

Follow up to the Final Statement by the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines)

Complaint from the Malaysian Trades Union Congress against British American Tobacco Malaysia Berhad (Malaysia)

1. This Follow Up Statement reflects one party's response, and the UK NCP's conclusions thereon, on the progress made in the implementation of the recommendation contained in the Final Statement dated 4 March 2011¹ on the complaint from the Malaysian Trades Union Congress (MTUC) against British American Tobacco Malaysia (BATM) under the Guidelines. The publication of this statement concludes this Specific Instance.

Background

OECD Guidelines for Multinational Enterprises

2. The Guidelines comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
3. The Guidelines are not legally binding. However, OECD governments and a number of non OECD governments are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.
4. The Guidelines are implemented in adhering countries by NCPs which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

Follow up to Final Statements by the UK NCP

5. The UK NCP's complaint process, together with the UK NCP's Initial Assessments, Final Statements and Follow Up Statements, is published on the UK NCP's website: <http://www.bis.gov.uk/nationalcontactpoint>.

¹ <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/f/11-774-final-statement-ncp-bat-malaysia.pdf>

6. In accordance with paragraph 6.1 of the complaint procedure, where the Final Statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the UK NCP with a substantiated update on the company's progress towards implementing these recommendations. The UK NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon.

Recommendation to the company

7. In the Final Statement dated 4 March 2011 on the complaint from the MTUC against BATM, the UK NCP made the following recommendation to BATM in order to assist the company in bringing its practices into line with the Guidelines:

"58. The UK NCP however considers that BATM risks breaching the Guidelines again in the future unless it changes its approach in consulting employees (and their representatives). To this effect, the UK NCP recommends that British American Tobacco PLC should encourage BATM to establish a permanent and regular process to consult and inform its employees on issues of mutual concern before key decisions of mutual concern are taken by management. Such process should be endorsed by both management and employees (and their representatives, where they exist).

59. Both parties are asked to provide the UK NCP with a substantiated update by 6 June 2011 on measurable progress towards BATM's implementation of the recommendation in paragraph 58 above."

Response from the parties

8. The UK NCP received BATM's update dated 2 June 2011, followed by British American Tobacco PLC's letter also dated 2 June 2011. The UK NCP did not receive any response from the MTUC.
9. In its letter, BATM stated that, in response to the UK NCP's recommendation, it carried out a review of its existing policies and practices, taking into account current Malaysian legislation and industrial practice, related to employees' engagement and consultation. The company explained that the review was conducted by a team of senior managers, including the human resources director, from February to May 2011. The company's internal review concluded:
 - a) that the current communication channels within the company between senior management and employees are sufficient and timely, and already include opportunities for employees' feedback; and

- b) that BATM's existing policies and practices related to employee engagement and consultation are not formalised and documented. BATM has therefore committed to formalise its current employee engagement and consultation process in the form of guidelines to be adhered to by the company. These guidelines will be implemented by August 2011 and will include engagement and consultation with employees or trades union(s) on matters of mutual concern. BATM explained that the consultation process will include face-to-face meetings, and the company's commitment to respond within 14 days to any concern raised by employees.
10. British American Tobacco PLC confirmed that it had been in regular and constructive dialogue with BATM and that it is satisfied that BATM's internal review (and its outcomes) have addressed the UK NCP's recommendation.

Conclusions

11. The purpose of the Follow Up Statement is not to examine again the allegations made against a company under the Guidelines but to evaluate the progress made by the company in implementing the UK NCP's recommendation(s) contained in the Final Statement. This evaluation is based solely on the parties' responses.
12. In this case, the key element of the UK NCP's recommendation in paragraph 58 of the Final Statement dated 4 March 2011 was to encourage BATM to reconsider its approach to consulting employees before key decisions of mutual concern are taken by management.
13. In light of BATM and British American Tobacco PLC's responses, and in the absence of a response from the MTUC, the UK NCP welcomes the steps taken by BATM to minimise the risk of future breaches of the Guidelines. In particular, the UK NCP welcomes the completion of an internal review on the company's practices, and considers that having clear and publicly accessible guidelines on engaging employees on matters of mutual concern will constitute a positive outcome.
14. The UK NCP remains concerned, however, that BATM's internal review appears to have been conducted by senior managers, without any employee (or trades union representative where they exist) involvement as part of the review committee. In addition, the UK NCP is surprised by the review committee's conclusion (as per paragraph 9(a) above) that BATM believes its current engagement practices to be sufficient and timely.
15. The above concerns notwithstanding, the UK NCP supports BATM's steps to increase the transparency of its employee engagement processes, and hopes that BATM's guidelines will be drawn up in close liaison with (and with the endorsement of) BATM's employees (or trades unions where they exist).

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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