

The OECD Guidelines for Multinational Enterprises

After the revision:
7 years of Trade Union experience



Tokyo – 25th of February 2008

Trade Union Advisory Committee
to the OECD

Summary

- Stronger language
- Increased visibility
- Cases
- Implementation mechanism
- Conclusions

Stronger language

- Since the Review in 2000: **Major improvements**
 - Global applicability of Guidelines for MNE
 - Addressed to all entities within MNE (parent company and/or local entities)
 - Reference to supply chain
 - Stronger language on workers' rights
 - Implicit inclusion of Core Labour Standards
 - Provide facilities to employee representatives
 - Ensure occupational health and safety in their operations
 - Employ local personnel and provide training
 - What procedure to follow in case of plant restructuring
 - No threats allowed when workers want to exercise their right to organize

Stronger language

- Since the Review ('98-'00): **Major improvements**
 - New chapters on bribery and consumer interests
 - Reinforced chapter on environment
 - Enhanced implementation procedure
 - Governments: legally obliged to set up NCPs

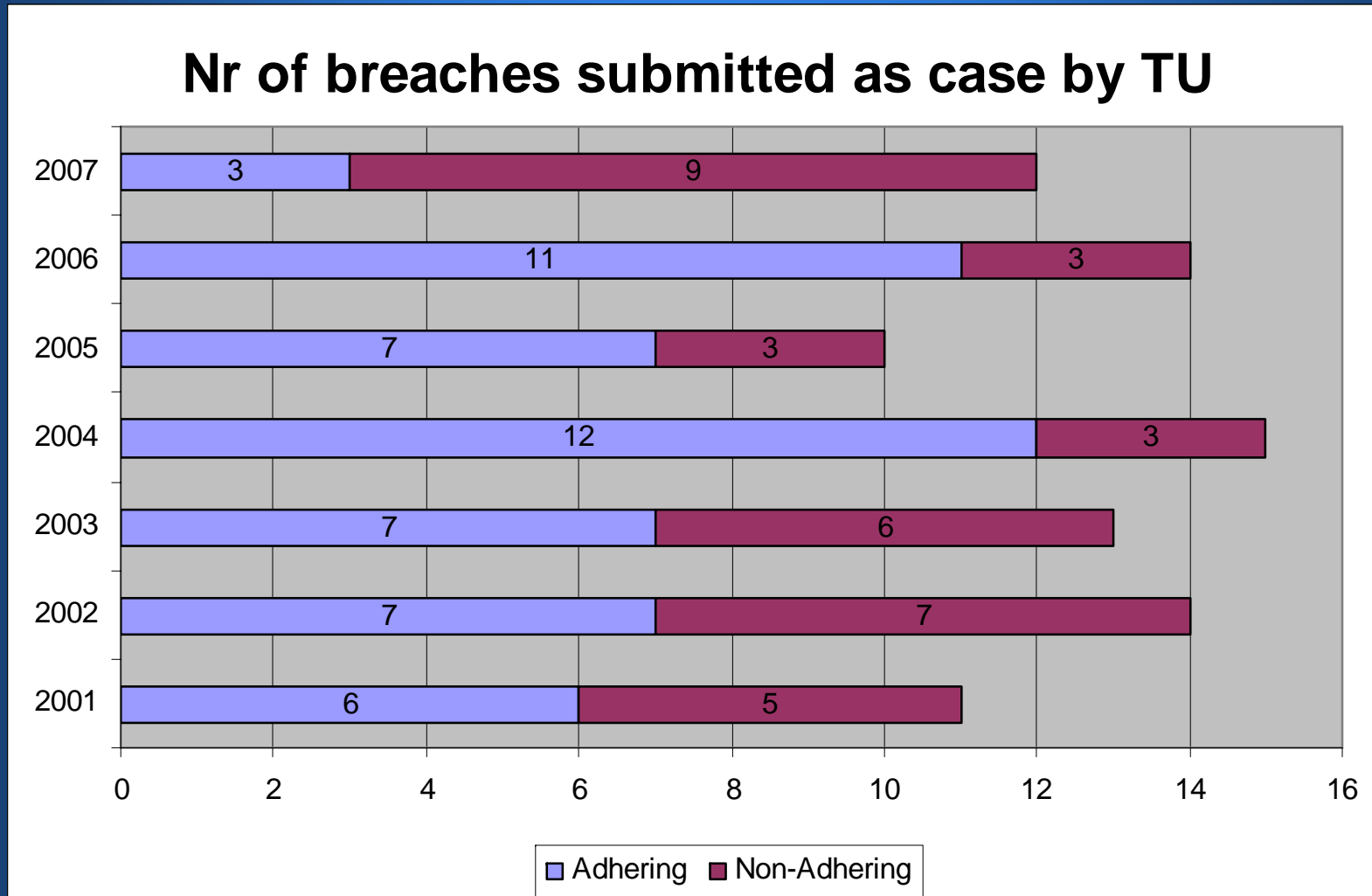
Increased visibility

- OECD Guidelines for MNE are recognized as major tool for CSR by
 - Governments
 - Trade Unions
 - Business
 - NGOs
- OECD Guidelines for MNE are adopted by 10 non-OECD countries:
 - Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia
- Different international institutions/forums refer to the OECD Guidelines for MNE
 - Forums organized by OECD & ILO
 - G8 (Heiligendamm Summit in 2007)
 - UN



Cases

- Almost 90 cases raised by TU since 2001:



