

INITIAL ASSESSMENT BY THE UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: BRITISH AMERICAN TOBACCO MALAYSIA (BATM) AND BRITISH AMERICAN TOBACCO EMPLOYERS UNION (BATEU)

Background

1. On 11 December 2007 Malaysian Trade Union Congress (on behalf of BATEU) wrote to the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) raising a number of concerns which they felt constitute Specific Instances (SIs) under the Guidelines, regarding the operations of a British American Tobacco Malaysia.
2. The concerns were specifically related to Chapter IV (Employment and Industrial Relations), in particular, the following, which state that “Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices
 - a. Chapter IV, Paragraph 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;”
 - b. Chapter IV, Paragraph 4a. Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
 - c. Chapter IV, Paragraph 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 not transfer employees from the enterprises’ component entities to other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
 - d. Chapter IV, Paragraph 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.
3. The complainant alleges that the restructuring of the workforce in Malaysia intentionally reduced the membership of the union to a level where the union had become unsustainable. In particular:
 - New categorisation of process technician post to process specialist (moving from non-managerial to managerial role)
 - New categorisation of trade marketing and distributions representatives (moving from non-managerial to managerial role)
 - Request for a ruling from the Malaysian authorities whether BATEU can represent the staff working on its subsidiaries as well as the parent company.

4. The complainant makes a secondary complaint that insufficient consultation took place with the unions in regards to the restructuring.

5. The company denies all allegations of conduct that is inconsistent with the Employment and Industrial Relations provisions of the Guidelines. Specifically, that the reduction of BATEU membership is a consequence of Malaysian legislation that (1) prevents the same union from representing both managerial and non-managerial posts and (2) recent Malaysian case law prevents the same union from representing both the parent company and its subsidiaries. The Union received confirmation from the appropriate Malaysian authorities that the recategorisation of process technician to process specialist was correct, the union has requested a judicial review of this decision. The Company received confirmation from the appropriate Malaysian authorities that its understanding that BATEU can only represent staff at the parent company is correct. The Union has requested a judicial review of this decision.

The UK NCP process

6. All information gathered by the NCP to determine whether to accept this case for further consideration was carried out in writing and was shared with both parties. Both parties have been offered a meeting to discuss the process, however as the complainant is based in Malaysia, a meeting did not prove practical.

7. The Company submitted a response to the allegations on 9 January 2008. The NCP wrote to both parties asking for further information and clarifications on 14 January 2008 and both parties responded to this request for further information promptly and additional material was received from both parties in February and March 2008.

UK NCP Decision

8. The UK NCP has decided that most of the issues raised in the BATEU submissions do merit further consideration and has decided to **accept** the specific instance. **This does not mean that the NCP considers BATM to have operated inconsistently with the Guidelines.**

9. The NCP is accepting Chapter IV, Paragraph 1a, Chapter IV, Paragraph 4a and Chapter IV, Paragraph 8 for further consideration.

10. In this complaint, Chapter IV, Paragraph 1a and Paragraph 8 fall into 2 issues: 1. whether the restructuring undertaken by the company intentionally caused a reduction in BATEU membership and 2. Whether consultation with the Union took place before and during the restructuring.

11. The NCP is not accepting for consideration Chapter IV, Paragraph 7 as no supporting evidence has been provided to the NCP.

12. As stipulated in the commentary on implementation in specific instances (text of the OECD Guidelines p.60 paragraph 14), the UK NCP took the following points into account in considering whether BATEU's concerns merited further consideration:

- a. BATEU is a legitimate and credible body to be raising these concerns as the trade union directly affected by the restructuring.
- b. Both BATM and BATEU have provided sufficient information for the NCP to accept the specific instance.
- c. The issues that have been accepted for the Specific Instance appear to be outstanding.
- d. The Guidelines are designed partly as a dispute resolution mechanism.

Next steps

13. The preferred outcome of any complaint is an agreement between the parties. As the NCP has now accepted this specific instance, it will now offer its "good offices" with the objective of bringing both parties together to discuss the issues and come to a mutually agreed resolution. Mediation can be seen as an 'assisted negotiation' between the parties with the aim of reaching a settlement agreeable to both. Considering the complainants are based in Malaysia while the Company's Head Office is based in England, the NCP will explore options with the parties of how best to proceed with mediation.

14. If a mediated solution is not possible, the NCP will conduct a separate investigation. Elements of investigation will be suspended until the judicial reviews outlined in paragraph 5 are finalised.

15. In either case, the NCP will issue a concluding statement on the case.

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