

# OECD Watch newsletter

March 2005

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## OECD Watch News

### □ OECD Watch programme to support NGO participation from the South

In January 2005 OECD Watch started work on a new capacity building project. The project is coordinated by IRENE and is funded by the Dutch Foreign Ministry. The four-year project will facilitate training seminars and other work with NGOs in Asia, Africa and Latin America. This work should help stimulate debate in non-OECD countries about corporate accountability and provide guidance about how National Contact Points can deal more effectively with complaints about the activities of companies in non-adhering countries.

The OECD Watch Capacity-Building Project 2005 – 2008 includes provision for research and fact finding to describe the activities and practices of TNCs in the South. It will produce case-based material about specific companies and company activities, with a special focus on the procedures of the National Contact Points of the OECD member states and adhering countries. The project will contribute to the Newsletters and briefing papers produced by OECD Watch, as well as the development of the website and database of cases.

An inter-regional seminar will be held once a year during the 4 years of the project being 2005 – 2008, in Europe, Asia, Africa and one in Latin America. The aim of each inter-regional seminar is to provide training on the OECD Guidelines, exchange information and experiences on research on TNCs, experiences with writing and fil-

ing complaints, NCP procedures, and strategies and so on. The first interregional seminar will be held in Europe, immediately after the OECD Watch Multi-Stakeholder Roundtable Conference in Brussels on the 1st of April. At the meeting the project partners of IRENE and other OECD Watch members from the South will discuss their work programmes and plans for the coming year.

■ **OECD Watch Multistakeholder Roundtable Conference 1st April 2005, Brussels**

## PUTTING THE OECD GUIDELINES FOR MNEs INTO PRACTICE

*The Guidelines as an instrument for implementing CSR*

On the fifth anniversary of the adoption of the revised OECD Guidelines, and as part of its EU-funded project to promote their use, OECD Watch is organising a Roundtable in Brussels. Participants include representatives from businesses, governments (EU, OECD, NCPs and others), trade unions and NGOs from all over the world. Five years on OECD Watch will evaluate the effectiveness of the instrument and different stakeholders have been invited to discuss and present their experiences in using the OECD Guidelines to implement CSR policies.

The Conference will examine the practical application of the OECD Guidelines for different stakeholders, and to try to reach agreement about a common and consistent approach to the use of the OECD Guidelines as a tool for corporate accountability and CSR policies.

Speakers include representatives from the OECD Investment Committee, The European Commission, The Dutch and Swedish Governments, GRI, ILO, TUAC, BIAC, multinational corporations, and civil society organisations. For registration: [oecdwatch@somo.nl](mailto:oecdwatch@somo.nl)

## PROGRAMME

### MORNING

#### Keynote speeches

- Speech by Chair of the **OECD Investment Committee**, Dr. Manfred Schekulin
- The perspective of the **European Commission** on the OECD Guidelines, Giusy Chiovato-Rambaldo, Employment and Social Affairs DG
- The complementary character of the ILO's Tripartite Declaration, Michael Urminsky, **International Labour Organisation**
- A civil society evaluation of the OECD Guidelines, by **OECD Watch**
- The Guidelines in practice: case example from **business**, Vincent van Assem, ABN Amro

#### Panel discussion

- John Evans, TUAC
- Dirk Manske, BIAC
- Colette Vanstraelen, NCP Belgium
- Teresa Fogelberg, Global Reporting Initiative
- Hannah Owusu-Koranteng (Wassa Association of Communities Affected by Mining, Ghana)

### AFTERNOON

#### Working groups

1. OECD Guidelines and Supply Chain Responsibility
2. CSR and Investment; how financial markets can use the Guidelines
3. Governments and the OECD Guidelines; NCPs and other national policies
4. The Guidelines, Conflict Resolution and Development

- **Concluding statements:** challenges and opportunities for the way forward
- **17:30 Closure and drinks**

### ■ Successful OECD Watch NGO Training Seminar Berlin, October 2004

OECD WATCH organized a successful two-day training and strategy seminar in Berlin last October. It was designed to support and build capacity on the use of the OECD Guidelines among NGOs in the EU member states, particularly in new EU member and applicant countries. More than 40 participants from 20 countries participated in the event, which was held at the Dietrich-Bonhoeffer-Haus. Participants welcomed the opportunity the seminar provided for exchanging views and experiences in using the Guidelines and for obtaining up-to-date information on progress with complaints raised with National Contact Points (NCPs).

