Annual Report on the OECD Guidelines for Multinational Enterprises

CONDUCTING BUSINESS IN WEAK GOVERNANCE ZONES

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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ENTREPRENDRE DANS DES ZONES DE FAIBLE GOUVERNANCE
2006

Foreword

To many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct by these companies is a growing challenge since their operations often straddle dozens of countries and hundreds of cultural, legal and regulatory environments. The OECD Guidelines for Multinational Enterprises *aim to help businesses, labour unions and NGOs meet this challenge by providing a global framework for responsible business conduct. While observance of the Guidelines is voluntary for businesses, adhering governments are committed to promoting them and to making them influential among companies operating in or from their territories.*

This Annual Report on the OECD Guidelines for Multinational Enterprises, the sixth in a series, describes what governments have done to live up to this commitment over the period June 2005-June 2006. One highlight of this implementation cycle was the completion of guidance for companies operating in weak governance zones when the OECD Council adopted the Investment Committee's report entitled "Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones". The 2006 OECD Roundtable on Corporate Responsibility focused on promotion and mediation under the Guidelines.

The Annual Report is published under the joint responsibility of the National Contact Points (NCPs) – government offices who are responsible for encouraging observance of the Guidelines – and the OECD Investment Committee.

The material for this publication was prepared by Kathryn Gordon, Senior Economist, and Pamela Duffin, Communications Officer, in the Investment Division, Directorate for Financial and Enterprise Affairs.

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Conducting Business in Weak Governance Zones

PART I

Meeting of National Contact Points – An Overview of Guidelines Implementation

Summary Report of the Chair of the Meeting on the Activities of NCPs

I. Introduction and background

The 2006 meeting of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises ("the Guidelines") gave NCPs an opportunity to take stock of their experiences during the sixth year of implementation since the June 2000 Review. Consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-government organisations provided further inputs on Guidelines implementation. The 2006 Roundtable on Corporate Responsibility focused on a "Proactive Approach to the OECD Guidelines".

The present report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2005-June 2006 period. It is based on individual NCP reports[1] and on other information received during the reporting period. The report is divided into seven sections. These include: institutional arrangements (Section II); information and promotion (Section III); specific instances (Section IV). Section V describes work by the Investment Committee and NCPs on investments in weak governance zones. Section VI describes how Guidelines institutions have followed up on some of the issues raised during earlier Annual NCP meetings and Corporate Responsibility Roundtables. Section VII reviews progress to date and proposes steps for future action.

Overall, this year's report suggests that promotional activities by NCPs have continued to expand.[2] "Targeted" promotion appears to be an emerging trend. For example, Hungary indicates that it targets promotional activities on multinational enterprises operating in its territory. Canada and Australia describe sectoral approaches to promotion focusing on, respectively, extractive industries and textiles, clothing and footwear. The Canadian report notes that since "Canada is a major player in the global extractive sector, both the Canadian Government and the Canadian industry share an interest in maintaining a positive image of Canada in the sector, and ensuring that Canadian businesses contribute positively to the broader social and environmental objectives of the communities in which they operate." Australia chose "textiles, clothing and footwear" because dialogue partners identified it being ripe for wider promotion and dissemination of the Guidelines.

The NCPs' reports show ongoing active consideration of specific instances. Ninety-six specific instances (24 more than in last year's report)

have been considered by NCPs since the June 2000 Review. This indicates continued strong interest in the specific instances facility.

Another highlight of the June 2005-June 2006 implementation cycle was the completion of guidance for companies operating in weak governance zones. In June 2006, the OECD Council adopted the Investment Committee's report entitled "Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones". In adopting this tool, the OECD Council considers "it desirable to raise awareness of the risks multinational enterprises face in weak governance zones and to offer guidance … which is consistent with the objectives and principles of the *Guidelines*.[3]"

II. Institutional arrangements

The NCP reports show that institutional arrangements were stable over the June 2005-2006 reporting period. NCP structures are as follows:

- 21 NCPs are single government departments;
- 7 NCPs are multiple government departments;
- 9 NCPs are tripartite (many of these also involve multiple government departments); and
- 2 NCPs are quadripartite.

NCPs noted that they also use other means for enhancing the inclusiveness of their activities. A number of countries reported using advisory committees or permanent consultative bodies whose members include non-government partners. Others stated that they convene regular meetings with business, trade unions and civil society. Still others state that they consult with NGOs or other partners on an informal basis or in reference to specific issues about which partners contribute their expertise.

During the reporting period, two NCPs (Netherlands and the United Kingdom) undertook reviews of their structure and practices. The Dutch Ministry of Economic Affairs examined the role and functioning of the NCP by means of a desk study, a benchmark study in six capitals, interviews and roundtable sessions with various stakeholders in the Netherlands. This process resulted in a number of recommendations. These recommendations and related future developments will be made public shortly (after the Ministry for Foreign Economic Relations has informed the Dutch Parliament). In September 2005, the UK Department of Trade and Industry launched a stakeholder consultation on promotion and implementation of the Guidelines by the NCP following a critical report by an All Party Parliamentary Group on the performance of the NCP in investing allegations of corporate misconduct in the DRC. A number of recommendations have been received and are currently being evaluated.

III. Information and promotion

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities. NCPs have continued to be active in this area during the reporting period. This section summarises the promotional activities described in the individual NCP reports.

III.a. Selected promotional activities

Developments and innovations in promotion include:

- *Argentina – event in Buenos Aires*. In partnership with NGOs, Argentina organised a "Workshop on National Contact Points" that covered such areas as environment, investment promotion, labour, human rights and competition. Business, trade unions, OECD Watch and government departments attended the event. Parliament was also invited. The different international experiences of NCPs were analysed and participants decided to continue meeting in order to take up all issues covered in the Guidelines.
- *Australia – targeted promotion focusing on textiles, clothing and footwear*. The Australian NCP is using a targeted approach to promotion. The May 2006 business and community consultation focused in the Australian Textiles, Clothing and Footwear industry (though the consultation was not limited to participants from these industries). This sector was chosen because the NCPs dialogue participants identified it as having great scope for wider promotion and dissemination of the Guidelines. The consultation explored ways of beginning the process of raising awareness and increasing understanding of the Guidelines within the TCF industry. It also enabled the Australian NCP to secure future opportunities to promote the Guidelines at sector-specific forums.
- *Brazil – targeted promotion focusing on multinationals*. The Brazilian NCP has decided to focus its promotional efforts on multinational enterprises, noting that most multinational enterprises are unaware of the existence of the Guidelines. In the Brazilian NCP's view, NGOs and trade unions are effective in raising awareness among their constituencies; however, the dissemination work directed towards multinationals rests entirely upon the NCP. The NCP's strategy is to focus most of its promotional work on multinational enterprises so as to enhance the visibility of the Guidelines in the business community, thereby possibly preventing future complaints due to its increased "understanding and assimilation of the document".
- *Canada – targeted promotion focusing on extractive industries*. Following up on a promotional strategy that targets extractive industries, the Canadian NCP is providing input into the development of the "Canadian National Roundtables on CSR and the Canadian Extractive Sector in Developing Countries" and has been providing support and advice on the OECD Guidelines to the Canadian

Government Working Group on the Democratic Republic of Congo in their development of a strategy on CSR in the mining sector. In February 2006, the Canadian Embassy in Ghana held a CSR Seminar in Accra. The seminar, which drew over 40 participants, focused on CSR in the mining sector – the largest sector for Canadian investment in Ghana.

- *Finland – Responsible Competitiveness Conference*. The Finnish NCP held a seminar on responsible competitiveness on 4 May 2006. The seminar focused on the OECD Guidelines, the Policy Framework on Investment and the OECD Risk Awareness Tool and other global CSR principles with best practice business examples.
- *Hungary – targeted promotion focusing on major multinationals*. The Hungarian NCP is sponsoring an email and letter campaign addressed to major multinational enterprises. Three basic instruments – the Guidelines, the EU Criminal Law Convention on Corruption and the ILO Tripartite Declaration – are being sent to them in order to mitigate problems arising "mainly in the field of employment, environment and exercising the right to organise".
- *Israel – promotion material development*. In co-operation with the Israeli-Jordanian NGO "Friends of the Earth and the Middle East" and Bar Ilan University Law Department, a booklet in Hebrew was put out that explains how to work effectively with the Israeli NCP.
- *Italy – creating a newsletter and working with universities*. The Italian NCP has created its own newsletter, PCNM@agazine in order to inform government agencies at the central and local levels, Italian embassies and consulates, companies, trade unions, NGOs and business associations and the European Commission about its initiatives and campaigns (there are currently 270 subscribers). It set up a Guidelines information desk at the International Fair of ICT and Consumer Electronics (October 2005) and at the annual Public Administration Fair (May 2006). It has also sponsored: 1) a research project – involving a sample of 50 small- and medium-sized enterprises – which documents companies' CSR practices and communications; 2) a course on CSR management at the Catholic University of Milan, including the financing of 10 fellowships and a degree prize for a graduate thesis dealing with the OECD Guidelines; and 3) training and refresher courses, organised with Italian Regions and private associations, to raise the visibility of the Guidelines among local small and medium-sized enterprises.
- *Mexico – regional issues*. The Mexican NCP has participated in several events organised by trade unions and civil society in Mexico that look at regional issues in corporate responsibility.
- *Netherlands – country-specific CSR information provided to companies doing business abroad*. The Agency for International Business and Co-operation (*www.evd.nl*) of the Ministry of Economic Affairs provides information on

how to observe the Guidelines in several emerging markets. The country-specific information is on the Agency's website and was brought to the attention of entrepreneurs in the form of country brochures during trade missions to India, Brazil and China. The feedback from companies suggests that this is an effective way to promote the Guidelines among small and medium-sized enterprises. Following up on this positive feedback, the Dutch NCP has commissioned MVO Nederland (a CSR knowledge and information centre) to deepen the information gathered on CSR issues and to make this available as web-based toolkits. Toolkits are being prepared on Brazil, China, India, Indonesia, Russian and South Africa.

- *Romania – most recently-formed NCP starts promotion*. The Romanian NCP, created in May 2005, has held a press conference, created a webpage on the Agency of Foreign Investment Site (*www.arisinvest.ro*). It also sent a bilingual (English-Romanian) NCP leaflet and the web page to central and local authorities, multinational companies, Foreign Investors' Council in Romania, regional development agencies, local and bilateral chambers of commerce, employers' associations, labour unions and professional associations. The Guidelines were also promoted by the Embassies abroad and to Embassies in Bucharest. The NCP made presentations to a master course at the Romanian Academy of Economic Sttudies and the National Institute of Administration. It also participated in the Cartel Alfa Trade Union's seminar on corporate responsibility.
- *Sweden – promotion by ambassadors*. The ambassador and head of the Swedish Partnership for Global Responsibility has participated in an import promotion delegation to Jordan, as well as bilateral dialogue with Thailand and South Africa. The Guidelines were also promoted in the course of bilateral co-operation with the United States, including with both governmental and non-governmental entities. The Ambassador also heads an informal inter-governmental working group designed to raise awareness of the Guidelines among Government Offices and, in particular, within the context of state-owned companies.
- *European Union – European Parliament resolution*. The Guidelines are referred to several times in the July 2005 European Parliament resolution on the exploitation of children in developing countries, with a special focus on child labour (reference 2005/2004(INI)).
- *European Commission – Cotonou Co-operation*. The European Commission is pursuing the issue of CSR and promotion of the Guidelines in its external trade agreements (for instance, in the EU-ACP Economic Partnership Agreements in the framework of the Cotonou co-operation).

Other promotional activities undertaken by NCPs during the reporting period included:

- Outreach to companies via contacts or presentations to individual companies or to business associations (Australia, Canada, Estonia, Finland, France, Germany, Italy, Japan, Latvia, Slovak Republic, United Kingdom, United States, European Commission). The Estonian Chamber of Commerce and Industry is using the Guidelines as a benchmarking tool to study the CSR practices of Estonian companies. In July 2005, the Korean NCP promoted the Guidelines among Korean companies in Mexico, Honduras and Guatemala; this promotion included "introducing model examples of local companies". The quadripartite Finnish NCP met five times during the reporting period, and describes the co-operation engendered by these frequent meetings as being "fruitful for the promotion of the Guidelines". The German NCP arranged a conference in late June 2005 that evaluated the Guidelines 5 years after their review. The Romanian NCP held its first Annual Conference, which attracted the participation of representatives of all interested parties (*e.g.* public authorities, private unions).
- Consultations and organisation of meetings with national partners (Australia, Czech Republic, France, Italy, Latvia, Switzerland, United Kingdom, United States, European Commission). In December 2005, the Latvian NCP organised a meeting with business federations, the Foreign Investors Council, the Bureau for Combating and Preventing Corruption, and the Turiba Business School in order to identify the best ways to promote the Guidelines in Latvia.
- Newsletters, articles in the press or other promotion through the media (Italy, Slovak Republic, Korea). The Italian, Slovak and Korean NCPs have launched email newsletter services. The Italian NCP contributed to the CSR Guide for Italian SMEs published by API Vincenza business association and Unicredit Bank.
- Participation in conferences organised by non-governmental actors (Belgium, Estonia, France, Italy, Korea, Mexico, Netherlands, Romania, Spain, Turkey, United Kingdom). The Polish NCP took part in the FES-Poland and OECD Watch training seminar on the Guidelines in April 2006. The Spanish NCP participated in a corporate responsibility day organised by the High Council of Spanish Chambers of Commerce.
- Co-operation and promotion with universities and other institutions of higher education (Denmark, Israel, Italy, Latvia, Mexico, Romania, Slovak Republic, Spain, Turkey). The Danish NCP has presented the Guidelines to law students at the University of Copenhagen.

Table I.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 Invest Australia websites.
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	FDI	The Foreign Investment Committee (CIE in Spanish) is the Agency that the state of Chile uses in its dealings with those who elect to use (the Foreign Investment Decree 600) as the legal mechanism to bring Direct Investment into the country. The Foreign Investment Committee helps to position 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 CR. The Czech NCP (at the Ministry of Finance) co-operates closely with Czech Invest.
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 promotion	This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.
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 ("*avoir pris connaissance des Principes directeurs*").
Germany	Investment guarantees	A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.
Greece	Investment promotion	The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.
Israel	Investment Promotion Centre	The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP website where the OECD Guidelines are available electronically.
Japan	Trade-investment Promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, METI Japan. Japan established a website with the intention to further strengthen a network between Asia and Africa to facilitate the exchange of trade and investment (*www.TICADExchange.org*). The Japanese NCP linked the TICAD Exchange website to the texts of the Guidelines. The Japanese NCP linked the ASEAN Centre website to the texts of the Guidelines as well.

Table I.1. **The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes** *(cont.)*

Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.
Latvia	Investment promotion	Information on Latvian NCP and Guidelines are available electronically on the website of Latvian Investment and Development Agency.
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.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIiIZ).
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.
Slovenia	Investment promotion, export credits and investment guaranties	Both organisations have added links to the NCP website. Export credits and investment guaranties (SID) call the Guidelines to the attention of outward investors.
Spain	Investment guarantees	The CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) and ICO (the Official Credit Institute) 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 bribery, the OECD GL for MNE's and the Swedish Partnership for Global Responsibility.
Switzerland	Export credits and investment guarantees	Switzerland's Export Credit Agency (ERG) and Investment Risk Guarantee Agency (IRG) both promote corporate responsibility principles. On their websites, they provide information regarding the Guidelines and their implementation mechanism.
Turkey	Investment promotion	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for inward investment promotion. The investment promotion website provides information on the Guidelines.
United Kingdom	Export Credit	Links connect Guidelines website and Export Credit Guarantee Department's website and *vice versa*. The following text is in ECGD's Case Impact Analysis Process document. "The UK Government encourages all multinational companies to adopt the recommendations on responsible business conduct contained in the 'OECD Guidelines for Multinational Enterprises'. ECGD's internal procedures will check on the consistency of the operations of its customers (both in the UK and overseas) with these recommendations, and in particular those relating to the environment, employment, combating bribery and transparency."
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

- Development of promotional material and mailings (Czech Republic, Israel, Italy, Japan, Romania). website development (Belgium, Canada, Hungary, Italy, Lithuania, Mexico, Romania). The Japanese NCP linked the ASEAN Centre website to the texts of the Guidelines as well.

III.b. Promotional activities within governments

The following promotional activities within governments took place during the reporting period:

- Promotion through presentations by high level officials (New Zealand, Switzerland). The Guidelines featured in a keynote address by the New Zealand Ministry of Economic Development's Deputy Secretary for Regulatory and Competition Policy at a conference on sustainable procurement.
- Promotion with and training of embassy and consular staff (Australia, Canada, France, Germany, Italy, Japan, Netherlands, New Zealand, Romania, Spain, United Kingdom). New Zealand provides copies of a Guidelines information sheet to all New Zealand overseas Embassies, Consulates and High Commissions for distribution to New Zealand companies operating abroad. The French NCP presented the Guidelines to environmental experts assigned to overseas diplomatic missions. The Economics Sections of German Embassies distribute German-language copies of the Guidelines. Japan provides instruction papers to newly assigned Embassy or Consulate staffs that instruct them to promote the Guidelines with Japanese multinational enterprises operating in their posted countries.
- Trade and Investment Promotion missions or activities (Canada, France, Italy, Netherlands, Sweden, European Commission). The Polish NCP provided a workshop for people servicing investors in regions so as to ensure that new investors are aware of the Guidelines. A Swedish Business delegation, headed by the State Secretary of Ministry for Trade and Industry, promoted the Guidelines during a visit to Ghana in February 2006.
- Promotion through overseas development agencies (Canada, Netherlands, Sweden).
- Responding to requests from Parliaments, Ombudsmen or other government bodies (Belgium, Canada, Germany, United Kingdom).

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

Adhering governments have continued to explore how to ensure that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table I.1 summarises the links that have been established between the Guidelines and such programmes. Twenty-two NCPs report that such links exist. The main changes

from last year's version of this Table are the additions of entries for Hungary and Romania.

III.d. Promotion by the OECD

The OECD Secretary-General spoke on the benefits of responsible business conduct and described the contribution made by the OECD Guidelines for Multinational Enterprises during the Global Corporate Social Responsibility Forum held in Beijing on 22 February 2006. The text of the Secretary General's speech appears as Document 1 in the Archive of Documents.

The "OECD Contribution to the United Nations Commission on Sustainable Development 14"[4] promoted the Guidelines in the chapter dealing with "Industry and corporate responsibility". The OECD Guidelines on the Corporate Governance of State Owned Enterprises' were adopted by Council in April 2005 and published in September 2005. Their annotations promote the Guidelines by asking state owned enterprises to develop "internal codes of ethics" that "include a commitment to comply with the OECD Guidelines for Multinational Enterprises…". The terms of reference for the Trade Committee's project on "Informing Consumers of CSR in International Trade" cites the Guidelines and foresees co-operation among the Trade, Investment and Consumer Committees.

Officers of the Investment committee and the OECD Secretariat accepted invitations to promote the Guidelines at roughly 20 international meetings over the period. Selected promotional events attended and activities undertaken include:

- The Chair of the Investment Committee promoted the Guidelines at a corporate responsibility event in London sponsored by Chatham House in March 2006, September 2006 conflict workshop, at Panel Discussion at the 11th session of the UNCTAD Commission on Investment held in March 2006 which dealt with "International Investment Rules Setting: Trends, Emerging Issues and Implications".
- The OECD Guidelines and the Investment Committee's work on investments in weak governance zones were presented to a stakeholder consultation event organised by the Office of the UN High Commission on Human Rights in November 2006 on behalf of the UN Secretary General's Special Representative on human rights and trans-national corporations.
- A session on the Guidelines and corporate responsibility was organised in conjunction with the Global Forum on International Investment held in Sao Paolo in October 2005.
- The Secretariat represented the Guidelines and other OECD instruments in the course of the ongoing development of the ISO SR 26000 guidance document.

- An OECD Investment Newsletter has been created which promotes all of the work of the Investment Committee, including follow-up work on the Guidelines. The newsletter will reach several hundred members of the investment policy community.

In addition, the Secretariat answers numerous queries about the Guidelines from the media, universities and other interested parties and maintains the OECD website dedicated to the Guidelines. In 2005, the website was accessed 25 000 times and the text of the Guidelines was downloaded 12 500 times.

IV. Specific instances

The OECD Council Decision of June 2000 instructs the NCPs to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP is expected to offer a forum for discussion and to assist the business community, employee organisations and other parties concerned in dealing with the issues raised. Thus, the "specific instances" procedure provides a channel for promoting observance of the Guidelines' recommendations in the context of individual company operations. A table listing specific instances taken up by NCPs is presented in Annex I.A3.

As discussed in Section IV of the 2005 Annual Report, the German NCP was contacted by the German network of the UN Global Compact and asked whether it could provide mediation for possible cases of non-observance with the Compact's ten principles. The German NCP welcomed this request and responded with a proposal for a two-step procedure: 1) the Global Compact would first try to address issues within its own reporting system; 2) if the results were not satisfactory, then the problem would be presented to the German NCP as a "specific instance" under the OECD Guidelines. The German NCP would use the Guidelines recommendations as the basis of its consideration in deciding whether to treat a request as a specific instance and would follow the Procedural Guidance as set forth in the June 2000 Council Decision. In April 2006, the stakeholders of "UN Global Compact Germany" approved this proposal and this link with the Guidelines in the context of the German Global Compact network will be formalised in due course.

IV.a. Specific instances – nature and numbers

Some 130 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCPs reports indicate the following numbers of specific instances have been filed: Argentina (1), Austria (3), Australia (1), Belgium (9), Brazil (9), Canada (7), Chile (3), Czech Republic (5), Denmark (3), Finland (2), France (12), Germany (6), Hungary (1), Italy (1), Japan (5),

Korea (3), Mexico (1), Netherlands (15), Norway (2), Poland (2), Portugal (1), Romania (1), Spain (2), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (11) and United States (19).

Annex I.A3 shows that 96 specific instances have been actively taken up and considered by NCPs.[5] Sixty-two of these have been concluded. Most specific instances deal with Chapter IV (Employment and Industrial Relations). However, some of the more recent specific instances have also covered issues dealt with in other Chapters. For example, two specific instances reported this year (by Norway and Australia) deal with human rights issues (covered in Chapter II, General Policies) that arose in connection with direct or indirect private sector involvement in the management of detention facilities. At the present time, the only Guidelines chapter that has not been referenced in the context of a specific instance is "Science and Technology".

IV.b. Selected specific instances described in NCP reports

Australia. In June 2005, the Australian NCP was asked by 5 NGOs to consider a specific instance concerning Global Solutions Limited, an Australian incorporated, and wholly-owned subsidiary of a UK-controlled multinational enterprise (hereafter "GSL Australia"). The complainants' submission alleged that, through its provision of immigration detention services to the Australian Government, GSL Australia had breached the Human Rights and Consumer Interests provisions of the Guidelines. The Australian NCP made an initial assessment that included fact-finding and separate meetings with the complainants. The NCP agreed to take up the request as a specific instance, but sought to focus the issues to matters related to the conduct of the company that are directly within its control. Following both parties' acceptance of the NCP's invitation to proceed with the specific instance, the NCP circulated a "Preliminary list of issues within GSL Australia's control" to parties in order to facilitate a shared understanding of the issues under consideration. After agreement was reached on the list of issues to be considered, the NCP initiated an information-sharing and dialogue process to ensure that both parties understood the issues involved and the facts of the situation. This involved a significant exchange of written information, including confidential documents such as GSL Australia's internal operational and procedural manuals. Following this exchange of information, the NCP conducted a face-to-face mediation session with both parties in February 2006. This session produced a list of 34 "Agreed Outcomes" (that is, endorsed by both the company and the complainants) which provides a basis for GSL Australia to continue to improve its operations. The Australian NCP released its "Final Statement on the GSL Specific Instance" in April 2006 (this statement appears as Document 2 in the Archive of Documents, Annex I.A4; the statement by the two parties on "Agreed Outcomes of the Mediation

Meeting" is attached to the NCP statement). Both parties considered that the mediation session was highly successful. According to the Australia's report, the key features of this specific instance are:

- The NCP's early establishment of rules of engagement promoted a non-adversarial climate conducive to building trust and goodwill between the parties;
- The instance was concluded in 8 months from the date it was raised. The NCP undertook to expedite the proceedings as much as possible without compromising the quality of the review process or a successful resolution of the matter.
- Conducting the mediation session after a considerable exchange of information enabled the parties to adequately prepare for the face-to-face discussions thereby enhancing the value of the mediation session.
- The focus on reaching reasonable resolutions on the issues germane to the specific instance allowed the parties to engage in frank and robust discussions and exploration of potential solutions.
- Both parties participated in good faith and displayed good will towards each other. Both parties also willingly abided by confidentiality requirements during the specific instance process.
- Both parties agreed to represent themselves throughout the entire examination process without involving legal representation at any stage. The non-legal character of this specific instance demonstrated the usefulness and strength of the Guidelines' specific instances procedure.
- Consistent with the Australian NCP's commitment to continuous improvement in its processes, both parties have been invited to suggest ways to improve the handling of future specific instances. The Managing Director of GSL Australia and the Spokesperson for the Complainants shared their experiences of the specific instance at a May 2006 consultation organised by the NCP.
- The complainants have produced a case study of the GSL Australia specific instance for training NGOs that may be involved in future specific instances.

Canada. A coalition of NGOs submitted a complaint to the Canadian NCP in May 2005 concerning the operations of an international mining company incorporated in Canada operating in a non-adhering country. The complaint was submitted on behalf of community groups affected by the company's operations. The NGOs and a representative of the affected communities met with the NCP to present their submission. Following intra-departmental and inter-departmental consultation (including close contact with the Canadian mission in the non-adhering country) the NCP determined that the

submission was relevant to the Guidelines and decided to seek agreement from the company and the NGOs to participate in an NCP-facilitated dialogue on the issues raised in the submission which are relevant to the Guidelines. In late 2005, both parties agreed to participate in the dialogue scheduled for end January 2006. However, prior to the meeting, the NGOs withdrew over a disagreement about the terms of reference for the meeting. In addition to expressing its ongoing willingness to facilitate a dialogue, the NCP encouraged the company to pursue independently ongoing dialogue with the communities affected by its operations with a view to resolving outstanding issues. Finally, in line with the Government of Canada's expectation that companies incorporated in Canada observe the OECD Guidelines, the Canadian NCP indicated its intention to maintain an interest in the company's operations and to follow relevant developments in the company's community development plan and Environmental Impact Assessment work.

France. In a public statement made in March 2005 (see Document 3 in the Archive of Documents in the 2005 Annual Report on the OECD Guidelines), the French NCP committed to continuing consultations with Électricité de France regarding its management of the Nam Theun II hydroelectric project in Laos. An additional consultation took place on 8 June 2006 and the NCP concluded that the measures taken by Électricité de France were appropriate. It was agreed that a follow-up consultation should take place in June 2007.

Germany. In June 2003, the German NCP received a request from a Philippines trade union (but forwarded by the German Trade Union Federation – to consider a specific instance concerning a German chemicals company's alleged non-observance of recommendations in Chapter IV (Employment and Industrial Relations). After having received comprehensive comments by the company as well as by the unions (because of the complexity of the case, this extensive comment period was necessary) the NCP conducted the first meeting with the parties involved. The main result of the meeting was that the parties themselves acknowledged that they have to obtain more information in order to assess objectively all of the facts. The German NCP has produced a draft statement and is still waiting for additional information and clarification by the Philippines trade union in order to conclude its consideration of this matter.

Netherlands. In August 2002, a Dutch trade union asked the NCP to consider whether the process leading up to a petition for bankruptcy by "Plaid Nederland" was in conformity with the Guidelines. As the company no longer exists, obtaining information was difficult and, since Plaid management has moved to another location, it was not possible to organise a tripartite meeting or to issue a joint statement. The NCP decided to draw a conclusion using information obtained from bilateral consultations and court records. Part of

this conclusion is that the company's efforts to share information with employees about its financial situation appeared to be ineffective.

Norway. In June 2005, an NGO asked the Norwegian NCP to consider a specific instance regarding Aker Kvaerner's (a Norwegian company) provision of maintenance facilities (via a wholly-owned US subsidiary) to a detention centre run by the US Department of Defence in Guantanamo Bay.[6] The NCP had meetings with Aker Kvaerner and the NGO on 5 September and 26 October, 2005 to discuss the complaint and to assist the parties in reaching agreement on this issue. On November 29, 2005, the NCP issued a statement that *inter alia* urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships (this statement appears as Document 4 in the Archive of Documents, Annex I.A4).

Romania. The Romanian NCP considered a request to take up a specific instance in relation to a steel company's management of relations with two trade unions. The NCP decided not to take up the case because: 1) it doubted, because of the adversarial relationship between the parties that it could effectively provide good offices; 2) it felt that it would have little value added relative to a parallel legal proceeding because of the greater resources and information available to the parallel proceeding; 3) it had doubts about the legality under Romanian law of its accepting such a request.

V. Investments in weak governance zones

The Investment Committee and the NCPs continued their examination of the issue of responsible management of investments in weak governance zones. This section covers two topics: 1) The Investment Committee's development of tool for companies operating in weak governance zones; 2) Continued NCP engagement with companies named in the UN Expert Panel Reports on illegal exploitation of natural resources in the Democratic Republic of Congo.

V.a. Investment Committee work on investments in weak governance zones

On 8 June, 2006, the OECD Council adopted a report by the Investment Committee on the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (the Tool can be accessed at *www.oecd.org/dataoecd/26/21/36885821.pdf*). The report will be transmitted to the Presidency of the G8 and to the UN Secretary General by the OECD. The *Tool* poses questions that are designed to help companies think about the risks and ethical dilemmas that they are likely to face in weak governance zones. Weak governance zones are defined as countries where governments are unwilling or unable to assume their responsibilities.

The special risks and dilemmas encountered in these difficult investment environments are linked to "government failures" that cause broader failures of economic, political and civil institutions. These, in turn, create problems for companies which the *Tool* helps to identify and address. In particular, the *Tool* covers such areas as: 1) obeying the law and observing international instruments; 2) heightened care in managing investments, 3) knowing business partners and clients; 4) dealing with public sector officials; and 5) speaking out about wrongdoing.

The *Tool* recognises that building governance and economic, political and civil institutions is the job of the political leadership and the citizens of the countries concerned – only they can formulate and implement the necessary reforms. But multinational enterprises can help companies avoid actions that may hinder efforts to build better governance and also help them to consider whether there is a positive role they can play.

The development of the *Tool* is part of Investment Committee's follow up on the OECD Guidelines for Multinational Enterprises. It is non-prescriptive and consistent with the objectives and principles of the Guidelines.

The *Tool* is designed to help business. Accordingly, in the next phase the Committee has expressed its desire to continue to work with business and other stakeholders to identify sources of practical experience in meeting the challenges this *Tool* is intended to address.

V.b. NCP follow up on investments in the Democratic Republic of Congo

Following up on work that began with the references to the OECD Guidelines made in two UN Expert Panel's reports to the UN Security Council on Illegal Exploitation of Natural Resources in the Democratic Republic of Congo (DRC[7]), some NCPs continued engagement with companies named in the reports. The following describes steps and decisions taken by NCPs during the reporting period:

- *Austria*. The Austrian NCP has dealt with a specific instance raised by a company active in the mining sector of the DRC that concerns a German company, also active in the sector. The complaint had first been introduced on November 2004. In February 2005, the Austrian NCP informed the complainant that it could not take up consideration of the matter due to the absence of an "investment nexus". In March 2005, the company renewed its complaint, offering documents to show the required investment nexus . In October 2005, the Austrian NCP invited the complainant to a hearing, and subsequently repeated the initial assessment. On 18 October 2005, the Austrian NCP informed the complainant that in the light of the documents newly submitted at the hearing an investment nexus would be at least possible, and because of that the issues raised merited further examination.

Therefore the complaint was sent to the German company and to the German NCP, which was informed and consulted during the whole process. The German company denied the alleged violations and requested documents to prove the alleged accusations. The complainant could not provide such documents and therefore the mediation effort carried out by the Austrian NCP did not produce any positive results. The Austrian NCP therefore tried to find out, if the complaint was justified. Unfortunately, due to the internal situation in the DRC and to the complicated structure of the mining activities in this country, it was not possible to verify the complaint. For this reason and after having consulted the Advisory Committee of the NCP, the Austrian NCP closed the specific instance in May 2006 without decision as to the merits of the complaint, and without issuing any specific recommendations. As there is no consensus was reached between the two enterprises, their names have not been published.

- *Belgium*. The Belgian NCP was asked by a consortium of NGOs to look at range of issues related to the activities of the Group Forrest in the DRC (*e.g.* worker safety, political activities, disclosure, the revenues received by a state-owned enterprise in the context of a mining project). In November 2005, the Belgian NCP issued a press release that notes the interest of the Group Forrest in "defending and promoting the Guidelines". It also recommends *inter alia* that the Group: promote the Guidelines with suppliers and assist public authorities and international institutions to implement policies dealing with problems of populations near "industrial sites" (available in the Archive of documents as Document 3, Annex I.A4).
- *Belgium and France*. The French NCP has contacted Transami, a commercial transport company with activities in the DRC. This company was classed in the 2003 Expert Panel report in category 5 ("Parties that did not react to the Panel report") in the 2003 report by the Expert Panel. The French NCP collaborated with the Belgian NCP on this matter, since Transami provides services for a Belgian business, Specialty Metals Company (SMC). The Belgian NCP has stated publicly that, because of the incomplete information provided by the Expert Panel and by SMC, that it was not in a position to pursue its consideration of SMC's activities in the DRC. The French NCP has decided that, given the lack of information on the two companies, it also would have to end its consideration of this matter.

