

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



Public Statement

Specific Instance between International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and Mondelez International for operations in Tunisia and Egypt

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Contact Point

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I. Introduction

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises of the Specific Instance submitted by International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF) on March 14, 2013. The U.S. NCP decided to offer its good offices but a voluntary mediation process between the two parties could not be established.

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

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, 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 from the United States. The office handles such issues in accordance with procedures it has adopted for this purpose, which are available on this public website: <http://www.state.gov/e/eb/oeed/usncp/specificinstance/index.htm>. In such circumstances, the U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to the issues raised under the Guidelines. The U.S. NCP's role is to take up issues that are amenable to a consensual resolution under the Guidelines 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 whether a "violation" of the Guidelines has occurred, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

III. The Specific Instance

IUF- Mondelez

On March 14, 2013, the Geneva-based International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) filed a Specific Instance with the U.S. NCP raising concerns over alleged labor and human rights violations related to Mondelez International's operations at certain of its manufacturing facilities in Egypt and Tunisia. Mondelez is one of the world's largest snack food companies, incorporated in the United States and with extensive manufacturing activities around the world.

a. Guidelines Provisions Cited

IUF alleged that managers at Mondelez's facilities in Alexandria and Tenth of Ramadan City and at its joint-venture factory in Tunis, Tunisia intimidated and/or retaliated against certain workers for union-related activities. IUF also cited concerns about a worker safety incident at the Alexandria plant. IUF contended these actions were inconsistent with the principles in Chapter IV (human rights), specifically paragraphs 1-6, and in Chapter V (employment and industrial relations), specifically paragraphs 1.a., 1.b., 3, and 4.c.

b. IUF Request

IUF's Specific Instance filing requested that the U.S. NCP offer to mediate between Mondelez and IUF, with the goals that Mondelez: (1) rectify the alleged abuses and ensure the rights of workers in Egypt and Tunisia were fully respected; (2) immediately reinstate the allegedly victimized workers; and; (3) work with IUF and the U.S. NCP to fully resolve all outstanding issues arising from Mondelez's alleged conduct.

Consistent with the criteria in the Guidelines and U.S. NCP procedures for Specific Instances, the U.S. NCP determined in the course of its Initial Assessment that the matters raised were bona fide and relevant to the implementation of the Guidelines.

- **Identity of the party:** IUF, a global labor union federation working in cooperation with members of the Egyptian Democratic Labor Congress (EDLC) union in Egypt and the General Federation of Food and Tourism Unions (UGTT) in Tunisia, has legitimate interests in the matter.

- **Issue is material and substantiated:** IUF’s Specific Instance filing alleges that managers intimidated and/or retaliated against workers due to union-related activities – allegations which would be material to implementation of the Guidelines’ employment and industrial relations-related provisions. Although Mondelez and IUF have different assessments for the underlying causes of the labor disputes, Mondelez does not refute the existence of these disputes.
- **Link between Mondelez’s activities and issues raised:** The Specific Instance describes labor-related disputes between management and workers in the Mondelez facilities in Egypt and its joint venture facility in Tunisia. Mondelez has not disputed the existence of the disputes at its facilities.
- **Relevance of applicable law and procedures, including court rulings, and status of other domestic/international proceedings:** There are five individual cases before the Egyptian Labor Tribunal for dismissal of the Alexandria factory workers for allegedly inciting an illegal strike. One case has moved from the Labor Tribunal to the Alexandria Court of Appeal – a separate legal institution. The U.S. NCP believes an offer of good offices could make a positive contribution to the resolution of the issues raised and would not prejudice the parties in the Labor Tribunal process. No other NCPs are addressing this matter through separate Specific Instance processes.
- **Contribution to the effectiveness of the Guidelines:** The U.S. NCP considers that its good offices could assist the parties in establishing a line of direct communication to examine their respective perspectives on their dispute and to address the substance of the concerns raised, all with the objective of reaching a mutually acceptable solution.

c. Substance of the Specific Instance

The U.S. NCP telephoned U.S.-based Mondelez officials on March 20, 2013, to inform the firm of the filing and to explain the Specific Instance process, and followed up with an official written notification to Mondelez corporate headquarters on March 22. On May 28, 2013, the U.S. NCP received Mondelez’s formal response. Mondelez disputed IUF’s characterization of management actions in Egypt and Tunisia and the safety incident in Egypt. Mondelez stated its

operations were consistent with the Guidelines' recommendations and that IUF's accusations had no merit. It called on the U.S. NCP to conclude that the issues did not merit an offer of good offices.