The final session was devoted to a general assessment of the relationship between the OECD Guidelines for Multinational Enterprises and other instruments including the UN Human Rights Norms for Business, national and international law. The panelists considered what could be done to strengthen the OECD Guidelines and how the experience of bringing complaints might be used with other instruments. Shirley van Buiren (Transparency International, Germany) described the specific characteristics of the OECD Guidelines and the potential strengths of the National Contact Points. She put forward a proposal for a peer review system to reduce the inconsistencies and other systemic weakness of the NCPs' current implementation practice. William Bourdon, a lawyer from the Association Sherpa (France), which aims to mobilise skills and know-how to instigate civil or criminal proceedings against companies responsible for human rights violations in developing countries, discussed the linkages between corporate violations of environmental and human rights in national and international law. He spoke about the importance of the OECD Guidelines as a means of changing corporate attitudes and helping to create a new definition of the role of the companies.

OECD WATCH would like to acknowledge the generous support it received for the training seminar from the European Commission's Employment and Social Affairs DG, Novib- Oxfam Netherlands, Germanwatch and EED.

*Peter Pennartz*

A full report on the Berlin training seminar is available at: [www.oecdwatch.org](http://www.oecdwatch.org)

### ■ Supply Chain: arbitrary and discriminatory interpretations?

One of the major characteristics of the globalised economy is the enlargement and complexity of supply chain relationships. NGOs and trade unions are united in their belief that multinational enterprises should take responsibility for their supply chains. One of the strong selling points after the review of the OECD Guidelines in June 2000 was the inclusion of a specific reference to relations with suppliers and other business partners. But from the beginning, NGOs had misgivings about the weakness of the text, which only asks companies 'to encourage, where practicable, their business partners, suppliers and sub-contractors to apply principles of corporate conduct compatible with the Guidelines'.

Problems soon arose when some National Contact Points (NCPs) started to reject complaints about supply chain issues, arguing that the Guidelines did not apply to trade. This provoked an intense debate about the scope of the Guidelines. The fact that the text contains various references to both trade and investment was ignored or downplayed. The agreement on supply chain, which had been negotiated with all parties during the review, has been jettisoned as a result of rearguard lobbying by business groups.

In 2003, after discussions behind closed doors, the Investment Committee laid out its new position: (i) the Guidelines are an Annex of the OECD's Declaration on International Investment and Multinational Enterprises which "indicates the investment intent of the drafters"; but, (ii) as a major corporate responsibility instrument, the Guidelines reflect common values relevant to other types of business activities in other contexts; and, (iii) in the absence of precise definitions of international investment a case-by-case approach is warranted. The curious and undefined term "investment nexus" was coined as a criterion for inclusion. In this scenario "trade cases" would be specifically excluded. But not all NCPs support this change and few believe that the distinction between trade and investment can be easily drawn. The scope of International investment Agreements has expanded and many different sectors, including services, are included. Although the Investment Committee claimed that the Statement did not "aim to change the balance reached during the 2000 review" but encouraged "flexibility in interpretation", NGOs have repeatedly expressed

concern about the arbitrary and discriminatory re-interpretation of the supply chain provision. "We find that activities explicitly defined as investment in the context of bilateral agreements are being reclassified as trade by some NCPs to block an OECD Guidelines' complaint." said an OECD WATCH coordinator, Patricia Feeney.

A new paper by OECD WATCH traces the history of the supply chain debate and outlines the problems with the implementation of the provision by NCPs. The paper presents OECD WATCH's view of the scope of the Guidelines. It illustrates, with references to specific complaints, how different NCPs have served up widely varying interpretations of 'the investment nexus'. The paper offers a number of recommendations to governments and business about how implementation could be improved. In

particular, the paper calls for a return to the broader understanding of the scope of the Guidelines in keeping with the spirit of the 2000 review. Five years ago the revised Guidelines were seen to represent good practice wherever enterprises operate, not just within the OECD area. No artificial distinction between trade and investment was made.

At the forthcoming OECD WATCH Roundtable in Brussels a workshop will consider the relevance of the supply chain to the Guidelines. The paper has been tabled for discussion at the next meeting of the Investment Committee in April in Paris.

