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5 November 2010

Diane Bean, U.S. *National Contact Point for the OECD Guidelines for Multinational Enterprises*  
Jose Fernandez, *Assistant Secretary of State for Economics, Energy and Business Affairs*  
Robert C. Hormats, *Under Secretary of State for Economic, Energy and Agricultural Affairs*  
2201 C Street, NW.  
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Re: OECD Watch response to US Department of State Public Notice 7175, dated September 10, 2010  
- Written Comments Concerning the Administration's Review of the U.S. National Contact Point for the  
OECD Guidelines for Multinational Enterprises

Dear Ms. Bean, Mr. Fernandez, Mr. Hormats, and other U.S. OECD NCP Review Staff,

OECD Watch is pleased to have the opportunity to provide the DoS with written comments for the review of the US NCP, which we consider an important and timely initiative. In submitting these comments, OECD Watch hopes to assist the US DoS and its stakeholders in reforming the US NCP so that it can become an effective instrument for implementing the OECD Guidelines for MNEs and ensuring that US businesses behave responsibly in their operations at home and abroad.

OECD Watch is an international network of 88 civil society organizations working together on issues related to corporate accountability. OECD Watch has over ten years of experience with the OECD Guidelines, NCPs and specific instances and is a key stakeholder of the OECD Investment Committee.

As you know, this review of the US NCP is taking place in the context of recent a number of reviews and restructuring of other NCPs (such as the Netherlands, Norway and the UK), as well as an ongoing broader update of the OECD Guidelines for MNEs. Strong US leadership in this process is crucial if the update is to be successful and the relevance and implementation of the OECD Guidelines is to be improved. If, as a result of this review process, concrete and necessary improvements can be made to the structure and functioning of the US NCP, the Administration will be able to lead by example and give the US a stronger and more positive voice in the global update of the OECD Guidelines.

As its input for the public comment period, OECD Watch is submitting two annexes to this cover letter and one separate attached document, namely:

Annex 1: OECD Watch NCP Performance Criteria  
Annex 2: Overview and analysis of OECD Guidelines cases filed by NGOs involving the US NCP  
As a separate attachment: OECD Watch's *10 Years On* report

Please do not hesitate to contact me if you have any questions about OECD Watch's submission.

Yours sincerely,



Joseph Wilde-Ramsing

## Annex 1: OECD Watch NCP Performance Standards

1	<b>Institutional arrangements and accountability of NCPs</b>	<p>NCPs as public bodies are committed to upholding the rule of law and the principles of good administration. The framework of international standards within which NCPs operate are set out in the Preface to the Guidelines (§ 8 and 10).</p> <p>The NCP should be independent, informed, and authoritative. It should command the confidence of all parties. An inter-departmental structure is the preferred option but whichever institutional arrangement is adopted, the NCP should be adequately staffed and headed by a senior, suitably qualified person(s).</p> <p>To uphold the integrity of the instrument and enhance the credibility of the NCP, checks and balances are required, either through an oversight body or external independent expert of suitable public standing.</p> <p>In order to ensure ‘functional equivalence’ NCPs are supposed to act in accordance with the core criteria of ‘visibility, accessibility, transparency and accountability’.</p>
2	<b>Resources</b>	<p>Adhering governments must provide adequate human and financial resources so that NCPs can effectively discharge their responsibility.</p> <p>Adhering governments may decide to pool resources for promotional and other activities.</p>
3	<b>Information, Promotion and Prevention</b>	<p>At a minimum, the NCP should:</p> <ol style="list-style-type: none"> <li>Maintain an accessible and updated website.</li> <li>Publish its procedures for specific instances in clear accessible language.</li> <li>Adopt a clear promotion strategy.</li> <li>Carry out training within and outside government.</li> <li>Distill lessons drawn from concluded instances to inform the wider business community of potential risks.</li> </ol>
4	<b>Stakeholder consultation</b>	<p>NCPs should:</p> <ol style="list-style-type: none"> <li>hold a meaningful annual consultation with stakeholders on NCP policy and practice.</li> <li>conduct regular meetings with key stakeholders, particularly before Investment Committee consultations.</li> </ol>
5	<b>Predictability procedures specific instances</b>	<p>The procedures must be clear, consistent and well-publicized to ensure fair treatment of the parties.</p> <p>In dealing with specific instances, NCPs should act in accordance with the core criteria for effective non-judicial grievance mechanisms as proposed by Professor Ruggie: legitimacy, predictability, equitability and rights-compatible’.</p> <p>Deviation from the published procedures or other procedural disputes should be subject to referral.</p>
6	<b>Timeliness</b>	<p>As a general rule conclude most cases within a 12- month period.</p> <p>Indicative time frame:</p> <ul style="list-style-type: none"> <li>- Initial assessment: three months.</li> <li>- Once the case has been accepted, the NCP and the parties should meet promptly to agree on a timetable.</li> <li>- Mediation phase: normally not more than six months.</li> <li>- Final assessment/determination phase: three months.</li> <li>- Final statement: issued after twelve months.</li> </ul>
7	<b>Admissibility</b>	<p>The threshold:</p> <ul style="list-style-type: none"> <li>- A <i>prima facie</i> prospect of a material breach of the Guidelines.</li> <li>- When the issue concerns an enterprise’s business partner, the overall context in which the issue occurs will be considered.</li> <li>- The existence of parallel proceedings should not of itself cause a suspension of the NCP’s handling of the specific instance. A complaint should be suspended only where it is necessary to avoid serious prejudice.</li> </ul>
8	<b>Initial assessment</b>	<p>The initial assessment should include:</p> <ul style="list-style-type: none"> <li>- A date by which the company must respond in writing.</li> <li>- A specified date by which the party must reply to the response of the company.</li> <li>- All additional information supplied by the participants to be disclosed to each other.</li> <li>- A date by which the initial assessment will be published.</li> <li>- The initial assessment should specify which aspects of the complaint have been rejected and which will be taken forward under the specific instance procedure.</li> </ul>

