OECD Guidelines for Multinational Enterprises

FOCUS ON RESPONSIBLE SUPPLY CHAIN MANAGEMENT



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Annual Report 2002

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Foreword

To many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct among such companies is a growing challenge since their operations often straddle dozens of countries and hundreds of cultural, legal and regulatory environments. The OECD Guidelines for Multinational Enterprises aim to help businesses, labour unions and NGOs meet this challenge by providing a global framework for responsible business conduct. Although observance of the Guidelines is voluntary for businesses, adhering governments are committed to promoting them and to making them influential among companies operating "in or from" their territories. This Annual Report on the Guidelines, the second in a series, describes what governments have done to live up to this commitment over the period June 2001-June 2002. It also provides an overview of the challenges of responsible supply chain management based on contributions from the business, trade union and NGO communities.

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The Roundtable participants included representatives of major corporate responsibility instruments as well as speakers from business, labour and non-governmental organisations.

Roundtable Speakers and Outside Participants

Chair: Mr. Claudio Rojas, Department for International Economic Relations, Ministry of External Relations, Chile.

***Representatives of major global responsibility initiatives*:**

OECD *Guidelines for Multinational Enterprises*: Mr. Richard E. Hecklinger, Deputy Secretary General.

UN *Global Compact* and ILO *instruments*: Ms. Ivanka Mamic, Management and Corporate Citizenship, International Labour Organisation.

***Speakers*:**

Mr. James Baker, Director of Multinationals and Organising, International Confederation of Free Trade Unions.

Mr. Stephen J. Canner, Vice President, Investment Policy, US Council for International Business.

Mr. André Driessen, Senior Advisor, International Economic Affairs, Confederation of Netherlands Industry and Employers VNO-NCW.

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Dr. Kristian Ehinger, General Counsel, Foreign Holdings, Volkswagen AG, Germany.

Ms. Patricia Feeney, RAID – Rights and Accountability in Development, United Kingdom.

Mr. Roy Jones, Senior Policy Adviser, Trade Union Advisory Committee to the OECD.

Mr. Neil Kearney, General Secretary, ITGLWF – International Textile, Garment and Leather Workers' Federation.

Ms. Serena Lillywhite, Manager, Ethical Business Brotherhood of St. Laurence.

Ms. Carol Pier, Labor Rights and Trade Researcher, Human Rights Watch.

Mr. Pieter Van der Gaag, ANPED Northern Alliance for Sustainability, Amsterdam, The Netherlands.

Mr. Maurice Sanciaume, Director, Government Affairs Europe, Agilent Technologies.

Ms. Deborah A. White, Associate Director, Corporate Sustainable Development, The Procter and Gamble Company, United States.

Mr. Douglas C. Worth, Secretary-General, Business and Industry Advisory Group to the OECD.

Ms Ineke Zeldenrust, Clean Clothes Campaign Europe, The Netherlands.

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P*art* I

MEETING OF NATIONAL CONTACT POINTS – AN OVERVIEW OF GUIDELINES-RELATED ACTIVITIES

Summary Report of the Chair of the Meeting on the Activities of NCPs

I. Background

The 2002 annual meeting of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises ("the Guidelines") provided an opportunity for NCPs to share their experiences during the second year of implementation since the June 2000 Review.[1] It also gave the NCPs an opportunity to discuss ways that they can work – with each other and in partnership with business, trade unions, and NGOs – to consolidate and enhance the Guidelines' contribution to promoting appropriate standards of international business conduct.

This meeting was held on 18 June 2002. Consultations with the Business Industry Advisory Council (BIAC), the Trade Union Advisory Council (TUAC) and non-governmental organisations[2] were also held. The 2002 Roundtable on Corporate Responsibility provided a forum for the business, trade union and NGO communities to express their views on how the Guidelines might contribute to improved responsible management of supply chains.

The present report reviews NCP activity based on the discussions that took place at these meetings, on individual reports submitted by NCPs and on information they provided in the course of the review period. It also draws on information provided by BIAC, TUAC and NGOs. As of late June 2002, 35 NCPs (as well as the European Commission) had sent reports to the Secretariat.[3]

The report is organised under five headings. The first three deal with institutional arrangements, information and promotion, and implementation in specific instances. The fourth section describes how the Guidelines institutions have followed up on three issues raised at the June 2001 consultations. These are: 1) Multinational enterprise activity in Myanmar; 2) Linkages between the Guidelines and other national policies; and 3) The balance of promotion between the Guidelines and other instruments in the OECD Declaration on International Investment and Multinational Enterprises. The fifth section – "Summary and considerations for future action" – provides a broad review of the second year of implementation activity under the revised Guidelines and proposes a few specific issues for consideration by the Guidelines institutions.

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Two main themes emerge from this report. The first is that, relative to the situation described in last year's report, the visibility and "user recognition" of the Guidelines appear to have been significantly enhanced. Many actors – ranging from G8 Ministers to local labour leaders – have referred to or used the Guidelines as a tool to promote appropriate business conduct. This heightened visibility reflects the efforts of many supporters of the Guidelines acting on many fronts. The second theme is the need for further action and continued effort. The Guidelines are now quite well known by business, unions and civil society in some countries, but they are hardly known at all in others. Promotion, in any case, is an ongoing challenge. Furthermore, many basic strategic questions – the most fundamental of which concerns whether and how the Guidelines are influencing business behaviour – have yet to be answered.

II. Institutional arrangements

The NCP reports show that the institutional arrangements under which NCPs operate were largely stable over the June 2001-June 2002 period. A wide range of structures of NCPs is in evidence (see Annex I). These structures may be summarised as follows (for the 35 countries for which information is available):

- 20 single government department NCPs;
- 6 NCPs consisting of multiple government departments;
- 7 tripartite NCPs;
- 2 quadripartite NCPs.

In addition to these formal structures, the NCP reports noted other means of organising their consultations and promoting the inclusiveness of their activities. For example, a number of countries (*e.g.* Austria, Greece, Slovenia) reported the use of advisory committees or permanent bodies, whose members are interested non-government partners or the convening of regular meetings with business, trade unions and civil society (*e.g.* Australia). Other NCPs mention consultations with NGOs or other partners on an informal basis (*e.g.* Japan) or in reference to specific issues where they are deemed to have particular expertise (*e.g.* United Kingdom, Netherlands).

III. Information and promotion

Nearly all NCPs continued to make significant efforts to promote the Guidelines and to heighten awareness of them among national actors. Furthermore, as was the case last year, promotional activity extended beyond NCPs. The role of trade unions, businesses, charitable foundations and NGOs in promoting the Guidelines is noteworthy.

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In keeping with their global character, the Guidelines are now available in at least 22 languages[4] and more if translations of TUAC's Users' Guide is taken account.

a) *Promotional activities by* NCPs

Seminars and conferences. Most NCPs report that they participated in or organised conferences involving the Guidelines. Particularly noteworthy was the two-day conference in Santiago sponsored by the Chilean NCP and attended by three other NCPs (France, Mexico and Sweden). A Guidelines seminar in Poland – arranged by the Friedrich Ebert Foundation in co-operation with TUAC – was attended by the Polish and Swedish NCPs and by many government, trade union and NGO representatives. NCPs also participated in conferences organised by trade unions that took place in Estonia, Hungary, Lithuania and Slovenia. The Finnish NCP presented the Guidelines at the Estonian event. The Slovak Republic notes that its NCP presented the Guidelines to seminars attended by leading multinational companies operating in the Slovak Republic.

Informing social partners, NGOs, *universities and the press*. Several NCPs have attempted to raise the profile of the Guidelines outside capital cities. The Italian NCP has organised conferences in Turin, Cagliari and Naples. The Australian NCP held two meetings in different cities with business, trade unions, NGOs and academics for the purpose of discussing Guidelines-related issues. The Spanish and Turkish NCPs have informed the social partners and NGOs about the Guidelines via a mailing campaign. Several NCPs mentioned doing mass mailings of promotional material – for example, the Austrian NCP sent out 13 000 summaries of the Guidelines to exporting and importing companies. The Finnish NCP mailed material to 1 000 Finnish export companies. The Polish NCP held a press conference on the Guidelines. The US Department of Commerce is in the trial stages of an outreach programme to communicate the OECD investment instruments to graduate international business schools and programmes by offering guest lectures on the content and application of the Guidelines. Several NCPs (*e.g.* the Slovak Republic) reported publishing articles on the Guidelines in their country's business press.

Promotional material and web sites. Nearly all NCPs report that the Guidelines are featured in some way on government websites. Often these are dedicated sites and they involve significant cross-links with other relevant sites (*e.g.* environment or labour ministries, investment promotion agencies). A number of NCPs noted preparation of new promotional material during the review period (*e.g.* Austria, Canada, Denmark, Mexico, Netherlands, Norway, and Portugal).

b) *Promotional activities in the business community*

BIAC officially expressed their support for the Guidelines in a letter dated 20 December 2001 (Annex III). The letter states "BIAC is fully supportive of an effec-

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tive implementation of the Guidelines. As elaborated in our Consultation with the Committee on December 4, 2001, our member organisations have engaged in a wide range of promotional and educational activities to communicate the substance and utility of the Guidelines, through brochures, websites, outreach to related institutions, conferences, seminars and workshops. Individually and in co-operation with government, these will continue and new vehicles will be found."

The Swedish NCP report notes that a major accounting firm and a business journal organised a seminar in Stockholm about the Guidelines and the UN Global Compact. Ireland reports that the Irish Business and Employers Confederation invited the NCP to advise on the elaboration of a code on corporate governance for its members.

c) Promotional activities among trade unions

A TUAC *User's Guide* on the Guidelines was published in English and has been distributed to both TUAC and ICFTU affiliates and posted on the TUAC website. It has been translated into Czech, French, Spanish, Portuguese, Italian, Korean, Hungarian, Russian, Estonian and Latvian. It will shortly be available in German, Georgian, Lithuanian and Romanian. TUAC views the translations as having been useful in raising the awareness of the Guidelines and has used them in seminars, workshops and to explain how "specific instances" should be raised.

TUAC has participated in a number of promotional events that aim to help trade unions use the Guidelines in order to resolve specific issues and facilitate a social dialogue with multinational enterprises. These have taken place in Europe, North America, South America and Asia. TUAC helped to organise and participated in two seminars in Estonia and Lithuania. Altogether, the seminars had about 80 participants from trade unions, business organisations and governments in Estonia, Latvia and Lithuania. TUAC has also briefed a number of Global Union Federations on the Guidelines.

d) Promotional activities by NGOs, charitable foundations and academics

The Fredrick Ebert Foundation sponsored a Guidelines event in Santiago de Chile (different than the one, described above, that was organised by the Chilean NCP). The event provided an opportunity to introduce the Guidelines to the trade union community in Latin America. It was also attended by the Chilean NCP and by TUAC. Germanwatch, an NGO, organised a session as part of the NGO Forum Programme in connection with its event "World Food Summit – Five Years Later" in Rome. This event explored the role of multinational enterprises in promoting food security and food safety.

Numerous academics have been attending Guidelines events (for example, the Chilean NCPs Guidelines conference, the promotional meeting for the ILO Declaration on Multinational Enterprises and the Labour Management Pro-

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gramme seminar on the Guidelines). A French group specialising in employment relations and based at the University of Paris[5] sponsored a colloquium on the Guidelines. The University of Nyenrode has developed a programme on corporate responsibility and the OECD Guidelines. The Netherlands NCP supports corporate responsibility in education programmes and has participated in workshops in Nyenrode.

e) *Promotional activities within governments.*

Numerous promotional activities within governments are described in the NCP reports. Turkey sent an informational letter to government agencies describing the Guidelines and asking for comments on them. Other activities include:

- *Promotion within embassy and consular networks.* Embassies have been informed about the Guidelines (Estonia, Japan, Netherlands, Spain). The United Kingdom includes presentations about them in training of commercial officers for embassies. Japan organises meetings with Japanese business communities/societies in non-OECD member countries – mainly in Asia – in order to provide information on the Guidelines. The Netherlands NCP states that ambassadors were informed about the Guidelines (especially their anti-corruption recommendations) at their annual meeting. Canada provides information sessions on the Guidelines to its overseas trade officials and they are also part of the human rights training for government officials preparing for overseas postings. The informational booklet of the US NCP is incorporated into the programmes of the Economic and Commercial Training Division of the National Foreign Affairs Training Centre, where diplomatic, economic and commercial officers receive advanced economic training for overseas assignments.
- *Participation in tripartite bodies.* The Czech NCP participates in "the Council of Economic and Social Agreement, the supreme tripartite body operating under the auspices of the Governments. Through this contact the NCP ensures that the Guidelines feature in the Czech Republic's overall policy on corporate and social responsibility".

f) *Promotional activities by the* OECD *Secretariat*

The Secretariat organised or participated in a number of promotional events and activities. A special session on the Guidelines was held as part of Forum 2002 in conjunction with the OECD ministerial meeting. A press conference was also held during the Ministerial in which the Guidelines were highlighted. The Guidelines were also included in the documentation prepared for the Ministerial (Annex IV) under the heading "Ensuring Integrity and Transparency in the International Economy".

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The Guidelines were on the programmes of the inaugural Global Forum for International Investment (GFII) (hosted in Mexico City by the Mexican government) and of the second GFII on mining. In addition the Secretariat participated in a variety of meetings sponsored by NCPs, businesses or business associations, NGOs or trade unions in such countries as Chile, Czech Republic, France, Germany, Italy, Sweden, United Kingdom and Switzerland. They were also presented in a paper and in remarks given at the first meeting of the OECD's Global Forum on Sustainable Development.

The Secretariat presented the Guidelines at meetings held by other international organisations. It presented the Guidelines at a side event held in conjunction with the preparatory committee meetings for the Monterrey Financing for Development Summit and at the post-Monterrey OECD press seminar held in Paris. It also participated in the ILO Tripartite Forum on promoting the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy. The Secretariat commented on the Commission's Green Paper on Corporate Social Responsibility and participated in two of the follow-up meetings.

A Deputy Secretary-General contributed an interview to an event sponsored by the Ministry of Agriculture of the Netherlands. The event promoted corporate responsibility in the agri-food industry. The Guidelines also figured in the launch of the OECD report *Working Together towards Sustainable Development: The OECD Experience*.

The Labour Management Programme meeting on the Guidelines was prepared jointly by TUAC and the Secretariat.

g) International agreements, investment promotion, and export credit and promotion agencies

- *European Commission*. The Association Agreement between the EU and Chile, concluded during the second EU-Latin American and Caribbean Summit held in Madrid in May 2002, refers to the Guidelines. A joint declaration will indicate that: "The Community and its member States and Chile jointly remind their multinational enterprises of their recommendation to observe the Guidelines for Multinational Enterprises wherever they operate."
- *Finland*. The Finnish NCP report states: "... the Act on the State's Export Credit Guarantees came into effect in July 2001. In the implementation of this act, Finnvera plc, the national Export Credit Agency, has introduced a set of environmental and other principles covering also the Guidelines. Finnvera wishes to call the OECD Guidelines to the attention of guarantee applicants."
- *Greece*. Greece has prepared information on the Guidelines for distribution on "the occasion of Joint Intergovernmental Meetings with non-adhering countries where Greek business operates".

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- *Sweden*. Sweden has discussed the issue of a possible link to the Guidelines in the Energy Charter Treaty Supplementary Treaty (an investment agreement).

- *Canada*. Canada's Trade Commissioner now makes Guidelines brochure available to companies that participate on trade and investment promotion missions abroad. The missions normally include government Ministers and many companies interested in doing business abroad.

- *United States*. The Export-Import Bank, the Overseas Private Investment Corporation (OPIC) 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.

h) *High-level promotion*

- OECD *Ministerial*. The Ministers meeting at the OECD in May 2002 considered how to ensure integrity and transparency in the international economy. In this context, their communiqué called for governments "to continue to promote implementation of the OECD Guidelines for Multinational Enterprises, which provide recommendations for responsible corporate behaviour, including in such areas as transparency and anti-corruption".

- G8 *Ministerial Meetings*. The conclusions (July 18-19, 2001) of G8 Foreign Ministers note, under the heading "Corporate Citizenship and Conflict Prevention", a potential role for Guidelines in this area. The conclusions recognise that the "private sector through good citizenship can play an important and positive role in conflict prevention and post conflict reconstruction".

- *Netherlands*. The Netherlands NCP report notes that Ministers of Foreign Trade referred to the Guidelines in several speeches.

- *Sweden*. In March 2002, three Cabinet Ministers at the Swedish Ministry for Foreign Affairs sent a letter (Annex V) to Swedish companies, which calls for a *Swedish Partnership for Global Responsibility*. This letter states that "the Government's basic expectations of Swedish companies' action in the global market, particularly in developing countries, are expressed in the OECD Guidelines and the UN's Global Compact." It also asks companies to express public support for the Guidelines (*e.g.* through reporting, employee training, integration into business objectives) and proposes that companies report once a year on measures they have taken or lessons they have learned relating to the OECD Guidelines and the UN Global Compact. An event promoting this initiative was attended by the Swedish Prime Minister and by six Ministers (Foreign Affairs; Trade; Development Co-operation; Industry and the Environment).

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- *United Kingdom*. Press sources quote UK Prime Minister Tony Blair as supporting the use of the Guidelines as a way of promoting responsible behaviour by companies in conflict zones in Africa.[6]

IV. Implementation in specific instances

The OECD Council Decision instructs the NCPs to "contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised…". The NCP reports for the June 2000-June 2001 period noted 8 specific instances had been raised with NCPs. The reports for the 2001-2002 period point to a significant increase in the number of "specific instances" being considered by National Contact Points.

a) Specific instances: number and nature

The NCPs that reported some activity in relation to specific instances during the June 2001-June 2002 period are: Austria (1 instance); Belgium (1); Canada (1); Czech Republic (2); Denmark (1); Finland (1); France (3); Korea (1); Netherlands (3); Norway (1); Poland (2); Switzerland (1), United Kingdom (2) and the United States (2). Some of these instances involve more than one NCP. Several NCP reports mention being contacted by other NCPs in relation to specific instances (Finland, United Kingdom).

Some of the NCP reports provide details on the nature of the specific instances:

- *Geographical scope*: The Czech and Polish NCPs report specific instances in relation to inward investment. The other specific instances concern outward bound investment toward another adhering country (Belgium, Finland) or outward bound investment, service provision or supply chain activities involving non-adhering countries (Austria, Denmark, Netherlands, United States).
- *Subjects*: Not all NCPs provide information on the issues underlying the specific instances. The Canadian and Swiss NCPs considered a specific instance involving resettlement and relations with local communities in the Zambian copper belt. The available information suggests that most of the other specific instances concern Chapter IV (Employment and Industrial Relations). Belgium's specific instances involved information disclosure to employees during the closure of a facility. The Korean NCP considered a case dealing with alleged interference of employees' right to be represented by a trade union in a textile production site in Guatemala. The Netherlands describes specific instances relating to: 1) Child labour and fair wages in the supply

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chain; 2) Human rights concerning forced or compulsory labour; 3) Prior notice and employee information in relation to the closure of a facility. The NCP of the Czech Republic has considered issues relating to right to trade union representation and the employers' responsibilities in relation to trade union activities. The Danish NCP has been asked to consider the situation of Malaysian workers in a Danish-owned company. Poland reports on specific instances involving Chapter IV (points 1a, 2a, 2b, 2c, 4a) and a new instance involving Chapters II (General Policies), III (Disclosure), IV (Employment and Industrial Relations) and IX (Competition). The US NCP reported enquiries and meetings concerning Chapter IV, Employment and Industrial Relations. One of the enquiries under Chapter IV also raised questions of the applicability of the Guidelines in a trade and supply chain context. The US NCP received an enquiry in relation to concerns about three chapters of the OECD Guidelines: General Policies, Disclosure and Combating Bribery.

- O*rganisations raising specific instances*. According to TUAC's report on the Guidelines, national trade unions and Global Union Federations have raised some fifteen "specific instances" during the review period. TUAC has been involved in some of these. NGOs have also raised a number of cases (*e.g.* with the Canadian and Swiss NCPs).

b) Outcomes and effectiveness of specific instances

Some of the NCP reports shed light on how specific instances were resolved and some offered assessments of whether or not their consideration of these instances changed business conduct. In this connection, the following issues emerge from NCPs discussions of their specific instances:

- S*pecific instances and national arrangements* (*law, administrative procedures*). At the conclusion of one of its specific instances, the Belgian NCP issued a public statement indicating that the firm in question had not been shown to have not observed the Guidelines. It further noted that, in this case, the security laws of another OECD country make observing the Guidelines recommendations more difficult inasmuch as they assign higher priority to the information rights of securities holders. The US report states that the "relationship between these inquiries and other legal and administrative processes has been a significant element of US NCP experience this past year".

- C*o-operation among* NCPs. Several of the reports mention that some specific instances involved more than one NCP. NCP discussions suggest that there may have been co-ordination problems in specific instances involving more than one NCP (*e.g.* in one case, NCPs from two adhering countries appear to

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have not reached the same conclusion about very similar behaviours by two subsidiaries of a retail company).

- *Constructive dialogue*. The Czech NCP report states, in relation to one of its specific instances, that: [t]his case was discussed at four meetings of the NCP where tensions were considerably alleviated and the parties gradually reached a consensus. At the fourth NCP meeting, it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
- *High quality discussion among stakeholders*. The report of Netherlands NCP notes the "good atmosphere" during discussions of specific instances and notes that "information is exchanged, positions are explained. The fact that the NCP convenes the meetings stimulates the willingness of parties to talk with each other".
- *The use of specific instances as a bargaining tool*. The Netherlands report also cites a case where a specific instance under the Guidelines "was successfully used as a negotiation instrument by trade unions in their discussions with the management… As part of the negotiation the case (specific instance) was withdrawn".
- *French* NCP *recommendations to companies on the issue of forced labour in Myanmar*. The French NCP issued recommendations for companies operating in Myanmar (Annex VI). These urge measures such as promoting legislation against forced labour, contributing to development projects, training and verification by local managers of the behaviour of sub-contractors.
- *Intensive consultations on a Korean company's labour management practices in Guatemala*. The Korean NCP played the role of "agent, co-ordinator and mediator" in a labour dispute involving a Korean textile company and its Guatemalan workers. These involved a range of activities including an arbitration meeting in Seoul among several ministries and the Korean company as well as a trip to Guatemala. In the course of its consideration of this matter, the Korean NCP found that there had indeed been problems in the company's observance of two of the recommendations in the labour chapter of the Guidelines (Chapter IV). The report states the following: "During this process (of discussion with workers and the Korean company), it was acknowledged that there were a few misunderstandings between management and labour. Both sides agreed on issues that should be improved and action that should be punished and are carrying out such measures. But conflicts still exist…" The report describes several concrete responses by the company (*e.g.* publication and distribution of a booklet on Guatemalan labour law in cartoon form so that "even illiterate workers were able to understand their rights and carry out their obligations"). Other NCPs were

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also contacted in connection with this specific instance and those NCPs were in contact with the Korean NCP.

- *Co-operation and resolution in Zambia.* The Canadian NCP – in co-operation with the Swiss NCP – had a specific instance in which the "central underlying issue was the impending removal of poor local farmers from company-owned land." The Canadian NCP report states the following about the conclusion of this case: "To address this issue, the Canadian NCP facilitated a flow of communications between the company's headquarters in Canada and the Canadian office of the NGO… Both Canadian parties in turn communicated with their operations in Zambia where face-to-face meetings took place. While there was a variance in the facts and opinions reported on each side, a resolution was reached after the company met with groups from the affected communities and worked out an approach whereby the farmers could continue to use the land, at least for the short term." The Canadian NCP sums up its experience as follows: "Canada's one experience with a Guidelines case resulted in a positive outcome. The approach adopted by the NCP… drew significantly from the Procedural Guidance annex of the Guidelines Decision… and offered a non-judgemental process for confronting a complex social problem related to a foreign investment activity. Essentially, the process facilitated dialogue and the dialogue led to resolution."

c) P*rocedures for dealing with specific instances*

The Czech NCP adopted rules of procedure during the review period. In terms of the provision of information to other actors, the Czech NCP has favoured highly transparent approach. This includes the issuance of a "Notification of Submission Received" to all parties concerned. This confirms acceptance of the submission, identifies the parties involved and specifies what further information needs to be provided. It also sends it to the Press Office for further evaluation of its possible disclosure to the media. The NCP also issues a statement on the results of its consideration of the specific instances. This could include recommendations, announcements of the settlement of disputes or a statement that an instance is not worth further consideration.

The French NCP has submitted a note on procedural questions that have arisen in the course of its consideration of specific instances. This note raises the following questions: What needs to be done to avoid two NCPs issuing two diverging communiqués concerning two very similar cases? Should NCPs issue a communiqué saying that the company under consideration in the specific instance is, in its view, observing the Guidelines? Should an NCP drop a specific instance when the future of the companies in question has been settled through other channels (legal in particular)?

