Complaint to the Swedish National Contact Point for the OECD Guidelines for Multinational Enterprises

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Content

1. Summary

Swedwatch is a voluntary association and non-partisan research organisation which aims to reduce social and environmental anomalies connected with the activities of Swedish corporations in developing and low-income countries.[1] Eighty percent of Swedwatch's activities are financed by the Swedish International Development Authority (SIDA) while the remainder is provided by other income.

The following organisations are members of Swedwatch: the Church of Sweden, the Swedish Society for Nature Conservation (SSNC), Fair Trade Center, Latin America Groups of Sweden (LAGS), Africa Groups of Sweden (AGS) and Diakonia. With this complaint, Swedwatch requests the Swedish National Contact Point (NCP) to investigate whether or not Mölnlycke complies with the OECD's Guidelines for Multinational Enterprises in their actions in a case concerning their subsidiary in Thailand.

The complaint is being made to the Swedish NCP given that Mölnlycke Health Care is a Swedish company, with its headquarters in Sweden, thus allowing the Swedish NCP authority to consider the case.

This complaint is based on information obtained from the report "*Vad hände i den gula zonen? – flera perspektiv på konflikten vid Mölnlycke Health Cares fabrik nummer ett i Thailand*" (*"What happened in the yellow zone? – several perspectives on the conflict at the Mölnlycke Health Care factory number 1 in Thailand")*, written by Mats Wingborg and published by Arena Idé on March 18th 2013.[2] The report builds upon interviews with workers, company directors and other interested parties and is attached to the complaint.

Other sources and references forming the basis of this complaint are Thai law, the OECD's Guidelines for Multinational Enterprises, the UN framework Protect, Respect, Remedy and the core conventions of the International Labour Organisation (ILO). The complaint describes the background and pertinent events of the case, both from the perspective of workers and the company.

The events show that Mölnlycke has acted in violation of the OECD's guidelines on four points, through:

1. The arbitrary suspension of trade union activists.

2. The termination and suspension of 22 workers who participated at meetings in the factory.

3. Failure to follow the decision of the Industrial Relations Committees (IRC) to reemploy the terminated workers, as well as through undue financial pressure, compelling them to take back their statements regarding reemployment in court.

4. Implementing adjustments in the salary system without negotiations with the local union and using unpermitted measures of influence in negotiations with individual employees.

[1] http://www.swedwatch.org/sv.

[2] Wingborg, Mats, *Vad hände i den gula zonen? – flera perspektiv på konflikten vid Mölnlycke Health Cares fabrik nummer ett i Thailand,* Arena Idé 2013.

The actions violate the provisions in Chapter I (Concepts and Principles) and Chapter V (Employment and Industrial Relations) in the OECD Guidelines for Multinational Enterprises.

2. Background

Mölnlycke Health Care is a Swedish corporation which manufactures products for operations and the treatment of injuries. The company's head office is in Gothenburg, employing approximately 350 people. The manufacturing of the company's products does not take place at the head office, but at sites in Belgium, Poland, Finland, the USA, France, the UK, Malaysia and Thailand. In total, the company has 7,000 employees, of which 1,300 are based in Thailand. The events concerning this complaint took place at one of Mölnlycke's factories in Thailand, at Bangphi Industrial Estate, in the province of Samutprakarn. This factory is called Factory 1 and has approximately 700 employees.

3. Chain of events

Below is a presentation of both the version of the workers, as well as that of Mölnlycke, as to what took place.

3.1 The Workers' Version

At the end of the summer and beginning of the autumn in 2011, salary negotiations were being conducted between the local trade union and the factory directors at Mölnlycke's Factory 1. No information regarding the negotiations was to be spread on factory premises. The union arranged instead to place themselves outside the factory to inform the workers and solicit their opinions.

During the negotiations, on August 19th 2011, six workers were suspended at the factory. All of them are active in the union and several of them are responsible for the distribution of information to the other workers. On August 25th, another four employees were suspended. No explanation was provided by company management.

On August 25th 2011, one of the floor managers called a meeting with a number of workers in a storage area, the so-called "yellow zone", which is directly connected to the manufacturing area. Approximately 200 workers were present at the meeting, as well as a representative of the company management. According to the workers, nothing happened initially and they were left to stand and wait. After a while, a representative from the labour market authority, a so-called "labour officer", arrived at the meeting in order to mediate negotiations between the management and the workers. The parties agreed that no one will be disciplined for attending the meeting.

