



**ANNUAL OECD ROUNDTABLE ON CORPORATE RESPONSIBILITY --
DEVELOPING A PROACTIVE APPROACH TO THE OECD GUIDELINES**

DRAFT AGENDA AND ISSUES FOR DISCUSSION

*Monday, 19 June 2006; 10h00-18h00
Salle des Nations, Tour Europe, La Défense, Paris*

Introduction

The OECD is founded on the view that, with the right combination of policies and international co-operation, nations can build successful economies and societies – that is, they can help secure high levels of economic, social and environmental well-being for their citizens. Private investment is an essential ingredient for securing these. Most OECD work focuses on governments – it helps them to develop more effective public policy. In the investment field, the OECD promotes transparent and open frameworks that help business, unions and civil society organisations play their roles more effectively.

The development of guidelines for government policy is a key part of OECD work. Relative to other OECD instruments, the *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) – a voluntary code of conduct for international business with a distinctive, government-backed implementation mechanism – are unusual because they are addressed by governments to companies. The Guidelines express the shared expectations of 39 adhering governments for international business conduct in such areas as human rights, supply chain management, labour relations, environment, combating bribery, taxation, and consumer welfare (see www.oecd.org/daf/investment/guidelines for more information).

Multinational enterprises are key partners in securing the benefits of international investment processes and, through their commitment to the Guidelines, adhering governments, seek to make this partnership work better. According to their Preface, the *Guidelines* aim to “ensure that the operations of multinational enterprises are in harmony with government policies, 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.” At the same time, the adhering governments recognise their own responsibilities and commit to “continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.”

Every year the OECD holds a Roundtable on Corporate Responsibility in conjunction with the annual meetings of the National Contact Points (NCPs). The National Contact Points are offices located in each of the adhering governments. The NCPs are charged with promoting the observance of the Guidelines by multinational enterprises operating in or from their territories -- the purpose of the Roundtables is to provide inputs so as to help them do this more effectively.

10h00-13h00: Partnerships for Promoting the Guidelines and Encouraging the Adoption of Responsible Business Practices

The Guidelines express widely-agreed principles for appropriate business conduct and draw on international instruments that are housed in a wide variety of institutions. Many different organisations – other agencies within adhering and non-adhering governments, other international and regional organisations as well as private actors including individual companies, business associations, trade unions and NGOs – are working in their own ways to uphold the values and principles from which the Guidelines are derived and which they reinforce. In various ways, these initiatives work to disseminate concepts and principles for good business practice, to prevent and solve potential problems before they occur and to help redress problems after they have occurred. The promotion of the Guidelines and responsible business conduct practices by the Investment Committee and by the NCPs should seek to complement and reinforce these other processes. A recent case in point is the intention of the Committee and business, with other stakeholders, to continue to work together to identify sources of practical experience in meeting the challenges that the OECD Risk Awareness Tool for Investors in Weak Governance Zones.

Format for discussion during the morning session:

Presentations of promotion activities and strategies by representatives of BIAC, TUAC and NGOs (5-7 minutes per speaker)

The invited participants who wish to do so may make a 3 minute presentation of their views on promotion.

Open discussion -- possible discussion questions include:

- Would Roundtable participants care to contribute any general observations or suggestions about promotion of the Guidelines?
- How does the Guidelines' status as a government-backed instrument used in the context of inter-governmental cooperation (on investment policy and related policy areas such as environment, labour, anti-corruption) influence Guidelines promotion?
- What are the respective roles of NCPs, BIAC, TUAC and OECDWatch in Guidelines promotion?
- Through their promotional efforts, should the Investment Committee and the NCPs seek to promote and help companies to observe the OECD Guidelines per se or to promote the principles that the Guidelines express?
 - Are the “brand” and “name recognition” of the OECD Guidelines important? If so, how can they be strengthened?
 - Are NCPs and the Investment Committee doing a good job of promoting observance of the principles for business conduct expressed in the Guidelines recommendations? How can they do a better job?
 - What are the experiences with using Guidelines promotion as a “preventative tool” – that is, as a tool for dealing with problems before they occur?
 - How does the fact that the Guidelines are extremely comprehensive (dealing with nearly all areas of business ethics) influence strategies for promoting the recommendations (e.g. does it

create a need for strategic targeting of promotional activities or for careful development of alliances with other partners having issue-specific expertise and contacts)?

- What is the role of business associations, especially BIAC (the official business representation at the OECD), in disseminating good business practices? How can they do this? How can they contribute to dissemination of such practices within small and medium sized companies?
- What are the comparative strengths of OECD institutions – the NCPs, the OECD Investment Committee and the Secretariat – in promotion relative to other public, private and international institutions (e.g. business associations, trade unions, NGOs, international financial institutions, UN agencies, UN Global Compact, Global Reporting Initiative)?

