



A Guide to the Guidelines

Practical Guidance for Individuals, Communities and NGOs
on the Organisation for Economic Cooperation and Development's
Guidelines for Multinational Enterprises

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Written by Colleen Freeman.

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This guide is available free on the Internet. A Russian version is also available at:
<http://www.foe.org/oecdguidelines>.

For more information or to request a free copy of this guide, please contact:

Colleen Freeman
Friends of the Earth
1717 Massachusetts Avenue, NW, Suite 600
Washington, D.C. 20036
U.S.A.
Tel: (+001) 202-783-7400
Fax: (+001) 202-783-0444
E-mail: cfreeman@foe.org
Web: www.foe.org

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Acronyms and Abbreviations

ATCA	Alien Tort Claims Act
BIAC.....	Business and Industry Advisory Committee
Bribery Convention.....	OECD Convention on Combating Bribery of Foreign Public Officials
BTC	Baku–Tbilisi–Ceyhan oil pipeline
CIME	Committee on International Investment and Multinational Enterprises
EMS.....	environmental management system
EPCRA	Emergency Planning and Community Right to Know Act of 1986
Guidelines.....	OECD Guidelines for Multinational Enterprises
ILO	International Labour Organization
ISO.....	International Organization for Standardization
NCP.....	National Contact Point
NGO	Non-governmental organization
Norms	UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights
OECD	Organisation for Economic Cooperation and Development
PRTR	Pollutant Release and Transfer Register
TRI	Toxic Release Inventory
TUAC	Trade Union Advisory Committee
UDHR	Universal Declaration of Human Rights
UN	United Nations

Introduction

The *Guidelines for Multinational Enterprises* establish standards for the global operations of multinational corporations from Organisation for Economic Cooperation and Development (OECD) member countries. The Guidelines cover a range of issues, including human rights, information disclosure, labor and the environment. In 2002 and 2003, high-level declarations issued by the Group of Eight leaders reaffirmed governmental support for the Guidelines, which solidifies their use as a key yardstick for corporate behavior.¹

Currently, the Guidelines are the only global corporate responsibility instrument that has been formally adopted by governments. Endorsing governments have obligations to promote adherence by multinational enterprises, and the OECD has provided clear directions in this regard. Through National Contact Points, endorsing governments are required to publicize the Guidelines and handle complaints brought against companies who are alleged to be in violation.

There continues to be considerable disparity among endorsing governments' commitment to implementing the Guidelines. Furthermore, the Guidelines have many weaknesses, and their voluntary and non-judicial nature means they cannot be enforced by law. Many NGOs, including Friends of the Earth, are convinced that the most effective way to counter irresponsible multinational corporate behavior is to adopt legally binding rules at the national and international levels.

In the absence of a legally binding corporate accountability framework, however, the Guidelines' complaint procedure offers a unique governmental forum that may be useful for remedying problems. Thus far, only a few complaints have been resolved, and there simply has not been enough experience to know if the Guidelines will be a useful instrument to foster more responsible multinational enterprise behavior globally.

This guide clarifies opportunities and obstacles in the Guidelines, provides practical guidance, summarizes a number of complaints that have been submitted and describes hypothetical examples of activities that could be considered violations. It is primarily intended to help individuals, communities and NGOs to better understand the Guidelines in order to promote meaningful and robust implementation by governments and, most importantly, adherence by multinational enterprises.

Part 1

Introduction to the OECD

Guidelines for Multinational Enterprises

What is the Organisation for Economic Cooperation and Development?

After World War II, the Organisation for European Economic Cooperation (OEEC) was created to manage American and Canadian aid for Europe's reconstruction. In 1961, the OEEC became the Organisation for Economic Cooperation and Development (OECD).

Today, the OECD is a forum of 30 countries that develops and promotes economic and social policies. Its mission is to "build strong economies in its member countries, improve efficiency, hone market systems, expand free trade and contribute to development in industrialized as well as developing countries."² Simply put, the OECD acts on behalf of and in collaboration with its member governments to advocate free market policies and trade.

The OECD member countries are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

What are the Guidelines for Multinational Enterprises?

The *Guidelines for Multinational Enterprises* (Guidelines) are one part of the *OECD Declaration on International Investment and Multinational Enterprises*, which is a broad political commitment adopted in 1976 to promote investment among OECD countries. The Guidelines describe voluntary standards for responsible corporate conduct on a range of social and environmental issues, such as human rights, information disclosure, labor and the environment.

Since their adoption in 1976, the Guidelines have been revised five times. The latest revision in 2000 resulted in a number of important changes. The Guidelines now apply to the global operations of multinational enterprises based in OECD countries, including their subsidiary companies. Companies are also expected to encourage the network of companies that form its supply chain to follow the Guidelines. Endorsing governments must also set up National Contact Points (NCPs) to oversee their implementation. As of January 2004, governments that have endorsed the Guidelines include all 30-member states of the OECD plus Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia.

The Guidelines are voluntary, which means multinational enterprises are not required by law to comply with them. However, endorsing governments do expect multinational companies to follow the recommendations outlined in the Guidelines in their business operations worldwide.

What are National Contact Points?

Governments that have endorsed the Guidelines are obligated to ensure that they are implemented by creating “National Contact Point” (NCPs) within the government. NCPs are required to publicize the Guidelines and handle complaints brought against companies who are alleged to be in violation. NCPs do not monitor whether or not companies are following the Guidelines.

While each endorsing government has flexibility in how it sets up its NCP and promotes the Guidelines, all NCPs are required to be visible, accessible, transparent and accountable when fulfilling the following four responsibilities:

1. Promoting adherence among multinational enterprises, for example, hosting seminars and educational events for foreign and domestic companies;
2. Functioning as a forum for discussion;
3. Submitting annual reports of their activities and participating in consultations with the Committee for International Investment and Multinational Enterprises (CIME); and
4. Handling “specific instances” (OECD terminology for “complaints”) when it is alleged a company has violated the Guidelines.

NCPs are typically located in the ministries for economic or trade affairs. Some include more than one ministry and others involve regional governmental bodies. Some NCPs have representatives from other groups that might include people from the business community, trade unions and/or non-governmental organizations (NGOs).

What is the Committee on International Investment and Multinational Enterprises?

The Committee on International Investment and Multinational Enterprises (CIME) is the oversight body for the Guidelines within the OECD. It assists NCPs in carrying out their activities and makes recommendations on how they can improve their performance.

When a complaint against a company is submitted, only the NCP can decide if the company has violated the Guidelines – the CIME cannot. Any NCP can ask the CIME to judge whether another NCP has interpreted the Guidelines correctly. The CIME can then make clarifications to the Guidelines, if necessary. The Trade Union Advisory Committee (TUAC)³ and the Business and Industry Advisory Committee (BIAC)⁴ can also request clarifications. While the CIME’s clarifications do not become part of the official text of the Guidelines, they give information on how certain guidelines should be seen and understood. Individuals, communities, NGOs and multinational enterprises cannot directly ask the CIME to provide clarifications at this time.

Do the Guidelines apply to all multinational enterprises?

The Guidelines apply to all parts of a multinational enterprise – from the company’s headquarters to its subsidiaries – that are either based or operating in an endorsing country. They also apply to any part of a multinational company operating in non-OECD countries, which means the Guidelines apply worldwide. For

example, complaints have been submitted against companies operating in Zambia, Russia, Burma (Myanmar) and other non-OECD countries because the multinational enterprise is headquartered in an endorsing country.

The applicability of the Guidelines to a certain part of a multinational enterprise is not conditioned on majority ownership. For example, the Guidelines apply to a multinational company that is a minority shareholder in a consortium or joint venture. The only situation in which the Guidelines would not apply is if the company is neither headquartered nor has operations in any endorsing country.

The Guidelines do not provide a precise definition for the term “multinational enterprise.” It generally means a company with operations in more than one country. A multinational enterprise can also consist of a variety of organizational arrangements, including privately-owned, state-owned or mixed ownership.

Endorsing governments have acknowledged that small and medium-sized companies might not have the same capacity as multinational enterprises to adhere to the Guidelines, but governments encourage them to follow the Guidelines as well.

What are the strengths and weaknesses of the Guidelines?

The Guidelines have a number of strengths that makes them an interesting tool to advance more responsible multinational enterprise behavior globally. They cover a wide range of important social and environmental issues and apply to multinational enterprises’ activities worldwide.

Currently, the Guidelines are the only global corporate responsibility instrument that has been formally adopted by governments. The unique, governmental forum to address violations of the Guidelines offers another option that may be useful for remedying problems. For example, the purpose of a complaint could be to resolve a specific problem at a particular location, foster dialogue with management or make changes in the way a multinational enterprise operates. Filing a complaint might also test the functioning of a particular NCP or the government’s commitment to the Guidelines. The Guidelines’ complaint procedure is not as burdensome as filing a lawsuit, and it can be an option for individuals, communities and NGOs that do not have access to the domestic legal system.⁵

The Guidelines also have a number of major weaknesses that cause many NGOs to question their value. The most obvious weakness is the Guidelines’ voluntary nature, which means they cannot be enforced by law. Endorsing governments do not monitor whether or not multinational enterprises are following the Guidelines. Also, it is not always clear what is expected of multinational enterprises under many of the guidelines and the use of phrases such as “where practicable” or “when appropriate” significantly lessens what is expected of companies.

Once a complaint is received by an NCP, there are no set schedules it must follow for handling the matter. In one instance, an NCP waited an entire year before acting on a complaint, and some NCPs have ignored complaints entirely.

