

**ITUC-ORIT
IN COOPERATION WITH TUAC-OECD**

**LATIN-AMERICAN EXPERIENCE
OF THE OECD GUIDELINES
AND THE NATIONAL CONTACT POINTS¹**

December 2006

Background

2006 marked the thirtieth anniversary of the coming into force of the OECD's Guidelines for Multinational Enterprises and the fifth anniversary of the first annual meeting charged with evaluating them, following the major review in 2000. In 2006, the USA, Canada and Mexico were the only full OECD members from the Americas, but since the 1990s Argentina, Brazil and Chile have also been observers with the organisation. One important related task has been to establish and/or make fully operational the countries' respective National Contact Points (NCPs), which are entrusted with making the guidelines work.

In the early part of this decade, the FES Latin America office and TUAC (through Verónica Nilsson, in charge of work on the Guidelines, and the Secretary-General John Evans) together developed various awareness-raising activities sponsored by their sub-regional offices (in Chile, 2001, Argentina 2001/2, and Mexico, 2004/5) and a Regional Trade Union Programme (FESUR, based at the Uruguay office) for organising events in Central America, Mexico and the Southern Cone and Argentina. The event in Uruguay (a regional seminar/workshop in 2004 entitled "Update and prospects of the OECD Guidelines for Multinational Enterprises") had the largest impact, since it covered four Latin American countries with NCPs and brought together government officials, trade union organisations (including ORIT) and NGOs.

The other regional trade union structure that has been working on this issue continuously is ORIT, whose 13th Congress in the Dominican Republic in April 1997 decided to include the Guidelines in its programme and official documents. Later on, in 2001, TUAC² invited ORIT to attend the first evaluation meeting on the new version of the Guidelines (that had been revised the previous year).

¹ This report has been written by Alvaro Orsatti and Hilda Sánchez, officers of ORIT, in agreement with TUAC. It was presented to the 6th International Conference on Trade Union Research and Action on Multinationals, organised by IOS-Brazil in Salvador, Bahía, on 7-8 December 2006. This work is also part of the programme adopted by ORIT after its 16th Congress (Brasilia, April 2005) on Democratisation of Industrial Relations, which specifically relates to multinational enterprises and their responsibilities with respect to CSR and regulated investment. A study is currently being prepared on cases in North America (USA and Canada), in cooperation with the Solidarity Center of AFL-CIO.

² Trade Union Advisory Committee.

In addition, ORIT:

- started to work with the FES, presenting one chapter on the Guidelines, in cooperation with UNI-Americas, at the FES sub-regional seminar in Buenos Aires (November 2001), and contributing to various subsequent seminars at national level (a second one in Argentina and two in Mexico).
- organised its own training activities on the Guidelines at both sub-regional (San José, July 2002) and regional level (July 2005, again with UNI);
- introduced the ICFTU and TUAC concerns at the IDB's inter-American event on CSR (Mexico, November 2004)³;
- explained its support in the main document of the 16th Congress (Brasilia, April 2005), endorsing the regional approach promoted by TUAC and its stressing of the importance of trade union involvement⁴.

ORIT also worked with the regional ILO office, in 2001, in publishing two documents on this issue, both under the AECL project ("Strengthening of trade union organisations for tripartite social dialogue and socio-economic development of the region"). The first paper addressed a broader theme ("International capital flows and multinational enterprises. A trade union viewpoint", written by H. Sánchez), whilst the second was specifically on NCPs ("Trade union strategy regarding the OECD national contact points on multinational enterprises", written by A. Orsatti and H. Sánchez). These two publications were edited by Oscar Valverde and Gerardo Castillo, respectively.

Other trade union activities promoting the Guidelines have been organised by AFL-CIO, through its Solidarity Center (in Central America), and by UNI-Americas. This period also saw the emergence of the "Red Puentes sobre Responsabilidad Social Empresarial" (an NGO network dealing with issues related to CSR), which was established in 2003 with assistance from the Dutch government and members of OECD Watch and includes NGOs from Argentina, Brazil, Chile, Mexico, Peru and Uruguay; it has regarded the Guidelines as a focal point for its activities.

Collectively these activities increased trade unions' awareness of the Guidelines, whilst bolstering the NCPs' own approach. This report describes the situation at the end of 2006, and is arranged in three sections:

- a brief description of the birth and development of the NCPs and of the unions' associated action;
- complaints from both trade unions and NGOs against multinationals, based on the actions of their subsidiaries in Latin American countries;
- an evaluation of the functioning of NCPs, based on the above-mentioned seminar in Uruguay and additional information.

³ 2nd Conference of the Inter-American Development Bank (IDB), where ORIT was invited to a round table of parallel session on "external and internal incentives" and where its contribution was noted in the official annals.

⁴ This addressed the different scenarios for cooperation between Latin American countries and other regions, based on the existing NCPs: the enlarged MERCOSUR including Chile, the FTAs between the USA, Canada and Mexico and between the USA and Chile, together with inter-continental agreements (European Union-MERCOSUR and EU with the Asia Pacific region, four of whose countries have NCPs: Japan, South Korea, Australia and New Zealand). In Europe itself, the Nordic countries' NCP has held sub-regional meetings and there has been cooperation between France and Luxembourg.

I. DEVELOPMENT OF THE NCPS AND OF LOCAL TRADE UNION ACTION

The five-year period between 2001 and 2006 saw the consolidation of the existing NCPS, expressions of interest from various other Latin American governments (Costa Rica, Panama and Venezuela), and an official request for involvement in the system from Peru (in late 2006)⁵. There was also a series of trade union activities largely run by the local offices of the FES, as part of its cooperation at international level with TUAC.

The NCP for Mexico was established in 2001 within the Economic Ministry (more precisely in the Directorate-General for international trade negotiations). The NCP's dissemination activities were limited to sending out an information brochure and posting the text of the Guidelines on its official website. Nevertheless, FES-Mexico carried out various follow-up activities involving the NCP, including the conference at the end of 2004 to celebrate the ten year anniversary of the country's membership of the OECD. The NCP has not received any direct complaints, but some passed on by the German and French NCPs.

Also in relation to this NCP, the Mexican trade union movement pointed out an important fact at the seminar in Montevideo: the Mexican government was the only OECD member state to raise objections to the revision of the Guidelines in 2000, on the grounds that it would have a negative impact on investment.

The NCP for Brazil: the Brazilian government adopted the Guidelines in 1998, though without informing the public of its action. CUT-Brazil reported that it had found this out 2 years later, from TUAC, which prompted it to send a message to the Foreign Ministry (in January 2002), affirming its interest in these matters and their importance to the union movement. A few months later (in September 2002), the CUT brought a case to the Ministry (jointly with the Italian unions, in their country), which forced the government to address the issue: in April 2003, the NCP was set up within the Ministry of Finance and the text of the Guidelines was posted on the latter's website.

One feature of the Brazilian NCP is its instability, as reflected by its succession of coordinators, of whom there have already been three, and the fact that its plans to set up some advisory structures have been announced but not yet implemented. Two of the latter are meant to be addressing governmental issues (a total of ten covered by the Foreign and Employment ministries) and would include representatives of companies and civil society (a total of 60 people).

