



OECD Guidelines for Multinational Enterprises: 2006 Annual Meeting of the National Contact Points

REPORT BY THE CHAIR

**Meeting held on
20-21 June 2006**

This document reproduces the Report by the Chair of the Annual Meeting of the National Contact Points which was held on 20-21 June 2006. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2006 Edition".

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SUMMARY REPORT OF THE CHAIR OF THE MEETING ON THE ACTIVITIES OF NCPS

I. Introduction and Background

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

The present report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2005-June 2006 period. It is based on individual NCP reports¹ and on other information received during the reporting period. The report is divided into seven sections. These include: institutional arrangements (section II); information and promotion (section III); specific instances (section IV). Section V describes work by the Investment Committee and NCPs on investments in weak governance zones. Section VI describes how Guidelines institutions have followed up on some of the issues raised during earlier Annual NCP meetings and Corporate Responsibility Roundtables. Section VII reviews progress to date and proposes steps for future action.

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

The NCPs’ reports show ongoing active consideration of specific instances. Ninety-six specific instances (24 more than in last year’s report) have been considered by NCPs since the June 2000 Review. This indicates continued strong interest in the specific instances facility.

¹ Individual reports from the following NCPs were received in time to be included in this report: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Although the European Commission does not have an NCP, it also submitted a report on its implementation activities.

² The Guidelines have now been translated into at least 29 languages: Arabic, Chinese, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Lithuanian, Norwegian, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish, Thai, Turkish and the official languages of Belgium.

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

II. Institutional Arrangements

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

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

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

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

III. Information and Promotion

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

III.a. Selected promotional activities

Developments and innovations in promotion include:

³ Text quoted from the June 2006 Conclusions of the OECD Council in which the Council adopts the Risk Awareness Tool (See Part III).

- *Argentina – event in Buenos Aires.* In partnership with NGOs, Argentina organised a “Workshop on National Contact Points” that covered such areas as environment, investment promotion, labour, human rights and competition. Business, trade unions, OECDWatch and government departments attended the event. Parliament was also invited. The different international experiences of NCPs were analysed and participants decided to continue meeting in order to take up all issues covered in the Guidelines.
- *Australia – targeted promotion focusing on textiles, clothing and footwear.* The Australian NCP is using a targeted approach to promotion. The May 2006 business and community consultation focused in the Australian Textiles, Clothing and Footwear industry (though the consultation was not limited to participants from these industries). This sector was chosen because the NCPs dialogue participants identified it as having great scope for wider promotion and dissemination of the Guidelines. The consultation explored ways of beginning the process of raising awareness and increasing understanding of the Guidelines within the TCF industry. It also enabled the Australian NCP to secure future opportunities to promote the Guidelines at sector-specific forums.
- *Brazil – targeted promotion focusing on multinationals.* The Brazilian NCP has decided to focus its promotional efforts on multinational enterprises, noting that most multinational enterprises are unaware of the existence of the Guidelines. In the Brazilian NCP’s view, NGOs and trade unions are effective in raising awareness among their constituencies; however, the dissemination work directed towards multinationals rests entirely upon the NCP. The NCP’s strategy is to focus most of its promotional work on multinational enterprises so as to enhance the visibility of the Guidelines in the business community, thereby possibly preventing future complaints due to its increased “understanding and assimilation of the document.”
- *Canada – targeted promotion focusing on extractive industries.* Following up on a promotional strategy that targets extractive industries, the Canadian NCP is providing input into the development of the “Canadian National Roundtables on CSR and the Canadian Extractive Sector in Developing Countries” and has been providing support and advice on the OECD Guidelines to the Canadian Government Working Group on the Democratic Republic of Congo in their development of a strategy on CSR in the mining sector. In February 2006, the Canadian Embassy in Ghana held a CSR Seminar in Accra. The seminar, which drew over 40 participants, focused on CSR in the mining sector – the largest sector for Canadian investment in Ghana.
- *Finland – Responsible Competitiveness Conference.* The Finnish NCP held a seminar on responsible competitiveness on May 4 2006. The seminar focused on the OECD Guidelines, the Policy Framework on Investment and the OECD Risk Awareness Tool and other global CSR principles with best practice business examples.
- *Hungary – targeted promotion focusing on major multinationals.* The Hungarian NCP is sponsoring an email and letter campaign addressed to major multinational enterprises. Three basic instruments – the Guidelines, the EU Criminal Law Convention on Corruption and the ILO Tripartite Declaration – are being sent to them in order to mitigate problems arising “mainly in the field of employment, environment and exercising the right to organise.”
- *Israel – promotion material development.* In cooperation with the Israeli-Jordanian NGO “Friends of the Earth and the Middle East” and Bar Ilan University Law Department, a booklet in Hebrew was put out that explains how to work effectively with the Israeli NCP.

- *Italy – creating a newsletter and working with universities.* The Italian NCP has created its own newsletter, PCNM@agazine in order to inform government agencies at the central and local levels, Italian embassies and consulates, companies, trade unions, NGOs and business associations and the European Commission about its initiatives and campaigns (there are currently 270 subscribers). It set up a Guidelines information desk at the International Fair of ICT and Consumer Electronics (October 2005) and at the annual Public Administration Fair (May 2006). It has also sponsored: 1) a research project – involving a sample of 50 small- and medium-sized enterprises – which documents companies’ CSR practices and communications; 2) a course on CSR management at the Catholic University of Milan, including the financing of 10 fellowships and a degree prize for a graduate thesis dealing with the OECD Guidelines; and 3) training and refresher courses, organised with Italian Regions and private associations, to raise the visibility of the Guidelines among local small and medium-sized enterprises.
- *Mexico – regional issues.* The Mexican NCP has participated in several events organised by trade unions and civil society in Mexico that look at regional issues in corporate responsibility.
- *Netherlands – country-specific CSR information provided to companies doing business abroad.* The Agency for International Business and Cooperation (www.evd.nl) of the Ministry of Economic Affairs provides information on how to observe the Guidelines in several emerging markets. The country-specific information is on the Agency’s web site and was brought to the attention of entrepreneurs in the form of country brochures during trade missions to India, Brazil and China. The feedback from companies suggests that this is an effective way to promote the Guidelines among small and medium-sized enterprises. Following up on this positive feedback, the Dutch NCP has commissioned MVO Nederland (a CSR knowledge and information centre) to deepen the information gathered on CSR issues and to make this available as web-based toolkits. Toolkits are being prepared on Brazil, China, India, Indonesia, Russian and South Africa.
- *Romania – most recently-formed NCP starts promotion.* The Romanian NCP, created in May 2005, has held a press conference, created a webpage on the Agency of Foreign Investment Site (www.arisinvest.ro). It also sent a bilingual (English-Romanian) NCP leaflet and the web page to central and local authorities, multinational companies, Foreign Investors’ Council in Romania, regional development agencies, local and bilateral chambers of commerce, employers’ associations, labour unions and professional associations. The Guidelines were also promoted by the Embassies abroad and to Embassies in Bucharest. The NCP made presentations to a master course at the Romanian Academy of Economic Studies and the National Institute of Administration. It also participated in the Cartel Alfa Trade Union’s seminar on corporate responsibility.
- *Sweden – promotion by ambassadors.* The ambassador and head of the Swedish Partnership for Global Responsibility has participated in an import promotion delegation to Jordan, as well as bilateral dialogue with Thailand and South Africa. The Guidelines were also promoted in the course of bilateral cooperation with the United States, including with both governmental and non-governmental entities. The Ambassador also heads an informal inter-governmental working group designed to raise awareness of the Guidelines among Government Offices and, in particular, within the context of state-owned companies.
- *European Union – European Parliament resolution.* The Guidelines are referred to several times in the July 2005 European Parliament resolution on the exploitation of children in developing countries, with a special focus on child labour (reference 2005/2004(INI)).

- *European Commission – Cotonou Cooperation.* The European Commission is pursuing the issue of CSR and promotion of the Guidelines in its external trade agreements (for instance, in the EU-ACP Economic Partnership Agreements in the framework of the Cotonou cooperation).

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

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

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

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Invest Australia websites.
Canada	Export Credits	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.
Chile	FDI	The Foreign Investment Committee (CIE in Spanish) is the Agency that the state of Chile uses in its dealings with those who elect to use (the Foreign Investment Decree 600) as the legal mechanism to bring Direct Investment into the country. The Foreign Investment Committee helps to position Chile as an attractive destination for foreign investment and international business.
Czech Republic	Investment promotion	There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the CR. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export promotion	This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.
France	Export credits and investment guarantees	Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines (" <i>avoir pris connaissance des Principes directeurs</i> ").
Germany	Investment guarantees	A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.
Greece	Investment promotion	The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.
Israel	Investment Promotion Centre	The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.
Japan	Trade-investment Promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, METI Japan. Japan established a website with the intention to further strengthen a network (www.TICAExchange.org) between Asia and Africa to facilitate the exchange of trade and investment. The Japanese NCP linked the TICAD Exchange website to the texts of the Guidelines. The Japanese NCP linked the ASEAN Centre website to the texts of the Guidelines as well.
Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.