There are no formal sanctions if a company is found to have violated the Guidelines, except the potential for negative publicity. NCPs can choose to withhold some or all information about the complaint from the public, including the name of the company, without explaining why or what information is being withheld. In addition, the NCP does not monitor whether a company fulfills its commitments after a complaint is resolved. Lastly, if the complaint is decided in favor of the company, individuals, communities and NGOs cannot appeal the

decision, nor can they directly ask the CIME to clarify whether or not the NCP interpreted the Guidelines correctly.

Do the Guidelines apply to the supply chain?

When the Guidelines were updated in 2000, one of the major changes was extending their applicability to multinational companies' "supply chains." A supply chain is the network of suppliers, contractors and sub-contractors that participate in the production, delivery and sale of a particular product. Multinational enterprises are now expected to encourage all the companies that form its supply chain to follow the Guidelines.

However, the business community and some endorsing governments are opposed to having the Guidelines apply to companies' supply chains. Their opposition has led to a debate as to whether the Guidelines do indeed apply to the supply chain and if so, to what extent. The debate has two aspects that are summarized below.

The first relates to whether the Guidelines apply only to "investment" or also "trade" activities. Opponents to having the Guidelines apply to companies' supply chains argue that the relationship between a multinational enterprise and its suppliers is a trade relationship – not an investment relationship. For example, they argue an "investment" relationship means the multinational enterprise has some form of ownership in the companies that make up its supply chain. Opponents argue that the Guidelines were originally created to promote investment among OECD countries and do not apply to trade activities and therefore, do not apply to the supply chain.

Supporters of the supply chain interpretation, which includes Friends of the Earth, argue that the Guidelines are intended to have the widest possible coverage and that they apply to both investment and trade activities. Supporters point to several sections in the Guidelines' official text, Clarifications and Commentary that support this position. *(See the introductory paragraph in Part 3 for more information on the Guidelines' Clarifications and Commentary sections.)*

The second aspect of the debate relates to what extent multinational enterprises should be expected to make sure its suppliers are following the Guidelines. Opponents argue that the ability of multinational enterprises to influence the companies that form its supply chain is limited. Companies cannot be expected to do the job of governments by acting as enforcers of legal requirements. Opponents also claim that supply chains can be extremely complex, making it impractical for multinational enterprises to ensure that all of its suppliers are following the Guidelines.

Supporters counter that complexity is not a legitimate excuse, and point to examples of companies overcoming the difficulties of managing complex supply chains. For example, they argue "companies readily accept responsibility for product quality in the supply chain and engineer their management practices to ensure product quality."⁶ Supporters also argue that many companies have restructured their supply chains to take advantage of low wages in the garment and textile industries, but then take no responsibility for labor rights violations. Supporters assert that companies choose where they invest and who they hire to produce their goods, and that multinational enterprises could easily use different suppliers that do not violate the Guidelines. They also contend that lack of government enforcement does not excuse them from their responsibilities to encourage suppliers to follow the Guidelines.

When faced with a complaint involving the supply chain, NCPs will look for an identifiable “investment nexus.” According to a June 2003 statement issued by the CIME, an investment nexus exists when the multinational enterprise has some degree of influence in the host country or has an investment-like relationship with its suppliers. The NCP will seek to identify the existence of an investment nexus if a complaint involves a multinational enterprise's supplier(s).

The investment nexus test is a troubling development, because it significantly weakens the Guidelines and reduces their scope. However, there has not been enough experience to know the full implications of how the investment nexus test will affect future supply chain-related complaints. The supply chain debate is still ongoing and there are good reasons to challenge this significant step backwards and weakening of the Guidelines. As of October 2003, the CIME has recommended a case-by-case approach for supply chain cases. *(A more comprehensive examination of the supply chain debate can be found in the 2002 Annual Report for the OECD Guidelines. A link to this report is provided in Appendix B)*

Part 2

Addressing Violations of the Guidelines

Part 2 describes the complaint process in more detail, including who can file a complaint, where it should be submitted and what information should be provided. It provides practical guidance on notifying other interested parties about a complaint and working with allied groups. Part 2 also describes what happens after a complaint is submitted and explains the Guidelines' confidentiality rules. There is also special guidance on complaints that involve labor issues.

Who can file a complaint?

Any “interested party” such as a group of individuals, a local community, a trade union or an NGO can file a complaint under the Guidelines. Examples would be a community impacted by a company's operations, employees of the company or an NGO representing citizens or taxpayers.

Where to submit a complaint?

Generally speaking, a complaint should be submitted to the most relevant NCP. For example, if the problem is taking place in a country that has endorsed the Guidelines, it should be filed with the NCP in that country. If the problem is taking place in a country that has not endorsed the Guidelines, it should be submitted to the NCP in the company's home country.

It will always be important to “assess the structure of the company, the political context of the country, the character of the NCP and potential allies” when deciding where to file a complaint.⁷ In addition, individuals, communities and NGOs could find that taking a strategic approach when choosing to which NCP to submit the complaint could be helpful.

For example, Milieudefensie (Friends of the Earth–Netherlands) deliberately filed a complaint against a Chilean subsidiary of a Dutch company at the Dutch NCP. The Dutch NCP then referred the complaint to the Chilean NCP. Had Milieudefensie submitted the complaint directly to the Chilean NCP, the Dutch NCP might not have been as involved in handling the matter.

It might also be necessary to consider potential language barriers when filing a complaint. If complainants do not speak the language spoken in the company's home country, it may be helpful to submit the complaint to an NCP that does speak the same language.

What information should be provided in the complaint?

A properly prepared complaint should have the following information:

- The identity of the group(s) filing the complaint.
- Name of the company(ies) involved.

- An explanation of complainant's interest in the matter.
- Location of the company's violating activities.
- The guidelines that are being violated with reference to specific paragraphs.
- Description of the company's activities considered to be in violation of the Guidelines.
- Supporting documentation and evidence. While the complaint procedure is not as burdensome as lawsuits tend to be, the burden of proof is on the complainant. Submitting comprehensive and good quality information that supports the allegations being made will strengthen the complaint.
- Notice of any information that should not be disclosed to the company. For example, should the identity of local individuals be kept confidential in order to protect their safety?
- Though not required, providing contact details of one or more individuals who will serve as official contacts is sensible.
- It could be helpful to also include a request for written confirmation on how the NCP intends to proceed.

Notifying the OECD and other interested organizations when a complaint is submitted

Although it is not required when submitting a complaint, it is recommended that the Committee on International Investment and Multinational Enterprises (CIME) – the oversight body for the Guidelines within the OECD – receive a copy of the complaint.

It is also worth considering if other individuals, organizations or institutions should receive a copy of the complaint, such as members of parliament, government officials or public institutions, especially if the company is receiving public financing or export credit assistance.

There are a number of NGOs that regularly engage with the CIME, monitor the NCPs' performance and provide assistance on filing complaints. Sending a copy of the complaint to these NGOs could also be helpful. Appendix C in this guide provides contact details for these NGOs.

Collaborating with allied groups

Experience to date suggests that it is beneficial to work with allied groups – especially those that monitor the Guidelines – that are based in the country where the multinational enterprise is headquartered and/or where the complaint is submitted. Allies can support complainants' efforts in a number of ways, including:

- Gathering more information about the company;
- Providing information about the NCP;
- Submitting the complaint jointly or on behalf of an interested party if, for example, there is reason to believe the company could retaliate or if individuals' safety could be jeopardized;
- Representing the complainants at meetings or consultations; and
- Coordinating media strategy, if there is one.

In addition, working with allied groups in the company's home country or in the country where the complaint is filed will make it less likely the NCP can ignore the complaint.

What happens after a complaint is submitted?

Once submitted, the complaint process has two phases. The first phase is to identify a *prima facie* violation of the Guidelines. In other words, at first sight, it must appear that a breach of the Guidelines has occurred.

During the first phase, the NCP will also consider the “relevance of applicable law and procedures” as well as “how similar issues have been or are being treated in other domestic or international proceedings.”⁸ NCPs should respond to the complainants about how it intends to proceed after making an initial assessment.

Currently, there are no set schedules that NCPs must follow when a complaint is filed. Some NCPs respond in a timely manner while others will not respond for many months. Some NCPs have not responded at all, which is one reason it could be helpful to work with allied groups and send copies of the complaint to the CIME, other interested individuals, organizations and/or institutions. The lack of schedules that NCPs must follow for handling complaints is a significant weakness of the Guidelines.

What happens if the complaint is accepted by the NCP?

If the NCP decides that the complaint demonstrates a *prima facie* violation, the second phase commences. In addition to contacting the company, the NCP might also notify the CIME, other National Contact Points, trade unions, government ministries, NGOs and/or relevant experts and authorities about the complaint.

The second phase of the complaint process will likely involve consultations in which the NCP will offer its “good offices.” This means it will act as an intermediary (also called a mediator) between the complainants and the multinational enterprise to negotiate a resolution to the problem. Ultimately, the goal of the NCP is to find a resolution to the problem that is acceptable to the complainants and the company.

Typically, meetings take place at the NCP's office, but they could also be held at an embassy or at the actual facility where the problem exists. It could be beneficial to suggest a location for meetings if paying for travel is an issue or if there are no allied groups to work within the country where the complaint is filed.

