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

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

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

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

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

– l'élaboration d'actions concertées avec les instances internationales de représentants des salariés aux différents niveaux pertinents ;

– le recours à un contrôle externe ;

– la promotion de la législation contre le travail forcé ;

– la contribution à des projets de développement en particulier dans leurs secteurs d'intervention ;

– la vérification par la direction locale du comportement des sous-traitants ;

– la contribution à des opérations de formation.

D'autres pratiques des entreprises peuvent également y contribuer :

– le développement d'un dialogue social avec les organisations représentatives des salariés à l'échelon local et international ;

– une information régulière de leur Conseil d'administration au sujet des initiatives qu'elles auraient prises pour éviter tout recours au travail forcé.

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

Marks & Spencer

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

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

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

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

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

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

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

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

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

The issue raised under the OECD Guidelines for Multinational Enterprises by the FNV and CNV (Dutch labour unions) about the activities of IHC CALAND as a contractpartner of a large offshore project in Burma has led to the following joint statement.

JOINT STATEMENT BY THE NCP, FNV, CNV and IHC CALAND
July 2004

The Netherlands National Contact Point (NCP)[1] for the OECD Guidelines for Multinational Enterprises (the Guidelines), FNV, CNV and IHC CALAND have reached an agreement on the issue raised by FNV and CNV about the activities of IHC CALAND as a contractpartner of a large offshore project in Burma and the implementation of the OECD-Guidelines.

According to FNV and CNV the activities of IHC CALAND in Burma would not comply with the General Policies Chapter of the guidelines and would not contribute to the elimination of all forms of compulsory labour as recommended in Chapter IV (Employment and Industrial Relations). FNV and CNV based their submission on the ILO resolution of June 2000 on Burma and authoritative reports of human rights abuses in Burma. From their point of view, companies that have activities in Burma would contribute to keep the junta-regime and its oppressive way to work with forced labour in place. This would not be in line with the labour chapter of the OECD-guidelines[2]. When the issue was raised, IHC CALAND was active as a subcontractor for Premier Oil Myanmar (an affiliate of Premier Oil UK) in an offshore project in the territorial waters of Burma. FNV and CNV asked the Dutch National Contact Point to see whether IHC CALAND's behaviour in this specific instance was in accordance with the Guidelines. By raising this specific instance at the NCP, FNV and CNV intended to establish a constructive dialogue with IHC CALAND.

The National Contact Point first invited both parties individually to clarify their points of view and subsequently organised a tripartite meeting for an open dialogue. Agreement between FNV, CNV and IHC CALAND was reached on the following points:

- The OECD-guidelines are not an instrument of economic sanctions.
- It is for governments to impose an economic sanction on a country or not.

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[1] The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in socially responsible manner.

[2] Detailed information of the specific issue raised by the FNV and CNV can be found in the background document.

- Companies decide themselves how to implement the OECD-guidelines when they are active in a country.
- Taking into account the contractual obligations of IHC CALAND in the project and the relevant text of the OECD-guidelines, FNV and CNV accept that a withdrawal from the project is not an option for IHC CALAND.
- With regard to the implementation of the guidelines, IHC CALAND could take a more active role and strengthen external communication addressing the human rights situation in Burma.

FNV, CNV and IHC CALAND agreed to meet again, amongst themselves. During this meeting parties looked for activities that would strengthen the external communication of IHC CALAND regarding the human rights situation in Burma. The following next-steps would be explored by IHC CALAND:

- IHC CALAND would ask their main contractor, Premier Oil Myanmar, to participate in common activities to address the human rights issues with the regime of Burma;
- IHC CALAND would look for actions on its own, in case the main contractor does not want to co-operate with IHC CALAND to raise awareness about the political situation in Burma.

IHC CALAND did follow up on this agreement:[3]

- After being encouraged by the Dutch Minister of Foreign Trade IHC CALAND announced in April 2002 that it would not undertake any new activities in Burma.
- On June 11th, 2003 IHC CALAND and FNV (representing also CNV) visited the Burmese ambassador in London. Reason for the delay in the activities was the fact that in September 2002 the main contractor, Premier Oil, announced that it would sell its subsidiary Premier Oil Myanmar to the Malaysian company Petronas. It would make sense for IHC CALAND to talk with the new main contractor about common activities towards the regime after the sale would have been concluded.
- Due to the lack of progress to conclude the transaction between Premier Oil and Petronas, IHC CALAND decided to visit the Burmese ambassador without the main contractor.
- The contract between Premier Oil and Petronas was concluded on September, 12th 2003. On 7 November 2003 IHC CALAND has written Petronas a letter requesting the company to abide by the OECD-Guidelines. Petronas replied as followed: “On 12th November 2003 the subsidiary of Petronas called PC Myanmar (Hong Kong) (which was named Premier Oil Myanmar before the takeover by Petronas) replied that it would be continuing with the majority of policies established by Premier Oil for their operation in Myanmar and that

[3] More detailed information is given in the background document

their human resources strategy and policy regard to the above captioned would reflect this understanding".

