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

Final Statement

Specific Instance involving the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and IndustriALL Global Union and Nissan Motor Co., Ltd. and Nissan North America, Inc. for conduct in the United States

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I. Summary of the Outcome of the Specific Instance

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) of the Specific Instance submitted on April 28, 2014 by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and IndustriALL Global Union (collectively referred to as "UAW/IndustriALL") with regards to the alleged conduct of Nissan Motor Co., Ltd. and its subsidiary Nissan North America, Inc. (hereafter referred to as "Nissan"). After reviewing the Specific Instance and consulting the parties, the U.S. NCP offered its good offices for a voluntary mediation process between the two parties, but such a process could not be established.

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

The OECD Guidelines for Multinational Enterprises[1] (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 encouraging their MNEs to promote and implement the Guidelines in their global operations and appointing a national contact point (NCP) to assist parties in seeking a mutually satisfactory resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues relating to implementation of the Guidelines, raised in the form of a Specific Instance, with regards to the business conduct of an MNE operating in or headquartered from the United States. The office of the U.S. NCP handles such instances in accordance with its procedures[2] which are based on Guidelines.

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 its good offices 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

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[1] http://mneguidelines.oecd.org/text

[2] http://www.state.gov/e/eb/oecd/usncp/specificinstance/index.htm

make a determination whether the party is acting consistently with the Guidelines, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

Acceptance of the Specific Instance 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. 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. Entering into such mediation or conciliation in no way implies that the parties will reach agreement. (*See, e.g.*, the Procedural Guidance for NCPs under the Guidelines, section I.C.3)

III. The Initial Assessment

Per the Guidelines procedures, upon receiving a Specific Instance, the U.S. NCP conducts an Initial Assessment with all parties. 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 are bona fide and merit further examination. Per the Guidelines procedures, 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

IV. Substance of the Specific Instance

On April 28, 2014[3], UAW/IndustriALL, both large and diverse unions, submitted a Specific Instance with the U.S. NCP alleging conduct inconsistent with

[3] *Personnel matters precluded the U.S. NCP from addressing the Specific Instance until fall of 2014; however, all parties agreed to defer consideration by the U.S NCP until that time.*

the Employment and Industrial Relations (Chapter V) of the Guidelines by Nissan for its manufacturing facility in Canton, Mississippi.

The allegations in the Specific Instance cover a period from 2003 to the present. The Specific Instance is supported by a report commissioned by the UAW which alleges intimidation and aggressive tactics of management interference with employees' trade union rights in the United States, and that Nissan failed to respect international standards on freedom of association with respect to its U.S. workers. UAW/IndustriALL maintain that management's interference took shape before workers turned to the UAW for organizing assistance in late 2004, and intensified after workers sought a climate free of management interference, to allow for employees to choose whether or not to have union representation. In its submission, UAW/IndustriALL expressly notes that its Specific Instance claims are based on what it alleges are Nissan's failures to comply with the Guidelines and not violations of any U.S. domestic law.

Nissan's corporate headquarters are located in Yokahama, Japan. Nissan North America, Inc. is headquartered in Franklin, Tennessee. In addition, Nissan has been integrated into a strategic alliance with France-based Renault since 1999.

The week of September 12, 2014, U.S. NCP and members of its U.S. government interagency working group met with representatives from Nissan, and separately hosted a phone call with UAW/IndustriALL to discuss U.S. NCP procedures, next steps, and hear all sides of the matter.

The company responded in writing to the Specific Instance through its legal counsel on September 25, asserting that Nissan's policies and practices are consistent with the Guidelines and U.S. law; that the issues raised by UAW/IndustriALL do not merit further involvement by the U.S. NCP; and that offering its good offices would not further the purpose of the Guidelines. The letter further articulated that the company is wholly committed to complying with the labor and employment laws in each country in which Nissan has employees. Compliance with national laws is a Nissan core value; and it supports and respects the rights of its employees, and stated that responsible corporate citizenship is very important to global enterprises. The letter also noted that Nissan supports the ten principles of the UN Global Compact and that Nissan provides an annual report on its corporate social responsibility work. Nissan denied the general allegations

made in the Specific Instance, but did not explicitly address the particular allegations cited by UAW/IndustriALL. Nissan's response also asserted that exercise of the U.S. NCP process could potentially lead to a violation of U.S. law and open Nissan to legal challenge or public criticism, and that certain NCP outcomes could be prejudicial to Nissan.

