

**Initial Assessment by the UK National Contact Point for the OECD
Guidelines for Multinational Enterprises**

Complaint from the IUF against Unilever Pakistan Ltd (Khanewal factory)

9 June 2009

SUMMARY OF THE UK NCP DECISION

- The UK NCP has decided that the issues raised in IUF's submission merit further consideration and has decided to accept the specific instance. This does not mean that the UK NCP considers Unilever to have operated inconsistently with the Guidelines.
- The UK NCP is accepting for consideration the alleged contravention of Chapters II(1), II(4) and II(9) (General Policies) and Chapter IV(1)(a) (Employment and Industrial Relations) of the Guidelines.
- The UK NCP considers that, by accepting this specific instance, it could help both parties in reaching a conciliated/mediated solution to the complaint. This might in turn pave the way to a swift conclusion of the legal proceedings in Pakistan.
- The UK NCP will formally contact both parties to ask for confirmation that they are willing to proceed immediately to conciliation/mediation with the aim of reaching a settlement. The UK NCP will then liaise with both parties to arrange the conciliation/mediation meetings.

BACKGROUND

1. On 6 March 2009 the "International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations" (IUF) wrote on behalf of the "National Federation of Food, Beverage and Tobacco Workers" of Pakistan, an IUF affiliate, to the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of Unilever Pakistan Ltd ("Unilever"), a subsidiary of Unilever Plc (a UK registered company).

ALLEGATIONS AND CURRENT STATE OF AFFAIRS

2. The concerns raised by the IUF relate to the operations of Unilever's factory in Khanewal and were specifically related by the IUF to the following provisions within the Guidelines:
 - (a) Chapter II(1): "[Enterprises should] *Contribute to economic, social and environmental progress with a view to achieving sustainable development*".
 - (b) Chapter II(4): "[Enterprises should] *Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees*".
 - (c) Chapter II(9): "[Enterprises should] *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".

- (d) Chapter IV(1)(a): *"[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] 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".*

3. The IUF makes the following allegations in respect of the operations of Unilever's factory in Khanewal:
- (a) That Unilever has deliberately constructed a system of employment based almost exclusively on temporary workers and is refusing to change the workers' status from temporary to permanent after the mandatory nine-month period of continuous service, allegedly in breach of Pakistan's employment law. The IUF explains that temporary workers do not have the same access to collective bargaining as permanent workers and also do not receive the same benefits. For example, they receive lower wages than permanent workers (6,000 Pakistan Rupees¹ per month (26 days of work) for temporary workers as opposed to 18,000 Pakistan Rupees² per month for permanent workers).
 - (b) That those temporary workers demanding permanent status and who petitioned the Punjab Labour Court No. 9 in Multan have been subject to threats, coercion and violence. The IUF alleges that incidents occurred on 8 October (alleged threats by company's contractors), 15 November (alleged beating by company's contractors), and 17 November 2008 (alleged lock out of workers who filed the petition and alleged refusal to provide first aid to a worker who fell ill during the lock out). The IUF also alleges that on 1 March 2009, as a result of a complaint from Unilever's contractor to the police, 17 workers were arrested (they are currently out on bail).
4. Unilever denies all of these allegations and states that it is adhering to the Guidelines by complying with applicable law, regulations and prevailing labour relations and employment practices in Pakistan. In particular:
- a) Unilever explains that, in line with the industry's practice in Pakistan and South East Asia, and to keep operations effective and competitive, it does employ independent service providers for non-core operations at the Khanewal factory. Unilever states that it cannot be held responsible for the work status of workers employed by independent local service providers and that it insists upon

¹ Approximately GBP£50.

² Approximately GBP£150.

service providers complying with Unilever's Business Partner Code³ and with Pakistan's law. Unilever also states that employees of Unilever's independent service providers are free to form their own unions separate from Unilever Employees Federation of Pakistan (which can only represent Unilever's permanent staff in the country).

- b) Unilever does not accept that the events referred to in paragraph 3(b) above are factually correct and it denies that workers were subject to threats, coercion or violence. Unilever also states that a lock out did not take place on 17 November 2008. It states that a group of workers took charge of the factory gate and refused to allow employees on the evening shift to enter the factory and the police were later called.
- 5. According to the IUF, 237 temporary workers have formed a union action committee, "Unilever Mazdoor Union Khanewal", in order to support their demand to be made permanent employees. The committee is supported by the IUF. Temporary workers have also filed 168 petitions to the Punjab Labour Court No. 9 in Multan in order to be recognised as permanent employees at the Khanewal factory. The UK NCP understands that a hearing has not yet taken place.
- 6. On 2 March 2009, Unilever met the IUF's Pakistan representative. Further meetings took place in Pakistan in March and April 2009. The meetings did not lead to a compromise solution on the allegations summarised in paragraph 3 above.
- 7. On 13 May 2009, the IUF also reported that Unilever was allegedly raising the possibility of closing down the operations of its Khanewal factory (and transferring part of the factory's activities to a nearby plant employing only casual workers) in order to increase pressure on the IUF-supported union. Unilever denies that it is (or has started) to close the Khanewal factory.

