

COMMUNIQUÉ OF THE ARGENTINE NATIONAL CONTACT POINT FOR
RESPONSIBLE BUSINESS CONDUCT
as closing of the specific instance "*FOCO/INPADE and Amigos de la Tierra vs
SHELL.*"

Buenos Aires, Argentina, February 17, 2021

1. The Argentine National Contact Point for Responsible Business Conduct (hereinafter referred to as ANCP) hereby makes the statement provided for in point C.3.c) of the "Procedural Guide" included in the Guidelines for Multinational Enterprises (hereinafter referred to as Guidelines) of the Organization for Economic Cooperation and Development (hereinafter referred to as OECD), which corresponds "when no agreement has been reached or when a party is not willing to participate in the proceedings".

2. The specific instance called "*Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO) y Amigos de la Tierra Argentina c / SHELL CAPSA*", whose description is published on the OECD website, at <http://mneguidelines.oecd.org/database/instances/ar0005.htm>, is thus concluded.

Background of the claim:

3. On May 28, 2008, the "*Foro Ciudadano de Participación por la Justicia y los Derechos Humanos* (hereinafter referred to as FOCO), represented by its Executive Director, Jorge Carpio, and *Amigos de la Tierra Argentina* (hereinafter referred to as FATA), represented by its President, Eduardo Sanchez, filed a submission with the Argentine and Dutch National Contact Points (hereinafter referred to as DNCP) concerning alleged breaches of the following provisions of the OECD Guidelines for Multinational Enterprises by the Shell CAPSA Company:

- a) Preface: for failing to comply with national regulations in relation to environmental issues;
- b) Chapter II "General Policies": for failing to present timely, reliable and relevant information.
- c) Chapter III "Disclosure" and its relationship with Chapter V "Environment": for not respecting the application of high quality standards for the disclosure of non-financial information, including environmental and social reports
- d) Chapter V "Environment" - (relative to disclosure): for failing to establish and maintain an adequate environmental management system and for failing to provide adequate information to identify, assess and address foreseeable environmental, health and safety impacts associated with its activities.

Competent NCP

6.- As stated in the Evaluation on Formal Admissibility “The Argentine and Dutch NCPs addressed this specific instance in a joint manner. However - in accordance with the provisions of paragraph 23 of the Commentary on the procedures for the implementation of the OECD Guidelines for Multinational Enterprises, within the framework of coordination between the NCPs in specific instances, in general, the issues will be dealt with by the NCP of the country in which the issue was raised-, given the fact that Shell CAPSA is an Argentine company and the circumstances addressed in the request of the complainants occurred in Argentina, the ANCP acted as the leading NCP in this procedure”. Because of this, the present declaration is made by the ANCP, with the DNCP in an advisory role.

Procedure

7. The ANCP issued in May 2008 the Formal Admissibility of the specific instance, considering that, *prima facie*, the claim submitted fulfilled the formal requirements laid down in the OECD Guidelines for Multinational Enterprises, as stipulated in Part II Procedures for the Implementation of the OECD Guidelines and in Article 8 of the ANCP Procedures Manual.

8. In the Formal Admissibility, it was expressly stated that “*Prima facie*, there are neither legal nor procedural impediments rendering invalid this submission. Therefore, both NCPs consider that conditions to implement the specific instance are fulfilled. Nevertheless, formal admissibility does not prejudge over the questions of law that shall be examined in this instance.”

9. The ANCP held meetings with the parties, in which the characteristics of the specific instance procedure were explained, as stipulated in the OECD Guidelines for Multinational Enterprises.

10. In this context, the ANCP held meetings with the legal representatives of the companies, in which they were informed of the presentation and the Formal Admissibility Report, as well as the nature and scope of the procedure for specific instances stipulated in the OECD Guidelines.

Shell discharge. Request for suspension of the process

11. SHELL CAPSA requested to suspend the specific instance based on the existence of a judicial case under development (Mendoza, Beatriz Silvia and others vs. National State and others o / Damages and damages - damages derived from the environmental contamination of the Matanza - Riachuelo River; CSJN File M1569, XL Supreme Court of Justice of the Nation (available at <http://www.cii.gov.ar/riachuelo.html> and at <http://www.acumar.gov.ar/pagina/120/causa-mendoza>) until the end of the judicial process.

12. Point 26 of the “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises” indicates that “When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do

not merit further consideration solely because parallel proceedings have been conducted, being under way or available to the parties concerned (...).”

13. Taking into consideration point 26 of the “Commentary of the Procedures for the Implementation of the OECD Guidelines for Multinational Enterprises”, the ANCP considered it appropriate to require the company to respond on the acceptance or rejection of the good offices of the ANCP to resolve the existing conflict between the parties and to pronounce itself (in the event that it did accept the good offices of the ANCP) in relation to the issues raised in the presentation of the complainants.

14. Taking account of SHELL's request, the Dutch NCP suggested that the parties could have a dialogue on those issues that were not included in the judicial process, in order to leave an open channel for dialogue between the company and the affected community, suggestion that was not accepted by SHELL.

15. The above-mentioned is the reason why the specific instance was left open, being the intention of the NCPs to leave a channel for dialogue between the parties.

