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MULTINATIONAL ENTERPRISES AND ENVIRONMENTAL PROTECTION: IMPLICATIONS FOR THE OECD GUIDELINES ON MULTINATIONAL ENTERPRISES

**Report on a meeting of management experts
held under the OECD Labour/Management Programme
(Paris, 4 May 1999)**

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FOREWORD

Under the OECD Labour/Management Programme for 1999, a meeting of management experts on "Multinational Enterprises and Environmental Protection: Implications for the OECD Guidelines on Multinational Enterprises" was held in Paris on 4th May 1999. The meeting was prepared in collaboration with the Business and Industry Advisory Committee to the OECD (BIAC).

Below you will find the overall report prepared by Professor Lucas Bergkamp, designated as General Rapporteur for this activity.

**THE OPINIONS EXPRESSED AND ARGUMENTS EMPLOYED IN THIS REPORT
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FINAL REPORT ON THE MEETING

by
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BACKGROUND AND OBJECTIVES

1. The OECD is undertaking a review of the OECD Guidelines for Multinational Enterprises. These Guidelines include a chapter on environmental protection, which is attached hereto as Annex I. The Review of the Guidelines and the possible revision of the environment chapter was the reason for calling this LMP meeting.
2. The objectives of this meeting were (i) for representatives of MNEs to present their company's environmental management systems and environmental performance in OECD and non-OECD countries, and (ii) to discuss key environmental issues in connection with the review of the MNE Guidelines. The Agenda is attached hereto as Annex II.
3. The meeting was chaired by Dr. Frank Rose, Chairman of the BIAC Committee on Environment, Vice President, Group Safety, Security, Health & Environment, ICI Group, United Kingdom. A List of Participants is attached hereto as Annex III.

SUMMARY OF MAIN THEMES:

MNE PRESENTATIONS ON ENVIRONMENTAL MANAGEMENT

4. With respect to environmental management, the participating MNEs share three main goals:
 - to protect human life and environment;
 - to constantly seek improvement; and
 - to share learning.
5. Steven Hellem, Executive Director, GEMI, described his organisation as an association of leading companies dedicated to fostering environmental, health and safety excellence world-wide through the sharing of tools and information in order for business to help business achieve environmental excellence (its membership includes some 30 large MNEs). Mr. Hellem provided an overview of MNEs economic and environmental impact in developing countries, based upon a study conducted by GEMI and International Resources Group, a consultancy firm. The results showed that MNEs

have a positive economic and environmental impact on developing countries. In most cases, MNEs make long term investments, their environmental performance is superior to that of domestic firms, they lift local economies and raise the bar on environmental and economic performance, and they provide technical know-how to host countries. The remainder of Mr. Hellem's presentation focused on twelve case studies showing that MNEs go beyond legal compliance to protect the environment and promote environmental prosperity. These case studies are summarised in a GEMI publication entitled *Fostering Environmental Prosperity*. Copies of this publication were made available to participants and the BIAC and OECD secretariats.

