

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

TUAC INTERNAL ANALYSIS OF TREATMENT OF CASES RAISED WITH NATIONAL CONTACT POINTS FEBRUARY 2001 - SEPTEMBER 2006

The information contained in this analysis has come primarily from TUAC affiliates and partners, the OECD 2006 Annual Report on NCPs or where available from the public comments of NCPs and companies. However, due to the lack of transparency of the functioning of some NCPs, further information may be available that TUAC would welcome in order to complete or amend this analysis. This updated version informs on new cases that have been raised in 2006. In addition, and when information is made available, it also includes updated information on the treatment of other on-going cases.

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I CHANGES SINCE APRIL 2006

Since April 2006 (previous version of the TUAC Internal Analysis), the following cases have been submitted (page 30-31):

- May 2006: A case involving British American Tobacco (UK-based) and its US-subsi-dary Reynolds American Inc. was raised by IUF with both the US and UK NCPs. The case concerns anti-union management policy and threat to relocate offshore at two tobacco plants in North Carolina (US);
- July 2006: A case involving InBev (Belgian-based, formerly Interbrew) and a subsidiary in Montenegro was submitted by IUF to the Belgian NCP for violation of trade union rights, and threat to relocate offshore;
- August 2006: the USW filed a case with the US NCP against Continental Tire North American Inc. and its parent company the German-based Continental Tire AG, for *inter alia* violation of rights to union representation, rights to information and consultation in a production facility located in North Carolina (US) (page 31).

The following cases which were considered as “on-going” in the previous version have been re-qualified as “closed” with the agreement of the submitting trade unions: Plaid Enterprises Inc. (p. 11), Ryanair (p. 19) & Smead Europe (p. 19).

The following on-going cases have been updated: Gamma Holding (p.29), Nestlé (p. 28), Banca Nazionale del Lavoro SA (p. 27), Imerys Carbonates LLC (p. 26), Bridgestone (p. 26),

Toyota Motor Corporation (p. 24), Bayer Philippines (p. 23), Metaleurop (p. 21) & Marriott Hotel (p. 10).

II CASES NO LONGER BEFORE NCPs

Trico Marine Services: February 2001-December 2002 (22 months)

The International Transport Workers' Federation (ITF) together with five American unions contacted the US NCP in February 2001 in order to facilitate resolution of a dispute with Trico. The union's case was that Trico by conducting an anti-union campaign including harassment and intimidation of workers, had violated several paragraphs of the Guidelines chapter on Employment and Industrial Relations, as well as the US National Labor Relations Act.

In response to Trico's anti-union campaign, the Norwegian oil and petrochemical workers' union NOPEF started a boycott of Trico. NOPEF also persuaded the oil company Norsk Hydro to halt negotiations with Trico on the chartering of vessels. Furthermore, legal action was taken in Norway which made reference to the Guidelines. In November 2002, NOPEF and Trico Norway signed a consent decree, allowing the employees at Trico USA to organise. Trico also agreed to send a letter to all the employees ensuring that the company accepted the right to organise and that there would not be any discrimination or harassment of pro-union workers.

The US NCP was very slow to respond to the unions and since the case had been taken up by the National Labor Relations Board (NLRB), the NCP was reluctant to deal with the issue. In December 2002, the NCP concluded that further involvement in the matter was not warranted. It referred to the availability of the NLRB "to consider the matter on the basis of U.S. labor law" and the agreement between NOPEF and Trico. The US NCP therefore did not play an active role in trying to resolve this case. Nevertheless, the Guidelines did add further pressure on the company to cease its campaign and start recognising the workers' right to be represented by trade unions.

French companies operating in Burma: March 2001-March 2002 (12 months)

In March 2001, the French unions CFDT and FO (and later UNSA) requested the French NCP to investigate as to whether French companies operating in Burma were observing the Guidelines. This led to a number of meetings at the NCP with the oil company TotalFinaElf and the hotel chain Accor to discuss their operations in Burma. In December, the NCP made a first set of draft recommendations to companies investing in Burma. These were later finalised and are posted on the French NCP website. While the recommendations demonstrate that the French NCP takes the Guidelines and the issue raised seriously, they are nevertheless unsatisfactory as they do not confront multinational enterprises with the disinvestment issue in Burma.

Accor announced in October 2002 that it would withdraw from Burma, but TotalFinaElf is still present.

The French NCP Recommendation, March 2002, is posted on the following page:
http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm

Marks and Spencer: April-December 2001 (8 months)

In April 2001, CFDT and FO (and later UNSA) raised the closure of Marks and Spencer with the French NCP. The announcement of the closure had been made without any prior consultations with the workers, and was therefore a breach of the chapter on Employment and Industrial Relations. Furthermore, the decision of Marks and Spencer was an infringement of French law and the European Works Council Directive. Consequently, the French courts ordered on 9 April Marks and Spencer to suspend the implementation of its closure plans and carry out a consultation and information process. The Belgian unions FGTB and CSC raised the same issue with the Belgian NCP in May 2001 since the Belgian employees had also not received any prior information of the closure of the Marks and Spencer stores in Belgium.

Both NCPs convened a number of meetings with the unions and the company, and they also consulted the UK NCP as the home country NCP. Marks and Spencer claimed that the British stock exchange rules prohibited it from informing the employees first. However, according to the UK NCP, quoted companies could handle redundancies with confidential consultation in advance, and simultaneous announcements to the workforce and the markets.

The French and Belgian NCPs prepared a joint draft statement, but in the end they reached different conclusions. On 13 December 2001, the French NCP stated publicly that Marks and Spencer had not consulted the employees properly and in a letter to the company, the NCP also pointed out that it had violated the Guidelines. The Belgian NCP did however not find enough evidence to conclude that Marks and Spencer had infringed the Guidelines (press release dated 23 December 2001). It was clearly unfortunate that the NCPs reached different conclusions, necessitating better coordination between NCPs.

The Marks and Spencer stores in France were acquired by Galeries Lafayette, and the employees were given the choice between a new job or severance pay. The opinion of our French affiliates is that the Guidelines did play some part in achieving an acceptable settlement.

French NCP Recommendation, December 2001:
http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm

Burma: May 2001

The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) wrote to the US NCP in May 2001 to discuss US companies trading with the Burmese regime. The AFL-CIO did not receive a reply from the NCP.

Siemens: June-November 2001 (5 months)

The Czech-Moravian Confederation of Trade Unions (CMKOS) raised a case with the Czech NCP at the beginning of June 2001 concerning a Czech subsidiary of the German-owned

multinational Siemens. The conflict had arisen when the labour conditions worsened at the plant and the management refused to negotiate with the trade union. It took three extraordinary meetings of the NCP to resolve the dispute. The NCP also informed the German Embassy and it discussed the case with the German NCP. The intervention of the parent company also contributed to the solution. The parties reached an agreement relatively soon after entering into the negotiations, and after the declaration of the new “Principles for personnel policy”. The trade union requirements were met in these principles and they are respected in the current operating practice.

The case confirmed the importance of positive cooperation between the social partners. The Siemens subsidiary was not affiliated to any of the Czech employers’ organisation, which made the communication between the parties more complicated. In dealing with the case, the Czech NCP played a constructive role. As a result, new activities were agreed to deepen and broaden the role of the NCP and the direct co-operation with the social partners. The CMKOS’ experience with the NCP has therefore been positive.

Bosch: June 2001-April 2002 (10 months)

This case was submitted simultaneously with the case of Siemens to the Czech NCP by the CMKOS and also concerned the right to organise. A subsidiary of the German company Bosch prevented the workers from establishing a trade union. The local management even used physical force to prevent the workers from exercising their rights to organise. The case was discussed at four extraordinary meetings of the NCP. Again the NCP informed the German NCP as well as the German Embassy. The NCP offered a forum for negotiations and there were sometimes considerable tensions before the parties gradually approached a consensus. Although the management eventually agreed to the establishment of a trade union representation, it took a change in management by the parent company before constructive negotiations were started. At the fourth NCP meeting, the new management declared that there were no obstacles for the growth and development of the newly established trade union and for reaching a collective agreement.

The objectives of the trade unions were reached also in this case. The behaviour of the local management changed and it adapted to the strategies of the parent company (declared clearly in their policy documents). The case has demonstrated the effectiveness of the NCP.

Bata: June 2001-February 2003 (20 months)

The CFDT, with the support of the CGT, raised the closure of Bata’s establishment in Lorraine (the Hellocourt plant) with the French NCP in June 2001. The reason was that the information given to the workers did not reflect the real situation, which was a breach of the Guidelines (the chapter on Employment and Industrial Relations). Since Bata was headquartered in Canada, the French NCP contacted the Canadian NCP to obtain more information directly from the parent company. BATA was however unwilling to provide further information. It appears that the Canadian NCP did little to try to resolve the case. The French NCP closed the case when the Hellocourt plant was taken over despite the fact that the issue had not been settled. According to the NCP, it wrote both to BATA and the Canadian NCP to explain this.

In a press release dated February 2003, the CGT contested the decision of the NCP. Only 268 out of 800 employees at the Hellocourt plant were rehired by the company that took over the plant. The BATA case illustrates the difficulties in using the Guidelines when a company has already closed a plant.

IHC Caland: July 2001-July 2004 (36 months)

In July 2001, the Dutch unions FNV and CNV requested the Dutch NCP to look into the association of the Dutch dredging company IHC Caland with the use of forced labour in Burma. They also asked the NCP to contact the French NCP. Since IHC Caland was a subcontractor to Premier Oil, the Trades Union Congress urged the UK NCP to consider the role of Premier Oil and to co-operate with the Dutch NCP.

A tripartite meeting was held in March 2002, more than half a year after the case had been raised. It resulted in a separate meeting between the social partners in July 2002. IHC Caland declared afterwards that it would withdraw from Burma when its contract expired in 2013. The Dutch unions and IHC Caland also met with the Burmese Embassy to protest against the use of forced labour. In September 2002, Premier Oil announced its withdrawal from Burma. The company was taken over by Petronas, a Malaysian enterprise. In November 2003, IHC Caland wrote a letter to Petronas requesting it to observe the Guidelines.

The social partners reached an agreement in July 2003. A draft declaration was presented by the NCP six months later, but it was not accepted by the trade unions. Not until July 2004 was the tripartite statement issued by the NCP.

Although the case had a satisfying outcome insofar as the company agreed to pull out of Burma, the fact that it took the NCP three years to conclude the case demonstrates the lack of efficient and timely procedures to deal with cases. There appears to have been considerable delays in setting up meetings and negotiating the final statement.

A statement by the Dutch NCP (and in Dutch only) is available on the NCP's website at the following: Website report: <http://www.oesorichtlijnen.nl/nieuws/archief.asp>

A follow-up meeting on this case, involving FNV representatives, took place in January 2006.

Cosmos Mack Industries Ltd: November 2001-2003

The Free Trade Zone Workers' Union (FTZWU) in Sri Lanka approached the Korean NCP in November 2001 about the anti-union practices of Cosmos Mack Industries Ltd. The company had refused to recognise the trade union. Furthermore, it was alleged that the company had intimidated the workers and fired key trade union members. The Korean NCP stated in its annual report 2003 that it had investigated the case and that the company was a joint venture between a Korean and a Sri Lankan company. It claimed that it was the Sri Lankan company that was responsible for labour issues and not the Korean company. Nevertheless, the NCP considered that the responsibilities should be shared between the joint venture partners and it recommended the company to conform to the Guidelines.

TUAC has not been able to obtain any further information about the subsequent outcome of the case.