THE UK NCP PROCESS SO FAR

- 8. The UK NCP received the IUF's complaint relating to the Khanewal factory on 6 March 2009. The complaint was copied to Unilever at the same time as it was sent to the UK NCP.
- 9. As both parties are familiar with the UK NCP process, neither party thought it necessary to meet the UK NCP for an explanation of the complaints' management process. Each party has supported the sharing with the other party of all documents sent to the UK NCP.
- 10. Unilever's preliminary response to the complaint was to suggest that the UK NCP's initial conciliation/mediation meeting, which was being agreed in respect of the separate complaint concerning Unilever's

³ http://www.unilever.com/aboutus/purposeandprinciples/business_partner_code/

Rahim Yar Khan factory, should also cover the complaint on the Khanewal factory (subject to the outcome of ongoing meetings in Pakistan). This was a departure from the UK NCP published complaint process, but the UK NCP agreed to it in order to assist the parties in finding a solution to the complaint.

11. However, on 23 April 2009, both parties agreed to go ahead with an initial conciliation/mediation meeting in London covering only the Rahim Yar Khan factory. For the purposes of the UK NCP complaint process, the two cases have since been dealt with separately.

UK NCP DECISION

12. **The UK NCP has decided that the issues raised in IUF's submission merit further consideration and has decided to accept the specific instance. This does not mean that the UK NCP considers Unilever to have operated inconsistently with the Guidelines.** The reasons for this decision are explained below.
13. **The UK NCP is accepting for consideration the alleged contravention of Chapters II(1), II(4) and II(9) (General Policies) and Chapter IV(1)(a) (Employment and Industrial Relations) of the Guidelines.**
14. As stipulated in paragraph 14 of the Commentary on the Guidelines on "Implementation in Specific Instances", the UK NCP took the following points into account when considering whether IUF's concerns merited further consideration:

a) Identity of the IUF and its interest in the matter:

The UK NCP is satisfied that the IUF is a legitimate and credible body to make this complaint. The IUF is a union representing workers in the food and agricultural sector and has brought the complaint on behalf of the "National Federation of Food, Beverage and Tobacco Workers" of Pakistan which is an affiliate of the IUF. The UK NCP considers that the members of this federation and the "Unilever Mazdoor Union Khanewal" (supported by the IUF) are directly interested in the issues raised in the complaint.

b) Whether the issue is material and substantiated:

The IUF and Unilever have provided sufficient information for the UK NCP to consider the issues material and substantiated. The IUF has provided copies of several affidavits signed by workers at the Khanewal factory which it says support its complaint.

c) Relevance of applicable law and procedures:

According to the IUF, Unilever has breached aspects of Pakistan's employment law (in that it has allegedly failed to recognise the right of a number of temporary workers to permanent employment). Unilever submits that its practices in relation to temporary workers mirror those of the majority of other major manufacturers in the region.

Unilever also contends that it operates in accordance with the host country law in respect of freedom of association and rights of employees to engage in constructive collective bargaining and that any finding that there has been a breach of Chapter IV(1) of the Guidelines would conflict with the principle that corporations should work within the "*framework of applicable law, regulations and prevailing labour relations and employments practises*". The UK NCP will consider this argument in the following stages of the complaint process.

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

As far as the UK NCP is aware (on the basis of information received from the IUF), the issue of the work status of the relevant Khanewal's employees is subject to ongoing legal proceedings in the Punjab Labour Court No. 9 in Multan (Pakistan).

The Guidelines represent supplementary principles and standards of behaviour of a non-legal character and are not a substitute for (nor should they be considered to override) local law and regulation. The UK NCP will offer the parties conciliation/mediation but if conciliation/mediation should fail, the UK NCP will consider suspending the complaint process in order to take into account the proceedings before Pakistan's courts.

e) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines:

One of the stated aims of the Guidelines, specifically the role of the NCPs, is for the NCP to "*offer 'good offices' in an effort to contribute informally to the resolution of the issue*"⁴. To this effect, **the UK NCP considers that, by accepting this specific instance, it could help both parties in reaching a conciliated/mediated solution to the complaint. This might in turn pave the way to a swift conclusion of the legal proceedings in Pakistan.**

⁴ See paragraph 16 of the Commentary on the Guidelines on "Implementation in Specific Instances".

NEXT STEPS

15. **The UK NCP will formally contact both parties to ask for confirmation that they are willing to proceed immediately to conciliation/mediation with the aim of reaching a settlement. The UK NCP will then liaise with both parties to arrange the conciliation/mediation meetings.**
16. If a conciliated/mediated solution is possible, the understanding reached by the parties may pave the way to a swift conclusion of the parallel legal proceedings in Pakistan. The UK NCP will then reflect the outcome of the conciliation/mediation and of the court proceedings in its final statement.
17. If a conciliated/mediated settlement is not possible, the UK NCP will conduct a separate investigation into the complaint. If one of the parties requests a suspension of the complaint on the basis that continuation of the process will prejudice parallel court proceedings in Pakistan, the UK NCP will consider its request. The UK NCP will not suspend aspects of the complaint that it considers are not an issue in the court proceedings in Pakistan.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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