

**OECD Guidelines for Multinational Enterprises:
2004 Annual Meeting of the National Contact Points**

REPORT BY THE CHAIR

**Meeting held on
14-15 June 2004**

This document reproduces the Report by the Chair of the Annual Meeting of the National Contact Points which was held on 14-15 June 2004. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2004 Edition".

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I. Introduction and Background

The 2004 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 fourth 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- governmental organisations (now joined in a more formal network) provided further inputs on Guidelines implementation. The 2004 Roundtable on Corporate Responsibility focused on responsible environmental management.

The present report reviews NCP’s activities over the June 2003-2004 period. It is based on the individual NCP reports 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 steps taken to date to respond to issues raised by the UN Expert Panel on Illegal Exploitation of Nature Resources in the Democratic Republic of Congo. Section VI describes how Guidelines institutions have followed up on some of the issues raised during the 2003 Annual NCP meeting and Corporate Responsibility Roundtable. Section VII summarises progress to date and proposes steps for further action. There are four annexes: 1) Structure of the NCPs; 2) Contact details for NCPs; 3) Summary Table – Specific Instance Considered by NCPs to date; 4) Archive of Documents.

Overall, the report suggests that the gains in visibility and user recognition – already noted in the 2002 and 2003 reports – were consolidated over the June 2003-2004 period. Support for this conclusion is widespread:

- The Guidelines have been referred to at high-level meetings. Their role in promoting a responsible market economy was mentioned in the June 2003 Evian Summit Declaration¹. Kofi Annan cited them as an important initiative in an April 2004 presentation to the United Nations Security Council (see Archive document 4);
- Use of the Guidelines implementation processes by business, trade unions, NGOs and by governments has been extensive (see section IV). In the context of their handling of a number of specific instances, NCPs believe that they have contributed to reducing tensions in the global economy and to promoting appropriate business conduct
- The Guidelines have now been translated into 28 languages² – particularly noteworthy is TUAC and its partners’ translation of the Guidelines into Chinese, Indonesian and Thai. Web coverage is extensive and growing. More than 70,000 web pages refer to the Guidelines (up from 25,000 last year);

¹ The June 2003 G8 Summit in Evian and the Summit Declaration’s mention of the OECD Guidelines was already covered in the 2003 Annual Report on the Guidelines.

² Arabic, Chinese, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Lithuanian, Norwegian, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish, Thai, Turkish and the official languages of Belgium and Switzerland.

- A World Bank-sponsored survey³ looked at corporate use of major standards for corporate responsibility. The survey asked managers of large multinational enterprises” which global corporate responsibility instruments were “most influential on practice at their companies”. Twenty two per cent of the respondents mentioned the Guidelines without prompting⁴.

Thus, the NCPs and the Investment Committee would appear to have some grounds for satisfaction regarding their progress in promoting the Guidelines to date. Yet, the consultations showed that the trade unions and NGOs still have concerns about specific implementation issues and, more generally, about the credibility of the instrument. While expressing overall satisfaction with the fairness of implementation procedures, BIAC noted that specific instances considered to date had focused mainly on the labour chapter and had largely ignored the other chapters. The discussions suggested that NCPs will need to renew their efforts to reassure all partners that they will preserve the political balance that underpins the current text of the Guidelines, while also showing their willingness and ability to deal meaningfully with some of the difficult ethical issues that arise in connection with international investment.

II. Institutional Arrangements

The NCP reports show that institutional arrangements were largely stable over the June 2003-2004 reporting period. Latvia effectively became an adherent to the OECD Declaration in January 2004. Its newly-created NCP is inter-ministerial and tripartite in structure (Annex 1). Overall, the structure of NCPs can be summarised as follows:

- 21 NCPs are single government departments;
- 6 NCPs are multiple government departments;
- 9 NCPs are tripartite; and
- 2 NCPs are quadripartite.

NCPs noted that they also use other means for organising consultations and for expanding 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 where partners’ expertise is required.

³ *Race to the Top: Attracting and Enabling Global Sustainable Business. Business Survey Report.* The World Bank Group. Social Responsibility Practice. Project undertaken by Political and Economic Link Consulting and Ethical Corporation Magazine. October 2003.

⁴ The most-mentioned instruments were ISO 14000, which was cited by 46 per cent of respondents, and the Global Reporting Initiative, with 36 per cent. Thirty-three per cent of the respondents mentioned the UN Global Compact.

III. Information and Promotion

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities and to handle enquiries. NCPs have continued to be active in this area. This section summarises the descriptions of promotional activities contained in the individual NCP reports.

III.a. Selected promotional activities by NCPs

Selected developments and innovations in promotion include:

- *Reflecting the Guidelines in domestic standards.* The Australian NCP continued its efforts to incorporate the Guidelines into domestic corporate, government and social responsibility reporting frameworks. It commented on the Australian Securities and Investment Commission's Socially Responsible Investing Disclosure Guidelines and the Australian Competition and Consumer Commission's Guidelines for developing and endorsing effective voluntary industry codes.
- *Strategic approach to promotion.* The Canadian NCP has formulated a strategic approach to promotion with the business community. The Canadian NCP report notes that more focus is being given to extractive industries, where both Canadian business and the government "share an interest in maintaining a positive image" ... and in "ensuring that Canadian businesses contribute positively to the broader social and environmental objectives of the communities in which they operate." As follow up on this strategy, the Canadian NCP contacted or participated in the events of several mining associations.
- *Deputy Ministers promote Guidelines with overseas missions.* The Canadian report also notes that the Deputy Ministers of Foreign Affairs and Trade promoted the Guidelines by sending a message to the heads of all Canadian embassies, consulates and high commissions. The message included a recommendation to promote the Guidelines with Canadian companies operating abroad and provided links to on-line reference material and tools to enable the missions' staff to effectively promote responsible corporate behaviour, including the Guidelines.
- *National corporate responsibility programme and report.* The Finnish NCP is reorganising itself into a cooperative body involving government, business and other actors with a view to increasing the versatility of Guidelines promotion. The Ministry of Trade and Industry aims to enhance corporate responsibility within the framework of a programme called Corporate Responsibility Finland, which will assign a prominent role to the OECD Guidelines. A report has been prepared on Finnish progress in developing the OECD Guidelines, the Global Compact and the Global Report. The report aims to provide an overall picture of international guidelines and initiatives and looks at how far Finland has progressed in the promotion of corporate responsibility reporting and other forms of corporate governance. In April 2004, the Finnish NCP organised a special seminar on the report.
- *Comparison with national law.* The NCP from New Zealand has compared the Guidelines with national law with a view to identifying areas of conflict (none were found) or areas where the Guidelines impose more stringent requirements than national law.
- *Training of entry-level government economists.* Economists preparing to work for the government of the Netherlands received training in the Guidelines. This year's annual study

tour of “young policy advisors” took place in India. The agenda included corporate responsibility discussions with Dutch companies in India and with Indian companies.

- *Norwegian Petroleum Fund uses Guidelines as a benchmark.* The government has proposed new ethical guidelines for the management of the Government Petroleum Fund (the Fund invests North Sea oil revenues) that will cover exercise of ownership rights to promote long-term financial return, negative screening to exclude companies that produce weapons whose normal use violates fundamental humanitarian principles and exclusion of companies in which there is deemed to exist an unacceptable risk of contributing to violations of fundamental humanitarian principles, gross violations of human rights, gross corruption or severe environmental degradation. The Fund will be based on the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the OECD Corporate Governance Principles.
- *Major international conference on the role of development cooperation agencies in corporate responsibility.* On 22-23 March, the Swedish development cooperation agency sponsored a conference which brought together OECD and non-OECD actors to discuss such issues as building local responsible business practices, corruption and transparency, corporate responsibility standards and norms in developing countries and private companies in conflict prone zones. The Guidelines were presented to the conference by the Chair of the OECD Investment Committee. The report from the conference is available on www.ud.se/ga.
- *Swedish Partnership on Global Responsibility.* The Partnership, discussed in the 2003 NCP report, is a Swedish government initiative that encourages Swedish companies to become “ambassadors for human rights, core labour standards and a sound environment all over the world. Its points of departure are the UN Global Compact and the OECD Guidelines for Multinational Enterprises. The Secretariat in charge of the Partnership keeps track of information on international developments in corporate responsibility, international systems of rules and conventions and practices experience and research results. It also organises and facilitates a wide range of activities such as counselling in-house training, network building, seminars and workshops. The OECD Guidelines are used in these activities.
- *State owned enterprises.* In December 2003, the Swedish Minister for Industry and Trade sent out a questionnaire to 34 out of 59 state owned companies, asking them about their work related to the implementation of the OECD Guidelines and the principles of the UN Global Compact. The questionnaire was followed up by a seminar in June 2004. The Swedish NCP is closely involved with this work, through which the government seeks to “lead by example.”
- *Promotion by the European Commission.* The Commission’s European Multi-stakeholder Forum brings together business and business federations, trade unions and NGOs to promote best practice and innovation in corporate responsibility. The Forum’s Development Roundtable has examined case studies of how to implement corporate responsibility practices in developing countries. The Roundtable on “Improving knowledge about CSR and facilitating the exchange of experience and good practice” looked at a Guidelines’ specific instance based on a presentation by the Czech Republic’s NCP. Two other events also permitted promotion and discussion of the Guidelines. The Commission seeks to have a coherent policy on corporate responsibility – it has cited the Guidelines in its communications on such issues as conflict prevention, human rights, core labour standards

and sustainable development. The Commission also sponsored four regional outreach seminars on the Guidelines.

- *Promotion by the Committee Chair.* The CIME Chair actively promoted the Guidelines over the reporting period. He presented the Guidelines in Stockholm (conference on development cooperation and CSR); London (handling of UN Expert Panel reports); Amsterdam, (responsible investment); Lisbon (World Congress of Consumers International); Lusaka, (TUAC/FES workshop); Amsterdam (Annual Conference of the International Corporate Governance Network); Brussels (EU multi-stakeholder forum).

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, Belgium, Brazil, Canada, Estonia, France, Finland, Italy, Japan, Korea, Lithuania, Mexico, New Zealand, Netherlands, Poland, Portugal, Slovenia, Switzerland, United Kingdom);
- Consultations with national partners (Australia, Belgium, Brazil, Chile, Canada, Czech Republic, Denmark, Estonia, Finland, Iceland, Ireland, Japan, Korea, Mexico, New Zealand, Netherlands, Norway, Portugal, Poland, Slovak Republic, Spain, the United Kingdom, the United States);
- Newsletters, interviews, articles in the national press or other promotion through the media (Belgium, Chile, Denmark, Switzerland, United States);
- Participation in conferences organised by non-governmental actors (Argentina, Australia, Belgium, Canada, Chile, Germany, Italy, Mexico, Slovak Republic, Switzerland, United Kingdom, United States);
- Cooperation with universities and think tanks (Canada, Chile, Japan, Slovak Republic, Sweden, Turkey, United States);
- Development of promotional material (Austria, Germany, Japan, Mexico, New Zealand, Poland, Portugal, Spain, Turkey);
- Website development (Australia, Portugal, United Kingdom).

III.b. Promotional activities within governments

- Promotion with and training of embassy and consular staff (Australia, Canada, Portugal, Spain, United Kingdom); the UK NCP presents the Guidelines to Commercial Officers from British Embassies as part of their induction/refresher course (every six weeks).
- Trade and Investment Promotion missions or activities (Canada, Germany, Netherlands, United Kingdom).
- Inter-ministerial promotion of corporate responsibility (Canada, Chile, New Zealand, United States); The New Zealand NCP has asked all government departments to conduct a comparison of the guidelines with the areas of national law for which that department is responsible.

- Promotion through overseas development agencies (Canada, Sweden).
- Answering questions from Parliaments, Ombudsmen or other government bodies (Denmark, European Commission).

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 expression in other aspects of national policy, including export credit and investment promotion or guarantee programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Fifteen NCPs report that such links exist. Relative to the 2003 version of this table, the main change is in the UK text describing how the Guidelines are to be used by the UK export credit agency.

III.d. High level promotion

In April, 2004, the United Nations Secretary General cited the Guidelines in a presentation to the United Nations Security Council. The full text of the presentation -- entitled "The Role of business in armed conflict can be crucial -- for good and for ill" -- is available as Archive document 4.