The letter further articulated that UAW/IndustriALL's claims were part of a global campaign to discredit Nissan, in order to pressure it to remain silent about trade unions and worker representation, and to obtain greater access to Nissan's employees. The company also claimed that IndustriAll and UAW publicizing the existence of the filing and its contents of the Specific Instance on their websites, which Nissan claimed calls into question the veracity of the union's motives as well as the confidentiality provisions of the U.S. NCP.

The unions denied that the mention of their filing of the Specific Instance is inconsistent with the confidentiality provisions of the U.S procedures, strongly asserted the contents of the Specific Instance were never made public, and contended that they have maintained strict compliance with the confidentiality procedures.

V. Guidelines Provisions Cited

The Specific Instance alleges inconsistencies with Chapter V "Employment and Industrial Relations" specifically V1.A,V1.B, V.3, V.7 of the OECD Guidelines as well as the Commentary from Chapter IV "Human Rights".

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.

   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.

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

Chapter IV "Human Rights" Commentary:

The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.

VI. Role of Other NCPs and the Interagency Working Group

By virtue of a strategic alliance between Nissan and the French auto multinational firm Renault S.A., and the location of the Renault-Nissan Alliance in the Netherlands under the aegis of the Renault-Nissan BV, in its initial submission, UAW/IndustriALL requested that the Japanese, French, and Dutch NCPs be involved in the Specific Instance. The U.S. NCP has consulted with these NCPs in person, over the phone, and over email throughout the Specific Instance process. At the request of the U.S. NCP, the Japanese NCP has had a meeting with Nissan headquarters as the parent company of Nissan North America, Inc. to share information provided by the U.S. NCP regarding the case and sent the feedback to the U.S.NCP.

Per procedures, the U.S. NCP has also consulted and received input from the U.S. government interagency working group throughout this process as well.

VII. Offer of Good Offices

After thorough review of information provided in writing and in oral communication by all parties, and with input from the interagency working group and other NCPs, the U.S. NCP decided, pursuant to the Guidelines, to accept the Specific Instance and determined that the issues raised by UAW/IndustriALL are material and substantiated and merit further examination. The U.S. NCP offered its good offices to facilitate a discussion between the parties to seek a mutually agreed upon resolution. The U.S. NCP does not make judgments as to whether parties act inconsistently with the Guidelines. For Nissan's part, a decision to participate in this process would not imply any prima facie admission of conduct inconsistent with the Guidelines. Per the Guidelines, the U.S. NCP took the following points into account when considering whether UAW/IndustriALL's concerns merited further examination.

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

UAW is one of the largest and most diverse unions in North America, with members in virtually every sector of the economy. UAW-represented workplaces range from multinational corporations, small manufacturers, and state and local governments to colleges and universities, hospitals and private non-profit organizations. UAW has more than 340,000 active members and more than 600,000 retired members in the United States, Canada, and Puerto Rico. IndustriALL is an international federation of labor organizations that represents 50 million workers in 140 countries in the mining, energy, and manufacturing sectors. The vast majority of unionized Nissan workers around the world are members of IndustriALL. IndustriALL also represents a majority of unionized Renault employees and is a signatory to the recently negotiated Global Framework Agreement with Renault which commits the company to uphold international labor standards at all of its operations globally as well as those of its suppliers.

Nissan is an automobile company that has more than 184,000 employees and operates more than 55 manufacturing facilities worldwide. To date, some of Nissan's employees in the United States have not been represented by a union, a right reserved to them under national law.

Through the Specific Instance, UAW/IndustriALL requested that the U.S. NCP use its good offices to mediate the issues between the two parties to allow for a process that UAW/IndustriALL consider would create conditions for employees

to exercise their right to freedom of association in a climate free of fear and intimidation. UAW/IndustriALL requested that the company cease activity that it believes is not in line with the Guidelines.