9	<b>NCP Cooperation</b>	In recognition of parent company responsibility for the actions of a foreign subsidiary alleged to have violated the OECD Guidelines, host NCPs should involve home country NCPs in specific instances involving both a parent company and a subsidiary. NCPs should cooperate in cases involving more than one MNE from different home countries.
10	<b>Mediation phase</b>	The NCP should facilitate resolution of the issue, possibly through external mediation.
11	<b>Determination phase</b>	If mediation fails, the NCP enters into the determination phase and makes an assessment of found facts and circumstances to determine whether or not the enterprise complied with the OECD Guidelines.
12	<b>Fact-finding</b>	Make whatever efforts it properly can to resolve questions of fact, including by carrying out information gathering or fact finding visits in a neutral, transparent and fair manner.
13	<b>Final statements</b>	At the end of the process the NCP should issue a reasoned final statement, which will be made public. The final statement should: - List each allegation and the company's response. - Provide clear, specific recommendations including measures for follow-up and remediation. - State if there has been a breach of the Guidelines. - Final statements can only be based on information available to both parties.
14	<b>Consequences</b>	Where companies have breached the Guidelines and are uncooperative, or have not complied with agreements reached, there should be consequences including recommendations to government regarding possible restrictions on access to public support and services.
15	<b>Transparency &amp; Confidentiality</b>	The default position is full transparency. The complaint itself, the initial assessment and any final statement are not covered by the confidentiality provisions of the Guidelines. The content of mediation should be kept confidential where parties agreed to do so. Decisions not to publish should be subject to review.
16	<b>Protection of complainants</b>	In case there is reason to believe complainants or victims of the alleged misconduct face security issues or repercussion, the NCP should take the necessary steps to ensure their safety and provide the right to remain anonymous.
17	<b>Review of procedural issues</b>	To maintain the integrity of the Guidelines and enhance the credibility of the NCP disputes over procedures should be referred to an independent external expert or oversight body with suitable public standing. The external expert would: a) oversee the performance of the NCP; b) assist in developing policy and operational guidance; c) review disputes related to procedural matters from parties to complaints.
18	<b>OECD oversight</b>	Oversight of the work of the NCP should be guaranteed at the OECD level through a mandatory peer review mechanism. The OECD should maintain a record of the conclusions of specific instances, mediated settlements and recommendations. In the event of procedural disputes, complainants must be have the opportunity to request clarifications regarding the handling of specific instances and interpretations by NCPs.
19	<b>Monitoring &amp; Follow-up</b>	NCPs should follow-up agreements from mediated outcomes or recommendations from final statements.
20	<b>Reporting</b>	NCPs should report annually to national parliaments, OECD and stakeholders. NCP reports should report on promotional activities, meetings with stakeholders, attendance at OECD Investment Committee meetings, and specific instances including their outcomes and reasons for decisions. The report should include their budget and staffing arrangements.

