

Mr. Wim van der Leeuw
Ministerie van Economische Zaken
Netherlands National Contact Point for the OECD Guidelines
ALP B/229, Postbus 20101
2500 EC Den Haag, Netherlands

Amsterdam, 15-05-2006

Dear Mr. Van der Leeuw,

Netherlands-based *Milieudedefensie (Friends of the Earth Netherlands)* and *Friends of the Earth International*, together with Philippines-based *The Fenceline Community For Human Safety and Environmental* and Brazil-based *Coletivo Alternativo Verde (CAVE)* and the *Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo (SIPETROL)*, hereby submit to you two specific instances concerning the behaviour of Royal Dutch Shell in the Philippines and Shell's Holding in Brazil¹.

By virtue of the fact that Shell is incorporated in the Netherlands and is publicly-traded on the Amsterdam Stock Exchange, Shell is subject to the principles and standards in the OECD Guidelines for Multinational Enterprises, and we therefore request that these submissions receive immediate attention by the Dutch NCP to ascertain whether the activities in both instances raised constitute breaches of the OECD Guidelines.

We are aware of the procedural guidance that states that specific instances should be filed at the NCP in the country where the alleged breaches occurred. Nonetheless we are filing the specific instance concerning Shell's Brazil Holdings' operations in Brazil at the Dutch NCP, because we have little faith in an effective handling of the issue by the Brazilian NCP. We request the Dutch NCP to actively follow and participate in resolving the case, given the Brazilian NCP's poor past performance in handling cases.

To illustrate this we like to call to your attention the handling of a case by the Brazilian NCP submitted by two Brazilian NGOs against Alcoa Alumínios S.A and Grupo Votorantim. The case was filed in June 2005. In September 2005, the Brazilian NCP accepted the case. Since then, no single action has been taken by the NCP to help and resolve the case. In fact, the head of the Brazilian NCP declared to the complainants that the current political situation in Brazil would make it difficult to resolve the case.

The OECD Guidelines are recommendations for the worldwide behaviour of OECD based Multinational Enterprises. Therefore, we believe the Dutch NCP has a responsibility to ensure that both instances raised regarding Shell's operations in Brazil and the Philippines are handled in an equal manner. Given that both instances are related also stresses the necessity for involvement of the Dutch NCP in both instances.

Milieudedefensie has participated in the recent evaluation undertaken by the Dutch NCP. During this evaluation, we have seen that the Dutch NCP has shown a willingness to improve its functioning related to the handling of specific instances raised. Now we call

¹ Exxonmobil's holding in Brazil is also involved in this instance. The complaint at the Dutch NCP is focussed on the role of Shell.

on you to put these good intentions into practice by playing an effective role in the resolution of the issues raised on an expedited basis.

With regard to the Dutch NCP's handling of this case, we would like to respectfully make the following recommendations:

- We expect the NCP to set concrete timelines for its handling of this case.
- We expect the NCP to seek to facilitate communication and exchange of information between the parties in a manner that is transparent and objective.
- The NCP should set and adhere to concrete timeliness for its handling of the case. For example, the NCP should acknowledge receipt of the complaint seven (7) days after receiving it and conduct an initial assessment within thirty (30) days. The procedures the NCP will undertake to make this assessment should be clearly stated. The NCP should strive to complete the process within three (3) months, and should ensure that the process takes no longer than nine (9) months.
- The NCP should seek to facilitate communication and exchange of information between the parties in a manner that is transparent and functionally equivalent for all parties.
- The NCP should allow both parties to nominate outside experts to consult and provide input on the issue.
- The NCP should offer to hold some of the meetings associated with the specific instance procedure in the Philippines rather than insisting that parties come to the NCP headquarters for all meetings.
- Given that this case involves primarily health, safety and environmental issues, the NCP should allow the Ministry of Spatial Planning, Housing and the Environment (VROM) to take the lead in resolving the case.

As is allowed by the Procedural Guidance regarding confidentiality, the Complainants have publicized the filing of this complaint; however, it is the Complainants' understanding of the Procedural Guidance that neither party is to make public any new information learned after the NCP has decided to accept the complaint. The Complainants' maintain their right to continue to campaign on information that is already in the public domain.²

SOMO (Centre for Research on Multinational Corporations) in the Netherlands, and of the coordinators of OECD Watch has provided guidance and advice in drafting these complaints. We would therefore like to continue to involve SOMO in the further proceedings of the cases as outside advisers.

Kind regards,

Netherlands:

PAUL DE CLERCK
Friends of the Earth International
PO Box 19199
1000 GD Amsterdam, the Netherlands
Tel: +32 2 5426107 (in Belgium)
paul@milieudefensie.nl

² For more information on the complainants' view of confidentiality and transparency, please see the OECD Watch briefing paper, "The Confidentiality Principle, Transparency and the Specific Instance Procedure", February 2006, available at http://www.oecdwatch.org/docs/OW_Transparency-Confidentiality_Briefing_Paper.pdf.

ANNE VAN SCHAİK
Milieudefensie (Friends of the Earth Netherlands)
Postbus 19199
1000 GD Amsterdam, the Netherlands
Tel: +31 20 6262 620
anne.van.schaik@milieudefensie.nl

Philippines:

VLADIMIR ALARIQUE T CABIGAO
Lawyer
2507 Santo Niño Street,
Pandacan, Manila,
The Philippines 1011
Mobile No. +639178338107
vladimir@cabigaolaw.info

FELIX C MAJABAGUE JR.
Barangay 835, Zone 91
Pandacan, Manila,
The Philippines 1011
Mobile No. +639278786600
felixcmjr@yahoo.com

RHODELE GABAC
2961 Lorenzo dela Paz,
Pandacan, Manila
Philippines 1011
Tel. No. +6324336831
Mobile No. +639275227962
rdlgabac@yahoo.com

Brazil:

CESAR AUGUSTO GUIMARÃES PEREIRA
Director - Coletivo Alternativa Verde – CAVE
PO Box 111
Santos/SP/Brazil, Zip 11010-010
Tel. No. +55-13-32270454
cesar1961@hotmail.com

VALDENIR DA CRUZ SANTOS
Employee of Rocha & Maio S/C Ltda (Company managed by Shell Brazil Ltda – Pool
São Paulo)
Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo –
SIPETROL
Rua Carlos Petit, 261 – São Paulo, Brazil – CEP: 04110-00

REGINALDO INÁCIO CARVALHO
Employee of Rocha & Maio S/C Ltda (Company managed by Shell Brazil Ltda – Pool
São Paulo)
Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo –
SIPETROL
Rua Carlos Petit, 261 – São Paulo, Brazil – CEP: 04110-00