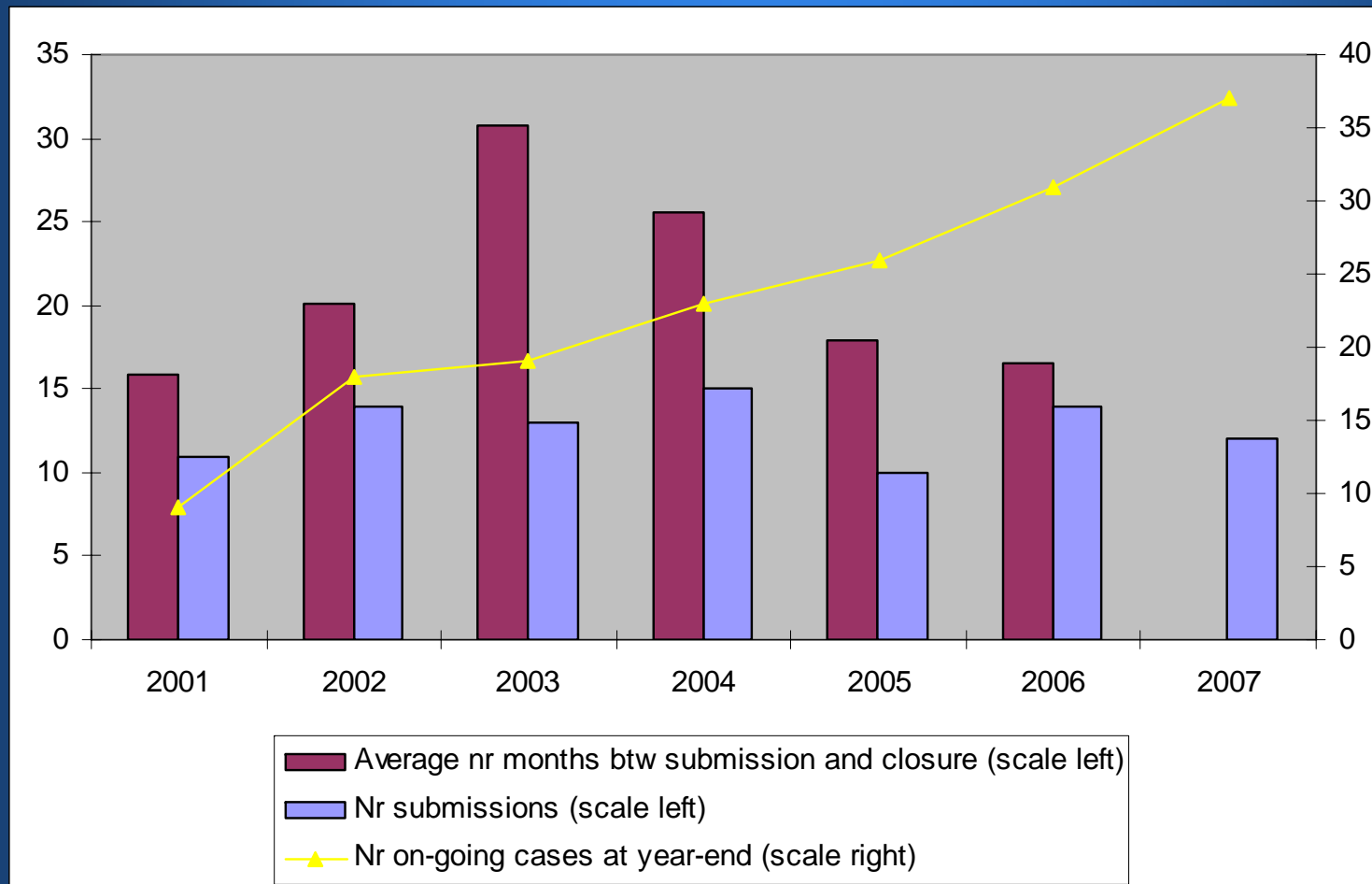
TUAC

Cases

- Number of submissions
 - Highest number of submissions in 2004
 - On average: 12,7 cases yearly
 - Important increase in breaches in non-adhering countries in 2007

Cases

- Upward trend in the annual number of pending cases
- Average length in months remains above 15 months



Cases

- Longest length in months before a case is closed:
 - Of closed cases: 48 months
 - Of on-going cases: 60 months
- Out of the 36 on-going cases:
 - 14 are on-going for > 2 years
 - 11 are on-going for > 3 years
 - NCP of **Japan**, **US** and **France** are involved in 70% of these still on-going cases for > 3 years

Cases

■ Types of leading breaches:

45%

- Anti-union behaviour

19%

- No consultation on restructuring

16%

- No enforcement of contract

2%

- Threat to relocate offshore

2%

- No information on financial performance of firm

1%

- Problems with occupational health & safety

15%

- Various

Cases

- Types of leading breaches:
 - Main reasons for TU to raise a case is the threat to its very existence
 - anti-union practices
 - Non consultation of workers in case of restructuring/downsizing on plant level
 - Non-compliance with contractual obligations
 - No renewal of collective agreement
 - No payment of wages; cut in other benefits
 - Illegal dismissal / no reinstatement

