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Study
Key Questions arising during the French NCP's treatment of "specific circumstances" cases since its inception

Deliberations regarding a possible reform of France's National Contact Point (NCP) commenced at its last meeting, in June 2009. In order to further these deliberations, and also to offer a contribution to the preparation of the revised OECD Guidelines for Multinational Enterprises (OGMEs) expected in 2010, it is worthwhile undertaking a retrospective analysis of the key questions arising from the examination of the "specific circumstances" (SC) cases received by the FNCP.

Since its creation in 2000, the French National Contact Point has received 16 "specific circumstances" cases: four were requests for assistance from foreign NCPs; two were rejected as they were not deemed to fall under its mandate; and ten were dealt with in depth. Out of these latter ten, four gave rise to a "final statement" published on the website of the Ministry of Economy and Finance.

This study presents, in Chapter One, the nature of all of the SC cases received, followed by, in the second Chapter, an identification of the main questions that arose during their examination: (1) parallel proceedings; (2) difficulties interpreting the OGMEs; (3) weakness of dossier in terms of content; (4) shortcomings in cooperation among NCPs; (5) duration of proceedings; and finally, (6) uncertainty as to the meaning of the NCP's very mission.

Chapter I. Content of the "Specific Circumstances" Cases Received and Summary of their Outcomes

I) Specific circumstances that concluded with the publication of a statement (classified in reverse chronological order of referral)

A. The MARKS & SPENCER SC case

Chapters concerned: Article 6 of Chapter IV Employment

1) **Complaint:** The closure of Marks & Spencer stores throughout continental Europe, affecting 1,700 employees in France, is announced on 29 March 2001, with no prior consultation with employees. The trade union, FO, lays a complaint on **17 April 2001**.

2) **Parallel Proceedings:** A complaint is laid against the firm, in parallel, with the Paris Regional Court for violation of the legal provisions on the information and consultation of

worker representative bodies. The Court handed down a decision on 9 April 2001, ordering the suspension of the store closure plan.

3) **Investigation:** The NCP's first meeting to discuss this case was on 19 April 2001. By way of justification, the group intimated that the need to respect stock-market secrecy had been seen to take precedence over the principle of prior employee consultation. Given that a Court decision, uncontested by Marks & Spencer, had been issued, the question of whether it was appropriate to continue with the procedure was raised. The NCP concluded that, since the Guidelines were of a trans-national nature, compliance with national legislation does not automatically mean conformity with the Guidelines.

As Marks & Spencer is an English group, the French NCP decided to seek the opinion of the British NCP. The latter replied that it saw no contradiction between national legislation and the OECD Guidelines as regards employee information, but stated that the argument regarding the need for stock-market secrecy to override the obligation to inform employees was a relevant one.

With TUAC having encouraged its affiliates in the various countries concerned to complain to their corresponding NCPs, the Belgian NCP, which had hitherto envisaged joining forces with the French NCP with a view to publishing the same final statement, replied that in its opinion, M&S had not infringed the Guidelines.

The CIME was petitioned so as to clarify the difficulty interpreting the joint application of national laws and the OGMEs when a contradiction arose.

4) **Conclusion:** A final statement is published on the French NCP website on 18 December 2001. It states that **the steps taken regarding the prior information of worker representatives on the restructuring envisaged by the company were not satisfactory with regard to the Guidelines.**

B. The ASPOCOMP SC case

Chapters concerned: Article 6 of Chapter IV Employment and implicitly Article 3 of Chapter IV Employment

1) **Complaint:** The liquidation of a subsidiary of the Finnish mobile telephony group, ASPOCOMP OYJ, based in Evreux, France, led to a complaint by the CGT-FO dated **4 April 2002**, which invoked a failure to provide information within the framework of redundancy scheme negotiations, signed on 18 January 2002.