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V. Follow-up on issues raised at the June 2001 consultations with NCPs[7]

The Chair's summary from last year highlights three issues raised by BIAC, TUAC or NGOs during last year's consultations:

- M*yanmar*. The question of human rights violations in Myanmar was raised by TUAC and at the NCP meeting and consultations. TUAC tabled a letter noting the June 2000 adoption by the International Labour Conference of a "Resolution on Burma" under article 33 of the ILO Constitution.[8] TUACs letter asked the CIME to discuss how "the Guidelines could be used to contribute to the elimination of forced labour in Burma". The CIME's response to this letter notes that "the Procedural Guidance accords primary responsibility to individual national contact points in addressing such enquiries…". The NCP's follow up on this issue is described below.
- L*inkages*. BIAC, in letters dated 29 May 2001 and 12 September 2001 expressed concern about policies linking the Guidelines to national government instruments. It felt that this was undermining the voluntary nature of the Guidelines. This issue was discussed under the heading of "policy coherence" in the Summary report of the Chair to the CIME.
- B*alance of promotion*. BIAC also expressed concern about the balance of efforts to promote the Guidelines in comparison with the efforts expended in promoting other elements of the Declaration.

This section reports on follow-up on those issues.

a) NCP *consideration of multinational enterprise activity in* Myanmar

The NCPs and their oversight committee, the OECD Committee on International Investment and Multinational Enterprises (CIME), have taken up the question of multinational enterprise activity in Myanmar:

- S*pecific instances in relation to* M*yanmar*. In response to a case raised by unions under the Guidelines, the French NCP undertook consultations with several companies with operations in Myanmar. Following these consultations the NCP issued a set of recommendations to companies with activities in Myanmar (Annex VI). These urge companies operating in Myanmar "to do everything possible in order to avoid direct or indirect recourse to forced labour in the normal course of their operations, in their relations with sub-contractors or through future investments, particularly in zones with a strong military presence and in activities controlled by the military". Two other NCPs have also noted specific instances in relation to Myanmar. They are still considering these instances.
- O*ther* NCP *initiatives*. A number of the NCP reports describe other activities in relation to Myanmar. The Austrian NCP informed its investment guarantee

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agency about the risks of investing in this country, though Austrian investments in Myanmar are small or non-existent. Other NCPs (Hungary, Finland, Canada, United Kingdom, and France) contacted companies known to have economic relations with the country. In their contacts, they recalled the importance their governments' attach to the Guidelines and underscored the need to take them into account, especially when operating in Myanmar. Other NCPs mention contacts with business federations on this issue (Japan, United States). Following up on TUAC recommendations, the Polish NCP published on its website "a recommendation not to undertake or continue business contacts with Burma [country designation used in NCP report]".

- NCPs *draw on research support from the* CIME *in their consideration of this issue*. The CIME asked the Secretariat to prepare a background note that looks at the generic corporate responsibility issues raised by multinational enterprise activity in Myanmar, while avoiding overlaps with the International Labour Organisation's enquiries into the question of forced labour in Myanmar. This note is entitled "Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses" and focuses mainly on extractive industries. Its principal theme is that corporate responsibility challenges are particularly acute for companies operating in countries such as Myanmar because the business environment there is characterised by so little "government responsibility". The paper invites companies to contribute in two areas: 1) Improving management in the immediate vicinity of their operations (especially of security forces and resettlement operations); 2) Participating in the search for long-term solutions to these countries' problems by helping them move toward healthier public governance (in particular by becoming more transparent in their financial relations with troubled host countries). Annex VII presents the executive summary of this paper.
- T*he* CIME *provides a forum for conferring with the* I*nternational* L*abour* O*ffice* (ILO) *and among adhering countries*. The CIME also considered a report on the ILO's enquiry into the observance by the Government of Myanmar of the Force Labour Convention by an ILO official. ILO documents summarising the findings were made available to NCPs. The CIME also provided for a review of and sharing of information on NCP activities in promoting business contributions to improving the situation in Myanmar.

b) P*olicy coherence and linkages*

As noted above, adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds expression in other aspects of national policy. This issue has been referred to as "policy coherence" and it arises in those policy areas where government programmes have a direct bearing on

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corporate activity. Recent focus has been on incentives or guarantees to business for the purpose of promoting or facilitating foreign trade and investment, especially export credits and investment guarantees.

Responding to a series of letters from BIAC expressing its concern about links between the Guidelines and export credit or investment guarantee programmes, the CIME chair reiterated the importance attached by adhering governments to "maintaining the voluntary character of the Guidelines, in fact and in effect" in a letter dated December 5, 2001 (Annex II). The NCP reports suggest that several governments have established or maintained such links, while taking care not to undermine the Guidelines' voluntary character.

Many adhering governments seek to call attention to the Guidelines by referring to them in various ways in the context of export credit or investment promotion/guarantee programmes. In some cases, the National Contact Point is located in the agency responsible for one or more of these programmes.[9] Table 1 summarises the relationships that have been established between the Guidelines and export credit and investment guarantee or promotion programmes. These range from having companies sign acknowledgements to hyperlinks between web sites.

c) **B*alance of promotion – the* G*uidelines* *versus* *other instruments in the* OECD D*eclaration***

During the consultations held in conjunction with the June 2001 meeting of the National Contact Points, BIAC expressed concern about how the different elements of the OECD Declaration on International Investment and Multinational Enterprises are being promoted by the CIME. The business community noted that the OECD Declaration is a single, balanced package and suggested that promotion, therefore, should also be balanced.

Business representatives noted the significant expenditure of resources on the Guidelines and suggested that other elements of the Declaration – national treatment, conflicting requirements and international investment incentives and disincentives – could benefit from similar promotional efforts. At the same time, numerous participants (including BIAC) noted and welcomed the presence in the meeting rooms of six governments that have been invited to adhere to the Declaration.

Over the review period, three of these countries adhered to the Declaration – Lithuania, Estonia and Slovenia. The review effort that preceded their adherence absorbed significant CIME resources. Thus, over the June 2001-June 2002 review period, the business community's concern about balanced promotion was primarily addressed by expanding the number of countries adhering to the Declaration. In addition a project on "Policy Competition for FDI" that is of direct relevance to one of the Declarations instruments – investment incentives and disincentives –

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Table 1. **Linkages – The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes**

	Programme	Description of link
Canada	Export credits	The Export Development Corporation (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. It also included the Guidelines in its across-Canada tour to promote business ethics.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Greece	Investment promotion	The Guidelines are available electronically on the site of ELKE, the Greek investment promotion agency.
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 ("*avoir pris connaissance des Principes directeurs*").
Korea	Trade-investment promotion	The KOTRA (Korean Trade Investment Promotion Agency) and the Korean foreign exchange banks provide information on the Guidelines to multinational enterprises with inward and outward investments.
Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive the 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 the Guidelines to the best of their ability.
United Kingdom	Investment guarantees	Links connect Guidelines website and investment guarantee website.
United States	Export and import credits and investment guarantees	The Export-Import Bank, the Overseas Private Investment Corporation (OPIC) 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.

Source: OECD.

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was pursued. Further issues regarding the promotion of the Declaration will be dealt with by the CIME and the Working Party in the course of discussions of ongoing and future work.

VI. Progress to date and considerations for future action

Last year's Roundtable – which focused on the relationship between the Guidelines and other global instruments for corporate responsibility[10] – identified low "user recognition" as being a weakness of the Guidelines. Although much remains to be done, the activities listed above – ranging from references at the OECD and G8 Ministerial Meetings to discussions among local partners – seem to have succeeded in raising the Guidelines' visibility. The Netherlands NCP report notes that, in that country, "the Guidelines are part of a lively debate on Corporate Social Responsibility". If this is also the case in other countries, then this already represents a measure of success.

Companies and trade unions appear to have taken notice as well. BIAC officially supported the Guidelines, as have many of its member business federations. The Secretariat's survey of public statements made by 59 extractive industry companies in late 2001 shows that the number of references to the Guidelines was comparable to those of major "voluntary" corporate responsibility instruments such as the UN Global Compact. TUAC stated at the consultations that the Guidelines had "exceeded the expectations" of the trade union community.

The Guidelines' presence on the web has also increased. Identical searches conducted in June 2001 and June 2002 indicate that the number of pages mentioning the Guidelines has more than doubled.[11] There is also evidence of heightened interest among web users as well. For example, the Australian and United Kingdom NCP reports note that their Guidelines websites are receiving about 1000 and 800 visits per month, respectively.

Thus, the higher visibility of the Guidelines would appear to provide grounds for satisfaction for the people and organisations that have supported them. However, as one NCP report points out, there can never be enough promotion. Furthermore, while this increased visibility is apparent in some national contexts, it is not present in all. The Polish NCP report notes that, in Poland, "[a]wareness of the Guidelines by individual companies is not very high". Thus, the task ahead of the NCPs and their partners in the Guidelines process remains a challenging one.

Several issues emerged during the meetings that would appear to merit further consideration:

- F*unctional equivalence and transparency of* NCP *activity*. The related issues of functional equivalence and transparency came up during the NCP meetings, the consultations and the Roundtable. Many actors are concerned that the "objective of functional equivalence" in the performance of NCPs has not

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yet been achieved and that their activities are not yet transparent enough. Trade unions called for benchmarking of NCP performance and practices and for a "register" of specific instances to be kept on the web. Several NCPs questioned the feasibility of such an exercise. TUAC also called for a central "register" of specific instances to be kept, but at least one NCP noted that the information contained in such a register would not satisfy many observers and would lead to calls for further information. Participants in the meetings agreed that the issues of functional equivalence and transparency need to be explored further.

- NCP *procedures*. Some NCPs are developing procedures for their activities and a few have published such procedures. The NCP discussions suggest that there are differences in how NCPs approach their responsibilities. For example, NCPs differ in how they handle confidentiality and transparency in relation to specific instances. Practices differ in relation to disclosure of information while the instance is being considered and after it has been concluded. There appears to be a need for exchange of information on NCP practices and procedures.
- *Scope of relevance of the Guidelines*. The Guidelines have sometimes been used to discuss business activities other than investment – for example, trade and service provision. Several individual NCPs (Netherlands, the United States) describe specific instances involving only trade relationships. The NCP from Norway has a specific instance involving a Norwegian protection and indemnities (P&I) club and contractual payments to Philippine and Indonesian seafarers in person injury and death cases. This question – the definition of the activities to which the Guidelines are thought to apply – was discussed at the annual meetings, the consultations and the Roundtable. One delegate suggested that the historical development of the Guidelines (as part of an international investment agreement, the OECD Declaration) could be relevant to interpretations of the scope of the recommendations and procedures. The business community stated its view that the Guidelines pertain only to investment activities, while trade unions and NGOs favoured a broader view of their relevance. This is an issue that will require further reflection.
- *Relationship between specific instances and other legal or administrative processes.* Several reports (*e.g.* Belgium, France, the United States) state that specific instances and enquiries were considered in parallel with other legal or administrative processes at the national level. The Polish report states that some actors "have extremely high expectations toward the NCP. They treat the NCP as part of a system of justice, dealing with the Labour Code and that is certainly not true. Such a state of affairs leads to misinterpretation of the role of the NCP and causes misunderstanding and disappointment…".

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- *Specific instances address core issues but are they making a difference*? The specific instances described in the NCPs' annual reports address some of the issues that lie at the heart of the public debate about globalisation – human rights, protection of local communities, MNE activity in Myanmar. At least two NCPs – Canada and the Czech Republic – state that their specific instances helped alleviate tensions and contributed to the resolution of problems. The Korean specific instance has involved extensive discussion of the labour management practices of a Korean company in Guatemala and these practices appear to have improved as a result. But NCPs are still learning about how to handle specific instances and many questions remain unanswered. Has NCP involvement made a real difference in the behaviour of the companies concerned (or of other actors)? When specific instances concerned business activity in non-adhering countries, were there problems in obtaining information or access to the people concerned by the instance?

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Notes

1. The annual meetings of the NCPs respond to the requirement in the OECD Council Decision of June 2000 stating that: "The National Contact Points shall meet annually to share experiences and report to the Committee on International Investment and Multinational Enterprises (CIME)."
2. NGOs were represented by the Northern Alliance for Sustainability (ANPED) and by Rights and Accountability in Development (RAID).
3. NCP reports from the following countries were received in time for inclusion in this report: Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Brazil submitted a report in July 2002 according to which the Brazilian NCP is being implemented. The European Commission, which does not have an NCP, also submitted a report on its activities. This report also draws on discussions of NCP activities in relation to Myanmar that took place at the December 2001 meeting of the Committee on International Investment and Multinational Enterprises.
4. Czech, Danish, Dutch, English, Estonian, Finnish, German, French, German, Hungarian, Greek, Norwegian, Japanese, Lithuanian, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish, Turkish and the official languages of Belgium and Switzerland.
5. Association Française de l'étude des Relations Professionnelles (AFERP).
6. "Blair Calls for Clampdown on Companies that Exploit Africa" *Financial Times* February 7, 2002.
7. See "Summary Report of the Chair of the Meeting on the Activities of National Contact Points" OECD *Guidelines for Multinational Enterprises Annual Report* 2001 (2001).
8. This country is referred to as Burma in these communications. The authorities of the country have changed its name to Myanmar, which is the official United Nations designation and the one used by the OECD.
9. For example, as noted in its report, the Polish NCP is located in the "PAIZ, a reputed institution which has close relations with foreign investors and which can strongly influence the improvement of the reception of foreign direct investment in Poland by the general public."
10. See OECD *Guidelines for Multinational Enterprises: Annual Report* 2001 *Global Instruments for Corporate Responsibility*, 2001.
11. There were 4 340 web pages on the Guidelines in early June 2002.

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Annex I

Structure of the National Contact Points[1]

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
Argentina	Single department	Ministry of Foreign Affairs, International Trade and Worship		
Australia	Single department	Foreign Investment Review Board	– Ministry of Treasury	
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.	Ministry of Economic Affairs	– Ministry of Environment – Ministry of Labour – Ministry of Foreign Affairs – Ministry of Finance – Ministry of Justice – Region of Brussels – Flemish Region – Walloon Region	
Canada	Interdepartmental Committee		– Department of Foreign Affairs and International Trade – Industry Canada – Human Resources Development Canada – Environment Canada – Natural Resources Canada – Department of Finance – Canadian International Development Agency	

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Structure of the National Contact Points[1] (*cont.*)

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
Chile	Quadripartite	Ministry of Foreign Affairs, Directorate of International Economic Relations	– Ministry of Economics – Ministry of Labour – General Secretariat of the Presidency	
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.
Denmark	Tripartite with several ministries	Ministry of Employment	– Danish Agency for Trade and Industry – Environmental Protection Agency – Ministry of Economic and Business Affairs – Ministry of Foreign Affairs	
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	– Ministry of Social Affairs – Ministry of Environment – Estonian Investment Agency – Estonian Export Agency	
Finland	Quadripartite with several ministries	Advisory Committee on International Investment and Multinational Enterprises, 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	

Structure of the National Contact Points[1] (*cont.*)

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	– Ministry of Labour – Ministry of Environment – Ministry of Foreign Affairs	
Germany	Single department	Federal Ministry of Economics	– Ministry of Foreign Affairs – Ministry of Justice – Ministry of Finance – Ministry of Economic Co-operation – Ministry of Labour – Ministry of Environment	The NCP works in close co-operation with the social partners.
Greece	Single department	Directorate for International Organisations and Policies, Ministry of National Economy		
Hungary	Interdepartmental Office	Ministry of Economic Affairs	– Ministry of Economic Affairs – Ministry of Finance – Ministry of Foreign Affairs	
Iceland	Interdepartmental Office	Ministries of Industry and Commerce		
Ireland	Single department	Enterprise Policy Unit, Department of Enterprise, Trade and Employment		
Italy	Single department	Direction Générale, Ministry of Production Activities		
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 has recently been reorganised as an inter-ministerial body composed of three ministries.

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Structure of the National Contact Points[1] (*cont.*)

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
Korea	Interdepartmental Office, with regional governments and several ministries	Executive Committee on Foreign Direct Investment	– Ministry of Foreign Affairs – Ministry of Finance and Economy – Korean Trade-Investment Promotion Agency	
Lithuania	Single department	Ministry of Economics		
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	Trade Negotiations Division, Ministry of Foreign Affairs and Trade		Consultations are currently being held within government and with the non-government sector on whether it is appropriate for the location or structure of the NCP to be changed.
Norway	Tripartite, with several ministries	Department for Trade Policy, Environment and Resources, Ministry of Foreign Affairs	– Ministry of Foreign Affairs – Ministry of Industry and Trade	
Poland	Single department	Polish Agency for Foreign Investment		
Portugal	Single department	ICEP Portugal (the Portuguese Investment Promotion Agency)		

Structure of the National Contact Points[1] (*cont.*)

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
Slovak Republic	Single department	Ministry of Economics		The NCP belongs as a single department to the Slovak Agency for Development of Investment and Trade established as a contributory organisation of the Ministry of Economy.
Slovenia	Single department	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 NCP holds separate meetings with trade unions and business representatives.
Spain	Single department	General Secretary for International Trade, Ministry of Economy		
Sweden	Tripartite, with several ministries	Department for International Trade and Policy, Ministry for Foreign Affairs	– Ministry of Industry, Employment and Communications – Ministry of Environment – Ministry of Justice – National Board of Trade	
Switzerland	Single department	International Investment and Multinational Enterprises Sector, Federal Department of Economy		Co-operation with business, trade unions and NGOs is institutionalised through a liaison group that meets regularly.
Turkey	Single department	General Directorate of Foreign Investment, Undersecretariat of Treasury		
United Kingdom	Single department	International Investment and Competition Policy Unit, Department of Trade and Industry	– Foreign and Commonwealth Office – Department for International development	The NCP liases with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.

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Structure of the National Contact Points[1] (*cont.*)

	Composition of the NCP	Governmental location of the NCP	Other Ministries and/ or Agencies involved[2]	Comments and notes
United States	Single department	Office of Investment Affairs of the 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.

1. This table is based on information provided by the National Contact Points in their 2001 and 2002 annual reports.
2. The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

Source: OECD.

Annex II

Letter from the Chair of CIME to BIAC

Dr. Enrico Massimo Carle
Chair of the BIAC Committee on International
Investment and Multinational Enterprises
Past President and Adviser for Internationalization
ANIMA and International Coordinator, Confindustria

Paris, 5 December 2001

Dear Dr. Carle,

I am writing to you in response to your predecessor's letter of 29 May 2001 and the statement of 12 September 2001 by BIAC.

The representatives of the governments adhering to the Declaration discussed the issues they raised in the Committee for International Investment and Multilateral Enterprises (CIME) in September and December 2001.

Delegates were unanimous in confirming the importance of maintaining the voluntary character of the Guidelines in fact and in effect, and reiterated their governments' attachment to this principle. They also acknowledged the right of governments to structure programmes such as investment subsidies and guarantees or export credit insurance in order to reflect their own national circumstances, legal traditions and international commitments. They noted that the Procedural Guidance to the Council Decision of June 2000 affords them flexibility in meeting their commitment to promote the Guidelines. However, they agreed that the broad multilateral and multi-stakeholder process by which the Guidelines have been developed should guide governments in fulfilling their commitment to the Decision.

Recognising the importance of the business community's support and co-operation to the effectiveness of the Guidelines, delegates agreed on the need for additional efforts to cultivate that support and co-operation. They believe that BIAC and its affiliates' contribution to the promotion of the Guidelines are the most effective means to encourage voluntary observance of the Guidelines by the broadest spectrum of individual multinational enterprises. Accordingly delegates reiterated their invitation to BIAC and its affiliates to express their support for the Guidelines. They consider it desirable that BIAC and its affiliates join CIME and individual NCPs in an effort to develop an effective positive agenda for promoting the Guidelines to individual firms. In this context they appreciate the suggestions for activities by governments in the letter of 22 November from Mr. Worth and they would welcome ideas on the role BIAC and its affiliates can play in assisting to advance the positive agenda. They also pledged to work within their individual governments to promote recognition of the

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importance of such co-operation, and its acceptance as the most effective means to achieve broad support among multinational enterprises for the Guidelines.

I believe the results of the Committee's discussions outlined above represent an important opportunity to advance our common objectives. I would be most interested in BIAC's thoughts and reactions.

Sincerely yours,

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

cc. CIME Delegates.

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Annex III

Letter from BIAC to the Chair of the CIME

Paris, 20 December 2001

Dear Mr. Sikkel,

We are in receipt of your letter to Dr. Carle of December 5, 2001 and much appreciate the careful deliberation and unanimity of the Committee.

The relationship of BIAC and the OECD is shaped and impelled by consensus and dialogue. Indeed, the OECD Declaration on International Investment and Multinational Enterprises and the OECD Guidelines themselves are a dialogue. Faced with an adversarial potential, investors and democratic, representative governments chose the path of mutual interest and agreed to recommendations on what each might contribute to a better environment for investment.

Therefore, we were gratified by the Committee members' restatement of their commitment to the fundamental character of the Guidelines as voluntary and the Decision made by Ministers in June of 2000 that articulates both substance and process.

As expressed in the Ministerial statement of then BIAC Chairman, Jaakko Ihamuotila, the value and relevance of the Guidelines lie in their implementation. By their very nature, recommendations cannot be "enforced" or employed as instruments of coercion. We appreciate the role of the Committee in managing the interpretations and expectations associated with the Guidelines to keep them within the scope and spirit of the Decision taken by Ministers.

The only method of ensuring the positive impact of the Guidelines is to encourage the willing participation of the companies that will make use of them.

Mr. Marinus W. SIKKEL

Chairman of the OECD CIME
Head of Investment Policy and International Organisations
Ministry of Economic Affairs
30 Bezuidenhoutseweg
P.O. Box 20101
2500 EC THE HAGUE

c.c. Mr. Manfred Schekulin
Chairman, Working Party on the OECD Declaration on
International Investment and Multinational Enterprises

Mr. Pierre Poret
Head of Division, OECD DAF/CMIS

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As an institution, BIAC is fully supportive of an effective implementation of the Guidelines, consistent with their spirit and letter. As elaborated in our Consultation with the Committee on December 4, 2001, our member organisations have engaged in a wide range of promotional and educational activities to communicate the substance and utility of the Guidelines, through brochures, websites, outreach to related institutions, conferences, seminars and workshops. Individually and in co-operation with government, these will continue and new vehicles will be found.

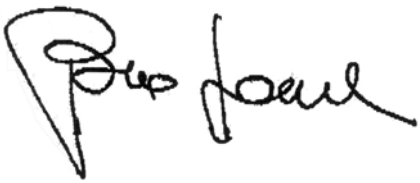
We should note that seeking to have an impact on the management systems of tens of thousands of companies is a goal we share with government, but it is an inestimable task. The objective of BIAC and our members is to introduce these recommendations from OECD governments, among the raft of codes, principles, compacts and guidance from other sources, as a comprehensive reference point and tool for better management and good corporate citizenship. We see no end to this effort, but we will do our best to see that they are widely known and their importance understood.

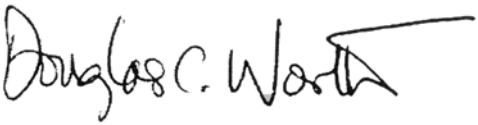
We look forward to continued dialogue and co-operation with the Committee in enhancing the role of investment in creating employment and wealth, raising the standard of living and fostering global sustainable growth.

Sincerely,



Dr. Enrico Massimo Carle
Chairman, BIAC Committee on International
Investment and Multinational Enterprises





Dr. Bruno Lamborghini
Chairman, BIAC

Douglas C. Worth
Secretary-General, BIAC

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Annex IV

OECD Ministerial Brochure 2002 – Guidelines Article

Multinational enterprises and public integrity: T*he role of the* OECD G*uidelines*

Integrity and transparency of the global system – responsible international business has a role to play.

Improved public governance is key to the transparency and integrity of the global system. Some zones have weak government accountability and fiscal controls and this often feeds into other problems such as civil strife, illicit trafficking or hosting of terrorist activities. Experience shows that MNEs operating in such zones can play positive roles in the move toward better public governance; for example, by refusing to compromise their own standards of corporate responsibility in their dealings with governments. However, there are limits to what responsible international business can achieve on its own. Home and host countries, international organisations and NGOs all have a role to play.

Weak public governance poses serious challenges for corporate responsibility.

Multinational enterprises (MNEs) sometimes invest in countries with weak governance. Weak host country regulatory frameworks can engender risks in such areas as competition, environment and product safety. Other risks stem from business activities in conflict zones. OECD studies show that, on average, the frequency of conflict in these zones has grown by a factor of 5 over the last four decades. In many countries, corruption is a daily problem for companies. At times, MNEs sign agreements not to disclose revenues they pay to governments that do not apply basic fiscal control principles. Business can send a clear message to Governments by not colluding with bad public governance; for example, by refusing to pay bribes or to sign non-transparent tax agreements.