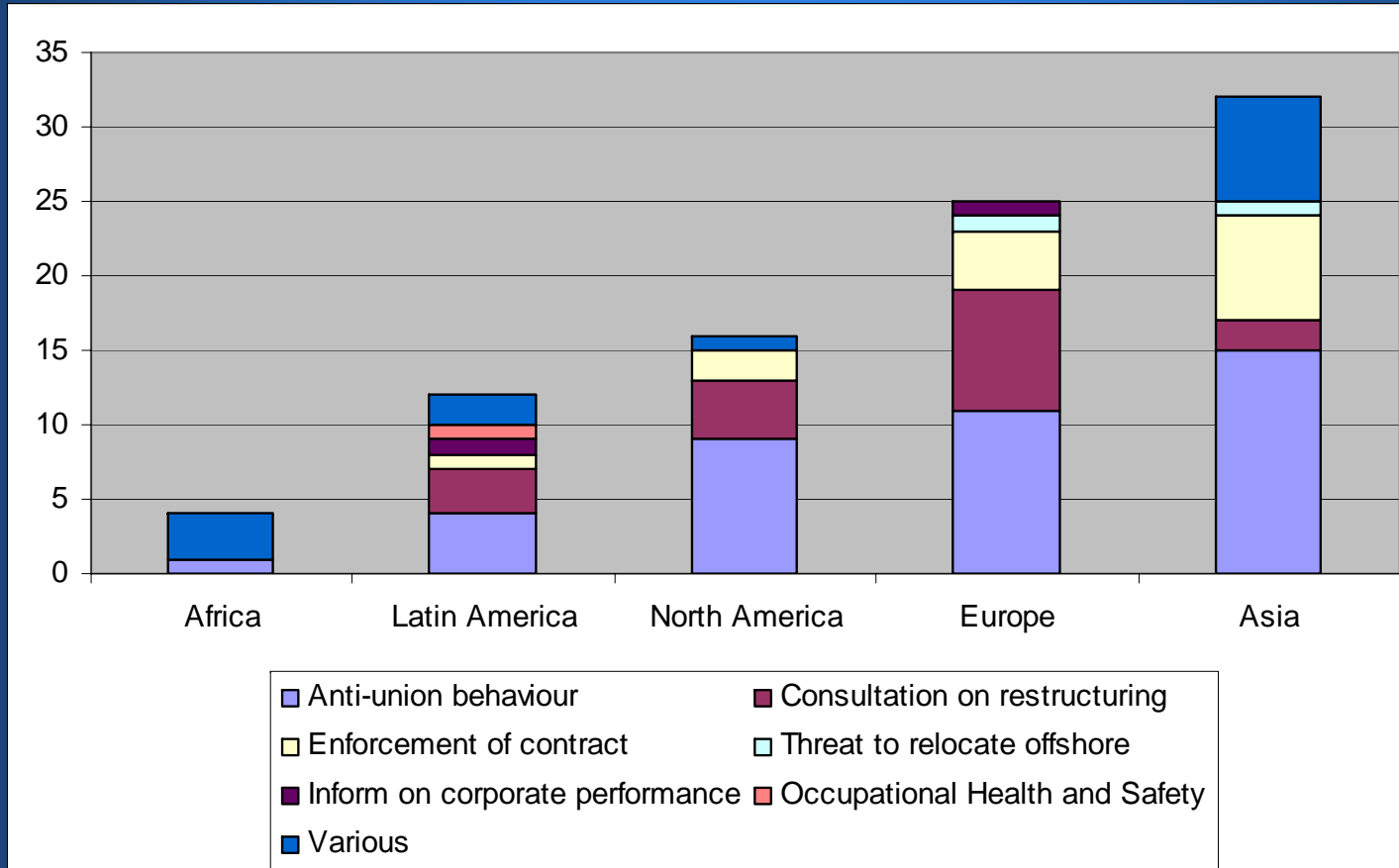
These 3 types constitute 80% of all raised breaches

- Few cases on environment, corruption, ...