6. Peter Tobler (Novartis) emphasised that environmental management is an integral part of a business, stressing that it is and must be explained as a line management responsibility. He defined how Novartis' environmental management is organised at the various levels of its organisational structure (corporate, sectors, countries, sites). The tasks of Environment Health and Safety ("ESH") management include management of environmental risks and advice to management. ESH has its own auditing system. A distinction is made between perceived risks, called "issues," and actual risks, called "risks." Novartis issues annual environmental reports, which are audited by an independent verifier. Copies of Novartis' environmental reports were made available to the OECD secretariat.
7. Ann Condon described GE's wide range of businesses, stressing the complexity of managers' roles. GE's environmental policies accommodate the diversity of its businesses by providing general, simple and straightforward rules that communicate GE's expectations to line managers and all employees. Importantly, the policies require compliance with local law as written, not as enforced. They are aimed at reducing risks to acceptable levels, and at introducing technology in host countries. For new projects, "greenfield" sites are required to meet GE's own standards, not local standards. "Brownfield" sites and acquisitions will be brought up to compliance with GE's standards over a specified period of time. In addition to complying with these broad corporate guidelines, individual businesses have their own environmental management systems (responsible care, ISO 14000, etc.). The main focus, however, is on implementation, involving training programs (internal and joint with others), detailed tools adapted to the specific facility, self-implementation, and self-assessment. Environmental work plans are used to ensure proper implementation. Each examines one type of environmental risk to provide easy-to-access policy recommendations for a line manager. GE's auditing program involves annual, self-administered audits to review compliance and train locals, as well as business audits every 2 to 3 years. Operating managers do presentations on environmental management to superiors including their CEO, which has sensitised them to their responsibility for environmental issues. At some training sessions, government officials and others are invited so that GE's management can explain environmental management strategies to governments and get feedback.
8. Richard Sykes identified three core elements of Shell's approach to environmental management. The first element is Shell's statement of values and principles, which focuses on contributing to sustainable development. The second element is consultation with stakeholders. Following the Brent Spar and Nigerian issues, Shell's top management learned the importance of listening to allow them to understand and meet society's expectations. The third element is the business case, including strategic direction, cost reduction, employee retention, and shareholder value. Shell is exploring renewable energy sources in an effort to reinvent itself. Mr. Sykes emphasised that attracting the top quality staff is an increasingly important business argument for investing in strong environmental performance. Environmental policies, including compliance with the law as written and continuous improvement, are mandatory for all Shell companies. Implementation of the

policies differs between companies. Core elements include internal assurances through compliance letters from executive offices, which may provide for qualifications and a time line for achieving full compliance. These are reviewed by top management. Audits are led by corporate staff from Shell's headquarters. On this basis, Shell is in a position to give external assurances about environmental compliance. External assurances include EMAS certification, ISO 14000 and other such mechanisms, as well as environmental reporting setting forth 1 and 5 year targets verified by independent consultants. As to standards, Shell has adopted global environmental standards including minimum technical standards. Shell wants to be a top environmental performer and has made progress. Examples include reduction of greenhouse gases and minimising and monitoring the environmental impact of a project in Peru. It is all about profits and principles; you cannot have one without the other.

9. Joan Mantel explained why environmental performance makes good business sense, from the perspective of the financing market. Strong internal standards are a key element of GE Capital's investment strategy. A project's profitability, not low standards, drives an investment decision. Shareholders want good environmental management since stock prices will drop following environmental disasters. GE Capital tries to assess environmental risk through environmental due diligence and reduce it through contractual provisions. Where applicable, the World Bank Guidelines are applied. Furthermore, GE Capital seeks environmental excellence so that it can sell off its debt in secondary markets. She noted that each project is unique and so is the environmental approach. Consequently, no single set of guidelines can be applied to all companies and projects. Environmental management evolves as a function of geography, technology, management style and the personality of the business. Only voluntary and flexible guidelines can accommodate these needs and achieve good environmental performance across a wide range of businesses.
10. Following these presentations there was a discussion between the participants. One of the main issues that came up was whether worldwide standards should be "state-of-the-art", minimum standards, or in-between. The company representatives noted that there is a significant difference between new and old plants, that the intent and spirit of rules can often be met but in different ways at different locations, and that technology must reflect local conditions (servicing, expertise, etc.) to make it work. It was noted also that the focus is on meeting an acceptable overall risk level, rather than meeting certain specific standards, and that there often is a trade off involved between standards and local culture and technology so as to achieve effective and efficient environmental protection. The company representatives noted that guidelines are usefully set at a level that is above law but not too high. They should be set at a level all companies can reach, and disseminated so that more companies know and use them.
11. The issue was raised as to whether it is appropriate to require that relatively high standards be applied in low income countries. Is the ability to set lower standards important for low income countries for them to compete? It was noted that MNEs often do not have a choice and should apply the same standards in developing countries. Environmental standards in the developing world are not necessarily lax; enforcement often is the problem. MNEs, unlike domestic companies, are required to meet the local standards and furthermore expected to educate the domestic firms. Where standards are not numerical, but focus on overall risk level, MNEs can do creative things to achieve environmental excellence. OECD officials were invited by BIAC members to visit plants of MNEs in developing countries.
12. There was discussion on the issue as to whether subcontractors of MNEs could be required to meet the same standards as the MNE sets for itself. This was generally considered a difficult issue.

