

# **Annual Report on the OECD Guidelines for Multinational Enterprises 2008**

**EMPLOYMENT AND  
INDUSTRIAL RELATIONS**





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## Foreword

**T**o many people, international investment by multinational enterprises is what globalisation is all about. Promoting appropriate business conduct by these companies is a growing challenge since their operations often straddle dozens of countries and hundreds of cultural, legal and regulatory environments. The OECD Guidelines for Multinational Enterprises aim to help businesses, labour unions and NGOs meet this challenge by providing a global framework for responsible business conduct. While observance of the Guidelines is voluntary for businesses, adhering governments are committed to promoting them and to making them influential among companies operating in or from their territories.

This Annual Report on the OECD Guidelines for Multinational Enterprises, the eighth in a series, describes what governments have done to live up to this commitment over the period June 2007-June 2008.

The Annual Report is published under the responsibility of the OECD Investment Committee. The material for this publication was prepared by Marie-France Houde, Senior Economist, with input from Paul Swaim, Senior Economist and Peter Tergeist, Economist of the Directorate of Employment and Education Affairs, and from Lahra Liberti, Legal advisor, Sarah Cartmell, Consultant, and Ineke Litjens, Consultant, and Pamela Duffin, Communications Officer, in the Investment Division, headed by Pierre Poret, of the Directorate for Financial and Enterprise Affairs.



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PART I

**Meeting of National Contact Points –  
An Overview of Guidelines  
Implementation**



PART I  
*Chapter 1*

**Report by the Chair on the Activities  
of the NCPs**

## 1. Overview

Every year, the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) meet to review their experiences in performing and promoting the implementation of the Guidelines. They also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations (NGOs), notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines. Additionally, a back-to-back roundtable with practitioners is organised to assist NCPs in better understanding the emerging issues and policy developments relevant to the Guidelines. This year, at the invitation of OECD Ministers and the G8,<sup>1</sup> this event consisted of a high-level conference on “Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy” jointly organised with the International Labour Organisation (ILO) on 23-24 June 2008.

This report reviews NCP activities as well as other implementation activities undertaken by adhering governments over the June 2007-June 2008 period. It is based on individual NCP reports and other information received during the reporting period and the results of this year’s Annual Meeting. The report is divided into five additional sections: Section II – Institutional Arrangements; Section III – Information and Promotion; Section IV – Specific Instances; Section V – activities related to OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones; and Section VI – Considerations for Future Actions.

Overall, NCPs considered that this implementation cycle was a good year for the OECD Guidelines. The strong endorsement of the Guidelines by the G8 Leaders at their June 2007 Summit in Heiligendamm reflects their rising profile and impact. In addition, the work of the Special Representative of the United Nations Secretary-General on Business and Human Rights put the spotlight on the wide applicability of the Guidelines and the unique features of their implementation mechanism.

The NCP reports show that NCPs’ individual efforts in raising the awareness, visibility and use of the Guidelines have assumed more proactive dimensions. There have been several improvements of national websites and more diverse promotional techniques. New partnerships with stakeholders have emerged and led to their greater involvement in promotional activities. Regional co-operation among NCPs around the Guidelines has also expanded. Promotional efforts on the Guidelines are increasingly more integrated into the daily activities of governments (notably those of economic, foreign affairs and labour ministries, or aid agencies). Efforts to exploit the synergies between the Guidelines and other existing initiatives and instruments relevant to corporate responsibility such as joint activities and publication of white papers, among others, have also expanded. As of June 2008, 104 000 websites referred to the Guidelines, compared to 25 000 five years ago.

A number of new adherent governments have also taken steps to promote the use of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones which is derived from standards and principles in the OECD Guidelines.

In total, however, this year's activities show considerably more attention paid to the issue of NCP performance and emerging NCP practices. Important changes in NCP structures (notably in the Netherlands and the United Kingdom) are now operational and these experiments are being closely watched by other NCPs. A few NCPs also report exploring the possibility of introducing changes to their institutional arrangements. The Working Party of the Investment Committee conducted a major survey of NCP performance in order to assist NCPs in preparing for the discussion at their 2008 Annual Meeting, which was largely devoted to this subject.

Although there has been a slight decline in the number of specific instances raised over the 2007-08 implementation cycle of the Guidelines, the NCPs' reports show continued support for the specific instances facility. There were 27 cases raised for a total of 182 requests since the June 2000 Review. Of these, 136 specific instances have been considered by NCPs. The trend of searching for amicable solutions is continuing, resulting in efforts to better co-ordinate and consult on cases involving multiple requests. However, some questions remain for further discussion.

Adherence to the Declaration on International Investment and Multinational Enterprises has continued to expand. Egypt became the 40th adherent to the Declaration on International Investment and Multinational Enterprises in July 2007 and established a National Contact Point for the Guidelines. The review of Peru's application as the 41st adherent to the Declaration was completed in June 2008 and several other requests for adherence to the Declaration by other non-OECD countries are under active consideration. The Guidelines have also garnered increased visibility within the context of the OECD Investment Committee's co-operation with China.

A Memorandum of Understanding has been concluded with the International Standard Organisation (ISO) to ensure that the draft ISO International Standard Providing Guidelines on Social Responsibility and related activities are consistent with and complementary to the OECD Guidelines.

While noting the progress made during the June 2007-June 2008 period, NCPs generally agreed that still more could be done to further the effectiveness of the Guidelines. The discussion at the annual consultations with stakeholders and the exchange of views with the Special Representative of the UN Secretary-General on Human Rights on his April 2008 report did focus on NCPs although it often blurred the distinctions between stakeholder satisfaction and performance of the NCP. Nevertheless, NCPs are aware of the importance of improving their performance and they considered that the 2008-09 implementation cycle should continue to be devoted to improving this. NCPs would benefit from access to better data on their actual performance which distinguishes those matters that are within NCPs' control – for example there was considerable discussion about process delays which are sometimes the result of other parties. NCPs are looking for more opportunities to exchange their experience in depth and in this regard welcomed the offer of the Dutch NCP to subject itself to a peer review in May 2009. They also agreed that the length of the 2009 Annual Meeting should be increased to allow more time for an in-depth exchange of concrete experiences on the functioning of the Guidelines, specifically NCPs would like an additional half day devoted to discussion of recently concluded cases. NCPs would also appreciate the opportunity to receive expert advice on techniques such as mediation. It was noted that many NCPs have not yet dealt with any specific instances but conversely that some NCPs experience resource constraints in fulfilling their duties. It was suggested

to the Investment Committee that the note transmitting the Annual Report to Council could include an invitation to adhering governments to take appropriate action. Finally, they welcomed the work to be undertaken over the coming year under the auspices of the Investment Committee on the supporting role of the Guidelines in the financial sector and the promotion of the Guidelines in non-adhering countries.

## 2. Innovations in NCP structure and procedures

Taking into account the structural changes that occurred in the June 2007-June 2008 period, current NCP structures now consist of:

- 20 NCP single government departments;<sup>2</sup>
- 7 NCP multiple government departments;<sup>3</sup>
- 1 bipartite NCP;<sup>4</sup>
- 9 tripartite NCPs (involving governments, business, and trade unions);<sup>5</sup>
- 2 quadripartite NCPs (involving governments, business, trade unions and NGOs);<sup>6</sup> and
- 1 mixed structure of independent experts and government representatives.<sup>7</sup>

Compared with 2000, when the NCP mechanism under the revised Guidelines was created, the inclusion of stakeholders into NCP structures has markedly expanded.<sup>8</sup> The number of NCPs with tri- or quadri-partite organisations has increased while advisory committees or permanent consultative bodies involving non-government partners has become widespread in countries with government NCP structures. Meetings with business, trade unions and civil society have also intensified. While a few NCPs seem to prefer more informal channels of communication, this year's reports underscore NCPs' commitment to respond to enquiries about the functioning of the Guidelines and be fully transparent about their activities.

The most striking innovations in NCP structures and procedures occurred in Egypt, the Netherlands and the United Kingdom:<sup>9</sup>

- Egypt became the 40th adherent country to the Declaration in July 2007 and established its NCP. Its newly created NCP consists of a Senior Manager from the Ministry of Investment and its own support staff. It is also assisted by an Advisory Committee comprising, in addition to the NCP's Manager, representatives from the Ministries of Finance, Foreign Affairs, Administrative Development, Trade and Industry, and Manpower and Immigration. The Advisory Committee also comprises economic, legal and financial experts. A representative of the Egyptian Trade Union Federation is a member of this Committee.
- The *Dutch NCP* now consists of an independent chairman and three independent members, who all possess backgrounds in the various stakeholder groups of the NCP's work. They are independent insofar that they have a seat in the NCP in their personal capacity, and are not bound by the policies and goals of the Dutch government. The NCP members are advised by four ministries (Economic Affairs, Foreign Affairs, Social Affairs and Employment, and Housing, Spatial Planning and the Environment). The ministry of Economic Affairs provides a Secretariat with two full-time employees. The new Dutch NCP has met twice in the reporting period.
- In the *United Kingdom*, the Steering Board overseeing the work of the NCP met for the first time in May 2007 and is now fully operational. It includes external members selected for their experience in business, employee relations and issues of concern to NGOs as well as representatives from government departments (Attorney General's Office, Environment,

Food and Rural Affairs, Constitutional Affairs, International Development, Work and Pensions, Export Credit Guarantee Department, Foreign Office, UK Trade and Investment, and the Scottish Executive). Following the adoption of a new strategy in May 2007, the FCO refocused its objectives, which means that it is no longer a member of the UK NCP although it will continue to be represented in the Steering Board. Two officials from the Department for Business, Enterprise and Regulatory Reform (BERR) are now working full time on the Guidelines, with 20 per cent of a DFID official.

NCPs noted these changes with interest and look forward to an assessment of their effectiveness at an appropriate time.

Other institutional changes reported to be under active consideration:

- *Canada* has started the process of transferring the role of NCP chair and coordinator from the Investment Trade Policy Division to the Trade Commissioner Service Overseas Operation Division. This Division has a team that advises trade commissioners in Canada and abroad on CSR, and coordinates an annual CSR-related program that includes training. The rationale behind the transfer is to expand the network and reach of the Guidelines through the trade commissioners, thus enabling the Canadian NCP to implement the Guidelines more effectively.
- In April 2008, *Chile* completed a review of its existing institutional arrangements for the Chilean NCP. Recommended changes include decentralisation of the consideration of specific instances to specialised departments or agencies, and reinforcement of the composition of the consultative Committee to the Chilean NCP.
- In *Iceland*, the location of the Icelandic NCP has been transferred to the Ministry of Business Affairs. Further changes are under active consideration.
- *Italy* reports the signing of a Protocol of Understanding between the Italian NCP and the Lombardy Region-General Directorate for Handcraft and Services in February 2008. The Protocol is aimed at strengthening NCP co-operation with sub-national institutions and promoting the Guidelines among small- and medium-sized enterprises. The Protocol provides for a series of activities to be carried out jointly between the signatories: the involvement of public and private bodies on the issues related to the Guidelines, the implementation of pilot projects together with artisan enterprises and SMEs, and the participation of the region's businesses in trade missions.
- *Japan* is exploring the modalities of establishing a standing consultative body comprised of representatives from the Japanese business and labour communities.
- *Mexico* and *Slovenia* are proceeding with a reorganisation of their NCPs.

More frequent consultations among NCPs stand out as the third most distinctive feature of the 2007-08 review period. Co-operation was strengthened or developed at a regional level, most notably among the Nordic countries and Latin American countries. Since 2000, NCPs report having engaged in joint consultations on 22 specific instances. During the reporting period, Switzerland reports consulting with the Australian and UK NCPs on the activities of a Swiss-based multinational and co-owner of a coal mine in Colombia. The Swedish and Norwegian NCPs report working closely together on a recent case involving the financial sector.

The Italian NCP raised some questions on how instances involving multiple NCPs should be managed. It was agreed that NCPs could draw on the following guiding principles for addressing multi-NCP specific instances. First, it was recognised that the NCPs involved

need to retain the necessary flexibility to address the merits and circumstances pertaining to such complex cases, which may vary significantly from one case to another. It was also noted that such flexibility is already embedded in the Procedural Guidance for implementing specific instances. *Second*, multi-NCP specific instances involving the same allegations of non-compliance, should be dealt through one single process to avoid potential inconsistencies between the treatment of instances by the various NCPs concerned. *Third*, to provide for this unified approach, a “leader NCP” should be designated to manage the whole process. Furthermore, the NCP receiving the first instance should take on the responsibility of obtaining an agreement on an appropriate leader NCP and the process for handling the instance. *Fourth* the leading NCP should maintain at all times effective communication channels with other concerned NCPs. It should also closely involve them in any decisions on the intermediary procedural steps as well as in drafting of the concluding statement on the specific instances raised. It was also suggested that the OECD Electronic Discussion Group could be a helpful communication channel for disseminating relevant information to NCPs.

### 3. Proactive approaches and regional co-operation in information and promotion initiatives

The June 2000 Decision of the OECD Council calls on NCPs to undertake promotional activities. The reporting period witnessed an increasingly proactive approach to identifying new avenues for promotional activities, and intensification in the targeting and tailoring of information delivery on the Guidelines. The present section summarises the main activities described in the individual NCP reports.

#### 3.1a. Selected promotional activities

Developments and innovations in promotion include:

- *Argentina – co-operating regionally.* In May 2008, the second annual regional meeting of national contact points in Latin America was held in Buenos Aires. At the meeting, regional co-operation among NCPs was stressed as a key way to garner political support, increase awareness of the Guidelines among civil society and government counterparts, and overcome the limited physical and human capital resources of NCP offices. In November 2007, a dedicated website to the Argentine NCP was inaugurated. Mexico offered to host in 2009 the Third Regional Meeting of the Latin American National Contact Points.
- *Australia – convening multi-stakeholder consultations.* To better promote the Guidelines and build networks across the country, the Australian NCP organised two multi-stakeholder consultations in Sydney and Melbourne in August 2007. Participants from both NGOs and the relevant government agencies gave presentations during the consultations. Further, to ensure user friendliness and act as a comprehensive information source, the Australian NCP website was reviewed and updated.
- *Brazil – targeting MNEs.* The Brazilian NCP is currently building a database of MNEs operating in Brazil and their relevant contact persons for issues related to the Guidelines. MNEs were identified as a priority group for outreach efforts and this targeted approach is complemented by additional NCP participation in conferences, seminars and regional NCP meetings.

- *Canada – global outreach.* At a seminar on human rights within the framework of La Francophonie in Rabat, Morocco in March 2008, the Canadian NCP presented the unique features of the Guidelines and the specific instance facility. Industry Canada disseminated the results of extensive research on Canadian MNEs and industry associations in the context of development of a Sustainable Development Strategy. Canadian embassies in Ecuador, Peru, Guatemala and Senegal organised multi-stakeholder seminars on the extractive sector.
- *Denmark – information-sharing at the regional level.* The Danish NCP participated in a meeting of Nordic National Contact Points in Oslo, Norway in March 2008 designed to help strengthen co-operation between NCPs on the Guidelines. In addition, the Danish NCP responded to an enquiry from the Norwegian government and discussed the Danish view of the Guidelines as a CSR-tool in a meeting with Norwegian government representatives.
- *Egypt – laying the foundation.* The Egyptian NCP website, to be launched in early summer 2008, will feature the Guidelines in both English and Arabic and other information relevant to stakeholders in Egypt. Egypt also organised an event on the Guidelines with TUAC and NGOs that attracted trade union participants from across the Middle East and North Africa.
- *France – spreading the Guidelines.* The French NCP also actively participated in the seminar on human rights organised within the framework of La Francophonie in Rabat, Morocco in March 2008 at which the creation of a French speaking NGO network was discussed. On the occasion of the major stakeholder conference, “*Quelles régulations pour une mondialisation plus juste?*” organised by the Ministry of Labour, Social Affairs and Solidarity, French enterprises were encouraged to refer to the Guidelines in the context of their framework agreements with trade unions. The association of French entrepreneurs MEDEF published an explanatory brochure on the Guidelines, which has been distributed to all French embassies abroad.
- *Germany – spotlight on the Guidelines.* At the June 2007 Leaders Summit, Germany initiated the so-called “Heiligendamm Process” to promote new forms of dialogue on CSR with G5 countries. The German NCP promoted the Guidelines with Chinese officials and was a key speaker at the forum organised in Egypt by TUAC.
- *Iceland – better promotion.* Iceland’s NCP is revising the first Icelandic translation of the Guidelines before providing a final version to domestic and foreign stakeholders. The NCP representative also introduced the Guidelines to advanced law students at Reykjavik University’s School of Law.
- *Italy – engaging SMEs.* The Italian NCP commissioned a survey concluded in October 2007 on “CSR as competitive elements for SMEs: Implementation policy and communication instruments to reach consumers.” The push to involve domestic SMEs in a dialogue on the Guidelines’ applicability also included such workshops and seminars as “Internationalisation and globalisation as key factors for the competitiveness of Micro-, Small- and Medium-Enterprises,” June 2007; “Internationalisation of the Enterprises – Workshop on Brazil,” April 2008; and “India: Challenges and Opportunities for Emilia Romagna SMEs”.
- *Japan – mobilising Southeast Asia.* The Japanese NCP participated in a symposium with TUAC and the Japanese Trade Union Confederation, RENGO, on the Guidelines in February 2008. During the symposium, participants discussed NCP experiences and how to promote the Guidelines in Southeast Asia.

- *Korea – extending partnerships.* As of 2008, excerpts of the Guidelines are available on the websites of several Korean economic organisations, as well as on the official ministry's website. The Korean NCP is also expanding its promotion efforts off-line and is directly educating companies on the Guidelines. It also visited the Japanese NCP in November 2007 to share management ideas.
- *Netherlands – pursuing global promotion.* The Dutch NCP has worked with the Dutch Agency for International Business and Co-operation (EVD) to provide information on the Guidelines and guidance on their implementation in emerging markets for companies considering foreign operations. EVD also launched three new country-specific CSR toolkits, which include information on the Guidelines, and more are under development. Moreover, the Guidelines were actively promoted during several Dutch trade missions.
- *Norway – maximising impact.* In January 2008, the Norwegian Foreign Ministry published a booklet on anti-corruption that included a section on the Guidelines which was distributed to all Norwegian embassies and export promotion offices abroad as well as to relevant agencies and organisations in Norway. In addition, the Norwegian government is in the process of writing a White Paper on CSR and its completion may spur a more comprehensive CSR strategy incorporating the Guidelines.
- *Poland – expanding NCP presence.* A revamped website on the Guidelines was launched in 2008. In November 2007, the Polish NCP hosted a conference on “The OECD Guidelines for Multinational Enterprises – Foreign Experience and Perspectives in Poland”. This was followed by NCP representation at a conference establishing a national platform for CSR.
- *Romania – easing accessibility.* The Guidelines are incorporated into the Romanian Agency for Foreign Investment's new user-friendly brochure, and a section is dedicated to answering questions about the Guidelines and explaining the Romanian NCP's functions. Moreover, the Romanian NCP is continuing its information outreach to trade unions through seminars.
- *The Swedish Partnership for Global Responsibility* has continued to be used as a platform for promoting the Guidelines, notably in relation to core labour standards, business in conflict, business in China, corruption, human rights, responsible investment and reporting.
- *In Switzerland,* the Guidelines have been promoted in ministerial speeches or that of high officials and continued to be linked with other government-supported corporate responsibility initiatives. An expanded website on the Guidelines will go live in mid-2008.
- *European Commission – building linkages.* The Guidelines featured prominently in discussion during the commission's December 2007 Conference on “CSR at the Global Level: What role for the EU?” The Compendium on National Public Policies on CSR in the European Union (2007) also includes information on the Guidelines and NCPs.

Other promotional activities undertaken by NCPs during the reporting period include:

- Outreach to companies via contacts or presentations to individual companies or business associations (Brazil, Canada, Italy, Japan, Korea, Netherlands, Poland, Sweden, United Kingdom).
- Consultations and organisation of meetings with national partners (Australia, Brazil, Canada, Czech Republic, Denmark, Egypt, Germany, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Romania, Sweden, United Kingdom). In

Denmark, a “Guidelines-Group” was established, functioning as an open forum for representatives of NGOs and the Danish NCP to discuss promoting the Guidelines.

- Newsletters, articles in the press or other promotion through the media (Brazil).
- Participation in conferences organised by non-governmental actors (Argentina, Australia, Canada, Finland, Greece, Italy, Poland, Romania, Turkey, United Kingdom, United States).
- Development of promotional material and mailings (Austria, Australia, European Commission, New Zealand, Norway, United Kingdom). Website development (Argentina, Australia, Brazil, Egypt, Italy, Poland, United Kingdom).

Promotional activities within governments:

- Promotion through presentations to government departments or agencies or by high-level officials (Australia, Norway, Turkey, United Kingdom).
- Promotion with and training of embassy and consular staff (Australia, Canada, Germany, Norway, Romania, Spain, Switzerland, United Kingdom, United States). In 2008, the UK’s Embassy in Moscow organised a series of meetings to promote the Guidelines to key British investors in Russia.
- Trade and Investment Promotion missions or activities (Canada, Germany, Japan, Lithuania, Netherlands, Norway, Romania, Slovenia, Sweden).
- Promotion through overseas development agencies (Canada, Netherlands). The Canadian International Development Agency raises awareness of the Guidelines through its participation in outreach events across Canada and internationally, for example, at the Inter-American Conference on CSR.
- Answering questions from Parliaments, Ombudsmen or other government bodies (European Commission, Germany, Japan, Sweden). Promoting the Guidelines to foreign embassies (Switzerland).

### **3.2b. Investment promotion, export credit and investment guarantee agencies**

Adhering governments have continued to explore ways of ensuring that their support for the Guidelines finds appropriate expression in credit and investment promotion or guarantee programmes. Table 1.1 summarises the links that have been established between the Guidelines and such programmes. Twenty-eight NCPs report that such links exist.

### **3.3c. OECD Investment Committee work**

As a result of the high political profile given to the OECD Guidelines, and the requests made to the OECD to act as a platform for various corporate responsibility issues, the OECD Investment Committee embarked on three major new initiatives to enhance the visibility and use of the OECD Guidelines as a foremost corporate responsibility instrument:

- *Review of NCP performance since 2000*: In light of the G8 commitment to promote the OECD Guidelines through better governance of the National Contact Points and the decision made at the 2007 Annual NCP meeting to prioritise improving NCP performance over the 2007-08 implementation cycle, the Working Party of the Investment Committee conducted a major review of NCP activities since the 2000 Revision of the Guidelines. The review’s findings have been submitted to NCPs in advance of this year’s Annual Meeting, and the report offers insight into emerging practices as “seed material” for the improvement of NCP performance.

**Table 1.1. The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes**

Australia	Export credit and investment promotion	Australia's Export Finance and Insurance Corporation (EFIC) promotes corporate social responsibility principles on its website, including the OECD Guidelines. The Guidelines are hosted on the Australian NCP's website. Links to the Australian NCP's website are provided on the Foreign Investment Review Board and the Invest Australia websites.
Austria	Export credits	Oesterreichische Kontrollbank AG, acting as the Austrian export credit agency on behalf of the Austrian Federal Ministry of Finance, is actively promoting corporate responsibility principles and standards. On its website, extensive information on CSR issues, including the current text of the Guidelines, is available.
Belgium	Export credit and investment guarantees	The Belgian Export Credit Agency mentions the OECD Guidelines in its investment guarantees and all export credit guarantees.
Canada	Export Credits	The Export Development Canada (EDC) promotes corporate responsibility principles and standards, including the recommendations of the Guidelines. EDC has linked its website with that of Canada's NCP. Guidelines brochures are distributed. Dialogue on CSR with key stakeholders is maintained.
Chile	Investment promotion	The Foreign Investment Committee is the agency which promotes Chile as an attractive destination for foreign investment and international business. The Guidelines are part of the information provided by the Committee to investors.
Czech Republic	Investment promotion	There is a special agency called "Czech Invest" operating in the Czech Republic which provides information on the Czech business environment to foreign investors. It has prepared an information package (which includes the Guidelines) that is passed to all foreign investors considering investing within the territory of the Czech Republic. The Czech NCP (at the Ministry of Finance) cooperates closely with Czech Invest.
Denmark	Export credits	When applying for export credits, the Danish Eksport Kredit Fonden informs exporters about the OECD Guidelines and encourages exporters to act in accordance with the OECD Guidelines.
Estonia	Investment promotion	The Estonian Investment Agency has published a description of the Guidelines and added a link to the Estonian NCP website.
Finland	Export promotion	This programme, adopted in July 2001, introduces "environmental and other principles" for "export credit guarantees". It calls the "attention of guarantee applicants" to the Guidelines.
France	Export credits and investment guarantees	Companies applying for export credits or for investment guarantees are systematically informed about the Guidelines. This information takes the form of a letter from the organisation in charge of managing such programmes (COFACE) as well as a letter for companies to sign acknowledging that they are aware of the Guidelines (" <i>avoir pris connaissance des Principes directeurs</i> ").
Germany	Investment guarantees	A reference to the Guidelines is included in the application form for investment guarantees by the Federal Government. The reference also provides a link to information of the Guidelines, in particular the Internet address for the German translation of the Guidelines.
Greece	Investment promotion	The <i>Guidelines</i> are available on the portal of the Ministry of Economy and Finance ( <a href="http://www.mnec.gr">www.mnec.gr</a> ), as well as on the websites of the Hellenic Investment Promotion Agency (ELKE) ( <a href="http://www.elke.gr">www.elke.gr</a> ) and the Export Credit Insurance organisation (OAEF) ( <a href="http://www.ecio.gr">www.ecio.gr</a> ).
Israel	Investment Promotion Centre	The site of Israel's Investment Promotion Centre has a direct connection to the Israeli NCP web site where the OECD Guidelines are available electronically.
Italy	Export credits	The Italian NCP is in regular contact with SACE (the Italian association in charge of insuring export credit) and contributes to its activities,
Japan	Trade-investment promotion	The Guidelines (basic texts and Japanese translation) are available on the websites of the MOFA, METI, and MHLW Japan. Japan established a website with the intention of further strengthening a network between Asia and Africa to facilitate the exchange of trade and investment. The Japan External Trade organisation (JETRO) website and the ASEAN-Japan Centre website are linked to the summary, full texts of the Guidelines, introduction of the Japanese NCP activity including its procedures and promotion. Tokyo International Conference on African Development (TICAD) Exchange also provides Web links to the Guidelines.
Korea	Trade-investment promotion	OECD Guidelines can be found at the MKE (Ministry of Knowledge Economy) website ( <a href="http://www.mke.go.kr">www.mke.go.kr</a> ). MKE promotes trade and investment.
Lithuania	Investment promotion	"Lithuanian Development Agency" operates in the Republic of Lithuania and provides information on the Lithuanian business environment to foreign investors. It has prepared an information package that is passed to all foreign investors considering investing within the territory of Lithuania. The Lithuanian NCP (at the Ministry of Economy) cooperates closely with the "Lithuanian Development Agency". Investment Promotion Programme for the period of 2008-2013 was adopted by the Government on 19th of December 2007. The goal of the programme is to improve investment environment in Lithuania in general and to establish an efficient system for the promotion of direct investment, focusing on long term development of economy and the prosperity of the society. Whole text of the Investment promotion Programme can be found at the web page of the Ministry of Economy: <a href="http://www.ukmin.lt/en/investment/investment-promotion/index.php">www.ukmin.lt/en/investment/investment-promotion/index.php</a> .

**Table 1.1. The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes (cont.)**

Netherlands	Export credits and investment guarantees	Applicants for these programmes or facilities receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability.
Poland	Investment promotion	The Polish NCP is located in the investment promotion agency (PAIIZ). The Polish Information and Foreign Investment Agency helps investors to enter the Polish market and find the best ways to utilise the possibilities available to them. It guides investors through all the essential administrative and legal procedures that involve a project; it also supports firms that are already active in Poland. PAIIZ provides rapid access to the complex information relating to legal and business matters regarding investments, helps in finding the appropriate partners and suppliers, together with new locations.
Romania	Romanian Agency for Foreign Investments (ARIS)	The Romanian NCP is located within the Romanian Agency for Foreign Investments (ARIS). The RNCIP's webpage was developed starting from the Romanian Agency for Foreign Investment central site. The Guidelines (basic texts) are available electronically on the sites of the MFA ( <a href="http://www.mae.ro">www.mae.ro</a> ) and the Romanian Agency for Foreign Investments (ARIS) ( <a href="http://www.arisinvest.ro">www.arisinvest.ro</a> ). The Guidelines and the relevant decisions of the OECD Council have been translated in the Romanian language. Other useful documents posted on the RNCIP's web page include: <ul style="list-style-type: none"> <li>• Policy framework for Investment.</li> <li>• OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.</li> </ul>
Slovenia	Investment promotion, export credits and investment guarantees	The Slovenian NCP is established within the Ministry of Economy of the Republic of Slovenia. The promotion and use of the OECD Guidelines for Multinational Enterprises is already a part of Slovenian policies. Currently we are in the restructuring phase. Public Agency for Entrepreneurship and Foreign investments (JAPTI) and Slovenc Export and Development Bank (SID) will add links to the NCP website.
Slovak Republic	Investment promotion	NCP is established at the Ministry of Economy of the Slovak Republic. The Guidelines are promoted in Slovak language at Ministry's webpage. The Ministry of Economy is funding and supervising an agency for investment and trade development (SARIO) that promotes both business environment and investment opportunities. The investors entering the Slovak republic who had been awarded with governmental incentives are to commit themselves to keep the Guidelines (part of the awarding decision).
Spain	Investment guarantees	The CESCE (Export Credit Agency) that manages investment guarantees, COFIDES (Corporation for Development Finance) and ICO (the Official Credit Institute) provide Guidelines brochures to applicants for support and investment guarantees.
Sweden	Export credits	The Swedish Export Credits Guarantee Board provides all its customers with information on the rules on environment, the rules on bribery, the OECD Guidelines for MNE's and the Swedish Partnership for Global Responsibility.
Switzerland	Export Risk Insurance	Switzerland's Export Risk Insurance (SERV) promotes corporate responsibility principles. On its website, it provides information regarding the Guidelines and their implementation mechanism.
Turkey	FDI	The Turkish NCP is located within the General Directorate of Foreign Investment (Treasury) which is the authorised body for investment policy making. The Treasury's website provides information on the Guidelines.
United Kingdom	Export credits and investment insurance	Links connect the Export Credits Guarantee Department's website with that of the UK National Contact Point. In addition, ECGD refers to the Guidelines in its publicly available Case Impact Analysis Process document.
United States	Export and import credits and investment guarantees	The Export-Import Bank and the Department of Commerce co-operate with the NCP on the provision of information on the Guidelines to applicants for their programmes in support of US business activities abroad.

- *Overview of selected Initiatives and Instruments relevant to CSR:* In response to the G8 request that “the OECD, in co-operation with the Global Compact and the ILO, compile the most relevant CSR standards and principles”, the OECD Secretariat prepared, under the auspices of the Investment Committee, an overview of initiatives and instruments relevant to Corporate Social Responsibility that incorporates inputs from the ILO Secretariat and the UN Global Compact. This report highlights the unique status and characteristics of the ILO and OECD instruments and those of the UNGC as important complements to privately-developed CSR initiatives. It also suggests that their increased use and reference by enterprises will help enhance the visibility, consistency and acceptability of companies' own CSR initiatives.

*OECD-ILO Co-operation:* On 23-24 June 2008, the OECD Investment Committee and the Employment, Labour and Social Affairs Committee, in conjunction with the ILO, organised

a high-level conference on “Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy.” The widely attended event contributed to further dissemination of good corporate practices in the area of employment and industrial relations, better understanding and use of the OECD and ILO’s instruments, and mutual understanding and trust between stakeholders in developed and emerging markets on approaches to responsible investment. Areas for future co-operation between the OECD and ILO were also identified.

*Outreach* work has also elevated the Guidelines’ profile. On 26-27 June 2008, a China-OECD symposium was organised on China’s recent progress and challenges in encouraging responsible business conduct. This event was followed by a seminar initiating a continuing dialogue and establishing a network for sharing information on best practices for environmentally responsible business conduct among Chinese enterprises.<sup>10</sup> In the context of its support to the work underway at the IMF on generally accepted principles and practices for sovereign wealth funds, the Investment Committee publicly called attention to the relevance of the OECD Guidelines for Multinational Enterprises to this work.

In addition, the OECD Investment Committee and its Working Party continued to provide a privileged forum for exchanging experiences on the implementation of the Guidelines, notably with regard to the areas identified for future action in the 2007 Annual Report on the Guidelines.<sup>11</sup>

#### **3.4d. Other promotion by the OECD**

In October 2007, the OECD Secretary-General met with Eurotradia International, an association of high level French executives to discuss the role of the Guidelines in a globalised world. In December 2007, the OECD Secretary-General’s interview on the Guidelines with *Les Ordres des Avocats de Paris* was reproduced in a special edition of “Le Barreau autour du Monde” on ethics and international trade. In February 2008, the OECD Deputy Secretary-General Mario Amano held a keynote address on “Making the Most of the OECD Guidelines for Multinational Enterprises” at the high level seminar organised in Tokyo by the Japanese Trade Union Confederation RENGO and the Trade Union Advisory Committee to the OECD.<sup>12</sup>

The Secretariat continued to contribute to the UN Secretary-General’s Special Representative John Ruggie’s work on business and human rights with speeches at a workshop in Berlin and a related supply chain workshop in The Hague in November 2007. The Secretariat also provided input to a project on alternative dispute settlement procedures in the field of corporate responsibility. Professor Ruggie presented the results of his work and their potential implications for the OECD Guidelines at the 2008 Annual NCP Meeting. His report to the Human Rights Council on 7 April 2008 [A/HRC/8/5] explicitly acknowledged that “the OECD Guidelines are currently the most widely applicable set of government-endorsed standards related to corporate responsibility and human rights”. Transparency International published guidance on the Guidelines explaining their relevance in fighting corruption in the private sector.<sup>13</sup>

The OECD concluded a Memorandum of Understanding with the ISO with a view to ensuring that the International Standard Providing Guidelines on Social Responsibility currently being developed by the ISO (the so-called ISO 26000 standard) and related activities are consistent with and complement the OECD MNE Guidelines.

Officers of the Investment Committee and its Secretariat accepted invitations to promote the Guidelines at several international meetings over the period. Selected promotional events attended and activities undertaken include:

- In October 2007, the Chair of the Investment Committee made a keynote presentation to the Spanish Parliament.
- The Secretariat organised an informative seminar on the Guidelines at the margins of the 5th meeting of the ISO Working Group on Social Responsibility held in Vienna in November 2007, which further benefitted from the participation of the Chair of the Investment Committee and a representative of the Global Reporting Initiative. It also made a presentation on “Matching Government and Corporate Responsibility” at a side ISO event on corporate responsibility.
- The Secretariat presented the “Perspectives of the OECD Guidelines” at the EC Conference on “Corporate Social Responsibility at the Global Level” held in Brussels in December 2007.
- The Secretariat presented on “Momentum and Responsible Growth: Role and Impact of the OECD Guidelines” at a Chatham House Conference in London in March 2008.
- The Secretariat presented the OECD instruments to promote responsible business at the seminar organised in the framework of La Francophonie in Rabat, Morocco in March 2008.
- The Secretariat made a presentation on corporate responsibility at the Salon de l’Environnement et des Métiers Durables held in Paris in June 2008.
- Since March 2006, the OECD Investment Newsletter, published three times a year, has kept the larger investment policy community and other stakeholders informed about ongoing Investment Committee work on the Guidelines.

In addition, the Secretariat answered numerous queries about the Guidelines from the media, universities and other interested parties, and continued to improve the OECD website dedicated to the Guidelines.

## 4. Active use of the “specific instance” facility

### 4.1a. Number of specific instances

182 requests to consider specific instances have been filed with NCPs since the June 2000 review. Individual NCP reports indicate that the following numbers of specific instances have been filed: Argentina (5), Australia (3), Austria (5), Belgium (11), Brazil (13), Canada (7), Chile (5), Czech Republic (5), Denmark (3), Finland (4), France (12), Germany (10), Hungary (1), Ireland (1), Italy (5), Japan (5), Korea (5), Mexico (2), Netherlands (15), New Zealand (1), Norway (3), Poland (3), Portugal (1), Romania (1), Spain (2), Sweden (3), Switzerland (5), Turkey (2), United Kingdom (18), and United States (26).

Annex 3 shows that 136 specific instances have been actively taken up and considered to date by NCPs.<sup>14</sup> 86 of these have been concluded. Most specific instances deal with Chapter IV (Employment and Industrial Relations). A number of cases also involve violation of human rights in the resources sector. The only Guidelines chapter that has not been referenced in the context of a specific instance is Chapter VIII (Science and Technology).

### 4.2b. Selected specific instances described in NCP reports

*Australia* – In July 2007, the Australian NCP received a request regarding alleged non-observance with several provisions of the OECD guidelines by a mining company operating

in South America. The Australian NCP has consulted with the Swiss and UK NCPs in relation to this specific instance. Further deliberation of this instance was suspended pending release of the report commissioned by the mining company's management and shareholders to review the firm's social engagement.

*Brazil* – In March 2008, the Brazilian NCP issued a final statement on a specific instance concerning Shell Brazil Holding and alleged non-observance of certain provisions of Chapter V (Environment) of the Guidelines. In May 2006, a Brazilian environmental NGO and a labour union representing petroleum by-products workers in the state of Sao Paulo brought the complaint to the NCP. After mediation, and several meetings and discussions with the relevant parties, the Brazilian NCP closed the case and issued its findings.

*Germany* – The German NCP issued a final statement in August 2007 on a specific instance concerning Bayer CropScience's operations in India. The statement includes a voluntary commitment from Bayer CropScience to take concrete measures against child labour. The case dates to October 2005 when the German NCP received a request from NGOs regarding alleged non-observance of paragraph 1b) "contribute to the abolition of child labour" of Chapter IV (Employment and Industrial Relations) of the Guidelines by one of Bayer CropScience's suppliers in India. The German NCP solicited comprehensive comments from both parties and initiated a series of meetings in November 2006 and January 2007.

*Sweden* – In January 2008, the Swedish NCP issued a final statement regarding a specific instance involving Scandinavian bank Nordea as partial financier of the Finnish company Botnia's construction of a pulp mill in Uruguay. The case dates to July 2006 when both the Swedish and Norwegian NCPs were contacted by the Norwegian NGO Bellona and the Argentinean NGO Center for Human Rights and Environment (CEDHA) about alleged non-observance of the Guidelines. Since Nordea's legal domicile is Sweden, the Swedish NCP took the lead with the support of the Norwegian NCP in assessing the request. This specific instance revolved around the applicability of the Guidelines to the financial sector and this issue was discussed at the annual NCP meeting in 2007. While the Swedish NCP determined that Nordea was complying with the Guidelines, it also stated that the Guidelines can and should be applied to the financial sector as well as to other multinational enterprises.

## **5. Implementation of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones**

Several countries have taken steps to disseminate and promote the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. Canada, for instance, has promoted the tool through its embassies in sub-Saharan Africa and the Canadian International Development Agency's activities in Afghanistan. The Risk Awareness Tool also featured prominently in the December 2007 workshop in Kampala sponsored by Sweden on the subject of "Contributing to Sustainable Peace in Conflict-Affected Countries – Identifying a Role for Investors in Uganda". The UK NCP drew attention to the OECD Risk Awareness Tool in its final statement on one specific instance.

The Risk Awareness Tool is now published or referred to alongside the Guidelines on NCP or corporate responsibility websites in many countries (Australia, Belgium, Canada, Germany, Ireland, Italy, Japan, Korea, Romania, Sweden and United Kingdom). The Australia Trade Commission invites business to use the tool as part of its risk management plan.

In June 2007, the UN Security Council stressed the importance of the OECD Risk Awareness Tool for promoting responsible business conduct and avoiding illegal exploitation of natural resources in countries in conflict.<sup>15</sup>

There is also increasing evidence that stakeholders are making greater use of the OECD Risk Awareness Tool. The tool has been cited, for example, as a source of helpful guidance in the management of challenges that Anglo Gold Ashanti faced in the Democratic Republic of Congo (the case-study detailing the use of the tool is available through the UN Global Compact's learning forum). The Shareholder Association for Research and Education (SHARE) has developed recommendations for the provision of financing to companies operating in weak governance zones. The Risk Awareness Tool is listed as a relevant resource in investment decision-making by the IFC Oil, Gas and Mining Sustainable Community Development Fund, the UK Anti-Corruption Forum, Business and Human Rights Resource Centre, Rights and Accountability in Development, and Transparency International.

The OECD Secretariat also continued to actively promote the OECD Risk Awareness Tool. It publicised the tool at a conference on corporate social responsibility organised in Milan in October 2007 by the OECD Development Centre and the Unicredit Group. In March 2008, the OECD Development Assistance Committee and the OECD Investment Committee agreed to launch a joint initiative for upgrading the promotion and implementation of the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. This initiative is intended to provide web-based operational guidance and engage in multi-stakeholder dialogue for better management of the risks of investing in fragile states. The tool and this initiative were presented at the May 2008 International Law Association's Annual Conference British Branch on "Does International Law Mean Business? A Partnership for Progress".

## 6. Considerations for future action

Overall, the 2008 Annual Meeting of NCPs considered that the progress made during the reporting period corresponds to several of the objectives decided at the 2007 Annual Meeting. However, the general sense prevailed that more could be done to further the effectiveness of the Guidelines and the NCP operations. Mindful of the fact that the Investment Committee intends to undertake further work on the supporting role of the Guidelines in the financial sector and in non-Member economies, the following priority areas for future action and ways to move forward were identified for the 2008-09 implementation cycle. It was also agreed that the duration of the 2009 Annual Meeting should be extended to facilitate an in-depth exchange of concrete experiences on the functioning of the Guidelines at that meeting.

*Peer learning:* NCPs need to learn more from each other. This could be done through a more frequent and in-depth exchange of concrete experiences, notably in handling specific instances, promoting the use of the Guidelines in supply chains and communicating with stakeholders. Voluntary peer reviews of individual performance could also be envisaged as a two way-learning process. The Dutch NCP volunteered to be the first NCP to engage in peer reviews, which could be held in May 2009. Austria, Norway and the United Kingdom also announced their intention to be among the "reviewers" in this undertaking. It was also suggested that the criteria discussed with Professor Ruggie in his presentation on his April 2008 report on non-judicial grievance mechanisms could be taken into account to

assess NCP performance in implementing specific instances.<sup>16</sup> Further consideration should be given to improving performance data with a particular focus on distinguishing between performance and satisfaction and on performance matters that are within NCPs' control.

*Good offices and proactive access to mediation and conciliation.* It was widely acknowledged that NCP good offices or proactive NCP facilitation to consensual and non-adversarial means such as mediation or conciliation remain one of the core functions of NCPs. However, NCPs need to build the necessary skills or resources to make such a contribution to the resolution of disputes. The next Annual Meeting could thus set aside time to discuss with invited experts ways to enhance the skills of NCPs or their capacity in facilitating mediation by third parties. NCPs may find it useful to review the "tips" for effective mediation identified at the 2006 Corporate Responsibility Roundtable.

*Parallel proceedings* also continue to stand out as one of the most important challenge in making full use of the specific instance facility. While this matter is a complex one, it should not be used as an excuse for not considering or postponing consideration of a specific case. It was also noted more and more disputes, notably in the United States, are being mediated outside the courts. The 2006 Annual Report identified a list of considerations to be taken into account by NCPs in their decisions to consider specific instances involving parallel proceedings and provided an analysis of the possible sources of "value added" of the NCPs involvement in such situations. NCPs should take advantage of this work.

*Making greater use of the wide applicability of the Guidelines in promotional activities.* The promotion of the Guidelines is also a core function of NCPs and this activity plays a determinant role in engaging companies in responsible business conduct. Some chapters of the Guidelines remain unexplored as a promotional tool and further discussion on how to develop this potential will be valuable.

*Coping with limited resources.* Given the resource constraints of some NCPs in fulfilling their duties, it was suggested to the Investment Committee that the note transmitting the Annual Report to Council could include an invitation to adhering governments inviting them to take appropriate action.

## Notes

1. At their 2007 Annual Meeting, OECD Ministers invited the Organisation to organise in conjunction with the ILO a high-level meeting in 2008 with the involvement of major non-OECD economies and social partners in order to support private sector effort in the area of employment and industrial relations within the framework provided by the OECD Guidelines for Multinational Enterprises. Shortly thereafter, the G8 countries committed themselves to actively promote internationally agreed corporate social responsibility and labour standards, notably the OECD Guidelines and the ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy (ILO MNE Declaration).
2. Argentina, Australia, Czech Republic, Egypt, Germany, Greece, Luxembourg, Ireland, Israel, Italy, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, Spain, Switzerland, Turkey and United States.
3. Brazil, Canada, Hungary, Japan, Iceland, Korea and United Kingdom.
4. Romania's NCP is comprised of government and business representatives.
5. Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxembourg, Norway and Sweden. Several of these also have multiple governmental department NCPs.
6. Chile and Finland.
7. In 2007, the Dutch NCP has been changed from an interdepartmental office to a mixed structure consisting of four independent experts and four advisors from four ministries.

8. The report by the Working Party of the Investment Committee “Review of NCP Performance: Key Findings” analyses the structural changes that have occurred since the 2000 Revision of the Guidelines.
9. These changes in Dutch and UK NCP structures are described in greater detail in the above cited report.
10. Further information can be found in [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment).
11. For further details refer to page 29 and 30 of the 2007 Annual Report of the OECD Guidelines for Multinational Enterprises which can be accessed at [www.oecd.org/daf/investment/instruments](http://www.oecd.org/daf/investment/instruments).
12. DSG Amano’s speech can be found at [www.tuac.org](http://www.tuac.org).
13. See [www.transparency.org/publications/publications/wp\\_03\\_2008\\_oecd](http://www.transparency.org/publications/publications/wp_03_2008_oecd).
14. The number of specific instances actively taken up by NCPs is the number of specific instances listed in Annex 3, adjusted for specific instances that are listed more than once on the Annex table because more than one NCP was involved and more than one reported on the specific instance in the Annex table.
15. See UN Security Council Report S/PRST/2007/22.
16. Outlined in paragraph 92, page 24 of Professor Ruggie’s report to the Human Rights Council on 7 April 2008 [A/HRC/8/5].



## ANNEX 1.A1

*Structure of the National Contact Points*

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Argentina	Single department	<i>OECD Coordination Unit</i> – National Directorate of International Economic Negotiations (DINEI) Ministry of Foreign Affairs, International Trade and Worship		The NCP has been coordinated with other government departments, business, labour and civil society and having in mind the experiences that has got from these Contact Points and its conviction that other areas of government might be involved, is working hard to present a new scheme in order to fulfil the complexities of in coming presentations.
Australia	Single department	Foreign Investment and Trade Policy Division of the Ministry of Treasury	Foreign Investment Review Board	The Australian NCP liaises with other government departments as necessary and holds community consultations with business, trade unions and other NGO representatives.
Austria	Single department	Export and Investment Policy Division, Federal Ministry of Economics and Labour	Other divisions of the Federal Ministry of Economics and Labour The Federal Chancellery and other Federal Ministries concerned	An Advisory Committee composed of representatives from other Federal government departments, social partners and interested NGOs supports the NCP. The Committee has its own rules of procedure, met three times over the review period and discussed all Guidelines-related business.
Belgium	Tripartite with representatives of business and labour organisations as well as with representatives of the federal government and regional governments	Federal Public Service of Economy, PMEs, Middle Classes and Energy	Federal Public Service of Environment Federal Public Service of Labour Federal Public Service of Foreign Affairs Federal Public Service of Finance Federal Public Service of Justice Region of Brussels Flemish Region Walloon Region	

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Brazil	Interministerial body composed of 8 ministries and the Central Bank	Ministry of Finance	Ministry of Foreign Affairs Ministry of Labour and Employment Ministry of Planning, Budget and Management Ministry of Justice Ministry of Environment Ministry of Science and Technology Ministry of Development, Industry and Trade Ministry of Agriculture Brazilian Central Bank	Representatives from other government offices can be asked to participate as well as other entities. In April 2007, the Brazilian NCP issued a decision to regularly invite CUT, the largest Brazilian labour union, to the forthcoming meetings. Other institutions have also been invited to the NCP meetings, like the NGO ETHOS Institute, the National Confederation of Industry – CNI, and the SOBEET (Brazilian Society for Transnational Enterprises and Globalisation Studies).
Canada	Interdepartmental Committee	Foreign Affairs and International Trade Canada	Industry Canada Human Resources and Social Development Canada Environment Canada Natural Resources Canada Department of Finance Canadian International Development Agency	Other departments and agencies participate on an “as required” basis, e.g., Export Development Canada. Key interlocutors in the business and labour communities include the Canadian Chamber of Commerce, the Canadian Labour Congress and the Confederation des syndicats nationaux.
Chile	In the process of restructuring	Ministry of Foreign Affairs, Directorate of International Economic Relations		The NCP consults regularly with business, trade unions and other NGO representatives.
Czech Republic	Single Department	Ministry of Finance	Ministry of Labour and Social Affairs Ministry of Industry and Trade Ministry of Interior Ministry of Justice Ministry of Foreign Affairs Ministry of the Environment Czech National Bank Office for the Protection of Economic Competition Czech Statistical Office Securities Commission CzechInvest	The NCP works in co-operation with the social partners. The NCP continues in co-operation with the NGOs, especially with the Czech OECD Watch member.
Denmark	Tripartite with several ministries	Ministry of Employment Ministry of Foreign Affairs	Ministry of the Environment Ministry of Economic and Business Affairs	
Egypt	Single Department	Ministry of Investment		
Estonia	Tripartite with several ministries	Ministry of Economic Affairs	Ministry of Social Affairs Ministry of Environment Estonian Investment Agency Estonian Export Agency Ministry of Foreign Affairs	

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Finland	Quadri-partite with several ministries and civil society partners	Advisory Committee on International Investment and Multinational Enterprises (MONIKA), Ministry of Employment and the Economy	Ministry of Employment and the Economy Ministry of Foreign Affairs Ministry of Finance Ministry of Social Affairs and Health Ministry of Environment	<p>The Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Employment and the Economy as a wide scoped forum of public and private representatives for issues related to investments, acts as the Finnish NCP.</p> <p>The MONIKA Committee, which has been established by Government Decree 335/2001, takes care of the promotion of the Guidelines on important principles of Corporate Social Responsibility and serves as an advisory forum in other issues related to the Investment Committee. The Ministry of Employment and the Economy is responsible for the handling of inquiries and the implementation in Specific Instances. Committee members come from various ministries, business and labour organisations and NGOs. Social partners are represented in the NCP by the Confederation of Finnish Industries EKs, the Finnish Section of the International Chamber of Commerce (ICC) and the Central organisation of Finnish Trade Unions (SAK). The NGOs are represented by FinnWatch, the Finnish Association for Nature Conservation and Kuluttajat Konsumenterna ('The Consumers'), a Finnish consumers' organisation. The committee has met several times over the review period.</p>
France	Tripartite with several ministries	Treasury Department, Ministry of Economy and Finance	Ministry of Labour Ministry of Environment Ministry of Foreign Affairs	An Employers' Federation and six Trade Union Federations are part of the NCP.
Germany	Single Department	Federal Ministry of Economics and Technology	Ministry of Foreign Affairs Ministry of Justice Ministry of Finance Ministry of Economic Co-operation Ministry of Environment	The NCP works in close co-operation with the social partners. A 'Working Party on the OECD Guidelines' composed of representatives from those Federal ministries mentioned in the previous column, business organisations, employee organisations and selected NGOs meets regularly to discuss all Guidelines-related issues.
Greece	Single Department	Unit for International Investments Directorate for International Economic Development and Co-operation General Directorate for International Economic Policy, Ministry of Economy and Finance		The Unit for International Investments, part of the Directorate for International Economic Developments and Co-operation, in the General Directorate for International Economic Policy of the Ministry of Economy and Finance, is designated as the NCP.
Hungary	Interdepartmental Office	Ministry of Economy and Transport	Ministry of Economy and Transport Ministry of Finance	

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Iceland	Interdepartmental Office	Ministry of Business Affairs		
Ireland	Single Department	Bilateral Trade Promotion Unit, Department of Enterprise, Trade and Employment		
Israel	Single department	Ministry of Trade, Industry and Labour	Ministry of Foreign Affairs Ministry of Finance Ministry of Environment Ministry of Justice	An Advisory Committee has been composed of representatives from those ministries mentioned in the previous column, and business and employee organisations.
Italy	Single Department	General Directorate for Industrial Policy Ministry of Economic Development	Ministry of Foreign Affairs Ministry of Environment Ministry of Economy and Finance Ministry of Justice Ministry of Welfare Ministry of Agriculture and Forest Policy Ministry of Health	The NCP works in close collaboration with representatives of social organisations and its Advisory Committee also includes members of the most important trade unions and business associations.
Japan	Interministerial body composed of three ministries	Ministry of Foreign Affairs Ministry of Health, Labour and Welfare Ministry of Economy, Trade and Industry		The Japanese NCP was reorganised in 2002 as an inter-ministerial body composed of three ministries.
Korea	Interdepartmental office, with several ministries	Foreign Investment Subcommittee (Ministry of Knowledge Economy)	Ministry of Strategy and Finance Ministry of Foreign Affairs and Trade Ministry of Environment Ministry of Labour, etc	Ministry titles have been changed.
Latvia	The OECD Consultative Board – Interministerial body including representatives of business and labour organisations	Economic Relations Department, Ministry of Foreign Affairs	Ministry of Economics Ministry of Environment Ministry of Finance Ministry of Welfare Latvian Investment and Development Agency Corruption Prevention and Combating Bureau Employer's Confederation of Latvia Free Trade Union Confederation	
Lithuania	Tripartite with representatives of business and labour organisations as well as with representatives of government	Ministry of Economy	Trade Union "Solidarumas" Confederation of Trade Unions Labour Federation Confederation of Business Employers Confederation of Industrialists	The NCP works in close co-operation with the Tripartite Council – a national body, including representatives of government agencies as well as employee and business organisations.
Luxembourg	Tripartite	Ministry of Economics	Ministry of Economics General Inspector of Finances STATEC Ministry of Finance Employment Administration Ministry of Labour and Employment 3 Employers' federations 2 Trade union federations	
Mexico	Single Department	Ministry of Economy		The NCP works in close co-operation with other concerned departments.
Netherlands	Independent Board	Ministry of Economic Affairs (NCP Secretariat)	Ministry of Social Affairs and Employment Ministry of Housing, Spatial Planning and Environment Ministry of Foreign Affairs	Regular consultations with all stakeholders. The board consists of four persons including a chairman with each a background in one of the various stake holding groups in society.

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
New Zealand	Single Department	Ministry of Economic Development	All departments, particularly the Ministry of Foreign Affairs and Trade, Department of Labour, Ministry for the Environment and Treasury	A Liaison Group comprising representatives of other government departments, social partners and NGOs, supports the NCP. The NCP also liaises with other government departments and agencies as necessary.
Norway	Tripartite, with several ministries	Section for Economic, Commercial and CSR Affairs Ministry of Foreign Affairs	Ministry of Foreign Affairs Ministry of Trade and Commerce Norwegian Confederation of Trade Unions Confederation of Norwegian Enterprise	
Poland	Single Department	Polish Information and Foreign Investment Agency (PAIIZ)		The Polish Information and Foreign Investment Agency (PAIIZ) is supervised by the Ministry of the Economy.
Portugal	Single Department	ICEP Portugal Ministry of Economy and Innovation		
Romania	Bipartite Structure	<i>Coordination</i> – Ministry for Small and Medium-sized Companies, Trade, Tourism and Liberal Professions and Ministry of Foreign Affairs. <i>Executive function</i> – Business Environment Unit and Romanian Agency for Foreign Investment. <i>Technical secretariat</i> Ministry of Foreign Affairs and Romanian Agency for Foreign Investment	Ministry of Foreign Affairs Ministry of Economy and Finance Ministry of Justice Ministry of Education and Research and Youth Ministry of Labour, the Family and Equal Opportunities Ministry of Transport Ministry of Development, Public Works and Housing Ministry of Environment and Sustainable Development Ministry for Small and Medium-sized Companies, Trade, Tourism, and Liberal Professions Romanian Agency for Foreign Investment Business Environment Unit Institute for Economic Research Alliance of Romanian Employers' Association Confederation Chamber of Commerce and Industry of Romania	Depending on the issue under debate within the Romanian National Contact Point, the consultation process is extended to other representatives from governmental and nongovernmental institutions, patronages and civil society.
Slovak Republic	Single Department	Ministry of Economy	Slovak Investment and Trade Development Agency (SARIO) as well as the Ministry of Finance of the Slovak Republic and the Ministry of Labour, Social Affairs and Family of the Slovak Republic as both are one of the investment aid providers.	Strategic investment department is a single department in the Ministry of Economy, under the Section of strategy.
Slovenia	Single Department	Ministry of the Economy	Other ministries and other parts of the Ministry of the Economy Public Agency for Entrepreneurship and Foreign Investments (JAPTI) Slovene Export and Development Bank (SID)	The Slovene NCP is in the restructuring phase. No final decision has been made yet.
Spain	Single Department	General Secretariat for External Trade, Ministry of Industry, Tourism and Trade	Ministry of Environment and Rural and Marine Affairs Ministry of Justice Ministry of Health and Consumption Ministry of Labour and Immigration	The NCP liaises with representatives of social partners and NGOs.

	Composition of the NCP	Governmental location of the NCP	Other ministries and/or agencies involved*	Comments and notes
Sweden	Tripartite, with several ministries	Division for International Trade Policy, Ministry for Foreign Affairs	Ministry for Foreign Affairs Ministry of the Environment Ministry of Employment Ministry of Enterprise, Energy and Communications	The Ministry for Foreign Affairs, Division for International Trade Policy, chairs the NCP and has the ultimate responsibility for its work and its decisions.
Switzerland	Single Department	International Investment and Multinational Enterprises Unit, State Secretariat for Economic Affairs		The Swiss NCP liaises with other government departments as necessary. Ad-hoc committees are set up to deal with specific instances procedures. The NCP has frequent contacts with business organisations, employee organisations and interested NGOs. A consultative group composed of stakeholders meets in principle once a year and is provided with essential information as required.
Turkey	Single Department	General Directorate of Foreign Investment, Undersecretariat of Treasury		Depending on the issue under debate, the consultation and fact finding processes are extended to other governmental offices.
United Kingdom	Bipartite	Department for Business, Enterprise and Regulatory Reform, Department for International Development	Attorney General's Office Department for Environment, Food and Rural Affairs, Department for Constitutional Affairs, Department for Work and Pensions Export Credit Guarantee Department	A cross-Group Steering Board oversees work of the NCP. The Board includes external members drawn from outside Government, selected for their experience in business, employee relations and issues of concern to NGO's. Other Government Departments and agencies with an interest in the OECD Guidelines are also represented. On a day to day level, the NCP liaises with other government departments as necessary and has regular informal contacts with business, trade union and NGO representatives.
United States	Single Department	Office of Investment Affairs, Bureau of Economic and Business Affairs, United States Department of State		The US NCP queries other agencies as needed and, when necessary, an interagency committee chaired by the Office of Investment Affairs meets to discuss Guidelines issues. Business, labour and civil society organisations are consulted regulatory via the Advisory Council on International Economic Policy or individually on an <i>ad hoc</i> basis.

Note: \* The information provided here is based on the ministries and/or government agencies explicitly mentioned in the NCP reports.

## ANNEX 1.A2

### *Specific Instances Considered by National Contact Points to Date*

This table provides an archive of specific instances that have been or are being considered by NCPs. The table seeks to improve the quality of information disclosed by NCPs while protecting NCPs' flexibility – called for in the June 2000 Council Decision – in determining how they implement the Guidelines. Discrepancies between the number of specific instances described in this table and the number listed in Section IV a could arise for at least two reasons. First, there may be double counting – that is, the same specific instance may be handled by more than one NCP. In such situations, the NCP with main responsibility for handling the specific instance would generally note its co-operation with other NCPs in the column “NCP concerned”. Second, the NCP might consider that it is not in the interests of effective implementation of the Guidelines to publish information about the case (note that recommendation 4.b. states that “The NCP will... make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines”). The texts in this table are submitted by the NCPs. Company, NGO and trade union names are mentioned when the NCP has mentioned these names in its public statements or in its submissions to the Secretariat.

### Specific instances considered by National Contact Points to date

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Argentina	The NCP received a request from the Argentine Banking Association (Asociación Bancaria Argentina) a trade union regarding an Argentine subsidiary of the Banca Nazionale del Lavoro (BNL) S.A. of the banking sector	Dec. 2004	Argentina	II. General Policies IV. Employment and Labour Relations	Concluded	No	The instance after the acquisition of the BNL by another multinational bank (HSBC) of 100 % of the stock has not been followed up. Since last year no new presentations have been made and the NCP has closed its involvement in the case.
Argentina	The NCP received a request from the Argentine Miller's Labour Union (Unión Obrera Molinera Argentina) regarding an alleged non-observance of the OECD Guidelines by CARGILL S.A. a multinational operating in the food sector	Nov. 2006	Argentina	II. General Policies III. Disclosure IV. Employment and labour relations	Concluded	Yes	Both parties reached a solution and the agreement was formalised on 31 July 2007.
Argentina	The NCP received a request of non-observance of Guidelines recommendations on bribery and taxation by a Sweden multinational enterprise	Nov. 2007	Argentina	VI. Bribery X. Taxation	Ongoing		The NCP accepted the specific instance on 26 November 2007. Both parties involved agreed to negotiate in good faith in order to achieve a win – win solution. The negotiations are continuing in search of an agreement that reflects the consensus of the parties.
Argentina	The NCP received a non-observance of labour relations and bribery by a French multinational enterprise	Nov. 2007	Argentina	II. General Policies IV Employment and labour relations VI. Bribery	Ongoing		The request is being dealt with by NCP authorities.
Australia (The Australian NCP assumed carriage following an agreement with the UK NCP in June 2005)	GSL (Australia) Pty Ltd. – an Australian incorporated wholly-owned subsidiary of a UK controlled multinational – Global Solutions Limited	June 2005	Australia	II. General Policies VII. Consumer Interests	Concluded	Yes	The examination was successfully concluded in 8 months from the date that the specific instance was raised. All parties were satisfied with the outcome with a list of 34 agreed outcomes produced. The statement issued is available on the website at <a href="http://www.ausncp.gov.au">www.ausncp.gov.au</a> .
Australia	Australia and New Zealand Banking Group Ltd (ANZ)	August 2006	Papua New Guinea	II. General Policies V. Environment	Concluded	Yes	The NCP concluded that there was no specific instance to answer and issued an official statement which is available on the website at <a href="http://www.ausncp.gov.au">www.ausncp.gov.au</a> .
Australia	Mining activities and the resettlement and compensation of the occupants of the land	July 2007	Colombia	II. General Policies	Ongoing	–	This instance is being jointly considered with the UK and Swiss NCPs.
Austria	Mining activities	Nov. 2004	RD Congo	Various	Concluded	Yes	No consensus reached.
Austria	Textile industry	Mar. 2006	Sri Lanka	IV. Employment and Industrial relations	Ongoing	–	Mediation efforts continue.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Austria	Pharmaceutics	Feb. 2008	Austria	IV. Employment and Industrial Relations	Ongoing	–	An initial assessment will be made.
Belgium	Marks and Spencer's announcement of closure of its stores in Belgium	May 2001	Belgium	IV. Employment and Industrial Relations	Concluded	Yes	The Belgian NCP issued a press release on 23 December 2001.
Belgium	Speciality Metals Company S.A.	Sept. 2003	RD Congo	Not specified in the UN report	Concluded	Yes	The Belgian NCP issued a press release in 2004.
Belgium	Forrest Group	Sept. 2003	RD Congo	Not specified in the UN report	Concluded	Yes	The case was handled in together with the NGO complaint.
Belgium	Forrest Group	Nov. 2004	RD Congo	II. General Policies III. Disclosure IV. Employment V. Environment IX. Competition	Concluded	Yes	Press release in 2005.
Belgium	Tractebel-Suez	April 2004	Laos	II. General Policies III. Disclosure V. Environment	Concluded	Yes	Press release in 2005.
Belgium	KBC/DEXIA/ING	Mai 2004	Azerbaijan, Georgia and Turkey	I. Concepts and Principles II. General Policies III. Disclosure V. Environment			UK NCP.
Belgium	Cogecom	Nov. 2004	RD Congo	I. Concepts and Principles II. General Policies IV. Employment	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Belgolaise	Nov. 2004	RD Congo	II. General Policies	Ongoing	n.a.	Under consideration. There is a parallel legal proceeding.
Belgium	Nami Gems	Nov. 2004	RD Congo	I. Concepts and Principles II. General Policies X. Taxation	Concluded	Yes	Press release in 2006.
Belgium	GP Garments	June 2005	Sri Lanka	III. Disclosure IV. Employment	Concluded	Yes	Press release in 2007.
Belgium	InBev	July 2006	Montenegro	I. Concepts and Principles IV. Employment		n.a.	Complaint withdrawn by trade union.
Belgium	Pharmaceutical company	January 2008	Belgium	II. General Policies III. Disclosure VI. Combating bribery VII. Consumer interests IX. Competition	Ongoing		
Brazil	Workers representation in labour unions	26 Sept. 2002	Brazil	Chapter IV, article 1	Ongoing	No	
Brazil	Dismissal of workers	Nov. 2003	Brazil	Chapter IV, article 6	Ongoing	No	
Brazil	Construction of a dam that affected the environment and dislodged local populations	2004	Brazil	Article V	Ongoing	No	
Brazil	Dismissal of workers	12 December 2005	Brazil	Chapter II, article 02, and Chapter IV, articles 1(a), 2(a), 4(a), 7 and 8	Ongoing	No	

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Brazil	Environment and workers' health issues	8 May 2006	Brazil	Chapter V, articles 1 and 3	Concluded	Yes	After a long mediation, several meetings and contacts held with the opposing parties, on 25th March 2008, the Brazilian NCP decided to close the complaint held against the multinational enterprise Shell through a comprehensive final Report in Portuguese.
Brazil	Dismissal of workers	26 Sept. 2006	Brazil	Chapter IV, article 6	Concluded	Yes	
Brazil	Refusal to negotiate with labor union	6 March 2007	Brazil	Chapter IV, articles 01 (a), 02 (a, b, c), 03 and 08	Ongoing	No	
Brazil	Dismissal of workers	7 March 2007	Brazil	Several articles of Chapter II and IV	Ongoing	No	
Brazil	Refusal to negotiate with labor union	19 April 2007	Brazil	Chapter IV, articles 01 (a), 01 (d), 02 (a), 02 (b), 02 (c), 03, 04 (a), 04 (b) and 06.	Ongoing	No	
Canada, Switzerland	The impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company	July 2001	Zambia	II. General Policies V. Environment	Concluded	No	With the Canadian NCP acting as a communications facilitator, a resolution was reached after the company met with groups from the affected communities. The Canadian NCP sent a final communication to the Canadian company [ <a href="http://www.ncp-pcn.gc.ca/annual_2002-en.asp">www.ncp-pcn.gc.ca/annual_2002-en.asp</a> ]. The Swiss company was kept informed of developments.
Canada	Follow-up to allegations made in UN Experts Report on DRC	December 2002	Democratic Republic of Congo	Not specified in UN Report	Concluded	n.a.	The NCP accepted the conclusions of the UN Panel's final report and has made enquiries with the one Canadian company identified for follow-up.
Canada	Complaint from a Canadian labour organisation about Canadian business activity in a non-adhering country	Nov. 2002	Myanmar	Employment and Industrial Relations; Environment	Concluded	Yes	The NCP was unsuccessful in its attempts to bring the parties together for a dialogue.
Canada	Complaint from a coalition of NGOs concerning Canadian business activity in a non-adhering country	May 2005	Ecuador	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Concluded	Yes	Following extensive consultation and arrangements for setting up the dialogue, the NGOs withdrew their complaint in January 2005 in disagreement over the set terms of reference for the meeting.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Chile	Marine Harvest, Chile, a subsidiary of the multinational enterprise NUTRECO was accused of not observing certain environmental and labour recommendations. The NGOs Ecoceanos of Chile and Friends of the Earth of the Netherlands asked the Chilean NCP to take up the specific instance	Oct. 2002	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded August 2004	Yes	The case had an important impact on the country and above all on the regions where the units of the enterprise are established. The case concluded with a dialogue process in which the parties to the instance and other actors participated. The parties accepted the procedure adopted by the NCP as well as most of the recommendations contained in the report of the NCP. The OECD Environmental Policy Report on Chile cites this specific instance in a positive way.
Chile	La Centrale Unitaire de Travailleurs du Chili (CUTCH) dans le cas de Unilever	June 2005	Chile	IV. Employment and Industrial Relations; V. Environment	Concluded November 2005	Yes	The parties accepted the procedure and conclusions of the NCP. See website for final report.
Chile	ISS Facility Services S.A.	April 2007	Denmark	IV. Employment and Industrial Relations	Ongoing	No	Currently being considered.
Chile	Banque du Travail du Pérou	April 2007	Peru	IV. Employment and Industrial Relations	Ongoing	No	Currently being considered.
Chile	Entreprise Zaldivar, subsidiary of the Canadian firm Barrick Gold	2007	Canada	IV. Employment and Industrial Relations	Ongoing	No	Currently being considered.
Czech Republic	The right to trade union representation in the Czech subsidiary of a German-owned multinational enterprise	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached agreement soon after entering into the negotiations.
Czech Republic	The labour management practices of the Czech subsidiary of a German-owned multinational enterprise	2001	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	Four meetings organised by the NCP took place. At the fourth meeting it was declared that a constructive social dialogue had been launched in the company and there was no more conflict between the parties.
Czech Republic	A Swiss-owned multinational enterprise's labour management practices	April 2003	Czech Republic	IV. Employment and Industrial Relations	Concluded	No	The parties reached an agreement during the second meeting in February 2004.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise	Jan. 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	n.a.	An agreement between employees and the retail chain store has been reached and union contract signed.
Czech Republic	The right to trade union representation in the Czech subsidiary of a multinational enterprise	Feb. 2004	Czech Republic	IV. Employment and Industrial Relations	Closed	Yes	The Czech NCP closed the specific instance at the trade union's (submitters) request, August 2004.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Denmark	Trade union representation in Danish owned enterprise in Malaysia	Feb. 2002	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	
Denmark	Trade union representation in plantations in Latin America	April 2003	Ecuador and Belize	IV. Employment and Industrial Relations	Concluded	n.a.	Connection of entity to Denmark could not be established.
Denmark	Several questions in relation to logging and trading of wood by a Danish enterprise in Cameroon, Liberia and Burma	Mar. 2006	Cameroon, Liberia and Burma	Several chapters (e.g. II, IV, V and IX)	Ongoing	Not relevant at this stage	Specific instance initially assessed, specific instance raised by NGO (Nepenthes).
Finland	Finnvera plc/Botnia SA paper mill project in Uruguay	Nov. 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Bribery	Concluded	Yes	Finland's NCP concluded on 8 Nov. 2006 that the request for a specific instance did not merit further examination. The nature of Finnvera Oy's special financing role and the company's position as a provider of state export guarantees (ECA) was considered.
Finland	Botnia SA paper mill project in Uruguay/Botnia SA/Metsa-Botnia Oy	Dec. 2006	Uruguay	II. General Policies III. Disclosure V. Environment VI. Bribery	Concluded	Yes	Finland's NCP considered on 21 Dec 2006 that Botnia SA/Metsa-Botnia Oy had not violated the OECD Guidelines in the pulp mill project in Uruguay.
France	Forced Labour in Myanmar and ways to address this issue for French multinational enterprises investing in this country	Jan. 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	Adoption of recommendations for enterprises operating in Myanmar. The French NCP issued a press release in March 2002, see <a href="http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm">www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn280302.htm</a> .
France	Closing of Aspocomp, a subsidiary of OYJ (Finland) in a way that did not observe the Guidelines recommendations relating to informing employees about the company's situation	April 2002	France	III.4 Disclosure	Concluded	Yes	A press release was published in October 2003, see <a href="http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm">www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131103.htm</a> .
France	Marks and Spencer's announcement of closure of its stores in France	April 2001	France	IV. Employment and Industrial Relations	Concluded	Yes	The French NCP issued a press release on 13 December 2001 <a href="http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm">www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn131201.htm</a> .

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
France	Accusation of non-observance of Guidelines recommendations on the environment, informing employees and social relations	Feb. 2003	France	V. Environment plus chapeau; III. Information and disclosure; IV. Employment and Industrial Relations	Ongoing	n.a.	Currently being considered; there is a parallel legal proceeding.
France	Dacia – conflict in a subsidiary of Group Renault on salary increases and about disclosure of economic and financial information needed for negotiating process	Feb. 2003	Romania	IV. Employment and Industrial Relations	Concluded	No	A solution was found between the parties and the collective labour agreement was finalised on 12 March 2003.
France	Accusation of non-observance of the Guidelines in the areas of environment, “contractual” and respect of human rights by a consortium in which three French companies participate in a project involving the construction and operation of an oil pipeline	Oct. 2003	Turkey, Azerbaijan and Georgia	II. General Policies	Ongoing	n.a.	In consultation with parties
France	DRC/SDV Transami – Report by the expert Panel of the United Nations. Violation of the Guidelines by this transport company in the Congo, named in the third report as not having responded to the Panel’s requests for information	Oct. 2003	Democratic Republic of Congo	Not specified in information supplied by Panel	Concluded	No	
France	EDF – Alleged non-observance of the Guidelines in the areas of environment and respect of human rights by the NTPC (in which EDF is leader) in a hydroelectric project in Nam-Theun River, Laos	Nov. 2004	Laos	II. General policies V. Environment IX. Competition	Concluded	Yes	The French NCP issued a press release on 31 March 2005 <a href="http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn010405.htm">www.minefi.gouv.fr/directions_services/dgtpe/pcn/compcn010405.htm</a> .
France	Alleged non-observance of the Guidelines in the context of negotiations on employment conditions in which threats of transfer of some or all of the business unit had been made	Feb. 2005	France	IV. Employment and Industrial Relations	Ongoing		
Germany	Labour conditions in a manufacturing supplier of Adidas	Sept. 2002	Indonesia	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 24 May 2004 <a href="http://www.bmwi.de/go/nationale-kontaktstelle">www.bmwi.de/go/nationale-kontaktstelle</a> .