Liberian Int'l Ship and Corporate Registry: November 2001-October 2002 (11 months)

The US NCP was requested in November 2001 to investigate the conduct of the Liberian International Ship and Corporate Registry (LISCR), a US registered company, by the International Transport Workers' Federation (ITF). A report of the UN Security Council had showed that LISCR had been used to transfer money to buy weapons for the Liberian government, which was a violation of the UN arms embargo. It was also considered a breach of a number of provisions of the chapters on General Policies, Disclosure and Combating Bribery. At the end of 2001, the UN Security Council adopted resolution 1343 (2001) concerning Liberia and the activities of LISCR, recommending the establishment of a special account (audited by the International Monetary Fund) to make sure that the revenue was used for development purposes.

In May 2002, the US NCP replied that the US government was addressing the issue through direct contacts with LISCR and that it supported the new UN resolution 1408 (2002), which called on Liberia to establish a transparent and internationally verifiable audit regime to ensure that the revenues were used for legitimate purposes. The ITF renewed its request to the NCP to investigate the conduct of LISCR. A meeting between the NCP and the ITF was finally held in July 2002. The NCP also held a separate meeting with LISCR.

At the end of October 2002, the NCP concluded that further involvement was not warranted as the issue "is being effectively addressed through other appropriate means", including through a United Nations Security Resolution. Moreover, the NCP referred to the audit that was going to be carried out by the auditing firm Deloitte and Touche. However, in November 2002, the ITF and the human rights NGO Global Witness revealed that Deloitte and Touche had not carried out the audit of LISCR in a transparent manner. Furthermore, a secretive agreement had been signed between the government of Liberia and the Ghana-based Deloitte subsidiary. In December 2002, Deloitte in Ghana withdrew from the contract to undertake the audit.

The US NCP again proved reluctant to deal with a case. It has yet to reach a conclusion whether the paragraphs of the Guidelines laid out by the ITF has been violated. It confined itself to state that the conduct of LISCR was being handled through other means.

Wärtsilä: December 2001

The closure of a subsidiary of Wärtsilä, a Finnish company producing ship engines, in the Netherlands was raised by the Federation of Dutch Trade Unions (FNV) with the Dutch NCP at the end of December 2001. The company decided to move the plant to Trieste in Italy without any prior information or consultations with the trade union to mitigate the negative effects as stipulated in the chapter on Employment and Industrial Relations. Considering the large amounts of public funds that had been transferred to the company, FNV also referred to

paragraph 1 in the chapter on General Policies¹. Furthermore, FNV requested the NCP to address the NCPs in Finland and Italy.

In the final negotiations with Wärtsilä, the trade unions agreed to withdraw the part of the case regarding the chapter on Employment and Industrial Relations from the NCP. In exchange, 440 jobs were saved. However, the part that concerned the government funds that had been transferred to the company was never settled. The NCP asserted that the local authorities had other ways to address the issue. It therefore considered that the case was finalised in 2001 when it was partly withdrawn by the FNV.

ChoiShin/Cimatextiles: February 2002-July 2003 (17 months)

In February 2002, the International Textile, Garment and Leather Workers' Federation (ITGLWF) in co-operation with TUAC and its two Korean affiliates FKTU and KCTU brought a case to the Korean NCP concerning the behaviour of ChoiShin and Cimatextiles – two Guatemalan subsidiaries of ChoiShin Co. Ltd. of Korea, which mainly produced clothes for the American retailer Liz Claiborne. The two plants had been conducting an aggressive anti-union campaign, which included harassment and threats against workers.

The case was also sent to the US NCP because of the connection to Liz Claiborne. The FNV also raised the case with the Dutch NCP since government funds had been used for the Central American Maquila Organising Programme, which included workers from the two plants concerned. On May 20, the US NCP replied that it had contacted the Korean NCP “with the request for information on their handling of the issue”. The following day, the Korean NCP wrote to TUAC to ask for advice on what action to take. At first, the Dutch NCP did not find the case relevant. But in March 2003, the NCP held a meeting with the General Secretary of the ITGLWF. In April 2003, in connection with the CIME meeting, TUAC arranged a meeting between the Korean NCP, the President of the Guatemalan trade union concerned, FESTRAS and the General Secretary of the ITGLWF.

The case was also raised with the ILO Committee on Freedom of Association, which in February 2003 urged the Guatemalan government “to ensure that the investigation covers all the allegations made in this case concerning serious acts of violence and other antiunion acts at the ChoiShin and Cimatextiles enterprises in the Villanueva free trade zone, with a view to clarifying the facts, determining responsibility and punishing those responsible”. In spring 2003, the Guatemalan government threatened to revoke the company's export licence if it did not reach an agreement with the trade unions. In July 2003, ChoiShin signed a first collective bargaining agreement with the two unions Sitracima and Sitrachoi. The company also started to reinstate the union members that had been dismissed.

It is difficult to assess to what extent the Korean NCP contributed to the solution of the case. What is clear is that the case was finally resolved because of the threat to revoke the export licence. According to the NCP, it recommended that the company should “conserve the local culture and labour practice and to encourage workforce-friendly environment”. The NCP did meet with the Korean management a number of times and did take measures to try to resolve

¹ “Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.”

the issue. But it did not follow the procedures set out in the Procedural Guidance. Firstly, it did not respond directly to the party raising the case, the ITGLWF. Instead it contacted a Korean affiliate of the ITGLWF, which created confusion. Secondly, it invited the company and NGOs to an arbitration meeting, but not the ITGLWF, which posed the question how to conduct an arbitration meeting if one of the parties in the dispute is not present! In addition, the NCP claimed that the ITGLWF had not proved that the trade unions represented at least 25 per cent of the employees, which is the legal requirement in order to negotiate a collective bargaining agreement. But the issue for the NCP to consider was the fact that the company prevented the workers from organising, which naturally makes it impossible to enter into any collective bargaining negotiations. Although the case was of some use in raising the profile of this dispute in the Korean government, it was ultimately resolved through national law and the NCP missed an opportunity to achieve a much earlier solution and to play a constructive role itself.

Maersk Medical Inc: February 2002-May 2005 (39 months)

The Danish labour movement's international forum AIF, an NGO connected to the trade unions, raised a case with the Danish NCP in February 2002 concerning Mærsk Medical Inc, a Malaysian subsidiary of the Mærsk Group, Denmark's largest company dealing with a broad spectrum of activities including in the maritime and industrial sectors. The management of the subsidiary refused to accept and enter into a collective agreement with the union (Rubber Products) despite the fact that the majority of the employees had signed that they wanted to join the union. The company referred to requirements in the Malaysian Trade Unions Act, which stipulates that the trade union has to be recognised as competent in the single company by the Department of Trade Union under the Ministry of Labour. After several rejections Rubbers finally achieved recognition as competent in 1988, which Mærsk Medical Inc disputed. As a result, the issue was pending in the legal system of Malaysia for several years due to appeals first by the employer and then the trade union.

In November 2003, the Court of Appeal ruled that the union was to be acknowledged, a decision which was challenged by the company. In August 2004, the Federal Court dismissed the application by the enterprise and upheld the decision of the Court of Appeal. Hence the Federal Court reaffirmed the Recognition Order by the Minister directing the company to recognise that the union was valid and right in law. The NCP however did not want to take any further action until this had been confirmed.

It has been difficult for the NCP to uncover the juridical details and aspects of the case and its development in the Malaysian system. In addition, the Danish employers' organisation was not particularly informative in the beginning of the process. Moreover, Mærsk Medical Inc was in 2003 taken over by Nordic Capital, one of the leading Nordic private capital companies, and operates under the name Unomedical. The parent company is still headquartered in Denmark. Again this is a case where the company and the NCP appear to have been using the legal proceedings in a non-adhering country as an excuse to avoid dealing with the issue.

The NCP finally concluded the case in May 2005, after the Malaysian Supreme Court had ruled in favour of the trade union, by a letter to the AIF. The NCP informed the AIF that the company had begun negotiations with the union to reach a collective bargaining agreement.

Furthermore, the NCP requested the company to respect the Guidelines at a meeting on 11 May.

Gard: April-December 2002 (8 months)

The ITF filed a case with the Norwegian NCP in April 2002 pertaining to the behaviour of the Norwegian insurance company Gard. The company had refused to pay the contractual benefits to the seafarers and their families in personal injury and death cases. Furthermore, Gard did not honour the vessel owners' obligation to provide basic health care benefits for injured seafarers. This was considered primarily a breach of the chapter on General Policies, but the chapter on Consumer Interests was also invoked since Gard provided insurance for the risks to be covered by the shipowners. The NCP however took a different view. It was of the opinion that the chapter on Employment and Industrial Relations would be more relevant, arguing that the issue concerned an employer-employee relationship and not a customer relationship, even though it was a matter between the employer's insurance company and the employees.

Nevertheless, the NCP concluded in December 2002 that Gard had not violated the Guidelines. The decision was based on the fact that the challenged arrangement was in accordance with Philippine law. There were agreements between the worker organisations and the employer organisations/shipping companies on the arrangement, and according to the Norwegian Embassy, the Supreme Court had decided that it was "lawful". The Embassy did also state that these arrangements were normal insurance practices in the Philippines in this field of business.

The Norwegian NCP is tripartite, and the conclusion of the NCP was agreed together with the social partners. According to the Norwegian Confederation of Trade Unions (LO), the choice of statutory authority to deal with the complaint could possibly have been discussed. Furthermore, LO considered it a problem that the ITF did not discuss the matter with the concerned organisation (the Norwegian Seamen's Union) before submitting it to the NCP. The lesson is perhaps the need for better coordination on the trade union side.

ASPOCOMP: April 2002-November 2003 (19 months)

In April 2002, Force Ouvrière (FO) raised a case about the Finnish telecom multinational Aspocomp with the French NCP. The company, in announcing the closure of its plant in Evreux, failed to live up to the provisions of the chapter on Employment and Industrial Relations. It also refused to participate in the tripartite consultations conducted by the NCP. In December 2002, the NCP wrote to the Finnish NCP to demand assistance in exerting pressure on the company to attend.

In the final statement of the French NCP in November 2003, it noticed that the company had not acted in conformity with the Guidelines. Not only had Aspocomp violated the paragraph cited by the FO, but it had also failed to live up to paragraph 3 of the same chapter.² MEDEF (the French Employers' Association) did however not share this conclusion.

² "3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole."

Although the FO was satisfied with the outcome, the decision of the NCP had limited effect considering that Aspocomp did not have any remaining activities in France. Moreover, the procedures were extremely tardy, partly due to the slow reaction of the Finnish NCP and the fact that the company refused to meet with the NCP.

French NCP Recommendation, 13 November 2003

http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm

Continental: May 2002-January 2005 (32 months)

The two NGOs Germanwatch and FIAN submitted a case to the German NCP on behalf of the Mexican union SNRTE concerning the closure of a subsidiary of Continental (Euzkadi) in Mexico in May 2002. The closure was executed without any prior information to the workers. In dealing with the case, the NCP met with a trade union delegation from Mexico. The case was however transferred to the Mexican NCP as it had the main responsibility considering that the issue had arisen in Mexico and not Germany. In January 2005, an agreement was reached allowing the union to reopen the plant as a cooperative in a joint venture with the Mexican investor group Llanti Systems³. The Mexican NCP was criticised for not playing a constructive role in the resolution of the case.