## Annex 2: Overview of OECD Guidelines specific instances filed by NGOs with the US NCP as of November 2010

Note: This overview includes specific instances submitted directly to the US NCP, i.e., cases in which the US NCP took the lead or was requested to take the lead in handling the case, as well as cases in which the US NCP played a more secondary or indirect role, such as when the US NCP was merely informed about the involvement of a US-based company in a specific instance being handled by another NCP. For the purposes of this overview, in cases of secondary/indirect involvement by the US NCP the mention of the US NCP and the US-based companies has been highlighted in yellow. The cases are listed in reverse chronological order.

The US NCP has been directly or indirectly involved in 10 OECD Guidelines specific instances filed by NGOs. The four specific instances in which the US NCP was directly involved were against Cabot Corporation, Trinitech, OM Group Inc., and Nike. The six instances in which the US NCP was indirectly involved were against Ivanhoe Mines Ltd. (still pending), Marathon Oil/Vermillion, ExxonMobil, Conoco Phillips, Delta Hess, and Unocal. Five of the ten (50%) specific instances involving the US NCP, including all four cases in which the US NCP was the lead, were rejected. Another three (30%) cases (those related to the BP BTC pipeline case) are considered blocked since there was no formal rejection of the cases, but neither does the NCP have any intention of handling the cases. One specific instance (Marathon Oil/Vermillion) was handled and closed by the Irish NCP, and one specific instance (Ivanhoe Mines Ltd.) is currently considered “filed” as the Canadian NCP conducts an initial assessment of the case. To date, no OECD Guidelines cases filed by NGOs involving the US NCP have been successfully concluded or resolved.

In terms of geographic distribution of the 10 cases involving the US NCP, nine cases (90%) involve alleged violations in developing countries (Mongolia, Brazil, Democratic Republic of Congo, Azerbaijan/Georgia/Turkey, Indonesia), and one case (10%) involves alleged violations in a developed country (Ireland). None of the 10 US NCP cases filed by NGOs involve alleged violations in the United States itself.

With regard to industrial sector, five (50%) cases involve the oil & gas industry, four cases (40%) involve the mining & mining sector (thus a total of 9 cases (90%) involving extractives), and one case (10%) involves the textile & garment sector.

In terms of chapters of the OECD Guidelines that are referenced (i.e., alleged to have been breached) in US NCP NGO cases, the most cited chapters are Chapter II on General Policies (cited in 10 cases), Chapter III on Disclosure (cited six times), and Chapter V on Environment (cited six times). In addition, three cases have referenced Chapter 1 on Concepts and Principles, and one case has cited Chapter IV on Employment and Industrial Relations.

More information on all of these cases can be found in OECD Watch's case database at [www.oecdwatch.org/cases](http://www.oecdwatch.org/cases).



Case	Water and sustainability issues at a planned mine in Mongolia		
Company/ies	Date Filed	Status	Duration (to date)
Rio Tinto International Holdings Ltd.	1 April 2010	Filed	7 months
Ivanhoe Mines Ltd.	1 April 2010	Filed	7 months
Complainants	Oyu Tolgoi (OT) Watch, Center for Citizens' Alliance, Center for Human Rights and Development, Steps without Border, Drastic Change Movement and National Soyombo Movement.		
National Contact Point(s) concerned	Canada, United States, United Kingdom, Australia		
Guidelines Chapter(s) & paragraph(s)	Chapter II, paragraph 1; Chapter V, paragraph 3		

#### Issue

OT Watch and five other NGOs filed a complaint concerning Canada-based Ivanhoe Mines' and UK-based Rio Tinto's plans to exploit the Oyu Tolgoi open-pit, gold and copper mine in the South Gobi Region of Mongolia.

The complaint alleges the companies' Technical and Economic Feasibility Study does not demonstrate the availability of sufficient water resources to carry out the project. It also raises issues concerning the long-term commitment of Ivanhoe Mines to the region, and proposed royalty

transfers among owners of the mining license.

The complaint was filed with the UK and Canadian NCPs. An additional complaint was submitted to the **US NCP** because Ivanhoe Mines is listed on the New York Stock Exchange and the NASDAQ.