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Germany	Employment and industrial relations in the branch of a German multinational enterprise	June 2003	Philippines	IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 29 June 2007 <a href="http://www.bmwi.de/go/nationale-kontaktstelle">www.bmwi.de/go/nationale-kontaktstelle</a> .
Germany	Child labour in supply chain	Oct. 2004	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	The German NCP has closed the specific instance and issued a statement on 30 August 2007 <a href="http://www.bmwi.de/go/nationale-kontaktstelle">www.bmwi.de/go/nationale-kontaktstelle</a> .
Hungary	Personal injury occurred in the plant of Visteon Hungary Ltd. Charge injury arising from negligence	June 2006	Hungary	IV. Employment and Industrial Relations	Concluded	Yes	A joint statement was signed by the MoET and Visteon Hungary Ltd on 20 February 2007 but only released on 14 May 2007 when attempts to agree a trilateral statement were not successful.
Israel	UN Expert Panel Report – DRC	2003	Democratic Republic of Congo	Not specified in Report	Concluded	No	Following an enquiry by the NCP, the accused company stopped illegitimate sourcing from DRC.
Italy- UK	Accusation of non-observance of Guidelines recommendations on human and labour rights, environment	2003	Turkey, Azerbaijan, Georgia	I. Concepts and Principles II. General Policies III. Disclosure V. Environment	Ongoing	n.a.	In consultation with parties.
Italy	Accusation of non-observance of Guidelines recommendations on human and labour rights	2005	China	IV. Employment and Industrial Relations	Ongoing	n.a.	Undergoing further assessment.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights and competition	2007	Italy	IV. Employment and Industrial Relations IX. Competition	Concluded	n.a.	The instance was concluded with an agreement with involved company.
Italy	Accusation of non-observance of Guidelines recommendations on labour rights	2007	Italy, India	IV. Employment and Industrial Relations	Concluded	n.a.	The multiparty instance was closed thanks to a successful mediation process with the Indian government led by a former representative of the Government of the other NCP involved.
Italy	Accusation of non-observance of Guidelines recommendations on human rights, environment and contribution to host country's progress	2007	India	II. General Policies V. Environment	Ongoing	n.a.	Undergoing initial assessment.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	Feb. 2003	Indonesia	IV. Employment and Industrial Relations	Concluded	No	Being the labour dispute ceased in compliance with the decision of High Court in Indonesia, the NCPs do not see any necessity to take further action.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Japan	Industrial relations of a Malaysian subsidiary of a Japanese company	March 2003	Malaysia	IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Philippines subsidiary of a Japanese company	March 2004	Philippines	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	In consultation with parties concerned. There is a parallel legal proceeding.
Japan	Industrial relations of an Indonesian subsidiary of a Japanese company	May 2005	Indonesia	II. General Policies IV. Employment and Industrial Relations	Ongoing	n.a.	There is a parallel legal proceeding.
Japan	Industrial relations of a Japanese subsidiary of a Swiss-owned multinational company	May 2006	Japan	II. General Policies III. Disclosure IV. Employment and Industrial Relations	Ongoing	n.a.	After the initial assessment was made, the Japanese NCP has consultations with parties concerned including the Swiss NCP. There is a parallel legal proceeding.
Korea (consulting with US NCP)	Korean company's business relations in Guatemala's Textile and Garment Sector	2002	Guatemala	IV. Employment and Industrial Relations	Concluded	No	A resolution was reached after the management and trade union made a collective agreement on July 2003.
Korea (consulting with Switzerland)	A Swiss-owned multinational enterprises' labour relations	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	This was concluded by common consent between the interested parties in November 2003. The Swiss NCP issued an intermediate press statement: <a href="http://www.seco.admin.ch/news/00197/index.html?lang=en">http://www.seco.admin.ch/news/00197/index.html?lang=en</a> .
Korea	Korean company's business relations in Malaysia's wire rope manufacturing sector	2003	Malaysia	IV. Employment and Industrial Relations	Concluded	n.a.	Korea's NCP is engaged in Guidelines promotion and Specific Instances implementation in accordance with the rule for Korea's NCP, which was established in May 2001.
Korea	Companies from guidelines adhering countries that are present in Korea	2007	Korea	III. Disclosure IV. Employment and Industrial Relations	Concluded	Yes	
Korea	Korean companies in non-adhering countries	2007	Philippines	I. Concepts and Principles III. Disclosure IV. Employment and Industrial Relations VI. Combating Bribery	Ongoing		

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Mexico (consulting with the German NCP)	Closing of a plant	2002	Mexico	IV. Employment and Industrial relations	Concluded	Yes	The Mexican NCP has closed the specific instance and reported at 2008 Annual Report of the National Contact Point of Mexico to the OECD Committee on International Investment and Multinational Enterprises (CIME) on 29 August 2008. <a href="http://www.economia.gob.mx/?P=5300_5304">www.economia.gob.mx/?P=5300_5304</a> .
Netherlands	Adidas' outsourcing of footballs in India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	Yes	A resolution was negotiated and a joint statement was issued by the NCP, Adidas and the India Committee of the Netherlands on 12 December 2002 <a href="http://www.oecd.org/dataoecd/33/43/2489243.pdf">www.oecd.org/dataoecd/33/43/2489243.pdf</a> .
Netherlands	Dutch trading company selling footballs from India	July 2001	India	II. General Policies IV. Employment and Industrial Relations	Concluded	No investment nexus	After the explanation of the CIME on investment nexus it was decided that the issue did not merit further examination under the NCP.
Netherlands	IHC CALAND's activities in Myanmar to contribute to abolition of forced labour and address human rights issues	July 2001	Myanmar	IV. Employment and Industrial Relations	Concluded	Yes	After several tripartite meetings parties agreed on common activities and a joint statement. Parties visited the ambassador of Myanmar in London. Statement can be found in English on <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> .
Netherlands	Closure of an affiliate of a Finnish company in the Netherlands	December 2001	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Labour unions requested the attention of the NCP due to a link of government aid to Dutch labour unions to help labour unions in Guatemala	March 2002	Guatemala/ Korea	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The specific instance was about a Korean company, the Korean NCP was already dealing with the instance. The Dutch NCP concluded by deciding that it did not merit further examination under the Dutch NCP.
Netherlands	Labour unions requested the attention of the NCP on a closure of a French affiliate in the USA	July 2002	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was the fact that another affiliate of this French company in the Netherlands could use the supply chain paragraph to address labour issues. The Dutch NCP concluded by deciding that the specific instance was not of concern of the Dutch NCP and did not merit further examination.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Netherlands	Treatment of employees of an affiliate of an American company in the process of the financial closure of a company	Aug. 2002	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	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 ( <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> ).
Netherlands (consulting with Chile)	On the effects of fish farming	Aug. 2002	Chile	V. Environment	Concluded	Not by Dutch NCP	The specific instance was dealt with by the Chilean NCP. The Dutch NCP acted merely as a mediator between the Dutch NGO and the Chilean NCP.
Netherlands	Chemie Pharmacie Holland BV and activities in the DRC	July 2003	Democratic Republic of Congo	II.10. Supply chain IV. Employment and Industrial Relations	Concluded	Yes	Despite the lack of an investment nexus, the NCP decided to publicise a statement on lessons learned ( <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> ).
Netherlands	Closure of an affiliate of an American company in the Netherlands	Sept. 2003	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Labour unions withdraw their instance after successful negotiations of a social plan.
Netherlands	Through supply chain provision address an employment issue between an American company and its trade union	Aug. 2004 – April 2005	United States	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	The link that the labour unions made was that a Dutch company, though its American affiliate, could use the supply chain recommendation to address labour issues. The Dutch NCP discussed the matter with the Dutch company involved. Shortly thereafter the underlying issue between the American company and its trade union was solved.
Netherlands	Travel agencies organising tours to Myanmar	2003-2004	Netherlands	IV. Employment and Industrial Relations	Concluded	Yes	Although not investment nexus, NCP decided to make a statement about discouraging policy on travel to Myanmar, see <a href="http://www.oesorichtlijnen.nl">www.oesorichtlijnen.nl</a> (in Dutch).
Netherlands	Treatment of the employees of an Irish company in the Netherlands	Oct. 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	The NCP decided that the specific instance, raised by a Dutch labour union, did not merit further examination, because of the absence of a subsidiary of a multinational company from another OECD country in the Netherlands.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Netherlands	Introduction of a 40 hrs working week in an affiliate in the Netherlands of an American company	Oct. 2004	Netherlands	IV. Employment and Industrial Relations	Concluded	No	Legal proceedings took care of labour union's concerns.
Netherlands	Treatment of employees and trade unions in a subsidiary of a Dutch company in Chile	July 2005	Chile	IV. Employment and Industrial Relations	Concluded	Not by Dutch NCP	Labour Union 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.
Netherlands	Storage facility in Brasil of a Dutch multinational and its American partner: alleged improper seeking of exceptions to local legislation and endangering the health of employees and the surrounding community	July 2006	USA	II. General Policies V. Employment and Industrial Relations	Pending	n.a.	The Dutch NCP has referred the notifying NGO to the NCP in Brasil and has offered its assistance in the handling of the instance.
Netherlands	Storage facilities in the Philippines of a Dutch multinational: alleged improper influencing of local decision making processes and of violating environmental and safety regulations	May 2006	Philippines	II. General Policies III. Disclosure V. Employment and Industrial Relations VI. Combating Bribery	Pending	No	Local legal proceedings caused an on-hold status for the NCP proceedings. Continuation is expected to take place in September.
Netherlands	Request by NCP of the USA to contact Dutch parent company of an American company, with regard to an instance concerning trade union rights	July 2006	USA	IV. Employment and Industrial Relations	Closed	n.a.	Report of the meeting between Dutch NCP and the Dutch company was sent to the NCP of the USA. In April 2007 an agreement was reached between parties.
Netherlands	Maltreatment of employees and <i>de facto</i> denial of union rights at a main garment supplier in India of a Dutch clothing company	October 2006	India	II. General Policies IV. Employment and Industrial Relations	Closed	Yes, although the statement does not go into the merits of the case.	After a successful mediatory attempt beyond NCP-level between complainants and the Indian company, the specific instance was withdrawn on 5 February 2007.
Netherlands	Abuse of local corporate law by a subsidiary of a Dutch/British multinational, in order to dismiss employees without compensation	October 2006	India	IV. Employment and Industrial Relations	Pending before UK NCP	n.a.	Case was brought to both the Dutch and UK NCP. The instance was decided admissible for the UK NCP. Facilitating role by the Dutch NCP.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
New Zealand	Activities of a financial institution	October 2007	Papua New Guinea	II. General Policies V. Environment	Concluded	No	An initial assessment was conducted into a complaint regarding an MNE operating in a non-adhering country. The MNE was headquartered in an adhering country, and that country's NCP had previously considered the specific instance. The NZNCP concluded that there was not a sufficient New Zealand link to the instance, so the complaint did not warrant further examination by the NZNCP. Toward effective operation of the Guidelines, the NZNCP passed relevant documents to the NCP in the country where the MNE is headquartered.
Norway	Contractual obligations of a Norwegian maritime insurance company following personal injury and death cases	2002	Philippines, Indonesia	IV. Employment and Industrial Relations	Concluded	n.a.	An initial assessment by the NCP concluded that the company had not violated the Guidelines and that the issue did not merit further examination.
Norway	Human rights in relation to provision of maintenance services to a detention facility in Guantanamo Bay	2005	United States	II.2 Human Rights	Concluded	Yes	The NCP noted that provision of goods or services in such situations requires particular vigilance and urged the company to undertake a thorough assessment of the ethical issues raised by its contractual relationships.
Norway	Accusation of non-observance of Guidelines recommendations on transparency regarding financial information/environmental information. First case where the GL has been applied to the financial sector	2006	Uruguay		Concluded	Yes	
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2004	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.
Poland	Violation of workers' rights in a subsidiary of a multinational enterprise	2002	Poland	IV. Employment and Industrial Relations	Resumed	n.a.	In contact with representatives of parties involved.
Poland	Violation of women and workers' rights in a subsidiary of a multinational enterprise	2006	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	In contact with representatives of parties involved.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Portugal	Closing of a factory	2004	Portugal	IV. Employment and Industrial Relations	Concluded	No	After an initial assessment by the NCP, no grounds to invoke violation of the Guidelines were found so the process was closed in 2 months with the agreement of all parties involved.
Spain	Labour management practices in a Spanish owned company	May 2004	Venezuela	IV. Employment and Industrial Relations	Concluded		
Spain	Conflict in a Spanish owned company on different salary levels	Dec. 2004	Peru	IV. Employment and Industrial Relations	Concluded		
Sweden	Two Swedish companies' (Sandvik and Atlas Copco) business relations in Ghana's gold mining sector	May 2003	Ghana	IV. Employment and Industrial Relations V. Environment	Concluded	Yes	The Swedish NCP issued a statement in June 2003 <a href="http://www.oecd.org/dataoecd/16/34/15595948.pdf">www.oecd.org/dataoecd/16/34/15595948.pdf</a> .
Sweden (consulting with Norway)	Applying the guidelines to the financial sector, liability by part-financing of construction of paper mill	2008	Uruguay	II. General Policies III. Disclosure V. Environment	Concluded	Yes	The Swedish NCP issued a statement in January 2008 <a href="http://www.sweden.gov.se/content/1/c6/09/65/71/9e9e4a6b.pdf">www.sweden.gov.se/content/1/c6/09/65/71/9e9e4a6b.pdf</a> .
Switzerland (consulting with Canada)	Impending removal of local farmers from the land of a Zambian copper mining company owned jointly by one Canadian and one Swiss company	2001	Zambia	II. General Policies V. Environment	Concluded	No	The specific instance was dealt with by the Canadian NCP (see information there). The Swiss company was kept informed of developments.
Switzerland (consulting with Korea)	Swiss multinational Nestlé's labour relations in a Korean subsidiary	2003	Korea	IV. Employment and Industrial Relations	Concluded	No	The specific instance was dealt with by the Korean NCP (see information there). The Swiss NCP acted as a mediator between trade unions, the enterprise and the Korean NCP. The Swiss NCP issued an intermediate press statement: <a href="http://www.seco.admin.ch/news/00197/index.html?lang=en">www.seco.admin.ch/news/00197/index.html?lang=en</a> .
Switzerland	Swiss multinational's labour relations in a Swiss subsidiary	2004	Switzerland	IV. Employment and Industrial Relations	Concluded	No	In the absence of an international investment context, the Swiss NCP requested a clarification from the Investment Committee. Based on that clarification (see 2005 Annual Meeting of the NCPS, Report by the Chair, p. 16 and 66), the Swiss NCP did not follow up on the request under the specific instances procedure. However, it offered its good services outside that context, and the issue was solved between the company and the trade union.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
Switzerland (consulting with Austria and Germany)	Logistical support to mining operations in a conflict region	2005	Democratic Republic of Congo	Several chapters, including: II. General Policies III. Disclosure IV. Employment	Concluded	No	The Swiss NCP concluded that the issues raised were not in any relevant way related to a Swiss-based enterprise.
Switzerland (consulting with Australia and UK)	Activities of Swiss based multi-national company and co-owner of the coal mine "El Cerrejon" in Colombia	2007	Colombia	Several chapters, including: I. Concepts and Principles (incl. Human Rights) II. General Policies V. Environment VI. Combating Bribery	Ongoing	n.a.	
United Kingdom	BTC; activities of consortium led by British Petroleum	2002	Azerbaijan, Georgia, Turkey	II.5 Exemption from Regulation, III.1 disclosure, V.1 environmental management, V.2a information on environmental health/safety V.2b community consultation, V.4 postponement of environmental protection measures	Ongoing	Yes, but subsequently withdrawn	Final statement was completed but complainants have requested a review under procedural grounds which UK system allows. Review is on-going.
United Kingdom	Activities of Oryx Minerals alleged in a UN Expert Panel Report	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	<a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Activities of De Beers in UN Expert Panel Report	2003	Democratic Republic of Congo	This was not specified in the Panel Report	Concluded	Yes	<a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Activities of National Grid/Transco/	2004	Democratic Republic of Congo	Various	Concluded	Yes	<a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	DAS Air	2005	Democratic Republic of Congo	II.1 achieving sustainable development. II.2 human rights II.10 encourage business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the guidelines.	Ongoing	n/a	Company is in receivership, NCP in contact with parties to agree final statement.
United Kingdom	Activities Anglo American	2005	Zambia	Various	Ongoing	Yes	Finalised May 2008. Statement can be found at <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United Kingdom	Peugeot – Process in closing down plant: <ul style="list-style-type: none"> <li>• Collective bargaining</li> <li>• Access to information and meaningful consultation</li> </ul>	2006	UK	IV. Employment and Industrial Relations	Ongoing	Yes	Finalised 1 February 2008, final statement at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	G4S – Contribution to economic, social and environmental progress with a view to achieving sustainable development Freedom of association and collective bargaining	2006	Mozambique Malawi Israel Uganda DRC Nepal Greece USA	II. General policies IV. Employment and Industrial Relations	Ongoing	n/a	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Unilever – Transfer of factory avoiding redundancy obligations Freedom of association and collective bargaining	2006	India	I. Concepts and principles IV. Employment and Industrial Relations	Ongoing	n.a.	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Freedom of association and collective bargaining	2006	Bangladesh	IV. Employment and Industrial Relations.	Ongoing	n.a.	Suspended due to parallel proceedings.
United Kingdom	Afrimex – Payment of taxes to armed group engaged in armed conflict with national Government Profiting from minerals sourced from mines which use forced labour and child labour	2007	Democratic Republic of Congo	II. General policies IV. Employment and Industrial Relations VI. Combating bribery	Ongoing	n.a.	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Unilever – Freedom of association and collective bargaining	2007	India	IV. Employment and Industrial Relations	Ongoing	n.a.	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> .
United Kingdom	Unilever – Freedom of association and collective bargaining	2007	Pakistan	IV. Employment and Industrial Relations	Suspended	n.a.	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> . Suspended waiting for outcome of talks between parties outside NCP process.
United Kingdom	British American Tobacco – Freedom of association and collective bargaining	2007	Malaysia	IV. Employment and Industrial Relations	Suspended	n.a.	Initial assessment can be found at: <a href="http://www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html">www.berr.gov.uk/sectors/sustainability/nationalcontactpoint/page45873.html</a> . Suspended waiting for outcome of 2 Judicial Reviews central to complaint.
United States, consulting with French NCP	Employee representation	June 2000	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.

### Specific instances considered by National Contact Points to date (cont.)

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United States	Employee representation	February 2001	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Investigate the conduct of an international ship registry	November 2001	Liberia	II. General Policies III. Information and Disclosure VI. Combating Bribery	Concluded	No	US NCP concluded in its preliminary assessment that the conduct in question was being effectively addressed through other appropriate means, including a United Nations Security Resolution.
United States, consulting with French NCP	Employment and industrial relations, freedom of association and collective bargaining	July 2002	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, multiple NCPs	Business in conflict zones, natural resource exploitation	October 2002	Democratic Republic of Congo	Numerous	Concluded	No	UN Panel Report concluded that all outstanding issues with the US-based firms cited in the initial report were resolved. US NCP concluded its facilitation of communications between the UN Panel and the US companies.
United States, consulting with German NCP	Employee relations in global manufacturing operations	November 2002	Global, focus on Vietnam and Indonesia	IV. Employment and Industrial Relations	Concluded	No	USNCP concluded that the issues raised were being adequately addressed through other means.
United States consulting with French NCP	Employment and industrial relations, collective bargaining	June 2003	United States	IV. Employment and Industrial Relations	Concluded	Yes	Parties reached agreement.
United States, consulting with German NCP	Employment and industrial relations, collective bargaining representation	June 2003	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States, consulting with Mexican NCP	Employment and industrial relations, collective bargaining, freedom of association	July 2004	Mexico	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States, consulting with Dutch NCP	Employment and industrial relations	August 2004	United States	II. General Policies IV. Employment and Industrial Relations VII. Consumer Interests	Concluded	No	Parties reached agreement.
United States	Business in conflict zones, natural resource exploitation	August 2004	Democratic Republic of Congo	Numerous	Concluded	No	USNCP concluded that the UN Panel of Experts report had resolved all outstanding issues with respect to US companies involved.
United States	Employment and industrial relations	August 2004	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.

**Specific instances considered by National Contact Points to date (cont.)**

NCP concerned	Issue dealt with	Date of notification	Host country	Guidelines chapter	Status	Final statement	Comments
United States	Employment and industrial relations	September 2004	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States	Employment and industrial relations	March 2005	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States	Employment and industrial relations	May 2005	United States	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States	Employment and industrial relations	March 2006	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, consulting with Polish NCP	Employment and industrial relations, sexual harassment	May 2006	Poland	IV. Employment and Industrial Relations	Ongoing	n.a.	Ongoing.
United States	Employment and industrial relations	June 2005	United States	IV. Employment and Industrial Relations	Concluded	No	Parties reached agreement.
United States, consulting with German NCP	Employment and industrial relations	August 2006	United States	IV. Employment and Industrial Relations	Ongoing	No	Ongoing.
United States, consulting with Austrian NCP	Employment and industrial relations	November 2006	United States	IV. Employment and Industrial Relations	Ongoing	No	Ongoing.

n.a. = not applicable.

## ANNEX 1.A3

## *Statements Released by NCPs, June 2007-June 2008*

This Annex reproduces the statements issued by the National Contact Points during the reporting period concerning specific instances, in accordance with the Procedural Guidance on the implementation of the Guidelines in specific instances, which provides that “if the parties involved do not reach agreement on the issues raised in the specific instance, the NCP will issue a statement and make recommendations as appropriate on the implementation of the Guidelines” and also that “after consultation with the parties involved, make publicly available the results of the specific instance procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines”.

- Public statement by the Argentine National Contact Point on the Union Obrera Molinera Argentina and Cargill S.A. Specific Instance.
- Public statement by the German National Contact Point on the EUBP-FFW/Bayer Philippines Specific Instance.
- Public statement by the German National Contact Point on the Bayer AG and German Watch, Global March and Coordination gegen Bayer-Gefahren Specific Instance.
- Public statement by the Swedish National Contact Point on the CEDHA and Nordea Specific Instance.
- Public statement by the United Kingdom National Contact Point on the PSA Peugeot Citroën Specific Instance.
- Public statement by the United Kingdom National Contact Point on the Anglo American Specific Instance.

### *Statement by the Argentine NCP*

#### **Argentine National Contact Point’s final statement on the specific instance between Unión Obrera Molinera Argentina and CARGILL S.A.**

31 July 2007

On 29 November 2006, Unión Obrera Molinera Argentina, a association consisting of Workers and Employees of the Milling Industry, and its Annexes and/or Direct Divisions (hereinafter, “UOMA”), filed a submission with the Argentine National Contact Point (ANCP) concerning certain violations of the OECD Guidelines for Multinational Enterprises by CARGILL S.A. (hereinafter, “CARGILL”) in Argentina.

On 29 November 2006, UOMA filed a submission with the ANCP, alleging certain violations by Cargill S.A. of the OECD Guidelines for Multinational Enterprises.

The submission filed by UOMA with the ANCP involved the following chapters of the Guidelines:

- Chapter II – General Policies.
- Chapter III – Disclosure.
- Chapter IV – Employment and Industrial Relations.

On 21 December 2006, the ANCP gave notice to Cargill through a Letter addressed to Hugo Krajnc, Director of Institutional Relations of Cargill, of the terms of UOMA's submission. Mr. Krajnc answered in writing on 9 January 2007, informing that a meeting with UOMA representatives had been scheduled for the purpose of discussing the aforesaid allegations.

In February, the ANCP contacted both parties by telephone to find out about the results of the meeting and any progress made. The parties reported that there was a principle of understanding between them and that they were working towards reaching a consensus solution. This was later ratified through a letter from UOMA, received on 5 March this year.

In March, the parties were contacted by telephone again, and it was reported that discussions were still underway with no agreement having been reached on the facts at issue.

In May, with a view to the ANCP's Annual Report, to be submitted at the ANCP's Annual Meeting of the Committee on International Investment and Multinational Enterprises (CIME), a meeting of the parties was called for the purpose of reviewing the state of events.

On 9 May, the meeting was held at the Argentine Ministry of Foreign Affairs, International Trade and Worship for the purpose of reviewing the status of the discussions and the parties' stance on the future of the negotiations and the possible action to be taken by the ANCP. As a result, it was agreed that the existence of a specific instance (UOMA's claim against Cargill) would be informed, and that progress in it would be reported. It was further agreed that if an Agreement is reached, such agreement will be registered with the ANCP, and that the parties will see to its fulfilment and subsequent follow-up. Lastly, both UOMA and Cargill representatives have undertaken to continue working together towards finding a consensus solution.

Finally, on 22 June, the parties arrived at a satisfactory solution, and signed the attached Memorandum of Agreement.

## The ANCP's Evaluation

The parties acted cooperatively, with UOMA acknowledging that its submission does not make any reference to any personal conduct by Cargill or its management and that it does not cast doubt on "the honourable character of any person on account of their stance on fundamental human rights".

The parties reached an agreement on the matters provided for in the Guidelines that were the subject of the negotiations and which appear in the Final Agreement attached.

The parties acknowledged that they had relied on the good offices of the ANCP, with whom they established a close and warm relationship that led to the amicable settlement of the disputes referred.

The ANCP kindly offers the parties collaboration for the follow up of this agreement if they so request.

The ANCP will inform the OECD Investment Committee of the contents of this Final Report.

### Statement by the German NCP

#### **Statement by the German National Contact Point for the “OECD Guidelines for Multinational Enterprises” on a Specific Instance brought by the DGB against Bayer AG (EUBP-FFW ./ Bayer Philippines)**

Berlin, 29 June 2007

On 27 June 2003 the DGB submitted a complaint against Bayer AG to the German National Contact Point for the “OECD Guidelines for Multinational Enterprises”. The background of the complaint were the consequences of the unlawful recognition of one of two competing company unions as contracting parties to collective bargaining by a subsidiary of Bayer AG in the Philippines in the period 1998 to 2002. While Bayer Philippines again recognised EUBP-FFW as the lawful union upon a corresponding ruling by the Philippine Supreme Court in 2002, there continued to be objections to the consequences of the conflict from the perspective of the complainant, namely the DGB, which represented the interests of the EUBP-FFW. Leading up to the complaint were acts that the court found to be violations of Philippine labor statutes, in particular provisions concerning collective bargaining; it should be noted that in advance of these events there were divergent votes and views on the interpretation of decisions regarding the subsidiary Bayer Philippines and the Philippine trade union EUBP-FFW which represents the employees there.

The specific issue at the focus of attention was the legality of dismissal for operational reasons of union representatives and members of the EUBP-FFW in the years from 2000 to 2002. On the other hand, the EUBP-FFW claimed entitlement *vis-à-vis* Bayer Philippines to the union membership dues transferred by that company to the REUBP union, which was retroactively found to be unlawful. According to the DGB and the EUBP-FFW, the “General Policies” (Section II) and the principles underlying “Employment and Industrial Relations” (Section IV) of the “OECD Guidelines”, in particular the principle of *bona fide* negotiations had not been observed.

After careful review, the German National Contact Point accepted for consideration the questions that had been raised and received detailed statements from both parties. In July 2004 the National Contact Point had a discussion with the DGB and in October 2004 a discussion with both parties in Germany’s Federal Ministry of Economics and Labor (thus designated at that time) in the interest of working toward an agreement acceptable to the DGB, the affected Philippine union and its representative, and Bayer AG. The essential results of the meeting were that, owing to the complex issues, both parties should obtain further information.

On the basis of the information that has meanwhile been received and after additional discussions between the National Contact Point and the DGB and a meeting with all of the parties in May/June 2007, the case can now be concluded with the following joint statement in accordance with the “OECD Guidelines”, subject to the legally binding conclusion, within an appropriate period of time, of the agreements among the three involved parties in the Philippines (Bayer Philippines, EUBP-FFW, and the former union president):

Bayer AG asserts that Bayer Philippines management at no time intended to obstruct union activities by EUBP-FFW and regrets if this impression had been obtained by EUBP-FFW and the DGB. In this connection, Bayer AG is of the opinion that the controversies that arose could have been avoided if all of those involved had shown more willingness to cooperate and had reached out to one another.

In view of the fact that EUBP-FFW incurred the loss of a substantial share of union membership dues in the period 1998 to 2002, Bayer Philippines has submitted a financial offer in the interest of further cooperation in the spirit of trust. The payment will be made immediately under the condition that EUBP-FFW no longer raises claims against Bayer Philippines owing to the (now undisputed) transfer of union membership dues to REUBP in the 1998 to 2002 period, and appropriately shows that all requests and legal measures to this effect have been dropped.

On the only still pending individual labour court proceeding filed by the former president of EUBP against Bayer Philippines, a settlement has already been reached that takes account of the ruling of the Court of Appeals of 30 January 2006. This provided for the reinstatement of the former union president with the payment of all claims and remuneration since termination of employment in 2000 and the payment of compensation for damages.

All of the parties announce the above described situation to be ended with the amicable settlement of the proceedings.

The National Contact Point expects that this dialogue will contribute to an amicable ending of the complaint filed here and to a more intensive exchange of information between both parties, and to improved transparency, and they thank the participants, particularly Ms. Meyer and Dr. Eckl, Mr. Botsch, and Mr. Hahn of the DGB and Ms Ehemann-Schneider, Mr. Naumann, and Mr. de Win, chairman of the all-works council, of Bayer AG for their constructive participation.

The OECD Guidelines for Multinational Enterprises, as part of the OECD Declaration on International Investment and Multinational Enterprises, present recommendations for responsible corporate conduct in the case of investment abroad. The governments of the OECD Member Countries and other participating countries have committed themselves by way of their respective National Contact Points (in Germany the Federal Ministry of Economics and Technology) to promoting the use of these voluntary codes of conduct and to arriving at solutions to complaints by way of the trusting intermediation of the respectively relevant partners.

### *Statement by the German NCP*

## **Statement by the German National Contact Point for the “OECD Guidelines for Multinational Enterprises” on the Complaint Filed against Bayer CropScience by German Watch, Global March, and Coordination gegen Bayer-Gefahren**

*Berlin, 30 August 2007*

On 11 October 2004 the non-governmental organisations German Watch, Global March, and Coordination gegen Bayer-Gefahren (hereinafter designated as “complainants”) submitted a complaint against the Bayer CropScience company to the German National Contact Point for the “OECD Guidelines for Multinational Enterprises” in the Federal Ministry of

Economics and Technology. The complainants allege that suppliers of Bayer CropScience in the Indian state of Andhra Pradesh employed children in cotton cultivation and that Bayer CropScience had not taken adequate measures to counter the practice. In response, Bayer CropScience argues that all reasonable means had been taken to prevent the practice.

After conducting comprehensive discussions with the involved parties, at the end of which Bayer CropScience issued a declaration committing itself (see page 3) to act in conformity with the principles set forth in Chapter II, Section 10 and Chapter IV, Section 1.b of the OECD Guidelines, the National Contact Point closes the complaint proceedings with the said declaration. In the declaration, the National Contact Point voices the expectation that Bayer CropScience will act in accordance with its voluntary commitment both now and in the future.

## Background

The OECD Guidelines for Multinational Enterprises contain recommendations by the governments of the OECD countries and some non-member countries concerning the foreign involvement of companies. The OECD Guidelines are based on the principle of voluntary conduct and contain standards of conduct and principles for corporate behavior relating to foreign investment. Their purpose is to foster the positive effects of foreign investment by provision of a frame of reference. National Contact Points have been established in the interest of the further dissemination and knowledge of the OECD Guidelines and for the possible arbitration of issues that might potentially arise.

The question raised in the case at hand relates to Chapter IV, Section 1.b of the OECD Guidelines, which calls on enterprises to “contribute to the effective abolition of child labour”. In particular, Chapter II, Section 10 of the OECD Guidelines calls on enterprises to work toward the goal of the abolition of child labour also in the framework of their dealings with business partners and sub-contractors.

## Case Background

On Indian cotton plantations, children are still used as workers for pollinating the cotton hybrid plants. They are taken away from schooling during the field-work season and can often no longer be re-integrated into regular classroom education; they are frequently exposed to possible health hazards from pesticides.

The complainants accuse Bayer CropScience of tolerating child labour on the part of the sub-contractors producing cotton seeds and not making adequate use of the possibilities that their business connections give them of influencing the operations. Although Bayer CropScience included a formal prohibition of child labour in its contracts, in practice this was not being monitored effectively enough. Furthermore, Bayer CropScience contributed to the further employment of children as cheap labor by paying suppliers at levels attuned to low profit margins.

Bayer CropScience responds by pointing out that, since the take-over of the India's Proagro seed company as part of the global acquisitions undertaken by Aventis CropScience, a child protection program had been instituted to prevent child labour in the sub-contractors of that subsidiary, owned by Bayer AG since mid 2002. In that connection, the incompatibility of child labour with Bayer AG's corporate philosophy was stressed and the already initiated measures to eliminate the employment of children highlighted. But child labour in India was still very common in India's farm sector, which is why Bayer CropScience would be

able to achieve changes only within the enterprise's supply chain. The elimination of child labour beyond the enterprise's direct area of impact would require, among other things, the targeted and, above all, on-site involvement of non-government organisations. And it would presuppose a fundamental transformation in the population's mentality, a change that could not be accomplished by a company acting on its own.

But among the seed-producing enterprises in India, Bayer CropScience had taken on a position of leadership. In this connection, an extensive catalogue of measures was being implemented and constantly further developed. The enterprise describes the measures as a system of incentives and sanctions to induce sub-contractors exclusively to employ adult workers. And there was the continuing independent supervision of the fields, the so-called "Creative Learning Centers" to re-integrate former child labourers into regular everyday schooling, along with measures to encourage the proper and safe handling of pesticides by workers. In addition, Bayer CropScience was training its contractors to enhance their productivity. For this purpose, the enterprise had developed its own training program and drafted teaching material in several languages; this information was being provided to farmers free of charge.

The implementation of these measures by Bayer CropScience was described by the complainants as not satisfactory since child labour was still to be observed on the cotton farms. In response, Bayer CropScience emphasised the program's success to date, backed by figures, and emphasised its long-term orientation. Moreover, as the only enterprise in the branch thus far, Bayer CropScience had developed its own professional organisation to ensure that there is no child labour in the sub-contractors' fields also in the future. Despite the recent expansion of the size of production, the number of sporadically spotted child labourers in the fields of contractors had shown further declines. From the perspective of Bayer CropScience, farmers were responding in a positive manner to the measures, which had been designed to continue into the long term.

## Proceedings

After the OECD Guidelines were found to be applicable to the issues raised here, a total of four rounds of talks were held at the National Contact Point between the complainants and representatives of Bayer CropScience. Since Bayer CropScience refused direct contact with one of the complainants and since it was not possible to have that party represented by the two other complainants, the arbitration talks had to be conducted with each of the separate parties, thus making the proceedings more difficult in formal and substantive terms.

For the same reason, there was no possibility of a joint final statement being issued by the parties to the proceedings. However, Bayer CropScience stated its willingness to issue a declaration of voluntary commitment. The National Contact Point herewith closes the complaint proceedings, and refers to Bayer CropScience's Declaration of Voluntary Commitment for any individual questions that might arise.

## Declaration of Voluntary Commitment by Bayer CropScience

In its Declaration of Voluntary Commitment, Bayer CropScience states its willingness to act, now and in the future, in accordance with the principles set forth in Chapter II, Section 10 and Chapter IV, Section 1.b of the OECD Guidelines. The individual measures to which Bayer CropScience commits itself are as follows:

- to continue actively to combat child labour;

- to continue to undertake all reasonable measures within Bayer CropScience's sphere of influence to protect children and support them in their commencement of schooling and occupational life;
- to continue and further improve the present program to protect children and foster the productivity of the farmers in agricultural regions of India;
- to continue to make seasonal reports available to the National Contact Point and other interested parties in the interest of success monitoring;
- to continue to pursue intensive contacts with the ILO with the objective of facilitating better access to education for children and young persons in agricultural regions; and
- after prior consultation to grant the National Contact Point and groups interested in constructive dialogue (except, according to Bayer CropScience, one of the complainants) an on-sight look into the Bayer CropScience program for combating child labour.

### Final Remarks by the National Contact Point

The National Contact Point expects Bayer CropScience to honour this voluntary commitment, now and in the future, and closes the proceedings with a word of thanks for the efforts made by the parties involved.

#### *Statement by the Swedish NCP*

**Statement by the Swedish National Contact Point (NCP)  
for the OECD Guidelines for Multinational Enterprises –  
with the full support of Norway's NCP –  
in connection with a complaint from the Argentine  
environmental organisation CEDHA against Nordea**

24 January 2008

### Introduction

On 12 July 2006, the Swedish National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a complaint from the Argentine environmental and human rights NGO CEDHA (Center for Human Rights and Environment), that was also signed by the Norwegian environmental organisation Bellona, concerning Nordea's part-financing of the Finnish company Botnia's pulp mill project in Uruguay. The same complaint was also sent to the Norwegian National Contact Point. The complaint has been dealt with via consultation between the Swedish and Norwegian Contact Points, but it has been agreed that the main responsibility should lie with the Swedish NCP as Nordea's head office is in Stockholm. The Norwegian NCP endorses the comments and conclusions expressed in the statement.

### Conclusion

The Swedish National Contact Point has not found indications to support the complaints made about Nordea having violated the OECD Guidelines in its part-financing of Botnia's pulp mill in Uruguay.

This position is founded partly on meetings that have been held with the aim of contributing to a solution by means of discussion and dialogue, and partly on questions and answers that have been exchanged between the parties concerned, with the NCP

acting as facilitator and intermediary. Moreover, the International Finance Corporation's (IFC) environmental study on the project and visits made to Uruguay by trade union organisations have strengthened this assessment. This statement has the full support of the Norwegian NCP.

In its handling of the matter, the Swedish National Contact Point has examined the application of the Guidelines to the financial sector and whether Nordea has independent liability as part-financer and supplier of financial services to the company Botnia. At the annual NCP meeting in Paris in June 2007, the topic for roundtable discussions was the OECD Guidelines and the financial sector. Sweden took on a leading role at the meeting, and it was established that the Guidelines could be applicable. The NCP states that the Guidelines can and should be applied to the financial sector as well as to other multinational enterprises. The NCP considers the following rule in the Guidelines to be of particular interest in this respect:

Chapter 2, paragraph 10

"Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines"

The Swedish National Contact Point would like to take this opportunity to encourage Nordea and other actors in the financial sector to practise as much transparency and freedom of information as possible. In order to foster greater understanding among the general public for their activities, it is essential that companies be sensitive to the public's increasing demands for information. The NCP would like to point in particular to Chapter 2, "General policies", paragraph 7, and Chapter 3, "Disclosure", paragraphs 4e) – f) and 5b) – c).\*

Nordea says that in the case in question it followed its regular processing routine for project and risk analysis where it – according to the information provided – applied procedures similar to those within the framework of the Equator Principles. In the course of proceedings, Nordea has adopted the Equator Principles (February 2007) and acceded to the UN Principles for Responsible Investments with effect from 1 November 2007.

The NCP considers that this process has illustrated how the Guidelines can contribute to both socially and environmentally responsible international entrepreneurship. It has played a significant role in promoting the Guidelines and has provided an example of how they can be applied even to the financial sector. This process has also shown how valuable good cooperation between National Contact Points can be. To conclude, the NCP would like to underline that it considers it very important that the OECD Guidelines are respected and followed by all actors.

\* Chapter 2, "General policies"

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."

Chapter 3, "Disclosure"

4. "Enterprises should also disclose material information on:

e. Material foreseeable risk factors;

f. Material issues regarding employees and other stakeholders".

5. "Enterprises are encouraged to communicate additional information that could include:

b) Information on systems for managing risks and complying with laws, and on statements of codes of business conduct;

c) Information on relationships with employees and other stakeholders."

## Background to the Matter

The NCP's main task is to spread information about and promote the use of the OECD Guidelines for Multinational Enterprises. In specific instances, it is the NCP's duty to assist in solving problems through discussion and dialogue with the parties concerned.

The NCP has – in collaboration with the Norwegian NCP – processed the complaint in accordance with the agreed guidance for handling specific instances in countries that are not members of the OECD.

CEDHA reported Nordea for not having followed the OECD Guidelines for Multinational Enterprises in its part-financing of the Finnish company Botnia's construction of a pulp mill in Uruguay. CEDHA had previously reported Botnia to the Finnish NCP. In its complaint against Botnia, the complainant claimed that the company had not followed the Guidelines and that, as a result, Botnia's partners – in this case Nordea – had not followed the Guidelines either.

In an additional complaint, it was stated that Nordea could have independent liability, with no direct link to Botnia. CEDHA claimed that Nordea had not followed paragraphs 1, 2, 5 and 7 (to contribute to economic, social and environmental progress, sustainable development, human rights etc.) of Chapter 2, "General policies", paragraphs 1 and 2 (to ensure that relevant information is disclosed) of Chapter 3, "Disclosure", and the introduction and commentary as well as paragraphs 1 – 6 of Chapter 5, "Environment" (the Environment Chapter broadly reflects the contents of the Rio Declaration on Environment and Development, including Agenda 21, various conventions and the ISO Standards on Environmental Management Systems).

Nordea's role can be described as that of "arranging bank", responsible for ensuring that the construction be financed by other banks too. According to CEDHA, the complainant, Nordea is responsible for part-financing to the tune of USD 300 million. This figure has not been confirmed by Nordea. The World Bank body IFC (International Finance Corporation) has approved a loan of USD 170 million to Botnia, and MIGA (the Multinational Investment Guarantee Agency) has approved a guarantee of up to USD 350 million.

The Swedish and Norwegian NCPs processed the Nordea complaint in joint consultation and decided on 15 November 2006 to take up the complaint on a formal basis. This assessment was based on the procedural guidance prescribed by the OECD Guidelines, and on the view that these could also apply to financial institutions with reference to Chapter 2:10.

## Contact and Information-Gathering

Throughout the process, contact has been maintained with and information gathered from the relevant ministries at the Government Offices, Swedish embassies and other concerned parties. A copy of the complaint has also been sent to Argentina's NCP for its information.

There has been the following contact between the parties:

The Swedish and Norwegian NCP chairs took part in a meeting in Helsinki where CEDHA met Botnia and the Finnish NCP on 30 August 2006.

- The Swedish and Norwegian NCPs jointly met representatives of Nordea's management, including officers responsible for CSR, in Stockholm on 11 October 2006. At this meeting, Nordea was able to air its views on CEDHA's complaint.

- The Swedish NCP invited Nordea and CEDHA to a dialogue meeting in Stockholm on 23 March 2007. The Norwegian NCP also took part in the meeting. The parties agreed that dialogue was important for the further handling of the matter and that CEDHA should put in writing the questions it wanted Nordea to answer. The NCP would then discuss the issues with Nordea prior to Nordea formulating its response. A written summary of the dialogue meeting has been published in accordance with the parties' wishes.
- Following the dialogue between the NCP and CEDHA, five questions were submitted by CEDHA in June 2007 for Nordea to answer. A meeting between Nordea and the Swedish and Norwegian NCP chairs took place in Oslo on 12 October 2007. Nordea's answers were forwarded to the complainant, CEDHA, on 31 October 2007, together with an invitation to react to Nordea's answers by 15 November 2007 at the latest.
- A preliminary and informal response from CEDHA was received by the Swedish NCP on 15 November 2007 (but was not forwarded to Nordea at CEDHA's request). CEDHA has not yet submitted an official reaction.

### **CEDHA's Complaint to the Finnish NCP**

The complaint against Botnia was concluded by the Finnish NCP which made a statement on 20 December 2006 in accordance with the OECD statutes. The same chapters and paragraphs that were given as grounds for the complaint against Botnia to the Finnish NCP were given for the complaint against Nordea to the Swedish NCP.

It is stated in the statement that Botnia did not violate the OECD Guidelines, and the statement is based, among other things, on the thorough examination of the matter carried out by the World Bank body IFC (International Finance Corporation). The IFC has since approved a loan of USD 170 million to Botnia, and MIGA (the Multinational Investment Guarantee Agency) approved a guarantee of up to USD 350 million for the construction of the pulp mill.

### **International Court of Justice in The Hague**

CEDHA also referred to Argentina's complaint against Uruguay to the International Court of Justice in The Hague, in which Argentina – according to CEDHA – claimed that Uruguay had unilaterally granted permission for the construction of two pulp mills, despite repeated attempts by Argentina to initiate consultations in accordance with the Rio Uruguay Treaty. In July 2006, the International Court of Justice in The Hague gave its first decision (by a vote of 14 – 1) which stated that the Court considered that Argentina had not been able to present sufficient evidence to show that the pulp mill would represent an immediate or irreversible threat to the environment. A final decision can be expected in two to three years' time.

*The Swedish National Contact Point is made up of representatives from:*

- *The Government Offices (chair is Margareta Kristianson, Ministry for Foreign Affairs, International Trade Policy Department, Swedish Partnership for Global Responsibility)*
- *The Swedish Trade Federation, the Confederation of Swedish Enterprise, IF Metall, the Swedish Trade Union Confederation, the Swedish Confederation of Professional Associations (Saco), the Confederation of Professional Employees, trade union Unionen*

*Statement by the United Kingdom NCP***Final Assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: PSA Peugeot Citroën**

1 February 2008

**Summary of NCP decision**

The National Contact Point (NCP) considered the complaint brought under the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises alleging that PSA Peugeot failed to undertake a meaningful consultation with the Unions when closing down the Ryton manufacturing plant in Coventry. The NCP found that the Company provided reasonable notice of the closure of the Ryton Plant in regards to i) allowing workers the opportunity to start searching for new jobs and ii) the unions with the opportunity to negotiate on the phasing of the closures and redundancy package available. However, the NCP has concluded that the Company failed to fulfil all the requirements under the Guidelines in particular, that the Company should have engaged with the Unions when the decision to make the closure of Ryton was at a formative stage and should have provided sufficient information to allow the Union to understand the reasoning for the decision so they could contribute to the consultation appropriately. The NCP is committed to highlighting good practice where it finds it and recognises that the Company provided a redundancy package significantly above the legal requirements and created a dedicated Resource Centre, with a budget of £5million to help employees prepare for redundancy.

**Background**

On 28 July 2006, the UK National Contact Point (NCP) received a request from Amicus and T&G (the Unions) to consider a specific instance regarding PSA Peugeot Citroën (the Company). The complaint alleges that the company failed to undertake a meaningful consultation with the Union when closing down the Ryton manufacturing plant in Coventry.

PSA Peugeot Citroën announced the intention to close the Ryton Plant on 18 April 2006. Management explained that actual sales in 2005 had failed to meet predicted targets, and that as a result of that and other factors (such as comparative production costs at the branch of PCG in Trnava in Slovakia) production at Ryton was no longer financially viable and proposed that Ryton would undergo phased closure, to be complete by mid-2007. The Company highlighted its commitment to its social responsibilities and stated it would work closely with Trade Unions and Government to provide a comprehensive support package for its staff and to help as many as possible to find alternative employment.

On 5 May 2006, the Company initiated the 90 day consultation period which is required under UK law when undertaking large-scale redundancies by sending the form HR1 to the DTI. The first shift were terminated on 3 August 2006 with 775 redundancies and the final closure of the plant was brought forward to 8 January 2007 with a further 724 redundancies.

The announcement of intended closure occurred a year after the Chief Executive Officer of the Company addressed representatives of the Unions at the Ryton Branch and assured them that they could expect to continue production of the Peugeot 206 until 2010.

## Good Practice

The NCP has committed to highlight good practice where it finds it. While the NCP has found Peugeot to have not met the requirements of the Guideline, the NCP recognises the Company provided a redundancy package significantly above the legal requirements and created a dedicated Resource Centre, with a budget of £5 million to help employees prepare for redundancy. The Resource Centre was staffed by seven employees and a number of resident employees of Jobcentre Plus and the LSC who provided additional support and access to training and employment opportunities.

## The OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. They are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: general company policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.

The Guidelines are not legally binding but OECD governments and a number of non-OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved in the work of the OECD Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

## The Specific Instance Procedure

The first step when a complaint is brought to the NCP under the OECD Guidelines is the initial assessment; this consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The NCP uses this information to determine whether further consideration is required under the Guidelines. The initial assessment is published to [www.csr.gov.uk](http://www.csr.gov.uk). If a case is accepted, the NCP instigates mediation between the two parties to ascertain whether they can agree on an appropriate way forward. Should mediation fail, the NCP will determine whether the Guidelines have been met and if necessary, make recommendations for future conduct.

In this case, The NCP did not produce an initial assessment because:

- a) The closure of the Ryton plant meant that mediation between the parties was inappropriate; the Company is not in a position to reopen the plant so there is no appropriate way forward.
- b) The Company had indicated they had provided all available information to the NCP and had nothing further to add. As all information had been received, the NCP decided to produce the final statement. Both parties were informed of the NCP's intention to proceed to a determination and to produce the final assessment on the basis of the documents submitted.

Both the Company and the Unions gave permission for all correspondence about the complaint sent to the NCP to be exchanged between the parties ensuring transparency in the system.

The Final Statement has been approved by Gareth Thomas, Minister for Trade and Development and copies has been placed in the House of Commons and House of Lords libraries.

## Substance of the Complaint

Amicus and T&G allege that PSA Peugeot Citroën did not comply with Chapter IV of the Guidelines that covers employment and industrial relations, specifically:

IV.6 In considering changes in their operations which would have major effects upon the livelihoods of their employees, in particular in the case of a closure of an entity involving collective layoffs or dismissals, **provide reasonable notice of such changes to representatives of their** employees and where appropriate to the relevant governmental authorities, and cooperate with the employee representatives and appropriate government authorities so as to mitigate to the maximum extent practicable adverse effects. In light of 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 cooperation to mitigate the effects of such decisions.

IV.1.a. Enterprises should respect the right of their employees to be represented by trade unions and engage in constructive negotiations, whether individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions

IV.2.b. Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment

IV.2.c. Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern

IV.3. Provide information to employees or 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

IV.4a. Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country,

The Unions allege that the Company announced their decision to close the Ryton Plant without undertaking meaningful consultation and negotiations on the closure with the recognised trade unions prior to making the decision. In essence, that the Company rejected the principle of full disclosure and refused to answer relevant questions from the trade unions despite a history of sharing commercially sensitive material with the Trade Union in the past without cause for complaint.

## PSA Peugeot Citroën's response

PSA Peugeot Citroën provided an extensive response to the Unions' allegations supported by transcripts of speeches and copies of the documents shared with the Unions in the period following the announcement of the intended closure. The premise of the Company's response is that the announcement of the closure of the Ryton plant was a proposal not a decision and that extensive engagement took place with the unions after the announcement was made.

Peugeot management met with the Unions several times after the announcement of the intended closure. Mr. Folz, then Chief Executive of the Group addressed a separate, private meeting with officials of the two unions representing the Ryton workforce shortly after making the announcement of the pending closure to the workforce. The Company provided the transcript of Mr. Folz's speech at this meeting and the press release of the same day to the NCP. Both these documents refer to the closure of the Ryton Plant as being "proposals" and an "intention" indicating scope for discussion and alteration.

The speech given by Mr. Folz was informative, stating the reason for the pending closure. The final paragraphs refer to the intention to phase out production over a year and to provide a comprehensive programme of support for all employees. However, a member of the team was tasked with working with the Trade Union "to provide you [the Union] with the detailed information that you will need".

Peugeot provided the Unions with an extensive amount of information as requested however, some information was not disclosed on the grounds of confidentiality. The Company state that not all the requested information was provided but considered that the Trade Union's request for "line for line detail on very many areas of activity was immense, disproportionate and very hard to achieve in the limited time scales available".

Various meetings took place between the Company and the Unions which included the presentation of an initial business plan by the Union, which was ultimately rejected by Peugeot. A second more detailed business plan was due to be presented by the union in September 2006 but was subsequently withdrawn due to the announcement that Peugeot would not proceed with the proposed extension of the Trnava plan.

The Company describe a difficult working relationship with the national level Unions while highlighting their relationship with the trade union at the plant remained positive.

PSA Peugeot Citroën provided a robust defence of the allegations, pointing out that the Trade Union's economics expert had accepted they had received sufficient information by 26 July for the unions to put together an alternative plan thereby substantiating Peugeot's view that the consultation that took place was meaningful and meets their commitments under the OECD Guidelines. In addition, the Company's direct response to the allegation in Section 6 is:

- Employees and Trade Union representatives were provided with reasonable notice of changes. They were informed of the proposal to terminate the second shift on 18th April and the first block of redundancies took effect on 3 August, only those that volunteered to leave at that stage did so.
- The Company cooperated with the unions to mitigate adverse effects; this is illustrated by the 8 formal meetings between the trade unions and the Company between the announcements on 18th April until 4 October 2006.
- It is clear from the press release and presentation from Peugeot management that no final decision had been made.
- The Company were willing to cooperate with the unions with the aim of mitigating the effects of the Group's proposal. However they maintain that the trade unions were not willing to negotiate on the redundancy packages as they included compulsory redundancies.

## NCP Analysis

The UK NCP analysis is restricted to the content of the complaint lodged, the NCP does not have a role in establishing whether PSA Peugeot Citroën fulfilled its regulatory commitment to commence a 90 day consultation period when undertaking large-scale redundancies, however, the NCP notes that this consultation period was initiated by the submission of the form HR1 to the DTI (now BERR).

**Paragraph IV.6** requires that enterprises:

*"In considering changes in their operations which would have major effects upon the livelihoods of their employees, in particular in the case of a closure of an entity involving collective layoffs or dismissals, **provide reasonable notice of such changes to representatives of their employees and where appropriate to the relevant governmental authorities, and cooperate with the employee representatives and appropriate government authorities so as to mitigate to the maximum extent practicable adverse effects. In light of 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 cooperation to mitigate the effects of such decisions."*

The unions highlight Chapter IV, paragraph 6 as being the most important aspect of their complaint. The commentary of the Guidelines, which forms part of the text of the meeting of the OECD council at ministerial level, 2000, explains:

*"Paragraph six recommends that enterprises provide reasonable notice to the representative of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of the entity involving collective lay offs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in industrial relations laws and practices of adhering countries, although the approach taken to ensuring an opportunity for meaningful cooperation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful cooperation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented"*.

The NCP has concentrated on:

- i) Whether the Company provided reasonable notice of the closure of Ryton and related redundancies.
- ii) Whether the Unions were given notice prior to the final decision being taken to close the plant.
- iii) If not, would it have been inappropriate to have given the Unions prior notice to the final decision being taken to close the plant.
- iv) When notice was given did Peugeot management work with the Union to mitigate to the maximum extent practicable adverse effects.

The NCP considered each aspect independently:

*Did PSA Peugeot Citroën provide reasonable notice of the closure of Ryton and related redundancies?*

The announcement of the intention to close Ryton was made on 18 April 2006, the first redundancies took place on 3 August 2006 (775 redundancies, all voluntary) with the final closure of the plant brought forward to 8 January 2007 (further 724 redundancies). This meets UK legislative requirements and the NCP is content that reasonable notice of the closure took place that allowed the workers and union to take action to mitigate the effects of the closure. In particular this period provided 1) workers with the opportunity to start searching for new jobs and 2) the unions with the opportunity to negotiate on the timing of the closures and redundancy packages.

In concluding that the Company provided reasonable notice of the closure, the NCP has distinguished between the need to provide a certain period of time to employees and unions to mitigate the effects of the closure from reasonable notice needed to provide unions with sufficient opportunity to negotiate alternatives to closure with the Company.

*Was the Union given notice prior to the final decision being taken to close the plant?*

The NCP considers that the decision to close the plant to all intents and purposes had been taken by 18 April 2006, when the Company announced its intention to close the plant. Mr. Folz's speech to the unions following the announcement stated the reason for the pending closure. An explicit invitation to discuss alternative proposals to the closure of the plant was not offered and the accompanying slides to Mr. Folz's speech states that "the only justifiable economic position is to cease production in the plant as quickly as possible". While the Peugeot response to the allegations indicates that a member of the team was tasked with working with the Trade Union "to provide you [the Union] with the detailed information that you will need", the documents supporting the Company's response to the allegations indicate that this offer was predominantly made in regards to the phasing of the closure and the redundancy package on offer to workers at the plant. This is supported by the final paragraphs of Mr. Folz's speech and accompanying slides that refer to the intention to phase out production over a year and to provide a comprehensive programme of support for all employees.

The NCP did not find evidence that the Company intended to consult on alternatives to the closure of Ryton, however the NCP acknowledge that the Company did respond to the majority of the requests for information by the Unions (with some key exceptions).

PSA Peugeot Citroën takes the view that the decision to close Ryton had not been made by 18 April. It cites evidence of the provision of information to the Unions after that date and explained they consider sufficient information was passed to the Unions by 26 July to allow for an alternative business plan to be created. The Company takes the view that the time available was not affected by stopping a shift on 3 August 2006.

The NCP view remains that the decision to close Ryton was made before 18 April. While accepting that PSA Peugeot Citroën may previously have operated with 1 shift, the continuous departure of workers between August and 2 October (when the plant effectively moved to running half a shift) ultimately contributed to the plant's ultimate closure.

The NCP concludes that the Unions were not given prior notice to the final decision being taken to close the plant.

*Would it have been inappropriate to have given the Union prior notice to the final decision being taken to close the plant?*

As the Company state they had not made the decision to close the plant as at 18 April, when announcing the pending closure, they have not provided the NCP with any reasons

why it would have been inappropriate to have given the Union prior notice to the final decision being taken to close the plant.

In this case, the NCP considered the specific context, particularly noting the assurances given by the Company to the Unions at Ryton just a year earlier, of their expectation that production would continue at Ryton until 2010. It is reasonable to conclude the workers may have made financial arrangements on the back of such assurances. While accepting that earlier dialogue may have had effects on productivity, the NCP concludes that the earlier assurances of continued production at the plant made it particularly important that the Unions and workers should have been informed of the potential closure before the final decision was made.

The NCP concludes that PSA Peugeot Citroën should have provided the Union prior notice to the final decision being taken to close the plant.

*Did PSA Peugeot Citroën management work with the Union to mitigate to the maximum extent practicable adverse effects?*

It is clear that the Company was willing to negotiate the details of the redundancy package with the Unions.

**Paragraph IV.1.a** required that an enterprise

*“Should respect the right of their employees to be represented by trade unions and other 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.”*

It is clear that the Company recognised the role of the Unions to represent the workers at the Ryton plant. The Company met with the unions regularly after announcing the intention to close Ryton and had 8 formal meetings with the trade unions between 18th April and 4 October 2006.

In considering whether the Unions were able to engage in constructive negotiations with a view to reaching agreements on employment conditions, it is necessary to consider whether the unions were provided with adequate information. This is considered under paragraphs IV.2b and IV.3. Due to the similarities between the two paragraphs these are considered together.

**Paragraph IV.2.b** requires that employers:

*“Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment”*

**Paragraph IV.3** required that employers:

*“provide information to employees and their representatives which enable them to obtain a true and fair view of the performance of the entity, or, where appropriate, the enterprise as a whole.”*

The commentary of the Guidelines, which forms part of the text of the meeting of the OECD council at ministerial level, 2000, explains:

*“In paragraph three of this chapter, information provided by companies to their employees is expected to provide a ‘true and fair view’ of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean the information on certain points may not be provided, or may not be provided without safeguards.”*

The union requested a great deal of information soon after the announcement of the proposed closure and a good proportion was made available to the union over the following few weeks. The NCP notes that the strategic manufacturing review which had ultimately recommended the closure of Ryton was not made available to the Union. While the commercial sensitivity of such a document is fully understood, the NCP concludes that the absence of access to this key information effectively disabled the Unions from putting forward an alternative and realistic business plan or for the Unions to make the initial determination as to whether an alternative business plan could be realistic, this effectively prevented them from undertaking a meaningful negotiation with the Company.

Information allowing comparative costs between the Ryton Plant and Trnava were made available to the unions on 16 June 2006. It was understandable that the Unions concentrated their efforts on attempting to reduce the cost differential between these two plants as this had been given as a key reason for the closure of the Ryton plant. However, the fluidity of the situation is sufficiently illustrated by the decision made in September 2006 not to build a new plant in Trnava and instead, continue to use the existing plant for production.

It is not the role of the NCP to determine the validity of alternative business plans put forward by the parties but merely to determine whether adequate information was passed to the unions for them to negotiate. The NCP determines that the Union was not given sufficient information to negotiate on the closures in a meaningful way. In particular, the refusal to share the strategic review with the Unions resulted in a clear example of asymmetric information with the Union unaware of the range of options considered by PSA Peugeot Citroën before they made the decision to close down Ryton. This effectively undermined the union's negotiating position.

It should be noted that the NCP recognises the commercial sensitivity of the strategic review which ultimately led to the closure of the Ryton Plant. However this was a key document which would have allowed the Unions to understand the level of consideration given to the various alternative options. While the NCP accept the business need to keep this document within the Board, the NCP believes that an alternative method of providing the Unions with sufficient information that would have allowed the Unions to fully understand the thinking taking place would have provided the opportunity for the Unions to get a realistic understanding on how best to engage in the issue.

**Paragraph IV.2.c** requires that employers:

*“promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern”*

This paragraph is the only mention of consultation made in the employment and industrial relations chapter of the Guidelines. It is reasonable to conclude that the Guidelines would expect a meaningful consultation and the case of **“R v British Coal” 1994** which defines “fair” consultation is introduced to the analysis at this point to consider whether Peugeot promoted consultation and co-operation with the employees at Ryton and its representatives in relation to the closure of the plant. Useful guidance in determining a “meaningful consultation” is provided by **R v British Coal 1994** which outlines the elements of fair consultation set out in paragraph 24:

1. Consultation when the proposals were still at a formative stage.
2. Adequate information on which to respond.

3. Adequate time in which to respond.
4. Conscientious consideration by (the employer) of the response to the consultation.

Paragraph 25 goes on to say:

“Another way of putting the point more shortly is that fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely.”

The NCP considered whether these elements of “fair” or “meaningful” consultation were met:

*Whether PSA Peugeot Citroën consulted when the proposals were still at a formative stage*

This issue has been analysed in paragraphs 28-30 above.

*Whether PSA Peugeot Citroën provided adequate information for the Unions to respond*

The NCP analysis of this issue is set out in paragraphs 28-30 above.

*Adequate time in which to respond*

The announcement of the intended closure of the plant was made on 18 April 2006. Discussions between the Company and the Unions commenced immediately. The Unions requested a substantial amount of information and some of this was made available between 4 and 14 May. By 16 June the Union had received most of the information, with the notable exception of the strategic report which was not shared due to its commercial sensitivity. The Company consider sufficient information was passed to the Unions by 26 July.

The first redundancies were on a voluntary basis and took place on 3 August 2006 with the final closure on 8 January 2007.

*Conscientious consideration by (the employer) of the response to the consultation*

The Unions put forward an alternative preliminary Business Case on the closure of Ryton to the Company on 12 May 2006 and received a response on 17 May explaining the reasons for rejecting the plan. The Company appears to have given conscientious consideration to the Unions’ plan and responded accordingly. However, this must be placed in the context of whether the information received by the unions was adequate to participate meaningfully in the consultation.

**Paragraph IV.4a** required that employers:

“Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.”

The NCP did not receive any evidence from the Unions that the Company observed standards of employment less favourable than those observed by comparable employers in the UK.

## NCP Conclusion

Obeying domestic law is the first obligation of business. The Guidelines are not a substitute for nor should they be considered to override national law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situation where it faces conflicting requirements.

The NCP concludes that PSA Peugeot Citroën provided reasonable notice of closures in regards to:

- Allowing workers the opportunity to start searching for new jobs.
- The unions with the opportunity to negotiate on the phasing of the closures and redundancy package.

However the NCP concludes that PSA Peugeot Citroën failed to meet the Guidelines' expectation that notice should have been given to the Unions of the pending closure of the Ryton Plant. In particular the Company should have engaged with the Unions when the decision to make the closure was at a formative stage, providing sufficient information to allow the Union to understand the reasoning for the decision and to contribute appropriately.

The NCP concluded that PSA Peugeot Citroën did not provide sufficient information to the Unions to allow them to undertake meaningful negotiations with the Company on the closure of the plant.

Therefore, in regards to the individual paragraphs of the Guidelines, the NCP found the following:

IV.1.a – The Company met the requirements of the Guidelines.

IV.2.b – The Company failed to meet the requirements of the Guidelines.

IV.2.c – The Company failed to meet the requirements of the Guidelines.

IV.3 – The Company failed to meet the requirements of the Guidelines.

IV.4a – The Company met the requirements of the Guidelines.

IV.6 – The Company failed to meet the requirements of the Guidelines.

## NCP Recommendations

The NCP recommends that PSA Peugeot Citroën adhere to chapter IV of the OECD Guidelines for Multinational Enterprises. In particular when considering closures of its premises, the Company should engage the unions at the appropriate time and provide adequate information for meaningful discussions to take place. In particular the Company should meet the requirements on “fair consultation” as defined by “**R v British Coal**” 1994:

- when the proposals were still at a formative stage;
- provide adequate information on which to respond;
- ensure adequate time in which to respond; and
- conscientious consideration by (the employer) of the response to the consultation.

1 February 2008

Margaret Sutherland  
Department for Business,  
Enterprise and Regulatory Reform  
UK NCP

Nick Baker  
Foreign and Commonwealth Office  
UK NCP

Martin Taylor  
Department for International Development  
UK NCP

## Statement by the United Kingdom NCP

### Statement by United Kingdom National Contact Point for OECD Guidelines for Multinational Enterprises (NCP): Anglo American\*

May 2008

A “specific instance” relating to Anglo American plc was submitted to the NCP on 21 February 2002 under the auspices of the OECD Guidelines for Multinational Enterprises by Non-Government Organisation Rights and Accountability in Development (RAID).

### The OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations that governments endorse and promote in relation to the behaviour of multinational enterprises. The Guidelines are voluntary principles and standards for responsible business conduct. They are the only comprehensive, multilaterally-endorsed code of conduct for multinational enterprises.

The Guidelines establish non-legally binding principles covering a broad range of issues in business ethics in the following areas of operation: *general company policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, responsible use of science and technology, competition and taxation.*

The Guidelines are not legally binding but OECD governments and a number of non-OECD members are committed to promoting their observance. The Guidelines are also supported by the business community and labour federations. In addition, a number of Non-Governmental Organisations are also heavily involved the work of the OECD Investment Committee responsible for monitoring and reviewing the Guidelines and are increasingly involved in overseeing the operation and promotion of the Guidelines.

### The Complainants:

**Rights and Accountability in Development (RAID).** A Non-Government Organisation founded in 1997 that aims through its research to promote social and economic rights and improve corporate accountability.

### The Company Subject of the Allegations

#### Anglo American PLC

Anglo American plc is the subject of the allegations submitted to the NCP by RAID. Prior to May 1999, the two principal constituent parts of what is now Anglo American plc were Anglo American Corporation of South Africa (AACSA) and Minorco. Minorco was a Luxembourg-based company that had no involvement in the copper industry privatisation process in Zambia.

AACSA was domiciled, headquartered and incorporated in South Africa and, moreover was the largest company quoted on the Johannesburg Stock Exchange. In 1999, a new British company, Anglo American plc, entered into a Scheme of Arrangement under which it purchased all of the outstanding shares of AACSA in exchange for shares of its own. AACSA remained in existence as a South African company, continued to own all its own assets and acts as holding company for Anglo American’s South African, and certain other, assets.

\* This specific instance does not follow the UK NCP process as published in May 2008. This is because this case was being finalised as the process was being agreed.

Anglo American plc also acquired all of the shares of Minorco in exchange for cash and its own shares.

AACSA therefore was not a UK company for the major part of the period covered by RAID's complaint. In addition, the Anglo American Group has had a UK parent only since May 1999 and that, accordingly, the company directing the negotiations in Zambia was part of a UK-Group only after May 1999.

## Applicability of the Guidelines

The dates of the events (1995-2000) that are the subject of the complaint by RAID and the date of incorporation of Anglo American plc in the UK (1999) are relevant. This is because the version of the Guidelines that applied at that time of the Zambian copper privatisation (1995-2000) related to enterprises and their activities in OECD member countries only.

Zambia is not a member of the OECD, and neither is South Africa – which is where AACSA was incorporated at the time. In the light of this, the issue for the NCP to resolve was whether it would be legitimate to accept the case and retrospectively apply the 2000 version of the Guidelines, which do apply to the activities of multinational enterprises in non-OECD countries, to RAID's complaint.

The NCP sought the guidance of the OECD Investment Committee (CIME). CIME is the committee that coordinates work of OECD members in respect of investment and as such, monitors and provides guidance to NCPs. The eventual view of CIME was that it would be reasonable for the NCP to accept the case under the terms of the 2000 Guidelines.

In any event, irrespective of the view of CIME, the company undertook to respond voluntarily to RAID's concerns and to explain the company's conduct from the mid-1990s.

Throughout the period of the consideration of the specific instance, the company made strenuous efforts to respond to questions from the complainant to detailed questions in respect of complex issues that occurred a number of years ago. It should also be recorded that both parties benefited from information and comments provided by DFID's representation in Zambia which informed the NCP's initial assessment (a copy of which is attached to this statement). Both parties also entered into a constructive and detailed exchange of information which clarified a number of issues. The constructive approach taken by RAID throughout this complex case is also commended by the NCP.

## The Complaint

Relates to a number of issues arising from the privatisation of the copper industry in Zambia during the period 1995 –2000.

RAID allege that in the context of the privatisation process AACSA (one of the companies that merged with Minorco to form Anglo American plc – see paragraphs 6-9 above) through its nominated directors on the board of Zambian Consolidated Copper Mines (ZCCM – the Government agency operating the mines) influenced the privatisation process so that it favoured the aspirations of ACCSA at the expense of the Zambian Government. Specifically it is alleged that AACSA was able to purchase the Konkola Deep Mining Project without entering into a competitive tendering process and that the company also obtained first right of refusal over the purchase of facilities at Mufulira (smelter and refinery) and Nkana (mine) thereby denying an opportunity for other enterprises to make an offer.

In connection with the privatisation process, RAID alleges that the company sought and accepted derogations from Zambian legislation in respect of taxation and environmental controls with the result that standards of environmental controls such as on emission targets were weakened and the health and safety of workers and the population in general suffered; and that the weakened environmental controls were not disclosed. Linked to the taxation derogations, RAID also alleges that the company secured a number of financial incentives and concessions that were not available to other enterprises.

The complaint by RAID focussed on the following broad areas of the OECD Guidelines:

- Influence over the regulatory framework in Zambia (Chapter II.5 – not seeking exemptions from regulatory framework).

- The terms of the privatisation.

Anti competitive practices (Chapter IX – Competition).

- Konkola Deep.

- Mufulira and Nkana.

Tax concessions (Chapters II.5 and IX).

- Special concessions.

- Seeking and accepting exemptions.

- Government revenue.

- Anti-competitive element.

Environmental concerns (Chapter II.5)

- Environmental deregulation and derogation.

- Emission targets.

Social provision (Chapter II.1 – need to contribute to economic, social and environmental progress and II.2 – respect for human rights).

- Abdication from provision.

- Fees and employees' pay.

- Access to services.

- Cost recovery.

Employment, training and local business development (Chapter IV.5 – need to employ and develop local personnel).

- Training and retraining.

- Local suppliers and business development.

Disclosure and consultation (Chapter II.2 – respect for human rights, II.4 – disclosure of material information on material issues to employees and other stakeholders).

## Anglo American PLC's Response to the Complaint

The Company responded that the RAID complaint was without foundation within the terms of the Guidelines. In relation to the first aspects of the complaint that the directors of AACSA allegedly behaved in an anti-competitive manner in relation to the privatisation of ZCCM, the Company pointed out that the Directors of Zambian Copper Investments (ZCI) had considerable and detailed knowledge of the assets involved and were entitled to take a view as to the privatisation model most likely to produce a competitive Zambian copper

industry – given the interdependence between the mines. In arguing against the model proposed in the Kienbaum Report, the Directors did not thwart the settled policy of the Zambian Government nor insist upon their favoured model. In the event, privatisation proceeded on the basis of a study conducted by Rothschild.

The Company responded by noting that the Zambian Government had not at any time adopted the Kienbaum Report as its preferred way forward and Anglo American Directors had not blocked the adoption of the Report. The Zambian Government had not, in any case, shown a consistent desire to move forward speedily with the privatisation and their intentions were not clear. Thus it is impossible to apportion blame for the shelving of the Kienbaum model and the commissioning of the Rothschild Report and strange for RAID to portray donors as playing a negative role *vis-à-vis* the Zambian Government.

In relation to the process for the privatisation of the Konkola Deep asset, the Government of Zambia had been unsuccessfully seeking investors in the project for some years and had publicly invited expressions of interest from the corporate sector. None had been forthcoming. In the absence of such expressions, in late 1995 AACSA had offered to bring together a consortium and to conduct a feasibility study and an option was granted in that light.

The Government were, for this reason, welcoming of the Company's willingness to shoulder the costs of feasibility studies and to seek other investors since this was the only route through which the deposit was likely to be developed at that time.

In relation to the terms of the privatisation of the existing operating assets, the Company also pointed out that when it, together with the Commonwealth Development Corporation and the International Finance Corporation, formulated the bid, no other significant player in the mining sector was prepared to participate in the process given the poor condition of the assets and low metals prices. Far from seeking to negotiate fiscal terms that would produce unusually attractive returns, terms were negotiated in a transparent manner between the parties, designed to ensure that the project would meet investment hurdle rates required of any projects of similar scale. Rather than disadvantage the Zambian Exchequer, the transaction removed the burden of operations that were losing cash at a rate of some \$20 million per month and were otherwise facing closure. In the event, over the two years following privatisation, the operations cost Anglo American shareholders over \$350 million – investment which helped to secure their viability under their present owners. In regard to the issue of environmental standards, the Company explained that far from lowering standards, the ZCCM assets had been non-compliant with Zambian law for some time before privatisation and that through its investment, environmental and health standards (especially in relation to malaria and HIV/AIDS), the environmental performance of the assets was significantly improved to the benefit of the workforce and the local population.

The Company pointed out that the RAID view of the impact of the wording of the Guidelines was not grounded in practicality since in the situation which they appeared to be seeking there would have been no investment and the mines would probably have closed with implications for livelihoods, public services and the environment. Moreover, RAID never submitted a complaint against the similar terms accorded to the Mopani consortium which acquired the second largest parcel of resources. The RAID position is similarly impractical in relation to the environmental arrangements that were agreed between the Company and the Government. Their view would only have had merit if

environmental performance was being allowed or intended to deteriorate. As the DfID assessment observed: “It should be noted that environmental management under ZCCM is widely acknowledged to have been very weak, leaving a costly legacy”. Prior to Anglo American’s ownership, for example, on a mass balance basis 75% of sulphur emissions ended up passing into the atmosphere, but within 18 months that had already been reduced by 40% and the environmental programme was designed to achieve a twentyfold reduction in ambient CO<sub>2</sub> levels.

The Company also noted that RAID was mistaken in characterising the decision by Anglo American to withdraw from its ownership of KCM as in some way specific to the circumstances of the Company rather than indicating a lack of viability for the KCM assets. The other KCM shareholders – the IFC, private sector arm of the World Bank, and the UK Government owned Commonwealth Development Corporation – were similarly unwilling to commit additional funds. The onward sale by the Government of Zambia to Vedanta Resources, some while later, would not have been possible but for Anglo American’s investment in the assets which reduced production costs by over a quarter and the fact that the operations were gifted back to the Government of Zambia debt free.

## RAID’s Counterarguments

Opposition from Anglo American ended the prospects of the Kienbaum plan and delayed the privatisation of ZCCM. This placed the Zambian Government under immense pressure from donors to sell the mines quickly. Other investors were never invited to bid on Konkola Deep (KDMP) and it did not figure in the mine packages identified to be sold by competitive tender. The company’s exclusive options to develop KDMP and excise the Mufulira smelter from the recommended package did have “a chilling effect on competitive bids”.

Other mining companies had the same investment challenges, but without the benefit of special tax concessions and exemptions accorded to Anglo American. The Permanent Secretary to the Ministry of Mines and Minerals development stated: “The Government may not immediately realise substantial revenues from taxes and mineral Royalties due to the incentives accorded to the companies...” Compliance with provision II.5 of the *Guidelines* does not, however, hinge on projections of government revenue nor upon the company’s return on investment, but rather on whether exemptions were sought or accepted. Concessions insisted upon in negotiations by Anglo American and framed in the sale agreements were subsequently incorporated in amendments to primary legislation.

The same pattern emerges in respect of environmental deregulation. Exemptions negotiated by the company allowed Konkola Copper Mines (KCM) to comply with its own “site-specific environmental standards” and thereby exceed the existing World Bank guidelines on SO<sub>2</sub> ambient air quality.

It is stated in the company’s social assessment that KCM, “is not directly involved in the management of social issues – e.g. service provision, healthcare or education – in Kitwe”. Agreements with the mining union over continued social provision for employees were never disclosed and it has not been possible to establish that education and health services to the wider community were “on very much the same basis as under ZCCM”.

It is important to move away from the notion that Anglo American’s withdrawal from Zambia is proof that every concession and exemption sought from the government was justified: the decision to withdraw from KCM was based on an immediate lack of project finance and the particular circumstances of Anglo American plc and did not bring into

question the longer term viability of KCM *per se* or the copper industry as a whole in Zambia. KCM was subsequently sold to a new investor and a significant recovery in the price of copper in recent years has increased the value and profitability of mining companies on the Copperbelt. KCM returned an operating profit of USD 413 million in 2006-07. Copper production in Zambia is projected to increase by over 150% over the period 2005 to 2010.

## Concluding Remarks

It is usual practice for the NCP to make determinations of compliance and to issue recommendations in respect of a specific instance on those matters which remain unresolved. On the narrow facts of the current specific instance under consideration, the NCP does not propose to make any recommendations aimed at achieving compliance for the pragmatic reason that a considerable period of time has passed since the ZCCM privatisation was concluded, during which Anglo American has sold the companies that are the subject of the complaint.

However, the NCP compliments both RAID and Anglo American for engaging constructively throughout this long running case and sharing a great deal of information about issues and events that were the subject of the original complaint. This exchange resulted in the clarification of a complex case and a deeper mutual understanding of both parties.

The complainants did raise a number of issues that the Government encourages all enterprises to address in all their activities at home and abroad. The NCP therefore takes the opportunity of this statement to draw to the attention of all UK companies, including Anglo American, the recommendations on responsible business behaviour contained in the OECD Guidelines for Multinational Enterprises. The NCP is currently developing a Guidelines promotion campaign and in this context, NCP staff are available to visit enterprises and other organisations in order to conduct awareness raising events.

The NCP also draws attention to the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, which has been developed as part of CIME's follow up to the Guidelines. The Risk Awareness tool consists of a list of questions that companies might ask themselves when considering actual or prospective investments in weak governance zones. The questions cover the following issues:

- Obeying the law and observing international relations.
- Heightened managerial care.
- Political activities.
- Knowing clients and business partners.
- Speaking out about wrongdoing.
- Business roles in weak governance societies – a broadened view of self interest.

The Risk Awareness tool can be downloaded from: [www.oecd.org/dataoecd/26/21/36885821.pdf](http://www.oecd.org/dataoecd/26/21/36885821.pdf)

UK NCP  
May 2008

**Box 1.1. Letter from the UK NCP to Anglo American PLC dated 10 June 2003**

**Mr. Edward Bickham Esq**  
**Executive Vice President**  
**Anglo American plc**  
**20 Carlton House Terrace**  
**London SW1Y 5AN**

Dear Mr. Bickham,

**OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES:  
 SUBMISSION ON ANGLO AMERICAN OPERATIONS IN ZAMBIA**

As you know we received a report from DFID Zambia on the allegations made by RAID and AFRONET in respect of alleged breaches of the OECD Guidelines for Multinational Enterprises (“the Guidelines”) by Anglo American (“AA”) relating to your operations in Zambia.

The procedure under the OECD Guidelines is as follows:

- The DTI, acting as the National Contact Point (NCP) under the OECD Guidelines passes the report by DIM Zambia and our initial assessment to you. I also enclose the paper from DFID Zambia which comments on points made by RAID/Afronet.
- You have an opportunity to comment on any outstanding points or supply additional information on the matters raised. I appreciate that there is quite a bit to take on board in this letter and the MID document but I would be grateful for a response by one month from the date of this letter.
- We will then take the report, initial assessment and any information you supply to the complainants who will be invited to respond within one month, we will then copy their reply to you. We would hope that any outstanding matters could be resolved by constructive dialogue between the two parties. We would be happy to assist with this.
- There is no timeframe on this dialogue, however, if, at any point during this dialogue either party feels the discussion is exhausted, they can ask the NCP to make a statement.

**1) INFLUENCE OVER REGULATORY FRAMEWORK**

**Kienbaum**

There appears to be no evidence of any breach of the Guidelines on this point.

**Rothschilds**

There appears to be no evidence of any breach of the Guidelines on this point.

**2) ANTI-COMPETITIVE PRACTICES**

**Konkola**

We consider that the authors present a reasonable *prima facie* case. Reference is made to the recommendation, in the Kienbaum report, for competitive bidding – it has already been alleged in the report that AA was the primary cause of that report being rejected.

We would like to draw your attention to this issue and invite you to comment or provide further information, which we will offer to the complainants.

**Postponement of Konkola Purchase**

It is asserted that AA ‘unreasonably refused to deal’. There seems to be, however, nothing in the succeeding text to support this claim of unreasonableness.

**Box 1.1. Letter from the UK NCP to Anglo American PLC dated 10 June 2003 (cont.)**

We consider that there is a lack of clear evidence for asserting that AA anticipated and planned all of the complained of developments. In particular, there is no evident causative link between AA and the collapse of the Kafue Consortium bid. The significance of the collapse in the price of copper and the onset of recession in Asia appear to us to be understated in the complaint.

Although apparently significant in themselves, the facts and figures set out at the end of this section (on page 3.7) do not, on the information presented, seem to be capable of being sufficiently clearly causally linked to the alleged “unreasonable refusal to deal”.

Consequently, on the evidence provided, there appears to us to have been no breach of the Guidelines on this point. Should you wish to comment further on this point please be assured that we will pass on your comments to the complainants.

**Mfulira and Nkana**

The information supplied by DFID reveals a tangled web of dealings on this issue. It is debatable as to whether the option held over the smelter and refinery by AA did not have a chilling effect on competitive bids. Such activities might be said, at the time, to have fallen under the general ‘abuse of a dominant position’ provision as set out at 3.5 of the report.

We would draw your attention to this issue and invite further comments.

**Tax and Environmental Concessions**

It is unclear to us how the obtaining of such concessions can be said to be anti-competitive per se, particularly in the context of the OECD Guidelines (Chapter X in particular). It is our view that consideration of these allegations seems to sit more properly with the later allegation of seeking or accepting exemptions from the statutory or regulatory framework (Chapter II General Policies 5. of the OECD Guidelines – Part (I) of the report).

However if the complainants were to produce any new evidence to the effect that AA brought pressure to bear on the Government to provide these tax incentives we may wish to reconsider this matter. Our assessment of this allegation takes account of the fact that the plant seems to have become rather run-down, and the Government, for economic reasons, may have decided of its own volition to offer additional incentives to dispose of it. We would welcome your views on this point.

**3) FINANCIAL INCENTIVES AND CONCESSIONS****Tax**

See above.

**Foreign exchange**

There appears to be no evidence of any breach of the Guidelines on this point.

**4) SOCIAL PROVISION**

The exact position of AA in relation to the Nkana operation and its owner (beyond the fact of AA managing the operation) is unclear to us and we would welcome further clarification from you on this matter.

The complaints under this heading do seem significant in the context of Chapter /I General Principles 1 and 2 of the OECD Guidelines. In order to be able to consider them more fully, it would be helpful to know the provision of what facilities, where, have been abdicated (by AA in particular)? Where services are now being provided on a fee-paying basis, how do such fees differ to the pre-existing arrangements and whether there is any

**Box 1.1. Letter from the UK NCP to Anglo American PLC dated 10 June 2003 (cont.)**

corresponding change in employees' pay? This information would help to demonstrate whether or not there has been any financial detriment to workers receiving such services. To whom are the services accessible a) in theory – i.e. are they explicitly restricted, for example, to employees and their families or are they open to the community at large (if one exists beyond such people) and b) in practice – i.e. who is actually able to pay for such services, if chargeable, and to what extent? It is, in our view, also important to know the extent to which the fees charged represent the actual cost of the services provided.

The actual extent of social difficulties experienced in respect of these allegations is not yet clear but the information presented in the report does, in our opinion, warrant comment from AA.

**5) EMPLOYMENT, TRAINING AND LOCAL BUSINESS**

With regard to a), without knowing details of the deal between the parties concerned it is difficult to identify whether AA is guilty of conduct which breaches the Guidelines. Perhaps AA would like to comment on this?

In b) it would be helpful if AA could supply some examples of contractual agreements with local suppliers and of specialised items which cannot be bought in Zambia,

As regards c), clarifications are sought on a number of issues in the DFID report including *inter alia*, the list of local companies with ownership details; – the copy of the IFC study on local business development (excluding the amount of the AA/KCM contribution); – the number of Zambian businesses funded in the Business partners for Development programme; – whether or not it has prepared a Local Business Development Programme and whether or not the IFC initiative is a part of or separate to this; – why KCM sought exemptions from import duty in primary legislation (if it is the case that it did).

**6) ENVIRONMENTAL REGULATION AND HEALTH AND SAFETY****Initial Environmental Deregulation**

The Complainants' allegation is that the Rothschilds report and associated "model" development agreements must have been subject to the approval of [AA] by virtue of its position on the ZCCM board and it can only be assumed that the company therefore exercised a degree of influence over the proposals for environmental deregulation.