2) **Parallel Proceedings:** A dossier is submitted by the dismissed employees' lawyer to the industrial tribunal in November 2002. The legal proceedings conclude with sentences handed down by the ROUEN Court of Appeal and confirmed by the rejection of ASPOCOMP's appeal by France's highest appellate court, the Court of Cassation. The employees receive compensation totalling 11 million euros in September 2007.

3) **Investigation:** The firm did not agree to appear at the first tripartite meeting, citing the delicate conditions in which the closure of the French subsidiary had taken place as a reason. On 8 November 2002 the NCP members deliberated on the matter. The Finnish NCP, once approached, convinced the firm to attend a second meeting. The FNCP thus heard the representative of the group on 28 February 2003.

There was discussion within the NCP on the interpretation to be given to Article 3 of Chapter IV of the OGMEs, regarding the provision of “information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity.” ASPOCOMP presented a draft communiqué in October 2003 which was met with divergent reactions from within the NCP.

4) **Conclusion:** The final statement dated 13 November 2003 notes that **it cannot be ruled out that the parent company had allowed the subsidiary to establish a redundancy scheme while having knowledge of the real economic situation** which did not in fact permit its effective implementation. The NCP observed that **the subsidiary did not inform its employees** that its auditor had launched an alert procedure even though the redundancy scheme had been signed 16 days prior.

C. The METALEUROP SC case

Chapters concerned: Chapter IV Employment and Chapter V Environment

1) **Complaint:** The trade union FO petitioned the NCP in **February 2003** claiming that Metaleurop SA had announced the cessation of the activities of its subsidiary, Metaleurop Nord, without having set up a redundancy scheme nor remedied the environmental damage caused by its activity.

2) **Parallel Proceedings:** The Béthune Regional Court, also petitioned, issues a decision on 11 April 2003 on the liquidation of Metaleurop Nord. It decides not to apply the compulsory liquidation to the parent company, Metaleurop SA. “[It] ... is of the opinion that there is no asset merger between Metaleurop and its subsidiary [Metaleurop Nord], nor any *de facto* management.” On 16 December 2004, a decision from the Douai Court of Appeal accepts the extension of Metaleurop Nord’s compulsory liquidation to Metaleurop SA due to asset merger. On 19 April 2005, the Court of Cassation overturns the Douai Court of Appeal’s decision extending the liquidation. On 11 October 2005, the Paris Court of Appeal confirms the decision from the Béthune Regional Court.

The press comments that “Metaleurop was thus able to save 900 jobs and 11 industrial sites, provided that it finds some 15 million euros in funding to avoid a liquidity crisis.” Metaleurop SA overcame its financial difficulties. It is now called Recylex. The Metaleurop Nord site has remained closed.

3) **Investigation:**

At the meeting on 27 October 2004, the NCP “decided to put a stay on the [Metaleurop] case while awaiting the decision of the Douai Court of Appeal and to convene the NCP urgently once the decision is issued.” (Source: minutes of the NCP meeting, drafted by the services of the DGTPE. Message by Christine Lan dated 28 October 2004)

Metaleurop is audited in April 2005 by the NCP even though the company is already undergoing compulsory liquidation. As the Metaleurop representative was unable to provide the requested information, it was decided that each member of the NCP was to send a list of questions to the NCP secretariat. Despite several reminders, not a single question was submitted and Metaleurop SA has not been re-contacted.

Metaleurop, it was observed, has carried out the decontamination work required under French law.

The closure of the case is envisaged in the NCP meeting of 9 February 2006, but postponed while awaiting fresh information. In February 2005 and June 2007, the idea of questioning the Swiss multinational Glencore, as the largest Metaleurop shareholder, was suggested, but this was not followed through.