The G8 Labour and Employment Ministers Conference (meeting 14-16 December 2003 in Stuttgart, Germany) encouraged in its conclusions all companies -- including small and medium-sized companies to respect the OECD Guidelines.

Three Netherlands' Ministers -- Economic Affairs, Development Cooperation, Social Affairs and Employment -- participated in Guidelines promotion during the reporting period.

The Ambassador for the Swedish Partnership for Global Responsibility held a presentation about the Partnership and the OECD Guidelines at the EU Italian Presidency's corporate responsibility conference in Venice, November 2003.

The United States Secretary of State promoted the Guidelines in October 2003 at a meeting for the Secretary of States' Award for Corporate Excellence.

EC Trade Commissioner has participated as a speaker in a number of seminars on international investment and corporate responsibility, including in the European Parliament, and has consistently promoted the Guidelines.

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

Australia	Export credit and investment promotion	<p>Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines.</p> <p>The Australian NCP has developed a comprehensive website including access to the Guidelines, related documentation, links to related sites, procedures for lodgement and review of specific instances, a notice-board advertising coming events and a secure site offering its consultation group secure access to official CIME documents.</p> <p>Many Australian government agency web sites provide links to the Australian NCP site.</p>
Canada	Export Credits	<p>The Export Development Corporation (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.</p>
Czech Republic	Investment promotion	<p>There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the CR. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.</p>
Estonia	Investment promotion	<p>The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.</p>
Greece	Investment promotion	<p>The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.</p>
Finland	Export promotion	<p>This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.</p>
France	Export credits and investment guarantees	<p>Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines ("<i>avoir pris connaissance des Principes directeurs</i>").</p>
Germany	Investment guarantees	<p>A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.</p>
Israel	Investment Promotion Centre	<p>The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.</p>
Japan	Trade-investment Promotion	<p>The ASEAN-Japan Centre is an international organization which was established based on the Agreement Establishing the ASEAN Promotion Centre on Trade, Investment and Tourism signed by the governments of ASEAN and Japan. The Japanese NCPs have built up a linkage to the organisation's website in order to provide information on the Guidelines.</p>

Latvia	Latvian Investment and Development Agency (LIDA)	<p>The Guidelines (basic texts) are available electronically on the sites of the MFA (www.mfa.gov.lv) and Latvian Investment and Development Agency (LIDA) (www.lida.gov.lv).</p> <p>The Guidelines and the relevant decisions of the OECD Council have been translated in the Latvian language.</p> <p>The LIDA plans a seminar in order to promote information on the Guidelines and NCP.</p>
Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive 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.
Slovenia	Investment promotion, export credits and investment guarantees	Both organisations have added links to the NCP web site. Export credits and investment guarantees (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
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 now in the guarantee documentation. "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.

III.e. Promotion by the OECD Secretariat

OECD Forum 2004, held May 12-13 2004 in conjunction with the OECD Ministerial Meeting, included a session on the “Role of Corporate Responsibility and the OECD Guidelines for Multinational Enterprises”. The panel for this session included a journalist and representatives from the business, trade union and academic communities. The audience was also given an opportunity to participate in the discussions. A summary of the event appears in Archive document 6.

A Guidelines promotion event focusing on the environment chapter of the Guidelines was organised in association with the Global Forum on International Investment, held in South Africa from 17-18 November 2003.

The OECD Secretariat accepted invitations to present the Guidelines at many meetings over the period. Highlights include presentation of the Guidelines’ anti-bribery chapter to a UN Global Compact Policy Dialogue held by the Compact as part of its consideration of whether to add a tenth, transparency principle. Presentations were also made to specialised business associations (e.g. French Observatory on the Societal Responsibility of Enterprises, World Business Council for Sustainable Development), various development assistance agencies (e.g. the French Development Agency), business schools, think tanks and at various international corporate responsibility conferences. The Secretariat also presented the Guidelines to the press and to other OECD bodies.

The Secretary-General contributed an article in May 2004 for inclusion in a book on Corporate Social Responsibility to be published by the International Bar Association and Kluwer Law International. Deputy Secretary-General Hecklinger delivered a keynote speech at a Chatham House “Corporate Responsibility in Practice” conference in March 2004.

The Investment Committee cooperated with Global Reporting Initiative (GRI) as it developed a table exploring and summarising the synergies and complementarities between the OECD and GRI Guidelines.

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 companies’ operations. In some cases, the specific instances are being or have been considered by more than one NCP – thus, a given specific instance could be included in the counts of two or more NCPs.

The individual NCP reports for the June 2003- June 2004 implementation cycle indicate that new specific instances were raised and that several were concluded.

IV.a. Specific instances – nature and numbers

In order to improve its reporting on the handling of specific instances, the OECD Investment Committee agreed in April 2004 that a new historical archive table should be included in subsequent annual reports on the Guidelines. This table can be found in Annex 3.

Some 78 specific instances have been filed with NCPs. Individual NCPs reports indicate the following numbers of specific instances since the 2000 Review: Austria (2), Belgium (1), Brazil (1), Canada (4), Chile (1), Czech Republic (5), Denmark (2), Finland (1), France (11), Germany (6), Japan (5), Korea (3), Mexico (1), Netherlands (11), Norway (1), Poland (2), Portugal (1), Spain (1), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (3) and United States (11).

Most specific instances concern Chapter IV (Employment and Industrial Relations). However, some deal with other issues such as other human rights, environment, combating corruption and political involvement.

IV.b. Selected specific instances described in individual NCP reports

Brazil. The Brazilian NCP has discussed an Italian multinational enterprise's labour relations practices with the company's management and with Brazilian trade unions. Tensions had arisen during the company's relocation of its agri-food activities in Brazil. The NCP found that the company had offered compensation to the affected workers that was above the level required by Brazilian law, but that it could have consulted more extensively with its workers prior to taking the decision. At the same time, the Brazilian NCP recognised that the company has the right to make plant closure decisions. In June 2003, the NCP encouraged the company to seek more actively the participation of affected parties when making future decisions that might adversely affect the communities in which it operates.

Chile. In September 2002, the Chilean NCP received a request from Dutch and Chilean NGOs to consider a specific instance involving the labour and environmental management practices of a Dutch fisheries and aquaculture company, Marine Harvest S.A., operating in the vicinity of Puerto Montt, Chile. The request raised a broad range of issues, including legal compliance, freedom of association, right to collective bargaining, protection of artisanal fishing rights and protection of the environment. The NCP met several times with the parties and requested information from the Dutch NCP. It visited the company's facilities, interviewed trade union leaders and met with representatives of local associations. The NCP also asked for expert advice on environmental issues in the fisheries sector and requested a report from Chile's National Labour Directorate. After concluding its consideration of this matter, the NCP made a public statement (Archive document 9) and published a detailed report containing recommendations designed to reduce tensions and to improve compliance with fisheries and aquaculture regulations and to improve the company's local suppliers' compliance with labour regulations. The report proposes that an ongoing dialogue be initiated between the company, the NGOs and various local associations. The NCP's report states that the constructive dialogue established by its consideration of the instance created positive results for all the interested parties.

Czech Republic. In October 2003, a trade union raised a specific instance regarding a Swiss-owned multinational enterprise with operations in the Czech machinery maintenance sector. The submission cited the labour and industrial relations chapter of the Guidelines. Two negotiating sessions were held to find a solution acceptable to all parties. The results were made publicly available through the Ministry of Finance's press service. The Czech NCP report states that "all the parties involved appreciated the procedure and expressed their satisfaction with the solution itself". The Czech NCP presented its handling of this instance to the OECD Investment Committee as part of its exchange of views on NCP procedures.

France. A French trade union asked the NCP to look into the declaration of bankruptcy by the French subsidiary of the Finnish company ASPOCOMP Oyj, despite the signing of a redundancy scheme (a plan for mitigating the impacts of a mass redundancy) with its French employees. The French NCP contacted all parties to this specific instance as well as the Finnish NCP in order to obtain

the information about what headquarters knew about the financial difficulties of its subsidiary at the time the redundancy scheme was signed. Based on the information it was able to collect and on the chronology of events, the NCP decided that, if headquarters knew about the subsidiary's financial condition and still let the subsidiary commit to a redundancy scheme, then this would not be compatible with recommendation 6 of the Employment and Industrial Relations Chapter. It also concluded that the subsidiary did not inform employees of its problems even though its auditor had initiated a warning procedure (which warns of serious financial difficulties) at about the same time. See Archive document 7 for the final statement on this specific instance.

Germany. In September 2002, the German NCP received a request by the Clean Clothes Campaign (CCC) to consider a specific instance against a German manufacturer of sports equipment. Based on a report by Oxfam, the CCC claimed that the Indonesian suppliers of the German manufacturer in Indonesia had not observed the recommendations in Chapter II (General Policies) and Chapter IV (Employment and Industrial Relations). After numerous conciliation proceedings and a constructive dialogue, the NCP closed the specific instance in May 2004 and issued a public statement which was posted on the Ministerial homepage of the German NCP (see Archive document 10). The statement notes that there are ongoing disagreements on the basic facts of the case (despite efforts by both the company and the NGO to clarify the situation in Indonesia). The parties have agreed to exchange information and to promote further improvements of labour conditions in Indonesia.

Netherlands. Two labour unions asked the Dutch NCP to consider the behaviour of an engineering and construction company with operations in Myanmar. In a tripartite meeting, the trade unions and the company agreed that they would look for ways to contribute to improving the situation in Burma. One of the actions that resulted from these discussions was the decision by the company to visit the Ambassador of Myanmar in London (a union representative was also present). During the meeting, the company expressed its concern about human rights violations and about use of forced labour in Myanmar⁵.

V. The UN Expert Panel Report

In February 2004, the OECD Investment Committee issued a statement on activities undertaken by it and by NCPs in response to the issues raised by the United Nations Expert Panel on Illegal Exploitation of Nature Resources and other Forms of Wealth in the Democratic Republic of Congo (DRC) in its reports to the UN Security Council. This section is based on this statement, with additions for developments since February 2004⁶.

In June 2000, the UN Security Council asked the UN Secretary General to establish the Expert Panel. The Panel produced three reports, two of which referred to the OECD Guidelines for Multinational Enterprises. In its October 2002 report (S/2002/1146), the Expert Panel claimed *inter alia* that 85 companies had not observed the OECD Guidelines for Multinational Enterprises and challenged the governments adhering to the Guidelines to use them to promote responsible behaviour among companies active in the DRC. In October 2003, the Panel reported on its efforts to verify, reinforce and update its earlier findings. This report describes the conclusions drawn by the Panel from its dialogue with many of the companies accused of not observing the Guidelines in its 2002 report.

In January 2003, the Chair of the Investment Committee wrote to the UN Security Council expressing general support for the work of the Panel and informing it that the adhering countries take

⁵ See www.oesrichtlijnen.nl – national contactpunt/verklaringen for more information.

⁶ The full statement may be found at <http://www.oecd.org/daf/investment/guidelines/>

seriously their role of furthering the effectiveness of the Guidelines (the Box provides a chronology of communications on this matter). The Chair's letter also stated that the Committee would welcome the opportunity to co-operate with the Panel. It hoped to receive information on which the Panel based its conclusions and offered to make it available to the NCPs. In Resolution 1457, the UN Security Council asked the Expert Panel to provide relevant information to the Committee and to the NCPs. The Panel met with the Committee Chair and relevant NCPs in April 2003 to discuss cooperation. The Panel presented its final report (S/2003/1027) in October 2003 and its mandate has now ended.

At the December 2003 meeting of the Committee, only three NCPs (out of the 10 NCPs from countries where enterprises accused by the Panel are based) reported having received some information from the Panel by the end of its mandate. Two of the NCPs reported that the information received tended to be general in nature (not specific to the Panel's accusations) and that it did not cover all the companies cited in the October 2002 report. Several NCPs have taken up consideration of "specific instances" in relation to multinational enterprise activity in the DRC (see below). In addition, several NCPs (Belgium, Canada, Finland, Germany, Sweden, United Kingdom, United States) have proactively contacted the companies named in the report (even in the absence of information from the Panel) in order to enquire about their activities and to stress the importance their governments attach to responsible business conduct in "difficult" environments such as the DRC.

The Investment Committee concluded that, while national experiences were mixed, there is room for improved cooperation between the Committee and any future Expert Panels that might be mandated by the UN Security Council. The Chair of the Committee has written a letter (see Archive document 1) that has been transmitted by the OECD Secretary General to the UN Secretary General. The letter suggests ways that future cooperation might be enhanced.