This NCP has received the most complaints, seven in all, five of which came from CUT-Brazil. The Social Monitoring Institute (Instituto Observatorio Social = IOS), whose board consists of leaders from that union centre, has promoted the Guidelines (initially through an article in its newsletter, at the end of 2002) and their incorporation in the study on CSR on the subsidiaries of multinationals in Brazil (which TUAC highlighted), and three concrete activities supported by the local FES office, the first of which was held in October 2003 and the most recent in August 2006 (a seminar on "the NCPs and application of the OECD Guidelines for Multinational Enterprises: the current situation and outlook", held in Sao Paolo - the details can be found on the IOS website). At its recent Congress (June 2006), the CUT also approved a resolution calling on its

⁵ To be precise, one of the national centres from that country (CUT-Peru) had contacted TUAC at the end of 2002 asking for information that could support a campaign to promote the Guidelines. Around the same time, the organisation was also considering presenting a case study to the Spanish NCP concerning the major dispute with Telefónica that started in 2000.

organisations to submit complaints to the NCP. CUT is also campaigning in this area using alliances with IBASE, IDEC and Friends of the Earth.

The NCP for Argentina: the government attended the annual meeting of the OECD, and announced that it had set up the NCP in 2000 and that it would be headed up by the Director of the National Directorate for International Economic Negotiations (DINEI) at the Ministry of Foreign Affairs, International Trade and Culture. However the actual birth of the NCP came in July 2006, with the creation of the Coordination Unit for OECD Issues. To begin with the only activities promoting the Guidelines were done by trade unions (2001-2) from the FES, ORIT and UNI-Americas via the Banking Association and in conjunction with the other CGT affiliates in Argentina). Two of those events were attended by the government representative. One highlight during that first stage was the decision to submit a draft law in the National Congress linking the NCP to the Parliament, in line with a TUAC recommendation. The proposal was endorsed by half the members of parliament at the end of 2001 (please see the details later).

There was then a lull in activities until the middle of 2004, when two local NGOs (Fundación SES and FARN⁶) submitted a proposal to the Foreign Ministry for a support programme to disseminate the Guidelines, which led to three events (the first in late 2004) held in government buildings, that were attended by other public bodies and both trade union (CTA and CGT) and employers' organisations. The NCP announced in 2006 that it would set up a tripartite advisory committee comprising those interested parties. The NGOs also produced some dissemination publications, the latest of which contained a prologue by the new coordinator. At the end of 2004, and then again at the end of 2006, the banking employees' and millers' trade unions sent separate complaints to the NCP.

The NCP for Chile: of the three observer countries in the OECD, Chile is the one with the clearest desire to become a full member, as acknowledged by the representative of the NCP at the seminar in Montevideo, when explaining that the government's concern that it should work well was part of that broader strategy. The NCP was set up in early 2001 under the auspices of the Foreign Ministry and there was a public launch (including representatives of two multinationals). This was followed up by the creation of an advisory body, with representatives from CUT-Chile and national agricultural and industrial employers' organisations, government representatives dealing with labour and taxation policy, and NGOs (including Greenpeace and SENDA, which focuses on agro-industrial matters). This led TUAC to describe the NCP as "quadripartite". Around that time FES-Chile also organised various dissemination activities on the Guidelines aimed at the trade union movement.

Later, at the end of 2002, the NCP received its first case, passed on by the Dutch NCP, on an issue that was important to the government (salmon production, which was second in importance based on export figures) and had recently come under international criticism. At the time the unions were only involved at a local level, though later (in 2005), once a Labour Observatory had been set up, the CUT got involved more closely and presented its own case, in cooperation with the union at the criticised enterprise. The Observatory also used the Guidelines as its basis for evaluating a number of enterprises. The case ended with a quick agreement that the union was able, a few months later, to refer to as a success when addressing the 3rd Inter-

⁶ Those NGOs belong to the abovementioned "Puentes" network that is developing a dissemination programme specifically on the Guidelines. The network in Argentina has also created a local CSR Platform (November 2005), which includes the CTA and the CGTRA, as well as a Southern Cone organisation belonging to CLAT.

American Conference on CSR (see the information sheet on this IDB conference). A second success came in 2006, when Puerto Montt SA, a jam and frozen foods company from the Moly group, adopted the Guidelines.

II. CASES AND PRESENTATIONS

As expected, all the NCPs in Latin American countries have received complaints, but there have also been a number of additional cases involving countries from the region as well as others from outside it, based on the alternative approach in the Guidelines of presenting the complaint in the country where the multinational is based. There have been more cases like these concerning Ecuador, Guatemala, Uruguay and Belize (but we have no details and so will not include them).

These cases include:

- Complaints from trade unions (based on information from TUAC) and NGOs (based on information provided by OECD Watch).
- Two “pre-denunciations” (in Argentina and Brazil), where the unions took preliminary, warning measures (prior to launching a full case).
- Two very recent cases (end of 2006): one presented to the NCP in Denmark, concerning the subsidiary of a timber company in Brazil, and the other presented to the NCP in Argentina, concerning a North American multinational⁷.

In addition:

- A distinction needs to be made between “cases” and “presentations” (or submissions), since the latter were sometimes made more than once.
- Presentations submitted in one country and transferred to another one will be regarded as a single case, where the original presentation was made outside the region and is then transferred at a later date.

Lastly, we will not count:

- Those presentations made (in other countries) in addition to and simultaneously with the main ones.
- Other steps taken in Brazil, where the CUT prepares cases and informs the company prior to making a formal presentation with a view to obtaining a direct agreement; two such presentations were made in the chemical industry (Dow Poulenc and BASF) and a third in the banking sector (ABN AMRO).⁸

⁷ Information on both cases was provided for this report in conjunction with the Conference activities.

⁸ A particular case occurred in Chile (in 2003): in response to CUT's questions regarding the possibility of denouncing the behaviour of Carrefour, the NCP considered that to be inappropriate since the Supreme Court had already produced an agreement on the matter and, in any event, this should be addressed directly with the French NCP. Subsequently, the company changed ownership and the CUT itself decided not to pursue the case (information provided at the seminar in Montevideo).

The following table presents a general overview:

- There are 19 cases in all, addressed through 23 presentations, including where there is more than one per case (two in Mexico and four in Argentina).
- 10 of the presentations were submitted in the NCPs of countries in the region, whilst 14 were made in other countries.
- 11 presentations were submitted by trade union organisations, 10 by NGOs and 2 by a mixture of both types of organisation.

	Argentina	Brazil	Chile	Mexico	Ecuador	Guatemala	Uruguay
1. Cases	2	7	2	3	3	1	1
2. Presentations	2	7	2	4	3	1	4
3. Presentations in local NCPs	2	7	1	-	-	-	-
4. Presentations in other NCPs	-	1	1	4	3	1	4
5. Submitters of presentations	2 unions	4 unions, 2 NGOs and 1 mixed	1 union and 1 NGO	1 union, 1 NGO and 1 mixed	1 union and 2 NGOs	1 union	4 NGOs

Compared to the total number of presentations to NCPs worldwide, Latin America could be as a good example, since it accounts for over 20% of the total number of cases (around 110) at the end of 2006.

In the appendix to this report there is a detailed description of each presentation, which will enable readers to make a more qualitative evaluation.

A number of general assertions can be made:

- There is a significant degree of involvement in Latin American cases from outside the region: the first group (main presentations submitted in their NCPs) includes six countries: the USA (related to Mexico), Canada (Ecuador), South Korea (Guatemala), Denmark (Ecuador), Finland and Norway (Uruguay). The next, less important group (transferred presentations) includes three more: the Netherlands (Chile), and France and Germany (both related to Mexico). Lastly, additional presentations were made in Italy (related to Brazil) and the Netherlands (Guatemala).
- The largest number of presentations on a single case concerned the case in Uruguay, which prompted four presentations (in two separate countries). In a case in Mexico, two related complaints were sent to the NCP for the USA.
- The case in Uruguay included a “triangle” of nationalities, since it involved organisations from Argentina (nationality of the NGO issuing the denunciation), Finland and Norway (where the presentations were submitted).