This is, in our view, a complaint based on 5. of Chapter II General Policies of the OECD Guidelines.

The question is whether AA did, in fact, influence to a significant extent the formation of the statutory or regulatory framework, by seeking or accepting relevant exemptions contained therein which could be said to fall within the spirit of the above cited provision of the OECD Guidelines.

AA may wish to clarify or comment on the above.

**Additional Deregulation Applicable to KCM**

There is insufficient information available on why GRZ has undertaken to take no action against KCM for failure to comply with environmental legislation, nor as to why KCM has an extended stability period (to 2020, compared to 2012-15 for other proprietors), for us to assess whether there is cause for concern under the OECD Guidelines under this head of complaint. In this regard we would welcome clarification from AA on whether there were or are particular concerns in relation to the KCM operations, over and above those faced by other operators, may go some way to justifying these concessions and the nature and extent of any such particular problems?

**Box 1.1. Letter from the UK NCP to Anglo American PLC dated 10 June 2003 (cont.)**

With regard to standards actually 'set' for emissions etc., these would seem to fall within Chapter V Environment 1. or 3. of the OECD Guidelines.

We would welcome further information from AA on its involvement in the formulation of the standard for sulphur referred to in the report in order to more fully consider this matter.

**Health and Safety**

Although no specific breach of the OECD Guidelines is here alleged, the issue does seem, potentially, to fall within 5 of Chapter V Environment. We would welcome AA's views on this matter.

**7) DISCLOSURE AND ACCOUNTABILITY**

We note that, the complaint does also indicate (at page 3.26) that AA requires the consent of the Zambian Government for the disclosure of relevant parts of the KCM development agreement. The authors of the complaint would appear to have improperly discounted this obstacle, if it is accurately represented.

There are allegations that AA has failed to comply with IFC guidelines on disclosure. We have not had an opportunity to consider these particular complaints in that context but do not think that they are relevant under the OECD Guidelines.

As with the second paragraph under (4) above, where it is said that there is no independent information in relation to the claims, it must be considered whether satisfactory evidence could be presented and, if so, whether the activity complained of is contrary to the OECD Guidelines. With regard, in particular, to the squatters issue, it seems likely that independent evidence of the relevant circumstances could be obtained. The lack of independent evidence may not necessarily prevent a finding of a breach of the Guidelines. We note that the DFID report does not dismiss this claim by the complainants.

If the complainants allegations were to be substantiated, breaches of Chapter H General Policies 2. of the OECD Guidelines (respect for human rights), Chapter III Disclosure 4. f) (disclosure of material information on material issues to employees and other stakeholders) and Chapter V Environment 2. b) (adequate and timely communication and consultation with directly affected communities) could arise.

AA is invited to comment on this issue.

Yours sincerely,

Duncan Lawson

National Contact Point for the OECD Guidelines for Multinational Enterprises.

## ANNEX 1.A4

## Review of NCP Performance: Key Findings

### 1. Introduction

At their 2007 Annual Meeting held in Paris on 19-20 June 2007, the National Contact Points (NCPs) agreed that the 2007-08 implementation cycle on the OECD Guidelines for Multinational Enterprises should give priority to the improvement of NCP performance.<sup>1</sup> At the Heiligendamm Summit of 6-8 June 2007, the G8 Leaders also committed themselves to “... promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration), high environmental standards and better governance through the OECD Guidelines’ National Contact Points”.<sup>2</sup>

In view of this, the Working Party decided at its October 2007 meeting to offer its assistance in the preparation of a focused discussion on the improvement of NCP performance for the 2008 Annual NCP Meeting. It created a small task force of interested delegations<sup>3</sup> to carry out, under the Chair’s guidance, a survey of NCP performance based on an update of the 2003 questionnaire on NCP procedures and a synthesis of the responses for the consideration of the Working Party identifying any new emerging NCP practices.

The present report by the Working Party summarises the key findings of this undertaking. It is based on the Working Party’s discussion at its December 2007 and March 2008 meetings of the 30 country responses to the questionnaire – 23 from OECD countries<sup>4</sup> and 7 from adherent countries<sup>5</sup> as well as comments received from TUAC and OECD Watch on the preliminary results of the questionnaire. Due to its broad scope and the high number of replies, the report provides a comprehensive and up-to-date picture of NCP institutional arrangements and working methods as well as an informative insight of how the experience with eight years of implementation of the revised OECD Guidelines for Multinational Enterprises have translated into new emerging NCP practices.

The remainder of this report is structured as follows. Part II highlights the salient features of existing NCP structures and significant recent developments; Part III summarises perceived advantages and disadvantages associated with various NCP structures; Part IV takes stock of recent proactive promotional activities on the Guidelines; and Part V describes how the procedures for handling specific instances have been changed to enhance due process and facilitate the resolution of disputes. Part VI identifies some emerging practices.

## 2. The NCP organisational landscape

Since their creation in 2000, NCP structures have followed two basic models, namely a) a government-only one and b) a multi-partite one with the built-in participation of business, labour or non-governmental organisations or a combination thereof under the government's leadership. As reported in the 2007 Annual Report on the OECD Guidelines for Multinational Enterprises, the government-only structure constitutes the dominant form (26 over 39)<sup>6</sup> but over time the number of multi-partite structures has increased (11), to a large degree as a result of choice made by new adherents (the three Baltic States and Romania). There are currently 20 NCP single government departments, 6 NCP multiple government departments, 1 bipartite NCP (involving government and business), 9 tripartite NCPs (involving government, business and trade unions), 2 quadripartite NCPs (involving governments, business, trade unions and NGOs) and a new mixed structure (of independent experts and government representatives – see further details below). Through experience, governments have found various ways of enhancing the inclusiveness of stakeholders (advisory committees or permanent consultative bodies, regular meetings, special events...).

Two important changes occurred during the last year. In February 2007, the Netherlands adopted, for a three-year trial period, a new structure composed of independent experts operating at “arms length” from the government, within certain instructions, written down in a published official Installation Ordinance. In September 2007, the UK NCP moved from a single unit to a dual-departmental NCP. The UK government also created a Steering Board to exercise oversight of the UK NCP and consider appeals on procedural issues in specific instances. These developments are described in greater detail in Box 1.A4.1. A few additional countries report being in the process of implementing new changes (Argentina, Brazil, Chile) or are considering exploring ones (Canada, Japan, and Turkey).

There is no perfect structure however. The following section summarises the perceived advantages or disadvantages of various NCP structures, as outlined in the responses to the questionnaire.

## 3. Perceived structural strengths and weaknesses

### 3.1. Government structures

#### 3.1.1. Advantages

*Adherent governments are the primary guarantor of the Guidelines.* While stakeholders have without doubt an important role to play, adherent governments have the primary responsibility of promoting the Guidelines and ensuring the effective implementation of this most comprehensive, multilaterally-backed up corporate responsibility instrument in existence today.<sup>7</sup> Direct government involvement and oversight is essential for the protection of the integrity and good functioning of the Guidelines.

*Governments have privileged access to a wealth of expertise and networking.* In addition to the knowledge provided by stakeholders, government structures can mobilise and capitalise on the wealth of diverse expertise and resources available within government departments and agencies at both national and sub-national levels and benefit from the government's extensive networks at home and abroad. This advantage can be reinforced by the formal inclusion of interested departments into the NCP structure (Brazil, Canada, Denmark, Korea, Japan, United Kingdom) although this also puts a greater onus on co-ordination. Single department NCPs have the advantage of simplicity (Greece, Italy, Spain).

### Box 1.A4.1. Netherlands and UK NCP restructuring

#### Netherlands

**Composition.** The Dutch NCP has been changed from an interdepartmental office to a bipartite structure consisting of four independent experts (including the Chair) chosen because of their social status with various stakeholder groups and for their knowledge and reputation on corporate responsibility issues. The NCP further consists of four government advisors (from the ministries of Economic Affairs, Foreign Affairs, Social Affairs and Housing, Spatial Planning, and Environment).

**Motivation.** The change is intended to ensure the independence of the Dutch NCP and avoid conflicting requirements between the NCP functions and those of the responsible Minister as member of the Dutch cabinet.

**Location.** The new NCP continues to be hosted in the Ministry of Economic Affairs.

**Mandate.** The new NCP has been installed for a trial period of three years to fulfil the tasks outlined in the *Procedural Guidance* for the implementation of the Guidelines and operate in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

**Oversight.** The NCP members act independently without supervision of any other authority. However, the government can issue a public comment on final statements on specific instances made by the Dutch NCP. The connection with the government is also upheld via the advisory members of the Dutch NCP. The Minister for Foreign Trade will instruct the Dutch NCP about any clarifications or other decisions by the OECD Investment Committee.

**Relations with stakeholders.** The new Dutch NCP will hold regular consultations with representatives of all stakeholders. This enables them to monitor the working procedures of the Dutch NCP. Stakeholders are also asked to participate actively in information and promotional activities.

**Resources.** The new NCP has a fixed budget (almost EUR 900 000 for three years). This includes the cost of one full-time officer for promotional activities located in MVO Netherlands (a separate private entity funded by the Ministry of Economic Affairs to promote corporate social responsibility among companies). In addition, two full-time officer equivalents from the Ministry of Economic Affairs have been made available to serve as the secretariat to the Dutch NCP.

#### United Kingdom\*

**Composition.** The UK NCP has changed from a single departmental unit to a dual-departmental structure. It consists of a representative from the Department for Business, Enterprise and Regulatory Reform (BER) – the leading agency – working with officials from the Department for International Development. A Steering Board oversees the work of the NCP (see Oversight).

**Motivation.** The enlarged composition of the UK NCP is intended to take better into account the concerns of key stakeholders (business, trade unions and NGOs). The inclusion of DFID is intended to give easier access to staff in overseas embassies and in addition, formal procedures have been put in place to contact Foreign and Commonwealth Office officials at the relevant Embassy. The UK NCP has also access to various specialist teams in UK offices and links the Guidelines with teams responsible for other corporate responsibility initiatives (such as EITI and Global Compact). The Steering Board aims to improve the functioning of the UK NCP (further details below).

#### Box 1.A4.1. Netherlands and UK NCP restructuring (cont.)

**Location.** The enlarged NCP continues to be hosted in the Department for Business, Enterprise and Regulatory Reform. BERR also acts as a secretariat for the Steering Board.

**Mandate.** The mandate of the UK NCP has remained unchanged.

**Oversight.** The Steering Board has been created to oversee the effectiveness of the operating of the NCP and to ensure that the procedures are followed. It also has the broad mandate of providing advice on issues of general and specific application of the Guidelines and promoting their use.

The Steering Board is chaired by a senior official from BERR and includes representatives from 8 other ministries (the Foreign Office, DFID, the Attorney General's Office and Export Credit Guarantees Department, the Department for the Environment, Food and Rural Affairs, the Ministry of Justice, the Scottish Executive and the Department of Work and Pensions and BERR's legal Department and the Directorate with overall responsibilities for Corporate Responsibility). There are four external members (representing business, trade unions and NGOs as well as an independent member who represents the All Parliamentary Group for the Great Lakes and the Prevention of Genocide. External members serve for a period of three years with the possibility of appointment for a further three years. The Steering Board can also draw on the other external experts for particular topics and issues as appropriate.

The Steering Group meets on a quarterly basis and more often if required. Minutes of the meetings will normally be published on the website. The Steering Board is currently reviewing the NCP Specific Instance Procedures as well developing appeals procedures. The Steering Group will conduct a self-evaluation after one year of operation (September 2008).

**Relations with stakeholders.** The establishment of the Steering Board allows the voice of stakeholders to be heard.

**Resources.** Two BERR officials work full time for the NCP while DFID allocate 20% of one official to the NCP. The expectation is that these officials will carry this function for a minimum of two years. The external members of the Steering Group are not paid except for travel expenses. One NCP member has now undertaken mediation training.

\* This description reflects changes to the UK NCP structure that became effective on 1 April 2008.

They can also benefit from inter-agency support and feedback or that of their respective constituents and stakeholders (United States, Mexico).

A great majority of NCPs are located in economic ministries or departments. NCPs located in economic ministries or departments can more easily tap on business forums to promote the Guidelines and relate more closely with MNEs (Australia, Austria, Greece, Switzerland). Furthermore, regrouping the work on MNEs in one single economic entity dealing with the Guidelines and other corporate responsibility instruments could also help enlist the support of business and make responsible corporate behaviour easier and more effective (Switzerland). Mexico underlines the expertise available in the Ministry of the Economy as regards issues related to the side agreements on labour and environmental co-operation of the North America Free Trade Agreement (NAFTA) and several other multilateral agreements. On the other hand, NCPs located in foreign affairs ministries (Argentina, Canada, Chile, Japan, United States) have more direct access to embassies' assistance. This can be a real advantage as a growing number of specific instances take place in non-

adherent countries. Irrespective of the government location, direct access whenever needed to government expertise and networking is deemed essential.

*There are several ways to consult and seek the advice of stakeholders.* Irrespective of the NCP structure, it is important to maintain a genuine and constructive two-way dialogue with stakeholders. A majority of government-centred NCPs have set up formal consultative or advisory mechanisms with stakeholders to assist them in performing their tasks. These mechanisms can be helpful in discussing strategies and activities for promoting the Guidelines. A smaller number of NCPs seem to prefer other avenues (existing channels of communication, meetings or special events with stakeholders...). This is perceived as providing more flexibility or as being less bureaucratic (Australia, Canada, Brazil, Switzerland). A few NCPs (Chile, Poland) report being in the process of seeking more permanent arrangements with business, labour and other civil society representatives although this is not always easy (Chile).

*Governments are accountable for all their activities.* Even if NCPs are not formally obliged to publicly report their activities (other than on an annual basis to the OECD Investment Committee),<sup>8</sup> as any government entity operating in a democracy, they are nonetheless accountable, individually or through their hierarchy, to their Parliaments or societies (Australia, Greece, Japan, New Zealand). In some countries, ombudsmen may have oversight powers as well (Denmark).

### 3.1.2. Disadvantages

*A perceived accountability and transparency deficit.* As compared with multipartite structures, government-centred structures continue to be perceived by several stakeholders as falling short of giving them a decisive voice in NCP activities. They see this structure is less credible in reflecting a genuine consensus over corporate responsibility issues. The direct involvement of labour ministries is seen by labour unions as a prerequisite for developing a solid knowledge base on employment and industrial relations. Given these views, some respondents (Belgium) acknowledge that stakeholders may be less inclined to engage in promotional activities and encourage the use of the Guidelines among their constituencies. They may be less enthusiastic in providing financial or other kinds of logistic support.

Government-only structures are also criticised by stakeholders for not being sufficiently transparent or accountable to stakeholders. This criticism seems to be more recurrent with respect to the handling of specific instances (see Part V of this report). Multipartite structures can increase the acceptance of NCPs as a forum for discussion of globalisation and corporate responsibility (Austria). Lack of formal processes with stakeholders may limit their ability to press for changes to NCP structure and procedure (Canada).

*Competing priorities and possible conflict of interests.* As persons with a partial position as a result of other functions within their administrations, NCPs may be confronted with competing priorities and may not always be in a position to carry out all their tasks (Australia). In addition, the government may face a conflict of interest in simultaneously promoting the development of its business sector and monitoring its behaviour. Lack of political independence may also be a problem when a dispute involves a state-owned enterprise.<sup>9</sup> Since the NCPs deal with international issues, international foreign affairs and commercial considerations may become entwined and even have an influence in the NCP processes.

*Insufficient oversight?* With one exception, there are no special mechanisms in place to review NCP activities at the national level. Mounting criticisms in the UK has led the government to create a steering board whose primary responsibility is to oversee the effectiveness of the operation of the UK NCP and ensure due process.

### **3.2. Multipartite structures**

Romania's NCP has a bipartite structure (government-business), Belgium, Denmark, Estonia, France, Luxembourg, Lithuania, Norway and Sweden have a tripartite structure (government, business and labour) and Chile, Finland, a quadripartite structure (government, business, labour and NGOs).

#### **3.2.1. Advantages**

*Objectivity, transparency and accountability.* One of the perceived principal advantages of a multipartite structure is the more direct access to business, labour or other stakeholders. Providing relevant business, labour and NGOs players are represented, this direct contact can assist the NCP in better taking into account the relevant considerations relating to a specific instance. It may also help secure stakeholders' "ownership" of the findings and actions proposed for resolving a case (several respondents). The consensual approach and sharing of views and experiences built into multipartite structures also provide greater confidence about the objectivity, transparency and accountability of the Guidelines process (Belgium, France). In some countries, this approach is consistent with a long and solid tradition of government, labour and employers' co-operation (Denmark, Norway, Sweden). This can be a clear advantage in providing NCP good offices in finding solutions to specific instances.

*More effective promotion of the Guidelines.* As committed partners, stakeholder members can be more supportive of the Guidelines and be more pro-active in promoting the Guidelines within their own constituencies (Belgium, Norway, Sweden).

#### **3.2.2. Disadvantages**

*But the advantages can also turn into disadvantages.* Lack of consensus can make dispute resolution more complicated and lengthier. Conflict of interest may arise when one stakeholder is a partner to a dispute (Belgium). So far these downside risks have proven to be manageable. Furthermore, to avoid a potential dysfunction of the decision-making process, the chair of the NCP has the final say when no consensus can be reached among the parties (Belgium, Norway, and Sweden).

### **3.3. Resource is a general problem for all NCPs**

Several NCPs (Brazil, Belgium, Chile, France, Greece, Italy, Mexico, Poland, Romania, Spain) report increased difficulty in coping with the various demands put on them. Frequent NCP turnover may also be a problem (United Kingdom). Several NCPs acknowledge that with additional resources, they could play a more active role in promoting the Guidelines. Special funding is also needed to carry out on-site visits (several respondents). Qualified staff may also be an issue, particularly as regards to mediation activities (Brazil). In view of this situation, some NCPs have taken steps to increase available resources and training as well as securing more stable arrangements (Brazil, the Netherlands, Poland, Switzerland, United Kingdom). The Netherlands, in particular, has earmarked a specific budget (900 000 Euros for three years plus two full-time staff) to cope with the problem.

## 4. Promoting the Guidelines

The responses to the questionnaire confirm the increased diversification and sophistication of NCP promotional activities and the more extensive use of modern communication tools.<sup>10</sup> They also confirm a more frequent use of the Guidelines as a policy tool for communicating expectations to business, such as in the context of export credits or investment guarantees programmes. At the same time, it is recognised that continuous efforts are needed to raise the general awareness of the Guidelines and spread their use among enterprises. Three key approaches have been reported.

*Getting the priorities right.* The demands are numerous and (human and financial) resources are limited. The Guidelines need to be promoted on several fronts, including large and small enterprises, foreign countries with weak governance or exposed to human rights violations, labour intensive industries, or sectors capable of exercising an influence (the financial sector). Without a proper evaluation, it is difficult to measure the effectiveness of various promotional efforts. A new promotion strategy is being developed by the Netherlands to assist in translating the Guidelines into corporate good practices, particularly on the part of small and medium-sized enterprises.

*Soliciting the contribution of stakeholders.* Acting in partnership with stakeholders' organisations is an effective way of promoting the Guidelines and seeking feedback (Switzerland). Soliciting their direct contribution in promoting the Guidelines such as the release of explanatory brochures addressed to business and others actors and organising events is also becoming more recurrent (France, the Netherlands, New Zealand). In New Zealand, this role is also fulfilled by a Liaison Group that includes government agencies and non-governmental (business and labour) organisations. Making use of government support programs, such as investment promotion, export credit and investment guarantees to generate support for the Guidelines, is another effective way of promoting the Guidelines.<sup>11</sup> There is a potential trade-off however: while the Guidelines may gain in exposure, government partners need to acquire a good understanding of the Guidelines (Australia). Monitoring the performance of enterprises is also an issue. In the Netherlands, where companies benefitting from government support must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability, a study on the corporate responsibility side-effects of the Netherlands' financial instruments was released in November 2007.

*Working more closely with other leading corporate responsibility initiatives.* The multiplication of numerous corporate responsibility codes, mechanisms and initiatives appears to be an increasing source of confusion for business. This also makes it more difficult to promote the unique features of the Guidelines. One unfortunate perception of the Guidelines is that although unique, it is not a very practical "soft law" instrument (Switzerland). Special efforts are being deployed by some NCPs (Denmark, France, Germany,<sup>12</sup> Norway, Sweden,<sup>13</sup> Switzerland...) to better coordinate the work on major corporate responsibility initiatives (the OECD MNE Guidelines, ILO Conventions and MNE Tripartite Declaration, UN Global Compact and ISO). White papers on corporate responsibility have been commissioned in Denmark, the Netherlands and Norway. NCPs also benefit from the Investment Committee's work to relate more closely with other corporate responsibility forums (such as ILO, Global Compact, ISO...).

## 5. Governance issues relating to specific instances

As shown in Box 1.A4.2 to the present chapter, the respondents report having considered 60% (98/164) of the requests to consider specific instances since the June 2000 Review of the Guidelines. Over 70% were raised by labour (119/164) as compared to 30% for NGOs (45/164). Close to half (76/164) concerned business activity in a non-adhering or in a weak governance zone country (44/164). Over 40% of the cases involved other NCPs (66/164).

With regard to the issues addressed, close to 60% (94/164) involved issues addressed in parallel proceedings (these were also the main reason for rejecting requests as reported below) and less than 20% (29/164) related to the “investment nexus” and involved supply chain responsibilities. Issues on the application of the Guidelines to the financial sector or involving business conduct previously examined by other forums (such as ILO or the UN Global Compact) seem to be on the rise (11 and 12 specific instances respectively).

This Part of the report examines the procedures that have been followed to consider these specific instances.

### 5.1. Application procedures and decisions to consider specific instances

*The procedures for handling specific instances have become clearer and more user-friendly. A large majority of NCPs have developed detailed guidance for handling specific instances<sup>14</sup> based on the OECD Guidelines Procedural Guidance, which is usually made publicly available. No significant difference is reported for specific instances in non-adherent countries (although it is widely acknowledged that the procedures are more difficult to apply in their case). The distinctions between the principal procedural steps have also become clearer and more consistent. A growing number of NCPs set indicative time limits and actions to be taken in case these cannot be met. These timeframes may range from 1 to 3 months for the initial assessment (Australia, Belgium,<sup>15</sup> Canada, Denmark,<sup>16</sup> Korea, the Netherlands,<sup>17</sup> New Zealand, Poland, United Kingdom), 6 to 9 months for the conciliation and investigation phase (Argentina, the Netherlands,<sup>18</sup> United Kingdom) and 3 months for the preparation and publication of the NCP final statement (United Kingdom). The newly reformed Dutch NCP also offers a so-called pre-advice service to applicants on the chances of acceptance of a case or ways to increase that chance.<sup>19</sup>*

Other NCPs consider that they lack sufficient exposure to specific instances to set up a general rule on the length of the process (Greece, Romania, Sweden, Turkey). Some other NCPs prefer a more flexible approach given that the circumstances and complexity of each case may vary (Austria, Hungary, Italy, Japan and United States). But in the end, the time spent in considering a case may not be all that different (Japan). Final statements are made public and reported to the Investment Committee.

*Relevance of the issues raised and quality of the supporting information.* NCPs will not consider a specific instance unless credible documentation on the alleged breach of the Guidelines is provided by the complainant (all respondents). They may go the extra mile to seek additional information or clarifications from the complainant (and the respondent in the case of Norway) but they will not “adjudicate” on the validity of the information provided (Australia) or normally launch independent research at that stage (Belgium, Korea, Japan, the Netherlands). The Swiss NCP, on the other hand, conducts a “pre-assessment” as to whether the application may be acceptable under the Guidelines; if the result is positive, it will proceed with collection of relevant information to issue the initial

assessment.<sup>20</sup> Differences in quality or reliability may occur<sup>21</sup> and be even a recurrent source of delay (Mexico) but a large number of respondents do not feel this is a major problem, at least for specific instances in adherent countries. Access to reliable information in non-adherent countries can be more problematic and raise sensitivities relating to sovereign jurisdiction (Canada, Japan, Mexico, the Netherlands). Site visits are more the exception than the general rule. One country (United Kingdom) reports making a site visit to collect information.

*Criteria for taking on or rejecting a case.* The NCPs must be convinced that the request constitutes an investment (or that there is an investment nexus) and that a possible non-compliance to the Guidelines is conceivable on the basis of the presented facts.<sup>22</sup> The company involved is normally informed shortly after receipt of the complainant's notification. In Belgium, the decision is taken by the NCP, in taking into account the recommendation of the evaluation committee created for each case. The composition of the evaluation is drawn from NCP members. The existence of parallel legal proceedings<sup>23</sup> and the lack of investment nexus are the most frequently cited reasons for turning down or delaying examination of a request to consider a specific instance.

*Communicating the results of an initial assessment.* The results of the initial assessment are normally communicated in writing to the parties.<sup>24</sup> Some NCPs have also started to publicly acknowledge in their websites their decision to actively take on (Brazil, Japan, United Kingdom)<sup>25</sup> a specific instance. This decision may also be taken on a case-by-case basis (Romania). Other NCPs refrain from making public the outcome of an initial assessment (Austria, Brazil), particularly when the case is rejected (Brazil). In Switzerland, this decision is never made public. On the other hand, the Dutch NCP always publishes the reasons for accepting to hear a case and in the future, it will do this as well for denials. If the UK NCP accepts a case, the parties will be named but if the case is rejected, the parties will remain anonymous.

## **5.2. Consideration of specific instances**

*Confidentiality is not incompatible with good communication.* The Procedural Guidance enables the NCP to take appropriate steps to protect sensitive information and inform the parties of their obligations. Confidentiality of the proceedings is also needed to ensure the success of good offices for mediation and conciliation efforts by the NCPs. That being said, several NCPs report an encouraging two-way exchange of information between the parties to a complaint. It is also made clear to them that a breach of confidence could be treated as a breach of faith in the process and could result in either a refusal to consider a complaint further or an adverse final report (United States). As provided by the Procedural Guidance outsiders are not, as a general rule, informed about the progress made in considering a case; this is more conducive to confidence-building between the parties more directly concerned.

*Good communication between NCPs is crucial.* While it is recognised that the need for consultations between NCPs may be directly proportional to their interest in the resolution of a specific instance, several NCPs (Mexico, United States) report making every effort to keep these NCPs apprised of the situation regarding a specific case. This includes forwarding at an early stage a copy of the submission, soliciting views at various stages of the process, include other NCPs' joint meetings with the parties to the complaint as appropriate and sharing drafts of final statements. The challenge is greater in cases involving complex international consortia for which more detailed procedural guidance might be warranted (Italy).

*Tips of good practices for handling or mediating specific instances.* Mediation and conciliation remain no doubt the major strengths and most distinctive features of the specific instances process. The responses suggest that a growing number of NCPs are giving their best shot at offering their good services for resolving investment disputes and a few useful tips have been learned since the 2000 Review. These include encouraging the parties to provide a thorough and detailed submission in the early stages of the process, promoting genuine co-operation between stakeholders and sharing and where practical release of all non-sensitive information. Mediation efforts should also be carefully stage-managed with clear agendas and deadlines and realistic expectations about what can be achieved. The process should also leave room for the NCPs to exercise their judgment on individual cases. Outside expertise may also be sought when needed. A certain amount of discretion may also need to be exercised to cool down the noise around the complaint.

### 5.3. Publication of the results

As a general rule, a final statement is issued and made public even if a mediated settlement has not been reached.<sup>26</sup> The final statements are also becoming more detailed, in providing background information on the complaint, including the names of the parties, assessing the parties' behaviour, explaining NCP procedures and reasoning on non-observance of the Guidelines or good practice where this can be evidenced. Whenever possible, recommendations are formulated with a view to providing guidance to businesses in respect of their future conduct (United States). The companies and complainants are consulted before the release of the statement (United States).

## 6. Emerging practices

At its March 2008 meeting, the Working Party broadly felt that the progress made since the 2000 Review in putting in place operational NCPs for furthering the effectiveness of the Guidelines has been a tangible and forward looking one. NCPs have become more experienced and confident about their duties. They have become more attentive to the functioning of their institutional arrangements and ways to integrate the views and expectations of stakeholders. NCPs have also learned from each other in becoming more pro-active in their promotion of the Guidelines and making the procedures for considering specific instances become clearer and more user-friendly. Broadly speaking, the relationship between structures, working methods and performance seems now better understood.

The Working Party also considered that the questionnaire has been useful in identifying some interesting emerging practices. While fully acknowledging that not all recent innovations mentioned in this report might be transposable to other NCPs because of economic, social, or cultural differences or other factors – which is why NCPs operate according to the functional equivalence principle – it still felt that some recent developments could provide “seed material” for NCP practices of a broader application. The following emerging practices were particularly identified as deserving special attention by NCPs at their 2008 Annual Meeting.

### 6.1. NCP structures

*Increased inclusiveness of stakeholders.* The closer association of stakeholders to NCP operations has no doubt been an evolving trend but three NCPs – namely the Dutch and the UK NCPs – have raised the bar a bit higher. In the case of the *Netherlands* the increased

inclusiveness concerns the NCP decision-making process itself. The Dutch NCP now consists of four independent stakeholders which are sovereign in their decisions on specific instances. This was a deliberate decision on the part of the Dutch government to avoid possible conflict of interests with other governmental activities. But it is the Dutch government which nominates the four members of the Dutch NCP and the connection with the government is upheld via advisory members of the Dutch NCP. In the case of *new UK structure*, on the other hand, stakeholders are full members of the Steering Board, overseeing and advising the work of the UK NCP. This allows the voice of stakeholders to be heard and make the UK NCP accountable. However these new institutional arrangements are still being implemented and it may be too soon to draw conclusions on NCP performance.

*Independence of NCPs to avoid possible conflict of interests.* If this was the main rationale for the recent Dutch reform, there could be some pre-conditions for this kind of structure to work. The four members of the Dutch NCP have been selected because they are “recognisable” by their peers as knowledgeable and objective representatives of the constituencies they represent. Netherlands’ cultural and industrial relations traditions have also played a part.

*Oversight at the national level.* Also, it was the mounting criticism in the UK which led the government to create a Steering Board to oversee the effectiveness of the operation of the UK NCP and ensure due process. The Steering Board provides a way to counterbalance the government structure of the UK NCP. To reinforce this, appeal procedures are being considered by the Steering Board. Several delegations at the Working Party’s March 2008 meeting felt nevertheless that the creation of appeal procedures on the substantial aspects of a specific instance would not be consistent with the non-judicial character of the specific instance facility.

*Appropriate resources.* There was broad agreement that earmarking a budget and allocating permanent expert staff to NCPs are good ways to address NCP resource constraints.

## **6.2. Promotion**

*Casting the net wide.* Many NCPs have gone beyond the stage of simply providing basic information to the Guidelines, responding to inquiries and improving websites. They are also engaged in deliberate efforts to raise the public’s general awareness of the importance of the Guidelines as a leading corporate responsibility instrument. Good emerging practices in this respect include more frequent speaking engagements, organisations of events and financing research projects on corporate responsibility. Regional co-operation such as that between MERCOSUR countries is another effective way to promote the Guidelines.

*Enlisting the support of stakeholders.* A growing number of NCPs are soliciting the direct involvement of stakeholders in promotional activities such as the organisation of events or publication of brochures. This is to be encouraged. It may also be desirable (as the Netherlands suggested) to put greater effort into translating the Guidelines into best practices on the part of enterprises, more particularly small and medium-sized firms.

## 7. Specific instances

*Due process.* The procedures for handling specific instances have become clearer and more predictable through the publication of more detailed guidance and indicative time-frames on the various procedural steps as well as the adoption of confidentiality rules that provide parties easier access to the information available to NCPs. Increased transparency has also been achieved through the more systematic publication of the outcome of specific instances, including a description of the facts, the implications for the Guidelines and

### Box 1.A4.2. National Contact Points' main tasks

By virtue of the OECD Council Decision of June 2000 on the *Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, adhering countries have the obligation to set up National Contact Points. This Decision and its attached *Procedural Guidance* assigns three major tasks to NCPs with a view to furthering the effectiveness of the Guidelines. These are: a) providing information, promoting and responding to enquiries about the Guidelines; b) contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances and c) reporting annually to the Investment Committee about the nature and results of their activities. NCPs shall carry these tasks according to the core criteria of visibility, accessibility, transparency and accountability.

Consistent with the objective of “functional equivalence” adhering countries have the flexibility to decide on the institutional arrangements for their NCPs. The *Procedural Guidance* states that the NCP can be organised as a government entity or as a co-operative body and include representatives of the business, labour and other interested parties. NCPs are free to decide, however, the degree of their “inclusiveness” of these stakeholders and their respective contributions to the effective functioning of the Guidelines. Irrespective of choices made, NCPs must keep the business community, employee organisations and other interested parties informed about their institutional arrangements and Guidelines-related activities.

Owing to its uniqueness and central importance to the functioning of the Guidelines, the procedural guidance is more detailed about how the Guidelines should be implemented in specific instances. NCPs should deal with the issues in an efficient and timely manner and in accordance with applicable law. A specific instance normally involves three distinct phases, namely a) an initial assessment of whether the issues raised merit further consideration; b) the examination phase where NCPs offer their good services to help the parties resolve the issues; and c) a concluding phase where the NCP issues a statement and makes recommendations as appropriate, on the implementation of the Guidelines. NCPs can take the necessary steps to protect sensitive business and other information. If issues arise in non-adhering countries, they will develop an understanding of the issues involved, and follow these procedures where relevant and practicable. NCPs are also encouraged to consult other NCPs over overlapping cases.

The flexibility embedded in the “functional equivalence” principle constitutes a recognition that the conditions and circumstances upon which various corporate responsibility actors operate may vary from one adherent country to another. This operational guidance also implies that NCPs can learn from experience and from each other and thus over the course of time improve their institutional arrangements based on evidence about emerging good practice.

**Box 1.A4.3. Statistical annex on specific instances: compilation of responses**

(Based on the information provided by the 30 respondents)

<b>Q1.</b> How many requests to consider specific instances has your NCP received since the June 2000 Review? _____	164
<b>Q2.</b> How many such requests has it decided not to consider? _____	66
<b>Q3.</b> How many of these specific instances concerned business activity in a non-adhering country? _____	76
<b>Q4.</b> How many of these specific instances were raised by labour? _____	119
<b>Q5.</b> How many of these specific instances were raised by NGOs? _____	45
<b>Q6.</b> How many specific instances involved other NCPs? _____	69
<b>Q7.</b> How many specific instances involved confidential business information? _____	78
<b>Q8.</b> How many specific instances involve business conduct that was covered by host country laws, regulations or administrative procedures? _____	63
<b>Q9.</b> How many specific instances involve issues addressed in parallel proceedings? _____	94
<b>Q10.</b> How many specific instances involving parallel proceedings were concluded? _____	27
<b>Q11.</b> How many specific instances raised issues relating to the “investment nexus” and involve supply chain responsibilities? _____	29
<b>Q12.</b> How many specific instances raised issues on the application of the Guidelines to the financial sector? _____	11
<b>Q13.</b> How many specific instances concerned business activity in weak governance zones as defined by the OECD Risk Awareness Tool for MNEs in Weak Governance Zones? _____	44
<b>Q14.</b> How many specific instances involved business conduct previously examined or under examination by another forum or corporate responsibility instruments (such as ILO or the UN Global Compact)? _____	12

government recommendations. Some NCPs have gone further in offering pre-advice to services to potential complainants (the Netherlands) and publicising the results of initial assessments, including the names of the parties (the Netherlands and the United Kingdom).

*Proactive mediation and conciliation.* The strength of the NCP mechanism is to provide a non-judicial avenue for resolving investment issues. A number of NCPs have become more proactive in offering their good offices to mediate and conciliate investment disputes, including where there are parallel proceedings. Tips of goes for a successful mediation also include good communication between the parties, careful stage-management of the process, discretion, access to outside expertise and setting realistic expectations from the outset of the process.

*Good communication and co-ordination.* With the increased complexity of MNE operations, NCPs have become more sensitised to the importance of closer communication and co-ordination in multi-partite specific instances. Perceived good practices include soliciting views of NCPs concerned at an early stage of the process, including through joint meetings, sharing of information at each main procedural step and sharing drafts or issuance of joint final statements. The discussion also showed that further guidance from NCPs and the Investment Committee might be called for on this subject (Italy).

#### Box 1.A4.4. Questionnaire on National Contact Point (NCP) Performance Follow-up to 2007 Annual Meeting of NCPs

October 2007

“We commit ourselves to promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration), high environmental standards and better governance through the OECD Guidelines National Contact Points.”

(Paragraph 24 of G8 Summit Declaration Heiligendamm, Germany, 7 June 2007)

At their 2007 Annual Meeting held in Paris on 19-20 June 2007, the National Contact Points agreed that the 2007-08 implementation cycle on the OECD Guidelines for Multinational Enterprises should give priority to the improvement of NCP performance.

Accordingly, with a view to assisting NCPs to prepare for a focused discussion at the 2008 Annual Meeting, at its 2-3 October 2007 meeting, the Working Party of the Investment Committee (ICWP) invited the Chair to set a small task force of interested delegations, with the support of the Secretariat, to update and expand as required the questionnaire that was used in 2003 to gather information on NCP procedures. It also invited the Secretariat to circulate this revised questionnaire to NCPs and ICWP delegates by the end of October 2007 so that a session of the Working Party could be organised in early December (the tentative date of 12 December 2007 has been set aside) to review the responses to the questionnaire and discuss the content of a more elaborated Note on NCP performance for the March 2008 meeting of the Working Party.

This revised questionnaire responds to this request. It has been prepared by a small group of delegations composed of Austria, Belgium, Canada, Chile, Japan, the Netherlands and the United Kingdom.

Enriched by seven years' experience of the implementation of the Guidelines, the questionnaire is designed with the intent of capturing the most significant developments which have occurred during this period regarding the implementation of the main tasks assigned to NCPs and exploring in particular how the four core criteria of visibility, accessibility and transparency and accountability identified in the Procedural Guidance have been taken into account in carrying out these tasks. It also investigates perceived best practices that could be discussed in the future to improve NCP performance so as to further enhance the effectiveness of the Guidelines both in adherent and non-adherent countries.

The questionnaire is divided into three parts focusing respectively on structural changes in institutional arrangements and their underlying rationale (Part A), experiences with pro-active information and promotional activities and techniques (Part B) and perceived improvements and shortcomings in implementation of specific instances (Part C). The latter – which draws more heavily on the 2003 Questionnaire – constitutes the most extensive part of the questionnaire owing to the broad support by all stakeholders for the unique features of the special instance facility and the general desire of NCPs to discuss further ways of improving the performance of the facility. This section covers the different phases of the consideration of a specific instance and the various roles NCPs are called upon to play in this context.

Delegations are invited to fill in the questionnaire as completely as possible. They should focus on those areas where they have experience and/or where they have undertaken recent policy or procedural changes.

Should NCPs' experience appear to be not directly applicable – for example should they have had no experience yet in handling specific instance – they may nonetheless wish to discuss the policies and procedures they have in place in order to deal with the issues raised.

In conformity with earlier practice, the responses to this questionnaire will be used solely for the Working Party internal discussions and will thus remain confidential.

The responses to the Questionnaire should be sent to Pamela Duffin [tel.: 33-1 45 24 78 40; fax: 33-1 44 31 78 40; e-mail: [pamela.duffin@oecd.org](mailto:pamela.duffin@oecd.org)] no later than Friday, 23 November 2007. The questionnaire is also available on the electronic discussion group (EDG) which could also be used as a vehicle for transmitting delegations' responses.

**Box 1.A4.5. Questionnaire on National Contact Point (NCP) Performance  
Follow-up to 2007 Annual Meeting of NCPs (cont.)**

**October 2007**

**COUNTRY:**

**Part A. Developments in Institutional Arrangements**

- Q1.** What are the main considerations underlying the current structure of your NCP? What do you see are the main advantages or disadvantages of this structure?
- Q2.** What changes in your NCP structure have been made or are being considered to enhance the contribution of stakeholders (business, labour, NGOs...)? Have these changes created or reinforced an arms-length relationship between NCP and other government services or agencies? Does your NCP report to a higher governmental authority such as Parliament or Congress?
- Q3.** What type of constraint – lack of resources, insufficient training, limited access to non-governmental expertise, any other) might your NCP encounter in performing its various tasks? How are these issues being addressed?

**Part B. Promoting the Guidelines**

- Q4.** Are the Guidelines being promoted in specific sectors/activities (extractive industries, financial sector – the Working Party has also decided to embark on a separate reflection on the application of the Guidelines to the financial sector, SMEs...) or country/regions (emerging markets, weak government zones...)? What are the main advantages or disadvantages of the various avenues available?
- Q5.** Are the Guidelines being promoted in the context of government support programmes (e.g. procurement, export credits, investment guarantees) or in relation to other corporate responsibility initiatives (such as the UN Global Compact, the Equator Principles, UN PRI, private sector conduct of codes...)? What has been the reaction of local stakeholders to such activities?

**Part C. Implementation in Specific Instances**

**I. Application procedures and decisions to consider specific instances**

- Q6.** Please describe the main steps in your NCP procedures for handling specific instances (application acceptance, consideration and reporting). Are these steps readily and publicly accessible and do you provide guidance on how specific instances should be submitted? How do the procedures differ in regard to a specific instance in a non-adherent country?
- Q7.** What kind of information and justification is expected from stakeholders regarding their requests to consider a specific instance? Is this made clear to potential users? Have you observed any significant differences in the quality and reliability of the information that has been conveyed by different categories of stakeholders? If so, please elaborate.
- Q8.** What criteria are included in an NCP decision to actively consider a specific instance? Does your NCP normally engage in information gathering or investigation at this initial stage of the process or does this vary between cases and stakeholders? When are interested parties (other NCPs or stakeholders) informed of requests to consider specific instances?
- Q9.** How long does the initial investigation stage normally take? Are NCP decisions as to whether or not to consider specific instances made public? What have been the most frequent reasons for turning down requests to consider a specific instance?
- Q10.** How an NCP decision to consider a specific instance may be/has been affected by the existence of parallel legal proceedings covering similar issues. What approach does your NCP follow in the case of parallel proceedings in non-adherent countries?

**Box 1.A4.5. Questionnaire on National Contact Point (NCP) Performance  
Follow-up to 2007 Annual Meeting of NCPs (cont.)**

**October 2007**

**II. Consideration of specific instances**

- Q11.** What are the most frequent problems your NCP encounters in obtaining the information it needs to actively consider a specific instance and attempt to resolve the dispute? What is your experience in addressing these problems, notably as regards cases arising in non-adherent countries? What type of information is shared or not shared between the various interested parties during the consideration of a specific instance?
- Q12.** In the context of specific instances involving NCPs in the same case as third countries or where the home country has a legitimate interest in the work of the host country NCPs, how does the host country NCP, as the leading NCP, ensure good communication channels with other concerned NCPs?
- Q13.** What measures does your NCP take to protect confidential or sensitive business and other information? Are parties explicitly asked to refrain from disclosure of information once a complaint has been accepted as a specific instance (along the lines of the understanding reached with OECD Watch on this matter)? How have breaches of confidentiality been addressed?
- Q14.** For tripartite and quadripartite NCPs, what role do the non-governmental members play in the consideration of a specific instance? Advisory? Decision making? What are the advantages and disadvantages of the approach taken?
- Q15.** Does your NCP make site visits to gather information, including in non-adhering countries? If so, is this done on a consensual basis, i.e., is the mission to gather information first discussed with and approved by the parties involved? Is the host government informed of or involved in the information gathering process? What problems, if any, have arisen on such missions? Does this reformulation get at what the NCP wished to survey?
- Q16.** How often has your NCP engaged in the mediation of a dispute? Have there been any instances where mediation has addressed issues dealt with in parallel proceedings, including in non-adherent countries? Are the results of a mediated settlement systematically made public? What difficulties, if any, have arisen in carrying out mediations in non-adherent countries? Is mediation training undertaken or being considered by your NCP?
- Q17.** Are procedures in place to ensure that the specific instance is handled in a timely manner by your NCP? For example – imposing deadlines on participants? On itself? Briefly describe such procedures. Would an indicative twelve-month time frame for completing the consideration of a case be a realistic or desirable objective?
- Q18.** Are outsiders/must outsiders (e.g. parliament asking a question) (be) informed about the progress made by the NCP in considering a specific instance?
- Q19.** What particular tips of good practices have you learned in handling or mediating specific instances?

**III. Publication of results**

- Q20.** What form (e.g. press release, statement on NCP website,...) does the publication of the results of a specific instance usually take? What subjects does it usually cover? Does the statement name the parties involved?
- Q21.** Is the NCP approach to the publication of the results any different when the parties involved do not reach agreement or when the issues raised concern non-adherent countries?

**Box 1.A4.5. Questionnaire on National Contact Point (NCP) Performance  
Follow-up to 2007 Annual Meeting of NCPs (cont.)**

**October 2007**

**Statistical Annex on specific instances\***

- Q1.** How many requests to consider specific instances has your NCP received since the June 2000 Review? \_\_\_\_\_
- Q2.** How many such requests has it decided not to consider? \_\_\_\_\_
- Q3.** How many of these specific instances concerned business activity in a non-adhering country? \_\_\_\_\_
- Q4.** How many of these specific instances were raised by labour? \_\_\_\_\_
- Q5.** How many of these specific instances were raised by NGOs? \_\_\_\_\_
- Q6.** How many specific instances involved other NCPs? \_\_\_\_\_
- Q7.** How many specific instances involved confidential business information? \_\_\_\_\_
- Q8.** How many specific instances involve business conduct that was covered by host country laws, regulations or administrative procedures? \_\_\_\_\_
- Q9.** How many specific instances involve issues addressed in parallel proceedings? \_\_\_\_\_
- Q10.** How many specific instances involving parallel proceedings were concluded? \_\_\_\_\_
- Q11.** How many specific instances raised issues relating to the “investment nexus” and involve supply chain responsibilities? \_\_\_\_\_
- Q12.** How many specific instances raised issues on the application of the Guidelines to the financial sector? \_\_\_\_\_
- Q13.** How many specific instances concerned business activity in weak governance zones as defined by the OECD Risk Awareness Tool for MNEs in Weak Governance Zones? \_\_\_\_\_
- Q14.** How many specific instances involved business conduct previously examined or under examination by another forum or corporate responsibility instruments (such as ILO or the UN Global Compact)? \_\_\_\_\_

\* The information requested is intended to update and complement the information in Annex I.A.3 – Specific Instances Considered by National Contact Points to Date – of the 2007 Annual Report on the OECD Guidelines for Multinational Enterprises, [www.oecd.org/dataoecd/23/26/39319743.pdf](http://www.oecd.org/dataoecd/23/26/39319743.pdf).

**Notes**

1. *Annual Report on the OECD Guidelines for Multinational Enterprises 2007*, pp. 29-30.
2. Paragraph 24 of G8 Summit Declaration Heiligendamm, “Growth and Responsibility in the World Economy”, Germany, 7 June 2007.
3. Austria, Belgium, Canada, Chile, Japan, the Netherlands and the United Kingdom.
4. Australia, Austria, Belgium, Canada, Denmark, France, Germany, Greece, Hungary, Italy, Japan, Korea, Mexico, The Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.
5. Argentina, Brazil, Chile, Estonia, Israel, Lithuania, and Romania.
6. Egypt, which adhered to the OECD Declaration on International Investment and Multinational Enterprises in July 2007, has not yet communicated the structure of its NCP.

7. According to Section I.1 of the Implementation Procedures, “Adhering countries shall set up National Contact Points for undertaking promotional activities, handling enquiries and for discussions with the parties concerned on all matters covered by the Guidelines...”.
8. As provided by the Procedural Guidance.
9. Norway, which has a multi-partite structure mentions this issue but can be applied to any government-based structure.
10. As reported in the 2007 Annual Report of the NCPs, websites, presentations, interviews, special events, brochures, regional co-operation, promotion through chambers of commerce are the more frequently cited measures.
11. As observed in the 2007 Annual Report, 29 NCPs report the existence of links between the Guidelines and such programs.
12. In particular, the local UN Global Compact in Germany, represented by GTZ, asked the German NCP for closer co-operation with the NCPs and whether it could especially provide NCP’s mediation capacity for possible cases of non-compliance with the Global Compact principles. The German NCP welcomed this request and suggested a two-step procedure, to which the Global Compact representatives agreed: first, the Global Compact tries to solve possible problems within its reporting system; second, if the results are not satisfactory, the problem could be presented to the German NCP as a “specific instance”, which would offer its mediation according to the OECD Guidelines and following the standards of the “OECD Procedural Guidance”. The stakeholders of the UN Global Compact Germany have approved and formalised this possibility of co-operation.
13. The Swedish NCP and the Swedish Partnership have a close relationship with the UN Global Compact and its local networks. Sweden considers that the Guidelines and the UN Global Compact complement and reinforce each other. The Partnership has close contacts with the Nordic Global Compact Network and the Swedish NCP-chair participates in annual Global Compact Network meetings. Sweden is the biggest donor country to the Global Compact.
14. This guidance may take various forms: detailed explanations on the NCPs’ websites (majority of NCPs), brochures, manuals or models or standard forms for filing complaints (Brazil, Japan, Italy, Norway, Poland) or useful “tips” (Australia). Argentina has indicated that its procedures are based on the OECD Watch Model. The existence of NCP procedures is less wide-spread, however, among countries with limited or no experience with specific instances (Greece, Israel, New Zealand, Spain).
15. Parties to an accepted specific instance are invited to meet with the Belgian NCP within 2 months after the declaration of acceptance.
16. Afterwards, the procedures are less formalistic.
17. The timeframe for this phase is set at 30 working days.
18. The timeframe for this phase is set at a maximum of 6 months, to be prolonged once with a maximum of 3 months in the case of a field visit abroad.
19. Details for this facility are being developed. The Swiss NCP is also available to provide interested parties with advice on how to submit and present a specific instance.
20. Switzerland reports the following steps before an initial assessment: 1) confirmation of the receipt of an application; 2) pre-assessment as to whether the application may be acceptable under the Guidelines; 3) if the result of the pre-assessment is not negative, information on the company concerned by the complaint, constitution of an *ad hoc* committee including relevant government departments and collection of relevant information, including through the Swiss diplomatic mission in the country concerned; and 4) making and communication to the parties of the initial assessment.
21. This may be the result of various factors, ranging from insufficient knowledge (for instance because of large distances, language barriers or communication channels, hampered for reasons of protecting the safety of the informants), resources, experience and motivation of the complainants, or deliberate manipulation of information (Netherlands, Norway, Switzerland). It may be critical to hear both the complainant and the respondent at an early stage (Norway).
22. Chile’s response also mentions that allegations can be proven by means foreseen in the Chilean law and that the complainant is recognised as a player in his area of activity.
23. Most respondents indicate that their NCPs will refrain from taking on a case subject to parallel proceedings unless the parties or the NCP see clear merit in getting involved. Some NCPs might also be more inclined to take on specific aspects of legal proceedings taking place in developing

countries when flaws in the legal framework and judicial systems of these countries are documented.

24. According to Section I.C.1 of the Procedural Guidance, the first step to be taken by the NCP in considering a specific instance is to make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
25. Japan occasionally informs the Diet about the outcome of its initial assessment.
26. Under section I.C.4.b of the Procedural Guidance, the NCP will “after consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation”.

## ANNEX 1.A5

### *Keynote Presentation by John Ruggie, Special Representative of the UN Secretary-General for Human Rights\**

*Professor Ruggie became the Special Representative of the UN Secretary-General on Business and Human Rights in 2005 and has just been nominated for a second three-year term. In his keynote presentation to National Contact Points at their annual meeting in 2008, he presented the results of his work over the past three years and their potential implications for the OECD Guidelines for Multinational Enterprises.*

It is an honor for me to participate in your annual meeting. The OECD recognised early on that globalisation requires social pillars if it is to be politically sustainable, and that human rights are an integral element of the shared values and institutional practices within which we must strive to embed global markets. The OECD Guidelines on Multinational Enterprises and the National Contact Points were products of that recognition.

But the scope and power of global market forces have continued to expand more rapidly than the ability of societies to manage their adverse effects and to produce the public goods that markets undersupply. The history of what are now the OECD countries teaches us that such misalignments can trigger grave consequences for business and society – as witnessed by the collapse in previous eras of open world markets that lacked adequate institutional underpinnings and safety nets. Because there now is an OECD system in place, the international community looks to you to ensure that it continues to live up to its potential.

As the United Nations' focal point for business and human rights, I very much look forward to working with you on our common and truly historic mission. To advance the

\* John G. Ruggie is Kirkpatrick Professor of International Affairs and Director, Mossavar-Rahmani Center for Business and Government, John F. Kennedy School of Government, Harvard University; and Affiliated Professor in International Legal Studies, Harvard Law School. He is beginning his second three-year term as Special Representative of the UN Secretary-General for Human Rights.

dialogue, let me summarise where my mandate currently stands, and draw out some implications that may be relevant for the Guidelines and NCPs.

I was appointed in July 2005, to pick up the pieces of a Geneva train wreck produced when an expert subsidiary body of the then UN Commission on Human Rights proposed a set of draft Norms on transnational corporations and other business enterprises.

This sought to impose on companies, directly under international law, the full range of human rights duties that states have accepted for themselves – from respecting rights all the way up to fulfilling them. The roles of states and firms were differentiated only by the slippery distinction between primary and secondary duties, and by the amorphous concept of corporate spheres of influence, invoked as though it were the functional equivalent of states' territorial jurisdiction. Human rights NGOs were uniformly in favor; business was vehemently opposed. Governments did not approve the proposal, establishing my mandate instead – essentially, to start all over again.

Now fast forward to 2008. Just last week the UN Human Rights Council adopted a resolution by acclamation welcoming the policy framework for business and human rights that I proposed in my most recent report, and asking me, in a renewed mandate, to translate its general principles into operational terms. My proposal was supported by the major international business associations and leading human rights organisations, with whom I've been in close consultation for the past three years.

The policy framework is organised around three core principles: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for greater access to effective remedies.

The first principle is the state duty to protect. It is often stressed that governments are the most appropriate entities to make the difficult balancing decisions required to reconcile different societal needs. But in the area of business and human rights, my research and consultations raised questions about whether governments, on the whole, have got the balance right. Many governments take a relatively narrow approach to managing business and human rights. It is often segregated within its own conceptual, and typically weak, institutional box.

Often human rights concerns are kept apart from, or heavily discounted in, other policy domains that shape business practices, including commercial policy, investment policy, securities regulation, and corporate governance. This is roughly equivalent to a company setting up a corporate social responsibility department in isolation from its core business operations. Inadequate domestic policy coherence then is replicated internationally.

Therefore, the human rights policies of states in relation to business need to be pushed beyond their narrow institutional confines. Governments must actively encourage corporate cultures respectful of human rights at home and abroad. They need to consider human rights impacts when they sign trade agreements and investment treaties, and when they provide export credit and investment guarantees for overseas projects, especially in contexts where the risk of human rights challenges is known to be high.

The framework's second component is the corporate responsibility to respect human rights – meaning, in essence, to do no harm. In addition to compliance with applicable laws, companies are subject to what is sometimes called a social license to operate – or prevailing social expectations, which typically evolve more rapidly than the law. The baseline social expectation for companies is that they respect human rights, as is widely recognised by firms and business groups in their voluntary initiatives.

Yet how do companies know they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence? In fact, relatively few do. Accordingly, my report outlined a due diligence process for companies to manage the risk of human rights harm with a view to avoiding it.

Access to remedy is the third principle. Even where institutions operate optimally, disputes over adverse human rights impacts of companies are likely to occur, and victims need redress. Currently, access to formal judicial remedies is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped – from the company level up through national and international spheres. My report to the Council noted some desirable changes on the judicial front. And it identified criteria of effectiveness for non-judicial grievance mechanisms.

Those, in brief, are the elements of the framework I am now called upon to operationalise. I also submitted a companion report clarifying the legal and non-legal meanings of corporate complicity in human rights abuses committed by others.

The resolution extending my mandate invites international and regional organisations to seek my views when formulating or developing their own policies and instruments related to human rights. So I was delighted and grateful to receive your invitation to join you here today.

We have learned a great deal about business and human rights since 2000, when the Guidelines were last revised and the NCP process was established. We understand the challenges more clearly, and we know better what works, and what doesn't, in devising effective responses. No doubt the OECD in due course will want to draw on this experience in updating the human rights component of its own system. So permit me to share a few thoughts based on my research and consultations over the past three years. I'll make five brief comments on the Guidelines, and then turn to the NCPs.

First, the fact that the human rights coverage of the Guidelines is anchored in host governments' international obligations no longer corresponds to the needs or practices of transnational business itself when caught up in real-world dilemma situations. For example, in a joint submission to my mandate, the ICC, IOE, and BIAC stated that in "weak governance zones" companies are "expected to respect the principles of relevant international instruments where national law is absent". Moreover, where national law conflicts with international instruments, leading firms are struggling to find ways of honoring the spirit of international standards without violating national law. Companies, including internet providers, for instance, require greater guidance for dealing with such dilemmas.

Another feature of the Guidelines that merits attention is their lack of specificity with regard to human rights beyond the sphere of labor practices, and the omission altogether of some critical areas, such as business impacts on communities, including indigenous peoples. The impact of companies on communities accounted for some forty-five per cent of all public allegations of corporate-related human rights abuses that we tracked between 2005 and 2007. Clearly, greater guidance for companies is required here as well.

Third, our research shows that companies can impact virtually all internationally recognised human rights. Therefore, any attempt to construct a limited list of rights that companies should consider will almost certainly miss one or more that may turn out to be significant in a particular situation. At this point in time, I believe it would be more helpful to business to elaborate process guidelines, coupled with effective grievance mechanisms. That is why my most recent report proposed the core elements and scope of a human

rights due diligence process. In the OECD Guidelines, the section on the environment is considerably more advanced in this regard than the corresponding human rights language.

A fourth issue concerns supply chains. Current Guidelines language recommends that companies encourage their suppliers to apply comparable practices. But a due diligence perspective would have companies take into account the human rights performance of both current *and* potential business partners, and also to consider the possible adverse impacts of their own purchasing practices.

Finally, even though the OECD's work on weak governance zones is not part of the Guidelines, it has much to offer. The human rights regime cannot be expected to function as intended when a country is engulfed in civil war, for instance. In such situations, the home countries of multinationals should play a more active role in providing information about human rights risks and, especially where the investment involves home country support, in providing greater oversight. The same is true of investments supported by international financial institutions.

Turning to the NCPs, it might be useful for me to summarise the results of our year-long research and consultative process examining the features that are widely believed to form the basis of effectiveness in human rights grievance mechanisms. We identified six such principles in my recent report:

- Legitimate: a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.
- Accessible: a mechanism must be publicised to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.
- Predictable: a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.
- Equitable: a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.
- Rights-compatible: a mechanism must ensure that its outcomes and remedies accord with internationally recognised human rights standards.
- Transparent: a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake.

Applied to the NCPs, these principles are sufficiently broad to provide room for the expression of different political cultures and institutional arrangements within OECD countries regarding how they might be realised in practice. But they do suggest a number of specific questions.

For example: Does the “functional equivalence” standard for NCPs include a sufficiently detailed common understanding among them of what they are expected to do? Is it clear to potential users what they, in turn, can expect from the NCP process? Where NCPs are housed primarily within government departments tasked with promoting business, trade and investment, how are potential conflicts-of-interest managed?

Furthermore, are NCPs resourced to undertake adequate investigation of specific instances, and given either the training to provide effective mediation themselves, or the

capacity to use external mediators when needed? Are NCPs structured in a way that helps them manage the tension between being neutral conciliators, on the one hand, and assessors reaching authoritative recommendations, on the other?

Does the prevailing level of transparency provide sufficient assurance to aggrieved parties? Is it optimal for peer learning across NCPs? Is there adequate guidance and oversight of NCPs at the national level, and by the Investment Committee safeguarding the brand integrity of the OECD system as a whole?

I simply leave these questions with you because, needless to say, you are much better equipped to answer them than I am.

Let me draw these remarks to a close. Kofi Annan, my former boss and still my teacher, once said: “if we cannot make globalisation work for all, in the end it will work for none.” I want to reassure you that the OECD is not expected to solve the many challenges of business and human rights by itself; indeed, they are not all under the control of governments and businesses located within the OECD countries and adhering states.

But the Guidelines and NCPs are critical, and in some respects unique, elements in the overall architecture. And cooperation with other international actors, including the United Nations, will yield greater benefits all around: to individuals and communities, to businesses, and to our respective institutions and their missions. Therefore, thank you again for inviting me, and enabling us to begin our dialogue on how to ensure that globalisation does work for all.

## ANNEX 1.A6

## Consultations with Business, Trade Unions and Non-Governmental Organisations

*Every year when the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises meet to review their experiences in performing and promoting the implementation of the Guidelines, they also engage in consultations with the Business Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC), and with non-governmental organisations, notably OECD Watch, to seek their input on how to further enhance the effectiveness of the Guidelines.*

*The following texts are published in their original form. The views expressed are those of the authors, and do not necessarily reflect those of the Organisation or of its member countries.*

### Trade Union Advisory Committee (TUAC) Submission

#### Introduction

Eight years after the revision of the OECD Guidelines for Multinational Enterprises in 2000, nearly 100 cases have been raised by trade unions. The Trade Union Advisory Committee (TUAC) list of cases includes 91 cases as of May 2008, but the actual number is higher as we have not received detailed information on all the cases. It appears, however, that fewer cases have been raised on the trade union side in 2008 than in recent years.

In order to review the performance of National Contact Points (NCPs), this paper examines the cases in terms of length of treatment by NCPs, type of breach, where the issue has arisen, nationality of the involved NCP and outcome. It also discusses factors that can help explain the differences in NCP performance, such as structure, differing interpretations of the Guidelines, lack of accountability and resources.

## 1. Key findings and recommendations

### 1.1. Findings

- Most cases concern breaches in adhering countries. In 2007, however, there was a rapid rise in the number of cases in non-adhering countries, more specifically in the Asian region.
- On average, NCPs need between one and two years to handle a case (15 months if only closed cases are considered and 20 months if all ongoing cases are included). The speed with which cases are being treated, especially in Asia and North America, needs to be improved. The NCPs in France, Japan and the US are responsible for 75% of the cases that have been pending for more than three years.
- The large majority of cases relate to violations of trade union rights. Anti-union behaviour, non-compliance with contractual obligations and no prior notice in case of restructuring are the issues that are most often raised with NCPs.
- Anti-union behaviour is most frequent in Asia and North America, while no prior notice in case of restructuring is more common in Europe than elsewhere.
- There is a growing number of transatlantic cases. Trade unions may prefer to submit cases involving companies headquartered in Europe since, in general, NCPs in Europe are believed to function more effectively than their American and Asian counterparts.
- Over 60% of the cases have been concluded and about 60% of those have had some positive outcome. But only in half of those cases was the intervention of the NCP helpful for the outcome.
- Some NCPs offer mediation to the parties involved, which may be necessary in order to establish a constructive dialogue between the parties.
- The Dutch and British NCPs have been restructured. Other NCPs should take stock of the situation to undertake reforms to improve effectiveness.
- Narrow interpretations of the investment nexus and the “non-action” attitude of some NCPs regarding parallel legal proceedings remain important obstacles to the resolution of cases.

### 1.2. Recommendations

- Labour ministries should be more frequently involved in the work of NCPs.
- NCPs need credible structures and should avoid excessive turnover of staff. Bilateral structures are for obvious reasons not appropriate and may lead to one-sided evaluations of cases.
- NCPs need to improve consultation and collaboration among themselves and should encourage and call upon each other to deal with cases in a proper way.
- The OECD Investment Committee should strengthen the visibility of the Guidelines by applying a more regional perspective on its promotional activities.
- It should also develop a real peer monitoring process to improve and encourage the functioning of NCPs. This could help shorten the unnecessarily long time with which cases are being dealt with.

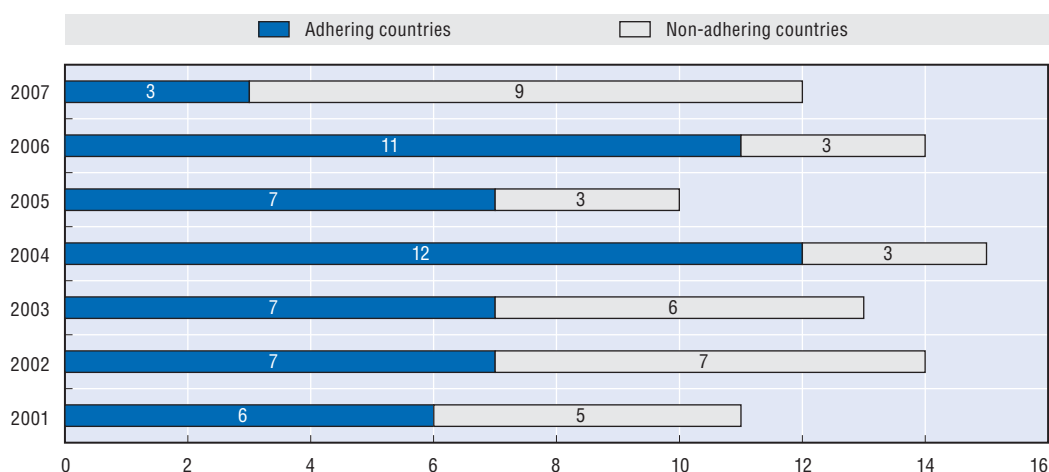
## 2. Cases

### 2.1. General features

Trade unions have raised over 90 cases since the 2000 review of the Guidelines. This paper, however, does not include cases submitted during 2008. This analysis is therefore based on the 89 cases registered in the TUAC list of cases by the end of 2007. 65% of them have been closed, while 35% are still pending.

Between 10 to 15 cases are raised yearly. The highest number of submissions was recorded in 2004, while the lowest in 2005 (Figure 1A6.1). Most cases concern breaches in adhering countries. In 2007, however, there was a significant increase in cases in non-adhering countries, notably in the Asian region.

Figure 1A6.1. **Number of cases submitted by trade unions divided by breaches in adhering and non-adhering countries**



The lack of clear time frames for dealing with cases remains an important obstacle to the effective resolution of cases. On average, NCPs take over 15 months to conclude consideration of a case. If all the pending cases are included, the average increases to 20 months. Nevertheless, overly restrictive interpretations of deadlines (as applied by some NCPs) may also hamper the process. It should also be remembered that concluding a case does not mean that the issue is resolved.

The longest lasting case, among the closed ones, is Bayer, which took four years to resolve. If pending cases are also included, there are three cases that have been going on for more than five years. Of the 32 ongoing cases, 16 have been pending for more than two years, of which 12 for more than three years. Nine of those 12 cases have been submitted to the French, Japanese and the US NCPs.

### 2.2. Breaches

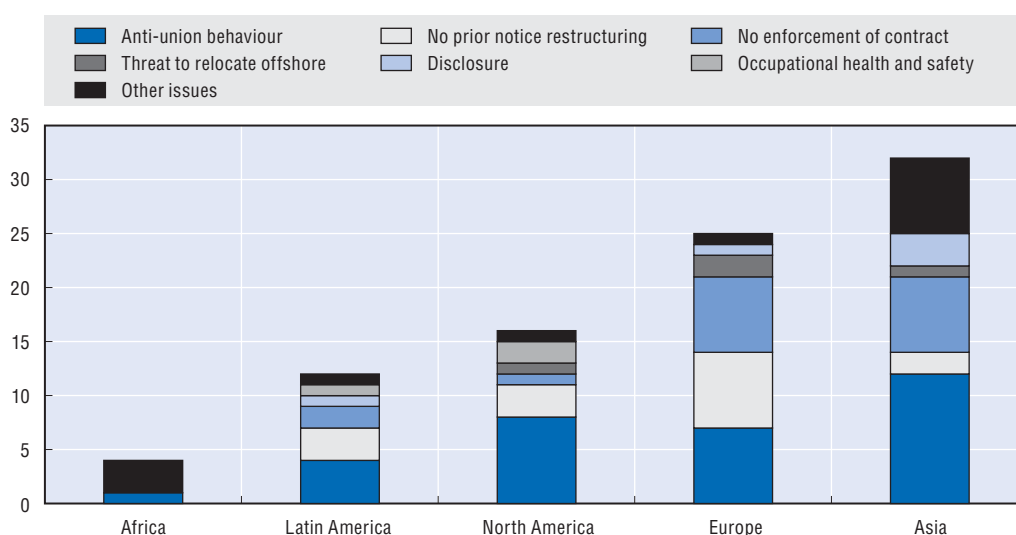
Most of the trade union cases relate to labour issues, although some cases have been raised on other grounds. They can be divided into seven categories: anti-union behaviour, noncompliance with contractual obligations, no prior notice in case of restructuring, threat to relocate offshore, disclosure of information, occupational health and safety and other issues. However, several of these categories are closely linked and many cases address

several issues. In spite of this, we have tried to identify the main issue in each case. The result can be seen in Table 1.A6.1, which identifies and ranks the different types of breaches. More than 70 per cent of the cases have been raised because of anti-union behaviour, non-compliance with contractual obligations and no prior notice in case of restructuring. There are also a few cases on disclosure and occupational health and safety. Other cases include forced labour, corruption and the DRC cases among other things.

Table 1.A6.1. **Cases divided by breach**

Types of breaches	Chapter of the Guidelines	In %
<b>Anti-union behaviour</b> No respect for trade union rights – workers are not allowed to organise, efforts to erode union presence and capacity, intimidation/threats, establishment of management-controlled unions etc	Ch. IV §1	36%
<b>Non-compliance with contractual obligations</b> Collective bargaining agreements are violated/not negotiated/not renewed, wages are not paid, cuts in wages or other benefits ( <i>e.g.</i> pensions and healthcare), illegal dismissal or no reinstatement of workers	Ch. IV §2, §4a, §8	19%
<b>No prior notice in case of restructuring</b> Lack of information or consultation with workers in case of restructuring or closure of business operations	Ch. IV §6	17%
<b>Threat to relocate offshore</b>	Ch. IV §7	6%
<b>Disclosure of information</b> No transparency and no disclosure of financial information of the company	Ch. III, IV §3	4%
<b>Occupational health and safety</b>	Ch. IV §4, V	3%
<b>Other issues</b> Forced labour, supply chain, broader human resource issues, bribery and corruption	Ch. II, IV §1, VI	15%

Figure 1.A6.2 shows the different breaches divided by region. Anti-union behaviour is most frequent in Asia, while restructuring cases are occurring mostly in Europe. Non-compliance with contractual obligations is common both in Europe and Asia. The relative high share of other breaches in Asia can be explained by the number of cases regarding Burma. Most of the cases in North America relate to anti-union behaviour.

Figure 1.A6.2. **Types of breaches per region**

### 2.3. Most demanded/solicited NCPs

Only 22 of the NCPs have been formally requested by trade unions to contribute to the resolution of cases. Thus, nearly half of the NCPs have little or no experience with considering labour issues (although some cases concerning labour issues have been raised by other parties). 11 NCPs have each received three or more cases submitted by trade unions. The US has received the highest number of cases. It is followed by Korea, the UK, Netherlands and France.

The NCPs of Brazil, France, Japan, Korea, the Netherlands, the UK and the US have received almost 70% of the cases submitted by trade unions. Table 1.A6.2 shows the number of cases that these NCPs are responsible for, how many have been pending for one year or more, how many have been pending for two years or more, how many are still ongoing and how many of these that were filed before 2006. Cases pending for two years or more are particularly frequent with the French, Japanese and US NCPs. This can partly be explained by parallel legal proceedings. The NCP of Japan, for example, does not handle cases while there is an ongoing proceeding elsewhere.

Table 1.A6.2. **The NCPs with the highest number of cases**

	No. cases	> 1 year	> years	Ongoing	Ongoing: raised before 2006
US	15	6	4	6	3
UK	10	4	1	7	1
Korea	10	2	1	2	0
Netherlands	8	4	2	0	0
France	7	3	3	3	3
Brazil	6	0	1	3	1
Japan	5	0	4	4	4
Others	28	5	9	8	2

### 2.4. Regional location of MNE

Figure 1.A6.3 shows the regional location of the headquarters of the companies that are subject to cases. The bulk of the companies are headquartered in Europe.

Figure 1.A6.4 shows a growing number of transatlantic cases over the years with the exception of 2007. Transatlantic cases are defined as cases where European-headquartered companies are involved in breaches that take place in North America and *vice versa*. In 2007, there were an increasing number of cases concerning breaches in Asia involving companies headquartered in Europe. Some trade unions have intentionally raised cases involving companies headquartered in Europe since European NCPs generally are considered more effective than others.

It is also interesting to note that a number of companies are recurring in several cases. Violations of the Guidelines by Unilever have been raised five times, Nestlé four times, British American Tobacco three times and Bata and Imerys twice. This does not necessarily mean that these companies are worse than others, but it does give reasons for concern. In the case of Unilever and Nestlé, unions observe that the responsible management at headquarters do not want to get involved with corporate conduct at the local level, even if this means that the Guidelines are being violated.

Figure 1.A6.3. **Number of breaches by MNEs headquartered in Asia, Europe, Latin America and North America**

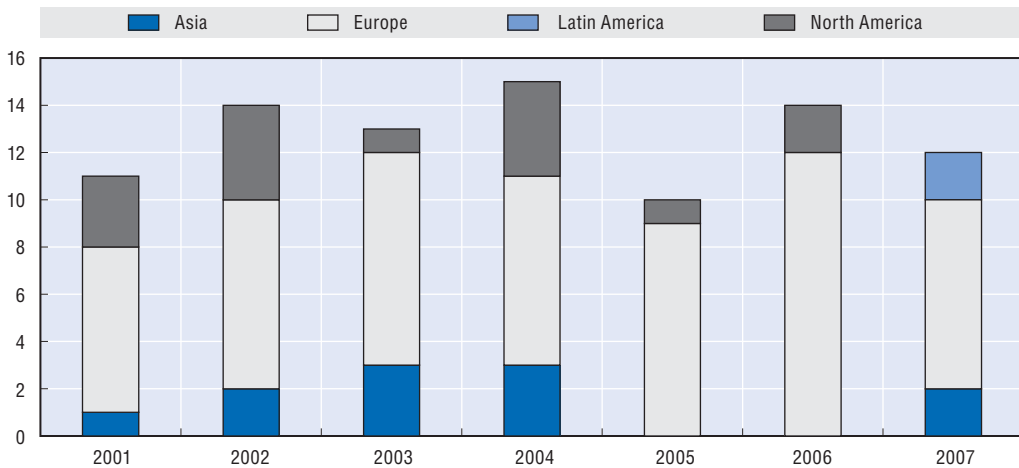
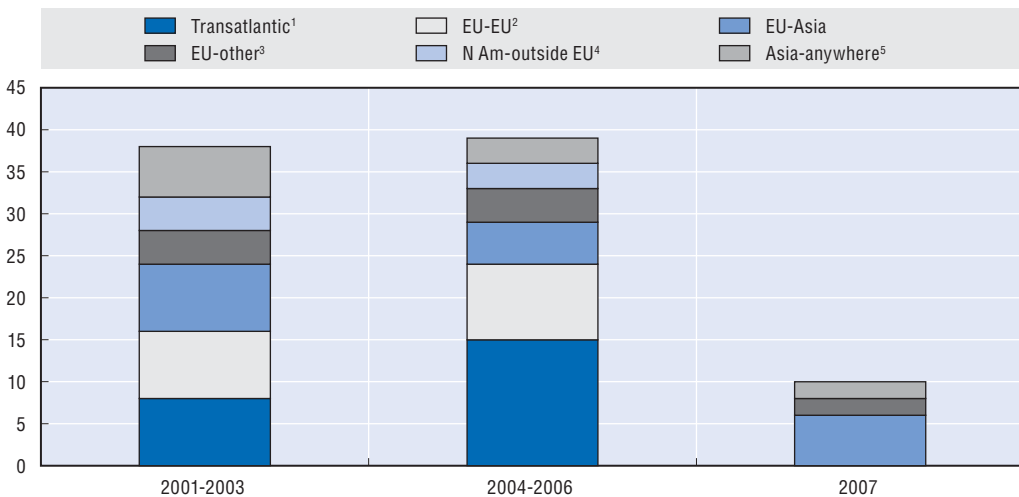


Figure 1.A6.4. **Cases divided by region of the MNE and the region of the breach**



1. Transatlantic case: European MNE involved in a breach taking place in North America and vice versa.
2. EU-EU: European MNE involved in a breach taking place in Europe.
3. EU-other: European MNE involved in a breach taking place outside Europe and North America.
4. N Am-outside EU: North American MNE involved in a breach taking place outside Europe.
5. Asia-anywhere: Asian MNE involved in a breach.

## 2.5. Outcome of cases

About 60% of the closed cases have, in the opinion of the union concerned, resulted in a loosely defined positive outcome. We have, however, also included cases which have not been resolved, but where the NCP has followed the procedure correctly and published a public statement accordingly. In 53% of “positive outcome cases”, the intervention of the NCP contributed to the result. In 38%, pressure on the company through different means, but without any help of the NCP, led to some kind of positive outcome. Three per cent of the cases were resolved through legal procedures.

Only in 23% of the cases, NCPs issued a public statement.

One way to enter into a dialogue with a company to resolve a problem, without the assistance of NCPs, is through International Framework Agreements (IFAs). These are worldwide agreements between Global Union Federations and multinational enterprises covering, as a minimum, basic trade union rights. But they may also cover other issues such as the supply chain and occupational health and safety. The number of IFAs has grown rapidly in recent years. About 60 such agreements had been signed by the beginning of 2008. A number of IFAs refer not only to the ILO core labour standards but the OECD Guidelines. An example of such an agreement between the Union Network International (UNI) and ISS is attached in Box 1.A6.1.

Some companies have signed IFAs after having been the subject of a Guidelines case, while others have been more willing to negotiate with the union raising a Guidelines case because there was also an IFA.

The Guidelines influence corporate conduct and investment flows also in other ways. The Norwegian pension fund KLP recently excluded G4S from its investment portfolio referring among other things to the case brought to the UK NCP by UNI.

### 3. NCP performance

Several factors can help explain the difference of performance between NCPs.

#### 3.1. Structure of NCPs

The outcome of a case largely depends on the effectiveness of the NCP. This is partly linked to the structure of the NCP.

According to the OECD, 26 of the NCPs consist only of (single or multiple) representatives of government departments. One NCP is bipartite, 9 are tripartite and 2 are quadripartite.

Of the 26 NCPs that are made up of government departments, 11 have a labour or social department, 6 have no labour/social department but have some involvement with both social partners, while 10 have no labour/social department and no formal involvement with both social partners. Naturally, these 10 NCPs do not have the adequate knowledge and experience to deal with cases concerning chapter four on employment and industrial relations. NCPs should ensure that labour ministries are properly involved in their work.

The Romanian NCP is the only NCP with a bipartite structure. It includes different government departments and employers' representatives, but not trade unions. Such a structure is unacceptable, and obviously, poses questions as to the NCP's objectivity. The structure may explain why the NCP refused a case regarding Mittal Steel Group in 2006/2007.

It is important to have a credible NCP structure which is respected by all the parties concerned. Trade unions prefer tri- or quadripartite structures as this makes it easier to enter into constructive dialogue with NCPs. Consequently, such NCPs are usually regarded as more effective.

The Dutch and British NCPs have been restructured. This may lead to a more effective treatment of cases. It would be very important to see similar developments in other NCPs as well.

#### 3.2. Different interpretations of the Guidelines

NCPs do not interpret the Guidelines in the same way. While some NCPs are willing to deal with cases despite parallel proceedings, others, such as the NCP of Japan, refuse to

take any action while there are other ongoing procedures. This is particularly problematic for cases in non-adhering countries, since legal remedy is often sought before raising a case with the relevant NCP. Moreover, there are frequent shortcomings in the legal systems in some nonadhering countries, especially regarding law enforcement. While some NCPs argue that they do not want to interfere with host countries' legal systems, their task is to uphold the implementation of the Guidelines and not to make judgements over whether national law has been violated.