The Guidelines' confidentiality rules

Once the second phase begins and a complaint is being handled by an NCP, there is a confidentiality rule that must be followed by all parties. The confidentiality rule does not mean individuals, communities and NGOs cannot publicly discuss the problem. Moreover, it will not prevent complainants from pursuing other strategies. Because information about a company's misbehavior is usually already publicly known, it does not suddenly become confidential once a complaint is filed.⁹

The confidentiality rule only applies once the NCP accepts the complaint. It means no parties involved can reveal any information learned during consultations during or after the complaint process, unless all parties agree information can be discussed publicly.

However, there is nothing in the Guidelines that states individuals, communities and NGOs cannot notify the media when a complaint is being submitted. For example, Milieudefensie (Friends of the Earth–Netherlands) sent out a press release about a complaint it was filing against a Chilean company. In this instance, the Dutch NCP expressed that it “was not too happy about [the press release] because they fear it will undermine the carefully arranged opportunity for finding solutions that the complaint procedure offers.”¹⁰

NCPs can also choose to withhold some or all information about the complaint from the public, including the name of the company, if it feels it “would be in the best interests of effective implementation of the Guidelines.”¹¹ A number of NGOs continue to be concerned about the Guidelines’ confidentiality rules, because NCPs are able keep certain cases and issues confidential without explaining why or what information is being withheld.

What happens at the end of the complaint process?

The NCP is expected to publicize the results when the complaint process concludes. If the company is found to have violated the Guidelines, the NCP should explain this to the company and offer recommendations to remedy the problem. If the parties cannot agree to a resolution, the NCP is still expected to publicize its findings. However, NCPs can choose to withhold some or all information about the complaint from the public. *(See previous section, “The Guidelines’ confidentiality rules”)*

Regardless of whether the parties agree to a resolution, all parties can discuss the complaint at the end of the process. However, the confidentiality rules still apply. This means information and views provided during the consultations must remain confidential unless all parties agree it can be discussed publicly.

While the NCP’s conclusions and recommendations could be enough to compel the company into action, the only concrete sanction the multinational enterprise could face is the potential for negative publicity. Neither the NCP nor the CIME monitor whether or not the company follows through with its commitments after a complaint process is concluded. This is another major weakness of the Guidelines.

What happens if the complaint is rejected by the NCP?

If the NCP rejects the complaint, it is expected to provide an explanation to the complainants. Currently, there is not an appeals process once the complaint has been rejected.

Any National Contact Point, the Trade Union Advisory Committee or the Business and Industry Advisory Committee can request that the CIME provide further clarification on the issues raised in a complaint. This option is not available to individuals, communities or NGOs at this time. *(See Part 1, “What is the Committee on International Investment and Multinational Enterprises?” for more information.)*

Complaints involving employment and industrial relations issues

The Trade Union Advisory Committee (TUAC) recommends that NGOs notify TUAC and the relevant trade union organization(s) when filing a complaint involving labor issues. TUAC can also assist individuals, communities and NGOs in making contact with trade union organization(s).

The TUAC has also published a User's Guide on the Guidelines that describes steps that should be taken on complaints involving employment and industrial relations issues. The guide also contains a comprehensive list of trade union contacts. The TUAC guide has been translated into 19 languages. Please contact TUAC for further information:

TUAC-OECD
26, Avenue de la Grande Armée
F-75017, Paris
France
Tel: (+33) 155-37-37-37
Fax: (+33) 147-54-98-28
E-mail: tuac@tuac.org

The guide is also available to download from the Internet in English, French, Spanish and Portuguese at:
<http://www.tuac.org>.

Part 3

Official Text of the Guidelines

Part 3 contains the [Preface](#) and [Chapters I–X](#) of the Guidelines. There are additional sections, described below, that have not been reproduced in this guide because of their length. It is strongly recommended that individuals, communities and NGOs read these sections before filing a complaint. A link to download the following sections is provided in Appendix B.

- The [Procedural Guidance](#) has detailed instructions on the responsibilities of National Contact Points (NCPs) and the Committee on International Investment and Multinational Enterprises (CIME).
- Each chapter and the Procedural Guidance are followed by [Commentary](#), which contains additional information to better explain the Guidelines. The Commentaries were agreed upon during the last review of the Guidelines in 2000.
- Some chapters are also followed by [Clarifications](#), which are clarifications made by the CIME on complaints submitted before the most recent revision of the Guidelines in 2000. *(See Part 1, “What is the Committee on International Investment and Multinational Enterprises?” for more information on CIME clarifications.)*
- The [Decision of the OECD Council](#) instructs governments that have endorsed the Guidelines to create NCPs and explains the purpose of the CIME.

Preface

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.
2. International business has experienced far-reaching structural change and the Guidelines themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.
4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.
5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.
6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.
7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The Guidelines clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the Guidelines both complement and reinforce private efforts to define and implement responsible business conduct.
8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.
9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD

Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the Guidelines are committed to continual improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

Chapter I – Concepts and Principles

1. The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable.
2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
3. A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.
4. The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.
5. Governments wish to encourage the widest possible observance of the Guidelines. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the Guidelines nevertheless encourage them to observe the Guidelines recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.¹²
7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.
8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.
9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.
10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

Chapter II – General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders¹³. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development¹⁴.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building¹⁵ through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance¹⁶ principles and develop and apply good corporate governance practices.

7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
8. Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.¹⁷
9. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.
10. Abstain from any improper involvement in local political activities.

Chapter III – Disclosure

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.
3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.
4. Enterprises should also disclose material information on:
 - a) The financial and operating results of the company;
 - b) Company objectives;
 - c) Major share ownership and voting rights;
 - d) Members of the board and key executives, and their remuneration;
 - e) Material foreseeable risk factors;¹⁸
 - f) Material issues regarding employees and other stakeholders;
 - g) Governance structures and policies.¹⁹
5. Enterprises are encouraged to communicate additional information that could include:

- a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;
- b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;²⁰
- c) Information on relationships with employees and other stakeholders.

Chapter IV – Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1.
 - a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
 - b) Contribute to the effective abolition of child labour;
 - c) Contribute to the elimination of all forms of forced or compulsory labour;
 - d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2.
 - a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
 - b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;
 - c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
4.
 - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
 - b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

Chapter V – Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
 - c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
- 3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
- 4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
- 5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
- 6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:
 - a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
 - d) Research on ways of improving the environmental performance of the enterprise over the longer term.
- 7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
- 8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

Chapter VI – Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

Chapter VII – Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

Chapter VIII – Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operate research projects with local industry or industry associations.

Chapter IX – Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner.²¹ In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
 - a) To fix prices;
 - b) To make rigged bids (collusive tenders);
 - c) To establish output restrictions or quotas; or
 - d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce;

2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.
3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

Chapter X – Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.²²

Part 4

Practical Guidance for Filing Complaints

Part 4 is intended to help those who are considering filing a complaint to better understand the Guidelines. The intent is not to prescribe a specific formula for filing a complaint. Rather, this section describes a number of complaints and their outcomes (when they are known) and certain opportunities and obstacles in the Guidelines. In order to foster greater understanding, some hypothetical situations are also described that could be considered violations. However, whether or not any of the hypothetical examples would actually be considered violations by National Contact Points (NCPs) can only be known by filing complaints.

Complaints Submitted to NCPs

Actual experience with filing complaints provides the most instructive information about the Guidelines. As of June 2003, more than a dozen complaints have been submitted by NGOs and over 30 from trade unions. As of January 2004, only a small number of complaints have been resolved successfully. This section contains brief summaries of a number of actual complaints that have been submitted to NCPs.²³

Forced resettlement

- In July 2001, Oxfam Canada (in collaboration with British NGO, Rights and Accountability in Development, and two Zambian NGOs, Afronet and DECOP) filed a complaint against Canadian-owned First Quantum Mining at the Canadian NCP. Swiss-owned Glencore International AG and Zambian-owned Mopani Copper Mines Plc were also named in the complaint. Oxfam Canada also requested the Swiss NCP to be involved. The complaint maintained that the mining companies had threatened to forcibly evict tenant communities in Zambia. The NCPs arranged meetings between the companies and local NGOs in Zambia. The company withdrew the threat of eviction, set aside land for the tenants and agreed to conduct a joint survey. The complaint was resolved in February 2002.

Environmental pollution

- In April 2002, Greenpeace Germany filed a complaint with the German NCP against TotalFinaElf, a multinational oil company. The complaint maintained that TotalFinaElf's supplier – an oil refinery – was responsible for environmental pollution in Russia and that its activities posed dangers to human health. The first meeting between the company and the complainant did not take place until one year after the complaint was submitted in April 2003. The company disputes that it is responsible for its suppliers' activities. As of June 2003, the complaint is pending.

Employment and Industrial Relations

- Trade unions filed a complaint against United Kingdom-based Marks & Spencer at the French NCP in April 2001 and the Belgian NCP in May 2001. The complaint maintained that Marks & Spencer had closed retail stores in France and Belgium without any prior consultation with employees and failed to give three month's notice of dismissals. In December 2001, the French NCP stated publicly that the company had

not consulted employees properly and in a letter to the company, the French NCP stated the company had violated the Guidelines. However, the Belgian NCP did not find enough evidence to conclude that the company was in breach of the Guidelines. The inconsistency between the French and Belgian NCPs conclusions suggests there are problems with coordinating complaints with more than one NCP.