To: The National Contact Point (NCP) of the Organization for Cooperation and Economic Development (OECD)

**Ministerie van Economische Zaken
Netherlands National Contact Point for the OECD Guidelines**

Subject: Complaint on violations of the OECD Guidelines for Multinational companies

Coletivo Alternativa Verde (CAVE), the Labor Union of Petroleum By-Products Workers in the State of São Paulo (SIPETROL), Friends of the Earth Netherlands (MILIEUDEFENSIE) and Friends of the Earth International come respectfully to file a COMPLAINT in light of the fact that:

the company SHELL, transnational corporation with home office in The Hague / The Netherlands, being that the Brazilian branch is controlled in its entirety by SHELL BRAZIL HOLDING BV with home office in The Hague / The Netherlands, PO. Box 162, 2501 AN, The Hague, The Netherlands

and

the company ESSO, transnational corporation with home office in Houston/Texas/USA, being that the Brazilian branch is controlled in its entirety by EXXONMOBIL BRAZIL HOLDINGS BV, Graaf Engelbertlaan 75, Breda, The Netherlands

have formed since 2001 the POOL SÃO PAULO, that is the operational, commercial and administrative association of the Petroleum By-Products Terminal of Vila Carioca for the storage, operation and trade of petroleum by-products, with its home office on Rua Auriverde 2028, Vila Carioca, District of Ipiranga, São Paulo / São Paulo / Brazil – ZIP: 04222-002,

companies that in operational association have a social and environmental inadequate practice from the ethical, transparency and responsibility points of view.

THEY HAVE VIOLATED AND STILL VIOLATE the Chapters II and V of the OECD Guidelines for Multinational companies, according to the description below³.

- **Description**

The OECD Guidelines for Multinational companies are voluntary instruments that orientates the social and environmental responsible practices of transnational companies. The Guidelines prescribe a solid economic development tuned to the greater interests of society of the member countries and other signatory countries, as Brazil.

The Chapter II of the OECD Guidelines (Guidelines) recommends that the companies must contribute to the economic, social and environmental progress so as to assure sustainable development (item 1). The caput of Chapter V of these Guidelines addresses specifically the Environment, determining that "the companies must, within the legal, normative and administrative practice in effect in the countries where they develop their respective activities and complying with the agreements, principles, goals and relevant international standards, take into due consideration the necessity of protecting the environment, the

³ The complaint to the Dutch NCP is only filed against Shell, being a company of Dutch origin.

public health and the safety and, overall, carry out their activities so as to contribute to the greater objective of sustainable development”.

According to the Guidelines, the companies must keep an environmental management that includes the collecting and the evaluation, within sufficient advance, of adequate information concerning the impact their respective activities could have on environment, health and safety (Chapter V, item 1).

The transnational companies must particularly evaluate and consider, in their decision making, the impact on the environment that can be caused by the procedures, assets and services of the company throughout all of its life span. As established by the Guidelines, “whenever the predicted activities can have a significant impact on the environment, health and safety and in case they are subjected to decision from competent authority, the companies will have to carry out an adequate assessment of the environmental impact” (Chapter V, item 3).

The OECD Guidelines orientate the transnational companies to “abstain of exceptions not included in the legal range in areas as that of the environment” (Chapter II item 5). However the several Terms of Compromise and Practice Adjustment (TAC) with the Public Ministry of the State of São Paulo and Labor Public Ministry agreed have been nothing but an exception to the rule, a deceit to bypass the ordinary legislation, the international pacts, the Federal Constitution itself and the State and Municipal legislation’s. The norms and procedures of Environmental Assessment, Public Health and Occupational Environment were also disregarded.

The practices here presented conferred a fake appearance of legality to the continuity of the activities of storage, industrialization and trade of POOL SÃO PAULO and the involved companies SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA., in spite of all outstanding social environmental damage. This when the Guidelines state “that non-existence of absolute scientific certainty will not be used as an argument to postpone the adoption of efficient and economic viable measures that allow preventing or minimizing this damage” (Chapter V, item 4).

The Technical Report about Workers’ Health of POOL SÃO PAULO (Appendix 1), of the Health State Secretary, is conclusive and direct – and in an institutionalized, legal and accredited form helps us to corroborate these violations of the Guidelines:

- 1) On the pages 15 to 27 it relates to the issues concerning directly to the worker’s health and the possible 65 diagnosis due to contacts with the contaminants and the frauds of the PCMS/PPRA and of the CIPAS, by the way all regulated by the Ministry of Labor and Employment;
- 2) On the pages 55 to 60 it relates to all the offenses committed by SHELL BRASIL and ESSO BRASILEIRA DE PETRÓLEO in their commercial, industrial and storage operations, offenses against the Federal, State and Municipal Legislation, as well as the Technical Norms of the Petroleum National Agency (ANP), the Technical Norms Brazilian Association (ABNT) and the International Norms and Conventions ratified by Brazil at the International Labor Organization (ILO). When the document was formally handed in to SHELL BRASIL LTDA, this company also received an Offense Notification from the Occupational Health Surveillance, indicating how high the degree of irregularities evidenced by the Work Group was;

- 3) The referred document also presents clearly the hazards for the surrounding community of the POOL SÃO PAULO.

Much the same way as the OECD Guidelines establish the duty of the companies of respecting the Human Rights conforming to international compromises assumed by the countries in which they have their activities (Chapter II, item 2); also Brazil, in its Federal Constitution (6th article), in the International Human, Economic, Social and Cultural Right Pact (articles 10 and 11) and in the American Convention of Human rights (articles 17 and 11); acknowledges the right to human dignity. However this principle has been wounded in its essence, both from the point of view of the workers and the very life in the surroundings of the POOL SÃO PAULO.