- Parties agreed to inform each other about future action with regard to Burma issues related to this specific instance.
- Parties will decide in a year from now on a future meeting to discuss follow up given to this point.

July 2003, parties involved asked the NCP to conclude the specific instance. The NCP took notice of the agreement between the parties involved about the actions taken by IHC CALAND. It also noted that FNV and CNV considered that IHC CALAND's decision not to engage in new activities in Burma as well as the points agreed between them and the company, has brought IHC CALAND sufficiently in line with the recommendations of the OECD-guidelines. The agreement made it possible for the NCP to formulate this joint statement. All parties welcomed the opportunity that the NCP had given for a constructive dialogue.

Ministerie van Economische Zaken

Background document

The issue raised under the OECD Guidelines for Multinational Enterprises by the FNV and CNV (Dutch labour unions) about the activities of IHC CALAND as a contractpartner of a large offshore project in Burma

Introduction to the specific instance
FNV and CNV have brought the specific instance to the attention of the Netherlands NCP on 23rd of July 2001. In their view the activities of IHC CALAND in Burma are violating the general policies of the OECD-guidelines. FNV and CNV specifically refer to the General Policies Chapter of the Guidelines (chapter 2, § 2) and to the chapter of Employment and Industrial Relations (chapter 4, § 1c).

General policies, chapter 2, § 2:
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; - Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

Employment and Industrial Relations, chapter 4, § 1c:
Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:
Contribute to the elimination of all forms of forced or compulsory labour.

FNV and CNV had followed the suggestion made by the Minister of Social Affairs and Employment (also on behalf of the Minister of Economic Affairs and the Minister of Foreign Affairs) that the NCP would be the apropriate forum for a joint meeting with IHC CALAND to discuss the consequences of these two specific paragraphs for IHC CALAND's activities in Burma.

Regarding the point "consider the view of other stakeholders", FNV and CNV pointed out that;
- the Burmese government does not comply with its obligations under ILO conventions, including convention 29 on forced labour.
- for that reason the Dutch government has set out a discouragement policy for trade and investment in Burma
- Mrs Aung San Suu Kyi, as the major leader of the democratic opposition in Burma (being a major stakeholder in the view of FNV and CNV) has asked for an economic boycott

All these stakeholders (ILO, Dutch government, mrs Aung San Suu Kyi) discourage activities in Burma. FNV and CNV believed that, by their activities in Burma IHC CALAND was not meeting the recommendation "to consider the view of these stakeholders" as mentioned in the general policies of the guidelines.

Furthermore, FNV and CNV were of the opinion that IHC did not make an effort to contribute to the elimination of all forms of forced or compulsory labour. The Union's side believed that the best way to make such a contribution would be discontinuing their investment in Burma. The guidelines, however, do not require this but leave companies many other options. For instance a meeting between IHC CALAND and a representative of the Burmese regime in which IHC CALAND would condemn the human rights abuses by this regime would be in line with the recommendation in chapter 4.

In a tripartite meeting on 19th of March, 2002 IHC CALAND explained its position;

- IHC CALAND is a subcontractor of Mitsubishi who was under the main contract of Premier Oil Myanmar, an affiliate of Premier Oil UK.[1]
- The contract between IHC CALAND and Premier Oil Myanmar was signed in 1998. A breach of contract from the side of IHC CALAND will be followed by a liability suit from the main contractors side.
- All activities in Burma of IHC CALAND are offshore. Tankers transport the by-product of the offshore activities to the shore of Thailand once every three months.
- IHC CALAND takes care that the labour used in their part of the project is no forced labour. An English company selects their personnel and is under the obligation not to hire forced labour.
- FNV and CNV question the involvement of IHC CALAND in the Yetagun-pipeline. IHC CALAND states that it is not involved in the Yetagun-pipeline nor does it use the pipeline.
- IHC CALAND has often publicly enounced its concern about violation of human rights by the Burmese regime.
- The Dutch government has changed its policy on Burma in 2001 into further discouragement of economic activities in Burma.
- The OECD-guidelines have been reviewed in May 2000.

