

Oslo, 19 May 2009

The Norwegian Contact Panel for OECD's Guidelines for Multinational Enterprises

The Ministry of Foreign Affairs
Department for culture, public diplomacy and protocol
Section for economic and commercial affairs
P.O. Box 8114 Dep
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Complaint pertaining to breach of OECD guidelines for multinational companies,

ForUM and Friends of the Earth Norway, herein called the Complainants; hereby lodge a complaint against Cermaq ASA for the breach of a number of articles in the Organisation for Economic Co-operation and Development's (OECD) guidelines for multinational companies, concerning production sustainability, employment conditions and human rights. The conditions for which the complaint is lodged apply particularly to the subsidiary Mainstream's fish farming activity. These have taken place over a longer period of time and are still occurring, and have been pointed out to Cermaq from various quarters earlier. The lack of resolve from Cermaq to get to grips with these questionable conditions is the reason that we now request an independent assessment of these breaches.

Breach of article 2, general political guidelines

The Complainants maintain that the company has breached the OECD guideline's article 2 by not taking adequate consideration of the indigenous people's rights in Canada and Chile. The United Nation's (UN) Declaration on the Rights of Indigenous People (UNDRIP) article 7 states: *States shall provide effective mechanisms for prevention of, and redress for: Any action which has the aim or effect of dispossessing them [indigenous peoples] of their lands, territories or resources.* The indigenous peoples of both Chile and Canada experience that Cermaq's activities threaten their access to resources.

In British Columbia, Canada, the indigenous people Musgamagw Tsawataineuk are witnessing a significant downturn in wild salmon stocks due to the spread of salmon lice from the aquaculture industry, and that shellfish have become inedible in proximity of fish farming sites due to pollution from the farm facilities. Children and young women are recommended to not eat fish from the areas near fish farms due to the high content of mercury that originates from the fish farming activity.¹ In Chile much of the fish farming activity takes place in the indigenous people Mapuchene's land areas. The indigenous people's representatives have repeatedly pointed out that fish farming threatens their very existence, particularly in regard to the areas that have been seized, and the damage incurred on local fish stocks by farm fish escapes. At a meeting in Puerto Montt in Southern Chile in May 2008 representatives of the Mapuchene people requested Cermaq change its production methods and to stop exploiting the sea in such a destructive manner.²

¹ "Salmon farming and first nations" <http://www.livingoceans.org/programs/fishfarms/first-nations.html>

² "Dan a conocer en Noruega los conflictos de las salmoneras con comunidades Mapuche."
http://www.ecoceanos.cl/index.php?option=com_content&task=view&id=6361&Itemid=5

The Complainants maintain Cermaq also breaches the OECD guidelines' article 2.7 through inadequate routines for contact and dispute arbitration with other interested parties in the areas they have activities. In contrast to Marine Harvest Cermaq does not participate in the "Salmon Aquaculture Dialogue", which arranges contact/communication between the salmon industry and other interests in the areas the industry has an activity. Neither have they participated in dialogue with environmental groups in Canada, which Marine Harvest has done, and not to the same extent that Marine Harvest has had dialogue with the U.S.-based Pure Salmon Campaign. On the whole this would appear to be a company that is prepared only to a lesser degree to employ dialogue in order to resolve differences and disputes with other interests in the eco-systems they use. The difference between Cermaq and Marine Harvest, who operate their activities in the same areas, indicates there are no other obstacles to prevent Cermaq from also participating in the dialogue, other than their own engagement.

In 2008 the environmental group Pure Salmon Campaign attempted as a shareholder in Cermaq to have the following resolution adopted at Cermaq's general meeting *"The company shall comply with the recommendations included in the Ministry of Trade and Industry's Parliamentary Report no. 13: (2006-2007) An active and long-term ownership and submit a report regarding conformity with Report No. 13 before the end of the second quarter in 2009."* This was not adopted. On the basis of the aforementioned there is therefore, in our opinion, a need for a more thorough examination of the company's control routines and policy.

