Ministerio de Relaciones Exteriores y Culto
República Argentina

PNCA
OCDE

PUNTO NACIONAL DE CONTACTO
ARGENTINO PARA LA OCDE

# Informe Anual del Punto Nacional de Contacto Argentino (PNCA)

Junio 2009 a Junio 2010

**REPORT OF THE NATIONAL CONTACT POINTS TO THE INVESTMENT COMITEE May 2010**

**ARGENTINA**

## A. Institutional Arrangements

I) The ANCP, based on the existent structure and the acquisition of experience during the discussion of subjects, presentations and "Specific Instances", came to the following conclusions with regard to the part of the process prior to the formal admissibility of a presentation.

a) It is convenient for the ones who present the complaint, especially taking into account the length of the Argentinean territory, that they have a long established tradition and/or territorial representation that best enable them in their pretension to represent a concrete situation given in a certain area.
b) The ones that presented the "Complaint" should then, as well as proving their territorial relevance where a possible non-observation of the OECD Guidelines for Multinational Enterprises could have occurred, have a strong representative role among society –in the case of NGOs –because, even when the legal formalities are fulfilled, the implications of a process that inevitably acquire international visibility requires a careful evaluation on behalf of the ANCP about the representative role invoked by the ones that presented the "Complaint".
c) Our country has a federal structure and not every province (State) have the same legislation. Only the matters considered core subjects are codified at federal level.

II) With regard to the treatment of the "Complaint", once accepted, it has been considered useful to take advice from other organs and governmental agencies that, for its competences, should know best the examined matters. That is the reason why

the ANCP planned an “advisory” mechanism to seek advice in two different moments, namely:

a) The ANPC may seek advice at the moment of accepting dealing with a “Complaint”, with regard to the realm of the subjects that it comprises. The reason for this is that in many cases, the “Complaints”, trying to comprise all the aspects that arise from the conflicting situation, involve several facets and refer, as foundation, to different chapters of the Guidelines. This does not seem conducive to a practical approach, capable at the same time of adjusting to the Law.

b) Once the “Complaint” has been factually and formally limited in scope to the really relevant matters (and possibly the enquiries widen to other social sectors that exceed the governmental framework), the matters subjected to a possible Good Offices procedure on behalf of the ANCP are specified and the ANCP, through an appropriate notice, informs the Multinational Enterprise subject to the “Complaint”, the actual range of the possible non-observance of the Guidelines for which it was summoned.

c) In case the procedure is accepted –keeping in mind the voluntary character of the Guidelines- and according to the development of the Specific Instance, the ANCP is enabled to seek advice among the above mentioned organs and/or governmental agencies about those matters that, because of their specificity, are beyond the scope of its knowledge and capacities..

III) The above mentioned considerations have led the ANCP to formulate a transparent, operative and reliable procedure. This procedure was positively analyzed and evaluated by the technical and legal areas of the Ministry of Foreign Affairs, International Trade and Worship. Considering that the NCP usually involves in its procedure several Ministries and other departments of the executive branch, the following step is the issuing of a decree, that must be signed first by several ministers and then by the President.

## B. Information and Promotion

I. A Spanish version of the OECD Guidelines for Multinational Enterprises is available at the web page of the Ministry of Foreign Affairs, International Trade and Worship.

II. The ANCP maintains regular contact with the NGOs that work on Corporate Responsibility.

III. In 2009-2010, the ANPC participated in four events held in Buenos Aires related to Corporate Responsibility, in which it had the opportunity to promote the OECD Guidelines for Multinational Enterprises:

a) September 2009 – Seminar on Corporate Responsibility organizad by the Norwegian Embassy in Argentina, supported by the Ministry of Foreign Affairs, International Trade and Worship and the Ministry of Labor, Employment and Social Security . NGOs, Norwegian and Argentinian enterprises also participated in the seminar.

