

Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises

Complaint from the European Centre for Constitutional and Human Rights (ECCHR) against Cargill Cotton Limited (in Uzbekistan)

Background

OECD Guidelines for Multinational Enterprises

1. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.
2. 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.
3. The Guidelines are implemented in adhering countries by National Contact Points (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.

UK NCP complaint procedure

4. The UK NCP complaint process is broadly divided into the following key stages:
 - a) Initial Assessment - This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The UK NCP will use this information to decide whether further consideration of a complaint is warranted;
 - b) Conciliation/mediation OR examination - If a case is accepted, the UK NCP will offer conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should

conciliation/mediation fail to achieve a resolution or should the parties decline the offer then the UK NCP will examine the complaint in order to assess whether it is justified;

- c) Final Statement – If a mediated settlement has been reached, the UK NCP will publish a Final Statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the UK NCP will examine the complaint and prepare and publish a Final Statement with a clear statement as to whether or not the Guidelines have been breached and, if appropriate, recommendations to the company to assist it in bringing its conduct into line with the Guidelines;
 - d) Follow up – Where the Final Statement includes such recommendations, it will specify a date by which both parties are asked to update the UK NCP on the company's progress towards meeting these recommendations. The UK NCP will then publish a further statement reflecting the parties' responses and, where appropriate, the NCP's conclusions on those responses.
5. The 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>

Complaint from the ECCHR and response from Cargill Cotton

6. On 1 December 2010, Leigh Day & Co Solicitors, acting on behalf of the ECCHR, wrote to the UK NCP raising a number of concerns which the ECCHR considered constitute a Specific Instance under the Guidelines in respect of the UK registered company Cargill Cotton Limited (Cargill) in relation to Uzbekistan. The ECCHR alleged that, by buying cotton, allegedly produced through the systematic use of child and forced labour in Uzbekistan, Cargill breached the following Chapters of the Guidelines:

"II. General Policies

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

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.

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

[...]

10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.”

“IV. Employment and Industrial Relations

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

[...]

1.(b) Contribute to the effective abolition of child labour.

1.(c) Contribute to the elimination of all forms of forced or compulsory labour.”

7. More information about the allegations made by the ECCHR in respect of Cargill can be found in the Initial Assessment which is available on the UK NCP’s website¹.
8. Cargill wrote to the UK NCP on 21 January 2011 and on 14 February 2011, denying these allegations. More information about Cargill’s response can be found in the Initial Assessment which is available on the UK NCP’s website².

UK NCP process in this Specific Instance

9. On 8 March 2011, the UK NCP concluded its Initial Assessment on this complaint³, accepting for further consideration the alleged breach by Cargill of Chapters II(1), II(2), II(10), IV(1)(b) and IV(1)(c) of the Guidelines. In particular, the Initial Assessment concluded that the UK NCP would attempt to facilitate a negotiated settlement on the following issues: Cargill’s policy of buying cotton from Uzbekistan; Cargill’s capacity to influence the government of Uzbekistan in relation to the use of forced and child labour; and Cargill’s disclosure of information related to its purchase of Uzbekistan-origin cotton in Uzbekistan. **The acceptance of this Specific Instance for further consideration by the UK NCP does not mean that the UK NCP considers that Cargill acted inconsistently with the Guidelines.**
10. The UK NCP offered, and both parties accepted, conciliation/mediation. The UK NCP therefore appointed ACAS⁴

¹ <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-764-initial-assessment-ncp-cargil-cotton.pdf>

² Ibid.

³ Ibid.

⁴ Advisory, Conciliation and Arbitration Service.

mediator Dr Karl Mackie to serve as conciliator-mediator. The parties met at a conciliation meeting in London on 3 June 2011. The meeting was chaired by Dr Mackie. No mediation was required as the parties agreed a mutually acceptable solution to the complaint through conciliation. The main points of the agreement are:

“Cargill does not condone the use of abusive, enforced or illegal labour wherever this may occur. It recognises that there have been serious allegations about the systematic use of forced child labour in Uzbekistan and would wish such allegations to be investigated by an appropriate independent international organisation. ECCHR believes that businesses have a responsibility to take active steps to prevent such practices as forced child labour in the supply chain.

With this in mind, Cargill and ECCHR have agreed to certain undertakings.

ECCHR and Cargill will inform each other and exchange views on a regular basis in the next 12 months.

Cargill and ECCHR agree to meet in 12 months time to review progress against the undertakings. This meeting will be hosted and facilitated by the UK NCP appointed mediator.

ECCHR wishes it to be noted that, although it is prepared for the time being to drop its request to Cargill for a cessation of trading in Uzbekistan cotton, it still believes that this remains a possible and appropriate course of action if other change efforts prove unsuccessful.”

Outcome of the conciliation

11. Following discussions which took place between 3 and 24 June 2011, the parties reached an agreement. Both parties have also agreed that no outstanding issues from the ECCHR’s original complaint need to be examined by the UK NCP.

UK NCP conclusions

12. Following the successful conclusion of the conciliation process by Dr Karl Mackie and the agreement reached by the parties, the UK NCP will close the complaint. The UK NCP will not carry out an examination of the allegations contained in the ECCHR’s complaint or make a statement as to whether there has been a breach of the Guidelines.

13. The UK NCP congratulates both parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the discussions.

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