- Some of the presentations were submitted as part of “multiple strategies” following a number of different paths: local justice, the OAS and the ILO.
- The trade union denunciations were issued at varying levels, by the company union, the federation, the national centre or the appropriate global union federation, or even a combination of these.
- The participation of the Global Union Federations (GUFs) has been very limited, with only the ITGLWF (via its regional organisation, the FITTVCC) getting involved, in the case in Guatemala. The use of the Guidelines has been comparatively more extensive in countries outside the region, including North America.
- Cooperation on cases between union organisations and NGOs has been rare, with just two cases presented jointly in Brazil and one in Mexico. That has also been the trend worldwide.
- One recent Brazilian case apparently displays an innovative use of the Guidelines, since it involves a company that is not strictly foreign but has operations in several Latin American countries (Votorantim).

The extent to which the objectives have been achieved is, of course, difficult to assess and debatable. All in all, most of the cases/presentations that are reported here could probably be regarded as essentially successful or positive:

- It is acknowledged internationally that three cases have had successful outcomes: the one concerning the Korean companies in Guatemala (brought by TUAC, FITTVCC and the ICFTU), the one concerning Nutreco in Chile (OECD Watch and TUAC), and, more recently, the one at Euskadi/General Tire de Mexico (brought by TUAC, OECD Watch and, recently, the ICFTU, which published a celebratory message), the processing of which had lasted 36 months. The case concerning Unilever in Chile might be added to those three.
- The “pre-denunciations” (BNL in Argentina and Bompreco in Brazil) can also be viewed as positive, since the impact of these actions and additional measures have led the companies to review their procedures. That category also included the “non-cases” that had been prepared but were not presented in the end since the company ended up meeting the requirements beforehand.
- In other cases, regardless of the actual achievements, the fact that the NCPs were made to intervene was positive in itself, since this was the first time this had happened in the countries concerned (Parmalat in Brazil, Nutreco in Chile, and Asociación Bancaria in Argentina).

In addition to the statistics we have presented here, CUT-Brazil’s method of preparing cases and giving warnings to the company prior to presenting them formally, can also be considered as a successful approach, since in the three cases in question the unions considered that they had achieved satisfactory results enabling them to call off their action.

Other comparisons:

- There are some clearly negative situations, where the complaints have not been taken up (those concerning Ecuador) or have been kept pending (the second Mexican case).
- There seem to have been some setbacks in cases that were initially successful, i.e. the one in Guatemala and the salmon fishing case in Chile. That information was provided by the NGO dealing with the first case (at the seminar in

Montevideo) and by the Chilean representative of Red Puentes (at a recent event held by the Global Network and ORIT in Lima in September 2006). The Chilean case was recently presented by the local trade unions in the Court for European Transnational Companies in Latin America (Vienna, October 2006).

Lastly, the cases presented during 2006 (concerning Uruguay and Brazil) cannot yet be commented on, as they are too recent.

III. ADDITIONAL EVALUATIONS

In addition to the abovementioned analysis of the cases and presentations, some more aspects are worth highlighting, based on the same assessment criteria:

- Trade unions in Latin America are beginning to monitor the annual meeting of the OECD, through the attendance (not systematic) of representatives of CUT-Brazil and CUT-Chile (via their respective observatories) and, in Argentina, though the unions' formal presentation of evaluations based on the models proposed by TUAC and OECD Watch⁹.
- The region also produced what may be an unprecedented political initiative in Argentina, in 2001, when a draft proposal was submitted to the Parliament, as the NCP was being officially established, which contained various recommendations from TUAC on the following matters: multi-governmental arrangements, quadripartite structures, sub-regional links (with other MERCOSUR countries), links with export credit policies, and NCP-Parliament coordination. That proposal was stressed by the NCP for Argentina in its annual report to the OECD (2002)¹⁰.
- More generally, the region is producing some initial evaluations from a labour law perspective.
- The awareness-raising and dissemination activities on the Guidelines were particularly effective at the FES event in Uruguay at the end of 2004. As a result the views expressed there, particularly by governmental representatives¹¹, augur well for future reporting events of that nature.

⁹ Both procedures were followed in 2005, in conjunction with the consultations with both organisations. In the TUAC case, the reply came from the CGT, from the leader of the highway administration César González (a member of the ORIT Executive Board). In the OECD Watch case, the reply was provided by UNI-Americas' Southern Cone body. Both cases highlighted the initial passivity of the NCP followed by its positive reaction once it was dealing with the first case.

¹⁰ The proposal (that only received partial support, at the end of 2001) established a permanent body for contacts with the Parliament, mainly via the External Relations, Consumer Protection and Labour Legislation Committees; put the NCP in charge of external relations, supported by employment and economic matters; used the NCP as a reference for the good behaviour expected from companies receiving voluntary assistance from the state, including guarantees on export credits; worked as a broader body in which the social actors and other interested parties could meet to discuss issues related to multinational enterprises and CSR generally; established a procedure for regular consultation and discussion meetings with the social actors, at least three times a year; promoted work on MERCOSUR; specified the need for the NCP to be provided adequate resources.

¹¹ In fact, the public authorities that were really competent on this issue were those of Chile, Brazil and Mexico, since the Argentinian representative was not a member of the NCP.

The legal scope of the Guidelines

A central issue in evaluating the NCPs in the region is the legal scope of the Guidelines.

TUAC has expressed clear views on this, in two articles by its Secretary-General John Evans: “The OECD Guidelines – one tool for corporate social accountability”, in the ILO’s *Labour Education* magazine (2003/1), and “The OECD Guidelines for Multinational Enterprises”, presented by Evans at an event in Mexico in November 2004 to celebrate the country’s ten years of membership of the OECD. He states that:

- The guidelines are not binding at international level, since they are not legal procedures. However, by providing a forum for discussion they do go further than national legislation. At the same time they are not optional for companies. If the latter could simply choose between certain provisions in the Guidelines or submit them to their own interpretation, the guidelines would be totally worthless. The application of the Guidelines is not dependent on their adoption by companies.
- It is disturbing that some NCPs are using a legalistic approach, since this is leading them to avoid handling some cases on the grounds that they are awaiting court decisions before taking any action, which means that cases can be delayed for several years. The NCPs should take up cases even if they are being dealt with in other fora. Trade unions can choose to submit cases to the appropriate NCPs whilst also using the national legal system.

At the seminar in Montevideo, two of the government representatives expressed views that seem to differ partly from that approach:

- The Chilean NCP maintained that the Guidelines are only binding at a political level, since they were signed by governments, and are not legally binding, since they have to be implemented in accordance with the applicable national legislation and standards.
- Similarly, the Mexican NCP claimed that the Guidelines did not constitute a supranational authority but were a complementary tool that could not operate outside legal processes, since otherwise two cases might have to be treated differently as they had to comply with separate requirements from different authorities. That is why the Economic Ministry, which headed up the NCP, consults other specialised government bodies. In other words, the NCP cannot adopt its positions autonomously, since that could result in the creation of new rights that went beyond national law. It was clearly necessary to compare the Guidelines with national legislation. Using that yardstick the company would need to comply with the relevant legislation, and would thereby automatically comply with the Guidelines.

In both cases, the approach applied only to labour issues, as it was acknowledged that environmental matters would need to be analysed separately since there might not be any corresponding national legislation.

The TUAC representative at the seminar in Montevideo endorsed his organisation's general view that the OECD procedures had no legal impact, since it was not the NCP's job to point up violations of the standards or to produce evidence to that effect, since that could lead it to reach different conclusions to a court. The NCP procedure allowed for measures to be taken without awaiting the results of legal cases. The focus of the NCP's action was not to point up legal violations but to facilitate conciliation.

