

Final Statement for Specific Instance:

**ITBLAV, represented by Dr. René Schindler
against Global Sports Lanka/the GST holding company**

On 27 March 2006 Dr. René Schindler, employed by the Metal, Textile and Food Trades Union within the Austrian trade union confederation, filed written complaints, on behalf of the International Textile, Clothing and Leather Workers Association (ITBLAV), with the Austrian national contact point (hereinafter: contact point) against Global Sports Lanka/ the GST holding company (the owners), whose head office is located in Antiesenhofen, for alleged breaches of the "Employment and Relations between the Social Partners" part of the OECD guidelines for multinational enterprises (hereinafter: guidelines). This related to an internal employment conflict which occurred in 2002 in Sri Lanka at Global Sports Lanka (known at that time as North Sails Lanka) following changes in the remuneration system.

The complainant claimed that, in March 2002, North Sails Lanka changed the remuneration system without consulting the employees and to the latter's detriment, which ultimately led to work stoppages and protests. North Sails Lanka, on the other hand, it is claimed, proceeded with a series of lay-offs, whereby a total of 207 employees are said to have lost their jobs. It is also claimed that North Sails Lanka demanded that employees who requested reinstatement following government intervention, sign – as a pre-condition – a written statement distancing them from the instigators of the protests.

The contact point regarded itself, in respect of the GST holding company, whose head office was based in Austria, as responsible for dealing with

the complaints, irrespective of the fact that Global Sports Lanka was transferred into the GST holding company's ownership only in 2005.

The contact point thus communicated the complaints immediately to the GST holding company, which commented upon them as early as April 2006, disputing the alleged violations. The works council is said to have been informed of the changes in the remuneration system and to have raised no objections. The lay-offs made are said to have been justified by disciplinary breaches. Many former employees are said simply not to have returned to work at the conclusion of the employment conflict despite the fact that the possibility was open to them. A written explanation of the complaint type is said not to have been demanded.

Dr. René Schindler and Mr Thomas Berger, CEO of the GST holding company, however, endeavoured at first to achieve an agreement. The contact point kept itself informed of progress. When, on 17 November 2006 Dr. Schindler informed the contact point, however, that these bilateral efforts had failed, an initial evaluation of the complaints was carried out immediately, in agreement with point I.C.1. of the procedural instructions to the guidelines, which showed that the questions thrown up justified more detailed examination. Both parties were informed of this on 29 November 2006, along with the OECD Secretariat.

After the demands were formalised on Dr. Schindler's side on 9 February 2007, a discussion was held at the Federal Ministry for Economic Affairs and Labour on 1 March 2007 between the contact point, Mr. Berger, other representatives of the GST holding company and Global Sports Lanka, during which additional documents were also submitted. On 3 May 2007 a further discussion took place at the Ministry for Economic Affairs and Labour between the contact point and Dr. Schindler. Following this the contact point endeavoured, in conjunction with the two parties, to engineer room for a compromise and suggested a discussion between the two parties, moderated by the contact point, but which did not take place.

In order to bridge the continued highly differing points-of-view, the contact point sent both parties a draft agreement on 16 August 2007 in which a compromise was suggested for the two main points of conflict, i.e. trades union activity at Global Sports Lanka and the approach in respect of former Global Sports Lanka employees, along with requirements for making the agreement a reality. Dr. Schindler and Mr. Berger finally commented on this in November 2007, the comments made containing substantial reservations corresponding to the differing points-of-view. The contact point continued to endeavour, irrespective of this, to achieve a consensual solution.

In September 2008, however, a compromise agreement was reached between Global Sports Lanka and 19 former employees but it was not possible to achieve a consensual solution.

Ultimately the following needed to be examined, therefore:

- whether the action of Global Sports Lanka (formerly known as North Sails Lanka)/the GST holding company corresponds to the recommendation in point 1.a) of the "*Employment and Relations between the Social Partners*" part "*to respect the right of the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.*"
- furthermore, whether the action corresponds to the recommendation in point 2.a) of the part quoted, "*Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.*"
- furthermore, whether it corresponds to the recommendation in point 2.c) of the quoted part, "*Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern.*"

- furthermore, whether it corresponds to the recommendation contained in point 8 of the referenced part, *"Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters."*

Unfortunately the information and resources to obtain information available to the contact point do not enable it to make a reliable statement on these points. Rather, in this case, at best, only the legally valid conclusion of the litigation pending in Sri Lanka will be able to provide more accurate information. The factual entitlement to the claim of objective breaches of the guidelines cannot, therefore, be judged by the contact point. Interrupting processing of the claims for the duration of the parallel proceedings in Sri Lanka, however, seemed neither productive nor reasonable, especially as the time scales involved are of the order of years. The contact point thus abstains from any statement on whether the breaches of the guidelines claimed actually took place.

Nevertheless, the contact point considers it appropriate, on the basis of the information available, to formulate the following recommendations:

The contact group welcomes the compromise agreement between Global Sports Lanka and 19 former employees of the company and recommends

- fitting observation of the OECD guidelines for multinational enterprises and, specifically, the "Employment and relations between social partners" part in the future arrangement of the internal employment relations at Global Sports Lanka;
- carefully examining all possibilities of achieving an amicable solution to the points of conflict resulting from the employment conflict which occurred in 2002 and which remain unresolved;

- additionally, striving to achieve a fair compromise agreement to the employment law proceedings still pending in Sri Lanka, at least insofar as no valid conviction is forthcoming in the pending criminal proceedings;
- otherwise, allowing for a preferred reinstatement of those employees laid off by Global Sports Lanka following the employment conflict, insofar as they wish to be reinstated and insofar as the actual personnel requirements of Global Sports Lanka allow;
- irrespective of the activity of the works council which exists within Global Sports Lanka, giving the FTZ&GSEU and any other interested trades unions the chance to inform the employees of Global Sports Lanka appropriately about their activity and to recruit them, should they so wish, as members.

The contact point thanks both parties to the proceedings for their good and constructive cooperation.

Vienna, 17 July 2009