Seeking exemptions to laws

- In April 2003, five complaints were submitted to the British, French, German, Italian and U.S. NCPs by several NGOs, including Friends of the Earth–United States. The complaints stated that the BP–lead oil consortium negotiated Host Government Agreements with Azerbaijan, Turkey and Georgia that exempt the Baku–Tbilisi–Ceyhan (BTC) oil pipeline from environmental, health, safety, labor, taxation and other laws for 60 years. Friends of the Earth–U.S. submitted its complaint to the U.S. NCP against American–owned companies Unocal, ConocoPhillips and Amerada Hess, which are minority shareholders in the consortium. The NCPs have deferred the matter to the British NCP because the primary shareholder and operator, BP, is headquartered in the United Kingdom. The Turkish NCP is also involved in the complaint, because part of the pipeline will go through Turkey. As of January 2004, the complaint is still pending.

Violations in the supply chain

- In June 2001, India Committee of the Netherlands filed a complaint against Dutch–owned companies, Kubbinga and Adidas Nederlands, with the Dutch NCP. British–owned Mitre Sports International and Italian–owned Mundo were also named in the complaint. The complaint stated the companies’ Indian suppliers were using child labor and had unsatisfactory working conditions. The NCP arranged meetings between the company and the complainant. After the company and complainant reached an agreement on the need for better monitoring of the company’s codes of conduct, the complaint was resolved in December 2002.
- In October 2002, dozens of western multinational enterprises, including several American companies, were accused of violating the Guidelines by a United Nations–appointed Panel of Experts. The Panel maintained that the companies had helped to finance the war in the Democratic Republic of the Congo by neglecting to ensure that their raw natural resources were not originating from the Congo via their supply chain. In response, several NCPs, including the U.S. NCP, argued that the Guidelines only apply to supply chain cases when an identifiable “investment nexus” exists. An investment nexus exists when the multinational enterprise has some degree of influence in the host country or has an investment–like relationship with its suppliers. NGOs have raised concerns that the “investment nexus” test significantly weakens and limits the scope of the Guidelines. As of January 2004, there are pending issues with several NCPs and a CIME working group will be studying possible violations of the Guidelines. The U.S. NCP considers the matters relating to the American companies resolved. A troubling precedent has now been set that companies from OECD countries are not responsible for ensuring that the raw materials or other goods purchased from suppliers are not indirectly financing violent conflict. (*See Part 1, “Do the Guidelines apply to the supply chain?” for more information on the “investment nexus” test.*)

Assessing compliance to host country domestic laws and the Guidelines

If a multinational enterprise is violating the law, it is also violating the Guidelines. When considering filing a complaint, an important first step is to find out what laws, if any, apply to the problem. It could be more effective to address the problem within the domestic legal system. However, filing a complaint can be an

“option for countries where the legal framework is not functioning smoothly, or where [individuals, communities, and] NGOs do not have easy access to the legal system.”²⁴

On the other hand, the fact that a multinational enterprise is complying with the law does not guarantee it is automatically following the Guidelines. Similarly, following the Guidelines does not guarantee the company is complying with the law.

Identifying relevant international law, standards and principles

A complaint could be strengthened if it demonstrates the company is also violating international law, standards and/or principles. Exploring these avenues could also yield other options that may help to remedy the problem.

For example, Peruvian communities and NGOs sought the legal opinion of the Secretariat for the *Convention on Wetlands* (also known as the *Ramsar Convention*) on the Camisea Gas Project in Peru. The Camisea gas project is highly controversial, because it includes plans to drill in indigenous peoples’ reserves and the potential for massive damage to a pristine tropical wetlands and rainforest. The Ramsar Convention Secretariat wrote to the Peruvian government and the U.S. Export–Import Bank citing that the natural gas pipeline violated the spirit and intent of the Ramsar Convention. The U.S. Export–Import Bank’s board of directors turned down the project on environmental grounds in September 2003. (*Note: An OECD Guidelines complaint was not filed on the Camisea project.*)

Addressing human rights abuses

In the General Policies chapter, Paragraph 2 makes clear that multinational enterprises should respect the human rights of those affected by their activities, and that companies’ activities should be consistent with the host governments’ human rights obligations and commitments.

Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.

A government’s obligations and commitments apply to its responsibilities under both legally binding and non-legally binding human rights instruments. For example, the *Universal Declaration of Human Rights* (UDHR) is not a legally binding treaty that governments ratified; rather, it is a resolution that functions as a forceful statement of principles that countries are obligated to observe the UDHR. The OECD’s *Convention on Combating Bribery of Foreign Public Officials* is legally binding, and countries that have ratified the Bribery Convention have committed and are obligated to implement legislation at the national level to monitor and punish illegal bribery. Therefore, assessing the relevant human rights instruments could be helpful in demonstrating whether a company is operating in a manner consistent with the host country’s human rights obligations and commitments.

In addition, becoming more familiar with how the host government normally handles human rights abuses will help individuals, communities and NGOs decide how the problem should be handled and if filing a complaint could be helpful. In most cases, multinational enterprises that violate human rights will also be violating the domestic law, which could mean that addressing the problem in the domestic legal system could be more appropriate. However, some governments have not incorporated their human rights obligations and

commitments into law or do not enforce such laws. In these instances, remedying human rights violations caused by multinational enterprises could be very difficult. In some cases, filing a complaint under the Guidelines might be the only available option.

Currently, there are a limited number of options to address human rights abuses committed by multinational companies. In the United States, for example, there are lawsuits pending against American companies that have allegedly violated human rights while operating abroad. These cases were filed using the Alien Tort Claims Act (ATCA). As of January 2004, there has yet to be a concrete outcome in any of the lawsuits filed against corporate actors under the ATCA. Legal action under the ATCA could soon become a powerful tool for individuals, communities and NGOs to hold U.S. multinational companies accountable for human rights abuses.

Another human rights instrument to be aware of is the UN's *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights* (Norms). The Norms clarify that international human rights standards of behavior exist and multinational companies must not be allowed to operate in defiance of these standards. The Norms also create a forum within the UN for challenging the bad practices of multinational companies.

The UN Subcommission on the Promotion and Protection of Human Rights approved the text of the Norms in August 2003. The Norms must now go before the full UN Human Rights Commission for their adoption as the first major UN instrument to directly address the behavior of multinational enterprises. While the Norms do not currently include an enforcement mechanism, they are written as mandatory standards. If the Norms are approved, UN bodies and national governments will be obliged to monitor multinational companies' adherence. Appendix B provides links to several Internet resources related to human rights including the human rights instruments mentioned in this section.

Assessing risks and preventing future harm to the environment and human health

In the Environment chapter, Paragraph 4 deliberately echoes the Precautionary Principle, which is significant because it makes clear that companies (and not just governments) should not use scientific uncertainty as a reason for not taking action to prevent serious harm to the environment or human health.²⁵ Paragraph 4 states:

Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

To put it simply, a lack of scientific certainty about a serious risk to the environment and human health should not stop multinational enterprises from acting to prevent future harm. If there is a lack of scientific certainty about what constitutes a serious risk to the environment and human health, a complaint might be strengthened if it demonstrates how the company is failing to take action to prevent future harm to the environment and human health. For example, it could be useful to keep a record of negligent behavior over time or perhaps seek an independent, third party analysis on whether the company is failing to prevent future harm to the environment or human health.

It could also be worthwhile to analyze agreements between the company and the host government. If the multinational enterprise has secured exemptions from laws to minimize or prevent serious harm to the

environment and human health (laws that could come to exist as scientific and technical understanding of risks improves), it could be argued that the company is violating Paragraph 4 because it will not have to comply with the new laws.

Seeking or accepting exemptions from regulatory requirements

If a multinational company seeks to exempt itself from environmental, health, safety, labor, taxation, financial or other laws of the host country, it is violating Paragraph 5 of the General Policies chapter. This guideline makes clear that companies should:

Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

In April 2003, five separate complaints were submitted to the British, French, German, Italian and U.S. governments charging that BP oil company and its consortium partners were violating Paragraph 5. The consortium negotiated Host Government Agreements (HGAs) that exempt the companies involved in the Baku–Tbilisi–Ceyhan (BTC) oil pipeline from environmental, health, safety, labor, taxation and other laws the governments of Azerbaijan, Georgia or Turkey may enact for the next 60 years that could impact the financial return of the pipeline. For example, the government of Azerbaijan could enact new laws requiring all oil companies to use a new technology to reduce the risk of oil spills that might affect the profits of the consortium. Under the HGAs for the BTC oil pipeline, the oil consortium would not have to comply with those laws.

The complaint also stated that the oil consortium violated Paragraph 4 in the Environment chapter, which makes clear that companies should not use the lack of scientific certainty as a reason for not taking action to prevent serious harm to the environment or human health. By negotiating the regulatory exemptions in the HGAs, the consortium weakened Azerbaijan, Georgia and Turkey's ability to reduce serious threats to the environment and human health. In other words, the consortium will not have to follow future laws these governments may enact regarding the environment and human health, even if the science determines a threat exists, if it could impact their profits.

Continually improving environmental performance

There are several guidelines in Chapter V on the Environment that have to do with multinational enterprises continually improving their environmental performance. Paragraphs 1a–c make clear that companies should adopt and maintain an environmental management system (EMS) that includes regular monitoring and verification of progress toward environmental, health and safety objectives or targets. Paragraphs 6 and 6a encourage companies to adopt technologies and operating procedures to prevent double standards in environmental performance.

