



Australian Government
The Treasury



OECD
GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

Australian National Contact Point
OECD Guidelines for Multinational Enterprises

Final Statement

This specific instance was submitted by IndustriALL Global Union on behalf of the Free Trade Zones and General Services Employee Union (FTZGSEU) of Sri Lanka and the National Union of Employees in Companies Manufacturing Rubber Products (NUECMRP) of Malaysia, against Ansell Limited for its conduct in Sri Lanka and Malaysia.

Published June 2017

Disclaimer

The information contained within this document is intended to inform the reader of the general processes and undertakings arising from a specific instance complaint raised with the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises. It is made available on the understanding that the Australian Treasury, as a result of providing this information, is not engaged in providing professional or legal advice, nor does it accept any responsibility for the accuracy or completeness of any material contained herein. Readers should exercise their own judgement with respect to interpretation. This material includes the views of third parties, which do not necessarily reflect the views of the Commonwealth, or indicate its commitment to a particular course of action. Links to other websites and listings of other people or organisations are included for convenience and do not constitute endorsement of those sites, products or services. The Commonwealth Government respects the privacy of personal and commercially sensitive information provided by parties, as per the requirements of the Privacy Act 1988 and the Freedom of Information Act 1982.

Executive Summary

On 20 November 2013, **IndustriALL Global Union** on behalf of the Free Trade Zones and General Services Employee Union (FTZGSEU) of Sri Lanka and the National Union of Employees in Companies Manufacturing Rubber Products (NUECMRP) of Malaysia, submitted a specific instance to the Australian National Contact Point (ANCP) alleging non-observance of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by **Ansell Limited** and its subsidiaries operating in Sri Lanka (Ansell Lanka PVT Ltd) and Malaysia (Ansell Shah Alam SDN BHD) in relation to the General Policies, Human Rights and Employment and Industrial Relations chapters of the OECD Guidelines.

IndustriALL alleged that some Ansell employees may have suffered significant health issues as a direct result of workplace contaminants and that Ansell has acted inappropriately in relation to its handling of deteriorating working conditions. Ansell strenuously denied these allegations. Other allegations included: employee health and safety; conduct in terminating Sri Lankan employees after they engaged in strike action; a lack of engagement with government and union conciliators in Sri Lanka and Malaysia; and the resulting impact on the local community.

Parallel proceedings and mediation concluded in November 2015, with final negotiations made over the course of 2016. A memorandum of understanding was signed on 15 August 2016, discharging the ANCP and agreeing matters satisfactorily resolved.

The ANCP closed the specific instance in June 2017 and subsequently published this Final Statement via the Australian NCP website – www.ausncp.gov.au.

The statement recommends that all parties continue their ongoing dialogue and conduct future business activity within the terms agreed in a memorandum of understanding and the standards articulated in the OECD Guidelines. It also suggests all parties promote the OECD Guidelines to employees and members to ensure greater awareness of current international standards relating to responsible business conduct.

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Australian National Contact Point¹
OECD Guidelines for Multinational Enterprises

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1 The ANCP position was transferred from Mr Robert Donnelly to Ms Victoria Anderson in early 2017.

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Institutional arrangements

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 Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.

The OECD Guidelines are not legally binding. They are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. Importantly, while the 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.

Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the Guidelines and to perform to — at minimum — the standards they recommend.

The 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 Guidelines in specific instances.

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Governance

Countries adhering to the Guidelines have flexibility in organising their NCPs and in seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the Guidelines stipulate that NCPs:

1. will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government;
2. can use different forms of organisation to meet this objective. An 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
3. 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 Guidelines.

An **Oversight Committee** oversees the ANCP in its implementation of the Guidelines, including advising on specific instances and broader international issues. Members of the Committee meet formally biannually and out of session as required, working collegiately to support the ANCP in promoting a sustainable approach to business conduct and engender mutual confidence between multinational enterprises and the communities in which they operate.

Ms Victoria Anderson, in her capacity as Australian National Contact Point, is the current chair of the Oversight Committee. Officials from the Australian Treasury provide secretariat services to the Committee. Members of the Committee include representatives from the Department of Foreign Affairs and Trade; Attorney-General's Department; the Department of Immigrations and Border Protection; the Department of Industry, Innovation and Science; the Department Employment; Export Finance and Insurance Corporation; and the Australian Trade Commission (Austrade). Other departments, including the Department of the Prime Minister and Cabinet, may participate in Committee meetings on an ad-hoc basis when issues of relevance arise. The Oversight Committee may call upon further experts where appropriate.

