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**National Contact Point, Austria**

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**OECD Guidelines for Multinational Enterprises: National Contact Point complaint regarding Adidas and Nike production in Indonesia put forth by the Clean Clothes Campaign Austria**

This complaint is directed towards Adidas and Nike representations in Austria as well as towards their headquarters in Germany (Adidas) and the USA (Nike). Being a campaign which not only represents the interest of workers in the host countries but also of consumers in Austria, we believe that the OECD-complaint mechanism should enable consumers or organizations acting on their behalf to file a complaint in their respective countries.

**Austrian units:**

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**NIKE GmbH,**  
 Pier Paolo Righi, Geschäftsführer  
 Donau City-Str. 11/16  
 A-1220 Vienna, Austria  
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**International Headquarters:**

**Adidas Deutschland**  
 Adi-Dassler-Str. 2; P.O. Box 1120  
 D-91072 Herzogenaurach  
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 Phone: 0049-9132-84-0  
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**Nike World Headquarters**  
 One Bowerman Drive  
 Beaverton, OR 97005-6453  
 USA  
 Phone: 1-800-344-6453

Hereby, the Austrian Clean Clothes Campaign is filing a complaint with the Austrian National Contact Point (NCP) about the corporate conduct of Adidas and Nike with regard to their overseas suppliers/contractors. In our view, the companies' pattern of behavior is not in line with the *OECD Guidelines for Multinational Enterprises* (subsequently referred to as Guidelines). The respective violations against guidelines laid out in Section II (General Policies) and Section IV (Employment and Industrial Relations) will subsequently be described.

Although the complaint is largely based on a particular report on suppliers in Indonesia (*We Are Not Machines*, Timothy Connor, March 2002), it is meant to exemplify general structural shortcomings in the behavior of the two market leaders, rather than just pointing to specific problems occurring with respect to their Indonesian contractors. As a consumer campaign struggling for workers' rights in the global apparel industry, we are focusing on structural corporate policies designed to bring about and sustain decent working conditions in all host countries. While we appreciate any concrete improvements of working conditions in specific supplier-factories, we insist that only structural policies applied to all host countries can ensure that workers can live and produce in dignity. Such an emphasis on structural measures is also reflected in the General Policies Section of the OECD Guidelines, which expects enterprises to develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between them and the societies in which they operate.

When filing this complaint, our interest is not to harm Adidas or Nike. After all, the Guidelines are voluntary and do not envision sanctions in case of non-compliance. Instead, we hope to enter a constructive dialogue leading to policies that will genuinely benefit workers, so they have a real chance to live and produce in dignity. *We Are Not Machines*, the attached report by Timothy Connor clearly demonstrates that this is currently not the case. Adidas and Nike workers in Indonesia live in extreme poverty (Connor, 2002, chapter 7) and they reasonably fear to speak out for their rights (Connor, 2002, chapters 3 and 4). These two issues – decent wages and the workers' right to organize – are at the heart of good corporate government principles and employment relations. When companies do not effectively deal with these core issues but instead focus on others (despite their knowledge of their crucial role) this behavior constitutes an intolerable form of negligence.

Furthermore, we will point out that these issues are also relevant with respect to ILO core labor standards, as expressed in the 1998 *Declaration on Fundamental Principles and Rights at Work*. In the *Commentary on Employment and Industrial Relations*, the OECD-Guidelines acknowledge explicitly all four fundamental principles and rights at work:

The first paragraph of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

As will be shown, freedom of association, the right to collective bargaining and non-discrimination in employment and occupation are principles of particular relevance in this case.

## 1) **The fear to speak out for workers' rights and to organize:**

Chapter 3 and 4 of the attached report (Connor, p. 9-17) reveal a history of intense intimidation and harassment of workers willing to organize or to complain about grievances. The list of intimidating measures against workers/unionists ranges from humiliation to arbitrary arrests or even threats to their health and safety. The result is that many workers are not willing to meet and discuss their rights. Workers are also effectively silenced when they are lead to believe that their complaints will cost them their jobs as a result of relocating orders to other factories.

