

**Roundtable on Corporate Responsibility:  
Encouraging the positive contribution of business to environment  
through the OECD Guidelines for Multinational Enterprises**

**SUMMARY OF THE ROUNDTABLE DISCUSSION**

**16 June 2004**

*This document reproduces the summary of the Roundtable discussion which was held on 16 June 2004. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2004 Edition".*

## ACKNOWLEDGEMENTS

The National Contact Points and the OECD Committee on International Investment and Multinational Enterprises wish to thank all of those who invested their time and resources in order to participate in the Roundtable on Corporate Responsibility held in conjunction with the third annual meeting of the National Contact Points. Their names appear below.

The Roundtable participants included representatives from business, labour and non-governmental organisations.

### Co-Chairs:

*Ms. Sofia Calltorp*, Department for International Trade Policy, Swedish Ministry for Foreign Affairs, Sweden

*Mr. Phil Callaghan*, Sustainable Trade and Investment Team, Environmental Protection International Division, Department for Environment, Food & Rural Affairs, United Kingdom

Opening remarks: *Mr. Kiyotaka Akasaka*, Deputy Secretary General, OECD

### Speakers:

*Mrs. Cecilia Brighi*, Health and Safety Environmental Department, Confédération Italienne des Syndicats des Travailleurs (CISL), Italy

*Mr. Bjorn Erikson*, Working Life and Industrial Policy Department, Norwegian Confederation of Trade Unions (LO-N), Norway

*Mr. Guy Ethier*, Vice President, Environment, Health and Safety Department, Umicore, Belgium

*Ms. Norine Kennedy*, Vice President, Environmental Affairs, US Council for International Business, United States

*Mr. Mokhehi Moshoeshe*, Director, African Institute of Corporate Citizenship, South Africa

*Mr. Stephen Porter*, Managing Attorney, Center for International Environment Law (CIEL), Switzerland

*Mr. Cornelis Van Der Lugt*, Programme Officer, Division of Technology, Industry and Economics, U.N. Environment Programme, France

*Ms. Halina Ward*, Director, Corporate Responsibility for Environment and Development, IIED (International Institute for Environment and Development), United Kingdom

*Ms. Claudia Wöhler*, Federation of German Industries (BDI), Germany.

## SUMMARY OF THE ROUNDTABLE DISCUSSION

The OECD Roundtable on Corporate Responsibility is held in June every year in conjunction with the annual meeting of the National Contact Points (NCPs). The 2004 Roundtable invited leading specialists on corporate environmental performance to discuss how the OECD Guidelines for Multinational Enterprises can help promote companies' positive contribution to the environment. It focused on how the Guidelines' specific recommendations relate to a growing array of corporate tools, standards and operational guidance that already exist to help corporate managers enhance their environmental performance<sup>1</sup>.

The Roundtable was co-chaired by Sofia Calltorp of the Swedish NCP and Ministry of Foreign Affairs, and Phil Callaghan, Head of the United Kingdom's Sustainable Trade and Investment Team, Department for Environment, Food and Rural Affairs. NCPs and delegates to the Environment Policy Committee attended the Roundtable, which was held under the Chatham House rule<sup>2</sup> to allow for a candid and constructive discussion.

During the Roundtable, representatives of the business, labour and NGO communities were invited to present their views on four topics:

- Recent developments in business practices toward the environment.
- Dealing with environmental risk.
- Corporate contributions to environmental policy.
- Specific instances with environmental contents.

This summary is organised in five sections. The first section – “Environment and the Guidelines” – raises some basic issues regarding the role of corporate responsibility for the environment and the contribution of the OECD Guidelines. This is followed by four sections covering the topics listed above.

### **Environment and the Guidelines**

In his opening address, Deputy Secretary-General Kiyotaka Akasaka noted the relevance of the Roundtable for one of OECD's key priorities: the achievement of sustainable development. He stressed that the business sector is one of the key players in this process, and that one way the business sector can make a contribution is by implementing the OECD Guidelines for Multinational Enterprises. He expressed his hopes that the Roundtable would help enterprises better understand the Guidelines so they can put them into practice.

