NCP is unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines in this respect.
112. The UK NCP considers that if the company did refuse to disclose a list of agents to the ECGD when making applications to the ECGD for support then this would have constituted a breach of Chapter VI(2) of the Guidelines.

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

113. Airbus has recognised in its response of 15 April 2010 that it did seek an assurance from the ECGD that it could use commercial confidentiality as a justification for withholding its list of agents from the ECGD. The UK NCP has also reviewed copies of several documents which show this, as follows:
 - a) In an exchange of e-mails dated 25 August 2004, which the UK NCP has seen, between the CBI Solutions Group and the ECGD, the CBI Solutions Group states that: *“We accept that where commission has been included in the gross price quoted to ECGD, both the level of commission and the name of “agent” concerned would require disclosure, except, in the case of the name of the agent, where there is justification for not disclosing it (e.g. competitive reasons)”*.
 - b) In a letter dated 24 September 2004 from the CBI Solutions Group to the ECGD, which the UK NCP has seen, the CBI Solutions Group states that: *“We understand that grounds of commercial confidentiality will be accepted by ECGD as a valid reason for not disclosing the names and addresses of agents and that cover will not be refused simply because Agents’ details cannot be divulged due to issues of commercial confidentiality. We would appreciate your written confirmation on this point”*.
 - c) The UK NCP has seen a note of a meeting on 7 October 2004 between the ECGD and the CBI Solutions Group, inclusive of representatives from Airbus. At the meeting, the CBI Solutions Group states that: *“Companies wanted some assurance that if they were unwilling to disclose the identity of an agent on the grounds of commercial confidentiality then this would not be used by ECGD as a reason for not providing support”*. In a letter dated 29 October 2004 from the ECGD to the CBI Solutions Group, which the UK NCP has seen, the ECGD confirmed that, from 1 December 2004, where commercial confidentiality was given as the ground for not disclosing agents’ names, this would not automatically be used by the ECGD as a reason for not giving cover.

114. The UK NCP has considered whether the fact that Airbus sought an assurance from the ECGD not to disclose its list of agents on grounds of commercial confidentiality constitutes a breach of Chapter VI(2) of the Guidelines.
115. As set out above, the UK NCP considers that the recommendation contained in Chapter VI(2) of the Guidelines to keep a list of agents and to make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of confidentiality.
116. However, the UK NCP has also taken into account that the Guidelines (and the commentary to Chapter VI(2) of the Guidelines) do not provide that companies cannot lobby competent authorities in order to seek changes to existing requirements. In particular, the UK NCP also notes that paragraph 6 of the Commentary¹⁰⁹, while recommending multinationals to “*avoid efforts to secure exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation and financial incentives among other issues*”, expressly recognises “*an enterprise’s right to seek changes in the statutory or regulatory framework*”.
117. In light of the above, the UK NCP concludes that, Airbus’ actions in seeking an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality did not constitute a breach of Chapter VI(2) of the Guidelines.

CONCLUSIONS

118. On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:
- a) That Chapter VI(2) requires the disclosure of a list of agents (meaning disclosure of the identity of agents) but does not extend to requiring disclosure of agents’ commissions, and that the words “made available to competent authorities” in Chapter VI(2) mean that companies should provide a list of agents upon request from competent authorities.
 - b) That the recommendation in Chapter VI(2) of the Guidelines that enterprises should keep a list of agents and make this list available to the competent authorities is not subject to a qualification that disclosure can be withheld on grounds of commercial confidentiality.
 - c) That, between April and October 2004, ECGD’s policy was to require all applicants to disclose their list of agents to the ECGD when applying for support (from 1 May 2004, this requirement applied if agents or other intermediaries were involved in the project for which support was sought).
 - d) That although the UK NCP has seen documents which suggest that Airbus may have refused to disclose its list of agents to the ECGD when making specific applications for support between April and October 2004, the UK NCP considers that it does not have sufficient evidence to make a finding as to whether Airbus did refuse to disclose a list of agents to the ECGD when making applications for support during this period. Accordingly, the UK NCP considers that it is unable to make a finding as to whether Airbus breached Chapter VI(2) of the Guidelines in this respect.
 - e) That Airbus did seek an assurance from the ECGD that it could withhold disclosure of its list of agents on grounds of commercial confidentiality, but that seeking such an assurance does not constitute a breach of Chapter VI(2) of the Guidelines.

¹⁰⁹ *Commentary on the OECD Guidelines for Multinational Enterprises*, 2008, op. cit., paragraph 6, p. 40 (available at www.oecd.org/dataoecd/56/36/1922428.pdf- visited on 21 July 2010).

THE COMPANY'S CURRENT PRACTICES

119. The ECGD has stated that Airbus has been complying fully with the ECGD's application procedures introduced on 1 July 2006. These procedures include a requirement to disclose a list of agents to the ECGD whenever agents are involved in the transaction for which support is sought.
120. The UK NCP notes that Airbus is a participant in the UN Global Compact which includes, amongst its ten principles, businesses' commitment to work against corruption in all its forms, including extortion and bribery.

RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP

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

5 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick van Benschoten, Sergio Moreno

Statement by the UK NCP

**OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES
UK NATIONAL CONTACT POINT – REVISED FINAL STATEMENT**

22 February 2011

SPECIFIC INSTANCE: BTC PIPELINE

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

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

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

SUMMARY OF THE CONCLUSIONS

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

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

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

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

Complaint 3 – Compensation process - Reopened and no change.

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

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

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

Complaint 4 – Consultation and grievance process - Reopened and changed.

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

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

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

Recommendations

Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of these specific complaints of intimidation of villagers who spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation in this region, and therefore **recommends that the company consider and report on ways that it could strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.**

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

UK NCP Complaint Procedure

4. The UK NCP complaint process was revised in April 2008 following public consultation. The BTC Specific Instance was one of the first complaints raised with the UK NCP in 2003 and was first considered under the previous complaint process.
5. The UK NCP issued an original Final Statement on 15 August 2007. The result was to dismiss all alleged breaches of the OECD Guidelines.
6. This 2007 Final Statement was procedurally reviewed by the UK NCP Steering Board (<http://www.bis.gov.uk/files/file49676.doc>). As recommended by the Review Committee, the 2007 Final Statement has been withdrawn and reconsidered in light of the review.

Review of the original Final Statement

7. The procedural review identified a flaw in the process followed by the UK NCP; namely, that the UK NCP published the Final Statement without giving the complainants the opportunity to read or comment on a report by the company's largest shareholder BP on concerns about the implementation of the BTC compensation and grievance process.
8. These implementation concerns were identified during a Field Visit by the NCP to all three host countries in August-September 2005. The Field Visit was undertaken in recognition that there existed significant factual difference between the parties and that additional information gathering would enhance the UK NCP's understanding of the issues. The Field Visit included face-to-face discussions with a number of host government officials, representatives of five villages and individual villagers affected by the pipeline. The UK NCP does not have investigatory powers and during the Field Visit the UK NCP simply took note of what was said, without challenging the information received or questioning the interviewees. During this Field Visit the UK NCP heard allegations that some villagers were not receiving the compensation they had expected and that some villagers had complained of poor local implementation of the overall processes of consultation and grievance resolution.
9. Following this Field Visit the UK NCP held a meeting with both parties where it was agreed that BP (the lead contractor in the BTC project) would investigate and report back on these implementation concerns. This BP report was provided in confidence to the UK NCP and was not shared with the complainants. The UK NCP relied

upon the BP report in the decision-making process, and the original Final Statement quoted some redacted portions of the BP report but did not reflect any comments by the complainants on the BP report.

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

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

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

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

DETAILS OF THE PARTIES INVOLVED

The complainants

13. Friends of the Earth

Milieudefensie (Friends of the Earth Netherlands)

The Corner House

Baku Ceyhan Campaign

Platform

Kurdish Human Rights Project

The company

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

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

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

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

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

- To illustrate the scale of the consultation process, the company submits that in one host country this involved public meetings in 11 locations, with a consultation document sent directly to 90 organisations and published on-line. The consultation document was also sent to villages and meetings held at various locations along the pipeline. 3000 comments were received in response, with the host government then consulting on an updated proposal document. In another host country, consultation involved community level, regional level and national level meetings, with 1624 people interviewed through household questionnaires, including questionnaires distributed at local construction camps. In response, the complainants dispute the accuracy of these figures and submit that of the consultation which did take place fewer than 2% was face-to-face consultation.
- To illustrate the scale of the grievance process, in one country this included 2100 land related and 400 social grievances from the period since the 2003 complaint until the 2005 Field Visit. 70% of these grievances were finally agreed and paid compensation and 20% were not agreed (the remaining 10% of grievances were passed to the host government as not directly related to the BTC project).

SUMMARY OF THE COMPLAINANTS’ POSITION

18. The 2003 complaint alleged that the company exerted undue influence on the regulatory framework (Chpt I, par 7), sought and accepted exemptions

related to social, labour, tax and environmental laws (Chpt II, para 5), failed to operate in a manner contributing to the wider goals of sustainable development (Chpt V, para 1), failed to adequately consult with communities affected by the project (Chpt III, para 1 and Chpt V, para 2a and 2b) and undermined the host governments' ability to mitigate serious threat to the environment and human health & safety (Chpt V, para 4). The complainants' position can be summarised as follows:

- (i) Exerting undue influence: specifically that the company exerted an undue influence on the process of negotiating and drafting the terms of HGAs with the governments of Azerbaijan, Georgia and Turkey, thereby circumscribing the right of those countries to prescribe the conditions under which multinational enterprises operate within their jurisdictions;
- (ii) Seeking exemptions: specifically that, in exerting undue influence on the terms of the HGAs, the company sought exemptions with respect to environmental, health and safety, labour and taxation legislation;
- (iii) Sustainable development: specifically that the company failed to take due account of the need to protect the environment, public health and safety, generally to conduct their activities in a manner contributing to the wider goals of sustainable development;
- (iv) Disclosure and consultation with affected communities: specifically that the company failed to provide timely, reliable and relevant information concerning its activities available to all communities affected by the project, and that the company failed to consult adequately with affected communities;
- (v) Undermining the Host Government's ability to mitigate serious threats: specifically that in exerting undue influence through the terms of the HGAs the company undermined the host governments' ability to mitigate serious threats to the environment and human health and safety.