Specific Instance

Parties

IndustriALL Global Union (complainant) of 54 bis, route des Acacias, Case Postale 1516, 1227 Geneva, Switzerland, is a federation of trade unions representing some 50 million workers across 140 countries in the mining, energy and manufacturing sectors. In this specific instance, IndustriALL represents the following affiliates:

- the Free Trade Zones and General Services Employee Union (FTZGSEU) of Sri Lanka - a trade union representing workers in the Biyagama Export Processing Zone in Sri Lanka; and
- the National Union of Employees in Companies Manufacturing Rubber Products (NUECMRP) of Malaysia.

Ansell Limited (defendant) of Level 3, 678 Victoria Street, Richmond, Victoria, 3121, Australia, is a publicly traded corporation on the Australian Securities Exchange, operating a business of design, manufacture and distribution of rubber products including protective personal equipment. In this specific instance, Ansell represents the following subsidiaries:

- Ansell Lanka (Pvt) - a manufacturing plant operating in the Biyagama Export Processing Zone in Sri Lanka; and
- Ansell Shah Alam SDN BHD - a manufacturing plant operating in Malaysia.

Other parties and NCPs

No other NCPs were directly involved in this specific instance. Through the course of their negotiations and legal proceedings, both parties corresponded with relevant local government authorities.

Complaint

On 20 November 2013, **IndustriALL Global Union** on behalf the FTZGSEU of Sri Lanka and the NUECMRP of Malaysia, submitted a specific instance to the ANCP alleging non-observance of the OECD Guidelines by **Ansell Limited** and its subsidiaries operating in Sri Lanka (Ansell Lanka PVT Ltd) and Malaysia (Ansell Shah Alam SDN BHD).

Allegations

- Ansell employees working in the Sri Lankan facility may have suffered significant health issues as a direct result of workplace contaminants.
- Ansell employees working in the Sri Lankan facility were coerced into relinquishing union membership and signing letters stating voluntary agreement to unsafe changes in production speed.
- Ansell failed to recognise and engage with Sri Lankan and Malaysian trade unions regarding collective bargaining.
- Ansell provoked industrial action by making unilateral changes to work conditions and took disciplinary action against union activists (including one allegation of physical attack).
- Ansell has negatively impacted the local community (housing, medical care and social services) by not offering adequate wages, working conditions and union representation to its employees.
- Ansell has not cooperated with the unions, Malaysian Government and Sri Lankan Commissioner of Labour when attempts were made to investigate and conciliate matters.

Responses

Ansell denied all allegations put forward by IndustriALL and cooperated fully with the specific instance process. In a letter to the ANCP on 31 March 2014 responding to the original complaint, Ansell informed the ANCP that many of the claims were baseless and unsubstantiated, reporting that all of the claims had already been raised directly with Ansell and that they had responded diligently, such as by engaging third party investigators; making use of an independent complaints process provided by the Sri Lankan government; and relaying outcomes of those investigations fairly and transparently to the complainants in an open dialogue. Ansell rejected the Union's claims that they engaged in anti-union activities, including allegations of criminal assault against a union member. Ansell also referred the ANCP to parallel court proceedings and provided further information in support of their position.

Relevant OECD Guidelines

IndustriALL further alleged that Ansell breached the General Policies, Human Rights and Employment and Industrial Relations chapters of the OECD Guidelines, specifically:

II General Policies Guidelines and associated commentary;

A. Enterprises should:

- 1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.*
- 11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities and address such impacts when they occur.*

IV Human Rights Guidelines and associated commentary;

- 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.*
- 3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*
- 5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of the adverse impacts.*
- 6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

V Employment and Industrial Relations Guidelines and associated commentary;

- 1.(a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing.*
- 1.(b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized 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.*
- 4.(b) ... provide the best possible wages, benefits and conditions of work within the framework of government policies. These should be at least adequate to satisfy the basic needs of the workers and their families.*
- 4.(c) Take adequate steps to ensure occupational health and safety in their operations.*

The complaint also referenced articles from the *United Nations Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948*; and the *International Labour Organization Declaration on Fundamental Principles and Rights at Work*.

Outcomes sought

Both IndustriALL and Ansell requested the ANCP offer its good offices for conciliation.

