

Australian National Contact Point for the OECD Guidelines for Multinational Enterprises

Canberra, 10 August 2011

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

The specific instance complaint alleged breaches of:

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

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

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

- Spanish is the first language of the proponents of the complaint and the [Company] representatives with day to day responsibility for the projects.
- The ANCP is not in the best position to assess whether the actions by [Company] in relation to the projects is valid or illegal under Argentine law – this will have some bearing on any consideration of the matter under the Guidelines.

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

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

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

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