Marriott Hotel: Spring 2002

The Polish NCP was contacted by the Polish trade union confederation Solidarnosc in Spring 2002 regarding the US-owned Warsaw Marriott Hotel. Trade union activists had been threatened and harassed by the management, and one trade unionist had even been beaten by security guards at the hotel. TUAC is not aware of any measures taken by the NCP to deal with the issue. It appears that the case was never investigated. According to the OECD 2006 Annual Report on NCPs, the handling of the case “resumed” and the Polish NCP is currently “in contact with representatives of parties involved”.

Pinault-Printemps-Redoute (PPR): July 2002-January 2003 (7 months)

The conduct of Brylane Inc, a US subsidiary to the French Pinault-Printemps-Redoute (PPR), was raised with the US NCP at the beginning of July 2002 by the US trade union organisations UNITE and AFL-CIO. It was also brought to the attention of the French NCP by the CFDT, CGT and FO. In addition, the FNV raised the case with the Dutch NCP on the grounds that PPR also owned Gucci, which was headquartered in the Netherlands. The same case was also submitted to the Austrian NCP in October by the Austrian Clean Clothes Campaign.

³ according to OECD 2006 Annual Report on NCPs: “The workers have received a total of 50% in shares of the tyre factory and *Llanti Systems* bought for estimated USD 40 Mio. The other half of the factory. The German MNE will support it as technical adviser for the production. At first there are 600 jobs; this figure shall be increased after one year to up to 1000 jobs”.

The reason for the case was that Brylane did not respect the employees' right to organise. In response to the workers' efforts to form a trade union, it was alleged that Brylane initiated a campaign of harassment and intimidation. The US NCP contacted the French NCP about the case, while the Dutch NCP replied that the case was not relevant to the Dutch NCP. Likewise, the Austrian NCP did not find the case admissible in the Austrian NCP. In November, UNITE renewed its request to the US NCP as it had not received a response.

UNITE withdrew the case in January 2003 after it had reached an agreement with Brylane to have a card check ballot to determine whether the employees wanted to be represented by UNITE or not. UNITE won the card check ballot on 29 January, and later a collective bargaining agreement was signed. Despite the passivity of the US NCP, the case helped to enable PPR to get Brylane to comply with the Guidelines. Action was taken by French trade unions and the French NCP. This contributed to the positive outcome.

Plaid Enterprises Inc: August 2002 – Spring 2006 (approx. 40 months)

Breaches of Guidelines by the US wholesale company Plaid were raised with the Dutch NCP by the Federation of Dutch Trade Unions (FNV) at the beginning of August 2002. The Dutch subsidiary had a couple of months earlier applied for bankruptcy without informing the employees in advance. The FNV also brought the case to court and won in the first instance, but lost in the second.

After the NCP had deemed that the case was receivable, it held a meeting with the FNV in November 2002. Thereafter the FNV did not receive any news and consequently sent several reminders. In October 2003, the NCP responded that all traces of Plaid in the Netherlands had disappeared. Considering this and the fact that the Dutch court had found that Plaid had not informed the employees of its application for bankruptcy, the FNV believes that the NCP should have enough information to conclude that Plaid has violated the Guidelines.

In the 2006 OECD report, the Dutch NCP qualifies the case as being concluded: "As the Dutch affiliate went bankrupt and the management went elsewhere neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from bilateral consultations and courts' rulings (www.oesorichtlijnen.nl)."

Parmalat: September 2002-April 2003 (7 months)

The Brazilian trade union confederation CUT presented a case to the Brazilian NCP regarding the Italian food company Parmalat at the end of September 2002. The Italian trade unions also brought the case to the attention of the Italian NCP requesting the two NCPs to collaborate. Parmalat had decided in June 2002 to transfer the production in a factory in Porto Alegre and to dismiss half of the workforce, without prior consultations with the trade union. This was considered a breach of the Guidelines.

In October, the CUT was invited to a first meeting with the NCP. It was decided that the NCP would convene another meeting with the CUT and Parmalat. This meeting was held in March 2003. Parmalat claimed that the workers had been given prior notice and that a collective

agreement had been signed with the union, while the CUT maintained that the workers had not been informed before the final decision had been taken.

The NCP concluded in April 2003 that Parmalat had not tried to find an alternative solution to the closure of the plant in co-operation with the workers and the government authorities as stipulated in the Guidelines. The NCP therefore recommended Parmalat to accomplish its procedures in similar cases in the future (Annex 2). The conclusion supported the facts put forward by the CUT, but the wording could have been stronger. The NCP's first draft conclusion had been even weaker, but the CUT insisted on having the text changed. At the time of the conclusion, the NCP was still working on its structure and procedures. It was also decided to set up a consultative body to the NCP representing civil society.

Sanmina-SCI/Hewlett Packard: September 2002-January 2004 (16 months)

The Dutch NCP was approached by the FNV at the beginning of September 2002 concerning the behaviour of Sanmina-SCI - a computer assembly firm and subsidiary of Hewlett Packard. The Sanmina plant had been set up with government funds and was closed without any prior information to the employees. Besides, the workers' representatives had not been allowed to negotiate with the real management.

The FNV withdrew part of the case in December 2002 after successful negotiations with Sanmina-SCI over a social plan. But the FNV maintained that the company's failure to meet the requirements of the Guidelines in paragraph six of the chapter on Employment and Industrial Relations in relation to public authorities ("...provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects") should be examined by the NCP.

The NCP did not officially respond to this demand, but appeared unwilling to deal with the issue. In January 2004, the FNV was informed that the NCP was not going to pursue the matter further. The Dutch NCP decided on the following ground: "As the Dutch affiliate went bankrupt and the management went elsewhere neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from bilateral consultations and courts' rulings (www.oesorichtlijnen.nl)".

Sees Corporation: November-December 2002 (1 month)

In November 2002, the Progress Union in Sri Lanka contacted the Korean NCP regarding the Korean company Sees Corporation. Sees Lanka Limited, a sports ware manufacturer owned by Sees Corporation, was about to close its bag section. Contrary to Sri Lankan law, it also stopped paying the salaries. According to the law, the company should have continued to pay wages until the government inquiry had been terminated. However, in the beginning of December, the Progress Union reached a settlement with the management of Sees Lanka, whereby all workers were compensated. The case was therefore withdrawn from the NCP.

Dutch Travel Agencies: November 2002-April 2004 (17 months)

The Dutch unions FNV and CNV submitted a case to the Dutch NCP at the end of November 2002 involving several travel agencies. Since these travel agencies promoted tourism in Burma they were inevitably implicated with the regime and had implicitly failed to contribute to the elimination of forced labour. The NCP held a hearing with the trade unions in January 2003. A tripartite meeting with the parties concerned was organised in July 2003. Next the NCP informed the social partners that it could not handle the case because of a lack of an investment nexus. Yet the case had been brought to the NCP because the Dutch government had stated that the NCP was the proper body to deal with issues over Dutch companies' operations in Burma, whether they related to trade or investment.

In January 2004, the Deputy Minister of Economic Affairs addressed the General Association of Dutch Travel Agencies explaining that the government preferred that they abstained from commercial activities in Burma. If they would however continue pursuing their activities, they should at least follow certain recommendations.

In April 2004, the NCP issued a communication arguing that the Guidelines were not applicable to the case⁴.

This case raises concerns that NCPs are interpreting the "investment nexus" as discussed in the OECD Investment Committee to overly restrict the meaning of the Guidelines and avoid dealing with cases. In TUAC's opinion, the investment nexus does not change the spirit of the Guidelines. The Investment Committee has recognised that "the international community may continue to draw on the values underlying the Guidelines in other contexts" as well as "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". Therefore it is worrying that the NCP considered the case receivable before the investment nexus was defined, but not afterwards.

Ivanhoe Mines Ltd: November 2002-February 2006 (38,5 months)

The Canadian Labour Congress (CLC) asked in November 2002 the Canadian NCP to investigate the charges against Ivanhoe Mines Ltd. The company was in a joint venture with a government enterprise in Burma operating the copper mine S&K. This joint venture had allegedly been involved in the use of forced labour, among other things to build a railway to supply the mine. In addition, the mine had caused serious ecological damage in the region. The NCP replied to the CLC in January 2003, demanding more information about the environmental problems. The CLC agreed to provide the NCP with more information on the environmental issue, but urged it to go ahead with the labour aspect of the case.

In June 2005, the NCP announced that it was going to close the case. But it took the NCP yet another 7-8 months to actually do so in February 2006. The NCP justified the closure by the fact that it was not able to proceed with the dialogue given that there was "no agreement between the parties to participate in the process".

⁴ See <http://www.oesorichtlijnen.nl/nieuws/archief.asp>

Not only has the NCP spent more than 3 years on trying to convince the company to participate in a dialogue with the CLC, it has also failed to issue a statement and make recommendations on the implementation as called for by the Guidelines (and by the NCP itself on its website).

Chemie Pharmacie Holland: December 2002-May 2004 (17 months)

In December 2002, the FNV asked the Dutch NCP to look into the allegations against Chemie Pharmacie Holland. The company was together with 84 other multinational enterprises listed by the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo in October 2002 as being in violation of the Guidelines.

In January 2003, the chair of the OECD Committee on International Investment and Multinational Enterprises (CIME) requested the UN Panel to provide the NCPs with further information in order to investigate the cases. According to the final report of the Panel in October 2003, the company had not reacted to the allegations in the previous report.

The issue was also debated in the Dutch parliament with questions put to the Minister of Foreign Affairs. It was alleged that the company had not done anything wrong.

The case was formally raised by Dutch NGOs in July 2003 to follow up the UN report. The NCP however declined the issue with reference to the lack of an investment nexus, but did publish a “statement on lessons learned”⁵.

Lundin Group: January-December 2003 (11 months)

At the initiative of the Swedish unions LO and SACO, the Swedish NCP contacted Lundin Petroleum in January 2003 with regard to the findings of the UN Panel on the Democratic Republic of Congo (DRC). The NCP requested the company to provide information concerning its operations in the DRC and to respond to the findings of the UN Panel. Lundin Petroleum replied that the company identified by the UN was in fact Lundin Group, a non-Swedish company registered in Bermuda. In the final report of the UN Panel, Lundin Group was taken off the list since the case was considered resolved in the sense that “the original issues that led to their being listed in the annexes having been worked out to the satisfaction of both the Panel and the companies and individuals concerned”. The NCP therefore closed the case at its meeting in December.

Honda: February-August 2003 (6 months)

The International Metalworkers’ Federation (IMF) raised the conduct of a subsidiary to Honda in Indonesia with the Japanese NCP in February 2003. After wage negotiations had broken down, workers at Honda Prospect Motor Indonesia went on a legal strike. Honda responded by dismissing 208 workers. Later, an additional 160 workers were fired. Although the Indonesian Labour Dispute Arbitration Committee had ruled that the strike was legally

⁵ <http://www.oesorichtlijnen.nl/nieuws/archief.asp>

convened and ordered Honda to reinstate the workers, Honda defied the decision of the Arbitration Committee.

The NCP met separately with Honda on the one hand, and with the trade union organisations RENGO and IMF-JC on the other, to discuss the case. In its conclusion dated August 2003, the NCP noted that Honda had reaffirmed its intention to abide by the court decision and that most of the workers concerned had reached an agreement with Honda to retire with severance pay. It appears that the NCP defended the company position rather than trying to mediate in a serious breach of the Guidelines.

British American Tobacco: September 2003-February 2004 (5 months)

The operations of the British American Tobacco Company (BAT) in Burma were raised with the UK NCP by the International Union of Food and Allied Workers (IUF) in September 2003. BAT was conducting a joint venture with the Burmese military, which precluded it from complying with several of the paragraphs of the chapter on General Policies. The IUF argued that BAT's operations in Burma necessarily involved it in political activities which repeatedly had been condemned by resolutions of the United Nation Security Council, the ILO and other international bodies. Prior to the case being raised, the UK government had already encouraged BAT to leave Burma, but without any result.