VI. Follow-up on issues raised at earlier meetings

This section follows up on two of the strategic issues for Guidelines implementation that were identified in the Chair's summary of the 2005 Annual NCP Meeting: 1) NCP procedures and parallel proceedings; and 2) Encouraging peer learning among NCPs.

NCP procedures and parallel proceedings

"Parallel proceedings" refer to specific instances that deal with business conduct that is also the subject of other proceedings at the sub-national, national or international levels. These proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquiries (*e.g.* by UN agencies). On numerous occasions, the Investment Committee and its Working Party and the National Contact Points (NCPs) have discussed how parallel proceedings should be handled. Earlier discussions of this issue are summarised in the 2004 and 2005 Annual Reports on the OECD Guidelines for Multinational Enterprises.[8]

This section and the Background Note in Annex I.A5 provide broad summaries of what has been learned in the course of these discussions. The consultations provided an opportunity for BIAC, TUAC and NGOs to share their views on this matter – their written submissions are reproduced in Annex I.A6 – have had an opportunity to comment on this summary. Delegates and NCPs recognise the need to accumulate more practical experience in this area – thus, these summaries are not to be viewed as the final word on the subject.

The business circumstances and legal and ethical issues underpinning many specific instances are complex. Because of this complexity, it is often impossible to develop detailed, fixed rules about how NCPs should handle specific instances. In summarising the results of its discussions of other issues relating to specific instances, the Investment Committee has previously stressed the need to allow flexibility to NCPs and has noted the value of a case-by-case approach. The Committee's approach to parallel proceedings is no exception.

The many discussions held on parallel proceedings show that broad agreement exists on two general points:

1. Genuine problems arise in connection with the handling of these specific instances and they can pose risks for the Guidelines. These problems and risks need to be taken seriously by NCPs when they consider whether or not to accept such specific instances.
2. There may be (and have been) situations where NCPs, after carefully weighing the risks and evaluating the potential problems, decide to accept such specific instances because they believe that they can have "value added" relative to other proceedings. This determination needs to be made on a case-by-case basis.

The Background Note in Annex I.A5 reviews the considerations identified by NCPs as influencing their approach to specific instances with parallel proceedings. Three lists of considerations are proposed in the Annex I.A5

Note. The first highlights the general problems and risks associated with accepting a specific instance that is the subject of parallel proceedings. The second looks at the particular problems and risks that might be encountered when the parallel proceeding takes place in a non-adhering host country. The third list covers the possible sources of "value added" of the specific instances procedure relative to the parallel proceeding – that is, it describes situations where the NCP might be able to contribute to the resolution of problems and to enhance the effectiveness of the Guidelines by agreeing to consider such instances.

These lists are designed to promote a coordinated NCP approach to this issue while avoiding attempts to establish fixed rules for the handling of parallel proceedings. Drawing on these lists, Box I.1 proposes short questions that NCPs might want to ask themselves when thinking about whether or not to accept a specific instance involving parallel proceedings.

Encouraging peer learning

The 2005 report notes that, at last year's meetings, "NCPs reaffirmed their commitment to continual improvement in Guidelines implementation and agreed that there is a need to reinforce human and institutional capacity. Support was expressed for increasing efforts to share best practices. Suggestions for reinforcing peer learning among NCPs included more frequent exchanges of information during meetings of the Working Party of the Investment Committee."

Several steps were taken during the implementation cycle to reinforce peer learning: 1) a standing item was added to the Working Party meetings which allow delegates to share Guidelines-related experiences on promotion and implementation; several delegations have made presentations during these sessions; 2) discussions of parallel proceedings were held in the Working Party, which allowed delegates to learn from each others experiences (see preceding session); 3) the 2006 OECD Corporate Responsibility Roundtable, whose title is "A Proactive Approach to the OECD Guidelines", will provide an opportunity for NCPs to listen to external views on two Guidelines implementation issues: 1) promotion; and 2) dialogue with individual companies, including through the specific instance procedure.

VII. Progress to date and considerations for future action

Progress to date

This review of the implementation of the Guidelines over the June 2005-June 2006 period underscores the continued relevance of the Guidelines as a tool for government, business, trade unions and civil society. It also indicates

Box I.1. **List of considerations for NCPs with specific instances involving parallel proceedings**

The considerations listed below are for specific instances where it is legally possible for the NCP to accept them. They are proposed in order to assist NCPs dealing with a request to consider a specific instance with a parallel proceeding for which no legal impediments exist.

Nature of the specific instance

- Does the specific instance involve business activities in an adhering or non adhering country? If the specific instance involves a non-adhering country, how does this affect the costs and benefits of taking up the specific instance?
- Does the matter raised in the specific instance deal with exactly the same issues as the parallel proceeding or does it deal with other matters (*e.g.* a broader range of behaviours)?
- Does the specific instance involve the same entity or a different entity as the parallel proceeding (*e.g.* the parent company of a subsidiary involved in a host country proceeding)?
- Is the specific instance of such a nature that the NCP will be able to obtain reliable information on the specific instance? Is the NCP well placed (relative to other parties or institutions) to obtain such information?

Nature of the parallel proceeding

- What is the nature of the parallel proceeding (*e.g.* does it criminal, civil, administrative law; arbitration, conciliation or mediation; public consultations; an enquiry by an international organisation)?
- At what level does the parallel proceeding take place (sub-national, national, regional or international)?
- Relations with the institution responsible for the parallel proceeding?
- Can the institution responsible for the parallel proceedings be contacted? If so, how does it view the involvement of the NCP?
- If the NCP decides to accept the specific instance, would it be possible to coordinate its handling with the institution responsible for the parallel proceedings (for example, if there is a need to coordinate scheduling of proceedings or findings)?
- If the parallel proceeding is the responsibility of an international organisation, would it be possible to coordinate with this organisation so as to reinforce the application of widely-agreed international standards (*e.g.* ILO Conventions)?
- How would various host country actors (*e.g.* government officials, business, trade union and NGOs, the public) view the NCPs involvement? Would neutral host country observers view such involvement as helpful or would they be likely to see it as inappropriate involvement by a foreign government in the domestic affairs of the country?

Box I.1. **List of considerations for NCPs with specific instances involving parallel proceedings** *(cont.)*

Views and attitudes of the interested parties

- Why has the interested party chosen to bring the issue to the NCP (*e.g.* in order to influence the handling or outcome of the other proceeding; because it does not trust the institution responsible for the other proceeding)?
- Has the existence of the parallel proceedings (especially adversarial proceedings) altered the state of mind of the parties in ways that undermine the likely efficacy of conciliation and mediation?

that there has been ongoing consolidation of adhering government use of the instrument.

The sustained promotional activities by adhering governments noted in last year's report continued into the 2005-2006 reporting period – actions included promotion with embassies and other diplomatic missions; undertaking projects and partnerships with universities; organisation of events; and development of websites. NCPs reported wide variations in how well the Guidelines are known in their national environments – some expressed broad satisfaction with the level of visibility of the Guidelines while others stated that considerable additional effort will be required to raise awareness. Several NCPs have adopted targeted promotion strategies. Sometimes these focus on sensitive sectors (*e.g.* extractive industries, textiles) or on types of companies (*e.g.* on large multinational enterprises with investments in the adhering country's territory or small and medium sized enterprises).

New requests to take up specific instances have been brought and a number of outstanding specific instances were concluded – the inventory of cases in Annex I.A4 shows that 96 specific instances have been actively considered by NCPs, as compared with the 72 specific instances reported last year. There are indications that some of these specific instances have had an impact – for example, during the 2006 OECD Corporate Responsibility Roundtable, the Australian NCP said that he expected that follow up on the "GSL Australia" specific instance would improve the lives of the people being held in detention facilities for illegal immigrants (the specific instances looked at the policies and practices of the private company that managed the facility for the Australian government). In addition, the specific instance has already been featured in human rights newsletters and websites; thus, it may also contribute to the emergence of shared thinking about corporate responsibilities in the context of public-private partnerships.

Another noteworthy development is "preventative promotion" – that is, promotion that is designed to head off problems before they arise. For example, in what it refers to as its "proactive approach", the Swiss NCP has contacted Swiss companies whose overseas "positioning" may point to contradictions with the recommendations of the Guidelines (as identified, for example, by Swiss diplomatic missions). The Swiss NCP notes that on the several occasions over the past few years it has used this proactive approach and that it seems to have resulted in greater efforts by the companies concerned to take the Guidelines into account. Another example can be found in the Canadian report. The Canadian NCP states that, while its efforts to facilitate dialogue under the specific instances procedure regarding a Canadian mining company's activities in a non-adhering company had not yet been successful, it had decided … "to maintain an interest in the company's operations and to keep up to date on relevant developments related to the company's community development plan and Environmental Impact Assessment work."

The consultations held in conjunction with the 2006 meeting of the NCPs showed that the positions and concerns of BIAC, TUAC and NGOs were broadly similar to those expressed in previous years. BIAC is generally satisfied with Guidelines implementation, but continues to be concerned about public statements made by trade unions and NGOs while specific instances are being considered. TUAC and NGOs underscored what they viewed as wide divergences in the performance of NCPs. They complained that specific instances are, in many cases, not being handled expeditiously, fairly and in a transparent manner. They expressed concern that parallel proceedings and the "investment nexus"[9] were being used as excuses for not looking into specific instances. The considerations for further action identified by NCPs during their annual meeting constitute a programme of action for continual improvement in Guidelines implementation – this programme will require effort by both NCPs and by stakeholders.

Considerations for future action

Two broad avenues for future action over the 2006-2007 implementation cycle were proposed at the 2006 meetings: 1) deepening co-operation; and 2) improving the quality of mediation and conciliation.

Co-operation

- *Deepening co-operation among NCPs.* NCPs report varying experiences when cooperating with other NCPs. In 2006 and earlier reports, some NCPs expressed satisfaction with the quality of co-operation, while others noted difficulties (usually these involved not getting information in a timely manner). The NCPs believe that it will be useful to engage in experience sharing with a view to improving communication and co-ordination.

- *Deepening co-operation among stakeholders*. During the Roundtable, one business participant observed that co-operation among the non-government stakeholders in Guidelines implementation process (BIAC, TUAC and NGOs) did not appear to be well developed. The NCPs would like the development of co-operation between BIAC, TUAC and NGOs to be one of the themes of the upcoming cycle of implementation. This might involve working on a joint project of common interest (such as follow up on the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the corporate responsibility work on China). Other avenues for co-operation cited were: 1) providing joint inputs to the work of the Investment Committee; and 2) creating liaison groups or "Friends of the Chair" which provide a forum for the development of shared positions and projects among stakeholders.
- *Deepening co-operation among different parts of government and of the OECD to promote corporate responsibility through the Guidelines*. Stakeholders and NCPs noted that co-operation within governments and within the OECD for promoting corporate responsibility and the Guidelines is not sufficiently developed. Enhancing such co-operation could be a goal for the next cycle of implementation.

Mediation

- *Follow up on the implications of the 2006 Roundtable discussions on mediation for NCPs*. During the 2006 OECD Corporate Responsibility Roundtable, the session on mediation and engagement with individual companies underscored the importance of accumulating expertise and building on experiences of the specific instances process. The need for mediation skills or for improving NCPs' ability to facilitate mediation by third parties could be particularly challenging. In addition, the multi-faceted nature of the NCP's role was highlighted during the discussions – the NCP is asked to assume a range of roles in addition to a possible role as mediator or facilitator. Understanding these multi-faceted roles and developing associated expertise were identified as being important areas for follow up in the 2006-2007 cycle of implementation.
- *Follow up on the implications of the 2006 Roundtable discussions on mediation for stakeholders*. NCPs also identified the role of stakeholders in the mediation and conciliation process as being an important one. The Roundtable discussions showed that the responsibilities of stakeholders in bringing specific instances to a successful conclusion are as important as those of NCPs. Building a common understanding on some of these responsibilities could help stakeholders and NCP to deal more confidently and effectively with specific instances.

Notes

1. Individual reports from the following NCPs were received in time to be included in this report: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Although the European Commission does not have an NCP, it also submitted a report on its implementation activities.
2. The Guidelines have now been translated into at least 29 languages: Arabic, Chinese, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Lithuanian, Norwegian, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish, Thai, Turkish and the official languages of Belgium.
3. Text quoted from the June 2006 Conclusions of the OECD Council in which the Council adopts the Risk Awareness Tool (See Part III).
4. This document can be accessed at *www.oecd.org/dataoecd/58/44/36655076.pdf*.
5. The number of specific instances actively taken up by NCPs is the number of specific instances listed in Annex I.A3, adjusted for specific instances that are listed more than once because more than one NCP was involved and more than one reported on the specific instance in the Annex table.
6. The US NCP was not consulted on this specific instance.
7. Earlier summaries of Investment Committee and NCP follow up on the Expert Panel Reports can be found in the 2003, 2004 and 2005 Annual Reports on the OECD Guidelines.
8. For earlier summaries of Investment Committee and NCP discussions of parallel proceedings, see Section VII.a of the 2005 Report and Section VI.a of the 2004 Report (available at *www.oecd.org/daf/investment/guidelines*).
9. See Section VI (under Scope of the Guidelines) of the 2003 Annual Report on the Guidelines for a discussion of the meaning of the "investment nexus".

ANNEX I.A1

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	(National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		The NCP coordinates with other government departments, business labour and civil society, as appropriate.
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 Economic Affairs and Labour	Other division of the Federal Ministry of Economic Affairs and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments.	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	
Brazil	Single department	Ministry of Finance	Ministry of Foreign Affairs Ministry of Planning, Budget and Management Ministry of Labour and Employment Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Brazilian Central Bank	Representatives from other government Offices can be asked to participate as well as Trade Unions, like CUT and “Força Sindical”; NGOs that deal with Ethics, like ETHOS; Industry and Trade Confederations; and other institutions like SOBEET (Brazilian Society For Trans-national Enterprises and Globalisation Studies).

	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Canada	Interdepartmental Committee	Foreign Affairs and International Trade Canada	Industry Canada Human Resources and Social Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an "as required" basis. *e.g.*, Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Council of International Business, the Canadian Labour Congress and the Confédération des syndicats nationaux.
Chile	Quadripartite	Ministry of Foreign Affairs, Directorate of International Economic Relations	Ministry of Economics Ministry of Labour General Secretariat of the Presidency	The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Finance	Ministry of Labour and Social Affairs Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners. The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment	Ministry of the Environment Ministry of Economic and Business Affairs	
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Investment Agency Estonian Export Agency Ministry of Foreign Affairs	

	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Finland	Quadri-partite with several ministries and civil society partners	Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Trade and Industry	Ministry of Trade and Industry Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Social Affairs and Health Ministry of Labour Ministry of Environment	The Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Trade and Industry as a wide-scoped forum of public and private representatives for issues related to investments, acts as the Finnish NCP. The MONIKA Committee, which has been established by the Government Decree 335/2001, takes care of the promotion of the Guidelines as important principles of Corporate Social Responsibility and serves as an advisory forum in other issues related to the Investment Committee. The Ministry of Trade and Industry is responsible for the handling of inquiries and the implementation in Specific Instances. The members of the committee come from various ministries, The Bank of Finland, business and labour organisations and NGOs Social partners are represented in the NCP by TT – The Confederation of Finnish Industry and Employers, The Finnish Section of the International Chamber of Commerce (ICC) and the Central Organization of Finnish Trade Unions SAK. The NGOs are represented by the Service Centre for Development Co-operation KEPA. The committee has met several times over the review period.
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and five Trade Union Federations are part of the NCP.
Germany	Single Department	Federal Ministry of Economics and Technology	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A "Working Party on the OECD Guidelines" composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues.

	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Greece	Single Department	Unit for International Investments Directorate for International Economic Development and Co-operation General Directorate for International Economic Policy, Ministry of Economy and Finance		Recently the General Directorate For International Economic Policy of the Ministry of Economy and Finance was restructured. In the current organisational structure, the Unit for International Investments part of the Directorate for International Economic Developments and Co-operation has been designated as the NCP.
Hungary	Interdepartmental Office	Ministry of Economy and Transport	Ministry of Economy and Transport Ministry of Finance	
Iceland	Interdepartmental Office	Ministries of Industry and Commerce		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment		
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee has been composed of representatives from those ministries mentioned in the previous column, and business and employee organisations.
Italy	Single Department	General Directorate for Productive Development and Competitiveness, Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Welfare Ministry of Agriculture and Forest Policy Ministry of Health	The NCP works in close collaboration with representatives of social organisations and its Advisory Committee also includes members of the most important trade unions and business associations.
Japan	Interministerial body composed of three ministries.	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental Office, with regional governments and several ministries	Foreign Investment Subcommittee (Ministry of Commerce, Industry and Energy)	Ministry of Finance and Economy Ministry of Foreign Affairs and Trade Ministry of Environment Ministry of Labor etc.	

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	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Latvia	The OECD Consultative Board – Interministerial body including representatives of business and labour organisations,	Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Employer's Confederation of Latvia Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		
Netherlands	Interdepartmental Office	Ministry of Economic Affairs	All departments, especially: Ministry of Social Affairs Ministry of Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders.
New Zealand	Single Department	Ministry of Economic Development	All departments, particularly the Ministry of Foreign Affairs and Trade, Department of Labour, Ministry for the Environment and Treasury	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	The Promotion and Protocol Department Section for Trade and Industry Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Industry and Trade	

	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Poland	Single Department	Polish Information and Foreign Investment Agency		
Portugal	Single Department	ICEP Portugal Ministry of Economy		
Romania	Inter-ministerial Body	*Co-ordination* – State Minister in charge with the co-ordination of the activities in the field of business environment and small and medium-sized enterprises, Ministry of Foreign Affairs; *Executive function* – Ministry of State for co-ordination of the activities from business environment and small and medium sized companies' fields and the Romanian Agency for Foreign Investments. *Technical secretariat* Ministry of Foreign Affairs and Romanian Agency for Foreign Investments	Ministry of Foreign Affairs The Cabinet of the State Minister in charge with the co-ordination of the activities in the field of business environment and small and medium-sized enterprises – Business Environment Unit. Ministry of European Integration Ministry of Public Finances Ministry of Justice Ministry of Education and Research Ministry of Labour, Social Solidarity and Family Ministry of Economy and Commerce Ministry of Transport, Constructions and Tourism Ministry of Environment and Waters Management Romanian Agency for Foreign Investments National Agency for Small and Medium Sized Enterprises and Co-operation Romanian Academy – National Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania and Bucharest	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and non-governmental institutions, employers' associations and civil society.
Slovak Republic	Single Department	Ministry of Economy		The NCP belongs as a single department to the Ministry of Economy, under the Division of Strategy, Department of Business Environment.

	Composition of thE NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Slovenia	Single Department	Foreign Economic Relations Division, Ministry of the Economy	Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency	The Advisory Committee has considered if a Single department structure is the best solution. No decision has been made, yet.
Spain	Single Department	General Secretariat for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment Ministry of Justice Ministry of Health and Consommation Ministry of Labour and Social Affairs	The NCP liaises with representatives of social partners and NGOs.
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	Ministry of Industry and Trade Ministry of Environment and Sustainability	The Ministry for Foreign Affairs, Department for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. *Ad hoc* committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets in principle once a year and is provided with essential information as required.
Turkey	Single Department	General Directorate of Foreign Investment, Undersecretariat of Treasury		
United Kingdom	Single Department	Trade Negotiations and Development Unit, Department of Trade and Industry	Foreign and Commonwealth Office HM Treasury Department for International development	The NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives. The NCP holds 2 formal "Stakeholder" meetings a year.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an *ad hoc* basis.

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

ANNEX I.A2

Contact Details for National Contact Points

Allemagne – Germany		
Bundesministerium für Wirtschaft und Arbeit - Auslandsinvestitionen VC3 Scharnhorststrasse 34-37 D-10115 Berlin	Tel.: Fax: E-mail: Web:	(49-30) 2014 7577, 75 21 (49-30) 2014 5378 buero-vc3@bmwi.bund.de *www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsfoerderung/instrumente-der-aussenwirtschaftsfoerderung,did=20608.html*
Argentine – Argentina		
Ambassador Enrique J. de la Torre National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship Esmeralda 1212, 9th floor Buenos Aires	Tel.: Fax: E-mail:	(54-11) 4819 7020/8124/7210 (54-11) 4819 7566 dlt@mrecic.gov.ar abr@mrecic.gov.ar
Australie – Australia		
The Executive Member Foreign Investment Review Board c/- The Treasury Canberra ACT 2600	Tel.: Fax: E-mail: Web:	(61-2) 6263 3763 (61-2) 6263 2940 ancp@treasury.gov.au *www.ausncp.gov.au*
Autriche – Austria		
Director Export and Investment Policy Division Federal Ministry of Economic Affairs and Labour Abteilung C2/5 Stubenring 1 1011 Vienna	Tel.: Fax: E-mail: Web:	(43-1) 711 00 5180 or 5792 (43-1) 711 00 15101 POST@C25.bmwa.gv.at *www.oecd-leitsaetze.at*
Belgique – Belgium		
Service Public Fédéral Économie P.M.E., Classes Moyennes and Energie Potentiel Économique Rue du Progrès 50 1210 Bruxelles	Tel.: Fax: E-mail: Web:	(32-2) 277 72 82 (32-2) 277 53 06 colette.vanstraelen@mineco.fgov.be *www.ocde-principesdirecteurs.fgov.be* *www.oeso-richtlijnen.fgov.be* *www.oecd-guidelines.fgov.be*

Brésil – Brazil		
Mr. Pedro de Abreu e Lima Florêncio Secretaria de Assuntos Internacionais Ministério da Fazenda Setor da Autarquias Sul, Quadra 03, Bloco "O", Sala 1005 70079 – 900 Brasília – Distrito Federal	Tel.: Fax: E-mail: Web:	(+5561) 3412 4013 (+5561) 3412 4057 pcn.ocde@fazenda.gov.br *www.fazenda.gov.br/multinacionaispcn*
Canada		
Canada's National Contact Point Room S5-192 International Trade Canada 111 Sussex Drive Ottawa, Ontario K1A 0G2	Tel.: Fax: E-mail: Web:	(1-613) 944-0763 (1-613) 944 0679 ncp.pcn@international.gc.ca *www.ncp-pcn.gc.ca*
Chili – Chile		
Chef du Département OECD/DIRECON Dirección de Relaciones Económicas Internacionales Ministerio de Relaciones Exteriores de Chile Teatinos 180, Piso 11 Santiago	Tel.: Fax: E-mail: Web:	56 2 565 93 25 56 2 696 06 39 clrojas@direcon.cl *www.direcon.cl* >"acuerdos comerciales" > OECD
Corée – Korea		
Director for Foreign Investment Policy Division Ministry of Commerce, Industry and Energy 1 Chungang-dong Gwacheon-si Kyonggi-do	Tel.: Fax: E-mail: Web:	82-2-2110-5356 82-2-503-9655 fdikorea@mocie.go.kr *www.mocie.go.kr*
Danemark – Denmark		
Deputy Permanent Secretary of State Labour Law and International Relations Centre Ministry of Employment Ved Stranden 8 DK-1061 Copenhagen K	Tel.: Fax: E-mail: Web:	(45) 33 92 99 59 (45) 33 12 13 78 eed@bm.dk *www.bm.dk/kontaktpunkt*
Espagne – Spain		
National Contact Point General Secretary for International Trade Ministry of Industry, Tourism and Trade Paseo de la Castellana n° 162 28046 Madrid	Tel.: Fax: E-mail: Web:	(34-91) 349 38 60 (34-91) 457 2863 pnacional.sscc@mcx.es *www.mcx.es/sgcomex/home1fra.htm* et *www.mcx.es/polco/InversionesExteriores/acuerdosinternacionales/puntonacionaldecontacto.htm*
Estonie – Estonia		
National Contact Point of the OECD Declaration on International Investment and Multinational Enterprises Foreign Trade Policy Division, Trade Department Ministry of Economic Affairs and Communication Harju 11 15072 Tallinn	Tel.: Fax: E-mail: Web:	372-625 6399 372-631 3660 hellehelena.puusepp@mkm.ee *www.mkm..ee*

États-Unis – United States		
Director Office of Investment Affairs Bureau of Economic and Business Affairs Department of State 2201 C St. NW Washington, DC 20520	Tel.: Fax: E-mail: Web:	(1-202) 736 4274 (1-202) 647 0320 usncp@state.gov *www.state.gov/www/issues/economic/ifd_oia.html* *www.state.gov/e/eb/oecd/*
Finlande – Finland		
Secretary General, Chief Counsellor Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA) Ministry of Trade and Industry PO Box 32 FIN- 00023 Valtioneuvosto Helsinki	Tel.: E-mail: Web:	+358-9- 1606 4689 jorma.immonen@ktm.fi *www.ktm.fi/monika*
France		
Mr Ramon Fernandez Sous-directeur "Affaires multilatérales et développement" Direction Générale du Trésor et de la Politique Économique 139, rue de Bercy, 75572 Paris cedex 12	Tel.: Fax: E-mail: Web:	(33) 01 44 87 73 60 (33) 01 44 87 74 59 ramon.fernandez@dgtpe.fr anne.muxart@dgtpe.fr *www.minefi.gouv.fr/directions_services/dgtpe/pcn/pcn.php*
Grèce – Greece		
Unit for International Investments Directorate for International Economic Developments and Co-operation General Directorate for International Economic Policy Ministry of Economy and Finance Ermou and Cornarou 1 GR-105 63 Athens	Tel.: Fax: E-mail: Web:	(30210) 328 6231 (30210) 3286249 (30210) 328 6404 evgenia.konto@mnec.gr g.horemi@mnec.gr *www.elke.gr*
Hongrie – Hungary		
Department of Economic Development Programmes Ministry of Economy and Transport V., Honvéd utca 13-15 H-1055 Budapest	Tel.: Fax: E-mail: Web:	(36-1) 374-2877 (36-1) 332-6154 tejnora.tibor@gkm.gov.hu *www.gkm.gov.hu/feladataink/kulgazd/oecd/kapcsolattarto.html*
Irlande – Ireland		
National Contact Point for the OECD Guidelines for Multinational Enterprises Bilateral Trade Promotion Unit Department of Enterprise, Trade and Employment Kildare Street Dublin 2	Tel.: Fax: E-mail: Web:	(353-1) 631 2605 (353-1) 631 2560 Pat_Hayden@entemp.ie *www.entemp.ie*
Islande – Iceland		
National Contact Point for the OECD Guidelines for Multinational Enterprises Ministries of Industry and Commerce Arnarhvoli 150 Reykjavik	Tel.: Fax: E-mail: Web	(+ 354) 545 8500 (+ 354) 562 1289 postur@ivr.stjr.is *www.vidskiptaraduneyti.is*

Israël – Israel		
Mr. Joseph Akerman Israel's National Contact Point Ministry of Industry, Trade and Labour 5 Bank Israel Street Jerusalem	Tel.: Fax: E-mail: Web:	(972-2) 666 2687 (972-2) 666 2941 Joseph.Akerman@moital.gov.il *www.ncp-israel.gov.il*
Italie – Italy		
Mrs. Loredana Gulino Italian National Contact Point General Directorate for Productive Development and Competitiveness Ministry of Economic Development Via Molise 2 I-00187 Rome	Tel.: Fax: E-mail: Web:	(39-6) 47052988/47052475 (39-6) 47052475 pcn1@attivitaproduttive.gov.it pcn2@attivitaproduttive.gov.it *www.pcnitalia.it*
Japon – Japan		
Director OECD Division Economic Affairs Bureau Ministry of Foreign Affairs 2-2-1 Kasumigaseki Chiyoda-ku Tokyo	Tel.: Fax: Web:	(81-3) 5501 8348 (81-3) 5501 8347 *www.mofa.go.jp/mofaj/gaiko/oecd/*
Director International Affairs Division Ministry of Health, Labour and Welfare 1-2-2 Kasumigaseki Chiyoda-ku Tokyo	Tel.: Fax: Web:	(81-3)-3595-2403 (81-3)- 3501-2532 *www.mhlw.go.jp*
Director Trade and Investment Facilitation Division Ministry of Economy, Trade and Industry 1-3-1 Kasumigaseki Chiyoda-ku Tokyo	Tel.: Fax: Web:	81-3)-3501-6623 (81-3)-3501-3638 *www.meti.go.jp/policy/trade_policy/oecd/html/cime.html*
Lettonie – Latvia		
Director Economic Relations Department Ministry of Foreign Affairs of the Republic of Latvia 36 Brivibas Bulvaris Riga LV – 1395	Tel.: Fax: E-mail: Web:	+ 371 7016258 + 371 7321588 lvncp@mfa.gov.lv *www.mfa.gov.lv*
Lituanie – Lithuania		
Company Law Division Company Law and Privatization Department Ministry of Economy of the Republic of Lithuania Gedimino ave. 38/2 LT-01104 Vilnius	Tel.: Fax: E-mail: Web:	370 5 262 0582 370 5 263 3974 m.rucinskaite@ukmin.lt *www.ukmin.lt*

Luxembourg		
Secrétaire du Point de Contact national Ministère de l'Économie Secrétariat du Comité de Conjoncture L-2914 Luxembourg	Tel.: Fax: E-mail:	(352) 478 – 41 73 (352) 46 04 48 marc.hostert@eco.etat.lu or anne-catherine.lammar@eco.etat.lu
Mexique – Mexico		
Secretaría de Economía Attn: Kenneth Smith Alfonso Reyes # 30, Piso 18 Col. Condesa C.P. 06140 Mexico, D.F	Tel.: Fax: E-mail: Web:	(52-5) 5729-9146 (52-5) 5729-9352 pcn-ocde@economia.gob.mx ksmith@economia.gob.mx *www.economia-snci.gob.mx/*
Norvège – Norway		
Ministry of Foreign Affairs The Promotion and Protocol Department Section for Trade and Industry PO Box 8114 N-0032 Oslo	Tel.: Fax: E-mail: Web:	(47) 2224 3456 (47) 2224 2782 e-nok@mfa.no *http://odin.dep.no/ud/norsk/handelspolitikk/032061-990006/index-dok000-b-n-a.html*
Nouvelle-Zélande – New Zealand		
International Technical and Regulatory Co-ordination Team Regulatory and Competition Policy Branch Ministry of Economic Development PO Box 1473 Wellington	Tel.: Fax: E-mail: Web:	(64-4) 462 4287 (64-4) 499 8508 oecd-ncp@med.govt.nz *http://oecd-multinat.med.govt.nz*
Pays-Bas – Netherlands		
Trade Policy Department Ministry of Economic Affairs P.O. Box 20102 NL-2500 EC The Hague	Tel.: Fax: E-mail: Web:	31-70-3796485 31-70-3797221 ncp@minez.nl *www.oesorichtlijnen.nl*
Pologne – Poland		
Polish Information and Foreign Investment Agency (PAIiIZ) Ul. Bagatela 12 00-585 Warsaw	Tel.: Fax: E-mail: Web:	(48-22) 870 35 41 (48-22) 810 98 23 barbara.loboda@paiz.gov.pl or post@paiz.gov.pl *www.paiz.gov.pl*
Portugal		
ICEP Portugal Avenida 5 de Outubro, 101 1050-051 Lisbon	Tel.: Fax: E-mail: Web:	(351) 217 909 500 (351) 217 909 593 icep@icep.pt paula.rodrigues@icep.pt *www.icep.pt/empresas/dirempmulti.asp*
République slovaque – Slovak Republic		
National Contact Point of the Slovak Republic – NKM SR Odbor podnikateáského prostredia Ministry of Economy MH SR, Mierova 19 827 15 Bratislava	Tel.: Fax: E-mail: Web:	421-2-48541610 421-2-48543613 aradyova@economy.gov.sk *www.economy.gov.sk*

République tchèque – Czech Republic		
Director EU and International Relations Department Ministry of Finance Letenská 15 118 10 Prague 1	Tel.: Fax: E-mail: Web:	(420-2) 5704 2279 (420-2) 5704 2281 jana.hendrichova@mfcr.cz *www.mfcr.cz*
Roumanie – Romania		
Romanian Agency for Foreign Investments 22 Primaverii Blvd, district 1 Bucharest	Tel.: Fax: E-mail: Web:	40 (021) 233 91 62 (40 (021) 233 91 04 pnc@arisinvest.ro *www.arisinvest.ro/arisinvest/SiteWriter?sectiune=PNC*
Royaume-Uni – United Kingdom		
UK National Contact Point Department of Trade and Industry Bay 4141 1 Victoria Street London SW1H 0ET	Tel.: Fax: E-mail: Web:	(44-20) 7215 5057 (44-20) 7215 2234 uk.ncp@dti.gsi.gov.uk *www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/page10203.html*
Slovénie – Slovenia		
Ministry of the Economy Foreign Economic Relations Division Economic Multilateral Sector Kotnikova 5 1000 Ljubljana	Tel.: Fax: E-mail: Web:	00 386 2 2341035 00 386 2 2341050 slonkt.mg@gov.si *www.mg-rs.si*
Suède – Sweden		
Department for International Trade Policy Ministry of Foreign Affairs 103 33 Stockholm	Tel.: Fax: E-mail: Web:	(46-8) 405 1000 (46-8) 723 1176 lennart.killander-larsson@foreign.ministry.se *www.ud.se*
Suisse – Switzerland		
Point de contact national Secteur Investissements internationaux et entreprises multinationales Secrétariat d'Etat à l'économie Effingerstrasse 1 CH-3003 Berne	Tel.: Fax: E-mail: Web:	(41-31) 324 08 54 (41-31) 325 73 76 WHIN@seco.admin.ch *www.seco.admin.ch*
Turquie – Turkey		
Deputy Director General Undersecretariat of Treasury General Directorate of Foreign Investment Inönü Bulvarý 06510 Emek-Ankara	Tel.: Fax: E-mail: Web:	90-312-2046619 90-312-2125879 zergul.ozbilgic@hazine.gov.tr ozlem.nudrali@hazine.gov.tr *www.hazine.gov.tr*
Commission européenne – European Commission*		
Adeline Hinderer Directorate General for Trade Rue de la Loi 200 B-1049 Brussels	Tel.: Fax: E-mail: Web:	32-2 296 63 63 32-2 299 24 35 adeline.hinderer@cec.eu.int *http://europa.eu.int/comm/trade/csr/index_en.htm*

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

ANNEX I.A3

Specific Instances Considered by National Contact Points to Date

This table provides an archive of specific instances that have been or are being considered by NCPs. The table seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines. Discrepancies between the number of specific instances described in this table and the number listed in Section IV.a could arise for at least two reasons. First, there may be double counting – that is, the same specific instance may be handled by more than one NCP. In such situations, the NCP with main responsibility for handling the specific instance would generally note its co-operation with other NCPs in the column "NCP concerned". Second, the NCP might consider that it is not in the interests of effective implementation of the Guidelines to publish information about the case (note that recommendation 4.b. states that "The NCP will… make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines"). The texts in this table are submitted by the NCP. 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	Argentine subsidiary of a multinational enterprise involving employment relations.	Dec. 2004	Argentina	II. General Principles IV. Employment and Industrial Relations	Ongoing	n.a.	The Argentine subsidiary of the multinational banking corporation subject to last year's claim has been sold to a new owner. No pending issues exist with the new owner. Requests contained in the original presentation have been partially met. Nevertheless some areas of disagreement persist between the original parties of the specific instance reported last year. The final settlement is still pending.
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 Principles VII. Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at *www.ausncp.gov.au.*
Austria	Mining activities.	Nov. 2004	Democratic Republic of Congo	Various	Concluded	Yes.	No consensus reached.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium.	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A.	Sept. 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group.	Sept. 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	Press release in 2005.
Belgium	Forrest Group.	Nov. 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment V. Environment IX. Competition	Concluded	Yes	Press release in 2005.