A number of NCPs continue to engage with some of the companies named by the Panel. The following describes steps and decisions taken by NCPs since the Panel issued its final report:

- *Belgium.* The Expert Panel interviews with Belgian companies were followed by the Belgian ambassadors to those countries. The Belgian NCP received 7 dossiers from the Expert Panel. The 7 companies concerned have been interviewed by the Belgian NCP with a view to forming a preliminary evaluation of each case. The Belgian NCP intends to follow the procedural guidance for specific instances as it pursues its examination of these dossiers.
- *Canada.* The Expert Panel's third and final report put seven of the eight Canadian companies in the category – "Resolved – no further action required". The report listed one Canadian company as "Pending Cases with Government" and requested further enquiry by the government. The NCP has accepted the conclusions of the Panel's report and is in the process of following up with the eighth company. A representative of the NGO coalition was informed of the NCPs approach in a February 2004 meeting.
- *France.* The French NCP is currently engaging with a transport company that appeared in category V of the Expert Panel Report ("Parties that did not react to the Panel report").
- *Germany.* The German NCP has conducted exploratory talks with the German companies named in the Panel's report. This process of contacting and discussing with companies has led to a considerable increase of awareness of the Guidelines and in the likelihood that they will be taken into account in future operations in the DRC. The Panel report of October 2003 points to only one case that will require further clarification, but the NCP has had difficulty obtaining sufficient information to enable it to determine whether there has been non-compliance with the OECD-Guidelines.

- *Netherlands.* The Dutch NCP looked into an NGO request to consider a case related to the Expert Panel’s claim that a Dutch company had “violated” the Guidelines. After several meetings with the company and NGOs, the NCP decided that the instance should be declined due to the lack of an “investment nexus”.
- *United Kingdom.* The UK National Contact Points has issued a public statement (Archive document 8) on the Expert Panel’s claims regarding DeBeers. The statement says that the claims are “unsubstantiated.”
- *United States.* The US NCP has determined that no further involvement is warranted given that all of its companies were included in Category I (Resolved – No further action required) of the Panel’s final report.

Box. Chronology of Communications on the UN Expert Panel’s DRC Reports

February 2003. The CIME Chair (the OECD Investment Committee has taken over CIME responsibilities as of April 2004) transmits a letter to UN Secretary General. It notes that NCPs take their responsibilities seriously and asks for the information backing up the Panel’s claims.

April 2003. Representatives of the 10 NCPS with companies named in the report meet with the UN Expert Panel. The CIME Chair sends an email to UN Ambassador who is the Head of the Panel, thanking the Panel for its promised cooperation and asking that information be sent to the NCPs.

May 2003. Email from the Head of the Expert Panel. He reports on the activities of the Expert Panel and “suggests that it might be useful if the NCPs were to receive information on companies that have responded to the Panel in identifying problem areas”.

June 2003. The annual NCP meeting reveals that no NCP has received information, though several state that they have asked the Panel for it.

July 2003. The CIME Chair emails the Head of Expert Panel repeating the Committee’s request to receive the information backing up the Panel’s claims.

August 2003. The Head of the Expert Panel sends a letter to the CIME Chair expressing his willingness to send information “in the coming weeks”.

September 2003. At a CIME meeting, cooperation with the Expert Panel is discussed. No information has been received. The Chair sends a letter to the Head of the Expert Panel stating that the lack of information is a “serious barrier to NCPs being able to take up their responsibilities.”

October 15. Email from the Head of the Expert Panel. This contains a list of the “category III companies” from the October 2003 report (that is, of “unresolved cases referred to NCPs”).

December 2003. The CIME discusses the Panel’s final report and cooperation with the Panel and decides that there is room for improvement.

January 2004. The CIME Chair writes the UN Secretary General suggesting how future cooperation might be enhanced.

The Investment Committee, which has oversight responsibility for Guidelines implementation, recognises that companies with operations in the DRC face a wide range of ethical challenges – human rights, bribery and political influence, disclosure of information, labour management, environment, and management of relations with supply chains and with local partners. Finding appropriate responses to these challenges is made more difficult by the fact that host country institutions (both public and private) may not be working well. In particular, public sectors may not have been willing or able to provide basic services that support corporate responsibility (e.g. protection of the rights framework, appropriate regulation, and effective law enforcement).

The Committee has agreed to undertake a project that will explore some of the generic corporate responsibility issues raised by doing business in countries affected by conflict, such as the DRC. This work will build on the Panel's reports, on previous Committee work on business and conflict and on the DAC Guidelines on Helping Prevent Violent Conflict. The purpose of the work will be to assist companies, NCPs and other actors to understand better what it means to conduct business responsibly in the DRC and other "weak governance zones". This project will also draw on other OECD instruments, such as the Anti-Bribery Convention and Recommendation, Corporate Governance Principles and Guidelines for Avoiding Conflict of Interest in the Public Service.

VI. Follow-up on issues raised at the June 2003 Meetings

This section follows up on a number of the strategic issues for Guidelines implementation that were identified in the Chair's summary of the 2003 Annual NCP Meeting and of the Corporate Responsibility Roundtable. This section looks at the following issues:

- NCP procedures and parallel legal proceedings;
- Improving the transparency of handling of specific instances;
- The BIAC request for assistance for companies dealing with solicitation;
- Determining whether and how the Guidelines are becoming a useful tool for international business.

VI.a. NCP procedures and parallel legal proceedings

The 2003 Summary Report of the Chair of the NCP Meeting notes that, during the June 2002-2003 implementation period, the Committee and its Working Party have "invested heavily in their consideration of NCP procedures. This discussion has shown that NCPs felt comfortable with the framework provided by the Council Decision and its Procedural Guidance." Despite this broad agreement on suitability of the general framework, there appear to be some significant and unexplained differences in practice. The report then proposes that the Committee and its Working Party pursue a case-based approach to ongoing consideration of this issue. Under this approach, individual NCPs would volunteer to share and discuss their experiences in handling specific instances.

The Czech, Netherlands and Swedish NCPS volunteered to present their experiences at the December 2003 meeting of the Working Party. Japan and Belgium presented their experiences at the April 2004 meeting – the focus of these presentations was on specific instances that are raised when there are parallel legal or administrative proceedings.

Delegates concluded that this experience sharing was useful – it helped NCPs understand each other's approaches to specific instances. Some of the key findings of these discussions are:

- *Satisfaction with the Council Decision and its Procedural Guidance.* All five ‘volunteer’ NCPs confirmed their satisfaction with the official guidance for handling specific instances – it establishes a useful framework for considering specific instances without unduly limiting NCP’s room for manoeuvre.
- *NCPs need flexibility in dealing with specific instances.* The discussions brought into relief the diversity of NCP experiences. The circumstances underpinning the specific instances described by the “volunteer” NCPs varied considerably (complexity of issue covered, relationship between the NCP and the interested parties, availability of information about the specific instance, etc.).
- *Balance between confidentiality and transparency.* Public statements were made by some NCPs at the beginning and the end of the process of considering specific instances. The Swedish NCP noted that the handling of information disclosure over the course of the specific instance could have an “impact on finding a solution”. There seemed to be broad agreement on the usefulness of making public statements at the conclusion of their consideration of their specific instances -- four of the five NCPs issued such statements. In some cases, these statements represented a consensus among the parties to the instance while, in others, they expressed only the views of the NCP. The Czech NCP stressed that there can be no hard and fast rule as to whether companies should be named in these statements – companies’ names appear in two Czech public statements, but not in a third (where the NCP felt that anonymity was useful).
- *Collecting information.* While two of the “volunteer” NCPs described instances involving business operations in their own countries, three were asked to consider business conduct in non-adhering countries. Thus, access to information and knowledge of local circumstances were highly variable among the specific instances presented and NCP approaches to collecting information were also variable. While some relied only on information provided by the parties to the instances, others invested heavily in information collection – for example, members of the Swedish NCP travelled to Ghana on a fact-finding mission. The Swedish embassy in the region was also used as a source of information (a practice also adopted by other NCPs; see section VI.c).
- *Establishing procedures.* Most of the NCPs have either formal or informal procedures that seek to adapt the procedural guidance to local institutions and circumstances. The Netherlands’ procedural measures call for providing minutes of meetings within a week (the NCP notes that keeping parties informed of progress puts them in a position of seeing that dealing with a specific instance and trying to reach consensus among parties can be very time consuming).

The NCPs of Belgium and Japan presented specific instances that were considered in parallel with legal or administrative proceedings in the host country. In the case of Japan, the parallel legal proceedings were in non-adhering countries, while the Belgian specific instance concerned business operations in Belgium. The Czech NCP had also considered a specific instance that was the subject of Czech legal proceedings.

Japan noted several key considerations that influenced its approach to this issue. First, all of its specific instances concern the employment and industrial affairs chapter of the Guidelines. Second, they all concern business conduct in non-adhering countries. The NCP noted that it was difficult to make contact with the parties directly concerned by the instance and it feared (unintentionally) interfering with the domestic affairs of these countries.

The Japanese NCP stated that its current thinking was that it ought to give priority to the domestic institutional and legal framework. When domestic legal processes are underway, NCPs should seek to collect relevant information and to develop an understanding of the issue. When the domestic proceedings have reached a conclusion, the Japanese NCP views its role as “keeping an eye on the implementation of the binding conclusions”.

The Belgian NCP handled a specific instance involving Marks and Spencer’s closing of its retail operations in Belgium. This instance was considered in parallel with administrative proceedings conducted by the Belgian Labour Ministry regarding respect for collective labour agreements and consultations with unions when decisions on mass redundancies are taken. The Belgian NCP notes that, in this area, Belgian domestic law is stricter than the Guidelines. It also noted that the decisions of the Ministry of Employment and Labour were a major influence on its own approach to this issue. Consideration of the instance was further complicated by the fact that the French NCP had been asked to look into similar issues regarding Marks and Spencer’s closing of its French retail sites and by the fact that the UK securities laws which applied to Marks and Spencer also have provisions as to when information is made publicly available and when it is made available to particular stakeholders (e.g. employees).

The general impression left by the discussion is that NCP consideration of specific instances in parallel with legal and administrative proceedings continues to be an area of concern for Guidelines implementation. Not only is such parallel consideration quite common, but it would appear that many NCPs are unsure of how it should be handled. Numerous Working Party delegates expressed an interest in further work in this area.

VI.b. Improving transparency

Trade unions and NGOs expressed concerns about the transparency of NCPs’ handling of specific instances at both the 2002 and 2003 Annual Meetings of National Contact Points⁷. As part of their evaluation of their own practices over the past two years, NCPs have looked carefully at disclosure of information during the entire process of handling specific instances (see also “Background Paper on NCP Procedures”, pages 45-56 of the 2003 Annual Report). Based on the surveys, the recent round of cases studies (see section VI.a) and individual NCPs reports, it would appear that divergences in information disclosure practices persist. For example, while some NCPs do not issue public statements at the end of their consideration of specific instances (presumably because they believe that this decision promotes the best interests of the Guidelines), many do issue such statements (for example, Belgium, Chile, Czech Republic, France, Germany, Netherlands, Sweden and the United Kingdom).

In order to respond to requests for further information on specific instances, the Investment Committee asked, at its April 2004 meeting, that NCPs prepare an historical table on their handling of specific instances. This historical table appears in Annex 3 and is intended to be a permanent feature of Annual Reports on the Guidelines.

VI.c. BIAC request for assistance for companies facing solicitation

The Summary of the 2003 Roundtable on Corporate Responsibility, when describing Roundtable participants’ proposals for enhancing the Guidelines’ contribution to the fight against corruption, states:

⁷ See, for example, page 26 of the 2002 Annual Report and pages 96 and 102 of the 2003 Annual Report.

Perhaps the most innovative proposal ... came from the business community. Business representatives challenged the NCPs to assist companies confronted with solicitation of bribers and extortion... They argued that NCPs can act as non-judicial gatekeepers into home country governments for multinational enterprises wishing to lodge allegations of serious instances of solicitation. This is perhaps the first time that business has requested a service from the institutions responsible for the Guidelines – a fact that was welcomed by the NCPs. The practical difficulties surrounding the creation of such a facility were noted by several NCPs, but there was also a clear readiness to give serious consideration to the proposal.

BIAC reiterated its request several times after the June Roundtable (see Archive document 5).

