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*INVESTMENT FOR DEVELOPMENT:  
FORGING PARTNERSHIPS*

**Session 3:  
Government Responsibility and Corporate Responsibility –  
OECD and non-OECD Perspectives**

**THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES  
IN PRACTICE**

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**Introduction**

TUAC appreciates this opportunity to discuss the OECD Guidelines for Multinational Enterprises and more precisely corporate responsibility issues in specific instances and how non-adhering countries can take advantage of the Guidelines.

These are issues that have received a great deal of attention within TUAC:

We have been running a project on the implementation of the Guidelines since 2001;

We have produced a User's Guide to explain the Guidelines and help trade unions and others to make use of them;

It is now available in 21 languages;

We have also organised a number of workshops, often in co-operation with the Friedrich Ebert Foundation (FES), with support of the European Union to disseminate the Guidelines;

Moreover, we are analysing and keeping track of the 50 or so cases raised by trade unions.

TUAC has also started a project, with the support of the European Commission, to develop the use of the Guidelines among European Works Councils.

**Corporate responsibility issues in specific instances**

Let me start by summing up where we are four years after the major revision of the Guidelines in 2004. Firstly, what has been achieved in terms of the four core criteria for measuring the performance of National Contact Points (NCPs): visibility, accessibility, transparency and accountability.

I think this is a necessary background to understand the specific instances, or cases, as we prefer to call them that have been raised.

*Visibility*

The Guidelines have clearly become more visible after the Review through the efforts of trade unions, governments, NGOs and business.

This seminar is a good example of this.

The number of cases is another example, of which quite a few concern multinational enterprises operating in non-adhering countries.

Trade unions have invested significant resources into raising awareness of the Guidelines, particularly in non-OECD countries.

Naturally, they are still better known in the OECD area than outside.

The Guidelines are however less influential than other instruments according to a study commissioned by the World Bank on corporate responsibility standards.

Although the Guidelines are more visible today than four years ago, we still have a long way to go in making them better known.

*Accessibility*

Accessibility to NCPs is in most cases satisfactory, but some trade unions have not been informed of where the NCP in their country is located.

Accessibility also includes the possibilities to raise cases.

Some recent cases suggest that this is becoming more difficult, but I will return to this later in my presentation.

*Transparency*

As to transparency, there is certainly room for improvement.

Trade unions or the party raising the case are not always kept informed of the developments of the case.

There is also a problem of finding the right balance between transparency and confidentiality.

Not all NCPs issue public statements and make recommendations to companies, nor do they make publicly available the results of the procedures.

*Accountability*

The annual reports and annual meetings is one way to ensure accountability of NCPs.

Again there is room for improvement.

While some reports from NCPs to the Annual Meeting are rather detailed, others are very brief.

TUAC welcomes the OECD table of specific instances, which summarises the cases raised with NCPs.

But it is based on the information provided by NCPs, which sometimes is inadequate.

Another way to increase accountability could be to involve more national parliaments.

*Cases*

According to the OECD report of the 2004 annual meeting of NCPs, 79 specific instances have been submitted to NCPs since the review of the Guidelines.

Some cases however are counted more than once since they are or have been handled by several NCPs.

In the opinion of TUAC, the correct figure is probably around 70.

Almost 50 cases have been raised by trade unions.

About half of them have been finalised and half are still pending.

The majority of those that have been resolved have led to statements and/or recommendations, although in some cases the NCPs concluded that the company in question had not violated the Guidelines or they referred the matter elsewhere.

The average time for dealing with a case is approximately 10 months.

Most of the cases concern violations of trade union rights, in fact nearly all of the cases in non-adhering countries have been raised because of rights abuses.

Almost half of the cases refer to problems with multinational enterprises operating in non-adhering countries (eg Burma, Guatemala, Indonesia, the Philippines, Malaysia and Sri Lanka, but so far not India).

Several of these cases are also breaches of national law and are therefore also subject to legal procedures in the host countries of the companies.

Trade unions may decide to raise a case within their national legal system and the relevant NCP.

Some NCPs are however reluctant to deal with such cases, claiming that they have to await the outcome of court decisions before taking action, which means that a case can drag on for many years.

It is of concern that some NCPs take a legalistic approach despite the fact that the Guidelines are not legally binding.

Because the Guidelines go beyond national law and the NCP procedures are not juridical procedures, NCPs should manage cases even if they are being processed elsewhere.

Another common issue of cases is restructuring - closures or transfers of companies or parts of companies.

Some of these cases have been withdrawn as part of agreements with the companies concerned.

They have for example resulted in a number of jobs being saved, and in one case a social plan being put in place.

These cases are usually complicated as the Guidelines cannot prevent multinational enterprises from moving or closing down.

The Guidelines do however require companies to give prior notice before a final decision is taken.

Not all of these cases have been successful.

Besides, it appears to be more difficult to resolve this type of problem when the multinational enterprise has already been closed.

NCPs cannot force companies to reopen, but they should at least make a statement as was the case when the Finnish company Aspocomp closed down operations in France.

Yet, in a similar case involving the closure of the Canadian corporation BATA, also in France, the NCP did not issue a statement.

Co-operation among NCPs is essential as cases often involves several countries, but in the BATA case the French NCP felt that it did not get the necessary information requested to deal with the case.

There have only been a few trade union cases on other issues covered by the Guidelines, for instance on environment and corruption.

One explanation is that these provisions are more difficult to use as they are rather general.

An interesting development is that a number of cases have been resolved before being formally submitted to an NCP.

By informing the company management of the planned cases, the social partners managed to find joint solutions to the issues without going to the NCP.