At the beginning of November 2003, BAT sold its stake in Burma to a Singapore-based investment company because of a formal request from the British government to withdraw from Burma. It did so reluctantly explaining that "it is hard to ignore the political will of your government". Consequently, the IUF withdrew the case in February 2004 after a separate meeting with BAT. Although the IUF was successful in reaching its goal to get BAT to disinvest, BAT is nevertheless present in Burma through licensing agreements.

It appears that the Guidelines case and the resulting discussion through the NCP did act as a focal point for getting some momentum in the company position.

Nestlé: September 2003-March 2004 (5.5 months)

The Korean Confederation of Trade Unions (KCTU) in co-operation with the International Union of Food and Allied Workers (IUF) and the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) filed a case with the Korean NCP at the end of September 2003. The Swiss NCP was also informed of the case as Nestlé is headquartered in Switzerland. Nestlé had threatened to close its factory in Korea because of a collective bargaining dispute with the Nestlé Korea Labour Union. The union took strike action after the local management had refused to include issues over staffing levels and subcontracting in the negotiations for a new collective bargaining agreement. In response, the management initiated a lockout and threatened to close its operations in Korea. In a letter to the employees and in Korean and international business press, Nestlé announced that they were considering moving their production to China amongst other countries. This was an infringement of paragraph 7 in the chapter on Employment and Industrial Relations.

Nestlé in Korea came under heavy pressure to change its behaviour, not least from the parent company. In addition, on November 16 the Chungbook Province Labour Relations

Committee ruled in favour of the union. At the end of November, a settlement was reached between the Nestlé Korea Labour Union (NKLU) and the company. The new collective agreement established a joint union-management committee to review any proposed changes to employment levels, working conditions and job classification. It also provided for a 5.5 per cent increase in salaries.

In response to repeated requests by the unions, the Korean NCP stated in March 2004 that the case was closed given the agreement between the NKLU and Nestlé. The unions were extremely critical of the NCP since it closed the case without having met the unions even once and without making a public statement. The unions therefore asked the Ministry for a meeting to discuss this further. As a result, a meeting was held between the NCP and the KCTU, in which the NCP reconfirmed that the case was closed. It did however state its willingness to start a dialogue over its internal procedures.

The Swiss NCP played a constructive role in trying to resolve the case. Although the Korean NCP had the main responsibility for dealing with the case, the Swiss NCP met with the unions involved and Nestlé several times. It also met with a labour delegation from Korea on 21 November. Furthermore, it engaged with the Korean NCP suggesting it to call a meeting with all parties to attempt to reach agreement on the issues raised and examined the possibilities of a joint statement.

Swiss NCP press release; 21 November 2003:
<http://www.seco.admin.ch/news/00197/index.html?lang=en>

Locomotive Trading AG Hänibül: October 2003-February 2004 (4,5 months)

An affiliate to the CMKOS, the Railway Trade Unions Association, contacted the Czech NCP in October 2003 concerning the behaviour of the Swiss company Locomotive Trading AG Hänibül, the owner of a plant for production and repair of railway equipment. The company had transferred assets abroad, which threatened it to go into liquidation. The main objective of trade union was to prevent the liquidation of the plant and retain the production and employment.

Meanwhile the union alleged that the company violated trade unions rights as well as the Czech law by not paying wages or delaying the wages, threatening and attacking trade union representatives in the supervisory body of the plant, refusing to provide the trade union with any information concerning the enterprise and by refusing to conclude a collective agreement.

It was believed that the only way to deal with the situation was for the company to declare bankruptcy and for a new owner to adopt a different approach.

At the first NCP meeting in November 2003, it was announced that the enterprise had been declared bankrupt. The case was closed in February 2004 because the company was to be managed by the Receiver. The relations between the trade union and the Receiver were satisfactory and CMKOS believed that there was a possibility to find a new owner and thereby save the enterprise and retain employment. These developments were to be monitored and the trade union could return to the issue in the NCP.

Swatch Group: February 2004-June 2005 (16 months)

The Swiss NCP was contacted by Union Syndicale Suisse (USS) in February 2004 concerning the activities of several subsidiaries of the Swatch Group. The subsidiaries, although covered by a collective bargaining agreement between the Swatch Group and the trade union organisation FTMH⁶, did not recognise the agreement.

The NCP responded that it would seek the advice of the OECD Investment Committee concerning the receivability of the case. Even though the NCP acknowledged that the Guidelines reflected good practices for all, it questioned the applicability of the Guidelines since the company was based in Switzerland and not in a foreign country. The Guidelines, however, do not make a distinction between multinational enterprises operating abroad and multinational enterprises operating in home countries.

In July 2004, the NCP made a formal request for clarification to the OECD Investment Committee. In its reply dated April 2005, the Committee recognised that the Guidelines were applicable to both domestic and international operations of companies. But it also stressed the fact that the implementation procedures had been created to deal with issues arising in the context of international investment. Finally, it encouraged the NCP to address the issue in terms of how to further the effectiveness of the Guidelines.

The issue was finally resolved in June 2005 after Swatch reached an agreement with the union concerning the extension of the collective bargaining agreement to three plants in the region of Tessin.

Korean EPZ Corporation: March-June 2004 (3 months)

At the end of March 2004, the International Textile, Garment and Leather Workers' Federation (ITGLWF) submitted a case to the Korean NCP concerning the attempts of Korean EPZ Corporation, a group of 22 Korean investors, to prevent the Bangladeshi government to end the ban on freedom of association in their Export Processing Zones (EPZs).

The Bangladeshi government announced in the gazette publication in 2001 that all workers in EPZs would have their rights restored from the first of January 2004. This was challenged by Youngone Corporation (one of the biggest foreign investors in Korea) in the Supreme Court of Bangladesh in 2003 on the grounds that the government had unilaterally changed the rules given that foreign companies invested in Bangladesh in the belief that trade unions were not allowed in the EPZs.

Apart from violating the employees' right to organise, the company was also believed to have infringed several paragraphs of the chapter on General Policies.

The NCP replied in May that it was not certain that the Korean EPZ Corporation had any relevance to the case arguing that the company's task was to develop an EPZ. Consequently, the ITGLWF wrote again to the NCP underlining that although Korean EPZ Corporation was a company established to develop an EPZ in Bangladesh, it should nevertheless comply with

⁶ On 1 January 2005, the FTMH together with several other Swiss unions merged into the new organisation UNIA.

the Guidelines. The NCP repeated that the company had not acted on behalf of investors in EPZs, but had merely developed an EPZ and thus did not interfere with trade union rights.

Angelica Textile Services: August 2004-June 2005 (10 months)

Both the US and Dutch NCPs were requested by UNITE-HERE at the beginning of August 2004 to investigate the violations of the Guidelines by Angelica Textile Services, a healthcare laundry service provider in the US. To expand its operations, the company had obtained funding from LaSalle Bank, a division of Dutch ABN Amro Bank. As a business partner, the bank was expected to encourage Angelica Textile Services to apply the Guidelines or principles compatible with the Guidelines. Although Angelica Textile Services was not a multinational enterprise, the trade unions recalled that the Guidelines reflected good practice for all and that multinational and domestic enterprises were subject to the same expectations.⁷

Angelica Textile Services was in breach of several chapters of the Guidelines. It did not provide training for its employees. Workers were not trained on job duties and health and safety precautions. Neither did the company ensure occupational health and safety in its operations (chapters on General Policies and Employment and Industrial Relations). For example, it did not provide workers with Hepatitis B vaccinations as required. Moreover, it did not respect the right of its employees to be represented by trade unions (chapter on Employment and Industrial Relations). Finally, it did not meet the agreed or legally required standards for consumer health and safety (chapter on Consumer Interests). It had among other things failed to meet hospital laundry quality standards by not separating soiled and clean linen.

The US NCP replied at the end of August that “further action” would not be appropriate given that Angelica Textile Services was a US company and that the issue concerned its operations in the US. It did however commit to inform the company of the issue raised.

In the middle of September, the unions requested the NCP to reconsider the complaint arguing that domestic companies were subject to the same expectations as multinational. They also stressed the international link to ABN Amro Bank. (The responsibility of ABN Amro Bank was later raised as a separate case in March 2005. See page 18.)

LaSalle Bank met with the senior management of Angelica in response to a letter from UNITE-HERE. According to LaSalle Bank, their client “is committed to responsible citizenship”.

In June 2005, UNITE-HERE and Angelica came to an understanding resolving the dispute. It was agreed that employees at Angelica non-union facilities would have the right to decide whether they wanted to be represented by UNITE-HERE. New, tentative collective bargaining agreements were also negotiated for those facilities where existing agreements had expired.

⁷ **I. Concepts and Principles**

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.”

Smead Europe: October 2004 – November 2004 (1 month)

The corporate conduct of Smead Europe, a US based office equipment company, was raised with the Dutch NCP by the FNV in October 2004. The company had violated a collective agreement and was sanctioned for this by a Dutch court. In spite of the fact that the issue had been resolved, the FNV requested the NCP to officially record that the company had violated the Guidelines.

In the reply of the NCP in November 2004, it was suggested that the Guidelines should be used only to address problems that go beyond national legislation. Although NCPs should consider the relevance of applicable law and procedures when deciding whether a case merits further examination, the Procedural Guidance does not exclude cases on the basis that the issue is covered in national law.

In the 2006 OECD Annual report on NCPs, the Dutch NCP considers the case to be closed, on the ground that “legal proceedings took care of labour union’s concerns”.

Ryanair: November 2004

The violations of the chapter on Employment and Industrial Relations of the Guidelines by Ryanair were brought forward to the Dutch NCP by the FNV and its affiliate FNV Bondgenoten in November 2004.

Although Ryanair is based in Ireland, it has staff in the Netherlands and elsewhere which are affected by the company’s anti-union policy. Hence, the NCP has been requested to co-operate with the Irish as well as other relevant NCPs.

In order to decide whether the case is receivable, the NCP has asked the unions to explain which paragraphs that Ryanair have violated which are not covered by Dutch legislation. Further to that, and according to the OECD 2006 Report “the NCP decided that the specific instance [...] did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.” Again the NCP appears to be taking an overly restrictive approach to the Guidelines.

UPM Kymmene: November 2004-June 2005 (6,5 months)

The Canadian NCP was at the end of November 2004 requested by the Communications, Energy and Paperworkers’ Union of Canada to examine breaches of the Guidelines by the Finnish company UPM Kymmene. After the company announced the closure of the kraft pulp mill part of its operations in September 2004, it refused to share any substantial information with the union about the closure, to negotiate a renewal of the collective agreement and to co-operate with the union and the governmental authorities to mitigate the negative effects. In addition, the President and the Vice President of the union were suspended by UPM Kymmene for their trade union work.

After more than six months the NCP concluded that “it would be inappropriate for us to get involved”. It considered that there were provincial labour laws and remedies to deal with the issue and that such recourse had already been taken by the parties.

UPC Cable TV: December 2004

The Polish trade union confederation Solidarnosc submitted a case to the Polish NCP at the beginning of December 2004 concerning UPC Cable TV, a US based company. UPC Cable TV had violated the employees' right to organise by dismissing one of the trade union representatives of the newly established union.