#### Developments/Outcome

The UK and Canadian NCPs agreed the Canadian NCP would take the lead, as Ivanhoe Mines appears to be the company most central in the complaint. The UK NCP offered to assist by engaging

Rio Tinto in the specific instance procedure if necessary.

After the US NCP acknowledged receipt of the complaint, it forwarded the case to the Australian, UK and Canadian NCPs citing the country of origin of the companies involved. The **US NCP** also stated it stands ready to assist in the case.

The Canadian NCP is conducting an initial assessment and has forwarded the complaint to Ivanhoe Mines and Rio Tinto, both of which have responded in writing.



Case	Shell-led consortium's environmental and human rights violations in Ireland		
Company/ies	Date Filed	Status	Duration
Royal Dutch Shell	22 August 2008	Closed on 30 July 2010	23 months
<b>Marathon Oil/Vermillion</b>	22 August 2008	Closed on 30 July 2010	23 months
Statoil	22 August 2008	Closed on 30 July 2010	23 months
Complainants	Pobal Chill Chomain Community, Kilcommon, Ballina, Co Mayo, Ireland		
National Contact Point(s) concerned	Ireland (lead), the Netherlands; <b>United States</b> and Norway also notified		
Guidelines Chapter(s) & paragraph(s)	Chapter II; Chapter V		

#### Issue

Pobal Chill Chomáin (People of Kilcommon) and two supporting NGOs filed a complaint concerning the Corrib gas project in North West County Mayo, Ireland run by a consortium of Shell E&P Ireland, Statoil Exploration Ireland, and **Vermillion (which bought out Marathon Oil's share in 2009)**. The project includes a gas processing plant and a pipeline to transport untreated gas from the sea to the processing plant.

The complaint alleges health and safety issues, because the pipeline would pass too close to populated areas and go through an area prone to landslides. According to the complainants, given the instability of peat in some areas, there is an increased likelihood of pipeline failure.

The groups also point to environmental concerns. The location of the refinery poses a risk to the only source of potable water for 10,000 people in the region. Furthermore, the pipeline would pass through three ecologically sensitive areas and represents a threat to wildlife.

In addition, the groups allege the Corrib Gas project would violate many human rights espoused by the European Convention for the protection of Human Rights and Fundamental Freedoms.

#### Developments/Outcome

The Irish NCP, in cooperation with the Dutch NCP, conducted an initial assessment and both NCPs declared the case admissible. The Norwegian, **US** and later Canadian

NCPs were informed about the process.

However, the process was put on hold while direct discussions between Shell and the complainants were being facilitated by the Irish government. When these talks collapsed in early April 2009, the Irish NCP held separate discussions with the parties.

In September 2009, the NCPs summarised their findings in writing, and asked the parties to react by the end of November. The NCPs surmised that mediation would be extremely difficult given the irreconcilable positions on the main issue: relocation of the planned processing plant. Shell has refused to discuss relocation, claiming it received all necessary government permits for the plant.

There was also significant disagreement as to whether the consortium engaged in sufficient consultations with the community.

In January 2010, the complainants agreed with the NCPs' assessment that mediation appeared impossible, and requested that the NCP close the procedure with a final statement.

The NCPs' final statement focused on the issue of due diligence by the consortium, stating it was beyond

its competence and mandate to draw conclusions on the validity of location of the processing facility.

The statement concluded that in the early stages, dialogue with stakeholders had not been in accordance with the spirit of the Guidelines. However, since 2005, the consortium had improved its practices and shown willingness to address health and safety concerns. In response, the complainants expressed disappointment the NCPs had

failed to consult with residents before coming to the latter conclusion.

The NCPs' statement also advised that in general, enterprises have a responsibility to respect the rights of people impacted by their activities. Companies are expected to exercise due diligence in the broad sense of the concept, and have a responsibility to consider going beyond what is legally required when it comes to consulting local communities.



