

Quarterly Case Update

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OECD Watch

Spring 2007

I. Highlights

New Cases:

- Global Witness vs. Afrimex (UK)
- Clean Clothes Campaign, India Committee of the Netherlands, et al vs. G-Star (Netherlands)
- Australian Conservation Foundation vs. ANZ Bank (Australia)
- Nepenthes vs. DLH (Denmark)

Developments:

- Finnish NCP rejects Finnvera case and dismisses Botnia case; Swedish NCP accepts Nordea case
- German NCP rejects Ratiopharm case (twice)
- RAID withdraws Tremalt, Alex Stewart, and Ridgepoint cases
- UK NCP issues draft statement in BP case

II. Overview of pending and recently concluded/rejected cases

Case	Afrimex's mining activities in the DRC
Company/ies	Status
Afrimex (UK) Ltd	Filed
Complainant	Global Witness
Date filed	20-02-2007
NCP(s) concerned	National Contact Point United Kingdom
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), para 2,1,10,11; Chapter IV (Employment and Industrial Relations), para 1,4; Chapter X (Taxation), para 0; Chapter VI (Combating Bribery), para 2,6

Issue

The London-based non-governmental organisation Global Witness has submitted a complaint against British company Afrimex to the UK National Contact Point under the government's new, strengthened procedures

for considering breaches of the OECD Guidelines for Multinational Enterprises. In the complaint, Global Witness alleges that Afrimex's trade in minerals has directly contributed to the brutal conflict and large-scale

human right abuses in the Democratic Republic of Congo (DRC).

Developments/Outcome

Global Witness is awaiting a response from the UK NCP.



Case	G-Star garment supply chain in India
Company/ies	Status
G Star International BV	Filed
Complainants	Schone Kleren Kampagne (CCC), India Committee of the Netherlands (ICN), Civil Initiatives for Development and Peace (CIVIDEP), Clean Clothes Campaign International Secretariat, Garment and Textile Workers Union (GATWU)
Date filed	13-10-2006
NCP(s) concerned	National Contact Point Netherlands
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), para 7,8; Chapter II (General Policies), para 2,7,8,10; Chapter IV (Employment and Industrial Relations), para 1,2,4,7

Issue

The complainants claim that G-Star has violated the Guidelines in its business relations with Indian suppliers Fibres and Fabrics International (FFI) and Jeans Knit Pvt. Ltd (JKPL).

The complaint alleges violations of workers' rights in the Indian factories regarding freedom of association, the right to collective bargaining, payment of a living wage, discrimination in employment, working hours, overtime work, occupational health and safety, punishment, abuse, harassment, and lack of legally binding employment relations. The complainants asked the Dutch NCP to:

- Facilitate a dialogue between CCC/ICN and G-Star
- Bring about a dialogue between G-Star and its Indian suppliers FFI/JKPL to make sure an effective remediation plan is developed to address the outstanding rights' violations
- Help bring about a mediated local

dialogue between FFI/JKPL and labour rights organisations involved in order to develop and implement an effective remediation plan.

Developments/Outcome

The complaint was accepted by the NCP on 6 December 2006. By accepting the complaint, the Dutch NCP has shown to use a broad interpretation of the investment nexus on the basis of the direct and well established relationship between G-Star and its Indian suppliers.

On 24 November the NCP informed CCC and ICN that they would have an informal meeting with G-star, and the NGOs also requested an informal meeting with the NCP. On 8 February 2007 the first meeting was held between the NGOs and the NCP. This was followed up on the 13 February 2007 when CCC/ICN provided the

NCP with additional information requested at the meeting.

In addition to the labour rights violations, FFI has sought to legally silence Indian labour organisations and NGOs involved in the case. On 19 February 2007, the court of the City Civil Judge at Bangalore ruled to impose a restraining order on five Indian labour organizations. The restraining order is a heavy blow to the fundamental right to freedom of speech and freedom of association in India. In January 2007 FFI also threatened to take legal action against Dutch organizations working on this case. The CCC and the ICN continue to call for FFI to enter into a mediated dialogue with the Indian organizations to resolve the problems at the factory. The CCC is in an ongoing dialogue with FFI/JKPL's clients about their role in resolving rights violations at their supplier.