In the tripartite meeting parties agreed that the OECD-guidelines are not an instrument for economic sanctions or boycott. Unions and IHC CALAND agreed bilaterally that they would look for ways to address the situation in Burma and look for possible action that can be taken to implement the OECD-guidelines. They would inform the NCP about the progress in July 2002.

During summer 2002, trade unions and the company agreed on the following:

[1] The main contractor after September 2003 is Petronas.

- IHC CALAND will contact Premier Oil (UK) and see if it can participate in activities planned by Premier Oil to address the abuse of human rights by the Burmese regime
- Possible other activities will be discussed between IHC CALAND and Premier Oil
- Results from the meeting between IHC CALAND and Premier Oil will be reported to FNV and CNV

After the meeting in March 2002 the following happened:

- In April 2002 IHC CALAND announced, as a result of the discussion it had with the Minister of Foreign Trade, that it would not undertake any new activities in Burma.
- In September 2002 Premier Oil announced that it would sell its subsidiary Premier Oil Myanmar to the Malaysian company Petronas that would then become the main contractor. As a consequence of this announcement it would not be useful for IHC CALAND to talk with Premier Oil, as they would no longer be responsible for the project. At the same time IHC CALAND stated that it could not talk to Petronas until the sale of the subsidiary had been concluded. Eventually, this sale was concluded on 12 September 2003.
- Due to the lack of progress as a result of the time it took to conclude the transaction between Premier Oil and Petronas, IHC CALAND decided to visit the Burmese ambassador in London on its own. This visit took place on June, 11th 2003. A representative of the labour union FNV (representing also CNV) was present at the meeting. In the meeting IHC CALAND expressed its concern about violation of human rights and of the use of forced labour, as several international organisations had established. After this meeting a press release was issued by IHC CALAND on 2 July 2003, the text of which was written in close co-operation with the labour unions. As IHC CALAND and the labour unions agreed on the text, it was decided that it would not be necessary to have a joint press conference, as had been planned earlier.
- On 7 November 2003 IHC CALAND has written Petronas a letter requesting the company to implement the OECD-guidelines, as agreed in July during the meeting with the trade unions. Petronas replied as followed: “On 12th November 2003 the subsidiary of Petronas called PC Myanmar (Hong Kong) (which was named Premier Oil Myanmar before the takeover by Petronas) replied that it would be continuing with the majority of policies established by Premier Oil for their operation in Myanmar and that their human resources strategy and policy regard to the above captioned would reflect this understanding”.
- In May 2004 the NCP, trade unions and IHC CALAND had a concluding meeting. Parties will decide in a year from now on a future meeting to discuss follow up given to this point.

Jeudi 13 novembre 2003

Saisine du PCN français

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

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

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

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

Statement of the National Contact Point on specific instance raised by FNV Bondgenoten about activities of Plaid Nederland.

Introduction

The Dutch labour union FNV raised the issue with the National Contact Point (NCP[1]) of the Netherlands on whether the (process leading up to) petition for bankruptcy by Plaid Nederland was in conformity with chapter IV, paragraph 6 of the OECD Guidelines for Multinational Enterprises (the Guidelines)[2]. According to the labour union Plaid Nederland did not inform the employees and labour unions accurately and in time about the petition for bankruptcy.

Due to difficulties in obtaining the necessary information from the former management of the bankrupt company, the NCP procedure took exceptionally long. The NCP consulted separately with FNV and with Plaid Nederland/ Plaid Enterprises (US) through business law firm Lovells. Since the company no longer existed 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 the bilateral consultations.

The specific instance

According to the labour union Plaid Nederland did not inform the employees and labour unions accurately and in time about the petition for bankruptcy. This would be incompatible with chapter IV, paragraph 6 of the OECD Guidelines[3].

The labour union informed the NCP that:

— Plaid Nederland was part of Plaid Beheer BV, which was part of Plaid Enterprises in the US.

— After the collapse of the consumer markets, Plaid Enterprises decided to stop financing its Dutch affiliates on May 6th, 2002**.** Plaid Nederland did file petition for

[1] The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in a socially responsible manner.

[2] This instance was raised on August 8, 2002.

[3] *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.*

bankruptcy in consultation with Plaid Enterprises. And so did Plaid Germany and Plaid France.