4) **Conclusion:** On 13 June 2008 the NCP website published a **final statement recalling the French and European regulations regarding the rehabilitation of polluted land.**

D. The SDV TRANSAMI SC case

Chapters concerned: Chapter II General Policies

1) **Complaint:** In 2004, a SC case concerning the transport company SDV Transami belonging to the Bolloré group, was brought before the French NCP. This is an upshot from the findings of an investigation, published in 2003, by a United Nations panel of experts on the plunder of natural resources in the DRC. For each of the enterprises mentioned by the experts, the corresponding NCP is invited by the UN to examine the facts coming under criticism with regard to the OGMEs. The firm SDV Transami is among those listed as having participated in the illicit exploitation of the country's riches.

2) **Parallel Proceedings:** none except for the Belgian NCP.

3) **Investigation:** The representative of the firm, invited to offer an elucidation before the NCP, explained that since SDV Transami was merely the transporting company for another company, SMC - Specialty Metal Company - which was simultaneously being investigated by the Belgian NCP, it would be wise to await the latter's conclusions.

4) **Conclusion:** The French NCP concluded on 9 February 2006 in a final **statement** based on information provided by the Belgian NCP, that there were **insufficient elements permitting the substantiation of the allegations that SDV Transami had violated the OGMEs.**

E. The EDF SC case

Chapters of the OGMEs concerned: Chapter II General Policies, Chapter V Environment, Chapter IX Competition -> rejected, Extension by the NCP to Chapter IV Employment

1) **Complaint:** The NCP was petitioned by the non-governmental organisation "Friends of the Earth" and seven other associations on 26 November **2004** concerning the planned construction of a hydroelectric dam known as "Nam Theun 2" in Laos by the NTPC consortium, of which the French utility Electricité de France (EDF) is the main shareholder.

The subject of the referral appeared to concern: sustainable development, the respect for human rights, the collection and transmission of information on the potential effects of the activities being carried out, community consultation, environmental impact assessment, health issues, the safety of the people concerned, the respect for international competition rules and the extension deemed relevant by the NCPF to Chapter IV concerning employment and professional relations.

2) No **parallel procedure** was noted

3) **Investigation:** So as to determine the admissibility of the referral, the NGO Friends of the Earth and EDF were heard jointly, by way of successive presentations followed by questions from members of the NCP, on 18 January 2005. Once both parties had left, the NCP members each aired their impressions, enabling the NCP to decide that the case was indeed admissible. Each member was invited to submit to the head of the NCP, before 4 February 2005, any questions that could be put to the firm and to COFACE on certain technical aspects.

The minutes from the meeting of 1 February 2005 confirm the acceptance of the SC case and outline the NGOs' grievances: the company EDF was alleged to have:

- Exaggerated the project's positive impacts while minimising the real risks
- Failed to analyse and disclose the project's real impacts and costs to the public
- Failed to properly address the concerns of the local communities

4) **Conclusion:** On 4 April 2005, the NCP published a final statement concluding that EDF had not infringed the OGMEs and had even undertaken commitments going above and beyond these principles. It nevertheless issued recommendations to the firm, including that of continuing the dialogue with the NGOs.

In May 2005, Friends of the Earth and Proyecto Gayo send a letter to the Director of the Treasury in which they express their "indignation". According to them:

- Neither arbitration, nor mediation had taken place given that the plaintiffs and the firm only met on one occasion and that this occasion was prior to the case being declared admissible.
- The evidence upon which the conclusion was based was inadequate.
- The duration of the investigation (two months) had been too brief to enable a serious assessment.
- No independent analysis had been accepted.
- The procedure showed the limits of the independence of a NCP primarily concerned with protecting French economic interests.

A clarification as to the interpretation of the OGMEs shall be addressed to the CIME.

5) **Outcome:** The NCP undertakes **regular monitoring** of the implementation of its recommendations. The NCP organised **a meeting with the management of EDF on 10 July 2008**. At this meeting, the following issues were addressed: information on the dam; re-grading of those employed on the dam worksite; fatal accidents at the worksite; dangerous waste; relocation of people near the dam. EDF organised a visit to the dam worksite in 2008 to which the complainant NGOs, other NGOs and the press were invited.