Breach of Article 4, Employment and the relationship between employer and employee

The Complainants maintain Cermaq has breached the OECD guidelines' article 4.1 a through unfounded dismissals and attempts to prevent free organising of employees to join labour unions. Observatorio Laboral y Ambiental de Chiloé has interviewed workers at Mainstream's sites/facilities *"On the question of whether there is a hostility-towards-unions practice in the company, they answered to the affirmative, and that this took the form of threats of dismissal from middle management ... and that unfounded dismissals have occurred. They also claimed that the contracts for office personnel and work foremen prohibited union organisation. It is also not uncommon for active union leaders to be shut out and harassed."*³ This account has been confirmed by other sources. *"Discrimination, mobbing and bad treatment is a situation many pregnant women meet in the Chilean salmon industry. This is exactly the situation in the Norwegian multinational company Cermaq/Mainstream, which is trying to lay off 14 pregnant workers at its factory in Calbuco, south of Puerto Montt"*⁴ According to the Norwegian Federation of Trade Unions (LO) report from 2007 on the conditions in the Norwegian-owned salmon companies⁵ in Chile the Chilean authorities called for a more active role by the Norwegian State in regard to Mainstream. The report states also that *"According to a number of workers' representatives work equipment and clothing were of poor quality. According to a number of workers' representatives there is not enough food for those with hard, physical work tasks. The law permits a 45-hour week and 2 hours overtime per day, but the workers' representatives claimed this is exceeded. The workers' representatives informed about certain plants/sites/facilities where the workers' representatives had been fired or harassed while negotiations were underway. It is not known whether this is still occurring."*

The Complainants maintain Cermaq has breached the OECD guidelines' article 1.d by having pay and bonus systems that discriminate women. The Norwegian LO registered during its visit to Chile in 2007 that pregnant and breastfeeding mothers lost bonuses. The leader of LO's fisheries-political panel, Rolf Jørn Karslen said that *"Neither is it acceptable for one to lose or have reduced the bonus due to a sick note, as long as the basic wage lies below the defined poverty threshold in Chile."*⁶

³ Salmenes Mainstream S.A.: Dos realidades de una transnacional salmonera en Chiloé: Planta de proceso y Centros de cultivos

⁴ http://www.ecoceanos.cl/index.php?option=com_content&task=view&id=6311&Itemid=5. Se også punkt 3.1.19 i det vedlagte kompendiet

⁵ RAPPORT FRA FISKERIUTVALGETS BESØK TIL CHILE 25.11. -03.12.2007

http://multimedia.api.no/www.frifagbevegelse.no/archive/01667/LO-rapport_fiskeri_1667333a.pdf

⁶ (Magasinet for Fagorganiserte. Nr 1 2008)

The Complainants maintain Cermaq has breached the OECD guidelines' article 4.4 by having inadequate safety routines for its employees. In Chile five people have lost their lives while working for Mainstream (5.1.3). LO pointed out in its report that outsourcing of diving work is a problem and these are particularly exposed to accidents due to inadequate training and equipment. In 2008 Cermaq declared itself guilty of a number of shortcomings in regard to safety on a vessel used in its aquaculture activity in Scotland. Railings were missing on parts of the vessel, the crew lacked training and information, there was a lack of lighting and no evaluation had been carried out of the crew's safety. One employee died when he fell from the vessel in 2007.⁷