<b>Case</b>	Chemical storage, human health impacts in Brazil		
<b>Company/ies</b>	<b>Date Filed</b>	<b>Status</b>	<b>Duration</b>
Royal Dutch Shell	15 May 2006	Rejected	7 months
ExxonMobil	15 May 2006	Rejected	7 months
<b>Complainants</b>	FoE Netherlands (Milieudedefensie), Friends of the Earth International, Coletivo Alternativa Verde (CAVE), SIPETROL-SP		
<b>National Contact Point(s) concerned</b>	NCP Brazil, NCP Netherlands, NCP USA		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 5; Chapter V, paragraphs 1, 3, 4		
<b>Issue</b>	<p>providing suggestions on how it would handle the case and</p> <p>declaring it would closely follow the case. The Brazilian NCP forwarded the complaint to the two companies involved and requested a response. In its 16 October 2006 response, ExxonMobil claimed that it was a minor partner in the Brazilian consortium accused of the violations and that Shell, as the lead partner and "facility operator", should be responsible for responding to the allegations in the complaint. The NCP accepted this argument and thus dismissed the case against ExxonMobil. For its part, Shell responded to the complaint stating that the alleged violations were already being considered by domestic legal bodies and thus should not be considered under the NCP/OECD Guidelines process. In early 2007 the NCP accepted Shell's argument and decided not to</p> <p>"interfere" in the legal proceedings by further examining the issues. The NCP then requested that the complainants make specific proposals for areas that could be negotiated with the Shell that were not covered by any parallel legal proceeding. On 7 April 2007 the complainants provided suggestions, but Shell refused to agree to mediation, again claiming that the issues were under judicial review.</p> <p>The NCP concluded that negotiations would no longer be possible or effective, since one party did not want to enter into a mediation process because of parallel legal proceedings, and thus decided to terminate the specific instance in the NCP framework. On 20 March 2008 the NCP produced a final statement.</p>		
<p>According to the complain, in January 2005, the Brazilian government called on Royal Dutch Shell and ExxonMobil to stop the practice of storing chemicals at and below their facilities and to help workers and local residents with health complaints arising from the high concentrations of chemicals and heavy metals in their blood. The complainants allege that the companies have not done so.</p>			
<b>Developments/Outcome</b>			
In June 2006, the Brazilian NCP conducted an initial assessment and accepted the complaint as a specific instance. The Dutch NCP also wrote to the Brazilian NCP and "offered its assistance in the handling of the instance" by			



<b>Case</b>	Illegal resource exploitation in the DRC		
<b>Company/ies</b>	<b>Date Filed</b>	<b>Status</b>	<b>Duration</b>
Cabot Corporation	4 August 2004	Rejected on 23 Aug 2004	3 weeks
Trinitech	4 August 2004	Rejected on 23 Aug 2004	3 weeks
OM Group Inc	4 August 2004	Rejected on 23 Aug 2004	3 weeks
<b>Complainants</b>	Rights and Accountability in Development (RAID) and Friends of the Earth US		
<b>National Contact Point(s) concerned</b>	United States		
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 9; Chapter III, paragraphs 1, 2, 5		

### Issue

In October 2002, a United Nations Panel of Experts accused 85 OECD-based companies of violating the Guidelines for their direct or indirect roles in the illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). The Panel alleged that “elite networks” of political and military elites and businesspersons fueled the conflict in order to retain their control over the country’s vast natural resources. But in its final, October 2003 report, the Panel said that no further investigation was required into the activities of the US companies. However, the Panel did make clear that “resolution should not be seen as invalidating the Panel’s earlier findings with regard to the activities of these actors.”

Complaints were submitted in August 2004, because the US NCP had not assessed whether the companies had breached the Guidelines. The complaint also provided new information on the companies’ activities to the US NCP. In the case of OM Group, the complaint raised a new set of issues concerning the company’s Big Hill project.

Cabot Corporation - Boston-based Cabot Corporation, one of the world’s largest refiners of coltan, was listed in Annex III of the October 2002 report of the UN Expert Panel. Cabot denies knowingly having received ‘any illegal materials from the Congo’. A report by the Belgian Senate states that Eagle Wings Resources International had a long-term contract to supply Cabot with coltan.

Trinitech Holdings/Eagle Wings Resources International - Trinitech Holdings is the holding company for Ohio-based companies, Eagle Wings Resources LLC and Trinitech International, Inc. Eagle Wings Resources International (EWRI) is a joint venture between Dutch company, Chemie Pharmacie Holland BV (CPH) and Trinitech Holdings. The Panel stated that EWRI received

privileged access to coltan sites and captive labour because of its close ties to the Rwandan military.