Some NCPs have also limited the receivability of cases by interpreting the so called "investment nexus" extremely narrowly.

### **3.3. Lack of accountability of NCPs**

One of the initial principles of NCP functioning is accountability. One way of improving this is to develop the NCPs' annual reports into an instrument for accountability. Each NCP should provide an annual account of its activities including its efforts to resolve cases. So far, annual reports provide at best a summary note on cases and a description of promotional activities by NCPs. The OECD Investment Committee should evaluate the effectiveness of the NCPs by identifying the weaknesses and problems as well as the successes. A recommendation should follow to improve the performance of each NCP – as set out by the procedural guidance.

The OECD Investment Committee should also introduce a peer review process. This should take place in cooperation with the Trade Union Advisory Committee (TUAC), Business Industry Advisory Committee (BIAC) and OECD Watch. The formal peer reviews should lead to separate reports in which the functioning of each NCP is evaluated. Shortcomings and successes should be noted so that appropriate recommendations to the concerned governments can be made.

### **3.4. Other factors**

Other factors that affect the performance of NCPs are the availability of sufficient resources, the level of staff turnover and the willingness of the involved parties to reconcile. Although an NCP cannot force a party to reconcile, it can play an active role by encouraging both parties to engage and be constructive. However, many NCPs appear to be reluctant to make use of the influence that they actually have and prefer a "hands off" approach.

Some NCPs have offered mediation in order to resolve a case. This can initiate and strengthen dialogue between the social partners.

NCPs also need to strengthen the collaboration among themselves on the treatment of cases. The NCP in the country where the company is headquartered should assist the NCP in the country where the breach has occurred (that is if it is not the same country). Too often this is not the case.

Finally, the OECD Investment Committee should strengthen the visibility of the Guidelines by adopting a more regional focus. This could be done through regional OECD Round Table Programmes to promote the Guidelines such as the OECD Round Table programmes on Corporate Governance and Governance of State-Owned Enterprises.

The Guidelines have yet to realise their full potential as an effective instrument to influence corporate conduct. The G8 mandate for 2007 raises the visibility and the expectations on the instrument and on NCPs. Governments have to rise to this challenge. The lack of trade union cases in 2008 is a source of concern.

### Box 1.A6.1. ISS – Uni Global Agreement

#### Purpose

**ISS and UNI have enjoyed a positive relationship for many years, having first signed a global agreement in 2003.**

As ISS expands, however, and as union organising activities among service staff increase, it has become clear that the original global agreement needs additional clarity and specificity in order to provide meaningful guidance to ISS managers and UNI unions.

Therefore the parties agree to take an important step to revise the global agreement in order to provide concrete commitments in the area of organising rights, and specific commitments on UNI's part to actively monitor standards in markets where ISS is operating.

Both parties are committed to a market for service employment in which workers receive decent work, and a decent wage. Both parties recognise the important role that unions play in raising and maintaining standards for these typically low wage service workers. Finally, both parties recognise that because of obstacles to the creation of unions in this industry, the employer must agree to facilitate the process of union access to workers in order to ensure that the promise of freedom of association may be fulfilled.

#### 1. Scope

1.1. This global agreement is between UNI Global Union and ISS.

1.2. "Union" refers to UNI Global Union and its affiliated unions and "ISS" refers to ISS A/S and its subsidiaries.

#### 2. Framework of Rights

2.1. ISS recognises its obligation to respect the applicable laws and public regulations concerning the treatment of its employees in the various countries in which it operates. This commitment includes, but is not limited to, a commitment to pay the legally required minimum wages and to respect limitations on the hours of work and overtime obligations.

2.2. ISS further recognises its obligation to respect the rights set forth in the ILO Conventions, including those comprising the Declaration of Fundamental Rights at Work (1), and ILO Convention 135. As such ISS agrees that it will not use child labour or forced labour (as those terms are understood within the meaning of the ILO Conventions) and that there shall be no discrimination in employment.

2.3. Finally, ISS agrees to adhere to the commitment to engage in constructive negotiations with trade unions as outlined in the OECD Guidelines for Multinational Enterprises.

2.4. In particular ISS agrees that ISS workers and workers providing services to ISS facilities are able to exercise rights to union membership and collective bargaining. All workers shall have the right to form and join trade unions (ILO Convention 87).

Subject to the terms and conditions set out in this global agreement ISS recognises the right of unions to represent union members in:

- Collective bargaining (ILO Convention 98).
- Dispute settlement procedures.
- Negotiations and consultations in those matters affecting jobs and training, where unions have a stake.

2.5. ISS and the Union jointly affirm that these union membership and collective bargaining rights can be exercised within the ISS without fear of retaliation, repression or any other form of action or discrimination.

### Box 1.A6.1. ISS – Uni Global Agreement (cont.)

#### 3. Union Rights and Union Recognition

3.1. In order to make it practicable for ISS employees to exercise the rights described above, when a UNI affiliated union notifies ISS of its intention to organise and provided, however, that there is no existing recognition of a (non-UNI affiliated) union, the parties will designate representatives to negotiate a recognition and recruitment policy based upon the following basic principles:

- 3.1.1. Representatives of the Union will be allowed unaccompanied access to meet with workers and outline the benefits of union membership (including the right to distribute union recruitment material); meetings with workers shall be allowed at a mutually agreed time, in agreed upon areas and shall be conducted in a non-disruptive manner. The parties agree that meetings shall be arranged either in breaks or after/before hours of work and, whenever possible, not within hours of work. The Union recognises and agrees that any Union access to the premises of an ISS customer is conditional on the prior consent of the customer in question. Consequently, the parties agree that in the event UNI or its affiliated unions want to meet with workers at the premises of an ISS customer, UNI or, as the case may be, its affiliated union shall ask ISS to obtain the requisite consent from the customer. In the event that the customer will not agree to such access, the parties will make alternate arrangements.
- 3.1.2. ISS will agree to an ongoing mechanism for informing new employees about the possibility of union memberships, such as distributing union recruitment material in connection with induction meetings and/or training of new employees.
- 3.1.3. ISS will remain positive in the face of union organising activities. Local ISS management will issue a written statement, which says that (within the terms and conditions of this global agreement) workers are free to meet the Union's representative(s), attend meetings and freely determine their own decision to join or not to join a union without fear of any form of recrimination;
- 3.1.4. The union will be recognised as the representative of employees so long as it satisfies the minimum legal requirements for recognition under applicable law and/or collective bargaining agreements, using the most expeditious process permitted under law and/or collective bargaining agreements.

#### 4. Union commitments

The Union recognises that the company operates in a highly competitive environment. In many markets, there are hundreds of small firm competitors, many of which do not honour wage and hour laws, let alone commitments to a union. The Union agrees to seek to raise and monitor standards among all of the companies in the markets in order to reduce the pressure on wages and conditions for ISS and to create an environment in which ISS will be able to raise standards and not compromise its competitive position.

#### 5. Resources

In support of this effort described in Section 4 above the parties agree to create of a jointly managed fund which will aim to monitor and raise standards in specific markets. The parties will make good faith efforts to determine the basic principles for the purpose, decision-making, activities and financing of the fund within 3 (three) months of the signing of this global agreement. ISS intends to donate an annual amount of Euro 100 000 to the fund.

### Box 1.A6.1. ISS – Uni Global Agreement (cont.)

#### 6. Implementation and Procedures

6.1. The Union and ISS commit to publicise this global agreement throughout its membership and corporate structures respectively. Such a process shall stress the requirement that all levels of both organisations fully respect the terms of the global agreement.

6.2. In the event that either party shows clear evidence of failure so to publicise this global agreement at any level both parties commit themselves to ensure that remedial action is put speedily in place.

6.3. In order to assess implementation and address any disputes which may arise concerning the application of this global agreement, senior corporate representatives will meet a team of representatives from the Union twice yearly. Senior labour relations management will maintain ongoing communications with the Union between those meetings. This meeting will amongst other things review mutual respect for and implementation of this global agreement.

6.4. In the event that the parties are unable to resolve a dispute arising out of this global agreement after discussion at the bi-annual meeting as set out in Section 6.3 above, the matter shall be referred to a mutually agreed independent mediator/arbitrator, who shall seek initially a mediated resolution. In the event of failure to reach a mediated resolution the independent party shall propose an arbitrated resolution which shall be binding on both parties. It shall be left for the independent mediator/arbitrator to decide, which party shall pay the costs associated with such mediation or arbitration.

6.5. For the avoidance of doubt, the dispute resolution procedure set out in Section 6.4 above shall not apply to disputes, which – directly or indirectly – relates to, affects or involves any collective bargaining agreement and/or any other local agreement. Such disputes shall be settled in accordance with the dispute resolution procedures set out in the relevant collective bargaining agreements and/or local agreements. However, the parties agree that the local ISS management and Union officials should first attempt to resolve the matter at the local or, as the case may be, national level.

6.6. UNI agrees that it will not take any public or legal action against or affecting ISS without a fair prior notice to ISS leaving ISS a reasonable period of time to resolve the dispute before any such public or legal actions are taken against the company. UNI will honour the same commitment as regards any dispute arising at a local or national level, and UNI will encourage its affiliated unions to honour the same commitment towards ISS.

#### 7. Term

7.1. This global agreement is for an indefinite period, but it may be terminated or renegotiated by either party upon giving the other party at least three months' written notice of termination.

7.2. Nothing in this global agreement shall in any way reduce or undermine existing labour relations practices or agreements relating to union rights or facilities already established by any Union members or any other union within ISS.

7.3. The parties agree that this global agreement shall replace the Global Agreement signed by the parties in 2003.

Box 1.A6.1. **ISS – Uni Global Agreement** (cont.)

**8. Explanatory notes.**

The ILO Conventions are:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87).
- Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98).
- Workers’ Representatives Convention, 1971 (Convention No. 135).
- Forced Labour Convention, 1930 (Convention No. 29).
- Abolition of Forced Labour Convention, 1957 (Convention No. 105).
- Minimum Age Convention, 1973 (Convention No. 138).
- Worst Forms of Child Labour Convention, 1999 (Convention No. 182).
- Equal Remuneration Convention, 1951 (Convention No. 100).
- Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111).

For the avoidance of doubt UNI and ISS agree that the term “union” as used in Section 3.1 to describe previously recognised unions will also include unions, which are limited to a single site or a single employer, as well as unions with a broader recognition.

## OECD Watch 2008 Review of National Contact Points and the Implementation of the OECD Guidelines

**Submission to the Annual Meeting of NCPs, June 2008\***

### Introduction

At their 2007 Annual Meeting, National Contact Points (NCPs) agreed that the 2007-08 implementation cycle on the OECD Guidelines should give priority to the improvement of NCP performance, and OECD Watch welcomes the effort by the OECD to review NCP activity. This follows the presentation by OECD Watch of its Model NCP which was intended as a positive contribution to the improvement of NCP performance. The Model NCP was the result of a broad, year-long multi-stakeholder consultation process.

Similarly, the G8, in its June 2007 Heiligendamm statement, highlighted the importance of the OECD Guidelines and the need for improving and clarifying the instrument's procedures. And on the opening day of the OECD's 2008 CSR Roundtable, the Secretary-General of the OECD, Ángel Gurría, acknowledged that NCP performance is "patchy".

OECD Watch would like to highlight the recent report of Professor John Ruggie, the Special Representative to the UN Secretary General on Human Rights and Business (SRSG) as being of particular significance. One of the key findings in Ruggie's report concerns the governance gaps in global corporate accountability and human rights and in this context he makes specific reference to the potential of the Guidelines while acknowledging the current shortfalls in the implementation procedures. We welcome the decision by the Human Rights Council to extend the Special Representative's mandate which called on him *inter alia* to make recommendations both for enhancing access to and improving the effectiveness of mechanisms like the OECD Guidelines.

The chorus of high-level voices calling for major improvements in the OECD Guidelines and NCP procedures leaves OECD Watch convinced that this year and the immediate years to come offer a unique opportunity for the OECD, the UN, State governments, the private sector and civil society to collectively participate in putting a process in motion to strengthen global corporate accountability. OECD Watch hopes that the NCPs will take advantage of this opportunity to actively and constructively engage with the Special Representative and the various stakeholders to provide an effective forum and guidance for multinational corporations to identify the persistent shortfalls and gaps in the OECD Guidelines process and to recommend concrete and effective solutions to close the governance gaps.

OECD Watch has received contributions from its members assessing their NCP and their experience with the Guidelines in the 2007-08 reporting period.<sup>1</sup> Following the Model

\* A draft of this review was submitted to the Annual Meeting of the NCPs. This final version was revised taking into account a number of comments received from various NCPs as well as additional comments from NGOs.

NCP, OECD Watch has focussed on three key elements that to a large extent decide the effectiveness of the NCP:

1. Structure and oversight.
2. Promotion and information.
3. Handling of complaints.

With a few exceptions, according to the reports that OECD Watch has received, improvements in these three key areas have been minimal. As a result, most of the concerns raised in this current OECD Watch report will sound familiar for they are concerns that have been raised time and again at previous consultations. The continuing disappointing experiences with NCPs and the procedures have contributed to a widespread perception among NGOs that the Guidelines can never become truly effective.

John Ruggie's report to the Human Rights Council has provided some support to OECD Watch's criticisms of the NCP process, when he states that the Guidelines have "too often failed to meet [their] potential".<sup>2</sup>

## 1. Structure and oversight

Model NCP Proposal:

- The MNCP should be independent, informed, and authoritative. It should command the confidence of all parties. The MNCP cannot function unless it has proper resources.
- Oversight of the MNCP should be reinforced at a national level. External advisers should assist the MNCP.

OECD Watch however is encouraged by some recent positive developments in the NCP restructuring, in particularly in the Netherlands, UK and Argentina.

The Dutch members of OECD Watch have welcomed the recent restructuring of the NCP, which has increased the independence of the NCP, as well as the new ability of the NCP to go on fact-finding missions to assess the cases brought forward. The NCP now consists of an independent chairman and three independent members who all have backgrounds in the various stakeholder groups of the NCP's work. They are independent in the sense that they operate in their personal capacity and are not bound by the policies and goals of the Dutch Government.<sup>3</sup> With the move towards more independence, the Dutch NCP has not necessarily become more authoritative. The new NCP structure still needs to demonstrate its value by showing its ability to resolve specific instances in a fair and satisfactory way.

Over the past year changes to the structure and the procedures of the UK NCP that were agreed after an 18-month multi-stakeholder consultation have started to be put in place. In fact, the development of new procedures for specific instances and the establishment of an appeals mechanism – called a review – have occupied much of the time of the newly created Steering Board, arguably the most important innovation to the UK NCP. In March 2008, a concerning development took place, with the sudden withdrawal of the Foreign and Commonwealth Office (FCO) from the NCP, claiming that it could not afford to allocate 20% of one of its official's time to staffing the NCP. This is hugely

damaging to the way in which the Guidelines are viewed internationally. The NGOs expressed their concern that the withdrawal would be interpreted by business and other parts of government as a sign that the OECD Guidelines and its implementation procedures were not to be taken seriously. It is particularly damaging to the running of the restructured NCP for the FCO to withdraw support even before the evaluation of the first twelve months of operations under the new system has been carried out. It appears that there is a likelihood that the UK NCP will revert to being a single department.

Argentinean OECD Watch members report that the Argentinean NCP is undergoing significant structural changes. While these are yet to be finalised, an Executive Committee has been informally established composed of representatives of government, business and labour unions. NGO's have been invited to participate but have not yet taken part in this Committee. The main function of the Executive Committee would be at the initial determination stage, i.e., to evaluate whether cases brought to the NCP would be accepted or rejected as a specific instance. Currently, the NGOs involved are still debating the terms of participation, including criteria for selection and participation of representatives and transparency and confidentiality principles.

The Argentine NCP actively participated in the Model NCP consultation and has used the Model to inform its NCP restructuring. An additional development within the Argentinean NCP is a personnel change that occurred in April 2008. This is noted in this year's OECD Watch Review in recognition and appreciation of the previous NCP, and his willingness to work collaboratively with all stakeholders.

At the June 2008 consultations during the Annual Meeting of NCPs, OECD Watch was informed of a welcome development within the Japanese NCP. The NCP introduced indicative time frames for specific instances, and set up a tripartite advisory committee with business and union representation.

*While the developments in these NCPs are welcomed, nearly one year after the presentation of the Model NCP, the vast majority of NCPs have made no significant steps toward implementing OECD Watch's recommendations. As a result, overall NCP performance continues to be well below acceptable and reasonable standards.*

Two of the most problematic issues with the current NCP institutional arrangements that are hampering effective implementation of the Guidelines continue to be the location of the NCPs within single (Foreign or Economic) Ministries, and the lack of independent oversight mechanisms. This can be seen among NCPs from all over the OECD territory. For example, both the German and the US NCPs are still placed in single Ministries (the Ministry of Economic Affairs and the international investment division of the State Department respectively). As Professor John Ruggie astutely observes, "[t]he housing of some NCPs within government departments tasked with promoting business, trade and investment raises questions about conflicts of interest".<sup>4</sup> OECD Watch members have considerable experience of this potential conflict of interest in the handling of cases. It has resulted in a narrow interpretation of the Guidelines, an unequal treatment of the parties, and a perception that NCP actions frequently protect business interest rather than seeking to resolve and remedy breaches of the Guidelines.

Many NCPs still lack any kind of oversight mechanism to increase their accountability such as steering groups, advisory groups or a requirement to report to parliament or to an ombudsman. OECD Watch is aware of only one case of an NCP sending the draft annual report to stakeholders for comment (the UK NCP shared its draft with the Steering Board).

The Dutch and Australian NCPs have not sent their annual report to stakeholders for comments prior its submission to the OECD Investment Committee, which is something they have done in the past. As a direct result of a lack of proper stakeholder consultation, these NCP reports tend to portray a somewhat idealised picture of the state of implementation of the Guidelines and the level of transparency and accountability towards stakeholders. Many NCPs tend to overstate their stakeholder dialogue arrangements, while overall NGOs feel the frequency and content of the consultations are woefully inadequate.

## 2. Promotion and information

Model NCP Proposal:

- The MNCP should engage in a range of promotional and training activities. These should be complemented by other government initiatives.

The NCPs' promotional and informational activities are clearly substandard in the view of the OECD Watch members that contributed to this years review. In some instances, such as in Australia and Czech Republic, the NCPs promotional and informational activities even seem to have slowed down and website accessibility and depth of content has deteriorated. The quality of NCP websites is far below what could be considered a satisfactory, minimum level of accessibility and comprehensiveness; they are often out of date. In fact some NGOs, like the Argentinean members, feel that the task of promoting the OECD Guidelines is mainly taken up by NGOs. Transparency International Germany states that *"the German NCP and the OECD Guidelines are one of the country's best kept secrets"*.

Most NCPs have undertaken some promotional activities such as presenting the Guidelines in business forums, CSR conferences or disseminating the Guidelines. The Australian NCP (along with relevant stakeholders) actively participated in a panel discussion on business and human rights, drawing on the GSL case. One of the independent members of the Dutch NCP participated in a panel discussion with NGOs from the South on the invitation of the Dutch CSR Platform and participated in a meeting organised by OECD Watch on responsible investing. Occasionally, the NCP and the OECD Guidelines are mentioned in government statements or other publications, in response to questions in parliament. In the Netherlands, a separate full time post has been created at the CSR knowledge centre (MVO Nederland), and a promotional strategy has been presented to stakeholders. The UK NCP has acted on a recommendation in OECD Watch's Model NCP and produced a standard form indicating the information that it is required. This should assist NGOs and others wishing to file a complaint.

Apart from these positive steps, in general NCP activities are hardly ever grounded in a robust and clear promotion and communication strategy to ensure all internationally operating businesses in the respective country are aware of the content of the Guidelines and understand what it means to adhere to them. Such a strategy should be based on an assessment of relevant national sectors and activities that pose risks in terms of possible non-compliance to the Guidelines, and directed at providing guidance to companies operating in these sectors to prevent often recurring breaches. The UK NCP however is planning an ambitious promotional strategy and delays in improving the website have been caused by wider government website reforms.

In addition to general awareness-raising among the public and business, NGOs have expressed concerns about the consultation arrangements of NCPs. In many OECD countries, consultations and exchanges rarely take place. When they do, NGOs feel that the meetings are failing to fulfill the NCPs' obligation to behave with transparency, visibility and accountability. It is often unclear to what extent any of the contributions or suggestions are taken up by the NCP or in any way influence the NCP's position at the Investment Committee. In Germany, the NCP holds confidential meetings with NGOs and other stakeholders on an annual basis. These meetings are the only occasions where the NCP informs stakeholders about the activities of the Investment Committee. But these meetings take place after the NCP Annual Meeting, so there is no room for NGO input beforehand.

### 3. Handling of specific instances

#### Model NCP Proposal:

- The MNCP should aim to complete the proceedings within a twelve-month time frame.
- The MNCP makes whatever efforts it properly can to resolve questions of fact, including by carrying out information-gathering or fact-finding visits.
- At each stage of the specific instance, the MNCP should follow consistent procedures, keep the parties informed and treat both fairly. At the end of the process the MNCP should issue a reasoned final statement.
- The MNCP has a dual role: that of mediator and that of adjudicator. If mediation fails then the MNCP makes a determination on compliance with the Guidelines.

In a continuing trend from 2007, there are very few positive experiences in 2008 among NGOs with the handling of their complaints. Respondents were asked to evaluate their NCP's handling of cases, outcomes of cases, treatment of parties, as well as to compare their NCP with the Model NCP in their approach to the assessment phase, fact finding, investment nexus, parallel legal proceedings, mediation phase, and final statements. This section highlights a number of recent case experiences in various OECD countries. For more information about specific cases mentioned here, and all other pending cases, please refer to OECD Watch' Quarterly Case Update, Summer 2008 (available at [www.oecdwatch.org](http://www.oecdwatch.org))

In this year's implementation period eight new cases were filed by NGOs. Two of these cases were filed by NGOs in OECD countries, two were filed by NGOs in non-OECD countries, and four were filed jointly by NGOs in the North and the South. In the same period, NCPs finalised 10 NGO cases, of which six were rejected (the majority on either investment nexus or parallel legal proceedings grounds), two were closed due to the sale of an accused company and an externally resolved case, and two concluded with an NCP statement.

In Australia, one case was filed last year that concerned the mining sector. The case was filed in June 2007, and the Australian NCP completed the initial assessment phase in accordance with their operating procedures. The case was accepted, and the complainants are perceived to be satisfied with the timeframe and the willingness of the NCP to proceed.

The case suggests a potential willingness, capacity and resources to undertake “in-country” fact finding, if necessary, albeit indirectly. As the case is still proceeding, it is too early to evaluate the NCP’s approach to the mediation phase or final statement.

In Germany, the NCP was regarded as having handled last year’s cases in an unsatisfactory manner. The NCP is seen as having narrowed its interpretation of the scope of the OECD Guidelines, and rejected even more cases on the basis of the lack of investment nexus, or due to parallel legal proceedings. The cases filed against 57 German companies by Transparency International were rejected because of these arguments. Up to date, the German NCP has rejected 7 of the 11 complaints filed, and forwarded one additional case. Only three cases were handled, for none of which the German NCP initiated a fact finding mission. Due to this unwillingness to accept cases, not much experience exists of how the German NCP would actually handle a case.

Although it was regrettable that the German NCP decided to reject the Volkswagen complaint – the first ever complaint related to climate change – in November 2007, this case is an example of how NGOs might enhance the poor transparency of some NCPs. Using the “legal approaches” provided for under the Administrative Procedures Act and the Environmental Information Act, Germanwatch was able to get access to a number of case documents that were not initially made available to the NGO. These documents included Volkswagen’s response to the complaint and a statement of the Ministry of Environment. This information will be used to make a more detailed appeal to the NCP’s rejection of the case. OECD Watch is encouraging NGOs that are unhappy with the handling of their case to explore and use such avenues (judicial review, ombudsman) in other countries as well.

In the UK, the NCP has spent a lot of time trying to conclude the outstanding NCP cases i.e. ones that had been presented before the consultation process ended. It is worth recording that after six years, the UK NCP issued a final statement in relation to the Anglo American plc Zambia case. The British Government took the position that these older cases should not fall under the revised procedures but be dealt with in an *ad hoc* manner by another civil servant operating on a part time basis in isolation from the rest of the NCP. The NGOs involved felt that they had been doubly penalised: first, the initial mishandling of their complaints by a series of NCPs had led to inordinate delays; and, second, instead of benefiting from the review their cases were being relegated to an unclear process, without any timeframes and sidelined from the mainstream NCP process. A Review Committee set up by the Steering Board has now conducted the first ever procedural review of the NCP’s handling of a Specific Instance, in relation to the BTC case. The review followed a procedural complaint by the Complainants to the Steering Board. The NCP has yet to decide whether the outcome of the review can be made public prior to a Final Statement on the case being issued. The NCP has withdrawn the Final Statement issued in August 2007.

Regarding the revised procedures the UK NGOs welcomed the clearer timeframes, the agreement to publish initial assessments and the acceptance that the NCP in the final statement would make clear when breaches have occurred. They also report that the treatment of the parties to a complaint has become more balanced. However, NGOs have voiced concerns about a number of aspects. Not only have there been unnecessary delays in bringing some of the older cases to conclusion but also there has been poor record keeping by the NCP unit (in relation to the older cases). The credibility of the NCP process depends on the careful maintenance of case dossiers and related correspondence, which requires adequate resources. Another problem that has beset many of the UK cases is the

NCP's failure to establish which aspects of a complaint are admissible at the appropriate stage. The grounds on which the NCP accepts a complaint should be set out clearly in the initial assessment and then discussed during mediation or the examination phase. At present, at the last minute, often just before a statement is finalised, issues are reopened that should have been or were decided on at a much earlier phase.

Unlike the UK, the newly established Dutch NCP did take on the cases that were filed at the NCP before its restructuring. The NGOs involved in these cases were unhappy with the handling of their case by the former NCP. Despite increased efforts by the new NCP to resolve the cases, some of the concerns of the NGOs continue to be present. Procedures are unclear and seem to be changing during the process. In particular, the procedure is still considered to be slow (due in part to legal proceedings) and its added value in resolving conflicts is not yet demonstrated.

Another question from NGOs has been what role the Dutch NCP is willing to take, that of mediator or that of independent assessor of the case. The NGOs are concerned that the NCP is reluctant to ever determine breaches of the Guidelines. In its first communication to stakeholders, the NCP stated that its primary role is that of mediator. It also stated that, in the initial assessment phase, it would take into consideration to what extent the parties were open for mediation, implying that if there was no possibility for mediation, it could reject the case on that ground. However, in a recent stakeholder consultation, the NCP gave assurances that a final statement determining compliance will be made if mediation fails, based on its own assessment and possibly including independent fact-finding.

There have been strong concerns from the NGO complainants about the Dutch NCP's handling of the G-Star case. In their view, the Dutch NCP failed to demonstrate leadership in the mediation process and in seeking to resolve the case. The Dutch NCP apparently lacked authority to persuade the company to agree to enter into a mediation process on reasonable terms. After a lengthy process with an unclear status because no mediation could be set up, the situation escalated at international level, when the Indian supplier took legal actions against the Dutch and Indian NGOs. A separate and more highly profiled mediation process was set up by the Dutch Government outside the NCP office and the NCP process was put on hold. Within the NGO community this was considered harmful for the credibility and perceived effectiveness of the OECD Guidelines and the NCP as an authoritative forum to resolve serious conflicts between civil society and business. As part of the mediated agreement, the NGOs had to withdraw their complaint with the Dutch NCP. To the disappointment of the NGOs, the NCP then issued a final statement that lacks an assessment of the validity of the complaint, an analysis of what compliance to the OECD Guidelines means in this situation and recommendations towards the parties to prevent similar conflicts in the future.

### **3.1. NCP cases: *forum dropping*?**

Many OECD Watch members have expressed their concern with regards to the transferring of cases to other NCPs, which some appear to regard as exempting them from any further responsibility. But the home NCPs cannot transfer their international obligations so easily. The procedures for forwarding cases as well as the responsibilities of the NCP after forwarding the complaint are unclear and seem to be arbitrary. In the case filed by Transparency International Germany against Ratiopharm for violations in other OECD countries, the German NCP refused to transfer the case to the relevant NCPs.

Confusion has also arisen in relation to cases involving multiple jurisdictions. The case against BP and its consortium partners in the BTC pipeline project, filed simultaneously before the UK, Italian, French, German and US NCPs, revealed the absence of coordination among the NCPs. NCPs tried to shift responsibilities from one to the other, leaving parts of the case lingering for years. In the case that Friends of the Earth filed against Shell's activities in Brazil at both the Dutch and Brazilian NCPs, the Dutch NCP initially stated that it would follow the case and assist the Brazilian NCP in the process. While the NCP offered its assistance more than once, there was no actual involvement of the Dutch NCP that could contribute to an expedited resolution of the case. Home country NCPs who receive specific instances that should officially be handled in another jurisdiction are supposed to forward the complaint to the appropriate NCP. In situations where the NCP is new or the government of is unwilling or unable to handle the case, the home country NCP should offer assistance. It may be appropriate for the home country NCP to play a more active role in cases involving serious and systematic breaches of the Guidelines. In future NCPs faced with multi-country specific instances should set down in writing how the case will be handled, by which NCP and on what basis, and this be communicated to the parties. OECD Watch believes the responsibility of the home state cannot be discharged simply by passing the buck.

#### 4. The report of the Special Representative to the Secretary-General on Business and Human Rights John Ruggie

OECD Watch welcomes the recent release of the SRSG's third report, entitled "Protect, Respect and Remedy: A Framework for Business and Human Rights," which culminated the mandate of the SRSG. The decision of the Human Rights Commission to extend the mandate to another three year period provides an opportunity to explore solutions to the governance gap identified in the report. OECD Watch believes the governance gap cannot solely be solved through legislation at state level and voluntary guidelines at multilateral level. A binding international framework is needed at UN level.

Ruggie provides a good analysis of the key problem concerning human rights and business, namely in imbalance between rights and powers of companies and an effective regulatory framework to address the human rights duties and responsibilities. However, OECD Watch believes that global standards are needed and crucial to address the gaps that he mentions.

OECD Watch welcomes the special attention in the report to the OECD Guidelines and its implementation procedure and regards this report as recognition of the concerns raised by NGOs for many years now.

The Report regards the NCPs as "potentially an important vehicle for providing remedy". But it also notes that they have "too often failed to meet this potential". With regards to the functioning of NCPs, Ruggie states: *"The NCPs are potentially an important vehicle for providing remedy. However, with a few exceptions, experience suggests that in practice they have too often failed to meet this potential. The housing of some NCPs primarily or wholly within government departments tasked with promoting business, trade and investment raises questions about conflicts of interest. NCPs often lack the resources to undertake adequate investigation of complaints and the training to provide effective mediation. There are typically no time frames for the commencement or completion of the process, and outcomes are often not publicly reported. In sum, many NCP processes appear to come up short"*.

Ruggie's report gives guidance on how measures that need to be taken to improve non-judicial mechanisms such as the OECD Guidelines. OECD Watch would draw to the Investment Committee's attention to the following elements which in Ruggie's view are minimum requirements:

- i) Legitimacy: a mechanism must have "clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process".
- ii) Predictable: a mechanism must provide "a clear and known procedure with a timeframe for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome".
- iii) Equitable: a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.
- iv) Rights-compatible: a mechanism must ensure that its outcomes and remedies accord with internationally recognised human rights standards.

Professor Ruggie, whose renewed mandate includes a request "to identify, exchange and promote best practices and lessons learned on the issue of transnational corporations and other business enterprises" observes that many NCP processes are inadequate when measured against these minimum principles.

Ruggie suggests that a revision of the Guidelines would be timely, in particular to bring the human rights provision up to date with the current best practices in standard and code development for corporate responsibility. If the OECD were to decide on a review, it would need to include significant modifications to the current procedural guidance to ensure that the shortcomings identified by Ruggie are addressed.

Such a review must be a transparent and inclusive process involving NGOs, BIAC and TUAC on an equal footing and would ideally involve wider consultation. It should consider how to amend the Procedural Guidance for NCPs so that Ruggie's principles are incorporated. The human rights provision should be reviewed so that companies are left in no doubt that "their responsibility to respect human rights exists independently of States obligations and is a baseline expectation". The references in the Commentary should also be amended to include the International Bill of Rights. Guidance to companies on how the human rights provision can be operationalised – particularly in conflict or weak governance zones – should be elaborated.

## 5. The Investment Committee's Review of NCPs performance

In its Model NCP, OECD Watch called on the Investment Committee to consider how its role could be revitalised in order to ensure consistency and coherence in the treatment of cases and the interpretation of the Guidelines. OECD Watch welcomes the initiative taken by the Working Party to create a task force of interested delegations to carry out a survey of NCP performance, and has submitted detailed comments on a draft version of the Review of NCP Performance (DAF/INV/WP(2008)1). However, the final report (Review of NCP Performance: Key findings DAF/INV/WP(2008)1/FINAL) fails to take into consideration any of OECD Watch's comments and is still far from depicting an accurate picture of NCP performance. While this initiative creates some space to discuss some of the best practices, it can hardly be regarded as an appropriate answer to the lack of oversight by the Investment Committee.

The survey has provided some interesting insights into the current functioning of NCPs. However, the Review of NCP Performance: Key findings fails to contribute to the commitment made by NCPs to focus on improving NCP performance, as no clear recommendations for improvements are presented. The current report is an assessment of the current status quo but does not provide NCPs with clear guidance for improving their performance. OECD Watch calls on the Investment Committee and the task force to go beyond this review to develop recommendations for effective NCP structures, promotion and handling of specific instances.

The work of the task force on NCP performance should therefore be further enhanced and methodologies should be developed to assess levels of NCP performance and measure progress. Given that the often referred to method of “peer learning” has not resulted in a substantial uptake of needed improvements, OECD Watch recommends that the Investment Committee reconsider effective peer review mechanisms to improve NCP performance.

*Prepared by the OECD Watch secretariat based on input from its members*

### **Notes**

1. Contributions were received from members in Australia, Argentina, Brazil, Canada, the Czech Republic, Denmark, Germany, India, the Netherlands, Norway, Philippines, Peru, Romania, Spain, South Korea, the United Kingdom.
2. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative to the United Nations Secretary General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008
3. Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises OECD Guidelines for multinational enterprises: reports by the national contact points, p. 87.
4. Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative to the United Nations Secretary General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008.

## ANNEX 1.A7

## *Memorandum of Understanding between the OECD and ISO in the Area of Social Responsibility*

*On 5 May 2008, the OECD and the International Organisation for Standardisation (ISO) concluded a Memorandum of Understanding with a view to ensuring that the proposed ISO 26000 Standard on Social Responsibility and related activities are consistent with and complement the OECD Guidelines for Multinational Enterprises.*

### **Memorandum of Understanding between the Organisation for Economic Co-operation and Development (OECD) and the International Organisation for Standardisation (ISO) in the area of social responsibility**

Whereas the OECD Guidelines for Multinational Enterprises (the OECD Guidelines)<sup>1</sup> which are an integral part of the OECD Declaration on International Investment and Multinational Enterprises, are recommendations addressed by governments to multinational enterprises, and that the implementation procedures of the Guidelines are legally binding on adhering governments in accordance with the OECD Council Decision of 27 June 2000;<sup>2</sup>

Whereas in particular that the OECD Guidelines provide for voluntary principles and standards for responsible business conduct in all major areas of business ethics consistent with applicable laws; that adhering governments are committed to encourage the enterprises operating into their territory to observe the OECD Guidelines wherever they operate; that the OECD Guidelines are endowed with a unique implementation mechanism – the specific instance facility – responsible for the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances, and that they reflect good practice for all enterprises;

Whereas adherence to the OECD Declaration including the Guidelines is open to non-OECD governments;<sup>3</sup>

Whereas the OECD through the Investment Committee is responsible for the effective functioning of the OECD Guidelines and thus entitled to make recommendations to that effect;

Whereas the International organisation for Standardization (ISO) is a worldwide federation of national standards bodies, that develops voluntary, consensus International Standards based on input through national standardization bodies and organisations in liaison;

Whereas ISO has undertaken the development of an International Standard to provide guidance on social responsibility,

And noting that it is in the interest of OECD and ISO to establish a Memorandum of Understanding (MOU) to assist in governing their co-operation in the area of social responsibility;

The OECD and ISO (hereafter “the parties”) hereby **agree** as follows:

#### Article 1

##### Purpose and scope

1.1. The purpose of this Memorandum of Understanding is to establish between the parties co-operation with a view to ensuring that the ISO International Standard on Social Responsibility and ISO activities relating thereto are consistent with and complement the OECD Guidelines for Multinational Enterprises.

1.2. The parties will be mutually supportive of each other. The areas of co-operation between the parties will include the development of the International Standard on Social Responsibility and periodic review of the ISO International Standard on Social Responsibility for confirmation, revision or withdrawal. The co-operation will encompass any issue relating to the principles and standards promoted by the OECD Guidelines and their implementation.

#### Article 2

##### Understandings

The parties agree:

2.1. That the future ISO International Standard on social responsibility needs to be consistent with the principles and standards of the OECD Guidelines and their implementation.

2.2. That ISO will address any concerns raised by the OECD in the development and promotion of the International Standard on social responsibility.

2.3. That the OECD will be consulted in a timely fashion and have the right to comment at all stages in the development of the International Standard on Social Responsibility and ISO commits to circulate its comments on the draft International Standard to all statutory ISO members, to the D-liaison organisations in the ISO Working Group on Social Responsibility and to the Technical Management Board at the same time that the draft is circulated to a wider group.

2.4. That, consistent with the ISO/IEC Directives, Part 1, ISO will consult with and seek support of the OECD for the final draft of the International Standard on social responsibility.

2.5. That, in the event that the OECD does not provide its support, ISO will communicate its comments to all statutory ISO members participating in the SR WG, to the D-liaison organisations in the ISO Working Group on Social Responsibility and to the Technical Management Board.

2.6. That OECD assistance or participation provided in this MOU in any ISO process or activity relating to development, promotion, support, evaluation or review of the ISO International Standard on Social Responsibility does not imply formal endorsement by OECD of that ISO International Standard or any other ISO product or activity.

2.7. That any ISO activities and/or publications for the promotion, support, evaluation and approval of any published ISO International Standard on social responsibility, insofar as they implicate OECD Guidelines, will facilitate greater awareness and wider observance of the OECD Guidelines in accordance with their object and purpose.

### Article 3

#### Mutual consultation

The OECD and ISO will maintain regular consultations as necessary on activities of common interest for the purpose of furthering the mutual achievement of the terms of this MOU.

### Article 4

#### Participation

4.1. The parties agree on the full participation of the OECD in the relevant Working Group activities and related bodies, whether formal or informal, relating to the development of the International Standard on social responsibility based on the rules established by the Working Group.

4.2. The parties also agree on the participation of relevant ISO representatives in the appropriate OECD bodies relating to further development of the OECD Guidelines based on the Rules of procedure of the Organisation and on the Decision by the Council governing our Relations with International Non-Governmental Organisations.

4.3. Nothing in this MOU shall be construed to permit either party to use or permit to use the logo of the other party without obtaining the other's prior written consent.

### Article 5

#### Exchange of Information

5.1. Before the OECD or ISO publishes any press release relating to this MOU and any subsequent work undertaken in this context, each entity will share the draft press release with the other for approval.

5.2. The OECD and the ISO will arrange for the exchange of information, publications and documents and will inform each other of forthcoming meetings as necessary to achieve the objectives of this Memorandum of Understanding.

### Article 6

#### Working arrangement

The Secretary-General of the OECD and the Secretary-General of the International organisation for Standardization or their duly mandated representatives may make appropriate working arrangements for the implementation of the provisions of this Memorandum of Understanding.

### Article 7

#### Other provisions

7.1. This Memorandum of Understanding is entered into by both parties for the duration of the development and promotion of the International Standard on social

responsibility and any periodic review of the International Standard for confirmation, revision or withdrawal.

7.2. The parties shall make every effort to resolve amicably by direct informal consultations any disagreement which may arise concerning the commitment made under this Memorandum of Understanding.

7.3. Termination of this Memorandum of Understanding may occur at any time subject to 90 days' advance written notification.

7.4. This Memorandum of Understanding shall enter into force upon the date of signature by the duly authorised representatives of the parties.

Thelma Askey  
Deputy Secretary-General  
Organisation for Economic  
Co-operation and Development

Alan Bryden  
Secretary-General  
International Organisation for Standardisation

Date of signature

Date of signature

### Notes

1. The text of the Guidelines can be found at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
2. At present, 40 countries adhere to the OECD Declaration, namely the 30 OECD members (Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States and 10 non-OECD members (Argentina, Brazil, Chile, Egypt, Estonia, Latvia, Lithuania, Israel, Romania and Slovenia).
3. Applications for adherence by four additional non-OECD Members are currently under consideration.

## PART II

# **OECD-ILO Conference on Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy**



## Acknowledgements

The National Contact Points, the OECD Investment Committee and Employment, Labour and Social Affairs Committee, and the ILO wish to thank all of those who actively contributed to the OECD-ILO Conference on Corporate Social Responsibility held in Paris on 23-24 June 2008 in conjunction with the eighth annual meeting of the National Contact Points, and more particularly:

*Mr. Gilles DE ROBIEN*, Ambassador for Social Cohesion, France.

*Professor John G. RUGGIE*, Special Representative of the UN Secretary-General on Business and Human Rights.

*Mr. Vladimír ŠPIDLA*, EU Commissioner for Employment, Social Affairs and Equal Opportunities.

*Mr. Carlos A. TOMADA*, Minister of Labour, Employment and Social Security, Argentina.

*Ms. Elisabeth WALAAS*, State Secretary, Ministry of Foreign Affairs, Norway.

*Mr. Karl-Josef WASSERHÖVEL*, State Secretary for Labour and Social Affairs, Germany.

And the following invited speakers and respondents from government, business, labour, international, organisations and non-governmental organisations:

*Ms. Sharan BURROW*, President, Australian Council of Trade Unions and Vice-Chairperson of the ILO MNE Subcommittee.

*Mr. Gary CAMPKIN*, Head, International Group, Confederation of British Industry (CBI).

*Ms. Carla COLETTI*, Director of International Relations, International Metalworkers' Federation.

*Ms. Karen CURTIS*, Deputy Director, ILO International Labour Standards Department.

*Mr. John EVANS*, Secretary General, Trade Union Advisory Committee to the OECD (TUAC).

*Mr. Michael HENRIQUES*, Director, ILO Job Creation and Enterprise Development Department.

*Mr. Stephen HINE*, Head of International Relations, Ethical Investment Research Institute (EIRIS).

*Mr. Richard HOWITT*, MEP, European Parliament Rapporteur on Corporate Social Responsibility.

*Mr. Mirosław IZIENICKI*, President and CEO, Fifth Capital Group, London.

*Mr. Emmanuel JULIEN*, Deputy Director, Directorate for Social Affairs, Mouvement des Entreprises de France (MEDEF).

*Mr. S. KRISHNAN*, Additional Secretary, Ministry of Labour and Employment, India.

*Mr. David LAMOTTE*, Programme Manager, ILO Job Creation and Enterprise Development Department and a.i. Programme Manager, ILO Multinational Enterprises Programme.

*Ms. Serena LILLYWHITE*, Manager, Ethical Business, Brotherhood of St Laurence.

*Mr. Vernon MACKAY*, Chair of the OECD Investment Committee Working Party and Canadian National Contact Point.

*Mr. John MARTIN*, Director, OECD Directorate for Employment, Labour and Social Affairs.

*Mr. Hiroyuki MATSUI*, Assistant to the Director General, Nippon Keidanren, Japan.

*Mr. Lothar MEINZER*, Director, Sustainability Centre, BASF.

*Ms. Nidya NEER*, Co-ordinator for CSR and Decent Work, Ministry of Labour, Employment and Social Security, Argentina.

*Ms. Jane NELSON*, Senior Fellow and Director, Corporate Social Responsibility Initiative, Harvard University.

*Ms. Veronica NILSSON*, Senior Policy Advisor, Trade Union Advisory Committee (TUAC).

*Ms. Nicole NOTAT*, President, Vigeo.

*Mr. Joris OLDENZIEL*, Senior Researcher, Centre for Research on Multinational Corporations (SOMO), the Netherlands.

*Mr. Bülent PIRLER*, Secretary-General, Turkish Confederation of Employer Associations (TISK).

*Mr. Pierre PORET*, Head of OECD Investment Division.

*Mr. Stephen PURSEY*, Director, Policy Integration and Statistics Department and Senior Advisor to the Director General, ILO.

*Mr. Govindasamy RAJASEKARAN*, General Secretary, Malaysian Trade Union Congress.

*Mr. Manfred SCHEKULIN*, Chair of the Investment Committee.

*Mr. Nick SMYTHE*, Senior Manager and Head of Industrial Relations, Gold Fields Limited, South Africa.

*Mr. James VIRAY*, Director, Office of International Labor and Corporate Social Responsibility, US Department of State.

*Mr. Brent WILTON*, Deputy Secretary-General, International Organisation of Employers (IOE).

PART II  
*Chapter 2*

## **Key Findings from the OECD-ILO Conference**

*Jointly organised by OECD and ILO, this conference was devoted to the theme of “Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy”. Discussions focused on wider dissemination of good corporate labour practices and better understanding and use of the OECD and ILO instruments. This chapter provides a summary of these discussions.*

The *OECD Guidelines for Multinational Enterprises* aim to ensure that the operations of multinational enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. In order to achieve these goals, the 41 governments adhering to the Guidelines have committed themselves to participating in the Guidelines' unique implementation procedures.

Each year, the OECD holds a Roundtable on Corporate Responsibility to correspond with the annual meeting of the National Contact Points (NCP). Designed to discuss emerging issues and relevant policy developments in corporate responsibility, the meetings also aim to assist NCPs in their work promoting and implementing the OECD Guidelines for Multinational Enterprises in their respective adhering countries.

In response to the 2007 OECD Ministerial Meeting and the G8's focus on the social dimension of globalisation at the Heiligendamm Summit on 6-8 June 2007, this year's event was jointly organised with the ILO and devoted to the subject of "Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy." Representatives of governments, business, labour, and other stakeholders convened to:

- identify the responsible business practices that can lead to better employment conditions and industrial relations;
- engage OECD and non-OECD member governments in discussion of the different public policies for promoting responsible business conduct with regard to employment and industrial relations; and
- enhance co-operation between the OECD and the ILO in increasing awareness and performance of the OECD Guidelines and the ILO MNE Declaration.

The Conference was attended by 275 participants representing approximately 45 countries. Argentina, France, Germany, Norway, India and the EU were represented at Ministerial or an otherwise high level. High-ranking representatives from employers' and workers' organisations were also key participants. The discussion was divided into five sessions that explored issues relevant to the conference's focus. Each session consisted of presentations and a panel of respondents drawn from government, multilateral organisations, business, labour and civil society (see Annex 2.A1). The following summary is organised according to each session's main theme. The event was held under the Chatham House Rule<sup>1</sup> and this summary conforms to that rule.

## 1. Corporate social responsibility and the social dimension of globalisation

The Conference benefitted from keynote presentations by the OECD Secretary-General, the representative of the ILO Director General, and ministerial or otherwise high-level representation from Argentina, France, Germany, Norway, India and the European Union. The Special Representative of the UN Secretary-General on Business and Human Rights also delivered a defining intervention. The following messages were conveyed.

*Corporate social responsibility (CSR) with regard to employment and industrial relations ranks high on the global agenda.* In June 2007, the G8 leaders committed themselves to strengthening the principles of CSR and actively promoting internationally agreed CSR and labour standards codified in such instruments as the OECD Guidelines and the ILO Tripartite Declaration for Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration). They explicitly asked the OECD to act as a platform for engaging with emerging economies on CSR issues. This reflects the high level of importance ascribed to CSR. Efforts to promote and support CSR gathered momentum and gained traction throughout 2007, and building upon them is a top priority. In June 2008, the ILO adopted a landmark “Declaration on Social Justice for a Fair Globalisation,” which aims to act as a “compass” for navigating globalisation’s reshaping of work arrangements. In fall 2008, during its European Union Council Presidency, the French government will hold a CSR conference, while the Norwegian government is planning a high-level conference on Decent Work. G8 outreach to emerging markets on CSR will continue to be actively pursued.

*CSR is not merely a buzzword* – even if it is used to describe a range of different objectives and initiatives that have evolved in the last decade. At its core, CSR is about business contributing to the social progress that globalisation and development should deliver. CSR has often been referred to as voluntary initiatives that extend beyond mere compliance with local legal requirements and internationally agreed upon standards to include responding and meeting societal expectations on business’ contribution to economic and social development. At the same time, there is broad recognition that the primary responsibility of business is to fully respect and observe laws and internationally recognised standards even when these are poorly enforced by governments. CSR slots into an internationally agreed framework in which states bear the duty to protect human rights and corporations have the responsibility to respect these rights. This entails identifying, acknowledging and assuming these different, yet complementary responsibilities.

*A business vision focused solely on financial performance is now widely acknowledged as too narrow.* The private sector can no longer seek to create long-term value without accounting for the social, economic and environmental impact of its activities, for it is the management of these impacts that will enable it to reduce costs and minimise risks. In MNEs, good employment and industrial relations need to be re-emphasised, recognising that the influence and power of this business dimension extends beyond the direct labour force to the entire value chain, local economy and quality of life for broad segments of a country’s population. Decent work must be a global reality in order to build cohesive societies and demonstrate good governance.

*Governments should lead by example.* Government and business must work together to calibrate the principles of responsible business conduct “that will take us beyond the old confrontations between state and market.” One ministerial representative noted the need to align the contents of private initiatives to the conditions in which each nation is developing, while upholding international norms. Until recently, discussion and setting of responsible business conduct standards fell largely within the purview of the developed countries. Public-private engagement in emerging economies on structuring a competitive market economy and providing adequate social protection is essential to advancing responsible business conduct worldwide. According to one high-level government representative, public authorities have three important functions in facilitating private initiatives. First, the public authorities must embrace transparency. Then, the utility of

“example-setting” must be internalised and realised. Lastly, a constant process of dialogue with corporations and social partners accompanied by appropriate legislation will be most effective in improving global governance and encouraging good business practice. Another high-level speaker noted the vital role consumers play in driving demand for private initiatives and the need for government to facilitate their participation. There is also the need for outreach to small- and medium-sized enterprises in order to bind them into accepted principles and standards of responsible business conduct.

*The OECD Guidelines and ILO MNE Declaration can reorient business activities.* Participants noted the synergies between the OECD and ILO’s instruments for promoting responsible business conduct. While the two tools have undergone comprehensive and far-reaching revisions, it is necessary to make them more effective. Translating the shared principles contained within the two instruments into the daily workings of government and MNEs is the challenge ahead – and progress is contingent on taking stock of current corporate and public sector practices. This is not just a question of ethics, it is also central to economic development.

## 2. Taking Stock of Multinational Enterprises’ Practices: Opportunities and Challenges

*Foreign direct investment (FDI) by MNEs can drive improvements in employment and living standards for workers.* A recent OECD study examined FDI by MNEs to ascertain its impact on employment and industrial relations. FDI has become the most important source of external finance for many developing countries. The global stock of FDI has increased from less than 5% of world GDP in 1980 to more than 25% in 2006. While the bulk of FDI continues to take place between OECD countries, the non-OECD share has grown rapidly: inward FDI to non-OECD countries increased from 22% in 1990 to 32% in 2005, while outward FDI increased from 10% to 17% over the same period. With regard to employment and industrial relations, FDI can benefit host countries through higher-quality job creation. Yet, concerns persist about labour practices in the foreign operations of MNEs. The OECD analysis not only analysed the wages and working conditions offered by OECD-based MNEs to their workforces in host – both OECD and non-OECD – countries, but also considered possible spill-over effects to local firms.

*Recent data indicates that MNEs tend to provide higher pay, especially in developing countries:* foreign takeovers by an OECD-based multinational tend to raise average wages by 10 to 20 % in Brazil and Indonesia and between 3 and 10 % in Germany, Portugal and the UK. Moreover, the positive wage effect is not confined only to an MNE’s direct employees. Domestic firms that engage with foreign firms in the supply chain or that hire managers with prior experience in foreign firms tend to be larger, more productive and pay higher wages than comparable local firms that do not engage with MNEs. They are also more likely to provide training courses to their employees, but there is no apparent difference in terms of union membership between such firms engaging with MNEs and other domestic firms. A high level participant from an emerging market economy pointed out, however, that if evidence about the positive practices and more favourable wages of MNEs may have been stronger some fifteen to twenty years ago, it also appears that the competitive pressure of recent years appear has induced an increasing number of these enterprises to follow the not so attractive practices of domestic firms. In order to reduce cost, a larger number of MNE’s outsource even core activities and fail to take into account the poor working conditions and bad practices of their contractors.

*Responsible corporate management of employment and industrial relations varies across issues, regions and sector.* An essential component in assessing MNEs' impact on employment and industrial relations is to examine the relevant corporate responsibility policies, systems and reporting procedures in place within the corporations. Tracking companies non-financial performance is of increasing importance to investors, who view companies that perform well on a broadened range of indicators encompassing environmental, social and governance issues as lower risk and more competitive. In a study commissioned by the OECD to EIRIS, companies' management of a range of labour issues – such as equal opportunity, health and safety, job security and training, freedom of association, child and forced labour – were examined to determine which standards and systems tended to emerge as those most widely adopted across regions and sectors. The study found that companies from OECD member countries in Europe were most advanced in their management and development of labour practices, followed by companies from the OECD countries of North America and Asia-Pacific. Regional variations can be attributed to several factors with pressure from civil society stakeholders and the responsible investment community potentially playing a large role. Yet, as managers of responsible investment funds increasingly call for corporate codes of conduct to directly reference the ILO core labour standards, the performance of companies in certain regions could improve over time as they come under more pressure to meet such expectations.

The study revealed that equal opportunity is a high-profile issue with 80% of companies possessing developed policies and systems. Health and safety systems were also highly developed across all regions, with the exception of non-OECD/emerging economies. These findings underscore the positive role of strong governmental involvement in increasing MNEs positive performance. Well-developed legal and regulatory requirements around health and safety, and equal opportunity issues can explain the high level of interest and commitment shown by employers to these issues.

Difficulties remain in ensuring that FDI contributes positively to employment and industrial relations, and that companies engage in responsible business conduct. Participants emphasised the need to remember the intense competition among countries for FDI, the skewed distribution of FDI, and the changing nature of its flows to and from non-OECD economies. There was a call for a concerted effort to combat the mistaken belief on behalf of some countries that lax labour standards translate into increased economic competitiveness. In countries with weak legislation or enforcement, CSR is regarded as an important complement to national law and international norms, and some participants noted its ability to pioneer good practices. Yet studies show that freedom of association and collective bargaining are referred to in only a small percentage of voluntary corporate codes of conduct. Unilateral private initiatives can be perceived to lack legitimacy and credibility, and to counteract this perception, some participants stressed inclusion of social partners in setting CSR standards.

*The changing nature of work arrangements and increasingly complex supply chains present continued challenges.* Several representatives stressed the importance of looking beyond MNEs when assessing the impact of investment on employment and working conditions. Increases in outsourcing, subcontracting and temporary work arrangements obfuscate the division of responsibility and capacity for oversight. Long, complex supply chains also complicate the ability to control for labour rights infringement. This suggests there may be an even greater need to protect workers rights throughout the supply chain. The EIRIS study found low levels of reporting on supply chain labour issues across all regions and

sectors examined. A representative from the private sector stated that it “is an illusion” to expect a company to transfer 1-to-1 its own performance standards for labour standards to its supply chain. This is difficult for the representative’s company, which counts approximately 50 000 suppliers worldwide. A trade union representative confirmed that the greatest challenge in observing the OECD Guidelines is in the context of supply chain. Effective monitoring systems involving stakeholder consultation are called for to assist in responsible business chain management. NGO representatives also drew attention to the impact of global labour mobility and the need to uphold responsible business practices with vulnerable workers engaged in precarious and informal employment, such as temporary and seasonal workers in the horticultural sector.

*There are a range of current practices and tools that enable MNEs to improve employment and industrial relations.* The experience of one OECD-based MNE operating in an emerging economy was detailed to provide a case study on how companies address employment and industrial relations issues. In this instance, the MNE has adopted internal assessment and monitoring processes, and mechanisms such as whistle-blowing hotlines. The company also established global labour relations structures that enable it to hold regular “network meetings” in its various regions of operations between corporate management, works councils and trade unions. With regard to supply chain governance – especially in a country where labour legislation is weakly enforced – the company has adopted a “snowball” approach, whereby it provides three immediate business partners with tailor-made CSR concepts and policies, and these partners provide such knowledge to three more suppliers, and so on. The Better Factories Cambodia and the South African WIETA projects were identified as significant multi-stakeholder initiatives.

The investment community and other stakeholders want to explore avenues for ensuring that corporate initiatives are not only implemented on the ground, but also that companies have mechanisms and procedures in place to check their application and efficacy. Peer review instruments – involving both trade unions and management – is one way to provide for more accountability and transparency in monitoring of the supply chain. Global framework agreements between MNEs and unions were also mentioned as an instrumental tool in advancing positive employment and industrial relations.

### **3. Role of Public Policies in Promoting Responsible Corporate Management of Employment and Industrial Relations**

*Governments are responsible for creating an environment conducive to responsible business conduct.* The primary duty to protect labour and other rights rests with states. With respect to fundamental principles and rights at work, all ILO member states, by virtue of their membership, have the obligation to respect, promote and to realise them. In addition to law enforcement, governments are responsible for fostering an enabling environment and a corporate culture in which respecting rights is a basic element of doing business. Business is responsible for respecting internationally recognised labour rights even in instances where states are unable or unwilling to enforce the proper governance framework. At the moment, several participants view governments as “over-relying” on private initiatives to take care of issues that fall under their jurisdiction, thereby inhibiting the ability of business to focus on its core activities. Central to resolving this conflict is a clear delineation of responsibilities between the public and private sector.

*States can fulfil their duty through a range of approaches and policy domains.* The first step for government is to demarcate its responsibilities from those of business. For enterprises

to engage in responsible business conduct, the distinction between the government's role and its own must be made clear. Participants acknowledged that while on the surface such a step seems simple or self-evident; in practice it challenges the social fabric of interaction between society, government and the private sector. Therefore, governments must also facilitate communication on expected responsible business conduct, including through greater coherence between the different policy domains that affect business. This will move issues related to labour and other human rights from a specialist function to the fore. Incorporating communications of the OECD and ILO standards into the activities and mandates of trade and finance officials, for example, also advances corporate responsibility without requiring new initiatives. However, the key channel for communicating societal expectations to companies and creating an enabling environment for investors is through implementation of national policies and legal frameworks – both of which need to be made more effective.

One framework for effective public policies to promote responsible corporate management of employment and industrial relations identifies four main areas of government intervention: mandating, facilitating, partnering and endorsing. A government can mandate responsible business conduct through laws, regulations and penalties, and the establishment of disclosure, procurement, and public financing requirements. The high performance of OECD-based companies on equal opportunity and health and safety policies, as reported in the EIRIS study, can potentially be attributed to the high level of governmental regulation in these areas. To facilitate the development of good corporate practices, the state can provide fiscal and other incentives in the form of research, training and awareness-raising grants. Governments can also explore non-binding codes, certification and trading schemes as options for further encouragement of private initiatives. Providing a safe space for stakeholders to convene for consultations is another important role governments can assume. Business and government can partner on the joint implementation of accountability and governance mechanisms, and also jointly mobilise financial and other resources to address challenges. For example, business, government and independent foundations can work together on developing creative financing mechanisms for training along the supply chain and to monitor vulnerable groups in the labour market. Governments have “political capital” to dispense through endorsing certain private initiatives with awards or recognition. Although endorsing is the softest area of government intervention, the public platform government can provide should not be underestimated.

*The international level can be instrumental in providing guidance.* Some participants mentioned that when political will at the national level is lacking or governments are constrained in their sphere of influence, the OECD and ILO instruments relevant to corporate social responsibility are indispensable for engaging multinationals. Internationally agreed upon norms serve to enhance transparency and are benchmarks for defining responsibilities and roles in improving employment and industrial practices. Moreover, the OECD's Policy Framework for Investment enumerates core considerations for governments wishing to mobilise private investment for sustainable growth and development, while the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones provides guidance to corporations when encountering risks or ethical dilemmas in countries with poor governance arrangements. At the same time, a government representative from an emerging economy emphasised his country's view that CSR and the enabling policy framework must be country-specific and evolve within the respective local context. For example, with 94% of India's total labour

force of 470 million estimated to work in the informal or unorganised sector, CSR initiatives reach only a very small sector of the economy. Ensuring proper employment and industrial relations practices thus rests squarely within the realm of the public sector.

#### 4. The supporting role of the OECD Guidelines and the ILO MNE Declaration: Learning from experience

The OECD Guidelines and the ILO MNE Declaration are the foremost authoritative instruments relevant to corporate social responsibility in existence today. Their authority derives from their development and formal endorsement by governments and other key stakeholders, firm anchorage in widely accepted international norms, and a high level of business and worker organisation engagement. Both instruments help stakeholders distinguish between the responsibility of enterprises and that of the state.

The *ILO MNE Declaration* provides guidance to enterprises and governments on how the principles deriving from international labour standards can be applied by companies in order to maximise their contribution to social and economic progress in all countries of operation. The declaration emphasises the value of dialogue and partnerships in achieving such goals and contains a set of recommendations concerning five areas: general policies, employment, training, conditions of work and life, and industrial relations. Negotiated between governments, and workers' and employers' organisations, it represents the first international tripartite consensus on the desirable behaviour of multinational enterprises with regard to labour and social policy issues. It also speaks directly to governments about their role in promoting employment creation and respecting workers' rights.

The *OECD Guidelines*, on the other hand, are recommendations addressed to multinational enterprises operating abroad and cover all major areas of business ethics including, in addition to human rights and employment and industrial relations, environment, anti-corruption, competition policy, taxation and consumer interests. The *Guidelines* are supported by a unique implementation mechanism of National Contact Points (NCP), government agencies responsible for actively promoting the Guidelines and offering, through their "specific instances" facility, their good offices to help parties resolve disputes.

With globalisation only accelerating, greater use of the OECD Guidelines and ILO MNE Declaration was viewed as key to improving employment conditions worldwide and creating a level playing field for multinational corporations. Explicit reference to these instruments imbues the various standards and principles embodied in CSR initiatives with greater visibility and clarity.

While their visibility has increased, the two instruments are still not sufficiently well-known and are underutilised by the business community and in emerging economies. The ILO international labour standards in the form of conventions and recommendations are well-known. Yet, as pointed out by a panellist representing the business community, awareness and use of the ILO MNE Declaration could be further enhanced. NGOs also report a lack of familiarity with the ILO MNE Declaration and insufficient impact, particularly in southern countries. Although the OECD Guidelines may benefit from wider recognition and are referenced by forty-one per cent of Fortune Global 500 companies, several participants commented that their exploitation still falls short of their potential, particularly with regard to small and medium-sized enterprises. Targeted and personal outreach to corporate executives and the provision of more user-friendly formats could enhance awareness and use of the instruments within the private sector. Governments

should also make greater use of government procurement, export credit insurance, participation in development banks, investment agreements and other support programs to encourage business use of the OECD Guidelines and ILO MNE Declaration. According to participants, the most serious challenge moving forward lies in inducing emerging economies to respond to the expectations contained within the OECD and ILO instruments. It was suggested that the “OECD” label of the Guidelines could be one factor. Promotional efforts should therefore give priority to ways of associating these countries to the instruments, with particular attention to weak governance zones where most human rights and labour abuses occur. Due to its economic impact and significance, the financial sector was singled out as another area for future intensified co-operation.

*The NCP mechanism needs further improvements.* While participants welcomed some recent developments, several speakers felt NCPs could do more to further enhance the effectiveness of the OECD Guidelines. NCP governance structures need to be accountable and sufficiently independent from other government functions in order for NCPs to play a credible role in resolving disputes. Further guidance is needed on the use of the specific instances facility, notably in relation to domestic law and forum shopping, and its application in non-adhering countries, and to increasingly more complex MNE structures and supply chains. The procedural steps for considering specific instances could also be more clearly defined and simplified in some instances. Several participant NCPs stressed the fact that NCPs need to learn more from each other and engage in peer reviews of their performance. All participants welcomed the fact that NCPs had selected performance as the main focus for improvements.

## 5. Working together

Collaboration is essential to maximising practical results and achieving coherence, and is contingent upon each actor fully understanding its role and responsibilities. This is clearly laid out in the conceptual and policy framework of “Protect, Respect and Remedy” for business and human rights as developed by the Special Representative of the UN-Secretary General on Business and Human Rights, and unanimously adopted by the Human Rights Council in June 2008. The duty to protect human and labour rights rests with states; corporations have a responsibility to respect these rights, which essentially means to do no harm. The last component of this framework is the need for access to effective remedies for aggrieved parties. CSR should not be relied upon as a substitute for effective labour standards and laws. International labour standards that have been widely subscribed to and are binding already exist, and should be effectively implemented by governments. The CSR challenge is no less than a governance challenge.

Potential synergies between the ILO MNE Declaration and the OECD Guidelines should be explored and developed, without compromising the organisations’ distinct identities. This co-operation should exploit the comparative advantages of the two organisations, while recognising the complementarities and respecting the differences in mandates, instruments and governance structures.

*Drawing on comparative strengths:* The ILO core labour standards are built into the OECD Guidelines. The OECD Guidelines have a unique mechanism for dealing with complaints. The ILO MNE Declaration applies to all ILO member states in both developed and developing economies, and has a large network of offices and programs in developing countries. Several participants suggested that the two organisations build upon these

respective strengths. In particular, it was suggested that they examine how NCPs could draw on ILO provisions and expertise, and vice-versa. There was interest in exploring how to exploit the unique features of the NCP specific instance facility in this context. One NGO suggested that any future review of the OECD Guidelines could, for example, amend the Procedural Guidance to allow access to the NCP complaint procedure for violations of both instruments. Moreover, the ILO's strong regional presence in developing countries could be utilised for actively promoting use of the OECD Declaration and ILO MNE Declaration in these economies and training stakeholders on their application, including in weak governance zones. New and creative mechanisms are required to assist in the implementation of the ILO MNE Declaration. The same NGO also considered that the helpdesk currently being envisaged by the ILO for advising companies on how to operationalise the principles of the ILO MNE Declaration could also serve as a vehicle for promoting the labour standards found in both instruments. One representative of the International Organisation of Employers noted however that the OECD Guidelines have a unique implementation mechanism and that the ILO helpdesk is not intended to be a mechanism for the ILO to receive complaints from and/or for MNEs. Participants also called for, in their view, a long overdue update of the 1963 Memorandum of Understanding governing the institutional arrangements between the ILO and OECD.

Next steps: Drawing on some of the main issues raised during the conference, while recognising complementarities but also differences in their mandates and governance structures, the OECD and the ILO were invited by the co-Chairs of the closing session to submit concrete proposals for joint co-operation to their respective constituencies in fall 2008. OECD and ILO indicated that some promising avenues could include promoting the use of the OECD and ILO instruments at the global and regional level, ensuring policy coherence in advice given to stakeholders, conducting joint research and analytical work, and strengthening contributions to capacity-building. Dialogue with developing countries was recognised as critical to fully position corporate responsibility in a global context.

### **Note**

1. Chatham House defines the Chatham House Rule as follows: *When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.* For more information please see [www.riskythinking.com/glossary/chatham\\_house\\_rule.php](http://www.riskythinking.com/glossary/chatham_house_rule.php).

## ANNEX 2.A1

## Conference Programme

## OECD-ILO Conference on Corporate Social Responsibility

<b>DAY ONE</b>	<b>23 JUNE 2008</b>
<b>SESSION ONE – INTRODUCTION</b>	
<b>09:30-10:45</b>	<b>Opening Remarks</b>
	<b>Mr. Angel Gurría</b> , Secretary-General, OECD
	<b>Mr. Stephen Pursey</b> , Senior Advisor to the ILO Director-General Juan Somavia
	<b>Keynote Speeches</b>
	<b>Mr. Gilles de Robien</b> , Ambassador for Social Cohesion, France
	<b>Mr. Carlos A. Tomada</b> , Minister of Labour, Employment and Social Security, Argentina
	<b>Mr. Karl-Josef Wasserhövel</b> , State Secretary for Labour and Social Affairs, Germany
<b>SESSION TWO – TAKING STOCK OF MULTINATIONAL ENTERPRISES' PRACTICES: OPPORTUNITIES AND CHALLENGES</b>	
How do changing patterns in foreign direct investment (FDI), such as growing investment from developing countries and the shift in investment increasingly to services, impact on corporate practices relating to wages, employment and industrial relations in host and home countries? What are the emerging trends toward responsible corporate management of employment and industrial relations? How do they link to social and economic development, including employment growth and decent jobs? What are the main challenges ahead?	
<b>11:00-13:30</b>	<b>Moderator: Mr. Michael Henriques</b> , Director, ILO Job Creation and Enterprise Development Department
	<b>Presentations:</b>
	<b>Mr. David Lamotte</b> , Programme Manager, ILO Job Creation and Enterprise Development Department: " <i>Development and Decent Work: New Directions for Multinational Enterprises in Shaping a Fair Globalisation</i> "
	<b>Mr. John Martin</b> , Director, OECD Directorate for Employment, Labour and Social Affairs: " <i>The Impact of Foreign Direct Investment on Wages and Working Conditions</i> "
	<b>Mr. Stephen Hine</b> , Head of International Relations, Ethical Investment Research Institute (EIRIS): " <i>Trends in corporate responsibility policies and practices concerning employment and industrial relations</i> "
	<b>Panellists:</b>
	<b>Mr. Lothar Meinzer</b> , Director, Sustainability Centre, BASF
	<b>Ms. Carla Coletti</b> , Director of International Relations, International Metalworkers' Federation
	<b>Ms. Nicole Notat</b> , President, Vigeo
	<b>Mr. Miroslaw Izienicki</b> , President and CEO, Fifth Capital Group, London
	<b>Discussion</b>

<b>DAY ONE</b>	<b>23 JUNE 2008</b> (cont.)
<b>SESSION THREE – ROLE OF PUBLIC POLICIES IN PROMOTING RESPONSIBLE CORPORATE MANAGEMENT OF EMPLOYMENT AND INDUSTRIAL RELATIONS</b>	
Public policies can support an environment conducive to responsible business practices, and enhance the contribution of business to social and economic development. Effective law enforcement, partnering with business initiatives and inter-governmental cooperation are avenues among others for official support of responsible business conduct.	
Which policies have been found to be most effective? How are these policies developed and implemented? How does the level of economic development matter for designing and implementing public policies to promote responsible business conduct?	
<b>15:00-18:00</b>	<b>Moderator: Mr. James Viray</b> , Director, Office of International Labor and Corporate Social Responsibility, US Department of State
	<b>Presentations:</b>
	<b>Mr. Pierre Poret</b> , Head of OECD Investment Division: “ <i>Public Policies for Promoting Responsible Business Conduct</i> ”
	<b>Ms. Karen Curtis</b> , Deputy Director, ILO International Labour Standards Department
	<b>Ms. Jane Nelson</b> , Senior Fellow and Director, Corporate Social Responsibility Initiative, Harvard University
	<b>Ms. Nidya Neer</b> , Co-ordinator for CSR and Decent Work, Ministry of Labour, Employment and Social Security, Argentina
	<b>Panellists:</b>
	<b>Mr. S. Krishnan</b> , Additional Secretary, Ministry of Labour and Employment, India
	<b>Mr. Emmanuel Julien</b> , Deputy Director, Directorate for Social Affairs, Mouvement des Entreprises de France (MEDEF)
	<b>Mr. Bülent Pirlir</b> , Secretary-General, Turkish Confederation of Employer Associations (TISK)
	<b>Mr. Govindasamy Rajasekaran</b> , General Secretary, Malaysian Trade Union Congress
	<b>Mr. Hiroyuki Matsui</b> , Assistant to the Director General, Nippon Keidanren, Japan
	<b>Discussion</b>
<b>DAY TWO</b>	<b>24 JUNE 2008</b>
<b>SESSION FOUR – THE SUPPORTING ROLE OF THE OECD GUIDELINES AND THE ILO MNE DECLARATION: LEARNING FROM EXPERIENCE</b>	
The OECD Guidelines and the ILO MNE Declaration possess unique features to assist enterprises to address issues and facilitate dialogue around employment and industrial relations.	
What lessons can be learned from their implementation? To what extent are the relevant actors making use of the OECD Guidelines and the ILO MNE Declaration? How can adherence to the OECD Guidelines and use of the ILO MNE Declaration be further encouraged in both developed and developing countries?	
<b>09:00-11:15</b>	<b>Moderator: Richard Howitt</b> , MEP, European Parliament Rapporteur on Corporate Social Responsibility
	<b>Presentations:</b>
	<b>Mr. Vernon Mackay</b> , Chair of the OECD Investment Committee Working Party and Canadian National Contact Point: “The OECD Guidelines for Multinational Enterprises: Unique features, unique accomplishments”
	<b>Ms. Elisabeth Walaas</b> , State Secretary, Ministry of Foreign Affairs, Norway
	<b>Ms. Sharan Burrow</b> , President, Australian Council of Trade Unions and Vice-Chairperson of the ILO MNE Subcommittee
	<b>Mr. Gary Campkin</b> , Head, International Group, Confederation of British Industry (CBI)
	<b>Panellists:</b>
	<b>Ms. Veronica Nilsson</b> , Senior Policy Advisor, Trade Union Advisory Committee (TUAC)
	<b>Mr. Nick Smythe</b> , Senior Manager and Head of Industrial Relations, Gold Fields Limited, South Africa
	<b>Mr. Joris Oldenziel</b> , Senior Researcher, Centre for Research on Multinational Corporations (SOMO), The Netherlands
	<b>Discussion</b>
<b>SESSION FIVE AND CONCLUSION – WORKING TOGETHER</b>	
What are the main synergies between the OECD Guidelines and the ILO MNE Declaration? Would it be feasible and desirable to strengthen these synergies further? What avenues and initiatives could be envisaged for this purpose? How can the promotion of responsible business conduct in the areas of employment and industrial relations be generally advanced?	
<b>11:30-13:00</b>	<b>Moderation and joint presentation by Mr. Manfred Schekulin</b> , Chair of the Investment Committee and Mr. Stephen Pursey, Director, Policy Integration and Statistics Department and Senior Advisor to the Director-General, ILO
	<b>Panellists:</b>
	<b>Mr. Vladimír Špidla</b> , EU Commissioner for Employment, Social Affairs and Equal Opportunities
	<b>Mr. Brent Wilton</b> , Deputy Secretary-General, International Organisation of Employers (IOE)
	<b>Mr. John Evans</b> , Secretary-General, Trade Union Advisory Committee to the OECD (TUAC)
	<b>Ms. Serena Lillywhite</b> , Manager, Ethical Business, Brotherhood of St Laurence
	<b>Professor John G. Ruggie</b> , Special Representative of the UN Secretary-General on Business and Human Rights
	<b>Discussion and Closing Remarks</b>

### Box 2.A1.1. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises, adopted in 1976 and substantially revised in 2000, are the most comprehensive government supported corporate responsibility instrument in existence today. Their forty adhering governments – those of 30 OECD countries and 10 non-OECD countries representing all regions of the world and accounting for 85% of foreign direct investment – are committed to encourage enterprises operating in their territory to observe a set of widely recognised principles and standards for responsible business conduct wherever they operate.

The promotion of high level standards for employment and industrial relations is one of the most important features of the Guidelines. In particular, Chapter IV on Employment and Industrial Relations:

- Promotes the effective abolition of child and forced labour, non discrimination, the right to employee representation, and the protection of health and safety of workers.
- Provides, in the event of closure of an entity involving collective lay-offs or dismissals, that enterprises should give reasonable notice to representatives of their employees and co operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.
- Asks companies, in the context of *bona fide* negotiations with representatives of employees on conditions of employment, not to threaten to transfer activities from the country concerned to other countries in order to influence those negotiations unfairly.

The OECD Guidelines also ask companies to refrain from seeking or accepting exemptions to labour and other regulatory standards, and to encourage, where practicable, business partners, including suppliers and sub contractors, to apply principles of responsible business conduct.

The Guidelines are supported by a unique implementation mechanism – the specific instance facility – which commits National Contact Points to resolve disputes and reduce tensions with respect to the implementation of the Guidelines. Most of the specific instances so far have dealt with employment and labour and industrial relations issues. Moreover, an increasing share of these complaints relates to employment and industrial relations conditions at work sites in non-OECD countries.

### Box 2.A1.2. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The Governing Body of the International Labour organisation adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977. It was most recently revised in 2006.

#### Purpose

The Declaration is intended to encourage the positive contribution which multinational enterprises (MNEs) can make to economic and social progress, and to minimise difficulties arising from their operations. It provides principles regarding the social aspects of multinational enterprises, for the use of governments, employee organisations, and MNEs themselves.

The ILO MNE Declaration speaks not only to enterprises, but to governments about their role in promoting employment creation and respect for workers' rights – the individual choices of companies concerning CSR are situated in the larger context of public policy to advance economic and social development. Consequently, it also encourages enterprises to engage in dialogue with government and employer and worker organisations, when appropriate, to ensure that their activities are in harmony with the development priorities and social aims and structure of the country in which they operate. The ILO MNE Declaration also highlights that CSR is about good labour management practices. Freedom of association and collective bargaining foster good labour management relations, and are essential for raising productivity and creating decent work.

### Box 2.A1.2. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (cont.)

#### Critical content

**General Policies:** MNEs should obey national laws, respect international standards, honour voluntary commitments, and harmonise their operations with the social aims and structure of countries in which they operate.

**Employment Promotion:** Governments should promote full, productive, freely chosen employment. MNEs should endeavour to increase employment opportunities and standards in host and home countries; give priority to the employment, development, promotion and advancement of host country nationals at all levels; and promote employment through use of employment generating technologies and local sourcing arrangements.

**Equality of opportunity and treatment:** All governments should promote equality of opportunity in employment.

**Security of employment:** Governments should take suitable measures to deal with the employment impacts of MNEs. MNEs should strive to provide stable employment and reasonable notice to government authorities when operational changes would have major employment effects. Governments, together with MNEs, should provide some form of income protection for workers whose employment has been terminated.

**Training:** Governments should develop national policies for vocational training and guidance. MNEs should ensure relevant training is provided to all employees, to meet the needs of the firm and those of the host country. Multinationals should also afford opportunities within the enterprise as a whole to broaden the experience of local management.

**Conditions of work and life:** In developing countries, MNEs should provide the best possible wages, conditions of work (including health and safety), and benefits, adequate to satisfy basic needs and within the framework of government policies. Governments should adopt policies ensuring that lower income groups and less developed areas benefit as much as possible from MNE activities. MNEs should provide upon request information concerning health and safety standards observed in other countries which are relevant to local operations.

**Industrial relations:** Workers should have the right to establish and join organisations of their choosing, and protection against anti-union discrimination. MNEs should allow collective bargaining, providing facilities and access to resources that will allow meaningful negotiation. MNEs and national enterprises should consult regularly with employees on matters of mutual concern. All workers should have the right to submit grievances without prejudice, and to have them investigated. MNEs and national enterprises should work to develop resolution mechanisms to assist in the prevention and settlement of disputes.

**Implementation:** Implementation of these standards is on a voluntary basis. ILO undertakes periodic surveys to evaluate the effect being given to the principles enshrined in the ILO MNE Declaration. ILO is also launching a helpdesk in 2008 to provide advice to companies seeking to put into practice principles of the ILO MNE Declaration.

### Box 2.A1.3. Documentation

#### OECD and ILO Instruments

- ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, ILO, 2006.
- OECD Guidelines for Multinational Enterprises, 2000.
- ILO Declaration on Fundamental Principles and Rights at Work, ILO, 1998.