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

- (i) The company did not investigate the full range of compensation concerns identified in the Field Visit. The BP report confirms that only a minority of affected villages raising complaints with the UK NCP were contacted, and in some cases only the village leader was contacted.
- (ii) The company breached confidentiality of villagers raising grievances by discussing their cases with village leaders and local journalists.
- (iii) There was a lack of a systematic approach to compensation and grievances, resulting in an inconsistent process and unrealistic expectations and confusion over procedural channels and legal rights.
- (iv) The subsequent concessions by the company show that the original consultation and compensation process was inadequate. Following the 2003 complaint the company has paid extensive compensation and agreed significant limitations to land use following complaints made under its own grievance mechanism and via the separate EBRD mechanism.
- (v) The BP report was limited to individual compensation complaints and failed to address systematic flaws in compensation and consultation. In addition, the BP report does not address broader concerns relating to human rights and environmental concerns raised during the Field Visit. For example, local NGO concerns over a lack of transparency in the negotiation of HGAs and constraints placed by HGAs on host government's environmental consultation procedures.
- (vi) There was a lack of a systematic approach to grievances resulted in local policing problems, including intimidation of those trying to complain. Despite the company's local economic influence they didn't monitor policing undertaken in their interests, as they undertook to do under the Voluntary Principles of Security and Human Rights.
- (vii) BP failed to update the UK NCP on alleged breaches of environmental standards; namely curtailed environmental impact assessments and excessive nitrous oxide emissions. These breaches illustrate the chilling effect of the BTC legal framework.

SUMMARY OF THE COMPANY'S POSITION

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

- (i) Exerting undue influence: The company state that the HGAs were properly negotiated over a long period of time and that participating host governments were advised by external advisors. Furthermore, BTC point to well-established precedents for the enactment of specific legal regimes applicable to strategically important projects;
- (ii) Seeking exemptions: The company does not accept that it breached the Guidelines by seeking or accepting exemptions to local laws. The Project Agreements create a binding mechanism under which the company is required to adhere to international best practice and EU standards as they develop over time. The project establishes a model for international best practice and regulation that host countries may build on over time. The Joint Statement by the company and the host governments sets out the international standards to which they are committed in the areas of human rights, security, labour and environmental standards;
- (iii) Sustainable development: The company note that issues of sustainable development are addressed in the commitments set out in the Joint Statement. The Joint Statement specifically states that it would be incorrect to interpret that the Project Agreements exempt the project from world-class environmental standards, since such an interpretation would neither reflect the intentions of the signatories nor the manner in which all the Project Agreements would be applied. The company also notes that, in addition to the compensation programme, it financed a number of community-based projects along the route of the pipeline to support rural development in line with its commitment to corporate social responsibility;
- (iv) Consultation with affected communities: The company has conducted a consultation and disclosure process unprecedented in scope, and designed to comply with international best practices. The company states that overall more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted;
- (v) Undermining the Host Government's ability to mitigate serious threats: The company notes that the project's environmental and social responsibility rests with BTC, which is obligated through the Project Agreements to construct and operate the pipeline in an environmentally and socially responsible manner that complies with international standards. The company adds that under the Human Rights Undertaking it recognises the ability of host governments to enact human rights or health and safety legislation that are reasonably required in the public interest in accordance with domestic law, provided that this new legislation is not more stringent than the highest of the EU standards referred to in the Project Agreements. The company states that it is legally precluded from seeking compensation from the host governments in circumstances where the government acts to fulfil its obligations under international treaties in respect of human rights, health and safety, labour and the environment.

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

- (i) The BP report only listed visits where the company was following up specific complaints mentioned in Field Visit. Local liaison officer consulted other villages.
- (ii) The company discussed certain cases with third parties due to these cases involving grievances that were being considered by the local courts. To avoid any perception of the company putting pressure on the villagers themselves while they were using the grievance process, the company investigated the cases indirectly via village leaders.
- (iii) The company took a pro-active approach to consultation and monitoring, engaging a network of local liaison officers to reach owners and users of land affected by the project. The company also took steps to support the grievance process, distributing free written guidance on the procedure, arranging

- for payment of individual court fees if compensation was disputed, and sponsoring a number of local NGOs to monitor how the process was being implemented.
- (iv) Individual problems were inevitable in a project affecting 0.75m people. Major administrative processes take time but the company took a pro-active stance in resolving problems and has settled the vast majority. To illustrate, if a villager died without their claim being resolved, any due payments were made to their heir.
 - (v) The BP report only addressed compensation issues identified in Field Visit, as agreed in an NCP meeting with all parties.
 - (vi) Variation in compensation was largely determined by differing land types, land use and market value.
 - (vii) The BP report noted that complaints of intimidation and pressure by the sub-contractor had not been raised through the monitoring or grievance processes, which included opportunities for complaints to be raised during village visits and land exit protocols. The company had directly asked various land owners on a number of occasions whether they ever felt pressured to accept the compensation offered, and has always been told that the land owners have never felt so pressured. There were no specific allegations of landowners being put under pressure to accept inadequate compensation have been raised but the company will investigate these if raised.
 - (viii) In addition to the formal monitoring and grievance procedure, the company guarded against the risk of local intimidation via NGO observers who monitored the overall process.
 - (ix) The company notes that it is unaware of any interrogations by local security forces and that no such complaints have been raised. The Joint Statement commits both the host governments and the company to the goal of promoting respect for and compliance with human rights principles, with the legal framework confirming that all pipeline security operations must be concluded in accordance with these principles and related international norms such as the Voluntary Principles of Security and Human Rights (the Voluntary Principles). The company also notes that a number of challenges to the level of compensation had been brought in the courts and comments that this demonstrates that land owners were aware of and willing to assert their rights, despite the alleged intimidation.
 - (x) The company has apologised for not providing an update on alleged breach of environmental standards. UK NCP was able to issue the 2007 Final Statement without this information so the company believe that it was not vital to the UK NCP conclusions.

UK NCP ANALYSIS AND CONCLUSIONS

COMPLAINTS 1, 2 AND 5: NEGOTIATION AND CONSTRAINTS OF THE BTC LEGAL FRAMEWORK

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

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

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

UK NCP Analysis

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

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

UK NCP Conclusions on Complaints 1, 2 and 5

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

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

28. The UK NCP considers that the company engaged constructively with concerns that the overall BTC framework would undermine human rights by agreeing that new legislation could introduce additional requirements benchmarked against an evolving upper level of EU, World Bank and international human rights standards. The company also addressed concerns as to how the BTC legal framework would be interpreted in practice by negotiating additional policy undertakings, confirming that the BTC framework would not constrain

host governments in protecting human rights but that it would constrain the company from seeking compensation for new legislation required by international treaties.

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

30. The issue of Host Government Agreements and stabilisation clauses has been raised in the context of OECD Working Party negotiations on the Update to the Guidelines. In terms of this Update, the UK supports clearer, practical guidance to assist multinationals in respecting human rights using a due diligence and risk awareness process. While not relevant to the 2003 complaint, in 2008 the UN Special Representative of the UN Secretary-General on Business and Human rights (UNSRSG), Professor John Ruggie, and the World Bank's International Finance Corporation published a joint discussion paper on 'Stabilisation Clauses and Human Rights'¹¹⁰. This discussion paper raised concerns about HGAs that exempted investment projects from any future changes in human rights law and commended Human Rights Undertakings that benchmark against the highest of domestic, EU or international standards and that prohibit compensation for legislation required by international obligations as emerging best practice.

COMPLAINT 3: COMPENSATION PROCESS

- Chpt V, para 1 - sustainable development

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

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

UK NCP Analysis

32. This revised Final Statement sets out the UK NCP's revised conclusions on the findings in the original Final Statement which were affected by the procedural failure to provide an opportunity for the complainants to see and comment on the BP report. The BP report addressed individual compensation and grievance issues identified in the Field Visit, including concerns relating to rural development projects in addition to the legal compensation process. Therefore, the UK NCP considers that the procedure failure did affect the conclusions on these issues in the original Final Statement and accordingly this aspect of the complaint (i.e. the compensation process) has been substantively re-opened. In accordance with the Review Committee's recommendations, the revised Final Statement also sets out in balanced terms the positions of the parties and the reasons for the NCP's conclusions on complaint 3.

33. The 2007 Final Statement had found that the company had taken major steps to address the environmental impacts of the BTC project. During the Field Visit local NGOs in Turkey noted that they were

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[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/\\$FILE/Stabilization+Paper.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StabilizationClausesandHumanRights/$FILE/Stabilization+Paper.pdf)

‘initially... very sceptical about an oil company’s ability to do biodiversity conservation, but now consider BTC has made an outstanding contribution to conservation NGOs’. Local NGOs also noted that the local sub-contractor had been perceived as having a poor environmental record but subsequent to joining the BTC project this sub-contractor was planning to work to BTC project standards on future pipeline contracts.

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

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

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

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

- In some cases complaints seem to have arisen because of misunderstandings over the scope of products and services agreed. In one example, the complainants’ refer to a complaint made by villagers during the Field Visit who were promised an irrigation system that had not been installed, with the final CIP log entry referring to “a meeting with the [local village headman] on activities not completed”. In this case the BP report noted that the local partner had provided cement and technical support to the establishment of an irrigation channel, as agreed in the protocol.
- In some cases complaints seem to have arisen because the company implemented the CIP but the villagers were unsatisfied with the results. In one example, the complainants drew attention to misconstrued complaints in the BP report, where in response to villager complaints of ineffective livestock project the company provided details of livestock inseminated under the CIP. The complainants critique the BP report as having misconstrued the complaint as the villagers were not disputing that the project took place but were questioning if it was effectively implemented as few livestock became pregnant, and noted that since 2007 the Turkish Government has taken over the insemination project.

- In some cases complaints seem to have arisen because compensation claims were examined but rejected by the company. In one example, the complainants drew attention to complaints that houses and a local historical building had been damaged by vibration from project vehicles using local roads and that none of the company's local partners had contacted the villagers about their complaint. The BP report noted that the project vehicles were routed to avoid significant monuments and that local partners undertook vibration monitoring and found that it is unlikely that project vehicles are the primary cause of the damage to these structures.

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

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

40. The Field Visit heard of extensive measures taken by the company to establish an effective compensation and grievance process. The UK NCP heard local NGOs in one country praise the BTC project framework as 'best practice which they would like to see repeated', while another local delivery partner NGO commented that 'BP is not a development organisation but in this case they have made great efforts in the environmental and social areas'. BTC project representatives described how the company provided support and monitoring for the grievances process, including paying for complainants legal costs if compensation disputes were taken to court, and sponsoring local NGOs to monitor the implementation of the compensation and grievance processes.