The U.S. NCP shared IUF's filing and Mondelez's response with the Egyptian and Tunisian NCPs. The U.S. and Egyptian NCPs agreed the U.S. NCP should take the lead on this Specific Instance because Mondelez's alleged activities spanned two countries and ultimate corporate decision-making authority resided in the United States. The U.S. NCP received no response from the Tunisian NCP.

A work stoppage occurred at Mondelez's Alexandria facility on July 26, 2012, which was a prominent issue in the Specific Instance. On July 26 Mondelez posted a notice in response to a government decree for social allowance and wage increases for public and private sector workers, saying that it would not increase wages. IUF stated that workers had expected Mondelez to raise wages by ten percent above wage levels as of June 30, in line with the decree for private sector workers, and were upset when the company announced it would not. Mondelez shared that the decree was not binding on the private sector, but cited its action to raise worker wages on April 1 to a level over and above 15 percent. According to Mondelez, it would not offer a supplementary payment in July which was reflected in the 1st article of the collective labor agreement signed in late April 2012, which applies if Mondelez has a better wage system than stipulated in the decree. The sides disagreed on whether the work stoppage was organized or spontaneous and what, if any, role union members played that day in persuading employees to stop work and/or on calling employees back to work.

Managers suspended five workers whom they alleged instigated the work stoppage, which according to Mondelez, was based on the outcome of a 3rd party investigation by external legal counsel. Mondelez asserted that the union membership of the five workers played no role in their suspension. IUF countered that the five had no role in the work stoppage and in fact actively tried to persuade workers to return to work. IUF further alleged the company targeted these five workers because they were the union's founding board members. Mondelez filed suit before Egypt's Labor Court to demand dismissal of the five workers for allegedly inciting an illegal strike as per Egypt's labor law. The five individual cases are now pending consideration before the Labor Court. Note: According to Mondelez, Egyptian labor law requires that workers considering a strike must first win majority approval of the board of a union committee and then notify

management of intent to strike at least ten days prior to the strike date. According to IUF, decisions of the governing bodies of the ILO have emphasized the incompatibility of Egyptian labor law with international Conventions on freedom of association. IUF has stressed that international standards, not national law and practice, are the references concerning adherence to, and possible violations of, the Guidelines.

The two sides have different perspectives on Mondelez's policy and practice on freedom of association. Both acknowledged that Alexandria plant workers voted in April 2012 to form an independent union. Mondelez stated that it recognized the union by signing a collective labor agreement with two of the independent Alexandria labor committees in late April 2012, demonstrating recognition and positive intent towards the committees. IUF contended the factory management never formally recognized the union and refused all meaningful discussion with it.

At the Tenth of Ramadan factory, Mondelez stated it was working with the existing union as there was no independent union because the local Labor Ministry had not yet authorized independent unions. IUF asserted that an independent union existed at the Tenth of Ramadan facility, but management was intimidating its members.

IUF raised concerns about the dismissal of an Alexandria factory worker after he suffered a work-related injury. According to IUF, in July 2011, the employee was trying to repair a machine when it cut off part of his thumb. IUF alleged that one month after returning to work, the factory manager put the employee on leave, and the employee later learned that he had been dismissed. Mondelez countered that the employee was injured in October 2011 when he tried to repair a machine without following proper safety procedures. According to Mondelez, the employee returned to work when he was medically able, but he was dismissed in December 2011, when he was found again to be in violation of health and safety policy.