13h15-15h00. Buffet lunch offered to Roundtable participants and NCPs by the Government of the Netherlands. Bar of the “Salle des Nations” in the Tour Europe.

15h00-18h00. Using Dialogue under the Guidelines to Create “Win-Win” Situations for Companies and Host Societies

This session looks at the steps that NCPs and the Investment Committee can take in order to enhance the positive contribution of their dialogue with companies. Six years of Guidelines implementation has shown that, in practice, NCPs use a variety of techniques for engaging in dialogue with companies and business associations about business ethics. These can include informal *ad hoc* contacts, as well as discussions that are part of routine Guidelines implementation (e.g. through periodic NCP consultations or because the NCP structure is tripartite and therefore includes business representation). These contacts provide opportunities for NCPs to discuss concrete issues with business associations and with individual businesses in order to prevent problems from emerging or to encourage remediation of existing problems (NCP follow up on the reports to the UN Security Council on illegal exploitation of natural resources in the Democratic Republic of Congo provides several examples of this kind of informal contact.¹)

In addition, NCPs are responsible for a more formal dialogue procedure which is designed to contribute to the resolution of issues that arise relating to implementation of the Guidelines. Under the so-called “specific instances” procedure, the NCP is supposed to “offer a forum for discussion and assist the business community, employee organisations, and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.”² In this connection, NCPs are asked to offer “good offices” in helping interested parties to “offer and, with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues”.³ Mediation and conciliation are supposed create “win-win” opportunities for parties to the mediation process in a cost effective way (see box on mediation).

The NCPs’ Annual Reports show that roughly 75 specific instances have been actively considered since the facility was created in June 2000 have produced some successes and that these have dealt with such issues as resettlement of populations in the vicinity of a Zambian copper mine, private companies’

¹ Section V of the 2003 Annual Report on the Guidelines notes that some NCPs had informal contacts with the companies named in the UN Expert Panel’s report on the Democratic Republic of Congo. Section V of the April 2004 Report describes one NCP’s belief that its contact with the companies named in the report had led “to a considerable increase of awareness of the Guidelines and in the likelihood that they will be taken into account in future operations in the DRC.”

² Procedural Guidance of the 2000 Council Decision opening paragraph, section C.

³ Procedural Guidance of 2000 Council Decision section C.2.d.

involvement in prison management in two OECD countries, managing the risks of child labour in Indian supply chains and respecting labour rights in a Guatemalan export processing zone.

According to NCP reports, the procedure has produced some successes. It has helped parties: move toward a common view on the facts of a given situation; come closer to a shared view on how these facts should be evaluated; realise that changes in business practices are needed or that criticism of business practices has not been sufficiently nuanced; increase awareness of principles for appropriate business conduct (in this sense, specific instances are a promotional tool); give a voice to non-OECD actors (such as representatives of trade unions and NGOs from developing countries) who might otherwise not have had an opportunity to air their concerns. The 2005 Annual NCP Report also notes that “NCPs are showing more confidence and openness when dealing with specific instances – they are more likely to issues statements at the conclusion of a specific instance and they are even discussing the procedure in the mass media.”⁴ Thus, there are signs of progress in the development of the specific instance procedure.

However, the procedure has also been criticised and NCPs, in their 2005 Annual Report, recognise the need for “continual improvement in Guideline implementation and agreed that there is a need to reinforce human and institutional capacity.”⁵ At the same time, NCPs have expressed concerns that some parties to specific instances have “unrealistic expectations” as to the potential outcome of the procedure. TUAC attributes the problems that it sees in the procedure to lack of accountability of NCPs.⁶ BIAC, while broadly satisfied with NCPs’ handling of specific instances, expressed concern that the specific instances are used as part of broader campaigns against companies and are not conducted with confidentiality and in a constructive atmosphere.⁷

All partners to the Guidelines process share the goal of reinforcing the credibility of and confidence in the specific instance procedure and to improve the capacity of the procedure to produce the “win-win” situations that are supposed to emerge from successful mediation and conciliation. Under the specific instances procedure, NCPs are asked to help the parties come closer to agreement on issues about which there are almost always pre-existing tensions. Successful outcomes will depend not only on the skill of the NCPs, but on the willingness of the interested parties to participate in good faith. Since participation in the process is voluntary, the willingness of participants to accept and to use the specific instance facility is crucial to the viability of the process. Maintaining trust, confidence and commitment to the process is therefore a key responsibility of the NCPs and of the interested parties.