Typically, MNEs require their subcontractors to meet the same standards, although local unsophisticated contractors cannot be expected to be able to do so without assistance. However, subcontractors have their own responsibility. MNEs do not control subcontractors and do not want to get involved in managing their businesses. However, MNEs do want their subcontractors to do the right thing, because their own reputation is put at risk.

OECD GUIDELINES FOR MNEs

Scope of Application, Objectives, Purpose, Use, Value and Effectiveness of the Guidelines

13. As to the purpose and objectives of the Guidelines, Adam Greene, Director of Environmental Affairs, USCIB, stated that national treatment is the government's responsibility, while MNEs are responsible for meeting the Guidelines. The Guidelines' main purpose should be to provide recommendations as to broad principles for operations of MNEs, including compliance with national laws. The objective should be to encourage the positive contribution that MNEs are making to progress in developing countries. While past use of the guidelines has not been extensive in the area of environment, future use should be as (1) suggestions for MNEs to consider in setting their own policies and making decisions, adapted to local situations, and (2) a benchmark for a MNE's own policies. The Guidelines' value would be in setting broad aspirational goals to promote sound management of the environment in compliance with laws and in harmony with the government and society. And lastly, the Guidelines will be effective if the OECD and BIAC look beyond the text and focus on knowledge-sharing and implementation: developing training kits based on the Guidelines with more detailed tools for specific areas; self-implementation guides; and self-assessment programs.
14. The discussion focused on the issue as to how compliance with the guidelines can be demonstrated to the outside world. MNE representatives felt that compliance can be demonstrated in a number of ways (verified audits, reporting against self-stated targets, etc.). These instruments will evolve over time. Since the standards will be procedural and qualitative, compliance means that systems are in place. There was consensus that the Guidelines should institutionalise environmental management systems, rather than impose quantitative standards. Qualitative substantive standards could be considered. Such standards should set a floor, not a ceiling, and provide appropriate incentives in particular for medium-size MNEs. If the OECD can bring all parties, including the NGOs, on board, the Guidelines could be amplified.
15. Subsequently, the question was raised as to whether any incentives should be adopted to promote compliance with the guidelines. The general feeling was that sanctions, such as penalties and denial of export insurance coverage, are not effective. Positive incentives have been proven more effective in promoting environmental excellence. However, the most important method would be making the Guidelines themselves useful to meet business needs, and "selling" them in the right way, for example by making them a benchmark accepted by a broad range of stakeholders.

Environmental Information

16. Adam Greene emphasised that several terms should be distinguished. There is voluntary and mandatory reporting, and internal and external communication. All companies have a communications policy that goes beyond legal compliance. Communication can take various forms

from corporate environmental reports to dialogues. The audience is key. Possible audiences can be regulators, suppliers, shareholders, employees, local communities. The vast differences between the audiences should be accommodated in the Guidelines. The OECD Recommendation on Environmental Information concentrates on the use of government-held data, and is not *per se* relevant to communications policies and companies.

17. Several MNE representatives pointed out how communication between their companies (and perhaps all large MNEs) and society have very recently improved dramatically. Regulators, NGOs and other stakeholders are consulted on how they perceive the MNE and its environmental performance. Antagonism has been replaced by consultation. Indeed, employees of MNEs are also members of NGOs, and a company is particularly concerned with its employees and its customers' views because of the economic links. However, NGOs and MNEs are diverse groups, and the level of communication is not uniform.