*Cornelia Heydenreich*

The full text of OECD WATCH's policy paper, "The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility", is available at: [www.oecdwatch.org](http://www.oecdwatch.org)

# NCP Cases

## ■ OECD WATCH's DATABASE and Overview of cases

By February 2005 there was a total of 34 complaints filed by NGOs with National Contact Points. OECD Watch has just finished developing its database that contains most of the essential information about each of these cases. The database provides details on the parties involved, the provisions of the Guidelines concerned, and any relevant documentation. The database is available for members of OECD Watch. A publicly available and regularly updated table with the basic outline of the cases is posted on the OECD Watch website ([www.oecdwatch.org](http://www.oecdwatch.org)).

Those interested in establishing precisely how many cases have been filed or the number of companies involved need to exercise a degree of caution with the figures. Some of the NGO complaints concern more than one company and they need to be cross checked against other sources. For example, TUAC publishes information on cases and in its most recent analysis reports on 50 complaints raised by trade unions with NCPs. But occasionally, there is an overlap with OECD WATCH's list as in a few case both trade unions and NGOs have (either jointly or independently) filed a complaint against the same company. Examples include the complaints against Pinault Printemps Redoute (PPR), Chemie Pharmacie Holland, and the Toyota Motor Corporation. The OECD Secretariat has started to compile its own list and according to the OECD 2004 Annual Report of the NCPs as of June 2004, 78 specific instances had been filed with NCPs.

For the Investment Committee's own report "OECD Guidelines for Multinational Enterprises: Specific instances considered by National Contact Points", 30 September 2004, go to: [http://www.oecd.org/findDocument/0,2350,en\\_2649\\_34889\\_1\\_119666\\_1\\_1\\_1,00.html](http://www.oecd.org/findDocument/0,2350,en_2649_34889_1_119666_1_1_1,00.html)

For TUAC's list of cases, go to: <http://www.tuac.org/statemen/communiq/listofcasesOct04WithAnnexes.pdf>

## ■ New cases since October 2004

Since the latest OECD Watch Newsletter NGOs new cases have been filed with National Contact Points, concerning Bayer and Electricité de France.

### ■ *Bayer and child labour in India*

In October 2004 the NGOs Germanwatch, Coalition Against Bayer Danger and Global March Against Child Labour submitted a complaint against Bayer with the German National Contact Point. A 2003 study conducted by the Indian Institute "Global Research and Consultancy Services" showed that cotton seed suppliers in India make use of child labour.

Production of hybrid cotton seed is very labour-intensive and is mostly done on small cotton-farms which supply large companies. These farms, mostly situated in South India, employ children in large numbers, predominantly girls between 6 and 14 years of age. Many of them work in bonded labour to pay off debts owed to loan sharks. Large quantities of pesticides are used which damages the health of the workers, particularly children. One of the companies involved is ProAgro, a Bayer subsidiary.

NGOs have urged Bayer to improve conditions along its supply chain and put an end to the exploitation of child labour. Despite a flurry of activities and promises the practice of employing children continues. The NCP has declared the case eligible.

*Cornelia Heydenreich*

### ■ *Electricité de France and Nam Theun 2, Laos*

In November 2004 a group of NGOs (Proyecto Gato, Amis de la Terre, World Rainforest Movement, Finnish Asiatic Society, CRBM, International Rivers Network and Mekong Watch) submitted a complaint against Electricité de France with the French NCP. The complaint concerns the Nam Theun 2 (a hydroelectric power) project in Laos. Electricité de France is the main shareholder. Although construction is planned to

begin in May 2005, key baseline data is lacking, many studies are still incomplete, and many of those studies that have been completed will not be released to the public.

There are concerns about the negative social and environmental impacts of the project including adverse impacts on biodiversity. In addition, the project will have major impacts on the livelihoods of villagers: the Nam Theun 2 project will impoverish thousands who depend on the tropical river ecosystems for their livelihoods. Roughly 6,200 indigenous people living on the Nakai Plateau would be evicted to make way for the Nam Theun 2 Dam and its reservoir. Another 120,000–150,000 people depend on the Xe Bang Fai River for their livelihoods. It is likely that they would suffer from destruction of fisheries, flooding of riverbank gardens and other impacts caused by the project.

EdF has until this May to secure financing for the Laotian venture, according to the power purchase deal it signed with the Electricity Generating Authority of Thailand in 2003. The case has been accepted by the French NCP. A source at the French finance ministry said the review would be completed before the World Bank's decision on financing, which is expected no later than May 2005.