UK NCP Conclusions on Complaint 3

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

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

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

COMPLAINT 4: CONSULTATION AND GRIEVANCE PROCESS

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

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

45. In their comments the complainants critique the BP report as not addressing concerns of systemic flaws in the consultation and grievance process, resulting in unrealistic expectations and confusion over procedural channels and legal rights. The complainants also critiqued the BP report for dismissing complaints made by two villages during the Field Visit of intimidation of villagers by the local sub-contractor, as these complaints had not been raised through the company's grievance and monitoring procedures. The complainants also critiqued the BP report for not investigating complaints made by one village during the Field Visit of intimidation by local security forces.

UK NCP Analysis

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

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

48. Having received a copy of the BP report, the complainants submitted detailed comments (summarised above) in relation to the company's consultation and grievance process. In particular, the complainants highlighted what they considered to be lack of a systematic approach to grievances which they submit resulted in local policing problems including intimidation of those trying to submit complaints. A key point of difference between the parties is whether the company's consultation and grievance process was sufficiently pro-active and responsive to individual villagers, or complacent about the risk that bona fide grievances would not be identified

by the formal process. In light of the positions of both parties, the UK NCP has considered this question in terms of what steps the company took to safeguard the consultation and grievance process from being undermined by local officials, security forces and sub-contracting organisations.

49. Taking into account all of the circumstances, the UK NCP does not consider that the company was complacent about the risks of local implementation or failed to commit sufficient resource to the consultation and grievance process. The company acknowledged that individual short-falls was inevitable in a programme of the size of BTC and denied that they had taken a defensive or passive approach to complaints. As noted above, the company sponsored local NGOs to monitor the grievance process and paid for legal costs arising from disputed compensation. The company also submits that it directly asked various land owners on a number of occasions whether they ever felt pressured to accept the compensation offered, and has always been told that the land owners have never felt so pressured.

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

Complaints of Intimidation

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

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

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

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

55. The UK NCP did not witness the alleged intimidation but was both told of similar general complaints before visiting particular village and was later told of specific complaints of intimidation against these villagers after they met with the UK NCP. The UK NCP also witnessed close supervision of this particular village by the

local sub-contractor, officials, politicians and security forces, despite the UK NCP's request to visit the village unaccompanied. The supervision by local officials and security forces was explained as being due to security concerns, but supervision by the local sub-contractor and politicians was perceived by the villagers as being intended to deter them from discussing grievances over compensation with the UK NCP. While not taking a view on the substance of these complaints of intimidation by the local sub-contractor, the UK NCP considers that they indicate that the villages might be unwilling to report complaints of intimidation by the local security forces to the company's local partners, possibly including NGOs appointed to monitor the grievance process.

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

Voluntary Principles – Interactions between companies and public security

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

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

58. It is also unclear whether the company took any steps to report these specific complaints of intimidation by local security forces, encourage investigation by the host authorities or support action to strengthen existing safeguards. The company's response to the complainants' comments noted that the local security forces may undertake investigations "where unusual events occur", but does not give any indication that the company encouraged investigation of the complaints. The company's response notes that the local security forces have been trained by international experts but does not give any indication of whether the company has supported additional training in response to the complaints.

UK NCP Conclusions on Complaint 4

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

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

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

62. The company's response to specific complaints of intimidation made during the Field Visit is also unclear and does not seem to accord with the Joint Statement commitment to ensure that all pipeline security operations are in accordance with the Voluntary Principles. The UK NCP does not take a view on the substance of the alleged intimidation, but does consider that the company's reference to general preventive measures is not a sufficient response to the specific complaints of intimidation identified during the Field Visit. Furthermore, as noted above, general complaints of intimidation by the local sub-contractor suggest that villagers in this region might be unwilling to report complaints of intimidation to the company's local partners, possibly including NGOs appointed to monitor the formal process. On this basis the UK NCP does not consider that the lack of corroborating information from the company's formal monitoring and grievance channels provide sufficient reason for the company to fail to take adequate steps to address the specific complaints raised outside of the formal process. The UK NCP considers that the company's failure to act in response to these specific complaints represents an inadequate safeguard against the risk of local partners in this region undermining the overall consultation and grievance process.

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

GOOD PRACTICE

64. The UK NCP considers that the overall BTC framework includes a number of examples of good practice, including:

- Responding to concerns over the BTC legal framework by negotiating a wider policy framework that confirmed that the HGAs did not exempt the project from all future legislation but set an upper limit of the project's future regulatory liability benchmarked against the highest of domestic, EU or international standards. This policy framework also legally precluded the company from seeking compensation for legislation required by international obligations;
- Responding to risks of inconsistency in the compensation, rural development and grievance process by establishing due diligence procedures and assisting local partners to develop their capacity. These due diligence procedures included NGO monitoring of the compensation and grievance process, use of Community Investment Programme protocols to minimise and resolve misunderstandings and dissatisfaction, and paying for legal costs arising from disputed compensation.

RECOMMENDATIONS

65. The UK NCP's complaint handling procedures explain that the NCP may make recommendations where appropriate. UK NCP recommendations are intended to assist companies in bringing their activities into line with the Guidelines going forward. This Final Statement is restricted to the 2003 complaint and the BTC pipeline project.

66. Given the length of time that has passed since the 2005 Field Visit, and the forward-looking nature of UK NCP recommendations, the UK NCP does not see any grounds for making recommendations to the company in respect of the specific complaints of intimidation of villagers that spoke to the UK NCP. However, the UK NCP does consider that the company can address the general complaints of intimidation by local security forces in this region of north-east Turkey, and therefore **recommends that the company consider and report on ways that it could strengthen procedures to identify and respond to reports of alleged intimidation by local pipeline security and other alleged breaches of the Voluntary Principles.**

67. As noted above (para 55), the Voluntary Principles is referred to in the RAT which suggests a number of responses available for companies seeking to apply heightened care in managing investments and dealing with public sector officials:

RAT reference to Voluntary Principles -

- "Does the company consult regularly with public security in the host country, home and host governments and local communities about the impact of their security arrangements?"
- "What policies does the company have for recording and reporting credible allegations of human rights violations? How does it plan to protect the security and safety of the sources of such information?"

68. While not relevant to the 2003 complaint, the work of UNSRSG Professor Ruggie has identified due diligence as a means for companies to translate in operational terms the corporate responsibility to respect human rights. As recommended by the UNSRSG, due diligence should be understood as a dynamic ongoing process involving engagement and communication with relevant stakeholders in order to identify, prevent and address actual or potential risks, with a view to avoiding or minimising human rights impacts. Due diligence is therefore also a learning process to distinguish between genuine mistakes, where the challenge is to learn the lessons and avoid any repetition, from wilful or careless breaches.

69. In accordance with paragraph 6.1 of the current UK NCP complaint procedure, where the Final Statement includes recommendations to the company, the UK NCP will specify a date by which both parties are asked to

provide the UK NCP with a substantiated update on the company's progress towards meeting these recommendations and then publish a follow up statement reflecting the parties' response and, where appropriate, the UK NCP's conclusions thereon. The UK NCP asks both parties to provide an update on this recommendation by 8 June 2011.

Final Statement from the UK NCP

Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Complaint from the Malaysian Trade Union Congress against British American Tobacco Malaysia Berhad (Malaysia)

SUMMARY OF THE CONCLUSIONS

- The UK NCP took the view that it could not examine the ruling of 29 October 2007 of the Malaysian Director General of Trade Unions, nor the Malaysian Ministry of Human Resources' decisions of 14 December 2006 and 8 March 2007, without expressing a view on the legal merits of these acts. This would have the risk, in the light of Chapter IV of the Guidelines, of reaching different conclusions from those reached by the Malaysian authorities. This would have had the effect of purporting to override Malaysian law, or of placing British American Tobacco Malaysia Berhad (BATM) in a situation where it faced a conflict between the requirements of the UK NCP's conclusions and Malaysian law. This would be contrary to the Guidelines. The UK NCP also had no means to determine whether the weakening of the "British American Tobacco Employees' Union" (BATEU) was a motivating factor for BATM's re-classifications, without calling into question the two rulings of the Malaysian Ministry of Human Resources. This action would have been contrary to the Guidelines. Therefore, the UK NCP did not examine the allegations under paragraphs 8(a), 8(b), 8(c) and 8(e) below, and, as a result, it cannot reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.
- The UK NCP however concludes that BATM failed to uphold the higher standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines by failing adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions. The UK NCP therefore concludes that BATM breached Chapter IV(8) of the Guidelines.
- Although the UK NCP could ascertain the expected and recommended standards on employment and industrial relations in Malaysia, it could not reliably determine whether BATM's practices in this instance were consistent with the standards of employment and industrial relations actually observed by comparable employers in Malaysia in similar situations. Therefore, the UK NCP has insufficient evidence to determine whether or not BATM acted consistently with Chapter IV(4)(a) of the Guidelines.
- In order to assist BATM in minimising the risk of committing the same breaches of the Guidelines in the future, the UK NCP recommends that British American Tobacco PLC should encourage BATM to establish a permanent and regular process to consult and inform its employees on issues of mutual concern before key decisions of mutual concern are taken by management. Such process should be endorsed by both management and employees (and their representatives, where they exist). Both parties are asked to provide the UK NCP with a substantiated update by 6 June 2011 on measurable progress towards BATM's implementation of this recommendation.

BACKGROUND

OECD Guidelines for Multinational Enterprises

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

UK NCP complaint procedure

126. The UK NCP complaint process is broadly divided into the following key stages:
- (1) Initial Assessment - This consists of a desk based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - (2) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;
 - (3) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - (4) Follow up – Where the Final Statement includes recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' response.
127. The complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website:
<http://www.bis.gov.uk/nationalcontactpoint>.

DETAILS OF THE PARTIES INVOLVED

128. **The complainant.** The “Malaysian Trades Union Congress” (MTUC) is the recognised federation of trade unions representing workers in Malaysia¹¹¹. The MTUC brought the complaint on behalf of the BATEU, an affiliate of the MTUC¹¹².
129. **The company.** British American Tobacco PLC is a UK registered multinational involved in the manufacture, distribution or sale of tobacco products. The company is listed in the FTSE 100. The allegations contained in the complaint from the MTUC were directed against BATM. The majority of BATM’s shares are held by British American Tobacco PLC and by British American Tobacco Holdings (Malaysia) BV. British American Tobacco Holdings (Malaysia) BV is wholly owned by British American Tobacco PLC¹¹³. Therefore, British American Tobacco PLC is BATM’s controlling company.