#### Other references

- Overview of Initiatives and Instruments Relevant to Corporate Social Responsibility, OECD, June 2008.
- Review of NCP Performance: Key Findings, Report by the Working Party of the OECD Investment Committee, June 2008.
- Corporate Responsibility Practices in the Area of Employment and Industrial Relations, Study prepared by the Ethical Investment Research Services (EIRIS) for OECD, June 2008
- The Impact of Foreign Direct Investment on Wages and Working Conditions, OECD, June 2008.
- Development and Decent Work: New Directions for Multinational Enterprises in Shaping a Fair Globalisation, ILO, June 2008.
- A Perspective from the MNE Declaration to the Present: Mistakes, Surprises, and Newly Important Policy Implications, Study prepared by Theodor H. Moran for the ILO, June 2008.
- “Policies for Promoting Responsible Business Conduct”, Chapter 7 of the Policy Framework for Investment, OECD, 2006.
- The Ten Principles of the Global Compact, 2005.

#### Additional background documentation

##### OECD

- “Encouraging Responsible Business Conduct in China”, in *Investment Policy Review of China*, OECD, 2008 (forthcoming).
- *Globalisation, Jobs and Wages*, Policy Brief, OECD, 2007.
- “OECD Workers in the Global Economy: Increasingly Vulnerable?” Chapter 3 in *OECD Employment Outlook*, 2007.
- *Annual Report on the OECD Guidelines for Multinational Enterprises*, OECD, 2006, 2007.
- *Trade and Structural Adjustment: Embracing Globalisation*, OECD, 2005.
- *Corporate Responsibility: Private Initiatives and Public Goals*, OECD, 2001.

##### ILO

- *The Promotion of Sustainable Enterprises*, ILO 2007.
- *The Promotion of Sustainable Enterprises: Conclusions concerning the promotion of sustainable enterprises*, ILO, 2007.
- *Labour Dimension of CSR: From principles to practice*, ILO, 2007.
- *Changing Patterns in the World of Work*, ILO 2006.
- *Better Business: Multinationals and Decent Work*, ILO World of Work, Magazine No.62 April 2008.

##### United Nations

- Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report by the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008.
- Human Rights Council, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Report by the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, 9 February 2007.



PART II  
Chapter 3

## Corporate Responsibility Practices in the Area of Employment and Industrial Relations\*

*This paper seeks to identify how companies manage labour issues in light of the principles and standards for responsible business conduct as promoted by the OECD Guidelines for Multinational Enterprises, in particular its Chapter IV “Employment and Industrial Relations”. The analysis covers a range of labour issues: equal opportunities, health and safety, job security and training, trade unions and other internationally recognised labour standards such as child labour, forced labour and freedom of association within owned operations and the supply chain.*

*This paper also includes allegations by civil society stakeholders of breaches of internationally recognised core labour standards, both in the company and the supply chain, and international standards on working hours and health and safety to assess how companies are managing labour issues globally.*

\* This paper was commissioned from Ethical Investment Research Service (EIRIS) by the OECD as background information in support of the discussions at the OECD-ILO Conference on Corporate Social Responsibility which took place in Paris on 23-24 June 2008. The views contained within do not necessarily represent those of the OECD or its member governments. For further information or clarification on any of the issues covered by this paper please contact: Carlota Garcia-Manas, Senior Researcher (Environment) – EIRIS, carlota.garcia-manas@eiris.org, tel.: +44 207 840 5711. This paper includes the invaluable input of Mr. Stephen Hine, EIRIS Head of International Relations and Ms. Franziska Jahn, EIRIS Senior Researcher (Governance).

## 1. Introduction

This paper seeks to identify, based primarily on companies' published information, how they manage labour issues in light of the principles and standards for responsible business conduct as promoted by the *OECD Guidelines for Multinational Enterprises*, in particular its Chapter IV "Employment and Industrial Relations". For this purpose, a range of indicators, explained in Annex 3, have been selected for the assessment of companies. The analysis has been based on a universe comprising almost 2000 companies publicly listed on the FTSE All World Developed index (and a sample of listed companies in emerging markets, chosen to give a representative sample of countries and sectors). This encompasses a broad geographical and sectoral spectrum (see Annex 2).

The current analysis covers a range of labour issues: equal opportunities, health and safety, job security and training, trade unions and other internationally recognised labour standards such as child labour, forced labour and freedom of association within owned operations and the supply chain. This paper also includes allegations by civil society stakeholders of breaches of internationally recognised core labour standards, both in the company and the supply chain, and international standards on working hours and health and safety to assess how companies are managing labour issues globally.

Analysing companies on their management of labour issues shows variability in performance depending on the different labour issues across regions and sectors. Certain labour standards and systems tend to emerge as those most widely adopted.

Overall, equal opportunity is the issue with the highest proportion of companies having developed policies and systems – with almost 80% of all companies having an equal opportunities policy. Similarly, companies with a high risk exposure to health and safety issues tend to have developed systems within a well regulated environment – with more than 77% of all companies having health and safety systems.

Often, national legislation, trade union pressure and public awareness around equal opportunities and health and safety can explain the level of interest shown by employers to these issues. It is therefore worth noting the positive role of strong governmental involvement through legislation and law enforcement.

This also explains overall good assessments in OECD-Europe on trade union membership, where labour laws are more regulated than in non-OECD/Emerging Markets. Indeed, in OECD-Europe, 76% of companies show at least some evidence of trade union recognition yet in non-OECD/Emerging Markets, only 15% of companies reach this level.

On the other hand, across all regions, no sector has more than 20% of companies showing clear evidence of job security or training systems<sup>1</sup> and, overall, less than 10% of all companies analysed have clear evidence of having job security systems. This may also be due to the absence or weaknesses of government regulations in these areas, even though both the OECD Guidelines and ILO instruments encourage these activities on the part of companies.

Companies are more likely to commit publicly to an equal opportunity policy (80% of companies) than to other internationally recognised labour standards. Only 22% of all

companies across regions publicly commit to all core internationally recognised labour standards. While strong legislation around equal opportunities and health and safety issues can explain company performances in these areas, the lack of national regulations relating to the internationally recognised core labour standards, and the fact that supply chain issues for example came on the public agenda at a later stage than other issues such as discrimination, can also help explain these differences. Overall, awareness of supply chain labour standards and human rights issues is highest in OECD-Europe and OECD-North America; however it remains low in OECD-Asia Pacific and especially in non-OECD/Emerging Markets.

Some industry sector differences also can be observed, for example in the traditionally unionised sectors as opposed to newer industries. Sectors which have been more often targeted by civil society actors for supply chain issues also perform better than other sectors. An example of the latter is the performance of mobile telecommunications and technology and hardware equipment in the supply chain with respectively none and 18.5% of companies achieving at least an intermediate grade for policies in the supply chain compared with 38.6% and 52.5% for the general retailers and the personal goods sectors. Companies in the real estate sector seem to have taken less action in response to all the issues (except for training) to improve the working conditions of their employees than in other sectors.

Apart from regional or sectoral reasons, the size of a company by market capitalisation can also explain the differences observed. With 46.7% of all companies with market capitalisation above USD 3 billion having developed human rights policies assessed as intermediate, good or advanced, against only 15% of companies with market capitalisation under USD 3 billion, it is clear that large companies by market capitalisation are more likely to develop human rights policies, systems and reporting and to a higher standard than smaller companies. This is partly due to the fact that larger and more visible companies often face greater exposure to investor, trade union, NGO and consumer pressure. The commitments on corruption, environment or labour standards for quotations required by a number of stock exchanges as listing requirements also have an impact.

The analysis of companies worldwide and across sectors also points to increasing convergence of commitments. The Universal Declaration on Human Rights as well as the ILO core labour standards are increasingly becoming central to human rights policies for companies, particularly in relation to operations in developing countries. Other initiatives such as the Voluntary Principles on Security and Human Rights are also starting to be more widely referred to in the extractive sector. The development of new accreditation standards such as OHSAS 18001, developed by the British Standards Institution (BSI) jointly with a number of national standards bodies, certification bodies and specialist consultancies, for health and safety or the SA 8000, developed by Social Accountability International (SAI), for human rights and the increasing auditing of companies on their labour practices also strengthen the standardisation of certain labour issues. These trends would indicate that a set of basic labour standards is emerging and is being developed.

Overall, companies in OECD-Europe are most advanced in their development of labour practices. They are followed by companies in the OECD-North America and OECD Asia-Pacific. Companies in OECD – Asia Pacific perform well in issues such as equal opportunities, trade unions, job security and training and health and safety. However, performance in managing supply chain labour standards is comparatively low. The lower performance of companies in non-OECD/ Emerging Markets may be explained by the fact that companies based in these countries are under less pressure from civil society stakeholders and the responsible investment community and may often be less regulated. Yet, as managers of responsible

investments funds are increasingly calling for corporate codes of conduct to make direct reference to the ILO core labour standards, it is reasonable to expect the performance of companies in non-OECD/ Emerging Markets to improve across the board for labour issues and OECD-Asia Pacific companies to improve in the area of supply chain management as these companies come under increasing pressure to meet such expectations.

## 2. Approach

Analysis for this paper is based on EIRIS data from February 2008. The data covers almost 2000 companies publicly listed on the FTSE All World Developed index (and a sample of listed companies in emerging markets chosen to give a representative sample of countries and sectors).

Regional analysis is based on the following distribution:

**OECD-Europe** – Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom (480 companies).

**OECD-Asia Pacific** – Australia, Japan, New Zealand and South Korea (601 companies).

**OECD-North America** – Canada, Mexico and United States of America (715 companies).

**Non-OECD/Emerging Markets** – Brazil, China, Chinese Taipei, Hong Kong, India, Israel, Malaysia, Russia, Singapore, South Africa and Thailand (192 companies).

The full distribution on companies by country is included in Annex3.A2.

This paper focuses on the following issues:

- Equal opportunities.
- Trade union membership.
- Job security and training.
- Health and safety.
- Human rights.
- Supply chain labour standards.

The company's performance on these issues is assessed with regard to the quality of management systems in place (including public policy commitments and quality of disclosure) and their effectiveness, as measured by an analysis of allegations of serious breaches of recognised labour standards.

The internationally recognised core labour standards referred to in this paper are the conventions in the ILO Declaration on Fundamental Principles and Rights at Work (1998): child labour, forced labour, discrimination, freedom of association and collective bargaining. These ILO core labour standards are extensively covered in the OECD Guidelines on Multinational Enterprises.

A wide range of sources are used, mainly public company documents (annual reports, social reports and websites) together with third party sources (government and regulatory data, industry and specialist journals, trade unions, NGO websites and other independent sources). In addition, EIRIS gathers its own data on companies via surveys and through direct dialogue with companies.

The areas that EIRIS researches are determined through consultation with clients and significant issues are identified using the researchers' expertise and access to responsible

investment networks. For each of these issues, the methodology provides an assessment of “evidence” (e.g. good, moderate and no evidence) that the company’s stated policy, management systems and reporting meet EIRIS indicators as defined in Annex 3. The methodology also assesses performance by analysing allegations of breaches of relevant international labour or human rights standards and responses reported by the companies involved (see Annex 3 for the source of information used on the alleged breaches and companies’ responses).

Establishing a globally applicable public policy, while no guarantee of performance, is commonly the first step for a company wishing to address their impact in any particular area and a valid measure of the level of a company’s commitment. The level of implementation of any given policy is also dependent on an appropriate management system and its effectiveness can be assessed through reporting on the issue, including relevant data and disclosing performance against targets, as well as performance on the ground. The approach outlined in this paper, focussing on the quality of policy, systems, reporting and evidence of breaches, therefore presents an important measure of company commitment and transparency on labour issues.

### 3. Key findings

Each section includes a brief introduction to the topic, details of the assessment methodology and regional and sectoral analysis and trends.

#### 3.1. Equal opportunities

##### 3.1.1. The issue

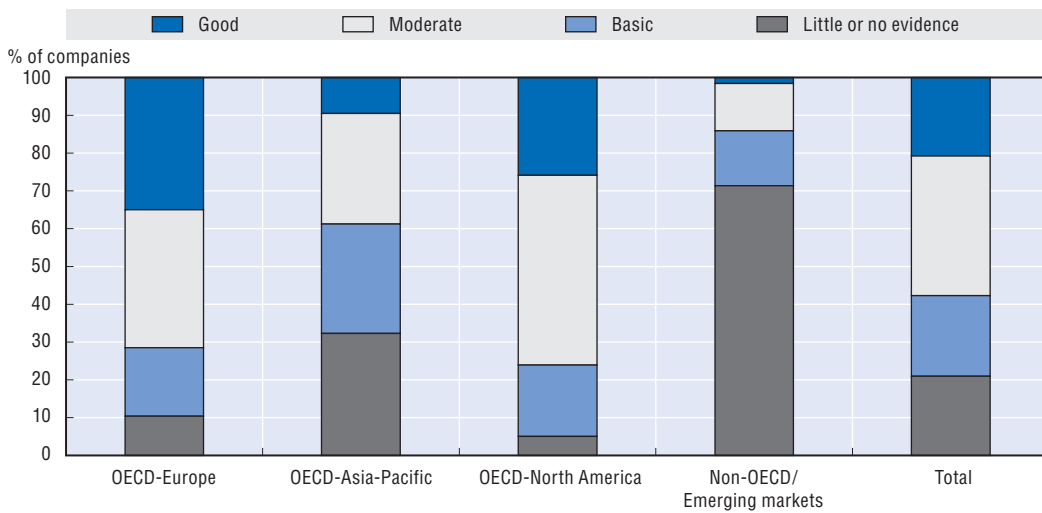
Employers are increasingly recognising equal opportunities as a high profile issue. This is driven by the increasing regulations on discrimination and the reputational issues which companies risk in cases of alleged discriminatory practices, in the media and as a result of lawsuits. Improving diversity is increasingly seen as a means to protect company or brand reputation and of gaining competitive advantage. Greater diversity in the workforce widens the talent pool and improves staff morale and retention rates.

##### 3.1.2. Methodology

The quality of companies’ equal opportunities policy and systems is assessed. For policy, this includes whether the policy goes beyond race and gender to cover disability, religion, ethnic origin, age and sexual orientation; global applicability of the policy, and whether there are mentoring and support networks. Companies are regarded as having a basic policy if they have made public a general non-discrimination statement, moderate if they go beyond this requirement and good if they are also members of support networks for minority groups. Equal opportunities management systems are assessed on a combination of work-life balance indicators including flexible working hours, job sharing and child care arrangements.

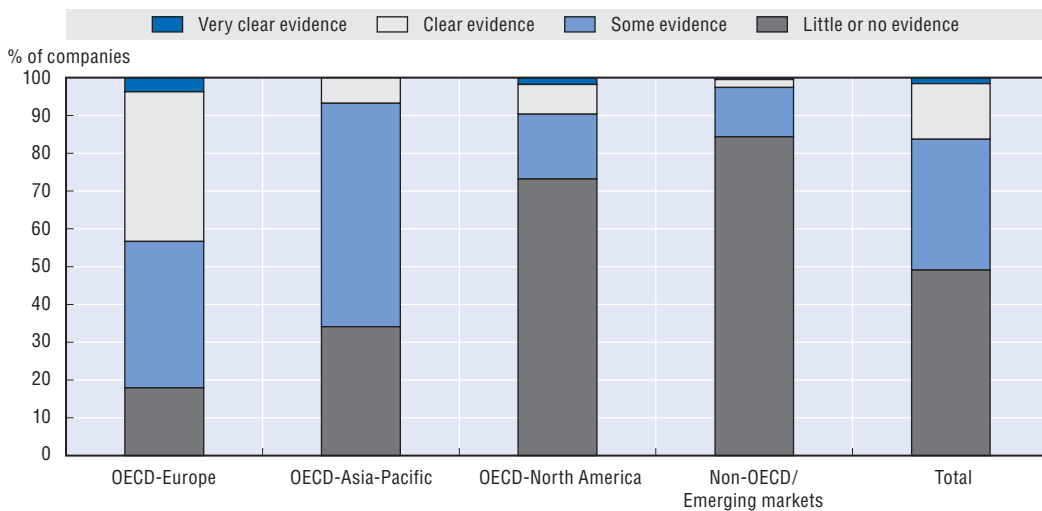
Companies are also assessed on whether they provide statistics from diversity monitoring showing employee demographics and the proportion of ethnic minorities and women at management level. An additional performance indicator is whether the proportion of women or ethnic minority managers matches at least three-fifths of the representation of these groups in the workforce.

Figure 3.1. Equal opportunities policies (Region)



Source: EIRIS.

Figure 3.2. Equal opportunities systems (region)

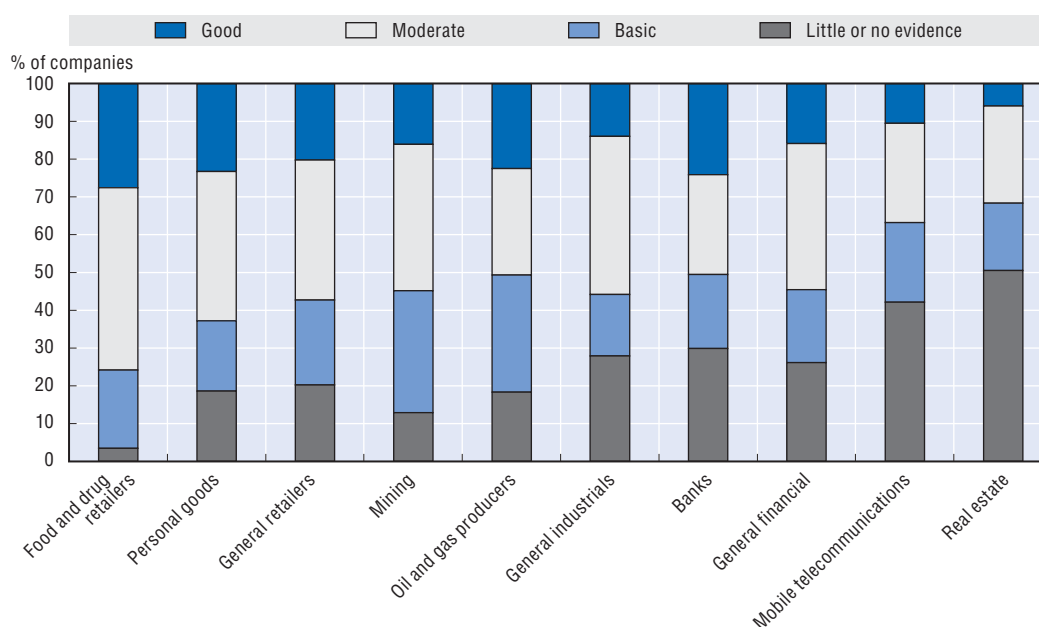


Source: EIRIS.

Figures 3.1 to 3.4 illustrate the following trends:

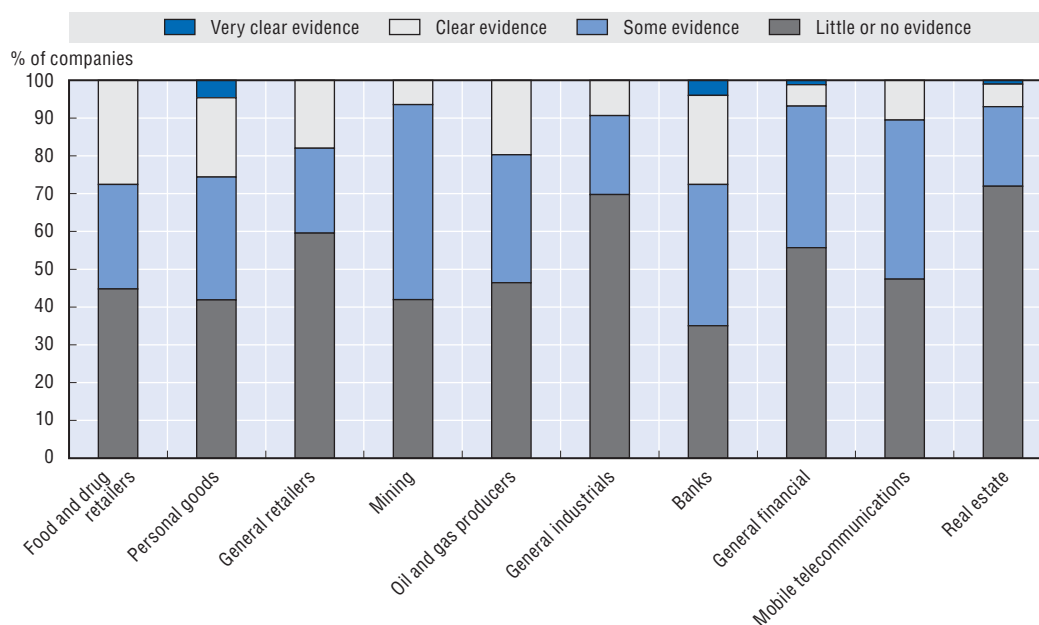
- OECD-North America region has the highest proportion of companies with policies for equal opportunities (95%). However, OECD-Europe has the highest proportion of companies with policies assessed as good (35%).
- OECD-Europe companies also have the highest proportion of equal opportunities systems (82%). These are companies with either work-life balance indicators such as flexible working hours, job sharing and child care arrangements or statistics from diversity monitoring showing employee demographics.
- OECD – North America has a higher proportion of companies with equal opportunities policy than the OECD – Asia Pacific, yet the trend reverses for equal opportunities systems (respectively 27% and 66% of companies analysed giving at least some evidence

Figure 3.3. Equal opportunities policies (sector)



Source: EIRIS.

Figure 3.4. Equal opportunities systems (sector)



Source: EIRIS.

of equal opportunities systems compared with 95% and 68% having at least a basic equal opportunity policy).

- Non-OECD/Emerging Markets region has the lowest proportion of policies and systems for equal opportunities; only 29% of companies have a basic equal opportunities policy or above and only 16% have systems to manage equal opportunities.

- The food and drug retailer sector has the highest proportion of good equal opportunities policy with 28% of companies analysed. However, the banking sector is the group with the highest proportion of equal opportunities systems, with 66% of companies having at least some evidence of these systems.
- Approximately 50% of all companies have a least some evidence of having equal opportunities systems compared with almost 80% of companies having an equal opportunities policy.

A higher proportion of US companies (which represent 92% of companies analysed in the OECD – North America region) achieve at least a basic assessment due to historically well established national regulations (Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967). Over 90% of US companies disclose an equal opportunities policy, and many have mentoring networks supporting minority groups.

The performance of companies in OECD-Asia Pacific and non-OECD/Emerging Markets may be explained by a looser legislative framework towards equal opportunities and a traditionally lower proportion of women in the home country workforce compared to North American and European companies (especially outside Japan). A higher than average proportion of companies in these countries refer only to gender and not other forms of discrimination in their policy. In Japan for example discrimination is largely perceived as a gender issue and generally acknowledged in large companies. Other cultural differences in the interpretation of equal opportunities include the classification of all non-English speakers as ethnic minorities in Australia.

Although OECD – North America has a higher proportion of companies with an equal opportunities policy than the OECD – Asia Pacific region, the trend reverses for equal opportunities systems. This is also linked to disclosure trends. There is an 80% response rate for Japanese companies, while US companies are less likely to respond to surveys on these issues. The data US companies publish tends to be standard employee benefits relating to medical insurance and paid time off rather than to employee composition by gender or ethnic minorities. In addition, public disclosure is not required by US legislation and it is possible that US companies tend not to publish these figures due to potential legal implications.

In the OECD-Europe region, a high proportion of companies report the gender composition of their workforce and their flexible working arrangements. This is due to a strong legislative framework. Under the French NRE law<sup>2</sup> passed in 2001, for example, publicly-listed companies are required to disclose information on social and environmental issues in their annual reports. Disclosure includes indicators related to equal opportunities such as the integration of women into different posts. While no key performance indicators (KPIs) are clearly defined or compulsory, EIRIS data clearly shows a high proportion of French companies with systems for implementing equal opportunities. Similarly, in the Netherlands, where companies are legally required to publish annual social reports, all companies have at least “some evidence” of systems.

Traditionally male-dominated industries such as oil and gas and mining have had problems recruiting women but are implementing changes to attract more women. Similarly, the banking sector has the highest proportion of companies with equal opportunities systems, this is driven by high profile allegations of discrimination against women in promotion opportunities and remuneration.

The proportion of equal opportunities policies and systems developed across all regions and sectors indicate that the issue has been seriously considered by employers. This reflects national regulatory requirements for standards and additional national regulations influencing the type and level of disclosure made by companies.<sup>3</sup> These findings seem to emphasise the positive role of government involvement through legislation.

In total 18 allegations of serious breaches of equal opportunities, as defined by the ILO core labour standards (ILO Conventions 100 and 111 – prohibiting discrimination at work) were found. Five (28%) allegations related to companies incorporated in the OECD-Europe and 13 (72%) from OECD-North America region, specifically the US. In OECD-Europe region one (20%) of the allegations was assessed by EIRIS as “not addressed”. This compares with seven (54%) of the allegations in OECD-North America. The fact that the majority of the cases were raised in the US may be due partly to a greater scrutiny on the part of NGOs on this topic and partly due to the litigation system in the US.

According to EIRIS methodology, “not addressed” means that a company has not implemented the changes necessary to prevent the re-occurrence of the breach in the future. For example, a company must have a policy on all ILO core labour standards in question and respond specifically and in detail to the allegation to be assessed as “addressed”. It should also provide details of audits related to the breach.

Most of the allegations were made against well-known companies which have been targeted by NGO campaigns. Allegations of discrimination in the supply chain often relate to recruitment methods aimed at screening out pregnant women, either by asking intrusive questions or forcing women to undergo mandatory pregnancy testing. Within the company itself, allegations refer to gender or racial discrimination.

### **3.2. Trade union membership**

#### **3.2.1. The issue**

Recognising and implementing the rights of workers to organise in trade unions and negotiate collectively represents an effective way to improve both employee relations and working conditions. Unions typically negotiate on key areas such as wages, hours of work and working conditions. Trade unions can provide workers with a valuable safeguard against exploitation and victimisation.

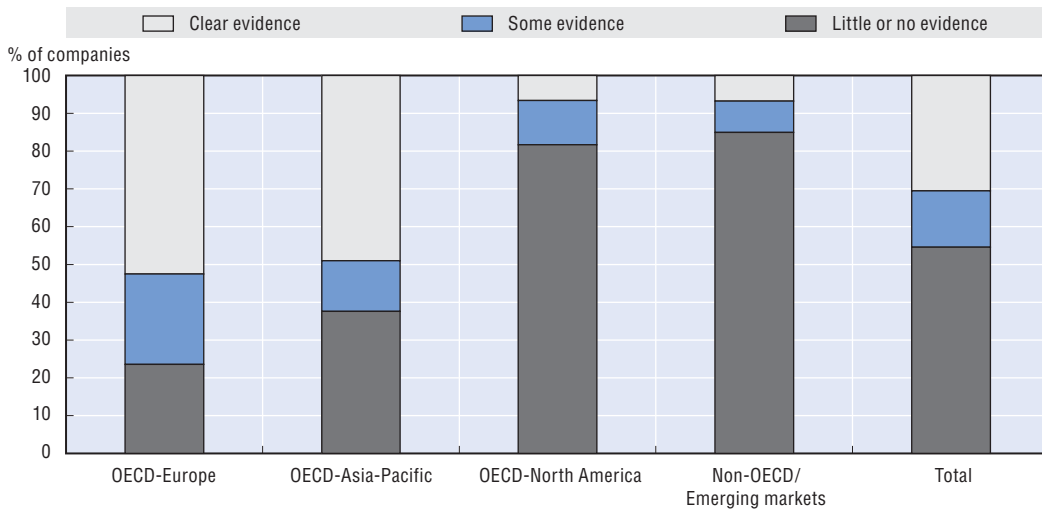
#### **3.2.2. Methodology**

The trade union and employee participation criterion analyses whether the company has collective bargaining and union recognition arrangements. The level of evidence provided is assessed according to the percentage of employees covered by the agreement/union recognition.

Figures 3.5 to 3.6 illustrate the following trends:

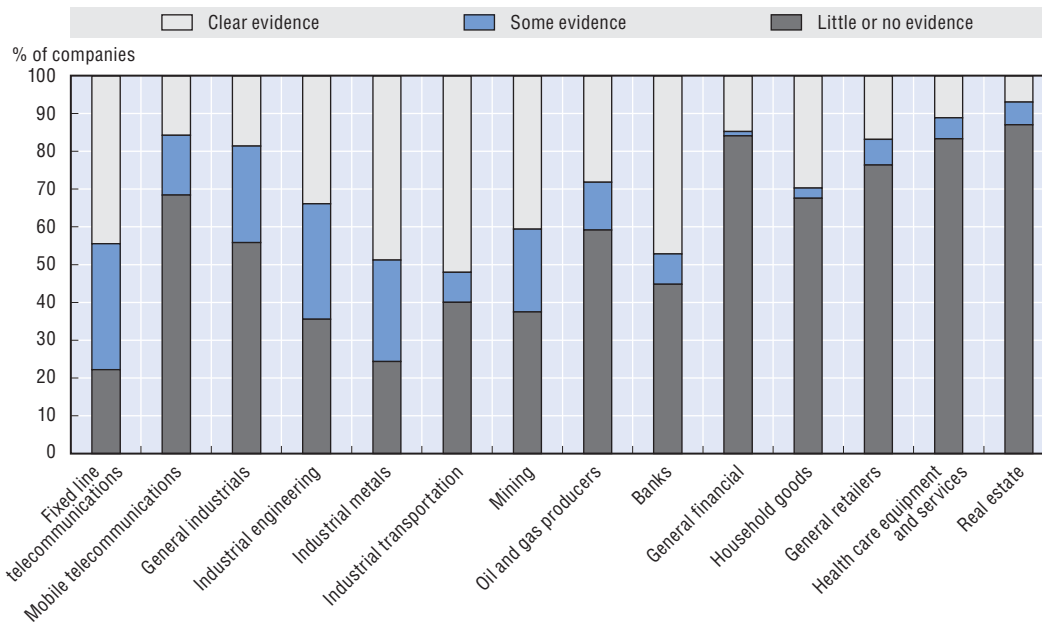
- OECD-North America and non-OECD/Emerging Markets are the regions whose home companies have disclosed the least evidence of employees covered by agreement/union recognition, with respectively 81% and 85% assessed as “little or no evidence”.
- OECD-Europe and OECD-Asia Pacific regions show similar results with around 50% of companies having a “clear evidence” grade. OECD-Europe shows a larger proportion of companies having “some evidence”.
- 55% of all companies have at least some evidence (30% have good evidence).

Figure 3.5. Trade unions (region)



Source: EIRIS.

Figure 3.6. Trade unions (sector)



Source: EIRIS.

The high percentage of employees represented by trade unions in OECD – Asia Pacific is explained by the Japanese trade union model. Japanese companies analysed represent 75.5% of companies assessed as having some evidence and 95.5% of companies assessed as having clear evidence in the OECD-Asia Pacific. In Japan, where federations of unions are formed by institutions engaged in the same industry, the union model differs from that of other OECD countries.

The differences between OECD-Europe and OECD-North America are probably linked to different social models. The high profile role of unions in Europe historically helps explain the high percentage of union recognition agreements in the OECD-Europe region.

Within OECD-Europe countries the regulatory background explains the number of companies with trade union representation. In Germany and Sweden for example, there are strong government laws in place that also ensure union representation at board level.<sup>4</sup> Similar legislation exists in France, Denmark, Finland, Greece, Hungary, Ireland, the Netherlands, Poland and Spain.

The lower proportion of employees that are members or represented by a union in OECD-North America might be explained by its different legislation and social model. The National Labour Relations Act provides employees the right to self-organise; to form, join, or assist labour organisations; and to engage in other concerted activities for the purpose of collective bargaining. It also makes it an unfair labour practice for employers to interfere with, restrain or coerce employees in the exercise of their statutory rights. However, the statute does not cover all categories of employees.

Out of eleven allegations of breaches of unions' rights analysed, four occurred in a company incorporated in the US and none of these four have been assessed by EIRIS as "addressed". Most of these cases refer to anti-unionism tactics ranging from rewarding those who oppose unions to threatening, arresting or firing union organisers.

Differences are also pronounced between industry sectors. For example the fixed line telecommunications sector has traditionally had strong unions and therefore it is not surprising to find that 77.7% of companies have union representation covering over 25% of their employees. This contrasts with the mobile telecommunications sector, which has a score of just over 31%. This is explained by the fact that the latter is a new industry and has more than half of its companies being incorporated either in the US or in non-OECD/ Emerging Markets.

Overall, companies' management of labour rights issues do not seem to go beyond national (or regional) legal requirements. This explains overall good assessments in OECD-Europe where government laws related to trade unions are more regulated than in non-OECD/Emerging Markets.<sup>5</sup>

### **3.3. Job security and training**

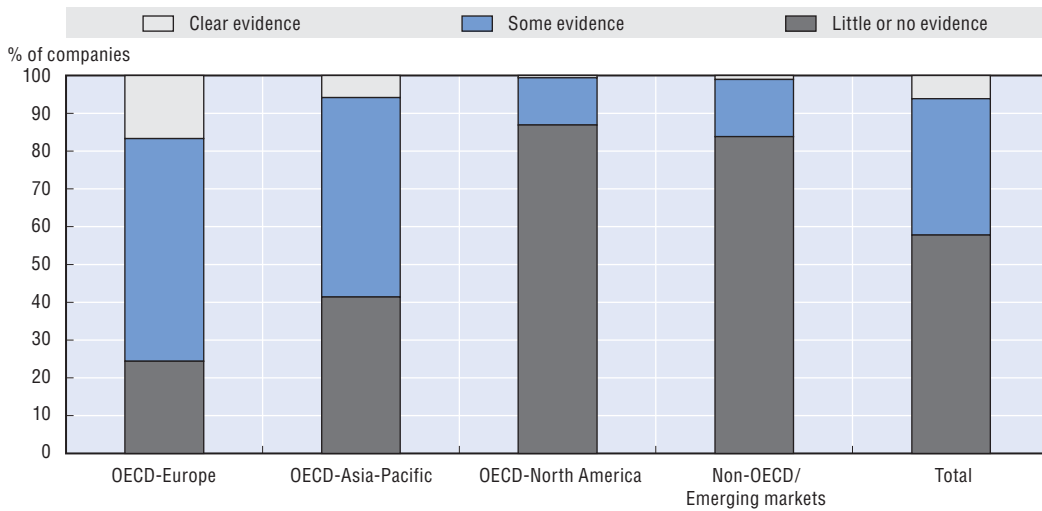
#### **3.3.1. The issue**

In order to make globalisation work for all, it is widely acknowledged that issues such as job insecurity must be tackled by governments and companies. It has also been increasingly recognised that employees' training and skills can contribute to improve both company performance and employee satisfaction.

#### **3.3.2. Methodology**

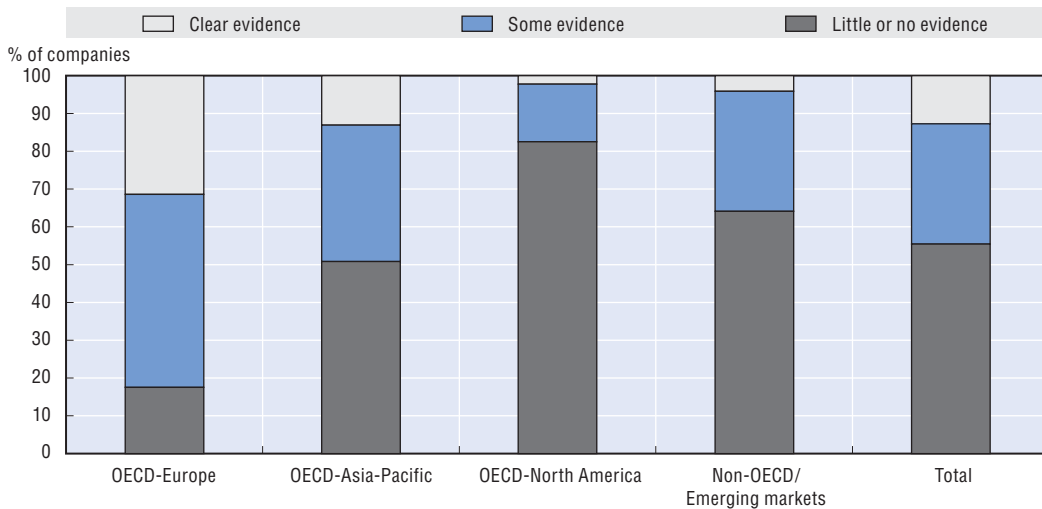
The assessment on job security systems depends on whether the company has a public policy on avoidance or minimisation of compulsory redundancies and procedures for consultation with the workforce on planned restructuring. The positive organic job growth, allocation of senior responsibility for this area and the disclosure of the proportion of staff on temporary contracts are also taken into account. The training systems criteria are assessed according to the percentage of employees having an annual review of training and development and quantitative details (budget, time) on training.

Figure 3.7. **Job security system (region)**



Source: EIRIS.

Figure 3.8. **Training systems (region)**

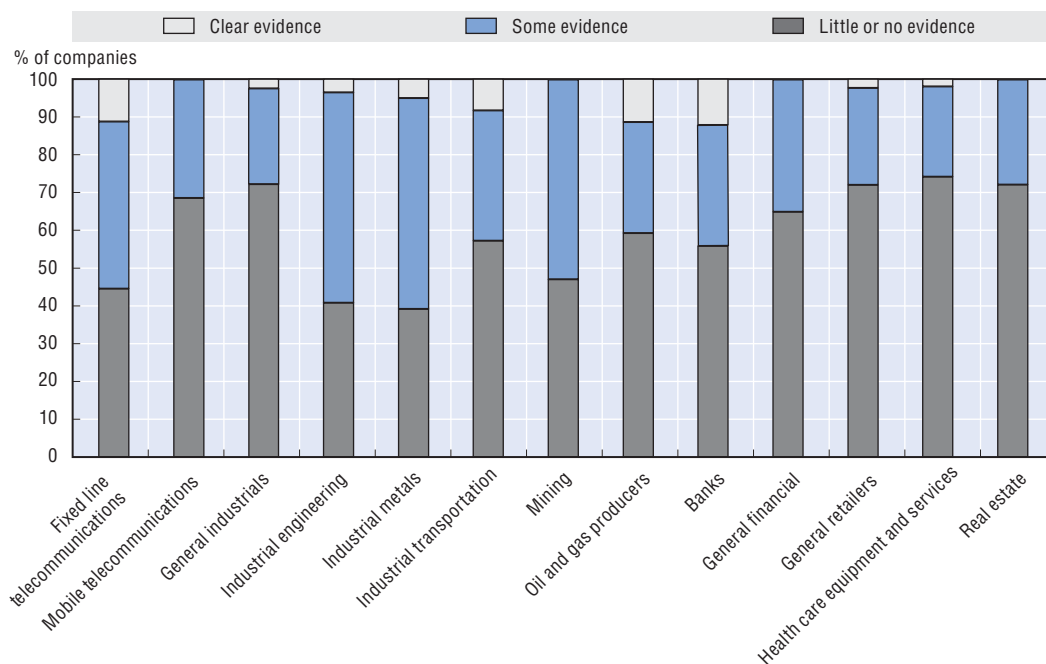


Source: EIRIS.

Figures 3.7 to 3.10 illustrate the following trends:

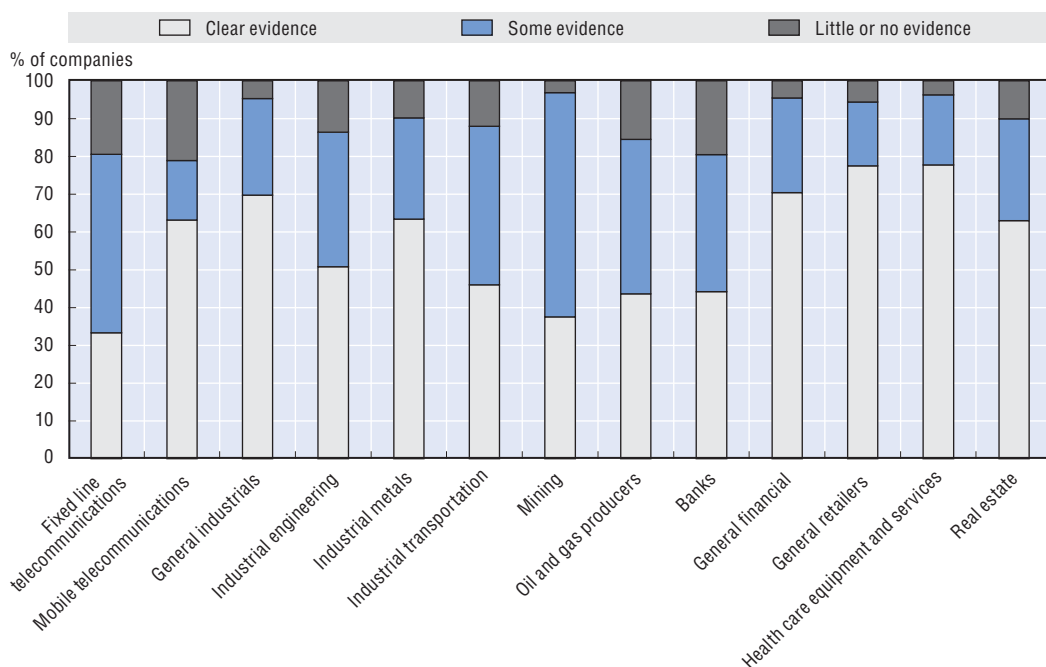
- OECD-Europe has the highest proportion of companies with at least some evidence of job security and training systems, with 77% and 82% of companies respectively.
- OECD-North America region has the highest proportion of companies with “little or no evidence” of systems to address job security or training, with 87% and 82% of the companies analysed respectively. It is also the region with the lowest proportion of companies with clear evidence of job security or training systems.
- No sector has more than 20% of companies showing clear evidence of job security systems.
- Overall, less than 10% of all companies analysed have clear evidence of having job security systems.

Figure 3.9. Job security systems (sector)



Source: EIRIS.

Figure 3.10. Training systems (sector)



Source: EIRIS.

- A minority of companies show evidence of job security and training systems (respectively 42% and 45% of all companies). OECD-Europe and OECD-Asia Pacific both have a much higher proportion of companies with evidence of job security (75.5% and 58.5%) and training systems (82% and 49%).

As with trade unions, the difference of approach to redundancy policies and training between OECD-Europe and OECD-North America is linked to cultural and social differences. The flexibility and mobility of labour markets – which is higher in North America than in Europe – may also be an explanatory factor.

Similarly, the difference between industry sectors can be linked to the level of unionisation. There appears to be a correlation between the level of union representation and the systems companies have put in place for job security and training. Moreover, the good performance of companies in the OECD-Asia Pacific may be explained, in part, by the high response rate received from Japanese companies (80% survey response rate).

None of the sectors profiled score highly on job security. Industrial metals, mining, industrial engineering and fixed line telecoms do best overall, all of them being traditionally highly unionised sectors. The financial services sector and oil and gas producers score highest on “clear evidence” of job security.

Of all the most severe allegations of working hours’ breaches, only one company had clear union representation, some evidence of employee training and little or no evidence of employee training. The rest of the companies facing allegations had little or no evidence for trade union representation, job security or training.

Overall, for trade union recognition and job security across sectors and regions, national legislation seems to be the main driver for companies to improve their working conditions. Although a company does not need to recognise unions to provide employee training, a correlation is often observed between increased unionisation and overall improvements in the working conditions of the workforce as a whole. These findings also emphasise the positive impact trade unions can have in advocating for and negotiating better working conditions.

### **3.4. Health and safety**

#### **3.4.1. The issue**

With the occurrence of various health and safety incidents, employers increasingly acknowledge that the health and safety of employees and neighbouring communities requires constant monitoring and management, especially in high risk sectors. Failure to adequately manage the risks can lead to fatalities, regulatory fines and reputational impact.

#### **3.4.2. Methodology**

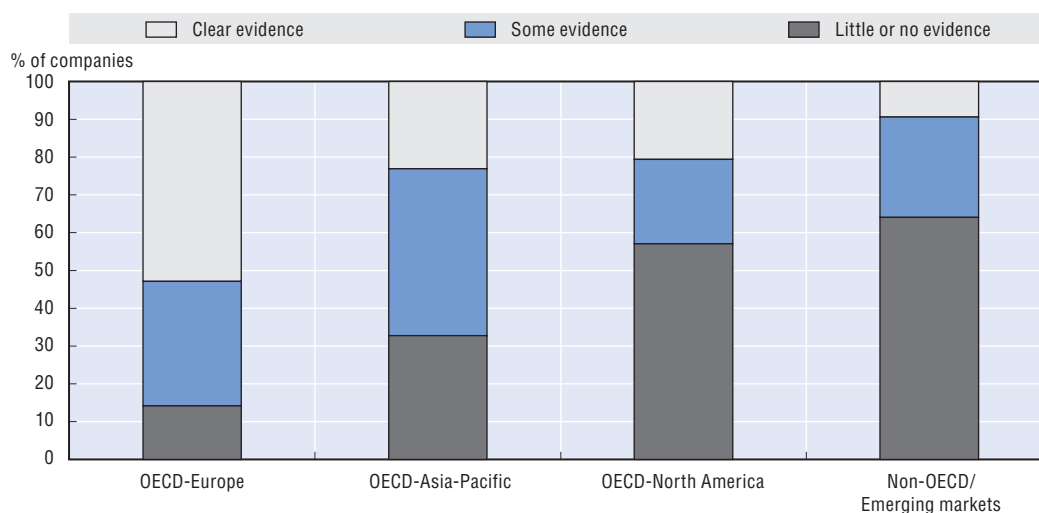
The health and safety criteria include senior responsibility, training, awards and quantitative data for health and safety issues. The company needs to combine three elements to be assessed as having “clear evidence” of health and safety systems.

For this study only companies that have high exposure to health and safety risks have been analysed. These are defined as companies which derive at least 15% of their turnover from a high risk activity. This represents 951 companies in total.

Figures 3.11 to 3.14 illustrate the following trends:

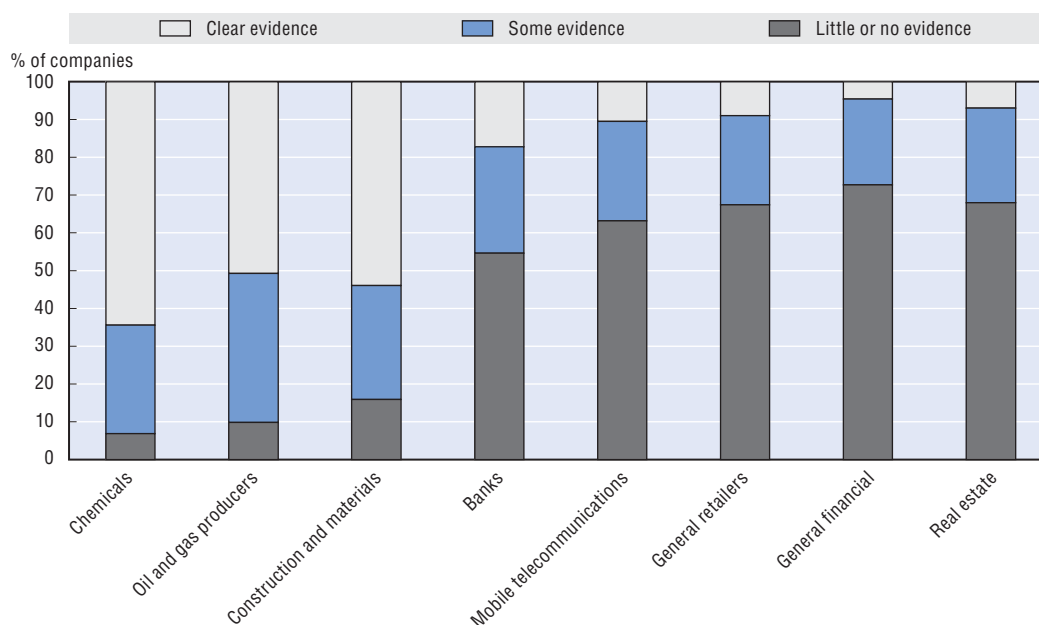
- OECD-Europe region has the highest proportion of companies with at least “some evidence” of health and safety systems (91%). Over 64% of its companies have “clear evidence” of health and safety systems.

Figure 3.11. Health and safety (region)



Source: EIRIS.

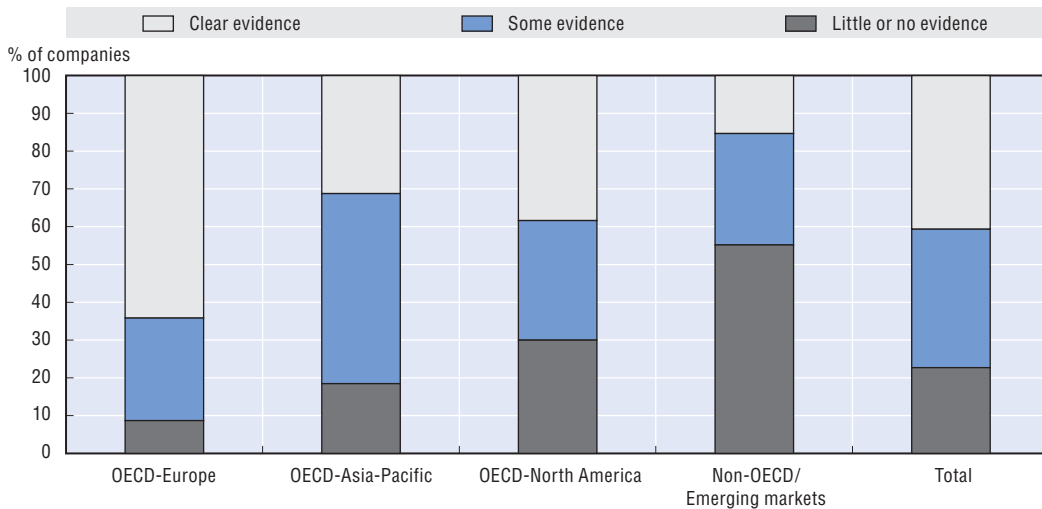
Figure 3.12. Health and safety (sector)



Source: EIRIS.

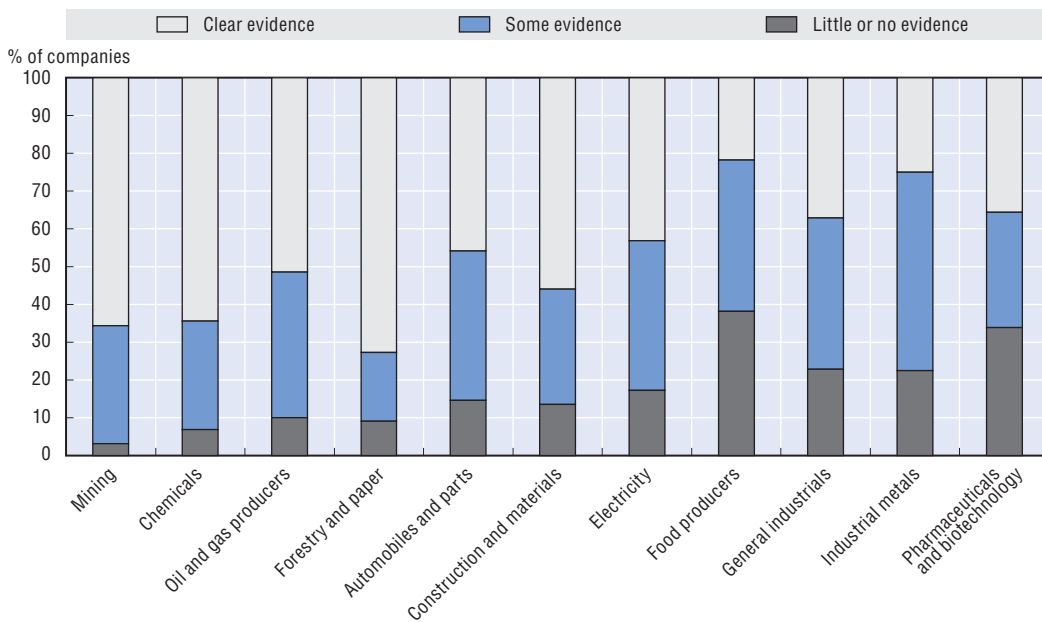
- OECD-Asia Pacific and OECD-North America both have around a third (31% and 38% respectively) of companies with “clear evidence” of health and safety systems. OECD-Asia Pacific has also more than 81% of companies with “some evidence” of health and safety systems compared with 70% for companies in OECD-North America.
- Non-OECD/Emerging Markets companies have the highest proportion of companies with “little or no evidence” of health and safety systems. These represent 55% of companies.
- The sectors with the highest proportion of health and safety systems are the mining (97%), chemicals (93%) and oil and gas (90%) sectors.

Figure 3.13. **Health and safety high risk exposure companies (region)**



Source: EIRIS.

Figure 3.14. **Health and safety high risk exposure companies (sector)**



Source: EIRIS.

The mining and oil and gas sectors have the highest proportion of health and safety systems. However, the rate of accidents is high in these sectors. For example, out of eleven cases of high profile breaches of the ILO health and safety standards studied by EIRIS, ten occurred in either mining or oil and gas companies (EIRIS only focuses on allegations relating to five deaths or more). Because of their high risk exposure to health and safety issues and as a historic target for trade unions due to their poor record, these sectors have high incentives to develop health and safety systems. As a consequence, they have often developed the best health and safety systems across industry sectors.

Similarly, companies in the chemicals sector also tend to have well developed health and safety systems. This is due partly to the highly regulated nature of the industry<sup>6</sup> and in part to the number of companies that are signatories to the Responsible Care (RC) charter and that therefore have committed to, amongst other things, improve and report performance on health and safety. The Responsible Care programme is a global voluntary initiative that seeks continual improvement in all aspects of health, safety (and environmental) performance. For example, out of the fifteen US companies in the chemical sector, twelve companies have clear evidence of health and safety systems. Ten of these are signatories to the RC charter. The remaining three companies have some evidence of health and safety systems. Although the correlation is not that clear in all countries, companies that have signed up to the RC charter tend to have clear evidence of health and safety systems.

In the OECD-Europe, OECD-North America and OECD-Asia Pacific (Japan in particular), health and safety issues for companies are very often addressed due to well developed legal and regulatory requirements on health and safety at work. In the US and in European countries, national regulations emerged in the 1970s following a number of industrial accidents in the workplace.

However, while occupational health and safety (OHS) regulations and law enforcement cover most companies in OECD-Europe, OECD-North America, and OECD-Asia Pacific, well developed OHS legislation is either less common in many developing countries<sup>7</sup> or it has poor compliance implementation when regulations are in place, leaving major high risk sectors and occupations unregulated. Only 20% of food producers in non-OECD/Emerging Markets had some evidence of health and safety systems.

Eleven serious allegations of health and safety breaches affecting the workforce, resulting in five or more deaths, were found. All eleven were within the extractive sector. Half of the allegations occurred in companies incorporated in the OECD-Europe region and the other half in non-OECD/Emerging Markets. Out of the cases addressed by companies, South Africa is the only country in non-OECD/Emerging Markets where companies have addressed health and safety allegations.

Overall, companies in high risk sectors for health and safety tend to have developed health and safety systems within a well regulated environment. Moreover, with new accreditation standards such as OHSAS 18001,<sup>8</sup> the auditing of companies on their health and safety systems is likely to increase.

### **3.5. Human rights**

#### **3.5.1. The issue**

There is growing acceptance that companies should respect human rights, including labour standards, as defined by the Universal Declaration of Human Rights (UDHR) (See Annex 1), even in weak governance zones where governments are unwilling or unable to protect human rights effectively.

#### **3.5.2. Methodology**

This study analyses companies with operations in countries which are particularly high risk for human rights.<sup>9</sup> Operations are defined as 20% or more equity or voting rights stake in a company incorporated in the country. For oil and gas and mining companies the threshold is lower at 5% or more stake in a venture based in one or more of the countries.

Companies are considered to have a large presence if their operations generate EUR 150 million in annual turnover from those operations or assets based in those countries, or if at least one thousand employees are employed there.

The human rights policy, systems and reporting are assessed separately. The policy grade depends on the extent of a company's commitment to the ILO core labour standards (equal opportunities, child labour, forced labour, freedom of association and collective bargaining) and the Universal Declaration of Human Rights (UDHR). Companies that do not have a published policy relating to all the ILO core labour standards cannot achieve an intermediate level grade. Explicit support for the OECD Guidelines for Multinational Enterprises and being a signatory to the UN Global Compact are considered to be proxies for the ILO core areas policy. For companies in the extractive sectors, having an armed guards' policy based on standards such as the Voluntary Principles on Security and Human Rights and an indigenous rights policy are taken into account. No company in these sectors can achieve an "intermediate" grade without an armed guards' policy.

The system criterion is based on disclosure of procedures and practices to implement the policies. Several data points combine to make the systems criteria, including training, monitoring, procedures to remedy non-compliance, consulting with independent local stakeholders, undertaking regular reviews, target setting, supporting human rights capacity-building projects in countries of concern and integrating human rights risk assessment into formal risk assessment procedures.

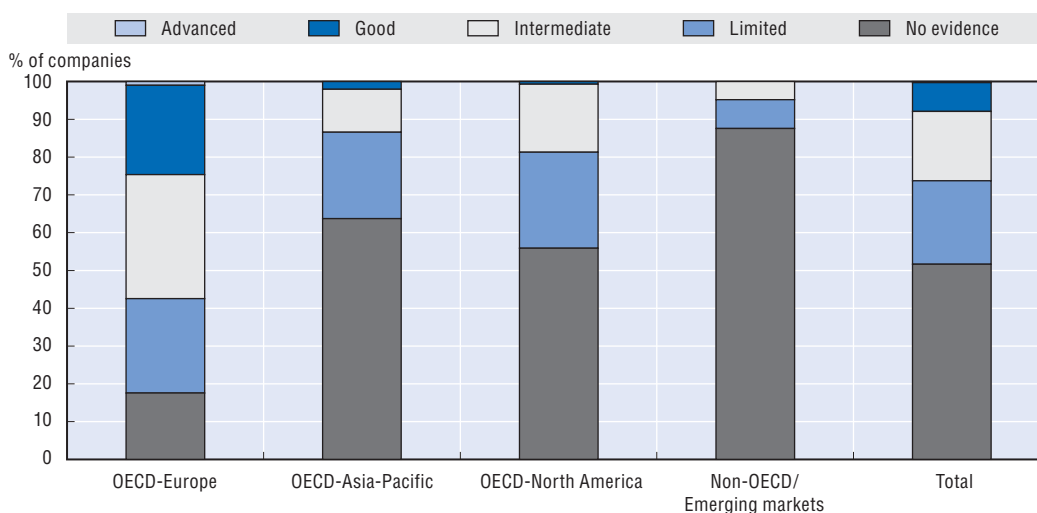
The reporting criteria assess public reporting of the elements contained in the policy and systems criteria plus additional requirements including the adoption of external auditing, impact assessments, engagement with NGOs, and reporting on performance against the policy, such as an example of human rights performance or number of breaches of the human rights policy.

The region with the highest percentage of companies with operations in high risk countries is the OECD-Asia Pacific; this is 331 of the 1066 companies (31%) analysed and can be explained by the regional ties with China (which is listed as a high risk country). However, the region with the highest proportion of large operations in high risk countries is OECD-Europe. This reflects the fact that a substantial number of European companies have manufacturing operations in developing countries, particularly China, to supply European and international markets (90% of all companies with large operations in high risk countries have operations in China).

Figures 3.15 to 3.20 illustrate the following trends:

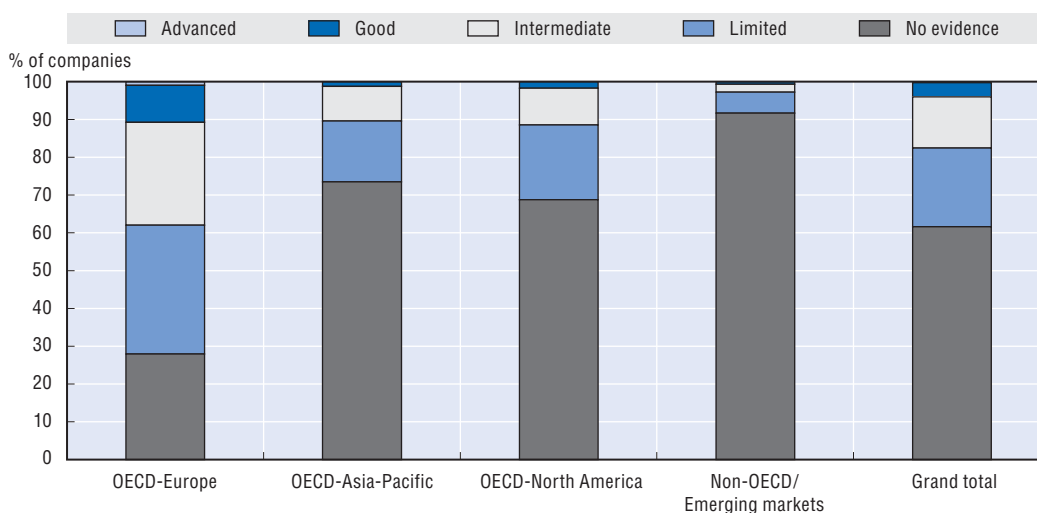
- OECD-Europe is the region with the highest proportion of policies (82%), systems (70%) and reporting (42%) to address human right issues.
- Only companies from OECD-Europe and OECD-Asia Pacific have human rights policies which are assessed as "good".
- Companies from OECD-North America and OECD-Asia Pacific have similar proportions of companies with "intermediate" evidence of human rights systems (respectively 33% and 18%).
- More than 50% of all companies have shown at least limited evidence of having a human rights policy and 40% have shown at least limited evidence of having human rights systems.

Figure 3.15. Human rights policy (region)



Source: EIRIS.

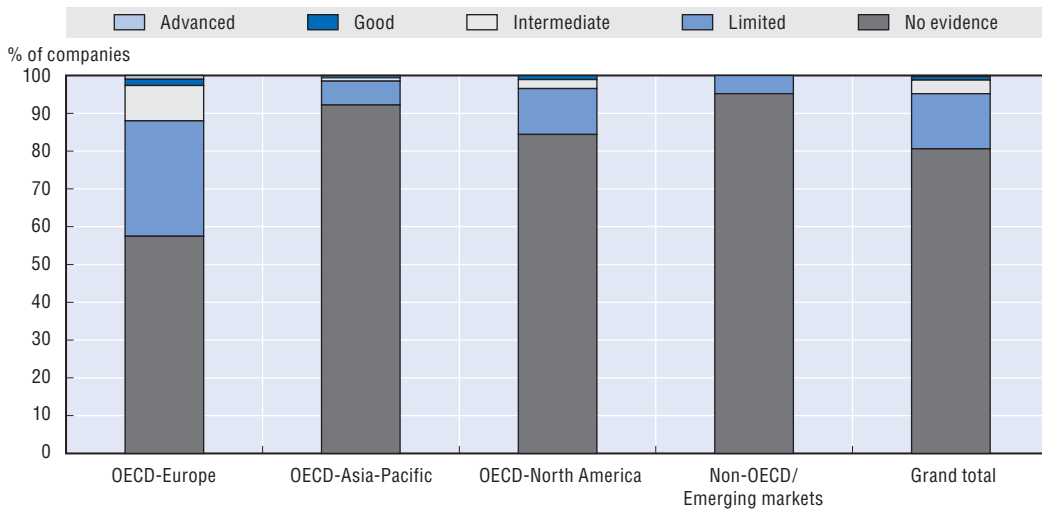
Figure 3.16. Human rights systems (region)



Source: EIRIS.

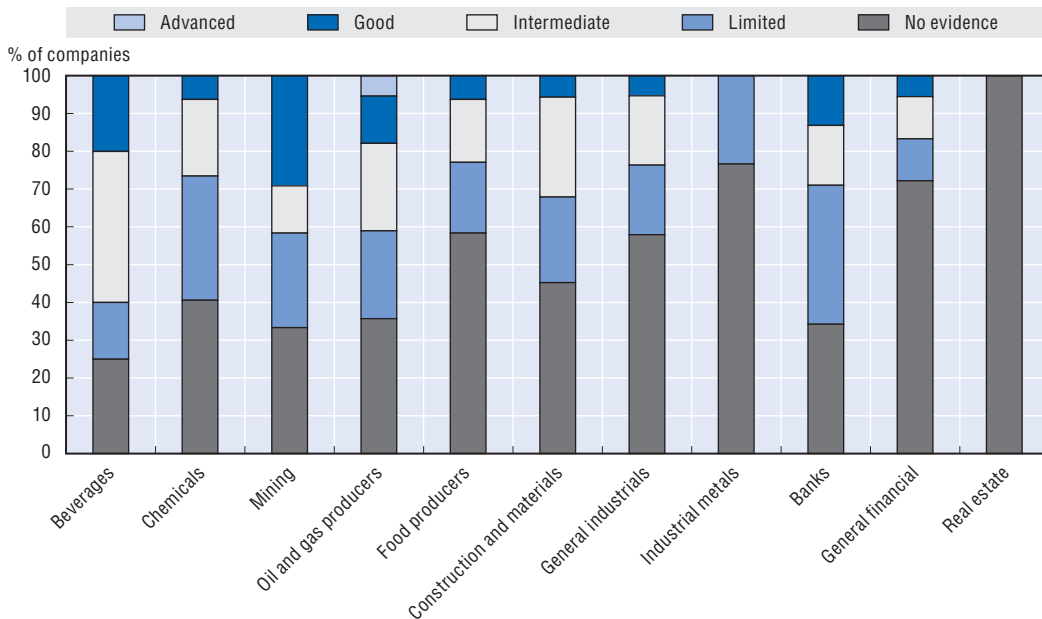
- The only 3 companies with “advanced” human rights policies and systems are all oil and gas producers based in OECD-Europe. This represents 4% of all oil and gas producers analysed.
- Several sectors such as aerospace and defence, industrial transportation, mobile telecommunications and real estate do not report on their human rights policies, systems or activities. Overall, more than 80% of companies analysed do not report enough on human rights to meet the requirements for a limited assessment.
- In the real estate sector, no companies (out of 32 analysed) have published a human rights policy defined as commitment to either two ILO core labour standards or a general statement to respect human rights.

Figure 3.17. Human rights reporting (region)



Source: EIRIS.

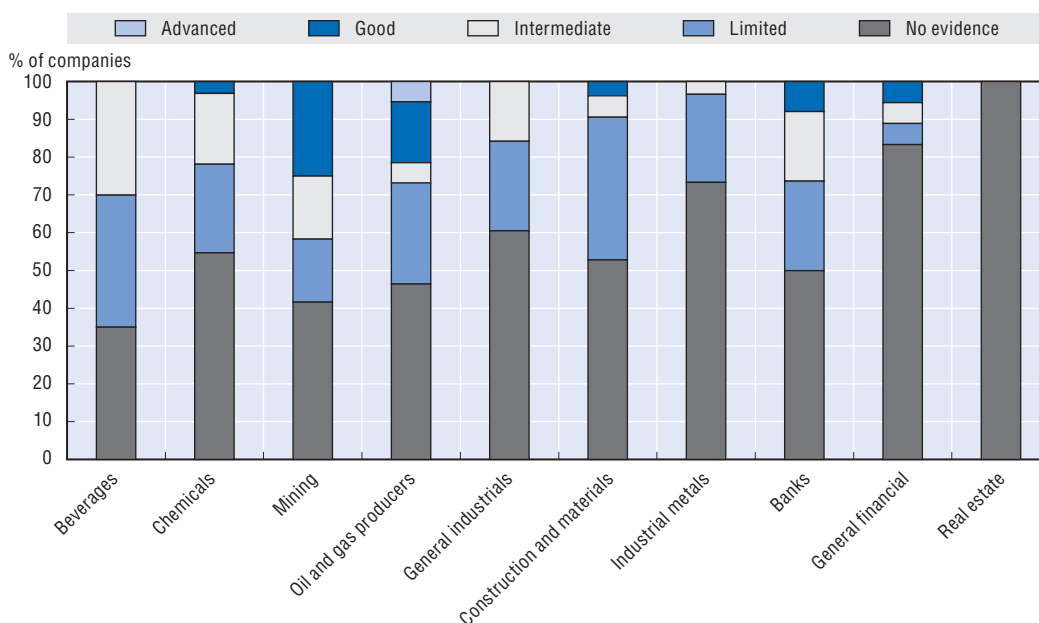
Figure 3.18. Human rights policy (sector)



Source: EIRIS.

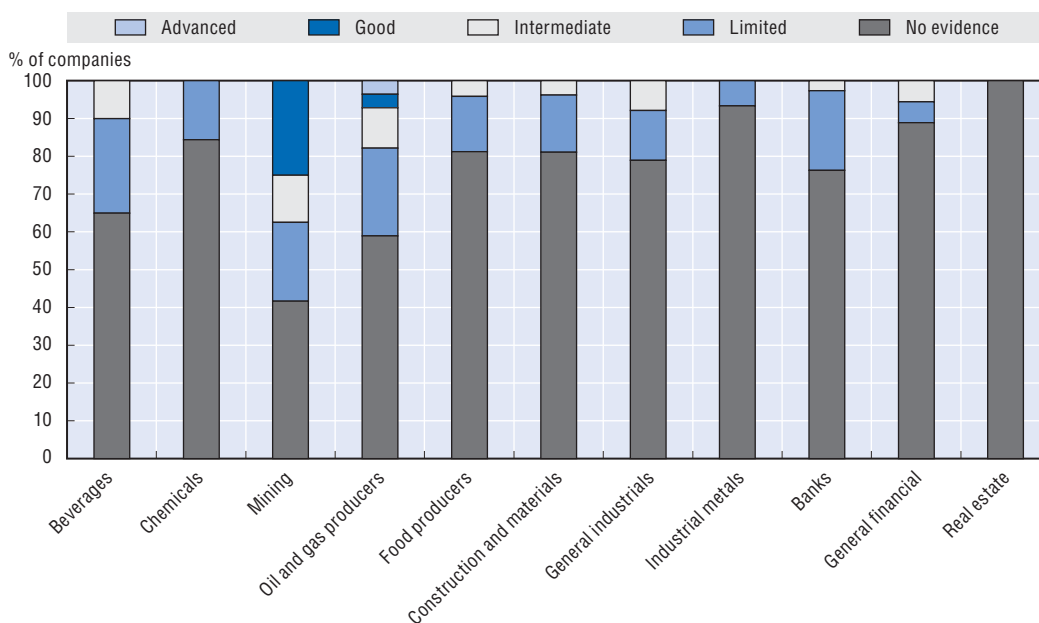
In response to alleged human rights abuses, trade unions, NGOs and responsible investors have put increasing pressure on companies to develop and adopt human rights policies, particularly so in OECD-Europe and OECD-North America. For example, the highest levels of trade union and NGO allegations of breaches of ILO core labour standards (especially health and safety and forced labour) as well as human rights relate to the extractive sector. Indeed, all the allegations of breaches of the ILO core labour standard on forced labour (in the companies rather than their supply chains) have been made against companies in the oil and gas sector.

Figure 3.19. Human rights systems (sector)



Source: EIRIS.

Figure 3.20. Human rights reporting (sector)



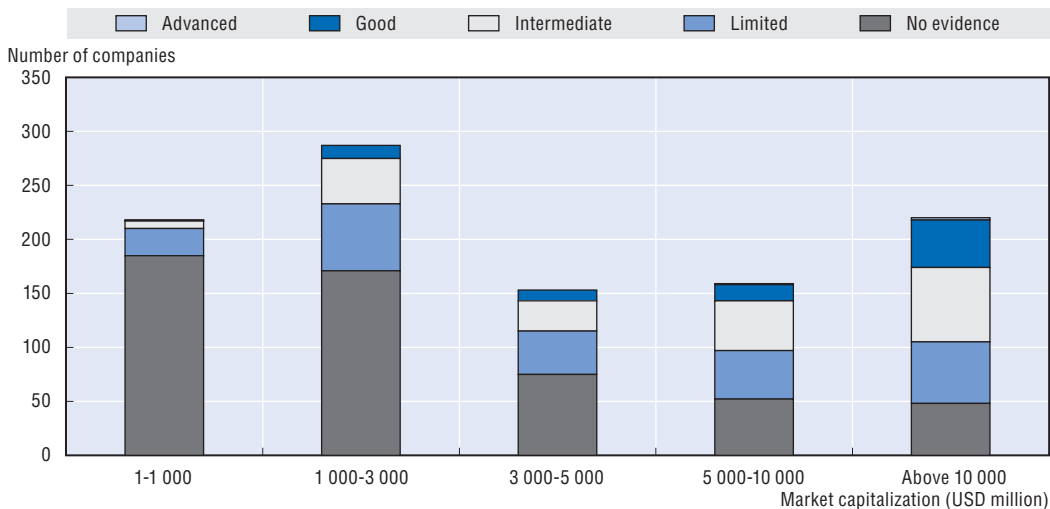
Source: EIRIS.

As companies in the oil and gas and mining sectors have been targeted and have had a reputational incentive to remedy the situation, they also represent the highest proportion of intermediate, good and advanced policies across sectors. Companies in this sector must also meet a more demanding policy (to be assessed as “good” they must also have a guards and indigenous rights policy). The highest scoring companies in this sector have based their armed guards’ policy on the Voluntary Principles on Security and Human Rights (VPs).

Between 92% and 95% of companies from the OECD-Asia Pacific and non-OECD/ Emerging Markets with operations in high risk countries do not meet the limited reporting requirement. This is partly explained by the different attitude to human rights in Asia. In Hong Kong, this may be largely influenced by companies not perceiving any need for special policies relating to investment in mainland China despite that China is considered a country of concern for human rights. Finally, in the US, Germany and Japan less than 10% of companies meet at least the limited reporting assessment. The low level of reporting amongst US companies may be due in part to a fear of litigation and NGO pressure if they start to disclose policy commitments and details of performance.

Another relevant classification based on market capitalisation adds to the information gained from focusing on sectoral or regional differences. Figure 3.21 below represents human rights policies according to five market capitalisation bands.

Figure 3.21. **Human rights policies according to market capitalization (sector)**



Source: EIRIS.

In total, 46.7% of all companies with market capitalisation above USD 3 billion have developed human rights policies assessed as intermediate, good or advanced. For companies with market capitalisation under USD 3 billion, this represents only 15% of companies. It clearly shows that large companies by market capitalisation are more likely to develop intermediate, good or advanced human rights policies than small companies. Again, this is due to their greater exposure to investor, trade union, NGO and consumer pressure.

Overall, the most developed human rights policies and systems are in the OECD-European region. The reasons for the comparatively low level of policies and systems amongst OECD-Asia Pacific companies may be due to lower levels of pressure from NGOs, trade unions, responsible investors and other stakeholders. The performance of OECD-North American companies compared with that in OECD-Europe is explained by the fact that US companies are less likely to include freedom of association and collective bargaining in their policies. Finally, large companies are more likely to have developed human rights policies and systems.

### **3.6. Supply chain labour standards**

#### **3.6.1. The issue**

Over the last decade awareness of working conditions in supply chains has increased amongst the general public and investors. The increasingly international nature of production and trade, and consequently, the growing number of products assembled or processed in many different countries have started to focus attention to the working conditions in developing countries. Companies sourcing many of their products from developing countries are coming under increasing pressure to demonstrate that their supply chains operate without infringing core labour rights. Starting in the 1990s, a number of high profile campaigns have been run against large multinational companies and, partly in response, these companies have developed and disclosed policies and systems in relation to labour standards in their supply chain. The potential for brand damage and reputational risks and therefore to financial performance has made this a key labour issue for many responsible investors.

#### **3.6.2. Methodology**

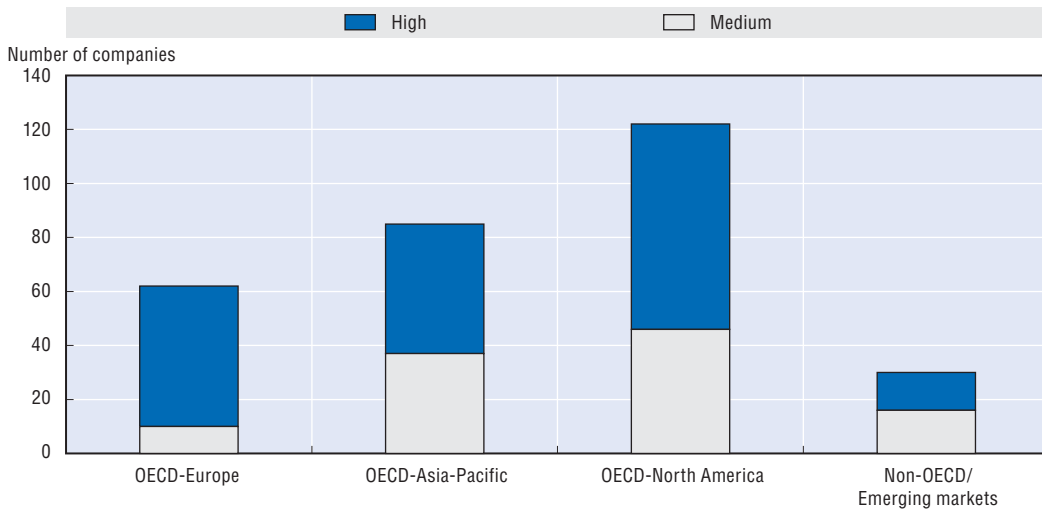
Companies are assessed as high or medium impact based on the size of their operations and both classifications are assessed on their supply chain policy, management systems and public reporting (299 companies in total).

Supply chain policy, systems and reporting are assessed separately. The chain policy criteria assess whether a company's policy covers the ILO core labour standards (freedom of association, collective bargaining, equal opportunities, forced labour and child labour) as well as related conventions and norms on working hours, health and safety, wages and disciplinary practices. To be assessed as "limited", a company must at least be able to demonstrate commitment to one of the ILO core labour standards, and make its policy publicly available. To achieve advanced, a company must demonstrate commitment to all the ILO core labour standards and all the other key labour standards. It must also demonstrate integration of its policy with the company's procurement process and membership of a relevant initiative dealing with labour standards. Such initiatives considered include the Ethical Trading Initiative, Fair Labour Association and Social Accountability International and also initiatives outside Europe and North America.

The supply chain systems criteria assess how comprehensive a company's management systems are for implementing its supply chain labour standards policy. To score an intermediate grade, a company must at least provide details on communicating its policy to its suppliers; indicate some form of relevant monitoring or auditing system; and have developed procedures for addressing non-compliance. The advanced level is only attained if a company can go further than this by demonstrating training of relevant employees (either its own or those of its suppliers) and demonstrating responsibility for supply chain labour standards at a senior level.

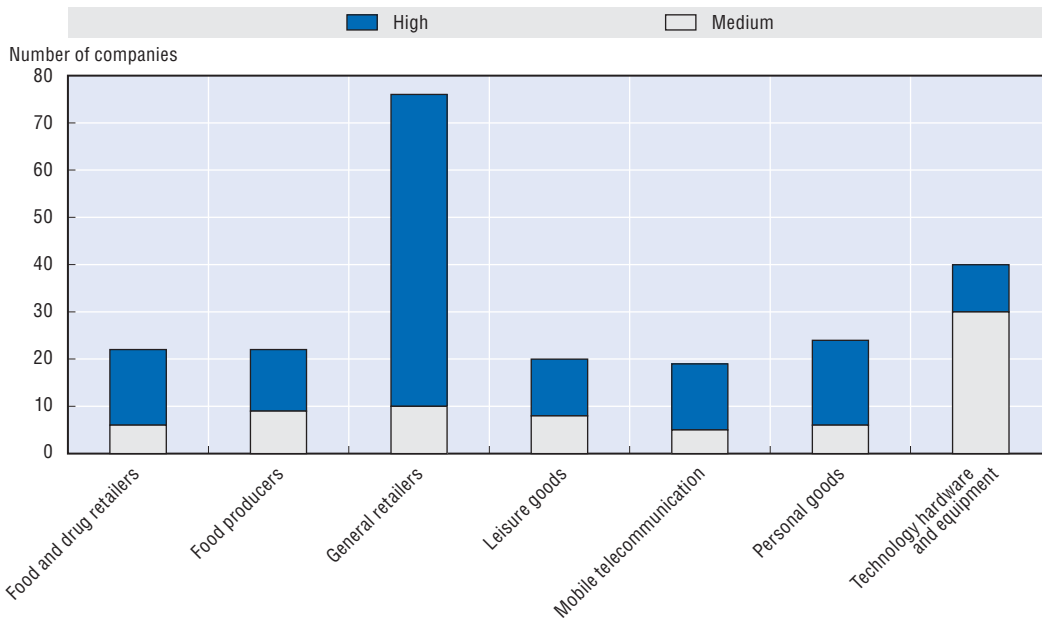
The reporting criteria measure public disclosure on supply chain management. To meet the intermediate level, companies must meet four of the following five indicators: make the policy publicly available; communicate the policy to suppliers; publish details of procedures to remedy non-compliance; publish details of auditing suppliers; and disclose details of training provided to relevant employees and suppliers' employees. In addition, companies must provide an indication of the extent of the supply chain monitored.

