

# U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



## Final Statement

Specific Instance between Greenpeace and Herakles Farms  
and Herakles Capital

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## **I. Introduction**

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines) of the Specific Instance submitted by Greenpeace regarding the actions of Herakles Farms and Herakles Capital. The NCP's review of this Specific Instance is concluded as conditions are not satisfactory to proceed to mediation.

## **II. Context and Background on the U.S. NCP**

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations and b) appointing a National Contact Point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP receives concerns raised, in the form of a Specific Instance, about the business conduct of an MNE operating in or from the United States. It handles such issues in accordance with procedures it has adopted for this purpose, which are available on this public website:

<http://www.state.gov/e/eb/oecd/usncp/links/rls/index.htm>. In such circumstances, the NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to matters raised under the Guidelines. The NCP's role is to take up issues that are amenable to a consensual resolution under the Guidelines and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. Consistent with the voluntary nature of the Guidelines, the NCP does not make a determination whether a "violation" of the Guidelines has occurred, nor does the NCP have legal authority to adjudicate disputes submitted under this process.

### **III. Initial Assessment**

The process leading up to completing the Specific Instance includes the Initial Assessment, which determines whether the issues raised merit further examination. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines. Per the OECD Guideline procedures, the Initial Assessment is made based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

### **IV. The Specific Instance**

On March 11, 2014, Greenpeace, a nongovernmental organization, submitted a specific instance regarding Herakles Farms and Herakles Capital (Herakles), the former of which is a New York-based entity. In February 2014, Greenpeace wrote a letter to both Herakles Capital and Herakles Farms requesting the following information:

- 1) The financial and operating results of the group of enterprises known as Herakles Farms and Herakles Capital, including but not limited to, all affiliates and subsidiaries of said companies, for each of the fiscal years 2008-2013; and the companies' financial contributions to All for Africa and receipts from All for Africa;
- 2) The major share ownership and voting rights, including the structure of the group of enterprises known as Herakles Farms and Herakles Capital, including, but not limited to, intra-group relations, as well as control enhancing mechanisms and all beneficial ownership.

Greenpeace further requested that this information be provided on a project-by-project basis. Greenpeace cited Chapter III, paragraph 4 of the OECD Guidelines as the basis for its complaint. Herakles did not respond to the Greenpeace letter.

## **V. Decision and Conclusion**

The NCP determines that the issues raised in the Specific Instance do not merit further examination and declines to offer good offices to seek a mediated resolution between Greenpeace and Herakles.

Greenpeace provided insufficient information to support its allegation that Herakles was not in compliance with the Guidelines. We note that Herakles is a private company, not in fact a multinational corporation, although we do not decline to offer our good offices for the Greenpeace submission based on that fact, nor does its legal status in the United States remove it from the scope of the Guidelines. Rather, the NCP believes that the public documentation that Herakles provides on its website in large measure duplicates the relevant information that shareholders would expect from the annual report of a multinational corporation. Because Herakles' alleged violation of chapter III paragraph four cannot be substantiated based on the specific instance filed, the NCP declines to offer its good offices for mediation.

**David M. Birdsey**

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