*Sebastian Godinot and Jan Capelle*

#### ■ **Toyota and Peugeot Failings over Czech Car Plant**

The Guidelines are beginning to be used as a key reference point by NGOs in Eastern Europe. More than 35 organizations from across the Czech Republic are urging car manufacturers, Toyota and Peugeot Citroën to address the negative impact of their new plant. The civil society organizations claim that the companies' actions breach the OECD Guidelines for Multinational Enterprises, as well as Czech and Community law.

Production in the new plant near Kolín is just starting with an expected annual output of 300 thousand cars. It is the largest foreign direct investment in the Czech Republic. Toyota and Peugeot Citroën have signed a special contract with Czech state and the local authority in Kolín which contains many provisions that the groups claim pose a conflict of interest for officials directly involved in approving the construction of the plant.

The car manufacturers have allegedly underestimated the transit system for the new plant and have no reliable study regarding the impact of supply traffic. Many local citizens will be heavily affected by noise and pollution from freight traffic to and from the plant. Property owners have asked Toyota and Peugeot Citroën to remedy the situation. People living near the plant will also be affected by noise coming from the plant itself.

A detailed report "Proposal for Putting Corporate Social Responsibility into Practice for Toyota Peugeot Citroën Automobile Czech, s. r. o." is available at: [www.sedlakjan.cz](http://www.sedlakjan.cz), or at [www.eps.cz](http://www.eps.cz).

#### ■ **Successful Outcome for Euzkadi workers (Mexico)**

In January 2005, a settlement was reached between the German tyre producer 'Continental' and the workers of the 'Euzkadi' factory, its Mexican subsidiary. After a three-year strike against the illegal closure of the factory, the workers have achieved their most important demands: the factory has been reopened and they have been reinstated. On top of this, the workers received 50 per cent of the shares in the factory. Unfortunately, according to Germanwatch, success cannot be attributed to the effectiveness of the OECD Guidelines' procedures although it provided a focus for the workers' campaign. The complaint was first submitted to the German NCP in May 2002 but then transferred to the Mexican NCP where it was mothballed.

# News from the OECD

## ■ Investment Committee News

*Mr. Manfred Schekulin* (Austria),  
Chair, Investment Committee  
*Mr. Vernon MacKay* (Canada),  
Vice-Chair, Investment Committee  
*Mr. Wesley Scholz* (United States),  
Vice-Chair, Investment Committee  
*Ms. Anna-Maj Hultgard* (Sweden),  
Chair, Working Party of the Investment Committee

Chris Legg (Australia) was the Chair of the Advisory Group on Co-operation with non-Members on Investment. Chris Legg has been promoted to a new position in the Australian Treasury, which means he will be leaving the Committee. The Australian NCP has played a constructive role and always tried to find common ground among the different social partners. He has been a strong advocate for greater transparency by the OECD and NCPs. His good humour and common sense will be missed.

A database of OECD bodies is available at:  
<http://webnet3.oecd.org/OECDgroups/>

## Clarifications

One of the responsibilities of the Investment Committee is to issue clarifications should National Contact Points (NCPs) have a query about how to interpret or apply the Guidelines. The recognized advisory bodies (i.e. BIAC and TUAC) may make representations if they believe an NCP has incorrectly interpreted the Guidelines in specific instances. They may also ask the Committee to consider whether an NCP is fulfilling its responsibilities in handling cases. Consideration of the merits of a complaint is outside the remit of the Investment Committee because, at the time of the Review, governments and business opposed it having a quasi appellate role.

## ■ Swiss attempt to restrict complaints mechanism

In July 2004, the Swiss NCP submitted a request for clarification - only the second such request since the review of the Guidelines. It can be seen as yet another attempt to restrict the implementation procedures of the Guidelines. The NCP claimed that a distinction should be made between the substance of the Guidelines and their implementation in particular cases. It argued that

while the Guidelines are aimed at the activities of businesses at home and abroad, the procedure for implementation by the National Contact Points in "specific instances" should theoretically be limited to issues arising in a context of international investment. It is an absurd proposition that home companies in OECD countries should be given more favourable treatment than a company operating in non adhering countries, where it is generally accepted implementation of the Guidelines is more challenging. Moreover, as noted in the background paper by the Secretariat, "the global economy and international investment ...do not always give rise to clear boundaries between national and global transactions, between home and host country operations, or between foreign and domestic issues". The Committee is expected to reach a decision at its April meeting.