The Committee and the Working Group on Bribery considered this issue at several of their meetings. A background note was prepared by the CIME Secretariat that described some of the main strategic challenges and institutional requirements associated with creating such a facility. Investment Committee delegates recognised the need for a broad based approach involving many actors including the business community, NGOs, trade unions, other international organisations and governments from non-adhering countries. The Committee, recognising that reporting on solicitation raises both institutional and legal issues, asked the Working Party on the Declaration and the Working Group on Bribery to develop a joint proposal defining the respective roles of the public and the private sector in collecting information on solicitation and to report back on their work.

As part of its response to this request, the Working Group on Bribery organised a Workshop on "The possible establishment of facilities to report bribery solicitation". The Workshop, held at International Chamber of Commerce (ICC) headquarters in Paris on April 21, 2004 (in association with the International Bar Association's annual anti-bribery conference), was attended by more than 45 participants. In addition to BIAC, TUAC and ICC representatives, eight business sector representatives attended – mainly lawyers from law firms and legal departments of multinational enterprises and representatives from transparency NGOs. The meeting provided a forum in which these actors could contribute their views on how governments can help in fighting the demand side of corruption and on the roles the private sector could play.

The general message from business was clear – they are looking for public recognition of the problem and for assistance in cases of solicitation. BIAC noted that, while deterrence against supply side of corruption has been strengthened, the same cannot be said of the demand side -- in many countries, public officials are free to solicit bribes with impunity.

The discussions indicate that business is facing a variety of problems and is looking for a variety of solutions. Key points include:

- *Awareness and guidance.* A representative from the business community asked for greater guidance from governments on the different anti-corruption instruments and related legislation and on how the legislation would be implemented. Another business representative highlighted the need for governments to help companies learn how to confront corruption.
- *Fighting impunity -- making business' information on solicitation available to anti-corruption practitioners.* Reiterating statements made during earlier discussions of this issue, business representatives noted that they have information about notorious bribe solicitors that may not be usable in a court of law, but that could nevertheless be useful to anti-corruption practitioners in home and host countries.

- *Mitigating adverse effects on business.* Another possible use of information would be assisting companies facing economic costs due to solicitation (e.g. loss of business). It was noted, that ICC Commercial Crime Services provides services – helping companies confronted with illegal activities -- and several public officials stated that their governments sometimes assist companies in this way. Different NCPs reiterated – already in evidence during earlier discussions -- that NCPs may not be the appropriate institution for responding to this need.
- *Demand side solutions for a demand side problem.* A US lawyer noted that some of the proposals being discussed involved a supply-side solution for a demand-side problem. He supported the idea of using peer reviews to improve public sector management in host countries where solicitation is a problem.
- *Legitimacy and reaction of non-OECD actors.* Trade union representatives stressed the importance of considering the reaction of non-OECD actors and of involving them in further discussions of this issue. They cited the danger of creating such a facility without adequate non-OECD involvement. They also warned that OECD governments might be perceived as strongly promoting measures with non-OECD governments that are not necessarily common within the OECD area.

Overall, the discussions suggested that there is no "silver bullet" for solving the problem of solicitation. Durable solutions will require partnership and sustained efforts. Workshop participants recommended that a private-public task force be set up to discuss how the various concerns of business might be addressed in more concrete terms. There was general agreement that the ICC Commercial Crime Services might be an interesting partner in this respect.

Participants also recommended that governments find ways to communicate more effectively on the issue of solicitation. The Working Group on Bribery will consider the Workshop's conclusions at its June 2004 meeting and hopes to report on its views of the feasibility of the Workshop's conclusions at the Investment Committee's September meeting.

VI.d. Are the Guidelines emerging as a useful tool for promoting appropriate business conduct?

The 2003 Annual Report noted that interest in and use of the Guidelines were growing, but also that adhering governments still “face ongoing challenges when trying to ensure that the Guidelines live up to their potential as a vital instrument for the international business community and for home and host societies” (page 26, 2003 Annual Report). This section takes stock of the impact of the Guidelines.

Several events and studies suggest that Guidelines are becoming quite well known and are being extensively used as a benchmark. In addition to the evidence cited earlier in this report (e.g. references to them by the UN Secretary General Kofi Annan and in the G8 Summit Declaration), the Guidelines now routinely figure in surveys on corporate responsibility practices. As noted earlier, the Guidelines were incorporated in the World Bank Group's corporate practices survey. They also figured in the World Business Council for Sustainable Development's corporate responsibility toolkit and in Ethical Corporation Magazine's recent overview of “international standards for corporate

responsibility”. The latter article describes the Guidelines as being one of a select set of instruments that have “attained a high degree of recognition and a significant following⁸.”

In addition to being a prominent international benchmark, the specific instances procedure of the Guidelines also allows for case-based exploration of ethical issues encountered in concrete business situations. Drawing on what is now 4 years of NCP experience with specific instances, this section proposes several areas in which the Guidelines are emerging as a unique and useful corporate responsibility instrument:

- *Emergence of embassy networks as a transparency mechanism.* It is becoming common for NCPs to use embassies (as well as overseas development assistance programs) as sources of information for consideration of specific instances (e.g. Canada, Korea, Sweden, United Kingdom). Although these institutions have undoubtedly been used by governments in this way before, the Guidelines provide a channel for formalizing this process and making the resulting information more available to public dialogue on responsible business conduct.
- *Empowering trade unions and civil society actors from the non-OECD area.* Many of the specific instances have been brought by trade unions and NGOs from the non-OECD area working in partnership with OECD-based actors. The Guidelines strengthen these non-OECD actors by providing an international forum in which they can voice their concerns and by allowing them to gain experience with international institutions and procedures. Examples of partnership between OECD and non-OECD actors can be found in specific instances considered by Canada, Korea, Netherlands, Sweden and the United Kingdom.
- *A way for governments to engage with companies in a non-judicial setting.* Several actors (e.g. the Czech NCP in its presentation of its handling of specific instances and the UN Expert Panel) have noted that the Guidelines implementation processes allow governments to engage with companies with greater flexibility and with faster and more cooperative outcomes than would be allowed by legal proceedings.
- *A tool for companies.* Trade unions and NGOs have been interested in the specific instances procedure for some time. But companies are now starting to realize that it can be a useful tool for them as well. Business recently asked the Guidelines institutions to assist them in dealing with bribe solicitation and ways of responding to this request are currently being explored (see Section VI.c of this report). In addition, the specific instances procedures can help provide concrete guidance to companies – it can reassure them or set the record straight (for example, see Annex document 8) while sometimes also helping them to identify shortcomings.

VII. Progress to date and considerations for future action

NCPs noted with satisfaction the continued growth in the use of the Guidelines by companies, trade unions and NGOs over the June 2003-June 2004 period. They reaffirmed their commitment to effective implementation of the Guidelines and took note of partners’ ongoing concerns about whether the June 2000 Decision’s call for “functional equivalence⁹” is being met. NCPs recalled the

⁸ January 2003 issue of *Ethical Corporation Magazine* “International Standards for Corporate Responsibility” by Malcolm MacIntosh, Ruth Thomas, Deborah Leipziger and Gill Coleman.

⁹ ‘Functional equivalence’ means that, although NCPs may have adopted different institutional structures and implementation practices, they should still perform to the same standard in terms of their visibility, accessibility, transparency and accountability.

significant efforts they have made over the past two years to improve the effectiveness, transparency and timeliness of their procedures. Despite this progress and their growing confidence that the Guidelines are a useful instrument for promoting appropriate conduct by international business, NCPs recognised the validity of some concerns. In particular, they underscored the need to speed up handling of specific instances (but noted that other parties to specific instances also sometimes slow consideration by not reacting to NCP correspondences or by not providing information in a timely manner).

The NCP discussions and consultations clearly indicated that the scope of the Guidelines – especially the concept of “investment nexus” – still poses problems for trade unions and NGOs. In its statement published in the 2003 Annual Report (Chapter VI, “Scope of the Guidelines”), the Investment Committee recognised the broad relevance of the Guidelines’ concepts and principles for business conduct. However, it also stressed that the Guidelines are part of a broader investment instrument and that “their application rests on the presence of an investment nexus.” The statement notes that NCP consideration of whether to take up specific instances involving supply chain issues needs to be done flexibly and that decisions need to be made on a case-by-case basis.

NCPs strongly reaffirmed their support for the 2003 statement on the “investment nexus”. They noted that they had been called upon to deal with many specific instances involving supply chains – they had invoked the lack of an “investment nexus” in some instances and agreed to take up consideration of the issues in others. The investment nexus principle is not a means for limiting the scope of the Guidelines relative to the original scope intended by the drafters of the 2000 revision. However, NCPs also recognised that this was an issue that would require continued vigilance in order to protect the integrity and credibility of the Guidelines and associated NCP procedures.

The NCPs identified the following as areas in which the Investment Committee consider taking up work during the June 2004-June 2005 cycle of implementation:

Parallel legal proceedings. The 2002 and 2003 Annual Reports flagged the importance of exploring the relationship between Guidelines implementation and national legal and administrative procedures. This issue was also discussed at the April 2004 meeting of the Working Party on the Declaration. The discussions at the 2004 NCP meeting and the consultations confirmed that this is a continuing and increasingly pressing concern for NCPs and for TUAC. Some NCPs stated that they had encountered particular difficulties with this issue in the context of specific instances dealing with business conduct in non-adhering countries.

Non adhering countries. NCPs highlighted the importance of further consideration of the relationship between the Guidelines and non-adhering countries. Non adhering countries present numerous challenges for both promotion (e.g. why should actors from non-adhering countries be interested in the Guidelines?) and implementation (e.g. how does one get information about business conduct in non-adhering countries?). NCPs suggested that the role of the Guidelines in non-adhering countries might be a suitable topic for the 2005 Roundtable on Corporate Responsibility.

UN Commission on Human Rights. NCPs noted with interest BIAAC’s invitation to NCPs, the Investment Committee, TUAC and NGOs to work with it in promoting the Guidelines in the context of the work of the UN Commission on Human Rights (see BIAAC Submission to the consultations). The Guidelines were referred to by the UN Sub-Commission on the Promotion and Protection of Human Rights -- an independent advisory body to the UN Commission on Human Rights -- in its draft “norms” on the human rights responsibilities of trans-national corporations. The UN Commission did not adopt the draft norms, but, in its 19 April 2004 decision, requested that the Office of the UN High Commissioner for Human Rights report to it on existing initiatives and standards relating to the

responsibility of trans-national corporations with regard to human rights. BIAC noted that this report will provide an important promotional opportunity for the Guidelines.

NCPs also identified two other areas that might merit further exploration by the institutions charged with Guidelines implementation.

- *Business and human rights.* Business' role in the protection of human rights has arisen on several occasions in the context of Guidelines implementation – including recent work on the Democratic Republic of Congo. NCPs acknowledged that this was an area on which some might criticise the Guidelines for not being sufficiently explicit or detailed.
- *Outsourcing and relocation.* A number of NCPs stressed the importance of exploring the social implications of outsourcing and of relocation of economic activities. Several OECD Committees are working on a horizontal project proposed at the 2004 MCM and relevant to these issues. NCPs proposed that the Investment Committee should monitor this work and consider possible synergies and implications regarding the role of the Guidelines.