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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	Concluded		UK NCP.
Belgium	Cogecom.	Nov. 2004	RD 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	RD Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems.	Nov. 2004	RD Congo	I. Concepts and Principles II. General Policies X. Taxation	Ongoing	n.a.	Press release in preparation.
Belgium	GP Garments.	June 2005	Sri Lanka	III. Disclosure IV. Employment	Ongoing	n.a.	A meeting organised by the NCP, in the presence of both parties took place in September 2005.
Brazil	Workers representation in labour unions.	26 Sept. 2002	Brazil	Article 1, Chapter IV	Ongoing	No	
Brazil	Dismissal of workers.	Nov. 2003	Brazil	Article 6, Chapter IV	Ongoing	No	
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	Article V	Ongoing	No	
Brazil	Environment and workers' health issues.	8 May 2006	Brazil	Chapter V, article 1 and Chapter V, article 3.	Ongoing	No	
Brazil	Dismissal of workers.	26 Sept. 2006	Brazil	Chapter IV, article 6.	Concluded	Yes	

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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 DRC.	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.
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country.	Nov. 2002	Myanmar	Employment and Industrial Relations; 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.
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.

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Chile	La Centrale Unitaire de Travailleurs (CUT) dans le cas de Unilever.	June 2005	Chile	IV. Employment and Industrial Relations V. Environment	Concluded Nov. 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices.	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Jan. 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Feb. 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004.
Denmark	Trade union representation in Danish owned enterprise in Malaysia.	Feb. 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America.	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established.
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)	Ongoing	Not relevant at this stage	Specific instance initially assessed, specific instance raised by NGO (Nepenthes).

Specific instances considered by national contact points to date *(cont.)*

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 Documents archive). *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 plus chapeau; III. Information and 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.

Specific instances considered by national contact points to date *(cont.)*

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 Principles	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		

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Germany	Labour conditions in a manufacturing supplier of Adidas.	Sept. 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 *www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsfoerderung/instrumente-der-aussenwirtschaftsfoerderung,did=20608.html* (see Documents Archive).
Germany	Employment and industrial relations in the branch of a German multinational enterprise.	June 2003	Philippines	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties. The German NCP has produced a draft Statement and is still waiting for the necessary further information and clarification by the party that brought the original complaint.
Germany	Child labour in supply chain.	Oct. 2004	India	II. General Policies. IV. Employment and Industrial Relations	Ongoing	n.a.	MNE was unable to join the meeting due to a question of principle based on a management-decision with regard to a categorical (non-) co-operation with one of the NGOs involved. Notwithstanding that, the MNE has notified the NCP in detail that it has already taken constructive and concrete steps to solve the problems raised. Thus, the German NCP has conducted with both parties separate, detailed meetings in Autumn 2005; further concluding talks will take place in due course.
Hungary	Visteon Hungary Ltd. Caused personal injury. Charge injury arising out of negligence.	June 2006	Hungary	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration – parallel legal proceedings are underway. NCP is waiting for additional information from Visteon Hungary, Ltd.
Israel	UN Expert Panel Report – DRC.	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.

Specific instances considered by national contact points to date *(cont.)*

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.	2004	Turkey, Azerbaijan, Georgia	I. Concepts and Principles II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment	Ongoing	n.a.	In consultation with parties.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company.	Feb. 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company.	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration – 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.	Under consideration – 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.	Under consideration – 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. Isclosure IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration – there is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector.	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' 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: *www.seco.admin.ch/news/00197/index.html?lang=en.*

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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 a rule for Korea's NCP, which was established in May 2001.
Mexico (consulting with the German NCP)	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 *Llanti Systems* 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 *Llanti Systems* 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 1 000 jobs.
Netherlands	Adidas' outsourcing of footballs in India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 *www.oecd.org/dataoecd/33/43/2489243.pdf.*
Netherlands	Dutch trading company selling footballs from India.	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues.	July 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties agreed on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found in English on *www.oesorichtlijnen.nl.*

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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 USA.	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.
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' ruliings (*www.oesorichtlijnen.nl*).
Netherlands (consulting with Chile)	On the effects of fish farming.	Aug. 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the DRC.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV. Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned (*www.oesorichtlijnen.nl*).

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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, though its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar.	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see *www.oesorichtlijnen.nl* (in Dutch).
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 subsidiairy 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 a Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile.

Specific instances considered by national contact points to date *(cont.)*

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.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2004	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise.	2002	Poland	IV. Employment and Industrial Relations	Resumed	n.a.	In contact with representatives of parties involved.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise.	2006	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Portugal	Closing of a factory.	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec. 2004	Peru	IV. Employment and Industrial Relations	Concluded		
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*.

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
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: *www.seco.admin.ch/news/00197/index.html?lang=en*.
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary.	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.
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	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
United Kingdom	Activities of Avient Ltd alleged in a UN Expert Panel report.	2003	Democratic Republic of Congo	This was not specified in the UN Panel report	Concluded	Yes	The U.K. NCP issued a statement in September 2004: *www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/NCP%20Statements/page23595.html*.

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United Kingdom	Activities of Oryx Minerals alleged in a UN Expert Panel Report.	2003	Democratic of Congo	This was not specified in the Panel Report	Concluded	Yes	
United Kingdom	Activities of Alfred Knight.	2004	Democratic of Congo	Various	Ongoing	n.a.	In contact with complainant.
United Kingdom	Activities Anglo-American.	2005	Zambia	Various	Ongoing	n.a.	In contact with both parties.
United Kingdom	Activities of National Grid/ Transco/.	2004	Democratic Republic of Congo	Various	Concluded	Yes	The UK NCP issued a statement in July 2005: *www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/NCP%20Statements/page23595.html.*
United Kingdom	Activities of DAS Air alleged in a UN Expert Panel Report.	2003	Democratic Republic of Congo	This was not specified in the UN Panel Report	Ongoing	n.a.	In contact with parties.
United Kingdom (in contact with US NCP)	Freedom of association and collective bargaining.	2006	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with parties.
United Kingdom	Freedom of association and collective bargaining.	2006	Bangladesh	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with parties.
United Kingdom	BTC; activities of consortium led by British Petroleum.	2004	Azerbaijan, Georgia, Turkey	II.5. Exemption from Regulation, III.I. disclosure, V.I. environmental management, V.2a. information on environmental health/safety, V.2b. community consultation, V.4. postponement of environmental protection measures.	Ongoing	n.a.	In contact with parties.
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 settlement.

Specific instances considered by national contact points to date *(cont.)*

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United States (consulting with French NCP)	Employee representation.	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States included among numerous NCPs and the Investment Committee, working with the UN	Conducting business in conflict zones and illegal exploitation of natural resources.	October 2002	Democratic Republic of the Congo (DRC)	Numerous	Concluded	No	UN Panel Report concluded all outstanding issues with the US-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 Austrian and German NCPs)	Employee relations in global manufacturing operations.	November 2002	Global, with focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	USNCP concluded that the issues raised were being adequately addressed though other means.
United States	Employee representation.	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Investigate the conduct of an international ship registry.	November 2001	Liberia	II. General Policies III. Information and Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the specific conduct which was the basis of the concerns raised was being effectively addressed through other appropriate means, including through a United Nations Security Resolution.
United States consulting with the French NCP	Employment and industrial relations, collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.
United States consulting with the German NCP	Employment and industrial relations, representation and collective bargaining.	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties.

n.a. = not applicable.

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ANNEX I.A4

Archive of Documents

Document 1. Speech by the OECD Secretary General in Beijing, China

Document 2. Public statement by Australian NCP

Document 3. Public statement by Belgian NCP

Document 4. Public statement by the Norwegian NCP

Document 5. Letter to UN Secretary-General Kofi Annan

Document 6. Letter to Russian Prime Minister Mikael Fradkov

Document 1. Speech by the OECD Secretary General in Beijing, China

Speech by the Hon. Donald J. Johnston, Secretary-General of the OECD

Global Corporate Social Responsibility Forum: China Beijing, 22 February 2006

I would like to thank China Newsweek, under the guidance of the Overseas Chinese Affairs Office of the State Council and the China News Service, for inviting me to speak at this Forum. I would also like to thank our master of ceremonies, Director Lin Yifu. I would add that I am especially honoured to appear alongside Minister of Health Gao Qiang, with whose ministry the OECD is pursuing active co-operation, and other leading Chinese officials, together with Franny Léautier of the World Bank and leaders of both business and NGOs.

Origins of the OECD

As Secretary-General of the Organisation for Economic Co-operation and Development, I should perhaps begin by saying a few words about the Organisation that I head. The OECD is often referred to as the only living legacy of the Marshall Plan, having evolved from the Organisation for European Economic Co-operation, the OEEC, which was created to administer the Marshall Plan in 1948.

As historians among you will know, the Marshall Plan was the cradle of economic development and security in post-war Europe. It established within a continent that had been ravaged by bloody conflict, both economic interdependence and security. This experience demonstrates that economic development and security have to go hand in hand, and that one cannot exist without the other.

A great deal of physical infrastructure was created under the Marshall Plan, through investments of approximately 14 billion dollars, made to rebuilding modern Europe in the wake of the devastation of World War II. But too many people make an error in thinking that the Marshall Plan was primarily about money. In fact, there was just as much financial assistance was given to Europe before the Marshall Plan. The genius of the Marshall Plan derived from the foresight of those who realised that while lasting peace,

prosperity and security can be defended through military strength, they can only be secured through economic development and co-operation, indeed through economic interdependence brought about by institutional frameworks, not bricks and mortar. And the remarkable success of the Marshall Plan is clear for all to see: instead of exchanging bombs and bullets, Europeans now exchange goods, services and people.

This is the real legacy of the Marshall Plan, and it must be carried forward to future generations all over the planet. With the right combination of policies and international co-operation nations can build successful and secure economies and societies. Indeed, in recent years, we have seen examples inspired in part by the Marshall Plan. We have seen growing regional co-operation in Asia and the Pacific, in Southeast Asia, and in North and South America. We have seen the nations of Africa beginning to take control of their own destiny in forming the New Economic Partnership for African Development (NEPAD). We have the Stability Pact for South East Europe, where the OECD is an active partner, and I have just been in Jordan where Middle East and North African countries and the OECD have launched a regional investment initiative known as the MENA/OECD Investment Program.

What the OECD is and what it does

The OECD has a mandate to promote economic growth and development throughout the world. It has 30 members and engagements with over 70 economies. The OECD promotes market-based economies and open, rules-based and non-discriminatory trading and financial systems, supported by good governance, or in other words, effective administration by a government accountable to its people.

OECD work, which covers just about every government policy area, except defence, falls into 4 broad categories. I would describe these as follows: firstly, we develop guidelines for economic or business activity which are agreed by a consensus among our membership. There are many examples and in a moment I will discuss in more detail the one which deals with responsible business conduct, namely the OECD Guidelines for Multinational Enterprises.

The second area of work addresses objectives shared by critical mass of members; examples include some of the work I have already mentioned, such as OECD support for the Stability Pact for South-Eastern Europe, the MENA project to contribute to Middle East peace and stability, and our work in Africa with NEPAD.

The third area of work is to help members and non-OECD economies meet domestic challenges through international comparisons of best practice, supported by in-depth analysis based on reliable data to develop national

policies. Examples include our work on health systems, environment, education, pension plans, innovations policies and so on.

Finally, the OECD also has the capacity to identify important challenges that lie beyond the horizon but for which governments must start preparing in the near future. In this category, we examine issues such as the energy mix in 30 years time, the commercialisation of space and the potential and risks of nano technology and so on.

Before I discuss OECD's guidelines contributing to responsible business conduct in a moment, let me first say a word about the increasing work we carry out here in China with our Chinese partners.

OECD's co-operation with China

The OECD's work with China is of crucial importance to our Organisation, as China is a key player in the world economy.

In fact, China and the OECD have been co-operating for many years across just about the whole range of the policy areas we cover, from economic surveillance to public and corporate governance, from agriculture and trade to taxation and labour market issues; from science, technology and education to anti-corruption and financial system reform. In just this last year, we published our first ever Economic Survey of China, an agricultural review as well as a major report on Governance in China, all prepared in close collaboration between OECD experts and the Chinese Authorities. And, amongst other things, we are now embarking on an environmental review of China, a regulatory reform review and an innovation review.

China is also taking part directly in the work of the OECD. China participates as an observer in two OECD Committees: the Committee on Science and Technology Policy and the Committee on Fiscal Affairs. We are pleased to note China's intention to co-operate directly in other committees.

China-OECD co-operation on investment policies has been continuing since 1995, leading to the 2003 investment policy review of China and subsequent follow-up activities. The 2006 investment policy review of China is about to be published. We will launch the publication here in Beijing in April this year.

Turning to the specific subject of this forum, namely global corporate social responsibility, the OECD is playing a central role.

Corporate social responsibility or CSR as it is known is not a term I like to use at the OECD. If you do a Google search you will find that there are no less than 38 or 39 million entries for corporate social responsibility.

At the OECD we prefer to talk about "responsible business conduct". The difference? The reality is that business is conducted by individuals within

corporations, not by the corporations themselves, and it is people who choose the legal framework in which they wish to undertake their business whether it be through partnerships, sole proprietorships or, as is most often the case, through corporations with limited liability. The exceptions to creating corporations tend to be found among some professional service firms such as lawyers, auditors, etc. I will return to the role of individuals.

The OECD first established and published guidelines for the behaviour of multinational enterprises in 1976. These enjoyed a moderately high profile for several years but, as far as I can determine, had little impact during the latter part of the 1980s and 1990s.

However, with the phenomenon of globalisation and the growth and expansion of enterprises with a global reach, the importance of responsible business conduct emerged as a major challenge. By 1999 we had completed major revisions to the guidelines. They had been strengthened and reinforced with mechanisms designed to expose unethical conduct and to subject offenders to pressures to conform to the agreed standards.

These guidelines now constitute recommendations by governments on business conduct, covering such areas as combating corruption, disclosure, the environment, science and technology, competition, taxation, human rights and labour relations.

Thirty-nine governments – representing the 30 OECD members and nine non-OECD economies – have agreed to these guidelines as part of a broader, balanced package of rights and commitments called the "OECD Declaration on International Investment", which includes the principle of non-discriminatory treatment of foreign-controlled enterprises.

The objectives of the OECD Guidelines are "to strengthen the basis of mutual confidence between enterprises and the societies in which they operate; to help improve the foreign investment climate; and to enhance the contribution to sustainable development made by multinational enterprises."

Responsible Business Conduct (RBC) benefits China

As this high-profile meeting attests, I am very pleased to note that the Chinese government is giving increasing attention to promoting RBC.

Indeed, as we have seen, public opinion in China is increasingly supportive of more demanding RBC standards. Good RBC performance by all enterprises, both domestic and foreign-owned, brings huge benefits to Chinese workers, consumers and citizens, for example more disclosure of company information, good environmental management and core labour standards.

RBC also benefits Chinese business in two ways:

- First, Chinese companies are increasingly "going global". To operate abroad, they need to understand the RBC standards adopted in other countries. Subscribing to international "good RBC practices" will open doors for Chinese companies, as host societies will have increased confidence and trust in these companies, thereby making it easier for them to form business alliances with other major companies.
- Second, good RBC performance can contribute to a company's long-term growth and profitability. For example, it can make it easier to compete for capital and labour, it can boost productivity and it allows companies to minimise reputational risk and damage to brands.

Finally, I would note that China has made rapid progress in establishing a market enterprise system. Encouraging good RBC performance is a logical next step.

OECD findings on Chinese companies

I would now like to say a few words about our findings about Chinese companies. OECD surveys of international business practices show that Chinese multinationals have made some progress in aligning their management practices with global trends. For example, we have noted the rapid uptake by Chinese companies of international environmental management systems. However, we consider that there remains much room for improvement, as is evident from the Chinese media. In this regard, we believe that the OECD's Guidelines for Multinational Enterprises warrant careful consideration by the Chinese Government and corporations.

The contribution of the OECD Guidelines for Multinational Enterprises

One of the factors that makes the Guidelines unique is the way they are implemented. Guidelines implementation is mainly the responsibility of so-called National Contact Points. These are government offices that are charged with promoting observance of the Guidelines among "their" companies, regardless of where they operate.

Guidelines implementation involves a mediation and conciliation facility that considers whether or not a particular investment project adheres to the Guidelines recommendations. This facility involves voluntary discussions between governments and companies on concrete ethics issues that are arise in connection with international investment projects. This facility has been used more than seventy times since its creation in June 2000 to explore many questions – for example, a Korean company's labour management practices in a Guatemalan export processing zones and a Canadian company's

resettlement of people in the vicinity of a mine in the Zambian copper belt. This dialogue can reassure companies that what they are doing meets international standards. Or they can help companies identify areas where they can improve. The OECD views this as a positive and pragmatic service that is both useful to businesses and enhances the contribution of international investment to host societies.

Moving co-operation ahead

The OECD is happy to co-operate with China in developing good RBC standards and sharing experiences on OECD and Chinese government approaches to RBC. China officially adheres to 10 of the 14 United Nations standards cited in the Guidelines. On 13 January 2006, China ratified the UN Convention against Corruption. All of this indicates that our RBC discussions can build upon a core of shared values.

Business, of course, is not alone in determining whether a country reaps the full benefits of investment. Governments are also important and RBC goes hand in hand with government responsibility. A good regulatory environment is needed to facilitate responsible business behaviour. China, like other developing countries, can benefit from the OECD *Policy Framework for Investment,* which aims to help governments create an environment that is attractive to domestic and foreign investors and that enhances the benefits of investment to society. And China's participation in the PFI Task Force is an important part of ongoing China-OECD co-operation.

Whether we speak of business, governments or NGOs, we are addressing ourselves to individuals. Individuals in a position to influence the behavior of the entities they direct, or work with or work for.

I have noticed in my relatively long professional life that some individuals are capable of acting in the name of a corporation in ways that they would never contemplate doing as individuals on their own account. Sometimes this even includes criminal behavior, which they would never condone personally, except as promoting the interests of their corporations and improving in theory the lot of their shareholders.

Am I wrong in this? I do not think so, but I have never conducted a serious investigation of the issue but perhaps others have.

This brings me to the conclusion that individuals must be directly involved and personally accountable for RBC. Otherwise it is likely to exist only in resounding declarations in Annual Reports and other corporate public documents. This may be important but it is not where the answer lies to ensuring RBC. Boards of Directors, Management and employees must all be aware of and commit themselves to the principles found in the MNE

Guidelines. The Guidelines should be taught in law schools and business schools. They should be widely disseminated and discussed and debated at conventions of lawyers, auditors and similar professional bodies in all countries.

In other words, they must become part of the international business culture. In pursuing responsible business conduct, people should be guided by the principle of the "golden rule": "Do not do unto others that which you would not want done unto you". This doctrine indeed finds itself well imbedded in the philosophies of all major religions including Confucius, Islam, Buddhism and Christianity.

Look at it this way: would you pollute rivers if you knew that in turn your rivers would be polluted? Would you deplete your forests and fisheries if you knew that in turn yours would be depleted? Would you render the air unsuitable to breathe if the same were to be done to your atmosphere?

Individuals with daily lives to lead, children to rear and a future to look forward to for their communities must each take on the challenge of RBC.

In closing, I would just reiterate that the OECD looks forward to expanding its work with China in sharing experience on RBC standards and practices in the years to come. Later this year, the OECD will hold a meeting with Chinese representatives to share Chinese and OECD member country government approaches to RBC. This will provide a firm foundation for follow-up activities in specific areas of RBC.

Document 2. Statement by the Australian NCP

Statement by the Australian National Contact Point "GSL Australia Specific Instance"

Introduction

1. In June 2005, the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines": *Attachment A*) received a submission from several Australian and overseas non-government organisations ("the complainants")[1] alleging that a UK-controlled multinational, Global Solutions Limited, in providing immigration detention services to the Australian Governm ent through its Australian incorporated wholly-owned subsidiary GSL (Australia) Pty Ltd ("GSL Australia"),[2] had breached the Human Rights and Consumer Interests provisions[3] of the Guidelines.
2. The submission alleged that GSL Australia:
   - in detaining children was complicit in violations of the 1989 Convention on the Rights of the Child particularly where there is no legal limit on the length of the detention;
   - was acquiescing in the mandatory detention of asylum seekers and was therefore complicit in subjecting detainees to a regime of indefinite and arbitrary detention in contravention of Article 9 of the 1996 International Covenant on Civil and Political Rights and Article 9 of the 1948 Universal Declaration of Human Rights. Furthermore, this regime is allegedly punitive in nature and is thus in contravention of Article 31 of the 1951 Convention relating to the Status of Refugees;
   - did not adequately respect the human rights of those detained in its operation of Australian immigration detention facilities; and
   - was misstating its operations in a way that was "deceptive, misleading, fraudulent, or unfair" by claiming to be "committed to promoting best practice in human rights in its policies, procedures and practices".

ANCP processes

3. In accordance with the ANCP's published procedures for handling specific instances, the ANCP commenced an initial assessment as to whether the issues raised warranted further consideration as a specific instance under the Guidelines. The ANCP's fact finding included meeting separately with representatives of the complainants and GSL Australia on 4 July 2005 in Melbourne, and a follow-up meeting with the complainants and their nominated experts on 11 July 2005 in Sydney. Following the Sydney meeting, the complainants lodged a supplementary submission that

focussed on GSL Australia's operations. The issues raised in both submissions were complex and sensitive.

4. On 1 August 2005, the ANCP determined that it would be appropriate to accept as a specific instance those matters raised by the complainants that could be shown to relate directly to the conduct of GSL Australia and were within its control. Those matters included arrangements in respect of children and the general detainee population, staff training, implementation and monitoring of operational procedures, information provision to detainees, psychiatric and mental health services, and the utilisation of the Management Support Units and Red One Compound. The ANCP proposed that the specific instance should not focus on isolated cases or where the risk of re-occurrence in the future has been or is being addressed through other means.[4] The ANCP reasoned that this would allow the parties to concentrate on those GSL Australia activities that have the greatest likelihood of being resolved through mediation.
5. The ANCP also determined that it would be inappropriate to accept those parts of the complainants' submission that sought to address the Australian Government's mandatory detention policy because the Guidelines do not provide an appropriate avenue to review a host government's domestic policy settings. The complainants disputed this determination, reiterating that the Guidelines state that the right of governments to "prescribe conditions under which multinational enterprises operate within their jurisdictions is subject to international law". The ANCP also ruled out portions of the supplementary submission that related to the activities of a previous detention centre operator.
6. On 10 August 2005 and 19 August 2005, the complainants and GSL Australia respectively agreed to participate in the specific instance. To facilitate a shared understanding of the issues under consideration, on 24 August 2005, the ANCP proposed an approach to progress the specific instance and circulated a "Preliminary list of issues within GSL Australia's control" to the parties.
7. On 21 October 2005, the ANCP circulated an updated list of issues within GSL Australia's control in conjunction with the parties' respective views. This was followed by an exchange of information to enable the parties to be able to understand the procedures and practices associated with managing immigration detention facilities and to appreciate the concerns and sensitivities of the complaint.[5]
8. The ANCP convened a face-to-face mediation session on 28 February 2006, in Canberra. GSL Australia was represented at the mediation session by its Managing Director, Mr Peter Olszak and its Public Affairs Director, Mr Tim Hall. The complainants were represented by the Manager of Ethical

Business at the Brotherhood of St Laurence, Ms Serena Lillywhite, the Executive Director of the Human Rights Council of Australia, Mr Patrick Earle and a member of the International Commission of Jurists, Dr Elizabeth Evatt. The ANCP was assisted by Ms Angela McGrath, Mr Andrew Callaway and Ms Debra Chesters.

Outcomes of the specific instance

9. The mediation session was conducted in a spirit that promoted the wellbeing of the detainee population whose care is currently entrusted to GSL Australia. A significant outcome was the value both parties gained in engaging openly on the human rights aspects of GSL Australia's operations. The discussion was frank and robust and enabled consideration of potential solutions.

10. GSL Australia committed to upholding the human rights of those in its care. GSL Australia's Managing Director, Mr Olszak, summed up the company's position by pledging to always consider the question of "Is it right?"; within the framework of human rights and embedding this approach within the company's policy and procedures, including training of its officers. The complainants acknowledged the difficult and changing environment of immigration detention services and offered practical suggestions to assist GSL Australia in utilising human rights experts to interpret human rights standards and in training staff. The mediation session's agreed outcomes are at *Attachment B*.

Summary

The ANCP congratulates GSL Australia and the complainants for engaging constructively in a manner that will contribute to resolving many of the issues considered in this specific instance. Throughout this process, the parties engaged with goodwill and commonsense. The agreed outcomes provide a basis for GSL Australia to continue to improve its administration of immigration detention services.

This is the first specific instance lodged with the ANCP since the Guidelines were revised in 2000. The ANCP intends to evaluate its processes for handling specific instances in the light of any suggestions that the parties may wish to offer.

Gerry Antioch
Australian National Contact Point 6
April 2006

OECD Guidelines for Multinational Enterprises Specific instance involving GSL (Australia) Pty Ltd and the complainants Agreed outcomes of mediation meeting

April 2006

Introduction

This document is a record of the agreed outcomes reached between GSL (Australia) Pty Ltd ("GSL") and the complainants during the mediation meeting held on Tuesday 28 February, 2006, at the Department of Treasury, Canberra. Present at the mediation were:

Mr. Gerry Antioch – Australian National Contact Point (ANCP)

Ms. Angela McGrath – office of the ANCP

Ms. Debra Chesters – office of the ANCP

Mr. Andrew Callaway – office of the ANCP

M. Peter Olszak – Managing Director, GSL

Mr. Tim Hall – Director, Public Affairs, GSL

Dr. Elizabeth Evatt – International Commission of Jurists

Mr. Patrick Earle – Human Rights Council of Australia

Ms. Serena Lillywhite – Brotherhood of St Laurence

Additional recommendations were tabled by the complainants during the meeting. An opening statement and relevant documents relating to human rights standards adopted by the United Nations General Assembly were also tabled.

The discussion was open and frank, and based on a shared commitment by all to promote adherence to universally recognised standards of human rights. It was acknowledged that there had been many positive changes since the complaint was lodged, not least that children were no longer being detained in detention centres. In this time there have been a number of reports such as the Palmer Report, and court cases that have highlighted many of the issues at the heart of the complaint.

The protracted tender and negotiation period for the contract, and the constantly changing nature of the demands being placed on the detention services provider, and its own learning from the experience highlighted for the complainants the considerable scope for the company in deciding what services it will offer and how. For all involved there seemed to be a shared understanding at the conclusion of the meeting of the value of international human rights standards in determining the companies own decision making processes.

The meeting took place between 10.00 a.m. and 2.45 p.m. Discussion of some issues of concern will require further time and consideration. There was willingness from all involved to canvass the range of issues involved in the original complaint – from the contractual issues through to operating protocols and the changing patterns of immigration detention. It was agreed that an atmosphere of direct dialogue between the complainants (and others concerned) and the company on these issues was engendered by the meeting and should be fostered to address continuing concerns. This provides scope for GSL to engage more closely with the complainants, or other appropriate external groups, in the future to ensure outcomes reached are implemented and a culture of transparency and accountability fostered.

At the conclusion of the meeting it was agreed by all parties that there would be value in the NCP forwarding a copy of his statement to the Department of Immigration and Multicultural Affairs, the Commonwealth Ombudsman, IDAG and HREOC.

General agreement

1. GSL acknowledged the value of using a human rights framework as the appropriate standard to guide operations and assist the company "do the right thing" in all aspects of operation and service delivery.
2. GSL acknowledged that as a corporation it had its own responsibilities and should be accountable for these responsibilities. How it understood and implemented its responsibilities was a key factor in its corporate reputation, which is central to its business success.
3. GSL agreed to ensure the contract renegotiation, and the final contract with DIMA (should GSL successfully tender) make reference to human rights standards and appropriate international conventions as the appropriate framework for a service delivery model in all areas of detention and deportation.
4. GSL agreed to ensure that the contract renegotiation process with DIMA (should GSL successfully tender) include the experiences and learning's that GSL has had with regards to the management of detention centres and their use of isolation facilities, and concerns raised regarding compliance with human rights standards.
5. GSL agreed that some of the issues discussed at the meeting needed further consideration and the input of external advice. GSL expressed the willingness to have a more ongoing dialogue on the issues discussed with those with relevant expertise and knowledge.

Training

6. GSL acknowledged the value of deepening the knowledge of understanding of human rights standards of all GSL staff, from senior management down given the nature of the industry that GSL was involved in.
7. GSL agreed to enhance the training curriculum it provides to its staff through the inclusion of appropriate human rights materials and references.
8. GSL agreed to liaise with DIMA to ensure that training delivered via the DIMA Training Initiative recognises the increasingly diverse detainee population, includes human rights standards, and utilises a human rights framework in training.
9. GSL agreed to make their training curriculum, manuals and materials available to external human rights trainers for review and comment.
10. GSL agreed to seek input from human rights experts to deliver human rights training as appropriate (the complainants offered to recommend appropriate trainers).
11. GSL agreed that staff with particular duties in relation to detainees may have a need for more specialised and in-depth human rights trainings.
12. GSL acknowledged that human rights training delivered to all GSL staff would assist in "embedding" a corporate culture that values a human rights framework in service delivery and operations.
13. GSL agreed to develop systems to monitor and evaluate the effectiveness of its training in meeting desired organisational and individual behavioural and attitudinal changes.

Monitoring the implementation of GSL procedures

14. GSL agreed to seek external advice to determine if the operations of the GSL Compliance and Audit Unit adequately encompass a human rights framework for monitoring and auditing purposes.
15. GSL indicated it was willing to make its own "random audits" available for external scrutiny.
16. GSL indicated it was changing its complaints monitoring system so that it could monitor the number and nature of complaints and responses to complaints more effectively and would be establishing targets for reduction in complaints.
17. GSL agreed to review the terms of reference and composition of its Community Advisory Committee to enhance external engagement (the complainants offered to suggest additional community representatives).

18. GSL agreed to expand their planned/forthcoming "client survey" to include input and feedback from community visitors to the detention centres (the complainants offered to provide names of key community visitors).
19. GSL agreed that the existing "infringement mechanisms" for identifying, reporting and responding to infringements needs to be made clearer to all GSL staff. International human rights standards were the agreed framework for the management and disciplining of staff alleged to have engaged in the ill-treatment of detainees.