## ■ UK Government's intervention in the BTC case criticized

OECD Watch is in an anomalous position in that it does not have any formal standing to request clarifications but it has received reassurances that the Committee will consider substantiated submissions from NGOs. In November 2004 a group of NGOs involved in the complaint about the Baku-Tbilisi-Ceyhan (BTC) oil pipeline project wrote to the Committee expressing concern about the UK NCP's handling of the specific instance. The NGOs maintained that the BTC consortium's "failure to reply before financial closure has ensured that the Complainants can no longer be assured of a fair and independent assessment of the specific instance given that the UK government is now a party to the project by having agreed to provide support through the Export Credit Guarantee Department (ECGD), the World Bank and the EBRD". The NGOs believe that British Government ministers and officials prejudiced the outcome of their complaint by publicly stating that the BTC project was compliant with the Guidelines before the specific instance process had been assessed. On 17 February 2005 the Committee responded stating they were satisfied with the UK NCP's assurances that (1) the competence and responsibility for handling and assessing specific instances within the UK government rest with the UK NCP and (2) that the specific instance raised will receive impartial attention. NGOs are more sceptical and fear



that public pronouncements by senior government ministers cannot easily be discounted by the NCP.

### ■ **Business as Usual in "Weak Governance Zones"**

The fallout from the reports of the UN Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth from the Democratic Republic of the Congo (DRC) continues to influence the work of the OECD. The Investment Committee and NCPs insisted that they alone had oversight of the complaints against the companies found by the UN Panel to have been in breach of the OECD Guidelines. But so far the decision by governments to entrust this work to the discretion of the NCPs has failed to produce clear or satisfactory outcomes. Many NCPs have seemed markedly reluctant to follow specific instance procedures against the companies concerned. The UK's All Party Parliamentary Group on the Great Lakes (APPG) last month issued a report that criticised the Department of Trade and Industry's handling of the DRC-related cases. In February 2005, the Austrian NCP summarily rejected complaints against H.C. Starck, the Port of Rotterdam and A. Knight Ltd that unusually had been filed by another company, Krall Métal. It is the first time a company has resorted to the procedures since the 2000 Review. The NCP argued that however reprehensible or unlawful the activities of the three companies might have been in relation to the exploitation of Congolese minerals, because there was no 'investment nexus', they lay outside the Guidelines. According to Krall Métal, both H. C. Starck and A. Knight have investment-like relationships with KHA, a German company operating the SOMIKIVU mine in the Eastern DRC. The narrowing of the scope of the Guidelines' and the arbitrary nature of the procedures, compound other deficiencies highlighted in the recent report of the Office of the High Commissioner for Human Rights (OHCHR) on business and human rights. According to the OHCHR report, the Guidelines lack "universal authority" and "specificity" in the references to human rights. The OHCHR report also stresses the need to improve protection for human rights in situations where a government is unwilling or unable to do so.

The Investment Committee has been looking at ways of increasing awareness of the OECD's "integrity instruments" (e.g. OECD Anti Bribery Convention, Principles of Corporate Governance and the OECD Guidelines) and making them "a risk management tool" for companies operating in conflict prone countries. The OECD has produced

an interesting draft paper "Conducting Business in Weak Governance Zones: issues for Discussion and a Case Study of the Democratic Republic of the Congo". Views have been solicited and the responses from companies, lawyers, academics and NGOs have been posted on the OECD's website. The purpose of the project is to examine the roles and responsibilities of companies in trouble spots around the world. In December 2004, the OECD hosted a High Level Expert Consultation on the issues. Some business representatives like De Beers called for a universally recognized code of conduct for companies wanting to bring benign investment to post conflict countries. This echoes the results of the APPG's survey that found a common consensus among most companies that more practical guidance about how to operate in conflict situations was needed. BIAC expressed grave reservations about the promulgation of "general guiding principles beyond or supplementing the OECD Guidelines".