COMPLAINT FROM THE MALAYSIAN TRADE UNION CONGRESS

130. On 11 December 2007, the MTUC submitted a complaint, on behalf of the BATEU, to the UK NCP under the Guidelines in relation to BATM’s operations in Malaysia. The MTUC made the following allegations:
- a) That in August 2006 BATM re-classified “process technicians”, a non-managerial role, as “process specialists”, a managerial role, whereas there was in fact little difference between the two roles.
 - b) That during 2006 BATM re-classified “trade marketing and distribution representatives”, a non-managerial role, as either “trade marketing representatives” (TMRs) or “sales and distribution representatives” (SDRs), both managerial roles, whereas there was in fact little difference between the old and new roles.
 - c) That the effect and intention of the re-classifications described above was to reduce BATEU’s membership by some 60% because under Malaysian law the BATEU may only represent employees in non-managerial roles, and may not represent workers employed by any company other than BATM. The MTUC alleged that this virtually eliminated BATEU’s bargaining strength for the purpose of signing collective agreements and also reduced the number of workers covered by the collective agreements signed to date.
 - d) That BATM was required under the applicable collective agreements to consult the BATEU about the re-classifications described above, but that it failed to do so adequately or at all, and that it harassed union members into applying for the reclassified non-unionised positions.
 - e) That on 29 October 2007, at BATM’s request, the Director General of Trade Unions (DGTU) ruled that the BATEU could not represent employees of both BATM and its subsidiaries, notwithstanding that the BATEU had done so for many years previously. The BATEU

¹¹¹ International Trade Union Confederation (ITUC), *List of affiliated organisations*, 21 June 2010 (available at http://www.ituc-csi.org/IMG/pdf/No_36_-_Appendix_1_-_Affiliated_Organisations-2.pdf, visited on 10 December 2010).

¹¹² Malaysian Trade Union Congress, <http://www.mtuc.org.my/affiliates.htm>, visited on 10 December 2010.

¹¹³ Mint Global - Bureau Van Dijk, *MINT reports on British American Tobacco Malaysia Berhad, British American Tobacco PLC, and British American Tobacco Holdings (Malaysia) BV*, <http://www.bvdinfo.com/Home.aspx>, visited on 10 December 2010.

subsequently applied for a judicial review of that ruling and, on 15 July 2010, the Malaysian High Court ruled in favour of the DGTU. The UK NCP understands that the BATEU has appealed this ruling.

131. The MTUC submitted that BATM's alleged conduct as summarised above was contrary to the following chapters of the Guidelines¹¹⁴:

"Chapter IV. Employment and Industrial Relations

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

1(a). Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.

[...]

4(a). Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

[...]

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters".

RESPONSE FROM BRITISH AMERICAN TOBACCO

132. BATM responded to the MTUC's allegations by stating:

- (a) In relation to the claim at 8(a) above, that the BATEU asked the Director General of Industrial Relations (DGIR) to investigate whether process specialists were correctly defined as managerial posts. Following the DGIR's investigation, in late 2006 or 2007, the Malaysian Ministry of Human Resources ruled that they were. The BATEU has subsequently applied for a judicial review of that ruling and that application remains pending.
- (b) In relation to the claim at 8(b) above, that BATM asked the DGIR to investigate whether TMRs and SDRs were correctly defined as managerial posts. On 14 December 2006, the Malaysian Ministry of Human Resources ruled that they were.

¹¹⁴ OECD, *OECD Guidelines for Multinational Enterprises*, pp. 17-18 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 10 December 2010).

- (c) In relation to the allegations at paragraph 8(c) above, that the re-classifications of “process technicians” and “trade marketing and distribution representatives” were made in order to enhance the company’s efficiency and effectiveness, involve greater responsibility and were therefore correctly reclassified at managerial level.
- (d) In relation to the allegations in paragraph 8(d) above, that BATM respects trade unions’ rights and freedom of association; that workers were not forced to apply for the new positions; and that BATM was not required to consult the BATEU on the creation of managerial posts (but that BATM however notified the BATEU of potential redundancies).
- (e) In relation to the allegations in paragraphs 8(d) and 8(e) above, that under Malaysian law, a single union cannot represent employees in both managerial and non-managerial roles; and that, as a result, the BATEU can only represent employees in non-managerial roles because its collective agreement with BATM only covers employees in non-managerial roles. As a result, the BATEU cannot legally represent “process specialists”, “trade marketing representatives” and “sales and distribution representatives”.
- (f) In relation to the allegations in paragraph 8(e) above, that under Malaysian law a single union cannot represent the employees of both a parent company and its subsidiaries, and that the DGTU’s ruling of 29 October 2007 was therefore correct, notwithstanding BATEU’s earlier representation of staff from both BATM and its subsidiaries. In this case, “process specialists” are formally employed by the “Tobacco Importers & Manufacturers Sdn. Berhad” (TIM), a subsidiary of BATM; “trade marketing representatives” and “sales and distribution representatives” are formally employed by the “Commercial Marketers and Distributors Sdn. Bhd” (CMD), also a subsidiary of BATM.

UK NCP PROCESS

- 133. The UK NCP received the complaint from the MTUC on 11 December 2007. British American Tobacco PLC and BATM responded to the allegations on 13 December 2007, 9 January 2008 and 28 January 2008. On 9 April 2008, the UK NCP published its Initial Assessment accepting the complaint from the MTUC as a Specific Instance under the Guidelines. The UK NCP agreed to consider the alleged breach by BATM of the following Chapters of the Guidelines: IV(1)(a), IV(4)(a), and IV(8). The UK NCP also clarified that Chapters IV(1)(a) and IV(8) covered the two key issues raised in the MTUC’s complaint: (a) whether the restructuring undertaken by BATM intentionally caused a reduction in the membership of the BATEU; and (b) whether consultation with the BATEU took place before and during the restructuring. The UK NCP did not accept for consideration the alleged breach of Chapter IV(7) because no supporting evidence was provided by the MTUC.
- 134. On 9 April 2008, the UK NCP also offered professional conciliation/mediation to the parties in order to facilitate an amicable solution to the complaint. On 15 April 2008, British American Tobacco PLC (and on 15 May 2008, BATM) declined the offer of conciliation/mediation on the ground of ongoing legal proceedings in Malaysia. Therefore, on 21 April 2008, the UK NCP suspended the complaint process in the light of ongoing legal proceedings in Malaysia.
- 135. Between November 2009 and April 2010, the UK NCP reviewed this Specific Instance in the light of its parallel proceeding guidance (which was endorsed by the UK NCP’s Steering Board on 16 September 2009¹¹⁵). Having sought the views of both parties, the UK NCP informed both parties

¹¹⁵ UK NCP, *Approach of the UK NCP to Specific Instances in which there are parallel proceedings*, available at <http://www.bis.gov.uk/files/file53069.pdf>, visited on 10 December 2010.

on 6 April 2010 that it would apply the guidance to this Specific Instance and progress the complaint in accordance with the UK NCP's complaint procedure¹¹⁶. The UK NCP offered again conciliation/mediation to the parties.

136. On 20 April 2010, BATM declined the offer on the grounds of ongoing legal proceedings in Malaysia and asked the UK NCP to reconsider its decision to progress the complaint. On 30 July 2010, the UK NCP wrote to the parties informing them that, in light of the explanation for the restructuring provided by BATM and the subsequent official rulings by Malaysian authorities, the UK NCP considered that it would be unproductive to examine further the question of whether the restructuring undertaken by BATM intentionally caused a reduction in the membership of the BATEU (issues 8(a), 8(b) and 8(c) in the list of MTUC's claims above). However, the UK NCP considered that it would be appropriate to continue to examine whether consultation with the BATEU should have, and did, take place before and during the restructuring (issue 8(d) in the list of claims above), and, if consultation did not take place, whether that constituted a breach of the Guidelines. The UK NCP also asked both parties to submit by 13 September 2010 any document that the UK NCP should examine in relation to the complaint from the MTUC. BATM responded to this request on 6 September 2010. The MTUC did not respond to this request. On 23 November 2010, the UK NCP asked the parties to submit by 7 December 2010 supplementary information in relation to the complaint. Both parties responded to this request.
137. All the evidence received by the UK NCP on this complaint has been shared with the parties.

UK NCP ANALYSIS

138. The analysis of the complaint against BATM will address the following key areas. Firstly, it will explain the UK NCP's reasoning behind the decision to exclude some elements of the MTUC's complaint from the examination process. Secondly, it will clarify the meaning of "adequate consultation". Thirdly, it will examine the issue of whether BATM should have consulted the BATEU, whether the BATEU was adequately consulted before and during the restructuring, and whether BATM harassed union members into applying for the reclassified non-unionised positions.

Elements of the complaint not examined by the UK NCP

139. In the course of correspondence with the UK NCP, the parties confirmed that the following two judicial reviews related to the complaint were pending in Malaysia:
- a) Judicial review requested by the BATEU of the DGTU's ruling of 29 October 2007 that the BATEU could not represent employees of both BATM and its subsidiaries. The UK NCP understood that on 15 July 2010, the Malaysian High Court ruled in favour of the DGTU but that the BATEU subsequently appealed this ruling. At the time of writing, the appeal is still pending.
 - b) Judicial review requested by the BATEU of the decision of 8 March 2007 of the Malaysian Ministry of Human Resources that process specialists were correctly defined as managerial posts. At the time of writing, the ruling is still pending.

¹¹⁶ UK NCP, *UK National Contact Point (NCP) procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises*, available at <http://www.bis.gov.uk/files/file53070.pdf>, visited on 10 December 2010.