Annex 1
Structure of the National Contact Points

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Argentina	Single department	(National Direction of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		
Australia	Single department	Foreign Investment Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds bi-annual interdepartmental meetings chaired by the Australian NCP to discuss Guidelines issues. The NCP holds bi-annual community consultations with business, trade unions and other NGO representatives. In the assessment of specific instances, the NCP may establish a special advisory consultation group of interested parties, including government, members from the business community, labour federations and other NGOs and experts.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economic Affairs and Labour	Other division of the Federal Ministry of Economic Affairs and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments.	Federal Public Service of Economy, PME's, 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 Flemish Region Walloon Region	

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Brazil	Single department	Ministry of Finance	Ministry of Foreign Relations Ministry of Planning, Budget and Management Ministry of Labour and Employment Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Brazilian Central Bank	Representatives from other government Offices can be asked to participate as well as Trade Unions, like CUIT and "Força Sindical"; NGOs that deal with Ethics, like ETHOS; Industry and Trade Confederations; and other institutions like SOBEET (Brazilian Society For Trans-national Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	International Trade Canada	Foreign Affairs Canada International Trade Canada Industry Canada Human Resources 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 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 consults regularly with business, trade unions and other NGO representatives. The NCP works in co-operation with the social partners.
Czech Republic	Single Department	Ministry of Finance	Environmental Protection Agency Ministry of Economic and Business Affairs Ministry of Foreign Affairs	
Denmark	Tripartite with several ministries	Ministry of Employment		

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

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

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	
Germany	Single Department	Federal Ministry of Economics and Labour	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues.
Greece	Single Department	Directorate for International Organisations and Policies, Ministry of Economy		
Hungary	Interdepartmental Office	Ministry of Economy and Transport	Ministry of Economy and Transport Ministry of Finance Ministry of Foreign Affairs	In 2002 after the election Ministry of Economic Affairs and the Ministry of Transport and Water Management were merged. The legal successor is the Ministry of Economy and Transport which was restructured and which kept the task of the Secretariat of HNCP.
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 other ministries.
Italy	Single Department	General Direction for Development and Competitiveness, Ministry of Production Activities	Ministry of Welfare Ministry of Foreign Affairs Ministry of Environment Ministry of Agriculture Ministry of Health	

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Japan	Interministerial body composed of three ministries.	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental Office, with regional governments and several ministries	Executive Committee on Foreign Direct Investment	Ministry of Foreign Affairs Ministry of Finance and Economy Korean Trade-Investment Promotion Agency	
Latvia	The OECD Consultative Board - Interministerial body including representatives of business & labour organisations, Bank of Latvia	EU External Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare The Bank of Latvia Latvian Confederation of Employers Association of Free Trade Unions	The members of the OECD Consultative Board representing various ministries, the Bank of Latvia, business and labour organisations. The OECD Consultative Board holds regular consultations with the governmental institutions involved as well as social partners. The Secretariat of the OECD Consultative Board is directly responsible for the coordination of the activities related to the CIME Cttee. The Secretariat is located in the EU External Economic Relations Department, MFA
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economics	Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industry	The 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	

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Mexico	Single Department	Ministry of Economy	All departments, especially: Ministry of Social Affairs Ministry of Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders.
Netherlands	Interdepartmental Office	Ministry of Economic Affairs	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.
New Zealand	Single Department	Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Industry and Trade	
Norway	Tripartite, with several ministries	Department for Trade Policy, Environment and Resources, Ministry of Foreign Affairs		
Poland	Single Department	Polish Information and Foreign Investment Agency		
Portugal	Single Department	ICEP Portugal Ministry of Economy		
Slovak Republic	Single Department	Ministry of Economy		The NCP belongs as a single department to the Ministry of Economy, under the Division of Enterprise and Tourism, Department of Economic Strategy.
Slovenia	Single Department	Foreign Economic Relations Division, Ministry of the Economy	Other ministries and other parts of the Ministry of the Economy Slovenia Trade and Investment Promotion Agency Slovenia Export Credit Agency	The Advisory Committee has considered if a Single department structure is the best solution. No decision has been made, yet.
Spain	Single Department	General Secretary for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment Ministry of Justice Ministry of Health and Consumption Ministry of Labour and Social Affairs	The NCP liaises with representatives of social partners and NGOs.

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	Ministry of Industry, Employment and Communications Ministry of Environment Ministry of Justice National Board of Trade	The Ministry for Foreign Affairs, Department for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions. The Swiss NCP liaises with other government departments as necessary and has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets as required.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		
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 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.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		

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

Annex 2

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<http://www.bmwi.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oecd.html>

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n

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www.state.gov/e/eb/oecd/

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Commission européenne – European Commission*

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

Annex 3

Specific Instances Considered by National Contact Points to Date

This table provides an archive of specific instances that have been or are being considered by NCPs. The table seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines. Discrepancies between the number of specific instances described in this table and the number listed in section IV.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.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
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.
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	Ongoing	n.a.	The NCP accepted the conclusions of the UN Panel's final report and is making enquiries with the one Canadian company identified for follow-up.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada	Complaint from a Canadian labour organization about Canadian business activity in a non-adhering country.	November 2002	Myanmar	Employment and Industrial Relations; Environment	Ongoing	n.a.	The NCP has offered to facilitate a dialogue between the parties and continues to pursue this goal. The focus of discussion would be on Employment and Industrial Relations.
Czech Republic	Czech subsidiary of a German-owned multinational enterprise involving the right to trade union representation	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	Czech subsidiary of a multinational enterprise involving the right to trade union representation	January 2004	Czech Republic	IV. Employment and Industrial Relations	Ongoing	n.a.	The NCP set it aside until results of a parallel legal procedure are available for further consideration.
Czech Republic	Czech subsidiary of a multinational enterprise involving the right to trade union representation	February 2004	Czech Republic	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration
Denmark	Trade union representation in Danish owned enterprise in Malaysia	February 2002	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Still pending
Denmark	Trade union representation in plantations in Latin America	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Ongoing	n.a.	To be initially assessed (connection to Denmark still to be established)

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
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). http://www.minefi.gouv.fr/TRESO/R/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.oecd.org/dataoecd/33/39/2489273.pdf
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	February 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.	February 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.
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.	October 2003	Turkey, Azerbaijan and Georgia	II. General Principles	Ongoing	n.a.	In consultation with parties
France	DRC – Report by the expert Panel of the United Nations. Violation of the Guidelines by a transport company in the Congo, named in the third report as not having responded to the Panel's requests for information.	October 2003	Democratic Republic of Congo	No information supplied by Panel	Ongoing	n.a.	In consultation with parties

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	September 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 http://www.bmwa.bund.de/Navigat ion/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/Investieren-im-Ausland/oeecd.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
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
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	February 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.	In consultation with parties
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 a common consent between the interested parties on November 2003. Korean NCP decided, in May 2004, to specify the NCP procedures and promote the Guidelines more aggressively..
Korea	Korean company's business relations in Malaysia's wire rope manufacturing Sector	2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Mexico (consulting with the German NCP)	Closing of a plant	2002	Mexico	IV. Employment and Industrial relations	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding. Currently, the parties are negotiating a solution.
Netherlands	Adidas' outsourcing of footballs in India	2002	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
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.
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.
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
Switzerland (consulting with Korea)	Industrial relations on a Korean subsidiary of a Swiss multinational enterprise	November 2003	Korea	IV. Employment and Industrial Relations	Ongoing	n.a.	While the labour dispute between the parties was resolved, some questions relating to the Guidelines procedures are still under discussion. The Swiss NCP issued an intermediate press statement http://www.seco.admin.ch/news/0197/index.html?lang=en

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	Complaint from an international labour organisation over BAT activities	2003	Burma	II. General Policies IV. Employment and Industrial Relations	Concluded	No	There was previously some dialogue between the parties which had reached an impasse. The U.K. NCP acted as a communications facilitator, a dialogue resumed, the company disinvested from Burma and the complaint was withdrawn.
United Kingdom	Activities of De Beers 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 May 2004 http://www.dti.gov.uk/ewt/debeers.doc
Lead UK NCP and Turkish NCP	Oil Pipeline across three states	April 2003	Azerbaijan, Georgia and Turkey	I, II, III, V,	Ongoing	n.a.	Coordinating with lead UK NCP; keeping relevant U.S. parties informed
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
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 CIME, 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 U.S.-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the U.S. 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 through other means.
United States	Employee representation	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United States	Investigate the conduct of an international ship registry	November 2001	Liberia	II. General Policies III. 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 In consultation with parties
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.	
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

Note: n.a. = not applicable

Annex 4

Archive of Documents

Document 1. Letters on Democratic Republic of Congo

Letter from the Chair of CIME to the Chairman of the United Nations Panel of Experts on DRC

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

Paris, 26 September 2003

Dear Ambassador Kassem,

Thank you for the willingness -- expressed in your letter of 8 August 2003 -- to send "in the coming weeks" information on companies contacted by the Panel regarding possible non-observance of the OECD Guidelines for Multinational Enterprises. We congratulate the Expert Panel on the work that it has already accomplished and we note the extension of the Panel's mandate until 31 October 2003.

At its meeting of 17-19 September, the OECD's Committee on International Investment and Multinational Enterprises (CIME) took stock of how co-operation with the Expert Panel has been working. Several National Contact Points (NCPs) with companies appearing on the list in Annex III of the Expert Panel's earlier report (S/2002/1146) have asked the Panel -- through letters, e-mails and telephone calls -- to provide the information backing up its remaining concerns about the companies. My 21 May and 3 July e-mails also request that the Panel's information be made available to the relevant NCPs. These requests follow up on the agreement, made at the 11 April meeting between the NCPs and the Expert Panel, to pursue effective co-operation.

Despite these efforts, NCPs reported that no information backing up the claims against the companies had yet been received from the Panel. The CIME concluded that this lack of information is a serious barrier to NCPs being able to take up their responsibilities in this matter. CIME and the NCPs concerned urge the Panel to respond to the UN Security Council Resolution 1457, which calls on the Panel to make such information available to them. Considering the desirability of retaining the possibility of further

.../...

Ambassador Mahmoud Kassem
Chairman
United Nations Panel of Experts on DRC
P.O. Box 30302
00100 Nairobi
Kenya

exchanges of view between the Panel and CIME/NCPs, it would be most helpful if this information would be made available well before the expiration of the Panel's mandate. We would urge that the Panel refrains from drawing final conclusions regarding the implementation of the Guidelines, without having given CIME and the NCPs the opportunity to act in conformity with their mandate.

Please be assured of the continuing willingness of the CIME and the NCPs to co-operate in addressing the concerns raised in the Expert Panel's report.

Yours sincerely,

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

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

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

Letter from the OECD Secretary General to the UN Secretary General

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

DJJ/2004.3.pn

9 January 2004

Dear Secretary-General,

At its session of 18-20 December 2003, the OECD Committee on International Investment and Multinational Enterprises, which has oversight responsibility for the OECD Guidelines for Multinational Enterprises, took stock of how co-operation has worked between it and the UN Panel of Experts on the Democratic Republic of Congo. I am conveying to you the views of the Committee as expressed in the attached letter by its Chair, for your attention and that of the Security Council. The letter asks for improved co-operation between the UN Security Council and the CIME in questions related to the OECD Guidelines arise in the future work of the Security Council.

Yours sincerely,

Donald J. Johnston

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

Letter from the Chair of CIME to the OECD Secretary General

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

Paris, 18 December 2003

Dear Secretary-General,

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

The Committee congratulates the UN Expert Panel on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo (DRC) on the conclusion of its work. In both its October 2002 report (S/2002/1146) and its October 2003 report (S/2003/1027), the Panel refers prominently to the OECD Guidelines for Multinational Enterprises, an instrument for which the Committee has oversight responsibility.

At its meeting of 16-18 December 2003, the Committee discussed its co-operation with the Expert Panel during the follow-up to the October 2002 report and drew lessons for future co-operation with the UN institutions relating to the OECD Guidelines.

The Committee recognised the difficult conditions under which the Expert Panel was working and, in particular, the need to protect the security of the people who cooperated with the Panel. However, the Committee's discussion also revealed disappointment about the level of co-operation of the Panel with the National Contact Points (which deal with all matters relating to the implementation of the Guidelines in the national context). Although experiences were mixed, several National Contact Points reiterated concerns about their inability to obtain sufficient substantive information from the Panel. It is essential that such information be provided in order for the National Contact Points to fulfil their responsibilities regarding the companies listed in the Panel's reports. I had the opportunity to express this requirement, referring to UN Security Council Resolution 1457, to the Chair of the Expert Panel in communications following the release of the October 2002 report.

.../...

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

If questions relating to the Guidelines arise in the future work of the United Nations, it is the Committee's expectation that contact with the Committee will be made at an early stage and that communication and co-operation will be enhanced.

The Committee offers these observations in the hope that they will be useful in arranging future co-operation with the Security Council. Improved co-operation will help both the Security Council and the CIME to carry out their responsibilities and to meet their shared goal of assisting the DRC and other countries beset by conflict to achieve a path of sustainable development.

Yours sincerely,

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

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

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

Document 2. Public Statement by CIME at conclusion of UN Expert Panel's Mandate

12 February 2004

The following statement by the OECD Committee on International Investment and Multinational Enterprises (CIME) reports on activities undertaken in response to the issues raised by the United Nations Expert Panel on Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of Congo (DRC).