Format for discussion in the afternoon session:

- Presentations (5-10 minutes) by the NCPs of Australia and Japan of their experiences with specific instances.
- The invited participants who wish to do so may make a 3 minute presentation of their views on dialogue with individual companies under the Guidelines.

⁴ 2005 Annual Report on the OECD Guidelines, section VIII.a Progress to date. First paragraph.

⁵ 2005 Annual Report on the OECD Guidelines, first sentence in section VIII.b (Considerations for future action).

⁶ See page 122 of “TUAC submission – June 2005” of the 2005 Annual Report on the *OECD Guidelines for Multinational Enterprises*.

⁷ See BIAC submission to the 2005 OECD Roundtable on Corporate Responsibility (page 113 of the 2005 Annual Report on the OECD Guidelines for Multinational Enterprises) and section VII.a of the 2005 Annual Report.

- Open discussion -- possible questions for discussion include:

- *Informal, ad hoc engagement with companies.*

- What kinds of informal, ad hoc engagement with companies do NCPs use to promote the Guidelines, prevent problems and encourage responsible business conduct?
- What are the advantages of this form of engagement?
- Are there any disadvantages to this sort of dialogue (e.g. lack of transparency and accountability)?
- *Specific instances.*

Ten minute presentations by two mediation experts (representing the Centre for Effective Dispute Resolution and the Advisory Conciliation and Arbitration Service).

- *Learning from other dialogue/mediation processes.* All partners to the Guidelines process share the goal of reinforcing the credibility of and confidence of Guidelines implementation and, in particular, of improving the capacity of the specific instances to produce the “win-win” situations that are supposed to emerge from successful mediation and conciliation. What can Guidelines institutions learn from other national and international dialogue processes?
- *NCP skills, resources and political support.* What skills, resources and support do NCPs need in order to play more effectively their role of facilitating access to consensual and non-adversarial means of dealing with issues and in bringing specific instances to successful conclusions?
- *Managing expectations.* What steps should NCPs take to ensure that the expectations of parties to the specific instances procedure are realistic (that is, that these parties understand what can realistically be achieved through the specific instances procedure)?
- *Responsibilities of interested parties.* Under the specific instances procedure, NCPs are asked to help the parties come closer to agreement on issues about which there are almost always pre-existing tensions. Successful outcomes will depend not only on the skill of the NCPs, but on the willingness of the interested parties to participate in good faith. Since participation in the process is voluntary, the willingness of participants to accept and to use the specific instance facility is crucial to its viability of the process. Maintaining trust, confidence and commitment is therefore a key responsibility for all parties to the process. (Note: mediation and conciliation professional stress the crucial roles that interested parties play in ensuring the success of the process).
 - What are the responsibilities of the parties participating in specific instances (that is, either companies or trade unions or NGOs) in bringing specific instances to a successful conclusion?
 - What steps can NCPs take to ensure that parties understand and assume their responsibilities during the dialogue process?
- *Other dialogue processes and parallel proceedings.* Discussions between parties to specific instances often occur in a context of tensions between parties that are also being discussed in

other fora. In particular, specific instances are often preceded by or run parallel with ongoing media campaigns by trade unions or NGOs. In addition, the business behaviours discussed under the specific instance might also be the subject of proceedings elsewhere (e.g. in national courts or labour relations systems, in international organisations). How do Roundtable participants see the competitive advantage of the Guidelines relative to other institutions for reducing tensions and resolving disputes?

- *International dimension.* By definition, specific instances involve dialogue on ethics issues that have an international dimension. This introduces a number of cultural, legal and political complexities making the establishment of mutual trust a challenge, but is also one of the sources of the value-added of the procedure. How can NCPs deal with this challenge?

Box -- Mediation and conciliation

Mediation is a flexible process, conducted confidentially, in which a neutral person assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of the resolution.

Positive outcomes of mediation include:

- improving communication and understanding;
- minimizing or avoiding involvement in the legal/judicial system or other slow or expensive proceedings over which the parties have little control (e.g. arbitration)
- working toward resolution of problems or disputes;
- parties reaching their own decisions;
- preventing problems from recurring.

Roles of parties to mediation.

Role of interested parties (those having the problem, disagreement or dispute). The primary responsibility for any resolution of a dispute rests with the interested parties – thus, the success or failure of the process lies largely in their hands.

Role of mediators. The skill and sensitivity of the mediator also influences the outcome. The role of the mediators is to:

- facilitate communication among the parties;
- assist in defining and clarifying issues;
- assist in identifying and exploring alternatives for resolving the dispute or disagreement;
- assist parties in reconciliation and settlement.

Source: Compiled from the websites of several professional associations of mediators.