140. In addition, BATM confirmed that it asked the DGIR to investigate whether TMRs and SDRs were correctly defined as managerial posts. On 14 December 2006, the Malaysian Ministry of Human Resources ruled that they were. This decision has not been judicially reviewed.
141. The Guidelines¹¹⁷ clearly state that: *“Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements”*.
142. In light of the above, the UK NCP took the view that it could not examine the DGTU’s ruling of 29 October 2007, nor the Malaysian Ministry of Human Resources’ decisions of 14 December 2006 and 8 March 2007, without expressing a view on the merits of these acts, with the risk, in the light of Chapter IV of the Guidelines, of reaching different conclusions from those reached by the Malaysian authorities. This would have had the effect of purporting to override Malaysian law, or of placing BATM in a situation where it faced a conflicting requirement between the UK NCP’s conclusions and Malaysian law, which is contrary to the Guidelines. Therefore, the UK NCP did not examine the allegations made by the MTUC under paragraphs 8(a), 8(b), and 8(c) above.
143. The UK NCP also considered whether it could usefully examine the MTUC’s allegation under paragraph 8(c) above. In particular, the UK NCP noted that, in its response of 30 May 2007 to the general secretary of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), which includes the BATEU amongst its affiliates¹¹⁸, British American Tobacco PLC stated that *“Changes in the business environment have led BATM to implement a range of initiatives to restructure their operations as well as their workforce, in order to enhance efficiency and effectiveness”* and that *“the Industrial Relations Department of Malaysia has conducted an investigation on the claim of ‘union-busting’ and we [British American Tobacco PLC] have been notified that after due investigation, there is no basis for this claim”*.
144. On 9 January 2008, British American Tobacco PLC further clarified that *“Over the years, BATM has sought to enhance production efficiency and has accordingly introduced more sophisticated machines. This has generated a need to replace Process Technicians with a smaller group of more highly skilled specialists who would not be purely machine operators but would manage the entire process as part of self-managing teams [...] BATM decided that the way forward was for it to market and distribute BATM’s products directly and have its own personnel to do this [...] As such, the functions and responsibilities of the existing TM&D [Trade Marketing & Distribution] Reps will also change to reflect the level of professionalism required by BATM of TM&D Reps and in future to provide more professional and dynamic service in marketing and distribution activities”*. On 28 January 2008, British American Tobacco PLC also stated that *“the self managed team concept role of Process Specialists has been successfully implemented in countries such as Brazil, South Korea, Chile and Venezuela”*.
145. The UK NCP also noted that, on 24 March 2008, the MTUC stated to the UK NCP that: *“Neither MTUC nor the BAT Employees Union oppose company’s effort to restructure for greater efficiency. But every action by the company since August 2006, is carried out with ulterior motive*

¹¹⁷ OECD, *Commentary on the OECD Guidelines for Multinational Enterprises*, paragraph 2, p. 39 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 10 December 2010).

¹¹⁸ IUF, *IUF Affiliates*, <http://cms.iuf.org/?q=node/506>, visited on 10 December 2010.

– *To destroy the 44 years old union. At that time in August 06 the union was suspicious of company's motive*”.

146. The UK NCP noted that, according to the MTUC, the practical effects of the re-classifications have been a reduction of the BATEU's bargaining strength because Malaysian law does not allow the same union to represent employees in both managerial and non-managerial roles. However, the UK NCP also noted that the Malaysian Ministry of Human Resources ruled, on 14 December 2006, that TMRs and SDRs were correctly defined as managerial posts, and, on 8 March 2007, that process specialists were correctly defined as managerial posts.
147. In light of the above, the UK NCP concluded that it had no means of determining whether the weakening of the BATEU was a motivating factor (or one of the reasons) for BATM's re-classifications, without reopening the issues subject to the two rulings of the Malaysian Ministry of Human Resources. This action would have been contrary to the Guidelines.
148. Therefore, the UK NCP did not examine the allegation from the MTUC under paragraphs 8(a), (b) (c) or (e) above. The UK NCP was therefore unable to reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.

What does “adequate consultation” mean?

149. The Commentary to Chapter IV of the Guidelines states that: *“This chapter opens with a chapeau that includes a reference to “applicable” law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national, sub-national, as well as supra-national levels of regulation of employment and industrial relations matters [...] The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work”*¹¹⁹.
150. The UK NCP noted that the ILO's “Tripartite declaration of principles concerning multinational enterprises and social policy”¹²⁰, originally adopted in 1977 and subsequently amended in 2000 and 2006, states that: *“In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining”* (paragraph 57).
151. Chapter IV(8) of the Guidelines reflects the above principle by recommending that enterprises should *“allow the parties [that is, authorised representatives of the employees] to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters”*.
152. Chapter IV(4)(a) of the Guidelines recommends enterprises to *“observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the*

¹¹⁹ OECD, *Commentary on the OECD Guidelines for Multinational Enterprises*, paragraph 19, p. 43 (downloadable from www.oecd.org/dataoecd/56/36/1922428.pdf - visited on 10 December 2010).

¹²⁰ ILO, *Tripartite declaration of principles concerning multinational enterprises and social policy*, 28 March 2006 (available at http://www.ilo.org/empent/Whatwedo/Publications/lang--en/docName--WCMS_094386/index.htm - visited on 10 December 2010).

host country”. The UK NCP noted Malaysia’s 1975 “Code of conduct for industrial harmony”¹²¹ (the Malaysian Code) which was agreed by the MTUC and the then Malaysian Council of Employers’ Organisations (now the Malaysian Employers’ Federation) under the auspices of the then Malaysian Ministry of Labour and Manpower (now Ministry of Human Resources). The Malaysian Code is voluntary and not legally enforceable but can be deemed to reflect Malaysia’s expected standards of employment and industrial relations because it was agreed by both employers and employees’ representative bodies, and because it is still promoted by the Malaysian Ministry of Human Resources. This Ministry’s website currently states that: *“The Code of Conduct exhorts management and unions to recognise the human relations aspect of industrial relations. It stresses that it is only with an abundance of goodwill, combined with constant consultation and communication between the parties involved, that we can hope to contain the destructive expression of industrial conflict and encourage a more equitable and efficient system for the benefit of those involved and the community at large. The Code has been agreed after numerous meetings between representatives of the Malaysian Trade Union Congress and the Malayan Council of Employer’s Organisations held under the auspices of the then Ministry of Labour and Manpower. The agreed Code, endorsed voluntarily by both employers’ and employees’ organisations commend both employer and employees to observe and comply with its provisions”*¹²².

153. The stated aim of the Malaysian Code is *“To lay down principles and guidelines to employers and workers on the practice of industrial relations for achieving greater industrial harmony”* (clause 1¹²³). Clause 6¹²⁴ of the Malaysian Code states that: *[the Malayan Council of Employers’ Organisation as representatives of employers generally and the Malaysian Trades Union Congress as representatives of workers generally] Hereby endorse, with the collaboration and approval of the Ministry of Labour and Manpower, this Code of Conduct for Industrial Harmony and commend both employers and workers in Malaysia to observe and comply with its provisions”*. Clause 7¹²⁵ further states that: *[the Malayan Council of Employers’ Organisation as representatives of employers generally and the Malaysian Trades Union Congress as representatives of workers generally] Hereby further endorse and commend the observance and compliance by both employers and workers, of such industrial relations practices as may be agreed, from time to time, between the Malayan Council of Employers’ Organisation as representatives of employers generally and the Malayan Trades Union Congress as representatives of workers generally and accepted by the Ministry of Labour and Manpower”*. Document I (*“Areas for co-operation and agreed industrial relations practices (under Clause 7 of the Code of Conduct for Industrial Harmony)”*), annexed to the Malaysian Code, states that: *“Good employer-employee relations is dependent upon efficiency. Employees’ efficiency may be enhanced if (a) they are kept informed on matters which concern them; and (b) their views are sought on existing practices and on proposed changes which would affect them”* (paragraph 43¹²⁶).

¹²¹ Malaysian Ministry of Human Resources, *Code of conduct for industrial harmony and areas for co-operation and agreed industrial relations practices – document I (under clause 7 of the Code of Conduct for Industrial Harmony)*, Malaysia, 1975, reprinted in 2008.

¹²² Malaysian Ministry of Human Resources, *Promote Code of Conduct for Industrial Harmony*, http://jpp.mohr.gov.my/index.php?option=com_content&task=view&lang=en&id=40&Itemid=56 (visited on 10 December 2010).

¹²³ *Code of Conduct for Industrial Harmony*, op. cit., p. 3.

¹²⁴ *Code of Conduct for Industrial Harmony*, op. cit., p. 4.

¹²⁵ *Code of Conduct for Industrial Harmony*, op. cit., p. 5.

¹²⁶ *Code of Conduct for Industrial Harmony*, op. cit., p. 29.

Document I further clarifies that: *“The employer has an important role in this and, in particular, he should (a) ensure that management personnel regard it as one of their principal duties to explain to those responsible to them plans and intentions which will affect them. (It is of great importance that this chain of communication should be effective down to each supervisor and through him to each individual employee); [...] (c) ensure that arrangements for consultation with workers or their representatives are adequate and are fully used”* (paragraph 44¹²⁷). Paragraph 47¹²⁸ states that: *“Methods of communication and consultation should suit the particular circumstances within the undertaking. The most important method is by word of mouth through regular personal contact between managers and employees at all levels. This could be supplemented by: [...] regular consultation between managers and other means established for the purpose”*.

154. The final section of Document I is titled *“Joint Consultation and Works Committee”* and states that *“Consultation between employer and employees or their trade union representatives at the floor level would be useful in all establishments or undertakings, whatever their size.”* (paragraph 48¹²⁹); and that *“The employer should take the initiative in setting up and maintaining regular consultative arrangements best suited to the circumstances of the establishment in co-operation with employees’ representatives and the trade union concerned.”* (paragraph 49¹³⁰). It concludes by stating that: *“As far as is practicable every establishment or undertaking should have a recognised machinery for consultation through the establishment of a works committee comprising employer’s and employees’ representatives at floor-level. The employer’s and the employees’ representatives or trade union should agree to: (a) a formal constitution which sets out the Committee’s aims and functions, its composition and that of sub-committees, if any, arrangements for the election of representatives and rules of procedure; (b) enable the committee to discuss the widest possible range of subjects of concern to employees, paying particular attention to matters closely associated with the work situation; (c) ensure that all members of the committee have enough information to enable them to participate effectively in committee business, and that the committee is used as a medium for a genuine exchange of views and not merely as a channel for passing information on decisions already taken; (d) make arrangements to keep all employees informed about the committee’s discussions.”* (paragraph 50¹³¹).
155. The UK NCP also noted that the Malaysian Ministry of Human Resources’ publication titled *“Harmony at the workplace”*¹³² recommends that *“The management should take the initiative to establish a negotiating machinery between the employer and employees as well as their trade unions so as to improve relations between them and facilitate problem solving”* (p. 7); and states that *“Industrial relations deals with people and thus industrial relations problem is essentially human problem which at time requires humane consideration and the application of large doses of common sense solution in resolving them, without compromising the enforcement aspect of the laws”* (p. 11).