II) Specific circumstances deemed non-admissible or unable to be pursued

A. The BATA SC case

Chapters concerned: Chapters IV Employment, paragraphs 3, 4, 6 and Chapter II General Policies, paragraph 6

1) **Complaint:** A complaint was laid by the union CFDT in **June 2001** against the Canadian group BATA, claiming that it had planned a (voluntary) liquidation and closure of its establishment in Lorraine several months prior, while offering false reassurances to workers and their representatives at the representative meetings.

2) **Parallel Proceedings:** In November 2001, the Commercial Court in Metz arbitrated the take-over of Bata Hellocourt by one of the managers from the original factory; a rescue accompanied by the loss of 400 jobs.

3) **Investigation:** On 12 June 2001, the French NCP invites the trade union organisations to provide further evidence that the group's management had taken a decision to close the site prior to consultation with its employees. Despite the CFDT's having provided additional information, the NCP reiterates its request on July 2001. The head of the NCP meets with management of the Bata group and gathers information that invalidating the facts as set forth in the complaint.

The Canadian NCP, requested by its counterpart to gather significant information from the group's management, replies that it is unable to obtain any elements permitting a judgement as to whether the date of the decision to close the site had been prior to the worker consultation. The Canadian NCP adds that it is of the opinion that the SC case cannot be taken further once the decision from the Commercial Court has ruled on the purchase of the factory and the continuation of activity.

4) **Conclusion:** The case is deemed non-admissible owing to the lack of evidence on an unspecified date prior to the end of 2004.

B. The ACCOR SC case

Chapter concerned: Chapter IV Employment

As part of the proceedings launched by Sherpa in September 2001 concerning the group Total, accused of having used unfree labour in Burma, the group Accor was heard by the NCP so that it could present its practices in the country. The Accor SC case did not lead to a complaint.

C. The DACIA SC case

Chapters concerned: Chapter IV Employment

1) **Complaint:** A Romanian trade union referred the case of the Romanian subsidiary of the Renault Dacia group to the NCP on 18 February 2003, on the grounds of labour relations tensions due to an insufficient wage rise offer, and failure to respect Romanian laws and the chapter of the Guidelines relating to the disclosure of economic and financial information required in the negotiation process.

2) **Parallel Procedure:** none, but an agreement between the parties concerned was reached on 7 March 2003

3) **Investigation:** The complaint was immediately deemed non-admissible as there was no longer any dispute.

4) **Conclusion:** The French NCP sent a letter to Renault's management outlining its conclusions and demonstrating its interest in monitoring the activities of French firms abroad.

D. The SEVES-SEDIVER SC case

Chapters concerned: Chapter IV Employment

1) **Complaint:** Le NCP was petitioned on February 2005 by the trade union FO, which alleged that the Italian multinational SEVES had threatened to relocate its SEDIVER glass insulator production unit, located in Saint Yorre (a firm purchased in 2002), in order to bring its negotiations on working conditions to a successful conclusion.

2) **Parallel Procedure:** The staff representatives took the case to the Nanterre Regional Court so as to have the redundancy scheme annulled. A stay was put on proceedings while awaiting the decision from the Versailles Court of Appeal on **8 December 2005**, ruling in favour of the firm's redundancy plan.

3) **Investigation:** The NCP requested that the initial complaint laid by FO be reformulated so that it fulfilled the three criteria for cases to be admissible, as laid out in the NCP Rules of Procedure (1. Identity of the firm; 2. Facts considered reprehensible; 3. Elements from the Guidelines upon which the complaint is based.) Once reformulated, the complaint was considered admissible on 9 February 2005.

The President of the NCP met with the Allier Prefect of Police in March 2005, who reported that the negotiations held in January by the parties had collapsed. The firm had ceased its activity, which led to the redundancy plan envisaging 286 redundancies. The NCP decided to keep the investigative phase of the case open despite the decision of 8 December 2005.