Case	ANZ Bank's financing of logging in Papua New Guinea
Company/ies	Status
ANZ Bank	Rejected
Complainants	Australian Conservation Foundation (ACF), Human Rights Council of Australia, Environmental Law Centre, PNG Eco-Forestry Forum, Centre for Environmental Law and Community Rights (CELCOR)
Date filed	24-08-2006
NCP(s) concerned	National Contact Point Australia
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), para 1,2,10; Chapter V (Environment), para 1

Issue

The community groups from Australia and Papua New Guinea allege that ANZ Bank has violated the Guidelines because of its financial support of logging companies that are

engaged in human rights abuses and environmental destruction in PNG.

Developments/Outcome

September 14, 2006: ACF Submits

supplementary evidence to Australian NCP regarding the existence and the extent of an investment nexus between ANZ Bank and Rimbunan Hijau the logging company.

October 24, 2006: The Australian NCP has rejected the specific instance on the basis that the loans and guarantees provided by ANZ to the logging company do not constitute an "investment nexus", and that the NCP was "unable to ascertain"

whether ANZ's degree of influence was sufficient to trigger the supply chain aspects of the Guidelines. ACF is disappointed in the NCP's highly restrictive interpretation of the 'investment nexus', which in this case excluded consideration of the matter

despite an undisputed debt financing link between the bank and the logging operator. The rejection would appear to be inconsistent with other cases in which debt financing relationships have triggered the operation of the Guidelines.



Case	Shell's and Exxon's behaviour in the Philippines and Brazil
Company/ies	Status
Royal Dutch Shell (Philippines)	Pending
Royal Dutch Shell (Brazil)	Pending
Exxon Mobil (Brazil)	Pending
Complainants	FoE Netherlands (Milieudefensie), Friends of the Earth International, Coletivo Alternativa Verde (CAVE - Brazil), Fenceline Community (Philippines)
Date filed	15-05-2006
NCP(s) concerned	National Contact Point Netherlands, National Contact Point Brazil
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), para 1,5; Chapter V (Environment), para 1,3,4

Issue

In the Philippines, Shell is accused of manipulating local authorities and failing to adequately inform local residents and employees about the dangers of its operations. This involves the withholding of information on the environmental, health and safety consequences of Shell's activities. Furthermore, the company lacks plans to diminish the dangers around its oil depot.

In São Paulo, Brazil, the main allegations concern chemicals that Shell and ExxonMobil have stored at and below their facilities for over twenty years. In January, 2005, the Brazilian government demanded that the companies stop this practice and help workers and local residents with health complaints related to chemicals and heavy metals in their blood. However,

the companies have not taken a proactive response to this requirement and have shown little concern for their own employees and local residents.

Developments/Outcome

Regarding the Philippines case, after conducting an initial assessment, the Dutch NCP decided to accept the case. The NCP contacted Shell informally in July 2006 for its reaction to the complaint. The NCP addressed the complainants in a letter asking for additional information. The NCP has held two meetings with the complainants in August and December 2006. The NCP has also held at least one meeting with Shell, but the minutes of this meeting(s) have not been made available to the complainants. The NCP had been preparing a fact-finding mission to the Philippines, and had

consulted both parties in developing the terms of reference for the mission, but on 7 March 2007 the Supreme Court of the Philippines ruled that the oil depot must be removed. Shell is challenging the decision, and the case is currently on hold for one month to see if the high court will change its ruling.

In the Brazilian case, The Brazilian NCP sent a letter to CAVE on the 12th of June accepting the case. In addition, the Dutch NCP wrote a letter to the Brazilian NCP with suggestions on how it would handle the case and stating that the Dutch NCP would continue to follow the case closely. However, since the initial acceptance and recommendation letter, there has been no progress at all in the case. CAVE speculates that the lack of movement may be due to recent presidential elections in Brazil.



Case	Ratiopharm's unethical business practices in Germany et al
Company/ies	Status
Ratiopharm	Blocked
Ratiopharm	Rejected
Complainants	Transparency International - Germany
Date filed	20-04-2006
NCP(s) concerned	National Contact Point Germany
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Combating Bribery); Chapter III (Disclosure); Chapter VII (Consumer Interests); Chapter XI (Competition)

Issue

Ratiopharm, a German multinational pharmaceuticals company and major producer of generic drugs, has allegedly engaged in unethical marketing behaviour including misinformation and bribing of doctors and pharmacists in Germany, Belgium, Canada, Spain and Estonia. Ratiopharm has allegedly violated OECD Guidelines Chapters III (Disclosure), VI (Combating Bribery), VII (Consumer Interests), IX (Competition).