¹²⁷ Code of Conduct for Industrial Harmony, op. cit., p. 29.

¹²⁸ Code of Conduct for Industrial Harmony, op. cit., p. 31.

¹²⁹ Code of Conduct for Industrial Harmony, op. cit., p. 31.

¹³⁰ Code of Conduct for Industrial Harmony, op. cit., p. 31.

¹³¹ Code of Conduct for Industrial Harmony, op. cit., p. 32.

¹³² Department of Industrial Relations (Malaysia Ministry of Human Resources), *Harmony at the workplace*, 2008 (downloadable from http://jpp.mohr.gov.my/images/stories/jppm/Keharmonian_Di_Tempat_Pekerjaan.pdf - visited on 10 December 2010).

156. In light of the above, the UK NCP concluded that “adequate consultation” should follow the approach reflected in, amongst other instruments, the Malaysian Code and the Malaysian Government’s publication “Harmony at the workplace”, and should be a regular process which enables workers and employers (either directly or through their representatives) to consider together issues of mutual concern; in order to be meaningful, such process should take place before the final decisions affecting employees have been taken.

Should consultation with the BATEU have taken place? Was the BATEU adequately consulted (if at all) before and during the restructuring? Did BATM harass union members into applying for the reclassified non-unionised positions?

157. The UK NCP examined the allegation from the MTUC under paragraph 8(d) above. In particular, the UK NCP examined three key issues: A) whether consultation with the BATEU should have taken place; B) whether the BATEU was adequately consulted (if at all) before and during the restructuring; and C) whether BATM harassed union members into applying for the reclassified non-unionised positions.

A. Should consultation with the BATEU have taken place?

158. By BATM’s own admission, the BATEU was, up to 29 October 2007, the union representing all relevant BATM employees. On 28 January 2008, British American Tobacco PLC stated that: *“After the merger in November 1999 [of Rothmans of Pall Mall Malaysia and the Malaysian Tobacco Corporation into BATM], upon application by BATEU, the Director General of Trade Union (DGTU) approved BATEU as BATM’s in-house union, representing the unionised employees of BATM, Tobacco Importer and Manufacturers Sdn. Bhd (TIM) and Commercial Marketers and Distributors Sdn. Bhd (CMD), respectively. BATM worked with BATEU on all matters involving unionised employees of BATM and its subsidiaries”.*
159. On 6 September 2010, BATM stated that both BATEU’s constitution and Article 13 of the BATEU-BATM collective agreement prevent the BATEU from representing employees in managerial, executive and confidential capacities. Therefore, BATM argued that it was under no legal obligation to consult the BATEU regarding the establishment of the managerial positions of process specialists, TMRs and SDRs.
160. The UK NCP has not seen BATEU’s constitution. On 21 January 2011, BATM confirmed that Article 13 of the collective agreement states that *“This Agreement shall cover all employees employed by the Company except for the following categories of employees: a) Directors and Managers b) Executives (including Trainee Executives and Executives on probation) c) Confidential Secretaries d) Confidential Staff e) Security Staff f) Temporary Staff g) Employees on first probation”*; and that Article 11.1 of the collective agreement states that *“The Company recognizes the British American Tobacco (Malaysia) Berhad Employees Union as the sole collective bargaining body in respect of salaries, wages and other terms and conditions of employment covered in this Agreement for all employees except for those excluded under Article 13 of this Agreement”*. On 8 February 2011, the MTUC drew the UK NCP’s attention to Article 7.2 of the collective agreement which states that: *“Company” means British American Tobacco (Malaysia) Berhad or any other name by which the Company is called arising from a change of name and all subsidiaries involved in the manufacture, sale, import and distribution of tobacco products*”. The parties clearly dispute these issues. It would be outside of the remit of the UK NCP to make a determination on whether consultation with the in-house union is mandatory in all circumstances under Malaysian law.

161. The UK NCP, however, noted that Chapter IV(8) of the Guidelines recommends enterprises to “allow the parties [that is, authorised representatives of the employees] to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters”. The BATEU was the in-house union at the time, and there was no other union representing the newly created positions of process specialists, TMRs and SDRs. The creation of the new positions can be considered a matter of mutual concern since it was likely to affect (and did affect) both the BATEU and BATM.
 162. As outlined above, the Malaysian Code reflects the host country’s expected employment and industrial standards, and does recommend that workers’ views are sought on existing practices and on proposed changes which would affect workers. The UK NCP considered that the re-classifications are an example of a proposed change affecting BATM’s employees.
 163. In light of the above, the UK NCP concluded that, although BATM may not have been under a legal obligation in Malaysia to consult the BATEU over the re-classifications, the Guidelines, supported by Malaysia’s own voluntary standards of employment and industrial relations, did require such consultation. Therefore, the BATEU should have been adequately consulted on the re-classifications. The UK Government encourages UK registered companies operating abroad to abide by the standards set out in the Guidelines as well as to obey the host country’s laws.
- B. Was the BATEU adequately consulted (if at all) by BATM before and during the restructuring?*
164. BATM stated in its letter to the UK NCP of 6 September 2010 that: “*BAT Malaysia (BATM) held consultations with BATEU throughout the period August 2006 and January 2007, despite the fact that there was no legal requirement under local law and regulation for us to consult BATEU either before, during or after the restructuring [...] Our engagement with BATEU reflects our commitment to good employment practices as set out in our Group Employment Principles*”.
 165. BATM also attached a “chronological timeline of consultation” related to the establishment of the new positions. The UK NCP understood from BATM that the “process specialist” role was advertised to staff on 25 August 2006 and was established from 18 September 2006, and that the TMR and SDR roles were established from 1 January 2007. The UK NCP examined BATM’s chronology of events and could find some evidence of BATM informing the BATEU about the creation of the new roles. In particular:
 - a) On 25 August 2006, BATM advertised the new “process specialist” role in the internal notice boards. According to the MTUC, on 28 August 2006, the process specialist role was also advertised via BATM’s internal e-mail as management positions.
 - b) On 30 August 2006, BATM met the BATEU to explain the “process specialist” role.
 - c) On 1 September 2006, BATM provided more detailed information to the BATEU on the “process specialist” role.
 - d) On 5 September 2006, BATM discussed with the BATEU the union’s concerns over the “process specialist” role, particularly it being a managerial role.
 - e) On 6 September 2006, the BATEU wrote to BATM expressing concerns over the “process specialist” role. On 11 September 2006, BATM confirmed that the “process specialist” role was a managerial role.
 - f) On 8 January 2007, BATM held a briefing session with the BATEU on the created posts of TMRs and SDRs.
 166. With the exceptions highlighted in paragraph 43, all of the meetings and correspondence between BATM, the BATEU and the MTUC in the period after the establishment of the new positions,

appeared to be related to the complaint filed on 3 October 2006 by the BATEU with the DGIR alleging “union busting” behaviour on the part of BATM, and the Malaysian Ministry of Human Resources’ decisions, on 14 December 2006, that TMRs and SDRs were correctly defined as managerial posts, and, on 8 March 2007, that process specialists were correctly defined as managerial posts. As a result of these events, the UK NCP took into account that the relationship between BATM and the BATEU might have deteriorated and that, under these circumstances, BATM might have been discouraged from engaging the BATEU in respect of the establishment of the new positions.

167. However, in its complaint of 11 December 2007, the MTUC stated that “*Despite the existence of a collective agreement, the Union [the BATEU] was not notified of any job creations*”. The MTUC also acknowledged in the complaint that “*on 1 September 2006 Company made a feeble attempt to justify the action*”. On 25 November 2010, the MTUC clarified that BATM did not consult the BATEU before taking the final decision to create the new positions, and before advertising the new role of process specialist on 25 August 2006, and establishing the new roles of TDRs and SDRs from January 2007. On 6 December 2010, BATM confirmed that it did not consult the BATEU on the creation of the new positions before 25 August 2006.
168. The UK NCP could find no evidence of consultation with the BATEU before BATM finalised its decision to create the new positions and advertised the new role of process specialist on 25 August 2006. All of the evidence seen by the UK NCP showed that BATM made attempts to inform the BATEU about the re-classifications after advertising the roles, but there is no evidence of BATM seeking BATEU’s views on the re-classifications before BATM finalised its decision to carry them out and advertised the new positions.
169. For the reasons set out in paragraph 41 above, the UK NCP did not accept that the lack of consultation with the BATEU could be justified by the fact that Malaysian law might not make consultation with the BATEU mandatory in all circumstances.
170. In light of the above, the UK NCP concluded that BATM failed to uphold the standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines because it failed adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions.
171. Although the UK NCP could ascertain the expected and recommended standards on employment and industrial relations in Malaysia, it could not reliably determine whether BATM’s practices in this instance were consistent with the standards of employment and industrial relations actually observed by comparable employers in Malaysia in similar situations. Therefore, the UK NCP has insufficient evidence to determine whether or not BATM acted consistently with Chapter IV(4)(a) of the Guidelines.

C. Did BATM harass union members into applying for the reclassified non-unionised positions?

172. In the evidence submitted by the MTUC on 29 February 2008, the MTUC included an undated letter to the General Secretary of the BATEU, allegedly signed by 163 of BATEU’s members which states that: “*we [BATM’s employees] were given a “new contract” and was forced to sign without giving any option to accept or reject the new contract. We as employees strongly feel that we should be given an option to exercise our “rights”. We were not even given time to think over the new offer or discuss this matter with our Union officials*”. In a letter dated 15 January 2007 from the BATEU to BATM, which the UK NCP has seen, the BATEU stated that: “*Our members*

were forced to sign a new contract [in relation to the new roles of TMRs and SDRs] when they are already covered by the existing terms and conditions of the Collective Agreement. Our members were also not given any option to accept or reject the new contract. Our members were also denied their rights to seek advice, clarifications or given sufficient time to consider the new contract". BATM denied these allegations.

173. The UK NCP had no means to verify the information above and therefore concluded that there was insufficient evidence to find that BATM harassed its employees into accepting the newly created positions.