According to Solidarnosc, the NCP did not want to examine the case because of ongoing legal proceedings. It even claimed that all legal measures should be exploited before a case could be raised under the Guidelines. Although NCPs should take into account the relevance of applicable law and procedures when assessing a case, such a misinterpretation is unacceptable. The Guidelines were not drafted to provide assistance only when other means had been exhausted. In the 2006 OECD annual report on NCPs, the Polish NCP acknowledges existence and handling of the case and that it is "in contact with representatives of parties involved".

ABN Amro Bank: March-July 2005 (4 months)

Further to the case against Angelica Textile Services submitted by UNITE-HERE in August 2004, UNITE-HERE filed an additional case with the US NCP in March 2005 regarding the operations of ABN Amro Bank. It was argued that the Bank being the primary creditor of Angelica, should encourage its business partner to "apply principles of corporate conduct compatible with the Guidelines".⁸ Despite being informed of the violations of the Guidelines of Angelica and a unilateral commitment not to take part in transactions with business partners that do not respect human rights, ABN Amro Bank had increased its investment in Angelica and had refused to meet with UNITE-HERE to discuss how to encourage Angelica to follow the Guidelines.

UNITE-HERE withdrew the case in July 2005 after reaching an agreement with Angelica.

Imerys: April-June 2005 (2,5 months)

The UK operations of Imerys were raised with the UK NCP by the Transport and General Workers Union (T&G) in April 2005. The company had introduced major changes in the employment conditions and notably its pension system without any consultation or negotiation with the employees.

The issue was settled in June 2005 in that Imerys agreed to consult the unions over all future and retrospective pension proposals including the changes already announced. The case was therefore withdrawn.

⁸ Paragraph 10 of Chapter II on General Principles

Unilever: June-November 2005 (5,5 months)

The corporate conduct of Unilever Chile Ltda was raised by the Chilean trade union confederation CUT with the Chilean NCP in June 2005. On 30 December 2004, Unilever had verbally informed the trade union representatives that it was going to close three plants making 250 workers unemployed. A fourth plant was to be closed unless the workers accepted a 20 per cent wage cut. Moreover, Unilever prevented the union from making the company's decision public. It also promised a group of workers that they would not be dismissed if they opposed the actions taken by the union.

After a number of meetings organised by the NCP, Unilever and CUT reached an agreement in November 2005. The agreement was made possible because the parties accepted the role of the NCP as a mediator. The company also recognised the union as the workers' representative.⁹

The parties agreed to separate the collective bargaining procedure from the restructuring procedure leading to the closure of two plants. It was also agreed that all the workers made redundant would be compensated. In addition, the workers were to share an annual bonus of 14 million pesos. Unilever did not engage to re-employ the workers, but would provide them with good references. The NCP was made responsible for the observance of the agreement.

III CASES ONGOING AS OF SEPTEMBER 2006

Metaleurop: February 2003

The French NCP was in February 2003 requested by Force Ouvrière (FO) to investigate the conduct of Metaleurop. The Swiss multinational Glencore is however the largest shareholder of Metaleurop and the case was therefore brought to the attention of the Swiss NCP as well. In January 2003, Metaleurop SA announced that it would stop finance its subsidiary Metaleurop Nord, the biggest foundry of lead in Europe, which was declared bankrupt in March 2003. In closing down the company, Metaleurop neglected both to put in place a social plan and to clean up the environmental damage it had caused. Consequently, both the chapters on Employment and Industrial Relations and on Environment were violated. In the 2006 OECD Annual report on NCPs, the French NCP has stated that the case is "being considered", but noted that the existence of a parallel legal proceeding.

Technip-Coflexip: March 2003

The French trade union confederation CGT filed a case with the French NCP regarding Technip-Coflexip in March 2003. The reason was that an employee of Technip-Coflexip had had part of his salary suspended for going on a trade union mission to the US. This was considered a breach of the Guidelines since the clarifications to the Guidelines state that

⁹ According to OECD report, Dutch trade Unions "requested the Dutch NCP to inquire after the follow up of an Interim report of the ILO Committee on Freedom of Association on the complaint against the Government of Chile."

“management should adopt a co-operative attitude towards the participation of employees in international meetings for consultation and exchanges of views among themselves”.

Top Thermo Manufacturers: March 2003

The anti-union activities of the Japanese company Top Thermo Manufacturers were raised with the Japanese NCP by the Malaysian Trades Union Congress (MTUC) in March 2003. The company has for several years refused to recognise the Metal Industry Employees Union (MIEU). Moreover, it has dismissed the union organisers and discriminated against union members. In January 2002, the Minister of Human Resources in Malaysia ordered the company to recognise the MIEU. But Top Thermo contested the decision by filing an application in the Kuala Lumpur High Court in August 2002. The High Court ruled in favour of the company in March 2003 and MTUC has therefore appealed to the Supreme Court. The NCP has acknowledged receipt of the case, but is apparently awaiting the outcome of a parallel legal proceeding.

Kiswire Sdn Bhd: May 2003

In May 2003, the MTUC submitted a case to the Korean NCP regarding the anti-union behaviour of the Korean-based company Kiswire Sdn Bhd. It had among other things refused to recognise the elected trade union, dismissed the trade union organisers and adopted discriminatory practices against union members.

The NCP claimed in April 2004 that it had not received the submission, which had been sent both electronically and by ordinary mail to the official NCP address. It was therefore resent with a request to attend to the matter most urgently. This shows the importance of NCPs notifying the party raising a case when the submission has been received.

Saint-Gobain: June 2003

The International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) together with the American unions AFL-CIO and UAW solicited the US NCP in June 2003 to examine the breaches of the Guidelines by the French company Saint-Gobain. These include violations of the right to organise (through challenging the union-won election and threatening and intimidating workers who support the union), the right to information for meaningful negotiations and the right to a safe and healthy workplace. The NCP was requested to bring the matter to the attention of the French NCP. Saint-Gobain's actions have also led to complaints by the National Labor Relations Board (NLRB) and citations and fines by the Occupational Safety and Health Administration.

The French NCP was informed of the case by both the US NCP and the French unions. The NCP thereafter contacted the management of Saint-Gobain, which claimed that the issue was part of their bargaining process. In a letter to the US NCP in October 2003, the French NCP declared its willingness to co-operate and desired information of the progress made in the US. The case was discussed at the French NCP meeting in December 2003. The French union CGT suggested that the NCP should convene a meeting with the management of Saint-

Gobain and the leadership of UAW. The NCP, however, asserted that it was the responsibility of the US NCP to set up such a meeting.

In February 2004, the UAW wrote again to the US NCP in response to a letter sent to the NCP by Saint-Gobain in December 2003. The company argued that the issues should be considered by the NLRB and not the NCP. Again, national law is being used as an argument for not taking action under the Guidelines. The UAW also repeated its request for a meeting with the top management in France.

In January 2005, the ICEM together with French unions met with the management of Saint-Gobain in France. The management stated that the company was not hostile to union representation in the US, but refused to intervene in the dispute.

The same month, the NLRB conducted a decertification vote at the US plant.

Bayer Philippines: July 2003

In July 2003, the German Confederation of Trade Unions (DGB) forwarded a submission by the Employees Union of Bayer Philippines (EUBP) to the German NCP. It also requested the NCP to assemble an extra-ordinary meeting at the beginning of September to discuss the case. According to the EUBP, Bayer Philippines had set up a company union to replace the EUBP and to prevent the workers from organising. The company claimed that the issue concerned an intra-union conflict.

After examining the case, the NCP convened a meeting in October 2004 to discuss the issue with the parties involved. It was agreed that the parties needed to provide further information before a settlement could be reached. In the 2006 OECD report, the German NCP re-asserts that it “still waiting for the necessary further information by the party that brought the original complaint.”

General Motors do Brasil Ltda: September 2003

In September 2003, the Brazilian NCP was contacted by the Porto Alegre Metal, Mechanical and Electrical Material Workers' Union regarding the conduct of General Motors Do Brasil Ltda. The company has since its establishment in 1997 interfered with the employees' right to organise. In August 1997, GM created a company union through a meeting held behind closed doors and to which the union members were not allowed. Workers have since been encouraged to join the company union so as to avoid “negative consequences” and workers belonging to the real union have been punished. Moreover, the company union is being financed by GM. The case has also been submitted to the ILO Committee on Freedom of Association.

The NCP has invited the social partners to a tripartite meeting including the company union, but the latter did not attend.

Unilever: December 2003

The partial transfer of a plant owned by Unilever in Brazil was raised by the CUT with the Brazilian NCP in December 2003. The decision to transfer part of the production line from Vinhedo – Sao Paulo to Ipojuca – Pernambuco was taken without any prior consultations with the Labour Union of Chemical Workers of Vinhedo. In fact, the workers learned about the details of the closure from the local newspapers. Furthermore, after the decision had been made public, the management threatened to move the whole factory if the trade union did not call off its activities.

The National Committee of Unilever Unions first tried to establish a dialogue with the company on the Guidelines, but Unilever Brazil responded negatively. It was therefore decided to submit the case to the NCP. Since Unilever is headquartered in the Netherlands, the CUT has requested the Brazilian NCP to co-operate with the Dutch NCP.

TGW International: February 2004

At the beginning of February 2004, the Czech NCP received a submission from the Czech-Moravian public catering, hotels and tourism trade union federation concerning a subsidiary of TGW International - American Chance Casinos. The company is preventing the workers from establishing a trade union and it is refusing to bargain collectively. It has also set up a management-controlled “union”.

In the 2006 OECD report it is stated that “The Czech NCP closed the specific instance at the trade union’s (submitter’s) request, August 2004”. This has yet to be confirmed by TUAC.

Michelin: February 2004

The closure of two plants of Uniroyal owned by Michelin was filed with the Mexican NCP in February 2004 by Mexican trade unions. The two plants were closed without any information to the workers. When they arrived at work on 7 August 2000 they were not allowed to enter the plants. Both plants were later re-opened under new names, but with the same structures and owners. In accordance with Mexican law, the dismissed workers demanded to be re-employed, which they were refused.

French unions have brought the case to the attention of the French NCP.

Toyota Motor Corporation: March 2004

The Toyota Motor Philippines Corporation Workers' Association (TMPCWA) approached the NCP of Japan at the beginning of March 2004 regarding the anti-union behaviour of Toyota Motor Philippines Corporation, a subsidiary of Toyota Motor Corporation. Since the company for several years has refused to enter into collective bargaining negotiations with the TMPCWA, the union called a strike. The company responded by illegally dismissing 233 union members who participated in the strike and filing criminal cases against some of the union leaders. The TMPCWA thus filed a case against Toyota Motor Philippines

Corporations asking for a withdrawal of the illegal dismissals. The case is still pending. In September 2003, the Supreme Court of the Philippines ordered Toyota Motor Philippines Corporations to begin the collective bargaining negotiations with the TMPCWA. The company is however ignoring the decision.

In addition, the case was sent to the ILO in February 2003. The ILO Committee on Freedom of Association made the following recommendations to the Philippine government in November 2003: 1) To reinstate the 233 union members; 2) To start the CBA immediately in order to establish sound labour relations; 3) To withdraw the criminal case; 4) To accept an ILO delegation; and 5) To amend the relevant legislative provisions of the Labor Code of the country.

In September 2004, the TMPCWA wrote again to the NCP to remind it of the importance of a prompt handling of the case. The union was concerned that after six months it still had not been informed of whether the case merited further examination. It considered that the NCP should already have started the mediation process.