OM Group - Ohio-based OM Group’s joint venture with a Belgian national, George Forrest, Groupement pour le Traitement des Scories du Terril de Lubumbashi, Ltd. (GTL) is accused by the Panel of deliberately ignoring technical agreements that provide for the construction of two electrical refineries and a converter for germanium processing in the DRC from the “Big Hill” project. Instead, semi-processed ore from the mine was shipped to OM Group’s processing facility in Finland, thereby depriving the state mining company, Gécamines, of millions of dollars in revenue. At issue is whether the complex corporate structure was intended to deny Gécamines the benefits of the future sales of minerals with significant commercial potential at a time when the country was at war and there was no functioning government or mining ministry to protect the interests of Gécamines and by extension, the Congolese people.

Separate to the Panel’s allegations concerning the Big Hill project, a World Bank environmental report raised concerns about the exploitation of radioactive minerals from concessions owned by Gécamines, such as the Shinkolobwe uranium mine. There is evidence that Societe pour le Traitement des Scories du Terril de Lubumbashi (STL) – a company created by GTL in 1997 – processed radioactive minerals to obtain cobalt at the company’s plant in Lubumbashi, which is situated close to a hospital. The Belgian Senate concluded that airborne and waterborne pollution could not be discounted. At issue is whether the measures in place at OMGroup’s plant in Lubumbashi were sufficient to prevent radioactive contamination of the Congolese workforce and whether the local population was exposed to unacceptably high risk of

pollution from the operations of the plant.

### Developments/Outcome

On August 23, 2004, the US NCP rejected the complaint on the grounds that the allegations “have not been adequately substantiated, denied by the firms concerned, and called into doubt by the party that originally made them”. The NCP stated he is “prepared to make further inquiries with the UN regarding the availability of any further information on the US firms mentioned in the UN Panel’s report”.

In a follow-up meeting in January 2005 in Washington, DC, the complainants provided the NCP with a copy of a contract between EWRI and RCD-Goma to export coltan from the eastern DRC. According to a report by the Belgian Senate, Eagle Wings Resources International had a long-term contract to supply Cabot with coltan. The Panel asserted in its October 2002 report that “no coltan exists from the eastern [DRC] without benefiting either the rebel group or foreign armies.”

In that meeting, the US NCP stated he had not sought additional information from the UN. The NCP offered to see if the companies would participate in an “informal” dialogue with RAID.

When the complainants followed-up in September 2005, the US NCP confirmed that the companies had received his letter, but they never responded to his offer.

The US NCP never addressed the Belgian Senate’s findings that Cabot Corporation had a long-term contract with EWRI and the additional evidence provided by the complainants in this regard.

In August 2006, RAID wrote to all the US companies asking whether the UN Panel’s allegations led to changes in business and management practices. No response has been received from any of the companies.

Case	BTC oil pipeline in Azerbaijan, Georgia & Turkey		
Company/ies	Date Filed	Status	Duration (to date)
BP plc	29 March 2003	Pending	90 months
Conoco Philips	29 March 2003	Blocked	
Delta Hess	29 March 2003	Blocked	
ENI	29 March 2003	Pending	
TotalFinaElf	29 March 2003	Rejected	
Unocal	29 March 2003	Blocked	
Complainants	Campagna per la Riforma della Banca Mondiale, FERN, Amis de la Terre, Friends of the Earth US, Milieudéfensie, PLATFORM, Urgewald e.V., WEED, Germanwatch, BUND, Friends of the Earth England, Wales and Northern Ireland, The Corner House, Proyecto Gato		
National Contact Point(s) concerned	United Kingdom, Italy, France, Germany, United States, Belgium		
Guidelines Chapter(s) & paragraph(s)	Chapter I, paragraph 7; Chapter II, paragraph 5; Chapter V, paragraphs 1,2,4; Chapter III, paragraph 1		

### Issue

The BTC consortium of 10 oil companies, led by BP, is accused of seeking tax and law exemptions and undue influencing of governments in the construction of a 1,760 kilometre pipeline through Azerbaijan, Georgia, and Turkey. The complaint was filed simultaneously with the UK, Germany, Italy, and US NCPs. The complaint also raised concerns about BP's failure to adequately consult with project-affected communities and failure to contribute to the goals of sustainable development.

At the time the complaint was filed, the BTC consortium was seeking the political and financial support of their countries' export credit agencies, the European Bank for Reconstruction and Development and the International Finance Corporation of the World Bank Group.

### Developments/Outcome

Although the case was accepted by the UK NCP in August 2003, BP only responded in detail in March 2004, denying that the project violated the Guidelines.