Some MNEs are now actively engaged in the search to solutions.

International business is starting to assume a role in improving public governance. MNEs are often among the best informed outside actors in host countries and can act as role models for good governance. This is especially true in places where they contribute large portions of government revenues and in sectors where they are the major competitors. While business is placed in an unaccustomed role when dealing with issues where governments have primary responsibility, some leading companies have actively participated in the search for solutions.

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However, acting with integrity in some areas can be a competitive handicap. Partnerships are needed.

Conducting business responsibly – for example, by refraining from corrupt or anti-competitive practices and by being transparent in their dealings with governments – can be a competitive handicap unless all competitors agree to abide by high standards of corporate responsibility. When engaging on such issues, it will be essential for business to work in partnership with each other – for example through business associations – and with international organisations and host and home governments.

The OECD Guidelines can play a role in encouraging integrity and promoting partnership.

The OECD Guidelines for Multinational Enterprises – a multilaterally endorsed code of conduct – have a role to play in this partnership. The Guidelines contain many recommendations on integrity issues – taxation, the fight against corruption, competitive practices, transparency and disclosure. To date, a few "specific instances" dealing with these issues have been called to the attention of the National Contact Points, the institutions that promote the Guidelines in the national context. In addition, the Guidelines have been used as a platform for inter-governmental consideration of these issues.

The Guidelines are not a substitute for healthy domestic frameworks, but provide guidance for business in the absence of such frameworks.

In some host countries, the crucial, missing ingredients are the legal and regulatory inputs provided by democratically elected governments and the "softer" inputs produced by societies in which human, political and labour rights are respected. The Guidelines are not a substitute for host country law and regulation, but they do provide home government guidance for companies on how to act when host country institutions are not working well.

The Guidelines implementation process helps to define the role of business...

Work with stakeholders – international business, trade unions and NGOs – on the difficult task of defining appropriate roles is needed. Government roles – in host countries with the most serious governance problems are the dominant ones. Home country governments can help through diplomatic action and through their contributions to capacity building. The Guidelines could be used to explore the areas where the business sector can make a useful contribution.

... and to enlist the support of a larger number of companies in the search for solutions.

The Guidelines can also help to level the playing field among companies. By encouraging all MNEs – especially through their business associations – to act on these issues, adhering governments can alleviate the competitive distortions that would arise if some companies were to engage actively on these issues while others do not.

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Other actors are also participating in this search. These include international organisations, other parts of the OECD, member and non-member governments and NGOs.

Among the actors working on these issues, the World Bank and the International Monetary Fund have been exploring ways to improve fiscal management of extractive industry revenues with host governments and companies. The OECD Development Assistance Committee's Guidelines on Helping Prevent Violent Conflict" provide guidance for business on enhancing its contribution in situations of violent conflict. Major human rights and anti-corruption NGOs have also organised projects in these areas. Governments in both OECD and non-OECD countries have issued high-level calls for action, especially in relation to parts of Africa. Thus, although actually making the reforms is likely to prove difficult, this emerging consensus on the development benefits of effective governance is encouraging.

Box 1. **The OECD Guidelines for Multinational Enterprises**

The Guidelines for Multinational Enterprises are recommendations addressed by 36 (OECD and non-OECD) governments to multinational enterprises operating in and from their countries. They provide voluntary principles and standards for responsible business conduct in areas such as product safety, environment, labour management, supply chain responsibilities, disclosure of major risks and competition. The recommendations express the shared values of the nations that are the source of most of the world's direct investment flows and home to most multinational enterprises.

A key value added of the Guidelines resides in the unique follow-up procedures created by governments and business. Governments of the 36 adhering countries have established a system of National Contact Points to promote the observance of the Guidelines by multinational enterprises operating "in or from" their territories.

Evidence so far suggests that the Guidelines are making a difference. Many companies have publicly acknowledged that they use the Guidelines as a benchmark for good behaviour. The Guidelines are being used to help prevent misunderstandings and promote mutual confidence and predictability between the business community and home and host societies. About twenty specific instances where there are questions about whether or not a company has observed the Guidelines in a particular business situation, have been considered so far.

The Guidelines are part of a broader instrument – the OECD Declaration on International Investment and Multinational Enterprises. The Declaration promotes a comprehensive and balanced approach for governments' fair treatment of foreign direct investment and for corporate responsibility.

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Annex V

Open Letter from Swedish Ministers to Swedish Companies

2002-03-06

Minister for Foreign Affairs
Minister for Trade
Minister for International Development
Co-operation, Asylum Policy and Migration

Global Responsibility
Open letter to Swedish companies

To Swedish business executives and representatives of industry and commerce,

The debate on corporate social responsibility is becoming increasingly intense. It is gratifying to see that Sweden's corporate community has played an active role in the efforts to realise a sound environment and good working conditions. It benefits both Sweden and the world. It is our ambition that Sweden should influence international developments by taking action faster and more forcefully than other countries. This could also have a positive impact on Swedish exports.

The Swedish Government pursues proactive policies at the national and international levels for human rights and a better environment. But we need your help. Your co-operation would be of great value in our efforts to achieve a human side to globalisation. We trust that the benefits are mutual. Your commitment would help us continue to pursue consistently liberal trade policies. We also believe the project could help companies manage their problems in different parts of the world, for example, conflicts, corruption and violations of human rights. In addition, we think it could have export promotion effects at a time when trademarks with a positive ethical image are increasingly valuable.

Since 1979 the Government has carried on a continuous dialogue with the social partners concerning corporate social responsibility in accordance with the OECD guidelines for multinational companies. The Government has, irrespective of party complexion, promoted the OECD guidelines.

The Government's basic expectations of Swedish companies' action in the global market, particularly in developing countries, are expressed in the OECD guidelines and the UN's Global Compact. These are based on international agreements, for example in the ILO. The European Commission has produced a Green Paper on Corporate Social Responsibility, a launchpad for a discussion that aims at the formulation of proposals concerning how the Union can promote companies' acceptance of social responsibility at European and international levels.

The Swedish Government now invites the corporate community to take part in an initiative we call the *Swedish Partnership for Global Responsibility*. The main responsibility rests with the Ministry for Foreign Affairs but the initiative has been taken in close co-operation with

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primarily the Ministry of Industry, Employment and Communications and the Ministry of the Environment. The *Swedish Partnership for Global Responsibility* is a joint effort to encourage Swedish companies to become ambassadors for human rights, decent economic and social conditions and a sound environment.

It is proposed that co-operation in these matters between Sweden's corporate community and the Government would consist of the Government's: 1) Making information about Swedish companies available on an Internet website; 2) Exchange of best practices; 3) Enabling others to share and be inspired by your company's commitment and work in the area; and 4) Offering help and advice to companies that operate in difficult situations. The system should be flexible enough to also include small and medium-sized businesses. The *Swedish Partnership for Global Responsibility* can contribute to boosting the credibility of your company's commitment. By your cooperation you can contribute to a globalisation with a human face.

This could be realised if your company:

1) Publicly supports the OECD guidelines and the UN's Global Compact, for example by:
   - informing employees, shareholders, clients, suppliers, subcontractors and external interested parties that the company has adopted the OECD guidelines and the UN Global Compact;
   - integrating the guidelines into in-house training;
   - adding the guidelines to the company's objectives;
   - including the guidelines in the company's annual report and other official documents, for example following a model developed in the context of the UN supported project, Global Reporting Initiative.
2) Reports, once a year, concrete examples of measures taken or lessons learnt relating to the OECD guidelines and the UN Global Compact. These reports will be published on the Government's website and in Sweden's annual report to OECD. The intention is not that companies should need to submit a special report to the Ministry for Foreign Affairs. If a company already follows the OECD guidelines and the UN Global Compact and has a follow-up and report system, this can be used.

The Swedish Partnership for Global Responsibility also applies to companies that intend to, or have just started to implement a programme for social responsibility. The OECD guidelines and UN Global Compact could be a help in this work.

The Government looks forward to co-operating with you on this matter and would with this letter like to initiate a dialogue.

Anna Lindh Leif Pagrotsky Jan O. Karlsson

Contact, information, texts: *www.ud.se/ga.htm ga@foreign.ministry.se*
+ 46 (0) 8-405 32 46

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Annex VI

Recommendations by the French National Contact Point to Companies on the Issue of Forced Labour in Burma (country name used in NCP report)

***Thursday*, 28 *March* 2002**
(*Translation from the original French*)

The OECD Guidelines for Multinational Enterprises states that "enterprises should... contribute to the elimination of all forms of forced or compulsory labour". Chapter IV "Employment and Industrial Relations".

On this basis, several labour unions asked the French National Contact Point (NCP) to look into the question of forced labour in Burma. In conformity with the procedural guidance set forth under the OECD Guidelines, the NCP undertook consultations with several enterprises, with the following results.

The NCP is of the opinion that companies operating in Burma should do everything possible in order to avoid direct or indirect recourse to forced labour in the normal course of their operations, in their relations with sub-contractors or through future investments, particularly in zones with a strong military presence and in activities controlled by the army.

In this respect, the consultations undertaken by the NCP have brought to light the following practices that companies can use to contribute to the fight against forced labour:

- Undertaking co-operative action with international labour organisations at the relevant levels.
- External monitoring.
- Promoting legislation against forced labour.
- Contributing to development projects, especially in their areas of involvement.
- Verification by local managers of the behaviour of sub-contractors.
- Contributing to training operations.

Other company practices can also contribute:

- Development of a social dialogue with organisations representing employees at the local and international levels.
- Provision of regular information to Boards of Directors about initiatives taken to avoid recourse to forced labour.

Such practices obviously cannot substitute for the enforcement of the measures necessary for the suppression of forced labour by the Burmese government itself in conformity with the recommendations of the ILO, nor for actions by its member States.

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Annex VII

Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses – Executive Summary

OECD *International Investment Working Papers* 2002/1
(*www.oecd.org/daf/investment*)

In response to enquiries about foreign investment in Myanmar, the Committee for International Investment and Multinational Enterprises (CIME) asked the Secretariat to prepare a paper, under the responsibility of the latter, that would provide background information to interested parties. This paper was not only to shed light on business activity in Myanmar, but also to consider the broader challenges of conducting business responsibly in countries characterised by civil strife and extensive human rights violations. The present paper responds to this request and focuses on issues that are of particular relevance to extractive industries. This sector's share of global investment is quite small, but its significance for particular host societies is large and the underlying issues for corporate responsibility affect the welfare of millions of people. While not ignoring the problems that have arisen in connection with multinational enterprise activity in troubled host countries, this paper also seeks to promote and highlight the positive roles that some companies have played in the search for solutions to these countries' very complex problems.

The paper draws on three sources of information: the economics and business literature; a Secretariat survey of public statements by a group of multinational enterprises; and studies and information produced by governments and international organisations. Based on these sources, it explores two issues that pose particular challenges for multinational enterprises operating in severely troubled societies.

The first issue concerns violence and human rights abuses in the immediate vicinity of company operations. Serious problems in this area have been documented, especially in extractive industries (in managing security and relations with local communities). The paper also notes that, working individually and through industry associations, some companies are trying to improve their practices in this area. A growing body of management practice and of conceptual guidelines is slowly emerging, though not all companies are involved in these efforts.

The second issue concerns the factors underpinning the dynamics of civil strife and human rights violations. A growing empirical literature supports the view that civil strife tends to be correlated with the level and structure of income and with the degree of development of political institutions. In particular, these findings identify strong primary resource orientation for the economy as being a significant factor contributing to the probability that a country will experience civil strife.

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In economies heavily dependent on extractive industries, multinational enterprises operating in this sector typically provide large revenues to governments in the form of taxes, royalties and other payments. In countries with severe public governance and fiscal control problems, these payments can contribute to both the means for violence – by providing funding for the organisational and material requirements of conflict – and the motive – by providing financial stakes for conflict. In addition, OECD-based companies have occasionally agreed to refrain from disclosing the amounts of money they pay to governments in these countries. The paper also discusses the positive role of some leading companies, working with international organisations, in trying to improve transparency and accountability in the budget processes in some countries.

It is recognised that the influence of multinational enterprises in troubled societies, while often significant, does have limits. The search for solutions will not be an easy one and it will be prudent for companies to act in partnership with one another, with host and home governments and with international organisations.

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Background – the Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises

The institutions that promote and implement the Guidelines are set forth in the OECD Council Decision, a binding declaration subscribed to by all adhering countries. The Council Decision requires each adhering government to set up a National Contact Point. These play a key role of any Guidelines institution in establishing the Guidelines as an effective and vital tool for international business (see Diagram below). The National Contact is responsible for promoting the Guidelines in its national context and contributing to a better understanding of the Guidelines among the national business community and other interested parties.

The National Contact Point:

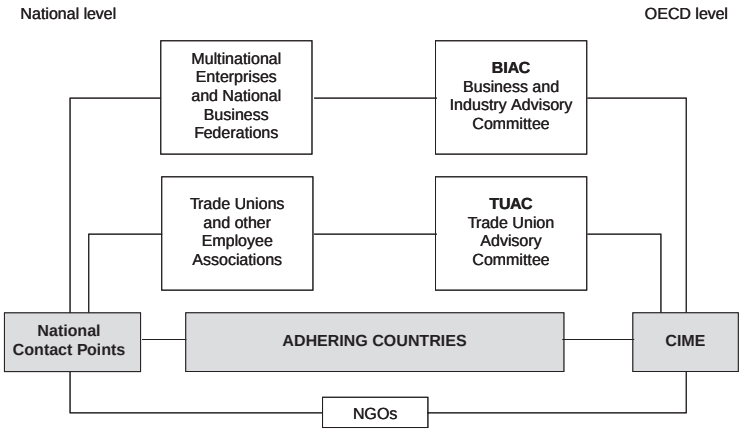
- Responds to enquiries about the Guidelines.
- Assists interested parties in resolving issues that arise with respect to the application of the Guidelines in "individual instances" through the availability of its "good offices" and, if the parties agree, facilitating access to other consensual and non-adversarial means of resolving the issues between the parties (Comment: more in keeping with the procedural guidance).
- Gathers information on national experiences with the Guidelines and reports annually to the CIME.

Because of its central role, the National Contact Point's effectiveness is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments. The current publication summarises the

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reports by the individual National Contact Points and provides an overview of the discussions during the second annual meeting of the National Contact Points held in June 2002.

Figure 1. **Institutions involved in implementing the Guidelines**



Source: OECD.

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CONSULTATIONS – CONTRIBUTIONS BY BUSINESS AND TRADE UNIONS

BIAC Statement

Dr. Kristian Ehinger (General Counsel/Foreign Holdings, Volkswagen AG, Germany)
Vice-Chairman of the BIAC Committee
on International Investment and Multinational Enterprises

BIAC welcomes this important opportunity to present to you our assessment and experience regarding implementation of the revised Guidelines during the past year.

Our members very much appreciate the Secretariat's NCP Summary Report, which we find to be a fair and positive assessment of NCP activities to promote and implement the Guidelines. However, I must emphasise that BIAC's promotion of the Guidelines merited more attention in the report, especially considering the more extensive coverage of TUAC promotional activities. During the past year, BIAC members have taken active steps to publicise and promote the guidelines through various channels, including web sites, publications in trade and business journals, press conferences, seminars and workshops aimed at the business community.

Our members have also found TUAC's work on this front to be helpful, particularly its informative User's Guide on the Guidelines. That said, while the User's Guide provides a practical tool for initiating an inquiry into specific instances, equal emphasis should be placed on the promotion of good business practices. It must be remembered that the Guidelines were intended to provide a framework for good business conduct and, as part of the wider OECD Declaration on International Investment and Multinational Enterprises, to encourage a balance of responsibility between international business and governments. We invite TUAC to strengthen its User's Guide and other promotional efforts by focusing more on these positive aspects of the Guidelines.

I must also address two areas of concern to BIAC. First, our members have expressed concern that certain member and adhering countries may misunderstand the voluntary nature of the Guidelines, especially given the proposals in some circles (the European Union parliament, for example) to make the Guidelines less voluntary. Therefore, we are grateful for CIME's efforts to maintain

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the voluntary nature of the Guidelines throughout its efforts to promote and implement them. We urge the CIME to continue its leadership with regard to this fundamental aspect of the Guidelines.

Second, BIAC members have also raised some concern about the bullet point item on page 16 of the NCP Summary Report, which poses the question of whether the Guidelines refer only to investment or to both trade and investment. The Guidelines are annexed to the OECD Declaration on International Investment and Multinational Enterprises, and clearly apply exclusively to investment, not trade. The official and clear aim of the Guidelines is to improve the climate for foreign direct investment and promote the positive contribution that multinational enterprises can bring.

In general, BIAC is very pleased with NCPs' handling of specific instances. We have no complaints about NCP activities, and we know of no problems or conflicts concerning specific instances. We are especially appreciative of NCPs' and CIME's consistent efforts to respect and maintain the confidentiality of NCP processes.

We fully endorse the NCPs' ongoing efforts to promote the Guidelines, but recommend against using CEO knowledge of the Guidelines as a benchmark to measure the success of those efforts. On a final note, BIAC is pleased to do our part in ensuring the success of the Guidelines by continuing to actively promote and encourage good business conduct.

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TUAC Working Paper on the Functioning of National Contact Points and How to Improve the Promotion and Implementation of the OECD Guidelines for Multinational Enterprises

Background

This working paper is intended to stimulate trade union discussions on how to make National Contact Points (NCPs) more effective. It has been finalised in the light of the discussions at the LMP meeting on the implementation of the OECD Guidelines and the functioning of NCPs on 17 June 2002 and the consultations with the annual meeting of NCPs on 18 June 2002.

The paper is based on the replies to a questionnaire that was sent to all TUAC affiliates, Global Union Federations, regional trade union organisations and national trade union centres in Brazil, Chile, Estonia, Lithuania, Slovenia and Russia. Twenty trade union organisations in 19 countries replied: Australia (ACTU), Austria (ÖGB), Belgium (FGTB), Brazil (CUT), Canada (CSN), Chile (CUT), the Czech Republic (CMKOS), Denmark (LO), Estonia (EAKL), Finland (SAK), Germany (DGB), Italy (CISL), Lithuania (LPSK), Poland (Solidarnosc), Spain (CC.OO), Sweden (LO and SACO), the UK (TUC), the US (AFL-CIO), and Russia (FNPR).

Summary

The results of the survey are mixed. There have been some positive developments and improvements in the functioning of NCPs since the 2001 TUAC survey. This includes the establishment of NCPs in Chile, Estonia, Lithuania and Slovenia, and the successful handling of cases by the Czech NCP. But there are also problems in several countries. A NCP has yet to be set up in Brazil, some NCPs take a passive approach and cases are not being handled according to the procedural guidance, if at all. For example, five cases have been raised by trade unions in the US NCP, of which not a single one has led to conclusions by the NCP. Only a few trade unions report that their NCP has improved since the review of the Guidelines.

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This paper puts forward a number of proposals to raise awareness of the Guidelines, improve their implementation and increase the effectiveness of NCPs. These include:

- set targets on efforts to promote the Guidelines;
- launch an OECD newsletter on the Guidelines;
- establish an outreach programme on the Guidelines with non-members;
- identify eventual problems facing new adherents;
- agree on a time frame in which cases are to be handled;
- create a register for cases;
- review the experiences with the Procedural Guidance and particular chapters of the Guidelines;
- develop best practices on how to deal with cases;
- increase peer pressure;
- evaluate individual NCP performance; and
- create linkages to other policy areas such as bilateral investment treaties.

Visibility

The OECD and adhering governments have yet to succeed in making the Guidelines sufficiently visible. According to Dara O'Rourke, Assistant Professor at the Massachusetts Institute of Technology, the Guidelines are less known than many of the newer initiatives in the area of corporate social accountability. The OECD and adhering governments have a duty to do more to raise their profile. Brazil has not even set up a NCP. Governments in Argentina, Australia, Italy, Japan, New Zealand and Poland are seen as having low profiles. Despite requests from the Italian trade unions, the Italian NCP appears not to have made any real efforts to promote the Guidelines. NCPs *should at least write to companies operating in their country and inform them about the Guidelines*.

Even among the active NCPs, difficulties are being encountered in making the Guidelines more publicly known, which can be seen in the reply from CUT in Chile. They suggest that work has been too focused on an élite. Yet some NCPs have prepared useful promotional material on the Guidelines. By contrast, the OECD booklet on the Guidelines is not very user-friendly. The Canadian NCP will for example produce a brochure on the Guidelines. The Spanish NCP has agreed to print the Spanish translation of the TUAC Users' Guide. The Swedish NCP's initiative "Global Responsibility" should help increase the visibility of the Guidelines as well as the creation of three new NCPs in Estonia, Lithuania and Slovenia.

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One important way to promote the Guidelines is to organise seminars. This has been done in Chile, Denmark, Finland, Germany and Sweden, and it is being discussed in the Czech Republic and Spain. However, trade unions in Australia, Belgium, Canada, Estonia, Italy, Lithuania and the US among others were unaware of any such activities.

While NCPs are expected to inform prospective inward and outward investors about the Guidelines many fail in this. Only trade unions in Finland, Germany, the Czech Republic and the UK have stated that their NCPs provide investors with information regarding the Guidelines.

To encourage information and promotion, the CIME *should set targets on efforts to promote the Guidelines.* Raising awareness requires widespread dissemination, both nationally by governments (in adhering and non-adhering countries) and internationally, by the OECD, and also in other pertinent intergovernmental fora. TUAC welcomes the inclusion of a session on the Guidelines in this year's OECD Forum and the reference in the OECD Ministerial Declaration, but at other occasions the Guidelines are still ignored. T*he Guidelines should be systematically included in relevant* OECD *meetings and activities, the Secretary-General's speeches, and press briefing material.*

T*o further promote the Guidelines the Secretariat should launch a newsletter on the Guidelines*, or alternatively make use of the newly published OECD Corporate Affairs Newsletter to issue regular information about the Guidelines. It could include NCP activities, changes in NCPs, information on new adherents, FDI reviews, information on cases being raised and their outcome etc.

Even if the Guidelines' visibility could be raised, there is a growing interest among trade unions in non-adhering countries. The Russian trade union centre FNPR has for example translated both the Guidelines and the TUAC Users' Guide, which they have made available both to the government and the employers' organisation. The Guidelines and the Guide have also been translated into Latvian in connection with a seminar TUAC organised in co-operation with the Council of Nordic Trade Unions. To give more countries the possibility to adopt the Guidelines, *the* OECD *should establish a* CCNM *outreach programme with non-members on the Guidelines*, which should contain regional meetings or seminars to raise awareness.

Accessibility

The majority of NCPs are individual government departments even if some consult business, trade unions and NGOs. None of the new adherents have set up tripartite or quadripartite bodies, though the Lithuanian NCP has consulted the unions and the Estonian NCP has agreed to establish a tripartite advisory committee. The revitalised Chilean NCP has become quadripartite and some previously inactive NCPs have now at least held a few meetings with the social partners. But some NCPs do not have any contacts with trade unions. Solidarnosc reported that

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it has been impossible to get in touch with the Polish NCP. A more effective social partner, and where appropriate, NGO input is required. NCPs should not underestimate the positive effects this would have on promotion and awareness raising of the Guidelines. NCPs are also reminded that they are supposed to be easily accessible and that they are responsible for developing and maintaining relations with the social partners and other interested parties.

It is important that new adherents set up effective NCPs. The involvement of TUAC in the review process would help ensure a prospective adhering government commitment to take the Guidelines and the NCP role in this more seriously. The CUT in Brazil suggests that governments should be obliged to consult business, trade unions and NGOs before they can adopt the Guidelines. The CIME and the OECD Secretariat should better help and support the NCPs in performing their tasks. Not all new NCPs seem to have understood what is expected of them in terms of developing relations with the social partners etc. The Secretariat should evaluate their experiences and identify if they have any special needs.

Governments also need to become more pro-active in problem-solving. It should be remembered that NCPs can raise cases themselves. If they are aware of a problem they do not need to wait for a trade union or a NGO to raise it.

Implementation in specific cases

Almost 20 cases have been raised by trade unions since the review of the Guidelines was completed in 2002 and more are underway. It is important that NCPs have an open attitude to cases and encourage dialogue with the parties concerned in order to resolve the problems. This has been the case in the four cases that have been settled and the operations of two French companies in Burma. But it is far from true in many of the other cases. On the contrary, some NCPs are extremely slow to respond if they respond at all and often fail to set up meetings with the parties involved.

Most cases have been raised in the US and the French NCPs. While the French NCP has settled at least two of the four cases raised, the US NCP has yet to resolve one of the five cases raised by trade unions. NCPs shall "make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them" according to the procedural guidance. Furthermore, they shall offer a forum for discussion and assist the parties in dealing with the issues raised in an efficient and timely manner. As can be seen from the following list of cases that have been raised by trade unions, this is too often ignored.