— On 14th May 2002 Plaid Nederland was adjudged bankrupt.
— The labour union instituted proceedings against Plaid Nederland because the company was suspected to have filed petition for bankruptcy to avoid labour right protection of the employees and reduce the costs for reorganisation. The Court of Justice in Rotterdam (May, 2002) ruled in favour of the labour union and nullified the sentence of 14th of May (bankruptcy).
— In appealing to a High Court in The Hague the sentence of the Court in Rotterdam was nullified. According to the High Court the financial situation of Plaid Nederland justified the decision to file petition for bankruptcy. It was clear that Plaid Enterprises (USA) was not willing to finance Plaid Nederland.
— The lawyers of Plaid Nederland did not react to the labour union's request for a social plan. The trustee of Plaid Nederland pointed out that there was no money available for a social plan.
— The labour union's complaint is that Plaid Nederland did not inform their employees and labour unions about the bankruptcy in advance (i.e. what is considered reasonable in the spirit of the Guidelines), before the petition for bankruptcy was filed. According to the labour union, the management in Rotterdam was informed at an early stage about the decision whereas the employees were only informed the day before the petition was filed.

<u>After studying the accompanying documents, the NCP found that:</u>

— In the ruling of the Court of Justice in Rotterdam, mention was made of the relationship between the company and its employees. It was stated that: Plaid Nederland did not inform its employees or unions of the approaching petition for bankruptcy, nor discuss with them either possible measures to prevent bankruptcy or possible creation of a social plan.
— It also stated that already in the beginning of 2002 Plaid Nederland had been speaking with Plaid Enterprises about reform and restructuring. In April of 2002 negotiations took place about selling (part of) the undertakings of Plaid Nederland.
— The ruling of the High Court in The Hague (July 2002) did not refute the section of the earlier ruling on the relationship between company and employees. Under Dutch law, a petition for bankruptcy does not require reference to whether or not employees are informed.

<u>The business law firm Lovells informed the NCP that:</u>

— Plaid Nederland at a certain point had no other option then to file for bankruptcy. Financing from Plaid Enterprises had stopped.
— The management of Plaid Nederland informed its employees every three months about the company (Plaid Nederland B.V.), among others its financial situation.

— Plaid Nederland informed its employees about the possible severe consequences of the worsening financial situation of the company on the last meeting before the petition for bankruptcy. This meeting took place one week before the petition. The employees were informed about the actual petition for bankruptcy on the day before.
— Plaid Nederland is of the opinion that the employees underestimated the messages about the worsening financial situation.
— Plaid Nederland communicated directly to its employees instead of through labour unions; before the worsening financial situation, only a few employees were member of a labour union.
— Plaid Nederland did not have means to finance a social plan.

Conclusion

In the spirit of the Guidelines, a company should provide reasonable notice of an approaching bankruptcy to representatives of employees (preferably before the final decision on the petition for bankruptcy has been taken) and cooperate with them so as to mitigate adverse effects.

The NCP found that, according to Plaid Nederland's lawyer, the company did make an effort to inform its employees about the possible severe consequences of the worsening financial situation of the company one week before the petition of bankruptcy. The company's deteriorating financial situation was also discussed during periodic employer-employee meetings, according to the same lawyer.

The NCP also found that, according to the facts established in the ruling of the Court in Rotterdam, Plaid Nederland had been contemplating and negotiating a restructuring of the company – indicating a worsening financial situation- months before May 6th , the day when Plaid Enterprises stopped financing. The petition for bankruptcy was filed on May 14th, according to the same facts.

The NCP finally found that the Court of Justice in Rotterdam was very clear about Plaid Nederland's lack of transparency towards its employees[4]. The High Court in The Hague did not refute this part of the ruling[5].

In light of the above, the NCP concluded that Plaid Nederland's efforts of sharing information with its employees about the financial situation of the company were apparently not effective. The NCP would have considered it appropriate if Plaid Nederland had made more explicitly clear to its employees that the worsening financial situation would possibly lead to a petition for bankruptcy, viewing the facts stated by the court ruling that talks about restructuring were taking place months before and leading up to the actual petition and that Plaid Nederland apparently did not share the information it

[4] *Plaid Nederland did not inform its employees or unions of the approaching petition of bankruptcy, nor discuss with them either possible measures to prevent bankruptcy or possible creation of a social plan.*

[5] Under Dutch law, a petition for bankruptcy does not require reference to whether or not employees are informed.

received on May 6th about the termination of financing until the day before the petition was filed on May 14th. Viewing the fact that the petition for bankruptcy was later re-approved by the higher court, the financial situation of Plaid Nederland and its dependency on Plaid Enterprises apparently withheld the company from cooperating with its employees to explore other possibilities in order to mitigate adverse effects.

