

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

OCTOBER 2004 TUAC INTERNAL ANALYSIS OF TREATMENT OF CASES RAISED BY TRADE UNIONS WITH NATIONAL CONTACT POINTS 2001 - 2004

The information contained in this analysis has come primarily from TUAC affiliates and partners, 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.

I 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 Relations¹, 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

¹ "Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise."

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 attached in Annex I. 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.

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 Relations². 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. In December 2001, the French NCP stated publicly that Marks and

² “Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

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.
4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, 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. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.”

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 press release is attached in Annex II. The Belgian NCP did however not find enough evidence to conclude that Marks and Spencer had infringed the Guidelines. 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.

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 (6 months)

The Czech-Moravian Confederation of Trade Unions (CMKOS) raised a case with the Czech NCP in 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 (11 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 2001-2002??

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.

Cosmos Mack Industries Ltd: November 2001-??

The Free Trade Zone Workers' Union (FTZWU) in Sri Lanka approached the Korean NCP in November 2001 about the anti-union behaviour 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 International 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.³ 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

³ **“II. General Policies**

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:

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

III. Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

VI. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.”

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”. 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 in 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 Policies⁴. 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

⁴ “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.”

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 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.

Gard: April-December 2002 (8 months)

The ITF filed a case with the Norwegian NCP in April 2002 concerning 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 Policies⁵,

⁵ “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.
2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.

but the chapter on Consumer Interests⁶ 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.⁷ 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 (Annex III). 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

7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate."

6 "When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair."

7 "Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, 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. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions."

chapter.⁸ MEDEF (the French Employers' Association) did however not share this conclusion.

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.

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.

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 in 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.

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.

Parmalat: September 2002-April 2003 (7 months)

The Brazilian trade union confederation CUT submitted a case concerning the Italian food company Parmalat to the Brazilian NCP in 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.

⁸ “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.”

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 IV). 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.

Sees Corporation: November-December 2002 (1 month)

The Korean NCP was approached by the Progress Union in Sri Lanka in November 2002 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 raised a case with the Dutch NCP in 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 case.

This case raises concerns that NCPs are interpreting the "investment nexus" as discussed in the 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.

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.

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 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 Policies⁹. 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.

In 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.

Locomotive Trading AG Hännibül: 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 Hännibül, 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.

⁹ “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.
2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.”

II CASES ONGOING AS OF SEPTEMBER 2004

Maersk Medical Inc: February 2002

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 to 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 the company disputed. The case has since been pending in the legal system of Malaysia 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.

It has been difficult for the Danish NCP to uncover the juridical details and aspects of the case and its development in the Malaysian system. Until recently the employers' organisation was not particularly informative. Moreover, Mærsk Medical was in 2003 taken over by Nordic Capital, one of the leading Nordic private capital companies, and now operates under the name Unomedical. The parent company is still headquartered in Denmark. Again this may prove to be a case where the company and the NCP may be hiding behind legal proceedings to avoid the application of the Guidelines.

Plaid Enterprises Inc: August 2002

The Federation of Dutch Trade Unions (FNV) submitted a case to the Dutch NCP regarding the US wholesale company Plaid in 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.

Sanmina-SCI/Hewlett Packard: September 2002

The Dutch NCP was approached by the FNV in 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 has not officially responded to this demand, but appears to be unwilling to deal with the issue.

Ivanhoe Mines Ltd: November 2002

The Canadian Labour Congress (CLC) demanded in November 2002 the Canadian NCP to investigate the charges against Ivanhoe Mines Ltd. The company is in a joint venture with a government enterprise in Burma operating the copper mine S&K. This joint venture has allegedly been involved in the use of forced labour, among other things to build a railway to supply the mine. In addition, the mine has 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, but urged it to go ahead with the labour aspect of the case.

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 stockholder 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.

Technip-Coflexip: March 2003

The French union 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 “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.

Kiswire Sdn Bhd: May 2003

In May 2003, the MTUC submitted another case to the Korean NCP regarding the Korean-based company Kiswire Sdn Bhd that was undertaking anti-union activities. It has 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 had 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 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 National Labor Relations Board 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.

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 in the beginning of September to discuss the case. According to the EUBP, Bayer Philippines has set up a company union to replace the EUBP and to prevent the workers from organising. The company claims that the issue concerns an intra-union conflict.

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.

Nestlé: September 2003

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 in 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 Relations¹⁰.

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. In the end of November, a settlement was reached between the Nestlé Korea Labour Union 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.

