U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises

Final Statement

Specific Instance Between the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Associations' and The Coca-Cola Company Related to Alleged Conduct in Indonesia

Office of the U.S. National Contact Point on Responsible Business Conduct

U.S. Department of State

May 25, 2018

Executive Summary

On March 24, 2017, the Office of the U.S. National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines") received a "Specific Instance" from the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Associations' (IUF) alleging conduct inconsistent with the OECD Guidelines for Multinational Enterprises by The Coca-Cola Company (TCCC) and an independent bottler's operations in Indonesia, Coca-Cola Amatil Indonesia (CCAI), owned by Coca-Cola Amatil.

After thorough review of information shared by both parties, on June 22, 2017, the U.S. NCP offered mediation services to assist the parties to develop a mutually agreed upon resolution to the issues raised. Three days of mediation took place February 27-March 1, 2018 in Washington, DC under the auspices of the U.S. NCP and its professional mediation team from Consensus Building Institute. IUF, TCCC, and Coca-Cola Amatil (CCA) participated in the mediation. While the parties showed a desire to reach agreement, unfortunately they were ultimately unable to bridge their differences. The U.S. NCP encourages the parties to continue a dialogue on the issues raised, and the office stands ready to consider future requests for mediation by the parties under the auspices of the U.S. NCP. With this Final Statement, the U.S. NCP brings this Specific Instance to a close.

Offering mediation on this Specific Instance is not a determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to assist the parties to voluntarily, confidentially, and in good faith, reach a cooperative resolution of their concerns.

Substance of the Specific Instance

IUF, a global union federation, submitted a Specific Instance to the U.S. NCP on March 24, 2017 alleging conduct inconsistent with Chapter II, General Policies, Chapter IV, Human Rights, and Chapter V, Employment and Industrial Relations, of the conduct by the independent bottler in Indonesia, CCAI. The claims raised in the Specific Instance cover a period from March 2015 to the submission date. IUF alleged that TCCC breached the Guidelines through its relationship with an independent bottler, Coca-Cola Amatil, in Indonesia because of failure by the TCCC to execute due diligence and remediation, as recommended in the Guidelines. IUF claimed that TCCC was informed of these allegations by IUF in both formal and informal communications but did not facilitate remediation or use its leverage to appropriately facilitate a remedy.

IUF alleged that the Indonesian subsidiaries of Coca-Cola Amatil, Coca-Cola Distribution Indonesia (CCDI) and Coca-Cola Bottling Indonesia (CCBI), engaged in and continued to pursue efforts to undermine the rights of workers concerning freedom of association and collective bargaining. IUF alleged that CCDI and CCBI sought to eliminate the elected leadership of the Serikat Buruh Coca-Cola Distribution union (SBCCD) at the Coca-Cola sales office Jakarta operation in Serang (Banten) and the Serikat Buruh Mandiri Coca-Cola union

(SBMCC) at the Bawen (Central Java) plant. IUF claimed that, since March 2015, Coca-Cola Amatil management:

- prevented employees from exercising their rights to freedom of association and collective bargaining by selectively targeting union officers for discipline and dismissal;
- refused to meet with elected union officials;
- refused to engage in meaningful negotiations;
- refused to make available information required for meaningful negotiations to take place; and
- refused to make available information on wage structures.

IUF asserted that Coca-Cola Amatil, which is headquartered in Australia and is one of the largest independent bottlers in the Coca-Cola system, should use its leverage to prevent the alleged breaches of the Guidelines. Coca-Cola Amatil is a publicly listed company on the Australian Securities Exchange and is the sole bottler of Coca-Cola products in Australia, New Zealand, Indonesia, Papua New Guinea, Fiji, and Samoa. IUF asserted that TCCC holds a 29.2% share in Coca-Cola Amatil, licenses the brands to Amatil, and supplies the proprietary concentrate. IUF further stated that, at the time of the submission, the four largest investors in Coca-Cola Amatil after TCCC own 1.65%, 1.54%, 1.16%, and .85% respectively.

IUF claimed that TCCC directly invests in Coca-Cola operations in Indonesia and its leverage is indisputable due to its investment, equity ownership, brand licensing, and concentrate sales. IUF said recommendations in the Guidelines mean that TCCC should use its leverage with independent bottlers, and wanted TCCC to act to ensure that these independent bottlers respect the Guidelines.

IUF stated that it regularly informed TCCC of these allegations and urged them to take action to prevent, mitigate, and remediate the issues raised. IUF requested that the U.S. NCP offer mediation for direct discussions between IUF and TCCC to facilitate a resolution and remedy regarding the issues raised.