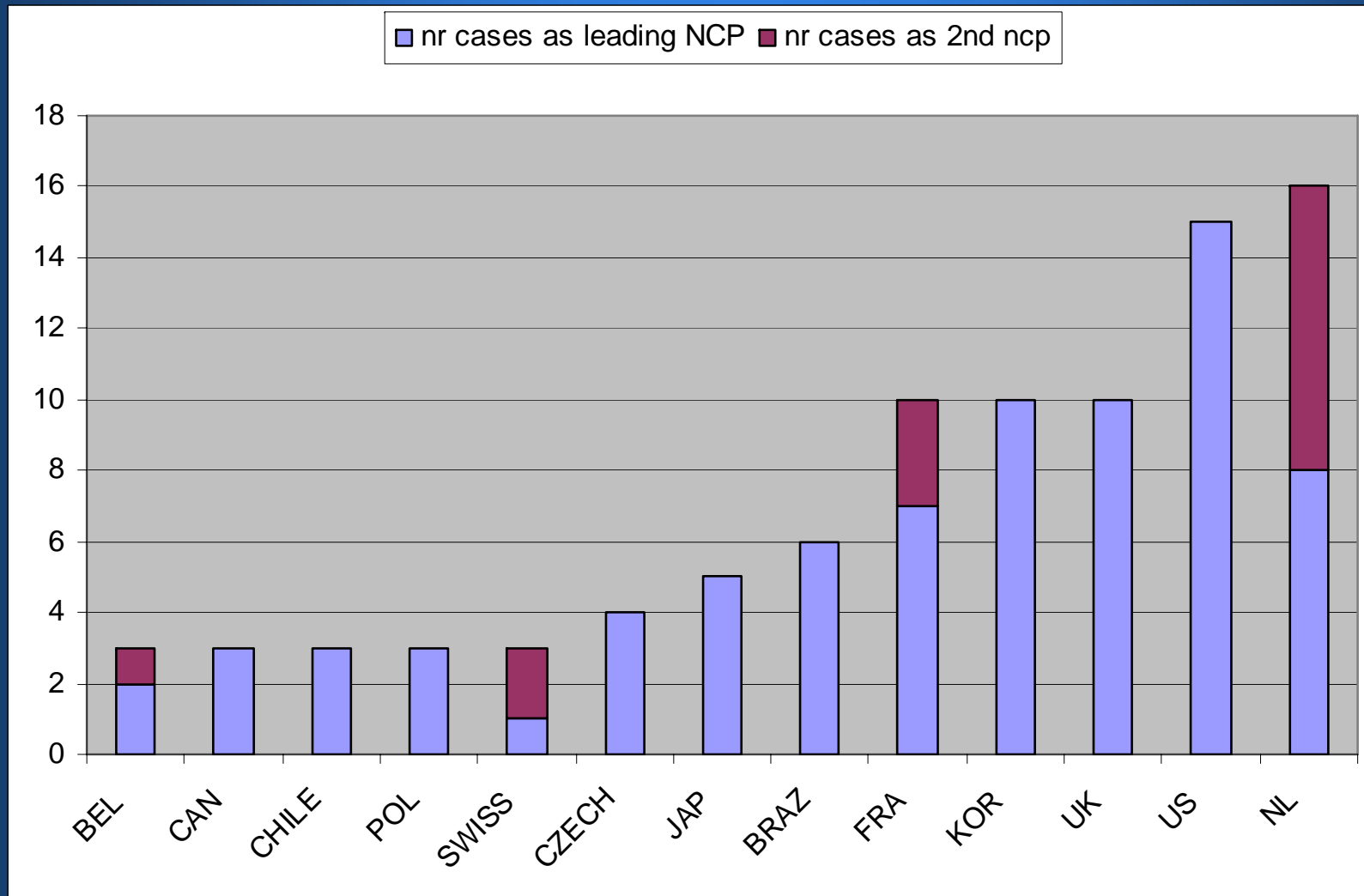
Cases

- Types of leading breaches / Region:
 - Anti-union behaviour: most frequent in Asia
 - Non-consultation if restructuring: most frequent in Europe



Cases

■ NCPs that received ≥ 3 TU-cases



Cases

- Leading NCPs with highest n° of TU cases:

	N° cases	≥1year	≥2years	On-going	On-going: not raised in 06-07
US	15	11	4	6	3
UK	10	5	1	7	1
KOR	10	4	1	4	0
NL	8	7	2	0	0
FRA	7	5	3	3	3
BRAZ	6	3	1	4	1
JAP	5	4	4	4	4
Others	28	14	7	8	2 (Arg & Mex)