The 2002 World Summit on Sustainable Development called on governments to promote, among other goals, corporate environmental and social responsibility as an important way to enhance poverty reduction and development. Mr. Akasaka commended the Investment Committee and the Environmental Policy Committee for responding to these demands. He noted that OECD Guidelines have become one of the world's foremost corporate responsibility instruments.

The Guidelines' Chapter V is directly aimed at enterprises' environmental performance. Broadly speaking, the environment chapter provides recommendations in the following areas: environmental

management systems; communication and stakeholder involvement; life-cycle assessment; precautionary approaches; risk prevention and mitigation; continuous improvement; education and training; and contributing to public policy. However, the Guidelines go beyond this. Several general recommendations, and specific recommendations principally aimed at areas other than the environment, can have important environmental implications.

Indeed, many participants mentioned that one of the advantages of the Guidelines is their broad coverage and the interrelations between their individual recommendations. They can act as an important bridge between environmental and social concerns – for instance as serious environmental damage often involves human rights issues vis-à-vis stakeholders or local communities. The reference to supply chains in the General Policies of the Guidelines is also important in the environmental context. The Guidelines could thus be seen as an integrating framework for a range of corporate responsibility issues. An NGO representative argued that the business sector itself is split in its perceptions of the exact nature of environmental responsibility. Companies in the most developed economies increasingly mix their environmental practices – especially when operating in developing countries – with broader social and human rights concerns. The domestic companies of developing countries tend to focus more narrowly on health and safety issues.

The discussions touched upon several general and implementation oriented aspects of the Guidelines. However, the remainder of this summary focuses on the discussions of the Guidelines' environmental application.

### **Corporate environmental practices and the Guidelines' environment chapter**

A large number of tools have emerged to assist companies in enhancing their environmental management. Some of these tools have been developed within the firms themselves (e.g. environmental management systems); others have developed externally to the firm (e.g. accounting and auditing tools; reporting standards; sectoral or industry performance standards). Many multinational enterprises have taken a proactive stance toward implementing such tools, recognising reputation and efficiency benefits from being environmentally responsible. They face an economic incentive to obtain resource savings and to undertake the technological innovation that often goes hand in hand with environmental improvement. Participants noted that many of the case examples of corporate environmental enhancement mentioned in the Background Report derive from companies' everyday efforts to enhance management practices.

Corporate environmental tools propose ways in which managers can develop and implement an enterprise's environmental policies and objectives. They often do not provide guidance concerning the levels of aspiration that these policies and objective should reflect. A business representative observed that Guidelines do not set absolute performance standards, but rather to encourage companies at all levels of advancement to implement environmental management systems (EMS) and engage in a process of continual improvement. The speaker recommended that companies take an interest in EMSs options that are internationally accepted such as the evolving ISO14000 series of standards. Also, several participants opined that the proper role for the Guidelines in the environmental context could be seen as a framework for ongoing improvements to such instruments.

The remainder of the discussion in this session focused on the issues of corporate tools for dealing with environmental concerns, environmental reporting, the special challenges for small and medium-sized enterprises, health and safety, and the experiences made so far by NCPs with specific instances related to the Guidelines' environment chapter.

### *Corporate environmental tools*

A specially invited expert, drawing on the Background Report as well as on recent work done by the United Nations Environment Programme, offered the Roundtable a comprehensive overview of existing corporate tools for environmental improvement. Environmental management and reporting systems are essential components in the so-called Performance Model. Based on Total Quality Management the model sets out key enablers and impact areas. It takes the company leadership from deciding on company policy (including vision and overall responsibility) through introducing available tools for implementing sustainable production and consumption processes, defining targets and desired outcomes, to putting in place procedures for internal and external reporting and dialogue. A commitment to continuous improvement as supported by the Guidelines' environment chapter links the reporting back into the planning phase: managers use the data and experiences gathered from their efforts so far to rethink their visions and improve their strategies.

The main purpose of implementing an EMS is that it is seen as an efficient way of organising this managerial cycle. Other corporate tools are used to assist or optimise parts of the process, and the role of instruments such as the Guidelines is arguably to assist corporate decision makers in setting out their visions and strategies. Much of the discussion at the Roundtable focused on the use of one class of tools, namely the reporting and information dissemination standards (below).