On April 27, 2017, TCCC responded in writing to the initial submission. In the letter, TCCC denied any breaches of the Guidelines and noted that neither Coca-Cola Amatil nor CCA's subsidiary, Coca-Cola Amatil Indonesia, were named as parties to the Specific Instance. TCCC asserted three main points in its response:

- **TCCC has no standing in the complaint:** TCCC claimed that while it does have minority equity interest in Coca-Cola Amatil, that interest is not at a level that gives TCCC the ability to direct or control the actions of Amatil or its subsidiaries in Indonesia. TCCC claimed it has neither management nor operational control of Coca-Cola Amatil and is not involved in human resources, management or labor relations decisions at issue. TCCC noted that the management referred to in IUF's submission is in regards to management of Coca-Cola Amatil's entities, not the management of TCCC. TCCC also noted that TCCC and IUF have met biannually since March 2005 to discuss global human and trade union issues relating to TCCC, and that in these meetings IUF may raise issues related to an independent bottler.

TCCC noted that, if such issues are raised, TCCC shares that information with the bottler, and encourages the bottler to explore the issues directly with IUF with the hope of reaching a mutually acceptable outcome. TCCC said that it is unable to speak on behalf of any independent bottler. Regarding the specific issues raised by IUF in Indonesia, TCCC shared that it had exercised its available leverage by sharing the information from IUF with Coca-Cola Amatil, and encouraged Coca-Cola Amatil to engage directly with IUF to explore the issue in the hope of a mutually acceptable outcome.

- **The complaint is not remediable by TCCC:** TCCC said that it does not speak for Coca-Cola Amatil in the local Indonesian disputes, and that it has no legal right to do so in a mediation setting. TCCC also noted that the information requested but denied to IUF (e.g., wage scales) is information possessed by Coca-Cola Amatil, not TCCC, and said that any remedy or engagement in any process to explore resolutions to the issues raised, would be the sole right and responsibility of Coca-Cola Amatil.

- **Previous completed adjudication on two issues raised:** As IUF acknowledged in its letter, an Indonesian court ruled in favor of Coca-Cola Amatil Indonesia on October 5, 2016 in the matter related to one individual who was also included in the Specific Instance submission. TCCC claimed that IUF, having forgone its right to appeal the decision, should not be allowed to seek a different result by pursuing a modified resolution in another forum.

U.S. NCP Decision

After thorough review of information provided in writing and in oral briefings by both parties, the U.S. NCP decided to accept the Specific Instance and determined that the issues raised merited further consideration under the Guidelines. The U.S. NCP offered mediation services to assist the parties to undertake a dialogue to seek a mutually agreed upon resolution of issues raised by IUF related to TCCC and the operations of Coca-Cola Amatil in Indonesia.

Following the offer of mediation and subsequent discussions with both parties, IUF and TCCC both accepted the U.S. NCP's offer of mediation. The U.S. NCP, IUF, and TCCC also agreed to expand the scope of the U.S. NCP's Specific Instance confidentiality policies to include Coca-Cola Amatil. The parties had a number of pre-mediation discussions with the U.S. NCP and its professional mediators from the Consensus Building Institute (CBI), and mediation occurred at the State Department in Washington D.C. February 27 – March 1, 2018. Coca-Cola Amatil also participated in the mediation process.

Recommendations

While the parties did not ultimately reach an agreement in mediation on the issues raised, the U.S. NCP is grateful to the parties for engaging in a dialogue to try and seek a mutually agreeable outcome. While an agreed resolution to the particular issues of this Specific Instance did not occur, the U.S. NCP hopes that the process led to greater understanding of the Guidelines and will result in a quicker recognition and resolution of such issues if they arise in the future. With that in mind, below are several recommendations from the U.S. NCP based on the Guidelines and the issues raised in the Specific Instance:

- **Ongoing Collaboration**: The U.S. NCP recommends that the parties to the Specific Instance—TCCC and IUF—as well as Coca-Cola Amatil, continue to work together on an ongoing basis to coordinate if/when issues arise pertaining to implementation of the Guidelines. Potential items for such collaboration could relate to human rights, labor rights, and due diligence.

- **Consider Incorporating the Guidelines in Company Human Rights Policies:** TCCC and Coca-Cola Amatil have public human rights policies in place. Both company policies explicitly reference the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, and the UN Declaration on Human Rights in describing the international best practices the companies seek to uphold in their operations. The U.S. NCP recommends that both TCCC and CCA consider updating their human rights policies to also include an explicit reference to the OECD Guidelines.