Parmalat

Brasília, le 20 avril 2003

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

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

Demandeur : Central Única dos Trabalhadores - CUT

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

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

Compte-rendu :

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

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

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

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

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

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

Le 7 novembre 2002 la société PARMALAT a envoyé une lettre au PCN, dans laquelle elle dit avoir reçu copie de la lettre envoyée par la CUT au PCN, et qu'il s'agit d'un "processus de transfert d'opérations de l'unité Industrielle de Porto Alegre (RS)". Elle justifie la fermeture de l'usine sur la base des changements de conjoncture des années 90, avec l'ouverture de l'économie ; de l'essor des opérations de l'entreprise ; de l'investissement dans des opérations industrielles, de la modernisation et de l'agrandissement de la capacité de production, avec rachat d'autres entreprises opérant dans ce secteur d'activité. L'unité de Porto Alegre fabriquait 9% de l'ensemble des yaourts consommés au Brésil, dix-huit pour cent de la production destinés au sud-est du pays, arrivaient donc sur les rayons ayant perdu de leur valeur, car proches de la date butoir d'autorisation de consommation. Cela se traduisait par une chute du prix final, et un préjudice pour l'opération.

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

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

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

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

Conclusions :

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

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

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

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

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

Antonio Gustavo Rodrigues
Directeur
Ponto de Contato Nacional

Berlin, June 29, 2007

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)

On June 27, 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 recognized 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 a 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 labor 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.

Ministerie van Economische Zaken

The Netherlands Institute for Southern Africa (Niza) & Co.[1] raised the issue how the OECD Guidelines for Multinational Enterprises (the Guidelines) should have been implemented by Chemie Pharmacie Holland BV (CPH) in relation to ore mining in the Democratic Republic of the Congo (DRC). The Netherlands National Contact Point (NCP)[2] consulted with both Niza & Co. and CPH separately as well as jointly. Despite these efforts, the parties involved could not agree upon a joint statement.

NATIONAL CONTACT POINT STATEMENT

The NCP found that in this specific instance there is no investment nexus. Since the application of the Guidelines rests on the presence of an investment nexus, the Guidelines are not applicable to this specific instance. Nevertheless, the NCP formulated a statement on the basis of the common values for responsible business conduct that are reflected in the Guidelines.

1. The issue

In July 2003 Niza & Co. asked the NCP whether CPH's involvement in ore mining in the DRC was in conformity with the Guidelines[3] (see Annex II for background information). Niza & Co. based its question on the "UN-Panel of Experts Report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (see http://www.niza.nl/docs/200210221013213047.pdf.)". This report listed a number of

[1] Milieudefensie (Friends of the Earth Netherlands), Pax Christi, Novib, the NC-IUCN, CENADEP, RECORE and PAL.

[2] The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in a socially responsible manner.

companies that supposedly behaved in an irresponsible manner in the DRC. These companies were accused of doing business with rebel movements operating in the north-east of the DRC, thereby contributing to the illegal exploitation of the natural resources of the DRC and the financing of the conflict.
CPH was one of the companies mentioned in the report, as was its American business partner Eagle Wings Resources International (EWRI)[4].

2. The relationship between CPH and EWRI

At the beginning, it was not clear what the business connection had been between CPH and EWRI. CPH explained in its meeting with the NCP that EWRI owned offices in Bukavu (DRC), Bujumbura (Burundi) and Kigali (Rwanda). Suppliers brought small shipments of ore to EWRI's offices to be inspected by a controller, after which the suppliers were paid accordingly. EWRI sent the shipments of ore to the office in Kigali for the attention of CPH. CPH provided the following services:

- Logistics: responsible for transporting ore from Kigali via Rotterdam to the final destination.
- Finance: responsible for financing individual transactions by wiring money to financial institutions in Kigali and Bujumbura by order of EWRI. EWRI subsequently paid the suppliers. After payment by the end-user, usually within 3 months after disbursement, CPH received the original amount plus commission. EWRI retained sole ownership as well as entrepreneurial risk over the commodities.
- Controller: advising EWRI on hiring a controller agency to inspect the ore. CPH hired the company Alex Stewart by order of EWRI.

The relationship between CPH and EWRI lasted from October 1999 until March 2002.