The Swiss NCP has played a constructive role in trying to resolve the case. Although the Korean NCP has the main responsibility to deal with the case, the Swiss NCP has met with the unions involved and Nestlé several times. It also met with a labour delegation from Korea on 21 November (the NCP press release is attached in Annex V). After a meeting on 1 December, it was decided that the Swiss NCP should reinforce its suggestion to the Korean NCP to call a meeting with all parties to attempt to reach agreement on the issues raised. If agreement cannot be reached in Korea or if the Korean NCP fails to act, the Swiss NCP would consult again with the IUF and with Nestlé in Switzerland. In any event, the process in Switzerland would result in an agreement of all parties or failing that with a statement from the Swiss NCP.

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

¹⁰ “Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.”

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

In 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”.

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 will bring the case to the attention of the French NCP.

Swatch Group: February 2004

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

The NCP has responded that it will seek the advice of CIME concerning the receivability of the case. Even though the NCP acknowledges that the Guidelines reflect good practices for all, it questions the applicability of the Guidelines since the companies are 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.

Toyota Motor Corporation: March 2004

The Toyota Motor Philippines Corporation Workers' Association (TMPCWA) approached the NCP of Japan in 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 labor 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.

Korean EPZ Corporation: March 2004

In 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 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 is also believed to have infringed several paragraphs of the chapter on General Policies.¹¹

Life Uniform: July 2004

The working conditions at two factories in Mexico were raised with the US NCP by the US trade union UNITEHERE 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.

¹¹ "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.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
11. Abstain from any improper involvement in local political activities."

Angelica Textile Services: August 2004

Both the US and Dutch NCPs were requested by the UNITEHERE and FNV in 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 reflect good practice for all and that multinational and domestic enterprises are subject to the same expectations.¹²

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 in 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.

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

Wackenhut: August 2004

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

Wackenhut is repeatedly interfering 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

¹² **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.”

keeps 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 does not live up to the Guidelines provisions on training, which is virtually non-existing.

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

Bridgestone: September 2004

In 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 is requiring that the company reinstates the four trade union officials that have been dismissed. The case has previously been raised with the ILO Committee of Freedom of Association.

Imerys: September 2004

Abuses of workers' rights within Imerys Carbonates LLC, a subsidiary of the French corporation Imerys, were raised with the US NCP by the Paper, Allied-Industrial, Chemical & Energy Workers International Union (Pace) in September 2004. The company has among other things threatened, coerced and intimidated employees exercising their rights to organise. Pace has also filed a number of unfair labour practice charges with the National Labor Relations Board.

Given that Imerys is a French-owned company, Pace 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.

III CASES PREPARED BUT NOT FORMALLY RAISED

Caisse de Dépôts et Consignations

The American Service Employees International Union (SEIU) was planning to raise a case with the US NCP in the beginning of January 2003 regarding the behaviour of Accent - a building services firm. The company was non-union and failed to observe local standards of employment and industrial relations in Westchester County, New York. It had also dismissed workers for their trade union activities. Accent had been contracted by AEW Capital Management, L.P. (one of the world's largest investors of real estate capital and managers of real estate portfolios), a subsidiary of Caisse des Dépôts et Consignations, an investment bank and savings institution owned by the government of France.

French unions and TUAC were informed of the issue and through direct contacts with Caisse des Dépôts the issue was settled. Caisse des Dépôts met directly with Accent and subsequently an agreement was reached between the SEIU and Accent, which allowed the workers to organise. This case indicates that even without formally raising a case the Guidelines can be useful in achieving a positive outcome.

BASF

The CUT in Brazil was planning to raise a case with the Brazilian NCP concerning the closure of a BASF plant in Brazil. In connection with a TUAC/FES workshop on the

Guidelines in Jakarta in November 2003¹³, the BASF had been invited to speak about corporate social responsibility. TUAC therefore had the opportunity to raise the issue directly with the BASF representative, who agreed to look into it. In the beginning of December 2003, the BASF representative met with the local management in Brazil and together with CUT they managed to reach a solution to the problem. They also did a joint presentation of the “case” at a Global Compact meeting in Brazil.

SUMMARY

The above analysis shows that more than forty cases have been raised by trade unions over the four years since the Revision of the Guidelines. Over half 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. Besides, the so called investment nexus is beginning to appear as an excuse for excluding cases from NCPs.

Several of the cases show 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 get 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 reason for 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.

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¹³ Organised with the support of the European Commission.