One reason for this positive outcome is that these so called cases involved responsible parent companies that were willing to intervene with the local management.

The problem is that local trade unions do not always have access to the management authorised to take decisions.

I would also like to mention briefly the 2002 report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, which listed 85 companies as being in breach of the Guidelines.

Some of these cases are now being investigated.

There has been some controversy around the report and NGOs have criticised NCPs for reluctance to handle cases.

Nevertheless, it has contributed to raise the profile of the Guidelines and pointed to the role that they can play in non-adhering countries (if properly implemented).

#### *Obstacles to the resolution of cases*

As I have already indicated, there are a number of obstacles to the efficient resolution of cases.

I mentioned the fact that parallel legal procedures are being used as an excuse for some NCPs not to do anything.

The same is true for the use of the so called “investment nexus” where pure trade issues are not deemed to be receivable by NCPs.

The Guidelines apply to multinational enterprises wherever they operate and thus do not make a distinction between investment and trade activities.

In addition, it can be difficult to draw a clear line between the two.

The investment nexus has been discussed by the OECD Committee on International Investment and Multinational Enterprises (now the OECD Investment Committee), which resulted in a statement in April 2003 suggesting that the scope of the Guidelines was not limited to investment issues.

In practice, however, the statement has come to mean that some NCPs are refusing to deal with cases that are not purely investment-related.

TUAC is concerned over these developments as well as the overall performance of some NCPs.

It is indispensable that NCPs follow the Procedural Guidance.

NCPs should for example issue statement and make recommendations as appropriate if no agreement can be achieved between the parties concerned.

Yet several NCPs fail to do this.

Furthermore, NCPs should make publicly available the result of cases that are raised unless confidentiality is in the “best interests” of the implementation of the Guidelines.

Consequently, those NCPs that do not make the result public should explain clearly why they believe that confidentiality benefits the Guidelines.

Although NCPs are supposed to handle cases in an “efficient and timely manner”, there are cases that have continued for years.

Needless to say, some cases are more complicated than others and thus take longer to handle, but the procedures are in general too slow.

Another problem is the fact that the party raising the case is not always being kept informed of the steps taken by the NCP – months may pass by without any sign of life from the NCP.

One should be able to expect from an NCP an acknowledgement of receipt of the case.

This would avoid the kind of problem that we encountered with the Korean NCP, which one year after a case had been submitted claimed that it had not been received.

In handling a case, the NCP should offer a forum for discussion.

Some NCPs are however reluctant to set up tripartite meetings or to meet with the trade unions.

It is our experience that those NCPs that are tripartite or quadripartite work the best, while the poorly functioning NCPs are those that consist of one single government department without the involvement of other ministries or departments or the social partners.

It is therefore promising that several of the non-OECD countries that have adopted the Guidelines have established tripartite or quadripartite NCPs.

But if NCPs are not willing and ready to seriously deal with the cases that are being raised, the Guidelines will not develop into the major instrument for corporate responsibility that it has the potential to become.

### **How can non-adhering countries take advantage of the Guidelines?**

In 2003 TUAC conducted a project together with the FES and with the support of the European Commission on raising awareness of the Guidelines among developing countries.

We organised four regional workshops in Mexico, Morocco, Zambia and Indonesia aiming to bring together governments, trade unions, business and NGOs to discuss the Guidelines.

I would like to share with you some of our experiences based on these workshops.

In discussing how non-adhering countries can take advantage of the Guidelines, the first point to stress is that the OECD welcomes non-OECD countries to adhere to them.

So far nine countries have signed up to the OECD Declaration on International Investment and Multinational Enterprises that includes the Guidelines.

TUAC believes that a government should be allowed to only adopt the Guidelines and not the whole declaration, if a government makes such a request.

When organising these workshops we have met a significant interest among governments either to adhere to the Guidelines or simply to implement them.

Since they apply globally, companies operating in or from the adhering countries are covered wherever they do business.

Thus, governments, trade unions, NGOs and business can make use of the Guidelines without the government actually adhering to them.

This explains why nearly half of the cases submitted by trade unions concern issues in non-adhering countries.

Nevertheless, non-adhering governments may be interested in establishing their own contact points.

These could facilitate resolution of cases regarding corporate conduct in non-adhering countries.

They could also help raising awareness of the Guidelines by disseminating them to foreign investors operating in their countries.

After the workshop that we held in Jakarta last year, we discussed with the Ministry of Labour in Indonesia how to disseminate the Guidelines to foreign investors in Indonesia.

To make the most of the Guidelines in non-adhering as well as adhering countries, they must be distributed widely.

Adhering countries should make use of their embassies to inform non-adhering countries of the Guidelines.

Moreover, governments should ensure that public subsidies are only granted to companies that observe the Guidelines.

This is particularly important when they operate in non-adhering countries, which is most often the case with companies that apply for export credits and investment guaranties.

Likewise, the World Bank and the IMF should only work with and award contracts to companies that apply the Guidelines.

It would also be desirable to include the Guidelines in the work of other international organisations such as the G8, ASEM (Asia-Europe Meeting) and NEPAD (New Partnership for Africa's Development).

Finally, there is a role for the Guidelines in bilateral investment agreements.

## **Conclusions**

To enable non-adhering countries to take full advantage of the Guidelines procedures, they have to be properly implemented. Thus, governments should consider:

- The involvement of trade unions in the promotion and implementation of the Guidelines;
- Making use of embassies to disseminate the Guidelines in non-adhering countries;
- Co-operation among NCPs; and most importantly,
- The functioning of NCPs, particularly how to improve the handling of cases.