Latvia	Investment promotion	Information on Latvian NCP and Guidelines are available electronically on the website of Latvian Investment and Development Agency.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ)
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA (www.mae.ro) and the Romanian Agency for Foreign Investments (ARIS) (www.arisinvest.ro). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language.
Slovenia	Investment promotion, export credits and investment 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
Switzerland	Export credits and investment guarantees	Switzerland's Export Credit Agency (ERG) and Investment Risk Guarantee Agency (IRG) both promote corporate responsibility principles. On their websites, they provide information regarding the Guidelines and their implementation mechanism.
Turkey	Investment promotion	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for inward investment promotion. The investment promotion website provides information on the Guidelines.
United Kingdom	Export Credit	Links connect Guidelines website and Export Credit Guarantee Department's website and vice versa. The following text is in ECGD's Case Impact Analysis Process document. "The UK Government encourages all multinational companies to adopt the recommendations on responsible business conduct contained in the "OECD Guidelines for Multinational Enterprises". ECGD's internal procedures will check on the consistency of the operations of its customers (both in the UK and overseas) with these recommendations, and in particular those relating to the environment, employment, combating bribery and transparency."
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

III.b. Promotional activities within governments

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

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

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

Adhering governments have continued to explore how to ensure that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1 summarises the links that have been established between the Guidelines and such programmes. Twenty-two NCPs report that such links exist. The main changes from last year's version of this Table are the additions of entries for Hungary and Romania.

III.d. Promotion by the OECD

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

The "OECD Contribution to the United Nations Commission on Sustainable Development 14"⁴ promoted the Guidelines in the chapter dealing with "Industry and corporate responsibility". The OECD Guidelines on the Corporate Governance of State Owned Enterprises" were adopted by Council in April 2005 and published in September 2005. Their annotations promote the Guidelines by asking state owned

⁴ This document can be accessed at www.oecd.org/dataoecd/58/44/36655076.pdf.

enterprises to develop “internal codes of ethics” that “include a commitment to comply with the OECD Guidelines for Multinational Enterprises...”. The terms of reference for the Trade Committee’s project on “Informing Consumers of CSR in International Trade” cites the Guidelines and foresees cooperation among the Trade, Investment and Consumer Committees.

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

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

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

IV. Specific instances

The OECD Council Decision of June 2000 instructs the NCPs to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP is expected to offer a forum for discussion and to assist the business community, employee organisations and other parties concerned in dealing with the issues raised. Thus, the “specific instances” procedure provides a channel for promoting observance of the Guidelines’ recommendations in the context of individual company operations. A table listing specific instances taken up by NCPs is presented in Annex 3.

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

Council Decision. In April 2006, the stakeholders of “UN Global Compact Germany” approved this proposal and this link with the Guidelines in the context of the German Global Compact network will be formalised in due course.

IV.a. Specific instances – nature and numbers

Some 130 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCPs reports indicate the following numbers of specific instances have been filed: Argentina (1), Austria (3), Australia (1), Belgium (9), Brazil (9), Canada (7), Chile (3), Czech Republic (5), Denmark (3), Finland (2), France (12), Germany (6), Hungary (1), Italy (1), Japan (5), Korea (3), Mexico (1), Netherlands (15), Norway (2), Poland (2), Portugal (1), Romania (1), Spain (2), Sweden (2), Switzerland (2), Turkey (1), United Kingdom (11) and United States (19).

Annex 3 shows that 96 specific instances have been actively taken up and considered by NCPs⁵. Sixty-two of these have been concluded. Most specific instances deal with Chapter IV (Employment and Industrial Relations). However, some of the more recent specific instances have also covered issues dealt with in other Chapters. For example, two specific instances reported this year (by Norway and Australia) deal with human rights issues (covered in Chapter II, General Policies) that arose in connection with direct or indirect private sector involvement in the management of detention facilities. At the present time, the only Guidelines chapter that has not been referenced in the context of a specific instance is “Science and Technology.”

IV.b. Selected specific instances described in NCP reports

Australia. In June 2005, the Australian NCP was asked by 5 NGOs to consider a specific instance concerning Global Solutions Limited, an Australian incorporated, and wholly-owned subsidiary of a UK-controlled multinational enterprise (hereafter ‘GSL Australia’). The complainants’ submission alleged that, through its provision of immigration detention services to the Australian Government, GSL Australia had breached the Human Rights and Consumer Interests provisions of the Guidelines. The Australian NCP made an initial assessment that included fact-finding and separate meetings with the complainants. The NCP agreed to take up the request as a specific instance, but sought to focus the issues to matters related to the conduct of the company that are directly within its control. Following both parties’ acceptance of the NCP’s invitation to proceed with the specific instance, the NCP circulated a “Preliminary list of issues within GSL Australia’s control” to parties in order to facilitate a shared understanding of the issues under consideration. After agreement was reached on the list of issues to be considered, the NCP initiated an information-sharing and dialogue process to ensure that both parties understood the issues involved and the facts of the situation. This involved a significant exchange of written information, including confidential documents such as GSL Australia’s internal operational and procedural manuals. Following this exchange of information, the NCP conducted a face-to-face mediation session with both parties in February 2006. This session produced a list of 34 “Agreed Outcomes” (that is, endorsed by both the company and the complainants) which provides a basis for GSL Australia to continue to improve its operations. The Australian NCP released its “Final Statement on the GSL Specific Instance” in April 2006 (this statement appears as Document 2 in the Archive of Documents, Annex 4; the statement by the two parties on “Agreed Outcomes of the Mediation Meeting” is attached to the NCP statement). Both parties considered that the mediation session was highly successful. According to the Australia’s report, the key features of this specific instance are:

⁵ The number of specific instances actively taken up by NCPs is the number of specific instances listed in Annex 3, adjusted for specific instances that are listed more than once because more than one NCP was involved and more than one reported on the specific instance in the Annex table.

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

Canada. A coalition of NGOs submitted a complaint to the Canadian NCP in May 2005 concerning the operations of an international mining company incorporated in Canada operating in a non-adhering country. The complaint was submitted on behalf of community groups affected by the company's operations. The NGOs and a representative of the affected communities met with the NCP to present their submission. Following intra-departmental and inter-departmental consultation (including close contact with the Canadian mission in the non-adhering country) the NCP determined that the submission was relevant to the Guidelines and decided to seek agreement from the company and the NGOs to participate in an NCP-facilitated dialogue on the issues raised in the submission which are relevant to the Guidelines. In late 2005, both parties agreed to participate in the dialogue scheduled for end January 2006. However, prior to the meeting, the NGOs withdrew over a disagreement about the terms of reference for the meeting. In addition to expressing its ongoing willingness to facilitate a dialogue, the NCP encouraged the company to pursue independently ongoing dialogue with the communities affected by its operations with a view to resolving outstanding issues. Finally, in line with the Government of Canada's expectation that companies incorporated in Canada observe the OECD Guidelines, the Canadian NCP indicated its intention to maintain an interest in the company's operations and to follow relevant developments in the company's community development plan and Environmental Impact Assessment work.

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

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

Netherlands. In August 2002, a Dutch trade union asked the NCP to consider whether the process leading up to a petition for bankruptcy by “Plaid Nederland” was in conformity with the Guidelines. As the company no longer exists, obtaining information was difficult and, since Plaid management has moved to another location, it was not possible to organise a tripartite meeting or to issue a joint statement. The NCP decided to draw a conclusion using information obtained from bilateral consultations and court records. Part of this conclusion is that the company’s efforts to share information with employees about its financial situation appeared to be ineffective.

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

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

V. Investments in Weak Governance Zones

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

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

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

⁶ The US NCP was not consulted on this specific instance.

zones. Weak governance zones are defined as countries where governments are unwilling or unable to assume their responsibilities.

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

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

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

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

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

Following up on work that began with the references to the OECD Guidelines made in two UN Expert Panel’s reports to the UN Security Council on Illegal Exploitation of Natural Resources in the Democratic Republic of Congo (DRC⁷), some NCPs continued engagement with companies named in the reports. The following describes steps and decisions taken by NCPs during the reporting period:

- *Austria.* The Austrian NCP has dealt with a specific instance raised by a company active in the mining sector of the DRC that concerns a German company, also active in the sector. The complaint had first been introduced on November 2004. In February 2005, the Austrian NCP informed the complainant that it could not take up consideration of the matter due to the absence of an ‘investment nexus.’ In March 2005, the company renewed its complaint, offering documents to show the required investment nexus. In October 2005, the Austrian NCP invited the complainant to a hearing, and subsequently repeated the initial assessment. On 18 October 2005, the Austrian NCP informed the complainant that in the light of the documents newly submitted at the hearing an investment nexus would be at least possible, and because of that the issues raised merited further examination. Therefore the complaint was sent to the German company and to the German NCP, which was informed and consulted during the whole process. The German company denied the alleged violations and requested documents to prove the alleged accusations. The complainant could not provide such documents and therefore the mediation effort carried out by the Austrian NCP did not produce any positive results. The Austrian NCP therefore tried to find out, if the complaint was justified. Unfortunately, due to the internal situation in the DRC and to the complicated structure of the mining activities in this country, it was not possible to verify the complaint. For this reason and after having consulted the Advisory Committee of the NCP, the Austrian NCP closed the specific instance in May 2006 without decision

⁷ Earlier summaries of Investment Committee and NCP follow up on the Expert Panel Reports can be found in the 2003, 2004 and 2005 Annual Reports on the OECD Guidelines.

as to the merits of the complaint, and without issuing any specific recommendations. As there is no consensus was reached between the two enterprises, their names have not been published.