CONCLUSIONS

174. On the basis of the analysis of the evidence outlined above, the UK NCP draws the following conclusions:
- a) That, as the UK NCP did not examine the allegations under paragraphs 8(a), 8(b), 8(c) and 8(e) above, it cannot reach any conclusion as to whether BATM breached Chapter IV(1)(a) of the Guidelines.
 - b) That “adequate consultation” should follow the approach reflected in, amongst other instruments, the Malaysian Code and the Malaysian Government’s publication “Harmony at the workplace”, and should be a regular process which enables workers and employers (either directly or through their representatives) to consider together issues of mutual concern; in order to be meaningful, such process should take place before the final decisions affecting employees have been taken.
 - c) That, although BATM may not have been under a legal obligation in Malaysia to consult the BATEU over the re-classifications, the Guidelines, supported by Malaysia’s own voluntary standards of employment and industrial relations, set a higher standard than what may have been required under domestic law. Therefore, the BATEU should have been adequately consulted on the re-classifications.
 - d) That BATM failed to uphold the higher standards on employment and industrial relations reflected through Chapter IV(8) of the Guidelines because it failed adequately to consult the BATEU about the re-classifications before finalising the decision to carry them out and to advertise the new positions. However, the UK NCP had insufficient evidence to determine whether BATM acted inconsistently with Chapter IV(4)(a) of the Guidelines.
 - e) That there is insufficient evidence to find that BATM harassed its employees into accepting the newly created positions.
175. In light of the above, the UK NCP concludes that BATM breached Chapter IV(8) of the Guidelines. The UK NCP cannot reach any conclusion on whether BATM complied with Chapters IV(1)(a) and IV(4)(a) of the Guidelines.

EXAMPLES OF GOOD COMPANY PRACTICE

176. British American Tobacco PLC’s corporate responsibility measures are accessible through the company’s web portal. The UK NCP has reviewed British American Tobacco PLC’s initiatives on employment and industrial relations. In particular, the UK NCP notes the following measures taken by British American Tobacco PLC which are of particular significance in relation to Chapter IV(8) of the Guidelines.

177. The “Statement of employment principles”¹³³ (the Statement) clearly indicates that British American Tobacco PLC expects and encourages its subsidiaries to implement the principles set out in the Statement. In particular:
- a) Paragraph 2.1.2 states: *“We respect both freedom of association and freedom of non-association. We acknowledge the right of employees to be represented by local company recognised Trades Unions, or other bona fide representatives, and for these, where appropriate, to consult with the relevant company – within the framework of applicable law, regulations, the prevailing labour relations and practices, and company procedures. We acknowledge the activities of recognised worker representative bodies such as Trades Unions (where such activities are practiced in accordance with national law) and we ensure that they are able to carry out their representative activities within agreed procedures”.*
 - b) Paragraph 3.1.3 states: *“BAT [British American Tobacco] undertakes restructuring in a responsible manner. Any of our global Operating Companies involved in restructuring will explain the initiatives that make change necessary to its employees and all appropriate groups and bodies, in accordance with local laws and regulations”.*
178. British American Tobacco PLC has published its approach towards supply chain companies, which states that: *“supply partners should expect the following from their relationship with us: [...] A joint approach to pursuing improvements in the supply chain, through education, training and the sharing of good practice. Group companies will uphold British American Tobacco policies and will encourage, and where appropriate, help supply partners to embrace them”*¹³⁴. It further clarifies that: *“we – and our supply partners – need to uphold and demonstrate high standards of integrity, accountability and business practice [...] We believe that, as a responsible business, we should do more than ensure that we exhibit best practice in the workplace; we should also use our influence to raise standards, secure product integrity and spread best practice in our supply chain and in the tobacco industry overall. We hope that our supply chain partners will assist us in this regard”*¹³⁵.

RECOMMENDATIONS TO THE COMPANY AND FOLLOW UP

179. Where appropriate, the UK NCP may make specific recommendations to a company so that its future conduct may be brought into line with the Guidelines. In considering whether to make any recommendations, the UK NCP has taken into account that BATM was found to have breached the Guidelines, and that consulting the BATEU on the re-classifications would not be useful at this stage because the new positions have now been established.
180. The UK NCP however considers that BATM risks breaching the Guidelines again in the future unless it changes its approach in consulting employees (and their representatives). To this effect, the UK NCP recommends that British American Tobacco PLC should encourage BATM to establish a permanent and regular process to consult and inform its employees on issues of mutual

¹³³ British American Tobacco PLC, *Statement of employment principles* (available at [http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO725ECW/\\$FILE/medMD623F3V.pdf?openelement](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO725ECW/$FILE/medMD623F3V.pdf?openelement) – visited on 10 December 2010).

¹³⁴ British American Tobacco PLC, *Our philosophy of supplier partnerships*, p. 4 (available at [http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO725ECW/\\$FILE/medMD6RWDFD.pdf?openelement](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO725ECW/$FILE/medMD6RWDFD.pdf?openelement) – visited on 10 December 2010).

¹³⁵ *Our philosophy of supplier partnerships*, op. cit, pp. 4-5.

concern before key decisions of mutual concern are taken by management. Such process should be endorsed by both management and employees (and their representatives, where they exist).

181. Both parties are asked to provide the UK NCP with a substantiated update by 6 June 2011 on measurable progress towards BATM's implementation of the recommendation in paragraph 58 above. The UK NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the UK NCP's conclusions thereon. The substantiated update should be sent to the UK NCP in writing to the following address:

UK National Contact Point for the OECD Guidelines for Multinational Enterprises
Department for Business, Innovation and Skills
Victoria 3.1 – 3rd floor
1, Victoria Street
London SW1H 0ET
United Kingdom
e-mail: uk.ncp@bis.gsi.gov.uk

4 March 2011

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Nick Van Benschoten, Sergio Moreno

ANNEX 5.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE OECD AND THE GLOBAL
REPORTING INITIATIVE (GRI)**

The OECD and GRI,

Considering that the OECD Guidelines for Multinational Enterprises (hereafter referred to as “the OECD MNE Guidelines”)¹³⁶, which are an integral part of the OECD Declaration on International Investment and Multinational Enterprises (hereafter referred to as “the OECD Declaration”), constitute recommendations addressed by governments to multinational enterprises setting out voluntary standards and principles for responsible business conduct,

Considering that the OECD Decision on the OECD Guidelines for Multinational Enterprises of 27 June 2000 endowed the OECD MNE Guidelines with a unique implementation mechanism in the form of National Contact Points in each adhering country which are responsible, *inter alia*, for the promotion of the Guidelines and for the facilitation of access to consensual and non-adversarial means, such as conciliation or mediation, to assist in the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances;

Considering that GRI is a global multi-stakeholder network of experts from business, civil society, mediating institutions and labour organisations, which has pioneered the development and implementation of the leading international framework for sustainability reporting by private and public organisations on economic, social and environmental impacts (hereafter “the GRI Sustainability Reporting Framework”)¹³⁷;

Considering that the GRI is supported by and receives input from a large number of governments, including OECD Members;

Considering that the OECD MNE Guidelines and GRI Sustainability Reporting Framework are based on and promote the same internationally agreed standards and principles for responsible business conduct, notably in the fields of social and human rights as well as in economic and environment matters, and that they both support multi-stakeholder engagement;

¹³⁶ The text of the OECD MNE Guidelines can be found at www.oecd.org/daf/investment/guidelines.

¹³⁷ Information on the GRI Sustainability Reporting Framework and the latest version of the GRI Guidelines (the G3 Guidelines) can be found at: <http://www.globalreporting.org/ReportingFramework>.

Considering that the GRI Sustainability Reporting Framework refer to the OECD MNE Guidelines as a benchmark for responsible business conduct reporting and that the Commentary to the OECD MNE Guidelines refers to the GRI as an example of an initiative for reporting standards that enhance the ability of enterprises to communicate on the influence of their activities on sustainable development outcomes;

Considering that the OECD MNE Guidelines and the GRI Sustainability Reporting Framework have received prominent international recognition including by the G8 and the UN, that they are among the most widely referenced global corporate responsibility instruments and that leading corporations extensively use the OECD MNE Guidelines and the GRI Sustainability Reporting Framework in developing their own codes of conduct;

Recalling that the 2003 exchange of letters between the GRI and the OECD Secretary-General acknowledged the existence of significant synergies and complementarities between the two instruments and the desirability of exploiting them further¹³⁸; and that a public document was jointly developed in 2004¹³⁹ by the GRI and OECD highlighting these complementarities and providing guidance on how to make use of their synergies;

Noting that the agreed terms of reference for the update of the OECD MNE Guidelines in 2010-2011 [DAF/INV(2010)5/FINAL] foresee the involvement of the GRI, notably in regard to the disclosure provisions of the OECD MNE Guidelines, that the GRI has already provided views on the update of the OECD MNE Guidelines and noting that the GRI will be involved in the implementation and dissemination of the updated OECD MNE Guidelines;

Considering that there are related areas in which closer cooperation between the OECD and GRI would be beneficial, including work on responsible supply chain management;

Agree that it is in the mutual interest of the OECD and GRI (hereafter individually referred to as “a Party” and collectively “the Parties”) to establish the following Memorandum of Understanding (hereafter referred to as “the MOU”):

Article I

Purpose and Scope

The purpose of the MOU is to establish a programme of cooperation for an initial period of three years to promote greater understanding, visibility and use of the OECD MNE Guidelines and the GRI Sustainability Reporting Framework, to exploit the synergies and complementarities between the two instruments and to develop cooperation between the Parties in other areas of mutual interest.

¹³⁸ Reproduced in 2003 Annual Report on the OECD Guidelines for Multinational Enterprises, pp 81-84.

¹³⁹ Available at <http://www.oecd.org/dataoecd/25/26/35150230.pdf>.

Any activities conducted under this MOU are subject to their inclusion in the Parties' respective programme of work and budget and shall be carried out in accordance with their respective rules and practices.