Maintaining environmental management systems

An environmental management system (EMS) is a system that companies voluntarily adopt in order to minimize harmful effects on the environment caused by its activities, and to continually improve its environmental performance.²⁶ Paragraphs 1a–c draw upon a set of standards for environmental management systems created by the International Organization for Standardization (ISO) known as ISO 14000.²⁷

1. **Establish and maintain a system of environmental management appropriate to the enterprise, including:**
 - a) **Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;**
 - b) **Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and**
 - c) **Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.**

If a company has adopted ISO 14000 standards for its environmental management system, this does not guarantee it is regularly monitoring and verifying its progress towards its environmental, health and safety objectives as expected under Paragraph 1c. A company can have its EMS certified, but this only means that an external body has audited and verified the company's EMS conforms to the requirements specified in ISO 14000.²⁸ Certification does not prove that the company is regularly monitoring and verifying its progress towards its objectives or targets. In other words, ISO 14000 certification does not guarantee the company is following Paragraph 1c.

In addition, while Paragraph 1c is clear that verification of progress should take place, it is not clear if verification should be carried out by the company internally or if it should be done externally by an independent body. The argument could be made that internal verification does not foster trust with the public, especially if the company has a bad environmental, health and safety record. In theory, if internal verification is taking place, this does not necessarily guarantee the company is meeting the expectation of Paragraph 7 in the General Policies chapter, which states:

- **Chp. II, Para. 7** – “Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”

Poor environmental, health and safety performance generally over an extended period of time could indicate that a company is failing to maintain an EMS that would meet some or all of the expectations of Paragraphs 1a–c in the Environment chapter.

Preventing double standards in environmental performance

Paragraphs 6 and 6a in the Environment chapter, listed below, specifically seek to prevent double standards between countries in terms of environmental performance.

6. **Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:**
 - a) **Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.**

In other words, companies should make an effort “to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.”²⁹ In addition, “continually” in Paragraph 6 means that companies should always be seeking to improve their environmental performance, even if their performance exceeds the regulatory requirements of the host country.

It may be difficult to find out what part of a multinational enterprise has the best environmental performance. In the case of northern multinational enterprises, it will often be either the U.S.-based or the European Union-based operations. This is because the United States and the European Union typically have strong laws that are aimed at improving companies’ environmental performance. For example, the United States currently has strong toxic disclosure standards.

Under the Emergency Planning and Community Right to Know Act of 1986 (EPCRA), certain companies operating in the United States must report their annual emissions of toxic chemicals. This data is then made available to the public in a user-friendly database called the Toxic Release Inventory (TRI). EPCRA has been hugely successful in improving companies’ environmental performance. According to the U.S. Environmental Protection Agency, companies reduced their emissions by 45.6 percent in the first decade of the TRI.³⁰ Data released in 2003 showed a 15 percent reduction in toxic emissions from the previous year.³¹

The EPCRA also requires certain companies operating in the United States to work with the appropriate public officials to prepare comprehensive emergency plans if there are extremely hazardous chemicals in their facilities.³² Companies are also required to make available to their employees and officials information (including location) of certain chemicals in the workplace.³³ If hazardous materials are accidentally released, EPCRA requires companies to report the incident to the appropriate public officials.³⁴

For illustrative purposes, a complaint could be submitted for violations to the following guidelines if a U.S. company operating abroad refuses to put into place operating procedures that will train employees to handle hazardous materials and inform the appropriate public authorities about hazardous materials in the workplace.

- **Chp. IV, Para. 4b** – “Take adequate steps to ensure occupational health and safety in their operations.”
- **Chp. V, Para. 5** – “Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”
- **Chp. V, Paras. 6 and 6a** – “Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as: a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise...”
- **Chp. V, Para. 7** – “Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.”

Similar to the EPCRA disclosure requirements, under the *Pollutant Release and Transfer Register* (PRTR), companies operating in UN Economic Commission for Europe (UNECE) member countries that have ratified PRTR will have to disclose information on the disposal, storage, recycling and treatment of 86 pollutants.³⁵ This information will be published in national registers that will be accessible to the public.

The EPCRA and the PRTR are just two examples of regulatory requirements aimed at improving companies' environmental performance and protecting human health. There are numerous other requirements that companies must follow when operating in the United States, the European Union and elsewhere. In theory, a company's refusal to adopt certain technologies and operating procedures to improve its environmental performance could not only result in a violation of Paragraphs 6 and 6a, but other guidelines as well.

If the problem involves environmental issues, it may be helpful to work with allies in the multinational enterprise's home country to explore whether there are laws requiring certain technologies or operating procedures to improve environmental performance.

Disclosing important company information to the public

In the Disclosure chapter, Paragraphs 4a–g make clear that companies should disclose to the public “material” information:

4. **Enterprises should also disclose material information on:**
 - a) **The financial and operating results of the company;**
 - b) **Company objectives;**
 - c) **Major share ownership and voting rights;**
 - d) **Members of the board and key executives, and their remuneration;**
 - e) **Material foreseeable risk factors;**
 - f) **Material issues regarding employees and other stakeholders;**
 - g) **Governance structures and policies.**

Information is considered “material” if it is important enough to potentially influence shareholders or investors' decisions. Most multinational enterprises would consider the items in Paragraphs 4a–g material information and its disclosure is standard practice.

It is important to note that information that represents “material foreseeable risk factors” or “material issues regarding employees and other stakeholders” can be the subject of intense debate. For example, a labor dispute – such as an airline pilot strike – that could affect profits would be considered a “material issues regarding employees” by most airline companies. Similarly, the Johannesburg Stock Exchange (JSE) has determined that the number of employees with HIV/AIDS is considered a “material foreseeable risk factor” for all companies in South Africa. Companies that are traded on the JSE must disclose this information to their shareholders. However, whether companies should disclose information on the future financial costs caused by global warming is the subject of a growing worldwide debate. Some companies consider global warming a “material foreseeable risk factor” and disclose certain information on the anticipated future costs to shareholders.

In the U.K., laws governing disclosure of material information are undergoing a massive overhaul. The British government is debating what kinds of information are significant enough to be included in U.K. companies' “Operating and Financial Reviews,” which are part of companies' financial statements that must be prepared by

all companies listed on the London Stock Exchange. A consultation paper released in September 2003 defines materiality as those issues that can affect the interests of the company, either directly or by virtue of the importance that other stakeholders (such as consumers, communities, labor unions and environmental groups) attach to them. This means that directors of companies listed in the U.K. will need to take a broad view of materiality and ensure they understand key stakeholder issues that can affect the interests and value of their business. Directors will likely need to demonstrate that they have consulted with stakeholders to make sure that their issues are appropriately included in company financial reports. If the U.K. approach towards materiality is finalized, individuals, communities and NGOs will be able to more effectively argue that stakeholder issues are material and therefore should be disclosed under national securities laws and/or the Guidelines.

Disclosing social, environmental and risk information to the public

It is important to note that the Disclosure chapter distinguishes between information that companies should disclose and information companies are encouraged to disclose, which includes social, environmental and risk information. The justification provided in the Commentary is that standards for reporting on social, environmental and risk issues are still emerging.

5. **Enterprises are encouraged to communicate additional information that could include:**
- a) **Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated;**
 - b) **Information on systems for managing risks and complying with laws, and on statements or codes of business conduct;**
 - c) **Information on relationships with employees and other stakeholders.**

When submitting a complaint on a company's unwillingness to disclose information that is encouraged under the Guidelines, the complaint could be strengthened if it also demonstrates how the lack of information disclosure is violating other guidelines. For example, a company could possibly violate Paragraphs 1 and 4a–g in Chapter III on Disclosure as well as Paragraphs 2b and 3 in Chapter IV on Employment and Industrial Relations if its refusal to disclose information to employee representatives weakens their ability to negotiate on employment conditions effectively.

- **Chp. III, Para. 1** – “Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas...”
- **Chp. III, Paras. 4a–g** – “Enterprises should also disclose material information on: a) The financial and operating results of the company; b) Company objectives; c) Major share ownership and voting rights; d) Members of the board and key executives, and their remuneration; e) Material foreseeable risk factors; f) Material issues regarding employees and other stakeholders; and g) Governance structures and policies.”

- **Chp. IV, Para. 2b**: “Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.”
- **Chp. IV, Para. 3**: “Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.”

Generally, written requests for the information should be submitted to the company before a complaint is filed. This is a good idea for two reasons. First, the company could very well provide the information. Second, the company’s unwillingness to disclose information should be documented in the complaint.

Consulting with employees and the public

In the following guidelines, “consultation” involves more than disclosure of information, but also seeking the views of employees and/or the public. Becoming more familiar with existing and emerging standards for public consultation could help individuals, communities and NGOs to better understand whether a multinational enterprise is conducting consultations adequately. For example, the International Finance Corporation, which is the World Bank Group’s private lending arm, has published a good practice manual on conducting public consultations. An Internet link to this manual is provided in Appendix B.

- **Chp IV, Para. 2c** – “Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.”
- **Chp. IV, Para. 8** – “Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.”
- **Chp. V, Para. 2b** – “Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”

Combating bribery of public officials

The *OECD Convention on Combating Bribery of Foreign Public Officials* is a legally binding convention – the contents of which are reflected in the Combating Bribery chapter of the Guidelines. The Bribery Convention makes it a crime to offer, promise or give a bribe to foreign public officials in order to obtain or retain business deals. Countries that have ratified the Bribery Convention agree to implement legislation to monitor and punish companies and individuals that engage in illegal bribery.