- *Belgium.* The Belgian NCP was asked by a consortium of NGOs to look at range of issues related to the activities of the Group Forrest in the DRC (e.g. worker safety, political activities, disclosure, the revenues received by a state-owned enterprise in the context of a mining project). In November 2005, the Belgian NCP issued a press release that notes the interest of the Group Forrest in “defending and promoting the Guidelines”. It also recommends *inter alia* that the Group: promote the Guidelines with suppliers and assist public authorities and international institutions to implement policies dealing with problems of populations near “industrial sites” (available in the Archive of documents as Document 3, Annex 4).
- *Belgium and France.* The French NCP has contacted Transami, a commercial transport company with activities in the DRC. This company was classed in the 2003 Expert Panel report in category 5 (“Parties that did not react to the Panel report”) in the 2003 report by the Expert Panel. The French NCP collaborated with the Belgian NCP on this matter, since Transami provides services for a Belgian business, Specialty Metals Company (SMC). The Belgian NCP has stated publicly that, because of the incomplete information provided by the Expert Panel and by SMC, that it was not in a position to pursue its consideration of SMC’s activities in the DRC. The French NCP has decided that, given the lack of information on the two companies, it also would have to end its consideration of this matter.

VI. Follow-up on Issues Raised at Earlier Meetings

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

NCP procedures and parallel proceedings

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

This section and the Background Note in Annex 5 provide broad summaries of what has been learned in the course of these discussions. The consultations provided an opportunity for BIAC, TUAC and NGOs to share their views on this matter – their written submissions are reproduced in Annex 6 - have had an opportunity to comment on this summary. Delegates and NCPs recognise the need to accumulate more practical experience in this area – thus, these summaries are not to be viewed as the final word on the subject.

The business circumstances and legal and ethical issues underpinning many specific instances are complex. Because of this complexity, it is often impossible to develop detailed, fixed rules about how NCPs should handle specific instances. In summarising the results of its discussions of other issues

⁸ For earlier summaries of Investment Committee and NCP discussions of parallel proceedings, see section VII.a of the 2005 Report and section VI.a of the 2004 Report (available at www.oecd.org/daf/investment/guidelines).

relating to specific instances, the Investment Committee has previously stressed the need to allow flexibility to NCPs and has noted the value of a case-by-case approach. The Committee's approach to parallel proceedings is no exception.

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

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

The Background Note in Annex 5 reviews the considerations identified by NCPs as influencing their approach to specific instances with parallel proceedings. Three lists of considerations are proposed in the Annex 5 Note. The first highlights the general problems and risks associated with accepting a specific instance that is the subject of parallel proceedings. The second looks at the particular problems and risks that might be encountered when the parallel proceeding takes place in a non-adhering host country. The third list covers the possible sources of "value added" of the specific instances procedure relative to the parallel proceeding – that is, it describes situations where the NCP might be able to contribute to the resolution of problems and to enhance the effectiveness of the Guidelines by agreeing to consider such instances.

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

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

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

Nature of the specific instance

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

Nature of the parallel proceeding

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

Views and attitudes of the interested parties

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

Encouraging peer learning

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

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

VII. Progress to Date and Considerations for Future Action

Progress to date

This review of the implementation of the Guidelines over the June 2005-June 2006 period underscores the continued relevance of the Guidelines as a tool for government, business, trade unions and civil society. It also indicates that there has been ongoing consolidation of adhering government use of the instrument.

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

New requests to take up specific instances have been brought and a number of outstanding specific instances were concluded – the inventory of cases in Annex 4 shows that 96 specific instances have been actively considered by NCPs, as compared with the 72 specific instances reported last year. There are indications that some of these specific instances have had an impact – for example, during the 2006 OECD Corporate Responsibility Roundtable, the Australian NCP said that he expected that follow up on the 'GSL Australia' specific instance would improve the lives of the people being held in detention facilities for illegal immigrants (the specific instances looked at the policies and practices of the private company that managed the facility for the Australian government). In addition, the specific instance has already been featured in human rights newsletters and websites; thus, it may also contribute to the emergence of shared thinking about corporate responsibilities in the context of public-private partnerships.

Another noteworthy development is "preventative promotion" – that is, promotion that is designed to head off problems before they arise. For example, in what it refers to as its "proactive approach", the Swiss NCP has contacted Swiss companies whose overseas "positioning" may point to contradictions with the recommendations of the Guidelines (as identified, for example, by Swiss diplomatic missions). The

Swiss NCP notes that on the several occasions over the past few years it has used this proactive approach and that it seems to have resulted in greater efforts by the companies concerned to take the Guidelines into account. Another example can be found in the Canadian report. The Canadian NCP states that, while its efforts to facilitate dialogue under the specific instances procedure regarding a Canadian mining company's activities in a non-adhering company had not yet been successful, it had decided ... "to maintain an interest in the company's operations and to keep up to date on relevant developments related to the company's community development plan and Environmental Impact Assessment work."

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

Considerations for future action

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

Cooperation

- *Deepening cooperation among NCPs.* NCPs report varying experiences when cooperating with other NCPs. In 2006 and earlier reports, some NCPs expressed satisfaction with the quality of cooperation, while others noted difficulties (usually these involved not getting information in a timely manner). The NCPs believe that it will be useful to engage in experience sharing with a view to improving communication and coordination.
- *Deepening cooperation among stakeholders.* During the Roundtable, one business participant observed that cooperation among the non-government stakeholders in Guidelines implementation process (BIAC, TUAC and NGOs) did not appear to be well developed. The NCPs would like the development of cooperation between BIAC, TUAC and NGOs to be one of the themes of the upcoming cycle of implementation. This might involve working on a joint project of common interest (such as follow up on the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the corporate responsibility work on China). Other avenues for cooperation cited were: 1) providing joint inputs to the work of the Investment Committee; and 2) creating liaison groups or "Friends of the Chair" which provide a forum for the development of shared positions and projects among stakeholders.
- *Deepening cooperation among different parts of government and of the OECD to promote corporate responsibility through the Guidelines.* Stakeholders and NCPs noted that cooperation within governments and within the OECD for promoting corporate responsibility and the Guidelines is not sufficiently developed. Enhancing such cooperation could be a goal for the next cycle of implementation.

⁹ See section VI (under Scope of the Guidelines) of the 2003 Annual Report on the Guidelines for a discussion of the meaning of the "investment nexus."

Mediation

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

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

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Finland	Quadri-partite with several ministries and civil society partners	Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Trade and Industry	Ministry of Trade and Industry Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Social Affairs and Health Ministry of Labour Ministry of Environment	<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 Investment Committee. 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). NGOs are represented by the Service Centre for Development Cooperation (KEPA).</p> <p>The committee has met several times over the review period.</p>
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and five Trade Union Federations are part of the NCP.
Germany	Single Department	Federal Ministry of Economics and Technology	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from Federal ministries mentioned in the previous column, business and employee organisations and selected NGOs meets regularly to discuss all Guidelines -related issues.

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

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

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Portugal	Single Department	ICEP Portugal Ministry of Economy		
Romania	Inter-ministerial Body	<p><i>Coordination</i> - State Minister in charge with the coordination of the activities in the field of business environment and small and medium -sized enterprises , Ministry of Foreign Affairs; <i>Executive function</i> - Ministry of State for coordination of the activities from business environment and small and medium sized companies' fields and the Romanian Agency for Foreign Investments. <i>Technical secretariat</i> Ministry of Foreign Affairs and Romanian Agency for Foreign Investments</p>	<p>Ministry of Foreign Affairs The Cabinet of the State Minister in charge of coordination of the activities in the field of business environment and small and medium -sized enterprises - Business Environment Unit Ministry of European Integration Ministry of Public Finances Ministry of Justice Ministry of Education and Research Ministry of Labour, Social Solidarity and Family Ministry of Economy and Commerce Ministry of Transport, Constructions and Tourism Ministry of Environment and Waters Management Romanian Agency for Foreign Investments National Agency for Small and Medium Sized Enterprises and Cooperation Romanian Academy – National Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania and Bucharest</p>	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, employers' associations and civil society.
Slovak Republic	Single Department	Ministry of Economy		The NCP belongs as a single department to the Ministry of Economy, under the Division of Strategy, Department of Business Environment.
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.

