

**Initial Assessment By The UK
National Contact Point For
The OECD Guidelines For
Multinational Enterprises**

**COMPLAINT FROM IUF AGAINST
BAT**

AUGUST 2016

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Substance of complaint and summary of the UK NCP Initial Assessment decision

- IUF claims that BAT is linked to abuses of migrant farmworkers in the United States, and is not meeting its obligations to help end these abuses. BAT rejects the claim and says that it has taken appropriate actions to prevent abuse in its supply chain.
- The UK NCP's Initial Assessment is that:
 - The claim that the company may not be taking adequate steps to address links to alleged abuses through a business relationship merits further examination.
 - The complainant has not substantiated a claim that the company causes or contributes to abuses. Unless new information emerges, the UK NCP will not examine this claim further.
- This Initial Assessment decision is made on the basis of the initial information parties offered. The decision to examine further the claim about BAT's business relationship is not a finding against BAT.
- The UK NCP will now offer the parties mediation. If the parties do not want to mediate or cannot reach agreement, the UK NCP will examine further the claim about BAT's business relationship to reach a finding about whether BAT's actions meet its OECD Guidelines obligations.

OECD MNE Guidelines provisions cited

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 stakeholders. In this regard:

A. *Enterprises should*

10. *Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*

11. *Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

12. *Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*

Chapter IV, Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. *Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

3. *Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*

5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*

6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

Nature of the complaint

1. The complaint is made by IUF, an international association of trades unions, based in Switzerland, on behalf of FLOC, a member union based in the United States (US). The complainant claims that BAT, a tobacco company based in the UK, does not meet (voluntary) obligations under OECD Guidelines to identify and address harmful impacts of its own operations and those of its business partners.
2. IUF refers to abuses it says are suffered by migrant farmworkers harvesting tobacco in North Carolina. The abuses include poor pay, unsafe working condition and poor living conditions. The complainant says that these workers are vulnerable to abuses because they cannot join or form labour unions without fear of retaliation.
3. The complainant says that the UK company is linked to the abuses by business relationships with US companies.
4. The complainant proposes that the company uses its influence with a specific US business partner to persuade that partner to agree to open discussions on creating a framework within which farmworkers can effectively access their rights.
5. The company accepted an invitation to respond to the complaint. Its response provides information about its due diligence processes and business relationships and comments on the complainant's proposal. The company says that it considers its approach to the issues to be consistent with the OECD Guidelines.

Summary of Initial Assessment process

6. The Initial Assessment decision is a decision about whether the complaint as presented merits further examination. It is not a decision about whether the company meets its obligations under the Guidelines.
7. Timetable:

27.04.2016	UK NCP receives complaint
11.05.2016	UK NCP confirms handling to complainant
12.05.2016	UK NCP shares complaint with company
10.06.2016	UK NCP receives company response
11.07.2016	UK NCP issues draft Initial Assessment
21-22.07.2016	UK NCP receives parties' comments
01.08.2016	UK NCP issues Initial Assessment

8. All documents provided in the complaint and response have been shared with both parties.
9. The NCP offered each party a meeting to explain the process. Neither party took up the offer.

Reasons for UK NCP decision

10. The decision to accept further examination of the complaint takes account of the following criteria, as set out in the OECD Guidelines implementation procedures:

Identity of the complainants and their interest in the issue

11. As the basis of the complaint is that the workers it refers to cannot join or form unions without fear of retaliation, neither the complainant nor its US member union directly represents these workers. However the complainant is able to provide information about the conditions of these workers and about the actions of the UK company. The complainant's interest in the issue is via its US member union. This union represents migrant farmworkers in the US and is a participant in the multi-stakeholder process to improve conditions of these workers.
12. The complainant appears to have authority to reach an agreement about the action it proposes the company should take to meet its Guidelines obligations using leverage with its US business partner. The business partner is itself an enterprise to which the Guidelines apply, and the UK NCP comments further on this at Paragraphs 22-23 below.