IndustriALL sought the following outcomes:

- that Ansell immediately convene a joint investigation committee to inquire into employee health (past and present), with the full participation of the FTZGSEU and any costs borne by Ansell;
- that Ansell immediately cease all anti-union activities and afford FTZGSEU and NUECMRP full recognition as representatives of employees affected;
- that Ansell collaborate with FTZGSEU and NUECMRP in an investigation to identify and take action against any local managers who have engaged in illegal anti-union activities, including involving local authorities;
- that Ansell cease its attempts to avoid liability for the wellbeing of its workers by unilaterally increasing its use of precarious contracts and agency labour; and
- that Ansell immediately commence a program of social dialogue with its trade union partners to resolve outstanding issues, restore trust and engage in collective bargaining in good faith.

Ansell sought the following outcomes:

- that the ANCP considers the union's underlying motivations when agitating for employee rights, including an interest in increasing union membership fees through salary deductions;
- that the ANCP, during the course of its investigation, considers the evidence supplied by Ansell refuting IndustriALL's allegations, including: its good conduct in responding to claims made in the past; independence of its investigations; and wiliness to engaging with local authorities;
- that the ANCP, in determining whether the issues raised are material and substantiated, considers the lack of documentary evidence provided by the unions and their defamatory public commentary; and
- that the ANCP delays publishing any information relating to the case until parallel legal proceedings have concluded.

Initial assessment and mediation

Process

Consistent with OECD procedures for handling specific instances, the ANCP concluded its initial assessment in July 2014 and determined that the matters raised warranted further consideration under the Guidelines. The ANCP subsequently offered its good offices to work towards a resolution and outlined the mediation process. Both parties accepted the offer and agreed to terms of mediation.

The OECD Investment Committee has provided guidance for NCPs regarding requirements for the mediation process. It has indicated that the following issues should be taken into account by a NCP when undertaking an initial assessment.

- The identity of the party concerned and its interest in the matter.
- Whether the issue is material and substantiated.
- Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- The relevance of applicable law and procedures, including court rulings.
- How similar issues have been, or are being, treated in other domestic or international proceedings.
- Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Importantly, while the Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, domestic laws. They represent standards of behaviour supplemental to domestic laws and, as such, do not create conflicting requirements.

The company involved in this specific instance is an Australian based multinational enterprise and the specific instance falls within the scope of the Guidelines. The ANCP ensured that both parties were consulted throughout all stages of the assessment and that the issues raised were considered by the ANCP in an unbiased and impartial manner.

Schedule of events

Specific Instance	
<ul style="list-style-type: none"> Complaint submitted by IndustriALL and acknowledged by the ANCP. 	20 November 2013
<ul style="list-style-type: none"> ANCP wrote to Ansell informing them of the specific instance and providing background on the ANCP and OECD Guidelines. 	December 2013
Initial Assessment	
<ul style="list-style-type: none"> ANCP corresponded with IndustriALL Global Union seeking additional information relating to the complaint. 	January 2014
<ul style="list-style-type: none"> ANCP corresponded with Ansell regarding their response to the allegations. 	February–March 2014
<ul style="list-style-type: none"> ANCP consulted with the ANCP Oversight Committee. 	April 2014
<ul style="list-style-type: none"> IndustriALL responded to Ansell’s comments. 	May 2014
<ul style="list-style-type: none"> ANCP concluded initial assessment and offered mediation. 	16 July 2014
Mediation	
<ul style="list-style-type: none"> ANCP corresponded with both parties regarding the substance and rules for the mediation process. 	August–October 2014
<ul style="list-style-type: none"> <i>First meeting:</i> Ansell met with IndustriALL and ANCP representatives in Washington, USA. 	4 November 2014
<ul style="list-style-type: none"> <i>Second meeting:</i> Ansell met with FTZGSEU and ANCP representatives in Colombo, Sri Lanka. 	17 December 2014
<ul style="list-style-type: none"> Direct dialogue between parties continued out of session and parallel legal proceedings commenced. 	Early 2015
<ul style="list-style-type: none"> <i>Third meeting:</i> IndustriALL Global Union met with FTZGSEU, Ansell and ANCP representatives in Brussels, Belgium. 	18 September 2015
<ul style="list-style-type: none"> <i>Fourth meeting:</i> Ansell, FTZGSEU and ANCP representatives met in Colombo, Sri Lanka. 	16 November 2015
<ul style="list-style-type: none"> Legal proceedings concluded (see section 8. Parallel proceedings). 	17 November 2015
<ul style="list-style-type: none"> Direct dialogue and negotiations on all remaining concerns occurred between parties out of session. 	15 February 2016
<ul style="list-style-type: none"> Parties concluded mediation, signed a MOU and discharged the ANCP of further mediation services. 	15 August 2016
<ul style="list-style-type: none"> ANCP acknowledged notification of resolution and commenced drafting its Final Statement. 	31 August 2016
Final Statement	
<ul style="list-style-type: none"> ANCP consulted with the ANCP Oversight Committee. 	November 2016
<ul style="list-style-type: none"> ANCP consulted with both parties regarding the draft Final Statement. 	January 2017

Parallel proceedings

FTZGSEU and Ansell were engaged in parallel court proceedings between 2014 and 2016 relating to the alleged unfair dismissal of workers and these cases were heard in the High Court of Colombo and the Supreme Court of Sri Lanka.