In June 2000, the UN Security Council asked the UN Secretary General to establish the Expert Panel. The Panel produced three reports, two of which referred to the OECD Guidelines for Multinational Enterprises. In its October 2002 report (S/2002/1146), the Expert Panel claimed inter alia that 85 companies had not observed the OECD Guidelines for Multinational Enterprises and challenged the governments adhering to the Guidelines to use them to promote responsible behaviour among companies active in the DRC. In October 2003, the Panel reported on its efforts to verify, reinforce and update its earlier findings. This report describes the conclusions drawn by the Panel from its dialogue with many of the companies accused of not observing the Guidelines in its 2002 report.

The Guidelines, for which the CIME has oversight responsibility, are a government-backed voluntary code of conduct for international business covering such areas as disclosure of information, anti-corruption, environmental protection, respect for core labour standards, protection of human rights and taxation. In January 2003, the Chair of the CIME wrote to the UN Security Council expressing general support for the work of the Panel and informing it that the adhering countries take seriously their role of furthering the effectiveness of the Guidelines. The Chair's letter also stated that the CIME would welcome the opportunity to co-operate with the Panel. It hoped to receive information on which the Panel based its conclusions and offered to make it available to the National Contact Points (NCPs, government offices charged with promoting observance of the Guidelines by multinational enterprises operating in or from their territories). In Resolution 1457, the United Nations Security Council asked the Expert Panel to provide relevant information to the CIME and to the NCPs. The Panel met with the CIME Chair and relevant NCPs in April 2003 to discuss cooperation. The Panel presented its final report (S/2003/1027) in October 2003 and its mandate has now ended.

At the December 2003 meeting of CIME, three NCPs (out of the 10 NCPs from countries where enterprises accused by the Panel are based) reported having received some information from the Panel only by the end of its mandate. Two of the NCPs reported that the information received tended to be general in nature (not specific to the Panel's accusations) and that it did not cover all the companies cited in the October 2002 report. In response to a relevant complaint, one NCP has taken up consideration of a "specific instance" in relation to MNE activities in the DRC. The "specific instances" procedure allows interested parties to call alleged non-observance of the Guidelines to the attention of the NCPs, who are then expected to facilitate discussion and assist the parties in dealing with the issues raised. In addition, some NCPs have contacted companies named in the reports (even in the absence of information from the Panel) in order to inquire about their activities and to stress the importance their governments attach to responsible business conduct in "difficult" environments such as the DRC.

The CIME concluded that, while national experiences were mixed, there is room for improved co-operation between the CIME and any future Expert Panels that might be mandated by the UN Security Council. The Chair of the CIME has written a letter that has been transmitted by the OECD

Secretary General to the UN Secretary General. The letter suggests ways that future cooperation might be enhanced.

The CIME has also agreed to undertake a project that will explore some of the generic corporate responsibility issues raised by doing business in countries affected by conflict, such as the DRC. This work will build on the Panel's reports and on previous CIME work on business and conflict. The purpose of the work will be to assist companies, NCPs and other actors to understand better what it means to conduct business responsibly in the DRC and other "weak governance zones". This project will also draw on other OECD instruments, such as the Anti-Bribery Convention and Recommendation, Corporate Governance Principles and Guidelines for Avoiding Conflict of Interest in the Public Sector.

Document 3. Letter from the Chair of CIME regarding the Request for Clarification from the UK

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

Paris, 13 April 2004

Dear Mr. Lawson,

I am writing you to report on CIME's consideration of the request for clarification that you made at the Committee's December 2003 meeting. Your request asks for "definitive guidance" regarding both the 1991 and 2000 versions of the Guidelines.

With respect to the 1991 version of the Guidelines, the CIME is reluctant to respond to your request. This reluctance stems from a number of considerations. First, the 1991 version has been repealed by the Council and, therefore, has no status as a text for clarification. Second, the current version of the "specific instances" procedure did not exist until the 2000 Guidelines were adopted by Ministers. This fact – and the recognition that the Guidelines text and implementation procedures were negotiated as an integral package – have made CIME reluctant to issue a clarification on a 1991 text that would be used in the context of a specific instance being considered under the 2000 Guidelines. While the 1991 text undoubtedly provides a useful written record of how people conceived of responsible business conduct in the early 1990s, it does not provide a basis for consideration of specific instances in 2004.

With respect to the questions raised on the 2000 version of the Guidelines, the CIMEs view is that the Guidelines text is sufficiently clear and that it allows useful flexibility to NCPs. The CIME also notes that, in their submissions, the UK NCP, the company and the NGO raising the specific instance agree on the answers to the second group of questions.

The CIME would like to call to the three parties' attention the final paragraph of the Guidelines preface. It states that 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 might give rise." The UK NCP -- in partnership with the company and the NGO -- needs to reflect on whether this specific instance is likely to give rise to a constructive dialogue in which positive contributions can be encouraged or difficulties minimised.

cont/...

Mr. Duncan Lawson
Senior Policy Advisor
Department of Trade and Industry
Kingsgate House
66-74 Victoria Street
London SW1E 6SW

If there is potential for such dialogue, then the procedural guidance (item C.2.d) asks the UK NCP to “offer, and with the agreement of the parties involved, facilitate access to non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.” In this context, the company’s view that it is unreasonable to expect that its managers should have been aware of or subject to the 1991 Guidelines might be a relevant input to consideration of the specific instance. Likewise, the NGO’s view that pre-1999 company behaviour needs to be taken into account in order to understand the current situation might be an important consideration.

Finally, the CIME recalls the statement made by the Chair of the Ministerial Council at the time the 2000 Guidelines were adopted. The Chair noted that the “success and effectiveness of the Guidelines will depend on the responsibility and good faith of all parties involved with their promotion and implementation.” The CIME encourages all parties to this specific instance – the UK NCP, the company and the NGO raising the issue – to keep this in mind.

Best regards,

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

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

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

Document 4. Remarks by Secretary-General Kofi Annan to the United Nations Security Council

15/04/2004

PRESS RELEASE
SG/SM/9256
SC/8059

Role of business in armed conflict can be crucial – ‘for good and for ill’,

Secretary-General tells Security Council open debate on issue

Following are Secretary-General Kofi Annan’s remarks at an open debate of the Security Council on the role of business in conflict prevention, peacekeeping and post-conflict peace-building in New York, 15 April:

I would like to thank the German Government for taking the initiative on this very important issue.

The economic dimensions of armed conflict are often overlooked, but they should never be underestimated. The role of business, in particular, can be crucial, for good and for ill.

Private companies operate in many conflict zones or conflict-prone countries. Their decisions — on investment and employment, on relations with local communities, on protection for local environments, on their own security arrangements -- can help a country turn its back on conflict, or exacerbate the tensions that fuelled conflict in the first place.

Private companies also manufacture and sell the main hardware of conflict -- from tanks to small arms, anti-personnel mines or even machetes.

And private enterprises and individuals are involved in the exploitation of, and trade in, lucrative natural resources, such as oil, diamonds, narcotics, timber and coltan, a crucial ingredient in many high-tech electronics. Governments and rebel groups alike have financed and sustained military campaigns in this way. In many situations, the chaos of conflict has enabled resources to be exploited illegally or with little regard for equity or the environment. When local populations are excluded from discussions on access and control of natural resources -- and see little benefit from them in their communities -- this in turn can be a cause of more conflict.

These are complex challenges. They touch on fundamental questions of sovereignty, democratic governance, corporate accountability and individual integrity. Moreover, many of the transactions involved occur in the shadows, or within the context of failed States that do not have the capacity to regulate activities that are driven by profit but which fuel conflict. Enforcement and monitoring measures aimed at cracking down on such activities often lack teeth, if they exist at all. Supply chains are often so multi-layered as to defy efforts at greater transparency. Even legal activities can have unfortunate or unintended consequences.

Business itself has an enormous stake in the search for solutions. After all, companies require a stable environment in order to conduct their operations and minimize their risks. Their reputations — not just with the public but with their own employees and shareholders — depend not just on what product or service is provided, but how it is provided. And their bottom lines can no longer be separated from some of the key goals of the United Nations: peace, development and equity. All these are compelling reasons why business should play an active role in tackling these issues, without waiting to be asked.

The Security Council, for its part, has already addressed many of them. You have imposed targeted sanctions. You have supported the Kimberley Process which, though a voluntary initiative, has reduced the trade in so-called conflict diamonds. You have set up expert panels to assess the role of political economy in triggering or prolonging conflict. You have authorized some peacekeeping missions to assist in the monitoring of economic sanctions and arms embargos, and to support efforts to re-establish national authority over natural resources.

This meeting occurs against a backdrop of several important initiatives.

The Organization for Economic Cooperation and Development has adopted Guidelines for Multinational Enterprises, with the hope of ensuring corporate adherence to Security Council decisions and international conventions.

An initiative led by the United Kingdom aims to increase transparency in the extractive industry.

Some member States have issued voluntary principles on security and human rights, aimed at ensuring that, when security and protection is sub-contracted to private companies, this is done in ways that protect against violations of human rights.

And my own Global Compact has sought to improve global corporate citizenship. One product of the dialogue on this subject is the “Business Guide to Conflict Impact Assessment and Risk Management”. Members of the Compact are also discussing adding a tenth principle, on corruption, to the existing nine on human rights, labour standards and the environment. And they are exploring what they can do to help implement the new UN Convention against Corruption. All of us — governments, businesses, non-governmental organizations, and intergovernmental organizations — need to learn to operate more openly, in the sunshine of transparency. This is essential if we are to break the cycle of corruption and build greater confidence in our various institutions and enterprises.

In the specific context of the United Nations, you probably know that I am establishing an independent inquiry into allegations of fraud, corruption and mismanagement relating to the oil-for-food programme that we were running in Iraq. Transparency is the only way to deal with such allegations, and by far the best way to prevent corruption from happening in the first place. That, I believe, will be one of the main lessons we have to learn from this affair, whatever the outcome of the inquiry.

In any case, all of these efforts and initiatives have only begun to tackle the issue. The time has come to translate ad hoc efforts into a more systematic approach. At the United Nations, such an approach would promote greater cooperation and interaction between the security and development arms of the Organization. It would give us the tools with which to better understand, and more actively influence, the economic incentives and disincentives that drive the dynamics of armed conflict. And it would ensure that those factors are reflected in efforts to prevent conflict, in peace agreements and in the mandates given to peace operations.

With these aims in mind, I have established an inter-agency group, chaired by the Department of Political Affairs, which is looking carefully at the political economy of armed conflict and will provide recommendations on how to improve the response of the UN system and of Member States. I urge this Council, and Member States in general, to focus greater attention on this issue, and engage more dynamically with the private sector. The Secretariat will help in any way it can.

This is a subject on which passions run high, as we know. We need to find the proper balance between inducement and enforcement. There are times when outrage is the only proper reaction. There are times when appeals to the common good will fall on deaf ears. But with so much at stake, we cannot afford a situation in which the actors involved are polarized, demonizing each other and unable to engage in dialogue. We must create a space where all can come together and find solutions. I hope that this meeting will contribute to that goal.

Document 5. BIAC Position on Solicitation of Bribes

This paper by BIAC was presented to the OECD Working Group on Bribery in International Business Transactions during their Consultation with the Private Sector on the Establishment of Facilities to Report Bribery Solicitation which took place in Paris on 21 April 2004

I. Background

Up to now, governments have been reluctant to fully address the problem of bribe solicitation in international trade and investment. In fact, testimony and available evidence indicate that explicit or implicit requests for bribes by public officials are often the “initiating act” for bribes. In this sense, companies become victims of corrupt administrations.

Thus, BIAC has continuously asked OECD governments to publicly recognise the problem of solicitation of bribes and engage themselves to act against it by assisting companies in specific situations and co-operating internationally.

On the occasion of the OECD's Corporate Responsibility Roundtable last June, BIAC started an initiative on using the Guidelines for Multinational Enterprises to assist companies confronted with bribe solicitation and extortion. The business community sees a strong need for establishing an institutional setting or using existing ones to deposit relevant bribe solicitation information on a confidential basis. Until now such information is lost.

