



**Australian Government**

**The Treasury**

Australian National Contact Point  
for the OECD Guidelines for Multinational Enterprises

# Final Statement

This complaint was submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) against Coca-Cola Amatil for its conduct in Indonesia.

Published 13 December 2019

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# EXECUTIVE SUMMARY

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1. On 20 June 2019, the Australian National Contact Point (AusNCP) received a complaint from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) against Coca-Cola Amatil (CCA) regarding its bottling and distribution operations in Indonesia.
2. The complaint alleged CCA had breached the Employment and Industrial Relations and Human Rights chapters of the OECD Guidelines for Multinational Enterprises by targeting elected union officials and union members for dismissal and suspension; refusing to meet with elected union officials; and refusing to engage in meaningful negotiations with three independent unions. The complaint asserted these alleged actions were preventing employees from exercising their rights to freedom of association and collective bargaining.
3. The IUF raised similar issues in a 2017 complaint to the US NCP against The Coca-Cola Company (TCCC), which referred to TCCC's business relationship with CCA in terms of contributing to adverse impact. The US NCP accepted the complaint, considered the issues raised and conducted a mediation process between the parties in early 2018 in Washington. TCCC included two CCA representatives in its mediation team, who participated directly in discussions.
4. The US NCP process concluded in March 2018. In its [final statement](#) on the case, the US NCP encouraged the parties to continue a dialogue on the issues raised, and noted it would consider future requests by the parties for mediation under the auspices of the US NCP. The AusNCP's consultations confirmed all parties engaged meaningfully with the issues raised during the process, despite it concluding without a resolution. The IUF asserted direct dialogue with CCA had last occurred in April 2019, but had not resolved the impasse between the parties.<sup>1</sup>
5. The AusNCP undertook an extended initial assessment process in order to consider the complaint and seek more information from both parties on the substance of the complaint. During this process, the AusNCP encouraged the IUF to provide an additional submission to reflect on any issues or objectives that might be materially different to the matters already aired between the parties and considered in the US NCP process. The IUF did not provide materially different information in its subsequent submission.
6. Consistent with the [AusNCP procedures](#) and the principles set out in the [OECD Procedural Guidance and Commentary](#), the AusNCP considered the complaint and reviewed the additional material provided by the parties.<sup>2</sup>

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<sup>1</sup> Submission IUF-AusNCP, 9 December 2019

<sup>2</sup> See Paragraph 4.10 of the AusNCP Complaint Procedures, September 2019.

7. Given the AusNCP's assessment that the IUF did not raise materially different issues or identify objectives different from those sought from the US NCP process, the AusNCP determined that duplicating the US NCP process by bringing the parties together once again to re-examine the issues raised would not contribute to the purposes and effectiveness of the OECD Guidelines. The AusNCP therefore did not accept this complaint.
8. After the final statement had been drafted and shared with the parties, at the IUF's request, the AusNCP consulted again with the US NCP in relation to the case. The NCPs agreed that the parties, issues and objectives of the complaint to the AusNCP were substantially similar to what had already been canvassed in the US NCP mediation process, negating the utility of accepting or transferring the case.
9. The AusNCP acknowledges the IUF's decision to submit a new complaint reflects its view that the scope of CCA's engagement in a complaint process to which it had been identified as a direct party may be different to its engagement in the US NCP-led process. However, the AusNCP is satisfied from the material provided during the initial assessment that CCA effectively participated as a direct party ahead of, during and after the US NCP mediation process, and naming it as a direct party does not materially change the substance of the complaint. CCA's involvement in the US process reflected the due consideration given to its role as owner of the facilities named in the complaint and its related obligations under the OECD Guidelines.
10. The AusNCP notes both parties last engaged in direct dialogue regarding the matters raised in the complaint in April 2019. The AusNCP encourages the parties to maintain open and constructive communication channels.
11. The AusNCP Governance and Advisory Board was consulted in the formulation of this assessment.<sup>3</sup> This statement is available on the AusNCP website at [www.ausncp.gov.au](http://www.ausncp.gov.au).
12. The AusNCP notes that this outcome is not a determination on the merits of the claims presented. The AusNCP encourages all companies operating in Australia and Australian companies operating overseas to act in accordance with the principles set out in the OECD Guidelines and to perform to the standards they suggest.