b) October 2009 – Latin American – European Union Forum on Corporate Responsibility and multi-sector alliances: contribution to competitiveness, innovation and sustainable development.

c) December 2009 – Argentinian NGOs Forum on Corporate Responsibility and the OECD Guidelines for Multinational Enterprises organized by CEDHA (Center for Human Rights and Environment) and INCASUR ( National Institute of Studies and Social Formation of the South).

d) March 2010 – Argentinian NGOs Forum Forum on Corporate Responsibility and the OECD Guidelines for Multinational Enterprises organized by CEDHA (Center for Human Rights and Environment) and INCASUR ( National Institute of Studies and Social Formation of the South).

IV. The ANCP usually responds to NGOs´ enquiries regarding Corporate Responsibility.

## C. Implementation in specific instances

**Specific Instance**
**ACCOR/Recalde – Wortman Jofre**

1. The request to consider the specific instance was received on November 28th, 2007
2. The specific instance was raised by National Deputy Dr. Héctor P. Recalde and his legal representative, Dr. Hugo Wortman Jofre
3. The chapters of the Guidelines cited in the specific instance are:

    - II General Policies
    - IV Employment and Industrial Relations
    - VI Combating Bribery

4. The specific instance does not involve business activities in a non-adhering country.
5. Sector of activity: Corporate Services Sector.
6. The specific instance was accepted.
7. The specific instance concluded on March 5th, 2009
8. The outcomes were conveyed to the public through a paid announcement published in two broadsheet newspapers of nation-wide circulation.
9. Throughout the process of Good Offices, the parties worked cooperatively. This made it possible to reach an agreement that the ANCP considers to be mutually satisfactory. The information handled throughout the specific instance corresponded to the written documents presented by the parties during the instance. Besides, the ANCP contributed through proposals of its own and prepared minutes of the meetings that were held. 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 ACCOR Company already existed, but this situation did not hinder the development of the instance and its adequate conclusion, which was published in the main journals of Argentina.

**Specific Instance**
**SKANSKA/CIPCE**

1. The request to consider the specific instance was received on September 19th, 2007
2. The specific instance was raised by The Center for Investigation and Prevention of Economic Criminality
3. The chapters of the Guidelines cited in the specific instance are:

    - VI Combating Bribery
    - X Taxation

4. The specific instance does not involve business activities in a non-adhering country.
5. Sector of activity: Construction.
6. The specific instance was accepted.
7. The specific instance concluded on September 26th, 2008, due to an alleged breaching in the non-disclosure agreement. On May 20th, 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 26th of September, 2008.

**Specific Instance**
**SHELL/ INPADE-Amigos de la Tierra**

1. The request to consider the specific instance was received on May 28th , 2008
2. The specific instance was raised by The Institute for Participation and Development of Argentina and Foundation Friend of the Earth of Argentina
3. The chapters of the Guidelines cited in the specific instance are:

    - II General Policies
    - III Disclosure
    - Environment

4. The specific instance does not involve business activities in a non-adhering country.
5. Sector of activity: Energy (petroleum).
6. The Specific Instance did not start because the enterprise decided to wait until the resolution of ongoing judicial causes (parallel proceedings) to determine whether it accepts the 'complaint' presented by the NGOs or not.

## D. Other

The ANCP considers that there are 3 issues of particular relevance to be address during the 2009-2010 period:

a) As the process of the Guidelines is highly dynamic and is enriched by the NPCs´ acquisition of experience, we consider that the meetings of the NPCs should be held twice a year.

b) Matters that occur more frequently should be carefully addressed before entering into more complex ones (financial matters).

c) Make sure that the reference to a violation on "Human Rights" will not turn into the *"leit motiv"* of all presentations, because if that is so, all the cases should be accepted, as no government can reject an invocation to a violation on "Human Rights".

d) The question of "confidentiality" during the specific instance and afterwards should be clarified.

Buenos Aires
May 3rd, 2010