According to information provided to the ANCP, these rulings were made in favour of Ansell and upheld when appealed. The rulings provided non-compensatory severance to the former employees of between three to six months' salary, depending on seniority.

As far as the ANCP is aware, all legal proceedings relating to this specific instance are now closed.

Outcome of mediation

The ANCP, and representatives acting on behalf of the ANCP, conducted successful mediation over four meetings between August 2014 and November 2015. Subsequent dialogue occurred directly between the ANCP and two parties over 2016, resolving all outstanding issues and concluding with a memorandum of understanding (MOU) signed in August 2016.

The MOU memorialises an agreement between Ansell and IndustriALL regarding terms for rehiring employees and expectations of professional business conduct between both parties going forward, specifically:

- the conditions by which the former employees are eligible to be re-employed at the site, including screening and selection processes;
- the terms of employment which apply to any of the former employees who are re-employed at the site, including participation in an on-boarding program, wages, working hours, leave entitlements and expectations of professional behavioural conduct;
- the eligibility for former employees to obtain and retirement benefits or early retirement benefits;
- the manner in which FTZGSEU and IndustriALL (and its affiliated trade unions globally) will make public references to Ansell, including the cessation of all public demonstrations and prior-agreement for an published information;
- the dismissal of the OECD mediation; and
- the ongoing review of the memorandum.

With due consideration to requests for confidentiality, the ANCP makes the following observations:

- the MOU acknowledges laws, regulations and legally binding obligations are to be observed in association with the MOU;
- the parties worked together to substantiate claims with documentary evidence and have put aside issues where claims cannot be satisfactorily verified; and
- Ansell publishes on its website its policies in relation to corporate responsibility, human rights, supplier code of conduct, modern slavery, health and safety, and community.

ANCP final statement

In consideration of all allegations, parallel court proceedings, substantiated evidence and discussions held between Ansell and IndustriALL between 2014 and 2016, the ANCP concludes that the MOU appears to address any outstanding issues of concern between the two parties in relation to this complaint. Further, the ANCP is satisfied that all original allegations have been reasonably addressed and/ or resolved as part of the mediation process.

The ANCP acknowledges that its role as conciliator is no longer required, however recommends that both parties continue their ongoing dialogue and conduct future business activity under the agreed terms of the MOU and with respect to guidance provided by the OECD Guidelines.

As required by the OECD Guidelines and evidenced during the course of the ANCPs investigation, both parties demonstrated a willingness to cooperate with local and Australian authorities and establish solutions that will continue to build mutual confidence. Given participation in mediation is voluntary, both parties should be commended for reaching an amicable outcome and continuing their dialogue.

All parties, including Ansell, FTZGSEU, NUECMRP and IndustriALL, are encouraged to publicise a summary of the OECD Guidelines in plain English and in a location readily accessible to employees, members and the wider community. This includes making direct references to the OECD Guidelines in any existing policies and statements. The summary should emphasise that the OECD Guidelines provide standards for international best practice in terms of business conduct and a cohesive approach to advancing community, stakeholder and company interests.

Further, all parties are encouraged to keep abreast of any changes or further guidance published by the OECD, particularly ahead of any proposed changes to business structures and operational arrangements. For example in February 2017, the OECD released new detailed guidance targeting due diligence for supply chains in the garment and footwear sector (covering manufacturing sector issues that may relate here).

The positive outcomes achieved in this specific instance demonstrate the role of national contact points as an important non-judicial mechanism for complainants who seek genuine reconciliation. It is also a measure of the Australian Government's commitment to promoting responsible business conduct in an increasingly complex global environment, where social, political and legal systems intersect with multinational enterprise operations.

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>

<http://www.industrialall-union.org/breakthrough-for-ansell-workers-in-sri-lanka>

<http://www.ansell.com/en/About/Corporate-Responsibility/About.aspx>