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<sup>3</sup> See Paragraph 6.6, AusNCP Complaint Procedures, September 2019.

# COMPLAINT

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## Parties

1. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), representing affected members in CCA's Indonesian bottling and distribution plants.
2. Coca-Cola Amatil (CCA) is one of the largest bottlers of non-alcoholic, ready-to-drink beverages in the Asia-Pacific region and one of the world's five major Coca-Cola bottlers. CCA operates in six countries – Australia, New Zealand, Indonesia, Papua New Guinea, Fiji and Samoa.

## Other parties and National Contact Points

3. The AusNCP sought advice from the US National Contact Point and the OECD Secretariat in developing this initial assessment.

## Complaint

4. On 20 June 2019, the IUF submitted a complaint to the Australian National Contact Point (AusNCP) alleging conduct by CCA and its Indonesian subsidiaries, Coca-Cola Distribution Indonesia (CCDI) and Coca-Cola Bottling Indonesia (CCBI), inconsistent with Chapter V: Employment and Industrial Relations and Chapter IV: Human Rights of the OECD Guidelines, in relation to the following alleged actions by local management:
  - preventing workers from forming and joining independent, democratic unions as an alternative to the existing workplace structures at the Cibitung distribution centre in West Java, Bawen plant in Central Java and CCA's Bandung plant;
  - targeting the elected leadership of three unions at facilities in Indonesia in disciplinary, dismissal and transfer processes, resulting in the loss of jobs for two individuals; and
  - preventing elected union representatives from meeting with their members at the workplace and excluding them from labour-management meetings.
5. The IUF asserted the alleged targeted dismissal or transfer of newly elected union leaders had undermined the confidence of workers in CCA's plants in Indonesia to form and join a union of their choice.<sup>4</sup>

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<sup>4</sup> Submission to AusNCP, 29 August 2019

6. The IUF asserted its view that the complaint to the AusNCP was distinct from its complaint to the US NCP in 2017 regarding similar matters for the following reasons:
  - The IUF had identified a third individual affected by an allegedly anti-union disciplinary process following the conclusion of the US NCP case;
  - CCA had participated in the US NCP process at the invitation of The Coca-Cola Company (TCCC) as part of TCCC's team. As CCA had not been a direct party to the complaint, the role of its representatives in the mediation was fundamentally different;
  - The complaint to the US NCP had not addressed CCA's responsibilities as the owner of the Indonesian bottling operations and its obligations under the OECD Guidelines; and
  - Filing the complaint to the AusNCP reflected CCA's status as an Australian company with direct managerial control of the operations in Indonesia.<sup>5</sup>

## Outcomes sought

7. The IUF was seeking for the AusNCP to use its good offices to facilitate a comprehensive resolution to the issues raised.
8. The IUF affirmed the reinstatement of the two dismissed union leaders would be essential to restoring workers' confidence that choosing to form, join or lead a union would not be met with disciplinary action, transfer or dismissal.<sup>6</sup>

## Coca-Cola Amatil response

9. CCA provided material in response to both the IUF's complaint and subsequent submission, including copies of direct correspondence previously exchanged between the parties. Within this material, CCA provided detailed information on the circumstances regarding the employment decisions made in relation to the individuals identified in the complaint. All material provided by CCA to the AusNCP was shared with permission and in confidence with the IUF.
10. CCA asserted it had been fully involved in the complaint and mediation process conducted under the auspices of the US NCP. CCA noted it was involved in pre-attendance conference calls, provided detailed submissions, ensured two senior CCA members participated in the mediation process in Washington DC, and was involved in final calls following this process.

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

# RELEVANT OECD GUIDELINES

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11. The complaint submitted by the IUF alleged that CCA breached certain paragraphs of the OECD Guidelines, specifically the following:

## Chapter V: Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

1. b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

8. Enable authorised representatives of the workers in their employment 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.