	COMPOSITION OF THE NCP	GOVERNMENTAL LOCATION OF THE NCP	OTHER MINISTRIES AND/OR AGENCIES INVOLVED*	COMMENTS AND NOTES
Spain	Single Department	General Secretariat 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.
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	Ministry of Industry and Trade Ministry of Environment and Sustainability	The Ministry for Foreign Affairs, Department for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets in principle once a year and is provided with essential information as required.
Turkey	Single Department	General Directorate of Foreign Investment, Undersecretariat of Treasury		
United Kingdom	Single Department	Trade Negotiations and Development Unit, Department of Trade and Industry	Foreign and Commonwealth Office HM Treasury Department for International development	The NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives. The NCP holds 2 formal 'Stakeholder' meetings a year.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an ad hoc basis.

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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* 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.

Specific Instances Considered by National Contact Points to Date

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Argentina	Argentine subsidiary of a multinational enterprise involving employment relations	Dec 2004	Argentina	II: General Principles IV: . Employment and Industrial Relations	ongoing	n.a	The Argentine subsidiary of the multinational banking corporation subject to last year's claim has been sold to a new owner. No pending issues exist with the new owner. Requests contained in the original presentation have been partially met. Nevertheless some areas of disagreement persist between the original parties of the specific instance reported last year. The final settlement is still pending.
Australia (The Australian NCP assumed carriage following an agreement with the UK NCP in June 2005)	GSL (Australia) Pty Ltd – an Australian incorporated wholly-owned subsidiary of a UK controlled multinational – Global Solutions Limited	June 2005	Australia	II General Principles VII Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at www.ausncc.gov.au .
Austria	Mining activities	Nov 2004	Democratic Republic of Congo	Various	Concluded	Yes.	No consensus reached.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A.	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group	Sept 2003	Democratic Republic of Congo	Not specified in the UN report	Concluded	.Yes	Press release in 2005.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Belgium	Forrest Group	Nov 2004	Democratic Republic of Congo	II. General Policies III. Disclosure IV. Employment V. Environment IX. Competition	Concluded	Yes	Press release in 2005.
Belgium	Tractebel-Suez	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Concluded	Yes	Press release in 2005.
Belgium	KBC/DEXIA/ING	Mai 2004	Azerbaijan, Georgia and Turkey	I Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded		UK NCP.
Belgium	Cogecom	Nov 2004	RD Congo	I Concepts and Principles II. General Policies IV. Employment	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Belgolaise	Nov 2004	RD Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems	Nov 2004	RD Congo	I Concepts and Principles II. General Policies X. Taxation	Ongoing	n.a.	Press release in preparation
Belgium	GP Garments	June 2005	Sri Lanka	III. Disclosure IV. Employment	Ongoing	n.a.	A meeting organised by the NCP, in the presence of both parties took place in September 2005.
Brazil	Workers representation in labour unions	26 Sept 2002	Brazil	Article 1, Chapter IV	ongoing	No	
Brazil	Dismissal of workers	Nov 2003	Brazil	Article 6, Chapter IV	ongoing	No	
Brazil	Construction of a dam that affected the environment and dislodged local populations.	2004	Brazil	Article V	ongoing	No	
Brazil	Environment and workers' health issues.	8 May 2006	Brazil	Chapter V, article 1 and Chapter V, article 3.	ongoing	No	
Brazil	Dismissal of workers	26 Sept 2006	Brazil	Chapter IV, article 6.	Concluded	Yes	

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [www.ncp-pcn.gc.ca/annual_2002-en.asp]. The Swiss company was kept informed of developments
Canada	Follow-up to allegations made in UN Experts Report on DRC	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.
Canada	Complaint from a Canadian labour organization about Canadian business activity in a non-adhering country.	Nov 2002	Myanmar	Employment and Industrial Relations; Environment	Concluded	Yes	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.
Canada	Complaint from a coalition of NGOs concerning Canadian business activity in a non-adhering country	May 2005	Ecuador	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	Yes	Following extensive consultation and arrangements for setting up the dialogue, the NGOs withdrew their complaint in January 2005 in disagreement over the set terms of reference for the meeting.
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance.	Oct 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
							Chile cites this specific instance in a positive way.
Chile	La Centrale Unitaire de Travailleurs (CUT) dans le cas de Unilever	June 2005	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded November 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise.	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Jan 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise.	Feb 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitter's) request, August 2004
Denmark	Trade union representation in Danish owned enterprise in Malaysia	Feb 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established
Denmark	Several questions in relation to logging and trading of wood by a Danish enterprise in Cameroon, Liberia and Burma	Mar 2006	Cameroon, Liberia and Burma	Several chapters (e. g. II, IV, V and IX)	Ongoing	Not relevant at this stage	Specific instance initially assessed, specific instance raised by NGO (Nepenthes)
France	Forced Labour in Myanmar and ways to address this issue for	Jan 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
	French multinational enterprises investing in this country						The French NCP issued a press release in March 2002, see www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation.	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003 (see Documents archive). www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm
France	Marks and Spencer's announcement of closure of its stores in France	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations.	Feb 2003	France	V. Environment plus chapeau; III. Information and disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process.	Feb 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.
France	Accusation of non-observance of the Guidelines in the areas of environment, "contractual" and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline.	Oct 2003	Turkey, Azerbaijan and Georgia	II. General Principles	Ongoing	n.a.	In consultation with parties

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
France	DRC/SDV Transami – Report by the expert Panel of the United Nations. Violation of the Guidelines by this transport company in the Congo, named in the third report as not having responded to the Panel's requests for information.	Oct 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Concluded	No	
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos.	Nov 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 www.minefi.gouv.fr/directions_services/dgtpc/pcn/compcn010405.htm
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made.	Feb 2005	France	IV. Employment and Industrial Relations	Ongoing		
Germany	Labour conditions in a manufacturing supplier of Adidas	Sept 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsfoerderung/instrumente-der-aussenwirtschaftsfoerderung,did=20608.html (see Documents Archive).
Germany	Employment and industrial relations in the branch of a German multinational enterprise	June 2003	Philippines	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties. The German NCP has produced a draft Statement and is still waiting for the necessary further information and clarification by the party that brought the original complaint.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Germany	Child labour in supply chain	Oct 2004	India	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	MNE was unable to join the meeting due to a question of principle based on a management-decision with regard to a categorical (non-) cooperation with one of the NGOs involved. Notwithstanding that, the MNE has notified the NCP in detail that it has already taken constructive and concrete steps to solve the problems raised. Thus, the German NCP has conducted with both parties separate, detailed meetings in Autumn 2005; further concluding talks will take place in due course.
Hungary	Visteon Hungary Ltd. Caused personal injury. Charge injury arising out of negligence.	June 2006	Hungary	IV Employment and Industrial Relations	Ongoing	n.a.	Under consideration – parallel legal proceedings are underway. NCP is waiting for additional information from Visteon Hungary, Ltd.
Israel	UN Expert Panel Report – DRC	2003	Democratic Republic of Congo	Not specified in Report	Concluded	No	Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from DRC
Italy	Accusation of non-observance of Guidelines recommendations on human and labour rights, environment	2004	Turkey, Azerbaijan, Georgia	I. Concepts and Principles II. General Policies III. Disclosure IV. Employment and Industrial Relations V. Environment	Ongoing	n.a.	In consultation with parties
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	Feb 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - there is a parallel legal proceeding.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Japan	Industrial relations of a Philippines subsidiary of a Japanese company	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration -There is a parallel legal proceeding.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - there is a parallel legal proceeding.
Japan	Industrial relations of a Japanese subsidiary of a Swiss-owned multinational company	May 2006	Japan	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	Under consideration - there is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' labour relations	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. The Swiss NCP issued an intermediate press statement: http://www.seco.admin.ch/news/00197/index.html?lang=en
Korea	Korean company's business relations in Malaysia's wire rope manufacturing sector	2003	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	* Korea's NCP is engaged in Guidelines promotion and Specific Instances implementation in accordance with the a rule for Korea's NCP, which was established in May 2001.