On August 29th, a floor manager called for another meeting in the yellow zone. The workers are promised more information about the salary negotiations. Two hundred employees participated this time, but no one from the company management was represented. After an hour, the factory director Wolfgang Peters, arrived at the meeting and announced that all workers should return to work and that no one will be disciplined for having attended the meeting. In the afternoon of the same day, as well as the next day, production has ceased as the workers were not allowed onto the premises of the factory.

The company management and the union signed the wage agreement on September 5th. On the 27th and 28th of September, it was announced that 22 workers had their contracts terminated, of which 4 were members of the so-called "workers' committee" who participated in the negotiations on the new collective labour agreement. These 4 were suspended with pay, in accordance with Thai law. According to the management, the reason for the terminations was that the workers participated in illegal strikes on August 25th and 29th and that these 22 were the organisers of the strikes. Nearly half of the terminated workers belong to the union's core group and are union information officers, while the other half are workers that had, at some point, lodged a complaint with the management.

The workers deny participating in an illegal strike and claim that they would never call for a strike during on-going contract negotiations. Furthermore, all potential strikes are announced in advance and never take place on factory premises.

The issue of the terminations was brought up on November 22nd by the Thai Industrial Relations Committee (IRC), which is a tripartite body. Following a completed investigation, the IRC reached the conclusion that the terminations are in violation of Articles 121 and 123 of the Thai labour market law and Mölnlycke is obliged to reemploy all terminated employees within a period of 10 days.

Mölnlycke chose instead to appeal the decision of the IRC and took the case to court in order to terminate the contracts of the 4 suspended members of the workers' committee and in order to overturn the IRC decision to reemploy 18 terminated employees.

Between May 15th 2012 and February 13th 2013, a number of court hearings took place involving Mölnlycke and the terminated workers. These meetings had been exclusively aimed at achieving conciliation; a review of evidence was never conducted. Each time, the company management refused to rehire the workers and, instead, the workers were offered financial compensation in return for withdrawing their demands for reemployment.

Initially, the workers did not want to accept the settlement of receiving compensation, but as time went by, an increasing number of workers were forced to agree to the company's conditions as they could not continue to provide for themselves or their families such as pay for housing without wages. The conflict finally dissolved on January 13th 2013 when the last of the 5 remaining workers that wished to continue the process in court agreed to withdraw their demands to reemployment and accept compensation.

In addition to this, conflicts surfaced during the spring of 2012 concerning revisions of the wage system at Mölnlycke's factory. The reason for the revisions in the wage system was that the Thai government decided to raise the national minimum wage. This resulted in Mölnlycke being forced to raise the base salaries of employees. In addition to basic wages, different forms of bonuses are also paid out, for example, production bonuses, cost of living adjustments and bonuses based upon seniority of service within the company, i.e. bonuses based upon the length of employment.

According to the workers, company management ignored the union during the revision process and instead negotiated directly with each individual. During these negotiations, the workers were informed that, if they do not agree to a reduction in bonuses, the company's operations in Thailand would be discontinued and moved to for example, Burma, where minimum wages are considerably lower. Those who did not want to accept the changes were also said to have been threatened with

relocation, resulting in the loss of their benefits. The union believes that the workers, subsequently, had no real choice during the negotiations. The workers claim that ultimately the revisions resulted in reduced compensation, when seen from a comprehensive view.

3.2 Mölnlycke's version

The local management of Mölnlycke's operations admits that 6 workers were suspended on August 19th 2011, but states that they are not aware that a further 4 workers were suspended on the August 25th. The reason given for the first suspensions was that, at that time, during the process of negotiations for a new collective agreement, there was a continual disturbance of groups of people and meetings outside of the factory premises. The management therefore decided to suspend those active in union activity, who they viewed as being responsible for the gatherings, in order to calm the situation.

Regarding the two meetings in the yellow zone on August 25th and August 29th, respectively, the management claims that these were illegal strikes and that no one had called upon workers to participate in them. Instead of terminating all those present, the management chose to identify those responsible for organising the meetings and terminate their employment. As proof of this claim, Mölnlycke refers to a number of films which claim that illegal strikes were taking place, according to witnesses from the police and the local labour market authority.