Parallel judicial cases. Request for update by the ANCP

16. In June 2012, the ANCP requested again that Shell provide information on the actions it had taken in relation to the complaints and an update on the parallel judicial case.

Request for closure of the specific instance

17. Considering the lack of progress in achieving a constructive instance of dialogue, in November 2015, FOCO / INPADE requested the closure of the specific instance and the issuance of the Final Statement. On that occasion, the NCP considered it appropriate to leave the channel for dialogue open in case it could be possible to advance in the mechanisms set forth in the OECD Guidelines.

18. In July 2017, a new meeting was held with FOCO since the company alleged that it had already carried out social development activities in the neighborhood, continuing with its position of waiting until the end of the judicial process to make a decision on the acceptance or not to participate in a dialogue with the other party, within the framework of the specific instance.

19. In November 2018, the company Raízen purchased the SHELL CAPSA refinery, so the ANCP contacted SHELL officials to request clarification if said purchase could somehow change the evolution of the specific instance. The ANCP also contacted the claimant, FOCO.

20. In November 1, 2019, the legal representative of Raízen sent a note to the ANCP informing that SHELL CAPSA, on that date called “Raízen Argentina SA”, has changed its shareholding composition effective as of October 1, 2018. By virtue of this change, the controlling shareholder of the company became “Raízen Combustiveis SA”, a company incorporated under the laws of the Federative Republic of Brazil and domiciled in that country.

Conclusion of the procedure

21. In the context of the specific instance, the ANCP offered a dialogue platform between the parties that could not be developed as it was not accepted by both parties.

22. The ANCP has paid due attention to the considerations expressed by the parties involved and has conducted itself within the framework of the powers and functions assigned to it by the OECD Guidelines.

23. In this sense, throughout this time the case has been kept open with the explicit intention of trying to bring the parties to the negotiation table and provide a space for dialogue between them with the aim of fulfilling the role assigned by the Guidelines. That is why the ANCP maintained contact and held meetings with the complainants and the respondent company.

24. The ANCP has always taken into account provision 40.2 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Revision 2011, which indicates "If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognizing that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consulting with the parties, establish a reasonable timeframe for the discussion between the parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement."

25. Now, bearing in mind the time elapsed since the beginning of this instance and having due regard to the provisions of Article 18 of the Procedures for the Presentation of Specific Instances of the ANCP, which foresees the conclusion of the procedures within twelve (12) months after the receipt of the specific request, and of Article 19, which establishes that "Having expired the maximum period indicated in Article 18, the parties not having jointly requested the extension thereof and not having reached a settlement of the claim on the merits, the ANCP it will declare the specific instance closed". Therefore, considering that such period have been largely exceeded without being able to reach an agreement between the parties, the ANCP proceeds to declare the conclusion of the present procedure.

26. In the same sense, it should be noted that the term established in Article 20 of the Regulations for the Presentation of Specific Instances of the ANCP, which establishes "The ANCP will take all appropriate steps for the enterprise to accept its good offices and agree to engage in a dialogue with the complainant, with or without the participation of the ANCP. If the enterprise does not accept the good offices of the ANCP within sixty (60) days from the Declaration of Formal Admissibility of the complaint despite the steps taken by the ANCP, the ANCP will conclude the specific instance and issue a report for submission to the relevant OECD subsidiary body." In accordance with the aforementioned regulations, this ANCP proceeded to issue this statement.

27. In accordance with the principle of transparency that governs the functions of the NCPs, final statements are published on the NCP's website and are reported to and sent to the OECD Working Party on Responsible Business Conduct, which publishes them in the website of the OECD.

28. Before issuing a final statement, the parties were given the opportunity to comment on the draft thereof, as established in point 36 of the Procedural Guide included in the Guidelines, Revision 2011.

Final comments and recommendations

29. This ANCP offered on repeated occasions its good offices with the aim that the parties enter into a constructive dialogue, without achieving the minimum prerequisite of acceptance and subsequent intervention of both parties in a process of dialogue, which would allow the conditions to be able to reach an agreement in a specific instance.

30. Without prejudice to the foregoing, the ANCP encourages the parties to consider how to generate the necessary conditions to engage in dialogue and work constructively for the resolution of the issues brought for consideration in this instance.

31. The ANCP also recommends once more that multinational companies to adopt a proper conduct that implies a broad and responsible vision of the risks involved in the business, knowing that they must identify, prevent, mitigate and respond to the possible negative consequences of their actions as a company.

32. Finally, taking into account that, according to the OECD Guidelines for Multinational Enterprises, the National Contact Point "shall raise awareness of the Guidelines and the procedures for their implementation, including through cooperation, as appropriate, with the business sector, workers' organizations, other non-governmental organizations and concerned citizens" and "Respond to inquiries about the Guidelines raised by: (...) b) the business sector, workers' organizations, other non-governmental organizations and the public; (...), the Argentine National Contact Point remains at the disposal of both parties to respond to any queries regarding the Guidelines, with the objective indicated above.

Argentine National Contact Point (ANCP)
for Responsible Business Conduct
Ministry of Foreign Affairs, International Trade and Worship