The minutes from the NCP meeting of 9 February 2006 state: "There was a preference not to make a decision on the ultimate fate of this complaint until the decision of the Versailles Court of Appeal dated 8 December 2005 could be considered. The NCP Secretariat undertook to obtain this decision and disseminate it to the members." In 2007, the members of the NCP decided to continue examining this SC case, notably to check whether to see whether any threat to relocate had in fact been issued in the course of the redundancy negotiations. The trade union organisations undertook to obtain the minutes from the meetings held as the site was being shut down. The NCP Secretariat was to contact the Allier Prefecture of Police to gather its observations. There was further discussion with the Prefect of Allier in 2007/2008. At the NCP meeting on 13 June 2008, the NCP Secretariat was still awaiting the response to a letter sent to the Prefect. Since the trade unions had not provided any new elements as of 2007, the Secretariat suggested closing the case if no word was received from the Prefect.

4) **Conclusion:** The case was closed in 2009; no solid evidence of a threat to relocate being issued in the course of the redundancy plan had been provided.

III) Incomplete Investigations

The BTC Pipeline SC case

Chapters concerned: Chapter IV Employment, Chapter X Taxation, Chapter V Environment

1) **Complaint:** Two NGOs (Sherpa and Friends of the Earth) complained to the NCP, on 2 October 2003, about a consortium including three French enterprises participating in a project for the construction and operation of an oil pipeline. According to the complainants, insufficient consideration in the project was given to the nature and scope of the BTC project, all the necessary environmental concerns, human rights issues, respect for the communities concerned, safety, sustainable development and the right of States to regulate the activities concerned.

2) **Parallel Proceedings:** Several other NCPs were also petitioned

3) **Investigation:** The French NCP invited the two NGOs to reformulate their complaint in light of the documents produced on the project by the consortium and/or the States concerned. Given that the British NCP had a leading role, since BP's participation in the consortium was the largest, and the fact that the oil pipeline is located in Turkey, the French NCP decided to follow the investigations led by the British and Turkish NCPs very closely.

To date, the French NCP has not received a redrafted complaint from Friends of the Earth or the association Sherpa. In autumn 2005, the British NCP undertook a field visit so as to meet with the consortium and organise a meeting between the parties. The pipeline became fully operational in November 2005. In June 2007 the FNCP stated its intention to chase up the British NCP on the BTC case to hear, among other things, the conclusions of the field visit.

4) **Conclusion:** investigations are still under way.

IV) Assistance to foreign NCPs

A. The IMERYS SC case: Assistance to the NCPs in the USA and Great Britain

Chapters concerned: Chapter IV Employment in England and in the United States

1) **Complaint:** In 2000, the trade union ICEM lodged a complaint with the American NCP against Imerys, accusing the world leader in industrial minerals of anti-union policies and discrimination against employees belonging to trade unions. The trade union and management reached an accord on a three year collective agreement in January 2001.

In 2004, the trade union Pace, feeling that the company had failed to respect the collective agreement, took the case to the American NCP and further accused it of anti-union policies and discrimination against unionised employees in two of its subsidiaries in the United States and in Great Britain.

In parallel, the challenge to new workers' access to the pension scheme in the English subsidiary, with neither consultation nor negotiation, was the subject of a complaint to the British NCP, lodged by the Transport and General Workers Union that same year.

The American and British NCPs requested that the French NCP cooperate in the case so that it could intercede with the Imerys head office in France.

2) **Parallel Proceedings:** Legal proceedings commenced in June 2004 before the NLRB upon the initiative of the local trade union, which had lodged a complaint against Imerys for

improper professional practices. From that time on, more complaints were laid with the NLRB calling for arbitration proceedings and dispute settlement.

The American NCP sought the opinion of the United Steelworkers union on the appropriateness of continuing the investigation into this situation. The union opined that the two procedures were not incompatible; that the Guidelines were complementary to federal legislation and that the fact that the Guidelines had been infringed necessitated the NCP's intervention.

