

March 18, 2010

Re: OECD Guidelines for Multinational Enterprises Review - Call for Stakeholder Input

In response to this call for stakeholder input, the Canadian Environmental Network (RCEN) International Program mandated one of its members, Clara Whyte of the environmental NGO Gaia Vision, to respond to this questionnaire from an international environmental non-governmental perspective. For more information on the comments here below, please contact Clara Whyte at clara.whyte@gaia-vision.org or Sarah Heiberg, RCEN International Program Coordinator, at sarah@cen-rce.org.

I. Relevancy of the OECD Guidelines Revision

A revision of the Guidelines entails a reopening of their text towards a negotiation between the adhering countries with a view to modifying it. Should all of the adhering countries agree to a revision under terms of reference to be determined following this first round of consultations, such negotiation will then take place.

Question 1: According to your organization, would a revision of the OECD Guidelines be relevant?

a) If so: please go to section II.

b) If not: please outline why:

Yes

II. Extent of the Revision as to the Substantive Provisions of the Guidelines

Part One of the OECD Guidelines include substantive provisions relating to various issues, including concepts and principles, general policies, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. The electronic version of the OECD Guidelines includes commentaries directly under the text.

For more information on the substantive provisions of the Guidelines, please see pages 5 to 43 of the following document:

[http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/NT00002F06/\\$FILE/JT00115758.PDF](http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/NT00002F06/$FILE/JT00115758.PDF)

1. According to you which sections of the Guidelines substantive provisions should be reopened for discussion in priority?

- Preface, paragraphs 4 and 5
- Chapter V, paragraph 1 on the environment
- Commentaries, paragraph 30

2. Please explain why:

- Preface, paragraphs 4 and 5 strongly assert that free trade is good for the environment and in favour of sustainable development, yet many studies including one of the World Trade Organization¹ emphasize that the impacts of free trade will highly vary from one investment or production project to another depending on three types of effects it may have: Composition effects, scale effects and technique effects, which may be positive or negative.²
- Chapter V, paragraph 1 on the environment: is extremely vague asserting the MNEs should “Establish and maintain a system of environmental management” including the “collection and evaluation of adequate and timely information”, the “establishment of measurable objectives” and “regular monitoring”, yet there are absolutely no indications on what “adequate and timely information” or “measurable” objectives could be. This chapter should come with a suggested list of indicators that would guide the companies towards establishing common and comparable systems of environmental management. Otherwise the information released by each company may easily be manipulated and will be difficult to compare and interpret.
- Commentaries, paragraph 30 states that “the text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development in Agenda 21”. Yet, Principle 8 of the Rio Declaration states that “To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption”. Those patterns are mainly the result of current economic models that see the economy as a closed system and forget to consider that it is linked to other systems such as an environmental system which is finite or at least renewable and cannot be used indefinitely without respecting certain capacities. This current economic model is reflected theoretically in neoclassical environmental economics which considers that all sorts of capital are fully substitutable: if one uses natural capital it is not a problem for future generations as long as one creates economic capital out of it. This second form of capital will help future generations to solve prospective problems thanks to improved technologies. This model is highly contestable and Ecological Economics criticizes it by saying that if one has no trees or no water left, economic capital will do little to solve the problem. It states that it is important to recognize that the economic system is not closed and that it depends on other systems such as the environmental system. The latter includes two sorts of capital: renewable natural capital and non-renewable natural capital. Renewable capital should be used by the economic system at a rate no higher than its reconstitution rate. Non-renewable capital use should be reduced and controlled as much

¹ Nordstrom H., Vaughan S., “Trade and Environment”, *Special Studies No. 4*, Geneva: Switzerland, 1999, 110 p.

² *Ibid.*, p. 3

as possible. This approach has a very important consequence which is that one cannot state that all kinds of economic growth are sustainable. In fact, in many cases, economic growth is not sustainable. Yet the paragraph 30 of the commentaries of the Guidelines states that “The goal of competition policy is to contribute to overall social welfare and economic growth by creating and maintaining market conditions in which the nature, quality and price of goods and services are determined by market forces except to the extent a jurisdiction considers necessary to achieve other goals.” It is thus in contradiction with the idea of the Rio Declaration to eliminate unsustainable patterns of production and consumption. This highlights once again the importance of defining a list of indicators that would make it possible to assess the impacts of MNEs’ activities from an economic, social and environmental perspective at the *same time*, in order to make sure that one does not threaten the other.

3. Are there issues which are not dealt with in the current Guidelines which you believe should be included therein?

Yes

4. Please explain why:

It should be stated that economic growth and environmental sustainability do not necessarily go together. The environmental impacts of economic growth highly depend on how it is made, which depends on different sorts of effects (composition, product and technique) that should be assessed jointly for each project in order to take into account the interdependence of the economic and environmental systems. This is why the Guidelines should be much more specific on what an appropriate system of environmental management should be.

III. Extent of the Revision Relating to the Implementation Procedures of the Guidelines

Part Two of the OECD Guidelines, in turn, provides Implementation Procedures and Procedural Guidance relating to the National Contact Points as well as to the Committee on International Investment and Multinational Enterprises (CIME). The electronic version of the OECD Guidelines includes commentaries on the Implementation Procedures within Part Two. For more information on the Implementation Procedures of the Guidelines, please see pages 43 to 54 of the following document:

[http://www.ois.oecd.org/olis/2000doc.nsf/LinkTo/NT00002F06/\\$FILE/JT00115758.PDF](http://www.ois.oecd.org/olis/2000doc.nsf/LinkTo/NT00002F06/$FILE/JT00115758.PDF)

1. According to you which sections of the Guidelines Procedural Guidance should be reopened for discussion in priority?

The Preface and Chapter V on the Environment

2. Please explain why:

Because the Preface sets bases that are not necessarily relevant in terms of links between environmental sustainability and free trade and investment, while Chapter 6 is too vague to ensure that those links will be reconsidered on the basis of proper systems of environmental management.

3. Are there issues which are not dealt with in the actual Guidelines which you believe should be included therein?

Yes

4. Please explain why:

As mentioned, it would be highly relevant to elaborate a list of indicators that would make it possible to assess properly the links between economic growth and natural capital use, and this is a harmonized way so as to facilitate the access of the public to proper and relevant information.

III. Location of the Guidelines within the OECD Declaration on International Investment and Multinational Enterprises

The OECD Guidelines are a part of a package of instruments known as the Declaration on International Investment and Multinational Enterprises. The Declaration is a commitment that OECD Members and other adhering countries make to maintain a balanced policy climate for the promotion of international investment. During recent consultation meetings held by the OECD on a review of the Guidelines, the possibility of new non-members adhering to only the Guidelines, without the requirement of adopting the Declaration, was raised.

1. What is your view on adherence of new non-members to the OECD Guidelines not being contingent on adopting the complete Declaration?

Do not agree because it states very basic lines of conduct that should be minimally followed by any MNE.

V. Other Views

If there are additional views you would like to share with us outside of the frame provided above, please include them here:

The Declaration on International Investment and Multinational Enterprises of June 2000 (of which the first version of the Guidelines was the annex 1) states in point II.1. on National Treatment that “Adhering governments should (...) accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government treatment (...) no less favourable than that accorded in like situations to domestic enterprises”.

This can be problematic for example when it comes to encouraging local production and local consumption, which can be highly important ways of reducing unsustainable production and consumption models.