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	Concluded	n.a.	The conflict was settled on 17 Jan 2005: The at that time closed Mexican subsidiary was taken over by a joint venture between the Mexican <i>Llanti Systems</i> and a cooperative of former workers and was re-named "Corporación de Occidente". The workers have received a total of 50% in shares of the tyre factory and <i>Llanti Systems</i> bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs.
Netherlands	Adidas' outsourcing of footballs in India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 www.oecd.org/dataoecd/33/43/2489243.pdf
Netherlands	Dutch trading company selling footballs from India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues	July 2001	Myanmar	IV Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties agreed on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found in English on www.oesorichtlijnen.nl .
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the U.S.A.	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company	Aug 2002	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	As the Dutch affiliate went bankrupt and the management went elsewhere neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from bilateral consultations and courts'rulings (www.oesorichtlijnen.nl).
Netherlands (consulting with Chile)	On the effects of fish farming	Aug2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the DRC.	July 2003	Democratic Republic of Congo	II.10. Supply chain IV Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned. (www.oesorichtlijnen.nl)
Netherlands	Closure of an affiliate of an American company in the Netherlands	Sept 2003	Netherlands	IV Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union	Aug 2004 - April 2005	United States	IV Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, though its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar	2003-2004	Netherlands	IV Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see www.oesorichtlijnen.nl (in Dutch).
Netherlands	Treatment of the employees of an Irish company in the Netherlands	Oct 2004	Netherlands	IV Employment and Industrial Relations	Concluded	No	The NCP decided that the specific instance, raised by a Dutch labour union, did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.
Netherlands	Introduction of a 40 hrs working week in an affiliate in the Netherlands of an American company	Oct 2004	Netherlands	IV Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Treatment of employees and trade unions in a subsidiary of a Dutch company in Chile	July 2005	Chile	IV Employment and Industrial Relations	Concluded	Not by Dutch NCP	Labour Union requested the Dutch NCP to inquire after the follow up of a Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile.
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.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2004	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2002	Poland	IV. Employment and Industrial Relations	Resumed	n.a.	In contact with representatives of parties involved.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise	2006	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Portugal	Closing of a factory	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company.	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels.	Dec 2004	Peru	IV. Employment and Industrial Relations	Concluded		
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 www.oecd.org/dataoecd/16/34/15595948.pdf
Switzerland (consulting with Canada)	Impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company	2001	Zambia	II. General Policies V. Environment	Concluded	No	The specific instance was dealt with by the Canadian NCP (see information there). The Swiss company was kept informed of developments.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
Switzerland (consulting with Korea)	Swiss multinational Nestlé's labour relations in a Korean subsidiary	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	The specific instance was dealt with by the Korean NCP (see information there). The Swiss NCP acted as a mediator between trade unions, the enterprise and the Korean NCP. The Swiss NCP issued an intermediate press statement: http://www.seco.admin.ch/news/00197/index.html?lang=en
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPs, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
United Kingdom	Activities of Avient Ltd alleged in a UN Expert Panel report.	2003	Democratic Republic of Congo	This was not specified in the UN Panel report	Concluded	Yes	The U.K. NCP issued a statement in September 2004: www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/NCP%20Statements/page23595.html .
United Kingdom	Activities of Oryx Minerals alleged in a UN Expert Panel Report	2003	Democratic of Congo	This was not specified in the Panel Report	Concluded	Yes	
United Kingdom	Activities of Alfred Knight	2004	Democratic of Congo	Various	Ongoing	N/A	In contact with complainant.

NCP concerned	Issue dealt with	Date of Notification	Host Country	Guidelines Chapter	Status	Final Statement	Comments
United Kingdom	Activities Anglo American	2005	Zambia	Various	Ongoing	N/A	In contact with both parties
United Kingdom	Activities of National Grid/Transco/	2004	Democratic Republic of Congo	Various	Concluded	Yes	The UK NCP issued a statement in July 2005: www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/NCP%20Statements/page23595.html
United Kingdom	Activities of DAS Air alleged in a UN Expert Panel Report	2003	Democratic Republic of Congo	This was not specified in the UN Panel Report	Ongoing	N/A	In contact with parties.
United Kingdom (in contact with US NCP)	Freedom of association and collective bargaining.	2006	United States	IV. Employment and Industrial Relations.	Ongoing	N/A	In contact with parties.
United Kingdom	Freedom of association and collective bargaining.	2006	Bangladesh	IV. Employment and Industrial Relations.	Ongoing	N/A	In contact with parties.
United Kingdom	BTC; activities of consortium led by British Petroleum	2004	Azerbaijan, Georgia, Turkey	II.5 Exemption from Regulation, III.1 disclosure, V.1 environmental management, V.2a information on environmental health/safety V.2b community consultation, V.4 postponement of environmental protection measures	Ongoing	N/A	In contact with parties.
United States (consulting with French NCP)	Employment and Industrial Relations - Freedom of Association and Collective Bargaining	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached settlement
United States (consulting with French NCP)	Employee representation	June 2000	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 included among numerous NCPs and the Investment Committee, working with the UN	Conducting business in conflict zones and illegal exploitation of natural resources	October 2002	Democratic Republic of the Congo (DRC)	Numerous	Concluded	No	UN Panel Report concluded all outstanding issues with the 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
United States	Investigate the conduct of an international ship registry	November 2001	Liberia	II. General Policies III. Information and Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the specific conduct which was the basis of the concerns raised was being effectively addressed through other appropriate means, including through a United Nations Security Resolution
United States consulting with the French NCP	Employment and industrial relations, collective bargaining	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties
United States consulting with the German NCP	Employment and industrial relations, representation and collective bargaining	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties

Note: n.a. = not applicable

Annex 4

Archive of Documents

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

Document 2. Public statement by Australian NCP

Document 3. Public statement by Belgian NCP

Document 4. Public statement by the Norwegian NCP

Document 5. Letter to UN Secretary-General Kofi Annan

Document 6. Letter to Russian Prime Minister Mikael Fradkov

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

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

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

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

Origins of the OECD

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

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

A great deal of physical infrastructure was created under the Marshall Plan, through investments of approximately 14 billion dollars, made to rebuilding modern Europe in the wake of the devastation of World War II. But too many people make an error in thinking that the Marshall Plan was primarily about money. In fact, there was just as much financial assistance was given to Europe before the Marshall Plan. The genius of the Marshall Plan derived from the foresight of those who realised that while lasting peace, prosperity and security can be defended through military strength, they can only be secured through economic development and co-operation, indeed through economic interdependence brought about by institutional frameworks, not bricks and mortar. And the remarkable success of the Marshall Plan is clear for all to see: instead of exchanging bombs and bullets, Europeans now exchange goods, services and people.

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

What the OECD is and what it does

The OECD has a mandate to promote economic growth and development throughout the world. It has 30 members and engagements with over 70 economies. The OECD promotes market-based economies and

open, rules-based and non-discriminatory trading and financial systems, supported by good governance, or in other words, effective administration by a government accountable to its people.

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

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

The third area of work is to help members and non-OECD economies meet domestic challenges through international comparisons of best practice, supported by in-depth analysis based on reliable data to develop national policies. Examples include our work on health systems, environment, education, pension plans, innovations policies and so on.

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

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

OECD's co-operation with China

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

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

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

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

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

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

At the OECD we prefer to talk about “responsible business conduct”. The difference? The reality is that business is conducted by individuals within corporations, not by the corporations themselves, and it is people who choose the legal framework in which they wish to undertake their business whether it be through partnerships, sole proprietorships or, as is most often the case, through corporations with limited liability. The exceptions to creating corporations tend to be found among some professional service firms such as lawyers, auditors, etc. I will return to the role of individuals.

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

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

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

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

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

Responsible Business Conduct (RBC) benefits China

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

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

RBC also benefits Chinese business in two ways:

- First, Chinese companies are increasingly “going global”. To operate abroad, they need to understand the RBC standards adopted in other countries. Subscribing to international “good RBC practices” will open doors for Chinese companies, as host societies will have increased confidence and trust in these companies, thereby making it easier for them to form business alliances with other major companies.

- Second, good RBC performance can contribute to a company's long-term growth and profitability. For example, it can make it easier to compete for capital and labour, it can boost productivity and it allows companies to minimise reputational risk and damage to brands.

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

OECD findings on Chinese companies

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

The contribution of the OECD Guidelines for Multinational Enterprises

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

Guidelines implementation involves a mediation and conciliation facility that considers whether or not a particular investment project adheres to the Guidelines recommendations. This facility involves voluntary discussions between governments and companies on concrete ethics issues that arise in connection with international investment projects. This facility has been used more than seventy times since its creation in June 2000 to explore many questions – for example, a Korean company's labour management practices in a Guatemalan export processing zones and a Canadian company's resettlement of people in the vicinity of a mine in the Zambian copper belt. This dialogue can reassure companies that what they are doing meets international standards. Or they can help companies identify areas where they can improve. The OECD views this as a positive and pragmatic service that is both useful to businesses and enhances the contribution of international investment to host societies.

Moving co-operation ahead

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

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

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

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

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

This brings me to the conclusion that individuals must be directly involved and personally accountable for RBC. Otherwise it is likely to exist only in resounding declarations in Annual Reports and other corporate public documents. This may be important but it is not where the answer lies to ensuring RBC. Boards of Directors, Management and employees must all be aware of and commit themselves to the principles found in the MNE Guidelines. The Guidelines should be taught in law schools and business schools. They should be widely disseminated and discussed and debated at conventions of lawyers, auditors and similar professional bodies in all countries.