Cases raised by trade unions:

- The case of one retailer was raised by French and Belgian trade unions in spring 2001. However, the French and the Belgian NCPs reached different conclusions at the end of 2001.

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- The French trade unions in spring 2001 asked the NCP to investigate if French companies operating in Burma observed the Guidelines. This resulted in a set of recommendations to these companies in spring 2002.
- In May 2001, the AFL-CIO wrote to the US NCP and asked for a meeting to discuss US enterprises' activities in Burma. The US NCP has yet to reply.
- The Dutch trade unions approached the Dutch NCP in July 2001 concerning the use of forced labour by a dredging company. Eventually the NCP convened a tripartite meeting in March 2002, where it was decided that the social partners would meet separately to try to resolve the issue.
- The conduct of a maritime company was raised in the US NCP in February 2001. The trade unions supplied the NCP with further information, but they have not heard anything from the NCP.
- The cases of two manufacturing companies were raised in the Czech NCP in 2001. Both cases were handled according to the procedural guidance and they were resolved satisfactorily.
- The French trade union centre CFDT filed a case on a manufacturing company in the French NCP in 2001. The case was closed because the NCP did not receive the information requested from the company concerned and the company had already been taken over.
- The Free Trade Zone Workers' Union in Sri Lanka approached the Korean NCP in November 2001 about the anti-union behaviour of one company. The case has yet to be resolved.
- In November 2001 the International Transport Federation (ITF) asked the US NCP to look into the conduct of a maritime company. Six months later, in May 2002, the NCP replied that "the United States Government is addressing the issues that you raised through appropriate means through direct contacts with [company name]".
- A case regarding two subsidiaries in Guatemala was brought forward to the Korean, US and Dutch NCPs in the beginning of 2002 by the International Textile, Garment and Leather Workers' Federation (ITGLWF). The subsidiaries are owned by the Korean company. They produce clothes for the American retailer, which makes both the Korean and the US NCPs responsible. It was also raised in the Dutch NCP as government funds had been used for an organising programme at these plants. In May, the US NCP replied that it had contacted the Korean NCP for information on the handling of the issue. The following day TUAC was asked for advice by the Korean NCP. According to the Korean NCP, it has undertaken a preliminary investigation and held an arbitration meeting among the concerned parties. But the trade union organisation raising the case (ITGLWF) was not invited to this meeting.

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- The closure of a subsidiary of a Finnish company located in the Netherlands was raised in the Dutch NCP in December 2001. Informal contacts took place between the Dutch and Finnish NCPs. The Finnish NCP also contacted the company. In negotiations with the company, the Dutch trade union agreed to withdraw part of the case in return for saving 440 jobs. However, as regards the transfer of government funds tothis company, the trade union is still waiting for the NCP's recommendations.
- A case regarding a Malaysian subsidiary of a Danish company was filed by the Danish LO in the Danish NCP in February 2002. The case has yet to be resolved.
- The Polish trade union centre Solidarnosc contacted the Polish NCP in March 2002 regarding a company which is US-owned. The NCP has yet to respond.
- The ITF approached the Norwegian NCP in April 2002 concerning a Norwegian insurance company. The case has yet to be resolved.
- In April 2002, Force Ouvrière raised a case concerning a Finnish multinational in the French NCP. It will also be discussed in the Finnish NCP.
- The anti-union conduct of one company, a subsidiary to a French-based multinational, will be raised simultaneously in the US and French NCPs.

One lesson from this is that it takes too long for NCPs to deal with cases. The issues that are being raised are often very serious and cannot risk being delayed, *e.g.* when workers are being physically threatened or abused or when they are fired and lack the means to support themselves and their families. Cases concerning transfers or closures of entities are also delicate. NCPs should remember that a prompt and effective intervention can safeguard jobs.

A NCP ought to be able to conclude early on if a case merits further examination or not. To avoid cases dragging on for years, NCPs need guidance on what should be considered a reasonable amount of time for managing a case. T*he* CIME *should therefore set a time frame on how long a case is normally expected to take*. This would put pressure on those NCPs trying to avoid their responsibilities.

Transparency

A second lesson is that NCPs must improve co-ordination among themselves. Several of the cases show that effective co-operation among NCPs is a prerequisite of resolving an issue. The case of one company could for example have been handled more smoothly if the French and Canadian NCPs had co-operated more effectively. I*n order to improve transparency and co-ordination, the* CIME *should set up a registry of cases where* NCP*s should provide information as soon as a case is being raised*. The registry could be posted on the OECD website and NCPs should immediately be

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informed when a new case is being filed. The registry should also include the published NCP recommendations and outcomes of cases.

There seem to be some ambiguities on how to interpret aspects of the Guidelines. It appears that some NCPs are ignorant of how to deal speedily and effectively with cases arising. *It would therefore be helpful to review the experience with the Procedural Guidance and other particular chapters of the Guidelines.*

Another ambiguity exists around how NCPs should interpret "whether the issues raised merit further examination". How much evidence must a party provide so as not to risk having a case rebutted and what responsibilities does a NCP have in trying to find out what is going on? In some cases, especially those in non-adhering countries, a trade union or a NGO may not be able to find out exactly what has happened or may be uncertain about the reliability of the information. NCPs with access to foreign embassies are better placed than trade unions or NGOs to elicit the details of a case. *It would be useful if the* CIME *could clarify what should be expected as a minimum in this regard*. Naturally, every case is different and what is plausible in one case may not be the same in another, but the CIME still needs to give guidance on what should be feasible.

The functioning of the NCPs is crucial to the effectiveness of the Guidelines and ultimately their credibility. The CIME should therefore benchmark all NCPs against the best performers. This could be done by developing best practices.

Accountability

The key to the implementation of the Guidelines is NCP accountability. The CIME must put much more pressure on non-functioning NCPs. This could include sending letters from the Secretary-General of the OECD to Ministers responsible for NCPs.

The CIME should more effectively monitor the performance of the NCPs. The current annual NCP report is not sufficient as it does not analyse the NCPs, but merely compiles the NCPs' own reports. *Now is the time for the* CIME *to instruct the Secretariat to prepare a special report on the functioning of* NCPs, *which should evaluate their performance, identify problems and weaknesses and make recommendations, so as to improve their performance*.

Linkages

No government has yet made observance of the Guidelines a binding condition for the receipt of public subsidies, although Dutch companies have to comply with the Guidelines in order to receive export credits. French enterprises have to sign a letter saying that they are aware of the Guidelines. Furthermore, trade unions in the Czech Republic, Finland and Sweden have noted that discussions

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with their governments on linkages between the Guidelines and export credits are still ongoing.

There are also other areas where a linkage to the Guidelines should be explored. References to the Guidelines could for instance be made in bilateral investment treaties between adhering and non-adhering countries. This would make non-adhering countries aware of the expectations multinational enterprises are facing. In addition, the European Union has a number of instruments operating under the direction of the European Commission that the Guidelines could be associated or linked to, so as to create some conditionality or leverage on European based multinationals. TUAC has requested DG Trade to do an audit of these mechanisms as a first step towards this goal.

Some trade unions are using the Guidelines in a broader context of corporate social accountability. They have been used in connection with shareholder resolutions in Canada and the US. The Lithuanian Trade Union Confederation is using the Guidelines in their discussions with multinational enterprises and in collective bargaining. The Finnish trade union confederation SAK is planning to raise the Guidelines in European Works Councils in Finnish-based companies. The Guidelines have been used as a criterion for studies on multinational enterprises operating in Brazil carried out by the Social Observatory. LO in Denmark has let the Guidelines form the basis for some discussions on corporate social accountability.

On broader discussions in the NCPs, the CMKOS, reported that the NCP had started discussing supply chain issues. The Belgian trade unions have in their NCP raised the issue of when employees have the right to be consulted, an outstanding issue in many countries.

In Sweden, NCP meetings are also used to prepare for the CIME meetings. The Nordic NCPs meet regularly every year to discuss the Guidelines. The Lithuanian NCP was also present at the last meeting in Oslo. The Nordic Council adopted two resolutions in 2001 urging the Nordic governments to promote the Guidelines. The resolution said that state-owned companies and financial institutions should observe the Guidelines as well as their clients. This should also be promoted in the EU.

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P*art* II

ROUNDTABLE ON CORPORATE RESPONSIBILITY: SUPPLY CHAINS AND THE OECD GUIDELINES ON MULTINATIONAL ENTERPRISES

Summary of the Roundtable Discussion

The OECD Roundtable on Corporate Responsibility is held every year in conjunction with the annual meeting of the National Contact Points (NCPs). The second Roundtable dealt with the issue of supply chain management and was held on 19 June 2002. In opening the Roundtable, Deputy Secretary-General Hecklinger stated that the Roundtable would allow the Guidelines' institutions and the Secretariat to "receive suggestions and a fair evaluation of what can be done to improve outcomes in the supply chain – what companies can do, what governments should do and what other actors may do as well".

Representatives of the business, labour and NGO communities presented their views to NCPs and discussed some of the implications for supply chain management of this important area of corporate responsibility. Some speakers, participants and adhering governments contributed written material.

The management of the supply chain is relevant for many areas of business ethics covered by the Guidelines – product safety, environment, technology transfer and labour relations. In the course of the Roundtable discussions, some participants (Steve Canner of the United States Council for International Business, Kristian Ehinger of Volkswagen AG, Maurice Sanciaume of Agilent Technologies and the Australian NCP) noted that supply chain management is a challenge for responsible business across the globe (not just in developing countries) and across the full range of issues covered by the Guidelines. Others emphasised concerns about human rights, working conditions and labour management in supplier sites in the developing world.

The themes of the Roundtable are described below.

Human dimension of the problem

Several participants described, in vivid terms, the difficult conditions under which some people in developing countries work and live. They also noted that some of these conditions are found in the supply chains of OECD-based multinational companies. Neil Kearney (International Textile, Garment and Leather Workers' Federation) cited a study of the results of audits of 300 supplier establishments that was financed and published by a group of leading French retailers.

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As Mr. Kearney states, "the details make grim reading" – children under 13 were found working in 2 factories in Bangladesh; non-compliance with minimum wage laws was "common", as were workweeks of "86 hours or more"; auditors also found inadequate occupational health and safety and unsanitary working conditions. Mr. Kearney also noted the "endemic" abuse of workers' rights in Guatemala, including suppliers' recourse to physical force in order to prevent workers from exercising their right to organise. Carol Pier's (Human Rights Watch) study documents obstacles to organising labour unions and the presence of children in the supply chains of major agrifood companies as well as their involvement in dangerous agricultural work in Ecuador's banana sector.

No monopolies on concern about poverty and poor working conditions

Of course, no one in the trade union, NGO or business communities has a monopoly of concern on these issues. Everyone cares about them, but may have different views on how best to improve matters. Participants from the business sector agreed that companies – through their supply chain management and in other areas – contribute to the alleviation of poverty, to respecting human rights and to the fair and equitable treatment of workers (Deborah White of Procter and Gamble). They also stated their belief that companies do contribute – by taking their supply chain responsibilities seriously and via the income generating effects of their trade and investment activities.

André Driessen (Confederation of Netherlands Industries and Employers) underscored the business sector's awareness of the serious problems that supply chains pose for corporate responsibility – and expressed the business sector's willingness to co-operate with unions, NGOs and host and home governments to search for solutions. Deborah White noted that the solutions to even the relatively narrow and straightforward managerial aspects of this problem are not necessarily simple or obvious, commenting that "we don't have complete answers yet". Ms. White also observed that, in her view, the business community is nevertheless committed to finding answers and encouraging suppliers to observe standards of corporate responsibility like those to which Procter and Gamble subscribe. Recalling points made in the Guidelines commentary and at the OECD Ministerial Meeting 2002, Stephen Canner noted that, while company efforts were generally positive (especially if government policies are well designed), "there are limits to what companies can and cannot do" – at some points governments have to do their jobs too.

Companies can draw on three sources of principles, standards and norms for behaviour – domestic law, international declarations and conventions, and private standards

The discussions about principles, norms and behavioural standards noted three sources of guidance for companies – domestic law, international standards

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and principles such as the OECD Guidelines, and private norms, such as codes of conduct and other private standards issued by business associations, labour unions and NGOs.

Compliance with law is a core principle of corporate responsibility. Serena Lillywhite (Brotherhood of Saint Laurence) noted that legal standards are not necessarily low in developing countries. She stated that "Chinese labour law sets standards and rules which are as high as those in most OECD countries, although the extent to which they are implemented and influence behaviour in factories varies… the Chinese legal system do[es] not provide strong institutional support for compliance with domestic law. Chinese labour law is complex, made more so by provincial adaptations and exception in special economic zones... The weakness of the Chinese legal institutions means too that workers are reluctant to take steps to secure their legal entitlements, adding to a culture of avoidance of legislated standards." In other words, legal frameworks are sometimes more fully developed than they are commonly given credit for. The challenge is to create the conditions that will motivate a broad set of actors – civil servants, company managers, workers, civil society – to push harder to ensure that these legal requirements are respected.

Some participants noted that, in addition to national law, there is a long-standing, widely accepted and evolving framework of principles, standards and conventions. Many of these standards and principles are relevant for companies, as well as for other actors, such as governments. This is particularly true in the field of human rights (*e.g.* Universal Declaration of Human Rights) and labour rights (*e.g.* the International Labour Office's Declaration on Fundamental Principles and Rights at Work), where such principles and standards are well established.

Many private standards setting initiatives were referred to in the course of the discussions. These ranged from private codes and associated internal management and reporting programmes (*e.g.* Deborah White discussed these in the context of Procter and Gamble). The role of industry wide initiatives was also noted (Neil Kearney). The effectiveness of some private certification standards was questioned (see below under "External monitoring and auditing").

How should responsibilities be shared between sourcing and supplying companies?

The sharing of responsibilities between sourcing companies and their suppliers lies at the heart of the challenge of responsible supply chain management. Companies exist as discrete units for reasons of economic efficiency and legal accountability. In order for the concept of "company" to have any legal or economic significance, companies must be defined by legal and operational boundaries. This creates a need for allocation of responsibilities between companies and the other actors with which they conduct business (suppliers,

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subcontractors, customers, financiers, etc.). The business representatives stressed their view that corporate responsibility in the supply chain couldn't extend to "taking on" other companies' problems – in particular, not their legal or regulatory responsibilities (André Driessen and Deborah White).

Yet other participants noted that new technologies and management techniques offer companies great flexibility in engineering their operations – and, by implication, great flexibility in engineering their responsibilities. Jim Baker (International Confederation of Free Trade Unions) noted that the garment and textile sector had already experienced a fundamental restructuring and migration of jobs toward regions with low wages, little respect for worker rights and poor working conditions. Given this scope for engineering the supply chain across legal, regulatory and cultural environments, many of the participants (*e.g.* Ineke Zeldenrust of the Clean Clothes Campaign) thought that it was unacceptable that companies would then refuse to take responsibility for it. She stressed the importance of understanding the challenge of responsible supply chain management and the need to "break it down… and look at how it can be operationalised". Carol Pier noted that Human Rights Watch's position is that when companies contract directly with supplier, but fail to use their influence those suppliers' respect of labour rights, these companies are complicit in the human rights violations suffered by workers.

Should Small and Medium-Sized Enterprise (SMEs) be held to the same standards?

The participants did not favour the application of a less demanding set of standards and principles to small and medium sized multinational enterprises (*e.g.* Neil Kearney). Generally, though, it was recognised that SMEs are less aware of the issues and challenges posed by responsible supply chain management. Governments can assist SMEs by helping them to understand the realities of corporate responsibility amongst supply chains in developing countries. This involves understanding the culture, business and legal environment in which they operate, as well as appreciating why worker "empowerment and self-determination" are important (Serena Lillywhite).

SMEs may also face slightly different business situations than those facing large companies (which often have significant leverage over their business partners). For example, Serena Lillywhite noted the importance of "buying organisations" among small companies in the optics industry. Ineke Zeldenrust also noted buying organisations' important role as an intermediary between smaller Dutch importers and world markets. Both viewed promotion of corporate responsibility to these organisations as a potentially promising channel through which corporate responsibility in the supply chain could be encouraged. The point was made that contractual

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arrangements should include social standards. The Canadian NCP offered the view that the real option of SMEs was to change suppliers if standards were not complied with, from a supplier's perspective the risk of losing customers is important. The delegate from the European Commission drew participants' attention to a new publication focusing on the views of 8 000 SMEs, most of which are "interested and willing to foster corporate responsibility".

Complexity and control

Some participants provided vivid testimony of the complexities of managing the supply chain. Maurice Sanciaume noted the managerial challenges posed by Agilent Technologies' vast supply chain where the company acts as both a purchaser and a supplier. Deborah White noted that Procter and Gamble has 106 000 employees in 80 countries. These work to provide 250 consumer brands to five million consumers located in more than 130 countries. The company has over 100 000 suppliers and the nature of the contractual relations with these suppliers varies from "arms length" spot-like transactions to closely managed relations with what the company calls "mission critical" suppliers. All agreed that the control problems in the supply chain are influenced by sectoral considerations.

Serena Lillywhite stated, in connection with the outsourcing relations that she has looked at in China, that "it is important to recognise that corporate responsibility amongst supply chains is a very complex issue. The conceptual and ethical task of dealing with Chinese factories is difficult for the small firm, even one committed to doing everything possible to operate in an ethical manner. It requires time, resources and commitment. Specialist staff are needed with expertise and knowledge of the labour and environmental issues, and regulatory environment of developing countries."

"No excuses – engineer processes so that basic labour rights can be respected"

Several participants warned against using complexity as an excuse for not taking responsibility (Neil Kearney, Ineke Zeldenrust, Jim Baker). Companies readily accept responsibility for product quality in the supply chain. They engineer their supply chain management practices to ensure acceptable standards of product quality. Some participants felt that, if they can do it in this area, they should be able to adopt similar control mechanisms for other aspects of corporate responsibility, such as respecting core labour rights.

Ineke Zeldenrust emphasised the power and leverage that stem from longer-term supplier relations and urged companies to favour such relations. She also called for elimination of the separation of corporate responsibility and sourcing functions because the design of sourcing systems needs to "incorporate fully corporate responsibility considerations".

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Deborah White felt that, while it has some merit, this argument about re-engineering supply chains can be exaggerated. She noted in particular the legal concerns that might arise. Doug Worth (Business and Industry Advisory Committee) asked Roundtable participants not to neglect what can be high costs of extensive restructuring of contractual relationships. He noted his own experience in the computer industry shows that a change of major suppliers could cost a company up to a billion dollars. In contrast, Neil Kearney said that his experience shows that such restructuring can be accomplished at relatively little cost in some sectors. Kristian Ehinger, cited Volkswagen's experiences in China (see below) as an example where government policies – notably those influencing management and control – can have an effect on companies' abilities to influence supplier conduct.

Internal controls

Supply chains are one of the major challenges of risk management. André Driessen noted that "things will inevitably go wrong in complex supply chains – companies need to have the ability to deal with problems once they are identified". There is also a need to develop the ability to adopt measures to prevent reoccurrence of problems. However, there will be differences in the nature of the problems and appropriate management tools among companies and across different sectors and countries.

Deborah White provided an example of the internal controls used by Procter and Gamble to monitor relations with its 100 000 suppliers. The company separates suppliers into raw material suppliers and contract manufacturers. It has a global purchasing organisation that assures that products are safe for consumers and for workers. However, its personnel are not trained to monitor for other aspects of corporate responsibility, such as respect for human rights. In terms of broader measures, it has sent 10 000 "mission critical" suppliers a booklet containing corporate responsibility guidelines. It has also modified contract language to require compliance with local labour law. The company also has programmes for corrective action and internal monitoring, and uses threats of terminating relationship as another source of leverage.

Kristian Ehinger advised participants not to neglect the importance of internal measures, such as those used by Procter and Gamble. In his view, these efforts to promote responsible supply chain management are likely to be more effective – in terms of both performance and cost – than external measures.

External monitoring and auditing

This year's focus on the supply chain extended a theme that was already developed at last year's Roundtable. Both discussions cautioned against

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exaggerating the contributions that external audits and monitoring can make to resolving supply chain issues. The limits of these tools involve both their costs and effectiveness.

The business community emphasised the sometimes-prohibitive costs of external monitoring and audits. Deborah White's reference to her company's 100 000 suppliers vividly illustrates how large a task conducting external monitoring of all suppliers can be. BIAC's written contribution states: "It is not economically or logistically feasible for all enterprises to monitor and audit all their suppliers. The best way to monitor and audit the social and environmental performance of all firms is for national governments to implement and enforce national laws and regulations that protect workers and the environment."

Other participants questioned the effectiveness of external monitoring and audits. Roy Jones (Trade Union Advisory Committee; TUAC) asked the basic institutional question – "who is auditing the auditors?". He highlighted the importance of sustainability and self-determination through education and training. In the absence of widely agreed performance, audit and reporting standards, it is not surprising that the social audit industry sometimes produces reports that are of doubtful accuracy and completeness. Carol Pier noted, in particular, that one of the companies in her study was a "signatory member" of a prominent social audit and certification scheme that is designed to check for adherence to appropriate social standards in the supply chain. According to her study's allegations, the company's suppliers in Ecuador employ children in dangerous operations and make it difficult to organise labour unions, but these labour rights abuses do not violate the terms of the companies' membership in the audit and certification scheme.

Workers' rights – a decentralised mechanism for monitoring and accountability

Other participants questioned the feasibility of using both external auditing and internal controls to monitor performance at millions of production sites spread across the globe. Jim Baker emphasised the role of rights – especially labour rights – in facilitating decentralised monitoring of corporate performance. One cannot "pretend that people can be protected by remote control". He stated that no matter what kind of system of internal or external control a company might adopt, it is going to "come up wanting" relative to a system where workers can protect their own rights.

Serena Lillywhite developed a similar theme, noting the relationship between workers rights and the effectiveness of the legal and regulatory environment in China. She discussed the deficiencies not just of formal enforcement, but of other more decentralised processes, such as workers' abilities to act on their own to "secure their legal entitlements without fear of reprisal". Her experiences in China suggest that codes of corporate conduct, alone, cannot guarantee protection of workers' rights.

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The Netherlands NCP noted that he had been asked to consider a specific instance in relation to the outsourcing activities of a small Dutch company in India. He wondered whether he should view the two core labour standards brought up by the specific instance – child labour and freedom of association – as being of equal importance.

The NGO and trade union communities rejected the notion that some labour standards are more important than others.

Government role

As was the case with last year's Roundtable, this year's participants all agreed that governments need to assume their rightful roles as regulators and legal enforcers. For example, BIAC's written contribution states: "Government implementation and enforcement of national laws and regulations are essential for creating competitive markets, protecting the environment and safeguarding individual rights… [I]n some countries a lack of resources and an inadequate institutional infrastructure inhibits the ability of countries to effectively enforce these laws. The only long term solution to such failures is for government to create an enabling environment for investment-led domestic growth that will create the resource base necessary to implement and enforce the law on all companies, regardless of size or nationality of ownership."

But some Roundtable participants emphasised that lack of government responsibility is not an excuse for lack of corporate responsibility. Neil Kearney said "the corporate world must, even in the absence of regulation or its implementation, respect international norms voluntarily". Ineke Zeldenrust pointed out that companies are not passive victims or poor regulatory environments – they can choose where they invest and where they out-source.

BIAC's written contribution to the Roundtable notes the limits of substituting a corporate role for government roles via supply chain management. The chief limitation "may be [the supply chain's] inability to reach the vast majority of people in the world who produce goods for local consumption or work outside the formal economy. For these people attempts to enforce local law through the global supply chain would bring little or no benefit". In other words, world poverty is a pressing problem – but the supply chain is only one piece in the larger puzzle of economic development.

Responsible business – cost or competitive advantage?

The question of whether responsible supply chain management is a cost or a competitive advantage for sourcing and supplying companies is important for many aspects of the supply chain debate. For example, if responsible management is profitable, then "selling" responsibility in this field may involve no more

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than raising awareness and highlighting best practice. In some sense, if responsible management is a profit centre, then good corporate citizenship becomes a self-enforcing proposition. On the other hand, if responsible conduct is costly to companies or if it creates winners and losers in the broader economy, then the issues of creating norms for business conduct and incentives for respecting them assume greater importance.

The Roundtable discussions were, not surprisingly, unable to resolve this basic quandary. Examples and experience were described that pointed in both directions. Neil Kearney related experience that suggested that responsible management is an investment, not a cost. He described his knowledge of supplier operations in a region of India where there was "massive child labour and abuses of workers' rights and horrendous working conditions". Improvements to working conditions not only made workers "better off, but the supplier company says that it has seen improved productivity, improved product quality and higher profitability. Serena Lillywhite's intervention also suggested that some Chinese entrepreneurs are interested in creating 'ethical production' as a source of competitive advantage, but this of course would require some way of demonstrating that such suppliers are indeed "ethical".