Requests to the Dutch National Contact Point:

1. That the present complaint be accepted and processed in all of its terms so that it can be judged, and thus strengthen and promote respect to the OECD Guidelines for Multinational companies in Brazil;
2. That compliance to the OECD Guidelines will be strongly recommended to the companies involved, in their present and future endeavors;
3. That a negotiation channel be opened between the companies hereby complained against and the Coletivo Alternativa Verde (CAVE) - with the participation of the Labor Union of Petroleum By Product and Ore Workers in the State of São Paulo (SIPETROL) and its homologous in Rio de Janeiro and other organs and public organizations involved - under supervision of the National Contact Point in order to investigate and follow the execution of the compromises agreed upon in the Terms of Compromise and Practice Adjustment (TAC);
4. That it be recommended to the companies hereby complained against that they respect and observe the orientations of the International Labor Organization (ILO) and the World Health Organization (WHO), chiefly concerning the formulation of non-aggressive alternatives towards the population, the workers and the environment – thereby conforming to premises of the OECD Guidelines;
5. That it be recommended to the companies hereby complained against the immediate bringing into practice of the recommendations of the HEALTH SECRETARY OF THE STATE OF SÃO PAULO (Pages 15 to 27 and 55 to 60);
6. That it be recommended to the companies hereby complained against that they grant popular participation, union participation of workers and participation of organized civil society in the process of quantification and qualification of the environmental liabilities, public health and occupational health. This will allow the true assessment of the environmental impact in a more scientific and social manner with regard to the monitoring of mitigating and compensatory measures. As well as the due respect to human, economic, social-environmental and cultural rights of the populations and workers, suffering the impact in the area of the POOL SÃO PAULO. All of this is in according to what the OECD Guidelines recommend and point out.

Also attached below is a history and a timeline of the violations and facts mentioned in this complaint.

In these terms, we request its acceptance.

Amsterdam, May 15, 2006

CESAR AUGUSTO GUIMARÃES PEREIRA

Director Coletivo Alternativa Verde (CAVE)

VALDENIR DA CRUZ SANTOS

Employee of Rocha & Maio S/C Ltda (Company managed by Shell Brazil Ltda – Pool São Paulo)

Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo – SIPETROL

REGINALDO INÁCIO CARVALHO

Employee of Rocha & Maio S/C Ltda (Company managed by Shell Brazil Ltda – Pool São Paulo)

Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo – SIPETROL

ANNE VAN SCHAİK

Campaign Head Friends of the Earth Netherlands (Milieudefensie)

PAUL DE CLERCK

Coordinator Corporate Campaign Friends of the Earth International

Appendix 1 -

Health Secretary of the State of São Paulo – Coordination of Disease Control – Sanitary Surveillance Center – Worker Sanitary Surveillance Division – Technical Report from the Worker Sanitary Surveillance – Shell Brazil S/A (Ipiranga Base / BIP I) – Lawsuit DIR – I – n.º 001/0101/19654/2002 – São Paulo, December 1st 2005

Appendix 2 – Timeline of facts and violations

1942 – Installation, trade and operation of the Petroleum By-Product Terminal of Mooca of ESSO BRASILEIRA DE PETRÓLEO LTDA.

1949 – Installation, trade and operation of the Petroleum By-Product Terminal of Vila Carioca of SHELL BRASIL LTDA.

1965 – Installation, trade and operation of Shell chemical inside the complex of Petroleum By-Product Terminal in Vila Carioca.

1981 – Installation, trade and operation of the ExxonMobil Chemical Ltda. Within the Petroleum By-Product Terminal in Mooca.

1993 – The Petroleum By-Product and Ore Workers Labor Union in the State of São Paulo – SIPETROL and GREENPEACE BRASIL file complaint against SHELL BRASIL LTDA. in the Public Ministry of the State of São Paulo (ICP - Public Civil Inquiry # 001/93 – Environment Justice Attorney Office of the Capital / São Paulo -, on account of the burial of toxic dregs in the restraint basins of the tanks and the probable environmental contamination of the site and surroundings (neighborhood).

1993 – The Environmental Director of SHELL BRASIL LTDA., Mr. Christian Dobereiner, in interview to the newspaper Gazeta Mercantil, states that “all the petroleum distributors had and have the practice of burying toxic dregs within their “sites”.

1993 – The Environment State Secretary of CUT – Central Union of Workers (São Paulo), launches its first newspaper where it denounces SHELL BRASIL LTDA and the environmental problems at Vila Carioca, predominantly working class-based neighborhood in São Paulo.

1994 – The first report of environmental assessment already points out the contamination and also points out the soil, sub-soil, shallow and deep ground water and deep underground waters, not only with toxic dregs originating from petroleum by-products, but also showed the contamination with organochlorines (Aldrin, Dieldrin, etc... Shell’s trademarks worldwide and now also in Brazil.

1994 – SHELL CHEMICAL self-denounces at the Public Ministry of the State of São Paulo – Paulínia’s Environment Justice Attorney Office.

1994 a 2001 –SHELL BRASIL LTDA. and CETESB in collusion, give no publicity to the environmental assessments of the site, thereby generating animosity before SIPETROL-SP, GREENPEACE BRASIL that demanded the Public Ministry of the State of São Paulo for measures.

2001 – ESSO BRASILEIRA DE PETRÓLEO LTDA removes equipment from the Petroleum By-Product Terminal of Mooca, being that SIPETROL-SP and CAVE file complaint in the

Public Ministry of the State of São Paulo (ICP – Public Civil Inquiry # 035/01 – Environment Justice Attorney Office of the Capital / São Paulo), because the company was already selling the lot for a mall enterprise and the construction of luxury flat buildings, being that the Public Ministry of the State of São Paulo had forbidden the sale, without firstly assessing the environmental issues thoroughly, so high the degree of contamination was that could be evidenced visually. The report of the Public Ministry expert, engineer Élio Lopes dos Santos Filho, found a water gallery of SABESP (Treated Water Distributor of the State of São Paulo) within the site of ESSO.

2001 – SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA. make up the POOL SÃO PAULO, being that the environmental assessment report issued by company CSD Geoclock already pointed out the environmental contamination and the effects on the workers (benzene), and the engineers of ANP – Petroleum National Agency, in inspection carried out, certify that there aren't dwellers in the surroundings of the Petroleum By-Product Terminal da Vila Carioca - POOL SÃO PAULO.

2002 – The Paulista press (newspapers Folha de São Paulo, Diário de São Paulo, O Estado de São Paulo, Gazeta Mercantil, etc.) start the reports about SHELL BRASIL LTDA. and the contamination in Recanto dos Pássaros by SHELL CHEMICAL Paulínia.

2002 – The Public Ministry of the State of São Paulo expert, engineer Élio Lopes dos Santos Filho, is commissioned to perform the environmental assessment of Recanto dos Pássaros and SHELL CHEMICAL in Paulínia., being that he uses the technical reports from Vila Carioca, and newspaper publicity starts encompassing the case Paulínia and the case Vila Carioca, as well as the case Esso in Mooca.

2002 – The Environment Commission of ALESP - Legislative Assembly do State of São Paulo - holds a public hearing on the issue SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA., requesting the formation of a CPI – Inquiry Parliament Commission. In the voting of leaders in favor of the CPI in ALESP's plenary assembly, but there was no agreement and the requirement was archived.