## 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.

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

# INITIAL ASSESSMENT

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12. Consistent with the OECD's procedural guidance for handling complaints to NCPs and the AusNCP complaint procedures, the AusNCP commenced an initial assessment as to whether the matters raised warranted further consideration under the OECD Guidelines. The AusNCP forwarded the complaint to CCA on 10 July with an invitation to provide a response. CCA provided the AusNCP with a response on 5 August.
13. The AusNCP spoke by telephone with the IUF on 15 August and invited the IUF to make a further submission. The AusNCP encouraged the IUF in its additional submission to reflect on any developments or objectives that might be materially different to the matters already considered by the US NCP.<sup>7</sup>
14. The AusNCP spoke by telephone with CCA on 16 August to outline the extended initial assessment process. The AusNCP received the IUF's further submission on 29 August and shared this with permission with CCA. CCA provided a response to the IUF's further submission on 5 September, which was shared by permission with the IUF.
15. The AusNCP considered the complaint and material provided by the parties in accordance with the AusNCP procedures and the principles set out in the OECD Procedural Guidance and Commentary, to determine whether the complaint was raised in good faith and relevant to the implementation of the Guidelines.
16. The OECD's procedural guidance instructs NCPs conducting Initial Assessments to take into account:
  - the identity of the party concerned and its interest in the matter;
  - whether the issue was material and substantiated;
  - whether there seemed to be a link between the enterprise's activities and the issue raised in the complaint;
  - the relevance of applicable laws and procedures, including court rulings;
  - how similar issues have been, or are being, treated in other domestic or international proceedings; and
  - whether consideration of the complaint would contribute to the purposes and effectiveness of the Guidelines.<sup>8</sup>

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<sup>7</sup> See Paragraphs 4.8 and 4.9 of the AusNCP Complaint Procedures, September 2019.

<sup>8</sup> See Paragraph 4.10 of the AusNCP Complaint Procedures, September 2019

17. In light of the US NCP process, the final criterion was considered particularly relevant in the AusNCP's decision on this case.

18. The AusNCP's [previous complaint procedures](#), under which management of this case commenced, noted at Paragraph 3.3:

*Submissions that concern a matter which the AusNCP or another National Contact Point (NCP) has already handled to completion may not be considered valid if the substance of the submission is not markedly different.*

19. As the AusNCP's current procedures entered into force during the AusNCP's consideration of this case, the initial assessment also gave consideration to the relevant part of the revised procedures, specifically:

*4.5. Complaints concerning a matter that the AusNCP or another NCP is currently handling, or has already handled to completion, will undergo a process of evaluation in the initial assessment stage.*

*4.5.1. This process will determine whether an offer of further good offices by the AusNCP is likely to contribute positively to resolving the issues raised. Such complaints may not be considered valid if the substance of the complaint is not markedly different.<sup>9</sup>*

20. After the final statement had been drafted and shared with the parties, at the IUF's request, the AusNCP consulted again with the US NCP in relation to the case. The NCPs agreed that the parties, issues and objectives of the complaint to the AusNCP were substantially similar to what had already been canvassed in the US NCP case, negating the utility of accepting or transferring the case.

21. The decision maker for this case remained the Treasury, as the Independent Examiner had not commenced at the time the complaint was received. However, the Independent Examiner and the AusNCP Governance and Advisory Board were consulted in the formulation of this assessment.

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<sup>9</sup> Consistent with the principles set out in the OECD Procedural Guidance and Commentary.

## Related proceedings

22. The US NCP led a complaint process involving the IUF and CCA (as part of TCCC's mediation team) from March 2017 to May 2018. The IUF, TCCC, and CCA participated in three days of mediation over the period 27 February to 1 March 2018 in Washington, DC, under the auspices of the US NCP and its professional mediation team from Consensus Building Institute. The mediation process concluded without agreement between the parties, and the US NCP closed the case and published its final statement in May 2018.
23. The AusNCP's consultation with the US NCP and with both parties during the course of the initial assessment confirmed all parties took the opportunity to contribute meaningfully to the issues raised over the course of that complaint process.
24. In correspondence from 29 August 2019, the IUF informed the AusNCP that the Indonesia National Human Rights Commission (Komnas-HAM) met with the IUF-affiliated Union Federation of Food Workers and the Coca-Cola Union in Semarang to investigate the complaint filed by the union. The IUF outlined the scope of the Komnas-HAM investigation, which would include alleged forced work on public holidays and the alleged unfair dismissals of the two union leaders raised in the complaint to the US and Australian NCPs.