On the other hand, other interventions suggested that responsible management could be very costly. These include the costs of actually raising the standards (*e.g.* managing product demand so as to not create crushing work loads for suppliers' workers; paying for more social services) and the costs of monitoring production sites and communicating performance to the broader world. The business community noted that these costs could range from modest to astronomical depending on the nature of the problem and the sector.

Transparency

There was widespread agreement among Roundtable participants on the importance of transparency. All felt that enhanced transparency would help create the conditions that would promote responsible supply chain management. However, there was less agreement on the scope or means of promoting transparency.

Many of the NGO and trade union participants called for "full disclosure in the supply chain" – this refers to extensive publication of the names and locations of suppliers. While most speakers referred to voluntary initiatives in this area, Serena Lillywhite and Neil Kearney thought that a government requirement that the label "country of origin" be put on certain products would be a useful step toward greater transparency. By way of example, Serena Lillywhite cited the complex licensing arrangements that allow some brand name optical frames to be labelled as "Made in Italy" when, in fact, 75 per cent of production occurs in China.

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However, some business representatives felt that full disclosure would force companies to reveal business secrets. Doug Worth and Kristian Ehinger both stressed that, at least in the computer and automotive industries, supply chain practices embodied business secrets. Any attempts to enhance transparency would have to somehow safeguard these secrets.

In contrast, Serena Lillywhite's experience in the optics industry showed that, at least in that sector, competitors routinely visit supplier sites. She found little problem there of revelation of business secrets, though she noted that factory visits were sometimes used as a means of gathering information about their competitors' designs. Deborah White noted that Procter and Gamble sees itself as a leader in this area; it believes strongly in transparency and engages in extensive reporting.

Development impacts

Overall, the assessment of the development impacts of supply chain activity was positive. Steve Canner asked: "Does responsible supply chain management matter for producers, workers and developing countries? Are the Guidelines a source of hidden protectionism or a source of competitive advantage in the global marketplace?" He provided answers at the aggregate level – at the level of overall economies. He noted that the aggregate answer depends on the interlocking "policy mosaics" of countries and of companies. If these two groups of actors manage to work well together, then supply chain activities can bring major benefits to producing countries – in terms of environmental protection, human capital accumulation and technology transfer. He cited the OECD's study "Foreign Direct Investment – Maximising Benefits, Minimising Costs" as supporting the view that, if the "enabling environment" is well designed, then the benefits of hosting multinational enterprises (including sourcing activities) are also positive.

Kristian Ehinger noted that Volkswagen is obliged to enter into 50-50 joint venture arrangements in China due to local control requirements. He notes that these requirements, combined with local content requirements, make it difficult for Volkswagen to manage this company the way it would like. It is nevertheless making an effort. It has signed a company framework agreement – a private contract signed with international labour federations – with regard to core labour standards that will apply to China's environment. He also notes that Volkswagen's suppliers – which have followed it into the Chinese market – bring technology and other know-how with them. This is a major development benefit for China.

The Brazilian delegate noted that these efforts help to build institutional and legal capacity. In Brazil, they create a benchmark that everyone can use to understand responsible management. This is an "ongoing, maturing process". He cited, as an example, the concept of sustainable development. While at one time it was not well known or accepted, it has become a useful, mainstream concept that

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everyone – companies, trade unions, civil society and governments – can use to discuss and understand a range of issues for government and corporate policy.

Moving toward a common view – The contribution of the Guidelines

Roundtable participants largely agreed that, in the long run, a durable solution to supply chain problems depends on establishing appropriate frameworks of rules and regulations. They also seemed to agree that such frameworks are currently deficient in some countries. Neil Kearney favoured a combination of "regulation, global and national, and voluntary effort" in order to improve these frameworks. BIACs conclusions – entitled "The Way Forward" – point in this same general direction; they state that "Business generally agrees that the best way to promote improved labour and environmental standards in a direct supplier or subcontractor is to convince them that it is in their interest to improve standards and conditions…" and that voluntary initiatives should not "divert attention from the primary means for promoting environmental and social protections: the implementation and enforcement of national laws and regulations".

However, despite this broad agreement on the importance of appropriate law and regulation, there were major differences of view on the nature and extent of corporate responsibility when companies operate in environments where legal and regulatory frameworks are not functioning well. Roundtable participants expressed a variety of views in most of the areas reviewed above – on the nature and extent of responsibility in the supply chain, on the degree to which companies can be expected to alter their investment decisions and internal management practices in order to respect norms for responsible behaviour. However, many participants pointed to the extensive body of international declarations, conventions and instruments – including the OECD Guidelines – that companies can draw on when formulating their policies and management practices.

The contribution that the Guidelines can make to improving supply chain practices is linked, according to some participants, to the overall effectiveness of the Guidelines and their implementation mechanisms. Carol Pier posed a number of challenges for improving the effectiveness and "functional equivalence" of NCPs (for example, she asks how NCPs decide whether a specific instance "merits further examination" and whether the relevant actors are sufficiently aware of them in particular national contexts). Serena Lillywhite urged greater "consistency of export-import credits and other government policies with the Guidelines". The issue of whether the Guidelines apply only to trade or to both trade and investment was a subject of debate. Patricia Feeney (Rights and Accountability in Development) and Roy Jones stated their view that the Guidelines apply to both. The business community stated its view that, since the Guidelines are part of the Declaration on International Investment and Multinational Enterprises, they only apply to international investment. The comments of several NCPs also suggested that there might be a need for further reflection and consideration of this issue.

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Opening Remarks

***Richard* E. H*ecklinger*,**
D*eputy S*ecretary-General*, OECD

Welcome participants to this meeting of the OECD Roundtable on Corporate Responsibility.

I. Issues of the Roundtable

The theme of this year's Roundtable is "Corporate Responsibility and the Supply Chain". This is a concern not only within the OECD area, but even more importantly in the developing world.

Developing countries would like to maximise the potential benefits of the operations MNE. These benefits include human capital development, improved labour and environmental standards, increased diffusion of technology and other knowledge transfers throughout the supply chain.

But many questions remain unanswered on how such benefits can be realised. How far can MNEs go in enhancing their standards of supply chain management? What can reasonably be expected of companies that have production sites in regions with ineffective regulatory and legal frameworks? What management tools, audit and other external services are available to help companies achieve appropriate standards? Where does corporate responsibility end and the responsibility of governments begin? I am pleased to note that this Roundtable will address all of these as well as other important issues.

II. The roles of government and business

OECD countries have recognised that, when promoting appropriate business conduct in supply chains and other areas, governments must assume their rightful place as regulators and law enforcers. However, we have also concluded that achieving responsible business behaviour of course cannot rest exclusively with governments. Although law and regulation are important, they cannot cover every business situation. Only companies are in a position to know what law and regulation mean for their operations and to translate them into management practice.

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Thus, their actions are as central to the effectiveness of legal and regulatory enforcement as what governments do.

III. The MNE Guidelines

The OECD Guidelines for Multinational Enterprises provide an institutional channel through which we can discuss, encourage and recognise the vital contribution of business itself to the effort to promote appropriate business conduct.

Of course, these Roundtables have a close relationship with the MNE Guidelines. Besides being organised in conjunction with the Annual Meetings of the National Contact Points, they promote the Guidelines by: 1) providing a platform for regular dialogue among the stakeholders; and 2) permitting further exploration of issues that arise with implementation of the Guidelines.

We are encouraged by the broad-based support that the Guidelines have attracted. The reports by NCPs that were considered at their second annual meeting yesterday suggest that the Guidelines are playing an increasingly prominent role in promoting responsible business conduct. The visibility and recognition of the Guidelines have been significantly enhanced since last year's NCP meeting and Roundtable. A large number of individuals and organisations have contributed to this result, including many of the people participating in this Roundtable.

However, further action will be required. For its part, the OECD is committed to continuing its efforts to serve committee and outreach work in support of the Guidelines. Its policy expertise is available to explore the many complex areas where corporate responsibility and government responsibility intersect such as anti-corruption, environment and product safety.

The work on the Guidelines is an important part of a broader OECD agenda to improve governance. Following high level support for the Guidelines already in OECD and G8 Ministerials over the last two years, the OECD Ministers at their meeting in May highlighted the Guidelines as part of their action programme for enhancing the transparency and integrity of the international economic system.

From this Roundtable, the Guidelines institutions and the Secretariat hope to receive suggestions and a fair evaluation of what can be done to improve outcomes in the supply chain – what companies can do, what governments should do and what other actors may do as well.

I look forward to hearing the outcome of your discussions.

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BIAC[1] Discussion Paper on Supply Chain Management

"Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines."

OECD Guidelines, 2000

"It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners... Established or direct business relationships are the major object of this recommendation."

Commentary on General Policies

"The Guidelines are not a substitute for, nor do they override, applicable law. They represent standards of behaviour supplemental to applicable law."

Statement of the Chairman of the OECD Ministerial, June 2000

Introduction

The extent to which businesses engaged in global commerce adhere to labour and environmental standards is primarily an issue of national governance rather than supply chain management. In countries where laws governing anti-competitive business practices, environmental protection and labour standards are effectively enforced, companies can rely on government oversight to ensure that their suppliers are, at a minimum, in compliance with local law. However, in countries where such laws exist but are not effectively enforced, the question of whether suppliers meet these legal requirements or not is much more difficult to determine. In the short term, business can help to address this situation through voluntary efforts and in partnership with governments and others.

The ability of companies to respond to this issue varies greatly by sector, location, contract terms, and type of products or services being provided. Most customer-supplier interaction is focused on production issues of product design, performance, cost and quality. More recently, an increasing number of companies have begun to voluntarily monitor the activities of direct suppliers in other areas, including those covered by the OECD *Guidelines for Multinational Enterprises*.

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However, it is clear that this type of engagement is voluntary and is not possible in all situations, even with respect to direct suppliers, due to the complexity of the supply chain, the sheer number of suppliers, or a limited ability to influence suppliers' behaviour.

As corporate responsibility covers a wide range of issues and is affected by the actions of many different actors, companies implementing corporate responsibility programs must prioritise both among the various issues to be addressed and the relevant audience, including employees, local communities, and suppliers. Any discussion of the supply chain in the context of corporate responsibility must recognise that other issues or activities may take priority depending upon the specific situation of each company. This discussion paper presents BIAC's views on these issues and the degree to which the OECD Guidelines can serve as a reference point for all companies in the supply chain.

An overview of supply chain management

A supply chain is a network of facilities and distribution channels that encompasses the procurement of materials, production and assembly, and delivery of product or service to the customer. Included in each of these functions is the management of inventory and returns of product or material to suppliers, both of which are influenced by promotional and sales activities. The complexity of the supply chain and the business relationship between the various components varies greatly from industry to industry and company to company. Supply chains range from fully vertically integrated, where a single company owns an entireprocess of production, to those where each stage of the chain operates independently.

The industrial and logistical co-operation between manufacturers and their business partners has intensified continuously over the last decades. "Suppliers" are no longer restricted to traditional component suppliers. Suppliers have become complex (technical) solution partners ranging from large multinational companies often larger and more "global" than the manufacturers to small but nevertheless very competitive design and engineering firms.

In many areas, industrial and consumer markets have become more fragmented, with more customized products targeted to a narrower customer base. Supply chain systems require co-operation on a worldwide basis, although the "global market" is still characterized by many local and regional differences. In some industrialising countries, products are assembled with local components due to customs savings or local content requirements. As a consequence, an increasing number of manufacturers have moved beyond setting and controlling product quality standards for their up-stream and down-stream business partners and have begun to include environmental aspects of production processes in their requirements.

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Supply chain management has been the focus of aggressive initiatives in many industries over the last decade to improve operational efficiencies, shorten product development cycles, increase product variety, improve quality and customer satisfaction, and better link the supply chain with demand and sales forecasts. Information technology plays a critical role in the integration of the supply chain, improving knowledge along the chain and increasing control of supply operations. However, there are clearly limits to such integration, and companies must be careful not to interfere with the independent management of their business partners since such partners will know best what is feasible and cost-effective for their business.

The OECD Guidelines refer particularly to suppliers and sub-contractors, that is, parties up the supply chain. This reflects the logic that some companies may be in a commercial position to encourage some direct suppliers and sub-contractors. The same does not necessarily hold true of customers or others down the supply chain, especially if national law prohibits a refusal to deal with any customer in many circumstances.

The role of government

Government implementation and enforcement of national laws and regulations are essential for creating competitive markets, protecting the environment, and safeguarding individual rights. Most countries around the world have laws governing these issues in place, but in some countries a lack of resources and an inadequate institutional infrastructure inhibits the ability of countries to effectively enforce these laws. The only long-term solution to such failures is for governments to create an enabling environment for investment-led domestic growth that will create the resource base necessary to implement and enforce the law on all companies, regardless of size or nationality of ownership.

The relationship between national laws and the Guidelines' recommendations are also very relevant to the discussion of corporate responsibility, as conformance with applicable laws and regulations is the most basic responsibilities of individuals and companies alike. Almost all codes of conduct and company policies include legal compliance as an obligation and state that compliance with host country law is the minimum level of performance acceptable. Indeed, even the performance level against which most private auditors measure suppliers' facilities is usually based on national law. Furthermore, the scope for voluntary initiatives in respect of direct suppliers and sub-contractors is limited in the presence of a comprehensive democratic legal framework.

The Guidelines, of course, go beyond national laws, "providing voluntary principles and standards for responsible business conduct *consistent with applicable laws* (*emphasis added*). In the absence of such laws, *e.g.*, freedom of association, how

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is a global company to use these voluntary principles in guiding its own internal corporate responsibility programs and procedures? Should it advocate for freedom of association in countries where it is prohibited?

Promoting principles for corporate conduct

Many companies have developed internal policies or codes of conduct that integrate social and environmental aspects into their business plans. In doing so, companies have found that they can discover areas of strategic advantage, and improve their management systems. Integrating such aspects into performance objectives has also helped businesses focus on a central issue for every enterprise: improving the lives of the people involved in its business operations. Improved performance in these areas is frequently cited as generating intangible assets, such as employee commitment and customer brand loyalty, that may lead to improved financial performance.

Companies have also found benefits from doing business with suppliers and sub-contractors who embrace high standards of business conduct and who demonstrate commitment to those standards through their business practices. At a minimum, business partners are expected to be in compliance with all relevant laws and regulations, particularly given the potential risks to the companies' public reputation. Companies in several industries, with a manageable number of direct suppliers and sub-contractors, promote corporate responsibility objectives with those business partners. Before committing to a contract, a growing number of companies ask their suppliers and sub-contractors to commit to terms regarding their legal, environmental and employment standards. Such voluntary initiatives by companies have been very useful in supporting a business culture that minimises corruption and encourages full compliance with all relevant laws and regulations. But not all companies have the means or capacity to do so.

Practical limitations of influencing the supply chain

Yet, in the United States, it has been calculated that worldwide, some 80 000 factories employing millions of workers feed the appetite for consumer goods.[2] Some argue there are tens of thousands more than that. One large US retailer alone buys from more than 20 000 factories worldwide. It is evident that not all enterprises can promote and monitor observance of corporate responsibility objectives throughout their supply chains. They quickly run into logistical and financial requirements that far exceed their capacity. An enterprise's ability to promote corporate responsibility principles, like those outlined in the OECD Guidelines, will depend on the industry in which it operates, the quantity of suppliers, the structure and complexity of the supply chain, and the market position of the enterprise. Some examples of the business relationships that limit

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an enterprise's ability to promote implementation of principles of corporate conduct include:

- Companies that purchase commodities as raw material for their products buy such goods in middle markets, and not from the farms or factories that produce the goods. Commodity markets have hundreds or thousands of small producers feeding into it, making it virtually impossible to identify the supply chain.

- Some companies' purchases represent a small portion of a particular supplier's output, leaving the customer with very limited influence over the supplier's operations. In such cases, the customers may be able to communicate its policy, but will find it difficult to demand observance. In addition, a supplier with several contracts may find that they are being asked to subscribe to multiple different competing corporate responsibility initiatives. And in markets with a monopolistic or oligopolistic structure, the supplier is in a strong position to disregard the promotion of codes of conduct by its clients.

- Companies in some sectors have thousands of suppliers and supply chains that are both complex and deep. These enterprises may be able to communicate corporate responsibility principles to a limited number of suppliers with which they have direct relations, but cannot feasibly communicate them to all indirect suppliers deeper in the supply chain. One US footwear and apparel company that applies its code of conduct throughout its supply chain has more than 750 suppliers in 52 countries, which is small relative to comparable firms in the industry.[3]

- Many businesses rely on short-term contracts with suppliers and change suppliers frequently. In such businesses, promoting corporate conduct activities along the supply chain would lead to costly frictions.

- In all sectors of government procurement or suppliers owned by government (*e.g.* public utilities) it can be extremely difficult if not impossible for private companies to promote codes of conduct or to alter the practices of suppliers.

The more serious limitation of applying corporate responsibility through the supply chain, however, may be its inability to reach the vast majority of people in the world who produce goods for local consumption or work outside the formal economy. For these people, attempts to enforce local law through the global supply chain would bring little or no benefit. As stated above, the only real solution that will reach this majority of the world's people is the implementation and effective enforcement of national laws.

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Supply Chain Management and Control

Some enterprises have voluntarily opted to engage in more extensive reviews of their suppliers performance in certain areas deemed of importance by the company in order to match the supplier's values with the company's. Some companies have established monitoring and assessment mechanisms that may lead to cancelled contracts if a supplier is found to be in continuous violation of certain corporate responsibility objectives, such as the use of child labour or forced labour. Many enterprises have committed to assisting suppliers to meet the enterprises' objectives through training programs on labour and environmental standards and helping them to understand the bottom-line benefits of observing such standards.

Yet, the costly nature of monitoring suppliers' observance of a code of conduct or corporate responsibility objectives may be an obstacle for most enterprises. For example, after reports of poor working conditions and abuse of labour standards in one supplier in Central America, a US apparel retailer decided to establish a group of local union, religious and academic leaders as independent monitors to meet regularly with workers to hear complaints, investigate problems and look over the books of this supplier. The retailer spends USD 10 000 a year for the independent monitors at the supplier, which is owned by investors from a third country, and thousands more for management time to arbitrate disputes and for its own company monitors to recheck facts on the ground. For this enterprise to duplicate these intensive efforts at each of the 4 000 independent factories with which it contracts would cost the equivalent of 4.5 per cent of its annual profit of USD 877 million in 2000.[4] Many companies find that they must rely on suppliers to monitor themselves and pursue corporate responsibility objectives out of their own self-interest.

There are a handful of multinational enterprises that have set up mechanisms for independent, external auditing of supplier's observance of corporate responsibility objectives. However, it is not economically or logistically feasible for all enterprises to monitor and audit all their suppliers. Th0e best way to monitor and audit the social and environmental performance of all firms is for national governments to implement and enforce national laws and regulations that protect workers and the environment. These examples reinforce the fact that the monitoring and auditing costs will lead to competitive disadvantages if the monitoring and auditing of the supply change is primarily focused on developing countries.

The way companies communicate their commitment to corporate responsibility and relationship with their suppliers also varies from enterprise to enterprise. While some companies make their corporate responsibility policies very public and/or subscribe to outside corporate responsibility initiatives, others develop their corporate responsibility policies and programs internally and disseminate

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the policies throughout the enterprise without making them widely available outside the firm. Different public reporting approaches are also used, including issuing corporate responsibility-specific reports, incorporating corporate responsibility into annual reports, posting information on company Web sites, and/or publicising corporate responsibility practices through business associations. Some companies also use the processes to develop such reports as a means to promote greater transparency and interaction with shareholders and others.

The OECD Guidelines provide companies with guidance as to principles of corporate conduct to integrate into their management systems. The Guidelines do not call on companies to monitor, audit or report on their efforts to promote principles of corporate conduct, but instead leave these decisions to companies to determine what course of action best fits the business reality and the local context.

The Way Forward

The complexity of this discussion points to the fact that efforts by companies to promote voluntarily corporate initiatives through supply chains should not divert attention from the primary means for promoting environmental and social protections: the implementation and enforcement of national laws and regulations. Competitive markets depend on governments to set a level playing field and to establish appropriate rules in areas such as corporate governance, financial disclosure, bribery and corruption, truth in advertising and product safety. Regulatory frameworks for environmental protection and labour rights are also essential aspects of the government's role in protecting the broader social interests. Indeed, the most basic responsibility of all actors in society, including business, is to respect and uphold the rule of law. Global improvements of labour and environmental conditions have to be seen as a long-term project.

In countries or regions with ineffective domestic governance, corporate responsibility initiatives may be used to promote good business practices, but should not be seen as a long-term solution. The OECD Guidelines, themselves, are not meant to substitute for national laws. Private entities cannot and must not replace governments with open and transparent rule-making processes.

Business generally agrees that the best way to promote improved labour and environmental standards in a direct supplier or subcontractor is to convince them that it is in their interest to improve standards and conditions and that it will have a positive effect on their bottom line. Companies work with their supply chains to promote corporate responsibility principles, because they believe in doing business with suppliers and sub-contractors who embrace high standards of ethical business behaviour and who demonstrate commitment to those standards through their business practices. Leading by example will be more successful in the long run.

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Notes

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Pursuing Corporate Responsibility in China – Experiences of a Small Enterprise in the Optical Industry

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This paper is divided into three parts. First, I want to give a brief overview of the experiences the Brotherhood of St. Laurence has had in attempting to responsibly manage the transnational supply chain of its commercial enterprise in China. Second, I will describe the barriers and some of the opportunities we have encountered. Finally, I will identify what governments can and should do in efforts to pursue corporate responsibility and improved compliance with labour and environmental standards.

1. Experiences of an Australian NGO managing a supply chain in China

1.1. *Introduction*

The Brotherhood of St. Laurence (BSL) is an Australian community organisation with a vision of promoting social justice and a whole of society framework for a poverty-free Australia. The Brotherhood is building relationships with business that are based on social entrepreneurship rather than welfare.

In 2000, the BSL gained ownership of a commercial enterprise. The company, which is small, employing 17 staff, imports and wholesales optical frames to Australia's independent optical retailers. In 2001-02 the company imported 152 000 optical frames, with a turnover of AUD 5 million. Most of the production occurs in China, where currently 90% of the world's optical frames are manufactured, primarily for the US and European markets.

The BSL accepted ownership of the company on the basis that it would investigate the ethical implications of owning a company which sourced goods from China and elsewhere. Profits were quarantined for two years, and used to fund a thorough investigation of the supply chain, the conditions of production workers, the barriers to improvements in these conditions and some creative responses to the issues.

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The BSL is committed to the core labour standards of the ILO, and other statements of principle set out in the OECD Guidelines for Multinational Enterprises and the UN's Global Compact. The investigation into the company was conducted in this context.

1.2. *Mapping the supply chain*

Identifying the factories

The company has 23 suppliers based in China, Korea, Japan and Italy. There are 13 suppliers in China, most of which are wholly Hong Kong owned family businesses, with the well-educated and business astute second generation significantly involved in managing the operations. These factories have adapted technologies and processes from Europe and Japan and created highly competitive operations in global markets.

The BSL has invested considerable time and resources to understand the realities – an undertaking which would be difficult for many small or medium enterprises. Even arranging visits can be complicated and time-consuming and requires an understanding of Chinese business culture. Seven of the 13 factories have been visited, all based in the industrial zone of Dongguan, Shenzhen, southern China. These factories vary in size from 150 workers to 4 500. The company's largest Chinese supplier, (also one of the largest producers for the global market) has 4 500 workers, 20 production lines, and a monthly production capacity of 1.1 million optical frames. The company's business, however, accounts for less than 2% of this factory's annual production and so has limited consumer influence.

Customer profile and subcontracting relationships

Prior to China joining the WTO, the Hong Kong owned optical factories based in China were producing only for the export market. The final customers include large global brands as well as smaller importers. However, many customers deal with the factories through complex indirect arrangements. For example, many contract with the three or four trading houses with offices in Hong Kong, which have considerable control over the global optical industry.

Other sub-contracting arrangements in the industry are also complex and virtually impossible to map. Raw materials and components are imported from other countries (for example, metal and acetate [plastic] come from Italy; Germany and Japan, screws are from Switzerland; lenses are from the USA, Thailand and Vietnam; colouring and screen prints from Italy) and wire comes from domestic Chinese suppliers. The smaller factories often outsource production processes such as electroplating and injection moulding, and little is known about these conditions or relationships by the BSL.

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Understanding the workforce

The majority (80%) of workers at factories visited are young women aged 17-25 years who have migrated from surrounding rural provinces to work in the burgeoning industrial districts. Generally speaking, they appear to have a relatively low level of education. Most are employed in repetitive, low-skilled jobs with only about 10% of the production process requiring technical expertise. Staff turnover is high, with most workers staying with a factory for one to two years.