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[3] Chapter IV, Employment and Industrial Relations (section 1, b and c, section 4,b) Chapter V, Environment (introduction and section 2 and 3), Chapter II, General Policies (section 10).
[4] Despite a formal request of the NCP, the UN panel never provided background information, nor clear arguments as to why CPH was mentioned in the report. CPH regrets never responding to the accusations. A final report of October 2003 cleared EWRI from all accusations, again without traceable arguments.

3. Investment nexus

The OECD Committee on International Investment and Multinational Enterprises (CIME)[5] issued a statement that the Guidelines have been developed in the specific context of international investment by multinational enterprises and that their application rests on the presence of an investment nexus (see Annex III.). The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances. A case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The statement links the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship.

4. Applicability of the Guidelines

On the basis of information made available during the procedure, the NCP concludes that in this specific instance, there is no investment like relationship between CPH and EWRI or EWRI's suppliers. The NCP notes that the business relationship between CPH and EWRI lasted 2,5 years and that CPH acted as a facilitator, who at no stage became owner of the goods and who worked on a commission basis.

CPH agrees with this conclusion. Niza & Co. is of the view that there was an investment nexus.[6]

Since the Guidelines are only applicable to issues concerning an investment nexus, the NCP-procedure cannot formally be pursued in this specific instance. Since this conclusion was drawn after already having met extensively with the parties involved, the NCP decided to sum up lessons learned and future activities (Annex I.).

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[5] The OECD CIME is the body for clarifying the meaning of the Guidelines and overseeing the activities of the NCPs with a view to enhancing the effectiveness of the Guidelines.

[6] Niza & Co.: "The sheer fact of embarking, over an extended period, upon a regular stream of business transactions - as was the case between CPH and EWRI - involves a conscious investment in the development of commercial relations and the establishment for itself of a stable line of business. CPH was explicitly taking the risk of not being able to access alternative sources of supply. In so doing, CPH was taking a commercial business risk in creating dependency.

ANNEX I.

Lessons learned and future activities

- The NCP procedure raised the awareness of CPH of its own responsibility throughout the business chain, from supplier and producer to consumer. Following the common values for responsible business conduct that are reflected in the Guidelines, CPH could have conducted more enquiries to find out the origin of the ore and the circumstances that surrounded ore mining. Companies should be proactive in asking these questions, particularly in a conflict zone. CPH noted that although it is most willing to implement the Guidelines, this is not always possible in practise.
- At the time when CPH started its business relations in East-Africa, the Netherlands government did not have a policy on doing business in the DRC. CPH was not aware of the Guidelines. The NCP will continue its effort to raise awareness of the Guidelines. Governments and international organisations should advise companies clearly and consistently on doing business in conflict zones.[7]
- The NCP welcomes that CPH now acknowledges the importance of the Guidelines and that it will introduce the Guidelines with its business partners abroad.
- The NCP appreciates CPH's effort to introduce certificates of origin in current business abroad.

[7] Recently the OECD CIME made a statement about business activities in the DRC (see website http://www.oecd.org/document/6/0,2340,en_2649_201185_27217798_1_1_1_1,00.html). The Netherlands Ministries of Foreign and Economic Affairs explained their policies in a document "Doing business in Conflict Zones" (see website www.minbuza.nl/ notas/ "Ondernemen in Conflictgebieden").

ANNEX II.

Background document

Introduction

In July 2003 Niza & Co. asked the NCP whether CPH's involvement in ore mining in the DRC was in conformity with the OECD Guidelines for Multinational Enterprises. In this specific instance, two main questions were raised:

1. Is it possible to conduct business in conformity with the Guidelines in an area occupied by rebel groups, i.e. the East of the DRC?
2. If so, how does a company achieve that?

Niza & Co. referred to the following chapters of the Guidelines:

Environment, Chapter V, introduction and section 2 and 3:

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:

- Taking in account concerns about costs, business confidentiality, and the protection of intellectual property rights:

- Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;
- 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 the implementation.

- 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 the full life circle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to the decision of a competent authority, prepare an appropriate environmental impact assessment.

Employment and Industrial Relations, Chapter IV, section 1, b and c, section 4, b:
Enterprises should, within the framework of applicable law, regulations and prevailing relations and employment practices:

- Contribute to the effective abolition of child labour;
- Contribute to the elimination of all forms of forced or compulsory labour.

Take adequate steps to ensure occupational health and safety in their operations.

General Policies, Chapter II, section 10 an section 11:

- Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles or corporate conduct compatible with the Guidelines.
- Abstain from any improper involvement in local political activities.