Jeudi 28 mars 2002
Recommandations du Point de contact national français
à l'intention des entreprises au sujet de la question du travail forcé en Birmanie

« Les principes directeurs de l'OCDE à l'intention des entreprises multinationales prévoient que "les entreprises devraient [...] contribuer à l'élimination de toute forme de travail forcé ou obligatoire" (chapitre IV "emploi et relations professionnelles"). »

« Sur cette base, plusieurs syndicats ont saisi le Point de contact national (PCN) français au sujet de la question du travail forcé en Birmanie. Conformément aux lignes directrices de procédure prévues par les principes directeurs de l'OCDE, le PCN a procédé à des consultations avec plusieurs entreprises concernées, desquelles il ressort les éléments suivants. »

« Le PCN est d'avis que les entreprises opérant en Birmanie devraient tout mettre en œuvre afin d'éviter directement ou indirectement tout recours au travail forcé dans le cadre normal de leurs activités, dans leurs liens avec d'éventuels fournisseurs ou sous-traitants ou par des investissements futurs, tout particulièrement dans les zones à forte présence militaire et pour les activités contrôlées par l'armée. »

« À cet égard, les consultations effectuées par le PCN ont permis de mettre en évidence plusieurs pratiques des entreprises pouvant contribuer à lutter contre le travail forcé :

- l'élaboration d'actions concertées avec les instances internationales de représentants des salariés aux différents niveaux pertinents ;
- le recours à un contrôle externe ;
- la promotion de la législation contre le travail forcé ;
- la contribution à des projets de développement en particulier dans leurs secteurs d'intervention ;
- la vérification par la direction locale du comportement des sous-traitants ;
- la contribution à des opérations de formation.

D'autres pratiques des entreprises peuvent également y contribuer :

- le développement d'un dialogue social avec les organisations représentatives des salariés à l'échelon local et international ;
- une information régulière de leur Conseil d'administration au sujet des initiatives qu'elles auraient prises pour éviter tout recours au travail forcé.

De telles pratiques ne sauraient évidemment se substituer ni à la mise en œuvre de toutes les mesures nécessaires à la suppression du travail forcé par le gouvernement birman lui-même conformément aux recommandations de l'OIT, ni aux actions de ses États membres ».

Jeudi 13 décembre 2001
Communiqué du Point de contact national français
chargé du suivi des principes directeurs de l'OCDE
à l'intention des entreprises multinationales

« Le Point de contact national (PCN) français a été saisi par plusieurs syndicats suite à l'annonce de la fermeture des magasins Marks & Spencer faite le 29 mars dernier, au motif que cette fermeture n'avait fait l'objet d'aucune information préalable des employés, contrairement aux dispositions prévues par les principes directeurs de l'OCDE à cet égard ».

« D'après ces derniers, en effet, " lorsque [les entreprises] envisagent d'apporter à leurs opérations des changements susceptibles d'avoir des effets importants sur les moyens d'existence de leurs salariés, notamment en cas de fermeture d'une entité entraînant des licenciements collectifs, [elles devraient] en avertir dans un délai raisonnable les représentants de leurs salariés ". Il est ajouté que " compte tenu des circonstances particulières dans chaque cas, il serait souhaitable que la direction en avertisse les intéressés avant que la décision définitive ne soit prise " (chapitre IV " Emploi et relations professionnelles ", paragraphe 6) ».

« Conformément aux procédures prévues par les principes directeurs de l'OCDE, le PCN a procédé à des consultations avec l'ensemble des parties concernées. Suite à ces consultations, le PCN français a adressé un courrier à la direction de Marks & Spencer indiquant que les modalités d'information préalable des représentants des salariés sur les restructurations envisagées par l'entreprise n'ont pas été satisfaisantes au regard des principes directeurs ».

« A cet égard, le PCN souligne que l'information et la consultation recouvre l'évolution probable de l'activité et de l'emploi au sein de l'entreprise. L'information doit donc s'effectuer de façon à permettre aux représentants des salariés de procéder à un examen adéquat et de préparer la consultation ».

« Même si Marks & Spencer a déclaré officiellement son intention de consulter les employés des filiales touchées par la restructuration du groupe, le PCN regrette que cette consultation n'ait pas été, en tout état de cause, mieux préparée et organisée. Néanmoins, il note avec satisfaction la reprise des magasins ».