II. The challenge

For business the key challenges of bribe solicitation have not changed since the implementation of the OECD Anti-Bribery Convention and are unlikely to change with the new UN Convention against corruption:

- Despite legislative anti-bribery measures, businesses are frequently confronted with explicit or indirect solicitation of bribes in OECD and non-OECD countries.
- The BIAC Programme for Combating Solicitation of Bribes calls on OECD governments to focus on: public recognition of the problem and assistance in cases of solicitation.
- When confronted with demands for bribes, companies need a point of reference, independent from the prosecution authorities, to which they can report such instances. Until now, information about bribe solicitors is lost.
- BIAC continues to believe that governments have a role to play in assisting companies in situations of bribe solicitation instead of relying solely on ex-post prosecution.

III. BIAC request

Given this continuing situation, business is requesting a clear signal from the OECD and its Committees showing the commitment to combat bribe solicitation in whatever form. This expression of governmental will is crucial to establish the necessary confidence of the business community for a comprehensive fight against corruption. We therefore ask the Investment Committee of the OECD and its Working Group on Bribery in International Business Transactions to consider and further explore possible options aimed at helping companies.

In addition, BIAC will ask this year's OECD Ministerial to concretely address the issue of bribe solicitation at high-level and to establish a public-private OECD working group to elaborate concrete steps. Such should include the following:

- A revised Recommendation of the Council on Combating Bribery in International Business Transaction (last version 23 May 1997) including language on governmental measures against bribe solicitation;
- To elaborate the role of the NCPs in the context of the OECD MNE Guidelines (data collection function and joint external action);
- The establishment of governmental help lines in national administrations;
- The establishment of non-governmental help lines and contact points for businesses.

For business the exchange of information amongst all these institutions and mechanisms involved is of crucial importance. This could be ensured by establishing a respective forum/public-private network under the auspices of the OECD. BIAC asks the OECD to establish such a network as a first step.

At the same time, as the discussion evolves the need for differentiating situations of bribe solicitation becomes more obvious. The following general lines should be taken into account:

- There could be a need to focus in a first step on the business situations where no bribe has been paid yet. This could be a way of excluding many problems stemming from the duty of government officials in OECD countries to report any knowledge they might gather to prosecutors.
- The situation of companies in bidding processes must be addressed differently from the situation of endemic wide-spread corruption affecting all sectors of an administration of a particular country. For tackling bribe solicitation in bidding processes, a more sector specific approach can be more adequate. At the same time data collection and diplomatic pressure can be more relevant responses in situations of endemic wide-spread corruption.

a) Statement/OECD Council Recommendation by OECD Governments

BIAC continues to expect from OECD governments to issue a high-level statement condemning bribe solicitation including a follow-up process. This should take the form of a revised Council Recommendation to the OECD Anti-bribery Convention including measures to be taken by governments on solicitation of bribes. A possible mechanism has been proposed by BIAC already in the context of the negotiation of the OECD Convention and merits still to be examined:

Such an addition to the OECD Convention would strengthen the support of the Convention in the business community, since it would be a clear signal to companies that governments take their practical problems on the ground seriously and help to resolve them. Another advantage of including such a paragraph into the Council Recommendation would be that the follow-up monitoring process established by the Convention could be extended to include the implementation of bribe solicitation facilities.

b) Role of the OECD MNE Guidelines

BIAC still believes that the OECD MNE Guidelines must play a role in helping companies in instances of bribe solicitation:

- Since the Guidelines include text on bribe solicitation the issue must be promoted by governments and National Contact Points (NCPs) as part of their overall obligation to promote the Guidelines.
- The same applies to the outreach work the OECD is conducting with a wide range of non-member countries. Again, the fight against bribe solicitation must be an integral part of the OECD's anti-corruption and regulatory reform activities with non-member countries.
- Furthermore, the OECD Guidelines clearly attribute to National Contact Points (NCPs) the task of helping companies in situations of bribe solicitation. BIAC sees an obligation of NCPs deriving from the MNE Guidelines to assist companies in instances of bribe solicitation.

Already now, a company could bring such a specific instance under the Guidelines to the attention of the National Contact Point of its jurisdiction. Thus, NCPs would have already now an obligation to deal with such instances. That could involve communicating instances of bribe solicitation with other agencies of their own government or directly with counterparts in the respective host countries. Apart from that, NCPs should start taking on a data collection function for any instances arising on the bribery chapter of the Guidelines and support anti-bribery policies in the countries and administrations where corruption is abundant.

c) Non-Governmental Anti-Bribery Helpline

In addition to that, another possible way of helping companies dealing with situations of bribe solicitations would be to establish an Anti-Bribery Helpline in the form of an independent non-governmental body.

Out of many suggestions, an independent, international helpline could be established as a non-governmental organisation operating under the protection of legal professional privileges in cooperation with the client seeking assistance. There could be advantages of such an approach. Companies might be more likely to turn to an independent non-governmental institution avoiding the risk of prosecution.

The following aspects might be also considered:

- What would be the “standing” of such a private institution vis-à-vis governments/administrations involved in solicitation of bribes? It seems to be an important difference whether an institution like the World Bank asks a host country government to implement its anti-corruption standards as part of their lending conditions or whether a non-governmental organisation tries to influence public administrations in OECD or non-OECD countries. Some attachment of such a non-governmental helpline to a public international organisation might be required.
- On a more general level, what would be the source of legitimacy of such an institution, not formally representing the business community, but intervening on behalf of it?

- The crucial challenge of such a facility will be to build up trust with all partners, companies as well as public institutions.

d) Governmental Helpline

Furthermore and as proposed under a), business would strongly recommend to envisage the establishment of governmental helplines in national administrations. A governmental helpline to which companies can turn in instances of bribe solicitation should act as a co-ordinating institution and inject the information gathered into “the whole of government”, including – inter alia - official development financing, export/investment promotion facilities/guarantee schemes, government procurement and diplomatic pressure.

The performance of such a governmental helpline should be monitored by an international organisation and constantly reviewed as to its effectiveness. This is why it would make sense to include the request of establishing such a helpline into the system established by the OECD Convention.

IV. Conclusion

BIAC feels that the best solution would be to have a strong link of any kind of institutional setting to an international organisation with credibility on anti-bribery work and respective standing in the international community.

The OECD would be best suited, representing the large majority of world investment and trade activity and having worked on the issues for a long time, be it through the OECD Anti-Bribery Convention, its Convention-related outreach activities with non-members countries or its work on public governance and regulatory reform.

***Corporate Responsibility and the OECD Guidelines for Multinational Enterprises
Morning, 12 May 2004***

Summary prepared by Forum 2004 Secretariat

Bridging the trust gap

Moderator: Mark Landler, Frankfort Correspondent, New York Times

Panel: Jean-Philippe Courtois, CEO, Microsoft Europe, Middle East & Africa; John Monks, General Secretary, European Trade Union Confederation; Jane Nelson, Director of Corporate Social Responsibility Initiative, Harvard University, US; Nevenka Pergar, Board Member, Aktiva Invest, Slovenia

Are businesses acting responsibly in their affairs and how can the OECD Guidelines for Multinational Enterprises help them to achieve broad goals? Jane Nelson, Director of the Corporate Social Responsibility Initiative at Harvard University reminded the audience that the health of nations was a notion that embraced economic and environmental well-being. She noted that the OECD MNE Guidelines had three main principles: do no harm; be proactive; and promote corporate responsibility and transparency in the market. There is an acceptance of the need to involve stakeholders in corporate governance: “The way to go involved corporations/government/trade union partnerships.” Moderator, Mark Landler, pointed to the voluntary nature of the OECD guidelines as the one of the key issues, and subsequent speakers took up this point, wondering if stricter application was not needed.

John Monks, the general secretary of the European Trade Union Confederation, said he would adopt the role of cynic, taking as an example Shell’s efforts to improve its public image in the environment and energy conservation field, though this firm still fell foul to some questioned business practices. Mr Monks noted a recent European poll that showed that 61% of those polled did not trust large companies. “The goal of companies must be to improve trust, especially in financial institutions and pension funds”, he said. In particular, “the paternalism of corporations must end”.

Nevenka Pergar, board member of Aktiva Invest in Slovenia, pointed out that though Slovenia was not yet an OECD member, it had nonetheless signed the OECD MNE guidelines. As representative of a financial holding company, Ms Pergar was nonetheless in favour of more of making regulations more binding. She saw several major areas for improvement: transparency in boardroom governance; quality management; education and strengthening links with civil society.

Jean-Philippe Courtois, CEO, Microsoft Europe, Middle East and Asia, said Microsoft was embarked on two journeys: that of becoming a global MNE, and that of “thinking it through” as Microsoft expanded its representation to 60 countries. The watchword at Microsoft was “people, planet, profits.” Business was part of society, not divorced from it. Standards of business conduct were key at Microsoft. In the short term, Microsoft was focusing on openness via business transparency to shareholders. Technology had a role to play in promoting that openness and furthering people participation and corporate citizenship. This included demanding high standards in corporate responsibility, as well as empowering communities through technology and education, including in developing countries.

Participants from the floor expressed some scepticism about the degree to which companies were willing to collaborate with governments in adhering to the OECD MNE guidelines. Jane Nelson

acknowledged that more had to be done, and emphasised several ways to improve the guidelines' effectiveness, including the need to provide clearer and better information, and to ensure that the guidelines were applied to government procurement.

Several speakers argued that it was all very well to want stakeholder participation, but these had to want to become involved, pointing to the difficulty of getting stakeholders into the boardrooms. There was also some concern about how stakeholder consultations might absorb company time and resources.

Document 7. Public Statement by the French NCP

French NCP – ASPOCOMP

Thursday, 13 November 2003

On 4th April 2002, the French NCP was asked to consider a specific instance by the French trade-union “Force Ouvrière” after the subsidiary of a Finnish group ASPOCOMP OYJ, based in Evreux, filed for bankruptcy despite having signed a collective redundancy agreement on 18th January 2002. The basis of this request is recommendation 6 of Chapter IV of the Guidelines which states: “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...”

In accordance to procedures set forth in the Guidelines, the NCP proceeded to consult all of the parties concerned. Following on from these consultations, the French NCP worked with the Finnish NCP to obtain further information as to whether the Finnish holding company was aware of its subsidiary’s financial difficulties at the time the social agreement was signed.

On the basis of the information it gathered and the chronology of events, the NCP does not exclude the possibility that the Finnish holding company was aware of that its subsidiary’s financial situation would not allow it to uphold the redundancy agreement. In this hypothesis, the company would not have complied with the terms of recommendation 6.

Moreover, the NCP confirms that the subsidiary did not inform its employees that its auditor would initiate a warning procedure, which happened shortly after the social agreement was signed. The NCP considers that this is not in accordance with recommendation 3 of Chapter IV of the Guidelines (which asks enterprises to disclose information to employees that is relevant to their economic status).

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Document 8. Public Statement by the UK NCP

Statement on De Beers

Introduction

De Beers was named in Annex 3 (Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises) of the initial UN Expert Panel report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (DRC) published in October 2002.

In the final Panel report published in October 2003 De Beers was named in Category 3 (unresolved cases referred to NCP for updating or investigation).

These lists contain the names of entities that the UN Expert Panel on the DRC alleged had been in breach of the OECD Guidelines for Multinational Enterprises.

Basis of allegations

Specifically the Panel alleged De Beers was in breach of its own Diamond Best Practice Principles, published by the Diamond Trading Company (a member of the De Beers group) in 2000 and, consequently, in breach of the OECD Guidelines. The Panel did not, however, identify which provision(s) of the OECD Guidelines for MNEs they alleged De Beers to be in breach.

The panel based its allegations on a claim that three sightholders, clients of the Diamond Trading Company (DTC) - the sales and marketing subsidiary of the De Beers Group - exported diamonds from the DRC, contributing to funding of parties involved in the conflict and that De Beers failed to monitor the compliance of these sightholders against The Diamond Trading Company's Diamond Best Practice Principles.

Co-operation with UN Expert Panel

These specific allegations (above) were only made known to De Beers by the Panel at a meeting between the two in May 2003. Prior to that date, De Beers were completely unaware of the basis upon which the Panel alleged that it was in breach of the OECD Guidelines.

The UN Expert Panel did not contact De Beers to discuss these allegations before publishing their initial report.

After the initial report was published, De Beers wrote to the Panel in December 2002 and February 2003 requesting a meeting to discuss the report; neither letter elicited any immediate response by the Panel. However, in April 2003, the Panel invited De Beers to a meeting in May 2003, referred to above.

The Panel refused to give De Beers any details of the basis of their allegations prior to the meeting and consequently De Beers was unable to bring relevant documentation or appropriate members of staff to the meeting to address the Panel's concerns.