Adequacy of information provision and access to interpreters

20. GSL undertook to improve the "induction handbook" for detainees, and to ensure it is available in the appropriate languages.
21. GSL undertook to evaluate detainees "understanding" of the induction handbook to ensure the content, expectations and detainees rights and responsibilities were understood.
22. GSL agreed to give consideration to alternative mechanisms to deliver the induction handbook to address literacy issues. Audio presentation was one idea suggested.
23. GSL undertook to consider expansion of the current complaints system to encompass a way to register and respond to the concerns of visitors to the detention centre. GSL would consider ways to convey its commitment that there would be no negative repercussions, such as visiting limitations, placed on visitors who register complaints. A "hotline" was suggested.

Management support unit and Red One Compound

24. It should be noted that GSL and the complainants were unable to reach agreement about the use of isolation facilities for punitive purposes. GSL reiterated its position that isolation facilities are never used for punitive purposes. The complainants reiterated that feedback from reputable and regular visitors to the centres suggested that facilities were being used for such purposes. It was acknowledged that the use of Red One Compound in particular had been and continues to be a source of particular concern in relation to the human rights of detainees. Agreement was reached on the need for a further review of the GSL protocols governing the use and operations of these facilities.
25. GSL agreed to accept advice from external stakeholders as to how the existing protocols can be improved and streamlined. For example, it was recommended by the complainants that the MSU Transfer and accommodation Guidelines be amended to ensure that women and minors are never placed in the MSU. It was agreed that the definition of

"good order of the institution" would be reviewed against relevant human rights standards.

26. GSL agreed to give consideration to identifying and disclosing the nature of the "structured programs" that are available to detainees in MSU and Red One.

27. GSL agreed to refer to relevant international human rights standards in drafting protocols for the management and disciplining of staff alleged to have engaged in ill-treatment of detainees.

28. GSL agreed to consider the desirability of reviewing (against relevant human rights standards) the timeframes for the transfer, detention and assessment of detainees in MSU. In particular, endorsement of transfer (recommended change from 48 to 24 hours), final determination (recommended within 24 not 72 hours) and emergency mental health assessments and checks (recommended within 12 not 24 hours).

Removal and deportation

29. It was agreed that removal and deportations in particular raised sensitive and important human rights issues that need to be considered on a case-by-case basis. GSL agreed to consult with DIMA to ensure an appropriate human rights framework is used in developing guidelines and processes for removals and deportations, particularly as they relate to the use of GSL staff as escorts.

30. GSL agreed to ensure that all GSL removal and deportation escorts have received appropriate training and understand the international protocols and human rights standards.

31. GSL undertook to provide a report to DIMA as a matter of course on all deportations and removals in which its officers are involved, and to the extent reasonably possible, in compliance with removal/deportation protocols, and also an assessment of the arrival situation and well being of the person being removed.

General conditions and services to detainees

32. GSL undertook to give consideration to establishing a "visitors scheme" that is more open and could provide feedback and advice to GSL in enhance their risk management process and improve conditions for detainees (the complainants suggested the Victorian Community Visitors Scheme operated by the Office of the Public Advocate as a possible model).

33. GSL indicated a major announcement would be forthcoming with regard to the provision of food in detention centres. Both GSL and the complainants agreed this is a significant issue of detainee dissatisfaction. It was acknowledged that in part this was an issue of infrastructure operated by GSL, but provided by DIMA.

34. GSL undertook to ensure all detainees have regular access to phones and phone cards to enable communication, support and advocacy.

Document 3. Statement by the Belgian NCP

Statement by the Belgian National Contact Point for the OECD Guidelines for Multinational Enterprises

The Belgian National Contact Point (NCP) was approached by the non-governmental organisation 11.11.11, on behalf of 15 NGOs, so that it might review an allegation of non-compliance with certain OECD Guidelines by the Forrest Group in its operations in the Democratic Republic of Congo (DR Congo).

Conclusion

The NCP ruled that it had jurisdiction to deal with this matter.

The NCP, having regard to the discussions at the OECD of economic relations with weak-governance countries, is on the whole of the opinion that the Forrest Group, in both its direct investments in DR Congo and its indirect investments, *i.e.* in joint ventures with other firms in which the Forrest Group has a minority interest, has complied as best it can with the OECD Guidelines for Multinational Enterprises.

The NCP recognised Mr. Forrest's determination, on behalf of his group, to continue promoting and upholding the OECD Guidelines in firms in which he owns even a minority interest, and on all of the boards of directors on which he sits.

The NCP recommends that the Forrest Group do likewise *vis-à-vis* its suppliers and its customers.

The NCP recommends that the Forrest Group on a regular basis disclose reliable and relevant information regarding its activities, structure, financial situation and performance, in a manner consistent with Chapter III of the OECD Guidelines.

The NCP recommends that the Forrest Group disclose employment-related information within the framework of applicable law, regulations and prevailing labour relations and employment practices, in compliance with Chapter IV of the OECD Guidelines.

The NCP recommends that the Forrest Group provide reliable, relevant and regular information on its activities and on steps taken to comply with the OECD Guidelines with respect to the environment, in compliance with Chapter V.

However, the Forrest Group is not the only industrial operator present in the market, even if it is a major one. Accordingly, the NCP recommends that the Forrest Group assist the political authorities of DR Congo, as well as international institutions, in implementing appropriate economic and industrial mechanisms, having regard to the problems of populations living in the vicinity of industrial sites.

These recommendations for an attitude of transparency, together with the efforts made by the Forrest Group with support from the NGOs and trade unions, will foster a climate of trust *vis-à-vis* the local population.

The NCP, following the last meeting with the parties, is pleased to have been able to play its role as a mediator, and it takes note of the parties' clearly expressed determination to continue the dialogue, *inter alia* by asking international bodies such as the WHO to conduct independent studies.

Background

On 24 November 2004, the non-governmental organisation 11.11.11, on behalf of 15 NGOs, filed an administrative procedure against the George Forrest International Group in respect of the Group's activities in DR Congo.

The procedure, as presented by 11.11.11, involved a claim that the Forrest Group took no steps to ensure healthy and secure working conditions at its plant in Lubumbashi (which processed radioactive minerals); an alleged conflict of interest and improper interference in political affairs; a GTL-STL "Big Hill" project: lost revenue for Gécamines, SA; and a lack of disclosure of information.

In accordance with the procedures laid down in the OECD Guidelines, the NCP conducted a very thorough analysis of the facts, working in consultation with the parties concerned. The NCP noted the arguments of the protagonists – representatives of both 11.11.11 and the Forrest Group – and examined the various documents submitted to the NCP Secretariat. The NCP met five times to discuss the case, three of which in the presence of the parties concerned.

Memorandum

The OECD Guidelines for Multinational Enterprises are recommendations of Governments to their enterprises, irrespective of where they do business.

The recommendations cover a number of areas, such as disclosure of information, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition, and taxation. Moreover, they introduce the concept of sustainable development. Implementation of the Guidelines is the responsibility of the National Contact Points (NCPs).

In Belgium, the NCP is chaired by a representative of the Minister of Economic Affairs and has a "tripartite" structure encompassing management and labour, representatives of the federal public services, and the regional governments.

The role of the NCP is to help resolve issues arising in particular circumstances. NCPs facilitate access to consensual, rather than litigious, means such as conciliation and mediation.

Document 4. Statement by the Norwegian NCP

Statement by the Norwegian National Contact Point

29 November 2005

Enquiry from the Forum for Environment and Development (ForUM) on Aker Kværner's activities at Guantanamo Bay

The Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises received an enquiry from ForUM on 20 June 2005 relating to Aker Kværner ASA's activities at Guantanamo Bay. ForUM believes that, in providing assistance to the detention facility at Guantanamo Bay, Aker Kværner, through its wholly-owned US subsidiary Kværner Process Services Inc., is failing to comply with Recommendation No. 2 in Chapter II of the Guidelines on respect for human rights.

Background information

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

The recommendation in question in this case is Recommendation No. 2 in Chapter II, which states that companies should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."

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

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

The NCP had meetings with Aker Kværner and ForUM on 5 September and 26 October 2005 to discuss the complaint submitted by ForUM and assist the parties in reaching agreement on this issue.

The company's operations

Aker Kværner has, through its wholly-owned US subsidiary Kværner Process Services Inc. (KPSI), carried out work for the US Department of Defence at the American Marine base at Guantanamo Bay, Cuba, since 1993.

According to the information provided, the work carried out by KPSI at the base consists of maintenance tasks, such as ensuring adequate electricity and water supplies and proper functioning of the drains. After 11 September 2001, a camp was built alongside the Marine base for the internment of terrorist suspects. This was known as Camp x-ray, and was used for persons taken prisoner in connection with military operations, for example in Afghanistan. The camp was built by other companies under contract to the US authorities. KPSI does not have a contract for the operation of the prison, but has, on request, assisted in the event of faults with water pipes, the electricity net and other shared functions for the Marine base and the prison.

KPSI's contract will expire in the near future. In the spring of 2005, the company submitted a tender for further works at the Guantanamo Bay base, but was not selected. The company will therefore discontinue its engagement at Guantanamo Bay by March/April 2006, and as a result will be closed down.

The arguments put forward by the parties

ForUM is of the opinion that Aker Kværner, through KPSI, is involved in activities that conflict with Recommendation No. 2 in Chapter II of the Guidelines. It refers to the fact that the International Committee of the Red Cross, Human Rights Watch and Amnesty International have all pointed out that the operation of the facilities is in breach of international humanitarian and human rights norms, including the prohibition against torture and other forms of cruel, inhuman or degrading punishment, and that it fails to ensure basic legal safeguards. For this reason, ForUM wants Aker Kværner ASA's company KPSI to discontinue its activities at Guantanamo Bay.

Aker Kværner states that it has considered on an ongoing basis the ethical issues these activities raise, but has not found them to weigh heavily enough to discontinue its work. It furthermore points out that the detention facilities were built ten years after KPSI started to work at the Marine base. The company has nothing to do with the operation of the detention facilities. Nevertheless, as several of the operational and supply functions are shared, KPSI has occasionally, on request, provided maintenance services relating to

the operation of the facilities, such as maintenance of the electricity and water supply, drains, etc. These services have also been carried out in the detention facilities, including the cells. Aker Kværner does not consider KPSI's activities at Guantanamo Bay to be at variance with the OECD Guidelines.

The NCP's assessment

This case is not a question of whether Aker Kværner has violated human rights. The human rights conventions apply to states only, and companies cannot therefore be held responsible for violations of human rights. However, companies can, through their own actions or failure to act, be complicit in or profit from violations of human rights by states. Recommendation No. 2 in Chapter II of the Guidelines addresses the ethical aspect of such cases. Therefore, the question that has to be asked in this case is whether the company has failed to "respect the human rights of those affected by (its) activities consistent with the host government's international obligations and commitments".

The NCP refers to a number of reports from international organisations and bodies that express serious concern about the operation of the detention facilities at Guantanamo Bay being in violation of human rights. Although this criticism is not directed at the activities at the Marine base itself, it is generally known that in recent years alterations have been made to the detention facilities.

Aker Kværner and its subsidiary KPSI are not primarily engaged in the operation of the base, but have on occasion carried out maintenance on shared operational and supply functions for the prison and the base. The Guidelines state that the company should, "respect the human rights of those affected by (its) activities". It is the NCP's opinion that the activities carried out by the company at least in part can be considered to have affected the inmates of the prison. The operation of the prison depends on the maintenance of infrastructure of the type carried out in this case.

It is the NCP's opinion that the nature and extent of Aker Kværner's activities are unclear. Despite several enquiries from the NCP, the company has not provided specific information about its activities at Guantanamo Bay. It is the NCP's opinion that Aker Kværner could have provided extensive documentation without compromising its obligation of confidentiality towards the other party to the contract. Neither has the company submitted documentation of the ethical assessments that have been made internally in the company in relation to its activities at Guantanamo Bay, including any board discussions of these issues. No documentation has been provided of any formalised, concrete framework, guidelines, rules, etc., that have been applied in assessing the ethical aspects of the activities in question. It has, however,

been ascertained that the OECD Guidelines have not been included in the basis for Aker Kværner's assessments.

The NCP underlines the importance of Norwegian companies continually assessing their activities in relation to human rights. The provision of goods or services in situations such as those at Guantanamo requires particular vigilance with respect to corporate social responsibility. It would therefore have been appropriate if the company had undertaken a thorough and documented assessment of the ethical issues in connection with its tender for the renewal of the contract in 2005.

The NCP has noted that the company does not seem to have drawn up ethical guidelines for its activities. The NCP therefore urges the company to draw up such guidelines and to apply them in all countries in which it operates. The NCP emphasises that the norms referred to in Recommendation No. 2 in Chapter II of the OECD Guidelines for Multinational Enterprises are international norms and are therefore equally relevant and important in all countries.

Document 5. Letter to UN Secretary-General Kofi Annan

AG/2006.059.sb
13 July 2006

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

Dear Secretary-General,

I am very pleased to have this opportunity to write to you now that I have taken up my duties as the new Secretary-General of the OECD, and am looking forward to continuing the strong co-operation that already exists between the OECD and the UN family across a wide range of issues. Indeed, I would hope that we might have an opportunity to meet at some point in the near future to discuss how we might strengthen this relationship in ways that would be mutually beneficial to our respective Organisations.

I am also pleased to take this opportunity to send to you the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*. Adopted at the OECD Council on 8 June, the *OECD Risk Awareness Tool* provides the only multilaterally-endorsed guidance for companies operating in countries where governments are unable or unwilling to assume their responsibilities.

I would recall that the *Risk Awareness Tool* is part of OECD Investment Committee's follow up to the UN Security Council's discussions in 2002 and 2003, which called on the governments adhering to the OECD Guidelines for Multinational Enterprises (a code of conduct for international business) to encourage companies operating in the Democratic Republic of Congo to observe the Guidelines. More recently, the UN Secretary General's Special Representative for Business and Human Rights, Professor Ruggie, visited the OECD to enquire about the *Risk Awareness Tool* and other aspects of OECD's work on corporate responsibility. The *Tool* also responds to the call by the 2005 G8 Summit at Gleneagles to develop "OECD guidance for companies operating in zones of weak governance".

The *Risk Awareness Tool* helps companies to face the risks and ethical dilemmas that they are likely to encounter in weak governance zones. It covers topics such as obeying the law and observing international instruments; heightened care in managing investments; knowing business partners and clients; dealing with public sector officials; and speaking out about wrongdoing. It is non-prescriptive and consistent with the objectives and principles of the OECD Guidelines for Multinational Enterprises.

The work has benefited from extensive consultations with business and other stakeholders, including African participants in the "Alliances for Integrity" conference held in Addis Ababa in March 2005. I take this opportunity to thank the UN Global Compact which co-organised this conference with the OECD.

In the next phase, business and stakeholders will work with OECD to identify sources of practical experience in meeting the challenges that the *Risk Awareness Tool* addresses.

I would be very happy to discuss this issue with you, or any other matters you may wish to raise concerning the OECD's relationship with the UN family, and I look forward to meeting you, hopefully in the near future.

Yours sincerely,
Angel Gurría
OECD Secretary-General

cc: Professor John Ruggie, UN Secretary-General Special Representative for Business and Human Rights
Mr. Georg Kell, Executive Head of the Global Compact
Mr. Manfred Schekulin, Chair of the OECD Investment Committee

Encl. *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*

Document 6. Letter to Russian Prime Minister Mikael Fradkov

Mr. Mikhail Fradkov
Prime Minister
Federation of Russia

AG/2006.058.sb
13 July 2006

Dear Prime Minister,

I am very pleased to have this opportunity to write to you now that I have taken up my duties as the new Secretary-General of the OECD, and I am looking forward to working closely with you and your colleagues in the months and years ahead. Indeed, I hope that we might have an opportunity to meet when I participate in the G8 Employment and Labour Ministerial in Moscow, scheduled for 9-10 October.

I am especially proud of the mutually beneficial and valuable co-operation between the OECD and the Russian Federation, which has been especially strong during the Russian Presidency of the G8. In this connection, I am pleased to take this opportunity to send to you, as Chair of the G8, the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*.

The *Risk Awareness Tool* responds to the call by the 2005 G8 Summit at Gleneagles to develop "OECD guidance for companies operating in zones of weak governance".

Adopted at OECD Council on 8 June, the *OECD Risk Awareness Tool* is the only multilaterally-endorsed instrument that helps companies face the risks and ethical dilemmas posed by their operations in weak governance zones – that is, countries where governments are unwilling or unable to assume their responsibilities. The Tool covers topics such as obeying the law and observing international instruments; heightened care in managing investments; knowing business partners and clients; dealing with public sector officials; and speaking out about wrongdoing. It is non-prescriptive and consistent with the objectives and principles of the *OECD Guidelines for Multinational Enterprises*, a government-backed code of conduct for international business.

In the next phase, business and other stakeholders will work with OECD to identify sources of practical experience in meeting the challenges that the *Risk Awareness Tool* addresses.

I would be very happy to discuss this issue with you, or any other matters you may wish to raise concerning the OECD's relationship with the Russian Federation, and I look forward to meeting you, hopefully in the near future.

Yours sincerely,
Angel Gurría
OECD Secretary-General

cc: Mr Manfred Schekulin, Chair of the OECD Investment Committee
His Excellency, Mr. Alexander Avdeev, Embassy of the Russian Federation, Paris.
Encl. *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*.

Notes

1. The complainants are the Brotherhood of St Laurence, Children Out of Detention (ChilOut), the Human Rights Council of Australia, the International Commission of Jurists (ICJ – Switzerland) and Rights and Accountability in Development (RAID – UK).
2. Although GSL Australia operates some State Government prisons and prisoner transportation services, the complaint concerned its activities as the provider of immigration detention services to the Australian Government.
3. See § 2 of Chapter II and § 4 of Chapter VII respectively ("The OECD Guidelines for Multinational Enterprises – Revision 2000", OECD, Paris, 2000).
4. In the lead up to the complaint and during the specific instance, there were a number of official inquiries (that is, parallel processes) related to immigration administration and GSL Australia's administration of immigration detention facilities in Australia. Prominent examples include the Palmer and Hamburger inquiries commissioned by the Australian Government and an own-motion study by the Australian National Audit Office. The Commonwealth Ombudsman was also asked by the Government to review particular immigration cases including the Vivian Alvarez (Solon) case, other immigration detention cases identified where the persons detained had been released from detention with their files marked "not unlawful" and the cases of detainees who have been in detention for two years or more. Consequent changes to the administration of immigration detention policy (say, in relation to families and children) and procedures have had a bearing on the issues considered by this specific instance.
5. Among the key pieces of information exchanged were operational procedures applicable to the issues raised and references to the findings of parallel processes and international standards.

ANNEX I.A5

Parallel Proceedings and Specific Instances – A Summary of Discussions

Introduction and background

"Parallel proceedings" refer to specific instances that deal with business conduct that is also the subject of other proceedings at the sub-national, national or international levels. These proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquiries (*e.g.* by UN agencies).[1] The Investment Committee and its Working Party and the National Contact Points (NCPs) have spent considerable time discussing how parallel proceedings should be handled. Earlier discussions of this issue are summarised in the 2004 and 2005 Annual Reports on the OECD Guidelines for Multinational Enterprises.[2]

This Background Note provides a summary of what has been learned in the course of these discussions. However, delegates also recognised the need to accumulate more practical experience in this area – thus, this summary is not to be viewed as the final word on the subject.

Investment Committee and NCP views on parallel proceedings

The business circumstances and legal and ethical issues underpinning many specific instances are complex. Because of this complexity, it is often impossible to develop detailed, fixed rules about how NCPs should handle specific instances. In summarising the results of its discussions of other issues relating to specific instances, the Investment Committee has previously stressed the need to allow flexibility to NCPs and has noted the value of a case-by-case approach.[3] The Committee's approach to parallel proceedings is no exception.

The many discussions held on parallel proceedings show that broad agreement on two general points:

- Genuine problems arise in connection with the handling of these specific instances and they can pose risks for the Guidelines. These problems and risks need to be taken seriously by NCPs when they consider whether or not to accept such specific instances.
- There may be (and have been) situations where NCPs, after carefully weighing the risks and evaluating the potential problems, decide to accept such specific instances because they believe that they can have "value added" relative to other proceedings. This determination needs to be made on a case-by-case basis.

Subsequent sections of this Background Note present lists of considerations that might be taken into account by NCPs as they determine their approach to specific instances with parallel proceedings. Three lists of considerations are proposed. The first list highlights the general problems and risks associated with accepting a specific instance that is the subject of parallel proceedings. The second list looks at the particular problems and risks that might be encountered when the parallel proceeding takes place in a non-adhering host country. The third list covers the possible sources of "value added" of the specific instances procedure relative to the parallel proceeding – that is, it suggests situations where the NCP might be able to contribute to the resolution of problems and to enhance the effectiveness of the Guidelines by agreeing to consider such instances. These lists are designed to promote a coordinated NCP approach to this issue while avoiding attempts to establish fixed rules for the handling of parallel proceedings.

General problems and risks associated with parallel proceedings

NCPs have identified the following general problems with considering specific instances subject to parallel proceedings:

- *Nature of proceeding.* Many NCPs were reluctant (some even stated that national law would not allow them) to take up specific instances that are also the subject of other proceedings. This was a particular concern for criminal proceedings. Several NCPs noted that they have an obligation to report criminal matters to the relevant authorities – one received a request in relation to an alleged case of bribery of foreign officials. Since the reported conduct qualifies as a criminal offence, the allegations were forwarded to the competent judicial authority. In addition to the difficulty of handling specific instances involving possible criminal behaviours, some NCPs expressed concern about being asked to evaluate the appropriateness of behaviours under national labour law, since they do not have the competence to make such evaluations.

- *Adversarial "state of mind" when a dispute between two parties has already been brought to court*. The success of NCPs' "facilitation of access to consensual and non-adversarial means" in the context of specific instances depends in large part on the cooperative state of mind of the parties to the specific instance and on their willingness to work together constructively on the issues at hand. When the parallel proceeding is legal and adversarial in nature, several NCPs express doubts about the potential "value added" of a specific instance. In such cases, one NCP notes the "the fact that the matter has already been submitted to the courts indicates the adversarial intent of one or both parties; thus, one can infer that there is no scope for bringing the good offices of the NCP to bear on the problem". Another NCP suspects that the "amicable" handling of the specific instance would be compromised by adversarial judicial proceedings. Several NCPs question whether companies would agree to participate in specific instances when there are parallel proceedings.
- *Ensuring consistency with outcomes of parallel proceedings:* One NCP comments that what NCPs do "cannot be inconsistent with international law, international treaties or domestic law". Several have experience in ensuring consistency with domestic criminal and administrative proceedings. Generally, their approach has been to wait for these proceedings to come to an end and then to reconsider the specific instance in light of the outcome.
- *Ensuring consistency with national law on competence*. Some NCPs noted that their national laws would not permit the NCP to take up the matter "once a court or an administrative body whose competence is not ruled out has already started to act".
- *Encroaching on the responsibility of sub-national governments*. One NCP described a problem that can arise in countries with federal or decentralised government structures – the NCP received a request to consider a specific instance that was already the subject of a provincial mediation process. Noting the sensitivity of the Federal government appearing to want to intervene in the affairs of provincial governments, the NCP decided that it would not be "wise" to set up a second forum for mediation. Problems and risks associated with parallel proceedings in non-adhering countries

In his April 2004 presentation to the Working Party on parallel proceedings, the Japanese NCP pointed out that the problem of parallel proceedings becomes more intractable when the proceedings take place in a non-adhering host country. In addition to the general risks and problems

mentioned above, problems associated with parallel proceedings in non-adhering host countries include:

- *Infringement of national sovereignty*. Perceptions that the specific instance procedure is a channel for intervening inappropriately in the domestic affairs of another country would be highly detrimental to the effectiveness of the Guidelines. Many NCPs have stressed the importance of taking all necessary steps to avoid creating this perception, including refusing to take up specific instances. Several NCPs described steps they have taken to manage these risks. For example, one sought the approval of relevant host country institutions before following up on a specific instance with a parallel proceeding in the host country.
- *Obtaining reliable information*. Although the problem of getting reliable information is a consideration in all specific instances in non-adhering countries, some NCPs believe that is even more of a problem when there are parallel proceedings. At least one NCP felt that it had been asked to get involved in a situation (whether or not a labour union vote in a workplace was valid or not) that was so complicated and required such detailed knowledge of both local law and the situation in the workplace, that it could never have become involved in a meaningful way – its assessment was that the NCP was not an appropriate institution for gathering the information that would be needed to mediate and conciliate such a dispute.

Sources of value added of the specific instance procedure relative to parallel proceedings

Some NCPs have noted that, in some instances, the specific instances procedure can have "value added" relative to host country or international proceedings. This value added might stem from the following sources:

- *Same facts, different issues*. The specific instance may cover the same facts or behaviors as the parallel proceeding, but address different issues. One NCP has what it calls a "no overlap criterion" – it will not deal with aspects that are the subject of a domestic legal procedure. It may, however, take up other aspects (often the Guidelines cover more than the law). Another NCP makes the same point: "The question put to the NCP, in respect of a matter already referred to the courts, may have nothing to do with compliance with provisions of domestic law, and thus nothing should prevent the NCP from taking positions on such issues." This NCP has practical experience with such a case – after waiting for a court decision (on appeal, the court ruled that a parent company had no legal liability for the costs of cleaning up a production site after closure by its subsidiary), the NCP renewed its engagement on a specific instance looking at whether the parent company

could be held accountable under the broader definition of corporate responsibility contained in the Guidelines.

- *Same facts, different entities*. It can happen that the parallel proceeding concerns part of a business entity (*e.g.* a subsidiary), while the specific instance concerns a different part (*e.g.* headquarters). Some NCPs indicated that this could be "a consideration in the NCP decision to take up the specific instance". One NCP describes a specific instance of this type: in the case of a labour dispute in a subsidiary of an … MNE located in another adhering country, requests to consider a specific instance were presented to the NCPs of both the host and home countries. Although some aspects of the dispute were already being treated in parallel proceedings in the host country, the NCP offered its good services and invited the parties concerned to meet. The offer was accepted and discussions involving both sides were held.
- *Reinforcing other channels for promoting widely accepted concepts and principles for business conduct*. The specific instance procedure is designed to promote well-established concepts and principles for business conduct and can complement and reinforce other domestic and international proceedings. For example, a specific instance involving labour management practices in Myanmar was handled in parallel with the International Labour Office's engagement with the government of Myanmar on forced labour in that country – both processes sought to promote the effective abolition of forced labour in Myanmar. The NCP statement issued upon completion of the specific instance lists a number of practices that companies might be take to contribute to the fight against forced labour, but also stresses the need for the government of Myanmar to conform to the ILO recommendations.
- *Providing other options for parties already involved in formal proceedings*. One NCP mentioned an experience in which parties expressed interest in using the specific instance procedure as means of getting out of an "entrenched" and costly formal proceeding which was not producing good results for either party.
- *Shortcomings in host country legal and administrative systems*. Shortcomings in the institutions of law and in law enforcement can create problems for companies and have sometimes been an issue in NCP consideration of specific instances. For example, one NCP statement on its specific instance in the Ghana gold sector notes that the its research revealed "the environmental and social problems that exist in connection with mining in Ghana but also the existence of established processes in the form of a regulatory framework and judicial institutions to tackle these problems. However, these processes and institutions wrestle with the difficulties normally associated with developing countries such as, for example,

insufficient resources and capacity."[4] Another NCP states that, while its "normal course of action would be to rule out a specific instance procedure… an intervention of the NCP may become appropriate if such parallel proceedings clearly fall short of generally recognised standards of integrity, impartiality or expediency."

- *Providing support*. NCPs might be able to provide assistance to domestic bodies (courts or other domestic judicial or administrative bodies) to which a proceeding that is being considered in parallel with a specific instance has been submitted. One NCP suggests that NCPs might continue to work with the competent authorities *ad adiuvandum* (that is, in a supporting role).

Notes

1. NCPs have been asked to consider specific instances involving all four of the categories of parallel proceedings in this list.
2. See Section VII.a of the 2005 Report and Section VI.a of the 2004 Report (available at *www.oecd.org/daf/investment/guidelines*).
3. See, for example, the Committee's statement on the scope of the Guidelines. 2003 Annual Report on the OECD Guidelines for Multinational Enterprises, Section VI. See also answer to Swiss request for clarification (2005 Annual Report on the OECD Guidelines).
4. 2003 Annual Report on the OECD Guidelines for Multinational Enterprises, Archive of Communications, document 4, pages 71-73.

ANNEX I.A6

Comments by BIAC, TUAC and NGOs on Parallel Proceedings and Specific Instances

BIAC Comment on parallel proceedings and specific instances

16 May 2006

BIAC welcomes the opportunity to comment on the draft paper that summarizes discussions on the handling specific instances that are subject of parallel proceedings. We believe that NCPs should not try to address problems that other national institutions have been specifically designed to address. NCPs must not to allow forum shopping by interested parties.

Such a misuse of NCPs' good offices would undermine the acceptance of the Guidelines by business and also overstretch scarce NCP resources that are needed for the handling of specific instances that require NCP involvement.

Furthermore, NCPs need to bear in mind that it can undermine other well-established authorities, domestic laws and binding procedures if NCPs become active in their areas of competence and responsibility. As the Chair of the 2000 OECD Ministerial made it clear, the "Guidelines are not a substitute for, nor do they override, applicable law" or create any conflicting requirements.[1] Thus, also the implementation of the Guidelines promoted by NCPs must not override national rules nor interfere with national legal or administrative procedures. This means in BIAC's view that parallel proceedings generally should be avoided.

However, BIAC appreciates the complexity of the issue of parallel proceedings and therefore, supports the OECD approach to give NCPs flexibility in the handling of specific instances. NCPs should decide on the handling specific instances based on the merits of each individual case.

Consequently, parallel proceedings should not automatically prevent NCPs taking up specific instances. In cases where all parties express interest in a consensual and non-adversarial dialogue despite parallel proceedings,

NCPs should offer their good offices to facilitate this dialogue. This may help finding solutions to problems that court proceedings do generally not offer.

BIAC believes that Box 1 on page 7 of in the draft OECD paper offers to NCPs some useful suggestions for issues to bear in mind when deciding about the handling of specific instances. In our view this list of considerations should also recommend that only one NCP should have the primary responsibility for the handling of a specific instance and that if the procedures regarding this specific instance have been concluded, other NCPs should not take the issue up again.

BIAC is confident that NCPs will continue to contribute through their activities to the effective implementation of the OECD MNE Guidelines in specific instances.

Comments by the TUAC

Paris, 15 May 2006

Summary of key points:

In conclusion:

- Provided that the Guidelines' own procedural requirements are met, an NCP should always deal with a specific instance even if it is partly or wholly addressed in parallel proceedings.

Specifically:

- As observance of the Guidelines is not part of national or international judicial systems, there should not be *prima facie* conflict or inconsistency between the Guidelines and legal proceedings.
- It is precisely because of "adversity" between parties arising from legal proceedings, that the NCPs have value. As mechanisms that can help resolve conflicts between companies and stakeholders, all state-to-state issues are to be excluded. NCPs are not required to judge a given country's regulation.
- There is no alternative to treating all substantive cases seriously. Any other option in dealing with parallel proceedings would ultimately render the Guidelines irrelevant.

As a result, the way forward is:

- to specify the sequencing of questions and answers that NCPs should address in a comparable way in the handling of cases that are, or might become, the object of parallel proceedings, so as to complement the procedural guidance given by the Guidelines. We propose in this paper a basic structure.

General comments

We welcome the OECD paper "Specific Instance and Parallel Proceedings – Draft Summary of Discussions" which is for discussion by the OECD Working Party of the Investment Committee meeting on 20-21 June 2006. The paper lists in a comprehensive and balanced way the key elements for discussion on parallel proceedings and, from there, proposes an indicative check list which could be helpful in harmonising NCPs treatment of cases that are concerned with parallel proceedings.

In developing further the discussion points, we reiterate our support for closer harmonisation of NCPs on treating specific instances – which has not been the case in the past – with a view to promote, and not to limit, the use of the Guidelines. We submit our comments and additional points on the direction that we believe the Working Party should take. In its commentaries,

the Guidelines note that NCPs, when examining cases, should take into account "the relevance of applicable law and procedures" and "how similar issues have been, or are being, treated in other domestic or international proceedings". The Guidelines, however, do not specify further on the practical modalities of such account, whether that would affect acceptance of cases (which would meet all Guidelines-specific requirements) or its handling after acceptance. These commentaries were designed to help guide NCPs to fulfil their tasks, not to limit their possibilities of taking action.

We have commented on the OECD paper in light of how we view the most useful role of the NCP, that is:

- to facilitate dialogue and dispute resolution between private parties, and
- where necessary, to make recommendations on how to achieve compliance with the Guidelines.