3) **Investigation:** The French NCP wanted to wait for the case before the American NCP to become official before intervening in the United States and for the British NCP to give a ruling on the admissibility of the case before it before coming to a decision on the possibility of intervening vis-à-vis the French parent company. The French NCP feared that the American NCP could suspend its investigation should a parallel legal procedure be launched.

4) **Conclusion:** In November 2004, the American NCP indicated that the case was still being examined. Minutes from the French NCP's meetings of 4 February 2005 and 9 February 2006 show that the NCP was not (re)contacted by the American NCP which was to decide on the admissibility of the Imerys case. The unions that had brought the (Imerys) case to the British NCP formally withdrew their complaint after an agreement was reached with the firm (minutes from the NCP meeting of 9 February 2006).

B. The PPR SC case - Assistance to the American NCP

Chapters concerned: Chapter IV Employment, Article 1 and 4 in the United States

1) **Complaint:** The American NCP was petitioned in **May 2002** by the American trade union UNITE! following allegations of violations of the right to organise committed by an American subsidiary of the PPR group in the United States which markets furnishing supplies, accessories and clothing out of distribution centres located in Massachusetts and in Indiana.

TUAC requested the French NCP's cooperation because the group is French.

2) **Parallel Proceedings:**

A legal decision was handed down in mid-October 2002. No further information.

3) **Investigation:**

Further information is required for determining how the investigation was carried out.

4) **Conclusion:** An agreement between the firm and the trade unions brought the proceedings to an end.

C. The SAINT GOBAIN SC case - Assistance to the American NCP

Chapters concerned: Chapter IV. Employment and Industrial Relations in the United States

1) **Complaint:** On **5 June 2003**, the American trade unions UAW, ICEM and AFL-CIO petitioned the American NCP, alleging that a subsidiary of Saint Gobain in Massachusetts had violated the OGMES by failing to respect employees' right to union representation and collective bargaining, and non-observation of the duty to protect its

employees (health and safety). From the outset of the case, the American NCP expressed its desire to work in cooperation with the French NCP.

2) Parallel Procedure: A complaint is registered with the NLRB on 29 August 2003 concerning a failure to respect the rights of UAW to collectively negotiate the employees' conditions, working hours and health protection. On 27 and 28 January 2005, the election of staff delegations at the US plant is followed by the suspension of UAW's accreditation by the subsidiary's management; the trade union attacks, on 3 February 2005 before the NLRB, the validity of the election results.

On 24 March 2006, the American administrative judge confirms the suspension of UAW's accreditation.

3) Investigation: In October 2003, the French NCP contacts the management of Saint Gobain. In November, as the situation had deteriorated in the plant, the unions CFDT and FO attempt to rekindle the dialogue by each sending a letter to Saint Gobain, inviting it to comment. The trade unions CFDT, CFTC, CFE-CGC, FO and CGT also publish a joint communiqué addressed to the Saint Gobain group's board, calling on it to respect the group Charter and recalling that it is vital that it be applied universally. The group replied that 'the United States is not France' and that each country has its specificities: the rules that applied in French companies did not automatically apply to American firms. Management did, nonetheless, appear prepared to discuss the matter if the trade union UAW were to show some flexibility.

In 2004, the various letters were exchanged between the CGT, UAW and the management of the Saint Gobain group show that the lack of response from the American NCP can be explained by the lack of response from Saint Gobain to the allegations of violations of the Guidelines.

Meanwhile, another source of conflict had arisen in the area of health and safety, with the group refusing any cooperation with the American inspection bodies. UAW contacted the industrial advisor at the French Embassy in Washington to inform of the conflict.

The American NCP again requested that the French NCP contact the management of the Saint Gobain group and ask it to comply with the request of the UAW, which was hoping to meet with the managers of the parent company. The group declines the invitation and invites the American NCP to contact the Saint Gobain delegation in the United States.