## CONCLUSION

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25. As part of the initial assessment process set out above, the AusNCP invited the IUF to identify issues or objectives materially different to the matters already aired between the parties and considered in the US NCP complaint process. The IUF did not provide materially different objectives or information in its subsequent submission.
26. Consistent with the AusNCP procedures and the principles set out in the OECD Procedural Guidance and Commentary, the AusNCP considered the complaint and reviewed the additional material provided by the parties.
27. The AusNCP notes the US NCP's standing offer at the conclusion of its complaint process to consider further requests for mediation by the parties. Given the IUF did not raise materially different issues or identify objectives different to those sought from the US NCP process, the AusNCP determined that establishing a separate process to bring the parties together to re-examine the issues raised would not contribute to the purposes and effectiveness of the OECD Guidelines. The AusNCP therefore did not accept this complaint.

28. The AusNCP acknowledges the IUF's view that CCA was not named as a direct party in its complaint to the US NCP and therefore may have participated to a different extent to what might be achieved through an AusNCP-led process with CCA as a direct party. However, the material provided to the AusNCP demonstrated CCA effectively participated as a direct party in the US NCP mediation process. Its involvement was also a reflection of the due consideration given by the US NCP to CCA's role as owner of the facilities named in the complaint and its related obligations under the OECD Guidelines.
29. The AusNCP notes both parties last engaged in direct dialogue regarding the matters raised in the complaint in April 2019. The AusNCP encourages the parties to maintain open and constructive communication channels.

## Publications

<http://mneguidelines.oecd.org/database/>

<http://www.oecd.org/daf/inv/mne/responsible-supply-chains-textile-garment-sector.htm>

<http://www.ausncp.gov.au/content/Content.aspx?doc=publications.htm>

# SCHEDULE OF EVENTS

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Complaint	Date
• Complaint submitted to the AusNCP.	20 June 2019
• Complaint acknowledged by the AusNCP.	24 June 2019
• AusNCP notified CCA of complaint and invited a response.	10 July 2019
• AusNCP received CCA response.	5 August 2019
• AusNCP shared CCA response with notifier.	7 August 2019

  

Initial Assessment	Date
• AusNCP phone call with US NCP.	4 July 2019
• AusNCP phone call with OECD.	17 July 2019
• AusNCP phone call with notifier.	15 August 2019
• AusNCP phone call with CCA.	16 August 2019
• AusNCP received additional written submission from notifier.	29 August 2019
• AusNCP shared notifier's additional submission with CCA, CCA invited to respond.	2 September 2019
• CCA additional submission received, shared with permission with notifier.	5 September 2019

  

Final Statement	Date
• Draft Initial Assessment shared with US NCP and AusNCP Independent Examiner for consultation.	20 September 2019
• Draft Final Statement shared with Governance and Advisory Board for consultation.	27 September 2019
• Draft Final Statement provided to the parties for comment.	24 October 2019
• AusNCP finalised Final Statement and provided an advance copy to the parties and Governance and Advisory Board.	12 December 2019
• AusNCP published Final Statement on its website and reported to the OECD NCP Secretariat.	13 December 2019

# INSTITUTIONAL ARRANGEMENTS

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30. The Australian Government is committed to promoting the use of the OECD Guidelines and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
31. The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. Importantly, while the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law. They represent standards of behaviour that supplement Australian law and therefore do not create conflicting requirements.
32. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to — at minimum — the standards they recommend.
33. The OECD Guidelines can be seen as:
  - a useful aid to business in developing their own code of conduct (they are not aimed at replacing or preventing companies from developing their own codes);
  - complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery; and
  - providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in specific instances.

## GOVERNANCE

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34. Countries adhering to the OECD Guidelines have flexibility in organising their National Contact Points (NCPs) and in seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.
35. Accordingly, the OECD Guidelines stipulate that NCPs:
- i) will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government;
  - ii) can use different forms of organisation to meet this objective. A NCP can consist of senior representatives from one or more ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included; and
  - iii) will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the OECD Guidelines.
36. The [AusNCP Governance and Advisory Board](#) (the Board), which includes non-government members as well as representatives from key government agencies, provides advice and assistance to the AusNCP Secretariat in relation to the handling of complaints. The Board was consulted in the development of this statement.
37. The Board helps to ensure that the AusNCP is visible, accessible, transparent and accountable, in accordance with its obligations under the OECD Guidelines for Multinational Enterprises. Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.
38. From September 2019, all new cases will be managed by an Independent Examiner, who will be supported by the AusNCP Secretariat and the Board. The Australian National Contact Point, held by a Senior Executive official in the Treasury, retains responsibility for current cases submitted prior to September 2019.