The judicial impossibility of conflicts with parallel proceedings

The Guidelines are not part of enforceable judiciable systems, be they country, regional or international systems. Therefore, there cannot be conflict of jurisdictions *per se* with hard law parallel proceedings. NCPs cannot be held legally liable *vis-à-vis* any jurisdictions, whatever the source of law. As a result, the OECD discussion paper's concerns of *ensuring consistency with outcomes of parallel proceedings*, including with *national law on competence*, is, in our view not receivable in addressing acceptance of specific instances. Naturally, interactions and potential co-ordination should be addressed by NCPs as they the proceed with the handling of the case, but not at the initial acceptance decision level. Consistency should only be sought with the Guidelines own requirements, not with separate jurisdictions legal jurisprudence and rulings.

On the content, the Guidelines' requirements are often embedded into national jurisdictions. However, NCPs should form judgment on the grounds of the Guidelines' own requirements, and not whether national law is being violated. This is well articulated in the OECD discussion paper. In the "*Same facts, different issues*" the paper rightly notes that NCPs should treat companies to "be held accountable under the broader definition of corporate responsibility contained in the Guidelines". As a general rule, and in particular if a case is pending in court, NCPs should be capable of making a recommendation on what a company should do to comply with the Guidelines.

Facilitate dispute resolution: clarifying the role of NCPs

The arguments put forward in the Discussion paper *Infringement of national sovereignty* and *Encroaching on the responsibility of sub-national governments* create confusion as regard the role of NCPs. The Guidelines

implementation procedure is not a state-to-state mechanism and is solely concerned with private party dispute resolution. Even in the (extreme) case of state-owned enterprise, the state sovereignty functions and the ownership function are to be clearly dissociated.[2]

The confusion of roles between NCP and private parties may also be apparent in the paper's reference to *adversarial* "*state of mind*" factors, which could legitimate an NCP refusal of handling a specific case. We find that line of argument very odd. It is *precisely* because of an adversarial "state of mind" situation that the dispute resolution mechanisms such as offered by the Guidelines implementation procedures, are so needed. And it is *precisely* the role and fundamental utility of NCPs to overcome those resistances and to facilitate cooperative solutions. NCPs are reminded that they are supposed to assist the parties involved in trying to reach an agreement on an issue. If this is not possible – particularly in such instances of high "adversity" – the NCP should issue a statement and make recommendations as appropriate.

The alternative of linking with domestic proceedings

The treatment of parallel proceedings is a crucial issue for the Working Party and we understand that there cannot be a half-way compromise in dealing with parallel proceedings, at least at the level of acceptance of cases by NCPs. The Working Party is facing two options. It can either rule:

i) that NCPs shall accept as *a general rule* qualifying cases (*i.e.* meeting the Guidelines' own standards) irrespective of the existence/non-existence of parallel proceedings, or

ii) that NCPs' handling should be *conditioned* upon parallel proceedings.

The latter option, if chosen, would provoke a radical (though unintended) revision of the Guidelines. It would change its nature from a global standard for corporate conduct and responsibility to a subsidiary forum of last re-course after other channels have been exhausted. This would be as if NCPs are expected to await the outcome of court decisions or other juridical procedures in order to handle an issue or come to a conclusion. It would open the door to all forms of abuse and disqualify the Implementation mechanisms. This would simply "kill" the Guidelines.

This issue is particularly important in non-adhering countries. Since the law enforcement in some countries is weak, parties cannot always rely on the juridical procedures to settle an issue. Another reason to also seek the help of an NCP, is the possibility of mediation and conciliation. Since the NCP offers a forum for discussion, this may be a more useful way to deal with a case than legal action.

Toward a principle-based approach: addressing implications for NCP procedures

Given the above, and in particular the importance of keeping NCP procedures autonomous form parallel proceedings, the Working Party's discussion should focus on the implications these proceedings may have on NCP procedural guidance, after initial acceptance. In doing so, and given the OECD papers' suggested outline of checklist (in "Box 1"), we propose the following four-step approach:

1. *Protection of parties:* in cases where there are reasonable indications that criminal activities are involved, the NCP should alert relevant authorities with the objective of ensuring protection of affected parties, and should make its best effort to monitor the handling of the case by the concerned authorities.
2. *Scoping of parallel proceedings:* once a parallel proceeding is identified, the NCP should evaluate where the Guidelines and parallel proceedings' requirements and coverage converge and differ. This scoping exercise should serve the unique purpose of better informing on compliance with the Guidelines.
3. *Forming a judgment on compliance with the Guidelines:* the NCP should take account of parallel proceedings insofar as it provides for relevant sources of facts and information in considering a specific case.
4. *Facilitate dialogue and dispute resolution between private parties:* independently from the above judgment requirement on compliance with the Guidelines, the NCP should facilitate dialogue taking due account of parallel proceedings. Where there is reasonable indication that a parallel proceeding is exposed to governance or administrative failures, such as extensive delays in procedures, it is especially important that an NCP makes its best effort to engage the parties in dialogue.

Submission by Rights and Accountability in Development and the Corner House

12 June 2006

According to the June 2005 Report by the Chair of the Annual Meeting of National Contact Points, "'parallel legal proceedings' refer to 'specific instances' that deal with business behaviours that are also the subject of legal or administrative proceedings in the host country".[3] The Chair's report refers to the relevant paragraphs in the Guidelines.[4] However there is no explicit statement that supports the view that parallel legal and administrative processes will take precedence over the Guidelines.

The Investment Committee has set out a number of reasons to justify NCP interventions even when there are parallel legal or administrative proceedings underway: NCPs may be able to promote global values; provide guidance to companies when there are shortcoming in host country legal and administrative systems; communicate external perspectives to help countries attract more and better investment flows; and provide guidance to companies when law does not provide full descriptions of acceptable behaviour.[5]

The March 2006 "Draft Summary of Discussions" concerning specific instances and parallel proceedings, the Investment Committee has further expanded the definition of parallel proceedings. According to the Draft, these proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquires (*e.g.* by UN agencies).[6]

In view of the shortcomings in the legal systems in many non-adhering, host countries, RAID and The Corner House maintain that domestic proceedings in such countries should not preclude the examination of specific instances by the NCP. The NCP is only required to assess a company's adherence to the Guidelines, not to make a judgment on whether it has broken host or home country laws. In many areas, the Guidelines go beyond national law and the implementation procedures offer the possibility of reaching settlements out of court. The current practice of many NCPs upholds the position adopted at the time of the 2000 review of the Guidelines that legal or other proceedings do not automatically rule out NCP proceedings.

A survey of NCPs handling of specific instances published in the NCPs' 2003 Annual Report shows that specific instances considered in parallel with legal and administrative procedures are common.[7] According to the Japanese NCP, when domestic legal proceedings are underway, NCPs should seek to collect relevant information and to develop an understanding of the issue. In Belgium, in the case concerning Marks and Spencer, the NCP coordinated its consideration with another domestic process and felt that it had "value added

relative to this process". In 2004, the French NCP looked into the declaration of bankruptcy by the French subsidiary of the Finnish company ASPOCOMP Oyj, despite the parallel signing of a redundancy scheme with its French employees.[8]

In the context of the UK, a distinction can be drawn between, on the one hand, those cases where either criminal investigations are underway or criminal proceeding have begun and, on the other hand, civil and administrative proceedings. In criminal cases, there is a danger of prejudicing a prosecution that does not arise in the context of civil and administrative proceedings. However, the fact that companies and individuals, first and foremost, must abide by UK law does not mean that it is correct to infer that the NCP is automatically precluded from acting when a parallel criminal proceedings are contemplated or underway. Provided that the NCP process does not prejudice a prospective or ongoing criminal case, there is no reason why the NCP should not examine a complaint in parallel. Of course, the NCP office should work closely with investigative or prosecuting authorities, following directions where appropriate, to ensure that any NCP findings that may be of assistance are properly handled. It may be appropriate in some cases, when the outcome of legal proceedings is awaited, that the NCP defers the examination of relevant parts of a complaint on the grounds that evidence may emerge which could assist the NCP in making its assessment. Where charges are not forthcoming within a reasonable period, or if a criminal case collapses, then the NCP procedures should be resumed without delay.

The suggestion by the UK NCP that it "will forebear from handling a complaint where a parallel administrative proceeding is more likely to address the issues raised" causes particular concern.[9] What constitutes such a process and why should it have precedence? Indeed, a proper assessment by the NCP of whether breaches of the Guidelines have occurred might provide the basis for constructive input into decisions being made about administrative proceedings. Moreover, it is apparent that such processes can never decide questions of compliance with the Guidelines or provide Guidelines-specific advice. The same argument applies to civil proceedings – for example, those considering defamation claims – as these too do not address questions of compliance, although information disclosed and the verdict reached may be relevant to the NCP.

Two recent cases exemplify why a blanket ban on the consideration of complaints under the Guidelines when parallel processes are underway would be highly undesirable. In their complaint concerning British Aerospace, Airbus and Rolls-Royce, The Corner House argued that the failure of the companies to provide the names and addresses of agents used on transactions with public bodies or state-owned enterprises to the Export Credit Guarantee Department is a violation of the Guidelines (chapter III. Disclosure). Yet the NCP, after

There should be no blanket rule that parallel proceedings take precedence

There is no reason why parallel legal proceedings, either civil or criminal, should preclude the consideration of a complaint by the NCP. The only caveat is that the NCP should take instruction so as not to prejudice criminal proceedings. Indeed, by ensuring co-ordination between the NCP process and other proceedings, information on common issues can be shared effectively. To give other administrative proceedings precedent over the Guidelines sends out an undesirable signal about the status of the latter. The Guidelines require a robust, impartial and fair complaints mechanism in their own right. Neither criminal, civil nor administrative proceedings can ever decide on questions of compliance with the Guidelines.

considering the complaint admissible, then decided to defer its examination of the case on the grounds that a parallel consultation process being held by the Export Credit Guarantee Department (ECGD) – which had not ruled on the issue – took precedence. The Corner House maintains that, irrespective of the outcome of the ECGD process, the NCP's refusal to consider the case means that no one will be any the wiser as to whether such conduct is in breach of the Guidelines. Moreover, a decision by the NCP on compliance may have helped inform the ECGD in reaching its own decision on the case. Most importantly, it may also have helped inform multilateral discussions at the OECD about improving export credit agency anti-bribery procedures, where the question as to whether companies should be required to disclose agents' names to competent authorities such as export credit agencies, is a major issue.

In the Oryx case, the UK NCP ruled out consideration of much of the complaint on the grounds that once a civil defamation case had been settled, the same matters, as raised by the UN Panel with the company, would be considered resolved under the Guidelines. The UK NCP took this view despite the fact that the defamation claim was settled out of court without a definitive ruling. Moreover, and this notwithstanding, RAID maintains that while certain facts and material information emerged in the court case, which the UK NCP should have examined, it was never the purpose of the court (nor the intention of the UN Panel) to decide the issue of whether or not the company was in compliance with the Guidelines. This was a matter for the UK NCP to determine and the existence of the court case should not have been used as a pretext for abdicating this responsibility.

We would like to see much more information made available by NCPs before the Investment Committee issues any formal guidance on this matter.

In particular it would be useful for the OECD Secretariat to provide an inventory of national legislation that prevents an NCP from taking up specific instances that are also the subject of other proceedings.

Notes

1. See The OECD Guidelines for Multinational Enterprises, Meeting of the OECD Council at Ministerial Level, 2000, page 5.
2. OECD Guidelines for corporate governance of state-owned enterprises, 2005.
3. See Section VII.A, p. 20.
4. The paragraphs cited are: Preface, 1; I. Concepts and Principles, 1 and 7; Procedural Guidance, C.1. See OECD Investment Committee, *OECD Guidelines for Multinational Enterprises: Specific Instances and Parallel Legal Proceedings*, 3 March 2005.
5. See *ibid*.
6. Specific Instances and Parallel Legal Proceedings – Draft Summary of Discussions, para. 1, p. 2.
7. OECD Guidelines for Multinational Enterprises: Specific Instances and Parallel Legal Proceedings, *op. cit*.
8. *Ibid*.
9. Stakeholder Consultation Document on the UK National Contact Point's Promotion and Implementation of the OECD Guidelines for Multinational Enterprises, para. 7, p. 3.

ANNEX I.A7

Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises

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

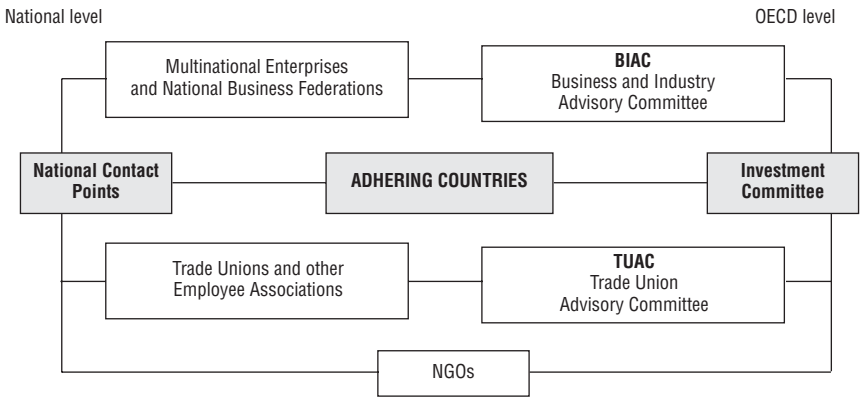
The National Contact Point:

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

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

accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments. The current publication summarises the reports by the individual National Contact Points and provides an overview of the discussions during the sixth annual meeting of the National Contact Points held in June 2006.

Figure I.A7.1. **Institutions Involved in Implementing the Guidelines**



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Annual Report on the OECD Guidelines for Multinational Enterprises
Conducting Business in Weak Governance Zones

Consultations – Contributions by Business, Trade Unions and Non-governmental Organisations

Note by the Secretariat: The following texts are published in their original form. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.

TUAC Submission

June 2006

1. Implementation of the OECD Guidelines

As of June 2006, 64 cases have been recorded as having been submitted by trade unions to National Contact Points (NCPs) with regard to alleged breaches of the OECD Guidelines for Multinational Enterprises since their review in June 2000. Each year between 2002 and 2004, trade unions raised 13-15 cases. In 2005, trade unions filed a total of nine cases. Three cases have so far this year been submitted (to the Polish and US NCPs) and another is expected to be raised shortly before the UK NCP.

More than half of the cases concern violations of trade union rights and roughly one quarter concern restructuring (most often company closures). A few cases refer to other issues such as, health and safety, environment, corruption, or disclosure of information .Many cases concern a mixture of different issues. The share of cases taking place in non-adhering countries has decreased (more than a third compared to nearly half at the end of 2003). Of the 64 cases, 36 have been closed while 28 are still pending. On average, NCPs take 13 months to deal with a case. In terms of duration, three cases (including IHC Caland) lasted for three years or more before they were closed by the NCPs.

A majority of the closed cases have been resolved and/or led to public statements and recommendations. In some cases the outcome can be attributed to the efforts of the NCPs (such as the instances involving Aspocomp and Unilever), while in others the efforts of the NCPs have been marginal. Nevertheless, the mere fact that a case is submitted can sometimes have an impact on the outcome. Even when the Guidelines have not constituted the main factor in the resolution of a case, they have on a series of occasions contributed to the solution.

The lower number of cases in 2005/2006 compared with previous years and the excessive length of procedures indicate that more work remains to be done to achieve effective implementation of the Guidelines and to fulfil the full potential of the Instrument since its revision in 2000. This submission

maps out what TUAC believes should constitute key elements of a reinvigorated agenda for the Guidelines, including:

- harmonisation and clarification as regards issues of "parallel legal proceedings" and the "investment nexus";
- leadership and pro-active engagement for the promotion and awareness of the Guidelines;
- mainstreaming the Instrument in the OECD's other activities and programmes and beyond.

2. Obstacles to treatment of cases: investment nexus and parallel proceedings

The first step in increasing commitment to the Guidelines must be the effective and soundly functioning NCPs. TUAC notes some improvements over the past year. Some NCPs have clearly upgraded their capacities and dialogue procedures to assist in resolving specific instances. The Chilean NCP in particular has made considerable efforts and is now functioning well, and where NCPs are tripartite they have a higher profile and are more active. Nevertheless, TUAC is still concerned about the large number of NCPs that appear unwilling to meet their responsibilities to resolve cases. For example, the basic requirement to acknowledge receipt of cases is not systematic for some NCPs. Of equal concern is the fact that not all NCPs issue a statement after the case has been finalised despite the fact that this is required when the parties do not reach an agreement. As a general rule, the result should also be made public. This is something that NCPs often fail to do.

The most important obstacles to the effective treatment of cases however lie in differing interpretation of the criteria for acceptance of cases and in particular the investment nexus[1] and the existence of parallel legal proceedings. Some NCPs have adopted a narrow interpretation of the investment nexus which in effect would exclude acceptance of many specific instances.[2] Similar concern arises with the interpretation of parallel legal proceedings on the part of some NCPs. The US and Japan NCPs in particular have adopted a fundamentally negative approach: on numerous occasions they have put cases aside until there has been an outcome of the parallel proceeding, and have then "closed" the case.[3]

In recent comments submitted to the Working Party of the Investment Committee, the TUAC has argued that there is no alternative to treating all substantive cases seriously and that NCPs should always deal with a specific instance (which would meet the Guidelines' own procedure guidance), even if it is partly or wholly addressed in parallel proceedings.[4] Taking a different approach to dealing with parallel proceedings would ultimately render the Guidelines irrelevant. The TUAC comments further note that the Guidelines

are not part of national or international judicial systems, and that there should not be *prima facie* conflict or inconsistency between the Guidelines and legal proceedings. As mechanisms that can help resolve conflicts between companies and stakeholders, all state-to-state issues or concern about "adversity" between parties (arising from legal proceedings) should not influence the decision of NCP in considering acceptance of a case brought to its attention. NCPs should address in a comparable way the handling of cases that are, or might become, the object of parallel proceedings, so as to complement the procedural guidance given by the Guidelines. The Working Party's discussion should focus on the implications these proceedings may have after initial acceptance by NCPs.[5]

3. Information on and promotion of the Guidelines

Since the 2000 revision of the Guidelines, the TUAC, its affiliated organisations, and other international trade union organisations (Global Union Federations, the ICFTU, the WCL the ETUC) have conducted significant activities to support information about and promotion of the Guidelines in all parts of the World. These activities have been conducted using the labour movement's own resources as well as with the financial support of donors such as the Friedrich Ebert Foundation (FES) and the European Commission. In the past three years a total of 13 international seminars have been organised by the labour movement in which the OECD Guidelines were either the unique purpose or its essential agenda. A majority of these were open events in which labour had invited business, government and NGO representatives.

- In 2002/2003, four regional workshops took place in Mexico (Central America), Morocco (Maghreb), Zambia (Southern Africa) and Indonesia (South East Asia) as well as several other events in South Africa, Korea and Argentina.
- In 2004, one regional workshop was held in Montevideo and Buenos Aires (covering Latin America), while the Guidelines were a central part of the agenda in another four seminars held in Bulgaria, Ecuador, Thailand, and Ukraine.
- In 2005: two workshops was held respectively in Macedonia and Romania, and four others took place in Western Europe to support awareness and use of the Guidelines by European Works Councils (EWC): in Sweden (for Nordic members of EWCs), in the UK (for British and Dutch members), in Germany and in France (for French and Belgian members). The TUAC also ensured high visibility of the Instrument at the World Social Forum in Porto Alegre, as well as at the World Economic Forum in Davos.

In the first half of 2006, the TUAC has continued to ensure visibility of the Guidelines in various meetings on CSR and international investment. It has

also expanded its supporting materials and publications. The 2002 TUAC Users' Guide is available in 22 languages[6] including in Mandarin Chinese. Thanks to the support of the European Commission, the TUAC released early this year a new Training Material for European Works Councils (consisting of a handbook and a CD-rom). This training material provides all the information needed to organise a three-day educational seminar on the use of the Guidelines by European Works Councils. The TUAC is currently considering adapting this material to a wider audience and is actively seeking funding partners.

The TUAC will for the time being continue to promote awareness and use of the Guidelines worldwide. In the past two years NGOs and their representative network at the OECD – the OECD Watch – have also invested in the monitoring and awareness of the Guidelines, which is very welcome. However, the burden of developing the Instrument cannot rest upon trade unions and NGOs. There needs to be a renewed consensual and collective effort to promote and strengthen the Guidelines, and thereby uphold the leadership of the OECD in the field corporate responsibility. A 2005 survey of TUAC affiliates has shown that a majority of NCPs have not organised any activities whatsoever to promote the Guidelines since 2004.[7] This is not acceptable. Recent developments in other multilateral fora, such as the EU,[8] the International Finance Corporation of the World Bank[9] (see below), the UNEP[10] and in private initiatives such as ISO[11] and the GRI,[12] necessitate a re-invigorated, pro-active and positive agenda for the Guidelines if they are not to become irrelevant.

4. Building a positive agenda at the OECD and beyond

A re-invigorated agenda for promoting the Guidelines is essential if they are to be an instrument for the promotion of responsible corporate conduct world wide. The falling number of cases over the past two years is not due to the fact that breaches of the Guidelines have not occurred. To the contrary the numbers justify serious concern as to the effective implementation of the instrument by all parties concerned and reveal that serious obstacles remain to the effective treatment of cases by NCPs. Much more needs to be done by stakeholders other than trade unions and NGOs, and by Governments' themselves to sustain the leadership of the Instrument in the field of corporate responsibility.

Within the realm of the OECD Investment Committee, there are several actions which could be of help to strengthen the effectiveness of NCPs in dealing with cases. As indicated above, discussion on the investment nexus, and on parallel proceedings should lead to harmonised interpretation and to procedures that enhance rather than restrict use of the Guidelines. Beyond

that the Committee should envisage using the Organisation flagship instrument, the peer review process. The OECD Special Group on Regulatory Policy could serve as a successful example to give useful direction in setting up a system of peer-group monitoring of NCPs.

But the OECD itself should promote the Guidelines beyond the NCPs and the Investment Committee. The Guidelines are a relevant instrument for many other programmes and Committees of the OECD. Yet too often it is at the insistence of the TUAC, and the TUAC only that proper reference is made to the Guidelines in other OECD standard-setting, implementation and revision processes. Closer linkages should be made with the implementation of the Anti-bribery Convention as well as with the Working Party on Export Credit Agencies. Last but not least, the TUAC is surprised to note that dialogue between the Investment Committee and the Steering Group on Corporate Governance is almost non-existent. This is a missed opportunity. No comparative analysis has been conducted to date, between the Guidelines and the Principles of corporate governance. The TUAC conducted preliminary work in that direction in 2005.[13]

OECD outreach activities are also important opportunities to raise awareness of the Guidelines and to broaden the number of non-OECD countries adhering to the Investment declaration. So far, nine non-member States have adhered to the Declaration,[14] and we understand that three additional economies – Egypt, Hong Kong China, Malaysia and Taiwan – are, or may be in the near future, in advanced dialogue with the Organisation on this matter. Dialogue with these countries should continue as well as with others whose high level members of government have in the past expressed interest in the Guidelines, including Costa Rica, Indonesia, Morocco, Singapore, South Africa and Thailand. The Guidelines should also be fully integrated in on-going outreach programmes such as the joint OECD/UNDP policy dialogue on investment and governance in the MENA region (Middle East and North Africa) and the OECD-APEC dialogue programme. Implementation of the recently adopted Policy Framework for Investment, part of which addressed responsible business conduct, should provide a further opportunity to inform non-adhering countries of the legitimate expectations to which investors are held to in the Guidelines. The proposed project on OECD and Chinese government approaches to corporate responsibility must build on the Guidelines.

Finally, the Organisation should strengthen its dialogue with other multilateral fora. It is welcome that the Safeguards Policy of the International Finance Corporation (IFC), the World Bank's private sector-lending arm, now stipulates that all borrowers from the IFC must respect core labour standards. Synergy and links should be developed between the IFC policy and the OECD Guidelines. The assistance of the ILO and its regional offices worldwide could

also be useful in developing the use and visibility of the Guidelines'. The ILO Committee on the Tripartite Declaration has expressed the desire further to develop its role as a clearing point for labour-related cases arising from the application of different instruments. In return NCPs could also act as points for disseminating information on relevant ILO instruments.

Notes

1. This is, linking the company targeted by the specific instance and the entity where the alleged breach occurs.
2. For example, the Dutch NCP closed a case involving travel agencies promoting tourism in Burma because of the lack of an investment context. It also refused one of the DRC cases for the same reason (In October 2002, the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo listed 84 multinational enterprises as being in violation of the Guidelines).
3. This is the strategy of the Japanese NCP, which argues that it does not want to interfere with legal systems particularly in non-adhering countries. The Canadian NCP refused a case involving the closure of a production facility It considered that the provincial labour laws and remedies in Canada would be more suitable to deal with the issue, and that such recourse had already been taken by the parties. The US NCP has also been extremely reluctant to examine cases which are also filed with the National Labour Relations Board, or within overseas' jurisdictions (for example the US NCP closed a case involving a US shipping company's operations in Liberia on the basis that the issue was "effectively addressed through other appropriate means").
4. Paper by the OECD Secretariat (DAF) for the Working Party of the Investment Committee "Specific Instances and Parallel Proceedings – Draft Summary of Discussions" [See Annex IA/5].
5. In its comments the TUAC proposes the following four-step approach: 1) Protection of parties: in cases where there are reasonable indications that criminal activities are involved, the NCP should alert relevant enforcement authorities, and should make its best effort to monitor the handling of the case by the concerned authorities; 2) Scoping of parallel proceedings: once a parallel proceeding is identified, the NCP should evaluate where the Guidelines and parallel proceedings converge and differ. This scoping exercise should serve the unique purpose of better informing on compliance with the Guidelines; 3) Forming a judgment on compliance with the Guidelines: the NCP should take account of parallel proceedings insofar as it provides for relevant sources of facts and information in considering a specific case; and 4) Facilitate dialogue and dispute resolution between private parties: the NCP should facilitate dialogue taking due account of parallel proceedings. Where there is reasonable indication that a parallel proceeding is exposed to governance or administrative failures, such as extensive delays in procedures, it is especially important that an NCP makes its best effort to engage the parties in dialogue.
6. Bahasa Indonesian, Bulgarian, Chinese, Croatian, Czech, English, Estonian, French, Georgian, German, Hungarian, Italian, Japanese, Korean, Latvian, Lithuanian, Macedonian, Portuguese, Romanian, Russian, Spanish and Turkish.

7. Or at least no activities publicised in the public domain or to trade unions in the countries concerned. See TUAC Submission 2005.
8. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee "Implementing the partnership for growth and jobs: Making Europe a Pole of Excellence on CSR" Brussels, 22.3.2006, COM(2006) 136 final, *http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2006/com2006_0136en01.pdf*.
9. The International Finance Corporation's (IFC – the private sector lending arm of the World Bank) new performance standards became operational on May 1, 2006. Henceforth, all new IFC loans will require clients to respect the core labour standards as defined by the International Labour Organization's (ILO) eight core conventions. The complete text of the new standards is currently available in 4 languages (English, Spanish, French, and Russian) on the IFC website: *www.ifc.org/ifcext/enviro.nsf/Content/PerformanceStandards*.
10. UNEP Finance Initiative and UN Global Compact supported Principles for Responsible Investment : *www.unpri.org*.
11. Development of a ISO 26000 standard on CSR : *http://isotc.iso.org/*.
12. Review of the Sustainability Guidelines : *www.grig3.org*.
13. "A Comparative explanation of the OECD Guidelines for Multinational Enterprises and the OECD Principles of Corporate Governance", April 2005, Internal report by the TUAC Secretariat (Available on demand). The report identifies five areas where there should be closer articulation between the two OECD standards: 1) employee rights to collective bargaining and to representation within the company, 2) protection of whistleblowers, 3) consultation of shareholders and employees in extraordinary transactions such as restructuring operations, 4) disclosure and transparency (including implicit revision of the Guidelines' Disclosure chapter to incorporated review of the Principles in 2004) and 5) duties of directors and executive management to explain non-compliance or to comply with the Guidelines.
14. Argentina (22 April 1997) Brazil (14 November 1997)Chile (3 October 1997) Estonia (20 September 2001) Israel (18 September 2002) Latvia (9 January 2004) Lithuania (20 September 2001) Romania (20 April 2005) Slovenia (22 January 2002).

OECD WATCH Submission

June 2006

1. Introduction

In September 2005, to mark the five-year anniversary of the revision of the OECD Guidelines for Multinational Enterprises (Guidelines), governments made a commitment to "enhance [their] value" and "reaffirmed their commitment to making them an even more useful instrument for promoting corporate social responsibility among multinational enterprises". OECD Watch also marked the anniversary by producing its most comprehensive assessment of NCPs' implementation to date, "Five Years On: A Review of the OECD Guidelines and National Contact Points" (NCPs).

The divergence in governments and civil society's assessment of how effectively NCPs had implemented the Guidelines during the first five years could not have been starker. NCPs maintained that they took action on 72 out of 106 cases and "this action has contributed to a resolution of issues and to better understanding between the parties concerned". In their statement, two of the earliest cases were cited as evidence of this successful action. OECD Watch, however, found non-governmental organisations' (NGO) confidence in the Guidelines had greatly declined and NCPs' implementation to be fraught with problems. Of the 106 cases cited by NCPs, 45 were submitted by NGOs and of these, only seven had some positive outcomes.

This year, OECD Watch again invited NGOs to report on their experiences with the Guidelines and NCPs. We received responses from 16 countries, including Australia, Austria, Belgium, Canada, Czech Republic, Democratic Republic of the Congo (DRC), Ecuador, Germany, Italy, the Netherlands, Norway, Pakistan, Serbia, Switzerland, the United Kingdom and the United States.

On the positive side, NGOs have applauded how the Australian and Norwegian NCPs handled cases that involved sensitive human rights issues – both of which illustrate the growing recognition that companies do indeed have human rights responsibilities. In Canada, the Netherlands and the United Kingdom, multi-stakeholder consultations to examine how to improve implementation are also underway. However, many of the problems that were

described at length in OECD Watch's "Five Years On" report persist. The responses underscored the ongoing problems with cases being mishandled due in part to the lack of administrative procedures. In several cases, NGOs were treated unfairly and were not consulted properly. Respondents also provided feedback on whether they believed the Guidelines were still useful in changing the behaviour of companies.

2. Positive outcomes in cases

The Norwegian case involved a subsidiary of Aker Kværner, which owns and operates prison facilities at Guantanamo Bay, Cuba. The NCP's statement on the case noted, "The activities that the company has carried out can be said, at least partly, to have affected the inmates of the prison". The NCP also strongly encouraged the company draw up guidelines for ethical behaviour. A representative of ForUM, the complainant in the case, said that it was "interesting to follow [the NCP's] work, and I was actually impressed by the efforts and engagement, particularly by the business representative".

Brotherhood of St. Laurence (BSL) reports that the Australian NCP handled a case involving Global Solutions Limited (Australia) (GSL) "in a positive, transparent and conciliatory manner". The case concerned human rights abuses in GSL's immigration detention facilities in Australia, particularly the detention of children. BSL reports that the NCP treated the parties fairly and the case was resolved in a reasonable timeframe. According to BSL, "The best aspect was the willingness of both parties, with the assistance of the office of the NCP, to meet and openly discuss and try and reach agreement. Not all matters were resolved, [but] the complainants would rate the mediation as a success".

3. Stakeholder consultation on the Guidelines

From June to November 2006, the Canadian government is hosting a series of roundtables in response to a report by the Parliamentary Standing Committee on Foreign Affairs and International Trade. In its report, the Committee recommended that the Canadian government move away from its current voluntary approach to corporate social responsibility and called for policies that condition public assistance for Canadian companies on compliance with international human rights and environmental standards, including core labour rights. The report also identified the need for legislation that holds companies accountable for their actions overseas.

The Dutch Ministry of Economic Affairs launched an evaluation of the NCP's work to implement the Guidelines and its institutional arrangements in September 2005. Dutch NGO SOMO reports that the evaluation was partly a response to concerns raised by several members of Parliament about the

Guidelines' voluntary nature and need to improve implementation. It was also prompted by Dutch NGOs' criticisms of how the NCP has handled cases and their resulting lack of interest in the Guidelines.

In October 2005, the British Government announced a multi-stakeholder consultation to discuss possible improvements to the UK NCP's promotion and implementation of the OECD Guidelines. The impetus for the consultation was a report by the All Party Parliamentary Group on the Great Lakes Region of Africa, which criticised the UK NCP's handling of multiple complaints related to the UN Panel of Experts' reports on illegal exploitation of natural resources in the Democratic Republic of the Congo (DRC).

While several NCPs have been consistent in meeting with stakeholders over the past several years, the number of NCPs that hold consultations does not appear to have increased overall. Transparency International and Germanwatch report that the German NCP has not held a consultation since 2005 and has yet to explain why. In Australia, one consultation took place; a second meeting was postponed to allow the case concerning GSL to conclude. The Berne Declaration reports that the Swiss NCP held its first consultation in May 2006. The Clean Clothes Campaign noted that the Austrian NCP organises two or three meeting per year. Italian NGO Campaign for Reform the World Bank (CBRM) reports their NCP has never held a consultation. Similarly, the US NCP does not host consultations with NGOs.

4. Mishandling of complaints and the lack of administrative procedures

The Belgian NCP recently rejected a case involving Nami Gems, which was one of four complaints filed in response to the UN Panel of Experts' 2002 and 2003 reports on illegal exploitation in the DRC. The case concerned Nami Gems' alleged tax evasion and diamond smuggling activities. The NCP rejected the case on the grounds that the company's activities were not investment-related and in any event, they were no longer continuing.