Cases

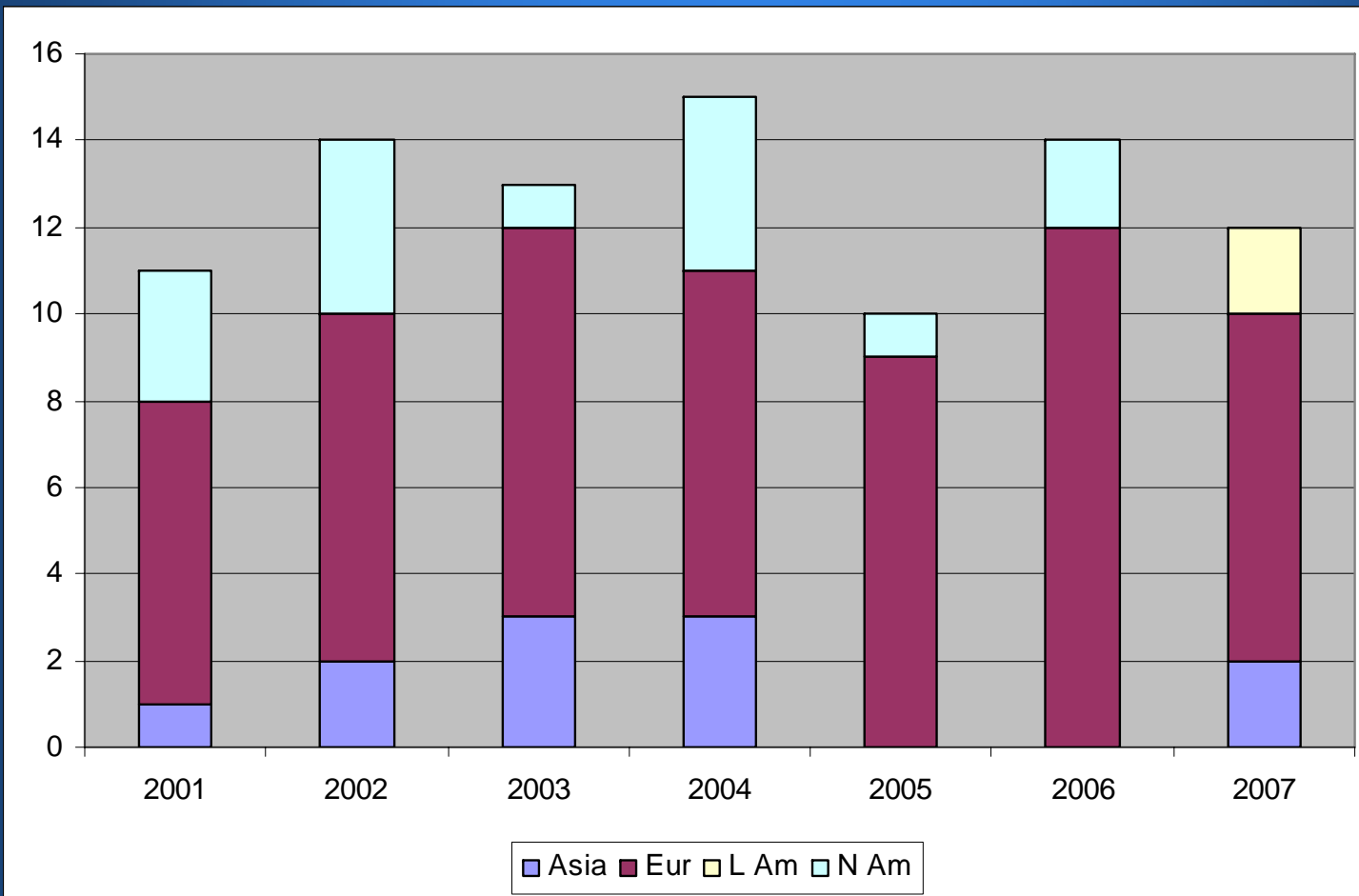
- All frequently addressed NCPs include a substantial number of long cases (≥ 1 year)
- Concerning pending cases that were not submitted during the past 2 year ('06-'07):
 - US, Japan, France are quite problematic
 - Is Parallel legal proceeding used as excuse?
 - Japan: 4/4
 - France: 1/3
 - US: 0/3

