BIAC contribution to the consultation with the
OECD Working Party on Responsible Business Conduct

4 December 2014

National Contact Points (NCPs)

BIAC has consistently underlined that a correct understanding of the NCP process is essential for the success of the MNE Guidelines. For business, it is fundamental that the NCP process offers a forum for discussion and conciliation with a view to address the issue at hand in a constructive and forward-looking manner in the interest of all parties. The parties’ commitment to participate in good faith is a crucial element to a successful resolution of the issues.

A shared understanding and adequate communication of the NCP process as a fundamental platform for mediation and conciliation is essential to ensure broad-based buy-in from the business community and use the potential this unique mechanism is providing. In this respect, the sharing of best practices and information can play a useful role.

- **Work plan to improve NCP functional equivalence, including through voluntary peer reviews and horizontal learning events**

BIAC welcomes the OECD efforts to improve information sharing and functional equivalence, recognizing that different institutional arrangements can be in place and that the focus should be on enhancing the effectiveness of NCPs in line with the overarching core criteria of the OECD provisions. We underline the importance of early involvement of business and other key stakeholders in voluntary peer reviews to provide practical input on the challenges and opportunities they encounter.

We also support efforts for horizontal learning events. One particular issue that would be of interest in this respect is to share experience on multi-jurisdiction issues, i.e. when the same specific instance is raised with several NCPs. We would appreciate early information on future themes for horizontal learning events so that we could consult and get input from companies on their practical experience in this area.
Proactive agenda projects

The proactive agenda is essentially an approach to develop, on the basis of the 2011 Guidelines, practical tools for addressing specific challenges, products, sectors or countries, with a view to addressing potential future risk. As such, BIAC has consistently underlined that the proactive agenda is not intended to create any additional expectations and obligations on enterprises and should not introduce prescriptive guidance that would go beyond the Guidelines.

The objective should be to foster multi-stakeholder dialogue, take stock of existing tools and develop practical tools that would be of concrete value to companies as they develop due diligence. Duplication should be avoided and any work in this area should provide clear added value and be broadly supported.

- Stakeholder engagement in the extractive industries

BIAC is actively represented in the advisory group and has submitted comments on the draft guide all along the process. Overall, we believe that progress has been achieved and that the first part of the latest draft is well structured. At this point, the value of the thematic modules is less apparent and the key elements of these modules should be incorporated into the first part, possibly as text boxes, to illustrate the key elements of the guide. This would also shorten the guide considerably. Further emphasis should be placed on the importance of identifying who the stakeholders are as an important first step.

We also believe that the document could be streamlined as it is still overall too long. In particular sections that are not directly relevant to the operational focus of the guide should be shortened. One option that would be worth exploring would be to consider making it an online guide.

- Agricultural supply chains

BIAC is actively involved in the advisory group, including at vice-chair level. As underlined in the comments we submitted in June, the guidance incorporates elements from a broad range of different instruments, which are not directly included or referenced in the OECD MNE Guidelines. Thus the potential use of the guidance by NCPs must be handled with great care to avoid possible confusion about what is and what is not contained in the Guidelines. We still believe that the revised document (30 September version) could underline more clearly that as the document refers to instruments beyond the MNE Guidelines, NCPs reading the document in relation to the Guidelines need to handle the information carefully.

BIAC also expressed concerns that the current document is too lengthy and that to be of practical use to companies, an easy-to-use tool, such as a handbook, practical guide or web portal would be more helpful. The Advisory Group should make this a priority in its next discussion. We previously
stated that care should be taken that the language is not too prescriptive, but focuses on options or good practice proposed by OECD/FAO to help companies, but that they are not the only way for companies to proceed. BIAC believes that a balanced and constructive approach is needed in order to put due emphasis on the benefits of investment and responsible business conduct. We are pleased that a number of our comments on this aspect have been taken into account. We will provide more detailed comments in the next Advisory Group discussions.

- **Finance sector**

BIAC contributed comments to the OECD’s work on the application of the MNE Guidelines to the financial sector in the initial stages of research by the Sustainable Finance Advisory Group. We understand that the proposed project will continue if funding can be secured. Establishing whether there is a clear industry demand for this work across different jurisdictions would seem to be an important step prior to undertaking the full scope of proposed activities. If the project does proceed with clear demand and funding, BIAC would wish to identify additional members for the advisory group to ensure a representative and coordinated industry viewpoint.