Nami Gems was one of seven cases referred by the UN Panel of Experts for investigation by the Belgian Government. So far, most cases have been declared inadmissible either because the NCP stated there were on-going parallel legal procedures or because of the lack of an investment nexus. One specific instance related to the Forrest Group was concluded with recommendations that the company be more transparent about financial and environmental issues. NGOs have criticised the Belgian NCP for putting narrow commercial interests above the human rights of the communities in developing countries affected by the behaviour of Belgian companies.

In complex cases like the complaint concerning the Baku-T'bilisi-Ceyhan (BTC) oil pipeline, the lack of administrative procedures has been very

problematic. Campaign for Reform the World Bank (CBRM) reports that the Italian NCP's handling of their case involving the Italian member of the BTC consortium has been extremely unsatisfactory. According to CBRM, after the complaint was filed in April 2003, the NCP did not contact them until October 2005 to organise a meeting. CBRM responded with information on their availability four times during October and November 2005. CBRM reports, "Only in December 2005, after one more communication from our side, the Italian NCP informed us that a first meeting had occurred with the [company]" and that the NCP would follow the decision taken by the British NCP.

Meanwhile, the British NCP would only allow non-UK NGOs to have "observatory" status during meetings with BP despite the fact that 1) NGOs in five countries lodged cases with their NCPs; and 2) all NCPs had decided to defer to the UK. The UK NCP's bewildering procedural rule also prevented Azeri, Georgian and Turkish NGO representatives who are the direct representatives of communities from being active participants.

Canadian NGO L'Entraide Missionnaire reports that there is a lack of confidence in the Canadian NCP given its track record and refusal to assess alleged breaches. In addition, L'Entraide Missionnaire states that when an NCP member went on study leave, not enough resources were made available to continue the work of the NCP in his absence.

In the past year, two cases were filed in Canada and neither was resolved. After one meeting with NGOs and the company, the case concerning Anvil Mining's logistical role in a massacre in the DRC was rejected, because the NCP said it only mediates resolutions and does not carry out investigations.

The case concerning a mining company's activities in Ecuador is the most recent example of an NCP erecting a procedural roadblock. After agreeing to facilitate a meeting in Ecuador, the Canadian NCP insisted that a meeting with community leaders, NGOs and the company be confidential. However, the NGOs feared that a confidential meeting would exacerbate the already tense situation if community representatives were prohibited from reporting back to community members. They asked the NCP to see if the company would agree to have the meeting's outcomes transparent, but the NCP flatly refused. The NCP's intransigence illustrates why basic administrative procedures for handling cases are needed, as the *ad hoc* manner in which many NCPs handle cases procedurally continues to result in negative outcomes. In this case, the complainants had no other option but to withdraw their case.

It is also worth highlighting how when it comes to some aspects of the Guidelines, NCPs adopt quite a literal interpretation of the text that appears disadvantageous to NGOs. For example, NCPs' assertion that the Guidelines only apply to investment activities and not trade has resulted in many cases being rejected. However, when it comes to NCPs' obligations to issue

statements when the parties cannot agree, they have taken a very liberal reading of the Procedural Guidance when this particular obligation could not be clearer.

5. The Guidelines' usefulness in changing corporate behaviour

Brotherhood of St. Laurence predicts that the successful outcome on the GSL case "may encourage other NGOs in Australia to file a case… perhaps now that a test case has occurred, and a difficult case, this may encourage others to use the Guidelines". Norwegian NGO FoRUM notes, "As it is the best (only) CSR framework we have, it has been a useful lesson to prepare, file, participate in NCP meetings and advocate the case". Pakistan NGO Citizens for a Better Environment reports:

> The OECD Guidelines are useful in [our] work and for a country like Pakistan, they are helpful in providing an analytical framework for assessing and evaluating the relevant national rules, regulations and standards, in identifying shortcomings and suggesting appropriate changes. They are also useful in raising the awareness levels of civil society groups on issues related to CSR and in better equipping them to tackle and challenge violations of relevant standards/regulations.

However, there remains a lack of faith in the implementation procedures being able to produce good outcomes. The process is seen as quite daunting, because there are often procedural roadblocks and again, the lack of administrative procedures that are understandable and applicable to all cases.

Many respondents listed measures that could improve implementation in their countries. Several echoed one of OECD Watch's recommendations in "Five Years On" to have a judge or an ombudsman that is independent of governments handle alleged breaches to the Guidelines. The growing popularity of this idea is symptomatic of many NCPs' failure to handle cases properly.

Austrian NGO Clean Clothes Campaign reports, "One member of government had the idea of setting up an award for NCPs to foster good practice/projects. The overwhelming feedback from NGOs [was] what sense does it make to establish an award if we have not even agreed on standards and criteria".

NCPs continued to be viewed as being overwhelmingly biased in favour of companies. They are also viewed as either too passive or obstructionist rather than helpful. US NGO Jus Sempter Global Alliance believes, "There is almost no interest on the part of the Mexican government regarding the NCP… the position of the government remains systematically supportive of corporations and against unions and civil society". Oxfam Novib feels that there needs to be "a political breakthrough to re-interpret the investment nexus. Without this

breakthrough, there is little room for improvement". Pakistan NGO Citizens for a Better Environment reports, "Governments are on the defensive when confronted with [multinationals'] practices".

Another interesting development is NCPs that are not receiving cases may be using the lack of submissions to assert that no problems exist. In reality, many NGOs are so disenchanted with the process they are not submitting complaints. Germanwatch paraphrased a recent statement by the new German NCP: "If there are no cases, that means everything is fine with German companies, otherwise NGOs could file complaints". Swiss NGO Berne Declaration reports, "The weakness of the implementation of the OECD Guidelines and the rules of the complaint procedure are the reasons why the Swiss NCP is not actively used by Swiss NGOs".

The idea of peer reviews to improve implementation has also fallen by the wayside despite interest on the part of some NCPs. Similarly, the Investment Committee's crucial role as arbiter of procedures and interpreter of the Guidelines in order to maintain "functional equivalence" appears to be waning. Austrian NGO Clean Clothes Campaign reports that the NCP "does not like the notion of using the Investment Committee as a clarifying or appeal unit [as] the independence of the NCP seem to be important to it".

Many respondents reiterated their belief that there needs to be legally binding frameworks to curb irresponsible corporate behaviour. One NGO noted that the Guidelines are "mainly an awareness-raising tool to show that regulation of corporations can only be compulsory". It appears the overall experience with the Guidelines during the past year has only reinforced this view.

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PART II

OECD Roundtable on Corporate Responsibility – Developing a Proactive Approach to the OECD Guidelines

Acknowledgements

The National Contact Points and the OECD Committee on International Investment and Multinational Enterprises wish to thank all of those who invested their time and resources in order to participate in the Roundtable on Corporate Responsibility held in conjunction with the sixth annual meeting of the National Contact Points. Their names appear below.

Invited participants included representatives from business, labour and non-governmental organisations.

Mr. Robin ARAM, Retired; Director of Conference Board's work on Social Responsibility, Shell International Limited, United Kingdom.

M. Fouad BENSEDDIK, Directeur Recherche et Relations internationales, VIGEO, France.

Ms. Eileen CARROLL, Deputy Chief Executive, Centre for Effective Dispute Resolution, United Kingdom.

Ms. Rita DONAGHY, President, Employment Relations, Advisory Conciliation and Arbitration Service (ACAS), United States.

Ms. Kirstine DREW, Project Manager, Global Political Economy Research Group, UNICORN: A Trade Union Anti-Corruption Network, United Kingdom.

M. François FATOUX, Délégué général, Observatoire sur la Responsabilité Sociétale des Entreprises, France.

Ms. Kate FISH, Managing Director, Europe Business for Social Responsibility.

Mr. Stephen HINE, Head of International Relations, Ethical Investment Research Services (EIRIS) Ltd, United Kingdom.

M. Pierre MAZEAU, Secretary of EDF Group's CSR Network, EDF – Energy Branch, France.

Mr. Anthony MILLER, Economic Affairs Officer, Enterprise Policies and Corporate Governance, UNCTAD – DITE, Switzerland.

Mr. James NICHOLSON, External and Corporate Affairs, De Beers Group External Affairs, United Kingdom.

Ms. Emily SIMS, Service de l'égalité et de l'emploi, NORMES Bureau International du Travail, France.

Dr. Raj THAMOTHERAM, Director, Responsible Investment, AXA Investment Managers Ltd.

Summary of the Roundtable Discussion

The Preface of the OECD Guidelines for Multinational Enterprises states that the Guidelines "aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises." In order to achieve these goals, the 39 governments adhering to the Guidelines have committed themselves to participating in the Guidelines' unique implementation procedures.

Every year the OECD holds a Roundtable on Corporate Responsibility in conjunction with the annual meetings of the National Contact Points (NCPs). The purpose of the Roundtables is to generate ideas from external participants for enhancing the effectiveness of Guidelines' implementation. The 2006 OECD Corporate Responsibility Roundtable was held on June 19. It dealt with two topics: 1) promotion of the Guidelines; and 2) NCP engagement with individual companies, including by providing or facilitating access to mediation and conciliation. In addition to representatives of BIAC, TUAC and OECD Watch, thirteen invited participants (including representatives of business and socially responsible investment services, a trade union anti-corruption expert, two mediation professionals and two representatives of NGOs that provide business services in the corporate responsibility field) contributed their views on Guidelines promotion.

The following summary of these discussions is based on the topics identified by the Chair of the Roundtable in his summing up. The Roundtable was held under the Chatham House Rule[1] and this summary conforms to that Rule.

Promotion

The session on promotion began with presentation by BIAC, TUAC and NGOs on their promotional activities. The principal findings of the discussions of promotion were as follows:

- *Importance of an effective policy environment.* Most OECD work focuses on government responsibility – it helps governments to develop more effective public policy. In the investment field, the OECD promotes transparent and open frameworks that help business, unions and civil society organisations play their roles more effectively.[2] Reiterating a theme developed in all

Roundtables since June 2001, Roundtable participants noted that the most important measures taken by governments in support of corporate responsibility are those that create and maintain an effective policy environment.

- *Broader co-ordination among and within governments*. Roundtable participants noted the lack of a "whole of government" approach to corporate responsibility. One participant described the fragmented situation in his country, where the OECD Guidelines are the responsibility of the Ministry of Finance, the UN Global Compact is with the Department of Foreign Affairs, and the Global Reporting Initiative is handled by the Environment Ministry. Shortcomings in co-ordination on corporate responsibility issues among policy communities within the OECD were also noted. Participants described the Guidelines' special place within the constellation of international instruments and their unique "content, governance and credibility." The Guidelines provide: 1) a text that is both detailed and comprehensive; 2) a governance structure that directly engages the responsibilities of governments; and 3) is supported by business, trade unions and NGOs; 4) a normative benchmark based on widely accepted concepts and principles for international business conduct, including those housed in the United Nations and the OECD; and 5) a unique mediation and conciliation mechanisms for resolving problems that arise in connection with implementation of the Guidelines in specific instances. These features make it a unique and valuable instrument for governments wishing to promote corporate responsibility.
- *Objectives of promotion – creating a Guidelines brand or promoting appropriate business conduct?* Participants agreed that the ultimate goal of Guidelines promotion is to enhance the business conduct in the day-to-day operations of companies. However, the development of the Guidelines brand can be an important means of realising this broader objective since they provide an important benchmark, helping to clarify what governments (and the societies they represent) expect of companies. OECD Watch pointed out that successful building of the brand will depend on the Guidelines being seen as an effective and credible instrument for enhance corporate accountability – thus, promotion and other aspects of implementation cannot easily be separated.
- *Co-operation among stakeholders*. One business participant started off his remarks by noting that there appears to be less co-operation among the stakeholders involved in Guidelines implementation than for other major corporate responsibility instruments. Participants proposed that improving such co-operation be included as an objective for the June 2006-2007 cycle of implementation. Opportunites for greater co-operation included reinforcing links with the ILO, UNCTAD and SRI fund managers. The ILO representative confirmed the ILO's interest in finding effective ways to

promote labour standards themselves as well as the global instruments that communicate these standards. TUAC suggested that more regulator meetings between all stakeholders would assist with enhanced co-ordination efforts and managing expectations.

- *Sending a positive message and managing expectations*. Participants agreed that promotional efforts should send the message that the Guidelines provide a positive resource for companies and other stakeholders – they are benchmark for understanding appropriate business conduct and provide a forum for exploring solutions to problems. Another important message for Guidelines promotion is that Guidelines implementation has a uniquely valuable contribution to the smooth functioning of the international economy. Promotion should clarify what this contribution is and encourage stakeholders to hold the Guidelines to a high performance standard, while also emphasising the importance of not expecting Guidelines implementation to achieve outcomes that it is not designed to achieve.
- *Promotion in non-adhering countries*. TUAC and NGOs reported on the extensive promotional campaigns they have sponsored in non-adhering countries. A trade union representative noted that his contacts in non-adhering countries did not see the Guidelines are "rich countries telling poor countries what to do"; rather, their attitude was more "thank heavens that this instrument is available". BIAC stressed that finding ways to promote corporate responsibility among companies from non-OECD countries which invest in other developing and emerging countries is one of the most important challenges for the Guidelines promotion. Business representatives added that promoting responsible business practices among Chinese and other investors from emerging countries' would significantly contribute to enhance the benefits from FDI to societies in non-OECD countries. One participant stressed the importance of dealing with what she referred to as the "African elephant sitting in the room" – many participants agreed on the importance of exploring the implications of China's emergence as a major outward investor, especially in Africa, and of promoting the Guidelines and other relevant international standards in that context. Business representatives pointed out that corporate responsibility and the Guidelines can best be promoted in investment friendly environments and that, therefore, one of the best ways for the OECD, business and other stakeholders to facilitate corporate responsibility is to urge non-OECD countries to improve their investment climates.
- *Visibility of the Guidelines*. There was general agreement that ongoing work to raise the visibility of the Guidelines was required. Specific suggestions included: promoting the Guidelines in business schools and other academic programmes; tightening the links between the work of the OECD Investment

Committee and that of other OECD bodies; developing appropriate meta-tags in order to raise the visibility of the Guidelines on the Web.

- *Learning lessons*. Roundtable participants stressed the need for continued learning by all Guidelines participants and noted that the communication and exchange of ideas that takes place during promotion can be part of this learning process. For example, one participant stated that companies need help in learning how to apply the Guidelines recommendations in specific business contexts. Guidelines promotion, especially promotion that focuses on particular problems, sectors or regions (*e.g.* the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones) provides learning opportunities for companies and for others involved in the promotion.

Mediation and Conciliation

The afternoon session on mediation involved presentations by the Australian and Japanese NCPs of their experiences with the specific instances procedure. This was followed by the presentations of two professionals who provide mediation and conciliation services. Perhaps because of this line-up of speakers, most of the afternoon discussion focused on the requirements of successful mediation.

The principal findings of the discussion were as follows:

- *Form and flexibility*. Mediation is a means of solving disputes that is increasingly used by governments, companies and individuals because it offers an attractive combination of form and flexibility. It is both formal (with mediators and parties having well-defined roles and responsibilities) and flexible (parties are encouraged to find their own solutions to problems). Since no two problems in international business ethics are the same, this combination holds out the prospect of resolving disputes at lower cost and with better outcomes. The mediation specialists pointed out that, far from being a soft procedure, mediation can (under favourable conditions) be very "muscular", giving rise to substantial changes in the way people think and act. This is particularly true when the consequences of not reaching a resolution are serious (good mediators will develop a clear view of what these consequences are and will be sure that the parties to the procedure understand them).
- *Multi-faceted role of NCPs*. Several participants noted the multi-faceted character of NCPs' roles in relation to the specific instance procedure. They asked: are NCPs advocates, an information bureau, arbitrators, and/or direct providers of mediation services? One NCP noted that he played several roles in relation to the Guidelines (advocate of the concepts and principles expressed in the Guidelines, judge as to whether or not a specific instance should be accepted, and mediator once a specific instance is under way). OECD Watch noted that, while mediation is potentially valuable, it is important to ensure that it does

not diffuse NCPs responsibilities when they become aware of serious wrongdoing (*e.g.* in the area of human rights). OECD Watch reiterated its interest in ensuring that NCPs issue clear statements that identify the facts and make recommendations on avoiding future wrongdoing.

- *Qualities of a good mediator*. The mediation experts described mediation as an "active and energetic process" demanding special skills and the right "mental make up". Mediation skills include "effective listening"; dealing with the emotions of the parties of the mediation; gathering and distributing information (so that parties can come to a shared view on why the dispute arose in the first place); framing the problem in new ways; suggesting language and new approaches to the resolution of issues that bring the positions of the parties closer together without taking over their responsibility for reaching agreement. Impartiality was also seen as key to effective mediation (*e.g.* by OECD Watch). Training would seem to be needed for the acquisition of these skills (but some NCPs have shown that they can provide effective mediation services, even without training). One issue about which some NCPs expressed concern was the fairly rapid turnover in NCPs, which may make it more difficult to build up expertise and to ensure continuity and commitment to particular specific instances. At their annual meetings that followed the 2006 Roundtable, NCPs agreed to propose improving mediation capacity as an area for experience sharing among NCPs during the next cycle of work.
- *Importance of building trust in mediators*. Mediators need to have credibility and to earn the trust of the parties to mediation. For NCPs, this implies the acquisition of the skills (discussed above) and resources needed for successful mediation and the cultivation of a reputation for impartiality and fairness. Participants also discussed the need to create ways of handling the various pressures that might develop within governments (*e.g.* coming from the interests of other branches of governments in the outcome of the specific instance) and that might create a perception of conflict of interest or bias.
- *Importance of building trust and a spirit of conciliation among parties*. The parties to the specific instance procedure have essential responsibilities in creating the conditions which will allow for successful dispute resolution. These include the responsibility to help create the conditions for building up trust and a spirit of conciliation. For the parties, trust is a "fragile commodity" that can easily be damaged or destroyed. For this reason, all parties have a responsibility to take actions (*e.g.* respecting the "rules of the game" set forth in the Procedural Guidance to the 2000 Council decision that created the specific instance procedure) and to use language that will be conducive to constructive dialogue and problem solving. A number of participants stressed, in particular, the importance of safeguarding confidentiality as a way of building trust and a cooperative spirit.

- *Parallel proceedings*. Both mediation specialists noted that every issue takes place in some kind of legal framework and that most issues that have been the subject of mediation have been or could be dealt with someplace within this framework. One specialist stated that "ongoing legal processes should be no bar to mediation."
- *Managing expectations, properly structuring the agendaand seeking appropriate representation*. The most fundamental task of the mediator is to manage the expectations of the parties – they need to embark upon the mediation process with a realistic view of what can be achieved and what is expected of them. Participants also highlighted the importance of focusing the dialogue under specific instances on issues that are important, about which parties can reach agreement and that are in the control of the company whose activities are the subject of the specific instance. Several participants noted that involving the right representatives in the dialogue is of crucial importance. The tendency of companies to want to name lawyers to represent them was noted. One NCP stated that he goes to considerable length to discourage the use of lawyers as representatives of business for his specific instances.
- *Committed engagement by NCPs*. Specific instances often involve difficult situations – parties may have entrenched view; antagonism and distrust may be high; the facts of the case may be subject to controversy and information sources fragmentary. The message sent by Roundtable participants to NCPs is: don't be too quick to give up and don't be scared off too easily. Successful resolution of problems often requires long-term commitment. At the same time, participants – including both NCPs and mediation specialists – the importance of time pressure and of deadlines in helping the parties to focus on the issues at hand and deal with them effectively and efficiently.

Notes

1. Chatham House defines the Chatham House Rule as follows: *When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.www.riskythinking.com/glossary/chatham_house_rule.php*.
2. See, for example, the Policy Framework for Investment, which provides a non-prescriptive checklist of issues for consideration by any interested governments engaged in domestic reform, regional co-operation or international policy dialogue aimed at creating an environment that is attractive to domestic and foreign investors and that enhances the benefits of investment to society. *www.oecd.org/dataoecd/1/31/36671400.pdf*.

ANNEX II.A1

*Briefing Paper by OECD Watch on Promotion of the OECD Guidelines for Multinational Enterprises and the Role of National Contact Points in Handling Specific Instances**

This briefing paper was prepared for the OECD Investment Committee's "Roundtable on Corporate Responsibility", which took place in June 2006. The Roundtable's theme was "A Proactive Approach to the OECD Guidelines", which included discussions on "Promotion of the OECD Guidelines" and "Mediation and Conciliation under the OECD Guidelines Specific Instance Procedure".

* This paper has been made possible through funding from the European Commission, DG Employment and Social Affairs, the Dutch Ministry of Foreign Affairs and Oxfam NOVIB (Netherlands). Editors: Joris Oldenziel, SOMO – Centre for Research on Multinational Enterprises, Joseph Wilde, SOMO – Centre for Research on Multinational Enterprises, and Colleen Freeman,Rights and Accountability in Development. Contributions have also been made by Serena Lillywhite, Brotherhood of St. Laurence and Peter Pennartz, IRENE.

Why OECD Watch promotes the OECD Guidelines for Multinational Enterprises

OECD Watch members share a common vision about the need for binding corporate accountability frameworks and sustainable development. The *OECD Guidelines for Multinational Enterprises* (Guidelines) – with its unique mechanism for resolving problems arising from irresponsible corporate behaviour – have the potential to reduce conflict between civil society and multinational companies.

In this regard, OECD Watch monitors how effectively governments promote the Guidelines and handle complaints against companies. OECD Watch also advises NGOs on how to raise issues with National Contact Points (NCPs) concerning companies that breach these minimum principles and standards for responsible conduct.

Our efforts are geared towards finding meaningful solutions for communities impacted by irresponsible corporate activities while continually highlighting how the existing global governance framework must be strengthened to ensure people's rights are protected through the creation of binding corporate accountability frameworks.

Overview of OECD Watch's promotion activities

Publications – OECD Watch has published over a dozen guides, reports and papers to advise NGOs about the Guidelines. Since 2003, OECD Watch has also produced an annual review of how effectively NCPs implement the Guidelines. NGOs can obtain information from OECD Watch in several languages, including Bahasa (Indonesian) English, French, German, Portuguese, Russian and Spanish. OECD Watch's recent publications include:

- "Five Years On: A review of the OECD Guidelines and NCPs", which was distributed to over 2 000 recipients;
- "Guide to the OECD Guidelines for Multinational Enterprises' Complaint Procedure: Lessons from Past NGO Complaints", published in June 2006;
- "The Confidentiality Principle, Transparency and the Specific Instance Procedure", published in March 2006; and
- "2006 Review of National Contact Points and Bi-Annual Newsletter", which was disseminated to over 500 recipients.

Training workshops – OECD Watch has carried out multi-day, regionally-focused training workshops in the following countries:

- Germany in October 2004 with participants from new EU member states;
- Argentina in November 2005 and June 2006;
- India in June 2005 and November 2005;

- Poland in March 2006 with participants from new EU member states; and
- Ghana in July 2006, which included a three-day field trip to communities impacted by gold mining.

Other promotion activities – Since its inception, OECD Watch has undertaken a wide range of promotion activities, including with governments and business. For example, OECD Watch members have:

- actively participated in the work of the Investment Committee, including making contributions on the Risk Awareness Tool, the Policy Framework for Investment and the Corporate Governance Principles;
- participated in government consultations in Australia, Canada, the Netherlands and the UK to examine corporate social responsibility (CSR) issues and/or how to improve NCPs' handling of specific instances;
- hosted a multi-stakeholder roundtable in Brussels in March 2005 that was attended by more than 100 government, business, NGO, trade union and ethical investor representatives;
- engaged in extensive multi-stakeholder discussions facilitated by the UK All Party Parliamentary Committee for the Great Lakes Region in Africa concerning investment in weak governance zones;
- organised a multi-stakeholder roundtable in Paris with FAFO and International Alert to discuss investment in weak governance/conflict zones in late 2005;
- hosted a dialogue in the Netherlands, which brought together representatives from ABN AMRO, Heineken, Nutreco, Berenschot, NBC Vermogensbeheer and the Dutch Ministry of Economic Affairs; and
- participated in several consultations with the UN Secretary General's Special Representative on Business and Human Rights.

How NCPs should promote the Guidelines

OECD Watch contends that much more could be done at the national level to promote and implement the Guidelines. Specifically:

- Every NCP should have an accessible and informative website. Links should be provided to relevant OECD papers, OECD Watch, the Trade Union Advisory Committee and the Business and Industry Advisory Committee's publications. The website should be promoted by embassies and government ministries such as export credit agencies, trade and investment departments, including with web links. The NCP should also promote the website within the business community. Ideally, statements should also be published in either English or French (the OECD's working languages). In addition, NCPs' websites could link to a central website maintained by the OECD Secretariat that provides the public with reliable information on cases, issues and procedures.

- NCP informational booklets should be developed by adhering governments in consultation with all stakeholders. These booklets should provide guidance to companies on the importance of adhering to the Guidelines, especially in those sectors and countries with weak governance where breaches are more common.
- Adherence to the Guidelines should be a precondition for all companies seeking export credits, subsidies, procurement contracts and political risk insurance.
- At a minimum, NCPs should hold multi-stakeholder meetings annually. These consultations should allow participants the opportunity to contribute to the NCP's agenda. All papers should be disseminated in advance and accessible from the NCP's website.
- NCPs should provide information on the Guidelines to prospective internal and external investors. NCPs could actively promote the Guidelines as part of risk management and good governance strategies with external investors.
- Embassies and other government ministries should play a stronger role in promoting the Guidelines, including disseminating information on a regular basis and providing guidance to companies on how to better implement the Guidelines. Embassies should also provide information on the Guidelines to groups wishing to bring complaints against companies. To avoid confusion or duplication, embassies and government departments should use the Guidelines as the minimum benchmark for assessing or promoting CSR.
- NCPs could work more closely with industry associations and professional bodies to promote adherence to the Guidelines, including by organising training sessions that include presentations by companies, trade unions and NGOs. NCPs could promote the Guidelines among major multinationals such as the top 100 companies and those certain sectors at higher risk of breaching the Guidelines, *e.g.* the extractive industries, textiles and prison management.
- CSR-related events are well established in many OECD and non-adhering countries. NCPs could actively promote the Guidelines by participating more frequently in these events. NCPs could also host seminars to discuss the Guidelines to contribute to the broader dialogue on responsible trade and investment.
- NCPs could promote the Guidelines via relevant government inquiries on CSR issues. For example, in Australia, two concurrent inquiries are taking place on CSR issues and the voluntary *versus* legislative debate to promote CSR.

NCPs' handling of specific instances

The Procedural Guidance is clear that NCPs have a dual role in handling specific instances. Firstly, NCPs are required to seek resolution through mediation. Secondly, should mediation fail, NCPs are required to reach a determination.

Currently, there are no rules setting out how the mediation process should be conducted and consequently, each case before the NCP has been handled differently. This lack of consistency is unfair both to companies and complainants. If NCPs are to take their role as mediators seriously, a number of measures need to be taken so that they can play the role as mediator:

- NCPs should be trained by experts in the area of dispute resolution and NCPs should learn from procedures adopted by other alternative dispute resolution providers.
- The key to successful mediation is the undisputed independence of the mediator in relation to the parties concerned. Housing the NCP within a government department (Economic, Trade, Industry) inevitably raises a conflict of interest – or the appearance of a conflict of interest – between the NCP's role as impartial adjudicator and its role as promoter of national business. To avoid the NCP being placed (or perceived to be) in a compromised or compromising position in complaints involving enterprises linked to government-funded projects or public private partnerships, a process is required to fast track mediation.
- Complainants should be treated as full and equal partners. Therefore, in specific instance procedures, all correspondence and documents should be shared with all parties.
- Unless the NCP is prepared to make a determination, then final statements will remain meaningless.
- If it is clear that mediation will fail to produce a resolution, NCP statements should not be issued before all parties have been properly consulted.
- NCPs need training by mediation experts in the area of dispute resolution, and informed about other dispute resolution providers.
- If mediation is agreed to by all parties, sufficient time must be allocated.
- All parties should contribute to an agreed agenda.
- All documents must be exchanged in advance to allow maximum opportunity for dialogue and debate. The company must be encouraged to respond to the complaint in writing. Subsequent counter claims by all parties should also be in writing.
- Legal representation should be avoided.

- Both parties should be given the opportunity to provide supplementary written evidence for mediation purposes, however, this must be distributed in advance.
- All parties should be given the opportunity to present an opening and closing statement at mediation.
- Minutes of the mediation must be kept and all agreed outcomes documented and "signed off" by all parties.
- Final mediation should occur within four months, or a maximum of eight months, with the consent of both parties. The extension of time must be on the basis of gathering information relevant to the specific instance.
- A follow-up process is required to ensure that undertakings and agreements reached in mediation are implemented and observed.
- The NCP needs to issue a clear statement on the outcomes of the mediation, including identifying any breaches of the Guidelines and the recommendations for remedy.

If mediation fails – For those complaints where mediation fails, the final statement should record a breach of specific provisions of the Guidelines or exonerate companies where there is no breach. The recommendations to the company contained in the final statement must clearly relate to the issues that are the subject of the specific instance. Specific recommendations are necessarily based on the NCP's opinion of whether or not a company's conduct complies with the Guidelines and they should therefore set out what a company must do to bring its conduct in line with specific provisions. The NCP's statement should also include recommendation to the OECD Investment Committee concerning areas in which the Guidelines could be clarified or improved.

If the OECD Governments' position is that NCPs are not required to make a determination, then NGOs cannot see that there is anything to be gained by continuing to engage with the Guidelines.

The recommendations are based on the following publications, which are available at *www.oecdwatch.org*:

- RAID and the Corner House, "The UK National Contact Point's Promotion and Implementation of the OECD Guidelines for Multinational Enterprises, Response to the Stakeholder Consultation", 12 January 2006.
- OECD Watch, "Five Years On, A Review of the OECD Guidelines and National Contact Points", September 2005.
- OECD Watch, "Review of National Contact Points and Update of Cases", August 2004.

ANNEX II.A2

International Mediation – Address at the Roundtable

Ms. Eileen Carroll, Deputy Chief Executive Centre for Effective Dispute Resolution

I am a Lawyer and Mediator, who in 1990, inspired by my US experience when working in San Francisco in the 1980s, launched the Centre for Effective Dispute Resolution (CEDR), the first prominent European Alternative Dispute Resolution (ADR) organisation.

In ***International Financial Law Review*** in 1989 I titled my first article on this subject "*Are we ready for ADR in Europe?*". In the last 15 years CEDR has witnessed a large volume of international clients resolve their conflict using the mediation process. Our internal data search in CEDR showed that clients from 50 countries had recently participated in mediation in the UK. The proposed European Union (EU) directive demonstrates a further maturing in the field.

In the just published Second Edition of ***International Mediation – the Art of Business Diplomacy*** (Kluwer Law, 2006) written by myself with Karl Mackie, we talk about development of international mediation and look at "*Form and Flexibility*", in part inspired by the quote from Howard Bellman a US environmental and labour mediator:

> "There is in our work as mediators, when it is going well, a peculiarly American blend of learned structure and conventions, and improvisation strongly supported by talent and intuition. It is jazz: there are a few orthodoxies and a lot of *ad hoc* ensemble invention."

I think this reference to "*Form and Flexibility*" as the critical balance in mediation is a really good place to start when looking at international mediation:

> ***"Form"*** – It is acknowledged that a minimum degree of compatibility of civil procedural rules is necessary as concerns the effect of mediation on

such basic issues as limitation periods and how confidentiality of the mediation will be protected in any subsequent judicial proceedings. Also how settlement agreements are to be capable of translation to court based judgements and all these issues are acknowledged in Articles 3, 5, 6 and 7 of the draft EU directive.

"*Flexibility*" – recognition that mediation while benefiting from a legal framework should be fluid to preserve its key strength as a flexible process as far as design, conduct and role of parties is concerned. There is a now European Code of Conduct for mediators and mediation organisations, promoting self-regulation.

Entry point and legitimacy for mediation

In the international cases I see there is a tendency towards trying mediation before even starting proceedings. I have noticed also in cases where there is a current provision for international arbitration, the tendency to try mediation before launching into arbitration and to incorporate that into commercial contracts. This was illustrated in the well-known Cable and Wireless case which gave support in the English courts for the enforceability of ADR contract clauses. It is still true however that the majority of mediations are taking place in the context of civil proceedings and a great deal of our international work in London comes through our Commercial Court.

The view of the EU Commission is that providing a stable and predictable legal framework should contribute to putting mediation on an equal footing with judicial proceedings. I was pleased to see that in drafting the directive the emphasis is very much on the positive opportunities for clients in mediation. That mediation has a value in itself as a dispute resolution method to which citizens and business should have easy access and which deserves to be promoted independently, rather than as a system to offload pressures on a court system.

The overall directive emphasis is client orientation and value added, which I think is again to be welcomed. It will give the same kind of recognition and harmony of approach, which has existed for the use of arbitration for a number of years. In the same way that judges in various jurisdictions have been influential in taking mediation to a new level of legal recognition, the work of the Commission if enacted will raise the game and profile of mediation, particularly in the international context.