Figure 3.22. **Supply chain – medium and high exposure (region)**



Source: EIRIS.

Figure 3.23. **Supply chain – medium and high exposure (sector)**

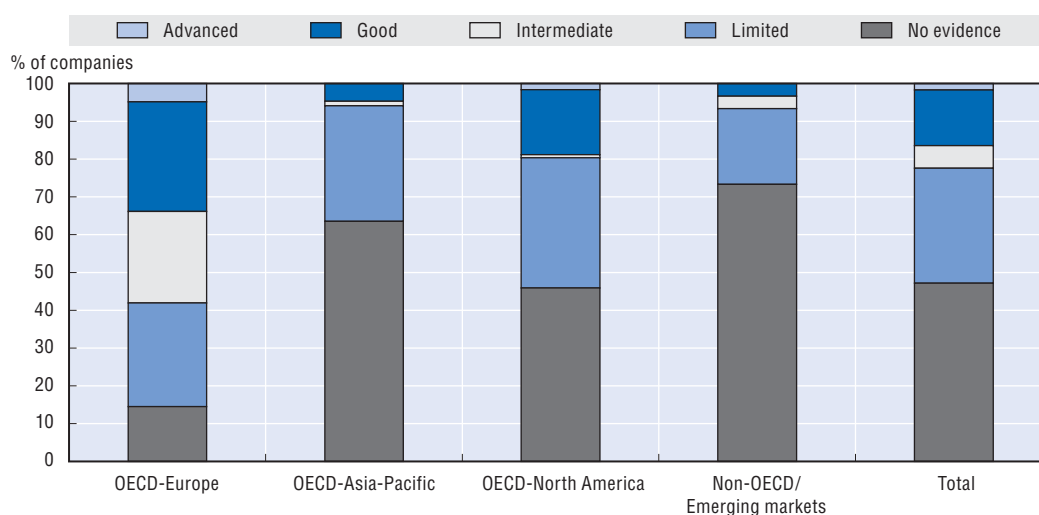


Source: EIRIS.

The following sectors are high risk for supply chain labour standards: food producers, food and drug retailers, general retailers and textiles, household goods, personal goods, leisure goods, mobile telecommunications, electronic and electrical equipment, technology hardware and equipment and tobacco. These sectors have been identified because they have the greatest concentration of activities involving global supply chains. This study therefore focuses on companies that are sourcing products from non-high income OECD countries.

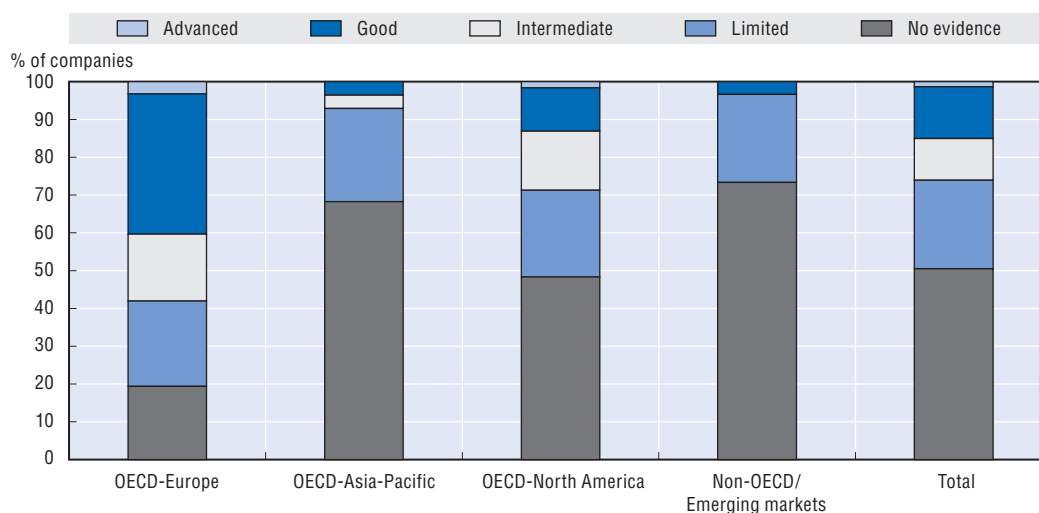
Most of the sectors analysed fall within the seven sectors analysed below in figures 3.23 to 3.29 (223 companies out of the 299 with a medium or high risk exposure).

Figure 3.24. Supply chain policy (region)



Source: EIRIS.

Figure 3.25. Supply chain systems (region)

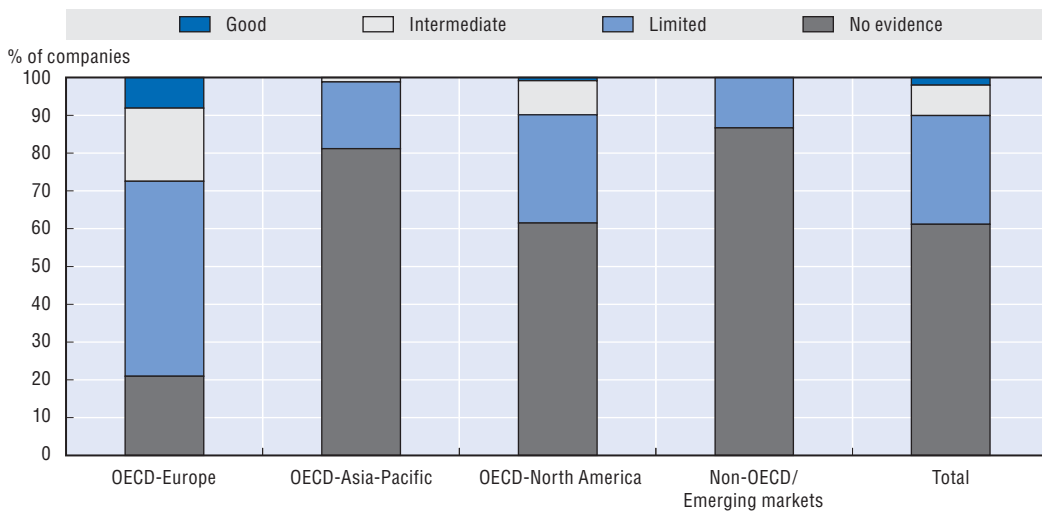


Source: EIRIS.

Figures 3.22 to 3.29 illustrate the following trends:

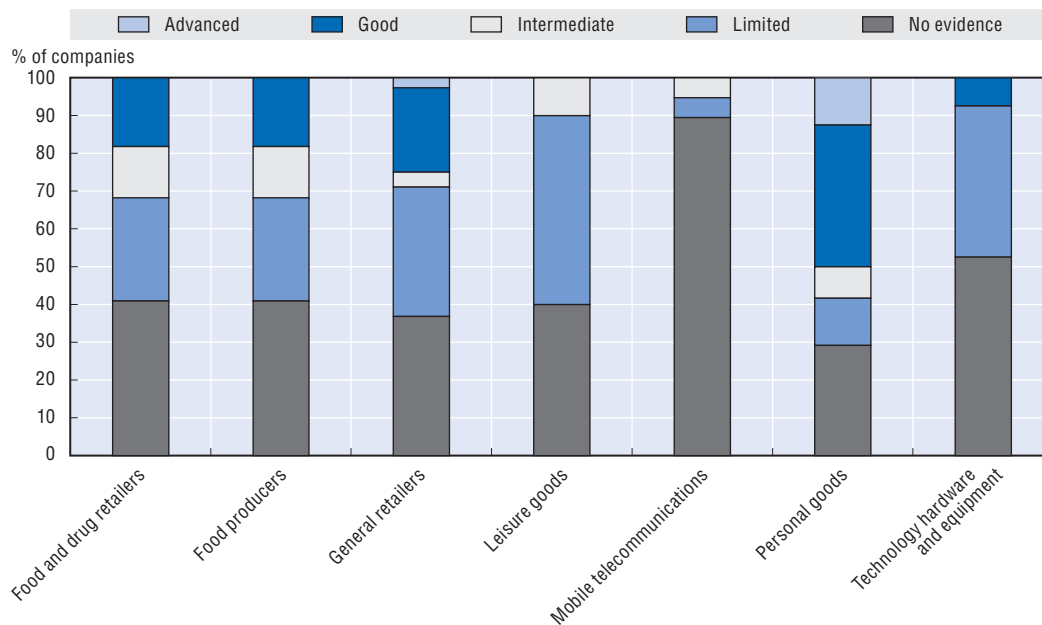
- OECD-Europe is the region with the highest proportion of companies with policies, systems and reporting on supply chain labour issues; this is respectively 85%, 80% and 79% of companies analysed. It also has the highest proportion of good and advanced policies and systems.
- In the three other regions combined (OECD-Asia Pacific, OECD- North America and non-OECD/Emerging Markets), only 44% of the companies have at least limited policies and 41% have at least limited systems.
- General retailers and personal goods have the highest proportion of supply chain labour policies and systems. They also have the highest proportion of good policies and they are the only ones with policies and systems of advanced quality. These sectors also report

Figure 3.26. Supply chain reporting (region)



Source: EIRIS.

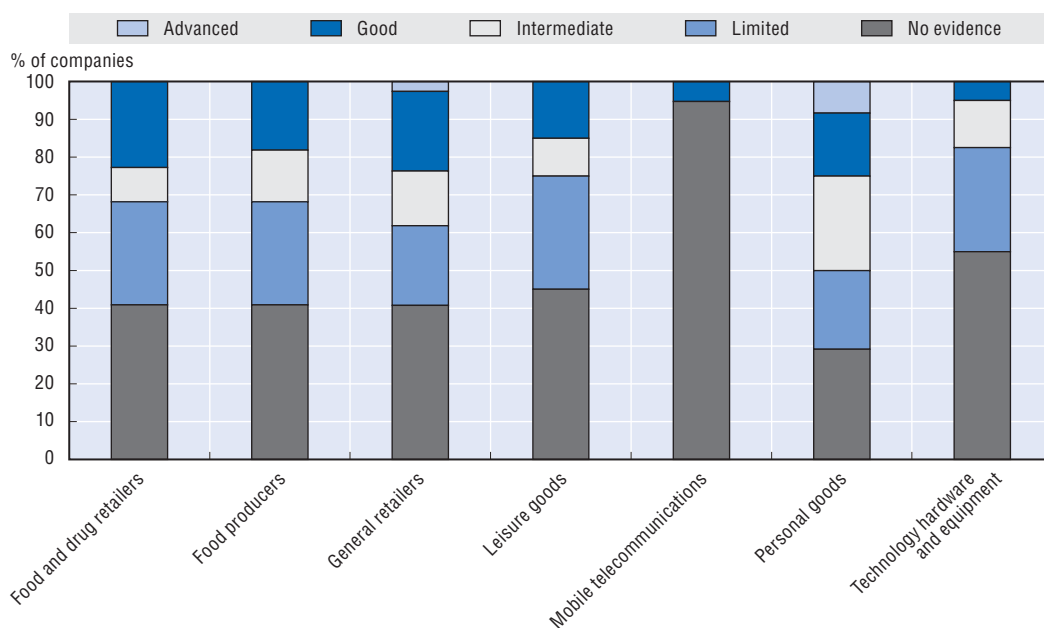
Figure 3.27. Supply chain policy (sector)



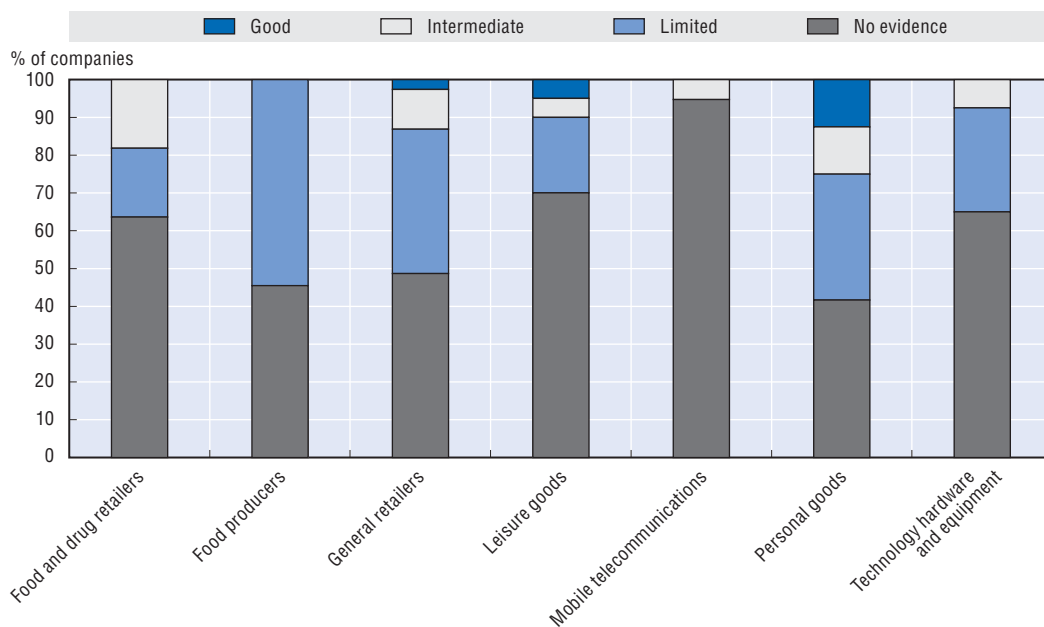
Source: EIRIS.

more than others on their supply chain labour standards with respectively 58% and 51% of companies having provided at least limited evidence of reporting.

- Only 10% of companies in the mobile telecommunications sector have a supply chain policy covering at least one ILO core labour standard and only 5% of its relevant companies have evidence of supply chain systems.
- Over 61% of all companies show insufficient evidence of reporting to meet EIRIS' minimum requirements. Only in the OECD-Europe region do more than a quarter of companies meet at least the limited threshold.

Figure 3.28. **Supply chain systems (sector)**

Source: EIRIS.

Figure 3.29. **Supply chain reporting (sector)**

Source: EIRIS.

It is clear that proportionally more companies in OECD-Europe and OECD-North America are responding to supply chain issues. This is linked to increased public pressure on the issue. In the OECD-Europe and in OECD-North America, companies are targeted by a number of large NGOs such as the Fair Labour Association (FLA), Clean Clothes Campaign (CCC), Campaign for Labour Rights, China Labour Watch, Global March Against Child

Labour, International Labour Rights Fund, Labour Research Association and Worker Rights Consortium. Indeed, the companies which are assessed as intermediate and good for reporting mostly include those which have come under NGO and public scrutiny in the past over their supply chain labour standards and whose reputations are vulnerable to allegations of poor labour practices and to NGO campaigns on this issue.

The difference in performance between companies in OECD-Europe and OECD-North America might be explained by the fact that, in the US, it is less common than in the EU to publish statements including freedom of association or collective bargaining.

In OECD-Asia Pacific and non-OECD/Emerging Markets where companies have been less targeted by investors and NGOs, and therefore less exposed to pressure on this issue, over two thirds of relevant companies do not have even limited supply chain policies or systems. Moreover, many companies in the OECD-Asia Pacific region often serve primarily their domestic market or have a domestic shareholder base. In the future, as trade union, responsible investment and NGO activity increases, increasing pressure on OECD-Asia Pacific companies to improve their response to this issue is likely to give companies in the region an incentive to develop supply chain policies.

The lower performance of mobile telecommunications and technology and hardware equipment seems to be linked to the focus of trade unions and NGO campaigns which have targeted other sectors before addressing supply chain problems in these two sectors. Similarly, the performance of companies in the personal goods and general retailers sectors may be due to their having been more exposed to trade union, NGO scrutiny and investor pressure.

Although policies and systems are being developed by companies in various regions, reporting on supply chain labour standards remains limited. However, as companies' policies and systems become more established, reporting is likely to increase over time. Also, as NGO reports and campaigns by groups such as the Interfaith Council on Corporate Responsibility are filing more shareholder resolutions in the United States on supply chain issues, more companies are prompted to disclose greater levels of information on these issues. The development of national requirements, including mandating companies to report on their supply chain, can have an impact on disclosure. For example in France, a 2001 NRE law encourages publicly-listed companies to describe how their sub-contractors respect the ILO core labour standards in relation to international activities.<sup>10</sup>

Only detailed and specific allegations of breaches of recognised labour standards by suppliers clearly linked to companies have been taken into account so as to focus on the most serious allegations.

Companies are given an "addressed" or "not addressed" status depending on the extent to which they have taken action to remedy the alleged breach and demonstrated that they have improved their management systems to prevent the breach from re-occurring. The following is an overview of the allegations found:

*Union rights* – out of 15 allegations of breaches of union rights within companies' supply chain, 11 refer to companies incorporated in the US, 3 in the OECD-European region and one in the OECD-Asia Pacific. Only 2 of these allegations did not refer to companies in the personal goods or general retailers sectors. Allegations relate to the blacklisting, firing or arrest of union members and sometimes physical assault upon them. Out of these 11 cases studied, 2 have been addressed.

*Child Labour* – out of 18 allegations of breaches within companies' supply chains, 3 have been addressed while 3 US companies are currently engaging to try to address the allegations.

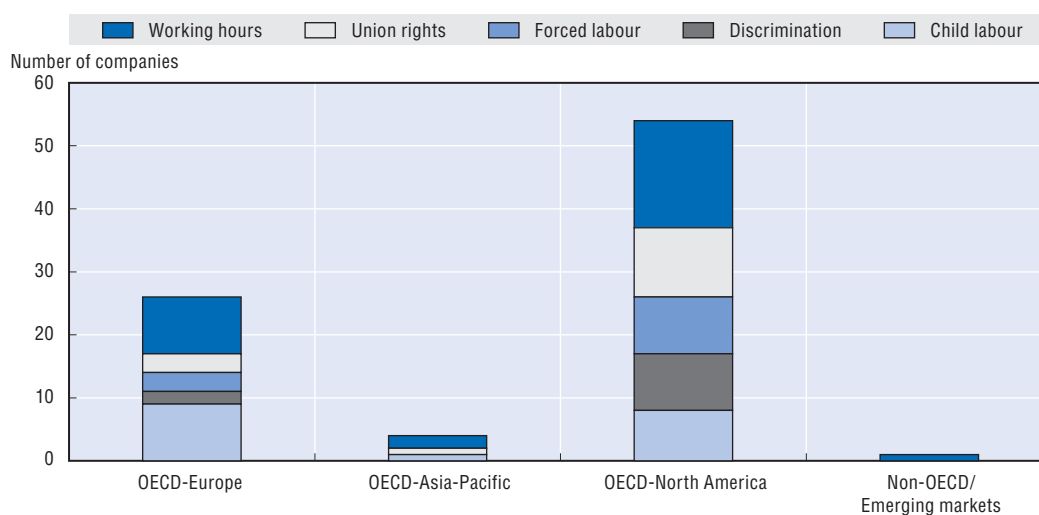
*Forced labour* – out of 12 allegations of breaches within companies' supply chains, the 3 allegations made against European companies have been addressed while US companies have addressed 4 of 9 allegations made against them.

*Discrimination* – out of 11 allegations, the 2 allegations of discrimination in the supply chain related to companies in the OECD-Europe region have both been addressed. In the US, 3 of the 9 allegations have been addressed.

*Working hours* – allegations related to violations of working hours conventions are the most numerous. Out of 29 allegations, 17 were made against companies incorporated in the US – only one has been addressed. All 9 allegations made against European companies have been addressed.

The graphs below (Figures 3.30 to 3.33), which refer to allegations of breaches in the supply chain, and not in the company, refer to the regions in which the companies that allegedly breached ILO core labour standards are incorporated and not where the breach occurred. Typically, allegations of breaches concern operations in developing countries. The graphs do not provide a measure of propensity to breach labour standards but indicate propensities to be subjected to and address allegations of breach of labour standards.

Figure 3.30. **Allegations of breaches of ILO labour standards in the supply chain (region)**

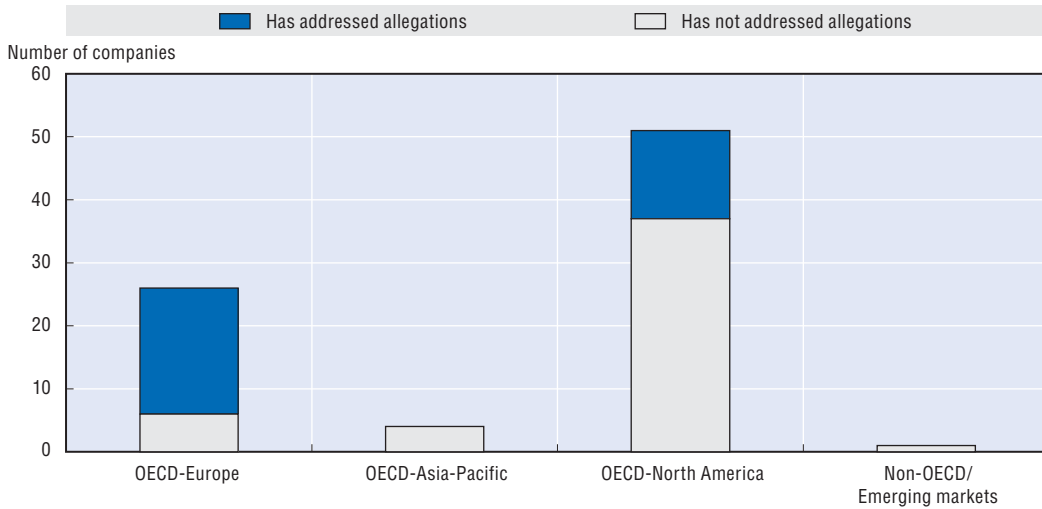


Source: EIRIS.

Figures 3.30 to 3.33 illustrate the following trends:

- Even though the OECD-Europe region has had fewer allegations made against its companies' supply chains than OECD-North America, it has more often addressed these allegations.
- Companies in the general retailers and personal goods sectors face more allegations than companies in other sectors.

Figure 3.31. **Companies addressing allegations of breaches of ILO labour standards in the supply chain (region)**



Source: EIRIS.

Figure 3.32. **Allegations of breaches of ILO labour standards in the supply chain (sector)**

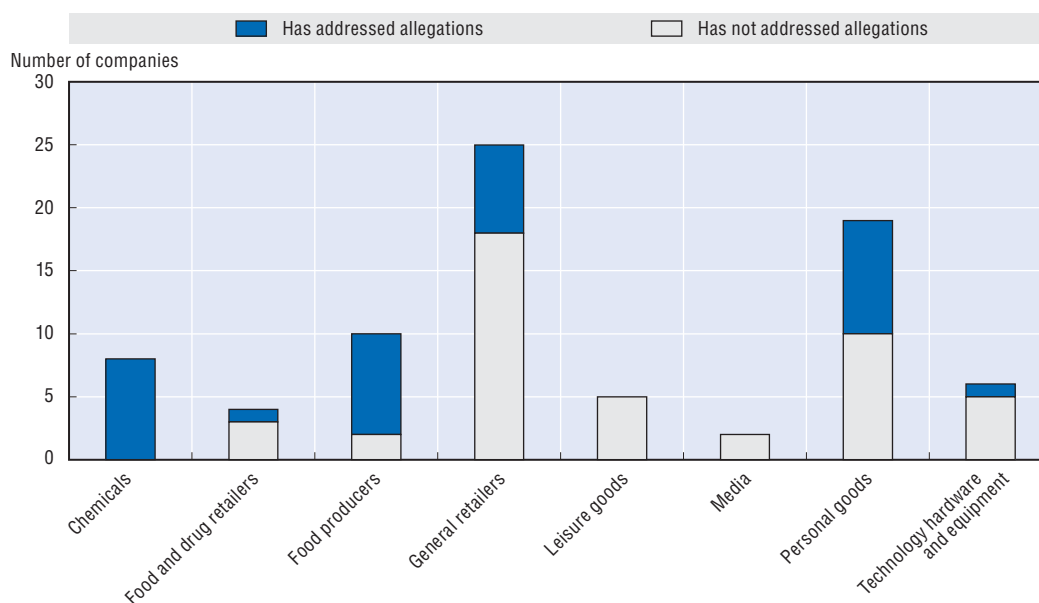


Source: EIRIS.

- All the companies in the chemical sector have addressed the allegations (8) made against them.
- Most of the allegations related to child and forced labour involve companies in the food production and general retailers.

The increased pressure on companies to improve working conditions within their supply chains by developing policies and systems has resulted, especially in OECD-Europe

Figure 3.33. **Companies addressing allegations of breaches of ILO labour standards in the supply chain (sector)**



Source: EIRIS.

and OECD-North America, in companies being more willing to address the allegations that have been made against them.

Overall, awareness of supply chain labour standards issues is highest in OECD-Europe and OECD-North America; however it remains low in OECD-Asia Pacific and in non-OECD/Emerging Markets. In the future, the focus on supply chain labour standards is likely to become greater as more investors integrate questions about supply chain standards within their investment decisions and it is reasonable to expect progress from countries outside OECD-Europe and OECD-North America as NGO and investor pressure develops and awareness of the issues increases.

## Notes

1. See Annex 3 for details on methodologies used to assess companies' stated policies, management systems and reporting in these areas.
2. Reporting requirements are set forth in regulations implementing the NRE law (*Nouvelles Régulations Économiques*), promulgated in a Decree dated 20 February 2002 (*Le Décret d'Application n° 2002-221*).
3. For example within Northern Ireland, equal opportunities legislation requires significant disclosure of the religious and racial compositions of their workforce, whilst in other countries such as France and Belgium, the reporting of such statistics based on ethnicity is illegal.
4. In Sweden, the 1987 Board Representation Act entitles workers (where a collective agreement is in force) to two representatives on the board of directors of Swedish companies that employ 25 or more workers (or three representatives for larger companies). Only trade unions may appoint such representatives. Visit [www.legislationline.org/?tid=221&jid=48&less=false](http://www.legislationline.org/?tid=221&jid=48&less=false) and [www.seeurope-network.org/homepages/seeurope/presens.html](http://www.seeurope-network.org/homepages/seeurope/presens.html) for more details.
5. UNI Finance Survey on the UN Global Compact; Company Commitments on Freedom of Association and Right to Collective Bargaining, January 2008, see [www.uniglobalunion.org](http://www.uniglobalunion.org).

6. For example, in 1999, a new set of the Control of Substances Hazardous to Health (COSHH) Regulations and two sets of the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations came into force along with new legislation on asbestos and major accidents. On 1 June 2007, REACH entered into force. REACH is a new European Community Regulation on chemicals and their safe use (EC 1907/2006). It deals with the Registration, Evaluation, Authorisation and Restriction of Chemical substances. The new law entered into force on 1 June 2007. All this legislation offers a measure of protection to workers and the public.
7. See [www.ilo.org/public/english/protection/safework/managmnt/jisha\\_en.pdf](http://www.ilo.org/public/english/protection/safework/managmnt/jisha_en.pdf) for more information.
8. OHSAS 18000 is an international occupational health and safety management system specification. It comprises two parts, 18001 and 18002 and embraces BS8800 and a number of other publications.
9. EIRIS divides countries of concern into different categories of intensity of human rights abuses. High risk highlights the countries of most concern for human rights issues. See Annex 3 on methodology.
10. Strauss, Robert, report submitted by the EC summarises overall sustainability reporting developments and trends in Europe, [www.sustainabilityreporting.eu/documents/ec\\_esra.pdf](http://www.sustainabilityreporting.eu/documents/ec_esra.pdf).

## ANNEX 3.A1

*Frameworks and Initiatives*

There are a growing number of frameworks and initiatives that relate to labour issues. A selection of these frameworks and initiatives are listed below:

**International frameworks****1948 United Nations Universal Declaration of Human Rights (UDHR)**

It consists of 30 articles which outline the view of the United Nations General Assembly on the human rights guaranteed to all people. International labour standards and values are enshrined in Article 23 of the Universal Declaration of Human Rights:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Website: [www.unhchr.ch/udhr](http://www.unhchr.ch/udhr).

**1976 OECD Guidelines for Multinational Enterprises (revised in 2000)**

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. In particular, Chapter IV deals with employment and industrial relations.

Website: [www.oecd.org](http://www.oecd.org).

**1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (revised in 2000)**

The MNE Declaration encourages the positive contribution that multinationals can make to economic and social progress and to minimise and resolve the difficulties arising from their operations. The principles in the MNE Declaration are voluntary in nature and encourage social dialogue. They intend to guide multinationals, governments, employers' and workers' organisations in adopting social policies and to inspire good practices to both

multinationals and national enterprises. The declaration was negotiated between Workers' and Employers' organisations and Governments in 1977, revised in 2000 to include the Fundamental Principles and Rights at Work, and more recently in 2006 to update references to other ILO instruments. As such it is the only truly international tripartite consensus on what would be a desirable behaviour of enterprises with regard to labour and social policy areas.

Website: [www.ilo.org](http://www.ilo.org).

### **Global initiatives covering labour issues**

#### *Global Reporting Initiative (GRI)*

The Global Reporting Initiative's Guidelines provide a common framework for sustainability reporting globally. The GRI vision is that reporting on economic, environmental, and social performance by all organisations becomes as routine and comparable as financial reporting. An international network of thousands from business, civil society, labour, and professional institutions create the content of the Reporting Framework in a consensus-seeking process.

Website: [www.globalreporting.org](http://www.globalreporting.org).

#### *United Nations Global Compact (UNGC)*

The Global Compact is an international voluntary initiative to bring companies together with UN agencies, labour and civil society to support universal environmental and social principles. These companies are working to advance ten universal principles in the areas of human rights, labour, the environment and anticorruption.

Through the power of collective action, the Global Compact seeks to promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation. The Global Compact is not a regulatory instrument, rather the Global Compact relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based.

Website: [www.globalcompact.org](http://www.globalcompact.org).

### **Initiatives focused on Labour issues**

#### *Ethical Trading Initiative (ETI)*

The Ethical Trading Initiative (ETI) is a UK alliance of companies, NGOs and trade union organisations. They exist to promote and improve the implementation of corporate codes of practice which cover supply chain working conditions. The ultimate goal is to ensure that the working conditions of workers producing for the UK market meet or exceed international labour standards.

Website: [www.ethicaltrade.org](http://www.ethicaltrade.org).

#### *Social Accountability International (SA8000)*

Social Accountability International (SAI)'s mission is to promote human rights for workers around the world. It is best known for SA8000 – its comprehensive and flexible system for managing ethical workplace conditions throughout global supply chains.

SAI works with companies, consumer groups, non-governmental organisations (NGOs), workers and trade unions, local governments – as well as a network of agencies accredited for SA8000 auditing, to help ensure that workers of the world are treated according to basic human rights principles.

Website: [www.sa-intl.org](http://www.sa-intl.org).

#### Fair Labour Association (FLA)

A non-profit organisation seeks to end sweatshop conditions in factories worldwide and building innovative and sustainable solutions to abusive labour conditions.

Website: [www.fairlabour.org](http://www.fairlabour.org).

#### Workers Rights Consortium (WRC)

The Worker Rights Consortium (WRC) is an independent labour rights monitoring organisation, conducting investigations of working conditions in factories around the globe. Our purpose is to combat sweatshops and protect the rights of workers who sew apparel and make other products sold in the United States.

Website: [www.workersrights.org](http://www.workersrights.org).

#### Clean Clothes Campaign (CCC)

The CCC is an international campaign, focused on improving working conditions in the global garment and sportswear industries, and empowering the workers in it. There is a Clean Clothes Campaign in 11 European countries. These are Austria, Belgium, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom.

Website: [www.cleanclothes.org](http://www.cleanclothes.org).

#### AccountAbility (AA1000)

AccountAbility's standards, the AA1000 series, are principles-based standards that provide the basis for improving the sustainability performance of organisations. They are applicable to organisations in any sector. The standards are developed through wide consultation with members, practitioners and other interested individuals. A technical committee of members oversees the development of the AA1000 Series.

Website: [www.accountability21.net](http://www.accountability21.net).

#### Worldwide Responsible Apparel Production (WRAP)

WRAP is an independent, non-profit organisation dedicated to the certification of lawful, humane and ethical manufacturing throughout the world. The objective of the Apparel Certification Program is to independently monitor and certify compliance with the standards (many of which are akin to the ILO core labour standards), ensuring that a given factory produces sewn goods under lawful, humane, and ethical conditions.

Website: [www.wrapapparel.org](http://www.wrapapparel.org).

### *World Business Council for Sustainable Development (WBCSD)*

The World Business Council for Sustainable Development (WBCSD) brings together some 180 international companies in a shared commitment to sustainable development through economic growth, ecological balance and social progress. Their members are drawn from more than 30 countries and 20 major industrial sectors. They also benefit from a global network of 50+ national and regional business councils and partner organisations.

Website: [www.wbcsd.ch](http://www.wbcsd.ch).

### **Initiatives focused on human rights**

#### *Voluntary principles on Security and Human Rights*

Created in the year 2000, the Voluntary Principles on Security and Human Rights is an international, tripartite initiative designed to assist energy and extractive companies in maintaining the security of their operations globally while ensuring respect for human rights. The Voluntary Principles address three main areas: risk assessments, engagement with public security forces and engagement with private security.

Website: [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org).

### **Sectoral initiatives**

#### *Responsible Care*

Responsible Care is the chemical industry's global voluntary initiative under which companies, through their national associations, work together to improve their health, safety and environmental performance, and to communicate with stakeholders about their products and processes.

Website: [www.responsiblecare.org](http://www.responsiblecare.org).

## ANNEX 3.A2

*Regional Distribution of Companies*

Coverage (1988 companies)			
<b>OECD – North America</b>	715	<b>OECD – Europe</b>	480
Canada	55	Austria	9
Mexico	3	Belgium	13
USA	657	Denmark	12
<b>OECD – Asia-Pacific</b>	601	Finland	14
Australia	109	France	72
Japan	472	Germany	49
New Zealand	13	Greece	10
South Korea	7	Hungary	2
<b>Non-OECD/Emerging Markets</b>	192	Ireland	8
Brazil	5	Italy	38
China	2	Luxembourg	1
Chinese Taipei	8	Netherlands	17
Hong Kong, China	110	Norway	11
India	3	Poland	2
Israel	1	Portugal	9
Malaysia	2	Spain	30
Russia	2	Sweden	23
Singapore	46	Switzerland	32
South Africa	11	Turkey	1
Thailand	2	UK	127

**OECD-Europe** – Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

**OECD-Asia Pacific** – Australia, Japan, New Zealand and South Korea.

**OECD- North America** – Canada, Mexico and the United States of America.

**Non-OECD/Emerging Markets** – Brazil, China, Chinese Taipei, Hong Kong, India, Israel, Malaysia, Russia, Singapore, South Africa and Thailand.

## ANNEX 3.A3

# Methodology

### Equal opportunities

#### **Policy**

Different gradings are based on whether a company has a policy which expressly or implicitly refers to avoiding discrimination on the grounds of gender, ethnic origin, disability, age, religion and sexual orientation. The number of elements referred to and whether the company is a member or supporter of business focused groups supporting equal opportunities development initiatives are also taken into account. Another indicator is based on whether the company makes clear its policy is applied worldwide.

#### **Systems**

Indicators such as allocating senior responsibility for equal opportunities, monitoring of the equal opportunities policy, being able to provide supporting data related to the workforce composition and providing a combination amongst various flexible working arrangements are taken into account.

### Trade unions and employee participation

The grading includes the following elements: the recognition of trade unions for collective bargaining purposes (or significant alternative consultative arrangements) and the allocation of responsibility for systems and practices to maintain good employee relations to a named senior person. The percentage of employees covered by collective bargaining agreements is also reflected in the grading.

#### **Health and Safety**

The grading includes the following elements: senior responsibility, details of certification or of awards, employee training and quantitative data relating to health and safety.

#### **Training**

There are various indicators for this area: the percentage of staff having an annual review of training and development needs, significant quantitative supporting data, (such as the proportion of employee costs spent on training, amounts of time and money spent on training per employee) to illustrate its systems for employee training and development, and allocating responsibility for training and development to a named senior person. The

percentage of employees having an annual review of training and development needs is also reflected in the grading.

### **Job Security**

The assessment of this area includes the following indicators: assignment of responsibility for job security, including creation of employment opportunities to a named senior person, a public commitment to and a procedure for consultation on restructuring or redundancies, the provision of figures for the proportion of staff on temporary contracts (which must be less than 10%) and on employment trends over the last three years.

### **Supply chain**

#### *Scope*

All companies in the following sectors will be checked for their involvement in high or medium risk products and will be given a high, medium or low risk record accordingly: general retailers, leisure goods, personal goods, household goods, food producers, food and drug retailers, tobacco, electronic and electrical equipment, mobile telecommunications and technology hardware and equipment. The companies are then researched on what products they are sourcing and from what countries in order to classify them as high, medium or low potential risk.

Companies in other sectors will also need to be given supply chain records if they are involved in high or medium risk products.

#### *Risk assessment*

Companies are assessed as having high potential risk of supply chain labour standard problems if they retail high risk products sourced from high risk countries on a large scale. High risk products and high risk countries lists have been determined by EIRIS.

#### *Supply chain policy*

The grading includes the following elements: a policy in relation to suppliers based upon or containing all or some of the ILO core labour standards, the policy being publicly available, the integration within the company's procurement process (whether the policy is clearly an integral part of procurement process) and company membership of relevant initiative dealing with labour standards Ethical Trading Initiative (ETI), Fair Labor Association (FLA), Social Accountability International (SAI), Fair Wear Foundation (FWF), Eliminating Child Labour in Tobacco Growing Foundation (ECLT), International Cocoa Initiative.

#### *Supply chain systems*

The grading is based on the extent to which the supplier policy is: communicated, monitored and audited. It also includes the following elements: procedure to address non-compliance by suppliers, the training of relevant employees on the policy, the allocation of senior responsibility for supply chain labour standards and whether systems targeted to areas of highest risk are in place.

### *Supply chain reporting*

The grading is based on the extent to which the supplier policy is: publicly available and that it clear that it is communicated to suppliers. It also includes the following elements: the provision of details of visiting/auditing of suppliers, details of procedures to remedy non-compliance, details of training disclosed, reports on proportion of supply chain monitored/audited or the number of supplier facilities, disclosure of risk assessment and results and details of stakeholder dialogue/engagement. Reporting on performance includes the following elements: the provision of examples of the non-compliances found with its policy, reports on amount of non-compliances found with its policy, report quality, response to non-compliances found, independent verification of report, stakeholder verification of report or evidence that stakeholder engagement has informed report writing and evidence of innovation/leadership in reporting.

### **Human Rights**

EIRIS human rights research covers companies with operations in EIRIS category A (high human rights risks) countries, drawn up annually by EIRIS using a variety of sources, including the Freedom House “Freedom in the World” Annual Survey, Human Rights Watch Annual Reports, and Amnesty International Annual Reports. The list of Category A countries includes 28 countries.

The EIRIS definition of country presence is based on ownership of at least a 20% stake in a company incorporated in the country.

### *Human rights policy*

The grading includes the following elements: a public policy based on the ILO core labour standards (being a UNGC signatory, explicitly supporting OECD Guidelines or being an SA8000 signatory are regarded as “proxies” for such a policy), a Public policy statement supporting fundamental human rights principles/explicit support UDHR, the allocation of senior responsibility for human rights and communicating the policy to all employees globally.

A public commitment to incorporate its human rights policy in contracts with major partners and/or suppliers and public commitment to advocate for human rights in a case where they were at risk around its operations are also included in the grading.

### *Human rights systems*

The grading is based on the following elements (to be graded on this criteria, a company must have a human rights policy that relate at least to two ILO core labour standards): training of relevant employees on the human rights policy, consulting independent local stakeholders, monitoring and procedures to remedy non-compliance, identification of major human rights challenges and their integration into risk assessment procedures, the regular review of the human rights policy and targets set for human rights policy. Whether the company supports human rights capacity building projects in countries of concern is also taken into account.

### *Human rights reporting*

The grading is based on the human rights policy: being publicly available and communicated to employees. It also includes elements such as detailing how the policy is monitored or audited, detailing procedures to remedy non-compliance, training, risk/impact assessments and giving details on engagement with human rights/labour rights NGOs or through involvement in initiatives between companies and NGOs or with local/national governments or local community groups in the countries of concern.

The grading of performance reporting is based on whether the company provides at least one detailed example of human rights performance in the developing world or a statement on compliance with human rights policies and whether any breaches have occurred.

### **Convention Watch**

#### *Scope*

Convention Watch incorporates allegations and assessments of breaches of international norms drawn from a range of principles, including: the UN Global Compact; OECD Guidelines for Multinational Enterprises; Universal Declaration on Human Rights; UN Human Rights Norms for Business; the ILO core labour standards; Kyoto and Montreal Protocols; Convention on Biological Diversity; Ottawa Convention on Anti- Personnel Landmines and the UN Convention against Corruption.

For the purpose of the paper, we have chosen to focus on allegations of breaches of key UN human rights principles and international labour standards.

This service is based on a rigorous monitoring system to record allegations made by others that EIRIS considers relevant to labour and human rights issues. EIRIS then makes an assessment as to whether or not the allegations (according to EIRIS criteria) have been addressed by the company concerned.

#### *Company responses incorporated and companies contacted*

EIRIS contacts each company and sends the report to the company contact for their comments. This is an important engagement process incorporated in the research. In addition, company websites, CSR reports and news databases are checked for details of how the company has responded to the allegation.

#### *International Labour standards*

The Convention Watch criteria are specifically based on looking for cases where companies are alleged to have breached the standards found in ILO conventions either in a company itself, or in its supply chain.

There are eight conventions affecting four major areas which are regarded and promoted by the ILO as “core” Conventions. These conventions form the basis of the ILO’s Declaration on Fundamental Principles and Rights at Work which applies to all ILO member states (175 countries as well as workers’ and employers’ associations). In summary these are:

- *Child labour* – prohibiting the employment of children below 15 years, and below 18 years in most hazardous work (ILO conventions 138 and 182).

- *Discrimination/equal opportunities* (ILO Conventions 100 and 111 – prohibiting discrimination at work).
- *Forced labour* – prohibiting the use of forced labour, indentured labour, slave labour and prison labour (ILO Conventions 29 and 105).
- *Freedom of association/Collective bargaining* (ILO Conventions 87 and 98).

In addition, EIRIS is tracking the following conventions which are highlighted by many leading corporate and NGO codes of conduct:

- *Working Hours* (ILO Conventions 1, 14 and 106 – Hours of Work (Industry), Weekly Rest (Industry) and Weekly Rest (Commerce and Offices)).
- *Health and safety* – According to figures from the International Labour organisation (ILO) and the World Health organisation (WHO) two million people die annually in accidents at work. Job-related accidents are also rising in developing countries, where there is often little training in health and safety systems. There are many ILO Conventions relating to this issue including: Occupational Safety and Health Convention 155, Prevention of Major Industrial Accidents Convention 174 and the Safety and Health in Mines Convention 176. Other relevant international instruments include the International Covenant on Economic Social and Cultural Rights, Article 7 of which includes the need for “safe and healthy working conditions”.

Note that these conventions are narrowly interpreted in order to focus on the most serious allegations. For all the convention areas outlined above, EIRIS focuses on allegations with substantial supporting detail. EIRIS covers reports or detailed allegations on company websites which focus on particular companies and which provide detail on the conditions within their supply chains. Allegations need to be specific by including information such as dates, names of supplier factories and locations. (If an NGO has decided not to name supplier factories in order to protect the workers’ identities and simply labels them as Factory A, Factory B etc then this is acceptable and the allegation can be included.) In general EIRIS focuses on reports where the research process is clear and the allegations are the result of an in-depth investigation.

### **Assessments**

In assessing whether or not EIRIS considers a company to have addressed allegations of breaches relating to child labour, forced labour, discrimination, freedom of association, collective bargaining, and working hours, EIRIS looks at statements and press releases made by the company and any written responses made to EIRIS.

A company will only be assessed as having addressed an allegation if it has taken action to prevent the reoccurrence of the breach. For each type of breach, EIRIS has determined a set of actions a company needs to take in order to be assessed as “addressed”.

A company is deemed to have responded specifically and in detail to the allegations if it has responded in detail to each individual allegation described in the report. It must also confirm that each allegation is a breach of its policy and describe the steps taken to remedy each alleged breach if proven to be founded. Where a company is not able to provide a specific and detailed response to particular cases, for example because supplier factories have not been named in the allegations, a specific and detailed response to the issues raised in the allegations will be sufficient.

Please note that companies which have allegations relating to freedom of association and collective bargaining in a Chinese supplier are assessed differently (taking national regulations into account).

If an allegation has not been addressed according to this definition, it will be assessed as “not addressed” unless further information is shortly expected from the company in which case a pending assessment will be made.



PART II  
Chapter 4

## The Impact of Foreign Direct Investment on Wages and Working Conditions\*

*Foreign direct investment (FDI) by OECD-based multinational enterprises (MNEs) in developing and emerging economies has increased dramatically over the past two decades. While generally perceived as beneficial for local development, it has also raised concerns about unfair competition and the protection of workers' rights in host countries. This paper documents the recent increase in FDI and assesses its effects on wages and working conditions for workers of foreign affiliates of MNEs and those of their independent supplier firms. The evidence suggests that MNEs tend to provide better pay than their domestic counterparts, especially when they operate in developing and emerging economies. The positive impact on wages also appears to spread to the employees of domestic firms that serve as suppliers of MNEs or recruit managers with prior experience in foreign firms, but these spillover effects are small. MNEs also provide more training than domestic firms, but it is unclear whether this reflects a causal impact of foreign ownership.*

\* This paper was prepared by Elena Arnal and Alexander Hijzen, a consultant and an economist respectively at the OECD Directorate for Employment, Labour and Social Affairs. John Martin's presentation at Session Two of the OECD-ILO Conference on Corporate Social Responsibility, 23-24 June 2008, drew upon the material presented here.

## 1. Introduction

Foreign Direct Investment (FDI) is often seen as a driver for economic development as it may bring capital, technology, management know-how, and jobs in receiving countries and access to new markets for foreign investors. Policy-makers have, therefore, tended to emphasise the benefits that FDI can bring to host economies, particularly in developing countries. Accordingly, many governments have developed policies to encourage inward FDI.

While FDI and multinational enterprises (MNEs) are often perceived to be beneficial for local development, they have also aroused much controversy and social concerns. For example, MNEs have often been accused of taking unfair advantage of low wages and weak labour standards in developing countries. MNEs also have been accused of violating human and labour rights in countries where governments fail to enforce such rights effectively.

The aim of this paper is to take stock of the current state of knowledge regarding the social impact of inward FDI in host countries, with particular emphasis on the wages and working conditions offered by OECD-based MNEs to their workforces in non-OECD countries. The paper also considers possible spillover effects of FDI on workers employed by local firms.

The structure of the paper is as follows. Section 2 provides a description of the various trends in FDI during the past two decades in OECD and non-OECD countries. Section 3 reviews the literature on the direct and indirect impact of FDI on wages and working conditions in host countries. Section 4 summarises the new empirical evidence carried out for Chapter 5 of the *OECD Employment Outlook 2008*, for two developing countries (Brazil and Indonesia) and three developed countries (Germany, Portugal and the United Kingdom).<sup>1</sup> Section 5 offers some concluding remarks.

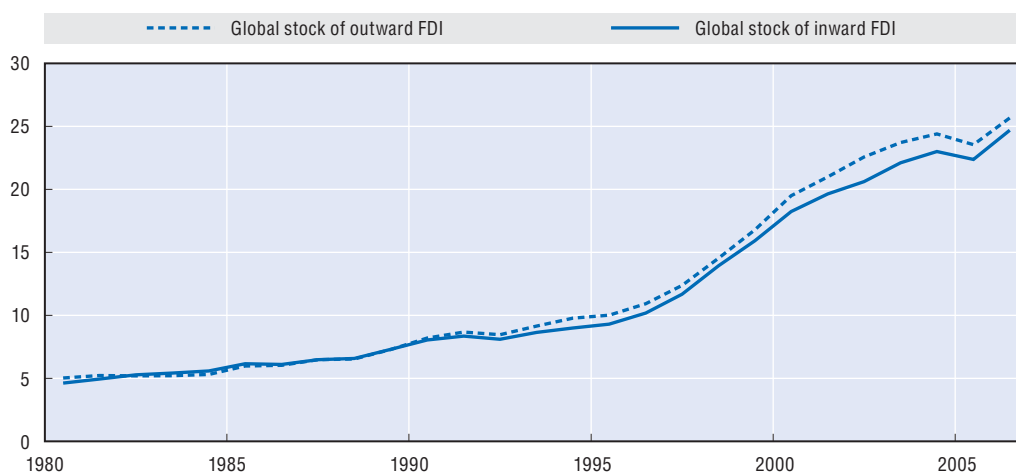
## 2. The growing importance of FDI

### 2.1. FDI has increased rapidly

Foreign direct investment is defined as an investment made to acquire a lasting interest by an entity resident in one economy in an enterprise resident in another economy. The investment should allow the investing entity to exert direct control over the management of assets in the invested firm. For statistical purposes, it is typically assumed that this is the case when a foreign investor owns 10 percent or more of the ordinary shares of voting power (or the equivalent). Investments that fall short of the 10% ownership threshold are classified as portfolio investments.

During recent decades, the importance of FDI in the world economy has increased rapidly.<sup>2</sup> The global stocks of inward and outward FDI as a per cent of global GDP have increased from less than 5% in 1980 to about 25% in 2006 (see Figure 4.1).<sup>3</sup> The increase in FDI is largely driven by the ongoing liberalisation of trade and investment and technological developments in information and communication technologies.

Figure 4.1. **World foreign direct investment, 1980-2006**  
Global FDI stocks as a percentage of world GDP



1. FDI stocks and world GDP are expressed in current US Dollars.

Source: UNCTAD, FDI Statistics.

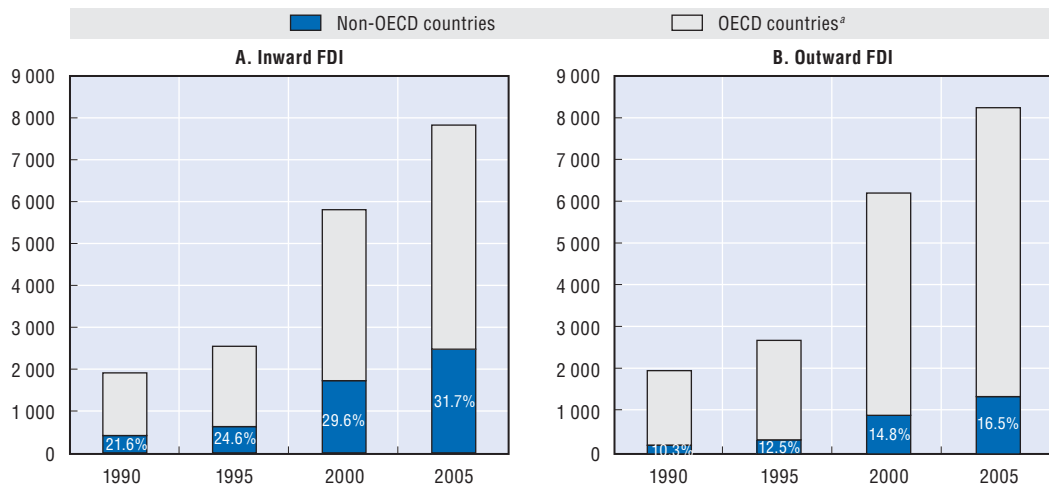
## 2.2. The geographical distribution of FDI

Although the bulk of FDI continues to take place between OECD countries, the relative importance of non-OECD countries for inward and outward FDI has grown substantially during the past 15 years, reflecting the integration of developing countries into the world economy, and particularly, of the so-called BRICs – i.e. Brazil, China, India and Russia. Figure 4.2 shows that the share of non-OECD countries in the global stock of inward FDI has risen from 22% in 1990 to 32% in 2005 and their share in the global stock of outward FDI from 10% in 1990 to 17% in 2005.

The rising importance of non-OECD countries as a destination for FDI has a number of potential implications. First, since the mid-1990s, FDI has become the most important source of external finance for developing countries, thus reinforcing its potential role for the development process in those countries (see Figure A.1 in Annex).<sup>4</sup> Second, the increasing number of potential destinations for FDI and the growing dependence of developing countries on FDI has intensified competition among countries to attract FDI. Finally, the rise in FDI from OECD countries into non-OECD countries has also raised serious social concerns about poor labour practices in the foreign operations of MNEs originating from OECD countries. This is particularly the case as minimum labour standards are not always effectively enforced in such countries.

Figure 4.3 focuses on the trend in inward and outward FDI for key emerging economies (Brazil, Chile, China, India, Indonesia, Russian Federation and South Africa). Panel A documents FDI for these countries with respect to the rest of the world, while Panels B and C show their FDI stocks from and to, respectively, OECD and non-OECD countries. In all seven countries, inward and outward FDI has tended to increase significantly between 1990 and 2005. China, mainland plus Hong Kong, is by far the most important non-OECD country both as a source and as a recipient of FDI. In 2005, China represented more than a third of the total inward FDI in all non-OECD countries, and more than half of outward FDI. This trend has consolidated China as a growing source of FDI, reaching in 2006 the 4th world position in terms of stocks and the 6th in terms of flows.<sup>5</sup>

Figure 4.2. **Trends in foreign direct investment by groups of countries, 1990-2005**  
Billions of US dollars at constant prices (2000)



a) Corresponds to the 30 OECD member countries.

Source: OECD (2008a).

In most of the countries shown, the rise in the inward stock of FDI between 1990 and 2005 predominantly results from FDI from other non-OECD countries, although FDI from OECD countries into the key emerging countries has also increased significantly. Indonesia and Brazil are the only two countries where the OECD is more important as a foreign investor than the group of other non-OECD countries.

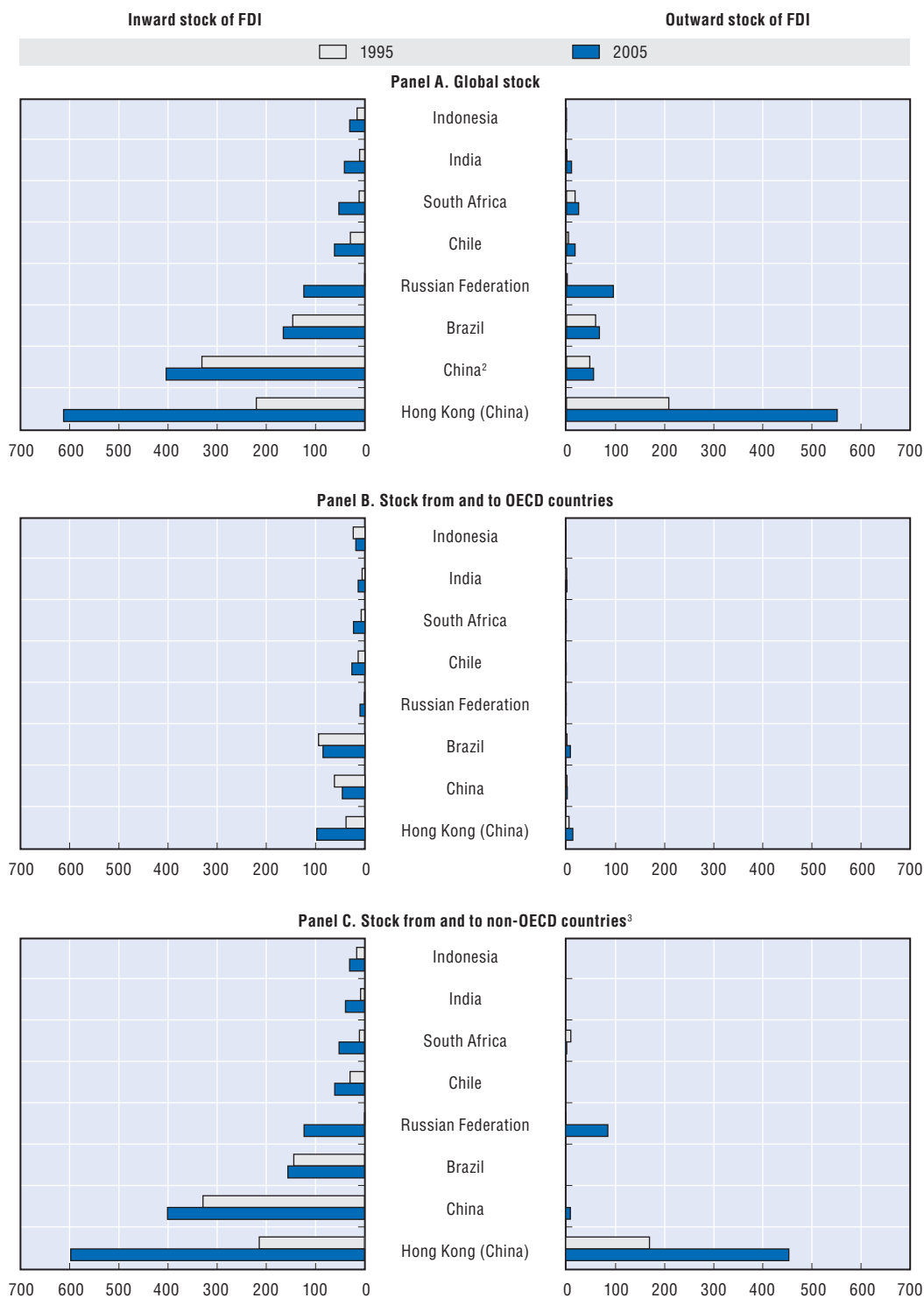
The rise in outward FDI from the selected emerging economies almost entirely reflects the rise in FDI between non-OECD countries (also referred to as South-South FDI). Outward FDI by emerging economies into the OECD remains relatively marginal, despite recurrent claims in the media that developing countries are increasingly acquiring strategic assets in developed countries. Also China's outward FDI has increased at higher rates in developing than in developed countries, particularly in Africa.<sup>6</sup>

### 2.3. FDI by sector of activity

While FDI has increased significantly in all major economic sectors, there has been a progressive shift towards services at the expense of manufacturing (see Figure 4.4). In developed countries, inward FDI in the manufacturing sector decreased from 41% to 30%, whereas it increased from 50% to 63% in services. In developing countries, inward FDI in the manufacturing sector decreased from 44% to 32%, whereas it increased from 47% to 58% in services. While this shift is, in part, likely to reflect the growing importance of services within national economies, it may also capture the growing internationalisation of the services sector as a result of developments in ICT as well as the liberalisation of services, including the rise of services offshoring.<sup>7</sup> The primary sector continues to account for about 10% of global inward FDI. However, while its share has declined somewhat in developed countries, it has increased slightly in developing countries.

When assessing the social impact of FDI in host countries, it is interesting to have some idea about the knowledge- and skill-intensity of the activities in which foreign investors get involved. One way to do this is by classifying sectors according to their technology or skill-intensity. As the technology and skill requirements of sectoral activities

Figure 4.3. **FDI stocks from selected emerging economies, 1990<sup>1</sup> and 2005**  
Billions of constant US dollars (2000)

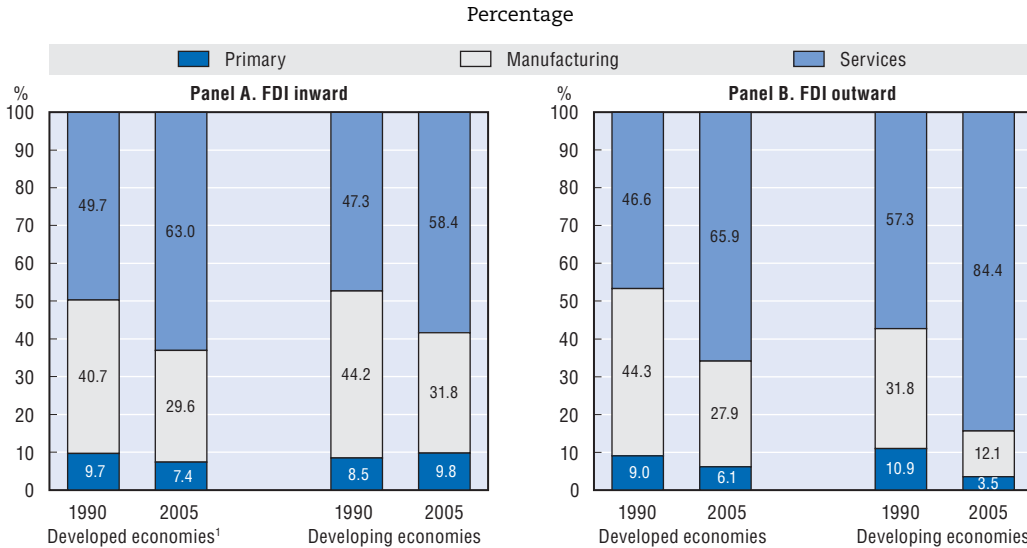


1. 1993 instead of 1990 for the Russian Federation.

2. China corresponds to mainland China.

3. Difference between global stock of FDI and FDI stock from OECD countries.

Source: OECD calculations based on UNCTAD, FDI Statistics; and OECD, FDI Statistics.

Figure 4.4. **Estimated world FDI stock by sector of activity, 1990-2005**

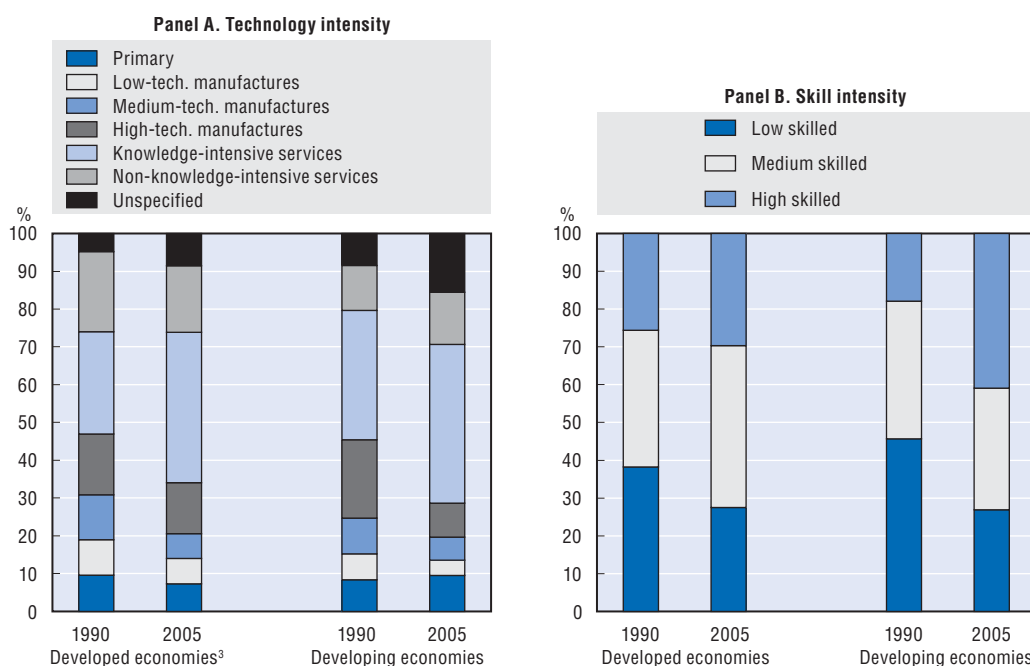
1. Developed economies include: Australia, Austria, Belgium, Bermuda, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Developing economies include all other countries.

Source: UNCTAD (2007).

are assumed to be the same for all countries, cross-country comparisons have to be made with caution. Figure 4.5, Panel A presents data on inward FDI by sectoral technology intensity. It suggests that the progressive shift toward services is associated with the growing importance of knowledge-intensive sectors. Between 1990 and 2005, knowledge-intensive services have increased their shares in inward FDI from 27% to 40% in developed countries and from 34% to 43% in developing countries. Moreover, the knowledge-intensive services sector is particularly important in developing countries. FDI may be a way for foreign firms in developed countries to supply markets in developing countries. Alternatively, it may reflect the increasing importance of services offshoring by OECD MNEs to developing countries.

Data by sectoral skill intensity, presented in Figure 4.5, Panel B, reveal a similar pattern. In both developed and developing countries, there has been a gradual shift of inward FDI towards more skill-intensive sectors, with this trend being particularly pronounced in the developing countries. While FDI is often said to have increased the relative demand for skilled labour and to have contributed to the rise in earnings inequality that is observed in many developed and developing countries, one should be careful before drawing such inferences from this Figure. The average skill-intensity of the sector need not necessarily correspond to the skill-intensity of the activities conducted in the foreign affiliates of MNEs. In order to assess the impact of FDI on the earnings distribution, not only information on the sectoral distribution of FDI is needed, but also on how FDI affects sectoral output prices and productivity. Only to the extent that FDI is concentrated in skill-intensive sectors and tends to reduce output prices or increase productivity in those sectors, is it likely to contribute to earnings inequality in the long-run.

Figure 4.5. **Inward FDI by technology<sup>1</sup> and skill<sup>2</sup> intensity, in 1990 and 2005**  
Percentage



1. Special industry aggregation used in the OECD STAN bilateral trade database (see description in Annex A of the publication *OECD Science, Technology and Industry Scoreboard*, 2005). Primary corresponds to Agriculture, hunting, forestry and fishing; Mining, quarrying and petroleum; and Unspecified primary. Low-tech manufactures corresponds to Food, beverage and tobacco; Textiles, clothing and leather; Wood and wood products; Publishing, printing and reproduction of recorded media; and other manufacturing. Medium-tech manufactures corresponds to Coke, petroleum products and nuclear fuel; Rubber and plastic products; Non-metallic mineral products; Metal and metal products; and Machinery and equipment. High-tech manufactures corresponds to Chemicals and chemical products; Electrical and electronic equipment; Precision instruments; and Motor vehicles and other transport equipment. Knowledge-intensive services corresponds to Transport, storage and communications; Finance; Business activities; Education; and Health and social services. And Non-knowledge-intensive services corresponds to Electricity, gas and water supply; Construction; Trade; Hotels and restaurants; Public administration and defence; and Community, social and personal service activities.
2. Low-skilled corresponds to Agriculture, hunting, forestry and fishing; Mining, quarrying and petroleum; Food, beverage and tobacco; Textiles, clothing and leather; Wood and wood products; Non-metallic mineral products; Metal and metal products; and Construction. Medium-skilled corresponds to other manufacturing; Motor vehicles and other transport equipment; Trade; Hotels and restaurants; Publishing, printing and reproduction of recorded media; Transport, storage and communications; and Electricity, gas and water supply. High-skilled corresponds to Coke, petroleum products and nuclear fuel; Machinery and equipment; Business activities; and Community, social and personal service activities.
3. Developed economies include: Australia, Austria, Belgium, Bermuda, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Developing economies include all other countries.

Source: OECD calculations based on UNCTAD (2007).

## 2.4. MNEs as employers

The increase in FDI is also reflected in the rise of the number of jobs in the foreign affiliates of MNEs. An estimated 73 million workers, representing 3% of the global workforce, were employed in foreign affiliates of MNEs in 2006, almost three times more than in 1990. A disproportionate share of these workers is employed in the foreign affiliates of MNEs in developing and transition economies, presumably reflecting the higher labour-intensity of production in foreign affiliates in those countries. The distribution of jobs in

foreign-owned firms is also skewed towards the manufacturing sector, suggesting that the activities conducted in foreign-owned firms in manufacturing tend to be relatively more labour-intensive. The extent to which employment in foreign-owned firms reflects the causal impact of FDI on job creation depends largely on whether FDI is realised through greenfield investment or cross-border mergers and acquisitions (M&As). Generally, FDI realised through greenfield investment is more likely to have a positive impact on employment. However, OECD (2008a) suggests that cross-border M&As may also have substantial positive effects on employment in some countries.<sup>8</sup>

### **3. The impact of FDI on employment conditions and industrial relations: a literature review**

Policy-makers have tended to emphasise the potential benefits that FDI can bring to the host economy, including by improving pay and working conditions. These benefits may be direct or indirect. The former refer to benefits for employees in foreign-owned firms, whereas the latter refer to benefits for workers in domestic firms. MNEs are able to provide higher wages and, possibly, working conditions because of their higher productivity which, in turn, is explained by greater technological know-how and modern management practices that allows them to compete effectively in foreign markets and to offset the cost of coordinating activities across different countries. This transfer of technological and managerial know-how across affiliates of MNEs may give rise to direct benefits. But, it may also lead to indirect benefits by increasing the productivity of domestic firms when the productivity advantage spills over from foreign affiliates to domestic firms. Productivity spillovers represent positive externalities to the host country and may explain why policy-makers have sometimes treated foreign investment more favourably than investment by domestic firms. Although not automatic, increased productivity in domestic or foreign-owned firms may lead to higher incomes, better working conditions and more employment.<sup>9</sup>

Despite being more productive, there is no reason to expect, in general, that MNEs would offer better pay or working conditions for identical workers than their local counterparts. In competitive labour markets, MNEs may pay higher average wages only to the extent that they employ a more skilled workforce or must compensate workers for undesirable differences in the characteristics of jobs such as lower job security.

The presence of certain market failures, however, could provide MNEs with an incentive to offer better pay and working conditions than domestic firms to individuals with similar characteristics doing similar jobs. First, MNEs may be more likely to pay, so-called, efficiency wages. For example, MNEs may be willing to pay higher wages than their local competitors in an attempt to reduce worker turnover and thereby minimise the risk of their productivity advantage spilling over to competing firms. MNEs may also be willing to pay higher wages to motivate the workforce as they may face higher monitoring costs related to informational problems. Second, in the context of search frictions, the productivity advantage of MNEs may give rise to rents. To the extent that employers share these rents with their employees, better firms promote better jobs. Finally, there may be institutional factors that provide incentives for MNEs to go beyond local labour practices. For example, in developing countries where the rule of law is weak, MNEs may be more likely to comply with national labour laws, because of reputational concerns and consumer pressure in their home markets.<sup>10</sup>

### 3.1. The direct impact of FDI on wages

There is a large empirical literature on multinational wage premia (see Table A.1 in Annex). Until recently, there was a consensus that foreign firms tend to provide better pay to workers than their domestic counterparts, particularly in developing countries. In an early study for Mexico, the US and Venezuela, Aitken *et al.* (1996) compare average wages between domestic and foreign-owned firms. They show that average wages in foreign-owned plants tend to be about 30% higher than in domestic plants. Moreover, these wage differences persist once one controls for size, geographic location, skill mix and capital intensity in Mexico and Venezuela, but not in the United States. This would tend to suggest that foreign-owned firms pay higher wages than their local competitors in developing countries. However, this does not necessarily mean that foreign ownership improves employment conditions as the workforces in domestic and foreign firms may be qualitatively different.

In order to address the possibility that average wage differences between foreign and domestic firms merely reflect differences in the composition of the workforce, a number of studies have analysed to what extent foreign wage premia persist after controlling for observable differences in workforce quality. For example, Lipsey and Sjöholm (2004) use a plant-level dataset for Indonesia with detailed information on the composition of workers across educational categories. They find that, while differences in average labour quality account for a significant part of the raw foreign wage premium, it remains large. Wages in foreign-owned plants are 12% higher for production workers and 20% for non-production workers. Morrissey and Te Velde (2003) present similar findings for five Sub-Saharan African countries.

An alternative approach to control for differences in the composition of the workforce is to focus on *changes* in firm ownership due to cross-border takeovers. Studies that have adopted this approach identify the causal effect of foreign ownership on employment conditions under the assumption that the composition of the workforce is not affected by cross-border takeovers. By focussing on cross-border M&As, this approach does not capture the role of greenfield investment, the effects of which may be different.<sup>11</sup> Studies that focus on cross-border M&As also suggest that FDI has the potential to increase significantly the number and quality of jobs in foreign-owned firms, particularly in developing countries. For example, Girma and Görg (2007) find for the UK that foreign takeovers of domestic firms tend to increase wages, but the effects are relatively small. For Indonesia, Lipsey and Sjöholm (2006) find that foreign takeovers raise production-worker wages by 17% and non-production-worker wages by 33%.<sup>12</sup>

However, the results from firm-level analysis may be misleading because they do not control for changes in the composition of the workforce that may be associated with cross-border takeovers. To the extent that foreign takeovers are associated with skill upgrading, this would bias the estimated foreign wage premium upwards. Using linked employer-employee data (worker-level data), it is possible to control for changes in the composition of the workforce due to cross-border M&As by focusing on the wage effects for individual workers who stay in the same firm. Those data also allow one to look at the role of ownership for workers who change jobs between domestic and foreign firms. This is interesting because it allows one to analyse differences in pay conditions between foreign and domestic firms for *new* workers. As productivity differences may have more important implications for workers at

the moment of hiring than for stayers (Beaudry and DiNardo, 1991), one may expect the role of ownership to be more important for this category of workers.<sup>13</sup>

An increasing number of recent studies have made use of worker-level data to analyse the role of foreign ownership for individual wages. The results challenge the conventional wisdom by suggesting that foreign takeovers in developed countries have, at best, a small positive effect on individual wages and that this effect could even be negative. For example, Martins (2006) shows for Portugal that the foreign wage premium disappears after controlling for worker selection and may even reduce individual wages by 3% for workers in foreign firms relative to their counterparts in domestic firms. Heyman *et al.* (2007) present similar findings for Sweden. By contrast, Andrews *et al.* (2007) for Germany, Malchow-Moller *et al.* (2007) for Denmark and Balsvik (2006) for Norway find small positive effects in the order of 1% to 3%. Relatively few studies exploit worker mobility to analyse the role of foreign ownership. Two exceptions are Andrews *et al.* (2007) and Balsvik (2006), who show that workers moving from a domestic to a foreign firm experience a 6% increase in wages in Germany and 8% in Norway. These findings may indicate that the short-term effects of foreign ownership may be more important for new hires in foreign firms than workers who stay in firms that change ownership.

Overall, the recent evidence based on worker-level data provides a somewhat mixed message with respect to the impact of foreign ownership on wages. While most studies indicate that foreign ownership has a positive impact on wages, a number of studies indicate small negative effects. Unfortunately, it is not clear what drives these differences in estimated wage premia across studies. They may reflect differences in country characteristics or the nature of FDI, as well as differences in methodology. Moreover, what the effect of controlling for changes in the composition of the workforce would be for the estimation of foreign wage premia in developing countries, where such premia are believed to be much larger, remains an open question. In order to better understand the implications of these new findings, it would be useful to have comparable evidence for a number of developing and developed countries. OECD (2008a) is the first study to provide such evidence and the main findings are discussed in Section 4 below.

### **3.2. The direct impact of FDI on other working conditions**

Very little is known about the impact of foreign ownership on non-wage working conditions. A number of studies have attempted to characterise employment conditions in MNEs and analysed its determinants. While the definition of employment conditions differs across studies, the literature appears to suggest that MNEs have a relatively low tendency to export labour practices to their foreign affiliates, tending instead to adapt to local practices (*e.g.* Almond and Ferner, 2006). Bloom *et al.* (2008) use survey data on management and work-life balance practices for over 700 medium-sized firms in the US, UK, Germany and France to analyse to what extent US multinationals export certain practices to their affiliates in Europe. The evidence indicates that US MNEs export management practices but not work-life balance practices. Freeman *et al.* (2007) compare labour practices in domestic and foreign affiliates of a single US firm in different countries and also find that US firms adapt their labour practices to host-country conditions to an important extent.

The literature suggests a number of reasons why US MNEs might have a low propensity to export labour practices. First, labour practices tend to be embedded in national rules and social norms. For example, the extensive regulation of the labour market in many European

countries and the strong role of trade unions may make it difficult or unattractive for US MNEs to export labour practices to Europe (Bloom *et al.*, 2008). Second, the low propensity of US MNEs to export working practices may also reflect strategic considerations. For example, local affiliates with a domestic market orientation may enjoy a significantly greater degree of discretion about the way human resources are managed than firms that are more export-oriented. Finally, the low propensity of US MNEs to export labour practices may reflect the specific management style of US MNEs and not be representative for MNEs originating from other countries.

There appears to be no systematic evidence on the propensity of MNEs to export labour practices to developing countries. This is unfortunate, as it not obvious to what extent the results for developed countries carry over to developing countries. On the one hand, enforcement of labour provisions and trade unions tend to be weaker in developing countries, thereby reducing the role of institutional constraints for the foreign affiliates of MNEs to implement the same labour practices they use in OECD countries. On the other hand, labour practices that are socially acceptable in developing countries may not be acceptable to the consumers and investors in developed countries, creating incentives for MNEs from developed countries to export their human-resource practices abroad.

### **3.3. The indirect impact of FDI on wages and working conditions**

In addition to having direct effects on wages and working conditions in the foreign affiliates of MNEs, FDI may also have indirect effects on employment conditions in domestic firms. This may happen because the productivity advantage of MNEs spills over to local firms or because the employment activities of foreign-owned firms affect the local labour market.

The productivity advantage of MNEs may spill over to local firms for a number of reasons.<sup>14</sup> First, domestic plants may be able to improve productivity by imitating production or management practices in foreign firms. Second, workers who move from a foreign-owned to a domestic plant may contribute to the transfer of knowledge of modern production and management practices to their new employers. Third, spillovers may occur from foreign firms to domestic firms in the supply chain, as foreign firms may collaborate with domestic suppliers to ensure that quality standards of intermediate inputs are met and that labour practices correspond with their codes of conduct. Finally, FDI may increase productivity in domestic firms when more intense product-market competition encourages local firms to remove inefficiencies in the production process.

The employment activities of foreign-owned firms may affect local labour market conditions through their impact on labour demand and supply. New entry of foreign firms or the expansion of activities in foreign firms may raise local labour demand, thereby bidding up local wages. To the extent that foreign firms tend to pay higher wages, FDI may also reduce the supply of labour available to domestic firms by lowering the willingness of individuals to work for such firms. This would also have a tendency to raise wages in domestic firms.

The empirical evidence in support of positive wage spillovers as a result of FDI is relatively limited. For example, Aitken *et al.* (1996) find no evidence of positive wage spillovers from FDI to domestic firms in Mexico and Venezuela, even though foreign-owned plants pay substantially higher wages. The absence of positive wage spillovers may indicate that foreign-owned and domestic plants operate in different labour markets and/

or that productivity spillovers may be absent or even negative. Labour markets may be segmented between foreign and domestic firms because foreign-owned firms tend to provide better working conditions in order to limit worker turnover or because of institutional differences, such as more complete compliance with labour laws or greater bargaining strength *vis-à-vis* trade unions. Positive productivity spillovers may also fail to materialize because of the lack of absorptive capacity in domestic firms or because of the crowding-out effect of foreign entry on local competitors.<sup>15</sup>

Several recent studies have found evidence of positive spillovers concentrating on the wage effects of FDI through its impact on labour demand and supply. Using data for the UK electronics industry, Driffield and Girma (2003) find that FDI has a large positive effect on wages in domestic firms through its impact on labour demand and a small positive effect through its impact on labour supply. Moreover, wage spillovers appear to be more important for skilled than unskilled workers, which may reflect the relative scarcity of skilled labour. Finally, using a cross-section of worker-level data for Indonesia, Lipsey and Sjöholm (2004) find that FDI is positively associated with average wage levels in domestic firms, particularly those of non-production workers.