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

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

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

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

Document 2. Statement by the Australian NCP

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

Introduction

1. In June 2005, the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines": Attachment A) received a submission from several Australian and overseas non-government organisations ("the complainants")¹⁰ alleging that a UK-controlled multinational, Global Solutions Limited, in providing immigration detention services to the Australian Government through its Australian incorporated wholly-owned subsidiary GSL (Australia) Pty Ltd ("GSL Australia")¹¹, had breached the Human Rights and Consumer Interests provisions¹² of the Guidelines.
2. The submission alleged that GSL Australia:
 - in detaining children was complicit in violations of the 1989 Convention on the Rights of the Child particularly where there is no legal limit on the length of the detention;
 - was acquiescing in the mandatory detention of asylum seekers and was therefore complicit in subjecting detainees to a regime of indefinite and arbitrary detention in contravention of Article 9 of the 1996 International Covenant on Civil and Political Rights and Article 9 of the 1948 Universal Declaration of Human Rights. Furthermore, this regime is allegedly punitive in nature and is thus in contravention of Article 31 of the 1951 Convention relating to the Status of Refugees;
 - did not adequately respect the human rights of those detained in its operation of Australian immigration detention facilities; and
 - was misstating its operations in a way that was 'deceptive, misleading, fraudulent, or unfair' by claiming to be 'committed to promoting best practice in human rights in its policies, procedures and practices'.

ANCP Processes

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

¹⁰ The complainants are the Brotherhood of St Laurence, Children Out of Detention (ChilOut), the Human Rights Council of Australia, the International Commission of Jurists (ICJ – Switzerland) and Rights & Accountability in Development (RAID – UK).

¹¹ Although GSL Australia operates some State Government prisons and prisoner transportation services, the complaint concerned its activities as the provider of immigration detention services to the Australian Government.

¹² See § 2 of Chapter II and § 4 of Chapter VII respectively ('The OECD Guidelines for Multinational Enterprises – Revision 2000', OECD, Paris, 2000).

Following the Sydney meeting, the complainants lodged a supplementary submission that focussed on GSL Australia's operations. The issues raised in both submissions were complex and sensitive.

4. On 1 August 2005, the ANCP determined that it would be appropriate to accept as a specific instance those matters raised by the complainants that could be shown to relate directly to the conduct of GSL Australia and were within its control. Those matters included arrangements in respect of children and the general detainee population, staff training, implementation and monitoring of operational procedures, information provision to detainees, psychiatric and mental health services, and the utilisation of the Management Support Units and Red One Compound. The ANCP proposed that the specific instance should not focus on isolated cases or where the risk of re-occurrence in the future has been or is being addressed through other means¹³. The ANCP reasoned that this would allow the parties to concentrate on those GSL Australia activities that have the greatest likelihood of being resolved through mediation.
5. The ANCP also determined that it would be inappropriate to accept those parts of the complainants' submission that sought to address the Australian Government's mandatory detention policy because the Guidelines do not provide an appropriate avenue to review a host government's domestic policy settings. The complainants disputed this determination, reiterating that the Guidelines state that the right of governments to 'prescribe conditions under which multinational enterprises operate within their jurisdictions is subject to international law'. The ANCP also ruled out portions of the supplementary submission that related to the activities of a previous detention centre operator.
6. On 10 August 2005 and 19 August 2005, the complainants and GSL Australia respectively agreed to participate in the specific instance. To facilitate a shared understanding of the issues under consideration, on 24 August 2005, the ANCP proposed an approach to progress the specific instance and circulated a 'Preliminary list of issues within GSL Australia's control' to the parties.
7. On 21 October 2005, the ANCP circulated an updated list of issues within GSL Australia's control in conjunction with the parties' respective views. This was followed by an exchange of information to enable the parties to be able to understand the procedures and practices associated with managing immigration detention facilities and to appreciate the concerns and sensitivities of the complaint¹⁴.
8. The ANCP convened a face-to-face mediation session on 28 February 2006, in Canberra. GSL Australia was represented at the mediation session by its Managing Director, Mr Peter Olszak and its Public Affairs Director, Mr Tim Hall. The complainants were represented by the Manager of Ethical Business at the Brotherhood of St Laurence, Ms Serena Lillywhite, the Executive Director of the Human Rights Council of Australia, Mr Patrick Earle and a member of the International Commission

¹³ In the lead up to the complaint and during the specific instance, there were a number of official inquiries (that is, parallel processes) related to immigration administration and GSL Australia's administration of immigration detention facilities in Australia. Prominent examples include the Palmer and Hamburger inquiries commissioned by the Australian Government and an own-motion study by the Australian National Audit Office. The Commonwealth Ombudsman was also asked by the Government to review particular immigration cases including the Vivian Alvarez (Solon) case, other immigration detention cases identified where the persons detained had been released from detention with their files marked 'not unlawful' and the cases of detainees who have been in detention for two years or more. Consequent changes to the administration of immigration detention policy (say, in relation to families and children) and procedures have had a bearing on the issues considered by this specific instance.

¹⁴ Among the key pieces of information exchanged were operational procedures applicable to the issues raised and references to the findings of parallel processes and international standards.

of Jurists, Dr Elizabeth Evatt. The ANCP was assisted by Ms Angela McGrath, Mr Andrew Callaway and Ms Debra Chesters.

Outcomes of the Specific Instance

9. The mediation session was conducted in a spirit that promoted the wellbeing of the detainee population whose care is currently entrusted to GSL Australia. A significant outcome was the value both parties gained in engaging openly on the human rights aspects of GSL Australia's operations. The discussion was frank and robust and enabled consideration of potential solutions.
10. GSL Australia committed to upholding the human rights of those in its care. GSL Australia's Managing Director, Mr Olszak, summed up the company's position by pledging to always consider the question of 'Is it right?' within the framework of human rights and embedding this approach within the company's policy and procedures, including training of its officers. The complainants acknowledged the difficult and changing environment of immigration detention services and offered practical suggestions to assist GSL Australia in utilising human rights experts to interpret human rights standards and in training staff. The mediation session's agreed outcomes are at Attachment B.

Summary

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

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

Gerry Antioch
Australian National Contact Point
6 April 2006

OECD Guidelines for Multinational Enterprises
Specific instance involving GSL (Australia) Pty Ltd and the complainants

Agreed outcomes of mediation meeting

April 2006

Introduction

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

Mr. Gerry Antioch – Australian National Contact Point (ANCP)
Ms. Angela McGrath – office of the ANCP
Ms. Debra Chesters – office of the ANCP
Mr. Andrew Callaway – office of the ANCP
M. Peter Olszak – Managing Director, GSL
Mr. Tim Hall – Director, Public Affairs, GSL
Dr. Elizabeth Evatt – International Commission of Jurists
Mr. Patrick Earle – Human Rights Council of Australia
Ms. Serena Lillywhite – Brotherhood of St Laurence

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

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

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

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

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

General agreement

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

Training

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

Monitoring the implementation of GSL procedures

14. GSL agreed to seek external advice to determine if the operations of the GSL Compliance and Audit Unit adequately encompass a human rights framework for monitoring and auditing purposes.
15. GSL indicated it was willing to make its own 'random audits' available for external scrutiny.
16. GSL indicated it was changing its complaints monitoring system so that it could monitor the number and nature of complaints and responses to complaints more effectively and would be establishing targets for reduction in complaints.
17. GSL agreed to review the terms of reference and composition of its Community Advisory Committee to enhance external engagement (the complainants offered to suggest additional community representatives).
18. GSL agreed to expand their planned / forthcoming 'client survey' to include input and feedback from community visitors to the detention centres (the complainants offered to provide names of key community visitors).
19. GSL agreed that the existing 'infringement mechanisms' for identifying, reporting and responding to infringements needs to be made clearer to all GSL staff. International human rights standards were the agreed framework for the management and disciplining of staff alleged to have engaged in the ill-treatment of detainees.

Adequacy of information provision and access to interpreters

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

Management Support Unit and Red One Compound

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

placed in the MSU. It was agreed that the definition of “good order of the institution” would be reviewed against relevant human rights standards.

26. GSL agreed to give consideration to identifying and disclosing the nature of the ‘structured programs’ that are available to detainees in MSU and Red One.
27. GSL agreed to refer to relevant international human rights standards in drafting protocols for the management and disciplining of staff alleged to have engaged in ill-treatment of detainees.
28. GSL agreed to consider the desirability of reviewing (against relevant human rights standards) the timeframes for the transfer, detention and assessment of detainees in MSU. In particular, endorsement of transfer (recommended change from 48 to 24 hours), final determination (recommended within 24 not 72 hours) and emergency mental health assessments and checks (recommended within 12 not 24 hours).

Removal and deportation

29. It was agreed that removal and deportations in particular raised sensitive and important human rights issues that need to be considered on a case-by-case basis. GSL agreed to consult with DIMA to ensure an appropriate human rights framework is used in developing guidelines and processes for removals and deportations, particularly as they relate to the use of GSL staff as escorts.
30. GSL agreed to ensure that all GSL removal and deportation escorts have received appropriate training and understand the international protocols and human rights standards.
31. GSL undertook to provide a report to DIMA as a matter of course on all deportations and removals in which its officers are involved, and to the extent reasonably possible, in compliance with removal / deportation protocols, and also an assessment of the arrival situation and well being of the person being removed.