The impetus for the Bribery Convention was the enactment of the Foreign Corrupt Practices Act (FCPA) in the United States back in 1977. In response to concerns that U.S. companies were being placed at a competitive disadvantage, negotiations were launched at the OECD for a binding convention, which came into force in February 1997.

Like the Bribery Convention, the FCPA targets the offering side of bribery. In other words, the FCPA makes it illegal for U.S. companies to offer bribes to foreign government officials. U.S. companies are required to track their payments to foreign officials and report this information to the Securities and Exchanges Commission –

the listing authority for the U.S. stock exchanges. Countries that are party to the Bribery Convention will have monitoring and enforcement mechanisms in place to address illegal bribery activities.

Evading tax obligations

The Taxation chapter makes clear that multinational companies are expected to fulfill their tax obligations in accordance with the law, be forthcoming with information to enable tax authorities to accurately determine their liabilities, and apply the “arm’s length principle” in transfer pricing.

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s length principle.

The transfer price is the amount paid “from one part of a multinational enterprise for goods or services provided by another.”³⁶ For example, when a subsidiary sells its manufactured goods to the parent company, the amount paid to the subsidiary for those products is the transfer price.

Transfer prices might not be the same as payments between two independent companies for a variety of reasons, including to purposely minimize tax obligations. A multinational company can reduce its tax burden by allocating taxable profits among its parts by adjusting the transfer price it pays for goods or services.

There are some legitimate reasons for multinational companies to use transfer pricing. However, when transfer pricing is abused, it deprives states – particularly developing countries – of much needed tax revenues. The Guidelines recommendation that companies should apply the arm’s length principle to the practice of transfer pricing means that transfer prices “should be the same as if the two companies involved were indeed two independents, not part of the same corporate structure.”³⁷

Evading tax obligations is very likely a violation of the law and therefore, the Guidelines. If there is reason to believe a multinational enterprise is not paying its taxes, an important first step is to confirm whether the company is disobeying domestic tax laws. What is legal and illegal may not always be clear, particularly for multinational companies that have elaborate economic relationships in multiple countries that could affect tax liabilities. There is also the possibility that insufficient– or non–payment of taxes might not be illegal; for example, as in the case of tax loopholes.

It could be a worthwhile exercise to find out if the company is violating other guidelines to eliminate or minimize its tax liabilities. For example, a company could violate Paragraph 5 of the General Policies chapter if it seeks or accepts exemptions from tax liabilities when relocating from one jurisdiction to another. Often referred to as the “race to the bottom,” governmental bodies at all levels entice companies with a variety of tax exemptions so they will relocate to their jurisdiction. Likewise, companies may solicit tax exemptions among numerous localities to get the best deal.

There is also the possibility that a company is engaging in improper political activities, bribery or corruption in an attempt to evade or minimize its tax obligations – all of which constitute violations to several guidelines, including the Combating Bribery chapter of the Guidelines.

While it would be challenging for most people and NGOs to prove tax evasion, non-disclosure of tax information to authorities, or other improper activities to reduce or eliminate tax liabilities, it is not altogether out of the realm of possibility if strong documentation and evidence exist. As stated in previous sections, it is important to consider if filing a complaint under the Guidelines is the right approach versus addressing the matter in the domestic legal system.

Part 5

General Reference – Similar and Reinforcing Guidelines

The Guidelines are mostly organized into chapters that relate to a broad subject area, such as the environment or information disclosure. Although most of the guidelines that relate to labor issues are contained in Chapter IV on Employment and Industrial Relations, there are guidelines in other chapters that also pertain to labor issues. These guidelines are sometimes similar or in some way reinforce the expectations contained in Chapter IV and vice versa. There are also major recommendations, such as companies' obligations to obey the law, which are repeated in several chapters.

Part 5 is a general reference to assist individuals, communities and NGOs easily identify similar and reinforcing guidelines. It also contains a listing of the international laws, standards and principles noted in the Commentary that follows each chapter. *(See the introductory paragraph in Part 3 for more information on the Guidelines' Commentary sections.)*

Guidelines on complying with host country laws and taking into account host country policies

Endorsing governments expect multinational companies to obey domestic laws and take into account the policies of the host country. Examples of policies would be targets for energy efficiency or the reduction of toxic emissions to meet air quality standards. Other examples would be trade policies on agricultural subsidies, policies to increase diversity in the workplace and a government's foreign policy.

For the most part, government policies reflect plans or guiding principles to achieve broader goals. While policies cannot be enforced without laws and regulations, governments that have endorsed the Guidelines expect multinational companies to take into account the policies of host governments. These expectations are reflected in the following guidelines:

- **Preface, Para. 1** – "...The Guidelines aim to ensure that the operations of [multinational] enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises..."
- **Chp. I, Para. 1** – "...The [Guidelines] provide principles and standards of good practice consistent with applicable laws..."
- **Chp. I, Para. 7** – "Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries..."

- **Chp. II, opening paragraph** – “Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders...”
- **Chp. IV, opening paragraph** – “Enterprises should, within the framework of applicable law, regulations and prevailing labor relations and employment practices.”
- **Chp. IV, Para. 4a** – “Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.”
- **Chp. V, opening paragraph** – “...in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety...”
- **Chp. VI, Para. 6** – “...Contributions should fully comply with public disclosure requirements and should be reported to senior management.”
- **Chp. IX, opening paragraph** – “Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner...”
- **Chp. IX, Para. 2** – “Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.”
- **Chp. IX, Para. 3** – “Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.”
- **Chp. X** – “It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations...”

Guidelines on taking into account international laws, standards and principles

The following guidelines make clear that endorsing governments expect multinational companies to take into account international laws, standards and principles with respect to human rights, employment and industrial relations, the environment, public health and safety. If a company is violating an international law, standard or principle, this could be an indication that the company is violating domestic laws and/or the Guidelines.

- **Chp. II, Para. 2** – “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”
- **Chp. IV, opening paragraph** – “Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices.”
- **Chp. V, opening paragraph** – “Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant

international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development...”

Guidelines on information disclosure

Chapter III covers information disclosure, but several other chapters also have guidelines that are similar or reinforce the expectations contained within the Disclosure chapter. For illustrative purposes, these guidelines have been organized into the following three categories:

- 1) disclosing company information,
- 2) disclosing information about company policies, and
- 3) disclosing information on environmental, health and safety policies and impacts.

Disclosing company information

- **Chp. III, Para. 1** – “Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.”
- **Chp. III, Para. 3** – “Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.”
- **Chp. III, Paras. 4a-f** – “Enterprises should also disclose material information on: a) The financial and operating results of the company; b) Company objectives; c) Major share ownership and voting rights; d) Members of the board and key executives, and their remuneration; e) Material foreseeable risk factors; f) Material issues regarding employees and other stakeholders; and g) Governance structures and policies.”
- **Chp. IV, Para. 2b** – “Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.”
- **Chp. IV, Para. 3** – “Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.”
- **Chp. IV, Para. 6** – “In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects...”

- **Chp. IX, Para. 3** – Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
- **Chp. X** – “...This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s length principle.”

Disclosing information on company policies

- **Chp. II, Para. 8** – “Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.”
- **Chp. III, Para. 2** – “...The standards or policies under which both financial and non-financial information are compiled and published should be reported.”
- **Chp. III, Para. 4g** – Enterprises should also disclose material information on...Governance structures and policies.
- **Chp. III, Para. 5a–b** – “Enterprises are encouraged to communicate additional information that could include: a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.”
- **Chp. III, Para. 5b** – “Enterprises are encouraged to communicate additional information that could include: b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct.”
- **Chp. V, Para. 2b** – “Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”
- **Chp. VI, Para. 3** – “Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.”

Disclosing information on environmental, health and safety policies and impacts

- **Chp. III, Para. 5a** – “Enterprises are encouraged to communicate additional information that could include: a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements apply and its performance in relation to these statements may be communicated.”

- **Chp. V, Paras. 2a** – “Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance.”
- **Chp. V, Para. 2b** – “Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”

Guidelines on employment and industrial relations

Several guidelines are similar or reinforce the expectations contained within the Employment and Industrial Relations chapter. These guidelines have been grouped into the following five categories for illustrative purposes:

- 1) upholding human and workers rights,
- 2) protecting employees’ health and safety,
- 3) promoting employee awareness of company policies,
- 4) whistleblower protection, and
- 5) capacity building.

Upholding human and workers rights

- **Chp. II, Para. 2** – “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”
- **Chp. IV, Para. 1a** – “Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions.”
- **Chp. IV, Para. 1b** – “Contribute to the effective abolition of child labour.”
- **Chp. IV, Para. 1c** – “Contribute to the elimination of all forms of forced or compulsory labour.”
- **Chp. IV, Para. 1d** – “Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.”
- **Chp. IV, Para. 4a** – “Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.”

Protecting employees' health and safety

- **Chp. II, Para. 5** – “Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.”
- **Chp. IV, Para. 4b** – “Take adequate steps to ensure occupational health and safety in their operations.”
- **Chp. V, opening paragraph** – “Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.”
- **Chp. V, Para. 1a** – “Establish and maintain a system of environmental management appropriate to the enterprise, including: a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities.”
- **Chp. V, Para. 1c** – “Establish and maintain a system of environmental management appropriate to the enterprise, including: c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.”
- **Chp. V, Para. 2a** – “Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance.”
- **Chp. V, Para. 2b** – “Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”
- **Chp. V, Para. 5** – “Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”
- **Chp. V, Para. 7** – “Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.”

Promoting employee awareness of company policies

- **Chp. II, Para. 8** – “Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.”