On 11 and 12 May 2004, during the Saint Gobain Convention for European Industrial Dialogue in Europe, a negative report of the negotiations, which have been dragging on for three years, is drawn up.

In January 2005 FCE-CFDT, CGT-FO and CGT meet with Saint Gobain management representatives in Paris, who confirm their refusal to become involved in the conflict. The trade union ICEM launches a global campaign against the Saint Gobain group.

Following the decision issued by the American administrative tribunal confirming UAW's loss of accreditation, the American NCP decides to cease investigation into the case in 2006.

4) Conclusion: The French NCP published a final statement (now unavailable). Given that the American NCP had closed the case, the French union CGT hoped to petition the French NCP, arguing, in particular, that a group could not dodge its responsibilities regarding the management of industrial relations by hiding behind its choice of a decentralised management policy on these issues, without there being some contradictions with the OECD Guidelines.

At the annual meeting of national contact points in 2007, the United States explained the difficulty encountered in convincing Saint Gobain to agree to mediation. The firm's

management has always replied that it did not wish to deal with problems unless it was through American labour law procedures.

Chapter II. Key Questions that have Arisen

I. Should the NCP halt its investigations if there are parallel proceedings?

The FNCP's position has varied, with three different solutions having been thus far applied: continuation of the investigation in parallel; suspension; and commencement only upon the conclusion of legal proceedings.

A. Cases where investigation has been commenced or continued by the NCP in parallel to legal proceedings

- The MARKS & SPENCER SC case: On 9 April 2001, the Paris Regional Court handed down a decision ordering the suspension of the Marks&Spencer store closures in France. The work of the French NCP continued and led to the publication of a statement on the firm's foul practices.
- The BATA SC case: Despite the case going before the courts, the French NCP conducted its own investigations into the matter to verify whether or not the decision to close the French subsidiary BATA Hellocourt made by the Canadian parent company BATA SA had preceded the provision of information to the employees; and whether or not BATA SA had, furthermore, implemented practices that pressed its subsidiary toward closure (stifling voluntary innovation for example).
- The METALEUROP SC case: The NCP is petitioned on February 2003 by the union FO. The case is taken to court in 2004 and the final decision is rendered on 11 October 2005. The NCP keeps working on the case and does not close it until June 2008, after having observed that no new elements have arisen, with the publication of French and Community regulations on the internet website regarding the rehabilitation of contaminated sites.

B. Cases where parallel proceedings lead to suspension of the NCP's proceedings

- The SEVES-SEDIVER SC case: The FNCP is petitioned on February 2005. The decision regarding the complaint's admissibility is postponed until after the decision from the Versailles Court of Appeal on 8 December 2005, which concludes that Sediver's redundancy plan is not contestable. The NCP then resumed its examination and approached the Allier Prefecture to request that it verify whether or not any threats had prejudiced the negotiation of the redundancy plan. The SC case was closed in 2009 upon observing that this information was not supplied.

C. Case where the NCP's proceedings commenced upon the conclusion of legal proceedings

- The ASPOCOMP SC case: On 4 April 2002, upon referral by CGT-FO, the NCP launches its proceedings once the court decision confirms the sentences imposed on

the firm, obliging it to compensate its employees. A statement is published on the NCP website on 13 November 2003, expressing regret at the firm's ill practices.

II. Difficulties interpreting the OGMEs

- The SEVES-SEDIVER case: The French NCP hoped that CIME would take a stance on Chapter IV Employment regarding relocation cases.
- The EDF SC case: The NGOs which had complained to the NCP regarding environmental damage caused by the dam in Laos publicly criticised an erroneous interpretation of the Guidelines.
- The MARKS&SPENCER SC case: The firm justified the decisions made by citing the precedence that the law of the stock markets takes over the principle of prior employee consultation. The interpretations made by the British and French NCPs differed. The former supported the notion of the primacy of stock market secrecy.
- The PPR SC case: The activity of the firm's subsidiary in the USA is to market goods from distribution centres located in Massachusetts and in Indiana. A complaint to the French NCP, as suggested by TUAC, would have engendered a case against the whole of the group, while in fact it was only the subsidiary, Brylane, in the United States which was the object of the American trade union's complaint. Undoubtedly the question of investment relations should have been raised. Because an agreement was swiftly established between the management and the trade union, this issue could not be fully pursued.