A follow up conference entitled Alliances for Integrity – Government and Business Roles in Enhancing African Standards of Living took place on 7 - 8 March 2005 in Addis Adaba. The conference was jointly organized by the OECD, the New Partnership for Africa's Development (NEPAD), the UN Global Compact and Transparency International. One of the aims of a conference is to contribute to evolving frameworks for good corporate behaviour in Africa, in the hope this will improve the investment climate on the continent. At the OECD WATCH Roundtable in Brussels on 1 April, a workshop will discuss the Guidelines, conflict resolution and development. It will include a report on the outcomes of the Addis Ababa Conference from Anna-Maj Hultgard, of the Swedish Foreign Ministry. Other speakers will present the APPG's findings, OHCHR's report on business and human rights, and the recommendations of the Commission for Africa.

*Patricia Feeney*

Responses to the OECD's Questions on Responsible Business in Weak Governance Zones are available at:  
[http://www.oecd.org/document/7/0,2340,en\\_2649\\_34863\\_34070151\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/7/0,2340,en_2649_34863_34070151_1_1_1_1,00.html)

All Party Parliamentary Group on the Great Lakes Region: "The OECD Guidelines for Multinational Enterprises and the DRC" available at:  
[http://www.appggreatlakes.org/cgi-bin/site/index.cgi?exact\\_match=yes&topic=APPG\\_Reports](http://www.appggreatlakes.org/cgi-bin/site/index.cgi?exact_match=yes&topic=APPG_Reports)  
\*Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights [E/CN.4/2005/91]at: <http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>



# Investment Debates at the OECD

The Investment Committee has embarked on a wide ranging examination of investor-state dispute settlement issues – procedural and jurisdictional – with a view to making recommendations on improving the system. A number of expert meetings have been convened most of which have been closed to NGOs and TUAC. It is a sign of the rather limited attitude to openness that still prevails at the OECD, that only BIAC representatives have been present at these discussions. The workings of international arbitration tribunals are notoriously complex and secretive. The summaries that are produced by the Investment Committee of their discussions are no substitute for attendance at expert meetings. At the December 2004 Investment Committee consultation there was a formal request to the Chair to give OECD Watch and TUAC observer status at future meetings.

The World Bank's International Centre for the Settlement of Investment Disputes (ICSID) has put forward proposals to reform Investor-to-State Arbitration.<sup>1</sup> Two closed meetings on this topic were held: the first in September 2004 when ICSID presented its proposals to the IC; the second meeting, jointly organized by ICSID and the IC, took place in November 2004 and involved leading arbitration lawyers. BIAC has welcomed "the open and transparent way ICSID and the OECD are conducting the consultation process".<sup>2</sup>

The Committee discussions have focused on three of ICSID's proposals aimed at reforming investor-state dispute settlement mechanisms: greater transparency through the publication of awards; the participation of third parties (*amicus curiae*) in dispute settlement procedures; and, an appeals mechanism.

The issues raised by ICSID are procedural rather than substantive in nature. Tinkering with the procedures to remove some defects will not, in the words of International Institute for Sustainable Development (IISD) "fix the wide range of problems arising from the substantive obligations and from the structure of the treaties that create them".<sup>3</sup> UNCTAD notes the recent rapid increase in the number of disputes arising from investment

agreements, virtually none of which are initiated by governments. The majority of claims, one third of which are conducted outside of ICSID, are pending. This creates uncertainty about the meaning to be ascribed to key treaty provisions.<sup>4</sup> The discussions in the Investment Committee on the substantive obligations in investment agreements revealed that "countries' intent with respect to the interpretation of a similar provision in their investment agreements may differ in some respects".

Finality is one of the main advantages for foreign investors of international arbitration. But with some tribunals awarding large sums there is growing concern by host governments not just about the costs of defending such claims but also about the development impacts of disputes and inconsistencies in arbitration decisions. The ICSID proposal is seen as a response to the fact that about 20 countries have recently signed international investment agreements containing appeals mechanism provisions. The Committee did not reach a consensus on the appellate mechanism proposal – Japan and most EU delegations as well as European business representatives were hesitant. The proposal, which derives in part from provisions in NAFTA and other US Free Trade Agreements, is strongly supported by the US and the USCIB. The European BIAC members fear the additional costs an appeals process would bring and are not convinced by arguments about the cases involving public interests.