1.3. *Understanding the labour and environmental conditions*

The BSL experience has shown that factories and their processes vary in terms of conditions for workers, compliance with labour and environmental standards, and managerial style, even within the relatively small number of the company's suppliers studied by the BSL. For example, some factories meet their obligations and provide social security contributions on behalf of workers, but have a heavy security presence and an arbitrary system of fines and deductions. Other factories provide state of the art facilities and architect-designed plants, yet expect excessive overtime without appropriate remuneration. Some factories have a commitment to occupational health and safety (OH&S), while others place restrictions on water usage and toilet breaks. All workers migrating from rural areas are in a vulnerable position because of their temporary residential and employment status.

Environmental standards

Environmental standards vary significantly among the factories studied. Generally speaking, the larger factories, which undertake electroplating on site, had sophisticated equipment, ventilation and waste management. All factories appeared to collect, and in some cases treat, wastewater before it was sent to an outside plant for further processing. Some factories had acetate dust collection bags, and in one case all acetate shavings are sold for recycling into personal goods such as combs and toothbrushes. Chemicals and paints are, for the most part, well labelled and stored, and most of the larger factories had a chemical inventory. The smaller optical factories, however, did not appear to invest as heavily in the capital equipment and processes necessary to ensure compliance with environmental standards.

Physical conditions

The physical conditions of the seven factories also presented a complex picture. Generally, they were better than anticipated, particularly in terms of occupational health and safety (OH&S) standards. Most of the factories are well lit with

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adequate heating and cooling. Dust masks are often provided (though not always worn), and some factories have specialised "hands-free" machines to reduce finger injuries. The overall impression, confirmed by local NGOs such as the Asia Monitor Resource Centre in Hong Kong, is that these factories provide better facilities and working conditions than reported in the toy, footwear, textile and apparel industries.

In other respects, however, it cannot be said that the Chinese workers have achieved "decent work", in the sense understood by the ILO. For example, worker accommodation is often spartan and dehumanising. In the worst cases limitations are placed on water usage and time allowed for toilet breaks. Large, clean new factories do not guarantee reasonable working conditions and can often mask serious human rights abuses.

Labour standards

Significant human and labour rights issues exist, particularly with regard to wages, hours, and social security entitlements. In these key conditions there were evident breaches of Chinese labour law. Managerial regimes are strictly hierarchical and at times repressive. For example, it is difficult for workers to raise grievances and have disputes resolved without risking reprisal. Fines and disciplinary action are common, and in some factories workers appear despondent. Overall, workers are compliant and in reality do not participate in the co-determination of their workplaces in any meaningful way. Freedom of association is not possible, as the only legal trade union is the All China Federation of Trade Unions. There was no evidence of collective bargaining, and conditions were set by unilateral management decisions. In this regard individual firms have little or no capacity to bring about change in China.

1.4. *National law, codes of conduct and global reporting*

The factories which supply the company exist in a complex regulatory environment. Chinese labour law sets standards and rules, which are as high as those in most OECD countries, although the extent to which they are implemented and influence behaviour in the factories is another matter, discussed below. In addition to the national laws, there are requirements of large customers, in the form of corporate codes of conduct or certification with reporting instruments such as SA8000 and ISO standards.

Whilst important in contributing to the promotion of core labour standards (particularly where national laws are inadequate or poorly regulated), in our experience, codes too often represent a shallow attempt to understand the real difficulties in transnational supply chain management. They do not provide an accurate representation of conditions, workers are usually not consulted or given an opportunity to comment freely and without reprisal on their operation, and

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inspections are *ad hoc* and not necessarily undertaken by skilled personnel. In addition, some codes ignore the reality of Chinese labour relations by claiming that the principle of freedom of association is adhered to. In isolation, codes cannot be relied on to protect workers' rights or promote worker empowerment.

The attitude of factory management towards the efforts of the BSL to understand and improve workers conditions varied. We found it was necessary to develop relationships with managers over time, and then to focus on those most receptive to our approaches. A single approach from a distance would achieve nothing. Among some managers there is interest in processes that may result in improved relationships, better management practices and enhanced competitiveness. Managers are interested in how a business can be both ethical and competitive, as the optical industry is highly competitive and often price is the only differentiation. There is interest in how corporate responsibility and improved compliance could be turned into a competitive advantage.

2. Barriers to positive change

The BSL has explored what can be done to give effect to the ILO core labour standards and the OECD Guidelines, as well as generally to improve the circumstances of the Chinese workers producing for the company. A number of key barriers stand in the way of achieving change.

E*nterprise capacity*

A key problem for the individual firm pursuing ethical trading practices lies in the nature of the core labour standards themselves. The ILO core labour standards are statements of principle, policy and practice addressed to States. It is necessary for an enterprise to then translate these principles into a form which can be applied in individual workplaces. For example, it is not within the capacity of the company to achieve freedom of association in China. Most of the core conventions require practical interpretation and implementation in keeping with the "spirit" of the principle. This is best pursued through incremental and pragmatic steps in light of what is possible.

Core labour standards are "big picture" issues and it is all the more difficult for enterprises to support compliance as many factory managers in China – and indeed in many OECD countries – do not see the links between labour rights and human rights, environmental standards and social justice.

C*omplexity of the issue: conceptual and ethical considerations*

It is important to recognise that corporate responsibility amongst supply chains is a very complex issue. The conceptual and ethical task of dealing with Chinese

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factories is difficult for the small firm, even one committed to doing everything possible to operate in an ethical manner. It requires time, resources and commitment. Specialist staff are needed with expertise and knowledge of the labour and environmental issues and regulatory environment of developing countries.

To demonstrate this complexity, the BSL has recognised that there are no easy answers to the difficult questions raised by our work. For example:

- What is the best approach to ensure sustainability and an enduring culture of corporate responsibility amongst our supply chains? Can this realistically be achieved?
- Do we only deal with factories that are open to our approach of continuous improvement and withdraw from dealing with the bad ones?
- To what extent can we accept willingness to change as a basis for an ongoing relationship with a supplier, irrespective of the time frames for achieving real change?
- How do we determine the point at which conditions are just so bad that nothing is to be gained by our continued involvement with that factory?
- How do we honour the ILO principles to which we are committed where they are simply impossible in the non-complying State?
- In which areas should we concentrate our efforts in terms of improved compliance – wages, hours, social security entitlements or the less threatening area of occupational health and safety – and who should make this decision?
- Would dealing with fewer suppliers increase the capacity to bring about an improvement in individual factory conditions as production increases?

Complexity of the law and ineffective regulation

The Chinese legal system and culture do not provide strong institutional support for compliance with domestic law. Chinese labour law is complex, made more so by provincial adaptations and exceptions in special economic zones. Some factory managers have expressed frustration about the complexity of the regulations (and also the foreign company imposed codes of conduct) and the inability of the local departments of labour to assist with interpretation of the law. For example, social security entitlements (insurance and pensions) and bonus payments are an area that is extremely complex and difficult to understand. Local labour departments may prefer not to insist on compliance with laws – it is reported that staff have friends and relatives who manage factories, and financial contributions and kickbacks are a reality.

The weakness of the Chinese legal institutions means too that workers are reluctant to take steps to secure their legal entitlements, adding to a culture of

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avoidance of legislated standards. This is most evident with regard to social security and overtime. Factory managers and workers are required by law to contribute to pension and insurance funds managed by the local department of labour. Workers have little confidence they will ever be able to access these benefits, particularly as most are from rural provinces and are unclear how contributions will be transferred to their hometown for retirement. Another concern is how workers who often have only temporary residential status in Guandong province can claim insurance benefits in the event of an industrial accident.

In addition, the practices of not paying legal minimum wages, appropriate overtime and bonus payments and of imposing arbitrary fines and deductions force many workers to choose a factory where they are able to work illegal amounts of overtime in order to survive. As a result, as some factories reduce the amount of overtime in order to comply with the law, it is becoming increasingly difficult to attract and keep skilled workers.

These are complex issues of national scope, and there is very little a small firm can do to ensure the guaranteed, full enforcement of all laws.

Costs of compliance

In this highly competitive industry, cost and relationships are often the only differentiating factor. Improved compliance means operating costs will escalate and lead to higher unit costs for customers. The failure of enforcement and the tight competition means that managers believe they cannot afford to comply with local laws in the absence of any guarantee that competitors will do so. There is a fear of losing customers to less compliant factories or even other countries such as Vietnam and Indonesia. The issue of greatest concern to managers was meeting ongoing insurance and pension contributions. One-time costs such as building new dormitories to improve living conditions and allow for the employment of additional workers to reduce overtime were not seen as particularly onerous. The time spent in responding to codes of conduct was also cited as a cost.

Customer leverage

The reality for many small or medium enterprises (SMEs) is that they have limited influence. The company, while a major player in the Australian optical industry, is a minor customer of most of the supplying factories in China. Despite the best intentions and commitment to core labour standards, the relatively small production gives us little authority. Attempts to gain leverage through global collaboration with larger brand name customers have been met with, at best, a lukewarm response.

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Corporate governance and production networks

Identifying and gaining access to brand name customers has in itself been problematic. It involves navigating global production networks that are often a maze of licensing arrangements shrouded in secrecy. Trading houses are responsible for managing the production of almost all the major optical brands, yet many are unwilling to acknowledge that the frames are being made in China. This lack of transparency and accountability has also hindered our efforts in global collaboration.

I*ndustry associations*

Opportunities to engage with the appropriate industry association have been limited. The optical industry association is primarily interested in developing new markets and accessing new technology. To date they have not indicated any interest in contributing to improved industry-wide labour and environmental compliance: this is seen as the factory's responsibility.

2.1. S*takeholder dialogue: opportunities for enterprises*

Documenting the difficulties encountered provides insight into the reality of SMEs attempting to operate responsibly in China. Whilst it makes fairly bleak reading, it is important to recognise that opportunities for continuous improvement do exist. The BSL believes it is making progress towards its goal of understanding the optical production chains and taking steps to improve conditions for workers in the factories.

M*odel of engagement*

A great deal of thought has gone into how this can be done consistently with the OECD Guidelines and other similar instruments. The BSL has developed a Model of Engagement, a creative response to the complex issue of supply chain management. It involves the undertaking of research, the establishment of stakeholder dialogue and building long-term meaningful relationships with contractors and suppliers to discuss innovative ways to improve supply chain management and protect workers' rights. The Model of Engagement promotes education and training as the most appropriate mechanism to encourage worker empowerment and self-determination, and sustainable improvements to labour and environmental standards.

This model is a dynamic process that requires a commitment to continuous dialogue and establishing partnerships and alliances with all stakeholders. The BSL has adopted a non-confrontational approach in discussions with factories. We are confident that the most useful first step is to engage directly with workers in

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some way that benefits them and which will be acceptable to the local management. This latter qualification is essential to have any hope of success.

To this end, the BSL is proposing an occupational health and safety (OH&S) needs assessments involving workers and external technical expertise. This would create a forum in which BSL staff, local NGOs and technical consultants could engage directly with staff, as well as providing health and safety information. It is hoped it will begin the process of empowering staff by involving them in day to day operations, leading to appropriate education and training, and the establishment of OH&S committees with a minimum of 50% worker membership.

Gaining permission for such activity is delicate and time-consuming. Once one session has been undertaken it is hoped that the experiences and learning can be applied to other factories.

Applying the learning

Enterprises have a role to play in documenting their experiences and making this information available to others. It is hoped that the knowledge gained by the BSL will assist other enterprises seeking to implement their own programs, and contribute to an environment of corporate responsibility.

Consumer campaigns

Enterprises might also contribute to consumer education and campaigns, so that products made in factories which have taken certain steps to improve conditions could eventually be specifically labelled, such as the "No Sweat Shop Label" in the Australian textile industry. Such advertising and labelling would however need to take into account legal ramifications in the consumer country, and "decent work" claims might be difficult to substantiate in contexts such as China.

3. Government intervention: the OECD Guidelines and China

Implementation of the OECD Guidelines in non-adhering countries such as China is problematic. This paper has demonstrated that there are real limitations to the extent to which a small Australian importing company can achieve real change in its supply factories in China. Much of the work of attaining, for example, the ILO core labour standards must fall to governments, though there is a role for experienced enterprises and NGOs in advocating the appropriate action.

Compliance with Chinese law and improved regulation

Compliance with Chinese labour law and environmental standards must be a government priority. Improved regulation not just by the central government, but

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at a provincial government, county and Department of Labour level is required. Simplification of the law, enhanced skills for Department of Labour staff, and mechanisms to assist with interpretation and clarification of the law are all examples of how governments can assist.

Institutional support to enterprises

Global supply chains and arms-length contracting arrangements are barriers to the transparent application of instruments such as the OECD Guidelines. Governments could assist in providing greater institutional support to those enterprises seeking to do the right thing. The OECD or its member states could conduct a study of possible models and best practice which could be made available to the corporate sector. Governments can assist with the dissemination of information, NGO contacts, advice about best practice and mechanisms that promote application of the learnings.

Governments can assist firms, particularly SMEs, by ensuring they understand the realities of corporate responsibility amongst supply chains in developing countries. This involves understanding the culture, business and legal environment in which they operate, as well as appreciating why worker empowerment and self-determination are important, and what issues are of greatest importance to workers in achieving decent and dignified work.

Corporate governance

Government assistance to encourage multinational enterprises (MNEs) and SMEs of countries adhering to the OECD Guidelines to improve their transparency and accountability, particularly regarding their global production networks and licensing arrangements, would be beneficial. This would require in principle recognition that trading houses and indirect contractors are part of a corporate operation, either large or small. It will foster global collaboration for the industry and assist consumers to gain accurate information about the source of goods. For example, some well-known brands of Italian sunglasses labelled "Made in Italy" are in fact produced in China, with only the finishing details done in Italy. Similarly, the contractual relationships along the supply chain could be disclosed, for example, in the annual reports of firms. This is consistent with the OECD Guidelines in terms of disclosure.

The principle should be that the State could contribute to greater transparency and accountability. The OECD, through the National Contact Points (NCPs), could undertake research into best practice in governance. Models may emerge which could result in improved global collaboration and a shared responsibility towards corporate responsibility, particularly in transnational supply chains.

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Promoting corporate responsibility and ethical business.

Corporate responsibility and the importance of labour and human rights in a properly functioning economic system could be promoted by governments through the provision of information to firms, trading houses, factory owners and managers, industry associations, importers, wholesalers and customers and workers. This may be best achieved through partnerships with NGOs, trade unions and appropriate business representatives and through the NCP network. It could also be pursued through the establishment of financial systems (subsidies and export credit regimes) that do not contradict the Guidelines. We have found that arguments about the competitive advantage of doing the right thing are most effective in the Chinese context.

In addition, governments could provide training and expertise to assist with marketing and management systems that promote ethical business practices and corporate responsibility as a competitive advantage.

Transfer of knowledge

This involves education and training amongst workers, managers and government officials, and a transfer of knowledge, particularly about institutional strengthening of the legal sector and capacity building in factory management and financial systems. This might include assistance, for example, with establishing a social security system that meets the needs of an increasingly mobile labour market, and is consistent with the Guidelines.

The BSL experience with the optical frame industry in China highlights the challenges of improving labour and environmental practices in transnational supply chains. It has brought into focus the importance of engaging with all stakeholders and the role that enterprises and governments have to play in achieving better conditions for all workers and responsible corporate practices.

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Case Study of Corporate Conduct within the Supply Chain

Ms. Carol Pier
Human Rights Watch

I appreciate the opportunity to present, on behalf of Human Rights Watch, a case study of corporate conduct within the supply chain. Human Rights Watch is a US-based independent, non-governmental organisation that since 1978 has conducted investigations of human rights abuses around the world. It is supported by contributions from private individuals and foundations worldwide and accepts no government funds, directly or indirectly.

The case study I will present today is one of failure to implement key human rights principles of the OECD Guidelines for Multinational Enterprises. Specifically, the case study demonstrates corporate failure to "contribute to the effective abolition of child labour" and to respect workers' right to unionise. I hope that by analysing and discussing the components of this case, similar failures can be prevented in the future.

In April 2002, Human Rights Watch published a report documenting hazardous child labour, violating children's right to health, education, and development, and obstacles to freedom of association on Ecuador's banana plantations. Ecuador is the largest banana-exporting country in the world, exporting roughly 28% of the world's bananas. In contrast to plantations in other Latin American banana-producing countries, banana plantations in Ecuador are generally not owned by the world's three largest banana-exporting corporations. In fact, only one US-based company directly owns any land in Ecuador, roughly 2 000 acres – only 1% of Ecuador's total banana-producing land. Instead, these multinational enterprises obtain Ecuadorian bananas through a variety of contract arrangements with locally-owned third-party producers, ranging from exclusive associate producer relationships to sporadic contracts to satisfy specific orders.

Headquartered in the United States, these three multinational corporations are expected to observe the OECD Guidelines for Multinational Enterprises and to encourage "compatible principles of corporate responsibility among business

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partners", including their independent suppliers in Ecuador. The United States, for its part, is required to encourage these enterprises to observe the Guidelines "wherever they operate".

Nonetheless, Human Rights Watch found that each of these corporations has been supplied by independently owned Ecuadorian banana plantations that employ children performing hazardous work. This failure to respect Guidelines principles highlights a fundamental weakness of voluntary standards – their implementation depends on the will of the corporations. Non-binding initiatives like the Guidelines are important first steps towards achieving corporate compliance with international labour and human rights standards. Nonetheless, only through effective enforcement of mandatory principles can corporations uniformly be counted on to improve respect for workers' rights. More specifically, as long as National Contact Points (NCPs) address allegations of non-compliance through consensual, non-adversarial means and by issuing unenforceable recommendations, uniform respect for Guideline principles will not be achieved.

As I mentioned, Human Rights Watch found that these three companies, at some time, failed to respect Guidelines principles in their relationships with Ecuadorian banana suppliers. However, 70% of the forty-five child workers interviewed by Human Rights Watch stated that they had worked on plantations almost exclusively supplying one US-based company, which sources almost one third of its bananas from Ecuador. In contrast, the two other companies, which source roughly 7 and 13% of their bananas from Ecuador, respectively, were not primarily supplied by any of the plantations on which the children laboured. Instead, those plantations only served, in some cases, as occasional suppliers.

While the OECD Guidelines Recommendation on Supply Chain Management clearly notes the importance of the Guidelines to all suppliers, whether primary or occasional, it also states that "[e]stablished or direct business relationships are the major object of this recommendation rather than… individual or *ad hoc* contracts or transactions". Therefore, rather than comparing the varying conduct of these three US-based multinational enterprises, I will use the rest of the time to present, as a brief case study, one company's supply chain conduct in Ecuador's banana sector.

The average age at which the children interviewed by Human Rights Watch began working on plantations primarily supplying this company was roughly eleven and a half, with two starting at age eight and two at age nine. In the course of their work, they were exposed to toxic pesticides, used sharp knives and machetes, hauled heavy loads of bananas, and drank unsanitary water. Most told Human Rights Watch that they continued working while toxic fungicides were sprayed from airplanes flying overhead. The majority no longer attended school. Three of the young girls interviewed also described sexual harassment they had

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experienced in the packing plants of one of the plantations. These human rights abuses occurred in violation of Ecuadorian law, which establishes fourteen as the minimum age of employment, requires all children to attend school until the age of fifteen, and prohibits harmful child labour and work that interferes with a child's education.

Adult workers also told Human Rights Watch about the prolific use of subcontractors by this company's primary suppliers and of "permanent temporary" contracting arrangements that provide workers with little job security and effectively exempt them from legal protections against being fired for exercising the right to organise. They explained that in these precarious labour relationships, they fear being fired if they exercise their right to organise, an internationally recognised right also specifically protected in Ecuador's Constitution and Labour Code.

This case study raises several key issues for the OECD Guidelines Recommendation on Supply Chain Management. In particular, it raises questions regarding corporate *versus* government responsibility for ensuring respect for Guidelines labour rights principles throughout supply chains; the efficacy of certain corporate management tools and control systems; and the importance of transparency, accountability, and public disclosure.

The human rights violations that Human Rights Watch documented in Ecuador's banana sector occur for two primary reasons. First, Ecuador fails to effectively enforce its labour laws, allowing banana producers to violate workers' and children's human rights with impunity. Second, large banana-exporting corporations contract directly with these producers but fail to use their influence to demand that they respect workers' rights. In such cases, because the corporations also benefit from the human rights violations by receiving goods produced under abusive conditions, Human Rights Watch believes that they are complicit in these violations suffered by the workers.

How has this company responded to this responsibility to demand respect for workers' human rights throughout its supply chain in its dealings in the Ecuadorian banana sector?

In a letter to Human Rights Watch, answering questions about its general labour polices with respect to supplier plantations, the company stated:

> *It is [company name]'s policy to comply with all applicable regulations and laws of any country in which it or its affiliates operate, including those relating to labour practices… [company name] audits its suppliers in a number of areas, including labour rights.*

This company is also a "signatory member" of Social Accountability 8000 (SA8000), "a global humane workplace standard" for "company-owned and supplier facilities". The SA8000 signatory program describes itself as a tool for companies to "demonstrate a real and credible commitment to achieving decent

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working conditions in their supply chains". When the company applied for signatory membership, it was required to submit a statement formally adopting SA8000 as the code of conduct for all its directly owned and supplier banana plantations.

Under the conditions of signatory membership, however, a company is only required to bring its directly-owned and supplier facilities into compliance with SA8000 terms within an unspecified "reasonable time period". Therefore, though this company has been a signatory member of SA8000 since November 1999, the continuing widespread human rights abuses documented by Human Rights Watch on this company's supplier plantations in Ecuador do NOT amount to violations of its SA8000 signatory membership terms. Thus, as an SA8000 signatory member, this company pays a USD 10 000 annual membership fee, can publicise affiliation with "a global humane workplace standard", but need not ensure compliance, on its own or its supplier facilities, with SA8000's terms. Those terms include requirements that enterprises ban child labour; provide adequate support to enable child workers to attend school; not expose young workers to hazardous workplaces; and respect the right of workers to organise.

Nonetheless, as an SA8000 signatory member, this company should have informed its supplier facilities that they are to adopt the SA8000 code of conduct; have established a plan and schedule for them to achieve SA8000 certification; and, through assessments and audits, work directly with them to achieve compliance. This company's Ecuadorian subsidiary, however, categorically denies any responsibility for labour rights conditions on its independent supplier plantations. When Human Rights Watch posed questions about this company's labour rights policies on third-party supplier plantations to a representative of its Ecuadorian subsidiary, he responded:

> *We do not have jurisdiction over that… It is their discretion…* [W]*e do not intervene in that. Absolutely not. It's their business… We do not have that responsibility. Nothing to do there. Our contract is limited to quality and technical assistance.*

In addition, although the company states that it "audits its suppliers in a number of areas, including labour rights", the company told Human Rights Watch that it will "not comment on monitoring or inspections of a specific producer or plantation". Similarly, when Human Rights Watch wrote to the company to confirm the company's contractual relationships with certain plantations on which children laboured and adults were often too afraid to organise, the company responded that that information is "proprietary business information, which it does not publicly disclose".

As a multinational enterprise based in the United States, a country adhering to the Guidelines, this company should be pressured by the government, generally, and by the National Contact Point, in particular, to comply with the OECD

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Guidelines throughout its supply chain. This company's conduct, however, instead raises questions about the effectiveness of NCPs in furthering implementation of the Guidelines. Have the NCPs been diligent enough in publicising instructions for raising specific issues regarding Guidelines implementation? Have the NCPs made the public sufficiently aware of this mechanism for holding the OECD, adhering governments, and multinational enterprises accountable for Guideline implementation? What criteria do NCPs use to make an assessment of whether an issue raised merits further examination, and would evidence in this case study merit such examination? What concrete steps have NCPs taken to encourage corporate transparency and accountability and to push this company and other multinational enterprises to demand observance of the OECD Guidelines throughout their supply chains?

This company's conduct also raises several more general questions relevant to the Guidelines. First, transparency and accountability are two of the core criteria in accordance with which NCPs must operate. Recognising the importance of transparency, should governments adhering to the Guidelines require multinational enterprises in their jurisdictions to disclose publicly their contractual relationships throughout their supply chains? And recognising the importance of accountability, how should adhering governments and NCPs address workplace codes of conduct that allow multinational enterprises to publicise affiliation while continuing to source from facilities violating human rights? Should more explicit minimum standards be established to govern NCPs' "information and promotion" activities as well as the forum created for "implementation in specific instances"? I would welcome any questions or comments that you may have. Thank you.

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Multinational Retailers Fuelling Worker Abuse from Factory to Store

Neil Kearney, General Secretary
International Textile, Garment and Leather Workers' Federation

In late March this year, a group of France's leading retailers, mostly multinationals, released the results of audits carried out over the past couple of years in some 300 of their suppliers' establishments. The details made grim reading.