Given that the issue was never presented before a court, the evidence claimed by Mölnlycke has never been provided to any external observers.

Concerning revisions of the wage system, Mölnlycke has announced that a reduction of bonuses was a necessary measure due to the increase in basic wages. Company management claims that, for most workers, this has not entailed a reduction in compensation and that, in principle; all workers signed the new agreements and, thus, signed up to the changes taking place.

4. Relevant provisions in the Guidelines of the OECD

Swedwatch expresses its concern over the actions of Mölnlycke in Thailand, which are not compatible with the Guidelines of the OECD.

The following actions of Mölnlycke are in contravention of the OECD's Guidelines:

1. The arbitrary suspension of trade union activists.

2. The termination and suspension, of 22 workers which had participated at the meetings in the Yellow Zone.

3. Failure to follow the decision of the Industrial Relations Committees (IRC) to reemploy the terminated workers, as well as through undue financial pressure, compell them to take back their statements regarding reemployment in court.

4. Implementing adjustments in the salary system without negotiations with the local union and using unpermitted measures of influence in negotiations with individual employees.

The following provisions in the Guidelines of the OECD are relevant to the case:

Chapter V. Employment and Industrial Relations

The Introduction to this chapter in the OECD Guidelines refers to "applicable" law and "applicable" international labour standards. According to the commentary on Chapter V., Paragraphs 47 and 48, this is explained by meaning that, multinational enterprises may need to follow provisions on employment and industrial relations on both the national and international levels, when they are active within the jurisdiction of a certain country. The International Labour Organization (ILO) is the body with the authority to determine and develop international standards on working conditions and to support fundamental rights in employment, in accordance with the 1998 Declaration on Fundamental Principles and Rights at Work.[3] The Guidelines of the OECD should be read within the light of the relevant provisions of the 1998 Declaration and the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which was last revised in 2006 (The ILO Declaration on Multinational Enterprises).[4]

Chapter V., Paragraph 1. a)

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

"Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing."

According to the commentary on this provision, point 51, establishes that the Guidelines should reflect all the fundamental principles and rights at work, such as the right to association and the right to collective bargaining, covered by the ILO Declaration from 1998 on Fundamental Principles and Rights at Work and its Follow-Up.[5]

These fundamental rights are further regulated in the eight Core Conventions of the ILO. In this case, ILO Convention 98 the Right to Organize and Collective Bargaining Convention[6] is of relevance. Article 1:1 establishes that employees shall be protected from anti-union activities. Furthermore, Article 1:2 p. b) explains that this concerns actions such as termination of employment or other forms of discrimination because union membership or participation in the activities of trade unions.

Arbitrarily suspending members of the local union because they spread information on negotiations for a collective labour agreement to other employees outside the factory is to be considered anti-union activity. The actions of the company obstruct the right of organization and can lead to a situation where workers at the factory decline to participate in union activities out of fear of being terminated or otherwise being discriminated against by the employer. This is substantiated also in the ILO Convention on Multinational Enterprises, page 27, where it is stated that companies shall abstain from arbitrary terminations and suspensions. The act of preventing the union from distributing information at the factory is an act, in and of itself, that can be considered to contravene this article.

[3] http://www.ilo.org/declaration/lang--en/index.htm.
[4] http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.
[5] http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.
[6] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C098.

In addition, the termination and suspension of the 22 selected workers who participated in the meetings in the yellow zone is to be considered as anti-union activity, given that company management targeted members of the workers' committee who participated in negotiations of the collective labour agreement.

Chapter V., Paragraph 3
Enterprises should**:**

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

Through the suspension of local union members and the termination of other workers who have filed complaints to the management, Mölnlycke has demonstrated an unwillingness to manage the dissatisfaction of its employees in a constructive way. The way in which the company has managed the subsequent court proceedings, having objected to the IRC's decision to reemploy the workers on the grounds of illegal termination, and then compelling the workers to withdraw their statements in return for compensation, indicates that the company does not follow the principle of **"Promot[ing] consultation and co-operation between employers and workers".**

In addition, negotiations regarding revisions of the wage system took place on an individual basis with the workers and the local union being prevented from negotiating. This is also a practice which is not in line with the provisions of the OECD Guidelines.