Cases

- Of all closed cases (53):
 - In half of the cases (28) we have at least some positive outcome
 - In 45%: Intermediation of NCP was very helpful
 - In 45%: Pressure on the company (via different ways) without help of the NCP
 - In 10%: court outcome in favour of TU which led to some positive outcome
 - In 61% of the closed cases, there is a public statement made by the NCP

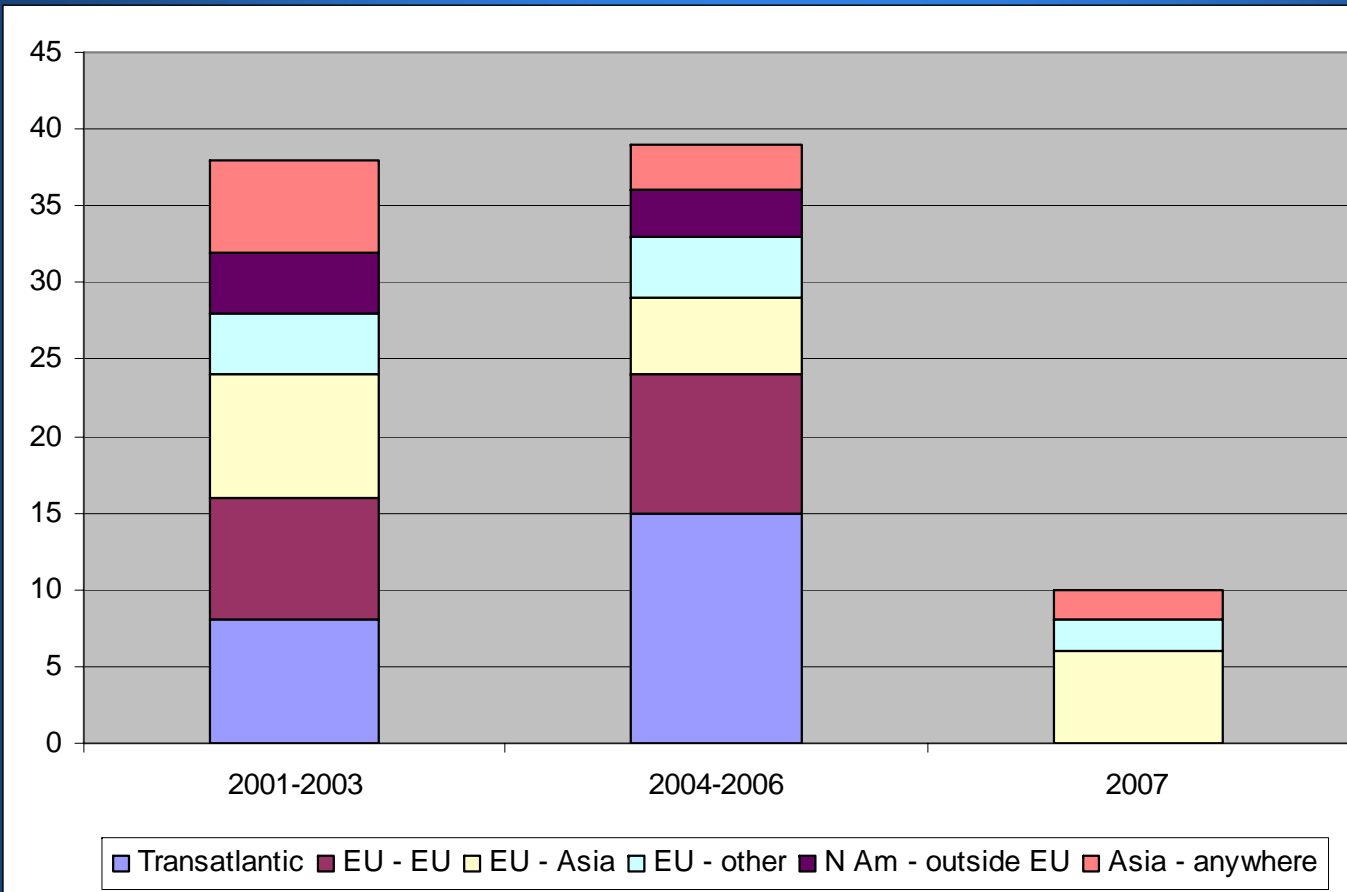
Cases

- Share of European MNEs remains important and constant



Cases

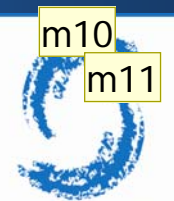
- growing number of transatlantic cases over the years apart from 2007
- 2007: Important number of cases of Eur. MNE in Asia



Implementation mechanism

Performance

- Influenced by the structure:
 - Only governmental departments
 - 27 NCP
 - Bipartite
 - 1 NCP: Romania
 - What about the objectivity?
 - Tripartite
 - 9 NCP: Belgium, Denmark, Estonia, France, Latvia, Lithuania, Luxemburg, Norway, Sweden
 - Quadripartite:
 - 2 NCP: Chile, Finland



Slide 19

m10 Likewise, what do you mean by Quadripartite in this case? Government, Union, Business & NGO?
ma-nogi, 14/02/2008

m11 Likewise, what do you mean by quadripartite in this context? Government, Business, Union & NGO?
or academia?
ma-nogi, 14/02/2008

Implementation mechanism

Performance

- Influenced by the structure:
 - governmental departments (27 NCP)
 - 11 of the 27 have a labour/social department in NCP
 - Besides, 5 of them also have some involvement with social partners: Israel, Czech Republic, New Zealand, Spain, the Netherlands
 - 6 of the 27 have no labour/social department in NCP but have some involvement with both social partners via
 - Advisory Committee (Italy, US, Switzerland), Working Party (Germany), Steering Board (UK), Turkey (informal)
 - 10 of the 27 have no labour/social department in NCP AND no formal involvement with both social partners