Implementation and Promotion

18. Adam Greene introduced the subject, stating that the Guidelines need promotion and more awareness. As MNEs get the same messages from other sources, it is important that the OECD Guidelines have added value so that they will not be discredited. On the implementation process, Adam Greene pointed out that the substance of the Guidelines impacts on the process; as the substance is not yet known, it is not possible to comment intelligently on the process. In fact, the issue of demonstrating effectiveness should be secondary to making the guidelines effective through knowledge-sharing, training, and other tools.
19. In the discussion that followed, MNE representatives emphasised that the Guidelines will be effective only if they present an opportunity rather than impose a burden. In order to offer workable assistance to MNEs in resolving difficult issues and setting company guidelines, the OECD should promote acceptance of these principles, rather than just promote the Guidelines. The Guidelines should not become a "box ticking" exercise; that would be the worst result. It was noted that accommodation of existing management systems (EMAS, ISO 14000, et cetera) will facilitate implementation of the Guidelines.
20. The National Contact Points (NCPs) have been dormant. The revised Guidelines would add life to NCPs. In response to the question whether NCPs could use "naming and shaming" procedures, e.g. black lists of non-compliant MNEs, participants argued that this could be unfair and would not drive improvement; an "honour roll" would be preferable but still problematic. Both of these instruments may not be available to the OECD, however. There was consensus that it would be very tricky and dangerous for the OECD to get involved with decision-making on compliance or regulatory judgement; this would require that the OECD take on the role of a judge or arbitrator, which is undesirable and potentially dangerous to its reputation. There was common agreement on the point that NCPs should have environmental and business expertise if they are to mediate issues of environmental management. Likewise, there should be an NCP in all countries where the Guidelines are intended to apply, because it would be necessary that the NCP know local conditions.

CONCLUSION

21. The Chairman invited participants to make their closing comments. The main comments included the following:
 - Democratic processes and competitive markets have been able to generate a successful system of environmental management and progress in MNEs.
 - The Guidelines should be voluntary, flexible, clear, simple, and helpful to MNEs in setting their own policies and providing a point of reference.
 - The Guidelines should focus on process, on management systems, not on substantive standards and emission limits. They should provide a framework for responsible behaviour and positive encouragement.
 - Effectiveness is key. To be effective, the Guidelines must “add value” in their “market,” and the OECD should “sell” them. Many other guidelines exist.
 - The Guidelines should not reinvent the wheel but build on existing systems and programs. The business community should therefore be directly involved in the revision project.
 - The main challenges for the OECD is to position the Guidelines in the new world, to ensure that they fit into existing systems, and to create mechanisms to encourage MNEs to comply and to correct non-compliant firms.
22. OECD representatives thanked BIAC members for their helpful input, and invited BIAC to continue consultations, which could also involve NGOs. The Chairman replied that he would welcome a multi-stakeholder meeting, and his offer to provide the OECD with copies of BIAC participants’ environmental reports was appreciated.
23. The Rapporteur reviewed the general conclusions, after which the Chairman closed the meeting.

ANNEX I -- EXTRACT FROM THE
OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES
OCDE/GD(97)40

ENVIRONMENTAL PROTECTION¹

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and recalling the provisions of paragraph 9 of the Introduction to the Guidelines that, *inter alia*, multinational and domestic enterprises are subject to the same expectations in respect of their conduct whenever the Guidelines are relevant to both, take due account of the need to protect the environment and avoid creating environmentally related health problems. In particular, enterprises, whether multinational or domestic, should:

1. Assess, and take into account in decision making, foreseeable environmental and environmentally related health consequences of their activities, including siting decisions, impact on indigenous natural resources and foreseeable environmental and environmentally related health risks of products as well as from the generation, transport and disposal of waste;
2. Co-operate with competent authorities, *inter alia*, by providing adequate and timely information regarding the potential impacts on the environment and environmentally related health aspects of all their activities and by providing the relevant expertise available in the enterprise as a whole;
3. Take appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular:
 - a) by selecting and adopting those technologies and practices which are compatible with these objectives;
 - b) by introducing a system of environmental protection at the level of the enterprise as a whole including, where appropriate, the use of environmental auditing;
 - c) by enabling their component entities to be adequately equipped, especially by providing them with adequate knowledge and assistance;
 - d) by implementing education and training programmes for their employees;
 - e) by preparing contingency plans; and
 - f) by supporting, in an appropriate manner, public information and community awareness programmes.

¹ This chapter was added at the meeting of the OECD Council at Ministerial level on 4 and 5 June 1991.

