

OFFICE OF THE SUB-SECRETARY OF COMPETITION AND REGULATIONS
FOREIGN INVESTMENT GENERAL DIRECTION



Ministry of the Economy
Official Communication DGIE.315.12.137

Re: Initial Evaluation Result Specific Instance Excellon.
Mexico City, Federal District, November 28, 2012.

PROYECTO DE DERECHOS ECONÓMICOS
SOCIALES Y CULTURALES, A. C.

ING. PABLO GUROLA QUEZADA
Minera Excellon de México. S.A. de CV.

I refer to the complaint presented to the National Contact Point in Mexico on May 29, 2012 with respect to alleged violations to the Guidelines for Multinational Enterprises (the "Guidelines") of the Organization for Economic Cooperation and Development by the Canadian company Excellon Resources Inc.

In this respect, attached hereto is a result of the Initial Evaluation issued in accordance with the Procedural Guidance of the Guidelines.

Sincerely,
The General Director
(Illegible signature)
ALEJANDRO FAYA RODRÍGUEZ

Cc: Judith St. Pierre Head of the National Contact Point of Canada
Jose Antonio Torre Medina, Sub-Secretary of Competition and Regulations, Ministry
of the Economy



SPECIFIC INSTANCE EXCELLON
INITIAL VALUATION OF THE NATIONAL CONTACT POINT OF MEXICO
GUIDELINES FOR MULTINATIONAL ENTERPRISES OF THE OECD

Background Information

I. On May 29, 2012, Mexico's National Contact Point (hereinafter, "Mexico's NCP") received from Proyecto de Derechos Económicos Sociales y Culturales A.C. (hereinafter, "ProDESC") a specific instance request for alleged violations to chapters III, IV, V and VI¹ of the Guidelines for Multinational Enterprises of the OECD (hereinafter, the "Guidelines") by Excellon Resources Inc., (hereinafter, "Excellon Canada"), through its subsidiary Minera Excellon de México, S.A. de C.V. (hereinafter, "Excellon Mexico") located in Durango, México.

ProDESC stated it was acting in representation of *Ejido La Sierrita*, the National Mine, Metallurgic, Steel and Similar Workers' Union of the Mexican Republic (SNTMMSSRM); the Independent Section 309 of the SNTMMSSRM, the Canadian Labour Congress, United Steelworkers and MiningWatch Canada.

The alleged violations refer to:

a) Breach of the lease agreement of communal land executed by Excellon México and *Ejido La Sierrita*.

The petitioners allege violations to several clauses of the above-mentioned agreement, particularly breach of the obligations relating to: i) requesting permission from the *Ejido* prior to conducting explorations on land not contemplated in the agreement; ii) building and installing a treatment plant for the water used in the activities of *La Platosa* mine; iii) granting to the *Ejido* preferential treatment when granting the concession of the cafeteria of the company; and iv) granting to the members of the *Ejido* preferential treatment in the hiring of non-specialized personnel.

b) Failure to promptly and transparently disclose the conflict to Excellon Canada's shareholders and the Canadian authorities.

The petitioners state that Excellon Canada has not disclosed information to its shareholders with respect to the alleged breach of the agreement between Excellon Mexico and *Ejido La Sierrita*, as well as the nature and term of the strike at the *La Platosa* mine located in Durango, Mexico.

c) Violation of human rights and anti-union practices

¹ Chapters: III Information Disclosure; IV Human Rights; V Environment; VI Employment and Labor Relations

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The petitioners state that Excellon Mexico systematically avoids and frustrates the adequate representation of its workers, who intend to sign a collective bargaining agreement with the company, through Independent Section 309 of the SNTMMSSRM, by intimidating actions – including aggression and dismissal without cause – against workers who promote and/or sympathize with the SNTMMSSRM, as well as open support for the National Mining and Metallurgic Workers’ Union Don Napoléon Gomez Sada (SNMMNGS), who also disputes title to the collective bargaining agreement with the company.

d) Environmental and water pollution.

The petitioners state that due to Excellon Mexico's breach with respect to the construction and installation of a water treatment plant, the company has caused negative impacts to the environment, since the water used in any activities of the La Platosa mine has high mineral content, which, without the required treatment, is not suitable for human consumption and/or agricultural use. Additionally, they state that by disposing of untreated water directly in communal land, the company can permanently damage the land and render it inadequate for agricultural purposes.