2002 – Recorded the first public demonstrations of the Vila Carioca dwellers, demanding explanations from SHELL and ESSO about the environmental contamination.

2002 – SHELL BRASIL LTDA. calls a press conference at the POOL SÃO PAULO and explains that the contamination is not restricted to petroleum by-products, but also organochlorines (Aldrin, Dieldrin, etc) that were buried together with the toxic dregs that were the residues of SHELL CHEMICAL's production and that the extent of contamination was already outside the limits of their site.

2002 – The State Health Secretary applies the Sanitary Code of the State Of São Paulo and determines the formation of a Work Group - GT – to perform the assessment of environmental and occupational environmental contamination, and also formalized a GT jointly with the Health Secretary of the City of São Paulo for the evaluation of the POOL SÃO PAULO's neighborhood dwellers' health.

2002 – The City Hall of São Paulo files two lawsuits in the State Justice Department (against SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA.) for the shutdown of the POOL SÃO PAULO; the Justice accepted the lawsuits. The resource filed by SHELL BRASIL LTDA. had no success but Esso's resource did.

2002 – The SIPETROL-SP and CAVE file the complaints involving the Petroleum By-Product Terminal of Paulínia (largest petroleum by-product distribution pole in Brazil and the third largest in the world), the complaint being promptly accepted by the Public Ministry of the State of São Paulo – Environment Justice Attorney Office of Paulínia, and 34 (thirty-four) Distributors, among them SHELL BRASIL LTDA., ESSO BRASILEIRA DE PETRÓLEO LTDA., CHEVRON DO BRASIL LTDA., REPSOL-YPF DO BRASIL LTDA., PETROBRAS DISTRIBUIDORA S/A, COMPANHIA BRASILEIRA DE PETRÓLEO “IPIRANGA”, and so forth were fined by CETESB (Environmental Agency of the State of São Paulo).

2002 – SIPETROL-SP and CAVE file environmental complaint at the Public Ministry of the Amazon against PETRÓLEO SABBÁ S/A in Manaus / Amazonas, being that this company is entirely controlled by SHELL BRASIL LTDA.; the complaint is based upon the Environmental Crime Law, because the company washes its petroleum by-product tanks, its tank trucks and its tank barges with the water of the river Negro, being its toxic residues dumped *in natura*, with no treatment, contaminating the river Negro and all of its estuary.

2002 – 2003 – Several visits are carried out by the GTs, and in São Paulo’s City Council is installed the Fuel CPI being that the result of this CPI based the Federal Criminal Lawsuit against SHELL BRASIL LTDA. placing it in the Environmental Crime Law and in fraud of federal documents together with the ANP – Petroleum National Agency.

2003 – The Labor Public Ministry – Regional Attorney Office of the 2nd Region (São Paulo), started an ICP – Public Civil Inquiry (IC 6363/2003) against SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA., to investigate the quantitative and qualitative of the occupational health liability of Shell’s own workers, outsourced workers, co-operative workers, retired from and dismissed from SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA. – POOL SÃO PAULO.

2003 – 2004 – The Unique Central of Workers – CUT put together a seminar on the issues concerning SHELL BRASIL LTDA. and ESSO BRASILEIRA DE PETRÓLEO LTDA. with the unions involved, that resulted in a series of meetings with the management representatives of SHELL BRASIL LTDA., being that the meetings started lingering without any concrete proposal from the company, and when ESSO BRASILEIRA DE PETRÓLEO LTDA. was invited to participate in the meetings both SHELL and ESSO voided any future proposal of scheduling new meetings.

2004 – Started hearings of the Federal Criminal Justice concerning SHELL BRASIL LTDA. and ANP - PETROLEUM NATIONAL AGENCY, being that the two engineers responsible for the fraud of the Operation Report of POOL SÃO PAULO benefited from Law 9990/90 and are paying monthly each one two basic baskets of food for two charity institutions of the capital, and have to appear every month at the Federal Justice Notary to sign a book and can’t travel overseas. As SHELL BRASIL LTDA. is a juridical person the federal judge proposed a judicial agreement with several clauses to benefit the population of the POOL SÃO PAULO surroundings; Shell is supposed to present a counter-proposal.

2005 – from June 22nd to 30th the SIPETROL-SP and CAVE are represented in the Worldwide Meeting of Shell Stockholders in The Hague and in London, staging demonstrations with representatives from South Africa, Nigeria, Philippines, Curaçao, USA, Ireland, the Netherlands, England, Russia against the worldwide policy of SHELL concerning environment and public health.

2005 – On December 8th, CAVE and SIPETROL-SP were represented in the meeting with the worldwide CEO of ROYAL DUTCH/SHELL GROUP, Mr. Jeroen van der Veer, at the

home office of the company in The Hague / The Netherlands, together with representatives from South Africa, Nigeria, Philippines, Curaçao, USA, Ireland, the Netherlands and England; SIPETROL-SP and CAVE handed to the CEO the Technical Report on the health of the POOL SÃO PAULO's workers issued by the Health State Secretary (São Paulo).

2005 – SHELL BRAZIL LTDA. propose a TAC - Term of Compromise and Practice Adjustment concerning the POOL SÃO PAULO's workers occupational health and ESSO BRAZILEIRA DE PETRÓLEO LTDA. only adheres after having the dismissal homologations of its workers frozen by the SIPETROL-SP.

2005 – The environmental assessment reports of the Petroleum By-Product Terminals in Paulínia, involving SHELL / ESSO / CHEVRON / BR DISTRIBUIDORA / IPIRANGA / REPSOL YPF and other minor distributors have been untouched for exactly 18 months at the Operational Supporting Centers of the Environmental and Urbanism Justice Attorney Offices, consultant organ for the Environmental Justice Attorney Office of the Public Ministry in the State of São Paulo.

2005 – Health State Secretary hands in formally to SIPETROL-SP, SHELL BRASIL LTDA., ESSO BRAZILEIRA DE PETRÓLEO LTDA, Federal Public Ministry, Labor Public Ministry, etc., the POOL SÃO PAULO's workers' health assessment technical report, where Offense Report was issued as well against SHELL BRASIL LTDA. for repeated offense against laboral environment.

2005 – The Public Ministry of the State of São Paulo – Environmental Justice Attorney Office of the Capital presents publicly the first preliminary report on the health of Vila Carioca's dwellers, elaborated by São Paulo's Municipal Health Secretary.