General conditions and services to detainees

32. GSL undertook to give consideration to establishing a ‘visitors scheme’ that is more open and could provide feedback and advice to GSL in enhance their risk management process and improve conditions for detainees (the complainants suggested the Victorian Community Visitors Scheme operated by the Office of the Public Advocate as a possible model).
33. GSL indicated a major announcement would be forthcoming with regard to the provision of food in detention centres. Both GSL and the complainants agreed this is a significant issue of detainee dissatisfaction. It was acknowledged that in part this was an issue of infrastructure operated by GSL, but provided by DIMA.
34. GSL undertook to ensure all detainees have regular access to phones and phone cards to enable communication, support and advocacy.

Document 3. Statement by the Belgian NCP

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

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

Conclusion

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

Memorandum

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

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

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

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

Document 4. Statement by the Norwegian NCP

Statement by the Norwegian National Contact Point

29 November 2005

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

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

Background information

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

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

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

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

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

The company's operations

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

According to the information provided, the work carried out by KPSI at the base consists of maintenance tasks, such as ensuring adequate electricity and water supplies and proper functioning of the drains. After 11 September 2001, a camp was built alongside the Marine base for the internment of terrorist suspects. This was known as Camp x-ray, and was used for persons taken prisoner in connection with military operations, for example in Afghanistan. The camp was built by other companies under contract to

the US authorities. KPSI does not have a contract for the operation of the prison, but has, on request, assisted in the event of faults with water pipes, the electricity net and other shared functions for the Marine base and the prison.

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

The arguments put forward by the parties

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

Aker Kværner states that it has considered on an ongoing basis the ethical issues these activities raise, but has not found them to weigh heavily enough to discontinue its work. It furthermore points out that the detention facilities were built ten years after KPSI started to work at the Marine base. The company has nothing to do with the operation of the detention facilities. Nevertheless, as several of the operational and supply functions are shared, KPSI has occasionally, on request, provided maintenance services relating to the operation of the facilities, such as maintenance of the electricity and water supply, drains, etc. These services have also been carried out in the detention facilities, including the cells. Aker Kværner does not consider KPSI's activities at Guantanamo Bay to be at variance with the OECD Guidelines.

The NCP's assessment

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

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

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

It is the NCP's opinion that the nature and extent of Aker Kværner's activities are unclear. Despite several enquiries from the NCP, the company has not provided specific information about its activities at

Guantanamo Bay. It is the NCP's opinion that Aker Kværner could have provided extensive documentation without compromising its obligation of confidentiality towards the other party to the contract. Neither has the company submitted documentation of the ethical assessments that have been made internally in the company in relation to its activities at Guantanamo Bay, including any board discussions of these issues. No documentation has been provided of any formalised, concrete framework, guidelines, rules, etc., that have been applied in assessing the ethical aspects of the activities in question. It has, however, been ascertained that the OECD Guidelines have not been included in the basis for Aker Kværner's assessments.

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

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

Document 5. Letter to UN Secretary-General Kofi Annan

AG/2006.059.sb
13 July 2006

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

Dear Secretary-General,

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

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

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

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

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

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

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

Yours sincerely,

Angel Gurría

OECD Secretary-General

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

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

Document 6. Letter to Russian Prime Minister Mikael Fradkov

AG/2006.058.sb
13 July 2006

Mr. Mikhail Fradkov
Prime Minister
Federation of Russia

Dear Prime Minister,

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

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

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

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

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

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

Yours sincerely,

Angel Gurría

OECD Secretary-General

cc: Mr Manfred Schekulin, Chair of the OECD Investment Committee
His Excellency, Mr. Alexander Avdeev, Embassy of the Russian Federation, Paris

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

Parallel Proceedings and Specific Instances – A Summary of Discussions

Introduction and background

“Parallel proceedings” refer to specific instances that deal with business conduct that is also the subject of other proceedings at the sub-national, national or international levels. These proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquiries (e.g. by UN agencies).¹⁵ The Investment Committee and its Working Party and the National Contact Points (NCPs) have spent considerable time discussing how parallel proceedings should be handled. Earlier discussions of this issue are summarised in the 2004 and 2005 Annual Reports on the OECD Guidelines for Multinational Enterprises.¹⁶

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

Investment Committee and NCP views on parallel proceedings

The business circumstances and legal and ethical issues underpinning many specific instances are complex. Because of this complexity, it is often impossible to develop detailed, fixed rules about how NCPs should handle specific instances. In summarising the results of its discussions of other issues relating to specific instances, the Investment Committee has previously stressed the need to allow flexibility to NCPs and has noted the value of a case-by-case approach.¹⁷ The Committee’s approach to parallel proceedings is no exception.

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

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

Subsequent sections of this Background Note present lists of considerations that might be taken into account by NCPs as they determine their approach to specific instances with parallel proceedings. Three lists of considerations are proposed. The first list highlights the general problems and risks associated with

¹⁵ NCPs have been asked to consider specific instances involving all four of the categories of parallel proceedings in this list.

¹⁶ See section VII.a of the 2005 Report and section VI.a of the 2004 Report (available at www.oecd.org/daf/investment/guidelines).

¹⁷ See, for example, the Committee’s statement on the scope of the Guidelines. 2003 Annual Report on the OECD Guidelines for Multinational Enterprises, section VI. See also answer to Swiss request for clarification (2005 Annual Report on the OECD Guidelines).

accepting a specific instance that is the subject of parallel proceedings. The second list looks at the particular problems and risks that might be encountered when the parallel proceeding takes place in a non-adhering host country. The third list covers the possible sources of “value added” of the specific instances procedure relative to the parallel proceeding – that is, it suggests situations where the NCP might be able to contribute to the resolution of problems and to enhance the effectiveness of the Guidelines by agreeing to consider such instances. These lists are designed to promote a coordinated NCP approach to this issue while avoiding attempts to establish fixed rules for the handling of parallel proceedings.

General problems and risks associated with parallel proceedings

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

- *Nature of proceeding.* Many NCPs were reluctant (some even stated that national law would not allow them) to take up specific instances that are also the subject of other proceedings. This was a particular concern for criminal proceedings. Several NCPs noted that they have an obligation to report criminal matters to the relevant authorities – one received a request in relation to an alleged case of bribery of foreign officials. Since the reported conduct qualifies as a criminal offence, the allegations were forwarded to the competent judicial authority. In addition to the difficulty of handling specific instances involving possible criminal behaviours, some NCPs expressed concern about being asked to evaluate the appropriateness of behaviours under national labour law, since they do not have the competence to make such evaluations.
- *Adversarial “state of mind” when a dispute between two parties has already been brought to court.* The success of NCPs’ “facilitation of access to consensual and non-adversarial means” in the context of specific instances depends in large part on the cooperative state of mind of the parties to the specific instance and on their willingness to work together constructively on the issues at hand. When the parallel proceeding is legal and adversarial in nature, several NCPs express doubts about the potential “value added” of a specific instance. In such cases, one NCP notes the “the fact that the matter has already been submitted to the courts indicates the adversarial intent of one or both parties; thus, one can infer that there is no scope for bringing the good offices of the NCP to bear on the problem.” Another NCP suspects that the “amicable” handling of the specific instance would be compromised by adversarial judicial proceedings. Several NCPs question whether companies would agree to participate in specific instances when there are parallel proceedings.
- *Ensuring consistency with outcomes of parallel proceedings:* One NCP comments that what NCPs do “cannot be inconsistent with international law, international treaties or domestic law.” Several have experience in ensuring consistency with domestic criminal and administrative proceedings. Generally, their approach has been to wait for these proceedings to come to an end and then to reconsider the specific instance in light of the outcome.
- *Ensuring consistency with national law on competence.* Some NCPs noted that their national laws would not permit the NCP to take up the matter “once a court or an administrative body whose competence is not ruled out has already started to act.”
- *Encroaching on the responsibility of sub-national governments.* One NCP described a problem that can arise in countries with federal or decentralised government structures -- the NCP received a request to consider a specific instance that was already the subject of a provincial mediation process. Noting the sensitivity of the Federal government appearing to want to intervene in the affairs of provincial governments, the NCP decided that it would not be “wise”

to set up a second forum for mediation. Problems and risks associated with parallel proceedings in non-adhering countries

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

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

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

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

- *Same facts, different issues.* The specific instance may cover the same facts or behaviors as the parallel proceeding, but address different issues. One NCP has what it calls a “no overlap criterion” -- it will not deal with aspects that are the subject of a domestic legal procedure. It may, however, take up other aspects (often the Guidelines cover more than the law). Another NCP makes the same point: “The question put to the NCP, in respect of a matter already referred to the courts, may have nothing to do with compliance with provisions of domestic law, and thus nothing should prevent the NCP from taking positions on such issues.” This NCP has practical experience with such a case – after waiting for a court decision (on appeal, the court ruled that a parent company had no legal liability for the costs of cleaning up a production site after closure by its subsidiary), the NCP renewed its engagement on a specific instance looking at whether the parent company could be held accountable under the broader definition of corporate responsibility contained in the Guidelines.
- *Same facts, different entities.* It can happen that the parallel proceeding concerns part of a business entity (e.g. a subsidiary), while the specific instance concerns a different part (e.g. headquarters). Some NCPs indicated that this could be “a consideration in the NCP decision to take up the specific instance.” One NCP describes a specific instance of this type: “in the case of a labour dispute in a subsidiary of an ... MNE located in another adhering country, requests to consider a specific instance were presented to the NCPs of both the host and home countries. Although some aspects of the dispute were already being treated in parallel proceedings in the

host country, the NCP offered its good services and invited the parties concerned to meet. The offer was accepted and discussions involving both sides were held.