III. Insufficient evidence

- The SEVES-SEDIVER SC case: The evidence provided in support of the case was insufficient. But the allegations were difficult to prove: the existence of blackmail in the form of a threat to relocate during negotiations.
- The BTC Pipeline case: The NGOs who petitioned the NCP on a broad array of accusations are requested to provide additional documents for clarification and interpretation, which they have not yet been able to submit. The case remains open.

IV. Difficult inter-NCP cooperation

- The IMERYS SC case: The American and British NCPs received complaints by trade unions from both countries for different industrial disputes. The French NCP was approached by the two NCPs, on 2 February 2005 and 28 April 2005 respectively. The French NCP preferred to wait until the American NCP's case be formally accepted (parallel legal proceedings may have led to suspension or withdrawal) before intervening in the United States and until the British NCP ruled on the admissibility of its case before deciding whether or not it would be possible to intervene through the French parent company. The French NCP received no further follow-up from the American NCP. In 2006, the trade union organisations that had petitioned the British NCP withdrew their case once an agreement had been signed with the firm.

- The ASPOCOMP SC case: The slowness of the Finnish NCP hindered the French NCP's work. Firstly, the Finnish NCP did not respond when contacted by the French NCP (still no response by November 2002, while the complaint dated back to April 2002). A letter responding favourably to the idea of holding a meeting with Aspocomp representatives arrived ten months after the French NCP had requested cooperation from the Finnish NCP. Secondly, despite informal contact with the investment committee, in February 2005, another letter from the French NCP still awaits reply.
- The MARKS&SPENCER SC case: The issue of the relationship between national legislation and the OGMs met with divergent opinions among NCPs as relating to the closure of Marks & Spencer stores without prior employee consultation. For the Belgian national contact point, M&S was not in breach of the Guidelines, which are identical to Belgian law. The French NCP was not of the same opinion. This divergence of position became apparent a few days before the publication of the final statement, in December 2001, despite the fact that the Belgian NCP had envisaged, throughout the examination of the case, joining with the French NCP in producing the same statement, outlining the group's shortcomings in terms of social responsibility.

V. Firms' refusal to cooperate

The most exemplary case is that of Saint Gobain, which the American NCP publicly portrayed as having refused any form of cooperation.

VI. Excessively lengthy proceedings

The Dutch and British NCPs, it should be recalled, have a rule stipulating that cases are to be dealt with within nine months. Most of the French NCP's proceedings have grossly exceeded this time frame. Some examples:

- The METALEUROP SC case: Complaint laid in February 2003 - Closure of the case in June 2008
Investigation was suspended several times. The first suspension was when legal proceedings were commenced in parallel to the NCP's handling of the case. The second suspension was due to a lack of fresh information that would have furthered progress in resolving the grievance.
- The SEVES-SEDIVER SC case: Complaint laid in February 2005 - Closure of the case in 2009.
The additional information required for the case to progress could not be provided. The case was closed on the grounds of insufficient evidence.
- The BTC Pipeline SC case: Complaint laid on 2 October 2003 – Case still open
The French NCP invited the two NGOs to reformulate their complaint, in the light of the project-related documents produced in the interim by the consortium and/or the States involved. The case remains open as a response has yet to be received.

VII. Purpose of the NCP

- On several occasions the question of the FNCP's very purpose has been clearly raised: an entity whose role is only to provide information on the OGMs and mediation, or also to denounce foul practice?
- What position to adopt when the firm is already closed down, as in the case of MetalEurop?