 - Who of the members of the NCP has the know-how on the chapter “employment and industrial relations” ?

Implementation mechanism Performance

- Depends on NCP resources available
- Depends on Staff turn-over
- Depends on the interpretation of criteria
 - Narrow interpretation or not
 - Differing interpretations or not
- Depends on the willingness of employees and employers to reconcile



Implementation mechanism

Performance

- What obstacles do we observe to an effective implementation?
 - Location of NCP in Finance Ministry
 - Lack of capacity
 - Too narrow and/or too differing interpretations
 - Parallel legal proceeding as argument not to handle a case
 - No proper functioning of some key NCPs
 - US, Japan
 - Lack of visibility beyond (and within) the OECD
 - Lack of co-ordination with other global fora e.g. ILO

Conclusions

- Net benefit is more likely:
 - in case of tripartite and quadripartite NCPs
 - when NCP is not located in finance ministry
 - if MNE HQ is sensitive for reputational damage
 - if MNE HQ is alerted on local management practices
 - if NCP case + targeted campaigning
+ parallel legal proceeding
- Japan

Conclusions

- TU strategy when submitting a case
 - To resolve a concrete problem at plant level
 - To draw attention to the problem
 - Focus on breaches of worker's rights in different
 - subsidiaries of the same MNE
 - Can be part of a campaign

Conclusions

- OECD guidelines for MNE:
 - “Far from perfect” but still useful
 - if more political will \Rightarrow more effective tool
 - Within the OECD
 - Need for more NCP capacity building
 - Peer review process
 - Link it to export credits guarantees
 - More regional focus
 - Take aim at existing regional OECD Round Table programmes on Corporate governance and Governance of State Owned Enterprises
 - Organize similar regional OECD Round Table programmes to promote the OECD Guidelines for MNE
 - G8 declaration
 - OECD/ILO Round Table