- *Reinforcing other channels for promoting widely accepted concepts and principles for business conduct.* The specific instance procedure is designed to promote well-established concepts and principles for business conduct and can complement and reinforce other domestic and international proceedings. For example, a specific instance involving labour management practices in Myanmar was handled in parallel with the International Labour Office's engagement with the government of Myanmar on forced labour in that country – both processes sought to promote the effective abolition of forced labour in Myanmar. The NCP statement issued upon completion of the specific instance lists a number of practices that companies might take to contribute to the fight against forced labour, but also stresses the need for the government of Myanmar to conform to the ILO recommendations.
- *Providing other options for parties already involved in formal proceedings.* One NCP mentioned an experience in which parties expressed interest in using the specific instance procedure as a means of getting out of an “entrenched” and costly formal proceeding which was not producing good results for either party.
- *Shortcomings in host country legal and administrative systems.* Shortcomings in the institutions of law and in law enforcement can create problems for companies and have sometimes been an issue in NCP consideration of specific instances. For example, one NCP statement on its specific instance in the Ghana gold sector notes that its research revealed “the environmental and social problems that exist in connection with mining in Ghana but also the existence of established processes in the form of a regulatory framework and judicial institutions to tackle these problems. However, these processes and institutions wrestle with the difficulties normally associated with developing countries such as, for example, insufficient resources and capacity.”¹⁸ Another NCP states that, while its “normal course of action would be to rule out a specific instance procedure.... an intervention of the NCP may become appropriate if such parallel proceedings clearly fall short of generally recognised standards of integrity, impartiality or expediency.”
- *Providing support.* NCPs might be able to provide assistance to domestic bodies (courts or other domestic judicial or administrative bodies) to which a proceeding that is being considered in parallel with a specific instance has been submitted. One NCP suggests that NCPs might continue to work with the competent authorities *ad adiuvandum* (that is, in a supporting role).

¹⁸

2003 Annual Report on the OECD Guidelines for Multinational Enterprises, Archive of Communications, document 4, pages 71-73.

Annex 6

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

BIAC Comment on parallel proceedings and specific instances

16 May 2006

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

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

Furthermore, NCPs need to bear in mind that it can undermine other well-established authorities, domestic laws and binding procedures if NCPs become active in their areas of competence and responsibility. As the Chair of the 2000 OECD Ministerial made it clear, the "Guidelines are not a substitute for, nor do they override, applicable law" or create any conflicting requirements.¹⁹ Thus, also the implementation of the Guidelines promoted by NCPs must not override national rules nor interfere with national legal or administrative procedures. This means in BIAC's view that parallel proceedings generally should be avoided.

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

Consequently, parallel proceedings should not automatically prevent NCPs taking up specific instances. In cases where all parties express interest in a consensual and non-adversarial dialogue despite parallel proceedings, NCPs should offer their good offices to facilitate this dialogue. This may help finding solutions to problems that court proceedings do generally not offer.

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

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

¹⁹ See The OECD Guidelines for Multinational Enterprises, Meeting of the OECD Council at Ministerial Level, 2000, page 5.

Paris, 15 May 2006

Summary of key points:

In conclusion:

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

Specifically:

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

As a result, the way forward is

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

General comments

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

In developing further the discussion points, we reiterate our support for closer harmonization of NCPs on treating specific instances – which has not been the case in the past – with a view to promote, and not to limit, the use of the Guidelines. We submit our comments and additional points on the direction that we believe the Working Party should take. In its commentaries, the Guidelines note that NCPs, when examining cases, should take into account "the relevance of applicable law and procedures" and "how similar issues have been, or are being, treated in other domestic or international proceedings". The Guidelines, however, do not specify further on the practical modalities of such account, whether that would

affect acceptance of cases (which would meet all Guidelines-specific requirements) or its handling after acceptance. These commentaries were designed to help guide NCPs to fulfil their tasks, not to limit their possibilities of taking action.

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

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

The judicial impossibility of conflicts with parallel proceedings

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

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

Facilitate dispute resolution: clarifying the role of NCPs

The arguments put forward in the Discussion paper *Infringement of national sovereignty and Encroaching on the responsibility of sub-national governments* create confusion as regard the role of NCPs. The Guidelines implementation procedure is not a state-to-state mechanism and is solely concerned with private party dispute resolution. Even in the (extreme) case of state-owned enterprise, the state sovereignty functions and the ownership function are to be clearly dissociated²⁰.

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

²⁰

OECD Guidelines for corporate governance of state-owned enterprises, 2005.

The alternative of linking with domestic proceedings

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

- i. that NCPs shall accept as a general rule qualifying cases (ie. meeting the Guidelines' own standards) irrespective of the existence / non-existence of parallel proceedings, or
- ii. that NCPs' handling should be conditioned upon parallel proceedings.

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

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

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

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

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

Submission by Rights and Accountability in Development and The Corner House

12 June 2006

According to the June 2005 Report by the Chair of the Annual Meeting of National Contact Points, “parallel legal proceedings’ refer to ‘specific instances’ that deal with business behaviours that are also the subject of legal or administrative proceedings in the host country”.²¹ The Chair’s report refers to the relevant paragraphs in the Guidelines.²² However there is no explicit statement that supports the view that parallel legal and administrative processes will take precedence over the Guidelines.

The Investment Committee has set out a number of reasons to justify NCP interventions even when there are parallel legal or administrative proceedings underway: NCPs may be able to promote global values; provide guidance to companies when there are shortcoming in host country legal and administrative systems; communicate external perspectives to help countries attract more and better investment flows; and provide guidance to companies when law does not provide full descriptions of acceptable behaviour.²³

The March 2006 “Draft Summary of Discussions” concerning specific instances and parallel proceedings, the Investment Committee has further expanded the definition of parallel proceedings. According to the Draft, “these proceedings may be of the following types: 1) criminal, administrative, or civil; 2) alternative dispute settlement proceedings (arbitration, conciliation or mediation); 3) public consultations; or 4) other enquires (e.g. by UN agencies).²⁴

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

A survey of NCPs handling of specific instances published in the NCPs’ 2003 Annual Report shows that specific instances considered in parallel with legal and administrative procedures are common.²⁵ According to the Japanese NCP, when domestic legal proceedings are underway, NCPs should seek to collect relevant information and to develop an understanding of the issue. In Belgium, in the case concerning Marks and Spencer, the NCP coordinated its consideration with another domestic process and felt that it had ‘value added relative to this process’. In 2004, the French NCP looked into the declaration

²¹ See section VII.A, p.20.

²² The paragraphs cited are: Preface, 1; I. Concepts and Principles, 1 and 7; Procedural Guidance, C.1. See OECD Investment Committee, *OECD Guidelines for Multinational Enterprises: Specific Instances and Parallel Legal Proceedings*, 3 March 2005.

²³ See *ibid.*

²⁴ Specific Instances and Parallel Legal Proceedings -- Draft Summary of Discussions, para. 1, p. 2.

²⁵ OECD Guidelines for Multinational Enterprises: Specific Instances and Parallel Legal Proceedings, *op. cit.*

of bankruptcy by the French subsidiary of the Finnish company ASPOCOMP Oyj, despite the parallel signing of a redundancy scheme with its French employees.²⁶

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

The suggestion by the UK NCP that it “will forebear from handling a complaint where a parallel administrative proceeding is more likely to address the issues raised” causes particular concern.²⁷ What constitutes such a process and why should it have precedence? Indeed, a proper assessment by the NCP of whether breaches of the Guidelines have occurred might provide the basis for constructive input into decisions being made about administrative proceedings. Moreover, it is apparent that such processes can never decide questions of compliance with the Guidelines or provide Guidelines-specific advice. The same argument applies to civil proceedings – for example, those considering defamation claims – as these too do not address questions of compliance, although information disclosed and the verdict reached may be relevant to the NCP.

⊙ There should be no blanket rule that parallel proceedings take precedence

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

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

²⁶ Ibid.

²⁷ Stakeholder Consultation Document on the UK National Contact Point’s Promotion and Implementation of the OECD Guidelines for Multinational Enterprises, para. 7, p. 3.

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

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

We would like to see much more information made available by NCPs before the Investment Committee issues any formal guidance on this matter. In particular it would be useful for the OECD Secretariat to provide an inventory of national legislation that prevents an NCP from taking up specific instances that are also the subject of other proceedings.