CEDR definition of mediation

"*Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute*

or difference, with the parties in ultimate control of the decision to settle and the terms of resolution."

Why mediation works:

1. Proper structure agenda.
2. Commitment and engagement.
3. Proper balance of sharing of critical information on history and evolution of the dispute with a forward approach based on solutions.
4. Patience and skill of mediator.
5. Ultimate control of participant to decide – essentially working with their "enlightened self-interest".
6. A deadline does inject reality.

Judges in the UK have been a great catalyst for the increased use of mediation for international parties particularly through our leading commercial court. There is a lot of debate in different jurisdictions as to whether one should mandate parties to mediate. I think a robust approach is to be preferred. This is based on my experience of the UK Commercial Court, although evidence of the experience of Ontario and some of the Australian experiences is that mandating can be effective if you give the parties the chance to decide on timing. My own personal view is not to go absolutely towards mandating as the psychology in mediation is terribly important and I think even more so important in international disputes. A robust way to get the parties to the table is entirely to be applauded but face saving and the sense of engagement is important, so a completely mandated element could I think create more difficulties, particularly in international cases.

There is of course always a risk that some mediations will not be successful but in my own experience it is a rare thing. Mediation, if conducted well, will have created a focal point for parties to understand the issues, and to recognise not just the legal issues, but also the commercial issues and what they are up against. I believe this has to be a good thing in terms of helping the parties progress to settlement or to narrowing of the differences between them. (On mandatory mediation see the article in the *IBA Autumn 2005 bulletin on Mediation*, see also *EU Atlas, Lexis Nexus, 2004)*.

Cross border element of international dispute

It is recognised that cross-border elements of a dispute may come from the place of business of one or both of the parties, the place of the mediation or the place of the competent court, the governing law of the transactions, the governing law of the mediation agreement and possibly the governing law in a different and enforcing jurisdiction. Let me put this into context of a case I

mediated some time back; an infrastructure project where the governing law for finance was New York, the failed equipment was supplied and warranted under Dutch Law, the Insurance Contracts were in Spanish and governed by a central American country's law, and reinsurance contracts governed by English law and parties from at least four jurisdictions.

Managing expectations and engagement

It is important to ensure parties going into mediation have a mediation agreement and mediate in friendly jurisdictions and that they are advised by competent counsel. It is the role of the lawyers to consider confidentiality enforcement, etcetera, so counsel should check that you are mediating in a mediator friendly jurisdiction where confidentiality is understood and protected, where mediators are properly trained and have professional codes and standards and if a settlement is reached it is drawn in a way that will in fact give the parties what is intended, a workable and binding settlement.

Trust is right at the pinnacle of mediation practice. As one of the participants on one of our CEDR international courses, Steve Davy of the Red Cross, said – "*Trust is a fragile commodity*". This is never more so than when a mediator is working with parties in international disputes where they may be dealing with a procedure that they have not been engaged with before and the role of the third party may be new to them. Mediators have to work very hard to build up the appropriate empathy and trust and get to a point were principals will trust them and devise ways in which matters may be settled (Articles 5 and 6 of the directive), therefore, it is to be welcomed to that the EU is going to ensure that this critical aspect of mediation is more widely and clearly protected.

In all mediations empathy, trust and professionalism are key and in an international context one needs to be particularly tuned to cultural sensitivity. Of course you can meet these needs on a domestic basis but more time and effort should be made on the part of the mediator and those advising the clients to ensure that they understand the process and its intentions, its capabilities and its limitations and also their role in the process and likely reactions of the other party. This is often covered by pre-mediation conferences and teleconferencing or travelling to meet the parties if necessary (depending on the amount at issue and what is sensible). You do have to consider protocol – the manner in which people are addressed, custom, dress, issues of how decision makers typically operate in a culture, the use of language and issues of verbal and non-verbal communication – there is not time to examine them all now but they are all certainly interesting and important to effective international practice.

Conquering logistical nightmares

The location in mediation is always important – it is good to have comfortable, sensible, airy surroundings for parties because it is a very difficult process. It is a long process that requires a lot of energy and the better the surrounding the better the process can be. In international cases you have people flying in, jet-lagged and irritable, not factors to be taken lightly when people are under pressure to find settlements and particularly when you have business managers engaged who are not often used to sitting in eight or nine hour meetings – which is what mediations are like.

Agenda and timings are always important in all mediations but even more so in international cases – it is very easy to get ambushed with parties announcing other commitments, the need to get to the nearest airport and so forth. Generally, in international cases where there is a lot at issue it is sensible to allow for at least a couple of days and in certain kinds of cases there is a lot to be said for having a three-day cycle, one day of mediation, then a day of rest and preparation to work with lawyers and then a final day.

As a mediator I will work with the lawyers or other professional advisors who are going to be much closer to the clients and talk about expectations, process, about the roles of their clients and the decision-makers. This will obviously cover things like cultural expectations, language and interpreters, but one has got to drive towards creating the best possible environment to keep the energy and focus on settlement at all times.

A process growing in demand

I think the EU Draft directive if enacted will raise the profile of mediation across borders and particularly creates greater opportunities for making international mediation a recognised professional practice, which we are already seeing in London, but I think there is a lot more scope for mediation to reach the same level of sophistication and extent as international arbitration and indeed I would suggest is likely to overtake it.

I think the balance between form and flexibility, is welcome. The quality of lawyers and those advising clients, and their having an effective understanding of the process is really important. Quality and commitment of mediators is of course of vital importance. Ultimately everyone should be driving towards assisting the clients in achieving their commercial objectives, to have a satisfactory and professional procedure where any settlement can be properly relied upon. Arbitration has long been harmonised within the legal framework and now mediation is finding a similar home.

Conflict is a rich tapestry – part of the fabric of commerce and human interaction. Mediation allows parties in conflict to negotiate or mediate a solution base on a number of factors:

- The legal interpretation of rights.
- Commercial considerations.
- Social needs and responsibility.
- Human dynamics and relationships.

Parties own the conflict – they need to be involved in the decision whether to settle, how to settle or whether ultimately their interests are best served by a third party making a decision. Let me put this into context by looking at some of the real cases that I have been involved in mediating. I have chosen three examples just to highlight the point:

- An international dispute involving the failure of a electricity generator in a third world country.
- International entrepreneurs fighting over technology.
- International chemical companies post sale of company dispute.

Case study: failure of a power generator in a third world country

The issues involved were: the failure of one engine; possible allegations of breach of warranty by the supplier; the immediate effect of the local community; the needs and interests of third parties project finance; insurance claims around property damage and business interruption and lots of interweaving issues on governing law. This case was mediated in London, I received the papers in New York and travelled to London at short notice and we had two very long days. The 40 individuals, with lawyers and advisors from many countries presented the various issues, experts were involved, complicated computations around the issues of energy calculations pertaining to financial and business interruption claims. The case settled at 3am in the morning.

Why did it settle? It settled because all the decision makers were present – the important people from third party project finance where there to use their muscle and persuasion, there were of course risks and uncertainty, insurers and re-insurers were all present to think about their potential liability. There was one missing party – that was the engine supplier so we were able to phase the settlement with a two-month time lag to finalise all other issues including communications with the engine supplier and the possible issue of further proceedings to put some leverage on them. What I talked about at the beginning was the present parties focusing long and hard. The decision makers were involved, there was an energy, there was a pressure chamber effect, there were lots of flying of feathers and upset. At one point I

was told by one American that he thought I wasn't being evaluative enough – which was very funny given I had only received a very large amount of paper the day before, he rather overlooked the real role of the mediator, it is to facilitate understanding but not to behave as a judge – but that is the life of the mediator. Calming him down and calming the parties down and keeping everything on track, did indeed work.

Case study: entrepreneurs and inventors

Starlight was set up to exploit media digital Technology. The directors and officers had put substantial sums in excess of £100 000 into the company. The venture was unsuccessful.

A new company Moonlight Limited was set up by some of those involved in the company Starlight. One of the directors of Starlight based and resident now in Florida, USA claimed that the new company Moonlight Ltd was a continuation in effect of the previous company Starlight and the new company and its directors and funders had taken without consent and compensations from Starlight the ideas and technology now being developed by the new company Moonlight Ltd. He threatened to commence proceedings in Florida for breach of contract, fiduciary trust and other heads of claim.

Both parties had sought previously to negotiate the dispute themselves without success and lawyers in Florida and in London were appointed. Both parties sought to settle the dispute and came to CEDR to appoint a mediator.

The starting point of the claimant in the USA was that there was a clear *prima facie* case which would be pursued in Florida; the prospective defendants disputed that there was any substance to the case at all, as the technology was wholly different as promoted by the new company compared with the former one. The amount in dispute was the settlement figure to dispose of the action. The claim was at least 800 000 USD but not particularised prior to the mediation. The real issues were feelings of injustice, unfairness and frustration by one party and on the other party held a genuine view that they held different technology. Through a focussed day of mediation using the techniques described in this article the parties signed a binding settlement agreement at the end of the day of mediation.

Case study: chemical company

The summary of the dispute a claim made by the purchaser "Seltrack" against "Rapid" was that in acquiring the share capital of a subsidiary "Acid", that there were several breaches of SPA (Share Purchase Agreement) and a claims letter was delivered to Rapid. The essence of the claims was that the one-off price for Acid SPA was gauged by the production capacity of Acid and the management information that was provided pre-acquisition, the

purchaser alleged that the seller was in breach of various warranties under the SPA. There were five heads of claim although some of the heads of claims dispensed with before the mediation.

The essence of getting this dispute settled was to look at the different heads of claims, simplify the heads of claim, look at the big numbers and then work through the calculation of loss of profit and to see how those calculations had been arrived at and to understand those calculations. In the course of the mediation it was necessary to sit down with the accountant and the General Manager of Seltrack and suggest that it would be helpful if they revamp some of their numbers to look at the loss of profit calculation: this revamping the numbers did help to concentrate the mind in the way in which the matter could be settled. There were a number of private sessions working on the numbers, plus having two days and an over a night period to reflect was also extremely helpful. Both teams were ably represented by corporate lawyers who were smart and quick on the numbers, the small team focus and abilities of the participants made it, although a highly technical mediation both as to numbers and facts, a good mediation in terms of being able to arrive at a result in terms of pre-mediation involvement.

The two-day mediation resulted in a binding settlement agreement. The claim was for over euros 10 million. The parties reached an agreement whereby the purchaser reduces its claims. The Sale Purchase Agreement has varied in a number of respects and terms of guarantees and deferred payment altered to allow for effective price reduction.

Conclusions

When parties decide to mediate they have the opportunity to use all elements of the "Rich Tapestry" of conflict to find their solution :

- the legal rights;
- the commercial and social considerations;
- needs and responsibilities; and
- importantly the human dynamics and relationships.

Today, we have a situation where – lawyers, solicitors, barristers and indeed the judges and arbitrators understand mediation and use it as a tool to engage and review all elements of conflict to help the party's make a decision.

Mediation is mainstream and part of conflict resolution's rich tapestry – it works in conjunction with the law courts and the legal community – all who are very much part of its development, but most importantly – when it works it works because and on behalf of those affected by conflict.

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Annual Report on the OECD Guidelines for Multinational Enterprises
Conducting business in Weak Governance Zones

PART III

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

The OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones *aims to help companies that invest in countries where governments are unwilling or unable to assume their responsibilitties. It addresses risks and ethical dilemmas that companies are likely to face in such weak governance zones, including obeying the law and observing international instruments, heightened care in managing investments, knowing business partners and clients and dealing with public sector officials, and speaking out about wrongdoing.*

The Risk Awareness Tool *was developed as part of the OECD Investment Committee's follow up to the OECD Guidelines for Multinational Enterprises. It is non-prescriptive and consistent with the objectives and principles of the Guidelines.*

The Risk Awareness Tool *has benefited from inputs from business, trade unions and civil society representatives from both the OECD and non-OECD areas. In the next phase, business and stakeholders will work with OECD to identify sources of practical experience in meeting the challenges the* Tool *addresses.*

Conclusions by the OECD Council, June 2006

The *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* was adopted by the OECD Council on 8 June 2006.

The Council recalled that the *OECD Guidelines for Multinational Enterprises* states that the common aim of the adhering governments is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress.

The Council considered it desirable to raise awareness of the risks multinational enterprises face in weak governance zones and to offer guidance for multinational enterprises in weak governance zones which is consistent with the objectives and principles of the *Guidelines*;

It also recognised that creating the conditions for progress in zones where authorities are unable or unwilling to assume their responsibilities is an important international policy objective and that governments, international organisations and multinational enterprises can each draw on their distinctive competences to contribute to the efforts of strengthening governance in such zones.

The Council invited adhering governments to take due account in the context of their policies involving interaction with multinational enterprises in weak governance zones of the *OECD Risk Awareness Tool*.

It recommended, with the support of the OECD, the widest possible dissemination of the Risk Awareness Tool and its active use by multinational enterprises, professional associations, trade unions, civil society organisations, international financial institutions and other stakeholders from both the OECD and the non-OECD area and by non-member governments.

PREFACE

A weak governance zone is defined as an investment environment in which governments are unable or unwilling to assume their responsibilities. These "government failures" lead to broader failures in political, economic and civic institutions that, in turn, create the conditions for endemic violence, crime and corruption and that block economic and social development. About 15 per cent of the world's people live in such areas, notably in sub-Saharan Africa.

For international business, weak governance zones represent some of the most challenging investment environments in the world. This *OECD Risk Awareness Tool* aims to help multinational enterprises – including small and medium size enterprises – meet these challenges. There is clearly a demand for such a tool and the business sector itself supports such work. The issue of investing responsibly in weak governance zones has been raised many times with the OECD Investment Committee and the National Contact Points[1] (NCPs) in the context of implementing the OECD Guidelines on Multinational Enterprises. Support for an OECD initiative in this area has come from the G8 – the 2005 G8 Gleneagles Summit Communiqué calls for "developing OECD guidance for companies working in zones of weak governance".[2]

The *Tool* is based on the premise that a durable exit from poverty will need to be driven by the leadership and the people of the countries concerned – only they can formulate and implement the necessary reforms. Companies play important supporting roles and this *Tool* seeks to raise awareness of these roles and to help companies play them more effectively.

With respect to the role of governments in establishing an appropriate policy framework, the OECD Investment Committee invites all governments to work with it in advancing the shared goal of continuous improvement in public policy. The *Policy Framework on Investment* proposes practical considerations in ten policy areas that help to create the domestic conditions for private investment to flourish (*e.g.* good public governance and the fight against corruption, equitable and efficient tax systems, human resource development, effective competition policies and improved infrastructure). The *Framework* was developed through an inter-governmental and multi-stakeholder partnership process involving representatives from more than 60 OECD and non-OECD economies. The Investment Committee seeks to co-operate with all governments – including those representing weak

governance zones – with a view to improving the effectiveness of public policy and creating a pathway to sustained economic development and greater well-being for their citizens.

Finally, the Investment Committee takes note of the interest of companies, NGOs and trade unions in the development of this instrument, the contributions they have made to its development and their continuing interest in its use. The Committee also expresses its desire to work with them to promote the use of this *Tool* and, in particular, to continue to work with them to develop a more extensive resource guide for companies wishing to identify sources of practical experience in meeting the challenges this *Tool* is intended to address. It suggests using the *Risk Awareness Tool* in the OECD dialogue with non-member countries.

1. INTRODUCTION

The mission of the OECD Investment Committee is to enhance the contribution of investment to growth and sustainable development. The Committee recognises that attracting private investment – both domestic and international – and creating effective institutions of public and private governance will lay the groundwork for durable improvements to the well being of citizens in weak governance zones.

Creating the conditions that permit this to happen is primarily the responsibility of governments. A recurrent theme of the OECD Investment Committee's work on the *OECD Guidelines for Multinational Enterprises* ("the *Guidelines*") – a government-backed, voluntary code of conduct for international business – is that corporate responsibility goes hand-in-hand with government responsibility. "Weak governance zones" are defined as investment environments in which governments cannot or will not assume their roles in protecting rights (including property rights), providing basic public services (*e.g.* social programmes, infrastructure development, law enforcement and prudential surveillance) and ensuring that public sector management is efficient and effective.[3] These "government failures" lead to broader failures in political, economic and civic institutions that are referred to as weak governance.

The broader institutional failures create situations which pose many ethical dilemmas and challenges for companies. As companies themselves often note, weak governance zones represent some of the world's most difficult investment environments. In addition to the usual financial and business risks encountered in all investment environments, weak governance zones pose ethical dilemmas and present risks that stem directly from government failure – *e.g.* widespread solicitation, extortion, endemic crime and violent conflict, abuses by security forces, forced labour and violations of the rule of law. Through its development of this *Risk Awareness Tool*, the OECD Investment Committee seeks to help companies in weak governance zones face these dilemmas and risks by calling to their attention to the guidance contained in OECD instruments and the findings of the broad-based consultations the Committee has conducted on this issue.[4]

International instruments provide various types of guidance that is of potential interest to many actors, including governments and companies. In particular, these instruments can help companies by setting forth agreed concepts and principles for business conduct. The evolving framework of international instruments provides guidance in such areas as respecting human rights, combating corruption, disclosing information and protecting the environment. In some cases, these instruments are addressed directly to companies (as with the *OECD Guidelines for Multinational Enterprises*). In others,

they create obligations for governments to translate the concepts and principles into national law (as with the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*), which in turn alters the legal obligations of companies. Companies should obey the law and observe established international concepts and principles in their global operations, including in weak governance zones. Some international instruments deal with public sector management issues. Indeed, OECD instruments of this type cover a wide range of public sector issues (*e.g.* management of budget systems or of conflict of interest in the public service). While addressed to governments, these instruments may also be useful for companies in weak governance zones as aids for identifying and understanding risks that arise from government failures. It is in this spirit – helping companies understand weak governance investment environments – that the present *Risk Awareness Tool* makes use of these public sector instruments.

The principal distinction between investments in weak and in stronger governance host countries lies not in differences in the concepts and principles that apply to managing them, but in the amount of care required to make these concepts and principles a reality. The "heightened risks" encountered in weak governance zones (*e.g.* in relation to corruption, human rights abuses and violations of international law) create a need for "heightened care" in ensuring that the company complies with law and observes relevant international instruments.

The Committee recognises that its efforts are only one of many international initiatives seeking to help people living in weak governance zones to get on the path of successful economic development.[5] The Committee aims to add value by basing its contribution on its experiences with the OECD Guidelines and on established OECD expertise. The *Tool* is non-prescriptive and consistent with the objectives and principles of the Guidelines.

The *Tool* has benefited from two sets of consultations conducted by the Committee. The first set (December 2004 to March 2005) included: 1) face-to-face discussions with invited experts; 2) an electronic discussion open to all interested parties; 3) an international conference held in Addis Ababa (jointly sponsored with NEPAD, Transparency International and the UN Global Compact) that involved more than 70 participants representing African business, trade unions, NGOs and governments.[6] A second (web-based) consultation on the first draft of the *Tool* was held in late 2005. It attracted written comments from 50 business, trade union, NGO and academic participants from both the OECD and non-OECD area.[7]

The *Tool* proposes a list of questions that companies might ask themselves when considering actual or prospective investments in weak governance zones. The questions cover the following topics:

I. Obeying the law and observing international instruments.

II. Heightened managerial care.

III. Political activities.

IV. Knowing clients and business partners.

V. Speaking out about wrongdoing.

VI. Business roles in weak governance societies – a broadened view of self interest.

Further commentary on terms appearing in bold type can be found in the Annex (*Glossary of Selected Terms*). Finally, it should be noted that the *Risk Awareness Tool* does not create new obligations on companies, but are provided by the OECD to be used by companies in the context of their own assessment procedures when investing in weak governance zones. In addition, the questions do not alter the text and the commentary of the *OECD Guidelines for Multinational Enterprises*. While the *Risk Awareness Tool* cannot be used as a basis for bringing specific instances, NCPs and interested parties might use it as a complementary source of information and ideas when confronted with the issue of responsible investment in weak governance zones (as they could with other OECD and non-OECD texts dealing with relevant subjects).[8]

2. OBEYING THE LAW AND OBSERVING INTERNATIONAL INSTRUMENTS

Companies have the same broad responsibilities in **weak governance zones** that they do in other investment environments – they are expected to comply with their legal obligations and to observe other **relevant international instruments** covering such areas as human rights, the fight against corruption, labour management (including observance of core labour standards) and environmental protection. Because legal systems and political dialogue in weak governance zones (almost by definition) do not work well, international instruments that provide guidance on acceptable behaviours are particularly useful in these contexts. Companies will want to reflect carefully on what law and relevant international instruments mean for their operations, accounting for the specificities of their sector, operating environments and business strategy.

Questions for consideration

2.1. General

- Is the **company** confident that, in this investment environment, it will be able to put in place business policies and processes that will allow it to obey applicable laws and to observe **relevant international instruments**, including the *OECD Guidelines for Multinational Enterprises*? If the answer to this question is no, what conclusions does the **company** draw for its investment strategy?
- How can the **company** inform itself about and assess the impacts (positive and negative) of its investment on the host country?
  - Does the **company** seek to involve stakeholders, especially local actors, in this process?
  - What steps does the **company** take to avoid situations where it might aggravate existing problems (*e.g.* human rights abuses, violent conflict, corruption in state-owned enterprises)?
  - What steps does it take to mitigate any negative impacts?
- Can the **company** use and contribute to the development of international standards for business conduct that are relevant for its operations in weak governance zones? These standards are likely to cover such areas as human rights, management of security forces (*e.g.* the *Voluntary Principles on Security and Human Rights*) combating corruption (*e.g.* the *International Chamber of Commerce's Rules of Conduct and Recommendations on Combating Extortion and Bribery* and *Transparency International's Business Principles for Countering Bribery: TI Six Step Process*) and promoting transparency and accountability of

both public and private actors (*e.g.* the *Extractive Industries Transparency Initiative*)?[9]

2.2. Human rights and management of security forces

- What measures does the company take to respect the human rights of those affected by its activities consistent with the host government's international obligations and commitments?[10]
- Is the company well informed about the relevant principles covering business and human rights?
- What steps does the company take to assess the host country's ability and willingness to respect human rights? Does it use heightened care when answering such questions as:[11]
  - Do the host government, other important political bodies and non state actors respect human rights? Do non state actors impair the enjoyment of human rights?
  - If the country is experiencing armed conflict, do the parties to the conflict respect **international humanitarian law**?
  - Does the host government fully control its territory? If not, what is the human rights situation in areas outside of effective government control and is **international humanitarian law** respected if there is armed conflict?
  - What do external evaluations of the government's record in respecting human rights and **international humanitarian law** indicate?
  - What steps are the host government, international organisations and other actors taking to improve the current situation?
- How can the company manage investments for which impact assessments show serious problems for respecting human rights and other obligations? Does company policy make it clear that business should be conducted without impairing others' enjoyment of human rights?
- What steps can the company take to ensure that it is able to pursue resolution of disputes through dialogue or other peaceful means?
- What steps can it take to ensure that its management of resettlement operations and of project impacts on local peoples (including indigenous peoples) does not impair enjoyment of human rights or act as a catalyst for conflict?
- Weak governance zones often present extremely serious security risks and companies will want to be particularly vigilant in managing security risks in these environments. Governments have the primary role in maintaining law and order and respecting their human rights obligations. Nevertheless,

companies have an interest in ensuring their security management practices are consistent with the promotion of human rights. Do company policies reflect good practice in the management of relations with public[12] and private[13] security services (as set forth, for example, in the *Voluntary Principles on Security and Human Rights*)? In particular:

- How does the company intend to protect employees and physical assets from threats related to violent conflict and from extortion and other criminal activities (*e.g.* theft, armed robbery, kidnapping)?
- Can the company manage security in ways that also promote human rights? Can the company be confident that its management of security for employees and physical assets is not at the expense of the security of local populations?
- Has the company identified and analysed the security risks that may exist in its operating environments? Does it follow good practice in making conflict impact assessments (possibly using tools developed by various international initiatives)?[14]
- 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 steps does the company take to review the background of its security providers? Is the company confident that its security management arrangements do not inadvertently support or finance armed groups who may be responsible for human rights abuses or violations of **international humanitarian law**?
- 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?

2.3. Combating corruption and money laundering

- What steps can the company take to refrain from, directly or indirectly, offering, promising, giving or demanding a bribe or other undue advantage to obtain or retain business or other improper advantage?
- Do company policies make it clear that business that cannot be conducted without recourse to corruption or money laundering should not be conducted at all? Do company policies commit employees to respect the letter and the spirit of anti-corruption and anti-money laundering laws?
- What steps does the company take in order to refrain from using subcontracts, purchase orders or consulting agreements as a means of channelling payments to public officials, to employees of business partners or to their relatives or business associations?

- What steps does the company take to ensure that remuneration of agents is appropriate and for legitimate services only?[15] Are lists of agents employed in connection with transactions with public bodies and state-owned enterprises kept and made available to competent authorities?
- When relevant, does the company comply with **international standards for combating money laundering**? In particular, does the company observe the *Financial Action Task Force's* recommendations on customer due diligence and record keeping; on reporting of suspicious transactions and compliance; and on other measures to deter money laundering and terrorist financing?[16]
- If the company has dealings with business partners that are registered in offshore locations, what steps does it take to ensure that these partners are not involved in money laundering, bribery and other illicit financial activities? (For example, does the company look into the reputation of the business partner, does it request disclosure of corporate and ownership information; does it ask the partner to provide the rationale for the offshore registration?)[17]

3. HEIGHTENED MANAGERIAL CARE

Business responsibilities are broadly the same in **weak governance zones** as in other countries – they are expected to identify and develop investment opportunities, obey home and host country laws and observe the international instruments that are relevant for their operations. However, the heightened risks encountered in weak governance zones create a need for **heightened managerial care** – covering information gathering, internal procedures, relations with business partners (including agents, joint venture partners and subsidiaries) and use of external legal, auditing and consulting services – in order to ensure compliance with legal obligations and observance of international standards.

Questions for consideration

3.1. *Policies*

- Are the concepts and principles that underpin relevant laws and **relevant international instruments** embedded in the company's business culture and policies (see Section II for further consideration of company policies on human rights, international humanitarian law and combating corruption)?
  - How does the Board of Directors (or other body with ultimate responsibility for the investment) promote these concepts and principles?
  - Do company policies adequately communicate the implications of relevant laws and international instruments for the company's business practices?
  - Is more detailed guidance provided to employees that are likely to be directly confronted with difficult situations?
- What steps does the company take to encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *OECD Guidelines*? Does the company use **heightened care** to promote the application of these principles to the company's subsidiaries, joint ventures, agents, suppliers and sub-contractors and other business partners in **weak governance zones**?

3.2. *Management systems*

- What steps does the Board of Directors take to ensure compliance with company policies, the law and **relevant international instruments**?
  - Are senior management and members of the Board of Directors visibly and actively committed to ensuring that investments in weak governance zones are managed in accordance with company policies, with the law and with **relevant international instruments**?

- For investments in weak governance zones, does the Board make additional resources available for implementing its policies and for complying with the law and with **relevant international instruments**?
- Does the Board use **heightened care** in ensuring that the company establishes and maintains **adequate internal company controls,** especially for investments in weak governance zones?
- Does the audit committee of the Board (or other relevant body) conduct regular independent reviews of compliance with company policy, the law and with **relevant international instruments**, especially for investments in weak governance zones?

- Does the company use **heightened care** in putting in place the management systems and **adequate internal company controls** that will allow it to manage the heightened risks of operating in weak governance zones? In particular, what steps has the company taken to ensure that:
  - It implements good management practices (for example, those described in various international initiatives)[18] in its business activities across the globe, but uses **heightened care** to offset the heightened risks encountered in weak governance zones?
  - Employees at all levels – from senior executives to field workers – understand the implications for their work of company policies, of relevant laws and of the **relevant international instruments**? In particular, do employees assigned to weak governance zones receive special assistance when facing the challenges of conducting business in these difficult environments (*e.g.* special training on how to tell the difference between solicitation and extortion; or advice on when not to engage in transactions because of excessive risks of being associated with human rights abuses, corruption or other criminal activities)?
  - Employee management practices (*e.g.* promotion, compensation, employee evaluation, disciplinary actions and **internal audit**) create genuine incentives for employee compliance with company policies and the law and for observance of **relevant international instruments**?
  - Hiring practices filter out potential employees who are unable or unwilling to comply with the law and to observe company policies and **relevant international instruments**?[19]
  - Employees are confident that, if they lose business because they comply with company policies, **relevant international instruments** or with home or host country law, they will be supported by their supervisors and will not suffer adverse consequences?
  - Employees know where to turn to for help (for example, to hotlines or whistle-blowing facilities) when dealing with violations of the law or

non-observance of company policies and **relevant international instruments**?

- Does the company refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent authorities, on practices that contravene the law, *the OECD Guidelines* or company policies? How does the company follow up on *bona fide* reports on such practices?

3.3. Reporting and disclosure of information

- Does the company ensure that timely, regular and reliable information is disclosed regarding its activities, structure, financial information and performance? Is the information disclosed for the enterprise as whole and, where appropriate, along business lines or geographic areas?[20]
- Does the company apply high quality standards for disclosure, accounting and audit for its operations in weak governance zones?
  - Does the company use **heightened care** to ensure that its financial statements relating to activities in weak governance zones are subject to **adequate independent external audits**?
  - Does the company use **heightened care** to ensure that the **arm's length principle** is applied in valuing transactions with **related companies**, especially when those transactions relate to activities in weak governance zones?
  - Does the company use **heightened care** in disclosing information about sensitive transactions (such as those involving **high-level governmental and political figures**, offshore entities, security forces or agents in weak governance zones)?
  - Does the company co-operate with other companies, with home and host governments and with international financial institutions (for example, by participating in the *Extractive Industries Transparency Initiative*) in providing for full disclosure of benefit streams from its investments (*e.g.* royalties, taxes, signature bonuses, and payments in kind) to host governments?
- What steps does the company take to provide easy and economical access to published information and, when necessary, to make information available to communities that do not have access to print or electronic media?

4. POLITICAL ACTIVITIES

In all societies, business can play legitimate and useful roles in the political process. However, if companies use political activities to gain access to improper advantages, they might violate home or host country laws or fail to observe international standards.

Weak governance zones are characterised by institutional shortcomings that prevent the public and private sectors from playing their respective roles effectively. These shortcoming include: absence of workable systems for promoting public and private sector ethics; excessive discretionary powers for public officials at all levels of government; absence of rules-based frameworks for investment protection; and lack of adequate tendering procedures and of financial and managerial controls in all parts of the public sector (including state-owned enterprises).

Companies in **weak governance zones** often find it necessary to forge political alliances with **high level governmental and political figures** in order to protect their investments from heightened threats of direct or indirect expropriation. These threats arise from inadequate checks on the powers of political actors – in effect, companies, through their political activities, create an informal system of investment protection that compensates for the lack of rules-based protection of their rights.

Questions for consideration

4.1. *Involvement in local politics*

- What steps can the company take to ensure that it abstains from **improper involvement in local political activities**?
- What steps can the company take to ensure that it refuses to make illegal contributions to candidates for public office or to political parties or to other political organisations? Do its contributions fully comply with public disclosure requirements?
- What steps can the company take to ensure that its political activities in weak governance zones do not aid and abet criminal and/or corrupt activities or exacerbate conflict?
- How can the company use **heightened care** in managing relations with **high level governmental and political figures** (*e.g.* by providing for board-level approval for and monitoring of these relations)?
- How can the company use **heightened care** in seeking to ensure that charitable contributions and sponsorship programmes are not used for illegitimate purposes?
- What steps can the company take to refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework

related to environmental, health, safety, labour, taxation and financial incentives among other issues?

- What steps can the company take to enhance the transparency and perceived legitimacy of its political activities (*e.g.* through partnerships with legitimate citizens groups or business associations)?

4.2. *Dealing with public officials with conflicts of interest*

- What steps can the company take to identify **conflicts of interest** associated with **public officials** with whom it has political or business relations?
- What is the company's policy for dealing with the **risks** associated with its political and business relations with **public officials** that may give rise to **conflicts of interest**?
- How does the company use **heightened care** in managing **"at risk" situations for conflict of interest** (an example would be negotiation of the terms of a public/private joint venture involving a company and a public official whose private capacity interests create conflicts with his public duties)?

5. KNOWING CLIENTS AND BUSINESS PARTNERS

In **weak governance zones**, companies face heightened risks of entering into relationships with employees, clients or business partners that might damage business reputations or give rise to violations of law or to other **abuses** (*e.g.* of human rights). Companies in weak governance zones have an interest in using **heightened care** in managing these risk and several business associations have issued guidelines for helping companies to do this.[21]

5.1. Questions for consideration

- Has the company used heightened care in informing itself about possible roles in host country criminality, **corruption** and violent conflict of people with whom it may have business or political relations?
- How does the company use **heightened care** to ensure that it does not, through its business relations, facilitate criminality, corruption and/or human rights abuses or contribute to fuelling violent conflict (*e.g.* through **heightened care** in the collection of information, selection of employees and business partners, contracting practices, assessment and resolution, documentation and follow-up monitoring)?[22]
- Does the company use **heightened care** to not be party to misuse of transactions channelled through off-shore financial centres and/or involving corporate vehicles (corporate forms that allow individuals or organisations to hide their identity and their involvement in transactions)?[23]

6. SPEAKING OUT ABOUT WRONGDOING

Information about wrongdoing (including crimes and **abuses** such as human rights violations, private or public corruption) can be especially valuable in weak governance host countries, which have few institutions (*e.g.* a free press, well developed legal and auditing institutions, active and free trade unions and civil society) that can collect and channel information (since, in the absence of protection of basic rights, these activities are risky). In the course of analysing or managing investments in weak governance zones, companies sometimes acquire such information and share it with home or host governments, international organisations or the media. Although foreign companies may be more capable of protecting themselves than most citizens in weak governance zones, the risks of speaking out in such environments are serious and real – they include threats to the physical security of employees and assets and threats of expropriation. It is useful for companies in weak governance zones to consider the costs, benefits and risks of speaking out or sharing information – their analysis will depend on the specific situation in the host country, the nature of the wrongdoing in question and channels available for communicating such information.