Since there is no investment nexus in this specific instance, CPH's responsibility refers to the business chain. CPH could have asked its business partner EWRI which activities it undertook to respect the Guidelines. Therefore, the main chapter of the Guidelines applicable to this specific instance is Chapter II., section 10.

ANNEX III.

OECD CIME statement on investment

Scope of the Guidelines

The question of the scope of the Guidelines – the definition of the activities to which the Guidelines are thought to apply – was raised during the NCP meetings, the consultations and the 2002 Roundtable. The issue was also raised and discussed in all subsequent consultations held during the reporting period. The CIME and its Working Party held several exchanges of views and surveyed delegates' positions on this issue. At the end of its April 2003 meeting, the CIME issued a draft statement on the issue, which was subject to additional comment by written procedures and to final approval at the June 2003 NCP meetings. The draft statement reads as follows:

> In considering this issue, the CIME has sought to protect and enhance the credibility and effectiveness of the Guidelines and to remain true to the agreement reached among adhering governments at the 2000 Review after extensive consultations with the business, trade union and NGO communities.
>
> The Guidelines are a multifaceted instrument and the Committee found it useful to consider this issue with reference to the following, which does not aim to change the balance reached during the 2000 Review:
>
> – First, the Guidelines are an Annex of the OECD Declaration on International Investment and Multinational Enterprises. The fact that they are part of the Declaration and that oversight responsibility for them has been assigned by the Council to the CIME -- the body charged with responsibility for the Organisation's work on investment and multinational enterprises – indicates the investment intent of the drafters of the instrument.
>
> – Second, the Guidelines are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with

responsible business conduct. These principles reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines. As such, these values are relevant to the activities of multinational enterprises. Thus, as it has already done in a number of areas, the international community may continue to draw on the values underlying the Guidelines in other contexts.

– Third, the Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship. In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances.

U.S. DEPARTMENT of STATE

U.S. National Contact Point's Final Statement on the Saint Gobain-United Autoworkers Specific Instance

Bureau of Economic, Energy and Business Affairs
May 01, 2007

On June 5, 2003, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America International Union (UAW), the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), and the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) jointly submitted a letter to the U.S. NCP raising issues regarding the activities at a Saint Gobain Abrasives facility in Worchester, Massachusetts, under the Employment and Industrial Relations chapter of the OECD Guidelines for Multinational Enterprises regarding the right of workers to bargain collectively. Saint Gobain Abrasives is a subsidiary of Compagnie Saint-Gobain, a French company.

The unions sought the USNCP's assistance in addressing their concerns that Saint-Gobain's actions were interfering with their ability to represent and bargain on behalf of the employees at the Worcester facility, that Saint-Gobain management was not bargaining in good faith, and that the company was failing to ensure occupational health and safety.

The dispute between Saint-Gobain and the union which formerly represented the employees at the Worcester facility has been the subject of complaints filed at various times by the union, management, and employees who did not support the union, before the U.S. National Labor Relations Board (NLRB). The NLRB adjudicates labor disputes under U.S. labor law in the same areas addressed in the Industrial Relations Chapter of the OECD Guidelines.

The USNCP has met with the parties concerned, exchanged letters, and had numerous phone contacts throughout its preliminary assessment. After weighing the issues carefully and consulting the NLRB and the Federal Mediation and Conciliation Service (FMCS), the USNCP on April 14, 2005 offered its good offices and encouraged the parties to consider the possibility of reengaging the FMCS mediation process that they had pursued previously. The union responded favorably to this suggestion. However, the company reiterated the view, which it has maintained throughout the USNCP's involvement, that it preferred to pursue the issues exclusively through the NLRB under U.S. labor law, and further explained that process afforded the equivalent of mediation, noting the parties mediation before the Associated Chief Administrative Law Judge for the NLRB. The USNCP took no immediate action, but indicated to both parties that it would continue monitoring developments in the dispute while considering the preparation of a final report.

Pursuant to a decertification petition filed by certain Saint-Gobain employees, an election was held on January 27 and 28, 2005 to determine whether the union should be decertified as the employees' collective bargaining representative. In that election, bargaining unit employees voted by a margin of 350 to 309 to terminate the union's status as their collective bargaining representative. The union filed objections to the election with the NLRB and evidentiary hearings were held with an NLRB administrative law judge. On March 24, 2006, the administrative law judge issued a decision in which he certified the results of the election and ruled that, under applicable United States labor law, the union is no longer the exclusive bargaining representative of employees at Saint-Gobain's Worcester facility. The union issued a statement on April 28, 2006, acknowledging that its efforts to win majority support for union representation had not been successful, that it no longer represented Saint-Gobain workers, and that it had decided to close its Worcester office. As a result of these developments, the USNCP decided to discontinue its monitoring of the dispute and to prepare this final report concluding its involvement in the matter.