2005 – SIPETROL-SP, CAVE and o Petroleum By-Product and Ore Workers Labor Union in the State of Rio de Janeiro – SITRAMICO-RJ filed a complaint at the Federal Public Ministry – Republic Attorney Office of the State of Rio de Janeiro, at the Labor Public Ministry – Regional Attorney Office of the 1st Region (Rio de Janeiro) and in the Urban Development and Environment State Secretary (Rio de Janeiro), with a request for extension of the environmental public and occupational health against the Portuary Terminals and Lubricant / Chemicals Production Terminals of SHELL BRAZIL LTDA. and ESSO BRAZILEIRA DE PETRÓLEO LTDA. at Governador Island / City of Rio de Janeiro.

2006 – February – ILO – International Labor Organization based on Geneva, Switzerland, has accepted the complaint against Shell Brazil Ltda and Esso Brasileira de Petróleo Ltda. – Pool São Paulo, complaint formulated by SIPETROL-SP.

2006 – Fevereiro – The Federal Accounting Court – TCU – Brasília / Brazil, accepted the complaint against Shell Brazil Ltda. and Petroleum National Agency – ANP, and is starting audition about the daily volume of production of raw petroleum at the rig Bijupirá-Salema – coast of the state of Espírito Santo – Basin of Campos.

The complexity in addressing environmental issues involving SHELL BRAZIL LTDA. and ESSO BRAZILEIRA DE PETRÓLEO LTDA. has a very important meaning, because it exposes the practices of these transnational companies in the Brazilian territory, even taking into account that the salaries applied in Brazil are among the lowest levels in its worldwide structure and the environmental and human rights situation affects not only its workers but also the population surroundings their industrial and commercial facilities.

Even so these two companies that made up the POOL SÃO PAULO frauded the Operation Report issued by the Petroleum National Agency - ANP, neglecting all measures of protection of workers and surrounding population to make a destructive commercial and industrial activity prevail.

CETESB (Environmental Agency of the State of São Paulo), is also a defendant in the Public Civil Lawsuit filed against SHELL BRAZIL LTDA and POOL SÃO PAULO, by the Public Ministry of the State of São Paulo.

It is worth pointing out that ESSO BRAZILEIRA DE PETRÓLEO LTDA. is a repeat offender in environmental crimes and appears in Environment State Secretary's Technical Report as a direct participating entity in the environmental, occupational and public health issues of the POOL SÃO PAULO.

Complaint on the violations of PILIPINAS SHELL PETROLEUM CORPORATION, pursuant to the OECD Guidelines for Multinational Enterprises

May 15, 2006

Mr Wim van der Leeuw
Ministerie van Economische Zaken
Netherlands National Contact Point for the OECD Guidelines
ALP B/229, Postbus 20101
2500 EC Den Haag, Netherlands

Dear Mr Van der Leeuw:

THE FENCELINE COMMUNITY FOR HUMAN SAFETY AND ENVIRONMENTAL PROTECTION, a not-for-profit organization based in Pandacan, City of Manila; Netherlands-based Milieudefensie (Friends of the Earth Netherlands); and Netherlands-based Friends of the Earth International (*hereinafter* “*the Complainants*”) request that the Dutch National Contact Point ascertain whether Royal Dutch/Shell (*hereinafter* “*Shell*”) has violated the following sections on the OECD Guidelines for Multinational Enterprises with respect to the operations of the Pilipinas Shell Petroleum Corporation’s (*hereinafter* “*PSPC*”) oil terminal in Pandacan and facilitate a resolution of the issues raised in this complaint⁴:

1.) Manipulations of local government

- Chapter II, Section 5 on refraining 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.
- Chapter II, Section 11 on abstaining from any improper involvement in local political activities.
- Chapter VI on directly or indirectly offering, promising, give or demand a bribe or undue advantage to obtain or retain business or other improper advantage.

2.) Concealment of negotiations with government and environmental/health risks of activities

⁴ UFO-OD has provided inputs to this complaint.

- Chapter III, Section 4(e) on the disclosure of material information on material foreseeable risk factors.
- Chapter V, Section 2 on the following:
 - a. Failure to provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise;
 - b. Failure to 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.) Lack of specific plans to mitigate the hazards at the oil depot.

- Chapter 5, Section 5 on the failure to maintain contingency plans for preventing, mitigating and controlling serious environmental and health damage from its operations, including accidents and emergencies, and mechanisms for immediate reporting to the competent authorities.
- Chapter 5, Section 6 on the failure to adopt technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.

Applicability of the Guidelines

PSPC is a subsidiary of the parent company Royal Dutch/Shell. By virtue of the fact that Shell is incorporated in the Netherlands, a country which has signed the 1976 OECD Declaration on International Investment and Multinational Enterprises, and is publicly-traded on the Amsterdam Stock Exchange, Shell is subject to the principles and standards in the *OECD Guidelines for Multinational Enterprises*.

The corporate headquarters of PSPC in the Philippines is at:

Shell House
 156 Valero Street,
 Salcedo Village,
 Makati City 1227
 PHILIPPINES
 Trunkline +63 2 8166501
 Fax no. +63 2 8166565

Shell was incorporated in the Netherlands and is publicly-traded on the stock exchange in Amsterdam, as well as in London and New York. Shell's managing director is Jeroen van der Veer, and the company has its headquarters at:

Carel van Bylandtlaan 16
2596 HR Den Haag
The Netherlands

According to the company's website (www.shell.com), Shell can be reached through the following contact information:

Mail: Postbus 162, 2501 AN Den Haag, the Netherlands
Telephone: +31 (0)70 377 9111

The factual antecedents

The oil terminal of PSPC/Shell, together with Chevron Texaco and Petron's, in Pandacan sits on a thirty-three (33) hectare property, in the midst of eighty four thousand (84,000) inhabitants in the community, in a highly urbanized area, in the City of Manila.

After the September 11 attack on the United States in 2001, the City of Manila, through its City Council, conducted a review of the safety of allowing the oil terminal of the three oil companies to remain in Pandacan.

After the hearings and public consultations, the City Council came up with a Committee Report⁵, dated 21 May 2002. According to the report, among others, PSPC/Shell has a total storage capacity for gasoline, diesel, bunker oil, jet fuel, kerosene and liquefied petroleum of 63,219,000 liters and maintains 40,796,000 liters as an average daily stock level for all products in the Pandacan oil terminal. Further, the committee has reported that PSPC is "holding enormous quantity of daily stock level for highly volatile products totaling 27,859,000 liters comprised of gasoline, jet fuel, kerosene and liquefied petroleum."⁶

Another Committee Report⁷ (*hereinafter "Asuncion Report"*) indicated that the oil depot facility in Pandacan contains three hundred thirteen million five hundred thousand (313.5 million) liters of highly flammable and volatile products which include petroleum gas, liquefied petroleum, aviation fuel, diesel, gasoline, kerosene, among others.