- **Chp. VI, Para. 4** – “Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.”

Protecting whistleblowers

- **Chp. II, Para. 9** – “Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise’s policies.”

Building capacity

- **Chp. II, Para. 3** – “Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise’s activities in domestic and foreign markets, consistent with the need for sound commercial practice.”
- **Chp. II, Para. 4** – “Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.”
- **Chp. IV, Para. 5** – “In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.”

Guidelines on establishing and maintaining management systems

A management system “refers to what the organization does to manage its processes or activities in order that the products or services that it produces meet the objectives it has set itself, such as satisfying the customer's quality requirements, complying with regulations, or meeting environmental objectives.”³⁸ Simply put, an EMS is the system in place to ensure a company is meeting its goals and requirements.

The expectation that companies adopt and maintain management systems is repeated several times in the *Guidelines* beginning with Paragraph 7 of the General Policies chapter. This particular guideline is worth highlighting, because it makes clear that companies should adopt and maintain management systems that foster trust with the societies they operate within, and by implication, avoid those that do not.

- **Chp. II, Para. 7** – “Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”
- **Chp. V, Paras. 1a–c** – “Establish and maintain a system of environmental management appropriate to the enterprise, including: a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities; b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.”

- **Chp. V, Para. 5** – “Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”
- **Chp. VI, Para. 5** – “Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.”

International Laws, Standards and Principles Noted in the Commentary of the Guidelines

Each chapter of the Guidelines is followed by Commentary, which contains additional information to better explain the Guidelines. The following is a list of the international laws (also referred to as “conventions”), standards and principles that are referred to in the Commentary.

General Policies chapter

- Universal Declaration of Human Rights
- OECD Principles of Good Governance

Disclosure chapter

- OECD Principles of Good Governance
- The Global Reporting Initiative

Employment and Industrial Relations chapter

- International Labour Organisation (ILO) Convention 29: Forced Labor Convention (1930)
- ILO Convention 105: Abolition of Forced Labor Convention (1957)
- ILO Convention 111: Discrimination (Employment and Occupation) Convention (1958)
- ILO Convention 138: Minimum Age Convention (1973)
- ILO Convention 182: Worst Forms of Child Labour Convention (1999)
- ILO Recommendation 94: Co-operation at the Level of the Undertaking Recommendation (1952)
- ILO Recommendation 146: Minimum Age Recommendation (1973)
- ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977)
- ILO Declaration on Fundamental Principles and Rights at Work (1998)

Environment chapter

- Rio Declaration on Environment and Development
- ISO Standard on Environmental Management Systems
- Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters

Combating Bribery chapter

- OECD Convention on Combating Bribery of Foreign Public Officials
- OECD Recommendations on Combating Bribery in International Business Transactions (1977)
- OECD Recommendations on the Tax Deductibility of Bribes to Foreign Public Officials (1996)

Consumer Interests chapter

- UN Guidelines on Consumer Policy
- OECD Guidelines for Consumer Protection in the Context of Electronic Commerce
- OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data

Competition chapter

- Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels (1998)
- Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade

Taxation chapter

- OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
- Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises

Appendix A

Quick Guide to the Guidelines

The following summarizes the major points of each chapter of the Guidelines.

Chapter I – Concepts and Principles

- Global applicability of the Guidelines
- Voluntary and non-legal nature of the Guidelines
- Definition of multinational enterprise and applicability of the Guidelines to all parts
- Guidelines apply equally to foreign and domestic enterprises and reflect good practice for all
- Expectations of small and medium-sized enterprises
- Government protectionism and questioning a country's comparative advantage
- Obeying the domestic laws of host countries
- Equal treatment of foreign and domestic enterprises by governments
- Dispute resolution between enterprises and governments
- Governments' obligations to create a National Contact Point to promote adherence to the Guidelines

Chapter II – General Policies

- Obeying policies of the host country and considering views of stakeholders
- Contributing to the achievement of sustainable development
- Respecting human rights consistent with host governments' obligations and commitments
- Encouraging local capacity building
- Encouraging human capital formation
- Refraining from seeking or accepting exemptions to regulatory requirements
- Upholding good corporate governance principles and applying good corporate governance practices
- Adopting self-regulatory practices and management systems that foster trust
- Promoting employee awareness of, and compliance with, company policies
- Protecting "whistle-blowers"
- Abstaining from improper involvement in local political activities

Chapter III – Disclosure

- Disclosing information on activities, structure, financial situation and performance
- Applying high-quality standards for disclosure, accounting and auditing practices
- Applying high-quality standards for non-financial information including environmental and social reporting
- Disclosing basic company information
- Disclosing material information
- Disclosing information on value statements or codes of conduct including information on social, ethical and environmental policies
- Disclosing information on systems for managing risks and complying with laws and on statements or codes of conduct
- Disclosing information on relationships with employees and other stakeholders

Chapter IV – Employment and Industrial Relations

- Respecting employees' right to organize and engaging in constructive negotiations
- Abolishing child labor
- Eliminating forced or compulsory labor
- Non-discrimination based on race, color, sex, religion, political opinion, national extraction or social origin
- Providing facilities for effective negotiation of collective bargaining agreements
- Providing information for meaningful negotiation on employment conditions
- Promoting consultation and cooperation among employers and employees
- Providing true and fair information on company performance
- Observing standards on a level equal or better to comparable employees in the country of operation
- Implementing measures to ensure the health and safety of employees
- Employing local personnel and providing training
- Providing reasonable notice of major changes such as facility closure or large-scale dismissals
- Unfairly influencing negotiations on employment conditions or employees' right to organize
- Negotiating on matters of mutual concern and authorizing management to take decisions

Chapter V – Environment

- Taking account of the need to protect the environment, public health and safety (EH&S) and contributing to the wider goal of sustainable development
- Maintaining an environmental management system including evaluation of EH&S impacts, establishment of objectives or targets to improve performance and verification of progress towards EH&S objectives or targets
- Providing information on EH&S impacts to employees and the public
- Consulting with communities on EH&S policies and their implementation
- Evaluating activities, goods and services for their EH&S impacts over the full life cycle
- Taking precaution to prevent serious harm to the EH&S
- Maintaining plans to prevent or reduce serious environmental and health damage and maintain systems to report to authorities
- Continually seeking to improve environmental performance
- Researching ways to improve environmental performance
- Providing training to employees on EH&S matters including handling hazardous materials and preventing accidents
- Contributing to the development of environmental policies

Chapter VI – Combating Bribery

- Not offering bribes to obtain or retain business or other undue advantage
- Not offering or giving into demands to pay officials or others a portion of a contract payment
- Maintaining a list of payments to public bodies and state-owned enterprises including making this information available to authorities
- Enhancing transparency of activities
- Promoting awareness of and compliance with company policies against bribery and extortion
- Maintaining management systems that discourage bribery and corrupt practices
- Implementing accounting and audit practices to prevent corrupt practices
- Not making illegal contributions to political candidates or parties including complying with domestic disclosure requirements

Chapter VII – Consumer Interests

- Acting in accordance with fair business practices and ensuring safety and quality of goods and services
- Ensuring goods and services meet agreed and legally required standards for consumer health and safety
- Providing clear and accurate information to enable consumers to make informed decisions
- Providing transparent and effective procedures to address consumer complaints and resolving disputes
- Not engaging in activities that are misleading, fraudulent or unfair
- Respecting consumer privacy
- Cooperating with officials to prevent or remove threats caused by their products

Chapter VIII – Science and Technology

- Ensuring activities are compatible with the science and technology (S&T) policies of the host country
- Contributing to the development of local and national S&T capacity
- Carrying out S&T development work in host countries and hiring people from host countries to encourage training
- Granting licenses for the use of intellectual property rights or technology transfer that are reasonable
- Cultivating relationships with educational and research institutions through collaborative research

Chapter IX – Competition

- Obeying competition laws and regulations
- Not entering into anti-competitive agreements with competitors
- Not fixing prices
- Not making rigged bids
- Not establishing output restrictions or quotas
- Not sharing or dividing markets
- Taking into account the anti-competition laws of other countries whose economies could be negatively impacted by anti-competitive activity

Chapter X – Taxation

- Paying taxes in a timely manner
- Obeying tax laws and regulations in every country with operations
- Providing information to authorities for determining tax obligations
- Applying the arm's length principle to the use of transfer pricing

Appendix B

Internet Resources

Nongovernmental Organization (NGO) Internet Resources

- EarthRights International's website on the U.S. Alien Tort Claims Act: www.earthrights.org/atca/index.shtml
- Friends of the Earth–US' Baku–Tbilisi–Ceyhan oil pipeline website: www.foe.org/camps/intl/institutions/bakucevhan.html
- Milieudefensie (Friends of the Earth–Netherlands) – Using the OECD Guidelines for Multinational Enterprises: A Critical Starterkit for NGOs: www.foenl.org/oecd.htm
- OECD Watch: www.oecdwatch.org (Website forthcoming in 2004)