The expert argued that the main remaining challenges for the corporate sector in optimising its strategies for environmental enhancement are fourfold:

- *Integration.* Enterprises that embark on an environmental initiative at the headquarters level often find it hard change attitudes throughout the organisation. Experience shows that much training and internal communication is needed. In addition, there could be a problem with horizontal integration – that is, across sectors. Technologies are often available in some sectors that, given proper action, could boost environmental performance in other sectors.
- *Product life-cycle.* Efforts to put in place a coherent approach to product life-cycles, upstream (e.g. product design) as well as downstream (e.g. ultimate consumption), represent a major challenge for companies.
- *Environment indicators.* Companies see a need to measure progress more accurately. Their efforts to establish good process standards would benefit from enhanced performance indicators.
- *Supply chains and partnerships.* More could be done in small and medium-sized enterprises. Multinational enterprises can help though their supply-chain policies, but an actual cooperation between large and small may be needed. Simply imposing demands on suppliers, especially in developing countries, is often not economically realistic.

A business representative responded that a veritable “jungle” of environmental tools is already available to the corporate sector. She said that the number and diversity of such instruments that are in active use are in fact an indicator of the success and progress of environmental management systems and tools. Still, the environment chapter of the Guidelines remains highly relevant to, and supportive of, that positive awareness and engagement by companies. On the other hand, several participants found that for the Guidelines to have the hoped-for impact, their visibility may have to be further raised – which could call for a greater effort by NCPs, business and civil society organisations alike.

## ***Reporting***

Environmental reporting is important in at least three contexts that are in practice often interrelated. First, there is a company-internal need for managerial information. Environment progress reporting is not a stand-alone exercise. It is an intrinsic part of the environment and overall corporate management process.

Second, information dissemination is an element in promotional or marketing strategies. Insofar as companies see their environmental performance as a competition parameter, they have an obvious interest in undertaking progress reporting. In addition, as mentioned by an NGO, when companies wish to move toward environmental strategies involving the ultimate consumers (e.g. the “Sustainable Consumption” framework) there is an even greater need to share environmental information with the public.

Third, reporting is often a prerequisite for stakeholder involvement. More and more companies engage in forward-looking reporting, such as the *ex ante* publication of performance targets. These are in many cases used as a basis for consultations with stakeholders and local communities. A NGO representative noted that this is one point where the purposes of good reporting interrelate: an important outcome of stakeholder consultations is to provide enterprise managers with aspirational information that can be used for their environment strategy formulation.

Several participants noted the existence of several “off the shelf” tools for environmental reporting. These include the Global Reporting Initiative’s (GRI) Sustainability Reporting Guidelines, which have an important environmental element. Another information tool is AccountAbility’s AA1000 Assurance Standards, the applicability of which is not limited to environment and sustainability reporting. Also, the ISO 14063 standard (a new member of the ISO 14000 family) will provide helpful guidance on environmental communication from next year.

A business representative noted that while these are considered as high-quality instruments their implementation calls for a large investment of time and money. As relatively few consumers and other stakeholders are interested in environment performance reports *per se*, some enterprises may find they have to justify the investment. A NGO representative argued that enterprises should be aware of a need to integrate with society as a whole and that environmental reporting involves a large number of stakeholders. Focusing on limited “target groups” could run counter to the objective of involving the public.

One participant informed of recent developments underlining the relationship between the Guidelines and the issue of performance reporting. An indicative table has been drawn up by the Global Reporting Initiative, demonstrating how the Sustainability Reporting Guidelines can be used to report on the implementation of the OECD Guidelines for Multinational Enterprises. The OECD Investment Committee has indicated that it finds this table a useful tool, among others, and has included it on the Guidelines website [[www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)].

### ***Small and medium-sized enterprises***

There was broad agreement among participants that encouraging small and medium-sized enterprises (SME) to implement environmental procedures and management systems will be an important challenge. Since, in the words of a business representative, environment management systems in their simplest form involve little more than a target, a reporting mechanism, streamlined managerial practices and a commitment to continuous improvements, even relatively small companies can easily embrace them. However, there appears to be an information gap, with the owners and

managers of many SMEs insufficiently aware of the benefits, and limited costs, of environmental management.

An NCP said that, according to its national experience, it is relatively easy to engage SMEs in a constructive dialogue about environmental issues. Among other things, small companies mostly operate in proximity of the environmental impact of their activities and are therefore motivated, even in the absence of elaborate formal obligations, to deal with the issues. However, it is more difficult to engage these enterprises on the basis of the Guidelines, which are perceived as being on too high a level of aspiration and somewhat too far from the commercial reality they face. In the words of a business representative, SMEs tend to look at the “demands” put to them and disqualify themselves.

A trade union representative argued that, as the shared values represented by the Guidelines are thought to apply to all enterprises, there is no need for different contents for different enterprise sizes. Rather, the question is how to make the SME response more effective. There would seem to be a need for awareness campaigns and technical assistance to the smaller enterprises. The question is whether other actors, for instance local authorities, could also play a role in providing environmental support services to SMEs.

Two participants informed about recent initiatives to assist SMEs with improving their environmental practices. UNEP and the Wuppertal Institute have developed a training package “The Effective Entrepreneur” targeted at small enterprises. It takes the form of a calendar-cum-guidebook, which each month introduces a new element of environmental management, eventually ending with formal environment reporting. GRI is in the process of producing a user’s guide for SMEs. It is also developing a number of special software tools to assist the reporting by small or unsophisticated companies by lowering transaction costs.

### ***Health and safety issues***

The health and safety issue figures prominently in the environment chapter of the Guidelines, which includes recommendations on impact assessments and precaution as applied to health and safety, as well as the handling of hazardous materials. It is perhaps less clear what this implies for the relevance of the more specialised tools for occupational health and safety in the context of corporate environmental management.

Trade union representatives argued that the issue of occupational health and safety cannot be separated from the environment. In consequence, the involvement of employees, including through trade unions, is an essential element of sound corporate environmental practices. One example is the occupational health and safety-related work of ILO, which have been undertaken jointly by employers, governments and trade unions.

A specially invited expert provided details about ILO’s activities. In the area of chemical safety the ILO Convention on the Prevention of Major Industrial Accidents addresses environment among other issues. The ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) is the only instrument adopted by an international organisation and negotiated by a tripartite committee of experts. ILO-OSH 2001 provides for the development of tailored guidelines for special target groups such as SMEs. In the area of reporting, a health and safety protocol is being developed for GRI Reporting Guidelines, which calls for the application of ILO-OSH 2001.

## **Dealing with environmental risk**

Managing risks to avoid damage to the environment and human health is key to sound environmental management. Preventing, mitigating and controlling environmental and health damage related to a company's operations is one aspect of this, as covered by the recommendations in the Guidelines' Chapter V, Point 5. Moreover, special challenges arise in situations of scientific uncertainty. Several instruments adopted by national authorities enunciate a "precautionary approach", but except for the Guidelines (Chapter V, Point 4) none of these is explicitly addressed to enterprises. The Guidelines recommend that enterprises act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible damages resulting from their activities.

Many participants at the Roundtable noted that, whereas the question of where to draw the line between government and corporate responsibility is an important cross-cutting issue, it is, particularly pertinent in the context of risk management. As a corporate representative said, few, if any activities are risk-less and so it is unrealistic to expect companies to shun all environmental risks. This is one reason why companies cannot be left alone managing risk; there needs to be a degree of involvement on the part of government and civil society to discuss *inter alia* what constitutes acceptable risk levels.

An NCP observed that national authorities' approach to managing risk differs greatly across countries, so it may be unrealistic to expect businesses to come up with a common approach. What is important, according to this argument, is to find the most efficient approach by adequately balancing government intervention and voluntary approaches within each country. On the other hand, in all countries companies are in a better position than members of the public to know the risk of their activities so a strong case can be made for undertaking company-driven consultative processes. An NGO representative argued that this particularly applies when MNEs operate in developing countries, where companies may have more resources available to address risks than host country authorities.

### ***Environmental risk management in general***

An NGO representative argued that whilst the OECD Guidelines and other corporate responsibility instruments may have a considerable impact on companies' approach to risk management, other motivating factors could be even more important. Notably, the corporate sector has a direct economic interest in avoiding liability. The concept of liability covers not only legal liability, and the financial liability that sometimes flows there from, but also social liability such as the risk to corporate reputation.

A speaker from the business sector stressed the importance of considering all of the economic impacts of environmental risk management. The economics costs of, say, not pursuing an activity should be weighted against environmental risks. Failure to do so could lead to higher prices that consumers are often not ready to pay, not even for the sake of environmental protection. This point was questioned by a representative of an international organisation, who considered that better risk handling usually goes hand in hand with more efficient management, in which case there may be no burden for consumers to bear.

An NGO representative, acknowledging that corporate behaviour in this area may hinge on consumers' willingness to pay, suggested that outcomes may vary considerably between developed and developing countries. However, argued she, the concept of corporate responsibility itself implies that companies are willing to be proactive in improving environmental performance, and not just rely on consumer behaviour. However, governments could assist progress in this area by educating consumers better and promote sustainable consumption.

A trade union representative mentioned the issue of a company's responsibility to inform not only consumers but also the general public about the risks of their activities and products. For example, many substances and production processes that are considered as dangerous in OECD countries are routinely used in developing countries – a problem that could arguably be overcome through better information. Several speakers from different sectors also emphasised the need for broad-based stakeholder involvement in risk management. While environmental risk is the responsibility of governments and business, the population has a right to be protected and informed. This also highlights the importance of environmental reporting, which needs to be informative and reliable.

A business representative observed that risk management is often seen as involving a choice between two options, namely prevention or compensation. She argued that in reality there are many more alleys to be explored, including cooperative approaches. An NGO representative agreed with business speakers that enterprises need a certain flexibility in their choice of risk management procedures, but opined that leaving the decisions entirely to business is not a good solution either. Several participants found that the proper role for governments is to establish a framework for risk management within which a degree of flexibility is provided.

### ***Precaution***

Precaution, as referred to in the Guidelines, implies that companies do not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise damage. Several speakers observed that the Guidelines' recommendation of precautionary approaches to enterprises is a challenge, since a traditional role shared by regulators is to apply precaution, subject to a consultative process with enterprises and members of the public. A business representative noted that there is no internationally accepted precautionary approach, and there are many interpretations of what constitutes acceptable environmental risk – particularly when taken in conjunction with other societal priorities and local conditions. It would therefore seem essential that countries institute and enforce appropriate laws that embody scientific approaches as well as their citizens' risk tolerance.

Speakers from NGOs and trade unions highlighted that it is crucial not only to have a plan to address risks, but also the adequate structure in place to reach continuous improvement. Precaution needs to be incorporated in everyday management. Many companies have put in place systems to address emergency situations, which involve prevention, preparedness and control. Such systems have to involve other stakeholders. A business representative argued that, when companies have an environmental management system in place, as recommended by the Guidelines, they will in most cases have gone a long way in terms of applying precaution.

An NGO representative warned that there is a need to balance the advantages and drawbacks of precaution. Lack of precaution and foresight may lead to a company's liability for the consequences of damages, may affect its reputation and have huge economic impacts. On the other hand, excessive precaution may stifle innovation and lead to lost business opportunities. Finding the right balance is difficult, and decisions are often controversial. This applies equally to international trade, where exporters from one country can be affected by measures taken out of precaution in another country.

An important issue in the context of precaution is the role of science. The concept of sound science is a relative one, and so is the notion of scientific certainty. Also, there is not just "one science" – different scientific reports on one issue can come to different conclusions. In some cases, even a minority scientific view can justify acting with precaution. An NGO representative said that as scientific research is often financed by industry its findings may be biased. There have been recent, highly publicised cases of research-intensive firms apparently having hidden the results of scientific

research which might have had negative implications for themselves. Some participants argued that, if risk management is to involve a broad range of stakeholders then there is a role for governments to ensure that all relevant scientific information is available to the public.

### **Corporate contributions to environmental policy**

The Guidelines recommend that enterprises engage in stakeholder communication and consultation (Chapter V, Point 2). Chapter V, Point 8 of the Guidelines calls upon enterprises to contribute to this process, “for example, by means of partnerships and initiatives that will enhance environmental awareness and protection”. The two issues are in practice interrelated, because partnerships between different stakeholders are an integral part of the policy-making process in many countries. In general, the development of environmentally meaningful and economically efficient public policy hinges upon the successful engagement of a wide segment of the population.

### ***Positive business contributions to environmental policy development***

The positive involvement of the business community in the development of environmental policy in many cases is now well recognised and policy makers frequently solicit contributions to help them lay the informational basis for policy development. There was a broad consensus among business representatives at the Roundtable that:

- Business contributions help to develop the most effective environmental policy solutions and at the same time help to ensure that business has full ownership of environmental regulation. On top of this, they often contribute to environmental enhancement in non-OECD countries through their standards, technologies and environmental management;
- Business involvement should be positive and proactive with an objective to raising environmental standards and exceeding existing environmental requirements. In some cases companies have developed codes of conduct that stipulate using the highest standards in any country of operation;
- All business operations are ultimately local and context dependent. There is therefore no “one-size-fits-all” approach to stakeholder involvement, which needs to be developed on a case-by-case basis, taking due account of the specific context, and namely confidentiality and cost considerations.

NGO representatives noted that, while the Guidelines do encourage enterprises to contribute to the development of public policy, the General Policies chapter of the Guidelines sets some boundaries to that engagement. This section of the Guidelines recommends that companies “refrain from seeking or accepting exemptions not contemplated in statutory or regulatory frameworks related to environment, health, safety, labour, taxation, financial incentives, or other issues”. It also says that companies should “abstain from any improper involvement in local political activities”. In other words, one could argue that corporate contributions to environmental policy making is helpful when motivated by genuine environmental concerns, but not necessarily so in the context of lobbying and petitioning for narrow company interests. In this context it was suggested that enterprises could make more frequent formal contributions to the public policy process, rather than acting behind the scene.

An NGO representative argued that, according to the Guidelines, it should not be the objective, or the outcome, of business involvement in policy development to fuel a “race to the bottom” or “regulatory chill”. The example of stabilisation clauses to protect investors from rent seeking by the host country was mentioned as a legal tool that could potentially have such an effect. Another NGO

representative argued that some large MNEs negotiate exemptions from environmental regulations in developing countries. Two NCPs responded they are not aware of concrete cases, but that they considered such behaviour as unacceptable – even if, as appears often to be the case, it is the host government itself that offers exemptions as an investment incentive. Business representatives argued that this issue needs to be placed in the greater context of avoiding and condemning public sector corruption, of which companies are commonly the victims rather than the initiators.

A trade union representative noted that civil society has recourse to implementation procedures for the Guidelines if they are aware of companies accepting environmental policy derogations. However, that requires that NGOs work efficiently, and this may not always be the case, especially in developing countries. One NGO representative suggested that a greater effort should go into capacity building among civil society organisations in developing countries.

### ***Stakeholder involvement and partnerships***

Business representatives pointed out that companies can most effectively communicate with stakeholders through their actual behaviour and the use of best practices on the road to sustainable development. The reporting of enterprise performance is therefore a key tool in communicating with various stakeholders and making contributions to the policy process. Many companies produce plant-level as well as overall sustainability reports that allow them to address policy issues at both the local and the overall levels, sometimes in partnership with other relevant stakeholders.

Due to their multinational structure, MNEs are in a unique position to transcend geographical boundaries. With regards to corporate contributions to policymaking, this could be particularly relevant when multilateral agreements between States are being discussed. As examples of active business contributions in this area a participant mentioned the Montreal Protocol on Ozone Depleting Substances and the mechanisms established under the Climate Change Convention and the Kyoto Protocol.

The usefulness of partnerships with the purpose of providing business inputs into the public policy process is mentioned in the Guidelines. Voluntary approaches involving private-private or public-private partnerships were mentioned as a useful means to establish dialogue, but a business representative said that the problem of “free-riders” (companies benefiting from these processes without being willing to contribute to them) is a major obstacle to their implementation. A business sector representative stressed the importance of voluntary covenants, such as “Responsible Care” in the chemicals sector, as a way for enterprises to interact with the public and establish performance benchmarks for themselves.

Some participants pointed to a need to be particularly careful when picking partners for stakeholder involvement. Intergenerational issues are a central consideration on the sustainable development agenda, and if enterprises interact with stakeholder groups that have only existing players’ interests at heart, this dimension could be lost.

### **Specific instances with an environmental content**

Most of the specific instances brought before the NCPs so far have focused on labour, social and human rights concerns. An NGO representative informed that there has been an environmental component to about 10 of the specific instances brought by NGOs in recent years. Most of these instances have not yet been brought to a conclusion. Others have been concluded without reference to the environmental *enjeu* of the specific instance<sup>3</sup>.

An NCP reported on a specific instance which was brought before it in 2002 by two NGOs. The specific instance regarded, among other things, a multinational enterprise's aquaculture activities on its national territory. The NCP first undertook information gathering drawing on the enterprise in question, the NCP's own resources and the relevant government agencies; next organised a roundtable involving NGOs, the enterprise and state agencies.

The NGO contention had been that the enterprise had not implemented the Environment Chapter, Point 5 of the Guidelines, by failing to apply a precautionary approach. The concrete grounds for the complaint were the contamination of the water around the aquaculture with algae, some of which are toxic. In addition, the NGOs asserted that the company, while complying with national regulations, had not carried out an "adequate" environmental impact assessment. The enterprise argued, based on reports by various agencies, that the algae bloom was due to several causes; that it had undertaken monitoring of water and seabed to take precautionary action; and that the algae bloom occurred already prior to its investment in the area.

The NCP observed that its government is constitutionally required to safeguard the environment, that national law establishes requirements to environmental impact assessments and that specific environmental regulation of aquaculture is in place. The NCP considered technical reports on the environmental damage in the area of the company's investment. It concluded that pollution levels did not exceed the limits sanctioned by national law and environmental regulation. The case is still pending due to the fact that a new piece of legislation was enacted in December 2003 which tightens environmental requirements in the aquaculture sector. The recommendation of the NCP was to await the implementation of this law, commission a second report from the national fisheries services and organise a new round of consultations.

A business representative commented that voluntary standards do not exist in a vacuum; they are built on a foundation of laws and enforcement. They are preconditioned by the implementation of environmental rules and standards set by national governments. A NGO representative observed that compliance with national law is the minimum that MNEs need to achieve, but that the Guidelines are about accepted international standards. If companies strive toward high environmental standards, as many of them claim to do, then there is a wealth of benchmarks other than mere compliance against which one can measure corporate performance. The NCP responded that, regardless of the level of aspiration, there is a need to establish upfront whether there is compliance with national law. In its experience, the involvement of a large number of state agencies may make this process more complicated. Another NCP observed that additional problems arise when specific instances are brought forward related to operations in countries not adhering to the Guidelines, which have, in some cases, national legislation that falls short of the Guidelines.

A NGO representative mentioned that specific instances mostly regard situations that have already deteriorated, and considered that it might be better if NCPs assumed a more proactive and preventive role. Also, in cases involving the operations of companies in developing countries there is often a resource problem or an information gap between NCPs and the foreign-invested enterprise. For specific instances to work, there could be a need for NCPs to go "on the ground" in developing countries.

## Notes

- 1 Documentation used at the Roundtable included an issues paper, a fact finding study of the environmental practices of the enterprises listed on the FTSE All-World Developed stock index, and a Background Report surveying tools and environmental practices available to enterprises wishing to implement the OECD Guidelines.
- 2 The Chatham House rule states that “participants are free to use the information received, but neither the identity nor the affiliation of the speakers, nor that of any other participant, may be revealed.”
- 3 This was the case with a specific instance involving, among other things, the environmental consequences of a European company’s operations in a West African country. The specific instance ended on the issue of customer-client relationships, without proceedings being issued about the main environmental contents of the case.