Children under 13 were found working in two plants in Bangladesh. And of the 45 textile plants audited there, few were found to be paying even the legal minimum wage of USD 17 a month. The minimum wage itself was last adjusted in 1994 when it was worth nearly double, or more than USD 33. Workweeks of 86 hours and more, even for youngsters, were common. Those who refused to work overtime were docked two days wages. One factory had 7 toilets for 600 workers.

In their Chinese suppliers, 12-hour workdays, seven days a week were the norm. Most workers didn't even have a single day off in a month. Talk about forced labour! Legislation was practically never respected and the wages being paid in many of the plants audited were just over half the legal minimum.

In Morocco, child labour and what was described as "forced labour" for women workers were easily uncovered. Health and safety conditions were horrific. Filthy or locked toilets. No fire or emergency exits. No protection against chemicals or against dangerous work situations. Disasters just waiting to happen.

Suppliers audited in Pakistan rarely respected the minimum wage regulations. Horrifically long hours of work and dangerous working conditions everywhere. Much of the production came from Export Processing Zones where labour legislation doesn't apply anyway.

Three audits were carried out in Burma where some of these retailers were sourcing in spite of the International Labour Organisation's strictures on the regime there. Interestingly the audits suggested that conditions were fine, conveniently ignoring the common abuses of human rights including the banning of freedom of association and consequently the lack of the right to bargain

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collectively. These rights were ignored in almost all the reports from the 18 different countries where audits were conducted.

In their presentation of the reports these multinational retailers displayed an amazing complacency appearing largely to ignore ILO Conventions and the OECD Guidelines. They even dismissed the widely accepted Code of Conduct, SA8000, which is firmly anchored in the key Conventions of the ILO, as "too demanding". "A big mechanism reserved for the rich", according to the retailer concerned.

So, to French retailers, accepting freedom of association and the right to bargain, paying a living wage, limiting normal work hours to 48 per week, providing a safe and secure workplace and rejecting child labour, forced labour and discrimination is "too demanding" and only for "the rich".

One company admitted that none of their 46 suppliers audited could be certified under SA8000. No surprising when almost all, if not all, were in breach of numerous pieces of national labour legislation.

It should be remembered that these retailers are among the foremost in France. In Indiana in the United States, employees at one company, part of a retailing empire, seeking improvements in working conditions began to organise late last year. Management immediately embarked on a union-busting campaign which continues till today.

This company's behaviour has focused attention on other parts of the retailing empire including its supply-base where, in India, workers endure thirteen-hour workdays, six days a week for starvation wages. In Indonesian supplier plants, workers faint from exhaustion after workdays that sometimes continue through till 5am. At least one major part of the chain sources from Burma.

It is difficult not to feel that France's multinational retail sector must be the most backward in the OECD when looked at from the viewpoint of corporate social responsibility. Many others are not far behind.

It is noticeable that multinational retailers and merchandisers are increasingly sourcing textiles, clothing and footwear from suppliers based in export processing zones which are now dominated by a new generation of multinational companies often based in OECD member South Korea.

In such zones and in such companies almost all of the core labour standards are ignored. Freedom of association and collective bargaining are largely non-existent, much of the work is akin to forced labour, discrimination is rife and children and young workers are among the most abused. All this is confirmed in the French retailer audit reports.

Many OECD retailers and merchandisers source from Sri Lanka. There much of the production is carried out in export designated zones where trade unions

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were banned until recently and where efforts to unionise are today met with harassment, intimidation and mass firings.

Free trade zones and Korean multinationals are the basis of Guatemala's garment export industry where workers' rights abuses are endemic. A current OECD Guidelines complaint concerns two companies where, when workers began to organise last year, management embarked on a campaign of terror which included mass dismissals, union members attacked with bricks and bottles and the home visiting of leaders and activists accompanied by death threats to themselves and their children.

What can be more despicable than threatening to liquidate children just to stifle a unionisation drive?

Unfortunately, corporate social irresponsibility is rife among the world's leading retailers and merchandisers and it encourages this type of corporate criminality mentioned which exploits workers and endangers their lives.

Business misconduct in the supply chain is thus causing enormous problems for workers. This misconduct involves the entire chain but particularly multinational manufacturers, merchandisers and retailers. Constant efforts to secure goods at the lowest possible price and in the quickest possible time are impoverishing workers, their communities and their nations who had hoped to clamber out of poverty through industrialisation. Instead they are going backwards.

One company recently compiled a decade's worth of data on wages in the garment sector – an industry seen by many as the initial engine of development – data that demonstrates almost uniform wage meltdown in the poorest countries. For example, Pakistan's garment exports to the United States rose some 400% during the 1990s to more than USD 1.5 billion. Wages remained flat over the whole of the period though inflation rose by nearly 150%. Over the same period wages in Turkey rose by 36.3% while the country was gripped by near hyper-inflation which saw prices rise by more than 1 800%. Falling real wages were the norm in most major clothing exporting countries including China, Indonesia, the Philippines, Egypt and Peru among many others.

These problems are compounded by the absence of worker representation and collective bargaining and by the failure of governments to enact and enforce legislation protecting human and worker rights.

Many governments don't act because of incompetence or corruption but also because there appears to be no incentive to do so in the absence of international mechanisms to enforce minimum human rights and workers' rights standards globally.

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How do we go about fixing all of this?

A combination of regulation, global and national and voluntary effort is needed.

Globally there is urgent need for mechanisms, probably linked to international trade, to ensure that laggards and offenders are brought to heel. Many believe that trade agreements should contain a social clause making participation in global markets dependent on respect for global labour standards. National governments, of course, have a key responsibility to advance the well being of all their citizens, including workers. This necessitates enacting and implementing legislation protecting workers' rights, health and safety, job security, etc.

Finally, the corporate world must, even in the absence of regulation or its implementation, respect international norms voluntarily. All the old excuses why this can't be done don't wash any more.

Excuses such as claiming that the supply chain is too wide or too deep to permit proper oversight. The width or depth of the supply chain doesn't prevent corporations enforcing quality standards or controls or tracking and penalising late deliveries.

Excuses pointing to the impossibility of dealing with sub-contractors and others further along the chain. The consumer who complains of faulty goods isn't told to take the matter up with the sub-sub-contractor in Cambodia. The retailer takes responsibility. So too, the retailer must take responsibility for the application of workers' rights throughout the supply chain.

Our French retailers when questioned at the conclusion of the audit process, declared that while they might promise more orders, better payments to producers was not an option.

Here lies the nub of the problem. Many of today's workers' rights abuses are the direct result of inadequate prices and impossible delivery schedules. Combined, these demands force producers to underpay workers and inflict on them crushingly long working hours.

Today, in reality, it is the multinational retailers and merchandisers who are truly responsible for the growing worker abuse globally. They really must begin to clean up their act. Abiding by the key ILO Conventions, respecting and using the OECD Guidelines, concluding international framework agreements with global union organisations and applying good multi-stakeholder codes of conduct – such as SA8000 – throughout their supply chains would be useful starting points. But, will it really happen without regulation? Past experience is not encouraging!

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Managing Working Conditions in the Supply Chain – A Fact-finding Study of Corporate Practices[1]

Supply chain management is "an integrative philosophy to manage the total flow of a distribution channel from the supplier to the ultimate user".

Cooper and Ellram (1993) *The International Journal of Logistics Management*

I. Introduction and background

The expanding geographical sweep of supply chains reflects important advances in the area of logistics management. Some of these advances are linked to progress in computing, telecommunications and robotics technologies as well as to the accumulation of management expertise. Managers have integrated new technologies into their production and distribution processes and have explored new ways of running their core businesses and of managing relations with business partners. As a result, the organisation of companies has evolved – strategic alliances and closer relations with suppliers and contractors have tended to blur the boundaries of the enterprise. This restructuring has been accompanied by new ways of looking at and organising the roles and responsibilities of various actors in supply chains – sourcing and supplying firms, business service providers and policy makers.

The greater sophistication in the management of supply chains is part of the long-standing process in which companies and national and regional economies sharpen their focus on their areas of distinctive competence and comparative advantage. This process offers potential benefits for investors in both sourcing and supplying firms as well as for consumers and workers. As part of this trend, some businesses in the developed world have focused more closely on their core areas of expertise and competence (for example, distribution, marketing, design or brand-based retailing). They have left manufacturing to other companies with expertise in that area. As a result, some businesses in lower wage countries have found that they are competitive in labour intensive agriculture, manufacturing, assembly and services. These developments offer suppliers an entry door not only into world markets, but also into world management trends and practices. Managers in these companies become familiar with the demands of advanced consumer markets and business partners as well as with management practices

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used for accountability and legal and regulatory compliance. These include control of product flow and quality, inventory and facilities management, record keeping and tighter labour and environmental management.

At the same time, the growth of supply chains has raised concerns. Indeed, as businesses themselves often point out, it poses significant challenges for nearly every aspect of corporate responsibility. This is a concern to many investors, consumers and trade union and NGO representatives. Consideration of this complex topic needs to take into account various competing factors and trends. In particular, whilst the highly publicised cases of abuse and exploitative conditions have often been located in poorer countries, it is also widely acknowledged from a development perspective that trade and foreign investment generate far more much-needed employment and wealth in developing countries than is provided by foreign aid projects. Hence, many actors now consider it vital to ensure that raising concerns about working conditions does not unduly undermine such benefits or lead to "back door protectionism" by wealthy countries.

This issue is also relevant for many of the areas of business ethics covered by OECD Guidelines for Multinational Enterprises. These include consumer interests (especially product quality and safety), employment and industrial relations, environment, technology transfer, competition and many of the areas covered in the "General Policies" chapter (human rights, management systems, human capital formation, employee awareness and training). Several participants at the 2001 Roundtable on Corporate Responsibility identified supply chain issues as a promising area for future consideration.[2]

The present paper reflects work sponsored by the Swedish Ministry for Foreign Affairs. This study was conducted by a research officer of the Swedish National Board of Trade working on firm level data supplied by the Ethical Investment Research Service (EIRIS). EIRIS provides "independent research into corporate behaviour needed by ethical investors to help them make informed and responsible investment decisions".[3] The project focuses on one aspect of supply chain management – corporate policies and management practices with respect to working conditions in their supply chains. It extends earlier work with EIRIS, whose data on environmental management practices formed the basis of a study published as Chapter 6 of *Corporate Responsibility: Private Initiatives and Public Goals*[4] (OECD 2001a).

This paper provides new data about company practices of relevance to this important issue. Its aim is primarily "fact finding" – that is, it seeks to clarify how important certain practices are among a given set of businesses. In particular, it seeks to answer the following questions:

- What percentage of the companies in the EIRIS sample have policy statements (or codes) giving guidance to their suppliers on how they would like labour conditions to be managed?

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- What issues are covered in these statements (child labour, forced labour, working hours, etc.)?
- How many companies have sourcing systems designed to influence outcomes in this area and what management tools are used in these systems (communication with suppliers or procurement teams, senior executive responsibility, remediation, whistleblowing)?
- Do companies report on their systems and performance?
- How do these findings compare with an earlier study of environmental management practices (recognising that the issues, context and control problems are quite different between the two areas of corporate responsibility)?

II. The data and the companies

The data reported here is based on aggregations of EIRIS' firm level data on working conditions in "global sourcing systems".[5] The data was collected in late 2001 and covers 147 firms. Some background about the EIRIS methodology is provided in the Annex. It is summarised below.

- *Sources.* The data comes from publicly available sources (primarily company annual reports, web sites and membership lists for relevant business initiatives) and from the Global Sourcing Standards survey sent to all companies with global supply chains operating in sectors that EIRIS has identified as being "of concern" for this issue.
- *Publicly quoted companies.* The businesses are all publicly quoted companies contained in the Financial Times Stock Exchange All-world developed index.[6]
- *Sectors "of concern" and global operations.* The companies in this sample all have global supply chains and operations in sectors "of concern" in relation to working conditions. They are retailers (including general food, drugs, apparel and household goods); apparel manufacturers (clothing, textile, footwear), sports goods manufacturers, food producers and processors and tobacco. EIRIS notes that "clothes and sports goods manufacturers [in the EIRIS database]… have both highly visible operations and also typically a high degree of influence over their supplier companies, which are often wholly dependent on them for orders. Similarly, retailers and food producers and processors often source products from all around the world, and have a high degree of leverage over their suppliers due to their purchasing power."[7]
- *Selecting the sectors "of concern".* The sectors identified as being "of concern" were chosen by EIRIS for researching these issues because they are among the sectors that have the "greatest concentration of activities involving global supply chains and have been the subject of significant public concern in relation to working conditions". The choice of sectors has been

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largely dictated by the needs of EIRIS clients who are most interested in comparing companies operating in areas of greatest potential reputational risk. Hence, work in this area has to date typically concentrated on high profile consumer-facing areas, as these are the sectors which have been the focus of the most NGO campaigns and media interest. EIRIS plans to look at ways to expand coverage to include other key industries with relevant global supply chains."[8]

- C*ountries.* EIRIS identifies home countries according to the location of the stock exchange on which the company has its primary listing. This sample of 147 companies is heavily weighted toward the United Kingdom (61 companies) and Japan (32 companies). Other countries whose companies appear in the sample are France (7 companies), Greece (7) and Australia (5), Canada (4) Belgium and Italy (3). Ten other countries have only one or two companies in the sample.[9] The United States was not included in this study because the EIRIS database on US companies is still being collated, as not all US companies will have received the same set of questions last year. Further survey data is expected to be compiled by EIRIS for all countries including the US later in 2002. The reason for the heavy bias toward UK companies seems to be the high propensity of UK companies involved in the sectors "of concern" to be listed within the FTSE All-World Developed Index.

- D*ata attributes.* EIRIS divides its data on company sourcing practices into three categories – sourcing policy, sourcing systems and reporting. Under sourcing policy it looks at commitment to core ILO conventions (child labour, forced-compulsory labour, equal opportunities, freedom of association); commitments to other ILO conventions. Under sourcing systems it looks at communication, auditing, monitoring of suppliers and subcontractors, remediation, whistleblowing, senior level accountability and incentives. Under reporting, it looks at the detail and content of company reports on their implementation of codes. EIRIS has closely monitored these developments including consulting with expert practitioners directly involved in assessing company supply chains in order to develop its criteria. The Annex summarises EIRIS' methodology.

III. Basic findings on policies, systems and reporting

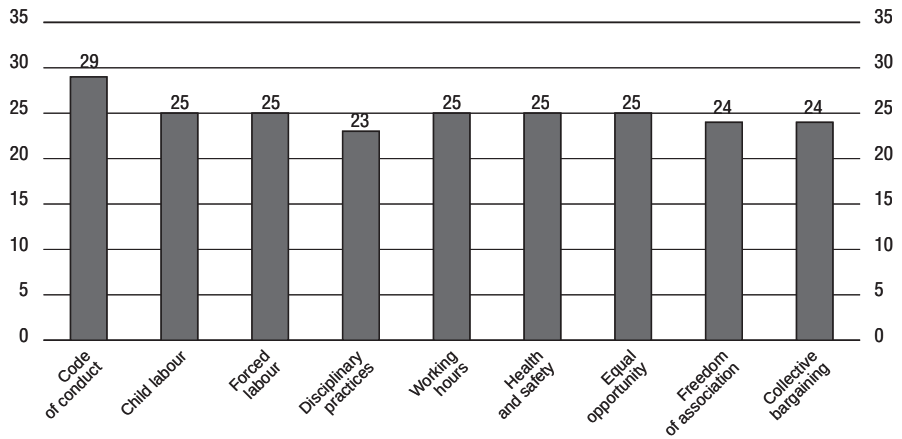
S*ourcing policies or codes.* Company's can express their expectations for labour practices in their supply chains by means of a policy or code. Of the 147 companies in the EIRIS database that operate in "sectors of concern", 29 – or about 20% – have a code of conduct on working conditions in their supply chains.

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The commitments made in these codes are summarised in Figure 1. They show that 25 codes cover child labour, forced or compulsory labour, working hours, health and safety and equal opportunities. Commitments to freedom of association are made in 24 codes and 23 codes make commitments to collective bargaining.

Figure 1. **Working conditions in the supply chain – content of policy statements**

Number of companies mentioning an attribute or standard in their codes of conduct or policy statements; total sample is 147 companies



Source: OECD/EIRIS.

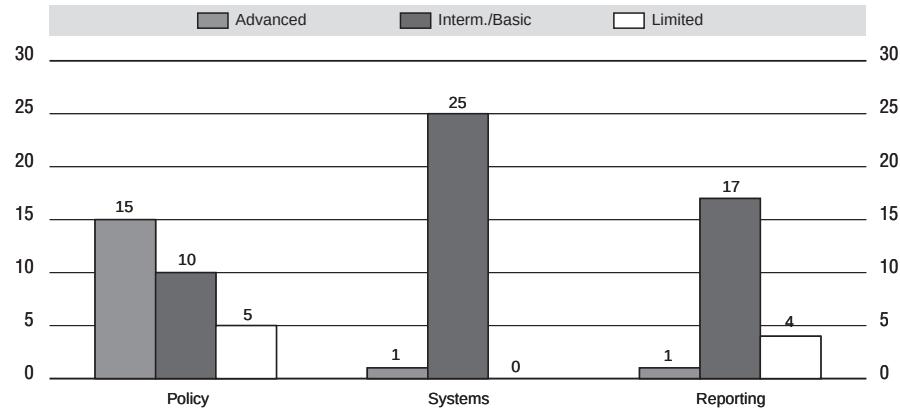
Only one of the 26 companies for which information on supplier systems is available is rated by EIRIS as having an advanced system (Figure 2). This means the company communicates its policy to factory managers and workers, engages in internal and external monitoring of suppliers, can demonstrate procedures for remedying non compliance with sourcing standards and has both incentives for compliance and clear senior executive responsibility on this issue. Most other companies – 25 – fall in EIRIS' "intermediate" or "basic" categories, which means they use some combination of communicating with factory managers and workers or monitoring (internal and external). Intermediate companies must also have remediation procedures and a senior level executive must be responsible.

Reporting on supply chain systems and outcomes. Again, only one of the companies in the sample has advanced reporting practices meaning that it provides detailed and independently verified reports on labour conditions in its supply chains.

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Figure 2. **Sourcing systems and reporting**

Number of companies with sourcing systems and reports; by qualitative level assigned by EIRIS



Source: OECD/EIRIS.

Seventeen companies produce "intermediate" level reports, a further four have "limited" reports. "Limited" means that the company does not completely ignore reporting on sourcing standards, but either it does not provide substantive details on labour conditions in its supply chain or it only indicates that it is planning or preparing such a report.

IV. Patterns of company behaviour

The above findings reveal a number of patterns:

L*abour management in the supply chain versus environmental management.* The companies included in this sample are all global, publicly listed companies operating in sectors designated by EIRIS as being "of concern" for working conditions in the supply chain. This use of sector of activity as a means of defining a sample is similar in spirit to the one it uses to define the sample of companies working in "high environmental impact" sectors. This group of companies was the focus of the OECDs 2001 study of environmental management practices. The data for these two sets of companies suggest that there are major differences in their propensities to engage in policy, management and reporting.

Compared with the study of environmental management, the current data set of labour management in the supply chain points to comparatively low propensities to engage in advanced practices among companies that EIRIS has identified as being in sectors of concern. The earlier study of the environmental manage-

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ment practices of companies in "high environmental impact" sectors produced an overall propensity among European companies – with a rate of codes issuance of 75% – that was more than three times as high. The propensity of HEI Japanese firms to adopt advanced environmental commitment, management and reporting practices was also very high (see OECD 2001a). In contrast, none of the current sample of Japanese firms issues supplier codes on working conditions. This comparison raises some interesting questions, but the data cannot answer them. The companies in the sourcing sample are all highly visible in their national environments and, indeed, many of their names are household words in their own countries. Many of them have made heavy investments in brands. They are all professionally managed and (compared with smaller, closely held companies operating in the same sector) probably have the resources required to manage their supply chains closely. The companies in the high environmental impact sample studied earlier were also large, well capitalised, professionally managed companies, but generally they had less brand exposure and consumer visibility than the companies in this sample.

Understanding the reasons for these differences would shed light on the differing incentives and obstacles companies face in different areas of corporate responsibility. These differences are, almost by definition, linked to different evaluations of the costs and benefits of such practices in environmental management *versus* labour management in the supply chain. This, in turn, is probably linked to the differing natures of the control problems posed in the two areas of corporate responsibility, to differences in the regulatory or legal environments, or to sectoral differences in the degree to which the benefits of such practices accrue to individual companies.

E*vidence of the emergence of a* de facto *standard of commitment*? Another notable finding is the similarity of the commitments made by the firms issuing supplier codes. Although the overall propensity to issue supplier codes is low, the companies with codes tend to refer to the same set of basic issues. The coverage of core labour standards is quite uniform among the companies issuing codes and the vast majority of these companies mention all of the core labour standards. This finding contrasts with the findings of an earlier study of apparel industry supplier codes – based on data that is now about 3 years old – that showed wide divergences in the commitments made in these codes. For example, less than half of that earlier set mentions freedom of association (Chapter 3, Corporate Responsibility: Private Initiatives and Public Goals, OECD 2001, Paris). This apparent shift in commitment practices across time could be pointing to the gradual emergence of a *de facto* standard of commitment in sectors where labour conditions in supply chains are a concern.

N*ational patterns*. The findings of an earlier study based on EIRIS's data on environmental management systems tended to undercut the view that corporate

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responsibility and associated management and reporting practices are an "Anglo-Saxon" phenomenon. The companies with the most advanced environmental management practices tended to be based in the northern rim of continental Europe – the UK firms had only a mid-ranking propensity to engage in such practices. Likewise, the Japanese companies also showed a high rate of adoption of advanced environmental management practices.

This set of data on managing working conditions in the supply chain arguably revives the "Anglo-Saxon" hypothesis as the data suggests that UK companies are much more involved in this issue than their counterparts in other countries. Though fewer than half the UK companies engage in these practices, they still have much higher rates of adoption than companies from other companies. For example, none of the 32 Japanese companies in this sample has adopted any of these practices. For other countries the sample size is often very small, but the results are similar: none of the 7 Greek companies or of the 5 Australian companies have adopted any of these practices either. This suggests that, although these are global companies in some respects, home country factors can still tend to have an important influence on conduct in this particular area of corporate responsibility. It is important to note however that thinking and practice on social issues in supply chain management is much less developed than for corresponding environmental impacts where there are much better established international benchmarks such as ISO 14001 and EMAS. The picture may change therefore as more uniform social standards develop and more large global companies adopt common standards of reporting on these issues.

V. Summary of findings

This fact-finding exercise provides information on corporate policies, management practices and reporting in relation to working conditions in supply chains for a sample of 147 public quoted, global companies. It suggests that such companies have comparatively little involvement in this area of management. Only 20% of them have formulated a policy for suppliers. However, among those companies that are active in this management area, the nature of the commitments made tend to be very similar. This differs from earlier findings, which showed wide divergences of commitment among branded apparel manufacturers for working conditions in their supply chains.

The study also shows that, at least in the particular sectors covered here – retailing, clothes and sporting good manufacturing and tobacco – the behaviour of UK companies is quite different than others in the sample. UK companies – which account for 61 of the 147 companies in the sample – have a much higher propensity to formulate sourcing policies, to have sourcing systems and to report on these systems and their outcomes. However, most countries have few companies in the sample.

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While the study raises some issues, it does not form a basis for explaining these findings. For example, the finding that companies with supplier policies now seem to agree on the issues that should be covered by those policies could point to the emergence of a *de facto* standard. Alternatively, it could be a reflection of the strong UK dominance in this particular sample of companies formulating such policies and to the role of initiatives (such as the government, union, NGO and business endorsed Ethical Trading Initiative) in harmonising UK companies approaches to these issues. EIRIS' write-up of its methodology suggests that this might be the case. It states that "Thanks to the emergence of organisations such as the Ethical Trading Initiative and of specialist organisations such as Social Accountability International and Account Ability who promote and audit quality assurance standards on supply chain working conditions, there is growing consensus about the elements that constitute a worthwhile code of conduct." Shedding light on the underlying forces that underpin these findings would require further investigation and contact with companies.

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Annex

Background and Methodology

Annex 1. Data sources and definition of sample[10]

The sources of information on labour conditions in the supply chain are:

- Company annual reports and any relevant social or sustainability reports.
- Information revealed on company websites (checked at least once a year).
- Survey sent to all companies in sectors of high concern at least once every two years.
- Membership information received from appropriate multi-stakeholder programmes that are working on improving supply chain conditions.