II. The complaint was also filed with Canada's National Contact Point (hereinafter, “Canada’s NCP”) on May 28, 2012. In this respect, on July 13, 2012, ProDESC was notified that in accordance with paragraph 23 of the Procedural Guidance of the Guidelines² and with Canada’s NCP prior agreement, Mexico’s NCP will be responsible for the case.³

III. On July 10, 2012, Mexico’s NCP consulted the relevant authorities in the case at hand and such authorities stated the following:

- a) General Mining Coordination of the Ministry of the Economy (GMC). The authority provided general information on Excellon Mexico, informed of the blockages carried out in 2008 and 2012 at La Platosa mine and of the count conducted on July 5, 2012, which determined title to the collective bargaining agreement of the company.
- b) National Agrarian Registry (NAR). The authority provided information on the Temporary Occupation Agreement for the Use of Enjoyment of Common Land, entered into by and between Ejido La Sierrita and Excellon Mexico.
- c) Ministry of the Environment and Natural Resources (SEMARNAT). The authority informed that "*although the Federal Environmental Protection Agency has authority to facilitate follow-up with such directives, the complaint at hand does not relate to matters over which is competent.*"

² Paragraph 23. “Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Guidelines for Multinational Enterprises, Page 82, 2011 Edition, official version in English.

³ Canada’s NCP informed MiningWatch Canada of such decision on June 28, 2012.

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d) National Water Commission (CONAGUA). The authority provided the following information:

- “The Offices of the Water Rights Public Registry (REDPA) and Assessment of Violations, Analysis and Evaluation, do not have any pending matter with the company Minera Excellon Mexico, S.A. de C.V.”
- “*With respect to the User Services Office, the only filing relating to such company is with respect to an underground water application and that the authority determined to deny such application, due to the fact that the 6 existing uses operating in such a mining company's facilities are located in the Principal-Lagoon Region aquifer within the limits included under the restriction decree published on December 6, 1958.*”
- *In the case at hand, “the CONAGUA does not perceive that the company has incurred in any sanctionable activity...”*

c) Ministry of Labor and Social Welfare (STPS). The authority informed that:

- “...the Mexican legal system does not regulate the so-called “protection agreements”, since unions are free to incorporate, draft their bylaws, appoint their representatives and leaders and regulate their own structure and internal life... Mexican labor authorities shall only take note of the formation of unions, the election of their directives and leaders, of the bylaws that govern them and of their internal organization...”
- With respect to the termination of employees without cause. “it is difficult to identify and determine whether Excellon de Mexico actually terminated employees without cause.”
- With respect to the conflict with the union: “this Ministry is not competent to resolve it, since it involves a conflict concerning a collective bargaining agreement which is deposited with the Local Conciliation and Arbitration Labor Board in Gomez Palacio, Durango...and the local authority within the framework of its competence shall resolve which union represents the majority of the workers and consequently, the title to or administration of the collective bargaining agreement”.
- Last, it concluded that “it is difficult for this Ministry to provide further elements...since the matters and evidence provided by the complainants do not prove any violation to the LEMS [Guidelines]”.

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IV. As of July 31, 2012, Mexico's NCP tried to contact Excellon Mexico. Canada's NCP also asked Excellon Canada for comments and did not obtain an answer⁴. On August 22, 2012, with the support of the GMC, Mexico's NCP contacted and notified the company (see also sections VI and VII).

V. On July 27 and 30, August 23, and October 15, 2012, ProDESC sent to Mexico's NCP documents to update the matters that motivated the filing of the complaint.

VI. For the purpose of obtaining additional information, on August 22 and 23, 2012, Mexico's NCP held separate meetings with Excellon Mexico and ProDESC, respectively.

VII. During the meeting held on August 22, 2012, Mexico's NCP formally served the complaint to Excellon Mexico. In its response, received on September 22, 2012, the company stated its position and expressly rejected the possibility of participating in mediation proceedings under the auspices of Mexico's NCP, alleging the lack of good faith by the complainants and the different negotiations that were being carried out through other channels with Mexican authorities.

VIII. During the meeting held on August 23, 2012 with Mexico's NCP, ProDESC agreed to submit additional documentation to complete and/or update the information previously provided. Part of such documentation was received on October 26.

IX. On October 23, 2012, Mexico's NCP sent to ProDESC Excellon Mexico's response and requested comments on the matter. Mexico's NCP received ProDESC's comments on October 30, 2012.

The Guidelines and the Initial Evaluation Stage

The Guidelines are recommendations made by governments to multinational enterprises on principles, standards and good practices relating to business responsibility. The adherence thereto is voluntary and they are not legally binding.