Breach of Article 5, Environmental conservation

The Complainants maintain the company has breached the OECD guidelines' article 5 on environmental conservation by its lack of preparedness against salmon escaping, the spread of lice and the spread of the salmon disease Infectious Salmon Anaemia (ISA). In an open letter to the Canadian government 18 Canadian researchers wrote that fish lice from farmed salmon are attacking and threatening British Columbia's wild salmon.⁸ Comprehensive research shows that fish lice are spread from farmed salmon and kill young wild salmon. In some case it is estimated that 90 percent of all wild young salmon are killed by fish lice when they migrate to the sea. Salmon lice from fish farms on the west coast of British Columbia cause mortalities in massive numbers of smolt from wild salmon that pass by on their life's first journey out to the fjords and open sea. The researchers carried out their investigations at Broughton Archipelago by Vancouver Island, in proximity to both Cermaq and Marine Harvests facilities. Each year it is estimated that several million wild salmon die.⁹

Both ISA and fish lice flourish where fish density is intense. One of the measures against these problems is regulation of the number of fish in the fish farm cages. Cermaq has breached these production license limitations in Chile and Canada.¹⁰ In 2006 the company was fined for a breach of these regulations in Chile and in 2008 it emerged that Cermaq Canada twice as much volume as was permitted in individual farm facilities.¹¹

The Complainants maintain Cermaq is breaching article 5.2 by not communicating with and consulting the communities that are directly affected by the company's environmental policy. While Marine Harvest has cooperated with researchers and critics and allowed researchers access to their farm facilities in Canada, Cermaq calls the assertions about a connection between fish farming and mortalities as a result of salmon lice in British Columbia as doubtful. Martin Blinde of the Norwegian Food Safety Authority's national centre for fish and seafood in Bergen said; *"I am surprised at and I have to say that I do not understand Cermaq's attitudes. This is a discussion we had ten years ago in Norway. At that time the fish farmers doubted that lice from farmed fish threatened the wild salmon. Now it is no longer a topic for discussion. Everyone is in agreement about that, and the Norwegian aquaculture industry has constructively taken steps to remedy the problem"*¹². The same applies in Chile where biochemist Carlos Pessot at NIVA's office, asked himself why the Norwegian companies have not transferred Norwegian expertise to Chile.¹³

The Complainants maintain Cermaq has systematically breached the guidelines' article 5.3 by not taking into account in its decision-making process the foreseeable environmental, health and safety-related consequences of its aquaculture activities. The Complainants maintain that with the expertise one has from Norway about harm caused to wild salmon stocks, particularly through the spread of salmon lice, and the problems connected to concentrated density in fish farm facilities, the problems

⁷ "Salmon farm company fined heavily after worker's death" The Shetland Times, September 16th 2008

<http://www.shetlandtimes.co.uk/2008/09/26/salmon-farm-company-fined-heavily-after-worker%E2%80%99s-death/#more-29590>

⁸ <http://www.sciencedaily.com/releases/2007/09/070919225321.htm>

⁹ "Cermaq skaper avsky i Canada" Dagens Næringsliv, 28/29 april 2007

¹⁰ "Mainstream Chile – bot for overproduksjon" <http://www.norwatch.no/20060824156/oppdrett/cermaq/mainstream-chile-bot-for-overproduksjon.html>

¹¹ "Mainstream salmon farms blatantly violate licenses" <http://www.livingoceans.org/media/news10240801.aspx>

¹² "Rister på hodet av Cermaq" Dagens Næringsliv 2.mai 2007.

¹³ "Lakseeventyret som falt i fisk" Bistandsaktuelt nr 3 2009

the industry is having to deal with now in Chile and Canada could have been foreseen. The Complainants further maintain that the company has known about these problems for a long time, among other things through the Raincoast Conservation Society's report on Canada.¹⁴ The Complainants maintain Cermaq has breached Article 5.4 through the company using alleged scientific uncertainty in order to avoid carrying out remedial measures.¹⁵

Additional background and an overview of the company are included in the attached compendium. The countries concerned are either members of the OECD (Norway, Scotland and Canada) or are associated with the declaration on international investments and multinational enterprises (Chile).

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¹⁴ "Rydd opp Brende", Dagbladet 14. februar 2005

¹⁵ Dagens Næringsliv 2. mai 2007.