The Asuncion Report further stated that a buffer zone or open spaces to separate incompatible land uses where no permanent structures are allowed would have been a perfect solution to safeguard the safety of the community around. At present, the area is surrounded by formal and informal settlers without an existing buffer zone and the oil depot. *Without the existence of the buffer zone, the oil depot had*

⁵ A copy of the Committee Report, dated 21 May 2002, is hereto marked and attached as Annex A. The committee that drafted this reported was chaired by Councilor Edward Tan.

⁶ Page two of the Committee Report.

⁷ A copy of the Committee Report is hereto marked and attached as Annex B. The committee that drafted this report was chaired by Councilor Jocelyn Dawis-Asuncion.

seriously put a threat to the lives and properties of the residents of Pandacan. Standard practice for international oil depot facilities is to have kilometer-wide buffer zones that separate the residential areas from the oil depot facility.⁸ In Pandacan, on the contrary, only a fence separates the residences from the oil depot facility.

The Asuncion Report continued to state that no specific action plan or security measures were presented at the public hearing that would prevent a large-scale terrorist or malicious attack, and that the oil depot poses a grave risk to the safety of the people in its neighboring community. It could not be gainsaid that the oil depot is a vital installation that could be the object of a terrorist attack. Any accident, whether caused by natural calamities, human error or equipment failure, will always pose a threat to the safety of the facility and its environ. Any accident that may occur therein would be a catastrophic disaster.

Finally, it was found out in the public hearing of the committee of Councilor Asuncion that PSPC/Shell has violated Presidential Decree 1185⁹ and Metro Manila Ordinance No. 82-03 from 1985 up to the time the public hearing was conducted¹⁰. This violation includes, among others, the absence of automatic fire suppression system, smoke/heat detector at the LPG filling plant, the failure to secure storage permit for inflammable/combustible materials, absence of storage permit for the LPG system stored in a pressure vessel, failure to secure a permit for above ground tanks of flammable combustible and non-combustible materials.

The aforesaid committee reports have brought about the passage of Ordinance No. 8027¹¹ on 28 November 2001. This ordinance has reclassified the land use of the Pandacan oil terminal from industrial II to commercial I. Under the said ordinance, PSPC/Shell was given a period of six (6) months from the date of the efficacy of the ordinance within which to desist and cease its operation of businesses which are thereby, in consequence, disallowed.¹²

The ordinance became effective on 28 December 2001, fifteen (15) days after the same was published in a newspaper of general circulation¹³, pursuant to Section 6 of the ordinance.

On 26 June 2002, or two (2) days prior to the taking effect of the reclassification of the Pandacan oil terminal from industrial II to commercial I, PSPC/Shell entered into a Memorandum of Understanding with the City of Manila in order to circumvent the spirit and letter of the ordinance. In the agreement, PSPC/Shell undertook to scale down its operation, instead of completely removing its facility from the Pandacan oil terminal and to create a "green zone" to surround the Pandacan Terminal (Please

⁸ Page three of the Asuncion Report.

⁹ Presidential Decree 1185 is otherwise known as the Fire Code of the Philippines. Please visit www.ndcc.gov.ph/ndcclaws.htm.

¹⁰ As testified to by Supt. Pablito Cordeta of the Bureau of Fire, mentioned on page 10, second paragraph of the Asuncion Report.

¹¹ A copy of Ordinance No. 8027 is hereto marked and attached as Annex C.

¹² Section 3, Ordinance No. 8027.

¹³ The ordinance was published on 13 December 2001 in Malaya, newspaper of general circulation.

refer to Section 1, Article 1, of the Memorandum of Understanding, dated 26 June 2002). The "green zone" that was adverted to by PSPC/Shell in the Memorandum of Understanding later became what is now known as "linear park" where the elderly take a walk and where the children play for fun everyday.

Sometime in 2002, a City of Manila alderman filed with the Office of the Ombudsman a complaint for violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019)¹⁴ against the Mayor of the City of Manila relating to the memorandum of understanding with PSPC/Shell and with the other two oil companies. The Office of the Ombudsman, after careful study of the complaint against the Mayor of the City of Manila, has given due course to the complaint of the alderman and recommended¹⁵ that administrative and criminal charges be brought against not only the Mayor of the City of Manila but also against the chairman and president of PSPC/Shell for having connived with the government officials in violating Ordinance No. 8027.¹⁶

On 4 December 2002, a Petition for Mandamus was filed with the Supreme Court by the Social Justice Society, Vladimir Alarique T Cabigao and Bonifacio Tumbokon against the Mayor of the City of Manila to compel him to implement Ordinance No. 8027, with the consequent result of the removal of oil depot from Pandacan.

On 28 March 2003, PSPC/Shell submitted to the City Council of Manila a position paper¹⁷ by the village chiefs of Pandacan where the latter expressed their acquiescence to the retention of the oil facility of PSPC/Shell and the two others in exchange for material benefits like gifts, livelihood projects, and gainful employment.

In April 2003, PSPC/Shell filed a complaint with the Manila regional trial court to annul Ordinance No. 8027. In its complaint, it prayed for an injunction relief to enjoin the City of Manila from enforcing the ordinance. On 30 April 2003, Branch 26 of the Manila regional trial court issued an Order¹⁸ that denied the application for injunction of PSPC/Shell on the ground that the enactment of Ordinance No. 8027 by the City of Manila was an exercise of its police power that was intended to promote the general welfare, particularly, the health and safety, of the inhabitants of the community where the oil depot sits.

Several groups have gone to the fence line community to conduct a study thereon about the health risk that the presence of the oil facility in Pandacan brings to the inhabitants of the fence line community. One of the groups that conducted the study, entitled "Initial Ambient Air Monitoring Report of the Pandacan Oil Depot in Barangay 835, Zone 91, District VI, Pandacan, Manila,"¹⁹ was the National Center for Disease Prevention and Control of the Department of Health. The ambient air

¹⁴ Please visit www.chanrobles.com/republicactno3019.htm for a full text of the law.

¹⁵ A copy of the Evaluation Report of the Office of the Ombudsman is hereto marked and attached as Annex D.

¹⁶ This Evaluation Report was reversed and set aside by the Office of the Ombudsman later, thereby exculpating all the respondents in the said report.

¹⁷ Annex E.

¹⁸ Annex F.

¹⁹ Annex G.

monitoring was an initial activity undertaken by the Department of Health to generate background information on the exposure of the communities to benzene and related compounds.