Article II

Content of the Cooperation Programme

Subject to resource availability, each Party will take appropriate opportunities to support and profile the work of the other Party and encourage its use. The main initiatives or activities envisaged under the cooperation programme include:

On the part of the GRI:

- strengthening efforts to encourage MNEs to refer to the OECD MNE Guidelines in responsible business conduct and sustainability reporting;
- strengthening efforts to encourage MNEs to report their use of the OECD MNE Guidelines using the GRI Sustainability Reporting Framework;
- providing of information, generic support and advice to National Contact Points (NCPs) on the GRI Sustainability Reporting Framework and the role that the Framework can play in promoting and facilitating the effective use of the Guidelines;
- providing of input to the update of the OECD MNE Guidelines;
- profiling of the OECD MNE Guidelines on the GRI website as well as in GRI events, training tools and publications;
- inviting the OECD to be represented in the GRI Governmental Advisory Group, composed of high-level representatives from OECD and non-OECD countries and international governmental organisations;
- providing input on other OECD initiatives of mutual interest including the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas; and
- inviting the OECD to participate in other GRI activities or events of mutual interest including the meetings of the GRI Supply Chain Working Group;

On the OECD side:

- encouraging adhering governments to the OECD MNE Guidelines and NCPs to promote where appropriate and in conformity with the Commentary on the OECD MNE Guidelines, the use of the GRI Sustainability Reporting Framework in relation to disclosure and reporting on the implementation of the OECD Guidelines;
- inviting the GRI to report to the Working Party of the Investment Committee and/or to NCPs as appropriate on trends in sustainability reporting and on the use of the OECD MNE Guidelines in practice;
- actively engaging the GRI in the consultation process on the update of the OECD MNE Guidelines;

- inviting the GRI to the OECD Annual Corporate Responsibility Roundtables;
- profiling as appropriate the GRI Sustainability Reporting Framework on the OECD website as well as in OECD corporate responsibility events and publications;
- referencing the GRI Sustainability Reporting Framework, as appropriate, in other OECD initiatives such as the OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas; and
- inviting the GRI to participate in other OECD activities and events of mutual interest including the meetings of the OECD-hosted Working Group on Due Diligence in the Mining and Minerals Sector.

Article III

Status of the MOU

For legal purposes nothing in this MOU shall be construed as creating a joint venture, an agency relationship or a legal partnership between the Parties. No provision of this MOU shall be construed so as to in any way interfere with the respective decision-making processes of the Parties with regard to their own respective work and operation. Each Party will bear its own costs incurred in the implementation of this MOU. This MOU does not represent a commitment of funds on the part of either Party.

Article IV

Consultations

Each Party accepts to enter promptly into consultations at the request of the other Party with respect to any matter arising in relation to this MOU.

Article V

Institutional Framework

After the signature of this MOU, each Party will appoint a staff member who will act as focal point for the implementation of the MOU. The focal point will ensure the implementation of the cooperation programme and facilitate the exchange of information between the Parties on matters of common interest.

Article VI

Intellectual Property Rights

The Parties recognise the importance of protecting and respecting intellectual property rights. The OECD will retain all intellectual property rights relating to the OECD MNE Guidelines and other OECD instruments while the GRI will retain all intellectual property rights relating to the GRI Sustainability Reporting Framework.

Article VII

Implementation, Renewal, Amendment and Termination.

This MOU is concluded for a period of three years starting at the date of its signature by both Parties. It may be renewed by mutual written agreement between the Parties.

This MOU may be amended in writing by mutual agreement of the Parties. It may be terminated by either Party subject to three months' written notice.

Signed in two original copies in English.

Signed on behalf of OECD

Signed on behalf of GRI

Richard Boucher
Deputy Secretary-General,
Organisation for Economic
Co-operation and Development

Mervyn King
Chairman of the Board of Directors
Global Reporting Initiative

Date 13 December 2010

Date 13 December 2010

ANNEX 6.

MEMORANDUM OF UNDERSTANDING BETWEEN THE OECD AND THE INTERNATIONAL CONFERENCE ON THE GREAT LAKES REGION (ICGLR)

Background

i) OECD Initiatives

The OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter “OECD Due Diligence Guidance”), developed as part of the OECD Pilot Project on Due Diligence in the Mining and Minerals Sector (hereafter “OECD Pilot Project”), is intended to clarify the responsibilities of the private sector in conflict-affected and high-risk areas and provide practical guidance on how enterprises can meet such responsibilities.

The OECD Due Diligence Guidance is based on and is consistent with the OECD Guidelines for Multinational Enterprises, which constitute recommendations addressed by governments to multinational enterprises setting out voluntary standards and principles for responsible business conduct.

The OECD Due Diligence Guidance represents the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected and high-risk areas. The objective of this initiative is to cultivate transparent and sustainable mineral supply chains that enable countries to generate income, growth and prosperity, sustain livelihoods and foster local development through the extraction and trade of their mineral resources.

ii) ICGLR Initiative against the Illegal exploitation of Natural Resources

The ICGLR Pact on Security, Stability and Development in the Great Lakes Region (hereafter “ICGLR Pact”), signed by the eleven Heads of State of the ICGLR on 15 December 2006, recognises the illegal exploitation of natural resources in the Great Lakes Region as a serious source of insecurity, instability and conflict as well as a major obstacle to development. The Pact includes, as an integral part, a Protocol against the Illegal Exploitation of Natural Resources.

The ICGLR has launched a Regional Initiative against the Illegal Exploitation of Natural Resources (hereafter “ICGLR Regional Initiative”) as part of the implementation of the ICGLR Pact and the above-mentioned Protocol.

iii) OECD and ICGLR Synergies and Complementarities

The OECD Pilot Project and the ICGLR Regional Initiative are based on the common objective of preventing the extraction and trade in minerals from being a source of conflict and insecurity, while creating the enabling conditions for a positive contribution by the private sector to sustainable development.

The 2009 G8 Leaders Declaration at L’Aquila has welcomed the efforts of the ICGLR to tackle illegal exploitation of natural resources and encouraged the OECD and other partners to work with the ICGLR and engage with stakeholders to develop practical guidance for business operating in conflict-affected and high-risk areas.

In 2009, there was an exchange between the ICGLR Executive Secretary and the OECD Secretary-General, acknowledging the existence of significant synergies and complementarities between the ICGLR Regional Initiative and the OECD Pilot Project and the desirability of exploring further possibilities for cooperation.

Since that time, the ICGLR has become a member of the OECD-hosted working group on due diligence in the mining and minerals sector and has actively participated in the development of the OECD Due Diligence Guidance.

The OECD and the ICGLR recognised the synergies and complementarities existing between the OECD Due Diligence Guidance and the six tools developed by the ICGLR Regional Initiative at the joint ICGLR-OECD Consultation on Responsible Supply Chain Management of Conflict Minerals held in Nairobi on 29-30 September 2010;

The outcome document of the meeting of ICGLR ministers in charge of mineral resources, issued on 1 October 2010, recognising the complementarities of the OECD Due Diligence Guidance and the tools of the ICGLR Regional Initiative, recommends that the Special Summit of ICGLR Heads of State should adopt the OECD Due Diligence Guidance as the 7th tool of the ICGLR Regional Initiative; and that the ICGLR and OECD should conclude a Memorandum of Understanding in order to establish a framework for cooperation.

In light of this background, the OECD and ICGLR (hereafter individually referred to as “a Party” and collectively “the Parties”) agree that it is in their mutual interest to establish the following Memorandum of Understanding (hereafter referred to as “the MOU”):

Article I

Purpose and Scope

The purpose of the MOU is to establish a programme of cooperation for an initial period of 2 years to promote the understanding, visibility and use of the OECD Due Diligence Guidance and the ICGLR Regional Initiative, to take advantage of the synergies and complementarities between the two initiatives and to develop cooperation between the Parties in areas of mutual interest.

Article II

Content of the Cooperation Programme

Subject to resource availability, each Party will take appropriate opportunities to support and profile the work of the other Party and encourage its use. The main initiatives or activities envisaged under the cooperation programme include:

On the part of the ICGLR:

- integrating the OECD Due Diligence Guidance into the six tools of the ICGLR Regional Initiative;
- participating in and cooperating with the OECD during the implementation phase of the OECD Due Diligence Guidance including in the preparation of reports on implementation;
- raising awareness and encouraging relevant companies and actors operating in mineral extraction and trade in the Great Lakes Region to implement the OECD Due Diligence Guidance;
- profiling of the OECD Due Diligence Guidance on the ICGLR website as well as in relevant ICGLR events, tools and publications;
- inviting the OECD to be represented in meetings of the ICGLR Regional Initiative, composed of high-level representatives from ICGLR member countries;
- inviting the OECD to participate in other ICGLR activities or events of mutual interest.

On the OECD side:

- inviting the ICGLR to participate in future work of the OECD Pilot Project, including, *inter alia*, the implementation of the OECD Due Diligence Guidance and the development of a Supplement on Gold and/or Other Precious Metals;
- exploring, in cooperation with the ICGLR, the feasibility of an institutional mechanism to support due diligence by companies, building upon the audit mechanism to be set up under the ICGLR Regional Certification Mechanism;

- profiling of the tools of the ICGLR Regional Initiative on the website of the OECD Pilot Project as well as in related OECD events, tools and publications;
- inviting the ICGLR to participate in other OECD activities or events of mutual interest related to the purpose of the MOU, including, *inter alia*, the OECD Annual Corporate Responsibility Roundtables;
- involving the ICGLR in OECD work on global drivers of conflict and fragility including through the DAC International Network on Conflict and Fragility.

Article III

Status of the MOU

For legal purposes, nothing in this MOU shall be construed as creating a joint venture, an agency relationship or a legal partnership between the Parties. No provision of this MOU shall be construed so as to in any way interfere with the respective decision-making processes of the Parties with regard to their own respective work and operation. Each Party will bear its own costs incurred in the implementation of this MOU. This MOU does not represent a commitment of funds on the part of either Party.

Any activities conducted under this MOU are subject to their inclusion in the Parties' respective programme of work and budget and shall be carried out in accordance with their respective rules and practices.

Article IV

Consultations

Each Party accepts to enter promptly into consultations at the request of the other Party with respect to any matter arising in relation to this MOU.

Article V

Institutional Framework

After the signature of this MOU, each Party will appoint a staff member who will act as focal point for the implementation of the MOU. The focal point will ensure the implementation of the cooperation programme and facilitate the exchange of information between the Parties on matters of common interest.

Article VI

Intellectual Property Rights

The Parties recognise the importance of protecting and respecting intellectual property rights. Each Party will retain all intellectual property rights on its respective work.

Article VII

Implementation, Renewal, Amendment and Termination

This MOU is concluded for a period of two years starting from the date of its signature by both Parties. It may be renewed by mutual written agreement between the Parties.

This MOU may be amended in writing by mutual agreement of the Parties. It may be terminated by either Party subject to three months' written notice.

Signed in two original copies in English.

Signed on behalf of OECD

Signed on behalf of ICGLR

Mr Richard Boucher
Deputy Secretary-General
Organisation for Economic
Co-operation and Development

Ambassador Liberata Mulamula
Executive Secretary,
International Conference on the
Great Lakes Region

Date 03 December 2010

Date 13 December 2010