In December 2004, the NCP replied that it was seeking further information from the parties concerned and relevant authorities. It also indicated the importance of the forthcoming decision of the Court of Appeals in the Philippines. In its reply to the NCP, the TMPCWA explained that the Supreme Court had already turned down the ruling of the Court of Appeal to suspend the union's right to collective bargaining. It also expressed its disappointment with the NCP's treatment of the case.

In June 2006, the TUAC Secretariat received a letter from the Philippines government (Department of Labor and Employment) informing that Toyota Motor Philippines Corp. contested the facts as accounted above.

In the 2006 OECD Annual report on NCPs, the Japanese NCP informs that the case is "under consideration", but that it is awaiting the outcome of a parallel legal proceeding.

Life Uniform: July 2004

The working conditions at two factories in Mexico were raised with the US NCP by the US trade union UNITE-HERE and the Mexican organisation CATY in July 2004. The two factories are suppliers of Life Uniform, a health care uniform retailer. At the time of the case being raised, Life Uniform was a division of Angelica Corporation. In August, however, Life Uniform was sold to Healthcare Uniform Co, an enterprise of Sun Capital Partners.

Life Uniform has failed to ensure that its suppliers apply principles of corporate conduct compatible with the Guidelines. Minimum employment standards and health and safety conditions have been violated at the two plants in Mexico (MarkeyTex and CocoTex) resulting in occupational injury and illness. Workers are denied minimum wages as regulated in Mexican labour law, they are expected to work overtime without compensation and they are not provided with protective equipment such as respiratory masks and suffer from respiratory infections.

Wackenhut: August 2004

The Union Network International (UNI) filed a case with the US NCP in August 2004 regarding the anti-union practices of Wackenhut, a private security company in the US, owned by the UK-registered Group 4 Securicor (which was the result of the merger of British Securicor and Danish Group 4 Falck). The case was later submitted also to the UK NCP.

Wackenhut has repeatedly interfered with the workers' right to organise. In 2002, the company informed its employees that they would have to resign from the trade union in order to be eligible for health insurance. Even though Wackenhut later withdrew from its position, it has kept refusing to let its employees organise with the Service Employees' International Union (SEIU) because it represents both security and non-security personnel. In addition, Wackenhut has not lived up to the Guidelines provisions on training, which is virtually non-existing.

The case was also presented to the ILO Committee on Freedom of Association in November 2003.

In December 2004, the US NCP responded that it was still in the process of making an initial assessment whether the case merited further examination. Although it recognised its role in assisting to resolve matters related to the implementation of the Guidelines, the NCP claimed that it could not settle labour-management disputes. Since industrial relations are a prominent part of the Guidelines and include labour-management issues, UNI repeated its request to the NCP to handle the matter in a letter dated January 2005.

In June 2005, the NCP replied that it was still making a preliminary assessment of the case. While the NCP accepted that the issues raised were within the scope of the Guidelines, it emphasised the fact that the NLRB and the ILO were also involved.

Bridgestone: September 2004

At the beginning of September 2004, the Local Union of Chemical, Energy and Mines of Bridgestone Tyre Indonesia submitted a case to the NCP of Japan concerning violations of trade union rights by Bridgestone Tyre Indonesia Company, a subsidiary of Bridgestone Corporation. The union called on the company to reinstate four trade union officials that had been dismissed for union activities. The case has previously been raised with the ILO Committee of Freedom of Association.

In April 2005, TUAC was informed that the submission had not been received by the NCP and it was therefore resent. The NCP acknowledged receipt of the case at the end of May 2005, and is awaiting outcome of a parallel legal proceeding.

Imerys Carbonates LLC: September 2004

Abuses of workers' rights within the production site in Alabama (US) of Imerys Carbonates LLC, a subsidiary of the French corporation Imerys, were raised with the US NCP by the United Steelworkers (USW, former union of Paper, Allied-Industrial, Chemical & Energy Workers – Pace) in September 2004. The company has among other things threatened,

coerced and intimidated employees exercising their rights to organise. The union has also filed a number of unfair labour practice charges with the National Labor Relations Board (NLRB).

Given that Imerys is a French-owned company, the United Steelworkers has requested the US NCP to co-operate with the French NCP in order to resolve the issue. It has also suggested that the French NCP intervene with Imerys in Paris.

In November 2004, the NCP replied that the matter was still under consideration. Before determining whether the issue merited further examination, the NCP wanted the union's opinion on the involvement of the NCP considering "there are parallel legal proceedings before the NLRB". The United Steelworkers argued that the two procedures were not exclusive and that the Guidelines were complementary to national law and the fact that the Guidelines had been violated required the intervention of the NCP. This appears to be yet a case where the US NCP is using parallel proceedings as an argument for not taking action.

TUAC took part in a fact finding visit to the Sylacauga Imerys facility in October 2005 and submitted a report to management. An informal meeting took place with French management in February 2006. Since then the situation has improved following a clear change in behaviour from the local management. The case is being closely monitored by the AFL-CIO, the USW and the ICEM to make sure recent improvements are sustained on the long run.

Banca Nazionale del Lavoro SA: December 2004

In December 2004, the Argentine trade union "Asociacion Bancaria" raised a case with the NCP of Argentina concerning alleged breaches of the Guidelines by Banca Nazionale del Lavoro SA, which is a subsidiary of the Italian BNL Group. The company has among other things refused to provide its employees with information that "enables them to obtain a true and fair view of the performance of the entity or [...] the enterprise as a whole".¹⁰ Moreover, the company has threatened to close its operations in Argentina.

The Argentinian NCP has acknowledged handling of the case. In the OECD 2006 Report the NCP states the following: "The Argentine subsidiary of the multinational banking corporation subject to last year's claim has been sold to a new owner. No pending issues exist with the new owner. Requests contained in the original presentation have been partially met. Nevertheless some areas of disagreement persist between the original parties of the specific instance reported last year. The final settlement is still pending."

Bata: January 2005

Three and a half years after French unions presented the French NCP with a case concerning the closure of Bata in France, the company has again failed to observe the Guidelines. In January 2005, the ITGLWF informed the Canadian NCP of serious breaches of the Guidelines by a Bata subsidiary in Sri Lanka.

¹⁰ Paragraph 3 of chapter IV on Employment and Industrial Relations

In April 2004, the company dismissed 146 employees without any prior information or consultation with the union, which is a breach of paragraph 6 of the chapter on Industrial Relations. Moreover, the Bata subsidiary has interfered with the workers' right to organise by dismissing the President of the union and filing police reports against the union leadership.

Groupe Lactalis: May 2005

The United Farmworkers Union (UFW) requested the US NCP in May 2005 to examine alleged breaches of the Guidelines by Threemile Canyon Farms, a significant supplier to Sorrento Lactalis, the US subsidiary of the French company Groupe Lactalis. The UFW has informed both Sorrento Lactalis and Groupe Lactalis of Threemile's non-compliance with the Guidelines, but without any result.

Threemile has not respected the workers' right to be represented by trade unions and has harassed workers who have supported the union. The company has furthermore failed to provide protective equipment for workers dealing with dangerous chemicals. In addition, Threemile has been accused of sexual discrimination in its hiring practices.

GP Garments: June 2005

The Belgian NCP received a submission by the ITGLWF in June 2005 regarding violations of the Guidelines in the Biyagama Free Trade Zone in Sri Lanka by the Belgian-controlled company GP Garments. The company has refused to disclose its ownership and structure in accordance with the chapter on Disclosure, which has made it impossible for the union to engage in a meaningful discussion with the company.

In January 2005, the union was told that the Biyagama factory would be reorganised. This process however took place without any social dialogue. The management even threatened to close the company if it could not impose the changes unilaterally. As the conflict escalated, workers were threatened and harassed. At the beginning of April, an agreement was reached following the intervention of the Ministry of Industries of Sri Lanka. Afterwards GP Garments claimed that the local manager had been coerced into entering the agreement. Later that month, a new agreement was reached in presence of the Commissioner of Labour. A few days later, however, GP Garments sent out letters of termination to the workers. Furthermore, the Board of Investment was informed that GP Garments would reopen the factory without reinstating the 480 workers whose contracts were terminated.

At the beginning of September 2005, the NCP organised a meeting with the parties concerned.

Nestlé: August 2005

In August 2005, yet another case was filed concerning the operations of Nestlé, this time with the NCP of Japan. According to the three unions¹¹ that submitted the case, the company is

¹¹ The Nestlé Japan Labour Union, the National Confederation of Trade Unions (Zenroren) and the Hyogo Prefectural Confederation of Trade Unions.

violating workers' rights. Nestlé is accused of conducting unfair labour practices, concealing information of its wage system, corporate structure and food safety. The Japanese NCP has acknowledged existence of the case (OECD 2006 report) stating: "under consideration – there is a parallel legal proceedings".

Coats Plc: December 2005

The anti-union practices by a Bangladeshi subsidiary of the UK enterprise Coats Plc was raised by the ITGLWF with the UK NCP at the beginning of December 2005.

In November 2004, three trade union leaders had been dismissed on alleged charges of misconduct, although the union believed that the real reason was their repeated request of a copy of the company's financial statement. In March 2005, the union organised a peaceful sit-down strike in support of the discharged union leaders. Coats responded with a lock-out. The police arrived at the scene (the union believes that they were called in by the company as this is a common practice in Bangladesh) resulting in a number of workers being injured and 27 arrested. They were later released on bail, but are now facing charges. Since then other union members have been dismissed as well.

Mittal Steel Group: December 2005

The National Trade Union Bloc in Romania (BNS) submitted a case to the Romanian NCP in December 2005 concerning the operations of Mittal Steel Group. The company is the world's largest steel producer and is headquartered in the Netherlands.

It is reported that Mittal Steel Group has violated paragraphs 1, 7 and 8 of the chapter on Employment and Industrial Relations at two plants in Romania. The company has among other things prevented the employees from exercising their right to organise. The union members have been moved to other parts of the plant and union fees are being withheld. On 1 December 2005, 15 workers started a hunger strike in protest over their trade union rights being violated.

Gamma Holding : February 2006

Violations of the Guidelines by the US subsidiary National Wire Fabric (NWF) of the Dutch company Gamma Holding were raised with the US NCP by the United Steelworkers of America (USW) at the beginning of February 2006. Gamma Holding's largest shareholder is the Dutch bank ING, which holds 26% of the shares.

It is reported that NWF has interfered with the workers' right to organise and refused to enter into constructive negotiations with the union, at NWF's facility in Star City, Arkansas (US). When the company terminated the collective agreement in June 2005, workers decided to strike. The NWF therefore hired replacement workers to operate the plant. After first having accepted the return of the regular workers, the NWF then refused to reinstate them in order to keep the replacement workers. On 18 May 2006, the USW filed a case with the US NLRB.

In May 2006 the US NCP informed the Dutch NCP and suggested that the latter contact the management of Gamma Holding. The Dutch NCP acknowledged receipt of the request. On 26 July 2006, the FNV sent a letter to the Dutch NCP, expressing support for the case raised by IUF and asking the Dutch NCP to offer its facilities to the US NCP to help resolve the case.

PepsiCo: April 2006

In April 2006, the IUF and Solidarnosc together submitted a case to the Polish and US NCPs pertaining to serious violations of the Guidelines in a Polish subsidiary of PepsiCo (Frito-Lay Poland Ltd).

Eight women workers, also union members, were asked to resign and immediately leave the facility in December 2004. At the time being, the management did not present any reason for the dismissals. The women were victims or witnesses of sexual harassment by a supervisor at the plant, who was arrested in February 2005 after three of the women had filed a complaint.