The study resulted in finding that there was an "elevated level of benzene" in the site, although it was not immediately determinable whether that was brought about by mobile (vehicle) or by point sources (oil depot operations, gasoline station, etc.) in the area. The study, on page three thereof, further stated that the "peak concentrations of benzene are a cause for concern to the potential risk exposure among the residents in the area especially the sensitive populations, i.e., infants and children, pregnant women and the elderly."

Breaches to the OECD Guidelines

The foregoing facts would narrate the breaches of PSPC/Shell to the OECD Guidelines. In sum, PSPC/Shell has failed to adhere to the principles and standards of good practice consistent with applicable laws and to observe corporate social responsibility as would be expected of it, Shell being based in the Netherlands, a country which has signed the OECD Declaration on International Investment and Multinational Enterprises. In particular, the following are the violations of PSPC/Shell, as discussed at the outset, namely:

1.) Manipulations of local government

- Chapter II, Section 5 on refraining 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.
 - a. PSPC has sought exemption from the enforcement of Ordinance No. 8027 (see Annex C) when it executed the Memorandum of Understanding (see Annex H) with the City of Manila on 26 June 2002, two (2) days prior to the taking effect of the law that would oust its oil terminal operation from Pandacan. As a result of this connivance by PSPC with the local officials in exempting itself from the operation of the law, the Office of the Ombudsman found PSPC administratively and criminally liable for violating the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) (For a full text of the law, please visit www.chanrobles.com/republicactno3019.htm).
 - b. PSPC/Shell has tried to frustrate the salutary purpose of Ordinance No. 8027, which is to protect the health and safety of the inhabitants of the fence line community in the likely event that a *force majeure* happens therein, by seeking to annul the law on the frivolous ground that PSPC/Shell has been there for a long time. PSPC/Shell is more concerned with its investment than with the health and safety of the inhabitants of the community where PSPC/Shell's oil facility is located.
- Chapter II, Section 11 on improper involvement in local political activities.

PSPC/Shell has convoked the local village chiefs, or barangay captains, in Pandacan to persuade them to sign a position paper (see Annex E) that would support the retention of its oil terminal in Pandacan. This is interference with the local political decision-making of the barangay captains who should be left to their own devices to determine which should be best to their own welfare. The determination of whether or not to support the retention should be decided by the people in their sovereign capacity, free from the outside pressure of any interested third-party that could unduly influence the arrival of the decision of the people.

- Chapter VI on directly or indirectly offering, promising, give or demand a bribe or undue advantage to obtain or retain business or other improper advantage.

PSPC/Shell has intervened in the signing of a position paper by the barangay captains to support the retention of its Pandacan oil terminal, with the following incentives and promises in exchange for the pledge of support for the oil terminal's retention, namely, educational scholarship, gainful employment, regular conduct of medical and dental outreach, support to sports development activities, donation of fire trucks and fire fighting equipment, and gift on Christmas, Holy Week and similar occasions.²⁰ This is an unambiguous case of directly or indirectly offering, promising, giving a bribe or undue advantage to obtain or retain its business in Pandacan.

²⁰ Refer to Annex E.

2.) Concealment of negotiations with government and environmental/health risks of activities

- Chapter III, Section 4(e) on the disclosure of material information on material foreseeable risk factors.
- Chapter V, Section 2 on the following:
 - a. Failure to provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise;
 - b. Failure to 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.

PSPC/Shell has concealed from the public its furtive negotiations with the local government of the City of Manila about the memorandum of understanding that would extend its operation of oil facility in Pandacan which is the reason why the Office of the Ombudsman has found PSPC's executive officer to be administratively and criminally liable for conniving with government officials in subverting the salutary purpose of Ordinance No. 8027 when it executed the memorandum of understanding. PSPC/Shell did not disclose either the material information on the material foreseeable risk factors if its oil terminal would continue its stay in Pandacan despite the overwhelming threats of "clear and present danger" that the oil terminal poses to the safety of the lives and health of the fence line community inhabitants.

PSPC/Shell continues to deceive the public that there is no health risk in its operation when, in truth and in fact, as shown by the result of the study of the Department of Health, there is an "elevated level of benzene" in the area where its oil terminal is situated, although it is indeterminable whether that came from mobile or from point sources in the area.

The public was also kept in the dark about the storage of high amount of inflammable and volatile fuel materials²¹ in the midst of a densely populated community such as Pandacan. This fact came to the knowledge of the public only when the City Council of Manila conducted a public hearing on the removal of the oil terminal in Pandacan. PSPC/Shell hid this material fact to the public, and the public was not made aware of the impact on their health and safety of this concealment.

3.) Lack of specific plans to mitigate the hazards at the oil depot.

²¹ Please refer to the Committee Report, dated 21 May 2002, which was marked and attached as Annex A.

- Chapter 5, Section 5 on the failure to maintain contingency plans for preventing, mitigating and controlling serious environmental and health damage from its operations, including accidents and emergencies, and mechanisms for immediate reporting to the competent authorities.
- Chapter 5, Section 6 on the failure to adopt technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.

As discovered in the public hearing of the City Council of Manila whose Committee Reports were the precursor of Ordinance No. 8027, there was no buffer zone or open spaces to separate incompatible land uses where no permanent structures are allowed to safeguard the safety of the community around. At present, the area is surrounded by formal and informal settlers without an existing buffer zone and the oil depot. *Without the existence of the buffer zone, the oil depot had seriously put a threat to the lives and properties of the residents of Pandacan.* International oil depot facilities have kilometer-wide buffer zones that separate the residential areas from the oil depot facility. In Pandacan, on the contrary, only a fence separates the residences from the oil depot facility.

What is worse is that PSPC/Shell has constructed a so-called "green zone" in the Pandacan Terminal which it turned into a "linear park" where people are allowed to promenade and play, thus, further imperiling their lives and putting at risk their safety.

The Asuncion Report continued to state that no specific action plan or security measures were presented at the public hearing that would prevent a large-scale terrorist or malicious attack, and that the oil depot poses a grave risk to the safety of the people in its neighboring community. It could not be gainsaid that the oil depot is a vital installation that could be the object of a terrorist attack. Any accident, whether caused by natural calamities, human error or equipment failure, will always pose a threat to the safety of the facility and its environ. *Any accident that may occur therein would be a catastrophic disaster.*

Finally, it was found out in the public hearing of the committee of Councilor Asuncion that PSPC has violated Presidential Decree 1185 and Metro Manila Ordinance No. 82-03 from 1985 up to the time the public hearing was conducted²². This violation includes, among others, the absence of automatic fire suppression system, smoke/heat detector at the LPG filling plant, the failure to secure storage permit for inflammable/combustible materials, absence of storage permit for the LPG system stored in a pressure vessel, failure to secure a permit for above ground tanks of flammable combustible and non-combustible materials.