Within the region, there has been virtually no official research (by the unions or any other parties) into these matters. However, a major discussion is taking place in the Americas on two other instruments, which might be considered to be linked to the general objectives and nature of the Guidelines:

- firstly, the social protocol supplementing the North American Free Trade Agreement (NAFTA) is also a non-judicial process that allows the presentation of complaints against multinationals by the member states to a specially created office, through a procedure that involves hearing a committee of independent experts, which may result in arbitration. This had led to a series of demands in Mexico, some of which, such as Sprint in the telecommunications sector, have been taken up (as testified by the representative of the Mexican telecommunications unions at the seminar in Montevideo). The issue was very relevant since the series of free trade agreements signed between the USA and other countries in the region from 2003 onwards (Chile, Peru, Colombia, the Central American countries and the Dominican Republic) have included "social chapters" based on the same model. That approach is also reflected in the proposals of ORIT and the group of NGOs in the Continental Social Alliance (CSA), and in the traditional "social clause" proposed by the ICFTU in the GATT/WTO negotiations in the 1980s¹².
- secondly, in recent years increasing use has been made in Latin America of the USA's Alien Torts Claim Act (1789), which has been treated as a national law with international scope, since it authorises civil claims for damages in the event of violations of human rights in a foreign country by non-nationals, in cases where the national legislation of the USA is breached¹³. That act has been used

¹² In its Alternative for the Americas (2001), aimed at providing ways of opposing the neo-liberal focus of trade and investment, that was motivated at the time by the current negotiations on the FTAA, the CSA (Continental Social Alliance) stressed that whilst national laws should suffice for ensuring compliance with labour standards, multinationals tend to exert undue influence through making implicit threats to the states where they are located or are planning to move. Consequently, those enterprises (and perhaps also local ones) should commit themselves legally to respect the standards as a condition of their right to export and to obtain preferential customs tariffs. That provision would include in the trade agreements a clause based on the ILO Declaration of 1998, modifying its original character (in line with ILO traditions) to become a binding requirement subject to monitoring arrangements checking actual compliance with labour standards and potentially leading to sanctions in the form of loss of the privileges provided by the trade agreement. Such sanctions would only take effect when violations were serious and repeated and had been expressly denounced by trade unions, NGOs or any affected persons, and once all attempted remedies had been exhausted. The ILO itself would be in charge of the monitoring process and would receive and investigate complaints, although it was noted that the current procedures would not be effective enough to process and investigate complaints quickly. A tribunal would also be needed for solving conflicts in a transparent manner based on an appeals procedure, a public register of all cases and public hearings. That was in line with the principle that mechanisms were needed to promote a better respect of national laws.

¹³ The following comments are taken from A. Baylos Grau's work on the "legal responsibility of transnational enterprises" in the "Revista de Derecho Social Latinoamérica, 1," (Buenos Aires,

quite regularly in Latin American cases concerning anti-union practices, and particularly those in Colombia (three cases) from 2001 onwards, which have included intimidation, abduction and assassination of union representatives (Coca Cola, Del Monte (ex-United Fruit) and the mining company Drummond). A case in Ecuador, also linked to Colombia, was also brought against DynCorp, which sprayed a group of Ecuadorian farmers with toxic chemicals on the border with Colombia, ruining their agricultural production. The company had been instructed by the US government, under Plan Colombia, to destroy coca plantations but also intoxicated the fields in the neighbouring country which was not growing drugs and should not have been targeted since they were in another country. Other cases were brought in Peru (against the oil company Oxy) and Argentina (against Daimler Chrysler).

One study directly concerning the Guidelines was made by the Argentinian Federico Di Giorgio ("The OECD Guidelines: an alternative way of securing social rights via trade union action", Buenos Aires, 2005)¹⁴. This approach, which involves the application of national legislation with reference to the social chapter starts by dividing the Guidelines into two groups:

- Those that are binding, since they are already covered by national legislation or by international labour law ratified by the country. It is the inclusion of practices specified in the Guidelines in other binding instruments that makes those particular guidelines binding.
- Those that are not binding, which is only the case with two guidelines, in fact: the hiring of local labour in the destination country through multinational investment and the ban on the company's use of "relocation" as an argument in the associated collective bargaining, together with the provision by multinationals for a general consultation of workers or their organisations regarding measures that will seriously alter industrial relations within the company. These are non-binding, since although the Constitution makes provision for forms of worker participation in companies, in practice these have not been used.

Accordingly, the author maintains that since the national states have adopted the Guidelines, there is an international commitment to support them through the work of

2006), which quotes from the work of A. Ojeda and L. Compa on "Globalization, class actions and labour law" published in Daugareilh, I: "Mondialisation, travail et droits fondamentaux (Brussels/Paris, 2005). That law began to be used fairly regularly during the 1980s and was applied against Latin American army personnel living in the USA for committing crimes and torture in their countries of origin. The use of that law was endorsed by the Congress in its Torture Victim Protection Act in 1992, which stipulated that any other violations of international law should be treated under the Alien Tort Claims Act (ATCA), which was applicable, from that decade onwards, to any individual persons or citizens who had violated fundamental human rights. That measure was applied for the first time in 1996 to insist that the MNE Unocal, which had used forced labour for constructing an oil pipeline in Burma, whilst the government had wiped out people living in the region in which the pipeline was to be built; this had involved murders, raping and abduction of people from the countryside to work in forced labour camps for constructing railway lines, destroying forests to build roads alongside the pipeline and for other infrastructure for transporting crude oil. The courts compared the use of forced labour to slavery and the trafficking of slaves, which are included amongst acts in breach of international law and invoke the personal responsibility of those committing them.

¹⁴ At the time of writing of the article the author was a member of the CTA's Social Law Observatory and had presented his article when representing the CTA at the above-mentioned first dissemination meeting on the Guidelines held by the local NCP (in November 2004).

the NCPs, which gives the Guidelines a certain weight and makes them less subject to states' self-regulation and closer, in some ways, to a set of requirements. Whilst the NCPs cannot apply sanctions, the drafting of reports on achievements and recommendation for better solutions to existing problems are sufficiently close to the sanctions under international public law. In addition, the author points out that the procedure provided in the Guidelines is an optional one that the aggrieved party can make use of together with the other procedures available under national or international administrative or legal systems.

The Guidelines are also examined within broader discussions in Latin America, such as the one led by the Uruguayan Oscar Ermida Uriarte (who was an official at the region's ILO office for a long time), for instance in his "Derechos laborales y comercio internacional" ("Labour laws and international trade") in the *Pistas* journal of 9 March 2003, where the Guidelines are described as examples of indirectly applicable international standards, i.e. standards that can be applied unilaterally or through collective agreements but are not obligatory. That type of standards also includes instruments applied by individual companies (such as "social clauses", codes of conduct, socially responsible investment and social labels) and codes of conduct drafted by nations for application at international level, particularly by multinationals, that the latter commit themselves to promote. They also include the 1977 ILO Declaration, the 1999 UN Global Compact and the 2001 European Union "Green Paper".

Direct standards, on the other hand, are always specified and binding on the affected, parties, whose behaviour is imposed in abstract terms (i.e. they are not aimed at individual companies), and are meant to be universally applicable. These are primarily the ILO's international conventions and the social charters and treaties on human rights and trade integration.

Another debate is taking place in Latin America (that has been sparked off by the 2003 proposal of the UN Commission on Human Rights: "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights") on the relationship between human rights, nations and companies, which also involves discussion of the Guidelines. The aforementioned Red Puentes has expressed the view, for example, in its Platform for Argentina (a key policy document) that international human rights law is not solely applicable to states but also to companies, which have indirect obligations, at least, since the states' own obligations include ensuring the respect of human rights both by the state itself and by non-state bodies, such as companies and individual people, within their respective spheres of activity and influence. It also points out that some UN monitoring bodies have already affirmed that their treaties are directly applicable to companies in areas such as respect for private life, food, water and health.

Other matters

The seminar in Montevideo also evaluated some other matters related to procedures, dissemination and resources:

Procedures

On behalf of the government representatives, the Chilean NCP felt that separate meetings (that were later combined) between managers and unions were more effective, since the former tend to adopt defensive attitudes in joint meetings. The Mexican NCP stressed that it could not intervene or express opinions if one of the parties was opposed to its mediation.

The Mexican trade union representative stated that the unions had received more support from the German NCP than from the local one. The Brazilian unions criticised the ambiguous government approach when dealing with the case in the metalworking sector, since it accepted the existence of a “ghost” union set up by a company that was being attacked for doing so. CUT-Brazil thought it would also be helpful if the NCP produced an official list of the multinationals operating in Brazil, so as to spread the information more democratically and thereby assist the NCP’s own work. As regards the proposal for a more complex NCP structure, the CUT felt this might not necessarily be a positive thing since government bodies tend to “neutralise” each other.

Dissemination

The Chilean NCP noted that in the first case that had been presented there had been an agreement between the parties not to pass on any information whilst negotiations were taking place, and that this had happened until the agreement was made public. The unions, from CTM, stated that they had only heard about the existence of the NCP by chance (at a meeting on APEC in early 2003), that the dissemination campaign that followed was no more than a leaflet containing some general comments, that the information policy of the NCP seemed to be focusing on external recognition (by attending the annual OECD meetings) and that the office was not very visible to ordinary citizens, partly owing to its multifunctional set-up. The unions also pointed out that when the first promotion seminar was held by the unions (the FES), the NCP had been invited but did not attend it.

Available economic resources

The Chilean NCP said the lack of economic resources was a problem, as exemplified by the cost of translations. The Mexican NCP also mentioned its severe shortage of staff. In Argentina, the representative illustrated the same problem by explaining that the office dealing with the guidelines also had to handle the negotiation of the trade agreement between Argentina and the European Union, with very few staff. An NGO confirmed this by mentioning that the head of the NCP had told them that the Guidelines were “number ten” on its priority list.

APPENDIX

INFORMATION SHEETS ON SPECIFIC CASES

MEXICO

Company: Continental Tire (Germany), concerning Manufactura Euzkadi, its subsidiary in Mexico.

Sector: tyres

Case brought by: NGOs German Watch and FIAN (Germany), with support from the Sindicato Nacional Revolucionario de Trabajadores de Euzkadi (SNRTE), a UNT affiliate.

Complaint addressed to: NCP Germany initially, and then transferred to NCP Mexico.

Initial date of complaint: June 2002, followed by a new complaint the year after.

Completion date: January 2005

Source for reports: TUAC, ICFTU, SNRTE, NCP Mexico, OECD Watch, and media reports.

The case was brought by the SNRTE, which was originally founded in 1935 and was a CTM member up to 1959 (its name changed in 1975).

The manufacturing company Euzkadi, which is Basque-owned, set up a plant in the late 1920s in Mexico. In 1936 it merged with the firm B.F. Goodrich International, which is US-owned, but kept capital assets of Mexican and Spanish origin. The plant in Jalisco, established in 1970, was long regarded as the most modern of its type in Latin America. In 1995, Slim, the owner of Telmex/América Móvil, bought the plant and sold it on at the end of 1998 to the above-mentioned German company (the fourth largest producer worldwide), keeping a minority stake in the shares. Continental was looking for new ways of penetrating the North American market, but then its own production in North Carolina slumped (there was also a major dispute with the unions over the company's working practices there). The sector was also affected by the signing of the North American Free Trade Agreement.

The event triggering the complaint was the closure of five plants (including the one in Jalisco) in December 2001, in order to concentrate production in San Luis Potosí, coupled with the amendment of the existing collective agreements. This operation resulted in the dismissal of 1,164 workers. The SNRTE held a sit-in to prevent the withdrawal of plant and equipment and immediately called a strike. Soon afterwards it also organised a march on Mexico City that passed by various other plants in that sector and car plants. It issued a formal complaint to the Ministry of Labour and Social Protection concerning the illegal closure of the plants, since various articles of the National Employment Law had been breached, owing to the failure to consult the competent Conciliation and Arbitration Committee beforehand and to prove the need for the measure. The company, on the other hand, requested that the strike be declared illegal. In March 2002, the committee declared the strike illegal, so the union requested that the case be defended in the Labour Court, which the latter agreed to.

The Euzkadi union's strategy included an international dimension from the start, since it received direct support from the IGBCE (chemical federation) and two German NGOs (FIAN International and German Watch), and additional monitoring by the ICEM and the DGB.

During the dispute it visited the head office of Continental three times (between 2002 and 2004), meeting activists and holding talks with the company management. The first visit coincided, furthermore, with the Mexican President's visit to Germany. The union:

- Presented the case to the local NCP, attending meetings that included the Mexican ambassador to Germany.
- Interviewed German members of parliament, resulting in the Green Party, which was organising a campaign in the European Parliament denouncing the workers' rights violations committed by European multinationals in Latin America, illustrating their campaign with the concrete example provided by Continental in Jalisco. This led to the final resolution of the European Parliament on the second EU-Latin American Summit including an explicit reference to the case ("the violent dismissal of workers at Euzkadi was particularly noted by MEPs and threatens to become a symbolic case").
- Obtained an interview with the Chair of the company's board, who promised to start a dialogue aimed at finding a financial solution to the conflict, though in Mexico.
- With support from shareholders who were critical of the company, it was able to attend Continental's annual shareholders' meeting. At that meeting, it refuted the official report, which claimed that the plant had been closed owing to the union representatives' refusal to accept the changes proposed by the management.

In the course of the dispute, some of the members of the union (360) accepted the compensation offered by the company, so the total that maintained their opposition was 604. At this time there was another dispute going on with the workers at the plant in San Luis Potosí. That was discussed by another shareholders' meeting, again attended by the union, which ended up forcing the Chairman of the Board of Directors to resign.

The role placed by the Mexican NCP was very limited, since it did not react at all for two years and only met the union once. In the meantime, the Minister of Labour without portfolio decided that the strike was unfounded (an option not provided for in the Federal Labour Law); the decision was contested by the union in the Labour Court, which upheld the union's view.

In February 2004, the Labour Court recognised the strike, heralding a new phase in the conflict, which ended in November 2004 with Continental reaching an agreement with the union, with the government's help. Finally, then, in January 2005 (37 months after the initial complaint) the NCP closed the case. Based on that agreement, the company:

1. handed over 50% of the shares to the workers, in exchange for the lost wages and to support the union's proposal to take over the production;
2. sold the remaining 50% to the local company Lianti Systems;
3. provided technical assistance for six months;
4. promised to buy half a million tyres per year.

The Mexican government exempted the new company from taxes and provided financial assistance to the SME. The company retained a value of 80 million dollars. In return, the workers agreed to dissolve the union and established the "Cooperativa de Trabajadores Democráticos de Occidente" (a workers' cooperative).

It has been said that the company's decision was influenced by the fact that it was a sponsor at the football World Cup in 2006 and did not want to risk the conflict continuing until then.

Company: Michelin (France), concerning Uniroyal, its subsidiary in Mexico

Sector: tyres

Case brought by: CGT-France and workers from the Sindicato Nacional de Trabajadores de Uniroyal SA de CV (SNTU).

Complaint addressed to: NCP France, with some involvement from NCP Mexico.

Initial date of complaint: March 2004

Completion date: not completed

Source of reports: SNTU

The case was brought by workers from the union dealing with Uniroyal, which has been owned by Michelin since 1992. Between then and 2000, the company progressively reduced the workforce from 1200 to 650, whilst maintaining the same level of production. In August 2000 the company started a process of closing its two plants (in Querétaro and the "Distrito Federal"), as part of a restructuring of its operations, without holding open consultations with its employees. Subsequently, the company reached an agreement with the union on the terms of the wind-up, however a group of members criticised their organisation before a public notary for accepting severance pay much lower than that required under the collective agreement for the rubber industry. In April 2002, the company re-opened one of the plants, naming it Autopartes Internacionales de Querétaro, taking on new workers from another CTM affiliate (the "Sindicato Nacional de Trabajadores de Comunicaciones, Actividades Comerciales y Servicios de la República Mexicana"), whose General Secretary had been the legal advisor of the SNTU. Faced with that situation, the former employees requested reinstatement based on the Federal Employment Law, which states that where an employer re-starts a company's operations, s/he is obliged, all things being equal, to give preference to the workers under contract, based on their seniority and family circumstances; the reinstatement request was not granted, however.

In March 2004, a group of workers from the original plant denounced this situation in court and presented the case to the French NCP, including in its arguments the fact that the plant was operating illegally and ignoring the provisions of the collective agreement covering the sector which was applicable to all plants in that sector. The case was also presented to the OAS' Inter-American Commission on Human Rights, and the French ambassador to Mexico was informed. The plaintiffs received support from the union at Euzkadi, with which it created a workers' front to "defend the rubber industry". The case was later transferred to the Mexican NCP, which organised meetings with both parties.

According to the annual report of the Mexican NCP (May 2006), no court ruling has yet been made and the government was collecting the latest information with a view to taking a decision at a later juncture.

Company: Angélica Textile Services Co (USA), concerning its subsidiary Life Uniform in Mexico, which is responsible for two plants: Markey Tex and Coco Tex.

Sector: cleaning services

Case brought by: Unite Here (merger of Unite with the Hotel Employees and Restaurant Employees International Union, HERE), and the Mexican NGO/support centre "Centro de Apoyo a los Trabajadores de Yucatán" (CATY).

Complaint addressed to: NCP USA and NCP Netherlands

Initial date of complaint: August 2004

Completion date: June 2005

Source: TUAC

Company: ABN Amro (the Netherlands), concerning LaSalle Bank, its subsidiary in the USA.

Sector: financial

Case brought by: Unite Here

Complaint addressed to: NCP USA

Initial date of complaint: March 2005

Completion date: July 2005.

Source: TUAC

These two presentations refer to the same case, which criticised the health and safety conditions, wages and anti-union behaviour at two plants owned by the company in Mexico. The first complaint was rejected owing to uncertainty as to the ownership (and, hence, the responsibility) but the second case was successful, since it focused on the body that had been financing the expansion of the company.

One month after the case was presented Life Uniform was purchased by Healthcare Uniform Co, a firm owned by Sun Capital Partners. The workers' terms and conditions were improved as a result of the purchase, so the case was closed.

BRAZIL

Parent Company: Parmalat

Subsidiary: Parmalat Brazil

Sector: foodstuffs

Case brought by: CUT-Brazil, supported by the 3 Italian union centres

Countries involved: NCP Brazil and NCP Italy

Initial date of complaint: September 2002

Completion date: June 2003

Source of reports: TUAC

This complaint concerned the inappropriate procedure used by the company, some months previously, when transferring production between subsidiaries within the same country. The NCP accepted the argument but closed the case after a few months, stressing the reasonable nature of the compensation offered by the company, whilst pointing out, however, that the company had failed to explore the alternatives to relocation, thereby disregarding the Guidelines. The NCP recognised that companies have the final decision in such matters, but also that if the staff and the government had been involved in assessing and discussing alternatives, viable options might have been found for keeping the initial production site.

Parent Company: Unilever

Subsidiary: IGL Industrial Ltda./Unilever

Sector: production of cleaning materials

Case brought by: CUT-Brazil, with its union in the company. There was also support from the National Committee of Unilever Unions.

Complaint addressed to: NCP Brazil, and consultation with the NCP Netherlands

Initial date of complaint: December 2003

Completion date: June 2004.

Source: TUAC

The complaint was raised in the context of a general strategy by the company of making major cuts in its workforce worldwide. In 2003 the union learnt through the press that part of the production line at one plant (in Vinhedo, 80 km from Sao Paulo) was to be transferred to another plant in Ipojuca, in the state of Pernambuco, affecting 120 jobs. The NCP held some meetings but no progress was made since the Brazilian NCP argued that it first needed to conclude a code of procedures, which never actually materialised.

The company initially claimed that it was not obliged to comply with the Guidelines in Brazil (unlike in the Netherlands), but then changed tack and agreed to engage in negotiations, so the NCP suspended the case.

CUT-Brazil also presented the "Unilever case" to the Social Affairs Committee of MERCOSUR, in the form of an "opinion", since the standing orders of the committee do not allow the submission of complaints. The CUT argued that the Committee's tasks included considering opinions regarding the application of the workers' rights that are protected in the Social Declaration, which include freedom of association.

Parent Company: General Motors (USA)

Subsidiary: General Motors do Brazil

Sector: automotive

Case brought by: Federación de Trabajadores Metalúrgicos, an affiliate of CUT-Brazil in Porto Alegre.

Complaint addressed to: NCP Brazil

Initial date of complaint: September 2003

Completion date: suspended

Since its establishment in the country (in 1997) the company has been interfering in organising rights. This interference has included setting up a yellow company union, which began a campaign to get workers to leave the CUT and was provided with a free phone line by the company.

The complaint to the NCP was made after the subsidiary refused dialogue with the union. The NCP invited the company to a tripartite meeting, but it did not attend it. There have been no subsequent developments.

This case has also been referred to the ILO.

Parent Company: Royal Ahold (the Netherlands)

Subsidiary: Bompreco

Sector: retail trade

Case brought by: Confederacao Nacional dos Trabalhadores do Comércio e Serviços (CONTRACTS), an affiliate of CUT-Brazil

Complaint addressed to: NCP Brazil

Initial date of complaint: June 2004

Completion date: not completed yet

As part of its restructuring process, following a global crisis in the company, Royal Ahold decided to sell Bompreco to Wal-Mart. That company had been operating in Brazil since 1995 and prior to the purchase had 25 shops in four states (Sao Paulo, Rio, Paraná and Minas Gerais), employing 7,000 workers. It had the 6th largest turnover in the sector. After buying Bompreco, Wal-Mart had 143 shops, with 27,000 employees and became third largest in the rankings.

For CONTRACTS, the important thing was to guarantee the workers' acquired rights and safeguard 20,000 jobs. The advantage was that all the subsidiaries of Bompreco were in the N. East region of the country, where Wal-Mart was only just starting to set up its operations.

CONTRACTS' efforts were aided by some other events, including the unification of the workers' representation bodies in the two companies and the establishment of contacts with the AFL-CIO in North America.

The presentation of the case was withdrawn after CONTRACTS had obtained adequate terms for its negotiations.

Companies: Alcoa and Votorantim

Sector: energy and metalworking

Case brought by: Movimento dos Atingidos por Barragens (MAB) and Terra de Direitos

Complaint addressed to: NCP Brazil

Initial date of complaint: June 2005

Completion date:

Source of report: OECD Watch

The complaint concerned the environmental problems linked to the building of a hydro-electric dam in Barra Grande. There had also been some fraudulent aspects of the prior environmental impact assessment.

Company: Royal Dutch Shell (the Netherlands)

Sector: petroleum

Case brought by: CAVE (Colectivo Alternativo Verde) and SIPETROL-SP (mining and petroleum workers' union of the state of Sao Paulo).

Complaint addressed to: NCP Brazil and NCP Netherlands.

Initial date of complaint: May 2006

Completion date: pending

Source: OECD Watch and TUAC

The complaint concerned the Pool San Pablo, created by Shell and Esso, which had disregarded the claims of the Health Secretary (in January 2005) regarding violations of federal, state and municipal law, together with ILO standards. The presentation noted the existence of 65 diagnosed illnesses resulting from contamination through contact with products such as aliphatic or aromatic hydrocarbons (and their

derivatives). For 20 years, the companies had been burying chemical waste under their factories.

The case was brought simultaneously with another one criticising the same company for its operations in the Philippines, where it had manipulated the local authorities and failed to inform the local residents and its own employees about the hazardous nature of its operations.

The strategy has also included presenting the case to the ILO and the World Health Organisation (WHO).

ARGENTINA

Company: Grupo BNL/Banca Nazionale del Lavoro (Italy), concerning the BNL in Argentina.

Sector: banking

Case brought by: Asociación Bancaria (a banking union affiliated to the CGTRA

Complaint addressed to: NCP Argentina

Initial date of complaint: December 2004

Completion date: called off with no conclusion.

Source: Asociación Bancaria and report by the CGTRA to TUAC (May 2005).

The complaint was part of a much wider campaign by the banking union against the Argentinian subsidiary of the Grupo Bancario BNL, which has its head office in Roma and was recently acquired by BBVA, which employed around 2000 workers in Argentina. In March 2004, the bank's management announced that it was leaving the country and planning to sell its subsidiary to the Banco Hipotecario, the former national bank whose stock was owned by a foreign investment bank.

The Bancaria, supported by the CGTRA, opposed this move, which it said would not be beneficial to the employees of the bank, and took a range of measures including a pre-denunciation of the case to the NCP for Argentina. The case referred to a series of negative impacts on the local BNL, and included the union's complaint regarding non-compliance with labour legislation (on wages and working time, evasion of social security contributions, and disregarding of seniority) and the manipulation of information to sow fear amongst the workforce regarding the withdrawal of the bank from the country. The company had also failed to attend meetings called by the Ministry of Labour to discuss its planned moves.

In making its presentation, the union asked the NCP for its help with establishing a dialogue with the management of the BNL. The Treasury passed on the case for examination by the Ministry of Labour, Employment and Social Security (international matters), which held consultations with both sides. In parallel the union successfully cooperated with the government on suspending the pending purchase by the Banco Hipotecario, and obtained its agreement that the Argentinian State should keep a large enough stake in the capital to prevent that purchase. The union subsequently decided not to pursue its pre-denunciation, since it felt the NCP and the ministry had played a positive role.

URUGUAY

Company: Botnia (Finland), concerning its subsidiary Metsa-Botnia Orion, that is setting up in Uruguay.

Sector: cellulose litter bins

Case brought by: CEDHA (Centre for Human and Environmental Rights, Argentina).

Complaint addressed to: NCP Finland

Initial date of complaint: April 2006

Completion date: pending

Source: CEDHA and OECD Watch.

Company: Kemira (Finland), regarding its cooperation with Botnia.

Sector: chemical

Case brought by: CEDHA

Complaint addressed to: NCP Finland

Initial date of complaint: June 2006

Completion date: pending

Source: CEDHA

Company: Finnvera (Finland), for its role in financing Botnia.

Sector: financial

Case brought by: CEDHA

Complaint addressed to: NCP Finland

Initial date of complaint: June 2006

Completion date: pending

Source for reports: CEDHA

Company: Nordea (Sweden), for its role in financing Botnia.

Case brought by: CEDHA, supported by the NGO Bellana (Norway)

Complaint addressed to: NCP Sweden, and communication with the NCP Norway

Initial date of complaint: June 2006

Completion date: pending

Source: OECD Watch and CEDHA

All four presentations concern the same case and focus on the establishment in Uruguay of a paper mill owned by Botnia, which together with a similar operation by the Spanish company Ence, not far away, would produce the largest concentration of cellulose production in the world. The NGO launching the complaint, the Centro de Derechos Humanos y Ambientales (CEDHA), had previously been one of the main advisors of the people of Gualaguaychú, a town of 35,000 inhabitants in the province of Entre Ríos, Argentina, who had resisted the installation of two cellulose plants at a very short distance from each other beside the River Uruguay, which separates the two countries, in the middle of 2003.

The heart of the conflict was that the toxic waste would be discharged into the river, which is the common property of both countries, with no prior consultation of the binational rivers authority. It was felt that the large scale of the operation would produce an unprecedented situation in terms of dealing with the environmental impact.

CEDHA devised a multi-pronged strategy aimed at the international institutions, starting in October 2005. They used the consultation procedure of the International Finance Corporation (IFC) of the World Bank, which is delaying the credit for establishing the plants; approached other banks (ING, BBVA) under the Ecuador Principles, which are

also linked to the IFC; the OAS Committee on Human Rights and, lastly, the OECD Guidelines.

In addition to the direct case against Botnia, the various presentations included:

- Nordea, as the main coordinator and financier of the investment by Botnia, and the main financial services group in the Nordic and Balkan region, based in Sweden. The presentation identified the vital role played by Nordea in ensuring the viability and continuity of the project.
- Kemira, a chemical company with some state-owned capital, which was sub-contracted by Botnia to carry out specialised tasks at the plant.
- Finnvera, which is the Finnish Export Credit Agency.

Nordea had repeatedly refused to comment on its level of responsibility, stating that any complaints would be dealt with only by the appropriate governance bodies. CEDHA seized on that statement, arguing that the OECD is one such body.

The Finnish NCP agreed to handle the complaint and called a meeting in Finland, which took place in August. It also published an open letter on its website suggesting that CEDHA visit its paper mill in Finland, however the invitation was refused on the grounds that it would not be a fair comparison as the factory is less production-based and works under separate and stricter environmental conditions than those proposed in Uruguay, which meant that the doubts would remain. CEDHA suggested that it would be more realistic to visit the factories operating under similar conditions and with Finnish technology in Chile or Brazil, however it received no reply.

The strategy included presentations to the World Bank, the OAS and to other banks linked to the funding of the Project (ING, the Netherlands, and BBVA in relation to the Ence case). The banks were referred to the Ecuador Principles that they had signed.

Company: Cargill (USA) concerning its subsidiary in Chile, Marine Harvest Chile SA.

Sector: foodstuffs

Case brought by: Millers' Union, an affiliate of CGTRA.

Complaint addressed to: NCP Argentina

Initial date of complaint: November 2006

Completion date:

Source of reports: no information

CHILE

Company: Nutreco (the Netherlands) regarding its subsidiary in Chile, Marine Harvest Chile SA.

Sector: salmon fishing

Case brought by: NGOs Milieudefensie (the Netherlands) and Ecoocéanos (Chile), with consultation of the Federación Provincial de Trabajadores de la Industria Pesquera de Puerto Montt.

Complaint addressed to: NCP Netherlands, that later passed it on to NCP Chile (September 2002). Information also requested from NCP Norway

Initial date of complaint: August 2002

Completion date: October 2003 and May 2004

Source: Institutional website of the NCP Chile, TUAC, report by the NCP representative at the TUAC Seminar in Montevideo (2004), Red Puentes Chile

The company operates in the region of Puerto Montt and is the national leader in salmon exports, particularly to the US and Japanese markets, a trade that has already overtaken copper exports. The main charges levelled against this company and others (such as Aqua Chile) concern environmental and health matters related to the exporting of contaminated salmon, including the use of the “verde malaquita” fungicide, despite the ban on the latter imposed by the government in 2002. The salmon farms have also been accused of social dumping by Irish, Scottish and North American companies since they sell at low prices and receive subsidies from the national fisheries development body (Política Nacional de Acuicultura, PNA).

The case was taken up by the Dutch NGO in the Netherlands but it failed to secure any agreements and so transferred it to the NCP in Chile. The complaint combined the above-mentioned environmental issues with protection of small-scale fishing and some labour issues. The three trade unions in the company had reported problems with freedom of association, owing to requirements to sign agreements pledging not to join a union, and with the hindering of joint negotiations by those unions. Some of those matters constituted violations according to the Labour Inspectorate. In October 2001 a strike was held in one of the plants, following which the company made some unfair dismissals. The complaint also noted inappropriate behaviour by the supplier and subcontracting firms.

During the case itself, the NCP called a meeting of the advisory council and established a broad-based dialogue, in Puerto Montt, with all the sectors involved, including recreational anglers. A director from the head office travelled to Chile for these discussions. The company also decided not to fund a study into the environmental issues, arguing that this would only “serve (our) competitors”.

The case was initially closed in October 2003, when the NCP noted that the company had reached agreement with the union in December 2002 on renegotiating the existing collective agreement and on a supplementary welfare fund that should be run jointly with the union, thereby meeting some of the key demands. It did, however, remind the company about all the existing trade union rights and warned of the continuing threats to social peace from the planned cutbacks of staff and reduced protection of union delegates, and of the need for transparent information. As far as the subcontractors were concerned, the NCP recommended that the company establish sanctions, such as the termination of contracts, for use against any that violated labour legislation. The process of dialogue recommended by the NCP included the creation of a full coordinating committee that should include, in addition to the union federation and the promoter NGOs, officials from the Labour, Tourism and Environment departments, small-scale and recreational anglers, other NGOs, and academics and scientists (from the “Universidad de los Lagos”).

The environmental chapter of the case was closed in May 2004, since a new local tax was set up in Puerto Montt to cover marine fishing activities and the government was already developing some specific legislation which, according to the NCP, would be superior to the corresponding chapter in the Guidelines. If, as was hoped, these measures were monitored and applied correctly it should be possible to maintain a full overview of developments in this area.

When this second aspect of the case was closed, the Labour Ministry also helped with the production of an industrial relations agreement with the subcontractors, in line with those operating in the company. At the time, the Federation endorsed those provisions.

In an oral evaluation made by a Chilean representative of Red Puentes (at the ORIT-Red Global Seminar in Lima in September 2006), it transpired that the subsidiary had

been bought by a Norwegian company one year later and that problems were re-emerging. A new case was lodged in May 2006 in the Permanent Peoples' Tribunal (in Vienna).

Company: Unilever, concerning its subsidiary in Chile, Unilever Holding SA

Sector: food and personal hygiene products

Case brought by: CUT-Chile and "Sindicato 1" at Unilever

Complaint addressed to: NCP Chile and NCP Netherlands

Initial date of complaint: June 2005

Completion date: September 2005

Source of reports: CUT-Brazil and Sindicato 1 at Unilever

The case was brought against Unilever Holding in Chile, which in the eight previous years had acquired and restructured various food production factories, closing six of them including the dismissal of over 2,000 workers and the destruction, in practice, of 15 trade union organisations. The remaining companies were to be kept but the plan was to cut wages by 20%. The company was also using subcontracting and avoiding signing collective agreements with the unions.

In December 2004, the company announced some more closures in three plants producing liquid detergents; the production was to be subcontracted or transferred to the plant in Argentina. In March the following year the dismissals began, with a total of 300 job losses (10% of the firm's overall workforce).

"Sindicato 1" at Unilever (created in 1929) represented 190 of those workers and presented the case on their behalf, supported by CUT-Chile. They called for an end to the subcontracting of the jobs of members of the union and demanded a special procedure for dismissals with a retraining and reinstatement plan; an annual contribution by the company to a fund guaranteeing their quality of life over a certain period; the maintenance of the union offices, which should remain the property of the dismissed workers; and the establishment of a tripartite monitoring body on the application of these agreements. In these discussions, the company acknowledged that it had not organised a proper information procedure and accepted most of the demands.

The union later presented the case at the 3rd IBD Conference on CSR (in Santiago), where it was noted in the official report, although the Guidelines were only mentioned indirectly in a reference to the procedure requiring the honouring of agreements signed by Chile.

ECUADOR

Company: no information

Sector: plantations in Ecuador and Belize

Case brought by: the trade unions affected

Complaint addressed to: NCP Denmark

Initial date of complaint: 2003

Source: TUAC

No further information available.

Company: West LB (Germany)
Sector: petroleum
Case brought by: Greenpeace (Germany)
Complaint addressed to: NCP Germany
Initial date of complaint: 2003
Completion date:
Source: OECD Watch

The complaint concerned the funding of an oil pipeline that was regarded to be breaching human and environmental rights. The case was rejected owing to uncertainties as to the ownership/responsibility.

Company: Ascendant Copper Co (ACX-T) (Canada)
Sector: mining
Case brought by: DECOIN (Defensa y Conservación Ecológica de Intag), Friends of the Earth Canada and Mining Watch Canada.
Complaint addressed to: NCP Canada
Initial date of complaint: May 2005
Completion date: January 2006
Source: OECD Watch.

The case referred to the company's actions relating to the copper mine project in the "Comunidad Junín", which were said to constitute an attack on the biodiversity of the region, and to its hiding of information on the legal action taken by the local government, which disputes the ownership of the land.

The NCP took up the case but insisted on holding confidential meetings between the parties, which was rejected by the NGO, since there would be no transparency if it could not inform the communities concerned.

GUATEMALA

Company: ChoiShin Co Ltd (Korea), concerning its two subsidiaries in Guatemala.
Sector: textile maquiladora
Case brought by: the ITGLWF, with involvement from its regional organisation and support from the Federation of Korean Trade Unions, FKTU, and the Korean Confederation of Trade Unions, KCTU) and two company trade unions (Sitracima and Sitrachos, which are affiliates of FESTRAS (Federación Sindical de Trabajadores Salvadoreños). Support from TUAC.
Complaint addressed to: NCP Korea, with information also sent to the NCPs for the USA and the Netherlands, since the companies are operating under the government-backed programme organising the Central American maquiladoras.
Initial date of complaint: February 2002
Completion date: June 2003
Source: TUAC

This case referred to an aggressive anti-union campaign by the two companies, which were suppliers of clothes to Liz Clairborne, the major US brand. There had been harassment and threats to workers. The companies shared the same building in Villanueva, 30 kilometres from Guatemala City. The case was also submitted to the ILO and in February 2003 the latter urged the government to address it.

The Guatemalan government got involved and threatened to revoke the company's export licence if it failed to reach an agreement with the unions. The Korean NCP met the Korean management several times, to try and resolve matters, and recommended that the firm try to "respect the local industrial relations culture and practices and promote a friendly atmosphere with the workers".

In the end, the company reached its first collective agreement with the two trade unions in the company and started to reinstate the union members that it had dismissed.

Some information has been received (from the NGOs attending the TUAC seminar at the end of 2004) to the effect that the companies were beginning to revert, to some extent, to their former practices.