Other recent studies have attempted to analyse how productivity and wage spillovers may occur by looking at specific ways domestic firms engage with foreign firms. For example, Görg and Strobl (2005) examine empirically the contribution of worker mobility to productivity spillovers using a panel of Ghanaian manufacturing firms. They find that domestic firms with an owner who has previously been employed in a foreign firm in the same industry, are more productive than other domestic firms. Balsvik (2006) analyses productivity spillovers through worker mobility using linked employer-employee data for Norway. She finds that workers with prior experience in MNEs tend to contribute 20-25% more to productivity than workers without such experience. Moreover, the contribution to firm productivity exceeds the private return to mobility, which suggests that worker mobility entails genuine productivity externalities. Poole (2006) analyses the role of worker mobility for wage spillovers using linked employer-employee data for Brazil.<sup>16</sup> She finds evidence in support of positive wage spillovers and that their magnitude depends on the skill levels of workers previously employed by MNEs and incumbent workers in the domestic firm.

Backward linkages provide an alternative channel through which spillovers may occur from FDI to local firms. Using input-output tables, a number of studies have shown that backward linkages from foreign plants to local suppliers are associated with positive productivity spillovers (see Javorcik, 2004 for Lithuania; Blalock and Gertler, 2008 for Indonesia). Intuitively, this may reflect the fact that foreign firms often have a strong interest in helping local supplier firms to improve the quality of inputs or to ensure that subcontractors respect minimum labour standards (Moran, 2007, Sabel *et al.*, 2000). There is little systematic analysis that specifically looks at the effects of backward linkages from MNEs on wages and working conditions in supplier firms. Harrison and Scorse (2006) provide indirect evidence that reputation-sensitive MNEs helped raising the wages of unskilled workers in Indonesian textiles factories without, however, inducing a reduction in unskilled employment in those factories. This may indicate that MNEs not only helped raise wages but also productivity.

A number of case studies have analysed the impact of private codes of conduct adopted by MNEs on working conditions in upstream suppliers. In general, the effectiveness of such codes in the supply chain appears to be limited (ETI, 2006). The benefits of codes of conduct

are likely to be greater and more enduring when they are integrated into the management structures that govern production and when the interests of workers in employment and production are represented in effective institutions. This is more likely when MNEs actively engage with supplier firms to help improve working practices and productivity. For example, Locke *et al.* (2007) find that the quality of labour practices across suppliers depends to an important extent on the involvement of MNEs in the production process of supplier firms. Similarly, Frenkel and Scott (2002) conclude in a study for Adidas that compliance programmes based on long-term partnerships are more likely to bear fruit than those based on the policing of working conditions. Furthermore, Locke and Romis (2007) compare two supplier firms for Nike that both produce T-shirts and are located in the same region, but differ substantially in terms of their working conditions (wages, overtime, job satisfaction and employee voice). They attribute these differences to the way the plants are managed. While in one plant labour is treated as a variable input whose costs need to be minimised, in the other plant workers are seen as an important factor to bolster productivity and output quality. Interestingly, despite paying higher wages, productivity is higher and unit labour cost lower in the plant that provides better employment conditions.

#### 4. New OECD evidence on the effects of FDI in the foreign affiliates of MNEs

OECD (2008a) presents new evidence on the impact of inward FDI on both wages and non-wage working conditions using data for three developed (Germany, Portugal and the United Kingdom) and two emerging economies (Brazil and Indonesia). This section summarises the main results from this study. After describing pay and working conditions in MNEs across host regions, the main findings of the econometric analysis are presented.

##### 4.1. A simple comparison of employment, productivity, pay and working conditions in host countries

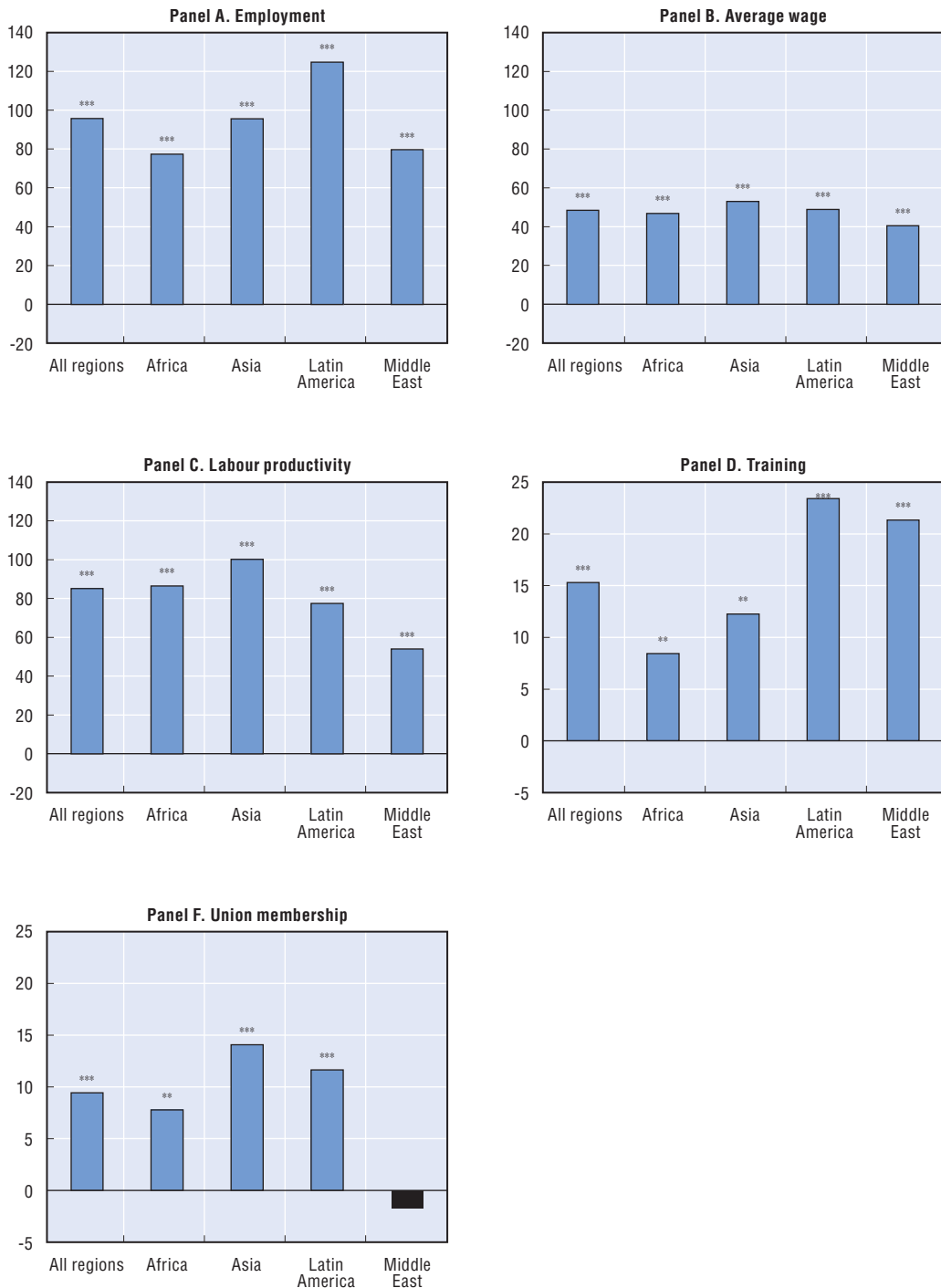
Using data from the World Bank Enterprise Survey, simple comparisons of MNEs and local firms suggest that the former tend to employ more workers and provide better jobs than local firms in the countries where they invest (Figure 4.6). The results are the following:

- On average, MNEs employ almost twice as many workers as the average local firm.
- Average wages are almost 50% higher in foreign MNEs than in domestic firms. Pay differences are larger in Asia and Latin America, as are the technological and productivity gaps between foreign MNEs and local firms in those regions.
- In all regions, the productivity gap between foreign and local firms appears to be even larger than the wage gap.<sup>17</sup>
- Foreign MNEs are more likely to provide training opportunities to their workforce and their workforces are more highly unionised than those in domestic firms. Both the emphasis on training and the higher unionisation rate could also help explain why wages tend to be higher in MNEs.

These results should, however, be interpreted with care as the data are subject to a number of shortcomings that give rise to potential biases that can contribute to an overestimation of the causal effect of FDI on working conditions.<sup>18</sup> The econometric analysis of the effects of foreign ownership on wages and non-wage working conditions in the next sub-section controls for these potential biases.

**Figure 4.6. Do MNEs offer better jobs?**

A simple comparison of employment conditions and productivity<sup>1</sup> between foreign MNEs and domestic firms (Average percentage differences by host region<sup>2</sup>)



\*, \*\*, \*\*\*: statistically significant at the 10%, 5%, 1% level, respectively, confidence interval based on robust standard errors.

1. *Employment*: Sum of permanent and full-time employees and temporary (or part-time) employees (adjusted by the length of contract duration); *Average wage*: Total wages and salaries of the permanent and full-time employees in constant USD divided by total employment; *Labour productivity*: Log of total sales in constant USD over employment; *Training*: Dummy equal to one when plant offers formal training to permanent employees; *Union membership*: Percentage of the workforce that is unionised.

2. All regions includes Central and Eastern European countries (CEE). Asia includes low-income Asia only.

Source: OECD's calculations based on the World Bank Enterprise Survey (WBES).

## 4.2. The direct impact of foreign ownership: an econometric analysis<sup>19</sup>

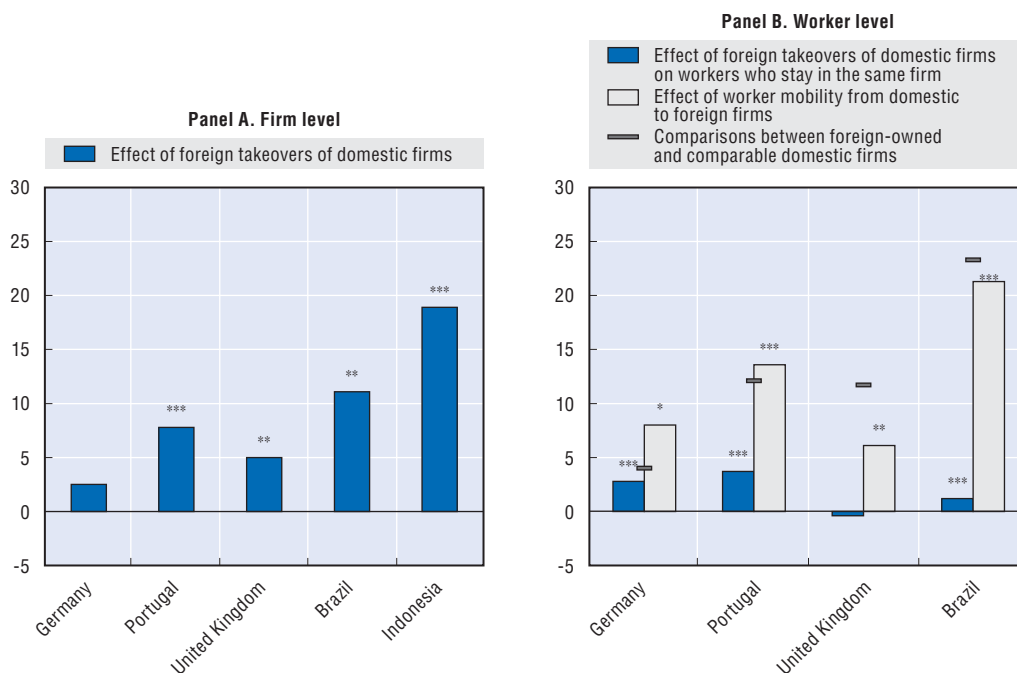
The results presented below identify the impact of foreign ownership on wages and non-wage working conditions by concentrating on changes in ownership status in three developed economies (Germany, Portugal and the United Kingdom) and two emerging economies (Brazil and Indonesia) for the period 1997-2005. This allows controlling for permanent differences in unobservable characteristics between firms that are taken over and those that remain domestic, but also implies that the analysis is necessarily constrained to the short-term. In the present case, the analysis captures the average effect of changes in ownership status over the first three years after the event.

Using firm-level data, Figure 4.7, Panel A shows that foreign takeovers of domestic firms tend to raise average wages relative to those that would have occurred in the absence of takeovers. However, the impact varies considerably across countries. The effects range from 5% in the United Kingdom to 8% in Portugal, 11% in Brazil, and 19% in Indonesia, while the effect is positive but statistically insignificant in Germany. In general, these results are consistent with previous studies that have shown small and positive foreign wage premia in developed economies and potentially larger foreign wage premia in developing countries.<sup>20</sup>

Worker-level data permit to focus on the wage effects for individual workers who stay in the same firm. They also allow looking at the effects on wages for workers who change jobs between domestic and foreign firms. Panel B of Figure 4.7 presents the results of the

Figure 4.7. **The effects of foreign ownership on wages**

Average percentage differences



\*, \*\*, \*\*\*: statistically significant at the 10%, 5%, 1% level, respectively, confidence interval based on robust standard errors.

Source: OECD (2008a).

takeover and the job mobility analysis for Brazil, Germany, Portugal and the United Kingdom. The following findings emerge:

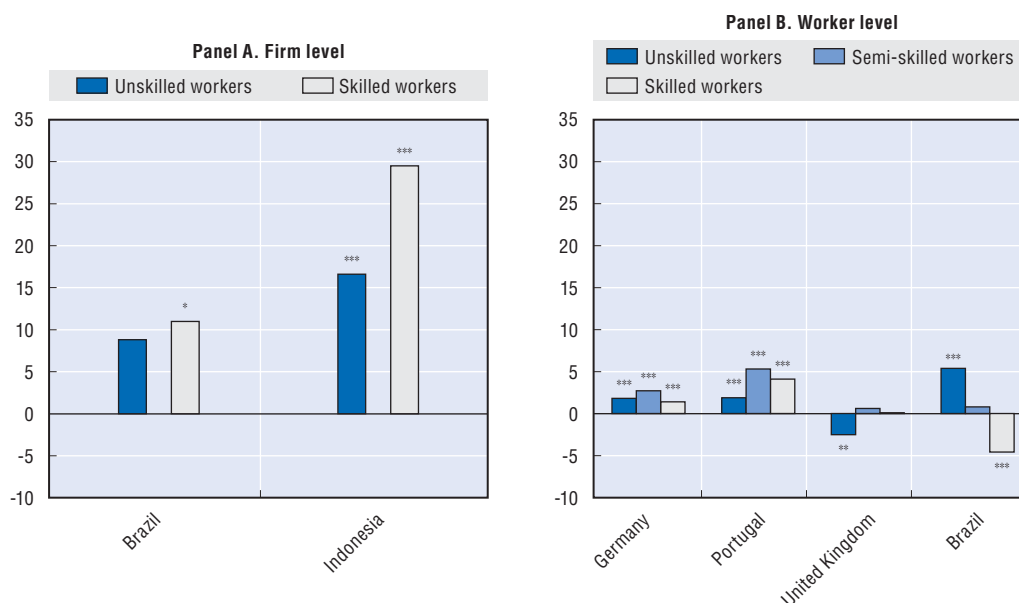
- Foreign takeovers of domestic firms tend to have a small positive or no average effect on the individual wages of workers who stay in the same firm relative to similar workers who stay in domestic firms that are not taken over. The results suggest no effect for the United Kingdom and a small positive effect for Brazil, Germany and Portugal in the range of 1% to 4%. The absence of a positive effect in the United Kingdom may reflect the relative flexibility of the UK labour market compared to the other countries that makes it hard to sustain differences in pay for identical workers across firms.
- The job mobility results indicate large wage gains for workers who move from domestic to foreign firms.<sup>21</sup> This suggests that foreign-owned firms offer higher pay than domestic firms for similar workers. Moreover, the foreign wage premia accruing to workers who move from domestic to foreign firms are considerably larger than those found in the context of takeovers. This may indicate that foreign firms share their productivity advantage more extensively with new workers than with workers who do not change firms. Moreover, the wage effects of foreign ownership differ considerably across countries. They range from 6% in the United Kingdom to 8% in Germany, 14% in Portugal and 21% in Brazil. This is consistent with the consensus in the empirical literature that foreign wage premia are larger in developing than in developed countries.
- The effect of foreign ownerships is potentially larger in the long-run. One would expect that the positive effects of FDI that initially accrue to new hires, eventually spread through the entire workforce as large pay disparities between new and old workers within firms are unlikely to be sustainable in the longer term. While it is not possible to estimate the causal effect of inward FDI in the long-run with the data analysed here, it is possible to place an upper bound on this effect by simply comparing wages across comparable workers in foreign-owned and domestic firms. The upper-bound estimates range from 4% in Germany, around 12% in Portugal and the United Kingdom, to 23% in Brazil and to 32% in Indonesia.

Thus, both the firm-level and the worker-level results suggest that FDI may have a substantial positive effect on wages in foreign-owned firms in the host country. While one should be careful about generalising results based on only a few countries, the present results are consistent with the consensus in the literature that the positive wage effects are likely to be more pronounced in developing and emerging economies. Presumably, this reflects the more important productivity advantage of foreign MNEs over local firms in less developed countries. The worker-level results based on takeovers and job movers, further suggest that the positive impact of FDI resides primarily in the provision of better job opportunities to new employees, rather than in the provision of better pay to workers who stay in firms that happen to change ownership, at least, in the short-term. This may reflect more competitive conditions in the market for new hires that allow new employees to share more widely the productivity advantages of MNEs. In the longer term, however, one would expect the positive effects to spread across the entire workforce, as large pay disparities between new and old workers within firms are unlikely to be sustainable.

Since the effects of foreign takeovers may not be evenly distributed across workers with different skills, OECD (2008a) also presents results by skill group (Figure 4.8).

Figure 4.8. **The short-term effects of foreign takeovers of domestic firms on wages by skill group**

Average percentage differences



\*, \*\*, \*\*\*: statistically significant at the 10%, 5%, 1% level, respectively, confidence interval based on robust standard errors.

Source: OECD (2008a).

- Firm-level results for Brazil and Indonesia provide some evidence that foreign wage premia may be more important for skilled than for unskilled workers (Panel A). In Indonesia, estimated foreign wage premia differ considerably across skilled and unskilled workers, being 30% for the former and 17% for the latter. In Brazil, a positive effect of 11% is found for skilled workers and no significant effect for unskilled workers.
- Worker-level results indicate important cross-country differences with respect to the effects of foreign takeover on workers with different skills in both qualitative and quantitative terms (Panel B). In the United Kingdom, the results suggest a small negative impact on the wages of low-skilled workers and no effect for semi- and high-skilled workers. By contrast, in Germany and Portugal, the impact of foreign takeovers on wages is positive for all three skill groups and differences across skill groups are modest. For Brazil, the results indicate large differences across skill groups with a positive effect for unskilled workers, a smaller but still positive effect for semi-skilled workers and a negative effect for skilled workers. The findings for Brazil differ from the prevailing view in the literature that the effects of foreign ownership tend to be more important for skilled workers.

OECD (2008a) also estimates the impact of foreign takeovers on a number of working conditions other than average pay: working hours (weekly working hours for full-time workers), worker turnover (the rate of job separation), low pay (the probability of receiving a wage equal or lower than the minimum wage) and union bargaining power (the wage premium associated with collective agreements). Key findings include:

- *Hours of work.* Raw comparisons between foreign and domestic firms suggest that working hours are longer in foreign firms in Brazil, Portugal and the United Kingdom.<sup>22</sup>

However, this is largely due to the specific characteristics of firms that are acquired by foreign owners. When focusing on changes in ownership status as a result of foreign takeovers, one observes either no effect or a slight negative impact on working hours. The results are generally not statistically significant and even in Brazil, where they are statistically significant, they are economically negligible.<sup>23</sup>

- *Worker turnover.* There is some evidence that foreign takeovers increase worker turnover in Portugal, while no effect is found in either Brazil or Germany. Increased worker turnover may reflect the process of restructuring that accompanies such takeovers in the short-term. However, it is also possible that foreign-owned firms have higher worker turnover than domestic firms in the longer-term as MNEs tend to adjust employment levels more swiftly in response to changes in market conditions and wages. The reason for this may be that they more easily substitute workers in one country with workers in other countries by relocating production activities internationally. Level comparisons between domestic and foreign firms suggest that foreign-owned firms experience higher worker turnover also in the longer term.
- *Low pay.* Individuals in foreign-owned firms are less likely to earn the minimum wage (or less) than those in domestic firms.<sup>24</sup> Nonetheless, foreign takeovers appear to increase the probability of low pay in Brazil and Portugal relative to comparable workers in firms that are not taken over, but there is no such effect in the United Kingdom. Note that in Brazil and Portugal, this does not necessarily mean that workers are worse off in absolute terms, but that workers at the bottom-end of the wage distribution do not experience the same wage growth as they would have, had their firm not been taken over by a foreign firm.
- *Union wage premium.* The analysis for the United Kingdom and Germany assesses to what extent foreign takeovers affect the union wage premium for workers covered by a collective agreement before the takeover, relative to workers whose firms is taken over by a foreign firm but were not covered by a collective agreement. The analysis indicates a negative effect for the United Kingdom, suggesting that foreign takeovers reduce union bargaining power in that country. This may result from the fear on the part of unions that excessive wage demands are more likely to result in the relocation of production to other countries.

The question whether MNEs promote better working conditions other than average wages is complex and the empirical analysis in OECD (2008a) represents only a preliminary attempt to address this issue. Bearing this caveat in mind, one can draw the following tentative conclusions. First, the evidence that foreign takeovers affect working conditions other than average wages is considerably weaker than that for raising average wages. Second, and also in contrast to average wages, the impact of foreign takeovers on other working conditions is not unambiguously positive. Third, while foreign takeovers may have some impact on non-wage working conditions, it is not clear whether these effects derive from a corporate policy to export certain labour practices or reflect the responses by MNEs to local conditions. Overall, there is little evidence to suggest that MNEs export working conditions abroad.

#### **4.3. Evidence on the effects of FDI on wages and working conditions in domestic firms**

Further evidence presented in OECD (2008a) suggests that FDI – through both greenfield investment and cross-border M&As – may have positive spillover effects on the wages and

non-wage working conditions of employees in domestic firms, but these indirect effects tend to be considerably weaker than the direct effects on employees in the foreign affiliates of MNEs. In particular, it confirms and extends the earlier findings by Lipsey and Sjöholm (2004) for Indonesia that FDI is positively associated with average wage levels in domestic firms, particularly those of non-production workers. A 10% increase in the foreign-presence index raises non-production worker wages in domestic firms by about 2%. It appears that these effects result largely from the link between the employment activities of foreign-owned firms and higher local labour demand, while the role of productivity-driven wage spillovers appears limited. Previous empirical studies on productivity-driven spillovers provide mixed results and suggest that the average effect of FDI on the productivity of domestic firms can even be negative. The lack of robust evidence in support of positive productivity-driven wage spillovers may reflect the crowding-out effect of domestic firms as a result of the competition from foreign firms in output and input markets, including the local labour market for skilled workers.

While the evidence suggests that positive productivity-driven wage spillovers are limited on average, their importance is likely to differ across local firms according to their engagement with foreign MNEs. In particular, productivity-driven wage spillovers are likely to be more important for local firms that engage with foreign MNEs in the supply chain or through worker mobility. In order to get an idea of the role of foreign-domestic linkages for wages and working conditions in domestic firms, Figure 4.9 compares employment conditions and productivity in domestic firms without any apparent relationship with foreign firms with conditions in domestic firms that supply intermediate inputs to foreign firms or have managers with prior experience in foreign firms by host region. These data indicate that:

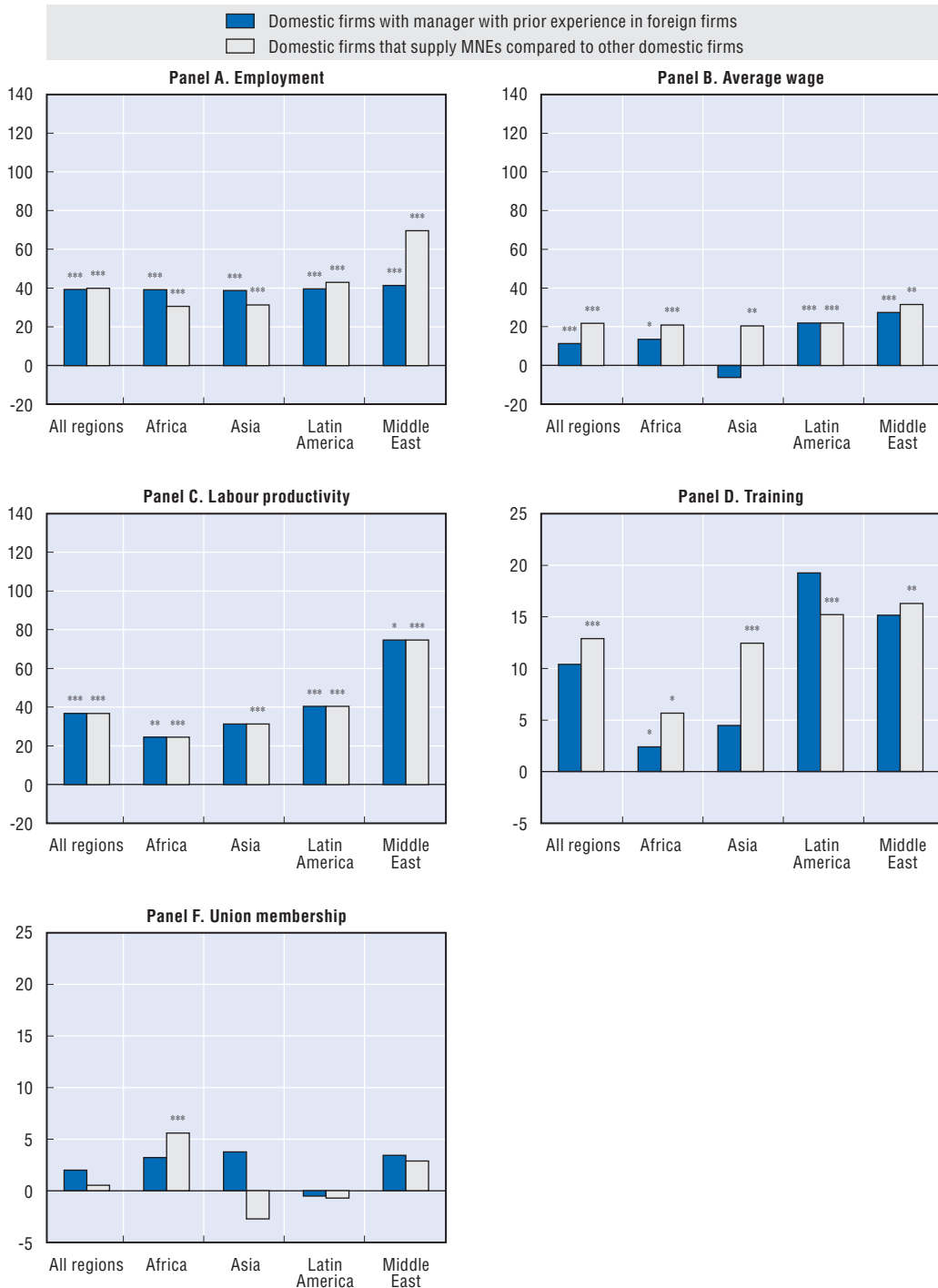
- Domestic firms that engage with foreign firms in the supply chain or that hire managers with prior experience in foreign firms tend to be larger, more productive and pay higher wages than local firms that have no apparent relationship with foreign firms.
- Domestic firms that engage with foreign firms are also more likely to provide training courses to their employees.
- There is no apparent difference in terms of union membership between such firms and other domestic firms.

The comparisons in Figure 4.9 suggest that backward linkages and worker mobility could be an important channel of wage spillovers between foreign and domestic firms. However, the simple comparisons do not provide conclusive evidence about the causal effect of engaging with foreign firms on working conditions in domestic firms. Indeed, it seems plausible that foreign firms select more productive firms as their suppliers and that managers, with prior experience in foreign firms, find it more attractive to work in more productive firms. Unfortunately, it is not possible to analyse these issues with the data available.

OECD (2008a) also analyses the wages of workers moving from foreign to domestic firms. The results indicate that the human capital accumulated in foreign firms can be effectively transferred through worker mobility, which is a pre-condition for observing productivity-driven wage spillovers. However, this analysis is limited to private returns (i.e. the wage premia of workers who change jobs) and it does not provide any information about whether there is also an impact on the wages of incumbent workers in domestic firms. Further work will be necessary to establish whether worker mobility provides a channel through which human capital accumulated in foreign firms creates spillover effects for incumbent workers in domestic firms.

**Figure 4.9. Are domestic firms that engage with MNEs different?**

A simple comparison of employment conditions and productivity<sup>1</sup>  
(Average percentage differences by host region<sup>2</sup>)



\*, \*\*, \*\*\*: statistically significant at the 10%, 5%, 1% level, respectively, confidence interval based on robust standard errors.

1. Employment: sum of permanent and full-time employees and temporary (or part-time) employees (adjusted by the length of contract duration); Average wage: total wages and salaries of the permanent and full-time employees in constant USD divided by total employment; Labour productivity: log of total sales in constant USD over employment; Training: dummy equal to one when plant offers formal training to permanent employees; Union membership: percentage of the workforce that is unionised.

2. All regions includes Central and Eastern European countries (CEE). Asia includes low-income Asia only.

Source: OECD (2008a).

## 5. Concluding remarks

Foreign direct investment has been one of the most dynamic components of the world economy in recent decades. Global FDI stocks rose from 8% of world GDP in 1990 to 24% in 2006. This rapid quantitative growth was accompanied by important qualitative changes. Although the bulk of FDI continues to take place between OECD countries, the relative importance of non-OECD countries for inward and outward FDI has grown substantially, both enabling and reflecting the increasing integration of developing countries into the world economy. Indeed, inward FDI has become the main source of external finance for developing countries. Many non-OECD countries have also become increasingly active as foreign direct investors, as is shown by the near doubling of their share in the global stock of outward FDI between 1990 and 2005.

The increased role of FDI in developing countries has raised expectations about its potential to contribute to the development process in these countries, for example, by serving as a channel for the international diffusion of know-how. One concrete way local economies may benefit from FDI is through the creation of high-quality jobs, such as when MNEs offer better pay and working conditions than domestic firms in the host country. MNEs may also increase the supply of good jobs indirectly by stimulating domestic firms to improve employment conditions. However, there has been considerable uncertainty (and controversy) about whether MNEs are, in practice, an important driver of improvements in pay and working conditions.

This paper summarises what is known about this issue, surveying prior research on the labour market impacts of FDI and presenting the main results from a new OECD study. Overall, the evidence indicates that MNEs tend to promote higher pay in the countries in which they operate. The positive wage effect tends to be concentrated among workers that are directly employed by MNEs, but there also appears to be a small positive impact on wages in domestic firms participating in the supply chains established by MNEs. These effects are larger in developing than in developed countries, probably because the technology gap between foreign and domestic firms is larger in the former. The evidence about whether MNEs provide non-pay working conditions that are superior to those in domestic firms is more mixed. While working conditions in foreign firms tend to differ from those in comparable domestic firms, they do not necessarily improve following a foreign takeover.

While more research on the labour market effects of MNEs is clearly required, enough is already known to draw some practical lessons. First, the evidence confirms that FDI is a potentially important driver of improving living standards for workers. This suggests that governments should strive to create a framework for international investment which facilitates economically and socially beneficial forms of FDI. The fact that the impact of MNEs on wages and working conditions varies in complex ways across different types of investments, workforce groups and national environments also suggests that governments and other stakeholders may be able to take measures to enhance the contribution of FDI to economic and social development. Among the types of initiatives that may prove to be helpful are government measures to enforce labour standards and public and private initiatives to promote responsible business conduct.

## Notes

1. Chapter 5 of the OECD *Employment Outlook 2008*, will be referred hereafter to as OECD (2008a) for convenience.
2. UNCTAD provides the most comprehensive dataset on FDI stocks that is currently available in terms of both its coverage across countries and time. As such, it is the best data source for describing global trends in FDI. As data on FDI is not available from national sources for all countries and years, UNCTAD imputes some values in order to be able to make globally representative estimates. In other instances, UNCTAD makes certain statistical adjustments to the data provided from national sources in order to enhance their international comparability. For both these reasons, FDI estimates based on UNCTAD data may be different from those based on FDI data provided by either the OECD or the IMF (*cf.* OECD FDI Statistics and IMF Balance of Payment Statistics). See OECD (2008b) for a detailed discussion of international methodological standards for the measurement of foreign direct investment.
3. While, in principle, the global stocks of inward and outward FDI should be equal at all times, in practice, sizable discrepancies tend to exist. This is largely due to gaps in coverage and the use of different reporting systems across countries (Patterson *et al.*, 2004).
4. However, the relative importance of FDI as a source of external finance differs substantially across regions. For example, in Sub-Saharan Africa, official development aid is more important than FDI (World Bank, 2006).
5. When distinguishing between mainland China and Hong Kong, one observes that Hong Kong is much more important for both inward and outward FDI than is mainland China. To the extent that the rise in FDI in China is partly driven by increasing FDI between the mainland and Hong Kong, Figure 8.3 over-estimates the importance of FDI in this region. In fact, an important part of direct investment in Hong Kong is reinvested in other countries, including mainland China.
6. However, China accounts for less than 1% of the total stock of FDI in Africa, and remains well below other traditional investors in the region. The bulk of its outward FDI is located in resource-rich countries such as Algeria, Nigeria, South Africa, Sudan and Zambia (OECD, 2008c).
7. Data on cross-border mergers and acquisitions (M&As) confirm this trend. According to UNCTAD (2007), the share of the service sector in cross-border M&As rose from 37% in 1987-2000 to 58% in 2002-06, whereas the share of the primary sector decreased from 11% to 5% over the same period.
8. The majority of FDI is typically thought to result from cross-border M&As, with the remainder being realised through greenfield investment. While thinking of cross-border M&As as simply a component of FDI may be useful, UNCTAD (2000) emphasises that the link between cross-border M&As and FDI is much more complex.
9. Employment effects are likely to be particularly important in countries where formal employment opportunities are limited.
10. Halegua (2007), for example, suggests that US MNEs operating in China tended to oppose the new Labour Contract Law that entered into force 1 January 2008, as they may need to apply labour provisions more rigorously than their local counterparts due to pressure from US consumers.
11. Heyman *et al.* (2007) show for Sweden that the wage difference between foreign-owned firms established through greenfield investment and comparable domestic firms tends to be larger than that between foreign-owned firms established through M&As and comparable domestic firms.
12. Other studies, *e.g.* Almeida (2007) for Portugal, Earle and Telegdy (2007) for Hungary and Huttunen (2007) for Finland, also find positive effects on average wages for foreign takeovers of domestic firms.
13. In addition, the analysis of worker movements takes account of both foreign-owned firms that were previously domestic, but have been acquired by a foreign owner, and those that are established through greenfield investment.
14. See Görg and Greenaway (2004) for an overview of the literature.
15. Aitken *et al.* (1996) confirm no positive spillover for Venezuela. The usual explanation for the negative impact of FDI on the productivity of local firms is that foreign entry crowds out local competitors, which will reduce domestic firm productivity when there are increasing returns to scale (Aitken and Harrison, 1999).
16. She focuses on the share of workers in the workforce that were displaced from a multinational firm prior to joining the current domestic firm.

17. The productivity gap between foreign and local firms is larger than the wage gap in most countries, implying that the wage share of total output is lower for MNEs. This might be an indication that worker bargaining power is weaker in foreign than in local firms, perhaps because fewer comparable outside job opportunities are available for workers in such firms. Even if this interpretation should be accurate, it does not mean that workers in foreign firms are worse off than their domestic counterparts. It would just mean that the pay premium associated with working in a foreign firm may not be as large as it would be if they had more bargaining power.
18. There are three main potential biases: aggregation, composition and selection. See OECD (2008a) for details.
19. For the econometric methodology see OECD (2008a).
20. Domestic takeovers of foreign firms generally have no or a small negative effect on average wages and employment. This suggests that the effects of foreign takeovers of domestic firms and domestic takeovers of foreign firms are different. This asymmetry supports the hypothesis that foreign takeovers are accompanied by the transfer of modern production and management practices from the parent to the foreign affiliate.
21. By contrast, worker movements from foreign to domestic firms are associated with no effect or small wage losses.
22. In Germany, for which actual hours of work are not available and standard hours are used instead, there is no difference between foreign and domestic firms.
23. The relationship between foreign ownership and hours of work is complicated as it is necessary to take account of the relationship between ownership and both employee and employer preferences over hours of work (OECD, 2008a).
24. This indicates that foreign firms employ on average fewer low-paid workers than domestic firms.

## References

- Aitken, B., A.E. Harrison and R. Lipsey (1996), "Wages and Foreign Ownership: A Comparative Study of Mexico, Venezuela, and the United States", *Journal of International Economics*, Vol. 40, No. 3/4, pp. 345-371.
- Aitken, B. and A.E. Harrison (1999), "Do Domestic Firms Benefit from Direct Foreign Investment? Evidence from Venezuela", *American Economic Review*, Vol. 89, No. 3, pp. 605-618.
- Almeida, R. (2007), "The Effects of Foreign Owned Firms on the Labor Market", *Journal of International Economics*, Vol. 72, Iss. 1, pp. 75-96.
- Almond, P. and A. Ferner (2006), *American Multinationals in Europe*, Oxford: Oxford University Press.
- Andrews, M., L. Bellmann, T. Schank and R. Upward (2007), "The Takeover and Selection Effects of Foreign Ownership in Germany: An Analysis Using Linked Worker-Firm Data", *GEP Research Paper*, 2007-08.
- Balsvik, R. (2006), "Is Mobility of labour a channel for spillovers from multinationals to local domestic firms?", Norwegian School of Economics, mimeo.
- Beaudry, P. and J. DiNardo (1991), "The effect of implicit contracts on the movement of wages over the business cycle: Evidence from micro data", *Journal of Political Economy*, Vol. 99, No. 4, pp. 665-688.
- Blalock, G. and P.J. Gertler (2008), "Welfare Gains from Foreign Direct Investment through Technology Transfer to Local Suppliers", *Journal of International Economics*, forthcoming.
- Bloom, N., T. Kretschmer and J. Van Reenen (2008), "Work Life Balance, Management Practices and Productivity", in R. Freedman and K. Shaw (eds.), *International Differences in Business Practices and the Productivity of Firms*, NBER: University of Chicago, forthcoming.
- Canyon, M., S. Girma, S. Thompson and P. Wright (2002), "The productivity and wage effects of foreign acquisition in the United Kingdom", *Journal of Industrial Economics*, Vol. 50, Iss. 1, pp. 85-102.
- Driffield, N. and S. Girma (2003), "Regional Foreign Direct Investment and Wage Spillovers: Plant Level Evidence from the Electronics Industry", *Oxford Bulletin of Economics and Statistics*, Vol. 65, Iss. 4, pp. 453-474.
- Earle, J.S. and A. Telegdy (2007), "Ownership and Wages: Estimating Public-Private and Foreign-Domestic Differentials with LEED from Hungary, 1986-2003", *NBER Working Paper*, No. 12997.
- ETI – Ethical Trading Initiative (2006), *The ETI Code of Labour Practice: Do Workers Really Benefit?*, London, available at [www.ethicaltrade.org/Z/lib/2006/09/ipact-report/index.shtml](http://www.ethicaltrade.org/Z/lib/2006/09/ipact-report/index.shtml).

- Freeman, R., D. Kruse and J. Blasi (2007), "The Same Yet Different: Worker Reports on Labour Practices and Outcomes in a Single Firm across Countries", *NBER Working Paper*, No. 13233.
- Frenkel, S.J. and D. Scott (2002), "Compliance, Collaboration and Codes of Labor Practice: The Adidas Connection", *California Management Review*, Vol. 45, No. 1, pp. 29-49.
- Girma, S. and H. Görg (2007), "Evaluating the foreign ownership wage premium using a difference-in-differences matching approach", *Journal of International Economics*, Vol. 72, No. 1, pp. 97-112.
- Görg, H. and D. Greenaway (2004), "Much ado about nothing? Do domestic firms really benefit from foreign direct investment?", *World Bank Research Observer*, Vol. 19, No. 2, pp. 171-197.
- Görg, H. and E. Strobl (2005), "Spillovers from Foreign Firms through Worker Mobility: An Empirical Investigation", *Scandinavian Journal of Economics*, Vol. 107, No. 4, pp. 693-709.
- Halegua, A. (2007), "The Debate Over Raising Chinese Labor Standards Goes International", *Harvard Law Policy Review*, 5 April 2007.
- Harrison, A.E. and J. Scorse (2006), "Multinationals and Anti-sweatshop Activism", *NBER Working Paper*, No. 10492.
- Heyman, F., F. Sjöholm and P. Gustavsson Tingvall (2007), "Is there Really a Foreign Ownership Wage Premium? Evidence from Matched Employer-Employee Data", *Journal of International Economics*, forthcoming.
- Huttunen, K. (2007), "The Effect of Foreign Acquisition on Employment and Wages: Evidence from Finnish Establishments", *Review of Economics and Statistics*, Vol. 89, No. 3, pp. 497-509.
- Javorcik, B. (2004), "Does Foreign Direct Investment Increase the Productivity of Domestic Firms? In Search of Spillovers through Backward Linkages", *American Economic Review*, Vol. 94, Iss. 3.
- Lipsey, R.E and F. Sjöholm (2004), "FDI and Wage Spillovers in Indonesian Manufacturing", *Review of World Economics*, Vol. 140 (2), pp. 321-332.
- Lipsey, R.E and F. Sjöholm (2006), "Foreign Firms and Indonesian Manufacturing Wages: An Analysis with Panel Data", *Economic Development and Cultural Change*, Vol. 55, No. 1, pp. 201-221.
- Locke, R., F. Qin and A. Brause (2007), "Does Monitoring Improve Labor Standards?: Lessons from Nike", *Industrial and Labor Relations Review*, No. 46:12-06.
- Locke, R. and M. Romis (2007), "Improving Work Conditions in a Global Supply Chain", *MIT Sloan Management Review*, forthcoming.
- Malchow Moller, N., J. Markusen and B. Schjerning (2007), "Foreign Firms, Domestic Workers", *NBER Working Paper*, No. 13001.
- Martins, P. (2006), "Do Foreign Firms Really Pay Higher Wages? Evidence from Different Estimators", *mimeo*.
- Moran, T.H. (2007), *A Perspective from the MNE Declaration to the Present: Mistakes, Surprises and Newly Important Policy Implications*, Geneva: ILO.
- Morrisey, O. and D.W. Te Velde (2003), "Do Workers in Africa Get a Wage Premium if Employed in Firms Owned by Foreigners?", *Journal of African Economies*, 12:1, pp. 41-73.
- OECD (2008a), "Do Multinationals promote better pay and working conditions?", *OECD Employment Outlook*, Paris: OECD.
- OECD (2008b), *OECD Benchmark Definition of Foreign Direct Investment*, 4th Edition, Paris: OECD.
- OECD (2008c), *OECD Investment Policy Review of China*, forthcoming, Paris: OECD.
- Patterson, N., M. Montanjee, J. Motala, C. Cardillo (2004), *Foreign Direct Investment: Trends, Data Availability, Concepts, and Recording Practices*, Washington D.C.: IMF.
- Poole, J.P. (2006), "Multinational Spillovers through Worker Turnover", University of California, San Diego, *mimeo*.
- Sabel, C., D. O'Rourke and A. Fung (2000), "Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace", *KSG Working Paper*, pp. 1-10.
- UNCTAD (2000), "Cross-Border Mergers and Acquisitions and Development", *World Investment Report*, UNCTAD, United Nations: Geneva.
- UNCTAD (2007), "Transnational Corporations, Extractive Industries and Development", *World Investment Report*, UNCTAD, United Nations: Geneva.
- World Bank (2006), *World Development Indicators 2006*, Washington DC: World Bank.

## ANNEX 4.A1

Figure 4.A1.1. **Components of external finance in developing countries, 1980-2006**

Percentage of total GDP for all developing countries

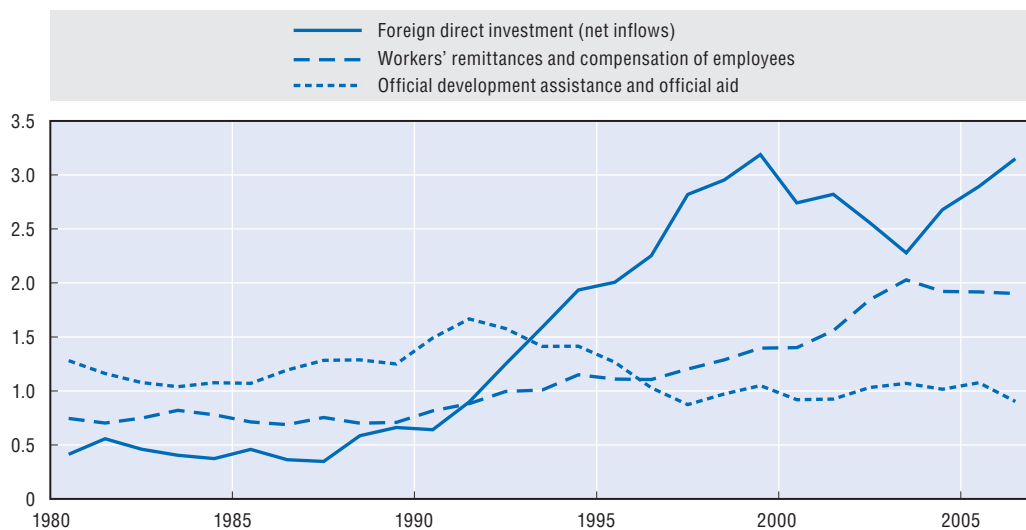
Source: OECD calculations based on World Bank, *World Development Indicators Database*.

Table 4.A1.1. **An overview of the literature on foreign wage premia**

Study	Country	Sample	Treatment <sup>1</sup>	Main findings
<b>I. Cross-sectional studies</b>				
Aitken, Harrison and Lipsey (1996)	Mexico, United States, Venezuela	1984-1990; 1987; 1977-1989, manufacturing	Foreign-owned	Positive and significant wage differences for Mexico and Venezuela after controlling for plant size, geographic location, skill mix and capital intensity, but not in the United States.
Morrisey and Te Velde (2003)	Cameroon, Ghana, Kenya, Zambia, Zimbabwe	Pooled cross-sections for various years during 1990-1993, manufacturing	Foreign-owned	Foreign wage premia ranging from 8% to 23% after controlling for observable worker and firm characteristics.
Lipsey and Sjöholm (2004)	Indonesia	1996, manufacturing	Foreign-owned	Wages in foreign-owned plants are 12% higher for production workers and 20% for non-production workers than in domestic plants.
<b>II. Longitudinal studies - Firm-fixed effects</b>				
Almeida (2007)	Portugal	1991-1998, manufacturing	Foreign takeovers	Foreign takeovers have a small positive effect of 2-4% on average wages.
Canyon, Girma, Thompson, and Wright (2002)	United Kingdom	1989-1994, manufacturing	Takeovers, asymmetric	Cross-border takeovers have small positive effect of 3.3% on average wages.
Earle and Telegdy (2007)	Hungary	1986-2003	Takeovers, symmetric	Cross-border takeovers have a positive effect of 7% on average wages.
Girma and Görg (2007)	United Kingdom	1980-1994, manufacturing	Foreign takeovers	Takeovers of UK firms by US firms increases the wage of both skilled and unskilled workers (4-13%), but takeovers by non-UK EU firms do not.
Huttunen (2007)	Finland	1988-2001, manufacturing	Foreign takeovers	Foreign takeovers have a positive effect on wages. The wage increase occurs within one to three years from the acquisition.
Lipsey and Sjöholm (2006)	Indonesia	1975-1999, manufacturing	Takeovers, asymmetric	Foreign takeovers have a positive effect of 10% on the average wage of blue-collar workers and 21% on the average wage of white-collar workers.
<b>III. Longitudinal studies – Worker and firm fixed effects</b>				
Andrews, Bellman, Schank and Upward (2007)	West and East Germany	2000 and 2004	Takeovers and movers, asymmetric	For West-Germany foreign takeovers are associated with 3% increase in individual wage. The effects for East Germany tend to be insignificant. Movers from domestic to foreign firms experience an increase in wages of 6%.
Balsvik (2006)	Norway	1990-2000, manufacturing	Takeovers and movers, asymmetric	Foreign takeovers have a small positive effect of 3% on individual wages. Movers from domestic to foreign firms experience an increase in wages of 8%.
Heyman, Sjöholm and Gustavsson Tinvall (2007)	Sweden	1996-2000	Takeovers, symmetric	Foreign takeovers have a small negative effect of -2% on individual wages.

Table 4.A1.1. **An overview of the literature on foreign wage premia (cont.)**

Study	Country	Sample	Treatment <sup>1</sup>	Main findings
			Takeovers, asymmetric	Foreign takeovers increase wages of high-skilled workers by 2% and reduce wages of medium and low-skilled workers by 4% and 6%.
Malchow-Moller, Markusen and Schjening (2007)	Denmark	2000-2002	Takeovers, symmetric	Foreign takeovers have small positive effect of 1% on individual wages.
Martins (2006)	Portugal	1991-1999, manufacturing	Takeovers, symmetric	Foreign takeovers have small negative effect -3% on individual wages.

1. Some studies impose the assumption of symmetry on the treatment. In the present case, this means that the effects of changes in ownership from domestic to foreign and domestic to foreign are assumed to be of the same magnitude but of opposite sign. If this assumption is not imposed but both changes are allowed, the treatment is said to be asymmetric.



PART II  
*Chapter 5*

**Development and Decent Work:  
New Directions  
for Multinational Enterprises  
in Shaping a Fair Globalisation**

*This note looks at how business endeavours can contribute to the promotion of decent work and explains the value of the ILO MNE Declaration for companies, governments and workers' and employers' organisations seeking to put in place a policy framework that maximises the linkages between FDI and the process of sustainable economic, social and environmental development. It was prepared for the presentation by Mr. José Manuel Salazar-Xirinachs, Executive Director, ILO Employment Sector, at the OECD-ILO Conference on Corporate Social Responsibility.*

## 1. Introduction

Multinational enterprises (MNEs) are main drivers of globalisation. Their influence and visibility place them at the heart of the concerns of the critics of globalisation as well as of its most ardent proponents. Recognising the key role they can play in pursuing the goals of sustainable development, a fair globalisation and decent work for all, subscribed to by the international community, MNEs have started embarking on a wide range of voluntary initiatives, such as codes of conduct and other practices.

The World Commission on the Social Dimension of Globalisation<sup>1</sup> underlined that a fair globalisation should be based on the framework of universally shared values and it calls for contributions from all actors in globalisation – States, civil society, business, trade unions, international organisations and individuals. The World Commission also urged making decent work – more and better jobs for women and men everywhere – a key goal of economic policy at national and global levels, by giving priority to employment creation, protecting fundamental rights at work, strengthening social protection and promoting social dialogue.

This appeal received worldwide endorsement by many governments and international institutions, including that of the Summit of the United Nations General Assembly in 2005.<sup>2</sup> The ILO and other multilateral agencies are actively engaged in supporting national and international efforts to follow-up on the commitment to promote decent work objectives as a means towards a fairer globalisation and as an important component of the development and poverty alleviation agenda.<sup>3</sup> In this connection, the International Labour Conference recently adopted a *Declaration on Social Justice and a Fair Globalisation* aimed at strengthening ILO capacity to support member states to pursue the goal of decent work for all.<sup>4</sup>

As regards the role of multinational enterprises, the challenge is to harness individual business initiatives to ensure systemic improvements in the contribution of foreign direct investment (FDI) to developmental goals, including poverty reduction; and to help shape an environment conducive to sustainable development and decent work in the developing countries that are host to multinational enterprises. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) is a key instrument for companies, host and home country governments, and employers' and workers' organisations that are committed to addressing this challenge.<sup>5</sup>

This presentation looks at how business endeavours can contribute to the promotion of decent work and explains the value of the ILO MNE Declaration for companies, governments and workers' and employers' organisations seeking to put in place a policy framework that maximises the linkages between FDI and the process of sustainable economic, social and environmental development.

## 2. Multinationals and employment: contributions and challenges

The private sector, investment and entrepreneurship are key factors in generating and sustaining economic growth; therefore they play a central role in attempts to address poverty and vulnerabilities. Recognising this, the ILO constituents – governments, employers', and workers' organisations – decided to discuss “The promotion of sustainable enterprises” at their International Labour Conference in June 2007. Through that discussion, they agreed on the need to promote enterprise development in a manner that aligns enterprise growth with sustainable development objectives and the creation of productive employment and decent work.<sup>6</sup>

In an ever increasingly globalised world, MNEs are an important part of the private sector in many developing and industrialised countries. They have been main actors in the unleashing of market forces that swept the developing world over the past 30 years. In a number of countries, FDI has made a clear contribution to economic growth and the creation of decent jobs. There is general consensus among experts that FDI stimulated technological and skills spillovers in host countries; by this means it facilitated local industrial learning and the growth and diversification of exports – key factors in order to deepen and sustain economic growth.

There is also ample evidence of good direct jobs as a result of multinational investments. Workers employed by MNEs generally enjoy wages, working conditions and other benefits that are at least equal and often higher than those of employees in comparable domestic enterprises. This at times can spill over to domestically owned firms and plants.<sup>7</sup>

From a broad development and decent work perspective, however, the fact remains that the geographical distribution of foreign investment remains highly skewed. With the exception of investment in extractive industries, which is location-specific, FDI largely flows across industrialised economies or accrues to just a few large countries in the developing world. Too many small and poor countries are unable to participate.

Equally important is the fact that even in those developing countries that receive FDI the impact has been clearly beneficial only where local manufacturing capabilities and able governments were already in place.<sup>8</sup> FDI comes in many forms, but its impact in the host country does not only depend on the overall quality of the MNE “package”. Rather, it is the local capacity to absorb and use that package – together with the presence of an environment favourable to the flourishing of sustainable enterprises – which can generate a virtuous circle. Where that capacity is weak and the environment not enabling, FDI alone is hardly enough to generate growth.

Moreover, for historical and structural reasons, the large majority of the workforce in developing countries is stuck in the vast informal economy and can hardly access the opportunities offered by FDI and global competition. Overall, MNEs are estimated to directly employ over 95 million people, mainly concentrated in industrialised economies. They account for only 3.4 per cent of the world's total employment of about 2.8 billion.<sup>9</sup>

There are several factors behind the weakness of labour market institutions and the lack of compliance with labour law that seem common to many developing countries. Often, Ministries of Labour and other agencies dealing with labour market and social issues do not have the capacity or resources to fulfil their mandate. In some cases, the labour law is unclear or not well understood by employers. In others, strict enforcement is undermined by the perception of government that domestic and foreign investors may prefer more lax jurisdictions.<sup>10</sup> Dysfunctional institutions, scant resources and lack of capabilities are the

central policy issues that should be addressed in order to improve the labour market impact of investment in host developing countries.

The ILO MNE Declaration recognises the importance of the policy and institutional environment in host countries as a key determinant of the impact of FDI on the quantity and quality of jobs, drawing the attention of managers and policymakers towards issues such as training for creating and developing local skills through the transfer of technology and know-how; backward linkages to local suppliers and SME development; measures to minimise restructuring effects; improvements in working conditions; and good industrial relations. By focusing on key issues of developing country labour markets, the ILO MNE Declaration contributes to foster cooperation between MNEs and governments in overcoming barriers to more equitable growth and better labour market outcomes.

### 3. A comprehensive framework for action: The ILO MNE Declaration

The ILO MNE Declaration provides guidance on good corporate behaviour and citizenship<sup>11</sup> based on the values enshrined in the international labour standards agreed upon by governments and representatives of employers and workers. Although it is a voluntary instrument, the ILO MNE Declaration refers to national legal frameworks and practices, relevant international labour standards, the international Covenants adopted in the United Nations, and the ILO Declaration of Fundamental Principles and Rights at Work.

The ILO MNE Declaration is a universal instrument, applicable to all ILO member states, in both developed and developing countries. It is accompanied by a periodic follow-up survey process carried out under tripartite supervision and includes a procedure to request an interpretation of its principles in concrete situations.

The ILO MNE Declaration is recognised as a key reference for consultation and cooperation among governments, MNEs and employers' and workers' organisations on labour and employment issues. It is increasingly common for voluntary initiatives to reference international labour standards covering many, if not most, of the key areas addressed by the ILO MNE Declaration, the remaining exception being industrial relations. More broadly, in the area of financial markets, the two most influential socially responsible investment (SRI) stock indexes where MNEs are likely to be publicly listed—the Dow Jones Sustainability Index and FTSE-4-Good—both reference the ILO MNE Declaration for labour practices.

#### 3.1. Content of the ILO MNE Declaration

The ILO MNE Declaration stresses the critical role that host country governments play in fostering an enabling environment' that encourages multinational and other enterprises to undertake actions to promote decent work, which governments in developing countries are increasingly acting on. For instance, Ghana, in partnership with employers and workers, has developed a Business Code, which addresses issues related to human rights, labour standards, environment, anti-corruption, and ethical business practices, and aims to create an enabling environment that encourage companies to operate in a socially responsible manner.

The ILO MNE Declaration also encourages governments of home countries to promote good social practice in accordance with its principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments are invited to be prepared to have consultations with each other, whenever the need arises, on the initiative of either.<sup>12</sup>

The ILO MNE Declaration covers five areas: general policies, employment, training, conditions of work and life, and industrial relations. Each of them includes guidance to both governments and enterprises, and suggests some ways in which they can work together to maximise the contribution of multinational and other enterprises to economic and social development. A brief description of guidance for companies under each area is provided below (see also Annex), along with some examples of how they – alone or in cooperation with government and the social partners – have put these principles into practice.

### 3.1.1. *General policies*

The ILO MNE Declaration stresses the importance of obeying national laws and respecting the principles contained in international labour standards, in particular the fundamental principles and rights at work. Companies are also encouraged to consult with government and employers' and workers' organisations to ensure that operations are consistent with national development priorities.

Some examples of how companies have given effect to these principles include:

- A prominent South African MNE played a leading role in challenging the denial of full trade union rights for black miners during Apartheid South Africa and remains actively engaged in local and national dialogue on issues of mutual concern for the company and the communities in which it operates.
- A global leader in placement services is supporting cross-border dialogues between management and worker representatives; engaging in partnership with government, trade unions, NGOs and international organisations to combat the worst forms of exploitation of migrant workers.

### 3.1.2. *Employment*

The ILO MNE Declaration calls on companies to increase employment opportunities and standards, to the extent possible, taking the employment policies and objectives of governments into account. They should give priority to the employment, occupational development, promotion and advancement of nationals of the host country; use technologies which generate employment, both directly and indirectly; and build linkages with local enterprises by sourcing local inputs, promoting the local processing of raw materials and local manufacturing of parts and equipment. Companies also are urged to extend equality of opportunity and treatment in employment. Lastly, companies should assume a leading role in promoting security of employment, providing reasonable notice of intended changes in operations and avoiding arbitrary dismissal.

Companies, by their very operations, contribute to employment generation. However, some are thinking more strategically about how to strengthen their suppliers to help them become more competitive and hence generate greater employment.

- A MNE operating in Brazil worked with the national and local government to ensure that the sale of an operation did not result in any job losses.
- An international food producer is working to support local farmers in developing countries to increase their productivity and competitiveness through skills development, transferring technology, providing micro-credit for upgrading and supporting infrastructure development.

- A major phone service provider used its existing industrial relations mechanisms to develop an agreement between employees and management to tackle discrimination and improve job satisfaction and performance through equal opportunities for both female and male colleagues.
- A mining company held consultations with its employees and with the local authorities in order to offer sustainable economic occupations after the mine closed. Together they developed an agriculture-retraining programme and other vocational training programmes for the displaced workers and the community as a whole.

### 3.1.3. Training

The ILO MNE Declaration stresses the importance of multinational and other enterprises providing training for all levels of employees to meet needs of enterprises as well as development policies of the country. MNEs should participate in programs to encourage skills formation and development and provide opportunities for local management to broaden their experience.

Companies commonly invest in their workforce; and a growing number are realising the benefits of investing in skills development for workers in their supply chains. Some also are collaborating with government at the policy and institutional level.

- For instance, numerous companies are working with the Tanzanian government to develop a system of skills certification.
- A major software company has been implementing in several Latin American countries training programmes to boost employability by providing free information technology courses to unemployed workers in less developed areas.
- In the Mexican automobile industry, firms are committed to cooperate with the government in making the skills certification process formal and transferable to help jobseekers and employers in both internal and external labour markets.

### 3.1.4. Conditions of work and life

The ILO MNE Declaration states that multinational and other enterprises should provide wages, benefits and conditions of work not less favourable than those offered by comparable employers in the country concerned; and encourages them to provide the best possible wages, benefits and conditions of work, within the framework of government policies, to meet basic needs of employees and their families. Furthermore, companies should respect the minimum age for admission to employment. And they should maintain highest standards of safety and health at work; examine the causes of industrial safety and health hazards; provide information on good practice observed in other countries; and undertake necessary improvements.

Some company examples include:

- Many multinational enterprises offer medical care services to their employees and their families, in particular when they operate in sectors where private life is closely linked with professional activity such as the plantation sector. In Africa, medical services often include HIV/AIDS treatments and counselling to prevent it. In other regions, such as Latin America, they can go as far as supporting their employees' efforts to control their weight in order to prevent obesity and related health complications.

- Concerning the elimination of child labour, many companies have become involved in initiatives at the sectoral and national level, such as ILO tripartite projects to eliminate child labour in the tobacco and cocoa sectors.
- A company in the sugar plantation and processing industry contributes to raising the level of occupational safety and health standards by implementing the same OSH policy it applies in its home country in all countries of operation. Guidelines for using the policy are translated into all relevant languages and distributed to all employees, who also receive specific training as well as the necessary personal protective clothes and equipments. In order to keep the number of accidents to a minimum, there is a constant monitoring.

### 3.1.5. Industrial relations

The ILO MNE Declaration highlights the importance of sound industrial relations. Companies should observe industrial relations standards no less favourable than those observed by comparable employers. They should respect freedom of association and the right to collective bargaining, and provide facilities and the information required for meaningful negotiations. Companies should also provide for regular consultation on matters of mutual concern; and examine worker grievances pursuant to an appropriate procedure. Furthermore, all enterprises should support representative employers' organisations.

Some examples of how MNEs have become active in promoting good industrial relations in their global operations include:

- Many MNEs have signed international framework agreements with the global union federation counterparts for their particular sector. These agreements provide a basis to build trustful relationships and transform industrial relations in countries where social dialogue is not fully developed. There are now over 50 such agreements.
- A major manufacturer of household care items is active not only in its home country employer organisation, but at the international level and in host countries through subsidiaries.
- A multinational tea plantation has established a comprehensive policy on management-labour relations, which includes in addition to collective bargaining, regular consultations as well as simple and effective joint mechanisms for addressing conflicts.
- A multinational affiliate in the paper industry maintains with the trade union that represents its workers a policy of transparent communication, which includes sharing information concerning its performance.

The ILO MNE Declaration has much guidance to offer both governments and companies. But its greatest value is highlighting the importance of a co-ordinated approach between governments and enterprises, whenever possible, to maximise the positive impacts of enterprises on economic and social development. While this section explained the guidance contained in the ILO MNE Declaration on how enterprises and governments can contribute, both individually and in a harmonised fashion, to decent work; the next section provides some concrete examples of companies engaging in collective efforts – at the sectoral level and with public institutions – to strengthen and expand protection of workers' rights.

## 4. Examples of coordinated solutions to decent work deficits in global supply chains

Public concern about compliance with labour standards in global supply chains has led MNEs to introduce corporate codes of conduct and to audit working conditions in their factories as well as among their overseas suppliers. These developments have brought improvements in some areas, but have also shown some limitations. A review of growing literature about the auditing model brings up the following issues:<sup>13</sup>

- There are vast inefficiencies in multiple audits for the same supplier by each buyer.<sup>14</sup>
- There is widespread cheating and double-book-keeping on the part of suppliers.
- There are limited capabilities of third party and in-house auditors to understand and detect violations, particularly of freedom of association.
- There is a focus on policing and finding flaws, rather than on advising and fixing problems.
- There is limited scope for reaching sub-contractors and the more vulnerable casual and home-based workers.
- There is internal misalignment within firms between social responsibility and economic imperatives.
- There is lack of engagement with public labour inspections and any other efforts to improve governance and compliance over the long term.

In addition, at times a selective approach is taken to respecting the fundamental principles and rights at work, leaving out rights such as freedom of association and collective bargaining, or non-discrimination. The recognition of those limitations is directing attention towards different, more comprehensive approaches that cover several or all of the topics addressed in the ILO MNE Declaration.

Development and decent work problems that, directly and indirectly, involve MNEs can be given successful responses through projects involving a multiplicity of stakeholders – private and public, national and international – at territorial or industry levels. These coordinated solutions are aimed at ensuring sustainable compliance with labour standards along global supply chains, but at the same time they enhance job opportunities in low-income countries and help MNEs maintain their reputation. They usually combine monitoring with a mix of incentives as well as training and capacity building. Three examples of such coordinated initiatives are outlined below.

### 4.1. (a) Better Work

A joint initiative by the ILO and the International Finance Corporation (IFC) of the World Bank Group, the Better Work programme is built on a successful project launched in Cambodia in 2001 and widely recognised by academics, development bodies and CSR opinion leaders as the most advanced model for improving labour compliance in global supply chains.<sup>15</sup> *Better Factories Cambodia* helped the textiles and garment industry develop and became the country's main engine of growth, accounting for 80% of Cambodia's exports and over 65% of employment in manufacturing. Among the project's outcomes are the improvement in working conditions in the industry, the increase in trade union membership and a contribution to the redistribution of income to the rural population, women in particular. Unlike in other developing countries, the industry in Cambodia has not suffered from the

expiry of the Multifibre Arrangement: exports have increased as the country has been able to create its niche as a socially responsible supplier in the international market.<sup>16</sup>

Drawing from the experience in Cambodia, *Better Work* redefines the way labour standards compliance is implemented in supply chains with a focus on the development of sustainable solutions in supplier countries. It combines enterprise assessments of compliance with labour standards at the factory level, with training and capacity building. The key to success is the active engagement of the relevant employers' and workers' organisations, the national government and international buyers.

To date, country-level activities have focused on establishing national tripartite industry schemes. Participating in *Better Work* can help enterprises access new contracts with international buyers, thus contributing to generate new employment opportunities. *Better Work* assesses enterprise compliance with international core labour standards and national law related to health and safety and working conditions. Assessment results are reported publicly and to buyers, which creates immediate incentives for improvement.

In each of its project countries, *Better Work* develops a strategy for building capacity and working with the public labour inspectorate. The strategy includes: on the job training for inspectors with *Better Work* teams; sharing of aggregate compliance data for the purposes of risk rating; and co-developing software for tracking inspections.

The programme is now developing global tools and is engaging in the garment sector in three countries, Jordan, Lesotho and Vietnam. Along with *Better factories Cambodia*, the first phase directly benefits 1.2 million working people with the potential for reaching millions more in sectors such as agribusiness, light manufacturing, transport, mining, construction and electronics.<sup>17</sup>

#### **4.2. (b) Wine and Agricultural Ethical Trade Association (WIETA)**

Workers in the wine and agricultural sectors of South Africa, particularly off-farm temporary workers and migrant workers, face many issues related to their lack of employment security, low pay, poor access to benefits, inadequate childcare, lack of training, and lack of, or low-quality on-farm housing. The search for a solution started with discussions among trade unions, NGOs, retailers and producers of the Western Cape wine supply chain exporting to the United Kingdom, which led to the creation of a local monitoring initiative called the Wine Industry Ethical Trade Association (WIETA).<sup>18</sup>

Formally established as a non-profit membership organisation in 2002, WIETA changed its name to Wine and Agricultural Ethical Trade Association in 2006, broadening its scope to encompass all sectors of agriculture. Its members include a significant number of South African wine producers, retailers, trade unions, non-governmental organisations and the government, and more recently, cut flower and deciduous fruit growers. Its mission is to promote the adoption of a code of good practice while educating producers and workers, organising independent social auditing, and monitoring the implementation of corrective actions in case of non-compliance. Funds come from a variety of private and public sources – a UK wine buyers group, the South African Wine Industry Trust, National and Provincial Governments, the Ethical Trading Initiative, local NGOs.

An independent assessment indicated that WIETA was able to build bridges between stakeholders, and to establish local inspection mechanisms and contacts to local governments. As it concerns labour conditions, the following improvements were reported: better terms and conditions of employment for seasonal/temporary workers, better

management systems and risk control measures for occupational health and safety, payment of overtime for long working hours, reduction of hours in extreme (illegal) cases of peak season hours, ending racial and gender discriminatory practices, and many other changes and alignments of managerial practice with the labour laws as they apply to agriculture in South Africa.<sup>19</sup>

From the outset, the Department of Labour has participated as an observer in the Executive Committee, to maximise synergies with its labour inspection services. The Department of Labour inspectorate helped to establish viable and relevant benchmarks for compliance monitoring and compliance decisions. WIETA, in turn, has contributed to the Department of Labour's inspectorate training programme. As a result, monitoring efficiency and corrective action implementation has significantly improved. These are important achievements considering that the agriculture sector is a main earner of foreign currency and a large employer. Wine, in particular, is South Africa's top exported agricultural product: South African winemakers have significantly increased their share of the global market in recent years, making the country the world's ninth largest exporter.

#### **4.3. (c) GTZ/ILO/Volkswagen Project: Better Health and Safety for Suppliers**

This pilot programme was launched in 2004 in three countries – Brazil, Mexico and South Africa. It is a clear example of the common interest of the public and the private sector in creating sound social, economic and environmental conditions in developing countries. Set within the framework of the UN Global Compact, the ILO's International Labour Standards and Volkswagen's Social Charter, the project aimed at reducing occupational safety and health (OSH) risks for employees at Volkswagen and its suppliers in the target countries, which would improve the quality and productivity in the supply chain, thus ultimately leading to higher competitiveness through reduced OSH risks and fewer accidents, less work hours lost, less absenteeism and higher motivation of the workforce.

The project had also mechanisms to ensure national sustainability through the establishment of national OSH and CSR committees, the introduction of a Process Optimizing Consulting (POC) method, and the development of an internet based prevention system that can be used outside Volkswagen's supply chain. Labour inspectors are involved and participate in enterprise visits, thereby they receive on-the-job training and can learn new approaches to prevention. The project is currently being evaluated; some preliminary results for South Africa are showing visible improvements among the local suppliers.<sup>20</sup>

The Better Work, WIETA and the GTZ/ILO/Volkswagen projects show many differences in terms of scope, objectives and the industries and countries covered. In each case, however, the interplay between different actors, private and public, was instrumental in strengthening the sustainability and competitiveness of a set of economic activities and at the same time improving conditions of work and workers' welfare.

These programmes illustrate that the approach promoted by the ILO MNE Declaration based on dialogue and partnerships among enterprises, governments and trade unions, can effectively contribute to achieving important common goals. The contribution each programme made to strengthening the capabilities and deepening the institutional texture of public labour inspection services was not always a major explicit objective, but it might well be the critical outcome for the purposes of achieving sustainable development and decent work.

## 5. Way forward

ILO is working to promote greater awareness and application of the rich and valuable guidance provided by the MNE Declaration. An important component of this work focuses on building the capacity of governments, social partners, and enterprises to promote and apply the MNE Declaration.

In this regard, the ILO is concentrating its efforts in the following areas:

- Providing policy guidance to governments on maximising the social and economic benefits of MNE operations.
- Developing information resources, case studies, tools and methodologies to encourage coordinated approaches between governments and enterprises whenever possible at national, local and sectoral levels.
- Providing training and supporting capacity building. Introductory training materials have been developed to help build the capacity of constituents and companies to use the ILO MNE Declaration. Currently more specialised training materials are being prepared for governments and social partners, as well as a wider target audience.
- Fostering knowledge sharing and dialogue: Networks at country and regional levels are important to better raise awareness, encourage social dialogue in areas of common interest and support efforts of companies and constituents. The ILO field offices and Decent Work Country Programmes in a number of countries provide a platform for tripartite dialogue which could promote the awareness and use of the ILO MNE Declaration. The trend towards the harmonisation of donors' interventions, the United Nations Development Assistance Framework and Poverty Reduction Strategy Paper exercises, and the call for greater policy coherence could provide opportunities and platforms for those dialogues.
- Providing technical assistance for specific questions of application. The ILO will soon launch an MNE Helpdesk, which will provide concrete guidance to companies and constituents about how the principles contained in the ILO MNE Declaration, and international labour standards, can be realised in practice.

In undertaking the above work, it is important that the ILO forges partnerships with other relevant international, multilateral and bilateral institutions to leverage its comparative advantage to achieve greater success and impact. This is particularly important in the context of the UN reforms. This joint meeting with OECD highlights the importance that we attach to this partnership approach.

### Notes

1. "A Fair Globalisation: Creating Opportunities for All", Report of the World Commission on the Social Dimension of Globalisation, ILO, Geneva, 2004.
2. Paragraph 47 of the Outcome Document of the UN World Summit 2005 reads as follows: "*We strongly support fair globalisation and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals.*"
3. For a review, see "Report of the ILO Forum on Decent Work for a Fair Globalisation, Lisbon, 31 October-2 November 2007", Geneva, 2008. The connection between decent work and poverty alleviation is outlined in "Working out of poverty", Report of ILO Director-General to the International Labour Conference, Geneva, 2003.

4. ILO Declaration on Social Justice for a Fair Globalisation. International Labour Conference, 2008.
5. Adopted by the ILO's Governing Body in 1977 and most recently updated in 2006, the ILO MNE Declaration is the main international voluntary instrument as regards the employment and labour dimension of MNE activities. For further information, see [www.ilo.org/multi](http://www.ilo.org/multi).
6. "The promotion of sustainable enterprises (general discussion and conclusions)", International Labour Conference, 96th session, Geneva, 2007. Available at: [www.ilo.org/public/english/standards/reln/ilc/ilc96/pdf/pr-15.pdf](http://www.ilo.org/public/english/standards/reln/ilc/ilc96/pdf/pr-15.pdf).
7. See T. Moran, "A Perspective from the MNE Declaration to the Present: Mistakes, Surprises, and Newly Important Policy Implications", Employment Working Paper No. 11, ILO, Geneva, 2008.
8. For a discussion, see "Trade, foreign investment and productive employment in developing countries", ILO's Governing Body Committee on Employment and Social Policy, Geneva, November 2004. The importance of "increasingly capable, credible and committed government" in fostering sustained and inclusive growth was underlined by the World Commission and is a central message of "The Growth Report: Strategies for Sustained Growth and Inclusive Development" released in May 2008 by the Commission on Growth and Development, see [www.growthcommission.org](http://www.growthcommission.org).
9. See Kee Beom Kim, "Direct employment in multinational enterprises: Trends and implications", EMP/MULTI working paper No. 11, ILO, Geneva, 2006.
10. That labour market institutions are considered just a cost to employers is shown by the way their presence is weighted in indicators of national competitiveness such as the World Bank's "Doing Business" Report. For a comprehensive discussion, see Janine Berg and David Kucera (eds.), "In Defence of Labour Market Institutions: Cultivating Justice in the Developing World", Palgrave Macmillan, 2008.
11. "Conclusions concerning the Promotion of Sustainable Enterprises", International Labour Conference, 96th Session, Geneva, 2007, paragraph 13 (5).
12. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, revised 2006), paragraph 12.
13. This list has been compiled by the ILO-IFC Better Work Team based on examples drawn from studies such as: Institute of Development Studies (2006); Ethical Trading Initiative Impact Assessment; Business for Social Responsibility (2007) *Beyond Monitoring: A New Vision for Sustainable Supply Chains*; O'Rourke, Dara, (2006) *Outsourcing Regulation: Non-Governmental Systems of Labour Standards and Monitoring*.
14. The proliferation of corporate codes of conduct increases the costs of compliance particularly for the smallest suppliers and it may get in the way of their efforts to diversify and broaden their clientele. It also increases information costs for the responsible consumer.
15. The *Better Factories Cambodia* project was originally linked to an innovative trade agreement between the US and Cambodia which provided trade incentives, in the form of quotas, in return for improving working conditions. Later it became a self-financing local entity relying on corporate social responsibility (CSR) rather than trade agreement incentives; see [www.betterfactories.org](http://www.betterfactories.org).
16. See Corinne Vargha, "Promoting decent working conditions in global production chains: the experience of Better Factories Cambodia", in Isabelle Daugareilh (ed.), *Responsabilité des entreprises transnationales et mondialisation de l'économie*, Bruylant – Brussels, forthcoming, 2008; Don Wells, "Best practice" in the regulation of international labour standards: lessons of the US- Cambodia textile agreement, *Comparative Labor Law and Policy Journal*, Vol. 27, 357, p. 360; Sandra Polaski, *Combining Global and Local Forces; The Case of Labor Rights in Cambodia*, Carnegie Endowment for International Peace Policy Brief, 2006, p. 12.
17. See [www.betterwork.org](http://www.betterwork.org).
18. See [www.wieta.org.za](http://www.wieta.org.za).
19. See "Initiative to improve compliance with labour laws: The case of WIETA", Multinational Enterprises Programme, ILO Geneva, mimeo, 2007.
20. Global Compact Case Study, Better Health and Safety for Suppliers – A partnership project between Volkswagen, ILO and GTZ, by Maria Kristjansdottir, Reykjavik University, School of Law.

PART II  
Chapter 6

## Overview of Selected Initiatives and Instruments Relevant to Corporate Social Responsibility\*

*This report provides an overview of the unique status and characteristics of the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the UN Global Compact. These instruments complement privately-developed corporate social responsibility (CSR) initiatives and are key expressions of the broader systems of public and private governance from which the private initiatives emerge.*

\* This report is based on material prepared by Paul Hohnen acting as an external consultant to the OECD Investment Division and benefited from inputs by the ILO Secretariat and the UN Global Compact Office. Earlier drafts were reviewed by the Investment Committee Working Party. Any queries concerning the report should be addressed to Marie-France Houde ([marie-france.houde@oecd.org](mailto:marie-france.houde@oecd.org)).

**“S**trengthening the principles of Corporate Social Responsibility: in this respect, we commit ourselves to promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration), high environmental standards and better governance through OECD Guidelines’ National Contact Points. We call on private corporations and business organisations to adhere to the principles in the OECD Guidelines for Multinational Enterprises. We encourage the emerging economies as well as developing countries to associate themselves with the values and standards contained in these guidelines and we will invite major emerging economies to a High Level Dialogue on corporate social responsibility issues using the OECD as a platform.”

We stress in particular the UN Global Compact as an important CSR initiative; we invite corporations from the G8 countries, emerging nations and developing countries to participate actively in the Global Compact and to support the worldwide dissemination of this initiative.

“In order to strengthen the voluntary approach of CSR, we encourage the improvement of the transparency of private companies’ performances with respect to CSR, and clarification of the numerous standards and principles issued in this area by many different public and private actors. We invite the companies listed on our Stock Markets to assess, in their annual reports, the way they comply with CSR standards and principles. We ask the OECD, in cooperation with the Global Compact and the ILO, to compile the most relevant CSR standards in order to give more visibility and more clarity to the various standards and principles.”

Paragraphs 24-26 of G8 Summit Declaration Heiligendamm, Germany.  
(7 June 2007)

## 1. Introduction

At its 2007 Summit meeting in Heiligendamm, the leaders of the Group of Eight (G8) nations underlined the importance of corporate social responsibility (CSR). Noting the potential of CSR to ensure that the processes of globalisation also addressed social issues, G8 leaders highlighted the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Declaration) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines), and stressed the United Nations Global Compact as an important CSR initiative. The G8 leaders also asked the OECD, in co-operation with the Global Compact and the ILO, to compile the most relevant CSR standards. This paper is a first attempt to respond to that request.