Whether the issue is material and substantiated

13. The complainant has substantiated the claim that migrant farmworkers in the US are vulnerable to abuses. The complainant provides or refers to recent reports about conditions of workers harvesting tobacco in North Carolina (reports from 2011 and 2014 are provided). The complaint also refers to the multi-stakeholder group set up to address the issue. The UK NCP notes that this group includes representatives of the US government (Department of Labor).
14. In its response to the complaint, the UK company says that it has identified the risk of such abuses and has acted to address the risk in its supply chain. The company has substantiated its claim with copies of reports it has commissioned, and refers to associated demands it places on its suppliers.
15. The complainant and the company disagree about whether it is appropriate, necessary, or even possible, to guarantee the right to organise. Each offers information about how US law may affect this

point. The UK NCP considers that further examination would be required to reach a conclusion about how US law may apply to the issues.

Whether there seems to be a link between the enterprise's activities and the issue raised

16. The complainant asserts that the company is linked to the alleged abuses in two ways:
 - i. Through its 42% shareholding in a US tobacco company;
 - ii. Through supply chain relationships with that US tobacco company and with North Carolina tobacco growers;
17. The response of the company refers to each of these links:
 - i. The company agrees that it is a shareholder in the US company, but US law restricts it from exercising influence with the company.
 - ii. The company refers to the due diligence measures in place to manage supply chain risks, as noted at Paragraph 14. above.

In regard to reports of alleged abuses referred to in support of the complaint, the company notes that steps have been taken to protect the identities of workers reporting abuses. This means that the company cannot be certain that none of the alleged abuses is linked to its supply chain. However the company has taken all possible steps to ensure that it does not source from suppliers linked to abuses.

18. The UK NCP considers that the information provided by both parties substantiates a link to BAT's activities through its business relationship with the US company referred to. The parties disagree about the leverage BAT has, and the UK NCP considers that further examination would be required to reach a conclusion on this.
19. The complaint as drafted also suggested that BAT was directly involved as a participant in a multi-stakeholder process set up to tackle alleged labour abuses in farm work. BAT disputed this and IUF has subsequently confirmed that it is an error: BAT has never been a participant in the process. As no direct participation is now alleged, the UK NCP considers that the information provided does not substantiate a claim that BAT causes or contributes to the impacts on the workers. The UK NCP will not pursue further examination of this part of the complaint (relating to Chapter II, Paragraph 11 and Chapter IV, Paragraph 6), unless new information emerges in the course of any further examination.

Relevance of applicable law and procedures, including court rulings

20. The complaint refers to international law on human rights under the International Covenant on Civil and Political Rights (in particular article 22 on freedom of association) and ILO Conventions 87 (on the right to organise) and 98 (protecting against dismissal as a result of union membership)].
21. IUF note that agricultural workers are specifically exempted from US law protecting the rights of workers to organise. IUF note, however, that the law does not prevent these workers from forming unions.

How similar issues have been, or are being, treated in other domestic or international proceedings:

22. The ultimate objective of the complainant is an agreement between a US union and a US multinational to enter a discussion aimed at reaching a mediated or arbitrated settlement.
23. The UK NCP notes that it would be within the remit of the US NCP to pursue such an agreement. A more direct, and potentially effective, way to address the issue raised in the complaint could have been for the complainant (or its US member union) to invite the US NCP to consider a complaint against the US company concerned. However, it is not inappropriate for the UK NCP to consider the actions of the UK company as an investor and buyer.
24. With the complainant's consent, the UK NCP has shared the details of the complaint with the US NCP for information. This is the UK NCP's standard practice where a complaint has links to another country that adheres to the Guidelines.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

25. The parties currently disagree about what action is appropriate to address alleged labour abuses in US tobacco farming, and about what leverage BAT has with its US business partner. These points can potentially be resolved by the parties sharing further information in mediation or further examination (including third party information), and this will further the purpose and effectiveness of the Guidelines.
26. It does not further the effectiveness of the Guidelines to duplicate or usurp work appropriate to another process: the multi-stakeholder process already established in the US. For this reason, the UK NCP notes that the UK NCP process will be limited to determining the actions appropriate to BAT's role.

Next steps

27. The UK NCP will formally ask IUF and BAT whether they are willing to engage in mediation with the aim of reaching a settlement. Subject to their response, the UK NCP will liaise with the parties to arrange mediation meetings. If these meetings achieve a resolution, the UK NCP will reflect this in a Final Statement. If a mediated solution is not possible, the UK NCP will conduct a separate examination into the issues and will reflect the outcome in a Final Statement that will include a finding about whether the company meets its Guidelines obligations.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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