On 12 December 2005, all the workers were conducted into one room to respond to a questionnaire asking whether they were trade union members or not. Since they were intimidated, most of them denied their union membership. Two days later, the union chairman, who had assisted the fired workers, was dismissed on the grounds that the union had fewer members than accounted for. In January 2005, in connection with the union elections, workers received a letter from management with ready-made forms stating that “I do not consider myself a member of the workplace trade union organisation”. These forms were to be signed and returned to management.

The Polish NCP has acknowledged receipt of the case. It has also informed the company of the submission asking it to provide clarifications about its observance of the Guidelines.

British American Tobacco, May 2006

On 3 May 2006, the IUF raised a case with the US and UK NCPs on behalf of the Bakery, Confectionery, Tobacco Workers and Grain Millers Union (BCTGM) and the Machinists and Aerospace Workers (IAM) concerning the US subsidiary Reynolds American Inc. of UK-Based British American Tobacco (BAT). The case concerns two tobacco plants in North Carolina (US) for violation of right to union representation (art. IV 1.a) and threat to relocate production offshore (art. IV 7).

As noted in the IUF letter to the NCPs: “At the request of a majority of the workforce [...] the BCTGM and the IAM have begun the process of organizing the plants. [Reynolds American Inc.] responded by launching an anti-union campaign involving disparaging attacks on the unions and worker intimidation. [...] The company has made it abundantly clear [...] that it does not want [its workers] to be unionised and there will be consequences if they do so”. The filing includes evidence of indirect threat made in a public meeting in April 2006 by the company’s vice-president for human resources to relocate offshore, should the plants be unionised.

The UK NCP acknowledged receipt on 4 May 2006.

Inbev, July 2006

On 7 July 2006, the IUF – acting on behalf of the Autonomous Union of Trebjesa A.D. Brewery (SDSPT) – submitted a case to the Belgian NCP involving the Belgian multinational InBev (formerly Interbrew) regarding breaches in the Guidelines at its subsidiary in Montenegro, Trebjesa A.D. Breaches concern Ch. IV right to union representation (1.a) and threat to relocation (7).

The case involves the constant refusal by local management to re-instate trade union officer Mr Bozidar Perovic, President of the SDSPT, in contradiction with local legislation and a formal agreement laid in September 2002 between Inbev and the IUF (specifying the reinstatement of workers after a strike in 2002). In 2003 and 2005, the company was twice found guilty for violation of the national labour code in Montenegrin courts, which declared Mr Perovic's dismissal illegal and ordered his immediate reinstatement. In its submission to the NCP, the IUF provides further evidence that InBev management has used the threat of transfer of production offshore to intimidate trade unions and inhibit further action to secure reinstatement of Mr Perovic. The IUF letter also includes evidence of interference of local management in recent union elections to impose new leadership at the SDSPT in replacement of Mr Perovic.

The Belgian NCP acknowledged receipt on 25 July 2006, and subsequently announced it would engage by end-September 2006 a first round of informal consultation with IUF and with InBev management separately.

Continental Tire North America Inc. August 2006

On 7 August 2006, the United Steelworkers (USW) raised a case with the US NCP involving the US subsidiary of German based multinational Continental Tire AG, the Continental Tire North America Inc. The case exposes serious breaches at a plant in Charlotte, North Carolina (US) of the Guidelines Ch. IV right to union representation and collective bargaining (1.a & 8), information and consultation (2.b&c), apply standards by comparable employers in host country (4.a).

Continental Tire North America has long maintained a hostile attitude to unions in the U.S., including hiring professional “union busters” to intimidate workers in non-union plants. In 2003, the company gradually phased out production at a unionised plant in Mayfield, Kentucky (US), which resulted in laying off most the 1300 unionized workers, and the transfer of much of the machinery to a non-union plant in Mt. Vernon and to a Brazil-base plant.

In an apparent attempt to repeat the Mayfield closure, Continental Tire North America announced in late 2005 that it was demanding USD 32 million in contract concessions at its unionised plant in Charlotte, Carolina (US), approximately USD 32,000 per employee per year. Management refused to engage in constructive negotiations with the recognized representative of its employees, despite numerous calls from the USW. In March 2006 it announced intention to “indefinitely suspend” tire production in Charlotte, and began moving equipment to other plants. In May and August 2006, it further imposed new cuts in wages, pension and health care benefits on USW-represented workers. Cut in healthcare benefits would force hundreds of workers to close-to poverty line situation.

The above account is evidenced by a complaint issued by the National Labor Relations Board on June 29, 2006, which states that the company “did refuse, and continues to refuse, to bargain collectively with the Union” and that it “failed and refused to bargain” over its decision to lay off employees and eliminate tire production at the Charlotte facility.

SUMMARY

The above analysis shows that more than sixty cases have been raised by trade unions over the five and a half years since the Revision of the Guidelines. It appears that the actual number is slightly higher, but not all cases have been reported to TUAC. 26 cases remain to be resolved and it is clear that some NCPs are not handling cases properly. Although NCPs are supposed to “deal with the issues raised in an efficient and timely manner”, it is not unusual that cases drag on for more than a year. Several NCPs are also reluctant to treat cases while there are ongoing legal proceedings concerning the same issue. Alternatively, cases are being referred to other fora. The so called “investment nexus” has appeared as another excuse for not dealing with cases effectively.

Several of the cases demonstrate that it is easier to find a solution to a problem when trade unions are dealing with companies that are seen as responsible, eg those with extensive CSR-policies, or when trade unions have access to company headquarters. Subsidiaries and local managements are less vulnerable and less inclined to attend to violations of the Guidelines.

But even when the Guidelines have not been the main factor in the resolution of a case, they have on a series of occasions contributed to the solution. Trade unions often raise cases as part of a broader set of activities to achieve improved company industrial relations on employment practices. The Guidelines can provide one channel for resolving cases.

ANNEX 1 SYNTHESIS OF ALL LABOUR CASES REPORTED TO TUAC

Case	Host country	Leading breach	Leading NCP	Filing	Closure	MNE	Country	Leading TU
Trico Marine Services	US	anti-union	US	2001	Dec-02	Trico Marine	Norway	ITF
French companies operating in Burma	Myanmar	various	France	2001	Mar-02	Total, Accor	France	CFDT, FO
Marks and Spencer	France, Belgium	consultation on restructuring	France, Belgium	2001	Dec-01	Marks and Spencer	UK	CFDT, FO, UNSA - FGTB, CSC
Burma	Myanmar	various	US	2001	unaccounted		US	AFLCIO
Siemens	Czech Rep.	enforcement of contract, ohse	Czech Rep.	2001	Nov-01	Siemens	Germany	CMKOS
Bosch	Czech Rep.	anti-union	Czech Rep.	2001	Apr-02	Bosch	Germany	CMKOS
Bata	France	information on performance	France	2001	Feb-03	Bata	Canada	CGT
IHC Caland	Myanmar	various	Netherlands	2001	Jul-04	IHC Caland	Ned	FNV, CNV
Cosmos Mack Industries Ltd	Sri Lanka	anti-union	Korea	2001	Jun-03	Cosmos Mack Industries Ltd	Korea	FTZWU
Liberian Int'l Ship and Corporate Registry	Liberia	various	US	2001	Oct-02	LISCR	US	ITF
Wärtsilä	Netherlands	consultation on restructuring	Netherlands	2001	unaccounted	Wärtsilä	Finland	FNV
ChoiShin/Cimatextiles	Guatemala	anti-union	Korea	2002	Jul-03	ChoiShin/Cimatextiles	Korea	ITLWF, FKTU, KCTU
Maersk Medical Inc	Malaysia	anti-union	Denmark	2002	May-05	Maersk Medical Inc	Denmark	AIF
Gard	Philippines	enforcement of contract	Norway	2002	Dec-02	Gard	Norway	ITF
Aspocomp	France	consultation on restructuring	France	2002	Nov-03	Aspocomp	Finland	FO
Continental	Mexico	consultation on restructuring	Mexico	2002	Jan-05	Continental	Germany	FIAN
Marriott Hotel	Poland	anti-union	Poland	2002	unaccounted	Marriott Hotel	US	Solidarnosc
Pinault Printemps Redoute	US	anti-union	US, France, Netherlands	2002	Jan-03	PPR	France	AFLCIO, UNITE
Plaid Enterprises Inc	Netherlands	consultation on restructuring	Netherlands	2002	Jan-06	Plaid Enterprises Inc	US	FNV
Parmalat	Brazil	consultation on restructuring	Brazil, Italy	2002	Apr-03	Parmalat	Italy	CUT
Sanmina-SCI/Hewlett Packard	Netherlands	consultation on restructuring	Netherlands	2002	Apr-04	Hewlett Packard	US	FNV
Sees Corporation & Sri Lanka Ltd	Sri Lanka	enforcement of contract	Korea	2002	Dec-02	Sees Corporation	Korea	Progress Union
Dutch Travel Agencies	Myanmar	various	Netherlands	2002	Apr-04		Netherlands	FNV, CNV
Ivanhoe Mines Ltd	Myanmar	various	Canada	2002	Feb-06	Ivanhoe Mines Ltd	Canada	CLC
Chemie Pharmacie Holland	Congo	various	Netherlands	2002	May-04	Chemie Pharmacie Holland	Netherlands	FNV

Lundin Group	Congo	various	Sweden	2003	Dec-03	Lundin Group	Sweden	LO, SACO
Honda	Indonesia	enforcement of contract	Japan	2003	Aug-03	Honda	Japan	IMF
British American Tobacco	Myanmar	various	UK	2003	Feb-04	British American Tobacco	UK	IUF
Nestlé	Korea	threat to relocation offshore	Korea, Swiss	2003	Mar-04	Nestlé	Swiss	KCTU
Locomotive Trading AG Hänibül	Czech Rep.	enforcement of contract, anti-union	Czech Rep.	2003	Feb-04	Locomotive Trading AG	Swiss	CMKOS
Swatch Group	Swiss	enforcement of contract	Swiss	2004	Jun-05	Swatch Group	Swiss	USS
Korean EPZ Corporation	Bangladesh	anti-union	Korea	2004	Jun-04	Korean EPZ Corporation	Korea	ITGLWF
Angelica Textile Services	US	anti-union, ohse	US, Netherlands	2004	Jun-05	ABN Amro Bank (funder)	Netherlands	UNITE-HERE
Smead Europe	Netherlands	enforcement of contract	Netherlands	2004	Nov-04	Smead	US	FNV
Ryanair	Netherlands	anti-union	Netherlands	2004	unaccounted	Ryanair	Ireland	FNV, Bondgenoten
UPM Kymmene	Canada	consultation on restructuring	Canada	2004	Jun-05	UPM Kymmene	Finland	CEP
UPC Cable TV: December 2004	Poland	anti-union	Poland	2004	Sep-06	UPC Cable TV	US	Solidarnosc
ABN Amro Bank	US	various	US	2005	Jul-05	ABN Amro Bank	Netherlands	UNITE-HERE
Imerys	UK	consultation on restructuring	UK	2005	Jun-05	Imerys	France	T&G
Unilever	Chile	consultation on restructuring	Chile	2005	Nov-05	Unilever	Netherlands	CUT
Metaleurop	France	consultation on restructuring	France	2003	on-going	Glencore	Swiss	FO
Technip-Coflexip	France	anti-union, enforcement of contract	France	2003	on-going	Technip-Coflexip	France	CGT
Top Thermo Manufacturers	Malaysia	anti-union	Japan	2003	on-going	Top Thermo	Japan	MTUC
Kiswire Sdn Bhd	Malaysia	anti-union	Korea	2003	on-going	Kiswire Sdn Bhd	Korea	MTUC
Saint-Gobain	US	anti-union, ohse	US, France	2003	on-going	Saint-Gobain	France	AFLCIO, UAW
Bayer Philippines	Philippine	anti-union	Germany	2003	on-going	Bayer	Germany	DGB
General Motors do Brasil Ltda	Brazil	anti-union	Brazil	2003	on-going	GM	US	Porto Alegre Metal Workers' Union
Unilever	Brazil	consultation on restructuring	Brazil	2003	on-going	Unilever	Netherlands	CUT
TGW International	Czech Rep.	anti-union	Czech Rep.	2004	on-going	TGW International - American Chance Casinos	US	Czech-Moravian catering & hotel TU federation
Michelin	Mexico	consultation on restructuring	Mexico, France	2004	on-going	Michelin	France	Mexican Unions
Toyota Motor Corporation	Philippine	anti-union	Japan	2004	on-going	Toyota	Japan	Toyota Motor Philippines Corp. Workers' Association
Life Uniform	Mexico	enforcement of contract, ohse	US	2004	on-going	Angelica, then Sun	US	UNITE-HERE,