Questions for consideration

- If a company envisages making an investment that is likely to put it in a position of frequently knowing of and having to remain silent about serious wrongdoing that is directly or indirectly related to its presence in the country, has it considered associated **risks** (*e.g.* the legal implications of complicity in wrongdoing, damage to its reputation and to its internal business culture)?
- What channels exist for sharing information or speaking out about wrongdoing? Does the host government have a whistle-blowing or ombudsman facility? Could the company use whistle-blowing and ombudsman facilities made available to it by host governments and by international organisations?[24] Could it use diplomatic channels? Are behind-the-scenes discussions with host country actors likely to be useful?
- What are the likely benefits, costs and risks for various elements of impacts of a company decision to share information about wrongdoing with the public or with relevant government authorities or international organisations?
- What costs or risks would this involve for the company's owners, employees and other stakeholders?
- Could the company envisage forming partnerships with other companies, business associations, international organisations, trade unions or civil society organisations in order to lower the risks of reprisals for passing on information about wrongdoing?

7. BUSINESS ROLES IN WEAK GOVERNANCE SOCIETIES – A BROADENED VIEW OF SELF INTEREST

The business costs of "government failures" and of associated problems of rights violations (including investors' rights), violence and corruption are large – they include direct costs and missed opportunities. Individual companies and the business sector as a whole might therefore find it in their broad self interest – as important members of weak governance host societies – to help these societies get on the path of institutional reform. However, the roles they can usefully play in this area are not always well defined and there may be risks associated with business engagement in this area.

A durable exit from poverty and insecurity will need to be driven by the leadership and people of the countries concerned: host country actors – including citizens, politicians and civil servants – have the primary responsibility for reforming institutions in weak governance zones. International organisations and home country governments can play important supporting roles.

OECD consultations on possible roles for companies in promoting institutional reform in weak governance countries revealed mixed views. Some consultation participants welcomed such involvement, noting that multinational enterprises are relatively powerful actors in weak governance host societies and that they might be better placed to advocate reform than most of the citizens of these countries. Some participants underscored the risks for companies of being seen as associated with or even complicit with a weak governance regime – it may be prudent for companies in weak governance zones to be seen as making credible efforts to promote better policies and practices in both the public and the private sectors. Others were strongly opposed to political advocacy by companies, fearing that it would inevitably deteriorate into inappropriate involvement in local politics.

When discussing how companies can support weak governance host countries' efforts to enact institutional reform, consultation participants generally agreed on the importance of partnership. Multinational enterprises can help by working in partnership with host country business and professional associations, trade unions and civil society organisations. They also noted the potential usefulness of partnerships involving international organisations, home governments and international business, trade union and civil society organisations (the *Extractive Industries Transparency Initiative* was cited by many as a good example of international, multi-stakeholder partnership for promoting fiscal reform and transparency).

Questions for consideration

- Does the company use its influence on political actors positively, not only to negotiate immediate conditions for their investment, but also to avert conflict and to promote broader reform? In particular, where possible, does the company promote:
  - Observance of international and host country law and policies and of **relevant international instruments**?
  - The development of the rule of law and the protection of rights (including property rights)?
  - Improvements in public security in line with internationally agreed principles?
  - The adoption of public sector ethics programme covering such areas as solicitation, conflict of interest and political contributions?
  - The development of laws and policies that support efficient markets and an effective public sector (including the development of competition policy, competitive and transparent tendering and appropriate reform of regulation and of the state-owned enterprise sector)?
  - Transparency and consultation in the adoption and implementation of law and public policy and in the political process? Does this include easy and economical access to government information on policies that affect business or other interested parties?
- In what ways does the company use its partnerships with host governments (joint ventures, concessions and delegated management contracts) to advocate respect for widely-accepted good policy practices (*e.g.* in the areas of fiscal policy, public sector ethics including avoidance of conflict of interest, governance of state owned enterprises and respect by state owned enterprises of principles of corporate conduct compatible with the *OECD Guidelines*)?
- Companies should comply with the tax laws and regulations of all countries in which they operate. In weak governance zones, **weak fiscal systems** are one symptom of broader government failures. Companies that make large tax payments into governments with **weak fiscal systems** may want to assess possible **risks** (*e.g.* of damage to reputation) associated with making payments into fiscal systems that cannot control revenues or channel expenditures in a financially and politically accountable way. If such **risks** are deemed to be substantial, the company might want to ask itself the following questions:
  - Is it possible for the company to engage constructively with host country institutions with a view to encouraging reform to fiscal policies and practices?

- What are the benefits, costs and risks associated with engagement on this issue for the company's owners and for other people affected by its operations?
- If the company does engage on this issue, how can it organise its activities so as to maximise benefits and reduce risks of reprisals (*e.g.* by forming partnerships with host country, regional or international civil society organisations)? by forming partnerships with home governments and international organisations for promoting more transparent and accountable fiscal policy (*e.g.* through participation in the *Extractive Industries Transparency Initiative*)?

- Does the company encourage capacity building through close co-operation with the local community, consistent with the need for sound commercial practices?
  - In managing its relations with host country business partners – especially with weak-governance state-owned enterprises – does the company support and uphold good corporate governance principles and apply good governance practices?
  - Does the company participate in and support development of host country professional and business associations, chambers of commerce and other institutional supports for a constructive role for business in host societies?
  - Does the company work with local communities, the host government, business and professional associations, trade unions, and NGOs to promote human rights (including labour rights), good governance and sustainable development?

Notes

1. National Contact Points are government offices (sometimes involving participation by business, trade union and NGO representatives) that located in each of the 39 countries adhering to the OECD Guidelines for Multinational Enterprises. They are charged with promoting the OECD Guidelines among multinational enterprises operating in or from the country in question.
2. The 2005 G8 Gleneagles Summit Communiqué, paragraph 10c of the African Statement.
3. The work of the Development Assistance Committee's Fragile States Group characterises "fragile states" as governments that have low will and/or capacity to address their citizens' basic needs. Thus, the terms fragile and weak governance zones define very similar investment environments.
4. Numerous consultations have been held by the OECD Investment Committee since investments in weak governance zones were first raised in issue was first raised in early 2001. They have included consultations with business, trade unions and NGOs from the OECD and non-OECD regions. They also involved other OECD

bodies and international financial institutions. A summary of the most recent series of consultations can be found at: *www.oecd.org/daf/investment/guidelines* or in Annex 6 of the 2005 Annual Report on the OECD Guidelines for Multinational Enterprises.

5. For example, other initiatives are being undertaken in the OECD, the United Nations and adhering governments. The Development Assistance Committee has several initiatives that complement this risk management tool, including the DAC Guidelines on Helping Prevent Violent Conflict and its development of the DAC Principles on Engagement in Fragile States. The UN Global Compact has published the *Business Guide to Conflict Impact Assessment and Risk Management* (June 2002). The Extractive Industries Transparency Initiative, which promotes transparency on the revenue side of budget systems so as to facilitate more effective use of extractive industry revenues in weak governance host countries, complements and reinforces this risk management tool.

6. A summary of the findings of the consultations can be found in the Chair's Report for the 2005 Annual Meeting of the National Contact Points. *www.oecd.org/daf/investment/guidelines*.

7. See *www.oecd.org/daf/investment/guidelines* for a compilation of written contributions.

8. The OECD Guidelines for Multinational Enterprises were adopted in June 2000 by the OECD Council Meeting at Ministerial Level. The Council Decision of June 2000 is a binding decision in which adhering governments make commitments in relation to Guidelines implementation. The Decision gives guidance about the specific instances procedure. The Guidelines text and implementation procedures were negotiated and agreed to as an integral package. Therefore the specific instances procedure can only be conducted with reference to the text of the Guidelines.

9. The Extractive Industries Transparency Initiative (EITI) is one example of such an initiative. The OECD Investment Committee has associated itself twice with the EITI. See Archive Document 1 in the 2005 Chair's Report of the Annual Meeting of the National Contact Points and Archive Document 1 of the 2003 Chair's Report.

10. This question draws on recommendation II.2 of the OECD Guidelines. The commentary to this recommendation states that: "while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role and thus 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" (paragraph 4 of Commentary).

11. The Human Rights and Business Project of the Danish Institute for Human Rights is developing a diagnostic tool called Human Rights Compliance Assessment to help companies detect potential human rights violations caused by the effect of their operations on employees, local residents and all other stakeholders. This tool may be accessed at *https://hrca.humanrightsbusiness.org*.

12. Companies may wish to consult the Voluntary Principles for Security and Human Rights. Under the heading "interactions between companies and public security", the Voluntary Principles offer guidance on: security arrangements, deployment and conduct of public security; consultation and advice and responses to human rights abuses. See *www.voluntaryprinciples.org* for more information.

13. Companies may wish to consult the Voluntary Principles for Security and Human Rights. Under the heading "Interactions between companies and private security", the Voluntary Principles recognise that it may sometimes be necessary to engage private security providers as a complement to public security when governments are unable or unwilling to provide adequate security. See *www.voluntaryprinciples.org* for more information.

14. A number of such resources are available to companies (see Annex III.2). They include the *UN Global Compact Business Guide for Conflict Impact Assessment and Risk Management*; and material provided by the Conflict Prevention and Reconstruction Unit of the World Bank (*www.worldbank.org/conflict*) See also International Alert's *Conflict–Sensitive Business Practice: Guidance for Extractive Industries* (*www.international-alert.org*).

15. A number of services are available to help companies to do this. For example, TRACE is a non-profit membership association that specialises in anti-bribery due diligence reviews and compliance training for international commercial intermediaries (sales agents and representatives, consultants, distributors, and suppliers). TRACE member intermediaries are "pre-vetted" partners for multinational corporations seeking to do business with entities that share their commitment to transparent and ethical business practices. See *www.traceinternational.org*.

16. The *Forty Recommendations of the Financial Action Task Force on Money Laundering* contain, *inter alia*, recommendations for financial institutions and non-financial businesses (*e.g.* real estate and casinos) and professions (*e.g.* legal and accounting). The recommendations cover such areas as: customer due diligence and record keeping; reporting of suspicious transactions and compliance; and other measures to deter money laundering. The *Forty Recommendations* can be accessed at: *www.fatf-gafi.org*.

17. See Appendix 3: (Due diligence and offshore companies) of the International Association of Oil and Gas Producers' Guidelines on Reputational Due Diligence.

18. Many management system standards and guidelines exist to assist companies put in place appropriate management practices. For example, Transparency International's "Six Step" process for developing and implementing a no-bribes policy involves: 1) adoption of a no bribes policy by boards and senior management; 2) plan implementation (*e.g.* review legal requirements; identify company specific risks); 3) develop anti-bribery programmes; 4) implement programme; 5) monitor; and 6) evaluation of performance by Board of Directors and senior management. See also the International Chamber of Commerce's rules of Conduct and Recommendations on Combating Extortion and Bribery: 2005 Edition (*www.iccwbo.org/policy/anticorruption/iccfccd/index.html*).

19. See also Section V of this risk management tool on "Knowing clients and business partners". The International Association of Oil and Gas Producers' Guidelines on Reputational Due Diligence provide guidance for companies on due diligence procedures for hiring employees (as well as for selecting and managing business partners such as agents, contractors, etc)? This includes the identification of "red flags" – that is, characteristics of individuals or transactions that signal that the company should be particularly vigilant in looking into the relationship with the employee or business partners. The Guidelines are available at: *www.ogp.org.uk/pubs/356.pdf*.

20. The Global Reporting Initiative (GRI) is a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines. These Guidelines are for voluntary

use by organisations for reporting on the economic, environmental, and social dimensions of their activities, products, and services. See *www.globalreporting.org* for more information.

21. See, for example, the *Wolfsberg Standards on Anti-Money Laundering* (*www.wolfsberg-principles.com*) and the *Guidelines on Reputational Due Diligence* published by the International Association of Oil and Gas Producers. (*www.ogp.org.uk/pubs/356.pdf*).

22. See *the Guidelines on Reputational Due Diligence* published by the International Association of Oil and Gas Producers. The Guidelines provide information on all aspects of managing relationships with employees and business partners.

23. See *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes (OECD 2001)* for a detailed discussion of this issue.

24. Several such facilities exist. For example, the World Bank investigates fraud and corruption allegations about World Bank staff and the project it funds. It accepts complaints from its Staff and from the public by email, telephone and paper mail. The email address for submitting complaints is: *investigations_hotline@worldbank.org*. Companies that have encountered corruption practices or that have been victims of bribe solicitation can report this information to the "Bribery Hotline" maintained by the US Department of Commerce's Trade Compliance Centre or at *www.mac.doc.gov/tcc*.

ANNEX III.1

Glossary of Selected Terms

Abuses. Abuses are acts that are excessive or improper when evaluated using widely accepted international concepts and principles for business conduct (see **Relevant international instruments**). Such abuses might not be offences (criminal or otherwise) in all jurisdictions.

Adequate internal company controls. According to the OECD Revised Recommendation on Combating Bribery (Article V) these practices should include:

- the development of standards of conduct;
- the company's management processes and controls are subject to adequate **internal audit** procedures, including the creation of monitoring bodies, independent of management, such as audit committees of boards of directors and supervisory boards;
- provision of channels from communication of and protection for, persons not willing to violate professional standards of ethics under instruction or pressure from hierarchical superiors.

Adequate independent external audit. External auditors lend credibility to published financial statements and are fundamental to public confidence in the reliability of these statements. In this context, independence means that auditors are free of any influence, interest or relationship that might impair professional judgement. Adequate standards for ensuring the independence of external auditors permit them "to provide an objective assessment of company accounts, financial statements and internal controls" (quote from OECD Revised Recommendation on Combating Bribery; V. B.ii.).

Arm's length principle. This valuation principle is commonly applied to commercial and financial transactions between **related companies**. It says that transactions should be valued as if they had been carried out between unrelated parties, each acting in his own best interest. This is an important concept in the *OECD Transfer Pricing Guidelines*.

"At risk" situations for conflicts of interest. The *OECD Guidelines for Managing Conflict of Interest in the Public Service* identify "at risk situations" as:

- "Outside" appointments – The appointment of a public official on the board or controlling body of, a community group, a professional or political organisation, another government entity, a government-owned corporation, or a commercial organisation which is involved in a contractual, regulatory, partnership or sponsorship arrangement with their employment organisation.
- Contracting – The preparation, negotiation, management or enforcement of a contract involving a public organisation.
- Gifts and other forms of benefits – Offering of traditional or new forms of gifts or benefits.
- Additional employment – Public officials engage in ancillary ("outside") employment while retaining their official positions.
- Activity after leaving public office – A public official who is about to leave public office may negotiate an appointment or employment or other activity which creates a potential for conflict of interest with their employing organisation.
- "Inside information" – Using information collected or held by public organisation which is not in the public domain or information obtained in confidence in the course of official functions.

Company. The *Risk Awareness Tool* uses the term "company" throughout, but has potential application to a broad range of organisations and organisational forms. These include partnerships; companies that are listed on stock exchanges; companies that are closely held; state-owned enterprises; professional firms (*e.g.* law and accountancy firms).

Conflict of Interest involves a conflict between the public duty and private interests of a public official, in which the public official's private capacity interests could improperly influence the performance of their official duties and responsibilities. Source: *OECD Guidelines for Managing Conflict of Interest in the Public Service*.

Corruption is the act of a public official or person with a fiduciary duty or other position of trust, who wrongly or unlawfully uses his position to procure some benefit for himself or for another person.[1]

Heightened managerial care (or heightened care). Heightened managerial care is a variant of the risk management term – "due care". The use of the word "heightened" stresses the fact that companies need to use extra vigilance and care in managing the heightened risks encountered in weak governance zones. Due care can be defined as the effort that an ordinarily reasonable and prudent person would use under the same or similar conditions to avoid harm to the company or to another party. In view

of the heightened risks encountered in weak governance zones, companies will want to reinforce the risk management techniques that they use in other investment contexts. Heightened care consists of extra efforts in: board level involvement, gathering information about the investment environment, verification and follow-up, record keeping and documentation, assessments, decision making, building in safeguards, management practices for relevant staff, associates and business partners (*e.g.* selecting appropriate staff, associates and business partners for at-risk positions and providing them with appropriate incentives and special training), monitoring and, where necessary, taking corrective measures.

High-level governmental and political figures are individuals who are or have been entrusted with prominent public functions in a foreign country. These include, for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials. Business relationships with family members or close associates of high-level political figures involve business risks similar to those with the political figures themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories. [This definition is adapted from the definition of "politically exposed persons" in the *Financial Action Task Force's Glossary of Terms*.]

High quality accounting practices. The OECD Revised Recommendation (Article V) and the OECD Convention on Combating Bribery (Article 8) define "adequate accounting practices" as:

- Maintaining adequate records of the sums of money received and expended by the company; identifying the matters in respect of which receipts and expenditures take place. Companies should not make off-the-book or inadequately identified transactions or keep off-the-book accounts.
- Companies should disclose in their financial statements the full range of material contingent liabilities and should adequately sanction accounting omissions, falsifications and fraud. They should prohibit the recording of non-existent expenditures or liabilities with incorrect identification of the object. They should not use false documents.

Improper involvement in local political activities. Clarification of the meaning of improper political activity is a subject of ongoing relevance with respect to OECD anti-corruption instruments. At a minimum, political involvement is deemed improper in a foreign country if it is illegal in a company's home or host country. For instance, under the legal systems of some countries, an advantage promised or given to any person, in anticipation of his or her becoming a foreign public official, is illegal; under the legal systems of many countries it is considered technically distinct from the

offence of bribery.[2] More generally, in thinking about this issue, companies might want to ask themselves whether their political activities are transparent; whether they would feel comfortable if these activities were described in detail in the media; and whether their activities are in the best interests of the host country (see also **legitimate political activity**).

Internal audit is an independent objective assurance and consulting activity designed to create value and to improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes.

International humanitarian law is the body of law which seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or no longer participating in hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. Although directed at the activities of States and organised armed groups, awareness of this body of law is also relevant for companies to the extent that government forced may be involved in the provision of security of their activities. More information on international humanitarian law may be found at *www.icrc.org*.

International standards for combating money laundering. These standards include the *Financial Action Task Force's 40 Recommendations* and the Basel Committee on Banking Supervision's *Customer Due Diligence for Banks*. The *Wolfsberg Standards* have been developed by a group of international banks – they provide guidance on various aspects of bank responsibilities and roles in the fight against money laundering.

Legitimate political activity. The following characteristics of legitimate political activity were proposed by participants in OECD consultations conducted as part of the development of this *Risk Awareness Tool*:

- the purpose of the activity is to promote better participatory processes and a competitive market environment;
- the company is acting in good faith – its intention is candid, *bona fide* and in the best interest of the host country;
- the company is well informed about the local political situation and understands the national, regional, local and ethnic dimensions of host country politics;
- the company works in partnership with legitimate civil society actors and with international organisations. Such partnerships allow organisations to pool their competencies and to enhance co-ordination and transparency.

Public officials. These include people who hold a legislative, administrative or judicial office (either appointed or elected); any person exercising a public

function, including for a public agency or a public enterprises (*e.g.* a state-owned enterprise); any official or agent of a public international organisation. (This definition is based on the definition of "public sector representative" provided in Article 1 of the OECD Convention on Combating Bribery).

Related companies. Related companies are companies that do not have an arm's-length relationship (*e.g.*, a relationship involving independent, competing interests). This could be due to both companies being part of the same business group or could stem from family or personal ties between officials of two companies. Accounting for transactions between related companies is particularly difficult (see **Arm's length principle**). For this reason managerial, regulatory and tax arrangements often provide for greater scrutiny of transactions between related companies.

Relevant international instruments. Many international instruments provide useful guidance for evaluating risks and identifying appropriate business conduct. This is especially true in weak governance zones, where host country sources of information and guidance may be lacking. In some cases, the instruments create binding obligations on States, which can, in turn, create legal obligations for companies. For instance the OECD Convention on Combating Bribery requires that State parties criminalise bribery of foreign public officials, making bribery a criminal offence for companies and individuals. Companies will need to evaluate their particular business situations in order to decide which instruments are relevant for their operations and how they should be reflected in company policies. The international instruments cited in the OECD Guidelines for Multinational Enterprises are (by issuing organisation):

- *United Nations*: Universal Declaration of Human Right; Copenhagen Declaration for Social Development; ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977 Tripartite Declaration); ILO Declaration of Fundamental Principles and Rights at Work (1998 Declaration); ILO Convention 29 of 1930 and C.105 of 1957 (Elimination of all forms of compulsory labour); ILO convention 111 of 1958 (Principle of non-discrimination with respect to employment and occupation); ILO Convention 138 of 1973 (Minimum age for admission to employment); ILO Convention 182 of 1999 (Elimination of the worst forms of child labour); ILO Recommendation 94 of 1952 (Concerning Consultation and Co-operation between Employers and workers on the Level of Undertaking); ILO Recommendation 146 of 1973 (Minimum age for admission to employment). Rio Declaration on Environment and Development, Agenda 21; Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus); UN Guidelines on Consumer Policy. [The United Nations Convention against Corruption was

adopted by the UN General Assembly in October 2003 and subsequently opened for signature by State parties.]

- *OECD*. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Revised Recommendation of the Council on Combating Bribery in International Business Transactions; Principles of Corporate Governance; Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials; Guidelines for Consumer Protection in the Context of Electronic Commerce; Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
- *Private*. ISO 14000 Series of Standards on Environmental Management Systems; the International Chamber of Commerce Report on Extortion and Bribery in Business Transactions.

Risks. Risks stem from changes in the company's external environment (*e.g.* a change in regulation) or from the actions of employees (*e.g.* a rogue employee deciding to violate company policy by paying a bribe) that give rise to changes in the value of the company. (Changes may involve increases in company value, in which case, the risk is an opportunity). Companies run risks of many types (financial, operating, political, etc) in the course of routine business activities – in weak governance zones additional risks stem primarily from failures of government (failure to protect rights, enforce law, provide public services, impose financial and management controls on public sector actors etc). The main sources of risks that are relevant to consideration of investments in weak governance zones are:

- Unfavourable developments in law, policy or practice – The legal, regulatory and political context may evolve in a manner that is unfavourable (or favourable) for the company (*e.g.* actual or threatened expropriation, solicitation, threats related to the absence of the rule of law). Since there are relatively few formal constraints on public sector actors in weak governance zones, this risk is a particularly important one.
- Legal non-compliance – The company may be unable to control its operations or employees so as to comply with home or host country laws.
- Non observance of international standards – The company may be unable to control its operations or employees so as to observe international standards.
- Close association with external events or people – The company may be closely associated with external events or people that do not reflect well on it (*e.g.* human rights abuses in the immediate vicinity of its operations; alliances with high level political officials that are widely viewed as corrupt).

These can lead to the following sources of value loss for the company:

- Direct and indirect legal costs.
- Loss of reputation – A company may sustain losses in the value of an intangible asset – business reputation. This may make it more difficult to conduct business in the future or to compete in capital or labour markets.
- Reductions in brand value – A company that operates in brand-sensitive segments of retail and business-to-business markets may sustain losses in the value of its brands.
- Reductions in employee morale and integrity (damage to internal business culture) – A company may suffer from loss in the effectiveness of internal value creation and control processes due to lack of employee motivation and growth of cynicism and of the belief that ethics do not matter.

Weak fiscal system. The following questions are based on the *OECD Best Practices for Budget Transparency*. Although primarily addressed to governments, these questions may help companies and other interested parties to identify weak governance fiscal systems (negative answers to many of the following questions would be an indication of weakness):

- Are the accounting policies that underpin the budget (including any deviations from these policies) publicly available?
- Has the government put in place a system of internal financial controls, including internal audit, in order to assure the integrity of information provided in the reports?
- Do the finance minister and senior officials responsible for producing budget reports effectively assume their responsibilities?
- Is the budget report audited by a "Supreme Audit Institution" in accordance with generally accepted auditing practices?
- Are the audit reports scrutinised by Parliament?
- Does Parliament have the opportunity and the resources to effectively examine any fiscal report that it deems necessary?
- Are all fiscal reports made publicly available (including the availability of all reports, free of charge, on the Internet)?
- Does the finance ministry actively promote understanding of the budget process by individual citizens and non-governmental organisations?

Companies can find information on most governments' fiscal policies and institutions on the website of the International Monetary Fund (*www.imf.org*). Companies whose activities have major fiscal impacts in weak governance host countries might also wish to join the Extractive Industries Transparency Initiative, which seeks to increase the transparency of extractive industry

revenues, thereby making it easier to hold host governments accountable for their use.

Weak governance zones are defined as investment environments in which public sector actors are unable or unwilling to assume their roles and responsibilities in protecting rights (including property rights), providing basic public services (*e.g.* social programmes, infrastructure development, law enforcement and prudential surveillance) and ensuring that public sector management is efficient and effective. These "government failures" lead to broader failures in political, economic and civic institutions that are referred to as weak governance. Weak governance zones can be identified by:

- extremely low "human development" indicators (published by the United Nations Development Programme, these indicators measure welfare performance outcomes such as infant mortality, literacy, life expectancy and various measures of material standard of living; and inputs such as health and education spending);
- widespread and serious corruption and lawlessness;[3]
- serious violations of human right and international humanitarian law and endemic violent conflict driven by cross-cutting motivations (*e.g.* economic, political, ethnic, tribal) and involving potentially diverse combatants (*e.g.* domestic or international and formal or informal);
- extremely weak evaluations of the country's public sector management and performance in economic and policy reviews conducted by international financial institutions or other international organisations.

Notes

1. Corruption includes, for instance, the bribery of a foreign public official, which pursuant to the OECD Convention means the intentional offer, promise or gift of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Description of legal systems' treatments of transactions made in anticipation of a person becoming a public official is from Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Paragraph 10.
3. The Transparency International website (*www.transparency.org*) contains information relevant for understanding the host country's corruption status (see, for example, the Corruption Perception Index and corruption mapping tools). The World Bank Governance Indicators also provide relevant information.

ANNEX III.2

Resources for Companies

Human rights, humanitarian law and security forces

The OECD Guidelines for Multinational Enterprises. Chapter II. *www.oecd.org/daf/investment/guidelines*.

International Labour Organisation, *www.ilo.org*.

International Committee of the Red Cross (*www.icrc.org*), Geneva Conventions of 1949 and their two Additional Protocols of 1977.

Voluntary Principles for Security and Human Rights, *www.voluntaryprinciples.org*.

OECD Development Assistance Committee Guidelines on Helping Prevent Violent Conflict, *www.oecd.org/dac/conflict/preventionguidelines*.

Human Rights and Business Project *http://hrca.humanrightsbusiness.org* of the Danish Institute for Human Rights, *www.humanrights.dk*.

International Alert (*www.international-alert.org*), Extractive Industries: Conflict – Sensitive Business Practice, *www.international-alert.org/our_work/themes/extractive_industries.php*.

UN Global Compact (*www.unglobalcompact.org*), Business Guide for Conflict Impact Assessment and Risk Management, *www.unglobalcompact.org/docs/issues_doc/7.2.3/BusinessGuide.pdf*.

World Bank Conflict Prevention and Reconstruction Unit, *www.worldbank.org/conflict*.

Anti-corruption

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, *www.oecd.org/daf/nocorruption*.

United Nations Convention against Corruption (*www.unodc.org*).

OECD Guidelines for Managing Conflict of Interest in the Public Service, *www.oecd.org/gov/ethics*.

OECD Guidelines for Multinational Enterprises. Chapter VI, *www.oecd.org/daf/investment/guidelines*.

The UN Global Compact. Tenth Principle, *www.unglobalcompact.org*.

Financial Action Task Force on Money Laundering (*www.fatf-gafi.org*), Forty Recommendations on Money Laundering, *www.fatf-gafi.org/standards*.

Basel Committee on Banking Supervision (*www.bis.org/bcbs*), Customer Due Diligence for Banks, *www.bis.org/publ/bcbs85.htm*.

Wolfsberg Standards on Anti-Money Laundering, *www.wolfsberg-principles.com*.

Transparency International Business Principles for Countering Bribery, *www.transparency.org*.

International Chamber of Commerce (*www.iccwbo.org*), Rules of Conduct and Recommendations on Combating Extortion and Bribery, *www.iccwbo.org/policy/anticorruption/iccfccd/index.html*.

Transparency International Business Principles for Countering Bribery (BPCB), *www.transparency.org/global_priorities/private_sector/business_principles*, including the Six Step Implementation Process.

TRACE (non-profit membership association that specializes in anti-bribery due diligence reviews and compliance training for international commercial intermediaries), *www.traceinternational.org*.

International Association of Oil and Gas Producers (*www.ogp.org*), Guidelines on Reputational Due Diligence, *www.ogp.org.uk/pubs/356.pdf*.

Fiscal issues

Extractive Industries Transparency Initiative (EITI), *www.eitransparency.org*.

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, *www.oecd.org/ctp/tp*.

OECD Best Practices on Budget Transparency, *www.oecd.org/gov*.

APPENDIX A

Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS[1]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto,[2] having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;

National Treatment

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;

3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

Conflicting Requirements

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto.[3]

International Investment Incentives and Disincentives

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment;

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;

3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

Consultation Procedures

V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;

Review

VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the *Guidelines for Multinational Enterprises* is reproduced in Appendix B of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD website *www.oecd.org/daf/investment/*.

APPENDIX B

The OECD Guidelines for Multinational Enterprises: Text and Implementation Procedures

Text

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational

forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what

constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good

practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General policies

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

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.

9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.
3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.
4. Enterprises should also disclose material information on:
    1. The financial and operating results of the company;
    2. Company objectives;
    3. Major share ownership and voting rights;
    4. Members of the board and key executives, and their remuneration;
    5. Material foreseeable risk factors;
    6. Material issues regarding employees and other stakeholders;
    7. Governance structures and policies.
8. Enterprises are encouraged to communicate additional information that could include:
    a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to

which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;

b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;

c) Information on relationships with employees and other stakeholders.

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;

   b) Contribute to the effective abolition of child labour;

   c) Contribute to the elimination of all forms of forced or compulsory labour;

   d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. *a)* Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;

   b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;

   c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. *a)* Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

   b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation

with employee representatives and, where appropriate, relevant governmental authorities.

6. 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 co-operation to mitigate the effects of such decisions.
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.

V. Environment

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

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
   a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
   b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and

c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
   a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
   b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
   a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
   b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
   c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
   d) Research on ways of improving the environmental performance of the enterprise over the longer term.

7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. 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.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully

comply with public disclosure requirements and should be reported to senior management.

VII. Consumer interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

VIII. Science and technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and

conditions and in a manner that contributes to the long term development prospects of the host country.

5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
   a) To fix prices;
   b) To make rigged bids (collusive tenders);
   c) To establish output restrictions or quotas; or
   d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.
2. Conduct all of their activities in a manner consistent with all applicable competition laws**,** taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

Implementation Procedures

Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

1. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Investment Committee.

2. The Investment Committee

1. The Investment Committee ("the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of

reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

3. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. Information and promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.

3. Respond to enquiries about the Guidelines from:
   a) Other National Contact Points;
   b) The business community, employee organisations, other non-governmental organisations and the public; and
   c) Governments of non-adhering countries.

C. Implementation in specific instances

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

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
   a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;
   b) Consult the National Contact Point in the other country or countries concerned;
   c) Seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances;
   d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
4. *a)* In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.

b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.

5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each National Contact Point will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
   a) Consider the reports of NCPs.
   b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
   c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
   d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

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Annual Report on the OECD Guidelines for Multinational Enterprises

CONDUCTING BUSINESS IN WEAK GOVERNANCE ZONES

The *Guidelines* are recommendations to international business for conduct in such areas as labour, environment, consumer protection and the fight against corruption. The recommendations are made by the adhering governments and, although not binding, governments are committed to promoting their observance. This *Annual Report* provides an account of the actions the 39 adhering governments have taken over the 12 months to June 2006 to enhance the contribution of the *Guidelines* to the improved functioning of the global economy. In six years, the *Guidelines* have consolidated their position as one of the world's principal corporate responsibility instruments.

One highlight of this reporting period was the completion of guidance for companies operating in weak governance zones. The Investment Committee's report entitled "Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones" was adopted by the OECD Council on 8 June 2006. The Tool aims to help companies that invest in countries where governments are unable or unwilling to take up their responsibilities – it offers considerations in such areas as obeying the law and observing international instruments; political activities; knowing clients and business partners; and speaking out about wrongdoing.

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