

The issue raised by the India Committee of the Netherlands (ICN) whether Kubbinga as an importer of footballs from India behaves in conformity with the OECD Guidelines for Multinationals has led to the following conclusion by the Netherlands National Contact Point (NCP).¹ The NCP found that there is no investment nexus in this specific instance. Since the application of the Guidelines Tests on the presence of an investment nexus, the Guidelines are not applicable to this specific instance. However, Kubbinga can draw on the common values for responsible business conduct that are reflected in the Guidelines.

NCP CONCLUSION REGARDING THE SPECIFIC INSTANCE ICN-KUBBINGA

"Guidelines not applicable to specific instance ICN-Kubbinga"

In June 2001, the India Committee of the Netherlands (ICN) asked the Netherlands National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) whether Ch.H. Kubbinga B.V., a small importer of footballs from India, operated in conformity with Recommendation II.10 of the Guidelines.² This Recommendation deals with relations among suppliers and other business partners. ICN asked this question, because it had reasons to assume that Kubbinga (like Adidas, see joint statement by NCP-ICN-Adidas of 12 December 2002 on www.oesorichtlijnen.nl) neglected to encourage its Indian supplier to operate in a responsible manner in the field of employment and industrial relations (chapter 4 of the Guidelines).

During the NCP procedure, the NCP found that Kubbinga had a trade relationship with its Indian supplier. The NCP doubted whether the Guidelines are applicable to a trade relationship that is not connected to an investment. It therefore sought the guidance of the Committee on International Investment and Multinational Enterprises (CIME) about the interpretation of the Guidelines in this particular circumstance.³ The CIME issued a statement⁴ that the Guidelines have been developed in the specific context of international investment by multinational enterprises and that their application rests on the presence of an investment nexus. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances. In considering Recommendation II,10 and its commentary, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship.

On the basis of information made available during the procedure, the NCP concludes that in this specific instance, there is no investment like relationship between Kubbinga and its Indian supplier as described in the statement of the CIME. Consequently, the Guidelines are not applicable and therefore the NCP does not have a mandate to issue a statement on the implementation of the Guidelines in this specific instance.

In conformity with the CIME statement that the international community may continue to draw on the common values underlying the Guidelines in other contexts, such as the trade

relation between Kubbinga and its Indian supplier, the NCP has raised the awareness of Kubbinga of the existence of these values through the Guidelines. The NCP notes with satisfaction that Kubbinga expressed its desire not to sell any sporting goods produced with child labour. The NCP encourages Kubbinga to take other values underpinning the Guidelines into consideration as well.

Attached: CIME statement

¹ The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in a socially responsible manner.

² See II. General Policies, paragraph 10: Enterprises should: "Encourage, where practicable, business partners", including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines" and Commentary on General Principles, paragraph 10: "Encouraging, where practicable, compatible principles of corporate responsibility among business partners serves to combine a re-affirmation of the standards and principles embodied in the Guidelines with an acknowledgement of their importance to suppliers, contractors, subcontractors, licensees and other entities with which MNEs enjoy a working relationship. It is recognised that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its suppliers or other business partners. The influence enterprises may have on their suppliers or business partners is normally restricted to the category of products or services they are sourcing, rather than to the full range of activities of suppliers or business partners. Thus, the scope for influencing business partners and the supply chain is greater in some instances than in others. Established or direct business relationships are the major object of this recommendation rather than all individual or ad hoc contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the Guidelines.

³ See Procedural Guidance, 1. National Contact Points, C. Implementation in Specific Instances, paragraph 2, c): The NCP will consult with these parties and where relevant.... "seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances."

⁴ See attachment

Scope of the Guidelines

Statement by the Committee on International Investment and Multinational Enterprises of the OECD:

In considering this issue, the CIME has sought to protect and enhance the credibility and effectiveness of the Guidelines and to remain true to the agreement reached among adhering governments at the 2000 Review after extensive consultations with the business, trade union and NGO communities.

The Guidelines are a multifaceted instrument and the Committee found it useful to consider this issue with reference to the following, which does not aim to change the balance reached during the 2000 Review:

- First, the Guidelines are an Annex of the OECD Declaration on International Investment and Multinational Enterprises. The fact that they are part of the Declaration and that oversight responsibility for them has been assigned by the Council to the CIME - the body charged with responsibility for the Organisation's work on investment and multinational enterprises - indicates the investment intent of the drafters of the instrument.*
- Second, the Guidelines are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with responsible business conduct. These principles reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines. As such, these values are relevant to the activities of multinational enterprises. Thus, as it has already done in a number of areas, the international community may continue to draw on the values underlying the Guidelines in other contexts.*
- Third, the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship. In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances.*