						Capital Partners		CATY
Wackenhut	US	anti-union	US	2004	on-going	Group 4 Securicor	UK	UNI
Bridgestone	Indonesia	anti-union	Japan	2004	on-going	Bridgestone	Japan	
Imerys Carbonates LLC	US	anti-union	US	2004	on-going	Imerys	France	USW
Banca Nazionale del Lavoro SA	Argentine	information on performance, threat to relocate offshore	Argentine	2004	on-going	BNL Group, then sold to new owner (?)	Italy	
Bata	Sri Lanka	consultation on restructuring	Canada	2005	on-going	Bata	Canada	ITGLWF
Lactalis	US	anti-union, ohse	US	2005	on-going	Groupe Lactalis	France	UFW
GP Garments	Sri Lanka	consultation on restructuring, enforcement of contract	Belgium	2005	on-going	GP Garments	Belgium	ITGLWF
Nestlé	Japan	enforcement of contract	Japan	2005	on-going	Nestlé	Swiss	Japanese unions
Coats Plc	Bangladesh	anti-union	UK	2005	on-going	Coats Plc	UK	ITGLWF
Mittal Steel Group	Romania	anti-union, ohse	Romania	2005	on-going	Mittal Steel Group	Netherlands	BNS
Gamma Holding	US	enforcement of contract	US, Netherlands	2006	on-going	ING	Netherlands	USW
PepsiCo	Poland	anti-union, enforcement of contract	Poland	2006	on-going	Pepsico	US	IUF
BAT & Reynolds American Inc.	US	anti-union, threat to relocate offshore	US, UK	2006	on-going	British American Tobacco	UK	IUF
Inbev	Montenegro	anti-union, enforcement of contract	Belgium	2006	on-going	Inbev	Belgium	IUF
Continental Tire North America Inc.	US	consultation on restructuring, enforcement of contract	US	2006	on-going	Continental Tire AG	Germany	USW

ANNEX 2: BRAZILIAN NCP RECOMMENDATION REGARDING PARMALAT BRASIL SA (APRIL 2003)

Brasília, le 20 avril 2003

PARMALAT - CUT :

Licenciements Collectifs à l'Usine de Porto Alegre, Rio Grande do Sul - Brésil

Défendeur : Empresa Parmalat Brasil S/A Indústria de Alimentos - PARMALAT

Demandeur : Central Única dos Trabalhadores - CUT

Demande : On a pu observer ce qui fait l'objet de l'Article 6, Chapitre 4 des Principes Directeurs [de l'OCDE à l'intention des entreprises multinationales] dans le cas de la fermeture de l'unité de production de la société PARMALAT à Porto Alegre. Avant la prise de décision, les informations n'ont pas été fournies à l'instance représentative des employés, ou toute autre, au gouvernement.

Normes : Article 6 du Chapitre 4 des Principes Directeurs de l'OCDE pour les Entreprises Multinationales : "Fournir aux représentants des travailleurs et, quand cela sied, aux autorités publiques compétentes, suffisamment à l'avance, toutes les informations portant sur l'introduction prévisible de changements dans l'activité de l'entreprise, susceptibles d'affecter, de façon significative, le mode de vie des travailleurs, en particulier dans le cas de fermeture d'unités impliquant des licenciements collectifs ; de coopérer avec ces représentants et avec les autorités, au sens d'atténuer autant que faire se peut les effets adverses des mesures en question ; en fonction des circonstances propres à chaque cas et dans la mesure du possible, fournir ces informations avant même de prendre la décision finale ; d'autres moyens pourront être employés, pour permettre une coopération constructive visant à atténuer, de façon substantielle, les effets de telles décisions."

Compte-rendu :

Le 26 septembre 2002, la CUT - Central Única dos Trabalhadores /Centrale Unique des Travailleurs -, a envoyé au PCN - Point de Contact National - une communication concernant le cas de l'usine de la société PARMALAT à Porto Alegre.

D'après cette correspondance, la gérance de l'entreprise PARMALAT avait remis à tous les travailleurs de l'usine de yaourts de Porto Alegre, le 11 juin 2002, une lettre par laquelle elle leur faisait savoir que cette ligne de production allait être délocalisée, d'ici la mi-novembre de la même année". Jusque là, l'entreprise n'avait aucunement fait mention de cette décision.

La lettre aux employés, jointe à la correspondance de la CUT, prévoit la possibilité de mise à profit d'une partie du personnel dans d'autres unités ; l'intention de fournir une assistance médicale pendant trois mois à compter de la rupture ; une prime sous forme financière payée conjointement avec le solde de tout compte et proportionnelle à l'ancienneté de chaque employé ; un programme de soutien à la préparation d'un curriculum vitae pour chaque employé, avec diffusion dans les entreprises de la région de Porto Alegre ; enfin, une formation aux entretiens et notions d'économie domestique. Cette lettre mentionne également la raison de la fermeture de ladite unité : le principal marché consommateur, dans le sud-est du pays, serait trop éloigné de l'unité productrice, située à l'extrême sud.

La CUT rapporte dans sa lettre que le STINPANPA - Syndicat des Travailleurs de l'Industrie des produits laitiers [...] - a rencontré l'entreprise PARMALAT entre les 17 et 24 juin 2002, et contesté l'explication mercadologique comme justifiant le licenciement des employés de l'usine de Porto Alegre.

La CUT a fait savoir que le Syndicat aurait saisi que la décision finale avait déjà été prise et décidé de négocier les conditions de départ des futurs licenciés. D'après la CUT, à l'usine travaillaient 410 employés et l'entreprise a licencié une moyenne de 50 travailleurs par mois, à compter du mois d'août 2002.

La correspondance de la société PARMALAT au STINPANPA - Syndicat des Travailleurs de l'Industrie des Produits Laitiers, de la Panification et du Chocolat de Porto Alegre -, a été remise le jour où les employés avaient reçu la lettre.

Le 7 novembre 2002 la société PARMALAT a envoyé une lettre au PCN, dans laquelle elle dit avoir reçu copie de la lettre envoyée par la CUT au PCN, et qu'il s'agit d'un "processus de transfert d'opérations de l'unité Industrielle de Porto Alegre (RS)". Elle justifie la fermeture de l'usine sur la base des changements de

conjoncture des années 90, avec l'ouverture de l'économie ; de l'essor des opérations de l'entreprise ; de l'investissement dans des opérations industrielles, de la modernisation et de l'agrandissement de la capacité de production, avec rachat d'autres entreprises opérant dans ce secteur d'activité. L'unité de Porto Alegre fabriquait 9% de l'ensemble des yaourts consommés au Brésil, dix-huit pour cent de la production destinés au sud-est du pays, arrivaient donc sur les rayons ayant perdu de leur valeur, car proches de la date butoir d'autorisation de consommation. Cela se traduisait par une chute du prix final, et un préjudice pour l'opération.

Le 5 décembre 2002, le PCN a organisé une réunion d'évaluation de la réclamation de la CUT au sujet de l'affaire PARMALAT sus décrite. Il a été décidé d'y donner suite et de convoquer les parties concernées.

Le 21 mars 2003 se sont retrouvés le PCN, la société PARMALAT et la CUT. La demanderesse a réitéré ses arguments, affirmant que dans l'affaire de la fermeture de l'usine, la société PARMALAT n'avait pas agi en conformité avec les Principes Directeurs, et a rappelé qu'en septembre 2002, elle avait adressé au gouvernement brésilien un courrier traitant de l'affaire. Le Secrétaire aux Affaires Internationales de la CUT a lu l'Article figurant dans lesdits Principes Directeurs et souligné l'aspect social et économique que sous-tendent les licenciements pour la communauté locale. Il a rapporté qu'il avait informé des événements le PCN italien, rappelant l'intérêt pour le Brésil de mettre en application de façon effective le contenu de ce document.

Pour PARMALAT, le Directeur de la Communication a exposé le plan de l'entreprise visant à atténuer l'impact de sa décision et distribué une publication, contenant le résultat de la négociation entre l'entreprise et la direction du Syndicat, datée du 21 juin 2002, où "ont été fixés les montants des indemnisations et les règles ayant trait aux licenciements". Dans ce document sont clarifiées les compensations proposées aux employés.

Le Syndicat local ne s'est pas présenté à la réunion et il n'y a pas eu de contestation de la part de la CUT quant au résultat de la négociation et aux compensations proposées. Pour ce qui est de l'avenir du personnel licencié, PARMALAT a fait savoir que sur un nombre de 434 employés en 1993, 189 avaient été licenciés entre août 2002 et janvier 2003.

Conclusions :

Outre le fait de poser la nécessité de réduire l'impact des décisions prises par les entreprises sur les employés touchés, l'article des Principes Directeurs en question va bien au-delà, en cherchant à rendre viables pour l'entreprise des alternatives à ces décisions. En statuant que travailleurs et gouvernement soient impliqués avant même la prise de décision définitive pouvant affecter de façon substantielle la vie des employés, les Principes Directeurs montrent une voie participative à la recherche de solutions alternatives.

Quant au premier aspect dudit article, les informations obtenues montrent que la société PARMALAT a proposé un ensemble raisonnable de compensations aux employés touchés par la fermeture de l'unité, compensations supérieures à ce qu'exige la législation brésilienne, l'effort fait en ce sens devant être reconnu.

Néanmoins, l'entreprise a, d'un autre côté, omis d'explorer des solutions alternatives à la fermeture de l'unité, en n'impliquant pas les travailleurs et les trois sphères gouvernementales (au niveau municipal, de l'État fédéré et de l'État fédéral) dans la phase qui a précédé la décision, manquant donc de satisfaire à ce que prescrivent les Principes Directeurs.

Il ne fait aucun doute que la décision finale incombe à l'entreprise pour ce qui est des sujets de cet ordre, mais la participation des travailleurs et du gouvernement, dans l'évaluation et le débat autour de solutions alternatives, aurait pu mettre au jour des options viables au maintien de l'unité de production sur place. Si ce n'était pas possible, pour le moins aurait existé l'agrément que ces solutions alternatives avaient été recherchées et étudiées.

Le PCN recommande donc à la société PARMALAT de parfaire ses procédures dans les futures situations de cette nature, en cherchant à encourager la participation des autres parties concernées, avant de prendre des décisions sur des questions qui touchent de façon substantielle à la vie de la communauté à laquelle elle appartient.

Antonio Gustavo Rodrigues

Directeur

Ponto de Contato Nacional