In accordance with the Procedural Guidance of the Guidelines, in order to resolve specific instances, the NCP will perform an initial evaluation to determine whether the facts require further examination and if such is the case, to offer the Parties its assistance to allow them to resolve their differences. In this stage, the NCP will consider:

- the identity of the claimant and its interest in the matter;
- whether the facts that motivate the specific instance are material and proven;

⁴ On May 30, 2012 Canada's NCP notified Excellon Canada of the receipt of the complaint filed against it and asked it to comment on the matter by June 29, 2012.

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- if a relationship exists between the company's activities and the facts indicated in the specific instance;
- the relevance of the applicable laws and proceedings, including judicial resolutions;
- Similar treatment given to the facts in other domestic or international proceedings;
- if the eventual acceptance of the specific instance would contribute to the purpose and effect of the Guidelines;

Analysis

The identity of the claimant and its interest in the matter

ProDESC is a non-governmental organization founded in 2005 for the purpose, according to the organization itself, to “defend and promote economic, social and cultural rights to contribute to their effect, justiciability and enforceability to ensure people can enjoy an adequate living standard”⁵.

For this NCP, the foregoing is sufficient for ProDESC to represent the claimants and request the development of a specific instance on their behalf. It is important to point out that on October 26, 2012, ProDESC delivered to Mexico’s NCP documentation that evidences the representation of *Ejido La Sierrita*, Section 309 of the SNTMMSSRM, MiningWatch Canada, and United Steelworkers, but not the representation of the Canadian Labour Congress, which for such reason, is excluded from these proceedings.

Whether the facts that motivate the specific instance are material and proven

a) Breach of Contract. Although Chapter I Concepts and Principles of the Guidelines provides that the first obligation of multinational enterprises is to follow national laws and regulations, they do not refer to specific contractual aspects. The underlying contract submitted to Mexico's NPC, is not clear as to the scope and execution terms for some of the Parties' obligations. On October 26, 2012, ProDESC provided to this NCP copy of the claim for contract rescission due to breach against Excellon Mexico, deposited with the Unitary Agrarian Court of the 6th District, in Torreon, Coahuila, dated September 4, 2012. Such proceedings are in the initial stage.

Mexico's NPC considers that this fact could be material but it was not proven.

b) Failure to promptly and transparently disclose information to the shareholders. Chapter III, Information Disclosure, of the Guidelines urges multinational enterprises to promptly and precisely disclose information relating to the exercise of their activities, structure financial condition, performance, owners and corporate governance, taking into account the protection of confidential business information. The complainants did not provide elements to determine

⁵ Source: ProDESC webpage, available at www.prodesc.org.mx

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that the shareholders of Excellon Canada were not informed of the contractual and laborer problems of Excellon Mexico or, otherwise, whether there was any obligation to inform with such degree of specificity.

Mexico's NCP considers that this fact is material but was not proven.

c) Labor and Human Rights issues. The Guidelines acknowledge, under Chapter V, Employment and Labor Relations, the diversity of labor laws at a global level and therefore, that multinational enterprises can be subject to different regulation levels.

With respect to the negotiation of the collective bargaining agreement of the company, the facts enable us to determine that the problem is essentially, of an intra-union nature, deriving from a dispute over title to the collective bargaining agreement between two unions. This determination is not susceptible of resolution through dialogue between the Parties, but must be resolved in accordance with the applicable laws and procedures and through a definitive resolution by a competent authority.

Additionally, chapter IV, Human Rights, provides that States are obligated to protect human rights and that multinational enterprises must respect human rights in any country where they conduct operations, in accordance with international standards, the international obligations of the countries where they are established and the applicable laws and regulations.

With respect to the termination of employees without cause, aggressions and other anti-union practices, Mexico's NCP was not given sufficient elements to make an evaluation in accordance with the Guidelines. It should be pointed out that during the meeting held on August 23, 2012 with Mexico's NCP, ProDESC mentioned the beginning of proceedings with the competent administrative or judicial authorities, but did not provide the relevant documentary evidence. Additionally, the STPS stated, in its response to the consultation made by Mexico's NCP, that "from the issues presented and evidence provided by the complainants, it is not possible to determine whether there is a violation to the LEMS [Guidelines]".

Mexico's NCP considers that this fact is material but was not proven.

d) Environmental Matters. Chapter IV, Environment, of the Guidelines, provides that multinational enterprises must acknowledge the need to protect the environment, health and public safety and in general, carry out their activities in a way that contributes to sustainable development.

In connection with the alleged water pollution, on October 26, 2012, ProDESC submitted to this NCP a copy of results of technical tests performed in 2010 and 2011, which are not conclusive or updated and are not official.