- **Business Relationships and Due Diligence**: A key issue raised in the Specific Instance submission as well as the response to the submission concerned the relationship between TCCC and CCA, and the responsibilities under the Guidelines based on that relationship. The U.S. NCP recommends that TCCC continue its longstanding engagement with CCA to review operations and identify ways to work together to prevent and mitigate potential adverse impacts and that, in line with the Guidelines' recommendations on business relationships, TCCC and CCA continue to work with IUF to seek to address the issues raised in the Specific Instance.[1]

- **Future Requests for Mediation:** The U.S. NCP stands ready to consider future requests for mediation by the parties under the auspices of the U.S. NCP.

[1] More information on what the Guidelines say about business relationships and due diligence is included in the annex below.

Annex: Details of U.S. NCP Specific Instance Process and Outcome of Initial Assessment

I. Context and Background on the U.S. NCP

The OECD Guidelines for Multinational Enterprises (MNEs) are non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations and b) appointing a national contact point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues arising in relation to implementation of the Guidelines, raised in the form of a Specific Instance, about the business conduct of an MNE operating in or headquartered in the United States. The office handles such issues in accordance with procedures available at: www.state.gov/usncp and in the U.S. NCP Guide. Further background on U.S. NCP procedures and policies, and on the Initial Assessment process, can be found in these documents.

The U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution and its role is to offer mediation to facilitate the resolution of the matter and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. The U.S. NCP does not make a determination as to whether a party is acting consistently with the Guidelines, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

The offer of mediation is in no way an acknowledgement of or determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to assist the parties in voluntarily, confidentially, and in good faith, reaching a cooperative resolution of their concerns. For the company's part, a decision to participate in this process would not have implied any prima facie admission of conduct inconsistent with the Guidelines.

In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem solving between the parties. The parties are in control of the outcome of an agreement. Participation is voluntary and no parties would be compelled to violate the law or waive their rights under the law during the NCP process. If the parties can reach an agreement through mediation or other means, the U.S. NCP would consider requests by the parties to follow up on implementation.

II. Conducting the Initial Assessment

Per the Guidelines procedures, upon receiving a Specific Instance, the U.S. NCP conducts an Initial Assessment. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised merit further examination in the form of voluntary mediation. Per the Procedure Guidance, the Initial Assessment is conducted based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

The U.S. NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines raised in Specific Instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The U.S. NCP works to facilitate dispute resolution in a confidential, efficient, and timely manner with an aim toward a forward-looking, good-faith resolution and in accordance with applicable law.

III. Outcome of the Initial Assessment

Per the Guidelines, the U.S. NCP took the following points into account when considering whether IUF's concerns merited further consideration.

a. Identity of the party and its interest in the matter

The IUF is the global union federation for trade unions representing workers in the food, agricultural, hotel, restaurant, catering, tobacco and allied sectors. Its members represent Coca-Cola workers throughout the globe and across the many activities the company engages in. The other unions mentioned in this case have been newly organized in recent years as workers in Indonesia seek to build independent and democratic unions within the Coca-Cola system; they are either affiliated with or working with the IUF.

The Coca-Cola Company is a beverage retailer, manufacturer, and marketer of non-alcoholic beverage concentrates and syrups headquartered in the United States in Atlanta, Georgia. According to The Coca-Cola Company's website, the Coca-Cola system is comprised of nearly 250 bottling entities worldwide. TCCC notes that it does not wholly own or control independent bottlers.

According to its website, Coca-Cola Amatil is the largest bottler and distributor of non-alcoholic ready-to-drink beverages in the Asia Pacific region, and one of the world's largest bottlers of TCCC beverages. Coca-Cola Amatil has two subsidiaries named in this Specific Instance, Coca-Cola Distribution Indonesia (CCDI) and Coca-Cola Bottling Indonesia (CCBI). TCCC identified another one, Coca-Cola Amatil Indonesia.

The U.S. NCP was satisfied that IUF was able to provide information about the Specific Instance and had an interest in the issues raised.

b. Whether the issue is material and substantiated

IUF provided information in the form of letters and annexes in its submission alleging failure on the part of TCCC to execute due diligence with Coca-Cola Amatil Indonesia when it comes to the labor and human rights chapters of the Guidelines and the issues raised in the Specific Instance.