EIRIS examines the activities of each company individually to determine whether or not it has significant operations in a sector of high concern and if so, if these involve global supply chains. Sectors of high concern are defined by EIRIS as follows: Retailers (including general, food, drugs, apparel, household goods, etc), Apparel manufacture (clothing, textile, footwear), Sports goods manufacture, Food producers and processors and Tobacco. These sectors have been identified because they have the greatest concentration of activities involving global supply chains, which have been the subject of significant public concern in relation to working conditions.

EIRIS includes all companies identified in these sectors as having operations in a sector of high concern ***unless*** it is made clear that the majority of the company's operations do not in practice involve global supply chains. (E.*g.* a company making a limited range of food products sourced from only one country.)

The survey on which the grading system is based was sent in autumn 2001 to all UK and European companies. EIRIS has also worked with partners to assess results for companies based in Japan, Hong Kong, Australia and Canada. A further survey is being sent out to all companies (including US companies) in summer 2002.

Annex 2. Policies

Methodology on Policies: EIRIS examines evidence of company policies to assess if they promote minimum standards for their suppliers and sub-contractors. In particular, it notes if the company actively requires suppliers to uphold the minimum employment conditions promoted under 8 Key headings by the International Labour Organisation (ILO).

These relate to the following topics covered by the core conventions promoted by the ILO:

- ***Child Labour*** – Avoiding or eliminating Child Labour (ILO conventions 182 and 138).

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- ***Discrimination*** – Avoiding or eliminating Discrimination in respect of Employment and Occupation (ILO conventions 100 and 111).
- ***Forced Labour*** – Avoiding or eliminating Forced or Compulsory Labour (ILO conventions 29 and 105).
- ***Freedom of Association*** – Supporting Freedom of Association and the Effective Recognition of the Rights to Collective Bargaining (ILO conventions 87 and 98).

In addition, EIRIS looks at 4 other key policy areas that are the subject of major ILO conventions:

- ***Disciplinary procedures*** – to not condone or engage in mental and physical coercion, the threat of physical abuse, sexual or other harassment and verbal abuse as part of company's disciplinary procedures.
- ***Health and safety*** – Taking all necessary steps to ensure all workers have a safe and healthy workplace and to avoid and eliminate potential health and safety hazards.
- ***Working hours*** – complying with national laws on working hours, and in any event not on a regular basis requiring personnel to work in excess of 48 hours per week and to ensure that overtime is voluntary, not excessive and remunerated at a premium rate.
- ***Living wage*** – to ensure that wages paid at least meet national legal or industry benchmark standards, whichever is higher, and in any event are sufficient to meet basic needs and provide reasonable discretionary income.

Where applicable, membership of a relevant multi-stakeholder initiative will be taken to imply commitment to particular ILO conventions. The main multi-stakeholder initiatives whose membership is monitored by EIRIS are the Ethical Trading Initiative, and Fair Labor Association.

What EIRIS measures:

No evidence	• No policy or little or no information available.
Limited	• Company can only demonstrate commitment to three or less of the four core ILO conventions – or has indicated it has a policy in practice.
Basic	• Company can demonstrate commitment to the four core ILO conventions.
Intermediate	• Company can demonstrate commitment to the four core ILO conventions and at least two of the other key ILO conventions selected by EIRIS and communicates its policy to its suppliers.
Advanced	• Company can demonstrate commitment to the four core ILO conventions and all the other key ILO conventions selected by EIRIS and can show that it communicates its policy to its suppliers and procurement teams.

Annex 3. Sourcing Systems

Thanks to the emergence of organisations such as the Ethical Trading Initiative and of specialist organisations such as Social Accountability International and Account Ability who promote and audit quality assurance standards on supply chain working conditions, there is growing consensus about the elements that constitute a worthwhile code of conduct. The focus here is very much on the ability of a company to effectively implement and monitor the standards upheld within its supply chains. Factors held to be of most significance are:

- Proper communication of the code to suppliers.

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- Effective monitoring of the code (both internally and externally).
- Existence of procedures to remedy breaches of standards identified by the company, including the use of incentives to promote improved standards.

EIRIS' data on sourcing systems attempts to answer the following questions: what is the extent of the company's systems on global sourcing standards? EIRIS looks in particular at:

Procedures used to remedy non-compliance with sourcing standard policy can include:

- Whistleblowing protection to enable and encourage employees to highlight cases.
- Contractual provision allowing company to issue warnings and vary or ultimately terminate contracts with suppliers who do not comply with labour standards requirements.
- Performance incentives for procurement teams or supplier factory managers.

The "Systems" data in Figure 2 are based on the following "scores":

No evidence	• No systems or little or no information available.
Limited	• Company only has systems in development or says it has systems but few details available.
Basic	• Company communicates policy to supplier factory managers/workers or indicates relevant monitoring of suppliers and sub-contractors.
Intermediate	• Company communicates policy to supplier factory managers/workers or indicates relevant monitoring of suppliers and sub-contractorsand can demonstrate some procedure to remedy non-compliance on sourcing standards by suppliers and sub-contractors and has clear senior level responsibility to champion the company's policy on this issue.
Advanced	• Company communicates policy to supplier factory managers/workers and indicates monitoring (both internal and external) of suppliers and sub-contractors and can demonstrate full and extensive procedure to remedy non-compliance on sourcing standards by suppliers and sub-contractors and has both incentives and clear senior level responsibility for this issue.

Annex 4. Reporting

The quality of working conditions in global supply chains is a high profile issue of concern to many investors and other users of corporate information.

Because many companies are yet to actively address some of these concerns, a helpful indicator of progress is the extent to which a company reports on its global sourcing standards.

The emergence of specialist organisations such as Social Accountability International and Account Ability who promote and audit quality assurance standards on supply chain working conditions, has helped generate consensus about the types of details that companies should be encouraged to report in relation to supply chain working conditions. This includes more than simply reporting on the basic standards required by the company, although this is a helpful first step.

In particular, it is considered very helpful for aspects of a company's report dealing with supply chain conditions to be independently verified or to provide details of working

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conditions going beyond the fundamental employment rights highlighted by the core ILO conventions. (E.*g.* providing details of wages paid and how the company benchmarks its conditions against similar companies in the same sector). By independent verification, EIRIS means confirmation by an independently recognised third party, such as a professional auditing firm or quality assurance/social auditor.

EIRIS's reporting data in the outsourcing module attempts to answer the following question: What is the extent of reporting on global sourcing standards?

EIRIS looks at:

- Public reports on implementation of code of conduct.
- Details of remedies provided in cases of non-compliance with code.
- Details of the methods and proportion of facilities/operations monitored.
- Independent verification of code of conduct report.
- Inclusion of extra details such as living wage assessment details in the report.

The "Reporting" data in Figure 2 are based on the following "scores":

No evidence	• No report or little information available.
Limited	• Company does not report substantively on labour conditions in its supply chain or indicates that it is collating a report for publication.
Basic	• Company can demonstrate commitment to the four core ILO conventions.
Intermediate	• Company reports substantively on labour conditions in supply chain including providing details of remedies for non-compliance and either has this report independently verified or provides some notable details.
Advanced	• Company reports meaningfully on labour conditions in supply chain and provides notable details of remedies for non-compliance and operation of its policies and procedures, including extra factors (such as providing comparative details of wages paid in its supply chain), which is also independently verified.

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Notes

1. This study was sponsored by the Swedish Ministry of Foreign Affairs, with the co-operation of the Ethical Investment Research Service (EIRIS). The paper was prepared by Mattias Chu (Senior Research Officer) of the Swedish National Board of Trade and Kathryn Gordon (Senior Economist) of the International Investment Division of the OECD, incorporating data and comments from Jeremy Baskin (Head of Research) and Niaz Alam (Social Researcher) at EIRIS. The paper is preliminary and should not be cited without the permission of the authors. Please contact Mattias Chu at *mattias.chu@kommers.se*
2. OECD (2001) OECD *Guidelines for Multinational Enterprises*: *Annual Report* 2001. Paris. This interest was confirmed in subsequent consultations by business, trade union and NGO representatives with the OECD Committee on International Investment and Multinational Enterprises (CIME).
3. See *www.eiris.org*
4. OECD (2001) Corporate Responsibility: Private Initiatives and Public Goals. Paris.
5. See Guide to EIRIS Research. Global Sourcing Systems. Available on EIRIS website: *www.eiris.org*
6. Sometimes clients ask EIRIS to collect information about companies not appearing in the FTSE indices, but this is relatively rare.
7. Quote from Guide to EIRIS Research – Global Sourcing Standards.
8. For example, companies in the telecommunications and electronics sectors often have substantial global supply chains, as do many manufacturers of automobiles and household goods. EIRIS is researching these sectors in consultation with partners to add to the range of ratings it provides for global sourcing standards.
9. Denmark, Ireland, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Hong Kong.
10. More detail on EIRIS methodology can be found In EIRIS (2002) Global Sourcing Standards, London.

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Discussion Paper for the Meeting of Trade Union Experts on "The Implementation of the OECD Guidelines for Multinational Enterprises and the Functioning of National Contact Points"

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I. Introduction

The Labour/Management Programme of the OECD will be convening a meeting of trade union and other experts on "The Implementation of the OECD Guidelines for Multinational Enterprises and the Functioning of the National Contact Points (NCPs)" on 17 June 2002. This "issues paper" lays out a range of topics for discussion at this meeting focusing in particular on means to evaluate progress to date on the implementation of the Guidelines and the effectiveness of the NCPs.

The OECD Guidelines were first developed in 1976, but revised in 2000 (OECD 2001c). While there has been extensive experience with the original Guidelines, the revised Guidelines have significantly broadened their scope, reinforced their global applicability and strengthened the implementation procedures. In particular, the role of the NCPs has been clarified and raised in prominence. At the same time, a wide range of initiatives are being developed around the world on multinational corporate social responsibility and accountability. Corporate codes of conduct and new monitoring, verification, and certification efforts are growing rapidly. Trade Unions are experimenting with Framework Agreements. NGOs are advancing independent monitoring and verification systems for Multinational Enterprise (MNE) activities. It is thus critical to seriously assess recent experiences with implementation, and issues for strengthening the Guidelines.

The key question now is whether the revised Guidelines are being implemented effectively through the NCPs, and ultimately whether corporate behaviour is changing. It is thus critical to evaluate general awareness levels of the Guidelines among MNEs and governments, how the Guidelines are being

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implemented in different countries and cases, and the effectiveness of the NCPs (particularly their responses to complaints around "specific instances"). It is also important at this juncture to discuss the challenges facing new adherents, and the problems of implementing the Guidelines in non-adhering countries. Finally, in light of recent changes in global economic trends and corporate social responsibility responses, it is essential to discuss means to continuously improve the Guidelines.

II. Profile of the Guidelines

As has been detailed elsewhere, the OECD Guidelines were significantly revised in 2000 (TUAC 2001b, Oldenziel 2000). The Guidelines remain the only comprehensive, multilaterally endorsed code of conduct for MNEs. The Guidelines establish a range of non-binding standards and principles for corporate practice including recommendations for advancing corporate social accountability through:

- respecting the human rights of those affected by their activities;
- implementing "core labour rights," including freedom of association, collective bargaining, non-discrimination in the workplace, no child labour, and no forced labour;
- disclosing environmental information and employing the "precautionary principle" for environmental impacts;
- applying the Guidelines down the MNE's supply chain;
- advancing information disclosure; and
- eliminating corruption.

The key question now is whether these revised Guidelines are being implemented effectively. This implementation can be evaluated along a number of dimensions:

- Are the Guidelines acknowledged and referenced by MNEs, trade unions, NGOs, and national governments?
- Are the principles embodied in the Guidelines spreading to other international organisations or multi-stakeholder initiatives?
- Do the full range of stakeholders accept the Guidelines as the standard for good corporate practice?
- Are MNEs incorporating the Guidelines into their internal codes of conduct?
- Are MNEs implementing the Guidelines down their supply chains?
- Are the Guidelines detailed enough to provide specific operational guidance for MNEs?

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- Are the Guidelines helping to build general public awareness about corporate social accountability?
- Are governments and NCPs developing effective mechanisms to promote compliance with the Guidelines?
- Are the NCPs effective in the resolution of specific instances of non-conformance?
- Are the Guidelines supporting improved corporate practices in non-adhering countries?
- Are the Guidelines complementary to other corporate social accountability initiatives and international standards?

III. Relations to other corporate social accountability initiatives

There has been a recent profusion of corporate codes, monitoring systems, verification procedures, and certification processes (OECD 2001b). While the OECD Guidelines pre-date most of these initiatives, the Guidelines are currently less well known than many of these newer initiatives. The OECD can thus not afford to ignore these programs and the Guidelines aim to "complement and reinforce" the efforts of other initiatives. It is therefore important to explore how the implementation procedures of the Guidelines can work in concert with them.

The Guidelines do not directly refer to other international standards such as the ILO conventions or UN declarations (although these standards are discussed in "commentaries" and the preface to the Guidelines). And the Guidelines have not been explicitly deployed in co-ordination with other initiatives. Nonetheless, there are a range of standards and initiatives which are relevant to the functioning of the Guidelines, including:

International Standards and Declarations:

- ILO Conventions and "Core Standards";
- ILO Declaration on Fundamental Principles and Rights at Work;
- UN Universal Declaration on Human Rights;
- the Rio Declaration on Sustainable Development; and
- the Aarhus Convention on Access to Information and Public Participation.

Multi-stakeholder Initiatives:

- UN Global Compact;
- Global Reporting Initiative;
- Ethical Trading Initiative;
- Fair Labour Association;
- Social Accountability International (SA8000 Standard);

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- Workers Rights Consortium;
- Fair Wear Foundation;
- Worldwide Responsible Apparel Production;
- Clean Clothes Campaign Pilot Projects;
- Global Sullivan Principles.

Trade Union Initiatives:

- International Trade Secretariat Framework Agreements.

More work is needed to evaluate how the OECD Guidelines relate to these other initiatives (OECD 2001a). Specifically, the content, requirements, and implementation mechanisms of the Guidelines should be compared to these initiatives. Research is also needed to evaluate the mechanisms that have proven effective in other initiatives, particularly the mechanisms that have actually motivated MNEs to change practices. There is significant potential to learn from the "best practices" of other systems of codes and monitoring. For example, verification procedures appear critical to the functioning (and credibility) of many multi-stakeholder systems. Can the OECD Guidelines learn from these systems to develop their own monitoring and verification procedures?

There is also a need for discussion on means for better co-ordination among these initiatives: working to ensure that different initiatives do not confuse MNEs or provide a means to avoid more effective standards, and that they work together to raise the bar, not lower or confuse it. In the long-term, there should also be discussion about making these systems inter-comparable, or even inter-operable.

IV. Success to date of efforts to work through the National Contact Points

The National Contact Points (NCPs) represent the key implementation mechanism for the Guidelines, and also set apart the Guidelines from other initiatives in their processes of government commitment to advancing corporate accountability. So while the Guidelines are voluntary, the NCPs provide the support of national governments and a country level complaint system to advance implementation.

There is wide variation in the structure and functioning of the NCPs (OECD 2001c). There are single department and multi-department NCPs. Several are tripartite (including business, trade unions, and government), and two are quadripartite (Finland and Chile). Trade Unions, NGOs, and business organisations are beginning to evaluate the implementation of the guidelines and the functioning of the NCPs, particularly in regards to their performance on specific instances (TUAC 2001a).

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TUAC has noted positive developments in a number of NCPs (which previously had been largely inactive), and continued weaknesses in other NCPs, particularly in non-OECD countries that have adhered to the Guidelines. As TUAC notes, "much remains to be done" as "too many NCPs are still dormant and/or fail to consult trade unions and other interested parties" (TUAC 2001a).

NGOs have also highlighted the past ineffectiveness of certain NCPs in responding to problems in specific instances (Oldenziel 2000, Feeney 2000). They also note that too few NCPs involve NGOs or trade unions in their activities. And only a few NCPs have begun to link the Guidelines to more influential government policies (such as export promotion privileges or other government incentives).

The OECD Guidelines assert that the NCPs should be: visible, accessible, transparent, and accountable. These are good principles to use for evaluation:

Visibility:

- Is the NCP promoting awareness of the Guidelines through publications, seminars, internet information, targeted information to investors, or information to MNEs applying for export credits, etc.?
- Is this information dissemination effective in raising the awareness and recognition of the Guidelines and NCPs? Can this awareness be measured?
- What can the NCPs do to pro-actively build the visibility and recognition of the Guidelines among MNEs? How do NCPs move beyond passive information presentation (such as web pages) to active, targeted awareness raising?

Accessibility:

- Is the NCP widely known and open to accepting complaints, enquiries, etc.?
- Does the NCP foster new dialogues between stakeholders?
- Does the NCP "forum for discussion" include all key stakeholders and lead to new solutions to existing problems?

Transparency:

- Is the NCP response process publicly transparent?
- Are the determinations of the NCP publicly transparent?
- Are the annual reports of the NCPs available for public review and comment?

Accountability:

- Are there processes for public input or review of NCP annual reports?
- Can the NCPs be compared and "benchmarked" to evaluate individual performance and best practice?
- Can the NCPs be held accountable to their commitments to implement the Guidelines?

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Clearly there is a need to evaluate the advantages and accomplishments of different structures and strategies of NCPs, and to advance learning processes on the functioning of the NCPs. Towards these ends TUAC has issued a "note" on "Good National Contact Points" (TUAC 2001a). This form of analysis could be significantly expanded and deepened.

It is also critical to evaluate whether the NCPs are effective in responding to specific instances of non-conformance to the Guidelines. Different NCPs have developed procedures for responding to specific instances. It will be important to make these processes transparent and to review the effectiveness of different NCP strategies. Much can be learned from country's experiences in responding to complaints in adherent countries (such as Marks and Spencer in France), new adherent countries (such as Estonia), and non-adhering countries (such as Korean companies operating in Guatemala and French companies in Burma).

Of particular importance are the effectiveness of different complaints procedures and the complimentarity of NCP responses to other corporate accountability strategies (*e.g.*, how the Guidelines might support broader efforts to change MNE practices in a particular country). Evaluations should look at how an NCP responded? What actions the NCP took? Did these actions change the behaviour of the MNE? Did the NCP report publicly on the outcome of the case? Did the NCP co-ordinate with other stakeholders working to influence the MNE?

V. Applicability to non-adhering countries

Perhaps the biggest challenge for the OECD Guidelines is how they can be applied to influence operations in countries that are not OECD members or adherents. The Guidelines do apply to MNEs operating in non-adhering countries. These are critical sites of production for MNEs, and in the long-term, these are the facilities that the Guidelines have to influence if they are to be globally effective. However, operations in non-adhering countries are likely to be the most difficult to influence.

If the Guidelines cannot be applied effectively to these countries and cases, then MNEs may simply relocate operations or out-source to these countries and avoid the intent of the Guidelines. Advancing transparency and fuller public disclosure of supply chain operations may be one key step the OECD can take in advancing the Guidelines down the webs of MNE operations and into non-adhering countries.

Strengthening the role of host country NCPs may also strengthen the implementation of the Guidelines. This will facilitate processes through which host country stakeholders can raise instances, and will in turn enhance host country government awareness of internationally accepted standards of socially responsible practice.

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VI. Strengthening the effectiveness of the Guidelines and the National Contact Points

With growing public concern about the operations of MNEs around the world, and the recent proliferation of codes of conduct and corporate responsibility initiatives, key stakeholders are demanding fuller processes of participation and greater public accountability in standards and implementation mechanisms. At the same time, changes in global business practices have led to new sourcing strategies significantly extending supply chains. These trends are creating immense challenges for both regulators and firms themselves. There is thus significant demand for international standards which can be applied across countries and down global supply chains.

The OECD Guidelines offer an important mechanism to respond to these demands. The Guidelines operate at both the global and national levels, and can be applied down supply chains. The National Contact Points provide government support and pressure to motivate the implementation of the Guidelines. And multiple stakeholders can use the Guidelines and the NCPs to raise awareness about the specific activities of MNEs.

However, the Guidelines and NCPs face a number of challenges. First is the challenge of raising the profile and public recognition of the Guidelines. In some regards, the Guidelines are being eclipsed by other initiatives and standards. Greater out-reach is needed to increase public awareness. It may make sense to actually measure the "brand" recognition of the Guidelines through surveys and polls to learn which countries are most effectively raising awareness of the Guidelines.

Second is the challenge of creating processes that effectively respond to specific instances. Annual reporting of NCP activities and responses to complaints will be critical to efforts to benchmark and learn from NCP efforts. Peer learning will be facilitated by comparing the specific activities and overall performance of NCPs, with the explicit goal of identifying both the "best practices" of NCPs (highlighting how governments can play a positive role in advancing corporate social accountability) and identifying ineffective NCPs or inadequate responses to specific instances.

Third is the challenge of creating incentives for implementation of the Guidelines. A number of NCPs are experimenting with using export credits and other government incentives to create positive motivations for implementation of the Guidelines. Public transparency on poor performance can also motivate MNE changes. Transparency mechanisms can help to identify both leaders and laggards in Guideline implementation (Sabel, O'Rourke, Fung 2000). By publicly comparing MNEs and NCPs it may be possible to benchmark both best and worst practices, effective complaint procedures, and processes for stakeholder involvement.

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Fourth is the challenge of creating effective systems of monitoring to ensure that the implementation of the Guidelines is credible and effective. As many NGOs have argued, there is a need for detailed public systems for monitoring and verification to motivate real change in problem areas of MNE activities.

And fifth is the challenge of connecting and co-ordinating the Guidelines with other public and private initiatives in corporate social accountability. Much can be gained from evaluating how the Guidelines can be complementary to these other initiatives. The OECD could facilitate discussions among these initiatives to discuss co-ordination, for instance, in the areas of advancing new transparency and accountability mechanisms, or in responding to specific instances.

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Appendix I

Declaration on International Investment and Mutinational Enterprises

27 June 2000

ADHERING GOVERNMENTS[1]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries.
- That multinational enterprises play an important role in this investment process.
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations.
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments.

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex I hereto,[2] having regard to the considerations and understandings that are set out in the Preface and are an integral part of them".

National Treatment

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment").

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;

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3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment".

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises.

Conflicting Requirements

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto.[3]

International Investment Incentives and Disincentives

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment.

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment.

3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available.

Consultation Procedures

V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council.

Review

VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the Guidelines for Multinational Enterprises is reproduced in Annex II of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD website *www.oecd.org/daf/investment/*.

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Appendix II

The OECD Guidelines for Multinational Enterprises: Text and Implementation Procedures

Text

Preface

1. The OECD *Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these 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. The *Guidelines* are part of the OECD *Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology

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among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in

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ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

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10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information includ-

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ing environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

4. Enterprises should also disclose material information on:

   1) The financial and operating results of the company.

   2) Company objectives.

   3) Major share ownership and voting rights.

   4) Members of the board and key executives, and their remuneration.

   5) Material foreseeable risk factors.

   6) Material issues regarding employees and other stakeholders.

   7) Governance structures and policies.

5. Enterprises are encouraged to communicate additional information that could include:

   a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.

   b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct.

   c) Information on relationships with employees and other stakeholders.

IV. Employment and industrial relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.

   b) Contribute to the effective abolition of child labour.

   c) Contribute to the elimination of all forms of forced or compulsory labour.

   d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. *a*) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.

   b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.

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c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. *a*) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of *bona fide* negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities.

b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and

c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

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2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
   a) provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
   b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
   a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
   b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
   c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
   d) research on ways of improving the environmental performance of the enterprise over the longer term.
7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

VI. Combating bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should

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enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of "off the books" or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

VII. Consumer interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

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VIII. Science and technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
   a) to fix prices.
   b) to make rigged bids (collusive tenders);
   c) to establish output restrictions or quotas; or
   d) to share or divide markets by allocating customers, suppliers, territories or lines of commerce.
2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

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Implementation Procedures

Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960.

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines").

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Committee on International Investment and Multinational Enterprises, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21].

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96].

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1].

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines.

On the proposal of the Committee on International Investment and Multinational Enterprises.

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

I. National Contact Points

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems

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which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Committee on International Investment and Multinational Enterprises.

II. The Committee on International Investment and Multinational Enterprises

1. The Committee on International Investment and Multinational Enterprises ("CIME" or "the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

III. Review of the decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

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Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. *Institutional Arrangements*

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

B. *Information and Promotion*

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the Guidelines from:
   a) other National Contact Points;
   b) the business community, employee organisations, other non-governmental organisations and the public; and
   c) governments of non-adhering countries.

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C. *Implementation in Specific Instances*

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will 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. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.

2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:

   a) Seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts.

   b) Consult the National Contact Point in the other country or countries concerned.

   c) Seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances.

   d) 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. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.

4. *a*) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.

   b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.

5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. *Reporting*

1. Each National Contact Point will report annually to the Committee.

2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

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II. Committee on International Investment and Multinational Enterprises

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
   a) Consider the reports of NCPs.
   b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
   c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
   d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

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