The current CSR landscape is complex and multi-faceted. There are now literally hundreds of private initiatives, often with their own code or set of standards and principles which offer guidance on social and environmental issues. Their focus, membership, usage, and structures vary widely. In the main, they share a desire to help enhance the contribution that business organisations can make to improvement of social and environmental conditions, including labour and other human rights. Since existing instruments evolve and new ones are emerging, a comprehensive yet accessible listing is almost impossible. Instead, this paper attempts to

summarise the broad spectrum of existing initiatives and their chief characteristics with a view to helping potential users better understand the current CSR landscape.

In this complex universe there are two foremost international instruments relevant to CSR – the ILO Declaration and the OECD Guidelines – and one important international CSR initiative – the UN Global Compact (UNGC) – which have either been developed and formally agreed by governments or received high-level recognition by governments at an international level. Indeed, the standards and principles set out in the ILO Declaration, the OECD Guidelines and the UNGC are universal and derive directly from international normative frameworks. The ILO Declaration and the OECD Guidelines provide detailed recommendations on responsible business conduct, while helping businesses and stakeholders distinguish between the responsibility of enterprises and that of the state. The UNGC provides a high profile means for mobilising and encouraging enterprises to integrate CSR into their daily operations.

This report explains the unique status and characteristics of the ILO and OECD instruments and that of the UNGC. The ILO Declaration, the OECD Guidelines and the UNGC complement privately-developed CSR initiatives and are key expressions of the broader systems of public and private governance from which the private initiatives emerge. Private CSR initiatives have been developed to address a range of different sectors, issues and communities, with new initiatives constantly emerging to address new challenges. By focusing on guidance agreed or recognised by governments, this paper does not seek to detract from the value and relevance of private initiatives. An overview of these initiatives is provided in Section 2.

## 2. Current landscape of private CSR initiatives<sup>1</sup>

Many companies of all sizes, in both developed and developing countries, have long engaged in CSR activities rooted in the values of the company. However, CSR as a very conscious and public activity, motivated at least in part by external expectations, particularly concerning supply-chain management, monitoring and reporting, is a recent phenomenon.

The first obligation of business is obeying laws and regulations. Responsible business conduct also entails responding to societal expectations that may be communicated through channels other than law (*e.g.* governmental organisations, within the workplace, by local communities and trade unions, in dialogue with other civil society organisations, via the press and so forth).

OECD work shows that private initiatives for corporate responsibility have provided an international channel through which various actors – businesses, business associations, public authorities, trade unions, intergovernmental organisations and NGOs – can debate various standards of business conduct and management practice. The amount of dialogue and mutual influence among these actors has been significant and it is important that this continues. OECD work also shows that voluntary initiatives in corporate responsibility have promoted the accumulation of the management expertise needed to translate law, regulation and less formal societal expectations into the day-to-day operations of companies. The institutional supports for this expertise – management standards, professional societies, specialised consulting and auditing services – help lower the costs of legal and ethical compliance as well as making it more effective.<sup>2</sup>

Private CSR initiatives are diverse in objectives, origin, areas covered, and implementation mechanisms. Some initiatives aim to raise awareness of the importance of corporate

responsibility in general; others promote a particular code of conduct; still others focus on providing tools such as reporting guidelines or services, e.g., certification and labelling schemes. Initiatives may be specific to a company, may be industry-led or may involve actors from many sectors in their conception and undertaking (i.e. they are multi-stakeholder).

Some private CSR initiatives address a wide range of issues, including human rights and labour rights, community development, consumer rights, the use of security forces, bribery and corruption, health and safety issues and environmental standards. Other initiatives focus on one or a few of these issues, usually in more depth; and either address issues specific to organisations' own operations or challenges facing a specific sector.

Some CSR initiatives have been developed with solely the business sector in mind (e.g. the International Chamber of Commerce Guidance on Supply Chain Responsibility), while others are designed for use by all organisations, whether private or public (e.g. the proposed ISO 26000 Social Responsibility Guidance Standard, the UN Global Compact, or the Global Reporting Initiative Guidelines).

Box 1.A4.1 presents broad classifications by ILO of existing private CSR initiatives while Annex 6.A1 lists examples of each type.

It can be seen from this description that the number and diversity of initiatives available offer businesses the possibility of flexibility, avoiding a "one-size fits all approach", and increases the chances that firms will be able to find support to address concerns of particular interest.

#### Box 6.1. A classification of existing private CSR initiatives

*Corporate Codes of Conduct.* Codes of conduct are directive statements which provide guidance and prohibit certain kinds of conduct. Some are used to guide a company's own environmental and social impacts; others focus on the impacts of their suppliers; still others apply to both. Codes directed at suppliers may contain provisions for monitoring compliance. The highest concentration of companies with codes of conduct tends to be in the consumer goods, food, retail and extractive industries.

*Multi stakeholder Initiatives.* Multi stakeholder initiatives involve cooperation in varying degrees between many social partners, including companies, worker and employer organisations, NGOs, governments, or some combination thereof. Such an initiative may address a specific issue (i.e. labour, environment, bribery, etc.) or encompass the whole range of CSR issues. Some multi stakeholder initiatives are focused on a specific region; others on a specific sector. Some multi stakeholder initiatives focus on promotional activities to build awareness; others have a code of conduct to which their members must comply, and may be required to undergo monitoring and certification carried out by either a "social auditing" firm or an NGO. Still others, such as the Global Reporting Initiative, focus on creating a uniform approach to a particular aspect of the CSR process.

*Certification and Labelling.* Certification and labelling initiatives aim to provide purchasers (consumers and businesses) with what is viewed as reliable information to make purchasing decisions. These initiatives usually cover a single issue, such as child labour, fair trade or forest conservation, but may also address a range of issues. Certification is subject to social auditing, which is carried out by accredited audit companies. In areas where non compliance has been detected, remediation steps are often undertaken with the opportunity for companies to demonstrate improvement through continuous monitoring.

**Box 6.1. A classification of existing private CSR initiatives (cont.)**

*Model Codes.* Model codes are codes of conduct set forth by a multistakeholder initiative, NGO, trade union or other actor, which companies can build on in developing their own codes. Model codes aim to establish a minimum list of standards that all codes of conduct covering certain issues ought to address. In addition to providing a reference for companies looking to create codes, this type of initiative is often meant to assist trade union organisations in negotiations with companies and in working with NGOs in campaigns involving codes of conduct. They are often used as a benchmark for evaluating unilaterally adopted codes of labour practice.

*Sectoral Initiatives.* Sector or industry wide initiatives aim to address widespread challenges in a specific sector (within a country, regionally or internationally) and provide a common approach in direct operations or in dealing with supply chain management. These initiatives may be led by business or may be multi stakeholder in nature. Some focus on raising awareness, but most involve an industry wide code of conduct to which businesses commit. These codes typically address management of global supply chains, which are often long and complicated. When companies share suppliers, an industry wide standard allows companies to work more effectively with suppliers to ensure compliance. Sectoral initiatives provide a type of uniformity across the industry, setting one standard for many companies (and ideally engaging those suppliers, through their local and international employer organisations, in the setting of the industry standard) as opposed to each company having its own code, which may lead to contradictions in codes, confusion and unnecessary monitoring costs among suppliers.

*International Framework Agreements* International Framework Agreements (IFAs) are negotiated jointly by national trade unions and global union federations with multinational companies. They aim at ensuring that the company concerned respects the same labour standards in all the countries where it operates as well as throughout its supply chain. These agreements are designed to be used in conjunction with national labour policies and serve as a basis for further negotiation at the national level. Since IFAs result from negotiations between trade unions and companies/management, they put workers in a stronger position to ensure compliance with a company's stated commitments.

*Socially Responsible Investment (SRI)* Initiatives are also being developed in the financial sector. Historically, these initiatives have focused on financial institutions' own operations, but increasingly, initiatives are focusing on social responsibility concerning investment decisions. On the lending side, this is being stimulated largely by the International Financial Corporation (IFC), the private sector lending arm of the World Bank, which has adopted Performance Standards to guide its investments. Other development financial institutions are following suit; and many private banks have incorporated the Performance Standards into their investments concerning project finance through signing onto the Equator Principles. On the equity side, socially responsible investment (SRI) incorporates elements of CSR in what is often termed the "triple bottom line" approach. The adoption of the UN Principles for Responsible Investment, which give guidance to fund managers and other investors, has given new impetus to this movement.

Source: ILO Secretariat.

### 3. Standards endorsed by governments

Although approaches to CSR are for each company to determine, government has an important role to play in helping to shape their understanding of what is generally expected of them. At the international level, governments have adopted standards and principles in conventions and declarations which constitute an international normative

framework. Table 6.1 shows the articulations between the normative framework, government-recognised standards for responsible business conduct and privately developed guidance. Annex 6.A2 provides a representative sample found in the current international normative framework.

**Table 6.1. Role and relationship of internationally recognised norms, government-recognised guidance, and privately-developed principles relevant to CSR**

Instrument and Role	Examples
International Conventions and Declarations. <ul style="list-style-type: none"> <li>• Reflect agreed international normative principles. Directed mainly to government for domestic implementation. These can help business understand <i>what</i> to do.</li> </ul>	Universal Declaration of Human Rights. UN Framework Convention on Climate Change. ILO Conventions. ILO Declaration on Fundamental Principles and Rights at Work. UN Millennium Development Goals. World Summit on Sustainable Development Plan of Implementation. OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.
Officially-agreed or recognised guidance. <ul style="list-style-type: none"> <li>• Offer authoritative guidance to the business sector on expectations of behaviour. Also help understand <i>what</i> to do, and sometimes also <i>how</i>.</li> </ul>	ILO MNE Declaration. OECD MNE Guidelines. UN Global Compact Principles. International Finance Corporation Performance Standards. Extractive Industries Transparency Initiative (EITI) Principles.
Privately developed principles. <ul style="list-style-type: none"> <li>• Offer business/civil society developed guidance on expectations of behaviour. These sometimes also provide guidance on <i>how</i> to implement such standards. These may or may not be derived from international norms.</li> </ul>	ISO standards (e.g. 14000 series). GRI Sustainability Reporting Guidelines. Responsible Care Guidelines. ICMM Sustainable Development Principles. Electronic Industry Code of Conduct.

There are four channels by which governments have endorsed standards relevant to CSR. These are:

- a) *International instruments developed and formally agreed by governments*, and also having formal support from business and labour organisations. In this category, there are two leading instruments, namely the ILO Declaration and the OECD Guidelines. For its part, the ILO is unique in so far as it is the only universal body with a tripartite membership. While the membership of the OECD is not universal (it has 30 members), the MNE Guidelines have several “universal” characteristics. For example, they have been subscribed to by ten non-OECD countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia), and are applicable to all enterprises from these 40 countries, wherever they operate in the world. There is also another level of instruments that have been agreed by a small number of governments, with inputs from business and civil society, but which are directed to a single sector. These include the Extractive Industries Transparency Initiative (EITI) and the Voluntary Principles on Security and Human Rights.
- b) *International initiatives developed by intergovernmental bodies*. This category includes prominently the UN Global Compact. The UN Global Compact has been recognised on a number of occasions by the UN General Assembly as well as by all Heads of States and Governments in the World Summit Outcome document. The International Finance Corporation (IFC) Environmental and Social Standards were developed within a governmental framework, and sometimes with significant inputs from the business and other sectors, and are another example. Although IFC standards do not explicitly reference intergovernmental instruments, they are derived from many of the instruments mentioned above.

- c) *International initiatives endorsed by governments.* Because of the voluntary nature of private CSR initiatives, governments mostly have not taken an active role in their development. Nonetheless, there is a category where intergovernmental organisations have played an active role, and/or where governments have recognised essentially non-government initiatives. Instruments in this category include the International organisation for Standardization (ISO) standards and the Global Reporting Initiative (GRI) Guidelines (both referenced by the 2002 World Summit on Sustainable Development, and by the G8).
- d) *National initiatives developed and endorsed by government.* This last category is mentioned for a number of reasons. First, because some governments have been active at the national level in facilitating the creation of instruments, usually in association with business and civil society. Second, because such instruments may attract international attention, and be applied by companies along their supply chain in third countries. An example is the Ethical Trading Initiative (ETI), founded with UK government support.

Among these, however, the ILO Declaration, the OECD Guidelines and the UN Global Compact have received prominent recognition by the G8 and the OECD<sup>3</sup> as well as in various UN contexts<sup>4</sup>. They also happen to be among the instruments or initiatives most referenced or used in business-developed guidance materials. More importantly, the direct links with governments as well as their high level of business and worker organisation engagement clearly sets them apart from all other instruments or initiatives as shown in Table 6.2. Annexes 6.A3 to 6.A55 also provide fuller details on their most distinctive features.

Table 6.2. **Government and stakeholder involvement in ILO Declaration, OECD Guidelines and UN Global Compact**

	Global?	Government?	Treaty derived?	Social Partner?
ILO MNE Declaration	Yes.	Yes. The revised Declaration was adopted in 1977, and revised in 2000 and 2006 by the ILO.	Yes. References include the Universal Declaration of Human Rights, the ILO Declaration of Fundamental Principles and Rights of Work, the ILO fundamental conventions, as well as a number of other ILO instruments.	Yes. The ILO is a tripartite body, where employer and worker organisations are formal partners.
OECD MNE Guidelines	Yes.	Yes. All 30 OECD member countries subscribe to the Guidelines. A further 10 countries have also subscribed to them. The OECD Guidelines are part of a Declaration which was adopted at Ministerial level and their implementation by adhering governments is governed by binding OECD decisions.	Yes. Referenced are: The Universal Declaration on Human Rights; the ILO Declaration of Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development and Agenda 21; and the Copenhagen Declaration for Social Development.	Yes. The business and trade union bodies were involved in developing the Guidelines and have formally endorsed them as an important reference point.
UN Global Compact	Yes.	Yes. Initially an initiative of the UN Secretary-General, the UN Global Compact has since been repeatedly recognised by the UN General Assembly. In the most recent GA resolution addressing the UN Global Compact (A/RES/62/211), the Global Compact Office was given a strengthened mandate. Every two years the Global Compact Office prepares the Secretary-General's report to the General Assembly on global partnerships, which also addresses the role of the UN Global Compact.	Yes. Referenced are: <i>The Universal Declaration of Human Rights</i> ; <i>The Rio Declaration on Environment and Development</i> ; and the <i>UN Convention Against Corruption</i> . The four labour principles of the UNGC come from the ILO Declaration on Fundamental Principles and Rights of Work.	Yes. Business, employee organisation and other civil society organisations are involved in governance and advisory roles. Overall, the business sector represents the greatest number of participants.

## 4. Complementarities and synergies between the ILO Declaration, the OECD Guidelines and the UN Global Compact

While the ILO MNE Declaration, the OECD Guidelines and the UN Global Compact have different histories, sponsors and approaches, they share a number of common thematic features. As Table 6.3 shows, they all, for example, address key employment issues, and all are designed to help the business sector in particular to balance economic and other factors related to their role in society. Together, they offer a broadly comprehensive coverage of economic, social and environmental issues.

Table 6.3. **Labour issues addressed by ILO Declaration, OECD Guidelines and UN Global Compact**

	ILO MNE Declaration	OECD MNE Guidelines	UN Global Compact
Freedom of association and collective bargaining	Paras. 49-56 Primary reference point is ILO C.87 and C.98	Section IV.1.a) 4.7,4.8	Principle 3
Elimination of all forms of forced and compulsory labour	Paras. 8-9, 34	Section IV.1.c)	Principle 4
Abolition of child labour	Para. 36	Section IV.1.b)	Principle 5
Non-discrimination in respect of employment and occupation	Paras. 21-23	Section IV.1.d)	Principle 6
General development	Paras. 8-12, 19-20	Section II.1	
Employment promotion	Paras. 13-18, 24-28		
Training	Paras. 29-32	Section II.4;	
Wages and benefits	Paras. 33-35	Section IV.1.a	
Hours of Work	Para. 34	Section IV.4.a)	
Safety and health	Paras. 37-40	Section IV.4.b)	
Social protection	Paras. 25-28	Section IV.6	
Industrial relations	Paras. 41-59	Chapter IV	

While they were developed independently and can be used on a “stand alone” basis, a business organisation might nonetheless wish to take advantage of the complementary and different guidance offered.

On labour issues, the ILO Declaration, the OECD Guidelines and the UNGC offer guidance on the internationally-agreed labour standards applicable in the workplace; and they draw their authoritative basis from ILO conventions and recommendations. The ILO Declaration provides the clearest and most comprehensive summary, covering all areas of labour rights relevant to enterprises. A company participating in the UN Global Compact can use the ILO Declaration and the OECD Guidelines to deepen its appreciation of the issues involved in the four UNGC labour principles. Equally, a company already familiar with the ILO Declaration and the OECD Guidelines might wish to use the UN Global Compact framework to share learning with other organisations, and to communicate its progress publicly.

On issues where the ILO declaration is silent (*e.g.* environment, corruption), a company can broaden/deepen its understandings on these aspects by referring to the OECD MNE Guidelines and the UN Global Compact. Table 6.4 shows the overlapping issues based on the issue coverage of the OECD Guidelines.

By using the ILO Declaration, the OECD Guidelines and the UNGC developed or supported by governments and derived from internationally-agreed principles, a business can be confident that it is meeting widely agreed expectations of good behaviour.

Table 6.4. Coverage of OECD Guidelines issues

	OECD MNE Guidelines	ILO MNE Declaration	UN Global Compact
General Principles	✓	✓	✓
Disclosure	✓		✓
Employment	✓	✓	✓
Human Rights	✓	✓	✓
Environment	✓		✓
Bribery	✓		✓ (Anti-corruption)
Consumer Interests	✓		
Competition	✓		
Taxation	✓		

There are very evident synergies, which might be further developed between the closely connected employment chapter of the OECD Guidelines and the principles of the labour standards enshrined in the ILO Declaration and the UN Global Compact. For this reason, efforts have been made in recent years to clarify the synergies between the three, and with other instruments or initiatives. For example materials have been developed explaining the relationship between the OECD Guidelines and the UN Global Compact. The ILO has developed a training package to explain the relationship between the ILO Declaration, the OECD Guidelines and the UN Global Compact. Special arrangements have recently been developed for strengthening operational ties between the OECD Guidelines and the UN GC (see Box 6.2). A list of these guidance documents is provided in the “Reference User Toolkit on Instruments or Initiatives Relevant to CSR” in Annex 6.A7.

#### Box 6.2. Strengthening operational ties between the OECD Guidelines and UN Global Compact

A number of OECD NCPs report increased co ordination within governments between the activities relating to the MNE Guidelines and other instruments relevant to CSR such as the UN Global Compact. Two examples can be seen from the 2006 NCP Annual Report.

- The German NCP was contacted by the German network of the UN Global Compact and asked to provide mediation for possible cases of non observance of the UN Global Compact principles. The German NCP welcomed this request and suggested a two step procedure. First, the UN Global Compact should try to resolve possible problems within its own framework. Failing resolution, the issue could be presented to the German NCP as a “specific instance”. Mediation would then be handled under the OECD Guidelines and the standards of the “OECD Procedural Guidance”. The stakeholders of the UN Global Compact Germany have approved and formalised this possibility of cooperation.
- Sweden also reports that the Swedish NCP and the Swedish Global Partnership have a very close relationship with the UN Global Compact and its local networks. The Partnership also has close contacts with the Nordic Global Compact Network and the Swedish NCP Chair participates in Annual Compact Network meetings.

The ILO has developed a training package to explain the relationship between the ILO Declaration, the OECD Guidelines and the UN Global Compact.

## 5. Conclusions

Annex 6.A6 provides a consolidated overview of selected initiatives and instruments presented by issues covered.

At the end of the day, it is one of the main responsibilities of government to ensure that markets work for people and business can flourish within a clear rules-based framework. In this context, government recognises that there is a place for both regulatory and voluntary instruments, working in a complementary and effective manner. This context explains why government has taken a direct interest in some voluntary corporate responsibility instruments.

As governments have noted, the role of the business sector has become vital in the process of globalisation and efforts to promote sustainable development. Decisions by business have a direct impact on all levels of society: economic, social and environmental. Expectations of the business sector to contribute at all levels will continue to grow.

For business, this poses a number of challenges. These include how to:

- understand and use the evolving landscape of instruments and initiatives relevant to CSR for developing internal programs and management systems that underpin their commitment to good corporate citizenship and good business and employee conduct;
- help contribute to the CSR landscape's further development and improvement, and ensure that CSR instruments are available for organisations of all sizes, operating in all regions and languages;
- help monitor implementation of corporate responsibility standards and norms, and measure their contribution to global public goods and compliance with national laws; and
- maximise the operational benefits (and minimise the transaction costs) involved for itself and society in general in using CSR instruments.

A central consideration for business organisations must be how well private CSR initiatives reflect and reinforce government agreements on labour, social and environmental standards. This nexus with agreed international norms is essential to guarantee that the instrument has solid foundations, and provides a basis for “level playing field” operations across supply chains and investment relations worldwide.

So how should business organisations approach the wide menu of CSR-relevant instruments or initiatives in practical terms? Beyond compliance with local laws, how can an Indian multinational company operating in Europe best understand what is expected of it? What standards are relevant to a US corporation operating in China? What standards should small and medium sized enterprises – anywhere in the world – need to know in order to compete successfully in global supply chains?

While it is up to each company to choose what approach to CSR is appropriate for it, there are many helpful privately-developed CSR initiatives, a number of them with a focus on a specific sector. Some of these, such as ISO standards and the GRI Guidelines have been recognised by governments and offer a practical means to follow up on the ILO Declaration, the OECD Guidelines and the UNGC. Sectoral instruments or initiatives with a governmental aspect (such as the EITI and Voluntary Principles) command a high level of credibility. Businesses operating in a sector where such instruments or initiatives exist may wish to build on these by using sector or issue specific instruments to enhance their CSR approach. Instruments such as the Principles for Responsible Investment often add valuable detail.

However, caution should be exercised to ensure that these sector or issue instruments or initiatives do not ignore or confuse governmentally-agreed principles, which remain authoritative. Business and other organisations involved in developing voluntary initiatives to promote responsible business practices should seek to promote consistency of such initiatives with agreed international norms.

In developing their own CSR approaches, businesses are guided by standards and principles derived from ILO, UN and OECD conventions and other acts which have been adopted at the multilateral level through an inter-governmental process in consultation with business, labour and other stakeholders. These standards and principles are presented in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines on Multinational Enterprises, and are stated in the United Nations Global Compact.

## ANNEX 6.A1

*Examples of Private CSR Initiatives*

This Annex provides selected illustrative examples representing different broadly-defined categories of voluntary initiatives. As the categories are not mutually exclusive, some initiatives (marked with an asterisk\*) appear under multiple categories.

Category	Illustrative examples*
Corporate Codes of Conduct	Currently, most multinational enterprises and domestic companies have adopted codes of conduct.
Multi-stakeholder Initiatives*	<ul style="list-style-type: none"> <li>• Global Reporting Initiative (GRI)*</li> <li>• Ethical Trading Initiative (ETI)*</li> <li>• Eco-Management and Audit Scheme</li> <li>• Collaborative Group on Artisanal and Small-Scale Mining (CASM) – best practices guidance*</li> <li>• Fair Labour Association*</li> <li>• Social Accountability International*</li> <li>• Worldwide Responsible Accredited Production*</li> <li>• ISO 26000 Social Responsibility Standard (under development)</li> <li>• Greenhouse Gas (GHG) Product Certification Standard*</li> <li>• ISEAL Code of Good Practice for Setting Social and Environmental Standards*</li> </ul>
Certification and Labelling (including reporting)	<ul style="list-style-type: none"> <li>• Social Accountability 8000-Social Accountability International*</li> <li>• Eco-Management and Audit Scheme</li> <li>• International Social and Environmental Accreditation and Labelling Alliance*</li> <li>• Kimberley Process Certification Scheme*</li> <li>• ISO 14000 series of environmental management standards</li> <li>• Greenhouse Gas (GHG) Product Certification Standard*</li> <li>• AccountAbility AA1000 Assurance Standard</li> <li>• Global Reporting Initiative Sustainability Reporting Guidelines*</li> <li>• Clean Clothes Campaign*</li> <li>• Marine Stewardship Council*</li> <li>• Forest Stewardship Council*</li> <li>• Worldwide Responsible Accredited Production*</li> </ul>
Model Codes	<ul style="list-style-type: none"> <li>• Ethical Trading Initiative*</li> <li>• Common Code for the Coffee Community*</li> <li>• Fair Labor Association Workplace Code of Conduct*</li> <li>• Global e-Sustainability Initiative (GeSI)</li> <li>• Confederation of European Paper Industries Code of Conduct*</li> <li>• ISEAL Code of Good Practice for Setting Social and Environmental Standards*</li> <li>• ITUC Basic Code of Labour Practice</li> <li>• Amnesty International Human Rights Principles for Companies</li> <li>• International Chamber of Commerce (ICC) Business Charter for Sustainable Development</li> <li>• Global Sullivan Principles</li> <li>• Transparency International Business Principles for Countering Bribery</li> <li>• Caux Round Table Principles for Business</li> <li>• ICC Rules of Conduct to Compact Extortion and Bribery</li> <li>• ICC Guidance on Supply Chain Responsibility</li> <li>• Clean Clothes Campaign*</li> <li>• Fair Labour Association-Workplace Code of Conduct*</li> <li>• Greenhouse Gas (GHG) Product Certification Standard*</li> <li>• International Social and Environmental Accreditation and Labelling Alliance*</li> <li>• Kimberley Process Certification Scheme*</li> <li>• Business Leaders Initiative for Human Rights</li> </ul>

Category	Illustrative examples*
Sectoral Initiatives*	<ul style="list-style-type: none"> <li>• GRI sector supplements (<i>e.g.</i> Automotive, Electric Utilities, Financial Services, Mining and Metals, Public Agency, Telecommunications)<sup>+</sup></li> <li>• Common Code for the Coffee Community**</li> <li>• Electronic Industry Code of Conduct (EICC)</li> <li>• Confederation of European Paper Industries (CEPI) Code of Conduct*</li> <li>• Kimberley Process Certification Scheme* (diamond trade)</li> <li>• Collaborative Group on Artisanal and Small-Scale Mining (CASM) – best practices guidance*</li> <li>• ICC International Codes of Marketing and Advertising Practice</li> <li>• Responsible Care (chemical industry)</li> <li>• International Mining and Metals Council (ICMM) Principles for Sustainable Development Performance</li> <li>• Petroleum Industry (IPIECA) Guidelines for Reporting Greenhouse gas Emissions</li> <li>• International Council of Toy Industries (ICTI) CARE Initiative</li> <li>• International Federation of Organic Agriculture Movements (IFOAM) Principles and Norms</li> <li>• Forest Stewardship Council (FSC) Principles and Criteria**</li> <li>• Workers Rights Consortium*</li> <li>• Marine Stewardship Council (MSC) Environmental Standard*</li> <li>• Better Cotton Initiative*</li> <li>• Clean Clothes Campaign*</li> </ul>
International Framework Agreements	As of end of 2007, there were 62 International Framework Agreements. These agreements have been negotiated between global trade union federations and major multinational enterprises. They span a wide variety of sectors, from agriculture and tourism to extractives and clothing
Socially Responsible Investment/Finance	<ul style="list-style-type: none"> <li>• Collaborative Group on Artisanal and Small-Scale Mining (CASM) – best practices guidance*</li> <li>• Equator Principles (investment in project finance)*</li> <li>• UN Principles for Responsible Investment</li> <li>• CERES Principles</li> </ul>

\* Certain sectoral initiatives (marked with a plus\*) have been developed in a multi-stakeholder manner.

Source: Material provided by ILO Secretariat.

## ANNEX 6.A2

## *International Normative Framework*

The *Universal Declaration of Human Rights* states that “every individual and organ of society” has the responsibility to strive “to promote respect for these rights and freedoms” and “by progressive measures, national and international, to secure their universal and effective recognition and observance”. As important “organs” of society, businesses have a responsibility to promote worldwide respect for human rights.

The *ILO Conventions* establish norms covering all aspects of working conditions and industrial relations. Some of the most important cover core labour standards (i.e. basic human rights in the workplace). These include the right to freedom of association, the right to organise and to collective bargaining, and freedom from forced labour. ILO conventions are binding on all countries that have ratified them.

The *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* is a global instrument designed to provide guidance to government, employer and worker organisations in areas of employment, training, conditions of work and industrial relations. All core labour standards are covered. Although it is a non-binding instrument, its implementation is nevertheless the object of regular reviews.

The *ILO Declaration on Fundamental Principles and Rights at Work* is based on the core labour standards outline in the *ILO Conventions*. The Declaration is not binding but applies to all ILO member states. As part of a strategy to help countries to have well-functioning labour markets, it provides for a mechanism for annual review of the efforts made by member states that have not yet ratified the core labour standards. The Declaration also reinforces the application of core labour standards in private voluntary instruments.

The 1992 *Rio Declaration* sets out 27 principles defining the rights and responsibilities of states in relation to human development and well-being. The *Agenda 21* agreement provides guidance for governments, business and individuals on how to contribute to efforts to make development socially, economically and environmentally sustainable. Its Chapter 30 recognises the value of promoting “responsible entrepreneurship”.

The *Millennium Development Goals* identify a series of government-agreed targets and timetables in relation to issues such as poverty reduction, improvement of child health care and education, and the promotion of gender equality.

The *Johannesburg Declaration on Sustainable Development (2002)* states that the private sector has “a duty to contribute to the evolution of equitable and sustainable communities and societies”, and that “there is a need for private sector corporations to enforce corporate accountability”. Its Plan of Implementation notes the need to “enhance corporate

environmental and social responsibility and accountability". The UN Framework Convention on Climate Change and Convention on Biodiversity were also signed by a majority of governments.

The 2005 *World Summit Outcome* reiterated the importance of full respect for existing labour, human rights and environmental commitments and encouraged "responsible business practices, such as those promoted by the Global Compact".

Under the 2003 *UN Convention Against Corruption*, ratifying countries undertook to: criminalise an array of corrupt practices; develop national institutions to prevent corrupt practices and to prosecute offenders; co-operate with other governments to recover stolen assets; and help each other to fight corruption.

## ANNEX 6.A3

## *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

**Sponsor/s:** The 181 member states of the ILO, and their workers' and employers' organisations. Founded in 1919, the ILO became the first specialised agency of the UN in 1946. It is the only "tripartite" United Nations agency, bringing together representatives of governments, employers and workers to shape policies and programmes jointly.

**Mission:** The purpose of the Declaration is to encourage the positive contribution which MNEs can make to economic and social progress, and to minimise and resolve difficulties arising from their operations. The Declaration was one of earliest international instruments covering the social dimension of business. Negotiated between governments, workers' and employers' organisations in 1977, it represents the first international tripartite consensus on desirable behaviour of enterprises with regard to labour and social policy areas.

**Scope:** The Declaration sets out principles in the field of general policies, employment, training, conditions of work and life and industrial relations. All government, employer and worker organisations are recommended to observe the principles on a voluntary basis.

The main areas covered by the Declaration are:

- General policies (obey national laws and respect international standards).
- Employment (employment promotion; equality of opportunity and treatment; security of employment).
- Training (policy development for vocational training, skills formation).
- Conditions of Work and Life (wages, benefits, conditions of work; minimum age; safety and health).
- Industrial Relations (freedom of association and right to organise; collective bargaining; consultation; grievances; settlement of disputes).

The Declaration was revised in 2000 to include the Fundamental Principles and Rights at Work. It was further revised in 2006 to update references to other ILO instruments. During this update, the list of ILO Conventions that member States are invited to ratify was extended to all the fundamental ILO Conventions. Moreover, a specific recommendation was added to encourage enterprises, both multinational and national, to take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour, as a matter of urgency.

References to the following ILO instruments were also added: the Global Employment Agenda; Recommendation (No. 169) concerning Employment Policy and Recommendation (No. 189) concerning General Conditions to Stimulate Job Creation in Small and Medium-

Sised Enterprises; and ILO codes of practice on HIV/AIDS and the world of work (2001) and on Managing disability in the workplace (2002).

**Audience:** While multinational enterprises are a key audience, the Declaration's principles regarding the social aspects of MNEs are also for use by small and medium enterprises, as well as by governments, employers and workers organisations. All the parties are encouraged to contribute to the realisation of the ILO Declaration on Fundamental Principles and Rights at Work. In addition, governments are urged to ratify, along with the conventions already referenced, the minimum age and child labour conventions. The ILO undertakes periodic surveys on the implementation of the MNE Declaration. It does not have a membership structure, so it does not require that user organisations report their use of the Declaration.

**Governance:** The ILO established a subcommittee of the Committee on Legal Issues and International Labour Standards of the ILO Governing Body to oversee the Declaration, and to discuss ILO policy concerning CSR issues. The ILO focuses on improved information collection, analysis and dissemination, and coherent action, drawing on its tripartite strength and bringing together contributions from all parts of the organisation. It also conducts surveys on use of the Declaration. The MNE Declaration includes procedures for the examination of disputes concerning its application. The ILO also has a standing tripartite committee on Freedom of Association, which deals with complaints concerning freedom of association and collective bargaining.

The MNE Declaration is unique in providing clear guidance of how companies and governments can work together, to help advance national and local economic and social development goals – advocating public-private partnerships long before the term existed. The MNE Declaration also encourages dialogue between home and host countries for foreign direct investment, linking CSR initiatives to a broader dialogue concerning trade and investment. By situating CSR in the broader context of government policies which critically impact enterprise decisions, the MNE Declaration emphasises that CSR is an important complement to government regulation, but never a substitute.

**Relations with other instruments:** The MNE Declaration references other authoritative international instruments, such as the Universal Declaration of Human Rights. As a result of the thematic and sectoral complementarity of the ILO Declaration and the OECD Guidelines, there is a good collaborative relationship between the two organisations. In June 2008 they will jointly host a Conference on CSR, aimed at promoting responsible business conduct in the globalising economy. The MNE Declaration also references instruments such as the Millennium Development Goals and the UN Global Compact.

ILO is establishing a helpdesk for companies, industry initiatives and employers, workers and governments to promote full and accurate inclusion of the principles of the MNE Declaration.

Summary:

- a voluntary global framework for responsible business conduct;
- developed and endorsed by government, business and workers organisations;
- based on agreed ILO conventions and recommendations;
- applies universally, regardless of ratification;
- key reference point for other initiatives in the area of labour;
- involves regular monitoring and review.

For more information: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

## ANNEX 6.A4

## OECD Guidelines for Multinational Enterprises

**Sponsor/s:** The OECD MNE Guidelines are subscribed to by all thirty members of the organisation for Economic Co-operation and Development (OECD). A further ten non-member countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia) have also adhered to the Guidelines. Four additional applications for adherence are currently under consideration by the OECD. The Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) were involved in their development and endorse the Guidelines. OECD Watch, a coalition of more than 65 civil society organisations, also supports the Guidelines. The Guidelines have been referenced by the UN Security Council and other interested non-OECD bodies.

**Mission:** The purpose of the OECD MNE Guidelines is to offer a balanced, multilaterally-endorsed, and comprehensive code that expresses the shared values of adhering governments. They are “recommendations jointly addressed by governments to multinational enterprises” that provide “principles and standards of good practice consistent with applicable laws”. By providing a clear set of expectations, the Guidelines seek to encourage the positive contributions multinational companies can make to economic, environmental and social progress.

**Scope:** The Guidelines comprise a set of voluntary recommendations in all the major areas of corporate citizenship, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. They form part of a broader OECD investment instrument, the Declaration on International Investment and Multinational Enterprises, which is designed to promote direct investment and international economic development and growth.

Implementation of the Guidelines involves a unique combination of binding and voluntary elements. Adhering governments commit to promote them among multinational enterprises operating in or from their territories. The instrument’s distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with advancing the Guidelines and handling enquiries in the national context. NCPs also support a unique mediation and conciliation procedure – called “specific instances” – involving claims that the Guidelines have not been respected. Since 2000, some 160 such specific instances have been considered by the NCPs. This process may be engaged whether or not a company has recognised the Guidelines.

**Audience:** While the Guidelines are primarily addressed to MNEs, they are not aimed at introducing differences of treatment between multinational and domestic enterprises.

Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both. Likewise, while SMEs may not have the same capacities as larger enterprises, they are invited to observe the Guidelines “to the fullest extent possible”. The Guidelines are freely available to all user organisations. Since the Guidelines do not require users to publicise their use, the actual number of users is not known. Nonetheless, surveys among large enterprises indicate that a significant proportion refer to the Guidelines in their CSR policies.

**Governance:** The OECD Investment Committee, in consultation with BIAC and TUAC, is responsible for oversight of the Guidelines. Adhering governments are individually responsible for promoting use of the Guidelines, and for processing any “specific instances”, through their NCPs. They meet annually at the OECD and report to the Investment Committee, which conducts a “peer review” of implementation.

**Relations with other instruments:** The Guidelines were expressly designed to strengthen the existing international normative framework. Among other norms, they reference the Universal Declaration of Human Rights, the *ILO Declaration on Fundamental Principles and Rights at Work*, the *Rio Declaration on Environment and Development* and *Agenda 21*, and the *Copenhagen Declaration for Social Development*.

The Guidelines can readily be used in conjunction with other instruments. Explanatory materials have been developed to outline their relationship with the UN Global Compact, the Principles for Responsible Investment, and with the GRI Guidelines.

Summary:

- a voluntary global framework for responsible business conduct;
- developed by government, in full consultation with business, trade union and other non-government organisations, and officially agreed by governments;
- based on agreed international norms;
- widely referenced in the business community;
- compatible with other instruments relevant to CSR;
- mechanism for review of performance; and
- involves regular monitoring.

For more information: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

## ANNEX 6.A5

*UN Global Compact*

**Sponsor/s:** UN Secretary-General, one of the principal organs of the United Nations, with support from UN agencies, governments, and representatives of business, labour and other civil society bodies. It accepts new adherents on an ongoing basis from all major categories of societal actors. The UN Global Compact has been recognised on a number of occasions by the UN General Assembly, as well as by all Heads of States and Governments in the UN World Summit Outcome document (2005) and the G8.

**Mission:** The UN Global Compact has two broad goals. These are to mainstream ten core principles relating to human rights, labour standards, the environment, and anti-corruption in business activities around the world; and to catalyse actions in support of broader UN goals, such as the Millennium Development Goals (MDGs). A voluntary initiative, it is not a code of conduct. It offers “a policy framework for organising and developing corporate sustainability strategies while offering a platform – based on universal principles – to encourage innovative initiatives and partnerships with civil society, governments and other stakeholders”.

**Scope:** The UN Global Compact invites companies to embrace, support and enact, within their sphere of influence, the following ten principles:

*Human Rights*

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

*Labour Standards*

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

*Environment*

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

#### *Anti-Corruption*

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

**Audience:** The UN Global Compact is directed primarily to the business sector, but is a multi-stakeholder initiative and engages all kinds of societal actors, including public agencies, labour and civil society organisations. Companies participating in the Compact initiate their involvement by expressing their support in writing at CEO level. Among other things, each participant commits to integrate the principles into organisational strategy, culture and operations; to publicly advocate the UN Global Compact and its principles; and to publish annually a “communication on progress”, a description of the ways in which it is supporting the Global Compact and its ten principles.

Since its launch in July 2000, the initiative has grown to over 5 000 participants, including over 3 600 businesses in 120 countries around the world. It is widely regarded as the world’s largest global corporate citizenship initiative.

**Governance:** The Compact has a “multi-centric” governance framework. This includes a triennial Leaders Summit, annual local networks forum, the Global Compact Office and a UN Inter-Agency Team, as well as a 20 person global Board comprising representation from business, civil society, labour and the UN family.

**Relations with other instruments:** The Compact’s principles are derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development, and the UN Convention Against Corruption.

The Global Compact has developed guidance materials that help users understand its relationship with the OECD MNE Guidelines, and with the GRI Guidelines. The Compact endorses but does not require the use of the GRI Guidelines in making “communications on progress”.

#### Summary:

- An instrument offering a voluntary global framework for action.
- Developed by the Secretariat of an intergovernmental body and government recognised.
- Derived from agreed international norms.
- Framework for learning, dialogue and partnerships.
- Mechanism for public reporting on progress.
- Widely used by the business community.
- Compatible with other instruments.

For more information: [www.unglobalcompact.org](http://www.unglobalcompact.org).

## ANNEX 6.A6

## *Categories of Instruments and Initiatives Relevant to CSR by Issues Covered: Illustrative Examples*

Focus	Government sponsored or supported	Industry sponsored	Partnership sponsored	Labour or NGO sponsored
General, including aspirational instruments	OECD MNE Guidelines UN Global Compact	Caux Round Table Principles for Business. Global Sullivan Principles. International Chamber of Commerce (ICC) Business Charter for Sustainable Development. ICC Business in society: making a positive and responsible contribution.	Earth Charter	
Corporate Disclosure	OECD Principles of Corporate Governance. OECD MNE Guidelines. UN Global Compact.		Global Reporting Initiative. (GRI) Sustainability Reporting Guidelines.	
Labour	ILO MNE Declaration. ILO Declaration of Fundamental Principles and Rights at Work. OECD MNE Guidelines. UN Global Compact.		Ethical Trading Initiative Base Code and Principles(UK). Social Accountability SAI 8000. Fair Labor Association Workplace Code of Conduct.	ICFTU Basic Code of Labour Practice.
Human Rights	UN Global Compact. OECD MNE Guidelines. ILO MNE Declaration.			Amnesty International Human Rights Principles for Companies.
Environment	UN Global Compact.		ISO 14000 series environmental management standards. Eco-Management and Audit Scheme (EMAS). Ceres Principles.	
Bribery	OECD Convention on Combating Bribery. UN Convention against Corruption. OECD MNE Guidelines. UN Global Compact.	ICC Rules of Conduct to Compact Extortion and Bribery.		Transparency International Business Principles for Countering Bribery.
Risk	OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. UN Global Compact Business Guide for Conflict Impact Assessment and Risk Management.			

Focus	Government sponsored or supported	Industry sponsored	Partnership sponsored	Labour or NGO sponsored
Quality management, assurance/verification			ISO 9000 Series quality management standards. AccountAbility AA1000 Assurance Standard.	
Supply Chain Codes		ICC Guidance on Supply Chain Responsibility.		
Accreditation, certification, labelling codes			ISO 14020 series standards on environmental labels and declarations. ISEAL Code of Good Practice for Setting Social and Environmental Standards.	
Consumer	UN Guidelines for Consumer Protection. OECD MNE Guidelines. WHO Ethical Criteria for Medical Drug Promotion. OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.		ISO 10000 series on customer satisfaction.	
Reporting			GRI Sustainability Reporting Guidelines.	
Comprehensive (e.g., "social responsibility", "sustainability").	World Bank Group Performance Standards on Social and Environmental Sustainability.		GRI Guidelines. ISO 26000 Standard (under development).	
Stakeholder Engagement			AA1000 Stakeholder Engagement Standard.	
Sectoral				
Advertising		ICC International Codes of Marketing and Advertising Practice.		
Agriculture			International Federation of Organic Agriculture Movements (IFOAM) Principles and Norms. Common Code for the Coffee Community.	
Apparel			GRI Sector Supplement for Apparel.	
Chemicals		Responsible Care program.		
Energy			WRI/WBCSD Greenhouse Gas Protocol. ISO 14064-65 standards on measuring greenhouse emissions. GRI Sector Supplement for Electric Utilities.	Greenhouse Gas (GHG) Product Certification Standard.
Extractives	Extractive Industries Transparency Initiative (EITI) Principles and Criteria. Voluntary Principles on Security and Human Rights. Kimberley Process Certification Scheme. Collaborative Group on Artisanal and Small-Scale Mining (CASM) – best practices guidance.	International Mining and Metals Council (ICMM). Principles for Sustainable Development Performance. International Cyanide Management Code.	GRI Sector Supplement for Mining and Metals. Initiative for Responsible Mining Assurance (IRMA) (principles under development). Diamond Development Initiative (DDI) – (quality standards under development).	
Investment	International Finance Corporation (IFC) Performance Standards. Principles for Responsible Investment.	Equator Principles.		

## II.6. OVERVIEW OF SELECTED INITIATIVES AND INSTRUMENTS RELEVANT TO CORPORATE SOCIAL RESPONSIBILITY

Focus	Government sponsored or supported	Industry sponsored	Partnership sponsored	Labour or NGO sponsored
Electrical		Electronic Industry Code of Conduct (EICC).		
Forestry		Confederation of European Paper Industries (CEPI) Code of Conduct.	Forest Stewardship Council (FSC) Principles and Criteria. ISO 14061:1998 Information to assist forestry organisations in the use of environmental management system standards ISO 14001 and ISO 14004.	
Fisheries			Marine Stewardship Council (MSC) Environmental Standard.	
Oil and Gas		Petroleum Industry (IPIECA) Guidelines for Reporting Greenhouse gas Emissions.		
Toys		International Council of Toy Industries (ICTI) CARE Initiative.		

## ANNEX 6.A7

## Reference User Toolkit on Initiatives and Instruments Relevant to CSR

### Useful materials comparing government-agreed and recognised initiatives and instruments

Global Compact/GRI, *Making the Connection: The GRI Guidelines and the Global Compact Communication on Progress*, 2007.

GRI, *Synergies between the OECD Guidelines for Multinational Enterprises (MNEs) and the GRI 2002 Sustainability Reporting Guidelines*, 2004.

ILO, *International Instruments and Corporate Social Responsibility. A Booklet to Accompany the Training Programme the Labour Dimension of CSR: from Principles to Practice*, 2007.

OECD, "The OECD Guidelines and other Corporate Responsibility Instruments. A Comparison", in *Annual Report on the OECD Guidelines for Multinational Enterprises*, OECD, 2001.

OECD, *The UN Global Compact and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Features*, in *Annual Report on the OECD Guidelines for Multinational Enterprises*, 2005.

OECD, *The OECD Guidelines for Multinational Enterprises and the Equator Principles – Similarities, Differences and Synergies*, in *Annual Report on the OECD Guidelines for Multinational Enterprises*, 2007.

OECD, *The UN Principles for Responsible Investment and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions*, in *Annual Report on the OECD Guidelines for Multinational Enterprises*, 2007.

### Useful general materials on initiatives and instruments

Bohman, Anna and Minter, Graham, "International Initiatives to Promote Responsible Business: Confusion or Coherence?", *International Business Leaders Forum*, 2007.

Cragg, Wesley, *Ethics Codes, Corporations and the Challenge of Globalisation*, 2005.

Goel, Ran, *Guide to Instruments of Corporate Responsibility: An overview of 16 tools for labour fund trustees*, 2005.

EU Commission, "ABC of the main instruments of Corporate Social Responsibility", 2004.

IFC, *International Finance Corporation's Guidance Notes: Performance on Social and Environmental Sustainability*, 2007.

ILO, Governing Body discussion paper, InFocus Initiative on Corporate Social responsibility (CSR), 2005.

ILO, *The promotion of sustainable enterprises*, 2007.

KPMG/University of Amsterdam, *International Survey of Corporate Responsibility Reporting*, 2005.

McKague, Kevin and Cragg, Wesley, *Compendium of Ethics Codes and Instruments of Corporate Responsibility*, 2007.

Leipziger, Deborah, *The Corporate Responsibility Code Book*, 2003.

Webb, Kernaghan (Ed.), *Voluntary Codes: Private Governance, the Public Interest and Innovation*, 2004.

OECD, *Corporate Responsibility: Private Initiatives and Public Goals*, OECD, 2001.

OECD, *Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches*, OECD, 2005.

OECD, "Policies for Promoting Responsible Business Conduct", in *Policy Framework for Investment: A Review of Good Practices*, 2006.

OECD, Chapter 7: Policies for Promoting Responsible Business Conduct, in *Policy Framework for Investment*, 2006.

United Nations, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Report of the Special Representative of the Secretary-General, 2007.

United Nations, *Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General, 2008.

## Notes

1. While special effort has been made to ensure an accurate overview of the many CSR initiatives that exist, no claim is made that the examples provided are collectively comprehensive or individually complete. References to instruments or initiatives other than those developed by the ILO, OECD and the UN Global Compact are for information only and should be interpreted as endorsing or recognising those instruments or initiatives.
2. OECD (2001), *Corporate Responsibility: Private Initiatives and Public Goals*. This study has been the basis for a Report by the OECD Investment Committee to Ministers at the 2001 OECD Annual Ministerial Meeting.
3. For instance, they are specifically mentioned in the Policy Framework for Investment adopted by the governing board of the OECD, the OECD Council, in 2006.
4. For instance, the UN Security Council has made repeated references to the OECD Guidelines and the UNGC in relation to responsible business conduct in weak governance zones.

# Appendices



## APPENDIX A

# *Declaration on International Investment and Multinational Enterprises*

27 June 2000

ADHERING GOVERNMENTS<sup>1</sup>

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries.
- That multinational enterprises play an important role in this investment process.
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations.
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments.

DECLARE:

**Guidelines  
for Multinational  
Enterprises**

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto,<sup>2</sup> having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;

**National  
Treatment**

II.1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

- |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Conflicting Requirements</b>                              | <ul style="list-style-type: none"> <li>2. That adhering governments will consider applying “National Treatment” in respect of countries other than adhering governments;</li> <li>3. That adhering governments will endeavour to ensure that their territorial subdivisions apply “National Treatment”;</li> <li>4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>International Investment Incentives and Disincentives</b> | <ul style="list-style-type: none"> <li>III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto;<sup>3</sup></li> <li>IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment; <ul style="list-style-type: none"> <li>2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called “measures”) providing official incentives and disincentives to international direct investment;</li> <li>3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;</li> </ul> </li> </ul> |
| <b>Consultation Procedures</b>                               | <ul style="list-style-type: none"> <li>V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Review</b>                                                | <ul style="list-style-type: none"> <li>VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. The text of the Guidelines for Multinational Enterprises is reproduced in Appendix B of this publication.
3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD website [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment).

## APPENDIX B

# The OECD Guidelines for Multinational Enterprises: Text and Implementation Procedures

## Text

## Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.
2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.
3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.
4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host

countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the *Universal Declaration of Human Rights*. Recent instruments include the *ILO Declaration on Fundamental Principles and Rights at Work*, the *Rio Declaration on Environment and Development* and *Agenda 21* and the *Copenhagen Declaration for Social Development*.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and of the *OECD Principles of Corporate Governance*, the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*, and ongoing work on the *OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations*.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental

organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

## I. Concepts and principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

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.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by

adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

## 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:

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.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
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.
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.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
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.

### 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.
2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.
3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.
4. Enterprises should also disclose material information on:
  1. the financial and operating results of the company;
  2. company objectives;
  3. major share ownership and voting rights;
  4. members of the board and key executives, and their remuneration;
  5. material foreseeable risk factors;
  6. material issues regarding employees and other stakeholders; and
  7. governance structures and policies.
5. Enterprises are encouraged to communicate additional information that could include:
  - a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.
  - b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct.
  - c) Information on relationships with employees and other stakeholders.

### IV. Employment and industrial relations

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;
- b) contribute to the effective abolition of child labour;
- c) contribute to the elimination of all forms of forced or compulsory labour; and

- d) not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
- b) provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; and
- c) promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
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; and
- b) take adequate steps to ensure occupational health and safety in their operations.
5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
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.
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.
8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

## V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their

activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
  - a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
  - b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
  - c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
  - a) Provide the public and employees with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
  - b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
  - a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
  - b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
  - c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and

- d) Research on ways of improving the environmental performance of the enterprise over the longer term.
- 7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
- 8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

## 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.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
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.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

## VII. Consumer Interests

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:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
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.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

## VIII. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

## IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
  - a) to fix prices;
  - b) to make rigged bids (collusive tenders);
  - c) to establish output restrictions or quotas; or
  - d) to share or divide markets by allocating customers, suppliers, territories or lines of commerce.

2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

## **X. Taxation**

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

## *Implementation Procedures*

### **Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises**

June 2000

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

To repeal the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1], and replace it with the following:

### **I. National Contact Points**

1. Adhering countries shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet annually to share experiences and report to the Investment Committee.

## **II. The Investment Committee**

1. The Investment Committee (“the Committee”) shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held at their request.
3. The Committee may decide to hold exchanges of views on matters covered by the Guidelines with representatives of non-adhering countries.
4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines.
6. In fulfilling its responsibilities for the effective functioning of the Guidelines, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points, the views expressed by the advisory bodies, and the views of other non-governmental organisations and non-adhering countries as appropriate.

## **III. Review of the Decision**

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

## Procedural Guidance

### I. National Contact Points

The role of National Contact Points (NCP) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

#### A. Institutional arrangements

Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, employee organisations, and other interested parties, which includes non-governmental organisations.

Accordingly, the National Contact Point:

1. May be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included.
2. Will develop and maintain relations with representatives of the business community, employee organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.

#### B. Information and promotion

National Contact Points will:

1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.
2. Raise awareness of the Guidelines, including through co-operation, as appropriate, with the business community, employee organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the Guidelines from:
  - a) other National Contact Points;
  - b) the business community, employee organisations, other non-governmental organisations and the public; and
  - c) governments of non-adhering countries.

### **C. Implementation in specific instances**

The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
  - a) seek advice from relevant authorities, and/or representatives of the business community, employee organisations, other non-governmental organisations, and relevant experts;
  - b) consult the National Contact Point in the other country or countries concerned;
  - c) seek the guidance of the CIME if it has doubt about the interpretation of the Guidelines in particular circumstances; and
  - d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist in dealing with the issues.
3. If the parties involved do not reach agreement on the issues raised, issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.
4.
  - a) In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.
  - b) After consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

### **D. Reporting**

1. Each National Contact Point will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the National Contact Point, including implementation activities in specific instances.

## II. Investment Committee

1. The Committee will discharge its responsibilities in an efficient and timely manner.
2. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.
3. The Committee will:
  - a) Consider the reports of NCPs.
  - b) Consider a substantiated submission by an adhering country or an advisory body on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.
  - c) Consider issuing a clarification where an adhering country or an advisory body makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.
  - d) Make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines.
4. The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.

## APPENDIX C

## *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

International Labour Office  
Geneva

### Introduction

In the 1960s and 1970s, the activities of multinational enterprises (MNEs) provoked intense discussions that resulted in efforts to draw up international instruments for regulating their conduct and defining the terms of their relations with host countries, mostly in the developing world. Labour-related and social policy issues were among those concerns to which the activities of MNEs gave rise.

The ILO's search for international guidelines in its sphere of competence resulted, in 1977, in the adoption by the ILO Governing Body, of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

The principles laid down in this universal instrument offer guidelines to MNEs, governments, and employers' and workers' organisations in such areas as employment, training, conditions of work and life, and industrial relations. Its provisions are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 highlighted the importance of the fundamental Conventions in realising the objectives of the ILO, and consequently, the MNE Declaration takes into account the objectives of the 1998 Declaration.

Today, the prominent role of MNEs in the process of social and economic globalisation renders the application of the principles of the MNE Declaration as timely and necessary as they were at the time of adoption. As efforts to attract and boost foreign direct investment gather momentum within and across many parts of the world, the parties concerned have a new opportunity to use the principles of the Declaration as guidelines for enhancing the positive social and labour effects of the operations of MNEs.

Periodic surveys are conducted to monitor the effect given to the Declaration by MNEs, governments, and employers' and workers' organisations. A summary and an analysis of the replies received are submitted to the ILO Governing Body for discussion. These documents, as well as other information and research publications on MNEs and social policy, are available through [www.ilo.org](http://www.ilo.org).

In the event of disagreement over the application of the Declaration, the parties, using a procedure instituted in 1981, may submit a request to the ILO for an interpretation of the meaning of its provisions. The text of this procedure is appended for information. Assistance and advice with regard to the submission of requests for interpretation can be obtained from the International Labour Office.

This instrument provides social policy guidelines in a sensitive and highly complex area of activities. Adherence to the Declaration by all concerned would contribute to a climate more conducive to economic growth and social development.

## *International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

*(adopted by the Governing Body of the International Labour Office at its 204th Session  
(Geneva, November 1977) as amended at its 279th (November 2000)  
and 295th Session [March 2006])*

The Governing Body of the International Labour Office:

Recalling that the International Labour organisation for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the organisation for Economic Cooperation and Development (OECD);

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' Organisations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field;

Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries, all the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group;

Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organisations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organisations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilization of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organising their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.

2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order, as well as subsequent developments within the United Nations, for example the Global Compact and the Millennium Development Goals.

3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by cooperation among the governments and the employers' and workers' organisations of all countries.

4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organisations of home and host countries and to the multinational enterprises themselves.

5. These principles are intended to guide the governments, the employers' and workers' organisations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.

6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of

the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term “multinational enterprise” is used in this Declaration to designate the various entities (parent companies or local entities or both or the organisation as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.

7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers’ and workers’ organisations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

### General policies

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour organisation and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realisation of the ILO Declaration on Fundamental Principles and Rights and Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.

9. Governments of States which have not yet ratified Conventions Nos. 29, 87, 98, 100, 105, 111, 122, 138 and 182 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 35, 90, 111, 119, 122, 146, 169, 189 and 190.<sup>1</sup> Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.

10. Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers’ and workers’ organisations concerned.

11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

12. Governments of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host

and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

## Employment

### **Employment promotion**

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.<sup>2</sup>

14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976),<sup>3</sup> and the Global Employment Agenda (Geneva, March 2003)<sup>4</sup> should be kept in mind.

15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.

16. Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.

17. Before starting operations, multinational enterprises should, wherever appropriate, consult the competent authorities and the national employers' and workers' organisations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organisations.

18. Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organisations of these workers and governmental authorities.

19. Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.

20. To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

### **Equality of opportunity and treatment**

21. All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.<sup>5</sup>

22. Multinational enterprises should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment.<sup>6</sup> Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.

23. Governments should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.

### **Security of employment**

24. Governments should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.

25. Multinational enterprises equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.

26. In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organisations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.

27. Arbitrary dismissal procedures should be avoided.<sup>7</sup>

28. Governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.<sup>8</sup>

### **Training**

29. Governments, in cooperation with all the parties concerned, should develop national policies for vocational training and guidance, closely linked with employment.<sup>9</sup> This is the framework within which multinational enterprises should pursue their training policies.

30. In their operations, multinational enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training

should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organisations and the competent local, national or international institutions.

31. Multinational enterprises operating in developing countries should participate, along with national enterprises, in programmes, including special funds, encouraged by host governments and supported by employers' and workers' organisations. These programmes should have the aim of encouraging skill formation and development as well as providing vocational guidance, and should be jointly administered by the parties which support them. Wherever practicable, multinational enterprises should make the services of skilled resource personnel available to help in training programmes organised by governments as part of a contribution to national development.

32. Multinational enterprises, with the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

## Conditions of work and life

### ***Wages, benefits and conditions of work***

33. Wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.

34. When multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.<sup>10</sup> These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.<sup>11</sup>

35. Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

### ***Minimum age***

36. Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.<sup>12</sup>

### ***Safety and health***

37. Governments should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in

their related Recommendations (Nos. 118, 114, 144 and 147). The list of occupational diseases and the codes of practice and guides in the current list of ILO publications on occupational safety and health should also be taken into account.<sup>13</sup>

38. Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organisations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.

39. Multinational enterprises should cooperate in the work of international organisations concerned with the preparation and adoption of international safety and health standards.

40. In accordance with national practice, multinational enterprises should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organisations, and established safety and health organisations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organisations.

## Industrial relations

41. Multinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.

### ***Freedom of association and the right to organise***

42. Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.<sup>14</sup> They should also enjoy adequate protection against acts of anti-union discrimination in respect of their employment.<sup>15</sup>

43. organisations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.<sup>16</sup>

44. Where appropriate, in the local circumstances, multinational enterprises should support representative employers' organisations.

45. Governments, where they do not already do so, are urged to apply the principles of Convention No. 87, Article 5, in view of the importance, in relation to multinational enterprises, of permitting organisations representing such enterprises or the workers in their employment to affiliate with international organisations of employers and workers of their own choosing.

46. Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organise and bargain collectively.

47. Representatives of the workers in multinational enterprises should not be hindered from meeting for consultation and exchange of views among themselves, provided that the functioning of the operations of the enterprise and the normal procedures which govern relationships with representatives of the workers and their organisations are not thereby prejudiced.

48. Governments should not restrict the entry of representatives of employers' and workers' organisations who come from other countries at the invitation of the local or national organisations concerned for the purpose of consultation on matters of mutual concern, solely on the grounds that they seek entry in that capacity.

### **Collective bargaining**

49. Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organisations of their own choosing recognised for the purpose of collective bargaining.

50. Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.<sup>17</sup>

51. Multinational enterprises, as well as national enterprises, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements.<sup>18</sup>

52. Multinational enterprises should enable duly authorised representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorised to take decisions on the matters under negotiation.

53. Multinational enterprises, in the context of *bona fide* negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to organise, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organise; nor should they transfer workers from affiliates in foreign countries with a view to undermining *bona fide* negotiations with the workers' representatives or the workers' exercise of their right to organise.

54. Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.

55. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.<sup>19</sup>

56. Governments should supply to the representatives of workers' organisations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, multinational as well as national enterprises should respond constructively to requests by governments for relevant information on their operations.

### **Consultation**

57. In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.<sup>20</sup>

### **Examination of grievances**

58. Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.<sup>21</sup> This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organise and bargain collectively, to discrimination, to child labour and to forced labour.<sup>22</sup>

### **Settlement of industrial disputes**

59. Multinational as well as national enterprises jointly with the representatives and organisations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.<sup>23</sup>

Geneva, 28 March 2006

## *List of International Labour Conventions and Recommendations Referred to in the Tripartite Declaration of Principles Concerning*

### **Multinational Enterprises and Social Policy**

*(adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) as amended at its 279th (November 2000) and 295th Session [March 2006])*

#### **Conventions**

- No. 29 Concerning Forced or Compulsory Labour, 1930.
- No. 87 Concerning Freedom of Association and Protection of the Right to Organise, 1948.
- No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949.
- No. 100 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.
- No. 105 Concerning the Abolition of Forced Labour, 1957.
- No. 110 Concerning Conditions of Employment of Plantation Workers, 1958.
- No. 111 Concerning Discrimination in Respect of Employment and Occupation, 1958.
- No. 115 Concerning the Protection of Workers against Ionising Radiations, 1960.
- No. 119 Concerning the Guarding of Machinery, 1963.
- No. 122 Concerning Employment Policy, 1964.
- No. 130 Concerning Medical Care and Sickness Benefits, 1969.
- No. 135 Concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971.
- No. 136 Concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
- No. 138 Concerning Minimum Age for Admission to Employment, 1973.
- No. 139 Concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
- No. 142 Concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975.
- No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.

## Recommendations

- No. 35 Concerning Indirect Compulsion to Labour, 1930.
- No. 69 Concerning Medical Care, 1944.
- No. 90 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.
- No. 92 Concerning Voluntary Conciliation and Arbitration, 1951.
- No. 94 Concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking, 1952.
- No. 110 Concerning Conditions of Employment of Plantation Workers, 1958.
- No. 111 Concerning Discrimination in Respect of Employment and Occupation, 1958.
- No. 114 Concerning the Protection of Workers against Ionising Radiations, 1960.
- No. 115 Concerning Workers' Housing, 1961.
- No. 116 Concerning Reduction of Hours of Work, 1962.
- No. 118 Concerning the Guarding of Machinery, 1963.
- No. 119 Concerning Termination of Employment at the Initiative of the Employer, 1963.
- No. 122 Concerning Employment Policy, 1964.
- No. 129 Concerning Communications between Management and Workers within the Undertaking, 1967.
- No. 130 Concerning the Examination of Grievances within the Undertaking with a View to Their Settlement, 1967.
- No. 134 Concerning Medical Care and Sickness Benefits, 1969.
- No. 144 Concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
- No. 146 Concerning Minimum Age for Admission to Employment, 1973.
- No. 147 Concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
- No. 169 Concerning Employment Policy, 1984.
- No. 189 Concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises, 1998.
- No. 190 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.
- No. 194 Concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases, 2002.
- No. 195 Concerning Human Resources Development: Education, Training and Lifelong Learning, 2004.

## ADDENDUM I

*List of International Labour Conventions  
and Recommendations adopted since 1977  
which Contain Provisions Relevant  
to the Tripartite Declaration of Principles  
Concerning Multinational Enterprises and Social Policy*

*(adopted by the Governing Body of the International Labour Office at its 238th Session (Geneva, November 1987), as amended at its 264th Session (Geneva, November 1995) and 279th Session (Geneva, November 2000) and 295th Session [Geneva, March 2006])*

A number of international labour Conventions and Recommendations containing provisions relevant to the Declaration are referred to in footnotes in the Declaration as well as in an Annex. These footnotes do not affect the meaning of the provisions of the Declaration to which they refer. They should be considered as references to relevant instruments adopted by the International Labour organisation in the corresponding subject areas, which have helped shape the provisions of the Declaration.

Since the adoption of the Declaration by the Governing Body on 16 November 1977, new Conventions and Recommendations have been adopted by the International Labour Conference. The text below is a consolidation of the lists of Conventions and Recommendations adopted since 1977 (including those adopted in June 1977), containing provisions relevant to the Declaration. Like the footnotes included in the Declaration at the time of its adoption, the new references do not affect the meaning of the provisions of the Declaration.

In keeping with the voluntary nature of the Declaration, all of its provisions, whether derived from ILO Conventions and Recommendations or other sources, are recommendatory, except of course for provisions in Conventions which are binding on the member States which have ratified them.

## List of Conventions and Recommendations adopted since 1977 (inclusive) which contain Provisions relevant to the Declaration

Number and title of Convention and Recommendation	Paragraphs of the Declaration to which the instrument is relevant
<b>Conventions</b>	
No. 148 Concerning the Protection of Workers against Occupational Hazards in the Working Environment due to Air Pollution, Noise and Vibration, 1977.	37
No. 154 Concerning the Promotion of Collective Bargaining, 1981.	9, 50
No. 155 Concerning Occupational Safety and Health and the Working Environment, 1981.	37
No. 156 Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981.	21
No. 158 Concerning Termination of Employment at the Initiative of the Employer, 1982.	9, 26, 27, 28
No. 161 Concerning Occupational Health Services, 1985.	37
No. 162 Concerning Safety in the Use of Asbestos, 1986.	37
No. 167 Concerning Safety and Health in Construction, 1988.	37
No. 168 Concerning Employment Promotion and Protection against Unemployment, 1988.	13
No. 170 Concerning Safety in the Use of Chemicals at Work, 1990.	37
No. 173 Concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer, 1992.	28
No. 174 Concerning the Prevention of Major Industrial Accidents, 1993.	37
No. 176 Concerning Safety and Health in Mines, 1995.	37
No. 184 Concerning Safety and Health in Agriculture, 2001.	37
<b>Recommendations</b>	
No. 156 Concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration, 1977.	37
No. 163 Concerning the Promotion of Collective Bargaining, 1981.	52, 55, 56
No. 164 Concerning Occupational Safety and Health and the Working Environment, 1981.	37
No. 165 Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981.	21
No. 166 Concerning Termination of Employment at the Initiative of the Employer, 1982.	9, 26, 27, 28
No. 171 Concerning Occupational Health Services, 1985.	37
No. 172 Concerning Safety in the Use of Asbestos, 1986.	37
No. 175 Concerning Safety and Health in Construction, 1988.	37
No. 176 Concerning Employment Promotion and Protection against Unemployment, 1988.	13
No. 177 Concerning Safety in the Use of Chemicals at Work, 1990.	37
No. 180 Concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer, 1992.	28
No. 181 Concerning the Prevention of Major Industrial Accidents, 1993.	37
No. 183 Concerning Safety and Health in Mines, 1995.	37
No. 192 Concerning Safety and Health in Agriculture, 2001.	37

## ADDENDUM II

*(adopted by the Governing Body of the International Labour Office at its 277th Session  
[Geneva, March 2000])*

The International Labour Conference adopted in June 1998 the ILO Declaration on Fundamental Principles and Rights at Work. By this adoption, members renewed their commitment to respect, promote and realize the following fundamental principles and rights at work, namely: a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation. The ILO Declaration on Fundamental Principles and Rights at Work applies to all members. Nevertheless, the contribution of multinational enterprises to its implementation can prove an important element in the attainment of its objectives. In this context, the interpretation and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy should fully take into account the objectives of the ILO Declaration on Fundamental Principles and Rights at Work. This reference does not in any way affect the voluntary character or the meaning of the provisions of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

## *Procedure for the Examination of Disputes Concerning the Application of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy by Means of Interpretation of its Provisions*

*[adopted by the Governing Body of the International Labour Office at its 232nd Session  
(Geneva, March 1986)\*]*

1. The purpose of the procedure is to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended.
2. The procedure should in no way duplicate or conflict with existing national or ILO procedures. Thus, it cannot be invoked:
  - a) in respect of national law and practice;
  - b) in respect of international labour Conventions and Recommendations;
  - c) in respect of matters falling under the freedom of association procedure.

The above means that questions regarding national law and practice should be considered through appropriate national machinery; that questions regarding international labour Conventions and Recommendations should be examined through the various procedures provided for in articles 19, 22, 24 and 26 of the Constitution of the ILO, or through government requests to the Office for informal interpretation; and that questions concerning freedom of association should be considered through the special ILO procedures applicable to that area.

3. When a request for interpretation of the Declaration is received by the International Labour Office, the Office shall acknowledge receipt and bring it before the Officers of the Committee on Multinational Enterprises. The Office will inform the government and the central organisations of employers and workers concerned of any request for interpretation received directly from an organisation under paragraph 5(b) and (c).
4. The Officers of the Committee on Multinational Enterprises shall decide unanimously after consultations in the groups whether the request is receivable under the procedure. If they cannot reach agreement the request shall be referred to the full Committee for decision.

\* *Official Bulletin* (Geneva, ILO), 1986, Vol. LXIX, Series A, No. 3, pp. 196-197 (to replace Part IV of the Procedures adopted by the Governing Body at its 214th Session (November 1980)). See *Official Bulletin*, 1981, Vol. LXIV, Series A, No. 1, pp. 89-90.

5. Requests for interpretation may be addressed to the Office:
  - a) as a rule by the government of a member State acting either on its own initiative or at the request of a national organisation of employers or workers;
  - b) by a national organisation of employers or workers, which is representative at the national and/or sectoral level, subject to the conditions set out in paragraph 6. Such requests should normally be channelled through the central organisations in the country concerned;
  - c) by an international organisation of employers or workers on behalf of a representative national affiliate.
6. In the case of 5(b) and (c), requests may be submitted if it can be demonstrated:
  - a) that the government concerned has declined to submit the request to the Office; or
  - b) that three months have elapsed since the organisation addressed the government without a statement of the government's intention.
7. In the case of receivable requests the Office shall prepare a draft reply in consultation with the Officers of the Committee on Multinational Enterprises. All appropriate sources of information shall be used, including government, employers' and workers' sources in the country concerned. The Officers may ask the Office to indicate a period within which the information should be provided.
8. The draft reply to a receivable request shall be considered and approved by the Committee on Multinational Enterprises prior to submission to the Governing Body for approval.
9. The reply when approved by the Governing Body shall be forwarded to the parties concerned and published in the *Official Bulletin* of the International Labour Office.

## Notes

1. Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer; Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 146) concerning Minimum Age for Admission to Employment; Recommendation (No. 169) concerning Employment Policy; Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises; Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
2. Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 169) concerning Employment Policy; and Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises.
3. ILO, World Employment Conference, Geneva, 4-17 June 1976.
4. ILO Global Employment Agenda, 2003, ILO, Geneva.

5. Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.
6. See the two following ILO codes of practice: *HIV/AIDS and the world of work*, ILO code of practice, 2001, ILO, Geneva; *Managing disability in the workplace*, ILO code of practice, 2002, ILO, Geneva.
7. Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.
8. *Ibid.*
9. Convention (No. 142) concerning Human Resources Development and Recommendation (No. 195) concerning Human Resources Development: Education, Training and Lifelong Learning, recalling the voluntary nature of the substance and levels of collective bargaining.
10. Recommendation (No. 116) concerning Reduction of Hours of Work.
11. Convention (No. 110) and Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers; Recommendation (No. 115) concerning Workers' Housing; Recommendation (No. 69) concerning Medical Care; Convention (No. 130) and Recommendation (No. 134) concerning Medical Care and Sickness Benefits.
12. Convention No. 138, Article 1; Convention No. 182, Article 1.
13. Recommendation (No. 194) concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases. The ILO Conventions and Recommendations referred to are listed in the *Catalogue of ILO Publications on Occupational Safety and Health*, 2000 edition, ILO, Geneva. See also [www.ilo.org/public/english/protection/safework/publicat/index.htm](http://www.ilo.org/public/english/protection/safework/publicat/index.htm).
14. Convention No. 87, Article 2.
15. Convention No. 98, Article 1(1).
16. Convention No. 98, Article 2(1).
17. Convention No. 98, Article 4.
18. Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.
19. Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking.
20. Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of Undertaking; Recommendation (No. 129) concerning Communications within the Undertaking.
21. Recommendation (No. 130) concerning the Examination of Grievances within the Undertaking with a View to Their Settlement.
22. Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 146) concerning Minimum Age for Admission to Employment, and Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
23. Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration.

## APPENDIX D

## *Background – The Role of the National Contact Points in the Implementation of the OECD Guidelines for Multinational Enterprises*

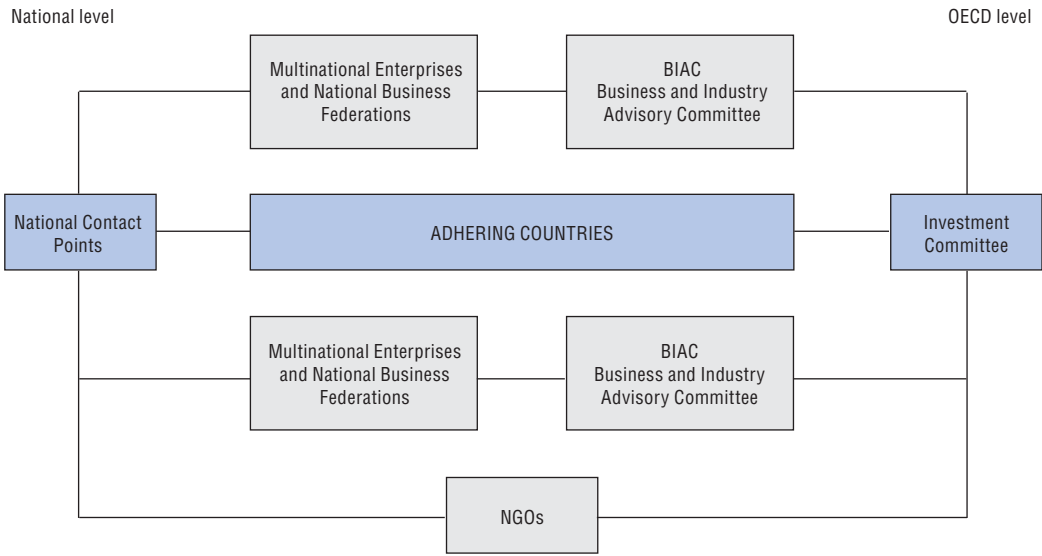
The institutions that promote and implement the Guidelines are set forth in the OECD Council Decision, a binding declaration subscribed to by all adhering countries. The Council Decision requires each adhering government to set up a National Contact Point. These play a key role of any Guidelines institution in establishing the Guidelines as an effective and vital tool for international business (see Diagram). The National Contact is responsible for promoting the Guidelines in its national context and contributing to a better understanding of the Guidelines among the national business community and other interested parties.

The National Contact Point:

- Responds to enquiries about the Guidelines.
- Assists interested parties in resolving issues that arise with respect to the application of the Guidelines in “individual instances” through the availability of its “good offices” and, if the parties agree, facilitating access to other consensual and non-adversarial means of resolving the issues between the parties. (Comment: more in keeping with the procedural guidance).
- Gathers information on national experiences with the Guidelines and reports annually to the Investment Committee.

Because of its central role, the National Contact Point’s effectiveness is a crucial factor in determining how influential the Guidelines are in each national context. While it is recognised that governments should be accorded flexibility in the way they organise National Contact Points, it is nevertheless expected that all National Contact Points should function in a visible, accessible, transparent and accountable manner. These four criteria should guide National Contact Points in carrying out their activities. The June 2000 review enhanced the accountability of National Contact Points by calling for annual reports of their activity, which are to serve as a basis for exchanges of view on the functioning of the National Contact Points among the adhering governments.

### Institutions Involved in Implementing the Guidelines



## APPENDIX E

## Contact Details for National Contact Points

<b>Argentina</b>	
Ambassador Rodolfo I. Rodríguez	Tel.: (54-11)4819 7602 /8124 7607
Deputy Director of the National Directorate for Economic International Negotiations	Fax: (54-11) 4819 7566
Director of the OECD Coordination Unit	E-mail: <a href="mailto:oece@mrecic.gov.ar">oece@mrecic.gov.ar</a>
Ministry Arturo Hottón Risler	<a href="mailto:rro@mrecic.gov.ar">rro@mrecic.gov.ar</a>
Deputy Director of the NPC	<a href="mailto:ahr@mrecic.gov.ar">ahr@mrecic.gov.ar</a>
National Direction of International Economic Negotiations (DINEI)	<a href="mailto:gnt@mrecic.gov.ar">gnt@mrecic.gov.ar</a>
Ministry of Foreign Affairs, International Trade and Worship	Web: <a href="http://www.cancilleria.gov.ar/pnc">www.cancilleria.gov.ar/pnc</a>
Esmeralda 1212, 9th floor	
Buenos Aires, Argentina	
<b>Australia</b>	
The Executive Member	Tel.: (61-2) 6263 3763
Foreign Investment Review Board	Fax: (61-2) 6263 2940
c/- The Treasury	E-mail: <a href="mailto:ancp@treasury.gov.au">ancp@treasury.gov.au</a>
Canberra ACT 2600	Web: <a href="http://www.ausncp.gov.au">www.ausncp.gov.au</a>
<b>Austria</b>	
Director	Tel.: (43-1) 711 00 5180 or 5792
Export and Investment Policy Division	Fax: (43-1) 71100 15101
Federal Ministry of Economics and Labour Abteilung C2/5	E-mail: <a href="mailto:POST@C25.bmwa.gv.at">POST@C25.bmwa.gv.at</a>
Stubenring 1	Web: <a href="http://www.oecd-leitsaetze.at">www.oecd-leitsaetze.at</a>
1011 Vienna	
<b>Belgium</b>	
Service Public Fédéral Economie	Tel.: (32-2) 277 72 82
Potentiel Economique	Fax: (32-2) 277 53 06
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# Annual Report on the OECD Guidelines for Multinational Enterprises 2008

## EMPLOYMENT AND INDUSTRIAL RELATIONS

The *Guidelines for Multinational Enterprises* are recommendations to international businesses on conduct in such areas as labour, the environment, consumer protection and the fight against corruption. The recommendations are made by the adhering governments and, although they are not binding, governments are committed to promoting their observance. Part I of this *Annual Report* provides an account of the actions the 41 adhering governments have taken over the 12 months to June 2008 to enhance the contribution of the *Guidelines* to the improved functioning of the global economy. In eight years, the *Guidelines* have consolidated their position as one of the world's principal corporate responsibility instruments.

Every year the OECD holds a roundtable on corporate responsibility, addressing emerging issues and new developments. The 2008 roundtable, jointly organised with the International Labour Organisation, focused on identifying how responsible business practices can lead to better employment conditions and industrial relations; engaging governments in experience sharing on the pros and cons of different public policies to promote responsible business conduct in the area of employment and industrial relations; enhancing the awareness and performance of the *OECD Guidelines* and the *ILO MNE Declaration* and developing synergies between the responsible organisations.

Part II of this *Annual Report* highlights:

- key findings of the High-Level OECD-ILO Conference on Corporate Social Responsibility;
- corporate responsibility practices in the area of employment and industrial relations;
- the impact of foreign direct investment on wages and working conditions;
- development and decent work: new directions for multinational enterprises in shaping a fair globalisation; and
- an overview of selected initiatives and instruments relevant to corporate social responsibility.

**More information about the OECD Guidelines for Multinational Enterprises is available online at [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).**

The full text of this book is available on line via these links:

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