In October 2004, NGOs sent a letter to the NCP, expressing concern that the UK Export Credit

Guarantee department (ECGD) has decided to support the project before the NCP adjudicated on the Complaint.

The NCP only visited the affected region in September 2005 and a dialogue session was held in October 2005.

However, in January 2006, BP broke off the dialogue process. The company also refused to disclose to the complainants its written response to the issues raised by the villagers during the NCP's field visit. Nevertheless, the NCP issued a Final Statement in August 2007, which relied heavily on BP's undisclosed response to the field visit. The Final Statement exonerated the company.

The complainants appealed to the UK's newly established NCP Steering Board arguing that the NCP's statement was unfair and that it failed to "make any serious attempts to engage critically with the issues." In December 2007, the NCP acknowledged the procedural failures and withdrew its Final Statement.

In July 2008, the Steering Board conducted the first ever review of the NCP's handling of a Specific Instance. A summary of the Review

Committee's findings were made public in September 2008. Following the Steering Board's review, BP agreed to share its previously undisclosed response with the complainants. However, the company still refused to disclose the report to the complainant's main partner in Turkey and the issue was only resolved after the arranged

mediation between the parties. The UK NCP is now composing a draft statement for the parties involved to comment on. A Final Statement is expected later in 2010.

In subsequent developments, in February 2009, the complainants submitted a paper on "General Lessons" that could be learned from the NCP's handling of the complaint. The Steering Board of the UK NCP has provided two reactions to the "lessons learned" paper that the complainants submitted.

Because the lead company in the BTC consortium, BP, is British, the NCPs in the countries where the Specific Instance was submitted collectively decided in 2004 that the UK would "take the lead" in handling the case. However, despite this understanding, the UK NCP decided unilaterally in 2005 that it would only deal with the UK complainants. This decision was apparently not communicated by the UK to the other NCPs until January 2006. The UK NCP consistently failed to keep its NCP colleagues informed of its handling of the specific instance. The French NCP rejected the case against TotalFinaElf, but no further progress on the cases filed against this or the US companies has been made.

In the ENI case, the Italian NCP finally agreed in January 2008 to conduct an initial assessment of the case against consortium partner ENI. The NCP hosted a



meeting between the parties, and ENI agreed to submit a written response to some of the issues raised in the complaint. After an exchange of views and a disagreement about the interpretation of the Guidelines, the complainants asked the NCP to seek clarification from the Investment Committee. The NCP

still has to do so. The clarification is around the use of stabilization clauses, such as those included in the host government agreements ruling the project are in compliance or not with the Guidelines. This request and following ENI's submission was moved by the complainants as preliminary to the instruction of the case by the NCP

and the case remains at the point of dealing with procedural issues, rather than with the substance.

The French and German NCPs have rejected the case against TotalFinaElf, but there still has been no official response from the US NCP.

 <b>Case</b>	Labour rights violations in Nike's Indonesian supply chain			
	<b>Company/ies</b>	<b>Date Filed</b>	<b>Status</b>	<b>Duration</b>
	Nike	5 September 2002	Rejected	13 months
<b>Complainants</b>	Clean Clothes Campaign (CCC) Austria, CCC Germany, Global Exchange			
<b>National Contact Point(s) concerned</b>	United States, Austria			
<b>Guidelines Chapter(s) &amp; paragraph(s)</b>	Chapter II, paragraph 7; Chapter IV, paragraphs 1a & 1d			

**Issue**

The complaint was directed towards Nike representations in Austria as well as towards its headquarters in the US. The complaint alleges that Nike suppliers in Indonesia are violating labour rights, specifically that workers were denied the right to organize and to collective bargaining. They were allegedly subjected to intimidation including humiliation, arbitrary arrests and threats to their health and safety.

As a result, workers were unwilling to speak out about abuses out of fear of retaliation. In addition, workers did not receive a living wage. The low wages allegedly impacted parents, particularly women, who are frequently forced to live away from their children. The complaint also raised occupational health and safety issues.

**Developments/Outcome**

After receiving the case from the Austrian NCP, the US NCP

rejected the case. The NCP concluded that the information available did not indicate that its involvement was needed. The US NCP asserted that Nike's conduct is being effectively addressed through other appropriate means and that the company has demonstrated its commitment to an ongoing, collaborative process to improve working conditions, for example, through its participation in the Fair Labour Association.