

Outcome of OECD complaint case of German Clean Clothes Campaign against adidas disappointing

OECD Guidelines for Multinational Corporations under examination

Statement of the German Clean Clothes Campaign

Wuppertal, 15 September 2004

We agreed to disagree – this is the key conclusion drawn by the parties involved in an OECD complaint case of the German Clean Clothes Campaign (CCC) on instances of labour rights violations in two Indonesian supplier factories of adidas (see the final communiqué of the German National Contact Point of 24 May 2004 at www.bmwi.de/Navigation/Unternehmer/auslandsgeschaefte.html). Yet, in spite of an overall disappointing outcome of this case under the OECD Guidelines for Multinational Corporations, the German CCC considers it to have been far from a useless exercise. In the following, the CCC makes an assessment of this case combined with proposals for future action.

1. Supply chain instance not controversial

Since the revision of the OECD Guidelines in June 2000, their scope of application has been extended to include worldwide supplier factories of multinational corporations from OECD member countries. In several complaint cases which have been filed since then, this scope turned out to be controversial, especially so in Germany where two cases were not accepted by the National Contact Point (NCP) due to the lack of an investment nexus. However, in the complaint case of the German CCC against adidas, its supply chain nature did not prevent it from being accepted by the NCP. This can be mainly attributed to the fact that adidas itself has broadly promoted its ethical principles for global sourcing since 1999.

In view of the ever growing shift of operations of multinational corporations towards global sourcing, it is imperative to maintain the existing scope of application of the OECD Guidelines including supply chains.

2. Social standards beyond OECD Guidelines provisions

Although the OECD Guidelines, under paragraph IV “Employment and Industrial Relations”, are limited to the core labour standards of the ILO, the complaint case of the German CCC also included violations of the ILO conventions on wages and

hours of work – two key features of working conditions in the garment and sportswear industry not only in Indonesia, but worldwide. Adidas accepted the challenge and referred to the respective CCC criticism in its statements which sets an important precedent for the OECD.

From the beginning, the CCC has argued that the ILO conventions on wages and hours of work should be integrated into the provisions of the OECD Guidelines, since low wages compel workers to work overtime, thereby leading to cases of de-facto forced labour.

3. Publicity and transparency

Since 2000, civil society organisations have criticized the OECD Guidelines because of their lack of transparency. In February 2003, when the German CCC took over the complaint from the Austrian CCC, it broadly publicised this complaint case to the media, much to the displeasure of the German NCP. Press reports did not only cover the view of the CCC, but also statements from adidas. However, during the mediation phase of the case, media work stopped, following the provisions of the OECD Guidelines.

The German CCC opts for more transparency and an opening of complaint cases to a broader public so as to counterbalance the overall weak position of unions and non-governmental organisations (NGOs) in the framework of the OECD Guidelines.

4. NCP Advisory Council helpful

The German NCP is composed of one department only and based at the Ministry of Economics and Labour in Berlin. Since the revision of the OECD Guidelines in 2000, NGOs and unions have been successful in contributing to the establishment of an Advisory Council which closely follows complaint cases and can give recommendations. The CCC continuously informed the unions and NGOs of the Advisory Council about the development of the case thereby spreading these news also to the German and international OECD Watch networks and to TUAC of which they are members. This communication contributed to a more detailed analysis of the strategy of the stakeholders involved and to organising support of the CCC position.

The composition of the German NCP should be extended to include more government departments like in other OECD countries. The function of NGOs and unions in the Advisory Council should be strengthened, and regular communications to a broader public be made possible.

5. Global vs. factory remediation

Confronted with the CCC evidence of labour rights violations in two Indonesian supplier factories of adidas, the company attempted to discredit it as outdated (the violations took place between the end of 1999 up to 2002/2003) and to shift the attention towards its general global ethical programme. The strategy of the CCC, however, was to analyse the cases in detail and call for specific remediation in these

two factories, as well as for general structural corrective actions. The NCP supported the strategy of the CCC, and called on adidas to include detailed answers to specific allegations and objections of the CCC in its reply to the complaint.

Although it is obvious that the emphasis should be laid on structural changes in the overall sourcing policy of companies such as adidas so as to ensure that workers in global supplier factories (and not only in two of them) can work and live in dignity, it is necessary to analyse and remedy specific OECD complaint cases first, thereby laying the ground for general conclusions.

6. Evidence against evidence: the dilemma of NCP mediation

The voluntary nature of the OECD Guidelines and the existing role of NCP mediation offered no mechanism to validate the truth or untruth of the evidence presented by the two parties CCC and adidas. The company qualified the CCC evidence, complemented by the results of detailed new research undertaken in Indonesia in the course of 2003, as outdated, subjective and false, and Indonesian witnesses as unreliable. The CCC rejected much of the information by one factory and by adidas since it did not correspond to statements of witnesses, or contradicted itself. The result was that the proof by the two parties stood opposed to each other, without a perspective of a solution. In the eyes of the CCC, it was therefore useless to continue collecting new data and evidence.

The current mediation role of NCPs provides very limited effects. Dialogue should be geared to developing solutions. There should be an appeal mechanism attached to the present complaint process. OECD cases could for instance be connected to Administrative Courts, Parliamentary Committees, Ombuds(wo)men etc. The mandate of NCPs should be extended to include investigations on their own.

7. CCC proposals for corrective action rejected, but external solution supported

Since there was no agreement between the CCC and adidas on the evidence of labour rights violations in the two factories, adidas also refused to accept any of the respective CCC proposals for corrective action. These proposals included the reinstatement of union members, special trainings and the set-up of a relief fund for 20 workers victimised in one of the two factories. However, at the beginning of 2004, at the joint invitation of adidas and Oxfam Community Aid Abroad, the US verification body the Worker Rights Consortium (WRC) agreed to examine the situation at one of the factories and to assist the efforts of all parties to address worker rights problems. The results of this examination, published at the end of May 2004, confirmed much of (and even more than) the evidence presented by the CCC in the framework of its OECD complaint case. According to the WRC study, adidas accepted a series of corrective actions, some of them very similar to what the CCC had proposed to adidas in the OECD case. It is strange why adidas did not refer to the running WRC investigation when the CCC proposals of October 2003 were discussed at the NCP mediation meeting in February 2004 in Berlin, and why adidas did not opt for the negotiations to be suspended as long as the WRC results were not known.

Once the NCP mediation process will be connected to bodies like Administrative Courts, Parliamentary Committees etc., broader-based investigations into specific cases including steps towards corrective action are supposed to become an official component of the complaint process itself. Parallel examinations are useful to complement these efforts.

8. Unequal burden of material resources

The OECD complaint case of the German CCC against adidas required a considerable input of material resources in terms of time, energy and finance. This represented a heavy burden on the shoulders of the CCC. The German CCC, an alliance of NGOs and unions struggling to finance a small office and one part-time coordinator, had no money available to pay for the expenses of this complaint. Financial input came from the "SÜDWIND Institut für Ökonomie und Ökumene", and the services union "VER.DI", who mobilised finance from their own funds and from the protestant church relief organisation "Bread for the World". For adidas, however, being the second largest sportswear company of the world, with profits of 260 million EURO in 2003 alone, the input into the OECD complaint case will not have been more than "peanuts". The NCP did not offer any funds to run the complaint, not even to finance transports to and from Berlin.

The OECD Guidelines formulate a mandate to member states. The current understanding is that complainants (NGOs and unions) must bear the brunt to prove non-compliance with government obligations. This is not acceptable. OECD countries should equip NCPs with a budget which – as a minimum - allows the refunding of expenses such as travel costs.

9. Involvement of witnesses in production countries

OECD complaint cases rely on reports of witnesses from global supplier factories of multinational corporations and local organisations which are dealt with by NCPs in OECD countries. Currently these witnesses are indirectly represented by unions and NGOs from OECD countries. The logic underlying the OECD Guidelines, however, requires a broader follow-up structure of complaint cases involving the governments of production countries.

The role which witnesses, NGOs and unions from production countries play in OECD complaint cases, should be strengthened by NCP partner structures in these countries. These partner structures should function similar to NCPs in OECD countries.

Final remark

Although the OECD Guidelines for Multinational Corporations are a voluntary instrument to enhance their global social responsibility, they nevertheless compel member governments to follow-up on their compliance through NCP structures. In so far, the OECD Guidelines are a mixture of voluntary and binding regulation. In view of

the limited effects which according to the CCC, complaint cases filed to the OECD have had so far, it seems necessary to strengthen this instrument considerably if it is to fulfil its function. The proposals for future action mentioned above, are options which may be considered at the next revision process of the OECD Guidelines if sufficient public pressure can be generated.

Since their adoption in 1976, the OECD Guidelines for Multinational Corporations have undergone a series of revisions, the latest one involving some remarkable steps forward such as the extension of their scope of application including supply chains.

In the long run, however, a strategy of ensuring the global observance of social and labour standards by multinational corporations through complaint cases will be insufficient. The above-mentioned proposals should therefore be seen as steps towards binding international regulation.

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