With respect to environmental protection and the implementation of due diligence by multinational enterprises to prevent, mitigate and avoid negative impacts to the environment, this NCP determines that such matters are not subject to dialogue between the parties and

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reiterates that the first obligation of companies is to comply with local legislation, which must be enforced by the relevant authorities.

The mere potential for environmental damage forces this NCP to communicate the facts to the relevant government agencies. However, on October 26, 2012, ProDESC delivered to Mexico's NCP a copy of the environmental class-action brought against Excellon Mexico before the Federal Environmental Protection Agency (PROFEPA), which was received on October 8, 2012. To date, the authority has not issued any resolution in this respect.

Due to the foregoing and considering the pending procedures before the competent authorities and the information that dates back to 2010 and 2011, this NCP considers that the facts are material but have not been sufficiently substantiated.

If a relationship exists between the company's activities and the facts indicated in the specific instance.

The information provided by the Parties evidences that a relationship exists between the activities of the company and the facts claimed, but this does not allow us to infer a cause-and-effect relationship between the activities and the alleged violations.

The relevance of the applicable laws and proceedings, including judicial resolutions.

With respect to breach of contract, Mexico's NCP has knowledge that there is a claim for contract termination due to breach against Excellon Mexico, filed with the Unitary Agrarian Court, 6th District, in Torreon, Coahuila, with date of receipt September 4, 2012. Such complaint is in process of resolution.

With respect to labor issues, this NCP has knowledge that there is a complaint for irregularities within the procedure submitted to the Local Labor Conciliation and Arbitration Board of Gomez Palacio Durango, received on September 25, 2012. Such complaint is in process of resolution.

With regard to environmental matters, this NCP has knowledge that on October 8, 2012, an environmental class action suit was filed against Excellon Mexico before the Environmental Protection Agency. To date, the authority has not issued any statement in this respect.

All these proceedings are extremely relevant, since the formal determination of the existence of illegal actions and other material elements of the conflict depend on them.

Similar treatment given to the facts in other domestic or international proceedings.

This NCP is not aware of similar facts that have been addressed in other domestic and international proceedings. In any case, the claimants should identify and provide information on any proceedings addressing similar issues.

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If the eventual acceptance of the specific instance would contribute to the purpose and effect of the Guidelines.

In accordance with the Guidelines, the voluntary participation of the parties involved is essential for the success of the proceedings, since the purpose of the NCP is to assist and facilitate dialogue between them to help them reach mutually-satisfactory resolutions. In this respect, Excellon Mexico communicated its decision not to participate in these proceedings by virtue of the absence of good faith by the claimants noted by the company, in light of several recent actions and the results of other negotiations.

The fact that parallel dialogue or attempted dialogue procedures have been carried out between the Parties through different authorities, mainly the Federal Ministry of Government and the Government of the State of Durango, is also highly relevant for this NCP. The involvement of the NCP could jeopardize such procedures.

Last, it should be noted that many of the issues presented pertain to public policy matters that are not subject to mediation and could hardly be resolved in a body such as a NCP.

Due to the foregoing, this NCP considers that the environment to proceed to the dialogue stage between the Parties is not suitable, since its involvement, under the current circumstances would not contribute to the purpose and effect of the Guidelines.

Decision of Mexico's National Contact Point

Based on the Background information and Analysis stated above, this NCP decides:

- 1) That the facts presented do not justify further examination based on the Guidelines;
- 2) Not to offer its mediation in the case at hand;
- 3) Urge Excellon Canada to seek implementation of the principles established in the Guidelines of the OECD during the performance of its activities in any country in which it conducts operations;
- 4) Urge Excellon Mexico to take any action available to address the matters that motivated the petition of the Specific Instance.

Place and Date of issuing: Mexico City, Federal District, November 28, 2012.

(illegible signature)

Alejandro Faya Rodríguez

Head of Mexico's National Contact Point
Foreign Investment General Director
Ministry of the Economy

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CERTIFICATION

The undersigned, Slauka Ladewig Seńkowski, attorney at law and authorized expert translator by the Supreme Court of the Federal District of Mexico as of February 2007, pursuant to the List of Expert Assistants for the Administration of Justice of the Superior Court of the Federal District of Mexico published in Judicial Bulletin Volume CXC No. 130, in July, 2011 and at <http://www.tsjdf.gob.mx/iej/index.html>, with registration number 84, hereby certifies that the foregoing document, consisting of 9 (nine) pages, is a complete and accurate translation of the Spanish original thereof into English, keeping to the meaning of such original as much as possible.

Mexico City, Federal District, December 7th, 2012.

A handwritten signature in cursive script that reads "Slauka Ladewig Seńkowski".

Slauka Ladewig Seńkowski