Nestlé

Swiss Contact Point welcomes Korean trade union delegation

OECD Guidelines for Multinational Enterprises

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

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

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

Bern, 21 November 2003

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Further information on the OECD Guidelines for multinational enterprises can be found on the OECD website

Communiqué du Point de contact national belge chargé du suivi des Principes directeurs de l'OCDE à l'intention des entreprises multinationales

Le Point de contact national belge (PCN) a été chargé par l'organisation syndicale internationale ITGLWF d'examiner un dossier relatif au non respect éventuel des Principes directeurs de l'OCDE pour les entreprises multinationales par la firme GP Garments, implantée au Sri Lanka et financée par un holding luxembourgeois et dirigée par des administrateurs belges.

Conclusion

Le PCN a déclaré ce dossier recevable et entamé des tentatives de médiation entre les deux parties. Vu toutefois la complexité de cette affaire au Sri Lanka, tant au plan juridique qu'économique et le fait que ce conflit dure déjà depuis bien avant l'introduction du dossier, le PCN a, pour la première fois, décidé de confier la médiation à un conciliateur social professionnel. Cette personne a été acceptée par les deux parties.
Malgré tous les efforts de cet expert belge, les deux parties n'ont pu trouver un accord. Cet échec a plusieurs raisons : le respect des dates fixées semblait être un problème pour GP Garments ; une enquête internationale de l'OIT a croisé la médiation ; il ne semblait pas aller de soi pour GP Garments qu'une solution puisse provenir du Point de contact national belge. Le PCN doit dès lors constater que la tentative de médiation a échoué et que son intervention n'a pas eu le résultat escompté, à savoir une solution du différend.

Dans de telles circonstances, le PCN estime nécessaire d'adresser à la firme GP Garments, à ses actionnaires et à ses administrateurs les recommandations suivantes en leur demandant d'y prêter une attention urgente:

- Le PCN recommande vivement à GP Garments, à ses actionnaires et à ses administrateurs de communiquer régulièrement des informations fiables et pertinentes sur ses activités et sa structure, conformément au chapitre III des Principes directeurs consacré à la publication d'informations.

- Le PCN recommande vivement à GP Garments, à ses actionnaires et à ses administrateurs d'améliorer la communication et ses relations avec les syndicats dans les implantations ayant le même actionnariat, conformément au chapitre IV des Principes directeurs consacré à l'emploi et aux relations professionnelles.

Historique

Le dossier a été introduit le 13 juin 2005 par le syndicat international ITGLWF (International Textile, Garment & Leather Workers' Federation) et concerne les activités de la firme GP Garments au Sri Lanka.

Dans son dossier, l'ITGLWF cite des infractions aux chapitres III et IV des Principes directeurs de l'OCDE pour les entreprises multinationales. Il estime que cette société ne respecte ni ses obligations en matière d'information sur ses activités et sa structure ni le droit de ses travailleurs à se faire représenter par un syndicat et refuse de négocier avec les représentants du syndicat.

Pour rappel

> *Les Principes directeurs de l'OCDE à l'intention des entreprises multinationales sont des recommandations des Gouvernements à leurs entreprises quel que soit le lieu où elles exercent leurs activités.*
> *Ces recommandations portent sur plusieurs domaines comme la publication d'informations, l'emploi et les relations professionnelles, l'environnement, la lutte contre la corruption, les intérêts des consommateurs, la science et la technologie, la concurrence et la fiscalité. En outre, le concept du développement durable est introduit. Il appartient aux différents Points de contact nationaux chargés du suivi de mettre en oeuvre ces Principes directeurs.*
> *En Belgique, le Point de contact national (PCN) est présidé par un représentant du Ministre de l'Economie et a une composition "tripartite", englobant les partenaires sociaux, les représentants des différents services publics fédéraux et les Gouvernements régionaux.*
> *Le rôle du PCN est de contribuer à la résolution des questions soulevées dans des circonstances spécifiques. Le PCN facilitera l'accès à des moyens consensuels et non contentieux tels que la conciliation ou la médiation.*