The U.S. NCP, per its established procedures, makes no determination whether a violation of the Guidelines has taken place. U.S. NCP assesses that the issues merit further consideration and thus offers voluntary mediation services to the parties.

c. Link between TCCC's activities and issues raised

Coca-Cola Amatil is an independent bottler in the Coca-Cola system. TCCC holds a 29.2% share in Coca-Cola Amatil, licenses the brands to Amatil and sells concentrate to Amatil. TCCC directly invests in Coca-Cola Amatil Indonesia and it appears to the U.S. NCP that without the investment, equity ownership, brand licensing and concentrate purchased from the Coca-Cola Company, the bottler could not operate as part of the Coca-Cola system.

d. Relevance of applicable law and procedures, including court rulings

Both parties note that an Indonesian court ruled in favor of Coca-Cola Amatil Indonesia on October 5, 2016 in the matter related to one individual. The U.S. NCP was not aware of any applicable law or procedures that would weigh against offering its mediation service in this case. The U.S. NCP was satisfied that its offer of mediation would not have any significant effect on processes that are underway.

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

The U.S. NCP is not aware of similar proceedings.

f. Whether the consideration of the Specific Instance would contribute to the purposes and effectiveness of the Guidelines

The U.S. NCP considered that its mediation could play a positive role in assisting the parties in facilitating a dialogue on the issues raised in the Specific Instance and reaching a mutually acceptable solution. Consistent with the criteria in the U.S. NCP procedures for Specific Instances (as established in the Guidelines themselves), the USNCP determined in the course of its Initial Assessment that the matters raised are *bona fide*, merit further consideration, and were relevant to the implementation of the Guidelines.

The Guidelines and Leverage

The Guidelines have this to say about supply chain responsibility:

> "If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm." (Commentary on General Principles, p.19)

This supply chain responsibility is further clarified in paragraph 20 of the Commentary on General Principles:

> ''Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.''
>
> Paragraph A.12 of the Guidelines states that enterprises should
>
> "Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, where 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."

From this passage, as well as the official Commentary accompanying it, it is clear that enterprises are responsible for other entities in the same supply chain even while those entities remain responsible for their own actions. These two separate responsibilities do not contradict each other. The local contractor would be responsible for any labor rights violations it commits. However, that does not absolve the company contracting with it from the responsibility to do what it can to prevent or mitigate such abuses, and ensure that the contracting arrangement does not reduce workers' ability to exercise their rights. The need for due diligence flows from this responsibility.

It is also clear that the enterprise should use its leverage to prevent or mitigate adverse impacts. (Guidelines, Commentary on General Policies, paragraphs 19-20.) Leverage is a complex issue. How much leverage a company may have in any given supplier relationship depends upon all the variables in play in that specific situation. In many cases, a company may not even be aware of the full extent of (or the limits to) its leverage until it attempts to wield that leverage in that particular case. However, the Guidelines also imply that a lack of leverage does not justify inaction.

The Guidelines recognize that there are practical limitations on the ability of enterprises to effect change in the behavior of their suppliers, related to, among other issues, product characteristics, the number of suppliers and the structure and complexity of the supply chain. Nonetheless, enterprises may influence their suppliers, such as through contractual arrangements, voting trusts, and participation in industry-wide collaborative efforts with other enterprises with which they share common suppliers. (Guidelines, Commentary on General Policies, paragraph 21.) The UN Guiding Principles on Business and Human rights refer to this as increasing leverage.

The Coca-Cola Company (TCCC) says that it exercised available leverage by sharing the information from IUF with Coca-Cola Amatil, including through conference calls, meetings, and emails. TCCC claims that while it does have some minority equity interest in Coca-Cola Amatil, that interest is not at a level that gives TCCC the ability to direct or control the actions of Amatil or its subsidiary in Indonesia. TCCC claimed it has neither management nor operational control of Coca-Cola Amatil and is not involved in CCA's human resources, management or labor relations decisions at issue.

IV. Mediation and Interagency Working Group

Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third-party to assist the parties to reach their own resolution of concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem-solving between the parties. If the parties can reach an agreement through mediation or other means, the U.S. NCP would consider requests by the parties to follow up on implementation.

In providing mediation services, the U.S. NCP utilized the expertise of objective and neutral mediators from the Consensus Building Institute (CBI). CBI is a not-for-profit organization founded in 1993 by leading practitioners and theory builders in the fields of negotiation and dispute resolution. CBI's mediators bring decades of experience brokering agreements and building collaboration in complex, high-stakes environments — and possess the deep understanding required to tackle negotiation and collaboration challenges in our practice areas.

Per its procedures, the U.S. NCP consulted with and received input from its U.S. government experts throughout the process, including the decision to offer mediation and issue this Final Statement.

Alan Krill
U.S. National Contact Point, Acting,
for the OECD Guidelines for Multinational Enterprises