Developments/Outcome

On 27 June 2006, the German NCP sent a letter to Transparency International Germany rejecting the case because it only dealt with alleged misbehaviour in Germany. The complainants disagreed with the NCP's interpretation of the applicability of

the Guidelines, but on 18 July 2006, with new information, TI Germany filed a new complaint dealing with alleged breaches by Ratiopharm in Germany, Belgium, Canada, Spain and Estonia.

On 13 December 2006, the German NCP repeated its refusal to accept the revised and extended complaint against Ratiopharm, albeit on different grounds while purporting to repeat the first refusal. The second refusal no longer proclaimed the lack of transnational investment. Instead the NCP argued this time that according to the "Procedural Guidance for the OECD Guidelines" complaints had to be dealt with by the NCP of the country where the alleged misbehaviour occurred, e.g. by the respective NCP in Belgium, Canada, Estonia, and Spain. The German NCP thus may not deal

with the Ratiopharm case and thereby pre-empt the other NCPs actually responsible for the case.

Following this, on 17 January 2007 TI requested to speak with the NCP as a last ditch attempt to impress upon them that Ratiopharm should be dealt with in Germany where the alleged misbehaviour was conceptualized and exported to any number of the 24 subsidiaries. Unofficial talks were held between the German NCP and TI in February 2007. The NCP insisted that it could not take the Ratiopharm case further but that TI should approach other NCPs. TI inquired whether it would not be more appropriate for the German NCP to take the initiative to handle the case with the other NCPs, but again were told that the German NCP's hands were tied.



Case	Botnia et al. operation and financing of Uruguayan paper mill
Company/ies	Status
Oy Metsä-Botnia	Concluded
Finnvera	Rejected
Nordea	Pending
Complainants	Fundación Centro de Derechos Humanos y Ambiente (CEDHA)
Date filed	18-04-2006
NCP(s) concerned	NCP Finland, NCP Sweden, NCP Norway
Guidelines Chapter(s) & paragraph(s)	Chapter II (General Policies), para 1,2,5; Chapter III (Disclosure), para 1; Chapter V (Environment), para 1,3,2,4,5,6

Issue

The complaint regards the Orion pulp mill project (Orion) in Uruguay near the Argentinean border. The breaches are based on the irresponsible business conduct and attitude of Botnia and its partners and subcontractors and the severe consequences that this conduct is causing to regional diplomatic relations between Argentina and Uruguay.

CEDHA followed this up with another filing against Finnvera, the Finnish Export Credit Agency, for its stated support of the Botnia project. The Finnish NCP acceptance of the Specific Instance filed by CEDHA raises pressure on Botnia and the overall

political and financial viability of the investments. The cases against Botnia and Finnvera are under the jurisdiction of the Finnish NCP.

Yet another case was filed against Nordea for its complicity in anticipated breaches of the OECD Guidelines with the help of Bellona Foundation in Norway. Nordea is a leading financial services group of the Nordic and Baltic Sea area, which was set to provide Botnia with a multi-million dollar package to finance the controversial investment in Uruguay. This case is being reviewed by the Swedish NCP on behalf of the Norwegian NCP.

Developments/Outcome

During the course of the OECD meeting of NCPs in Paris in June 2006, the Finnish NCP informed CEDHA that they had reviewed the Specific Instance filed against Botnia. Subsequently, CEDHA was invited to meet with Botnia at the NCP offices in Helsinki during the course of the next NCP meetings in August 2006.

On 11 August 2006, the Finnish NCP sent an email to CEDHA informing them that meetings regarding all three cases related to the Uruguayan paper mills (Botnia, Finnvera & Nordea) would be combined into one meeting to be held on 30 August 2006, in Helsinki.

The NCP also announced the names of the legal representatives for Botnia and Finnvera that would be present and informed CEDHA that, for the Nordea case, representatives of the Swedish & Norwegian NCPs would also attend the meeting. Despite organising this meeting to discuss the Finnvera and Nordea cases, the Finnish NCP did not give official confirmation that the Finnvera and Nordea cases had been accepted.