ANNEX II -- AGENDA

Pre-meeting: Monday 3 May, 17:00 – 19:00
(following meeting of BIAC Environment Committee)

I. Introduction: the 2000 Review of the OECD Guidelines for Multinational Enterprises

Introduction of main issues by the OECD Secretariat.

Tuesday 4 May, 08:00 – 13:00

II. Current MNE Practices and Performance (08:00 – 10:00)

Presentations:

Environmental Management Systems; training, assessment and integrating environmental responsibility into operations; global auditing; environmental due diligence for new purchases; impact assessment for proposed activities.

Environmental effects and performance in OECD and non-OECD countries:

Effects and performance; assuring compliance with environmental regulations; company strategies beyond meeting current regulatory requirements.

III. Key Environment Issues in the Review of the MNE Guidelines (10:00 – 12:00)

The OECD MNE Guidelines' purpose, use, value, effectiveness; scope of application; Appropriate aims of the Guidelines on environment issues; content.

Environmental Information:

Mandated and voluntary disclosure by companies: potential audiences and purposes; role of industry codes and international initiatives.

Implementation and promotion of the MNE Guidelines:

Dissemination and Education; NCP procedures; incentives/disincentives.

Discussion question: How can the MNE Guidelines promote environmental excellence?

IV. Conclusions (12:00 - 13:00)

Closing Commentary by Business Panellists.

Conclusions by the Rapporteur.

ANNEX III -- LIST OF PARTICIPANTS

MANAGEMENT EXPERTS

Ms. Ann E. Condon	Director EHS Programs, Europe & Asia GE Corporate Environmental Programs	BELGIUM
Mr. Benny Hasenson	Specialist Advisor Confederation of Finnish Industry and Employers	FINLAND
Mr. Esa Tommila	Vice-Chairman of the BIAC Committee on Environment Managing Director Ekokem Oy Ab	FINLAND
Mr. Marc Maindrault	Directeur des Relations Commerciales et Financières Internationales Mouvement des Entreprises de France (MEDEF)	FRANCE
Mr. Gianluca Baga	Researcher Istituto per l'Ambiente	ITALY
Mr. Richard Almgren	Environmental Director Federation of Swedish Industries	SWEDEN
Dr. Frank Rose	Chairman of the meeting Chairman of the BIAC Committee on Environment Vice President Group Safety, Security, Health & Environment, ICI Group	UNITED KINGDOM
Dr. Janet Asherson	Head of Environment, Health & Safety Business Environment Directorate Confederation of British Industries	UNITED KINGDOM
Mr. Richard Sykes	Group Environmental Adviser Shell	UNITED KINGDOM

Mr. Steven B. Hellem	Executive Director Global Environmental Management Initiative (GEMI)	UNITED STATES
Mr. Adam B. Greene	Director, Environmental Affairs U.S. Council for International Business	UNITED STATES
Ms. Joan Licht Mantel	Vice-President – Environmental Support GE Capital Structured Finance Group, Inc.	UNITED STATES
Mr. Willy Bjerke	IPAI Environmental Officer International Primary Aluminium Institute	
Dr. Peter Tobler	Associate General Counsel Novartis International AG	

BUSINESS AND INDUSTRY ADVISORY COMMITTEE TO THE OECD (BIAC)

Mr. Steven Bate	Executive Director	
Mrs. Hanni Rosenbaum	Manager	
Ms. April Tash	Manager	

RAPPORTEUR

Professor Lucas Bergkamp	Managing Partner Hunton & Williams	BELGIUM
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Mr. Marinus Sikkel	Chairman designate of the CIME Working Party on the Guidelines	NETHERLANDS
Mrs. Elin B. Rognlie	First Secretary Permanent Delegation to the OECD	NORWAY
Mr. Timuçin Sanalan	Deputy Permanent Representative	TURKEY

Ms. Breck Milroy	Advisor for Environment Affairs Permanent Delegation to the OECD	UNITED STATES
Ms. Martha N. Kelley	Advisor for Investment Policy Permanent Delegation to the OECD	UNITED STATES
Mr. Georges Lemonidis	Counsellor Permanent Delegation to the OECD	EC

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Mr. Christopher Wilkie	Principal Administrator Capital Movements, International Investment and Services Division
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