OECD Internet Resources

- About the Committee on International Investment and Multinational Enterprises: www.oecd.org/document/24/0,2340,en_2649_34863_2373464_1_1_1_37439,00.html
- Entire text of the OECD Guidelines for Multinational Enterprises including Preface, Commentary, Clarifications, Decision of the OECD Council and Procedural Guidance: www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_37439,00.html
- List of National Contact Points for the OECD Guidelines for Multinational Enterprises (including contact details): www.oecd.org/document/60/0,2340,en_2649_34889_1933116_1_1_1_37439,00.html
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: www.oecd.org/about/0,2337,en_2649_37447_1_1_1_1_37447,00.html
- OECD Declaration on International Investment and Multinational Enterprises: www.oecd.org/document/24/0,2340,en_2649_34887_1875736_1_1_1_1,00.html
- OECD Guidelines 2002 Annual Report – Focus on Responsible Supply Chain Management: www.oecd.org/document/11/0,2340,en_2649_34889_2410315_1_1_1_37439,00.html
- Organisation for Economic Cooperation and Development: www.oecd.org

Trade Union/Labor Internet Resources

- International Labour Organisation: www.ilo.org
- International Labour Standards and Human Rights: www.ilo.org/public/english/standards/norm/index.htm
- Trade Union Advisory Committee: www.tuac.org
- Trade Union Advisory Committee's User's Guide to the OECD Guidelines for Multinationals: www.tuac.org/News/default.htm#2

United Nations Internet Resources

- List of UN Economic Commission for Europe Member Countries: www.unece.org/oes/about/members.htm
- List of Multilateral Environmental Agreements: www.unep.ch/conventions/geclist.htm
- Pollutant Release and Transfer Register Protocol: www.unece.org/env/pp/prtr.htm
- Rio Declaration on Environment and Development:
www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163
- Status of ratification of the principle international human rights treaties: www.unhchr.ch/pdf/report.pdf
- UN Economic Commission for Europe: www.unece.org
- UN Environment Programme: www.unep.org
- UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights: www.unhchr.ch/pdf/55sub/12rev2_AV.pdf
- UN Office of the High Commissioner for Human Rights: www.unhchr.ch/hchr_un.htm
- UN Universal Declaration of Human Rights: www.unhchr.ch/udhr
- UN Compilation of Human Rights Instruments: www.unhchr.ch/html/menu6/2/reference.htm
- United Nations: www.un.org

United States Government Internet Resources

- Toxic Release Inventory: www.epa.gov/tri
- U.S. Department of State – Country Reports on Human Rights Practices:
<http://www.state.gov/g/drl/hr/c1470.htm>
- U.S. Emergency Planning and Community Right to Know Act: www.epa.gov/epaoswer/hotline/epcra.htm
- U.S. Foreign Corrupt Practices Act: www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm

World Bank Internet Resources

- The International Finance Corporation's Good Practice Manual on Public Consultation:
<http://ifcln1.ifc.org/ifcext/enviro.nsf/Content/GoodPractice>

Other

- Business and Industry Advisory Committee: www.biac.org
- International Organization for Standardization: www.iso.ch
- ISO 14000: www.iso.ch/iso/en/iso9000-14000/index.html

Appendix C

NGO Contacts for OECD Watch

Established in March 2003, OECD Watch is the provisional name for a body to that helps facilitate nongovernmental organizations (NGOs) activities around the OECD Guidelines and the work of the Committee on International Investment and Multinational Enterprises. A website is forthcoming in 2004 at www.oecdwatch.org.

NGO Contacts

Milieudefensie (Friends of the Earth–Netherlands)
Amsterdam, The Netherlands
Tel: (31) 20–550–7300
Fax: (31) 20–550–7310
Web: <http://www.milieudefensie.nl>

Mr. Joris Oldenziel
Amsterdam, The Netherlands
Tel: (31) 20–639–1291
E-mail: J.Oldenziel@somo.nl
Web: <http://www.somo.nl>

Ms. Patricia Feeney
Rights and Accountability in Development (RAID)
Oxford, United Kingdom
Tel: (44) 1865–436–245
E-mail: tricia.feeney@ntlworld.com

Ms. Cornelia Heydenreich
Bonn, Germany
Tel: (49) 228–604–920
E-mail: heydenreich@germanwatch.org
Web: <http://www.germanwatch.org>

Endnotes

¹ Group of Eight (G8) member countries include Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States.

² OECD, "History of the OECD."

http://www.oecd.org/document/63/0,2340,en_2649_201185_1876671_1_1_1_1,00.html

³ The Trade Union Advisory Committee is an official advisory committee that represents trade unions' views at the OECD. Go to www.tuac.org for more information.

⁴ The Business and Industry Advisory Committee is an official advisory committee that represents business and industries' views at the OECD. Go to www.biac.org for more information.

⁵ Friends of the Earth–Netherlands, "Using the OECD Guidelines for Multinational Enterprises: A critical starterkit for NGOs," Pg. 11, www.foenl.org/tk_english.php

⁶ "Summary of the Roundtable Discussion," OECD Guidelines for Multinational Enterprises: Focus on Responsible Supply Chain Management, Annual Report 2002, Pg. 69 (hard copy); (Page 66 in Adobe PDF available at: <http://www1.oecd.org/publications/e-book/2002011e.pdf>)

⁷ Friends of the Earth–Netherlands, Pg. 14.

⁸ Commentary on the Implementation Procedures, Para. 14.

⁹ Friends of the Earth–Netherlands, Pg. 12.

¹⁰ Friends of the Earth–Netherlands, Pg. 12.

¹¹ Procedural Guidance, Section C, Para. 4(b).

¹² Comparative advantage is the economic theory a country should produce the goods and services it is most efficient at producing when compared to its trading partners. Since no one country is the most efficient at producing everything, it benefits countries to trade with other countries that can produce goods or services at a lower cost. Some economists have argued that the increasingly fluid nature of multinational capital has made the theory of comparative advantage obsolete.

¹³ Stakeholders are people who have an interest in a particular decision, either as individuals or as representatives of a group. This includes people who influence a decision, or can influence it, as well as those affected by it. (Citation: 2002 Earth Summit Stakeholders Forum, <http://www.earthsummit2002.org/ic/process/stakeholders.htm>)

¹⁴ The most commonly cited definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." (Citation: Our Common Future," World Commission on Environment and Development, 1987.)

¹⁵ Capacity building is generally accepted to mean providing employment, educational or training opportunities.

¹⁶ Corporate governance describes the ways in which corporate actors (especially the management and the shareholders) share rights and responsibilities within the company.

¹⁷ This is more commonly referred to as "whistle-blower protection."

¹⁸ Material foreseeable risk factors refers to future trends or known certainties that could affect the company's profits.

¹⁹ Governance structures and policies refers to how many people sit on the board of directors, whether the chair and chief executive officer are the same person or the policies that govern the board's decision-making processes.

²⁰ Systems for managing risks refers to the procedures, policies and staff responsibilities the company has in place to identify and manage various kinds of risks such as financial, operational, or legal. Good risk management systems have many benefits, including improving management, reducing costs, and increasing efficiencies. Systems for statements or codes of business conduct refers to how a business monitors its actions to ensure good conduct. This could include, for example, the number of environmental staff, the internal procedures to monitor compliance, or whether outside auditors are used to monitor compliance.

²¹ Commentary for Chapter IX states: The term competition law is used to refer to laws, including both antitrust and antimonopoly laws..." Antitrust laws forbid businesses from collaborating to monopolize a market or restrain free trade. Antimonopoly laws forbid one single company from owning all or nearly all of the market for a given type of product or service.

²² Transfer price is the amount paid from one part of a multinational enterprise for goods or services provided by another. Arm's length principle means that transfer prices should be the same as if the two companies involved were indeed two independent companies and not part of the same corporate structure.

²³ SOMO Centre for Research on Multinational Corporations' compilation of cases raised by NGOs and trade unions prepared for a June 2003 OECD Watch memorandum to National Contact Points and the Committee on International Investment and Multinational Enterprises. Written by Joris Oldenziel and reproduced with permission.

²⁴ Friends of the Earth–Netherlands, Pg. 11.

²⁵ The most widely cited definition of the Precautionary Principle is one that emerged from the 1992 Rio Earth Summit: "Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

²⁶ International Organization for Standardization, ISO 9000 and ISO 14000 In Brief:
<http://www.iso.ch/iso/en/iso9000-14000/index.html>

²⁷ Commentary for Chp. V, Paras. 1a–c.

²⁸ International Organization for Standardization, ISO 9000 and ISO 14000 Certification, accreditation, and registration: http://www.iso.ch/iso/en/iso9000-14000/basics/general/basics_5.html

²⁹ Commentary for Para. 6a.

³⁰ Environmental Protection Agency. 1996 Toxic Release Inventory: Public Data Release – Ten Years of Right-to-Know, May 1998, Pg. 1.

³¹ Environmental Protection Agency, 2001 TRI Public Data Release Press Release:
<http://www.epa.gov/tri/tridata/tri01/Final%20Press%20Release.pdf>

³² See Emergency Planning and Community Right to Know Act of 1986 (United States), Sections 302 and 303.

³³ Ibid, Sections 311 and 312.

³⁴ Ibid, Section 304.

³⁵ Go to www.unece.org for a full listing of United Nations Economic Commission for Europe member countries.

³⁶ OECD, "About Transfer Pricing." <http://www.oecd.org/EN/about/0,,EN-about-107-nodirectorate-no-no-no-22,00.html>

³⁷ John Neighbour, "Transfer pricing: Keeping it at arm's length," *OECD Observer*, April 21, 2002.
http://www.oecdobserver.org/news/fullstory.php/aid/670/Transfer_pricing:_Keeping_it_at_arm__8217;s_length.html

³⁸ International Organization for Standardization, Generic Management System Standards:
http://www.iso.ch/iso/en/iso9000-14000/basics/general/basics_3.html