On October 12, the Finnish NCP wrote to CEDHA to inform them that the case against Finnvera had been

rejected, claiming that Finnvera is not a multinational enterprise and, thus, the OECD Guidelines do not apply to it. However, on 17 November, the Swedish NCP (answering also on behalf of the Norwegian NCP) accepted the complaint filed by CEDHA and Bellona against Nordea. This marks the rare acceptance of an OECD Guidelines case against a financial institution. The Swedish NCP has invited CEDHA/Bellona and Nordea to a dialogue meeting to orally present their respective views on the specific instance in March 2007 in Stockholm.

The Finnish NCP released a statement in December 2006, concluding that the evidence presented does not prove that Botnia has failed to comply with the OECD Guidelines. In January 2007, CEDHA filed complaints to the Finnish Government Ombudsman and the OECD Investment Committee stating that the Finnish NCP had failed in its task and had improperly dismissed the case. CEDHA also drafted a response criticising the rejection of the case against Finnvera and submitted this as evidence to Finland's Parliamentary Ombudsman.



Case	DLH's purchasing of illegal and conflict-zone timber
Company/ies	Status
Dalhoff, Larsen & Hornemann (DLH)	Pending
Complainants	Nepenthes
Date filed	10-03-2006
NCP(s) concerned	Denmark
Guidelines Chapter(s) & paragraph(s)	Preface, point 1; Chapter V (Environment), para 1; Chapter II (General Policies), para 1,10,2; Chapter IV (Employment and Industrial Relations), para 1; Chapter IX (Competition).

Issue

According to the complaint, DLH buys timber in countries where the percentage of illegal timber is very high. Some of DLH's suppliers have previously been convicted of forest crimes. DLH does not verify that the timber it buys is legal, and the company has been caught buying illegal timber several times.

Furthermore, the complaint states that DLH buys timber from conflict zones, where there is evidence that the timber trade has exacerbated the conflicts.

Developments/Outcome

The NCP has accepted the case as eligible, but has informed the

complainants that it is holding back work on the case because the Danish environmental ministry is currently working on defining what is meant by "sustainable timber" and "legal timber". The NCP says it will wait and see what the environmental ministry comes up with before it starts work on the case.



Case	Alcoa Alumínios et al hydroelectric dam in Brazil
Company/ies	Status
Alcoa Alumínios S.A	Pending
Grupo Votorantim	Pending
Complainants	Terra de Direitos, Movimento dos Atingidos por Barragens (MAB)
Date filed	06-06-2005
NCP(s) concerned	National Contact Point Brazil
Guidelines Chapter(s) & paragraph(s)	Chapter V (Environment), para 1,3,4; Chapter II (General Policies), para 2,5

Issue

The corporations Alcoa Alumínios S.A. and the Companhia Brasileira de

Alumínio/Grupo Votorantim allegedly violated various human, economic,

social, cultural, and environmental rights in the construction of the Barra Grande

hydroelectric plant in the states of Santa Catarina and Rio Grande do Sul. The corporations utilized a fraudulent environmental impact assessment conducted by the company Engevix Engenharia S.A. in 1999. Despite being aware of the fraudulent nature of the assessment, the Baesa Consortium went ahead with the exploration and used the flawed assessment to justify its disregard for its commitments to sustainable development.

Developments/Outcome

The Brazilian NCP received the case and held a meeting with the NGOs and the nine executive Ministers of the Brazilian NCP, in which they questioned the NGOs about the recommendations of the World Commission of Dams (WCD). In September, 2005, the NGOs met with the head of the NCP, who promised to organize more meetings, but admitted that the current political situation in

Brazil would make it difficult to resolve the case. The NGOs have heard from unofficial sources that the NCP plans to close the case due to a lack of evidence about the behavior of the companies, but the NGOs believe that they do have sufficient evidence. The NGOs continue to monitor Baesa's fulfillment of the conditions in the Adjustment of Conduct Terms.



Case	BAE et al alleged bribery in UK Export Credit Program
Company/ies	Status
BAE Systems	Pending
Airbus S.A.S.	Pending
Rolls Royce	Pending
Complainants	The Corner House
Date filed	01-04-2005
NCP(s) concerned	National Contact Point United Kingdom, National Contact Point France
Guidelines Chapter(s) & paragraph(s)	Chapter VI (Combating Bribery), para 2

Issue

The complainant alleges that the refusal of the three companies concerned to provide details of their agents and about agent's commission

to the UK Government's Export Credit Guarantee Department represents a violation of the bribery provision of the Guidelines.