The U.S. NCP was satisfied that UAW/IndustriALL parties were able to provide information about the Specific Instance and have an interest in the issues raised.

b. Whether the issue is material and substantiated

UAW/IndustriALL has provided information in the form of reports, and statements alleging the use of intimidation other forms of interference with employees' rights to organize.

UAW/IndustriALL claims the submitted documents show that:

- Nissan has failed to comply with Chapter V "Employment and Industrial Relations" of the OECD Guidelines for Multinational Enterprises
- Nissan management has pursued an aggressive and ongoing campaign of interference with employees' trade union rights and failed to respect international standards on freedom of association
- Nissan management has intimidated employees to discourage them from participating in or organizing union activities
- Nissan has refused to meet with the UAW/IndustriALL on this matter

In response to UAW/IndustriALL allegations, the company believes the issues raised by UAW/IndustriALL do not merit further involvement by the U.S. NCP good offices and that offering good offices does not further the purpose of the Guidelines. Nissan also denied, without addressing in particular, the allegations made by the UAW/IndustriALL, and drew attention to the fact that the report upon which the submission was premised, was sponsored by the UAW.

Nissan asserts that compliance with national laws is a core value, and that it supports and endorses the principles set forth in the Guidelines. Nissan also notes that it respects the principle of freedom of association. Nissan claims that it recognizes and respects the rights of its employees to unionize or not to unionize, as they choose in accordance with U.S. national law, and as governed by the National Labor Relations Act (NLRA). Nissan notes that under the NLRA, the

right of an employee to choose not to be represented by a labor union has equal force as the corresponding right to be represented by a union. Nissan claims that employee rights are a matter of corporate policy, and that it provides a varied set of formal and informal complaint mechanisms enabling its employees to report policy and other potential violations, in order for Nissan to investigate and respond.

The company also claims that the U.S. NCP's involvement in the matter was unwarranted for the following these reasons:

- Representational rights of workers in the private sector are within the sole jurisdiction of another agency of government – the NLRB
- The U.S. NCP should not attempt to broker an agreement containing terms that would place Nissan in a position of either potentially violating U.S. law, or waiving employer rights conferred to Nissan by Congress and recognized by the International Labor Organization
- As evidenced by UAW/IndustriALL's publicity around the issue to date, the Specific Instance is a component of a larger public relations campaign by the UAW to attempt to discredit and pressure Nissan into acceding to the UAW's demands

The company claims its documentation shows that it has appropriately worked with its employees and is wholly committed to complying with applicable labor and employment laws. Nissan contends that compliance with national laws is a core value for the company and that it supports and endorses the principles set forth in the Guidelines. Nissan claims to value and respect the rights of its employees, and believes that responsible corporate citizenship is very important for global enterprises.

c. Link between Nissan's activities and issues raised

The Specific Instance raised by UAW/IndustriALL asserts that Nissan interfered with its employees' trade union rights inconsistent with the Guidelines.

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

At the time this Final Statement was drafted, the U.S. NCP was not aware of any proceedings in court or before any other administrative body involving the parties to this Specific Instance. Although Nissan argued that the U.S. NCP's

involvement in this matter could lead to a violation of national law, which prohibits an employer from giving to a union, and a union from receiving, a thing of value, the U.S. NCP strongly disagrees and is not aware of any applicable law or procedures that would weigh against offering its good offices in this case particularly in light of the voluntary, consent-based nature of the NCP-facilitated mediation process. Furthermore, the discussions and outcome of any mediation are unknowable as mediation is not taking place at this time. The U.S. NCP works to facilitate a dispute resolution that is mutually drafted/composed and accepted by the parties and that does not violate applicable law.

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 considers that its good offices 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 resolution. Consistent with the criteria in the U.S. NCP procedures for Specific Instances (as established in the Guidelines themselves), the U.S. NCP determined in the course of its Initial Assessment that the matters raised were bona fide and merited further examination with regards to the Guidelines.

VIII. The U.S. NCP Offer of Good Offices

Following the review of the information provided by the parties, on November 13, 2014 the U.S. NCP issued an Initial Assessment to the parties that the issues raised by UAW/IndustriALL merited further examination under the Guidelines, and offered its good offices to assist the parties in undertaking a dialogue to seek a mutually agreeable 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 Guidelines, and potentially a mutually agreeable solution.