- **Textiles and garment sector**

The OECD prominently addressed the issue at the first and second OECD Global Forum on Responsible Business Conduct in 2013 and 2014, the Ministerial Meeting on Responsible Business Conduct as well as the forum on the textiles and garment sector in September 2014. Several National Contact Points have taken concrete steps, including the French NCP, with the active participation of the business community.

A number of major steps at different levels have been taken to address the challenges in Bangladesh, and business has demonstrated its willingness to proactively engage, including through direct involvement in concrete supply chain initiatives, such as the Bangladesh Accord, the Alliance for Bangladesh Worker Safety or the Business Social Compliance Initiative. BIAC supports the development of result-oriented initiatives and is willing to contribute to their development. While business has underlined its strong wish to constructively engage in the discussions and concrete initiatives, due attention needs to be given to what business can do in practical terms, and what the specific role of governments is.

Many companies today are very active in their supply chain management and have developed sophisticated approaches. The contribution of global supply chains to jobs, income and wealth as well as their complexity must be kept in mind. However, not all companies are part of them. In addition, global supply chains in the textile sector are so complex and ramified that it is impossible for companies – especially SMEs – to control the whole value chain. It should therefore be recognized that the real possibilities of companies to influence supply chains can be limited. The OECD Guidelines explicitly recognize that there are practical limitations on the ability of enterprises to effect change in the behavior of their suppliers. Moreover, business relations can be limited in
time. This underlines the importance of governments effectively enforcing human rights and fundamental social and environmental standards. Companies cannot be substitutes for governments’ responsibilities in this regard.

With regard to the proposed proactive agenda project, we call upon the OECD to work closely with the ILO to avoid duplication, recognizing the specificities of each organization. As in the case of other proactive agenda projects, we would like to underline the importance of keeping in mind the criteria outlined in the OECD principles for the proactive agenda, which should add clear value and be practical and specific in focus. The project should not develop an interpretation of or obligations going beyond the MNE Guidelines.

The details of the project should be discussed and agreed upon by the advisory group, which is in the process of being set up. BIAC has nominated a number of business representatives and looks forward to being actively involved.

**Outreach, including China**

BIAC has always supported OECD outreach activities and close cooperation with key emerging economies which are not yet adherents to the OECD Declaration on International Investment and MNEs. The Guidelines are the best reference instrument for a level playing field in global markets. With the shift of weight in the world economy, it is more important than ever to expand the geographical coverage of the Guidelines. We therefore actively support efforts to establish the standards of the Guidelines in non-adhering countries. These countries should give serious consideration to endorsing the Guidelines, which will not only encourage companies to behave responsibly, but also contribute to creating a favourable investment environment. As a consequence, it is important that the Guidelines remain practical and applicable in a variety of legal and social backgrounds in different jurisdictions and societies.

In this context, we are very supportive of the OECD plan to actively engage with China on responsible business conduct, not only on an ad-hoc basis, but by identifying longer-term opportunities for engagement. We therefore support the proposed strategy, which includes the establishment of an OECD-led informal contact group, the analysis of the RBC landscape in China, a workshop related to the setting up and functioning of a National Contact Point and a dedicated session related to China at the next OECD Global Forum. In addition to addressing responsible business conduct in China, it would also be of interest to address responsible business conduct of Chinese companies investing abroad. BIAC would be pleased to help establish contact with business active in China and provide input going forward.

**2015 Global Forum on Responsible Business Conduct**

The OECD Global Forum on Responsible Business Conduct was successfully launched in 2013 to strengthen international dialogue on RBC and to enhance the synergies between different instruments on all levels, including the OECD Guidelines.
One of the key objectives should be to enhance global dialogue and help foster a level playing field in global markets. The Global Forum should also be understood as a platform to not only discuss challenges, but also opportunities in the area of responsible business conduct, best practices from the private sector, and the need to balance responsible business conduct with an open investment environment.

BIAC appreciated the constructive cooperation in the run-up to the 2014 Global Forum, which enabled us to nominate speakers to a number of sessions. We would welcome the opportunity of active and early involvement in the run-up for the 2015 Global Forum to discuss speaking slots and key issues to be raised in the various sessions.

**Any other issues**

Another topic for possible consideration by the Working Party on Responsible Business Conduct is the link between CSR initiatives and competition issues, which might arise in the case of specific initiatives. This issue would benefit from further discussion between CSR and competition experts.