Chapter V., Paragraphs 4. a) and b)
Enterprises should**:**

"4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families."

To subsequently reduce bonuses as a result of increased minimum wages, and therefore cumulatively reduce the amount of compensation for employees is not consistent with this provision. A multinational enterprise such as Mölnlycke should instead be able to offer the best possible wages and benefits and therefore not worsen the working conditions of its employees due to an increase in the national minimum wage.

Chapter V., Paragraph 7
Enterprises should**:**

"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."

At the time of the revision of the wage system, workers have testified that company management threatened to suspend activities in Thailand in the event that employees did not agree to reduced

bonuses, and in this way, forced the workers to sign the new agreements. This has also taken place without any negotiations with the local union.

It is evident from the ILO Convention on Multinational Enterprises, page 53, that this is an undue action on behalf of the company.

Chapter I., Paragraph 2.
"Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law."

In this case, Mölnlycke has complied with Thai law; however, it is apparent that its actions are not compatible with the Guidelines of the OECD. Multinational enterprises are expected to seek to adhere to these principles, as long as domestic law is not violated. In this case, there are no provisions in Thai law that would constitute a violation of the law by Mölnlycke through adhering to the Guidelines of the OECD.

5. Epilogue

Swedwatch welcomes the fact that Mölnlycke has now initiated negotiations with the remaining members of the local trade union at Factory 1 and that training activities have begun in cooperation with the Swedish trade unions Unionen and IF Metall. This offers hope that workplace dialogue can be improved in the future.

However, Swedwatch notes, that Mölnlycke's tone towards the Clean Clothes Campaign (CCC) has been hard. When the Norwegian section of CCC contacted Mölnlycke in the summer of 2012 and expressed its concern over the situation in Thailand, while also informing Norwegian bidders on public contracts of Mölnlycke's actions, the representatives of the organisation received a threatening letter in response. Mölnlycke instructed the representatives of the organisation to cease contacting their clients; otherwise the company would initiate legal proceedings. This is astonishing behaviour coming from a Swedish company, although, however, it is thankfully rare.

Finally, Swedwatch believes that it is important as a point of principle that what has been described in this complaint is investigated by the NCP.

6. Analysis and conclusions

Centrally-determined minimum wages in South Asia and Southeast Asia are, as a rule, far below that which is defined as a liveable wage in the UN's Declaration on Human Rights and the Conventions of the ILO. Many rights organisations and consumers in the West have demanded liveable wages and better working conditions in the chain of production over the last few years. The scenario in Thailand, where salary negotiations deteriorate and the company unleashes confrontational action against union representatives and employees are thus in violation of the OECD Guidelines and other international standards, which advocate consultation and cooperation between parties. The heavy

pressure to keep prices low creates sharp competition between countries in Southeast and South Asia, which increases risks for the repression of the right to organise and collective bargaining. A long-term, transparent process of dialogue between employers and employees, where the latter have the right to collective bargaining is that which all international frameworks advocate today, as the only sustainable way from a short-term "race to the bottom". In light of this systemic risk factor, the actions of Mölnlycke become even more important, regarding its conduct in negotiations, its approach to trade unions and its dialogue with employees.

Through this complaint, Swedwatch wishes to bring this case to the attention of the NCP, and instigate a tripartite investigation and mediation process in order to achieve a commonly acceptable, satisfactory solution for all concerned parties. It is our hope that the NCP can intervene in situations such as this one. Several companies can receive guidance from the NCP's ruling on how to act in similar situations, when international guidelines set a higher standard than national legislation.

Swedwatch also believes that, in line with the UN's Guiding Principles for Business and Human Rights[7], the NCP fills an important function as a complaint mechanism and should be utilized. The case can provide guidance for interpreting the guidelines and, in such a way, contribute to the aims and success of the guidelines themselves.

7. Recommendations

Swedwatch recommends that Mölnlycke takes the following actions in order to adhere to the Guidelines of the OECD:

1. Continue negotiations with the local union in Thailand in order to strengthen the relationships between employees and the management of the company.

2. Establish clear guidelines and mechanisms for the management of complaints and inquiries from employees.

3. Implement centralised ethical policies and guidelines for negotiation routines throughout the entire organisation through internal training activities.

4. Initiate new salary negotiations with representatives of the local trade union with the aim of revising the salary system in an acceptable way.

[7] http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf