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**Promoting Corporate Responsibility: The OECD Guidelines for Multinational Enterprises**

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*This paper has been prepared by Kathryn Gordon, OECD.*

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## **PROMOTING CORPORATE RESPONSIBILITY: THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES<sup>1</sup>**

1. International investment by multinational enterprises is at the heart of the current debate on globalisation. The Monterrey Conference and the Johannesburg Summit in 2002 called attention to the importance of responsible international business for spreading the benefits of globalisation more widely. The 2003 G8 Summit Declaration underscored the importance of “fostering growth and promoting a responsible market economy.” The Declaration explicitly cites the OECD Guidelines for Multinational Enterprises and commits the G8 to work with interested countries to create an environment in which “business can act responsibly.”

2. Governments are exploring how the OECD Guidelines for Multinational Enterprises can contribute to improving the functioning of the global economy and to promote corporate responsibility. Some of the issues currently being dealt with under the Guidelines (see below) resemble those encountered in IUU fishing (e.g. strong international dimension to transactions, interaction of corporate wrongdoing with weak policy environments, difficulty of bringing broader social and civil pressures to bear on wrongdoing). The fisheries policy community might wish to give some consideration to the contributions that the Guidelines might make to a broader strategy for fighting IUU fishing.

3. The OECD Guidelines for Multinational Enterprises express the shared views of 38 adhering governments on ethical business conduct.

4. Key features of the Guidelines are<sup>2</sup>:

- They contain voluntary recommendations to multinational enterprises (MNE) in such areas as human rights, disclosure of information, anti-corruption, taxation, labour relations, and environmental and consumer protection.
- While the observance of the Guidelines is voluntary for companies, the 38 governments that adhere to the Guidelines sign a binding commitment to promote them among multinational enterprises operating in or from their territories. Thus, the Guidelines represent a unique combination of voluntary and binding elements.
- The most visible sign of adhering governments’ commitment to the Guidelines is their participation in the instrument’s distinctive follow-up mechanisms. These include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context.
- One of the responsibilities of NCPs is to consider “specific instances”. Under this procedure, NCPs act as referees for multi-stakeholder discussions of specific company behaviour in specific

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<sup>1</sup> This paper has been prepared by Kathryn Gordon, OECD.

<sup>2</sup> For fuller information on the Guidelines, see [www.oecd.org/daf/investment/guidelines/](http://www.oecd.org/daf/investment/guidelines/).

business situations. In effect, this creates a case based approach to the problem of building behavioural norms for appropriate international business conduct.

- The Guidelines are part of a broader and balanced instrument of rights and commitments – the OECD Declaration on International Investment and Multinational Enterprises. In addition to the Guidelines, the Declaration provides guidance for governments in the areas of national treatment, avoiding imposing conflicting requirements on international investors and investment incentives and disincentives<sup>3</sup>.

5. The 38 governments that adhere to the Guidelines represent countries that are the source of most of the world's foreign direct investment and are home to most major multinational enterprises (97 out of UNCTAD's top 100 multinational enterprises are covered by the Guidelines). Although the Guidelines have been in existence since 1976, they were significantly revised in June 2000. After four years of implementation under the revised procedures, it is fair to ask what kind of impact the Guidelines have had to date.

### Results to date

6. The 2000 review of the Guidelines and subsequent work by adhering governments have strengthened the instrument and raised its profile. There is growing evidence that the Guidelines are becoming an important international tool for corporate responsibility. The Guidelines have been translated into at least 24 languages. Some 60,000 web pages refer to them. In addition to the formal adherence by 38 governments, the Guidelines have comparatively broad-based acceptance among a wide array of actors – companies, trade unions and NGOs.

7. As of June 2003, 64 specific instances had been considered<sup>4</sup>. These deal with company conduct in OECD as well as non-OECD countries and cover issues that go to the heart of the current debate on globalization. These two examples are chosen (though others exist) because they show how the Guidelines have been used in situations where, as in IUU fishing, business is being conducted in what is effectively a very weak policy setting:

- **Zambian copper mining.** The Canadian NCP has looked into the resettlement plans of a company operating in Zambia's copper belt. As a result of this consideration, the company agreed to postpone its resettlement plans for one year to allow time to rethink the plans – both the company and the NGO coalition (involving a Canadian and Zambian NGO) that were parties to this specific instance agreed that the procedure made a useful contribution to reducing tensions.
- **Swedish business service provision in Ghana's gold sector.** The Swedish NCP looked at two Swedish companies' involvement (as business service providers) in Ghana's gold sector. The NCP collected information from on-site visits, from the Swedish embassy and from Ghanaian NGOs. It concluded that, while there are significant environmental and social problems in Ghana's gold sector, the two companies could not be held responsible for these problems because they were too far removed from them.

8. These are just a few of the many specific instances that have been considered by NCPs so far. Some of the positive developments that have been noted from these and other experiences include:

<sup>3</sup> For fuller information on the OECD Declaration, see [www.oecd.org/daf/investment/instruments/](http://www.oecd.org/daf/investment/instruments/).

<sup>4</sup> 2003 Annual Report on the OECD Guidelines for Multinational Enterprises: Focus on Enhancing the Role of Business in the Fight Against Corruption. OECD. Paris. 2003. pages 17-20.

- ***A way for governments to engage with companies on issues of business ethics at a lower standard of “proof” than that required by formal legal proceedings.*** A number of actors, including the UN Expert Panel on the illegal exploitation of natural resources in the Democratic Republic of Congo, have noted that the Guidelines allow governments to engage with companies with greater flexibility than that permitted by legal proceedings. In IUU fishing, where it is often difficult to undertake formal law enforcement because of unclear jurisdictions and the difficulty of adhering to judicial standards of evidence, the Guidelines procedures could provide a useful way of interacting with the companies concerned.
- ***A tool for companies.*** Trade unions and NGOs have been attracted to the specific instances procedure for some time. But companies are now starting to realize that it can be a useful tool for them as well. Some of the press releases issued in connection with specific instances (see 2003 Annual Report on the Guidelines, pages 67-73) show that NCPs have provided assurance to companies that their actions in specific business contexts are broadly appropriate. The specific instances procedures can reassure companies (as in the Swedish case described above) while sometimes also helping them to identify shortcomings. It might be useful for the fisheries community (including governments, businesses and other civil society actors) to give some thought to what it thinks responsible conduct consists of in this sector. This might refer not just to complying with the law, but also to how relations with business partners could be structured).
- ***Using the embassy networks as an accountability mechanism.*** It is now becoming common practice for NCPs to use embassies (as well as employees from overseas development assistance programmes) as sources of information for consideration of “specific instances” (e.g. see Swedish case above). Although embassies have been used for this purpose before, the Guidelines provide a way of more effectively channeling embassy information in order to enhance accountability and to improve the quality of the debate on globalization.