Developments/Outcome

In May 2005, the NCP accepted the complaint and forwarded it to the companies concerned for comment.



Case	Oryx et al activities in the DR Congo
Company/ies	Status
Oryx National Resources	Pending
Avient Air	Concluded – RAID may reopen the case
Dairo Air Services	Pending
Tremalt Ltd	Withdrawn
Alex Stewart (Assayers) Limited	Withdrawn
Ridgepoint International Developments Ltd	Withdrawn
Complainants	Rights and Accountability in Development (RAID)
Date filed	28-06-2004
NCP(s) concerned	National Contact Point United Kingdom
Guidelines Chapter(s) & paragraph(s)	Chapter IX (Competition), para 1; Chapter III (Disclosure), para 3,4; Chapter VI (Combating Bribery), para 1,5; Chapter V (Environment), para 6; Chapter II (General Policies), para 2,11

Issue

The complaint alleges breaches by companies operating in the DRC, including violations of the human rights, disclosure, bribery and anti-competition provisions of the OECD Guidelines.

Developments/Outcome

On September 8, 2004, the UK NCP issued a weak statement on the Avient case accepting Avient Ltd's contention that they were working within a contractual arrangement with

the officially recognized governments in the area. The NCP also stated that "in future Avient Ltd. should carefully consider the recommendations of the Guidelines particularly, but not

exclusively, Chapter 2 before entering into contracts with Governments and businesses in the area.” RAID, having been accepted as a complainant, was locked out of the process. Ad hoc procedures were adopted which disregarded due process. The NCP Recommendations merely highlight the existence of a few provisions of the Guidelines but do not declare breaches and offer nothing in the way of specific actions a company is expected to take to remedy the breaches. Following a September 2006 expose in the UK’s *Sunday Times*, RAID called on the UK NCP to re-open the case. The case is now pending. RAID is also exploring other avenues to hold the company to account for its activities in the DRC.

In July 2004, the NCP accepted the complaint against Oryx, but RAID was prohibited from taking part in the negotiation process for one year

while the NCP engaged in extensive discussions with Oryx. Most of the complaint was rejected on the grounds that a UN Panel had resolved the issue. RAID was allowed to participate in the proceedings in April 2005, but under very restrictive and summary procedures. RAID was able to comment on the NCP’s draft statement, which was the only area in which the UK NCP followed the Guidelines’ complaint procedures. Nevertheless, the final statement was highly unsatisfactory and did not incorporate any of RAID’s recommendations.

The cases against Tremalt/ Bredenkamp, Alex Stewart (Assayers) Ltd and Ridgepoint have been blocked by the UK NCP. The NCP claims these cases were resolved by the UN Panel and cannot therefore be reopened. Due to the NCP’s inaction, RAID is withdrawing the cases.

In July 2004, the NCP accepted the complaint against DAS Air, but RAID was again prohibited from taking part in the negotiation process for one year. RAID was allowed to participate in the proceedings in May 2005. DAS Air moved to close the case in December 2005. However, based on material from an official Uganda Judicial Commission of Inquiry, RAID was able to provide evidence that DAS Air had made regular flights into the DRC from the military airport in Entebbe. Since April 2006, there have been a number of exchanges with the company. The UK NCP has indicated that it will try to convene a meeting between the parties shortly. Once this case is concluded the UK Government is committed to issuing a statement to Parliament on its handling of the UN Panel cases.



Case	Bayer's cotton seed production in India
Company/ies	Status
Bayer	Pending
Complainants	Germanwatch, Coalition Against Bayer Dangers (CBG), Global March Against Child Labour
Date filed	11-10-2004
NCP(s) concerned	National Contact Point Germany
Guidelines Chapter(s) & paragraph(s)	Chapter IV (Employment and Industrial Relations), para 1; Chapter II (General Policies), para 10

Issue

Bayer suppliers in India are alleged to have violated the OECD Guidelines chapter on employment and industrial relations by using child labour.