²² As testified to by Supt. Pablito Cordeta of the Bureau of Fire. Please refer to Annex B.

Conclusion

As discussed above, the presence of the oil facility of PSCP/Shell undoubtedly poses a threat not only to the health, but more so to the safety of the community that lives around it.

The legal challenge, filed on 4 December 2002, docketed as G. R. number 156052, pending in the Third Division of the Supreme Court, brought against the oil companies before the Supreme Court remains pending therein, despite the passage of forty (40) months for its resolution²³, since its initial filing.

As a signatory to the OECD Declaration on International Investment and Multinational Enterprises, the Dutch government has committed itself to encouraging multinational enterprises based within its territory to observe the OECD Guidelines wherever they operate. Given that PSCP is a subsidiary of the parent company Royal Dutch/Shell, and by virtue of the fact that Shell is incorporated in the Netherlands and is publicly-traded on the Amsterdam Stock Exchange, Shell is subject to the principles and standards in the *OECD Guidelines for Multinational Enterprises*.

The undersigned thus respectfully submit this complaint and request that this submission receive immediate attention by the Dutch National Contact Point for the OECD to ascertain whether Shell has violated the following sections on the OECD Guidelines for Multinational Enterprises with respect to the operations of PSCP's oil terminal in Pandacan and facilitate a resolution of the issues raised in this complaint. Given the seriousness of PSCP/Shell's alleged breaches to the OECD Guidelines, we request that PSCP/Shell:

- Comply with Ordinance No. 8027 by completely removing its oil depot from Pandacan and relocating it where it would not put the people's health and safety at risk;
- Assume responsibility for the health problems of the people of Pandacan that were derived, partly or otherwise, from the maintenance of the oil depot therein;
- Assume complete responsibility for the contamination of the soil in Pandacan where its oil facilities are located;
- Actively monitor and improve the air quality around its facilities;
- Desist from engaging in deceptive campaigns to woo support for the retention of its facility;
- Desist from involving itself in bribery and local political activities;

²³ Under Section 15 (1), Article VIII, 1987 Philippine Constitution, all cases or matters must be decided or resolved within twenty-four months from date of submission to the Supreme Court.

- Provide information to the public regarding the potential risks of its operations and engage with the local community in decision-making;
- Improve and upgrade its equipment, and continuously enhance the training of its people on disaster preparedness and management, to respond to oil leakages and other accidents.

We hope that the Dutch National Contact Point can play an effective role in the resolution of the issues raised in this specific instance. Procedural Guidance on Implementation in Specific Instances requires National Contact Points to make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them in an efficient and timely manner. We, therefore, request a response indicating how the Dutch National Contact Point intends to proceed on an expedited basis.

We would like to call the attention of the Dutch NCP to the current best practice of its Australian counterpart in dealing with a recent OECD Guidelines case involving immigrant detention centers operated by Global Solutions Limited (Australia) Pty Ltd. With regard to the Dutch NCP's handling of this case, we would like to respectfully make the following recommendations:

- We expect the NCP to set concrete timelines for its handling of this case.
- We expect the NCP to seek to facilitate communication and exchange of information between the parties in a manner that is transparent and objective.
- The NCP should set and adhere to concrete timeliness for its handling of the case. For example, the NCP should acknowledge receipt of the complaint seven (7) days after receiving it and conduct an initial assessment within thirty (30) days. The procedures the NCP will undertake to make this assessment should be clearly stated. The NCP should strive to complete the process within three (3) months, and should ensure that the process take no longer than nine (9) months.
- The NCP should seek to facilitate communication and exchange of information between the parties in a manner that is transparent and functionally equivalent for all parties.
- The NCP should allow both parties to nominate outside experts to consult and provide input on the issue.
- The NCP should offer to hold some of the meetings associated with the specific instance procedure in the Philippines rather than insisting that parties come to the NCP headquarters for all meetings.

- Given that this case involves primarily health, safety and environmental issues, the NCP should allow the Ministry of Spatial Planning, Housing and the Environment (VROM) to take the lead in resolving the case.

As is allowed by the Procedural Guidance regarding confidentiality, the Complainants have publicized the filing of this complaint; however, it is the Complainants' understanding of the Procedural Guidance that neither party is to make public any new information learned after the NCP has decided to accept the complaint. The Complainants' maintain their right to continue to campaign on information that is already in the public domain.²⁴

The preferred method of communication is via email with hard copy documentation sent via mail or facsimile, when necessary. The primary contacts for this submission are the below signatures.

Very truly yours,

VLADIMIR ALARIQUE T CABIGAO

Lawyer
2507 Santo Niño Street,
Pandacan, Manila,
The Philippines 1011
Mobile No. +639178338107
vladimir@cabigaolaw.info

FELIX C MAJABAGUE JR.
Barangay 835, Zone 91
Pandacan, Manila,
The Philippines 1011
Mobile No. +639278786600
felixcmjr@yahoo.com

RHODEL GABAC
2961 Lorenzo dela Paz,
Pandacan, Manila
Philippines 1011
Tel. No. +6324336831
Mobile No. +639275227962
rdlgabac@yahoo.com

PAUL DE CLERCK
Friends of the Earth International

²⁴ For more information on the complainants' view of confidentiality and transparency, please see the OECD Watch briefing paper, "The Confidentiality Principle, Transparency and the Specific Instance Procedure", February 2006, available at http://www.oecdwatch.org/docs/OW_Transparency-Confidentiality_Briefing_Paper.pdf.

PO Box 19199
1000 GD Amsterdam, the Netherlands
Tel: +32 2 5426107 (in Belgium)
paul@milieudedefensie.nl

ANNE VAN SCHAİK
Milieudedefensie (Friends of the Earth Netherlands)
Postbus 19199
1000 GD Amsterdam, the Netherlands
Tel: +31 20 6262 620
anne.van.schaik@milieudedefensie.nl

This complaint was drafted with the help of the Centre for Research on Multinational Corporations (SOMO).

Annexes

Committee Report, dated 21 May 2002, of the Manila City Council	A
Committee Report by Jocelyn Dawis-Asuncion (Asuncion Report)	B
City of Manila Ordinance No. 8027	C
Evaluation Report of the Ombudsman	D
Position Paper of the barangay captains in Pandacan	E
Order of the Manila Regional Trial Court, Branch 26	F
Report of the National Center for Disease Prevention and Control, Department of Health	G
Memorandum of Understanding, dated 26 June 2002	H