In Tunisia, IUF alleged that managers at the joint venture SOTUBI biscuit factory in Tunis suspended or dismissed a number of senior union officials to intimidate union members, including in a period when management and the union were in collective bargaining negotiations. Mondelez said it disciplined the cited workers for a number of different professional and personal conduct issues

unrelated to their union status. Mondelez stated that because it was a minority joint venture partner in the SOTUBI factory, it did not exercise management control, but expected management to respect all local laws and regulations. Mondelez contended that because of the above issues, workers lost confidence in union leaders, the leaders resigned and workers voted on and approved a new union and new leaders in November 2012. IUF countered that there was no “new union” created but rather the union remained UGTT and that there was only elections for new leadership. The leaders resigned under pressure of losing their jobs and, notwithstanding the new leadership no constructive negotiations had occurred since the union election.

In its submission, IUF specifically emphasized that insisting on the replacement of elected union leaders as a condition for collective bargaining negotiations constitutes a serious violation of the Guidelines.

In its May 28, 2013 letter to the U.S. NCP, Mondelez contended that IUF deliberately misused and diluted the company’s trademarks and intellectual property in its public campaign against the company. Mondelez alleged that these actions were in violation of U.S. law, international treaties, conventions and protocols.

IV. The U.S. NCP’s Offer of Good Offices

Following its review of the information provided by the parties, on July 2nd, the Office of the U.S. NCP issued an Initial Assessment to the parties determining that the issues raised by IUF merited further consideration under the Guidelines and offered its good offices to assist the parties in undertaking a dialogue to seek a positive resolution.

The U.S. NCP believed the two sides could benefit from a mediation process, under the auspices of its good offices that could create the conditions for a positive exchange of perspectives, a beneficial examination of the core issues arising under the OECD MNE Guidelines, and potentially a mutually agreeable solution.

When providing good offices, the U.S. NCP utilizes the services of objective and neutral mediators employed by the U.S. Federal Mediation and Conciliation Service (FMCS), an independent U.S. government agency with extensive

experience resolving labor-management conflicts and promoting cooperative workplace relationships both domestically and abroad. In order to introduce both parties to the FMCS and its conflict resolution services, the U.S. NCP offered to host a one-hour information session with each party during which representatives could raise any questions or concerns about the mediation process contemplated by the U.S. NCP's offer of good offices. The U.S. NCP made clear that participation in this information session did not mean either party accepted the U.S. NCP's offer of good offices; rather it was simply an opportunity to better inform each party about the mediation process.

FMCS is an independent U.S. government agency with more than 65 years of experience resolving labor-management conflicts and promoting cooperative workplace relationships both domestically and abroad. FMCS mediators are labor relations and conflict management professionals, who have years of training and experience in helping parties work through issues that separate them in complex individual, collective, and multi-party disputes.¹

Under U.S. NCP procedures, acceptance of the Specific Instance – including a finding that the issues raised by IUF were bona fide – does not indicate the U.S. NCP concluded that Mondelez acted inconsistently with the Guidelines, but rather that the U.S. NCP considered it appropriate to facilitate a discussion between the parties of the issues raised. For Mondelez's part, a decision to participate in this process would not imply any prima facie admission of conduct inconsistent with the Guidelines. Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third party to assist 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.

V. Conclusion

The U.S. NCP's Specific Instance is concluded as Mondelez was unwilling to proceed to mediation. In an email dated July 24th, IUF agreed to participate in mediation. In a letter dated August 20th, Mondelez stated that it would not participate in an information session with FMCS or any subsequent mediation offered by the U.S. NCP.

1. www.fmcs.gov

The Specific Instance process – and any ensuing mediation – is voluntary, providing an opportunity for a neutral third party to assist parties to reach their own resolution of concerns only if and when all parties come to the process freely and committed to cooperative problem solving.

According to its August 20th letter, Mondelez conducted an internal review of the NCP inquiry. The U.S. NCP recommends Mondelez consult with IUF regarding the findings of its internal review to find a resolution to the issues raised.

The U.S. NCP observes that the parties honored the confidentiality of the Specific Instance process. The confidentiality of the process contributed to the parties' mutual confidence in the process

Finally, the U.S. NCP is prepared to assist the parties in undertaking a facilitated dialogue in the future, if the parties later agree to pursue mediation or another form of alternative dispute resolution.

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