Following the meeting, De Beers replied in writing, addressing the specific allegations relating to the three sightholders raised by the Panel. The Panel did not reply to De Beers response nor ask De

Beers for any further information and rather published its final report listing De Beers as a company that had been in breach of OECD Guidelines.

De Beers have stated their disappointment with the way this Panel conducted its affairs, particularly when they had previously enjoyed constructive relations with the United Nations, principally, in the development of the Kimberley Process Certification Scheme where their work was commended by the Secretary-General.

NCP Comments on Panel Accusations

Activities of 3 sightholders. Based on the information which it has seen, the UK NCP is satisfied that the relationship between De Beers and the three companies named by the UN Panel is such that the activities of those three companies in the DRC, insofar as they relate to De Beers, are outside the remit of the UK National Contact Point (NCP) acting under the OECD Guidelines for Multinational Enterprises.

Breach of Best Practice Principles. The UN Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo (The UN Expert Panel) alleged that De Beers breached the DTC Diamond Best Practice and, consequently, were in breach of the OECD Guidelines for MNEs. The UN Expert Panel did not specify which provisions of those Guidelines were alleged to have been breached, failed to give adequate or timely information supporting its allegations and failed to engage meaningfully in the dialogue process envisaged by the Guidelines.

In the circumstances and on the basis of the information provided, the UK NCP concludes that the allegations made by the UN Expert Panel against De Beers are unsubstantiated.

Document 9. Public Statement by Chilean NCP

The Marine Harvest Case: Developments and Results

*(A longer report on this specific instance can be found at the following website address:
<http://www.oecd.org/dataoecd/42/13/32429072.pdf>)*

I. Presentation

This is the first case submitted to the OECD National Contact Point in Chile, in accordance with the “OECD Guidelines for Multinational Enterprises”.

Marine Harvest S.A. (MH) is a subsidiary of Nutreco, a Dutch multinational and a leader in the competitive Chilean Salmon export industry.

The salmon industry has become one of Chile’s most prestigious and competitive industries. In fact, Chile is the world’s second largest salmon producer after Norway.

Therefore, given the economic significance of the salmon industry, the present case becomes particularly sensitive.

II. Case summary

The Chilean NCP initiated proceedings on the case in November of 2002. Accordingly, the NCP responded the allegations presented by the NGO’s Ecoceanos (Chile) and Milieudéfense (Holland).

The allegations refer to certain aspects relating: employer – union’s relations, environmental impact of the salmon industry, and other related issues.

The NCP requested and received written reports from all competent governmental agencies. Also, the NCP ask the Parties to disclose all complementary information.

In view of the foregoing, the NCP presented a Final Report in October of 2003.

III. The results:

A. Round Table, X Region, Chile.

This is the most significant result of the present case, as allowed all the Parties involved to exchange views, and eventually, reach an agreement. This Round Table was originally proposed by the NCP and included the participation, among others, of Marine Harvest and interested NGO’s, particularly the “Ecoceanos Centre”.

The points here agreed upon, will be the base for a Protocol signed by the Parties at a Plenary Meeting to be held in the southern city of Puerto Mont in June 2004.

The purpose of the initiative was to facilitate the exchange of views between the enterprise, civil organizations, and regional authorities directly related to the case.

The list of participants included: representatives from Marine Harvest Administration Division, representatives from the three different Unions of the enterprise, NGO’s representatives, Regional Association of Sport Fishing representatives, the Director of the Regional Environment Commission

(COREMA), and the Director of the National Fishing Service (SERNAPESCA), who has also served as the coordinator of this instance. The Chilean NCP has participated in the two plenary meetings so far performed.

B. Regional Level

Participation

The Round Table represents a real and effective space for public/private participation, with a real social impact. All parties interested were able to express their views and cooperate towards a commonly achieved goal, that is, to find a practical solution that guarantees the respect to the parties' demands.

Contents

- a) The limits of the defense lines protecting the Domeyko concession, in Lake Llanquihue, will be removed from its current position, and reinstalled in a location that allows "sport fishers" to have free access to the existing resources.

The final agreement was reached between the Regional Association of Sport Fishers and the Regional Maritime Directorate. The agreement allowed the reestablishment of good relations between the parties.

- b) Subcontractors and the respect to Labor regulations

The Unions, NGO's, and public Institutions have agreed on the fact that, in general, subcontractors do not fully respect Labor regulations. It is well known that these enterprises are part of the multinationals productive chain in the aquiculture sector. Thus, the infringement of labor regulations represents a permanent social conflict at the regional level.

On this issue, an agreement was reached between Marine Harvest, the Unions, and the Regional Labor Directorate. The agreement consists in a complete set of internal rules to be applied by Marine Harvest in its commercial relationships (contracts) with contractors and subcontractors.

Content of the Rules adopted by Marine Harvest:

- I. General principles concerning, labor relations, social security, environmental regulations, hygiene, and risk prevention.
- II. A precise and detailed description of the regulations (statutes, acts, etc.) that the contractors and subcontractors shall comply with.
- III. Notwithstanding the jurisdictional attributions of governmental agencies, Marine Harvest committed to observe the compliance of such regulations.

All the parties involved had the opportunity to contribute in the process, so the final contents reflect their diverse interests. Labor Unions made a special contribution, as they participated in every stage of the initiative.

Since this initiative has been implemented, a number of enterprises in the aquaculture sector have expressed their desire to pursue similar initiatives.

- c) Research Initiatives on the aquaculture industry's impact on the environment

Marine Harvest is currently carrying on a number of studies concerning the issues presented above. Also, the National Organization of Aquaculture Enterprises, through Intesal Institute and along with the Universidad Austral are carrying on similar research initiatives.

Nevertheless, Marine Harvest has made it clear in rejecting the possibility of having external institutions, such as NGO's and other private organizations to participate in the research initiatives carried out by Marine Harvest, as these activities are part of a private and independent program belonging to the enterprise.

C. NCP Report. Final results

The following section presents the final results included in the Final Report. In other words, those matters subjected to consideration, opinions or recommendations.

- a) Marine Harvest – Labor Unions relations

The Report by the NCP is strongly supportive of the role of the Unions and the compliance of Labor regulations. The report also points out that all of the rights and obligations mentioned in it are recognized either by Chilean or International Law. This statement was made in reference to the events that took place in a Marine Harvest facility in the course of the year 2001.

- b) On the right of the local communities to know the activities of the multinational enterprises (i.e. the limits and the extension of the concessions).

Marine Harvest has made available to the NCP and NGO's, all the necessary data to determine the geographical limits of all concessions owned by the enterprise.

- c) On the right to use the 5 miles extending from the Chilean coastline into the Pacific Ocean.

NGO's affirm the exclusive right of the artisan fishers to use this area.

On the contrary, the governmental agencies, particularly SERNAPESCA, affirm that such exclusive right does not exist; that the exclusiveness only applies to industrial fishing, with exclusion on any other activity, such as aquaculture.

Finally, that the NGO's legal interpretation is not acceptable.

- d) That aquaculture concessions could negatively affect other industries located in the surroundings of the facility.

Chilean regulations provide a number of safeguards to avoid negative collateral effects in other industries. There are also different mechanisms to question the establishment of the aquaculture industry.

NGO's claim is not sustainable. It does not identify any concession under the circumstances described in its allegation.

e) Environmental impact

The NCP's report, shows that competent governmental agencies are aware of the environmental risks associated to this particular industry.

Consequently, Chilean regulations are being updated to comply with higher international standards. The best example is the new "Environmental Regulation", which entered into force in December, 2003.

This report requests SERNAPESCA to perform an evaluation on these issues, once the new law is fully implemented.

*Chilean NCP
Santiago, June 2004*

Document 10. Public Statement by the German NCP

Statement by the German National Contact Point on a specific instance brought by the German Clean Clothes Campaign (CCC) against Adidas-Salomon

Berlin, 24 May 2004

German National Contact Point for the OECD Guidelines for Multinational Enterprises on a specific instance brought by the German Clean Clothes Campaign (CCC) against Adidas-Salomon

On 5 September 2002, the Clean Clothes Campaign submitted a specific instance concerning Adidas-Salomon with the Austrian National Contact Point for the OECD Guidelines for Multinational Companies. This specific instance was forwarded to the competent German National Contact Point in the Federal Ministry of Economics and Labour, Berlin.

The German Clean Clothes Campaign (CCC – SÜDWIND Institut für Ökonomie und Ökumene, ver.di), alleged suppliers of Adidas-Salomon in Indonesia of failing to comply with the OECD Guidelines (General Policies [Section II] and Employment and Industrial Relations [Section IV]). CCC chiefly based its allegations on statements in the OXFAM Report of March 2002 entitled “We Are Not Machines”. This report accused Indonesian supplier firms, including some delivering to Adidas-Salomon, of failing to comply with the OECD Guidelines. In accordance with the OECD Guidelines, companies should ensure that the Guidelines are adhered to also in production sites in countries which are not themselves OECD members.

In response to the mediation by and at the invitation of the German National Contact Point (NCP), discussions were held on 28 May 2003 and on 16 February 2004 at the NCP in the Federal Ministry of Economics and Labour, Berlin, leading to a constructive dialogue and enabling both sides to present their respective view of this case. There was disagreement about the extent to which the allegations made in the OXFAM Report of March 2002 coincided with what actually happened, in some cases up to three years ago (December 1999 – 2000), and about the extent to which the relevant events actually took place at specific production sites of suppliers to Adidas-Salomon. Therefore, at the request of the NCP, both Adidas-Salomon and CCC presented several statements about working conditions, minimum wages and employees’ rights to form organisations at the firms supplying Adidas-Salomon in Indonesia.

All parties concerned agreed that the treatment of the specific complaints towards solutions should be sought in structural approaches. In the individual cases, the parties involved were unable to reach agreement, neither on the facts of the matter gathered in subsequent research nor on the precise options for action to be derived from these facts. A major reason for this may have been that it was not possible to obtain the information needed for an unambiguous description and assessment of the facts.

The situation regarding the assessment of the general programme of global social responsibility of Adidas-Salomon was different. Here, all sides took note of the fact that the company maintains a comprehensive internal programme intended to ensure that the principles contained in the in-house “Standards of Engagement” (SOE) are complied with by the supplier firms of its business partners. Key elements of this programme include obligatory recognition of core labour standards and relevant environmental standards by the management in the supplier factories, monitoring of these standards by experts, identification of specific problems, active training and advice for the factory management regarding potential for improvement and the consistent exerting of influence on the factory management to tackle any problems found. In the context of its participation in the programme of the

Fair Labour Association (FLA)*, adidas-Salomon also commits itself to independent controls of supplier factories. According to adidas-Salomon, the above-mentioned elements of the SOE programme are specifically applied in the relevant supplier factories in Indonesia and are subject to FLA controls. The CCC is unable to confirm this assertion on the basis of the information available to it.

Both parties agree that the dialogue initiated by the NCP has contributed to an intensified exchange of information and to improved transparency, even if there are differing views about the facts of the matter which proved impossible to reconcile in the complaints procedure under the OECD Guidelines. The parties agreed to remain in communication on this issue and to utilise the information obtained for further progress on the improvement of working conditions, and in particular for improvements in communications between the company management and the employees in the Indonesian supplier factories named.

The NCP in the Federal Ministry of Economics and Labour thanks the parties, and especially Mr. Frank Henke, Global Director, Social & Environmental Affairs, adidas-Salomon, and Ms. Ingeborg Wick, academic assistant at the SÜDWIND Institut für Ökonomie und Ökumene, and Mr. Uwe Woetzel, ver.di, for their constructive co-operation.

The OECD Guidelines for Multinational Enterprises, which are based on the principle of voluntary compliance, form part of the OECD Declaration on International Investment and Multinational Enterprises and provide recommendations for responsible corporate conduct in foreign investment. The governments of the OECD member states and other participating countries have committed themselves to promoting the application of this code of conduct via their respective National Contact Points (in Germany: the Federal Ministry of Economics and Labour) and in the case of allegations to contributing towards solutions involving the relevant partners via confidential mediation.

* The Fair Labour Association (FLA) is a non-profit-making organisation consisting of companies, non-governmental organisations and universities. It establishes labour standards and guidelines for health, safety and environmental protection at work and appoints accredited inspectors to monitor adherence to these standards by the companies participating in the programme.