When providing good offices, the U.S. NCP offers the services of objective and neutral mediators employed by the U.S. Federal Mediation and Conciliation Service (FMCS)[4]. In order to introduce each party to the FMCS and its conflict resolution services, the U.S. NCP offered to host a one hour information session separately with each party during which representatives can raise any questions or concerns about the mediation process as well as get to know the mediators. 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. On November 19, UAW, on behalf of both itself and IndustriALL, participated in an information session hosted by the U.S. NCP with FMCS. Nissan refused to participate in the mediation and in so doing it also declined to participate in an information session.

In an in-person introductory meeting with FMCS, on November 19, UAW/IndustriALL expressed interest in mediation, which they subsequently confirmed in writing. According to its December 5th letter, participation in the process of the U.S. NCP is not in the best interest of Nissan, its employees or the Guidelines themselves, and Nissan therefore declined the offer of the information session and the mediation service. Nissan referenced the unions' submission and IndustriALL's effort to publicize the Specific Instance in an article published December 3, 2014, further claiming that the filing of the Specific Instance was simply part of the Unions' larger campaign to publicly discredit Nissan for the singular purpose of forcing Nissan to engage with the UAW despite a lack of interest by Nissan's employees. Nissan denied the unions' allegations which Nissan claims were solely based on a report written by UAW. The U.S. NCP notes there was no breach in confidentiality and that it assessed the Specific Instance in accordance with U.S. NCP procedures and the Guidelines. Neither the Guidelines nor U.S. NCP procedures preclude the offering of good offices on the basis of public disagreement or dispute between the parties.

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[4] 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. FMCS mediators regularly help parties identify the interests underlying their disputes, improve their communications and problem-solving skills and, ultimately, create an environment in which they can work together and achieve consensus resolutions of both the dispute at issue, as well as future conflicts that inevitably arise in any workplace.

IX. Conclusion

This Specific Instance is now concluded as a voluntary mediation process could not be established since Nissan was not willing to participate in mediation. The NCP regrets Nissan's unwillingness to participate in the process.

The U.S. NCP would like to be clear that its role is to further the 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 does this by offering a forum for discussion and voluntary, good-faith mediation assistance to the business community, worker organizations, non-governmental organizations, and other interested parties concerned. 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. In this case, because the issues raised merited further examination, the U.S. NCP offered the parties access to a facilitated, consensual mediation through non-adversarial means. It is the position of the U.S. NCP that it is exactly its role to offer an opportunity, should both parties agree, to facilitate an agreement to address the allegations raised in this Specific Instance that is mutually accepted by the parties and that does not violate applicable law. 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.

Confidentiality: With respect to the parties' differing positions regarding whether the unions' acted consistently with the confidentiality provisions of the U.S. NCP procedures by publicizing the submission of the Specific Instance, it is the position of the U.S. NCP that public reference to the filing of the Specific Instance is not inconsistent with those provisions such that it would warrant further NCP action or breach of confidentiality by the parties. This position is based on the U.S. NCP procedural guidance (which are based on the text of the Guidelines) with respect to the confidentiality of communications with the NCP and between the parties.[5]

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[5] http://www.state.gov/e/eb/oecd/usncp/links/rls/166661.htm

Conduct Corporate-Wide Labor Review: The U.S. NCP recommends that Nissan North America, Inc., in cooperation and with guidance from Nissan corporate headquarters in Japan, conduct corporate-wide labor rights review processes, consistent with the recommendation of the Guidelines, in particular the chapters cited above.

Mediation: The U.S. NCP recommends that Nissan evaluate the allegations raised by the submitters and consider how to address them, including the opportunity to engage informally or formally with the submitters. The U.S. NCP recommends Nissan consider mediating, either through its own internal processes or through third-party mechanisms, the issues raised by UAW/IndustriALL to seek a resolution to the issues raised.

Going Forward: The U.S. NCP notes that this Specific Instance has been shared with other foreign NCPs who have been consulted throughout this process and that these NCPs remain available to offer assistance to the parties. The U.S. NCP remains available to assist the parties in facilitating dialogue in the future on these matters, if the parties later agree to pursue mediation or another form of alternative dispute resolution.

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