

COMMUNIQUE OF THE ARGENTINE NATIONAL CONTACT POINT (PNCA)  
for the OECD Guidelines for Multinational Enterprises

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Buenos Aires, Argentina  
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The functions of the Argentine National Contact Point (ANCP) are to promote the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) and to contribute to the resolution of issues related to their implementation. The *OECD Guidelines for Multinational Enterprises* are recommendations issued by governments to multinational companies that operate in adhering countries or with headquarters in said countries. The *Guidelines* set forth voluntary principles and rules for a responsible corporate conduct that is compatible with applicable legislations and internationally recognized rules.

The ANCP is the authority in charge of receiving claims involving non-compliance with the OECD Guidelines for Multinational Enterprises. The ANCP acts in compliance with the Procedure Manual and within the framework of the abovementioned Guidelines.

**Specific instance:**

**Claimant:**

On 16 September 2011, the Center for Human Rights and Environment (CEDHA) submitted a brief before the ANCP alleging possible breaches of the OECD Guidelines for Multinational Enterprises, committed by the Argentine subsidiary of Xstrata Copper.

It should be noted that the submission was originally made before the Australian National Contact Point on 1 June 2011. Nevertheless, after several exchanges between the Australian National Contact Point and the Argentine National Contact Point, both National Contact Points decided -with the approval of CEDHA- to transfer the case to the Argentine National Contact Point, among other reasons, due to the following: the mining projects which are the subject of the complaint are located in the Argentine Republic (El Pachón in the Province of San Juan; and Filo Colorado in the Province of Catamarca); the persons making the complaint reside in the country; and the key Xstrata representatives that have day to day decision making responsibilities for the mining projects are based in the Argentine Republic.

In connection with the claim, CEDHA requested the ANCP to open a specific instance against the Argentine subsidiary of Xstrata Copper for the impact of projects El Pachón and Filo Colorado on rock glaciers and periglacial environments in the Provinces of San Juan and Catamarca, respectively, as well as for the alleged breach of some OECD Guidelines for Multinational Enterprises - namely: Chapter II (General Policies); Chapter III (Disclosure); and Chapter V (Environment), which are included in Annex I.

In this respect, CEDHA requested that Xstrata Copper do the following:

- Cease all types of activity related to El Pachón until an appropriate assessment of its impact on glaciers is carried out;
- Declare that rock glaciers and the periglacial environment will be protected in each of their operations at the world level;
- Comply with national and provincial laws relative to the protection of the environment, particularly those related to glaciers (including rock glaciers) and the periglacial environment;
- Elaborate an assessment of the impact of projects Filo Colorado and El Pachón on glaciers, in compliance with the Argentine National Law on Glacier Protection;
- Redress any damage caused by projects Filo Colorado and El Pachón to rock glaciers and the periglacial environment;
- Prevent and avoid any type of future impact on glaciers, rock glaciers and the periglacial environment in each and every one of their global operations;
- To engage with CEDHA and other actors in a constructive effort to collaborate with the creation of an industrial standard for Argentina, as well as for other States, relative to operations in glacier areas.

### **Proceedings:**

On 28 October 2011, the ANCP declared the formal admissibility of the Complaint, since it considered that, *prima facie*, the complaint submitted by CEDHA complied with the formal requirements set forth in the OECD Guidelines for Multinational Enterprises. In addition, after analysing the connection between the request made by CEDHA, the documents submitted and the goals proposed by said organization, and considering the relevance of the case for relationships between companies and the societies in which they operate, as well as the impact of these activities on the natural environment in which they are conducted, the ANCP decided to declare the formal admissibility of this instance. In this context, the ANCP offered its good offices to the parties in order to facilitate the dialogue process for them to reach an understanding that is beneficial to all parties involved.

After the claim submitted by CEDHA was declared formally admissible, the ANCP communicated separately with both Parties.

On 14 May 2012, the Vice President of Xstrata answered an information request submitted by the ANCP on the status of the field survey and the corresponding technical study, and he stated that, during the summer season, the company had successfully conducted the field works required for the preparation of the technical report. In the same letter, the Vice President reiterated the will of the company to work on the initiative of a Protocol for Mining Activities in glacier areas and periglacial environments announced by CEDHA on 8 October 2011. He also noted that both the Federal Government and the Provincial and Municipal Governments had been invited to work on this process. The latter statement was reiterated by the company against which the claim was issued, in a letter dated 6 September, insisting that federal and provincial authorities should be invited to participate in the elaboration of said Protocol.

On this occasion, the ANCP recommended both parties that they reach an agreement on a common text before inviting any third parties to participate in the Protocol.

Although CEDHA and Xstrata/Glencore held informal contacts on the draft Protocol for the glacial territory, and despite the fact that the ANCP continued with the specific instance mentioned above, conversations were halted by late 2012 and no progress was observed during 2013.

The ANCP forwarded to the National Directorate for Mining, which is under the authority of the Argentine Mining Secretariat, a letter containing the submission made by CEDHA ("specific instance") and the relevant Declaration of Formal Admissibility issued by the ANCP. In turn, the National Directorate for Mining conveyed this information to the Ministry of Mining of the Province of San Juan.

During 2014, on successive occasions, the ANCP called the two parties to a meeting in order to update the status report on the specific instance, but attempts were unsuccessful.

During a meeting held on 10 March 2014, the President of CEDHA reiterated that he considered that the time granted for dialogue had expired. This was reiterated in a letter sent by CEDHA to the Argentine and Australian National Contact Points, expressing that three years had elapsed since it submitted its claim and that, in spite of certain bilateral meetings between CEDHA and the ANCP, as well as between the company and CEDHA, no meeting had been held between the three parties under the good offices of the ANCP. The letter also informed that at this stage, CEDHA considers that Xstrata-Glencore is disregarding the specific instance and the proceedings before the ANCP. In addition, in a letter sent by the Legal Manager of Glencore Cooper on 7 July 2014 in response to the invitation issued by the ANCP for the parties to hold a joint meeting, the former reiterated the need to consult with other federal and provincial entities with respect to CEDHA's attempt to draft a Protocol for mining activities in the glacier area and in the periglacial environment as a pre-condition to the adoption of any measures at this stage.

## **Conclusion**

The ANPC has duly considered the arguments of the two parties involved and has acted within the framework of the powers and functions vested upon it by the OECD Guidelines.

In this respect, the ANPC has attempted to bring the parties together in order to foster dialogue between them, with a view to complying with the role assigned to it under the Guidelines -that is, the role to serve as a discussion forum for interested parties.

Nevertheless, the conditions imposed by the company to engage in direct dialogue have frustrated this goal. Moreover, and without prejudice to the contacts entered into by the ANPC with competent authorities, the measures requested by Xstrata/Glencore Cooper fall outside the scope of the powers of the Argentine National Contact Point.

Based on the foregoing and taking into consideration the time that has elapsed, as well as the lack of progress made in connection with the measures adopted in order for both parties to engage in dialogue, the ANCP considers that it can no longer persist in its role of facilitator. Consequently, the ANCP should put an end to the proceedings of this specific instance.

Nevertheless, the ANCP encourages the parties to consider finding a way to generate the conditions required to engage in dialogue and constructively work for the resolution of the issues in which they are involved.

It should be noted that the OECD Guidelines provide for the closing of the procedures of a specific instance when no agreement is reached by the parties or when either party is not willing to take part in the proceedings.