The case is based on a 2003 study entitled “Child Labour and Transnational Seed Companies in Hybrid Cottonseed Production” and a follow up study from 2004. The study found that cottonseed farms, largely in South India, employ children in large numbers, predominantly girls between 6 and 14 years of age. Many of them work in bonded labour and are forced to stay with their employers for several years, their work serving as payment

for servicing loans at usurious interest. Because large quantities of pesticides are in constant use, their health conditions are negatively affected all the time. Procurement prices paid for cotton seeds are so low that farmers employ children, who are paid less money, because otherwise they would not make any at all. The study found that around 2,000 children were working for suppliers of Proagro, a subsidiary of the German company Bayer AG. Bayer has failed to address these concerns, which form the basis of the complaint.

Developments/Outcome

On October 26, 2004, Bayer

responded to the NGO complaint in a letter to the NCP. Bayer stated that it does enough to deal with the issue of child labour and that the complaint is unfounded. In December 2004, the NGOs responded to Bayer’s comments in another letter to the NCP, and in a January 2005 letter to the NCP, Bayer reacted to the NGOs’ second letter.

After having received comprehensive comments by both parties, the German NCP invited all parties involved to a meeting. However, Bayer objected to the participation of one of the NGO participants, and refused the offer. Nevertheless, Bayer has told the NCP

and the public that it has already taken constructive and concrete steps to solve the problems raised. Instead of a joint meeting, the NCP held separate meetings. First there was a meeting between Bayer and the NCP in which the company explained its plan on how to face the problem. The company's presentation and the minutes of the meeting were communicated to the NGOs. Afterwards, the NCP held a subsequent meeting with the NGOs. The NGOs were concerned about the omission of some comments made during their meeting in the meeting minutes issued by the NCP, but after some arguing with the NCP, finally their

points were taken up in a new version of the minutes. In general it was felt that having separate meetings with the complainant and the company can compromise the NCP's (supposed) independent/objective nature because it puts the NCP into the role of having to present the view and arguments of the company to the NGOs.

In December 2005, the complainants sent a letter to Bayer with questions regarding the company's action plan. Bayer promised a response by January, but failed to do so, and in May, 2006, the NGOs resent the letter, this time through the NCP.

In the mean time, independent research revealed that there were still 450-500 children working in the fields in the 2005/06 season producing for ProAgro/Bayer, meaning that there was a reduction in the number of children, but that the problem remains. In late 2006 and early 2007, there were more (separate) meetings at the NCP. The complainants presented the first results of the independent research, which indicates structural problems in Bayer's implementation of the action plan (e.g. Bayer is now partly producing in another state where the action plan is not implemented).



Case	BP's role in the Baku-Tbilisi-Ceyhan oil pipeline
Company/ies	Status
BP p.l.c.	Pending
Complainants	Campagna per la Riforma della Banca Mondiale (CRBM), FERN, Friends of the Earth France (FOE France), Friends of the Earth United States of America (FOE US), FoE Netherlands (Milieudefensie), PLATFORM, urgewald e.V. (urgewald), World Economy, Ecology & Development (Weed), Germanwatch, Friends of the Earth Germany (BUND), Friends of the Earth England, Wales and Northern Ireland (FOE EWNI), The Corner House
Date filed	29-04-2003
NCP(s) concerned	United Kingdom, France, Germany, Italy, United States of America
Guidelines Chapter(s) & paragraph(s)	Chapter I (Concepts and Principles), para 7; Chapter II (General Policies), para 5; Chapter V (Environment), para 1,2,4; Chapter III (Disclosure), para 1

Issue

The Baku-T'bilisi-Ceyhan (BTC) oil pipeline (now completed) spans 1,760 kilometres from the Azerbaijan capital of Baku, through T'bilisi Georgia, ending in the Mediterranean city of Ceyhan, Turkey. A gas pipeline follows the same route through Georgia and Azerbaijan and Northern Turkey. British Petroleum (BP) is the lead sponsor; there are nine other participants in the consortium. The BTC consortium sought political and financial support of their countries' export credit agencies, the European Bank for Reconstruction and Development and the International Finance Corporation of the World Bank Group. The consortium is accused of seeking tax and law exemptions and undue influencing of governments in

construction of Pipeline in Georgia and Turkey.