Bearing in mind reference to ILO's *Fundamental Principles and Rights at Work* Paragraph 1a and 2 of Section IV (Employment and Industrial Relations) of the OECD Guidelines refer to the workers' rights to be represented by trade unions and to engage in constructive and meaningful negotiations on conditions of employment. We understand that the workers in question are not employees of Nike or Adidas, but argue that the Guidelines also require them to take some responsibility with regard to workers' rights to organize, which can be deferred from Paragraph 10 in conjunction with Paragraph 6 and 7 of the General Policies Section (II) of the Guidelines.

At the very least, Adidas and Nike have a responsibility to actively alleviate fears directly related to their practice of placing orders with subcontractors. Various examples in the apparel industry demonstrate that it has become convenient for factory managers to argue that companies will relocate orders if workers continue to complain or organize. Unfortunately, this form of intimidation is not taken seriously enough. For example, when an Indonesian factory manager warned that any further public criticism of factory conditions might lead Nike to move production to other factories in other countries, Nike refused to assure the workers that the company would not cut orders in response to negative publicity, arguing that it had not found evidence for such a statement of the factory manager. Even if Nike genuinely believes no such statements were made, this should not prevent it from meeting with workers and management and reassuring workers that honest comment on factory conditions will not lose them their jobs (Connor, p. 9-10). The dynamics of the global contracting system typical for the apparel industry lead workers to take such warnings of factory managers seriously. Unless companies like Adidas and Nike pursue a policy of actively alleviating such fears, they implicitly contribute to such forms of intimidation.

Both operate global contracting systems that push the costs of unstable consumer markets onto those least able to afford them – young workers from poverty-stricken rural areas in industrialising countries. In order to be able to provide the flexibility and low costs which companies like Nike and Adidas demand, factory owners keep full time wages below what is needed to meet the basic needs of a single worker. This makes most workers desperate to work as much overtime as they can – hence the factory owner is able to fill new orders quickly, whenever they come in. The pressure for maximum flexibility and minimum cost also makes it necessary for factory owners to prevent the growth of active unions, which might stop production or seek to increase wage costs. If contractors are unable to control their workers and keep their costs down, Nike and Adidas can easily move their orders to other companies who are willing to do so (Connor, 2002, p.31).

In order to demonstrate good corporate governance principles and practices (Paragraph 6, General Policies), Adidas and Nike should adopt a policy to actively signal to factory owners and governments in supplier countries that enforcement of labour standards, including increased wages, will not lead to automatic relocation in search of cheaper labour. An additional instrument to back up such signals could be to publicize records/statistics of the level of factory orders to unions/human rights organizations, in order to counter fears that orders are systematically moved to factories without independent unions (currently there is

some fear that orders are shifting towards China and Vietnam for that reason). By making such records available, companies could alleviate fears, grave discrimination against factories with independent unions would be noticed.

As a measure to encourage their suppliers and subcontractors to apply principles of corporate conduct compatible with the Guidelines (Paragraph 10, General Policies), Adidas and Nike should press for the enforcement of workers' rights to organise and bargain collectively. Applied in Indonesia, that particularly means that they also ensure their suppliers minimise the use of contract labour and other hiring and dismissal practices that increase workers' fear that participating in unions could put their jobs in danger. The issue of discrimination against union members when selecting workers for dismissal is crucial, but should be viewed in a wider context of other factory practices designed to hinder unionizing - e.g. the practice of constantly moving unionists from one factory unit to another, or of isolating them in factory units with little contact to other workers (Connor, p. 14-17).

Particularly in host countries with a history of the military being used to suppress unions, Adidas and Nike should ensure that armed soldiers are not employed by factory owners and stationed at factories. More generally, in host countries where discrimination of union activity is frequently being reported, an appropriate measure on the part of Adidas and Nike should be to arrange the establishment of a confidential procedure for workers to notify independent organizations, if they receive any threats or discrimination for union activity. Such structural measures are suitable to serve the spirit of Paragraph 7, General Policies of the Guidelines: *Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust.* Given the dynamics of the global contracting business, only structural measures can assure that the economic rationale does not work in negative way described above.

In cases of concrete threats or intimidation, it is of the utmost importance that Adidas and Nike *immediately* communicate to the workers and the factory management that they do not tolerate such behavior. Under grave circumstances, arranging an independent investigation where the findings are being made public would serve them best to credibly back up their position vis-à-vis contractors and workers (as for example when there is reason to believe that government officials conspire with union busting behavior of factories).

## 2) **The issue of living wages**

Legal minimum wages are insufficient to cover the basic needs of even single workers according to *Wearing Thin: the State of Pay in the Fashion Industry*, a report published recently by The UK network Labour Behind the Label, part of the International Clean Clothes Campaign (see attached report). In response to the shortcomings of legal minimum wages, the concept of a so-called living wage has evolved in recent years:

A living wage enables workers to meet their needs for nutritious food and clean water, shelter, clothes, education, health care and transport, as well as allowing for a discretionary income. It should be enough to provide for the basic needs of workers and their families, to allow them to participate fully in society and live with dignity.

Paragraph 6 of the General Policies of the Guidelines requires enterprises to *support and uphold good corporate governance principles and develop and apply good corporate governance practices.* For a consumer organization like the Clean Clothes Campaign, which is active on behalf of worker's rights, it is impossible to think of such principles and practices

while ignoring the issue of decent wages completely – the main obligation of enterprises vis-à-vis their workers. Adidas and Nike are fully aware that the global contracting system, which serves them well, also has the effect that workers producing their products do not even earn the money to support their own families. It is well known, that minimum wages in a large number of their host countries are set below subsistence levels. Extremely exploitative working conditions have become the norm. Nike funded several studies on wage issues, which demonstrates that the level of awareness of the problem is quite high. Adidas responded to concerns of *Labour Behind the Label* in April 2001 as follows:

We are presently developing a methodology to assess the buying power of wages [...]. Once a methodology has been finalised later in the year, our Standards of Engagement (SoE) Team will be able to monitor the buying power of workers' wages and to assess whether wages are fair. The right methodology should take into account an adequate definition of basic needs, the number of family members, the number of wage earners in a family, and the expectations of the society in question.

Human rights groups have targeted giant companies like Adidas and Nike, because their profit levels mean they can more easily afford to ensure that workers producing their goods are able to live with dignity. Yet both companies, Adidas and Nike are still refusing to publicly commit to a wage standard that would meet the basic needs of a family. By avoiding that issue, they also do not need to deal with the question, which prices to suppliers they need to establish to ensure decent wages can be paid to workers.

Paragraph 8, Section IV of the OECD Guidelines requires enterprises to *enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues*. Paragraph 2a and 2b of the same section requires them to provide facilities necessary to assist in the development of effective collective agreements as well as to provide information needed for meaningful negotiations on conditions of employment. Since the workers in question are not directly employed with Adidas or Nike, it is also necessary to consider Paragraph 10, Section II of the Guidelines, which requires enterprises to *encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines*. Since the phrase “encourage where practicable” is worded rather vaguely, it is necessary to consider which form of encouragement is practicable in this case.

Given that a core element of collective bargaining concerns wage negotiations, one would infer from the above that an enterprise should seek to provide a framework, under which such negotiations can take place in a meaningful way. At the very least, this implies to establish prices to suppliers that reflect the cost of paying living wages. If prices to suppliers are too low, no further means of encouragement to suppliers will lead to meaningful collective bargaining. For a sustainable solution, structural measures suitable to ensure appropriate prices are being paid are necessary. As being laid out in the attached report (Connor 2002, p. 32) this could comprise the following measures on the part of Adidas and Nike: They should

- (1) Commit to ensuring workers are paid full time wages which are at least adequate to meet the basic needs of a family and allow a small amount of discretionary income;
- (2) Carry out research on the value of workers' current wages;
- (3) Consult with local trade unions, human rights and other relevant organizations and academics to determine appropriate living wages in each area;
- (3) Negotiate the level of a living wage with genuine representatives of workers;
- (4) Establish prices to suppliers that reflect the cost of paying living wages.

Given the current nature of the global contracting business, and the position of Adidas and Nike within that business, it would be completely unrealistic to expect that workers producing

for Adidas and Nike in Indonesia will be paid decent wages, unless Adidas and Nike assume direct responsibility in regard to the pending wage issue. Structural reforms designed to accept that responsibility would also help the two companies to adhere to Paragraph 7 of Section II (General Principles) of the Guidelines: *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.*

### 3) The issue of discrimination

Section I of this complaint argued that union members are subject to discrimination, particularly (but not exclusively) in the form of factory dismissal practices. Paragraph 24 in the Commentary to the OECD Guidelines makes specific reference to the issue of discrimination.

Apart from discriminatory practices against union members, we would like to point to the fact that the current wage situation described in Section II of this complaint discriminates parents, particularly women, who are frequently forced to live separated from their children. The Nike-funded Global Alliance research into conditions in Nike contract factories in Indonesia noted in February 2001 that: *"In the focus group discussions, when workers were asked why they sometimes feel sad, some young parents reported living separately from their small children. Those workers explained that due to the lack of affordable child care options and high cost of schools in the greater Jakarta area, they were forced to leave their children behind in their home towns with extended family."* (Center for Societal Development Studies 2001, p.20; cited in Connor, chapter 7). Chapter 7 of the enclosed report by Timothy Connor demonstrates that this problem is not restricted to some young parents but instead is typical for a significant portion of working parents.

Obviously, it would be far-fetched to speak of deliberate discrimination in this case, nevertheless the actual consequence of the dire wage situation is that parents/mothers who decide to live with their children cannot afford to do so while working for Adidas or Nike in Indonesia. Discrimination is not restricted to the realm of deliberate action, but should be viewed in the wider context of actual working conditions. Paragraph 24 in the Commentary to the OECD Guidelines also refers to an extended view of discrimination as opposed to a clear-cut list of discriminatory action:

The principle of non-discrimination with respect to employment and occupation is considered to apply to such terms and conditions as hiring, discharge, pay, promotion, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958 considers that any distinction, exclusion or preference on these grounds is in violation of the Convention. At the same time, the text makes clear that the **terms do not constitute an exhaustive list**. Consistent with the provisions in paragraph 1d), enterprises are **expected to promote equal opportunities for women and men** with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and **prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood**.

For appropriate measures, please refer to Section I and II of this complaint.

#### 4) **Health and Safety**

Paragraph 4b of Section IV of the Guidelines requires enterprises to *take adequate steps to ensure occupational health and safety in their operations*. Since the factories in question are not directly being operated by Adidas and Nike, this requirement again needs to be viewed in conjunction with Paragraph 10 of the General Policies Section. We welcome the concrete improvements, described in the attached report (Connor, p. 24-26), in particular the greater accessibility of sick leave. Regarding the PT Nikomas Gemilang factory, we urge Adidas and Nike to use their influence to ensure that the workers are no longer denied safe footwear that would protect their feet from possible amputation in the case of accidents involving heavy metal moulds and that women claiming their legally-mandated menstrual leave are no longer required to undergo humiliating discriminatory treatment (pulling down their pants in front of factory doctors).

On a more structural level, the companies should investigate typical health hazards of the industry, such as the loss of fingers involving cutting machines and respiratory illnesses. Such investigations should be supported by factory records of injuries, as required by standard health and safety procedures, in order to help identify their causes and assist in preventing them. Co-operating with independent professionals and making the respective findings public would ensure that such endeavors are highly credible and serve to build mutual trust, as envisioned in the Guidelines. Sustaining that trust makes it necessary that workers are informed about the results of inspections, when for example, Nike or Adidas are sending professionals to test air quality in factories.

#### 5) **Annual Leave**

Despite some improvements (especially the introduction of policies for taking leave in a number of factories), there are still significant problems for workers to claim their legally-mandated annual leave (Connor, p. 30). Annual leave is also important with respect to the workers' ability to meet their children. As indicated above, "Adidas and Nike workers in Indonesia live in extreme poverty. Even when significant amounts of overtime are available, wages are so low that they break up families, forcing many workers to live separately from their children" (Connor, 2002, p. 31). Given that additional importance, we urge Adidas and Nike to exert their influence to ensure legally-mandated annual leave can be claimed without fear.

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End of the concrete complaint with regard to Adidas and Nike. The following section is asking for a more general clarification / interpretation of the Guidelines concerning the issue of a living wage.

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## **Request of clarification with respect to the issue of a living wage**

The past years have demonstrated that Adidas, Nike and other apparel companies increasingly understand that the wage issue is a major problem in their global subcontracting business. As a result, companies are beginning to explore, how they can define basic needs of a family within a specific local setting, and how they can monitor, whether their subcontractors are paying adequate wages.

Irrespective of this complaint against Adidas and Nike, we ask the National Contact Point to have the issue of a living wage clarified in more general terms. The OECD Guidelines do not make reference to the concept of a living wage. However, in our view, such an obligation can be inferred both from the Section on General Policies as well as from the Section on Employment and Industrial Relations. Regarding the latter, our arguments have already been laid out in Section II of this complaint, therefore we only repeat a few selected lines here.

Paragraph 8, Section IV of the OECD Guidelines requires enterprises to *enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues*. Paragraph 2a and 2b of the same section requires them to provide facilities necessary to assist in the development of effective collective agreements as well as to provide information needed for meaningful negotiations on conditions of employment. Given that a core element of collective bargaining concerns wage negotiations, one would infer from the above that an enterprise should seek to provide a framework, under which such negotiations can take place in a meaningful way. At the very least, this implies to establish prices to suppliers that reflect the cost of paying living wages. If prices to suppliers are too low, no further means of encouragement to suppliers will lead to meaningful collective bargaining. Given the level of awareness of the industry with regard to the wage issue, good corporate governance principles and practices need to consider wage issues substantially. Fair wages are a major obligation of enterprises vis-à-vis their workers.

With regard to the Section on General Policies, Paragraph 2 is of particular relevance: *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments*. Most governments are internationally obliged to protect universal social rights as an integral part of universal human rights. Their respective national laws on minimum wages are a major measure to protect such rights. Unfortunately, governments in many developing countries are setting minimum wages below subsistence levels, as they desperately compete for foreign investments. Some of them even admit that the minimum wage does not cover basic needs. As a result the host countries' local laws on minimum wages frequently do not reflect the governments responsibility to secure basic social rights of their citizens. In our view, the fact whether governments of host countries are setting minimum wages below or above subsistence levels is less important than their fundamental obligation under international law. The main intention of minimum wage laws is to secure adequate wages. If current levels of the minimum wage are inadequate, we should focus on the generic function of such laws, which is to secure an income that covers at least basic needs.

If we interpret the Guidelines in such a way, that multinational enterprises should focus on the function of minimum wage laws this means that we are asking companies to focus on substance rather than formalism. This clearly extends beyond local law requirements. Nevertheless, such an interpretation is consistent with the Commentary of the Guidelines referring to the very Paragraph 2 cited above:



Commentary on General Policies, Paragraph 2:

Obedying domestic law is the first obligation of business. The *Guidelines* are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.

Interpreting minimum wage requirements with a thorough analysis of their substance clearly is not in conflict to local law, but constitutes a reasonable supplementary principle and standard of behavior. To defer such obligations from rather general international human rights standards is not farfetched but a principle also found with regard to issues not directly concerning employees:

Paragraph 4 of the Commentary on General Policies: On a related issue, while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the government concerned are of particular relevance in this regard.

For companies operating in fields like the global apparel industry such general principles are particularly relevant. This is the case, because governments competing for foreign investors face conflicting interests and rarely challenge the capacity of large multinational enterprises. Local environmental and social standards as well as their enforcement reflect this situation. Paragraph 2 of the *Guidelines'* Section on *Concepts and Principles* establishes a principle that the particular circumstances of each host country should be taken into account.

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.

It is our view that the reference made to local circumstances was not merely created to make it easier for multinational enterprises to justify cases of non-compliance. The wish on the part of companies that difficult situations in particular host countries should be taken into account is quite understandable. At the same time companies can only expect benevolent observers if that principle is also applied to their own sense of responsibility. With regard to the wage issue, this would mean that companies should be particularly sensitive to the issue of fair wages, when they operate in host countries, where minimum wages are set below subsistence levels.

Overall, we believe that the *Guidelines* support a view of corporate social responsibility (CSR) which requires companies to consider the wage issue substantially instead of confining it to the formal issue of local minimum wages. We ask the National Contact Point to consult with CIME, whether such a principle can indeed be inferred from the *Guidelines*. Of particular interest would also be the position of BIAC and TUAC respectively. We are convinced that clarification of this important issue will also increase the *Guidelines'* applicability.

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This complaint has been brought before the Austrian National Contact Point by the Austrian Clean Clothes Campaign.

Sincerely,

Christian Mücke  
Clean Clothes Campaign

**Enclosures/Attachments:**

Main report supporting this complaint:  
Dokument on the issue of living wages:

We\_are\_not\_Machines.pdf  
Wearing\_Thin.pdf