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« Les principes directeurs de l'OCDE à l'intention des entreprises multinationales sont constitués d'un ensemble de recommandations qui portent sur une très large part des domaines touchés par l'activité des entreprises " multinationales ". La publication d'informations, l'emploi et les relations professionnelles, l'environnement, la science et la technologie, la concurrence, la fiscalité y sont traités. La dernière révision des principes directeurs (juin 2000) a permis d'y rajouter la lutte contre la corruption et la protection des consommateurs, ainsi qu'une nouvelle recommandation sur les droits de l'homme ».

« Les principes directeurs de l'OCDE sont assortis d'un mécanisme de mise en œuvre qui a été renforcé lors de leur dernière révision en juin 2000. Ce mécanisme repose sur un réseau de Points de contact nationaux (PCN) chargés d'en suivre l'application à leur niveau et pouvant

être saisis au sujet de cas spécifiques. En France, le PCN rassemble, outre l'administration, des représentants de plusieurs centrales syndicales ainsi que des représentants des entreprises. Des informations complémentaires peuvent être obtenues sur la page " web " consacrée aux [principes directeurs de l'OCDE et au PCN français](#) ».

Jeudi 13 novembre 2003

Saisine du PCN français

Le PCN français a été saisi par le syndicat français Force Ouvrière le 4 avril 2002 à la suite du dépôt de bilan d'une filiale basée à Evreux du groupe finlandais ASPOCOMP OYJ, malgré la signature d'un plan social le 18 janvier 2002. La saisine s'appuie sur l'article 6 du chapitre IV des principes directeurs, qui indique que "*lorsque les entreprises envisagent d'apporter à leurs opérations des changements susceptibles d'avoir des effets importants sur les moyens d'existence de leurs salariés, notamment en cas de fermeture d'une entité entraînant des licenciements collectifs, elles [devraient] en avertir dans un délai raisonnable les représentants de leurs salariés*".

Conformément aux procédures prévues par les principes directeurs, le PCN a procédé à des consultations avec l'ensemble des parties concernées. A la suite de ces consultations, le PCN a notamment coopéré avec le PCN finlandais afin d'obtenir des informations supplémentaires sur la connaissance par la maison-mère des difficultés financières de sa filiale au moment de la signature du plan social.

Sur la base de l'ensemble des éléments recueillis et au vu de la chronologie des faits, le PCN considère qu'il n'est pas exclu que la maison-mère ait laissé sa filiale s'engager dans un plan social alors qu'elle connaissait sa situation économique réelle, qui ne lui permettait pas de le mettre en œuvre effectivement. Dans cette hypothèse, cette situation ne serait pas compatible avec les termes de l'article 6 précité.

Par ailleurs, le PCN constate que la filiale n'a pas informé ses salariés du déclenchement d'une procédure d'alerte par son commissaire aux comptes alors que le plan social avait été signé 16 jours auparavant. Le PCN considère cette situation incompatible avec les devoirs d'information d'une entreprise vis-à-vis de ses salariés quant à sa situation économique, prévus à l'article 3 du chapitre IV des principes directeurs.

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

ANNEX V

Swiss Contact Point welcomes Korean trade union delegation

OECD Guidelines for Multinational Enterprises

The National Contact Point for the OECD Guidelines for Multinational Enterprises, which is based at the State Secretariat for Economic Affairs (seco), welcomed trade union representatives from South Korea on 21 November 2003. They discussed issues regarding the application of the guidelines to a labour dispute that began in July 2003 at the South Korean Nestlé subsidiary.

The OECD Guidelines for Multinational Enterprises, which have been in force since 2000 and have been accepted by 37 governments, give joint recommendations for responsible entrepreneurial conduct abroad in accordance with existing legislation. Specific issues concerning the application of the guidelines can be submitted to National Contact Points in all participating states. These are aimed at resolving disputes by offering good offices and facilitating consensual means of settlement. The Swiss Contact Point for the OECD Guidelines is based at seco.

The meeting gave the South Korean trade union delegation the opportunity to give their view of observance of the OECD guidelines in the labour dispute at Nestlé Korea, which began in July 2003. Specific application issues in connection with this dispute had already been submitted some weeks previously to both National Contact Points, i.e. at the South Korean Ministry of Trade as well as at seco. Result-oriented and confidential talks between the two Contact Points and the parties to the dispute are taking place in both countries. The Contact Points will announce the outcome in due course in accordance with the procedural principles of the OECD Guidelines or issue recommendations for the application of the Guidelines.

Bern, 21 November 2003

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Further information on the [OECD Guidelines](#) for multinational enterprises can be found on the [OECD website](#)