The complainants argued that the consortium had:

- exerted undue influence on the regulatory framework for the project
- sought or accepted exemptions related to social, labour, tax and environmental laws
- pressured the Georgian environment minister to approve the Environmental Impact Assessment despite the minister's protests that it violated Georgian law (the minister actually wrote a letter to BP, dated 26 November 2002, where he confirmed that BP representatives were requesting the Georgian government to violate their own environmental

legislation), and

- undermined the host government's ability to mitigate serious threats to the environment, human health and safety by, among other actions, negotiating agreements that free the pipeline project from any environmental, public health or other laws that the three host countries might adopt in the future when constructing a Pipeline in Azerbaijan, Georgia and Turkey.

Concerns were also expressed over failure to adequately consult with project-affected communities and failure to operate in a manner contributing to goals of sustainable development.

Developments/Outcome

The complaint was declared eligible by the UK NCP in August 2003. In March 2004, almost 1 year after the filing of the complaint, BP responded to the complaint, stating that they thought the project complied with the OECD Guidelines. The fact that a funding package has been approved, which makes the UK government a financial stakeholder in the BTC, led the NGOs to doubt the impartiality of the NCP. There were also concerns about the NCP's delays in dealing with the case. On October 24, 2004, the NGOs sent a letter to the NCP, expressing concern about the ECGD's statement that the BTC project complied with the OECD Guidelines and its decision to support the project. A complaint was made to the Investment Committee over the ECGD prejudicing the case: the Committee responded by stating that "the good offices of the Chair and Bureau members of the Investment Committee remain available to the UK NCP and The Corner House to assist

in resolution of matters left pending." The NCP offered to facilitate a dialogue between the parties. Despite the length of time that ensued, the NCP failed to follow agreed procedures and produce an initial assessment of the complaint.

In September 2005, The UK NCP visited affected community members and NGOs in Azerbaijan, Georgia and Turkey. Notably, the NCP organized this trip in close collaboration with both the complainants and BP to ensure all parties were satisfied with the terms of reference. After the trip, a dialogue meeting took place. Despite promises to respond to the issues raised by NGOs, BP refused to disclose their response to the complainants. In January 2006, BP broke off the dialogue process.

A draft statement was released to the parties in December 2006 and comments have been sought from the

parties. An earlier draft of the statement has subsequently been released under the Freedom of Information Act and is now a public document. It reveals that the NCP intends to exonerate BP on the basis of a report that BP has refused to disclose to the complainants. The draft statement admits that the report is contested by local villagers who say that BP never visited them to investigate their problems.

The NCP has agreed to consider a number of "general lessons" (relating to consultation and the use of stabilisation clauses in investment agreement) that the complainants have identified from the case. The lessons will be forwarded to a new but yet-to-be-formed steering committee that will have oversight of the NCP in the UK. If the steering committee and Ministers agree, the lessons will be sent to the OECD Investment Committee for discussion.

III. Current case statistics of the 58 OECD Guidelines cases presented by NGOs

Current Status		No. Cases
Filed	the NGO has sent the complaint to the NCP	1
Pending	the NCP has confirmed that it is admissible and the specific instance procedure is under way	18
Concluded	the NCP has reached a decision and issued a statement or the case was settled outside the NCP forum	15
Closed	the NCP has started the case but dropped it before issuing a statement	2
Rejected	the NCP has formally rejected the case (declared it inadmissible)	13
Withdrawn	the complainants have decided to close the case	5
Blocked	the NCP is not clear about the status of the case (no formal rejection, but no intention of accepting it as a specific instance).	4

Chapter of the OECD Guidelines		No. Cases
Chapter I	Concepts and Principles	9
Chapter II	General Policies (incl. Human rights and the supply chain)	52
Chapter III	Disclosure	17
Chapter IV	Employment and Industrial Relations	20
Chapter V	Environment	27
Chapter VI	Combating Bribery	13
Chapter VII	Consumer Interests	3
Chapter VIII	Science and Technology	0
Chapter IX	Competition	8
Chapter X	Taxation	5

Compiled by Joseph Wilde, Centre for Research on Multinational Corporations (SOMO).

OECD Watch is an international network of civil society organizations promoting corporate accountability. For more information on the network and on this and other Quarterly Case Updates, send an e-mail to info@oecdwatch.org or visit www.oecdwatch.org.

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