But NGOs have voiced concern about the dangers of flawed appeals mechanisms. In relation to the proposed mechanism for the Investment Chapter of the Central America Free Trade Agreement (CAFTA), AFL-CIO, Oxfam US, FoE US and others have expressed concern that "an inappropriately designed appellate mechanism could lead to greater incoherence in investment rulings by international arbitral tribunals, could further weaken appropriate domestic oversight over those decisions, and could fail to assure the protection of public interest objectives and democratic principles".<sup>5</sup> They point out that similar provisions in NAFTA have allowed private investors to threaten health and safety laws in the U.S. and abroad.

There was overwhelming support from legal experts to the principle of transparency in investor-state dispute settlement procedures. There was recognition that public interest issues are often raised in investment arbitration. Awards may have a significant impact on the national budget and public welfare, so the interest of citizens in investment disputes is understandable. Maximum transparency should be encouraged in order "to deflate criticisms" and "enhance the continued acceptance and possibly the survival of the system".

But, there was only qualified support for allowing third party submissions and participation in proceedings. Agreement emerged that in principle 'there is merit' in allowing NGOs and other interested parties to provide submissions and to attend open hearings. This would have to be carefully regulated and closely monitored.

ICSID is revising its proposal and EU governments

are canvassing views from the business community. A summary of the OECD's discussions on the appeals mechanism and other proposals will be incorporated into a paper provisionally to be published in the summer.

*Patricia Feeney*

1. ICSID discussion paper "Possible Improvements of the Framework for ICSID Arbitration" available at: <http://www.worldbank.org/icsid/improve-arb.pdf>
2. BIAC: The Current Debate on the Proposal to Reform ICSID Investor-to-State Arbitration at [www.biac.org](http://www.biac.org)
3. IISD, Comments on ICSID Discussion Paper, "Possible Improvements of the Framework for ICSID Arbitration" available at: <http://www.iisd.org>
4. UNCTAD, "Investor-State disputes and policy implications": [http://www.unctad.org/en/docs/c2d62\\_en.pdf](http://www.unctad.org/en/docs/c2d62_en.pdf)
5. AFL-CIO, Center for International Environmental Law, Defenders of Wildlife, Earthjustice, Friends of the Earth - United States, National Wildlife Federation, Oxfam America, Public Citizen, Sierra Club letter to Robert Zoellick, US Trade Representative, December 7 2004.

## COLOPHON

This is the OECD Watch Newsletter. This newsletter will be published three times a year in English, and translated into Spanish and French. For more information, contact any of the coordinators of OECD Watch below:

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[www.oecdwatch.org](http://www.oecdwatch.org)

This project is coordinated by SOMO.



# CALENDAR OF EVENTS

## March 14 - April 22

*Geneva*

- UN Commission on Human Rights, 61st sessions  
The High Commissioner for Human Rights report "Responsibilities of transnational corporations and related business enterprises with regard to human rights" will be submitted to the Commission on Human Rights and discussed under item 16 of the agenda (towards to end of the session in April)

## April 1

*Brussels*

- OECD Watch  
International Multi-Stakeholder Round Table Conference on the OECD Guidelines 5 Years after their revision

## April 5

*OECD Headquarters, Paris*

- Consultations with BIAC, TUAC and NGOs (OECD Watch members) and the Investment Committee

## April 8

*OECD Headquarters, Paris*

- OECD Second Plenary Meeting of the Task Force on the Policy Framework for Investment

## April 19

*Brussels*

- RESPONSIBLE COMPETITIVENESS  
Corporate Social Responsibility; Driving European Competitiveness in a Global Economy  
DG Employment, Social Affairs and Equal Opportunities, in association with AccountAbility

## May 2 - 3

*Centre de conférences, Paris*

- OECD Forum 2005 – Fuelling the Future: Security, Stability, Development

## June 13

*OECD Headquarters, Paris*

- OECD Third Plenary Meeting of the Task Force on the Policy Framework for Investment

## June 14

*OECD Headquarters, Paris*

- OECD Roundtable on Corporate Responsibility - OECD Guidelines for Multinational Enterprises and the Developing World – Building Trust

## June 15

*OECD Headquarters, Paris*

- Annual NCP meeting (with a stakeholder consultation to be scheduled within that day)

## October - November 2005

*Brazil*

- Global Forum on International Investment on the theme of the Policy Framework for Investment

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The production of this newsletter has been made possible through funding from the European Commission, DG Employment and Social Affairs, The Dutch Ministry of Foreign Affairs and Novib (Oxfam-Netherlands)