



OXFAM NETHERLANDS



Nederlands instituut voor Zuidelijk Afrika

Dutch NGOs disappointed with outcome of case against traders in Congolese coltan

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Dutch and Congolese NGOs were very disappointed in the decision of the Dutch national contact Point to declare the OECD Guidelines 'not applicable' in the question of Chemical Pharmacie Holland and the Coltan trade from East Congo. According to the NCP, the business relationship between CPH and the Congolese business partners can only be regarded as a trade relationship and not as an investment relationship. Since 2003, the existence of an 'investment nexus' is essential for the acceptance of a case under the guidelines.

The implications of the Dutch decision on the case against CPH are far reaching and may endanger the relevance of the guidelines for international business, especially for supply chain issues.

First, this decision ignores the supply chain paragraph of the guidelines. The guidelines are construed in such a way that NCPs have two ways to accept a case which occurs outside the OECD area. The first way is accepting that a parent company is clearly responsible for the situation at hand, e.g. if there is a clear investment linkage between the parent company and the company outside the OECD area. In these cases, all paragraphs of the Guidelines could be relevant. Second, an NCP can accept a case based on the supply chain paragraph of the Guidelines, par 2.10. According to the commentary of the Guidelines:

... In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the guidelines.

This paragraph clearly indicates that the guidelines establish their relevance for supply chain issues, also in cases where there is no direct influence (= no direct investment link) the guidelines could still be relevant. The outcome of the case in the Netherlands means that this difference in nuance is ignored. CPH admitted that they have not undertaken any activities to encourage their business partner to apply such principles of corporate conduct but still, the NCP stated that the guidelines were not applicable.

Second, the meetings that the NGOs have had with the NCP and Chemical Pharmacie Holland made clear that the relationship between CPH and the Congolese partners encompassed much more than trade. In short, CPH financed the exploitation, enabled the quality control, the logistics and the transport, and CPH also ensured the sales, over a period of approx. 2.5 years. The sheer fact of embarking, over an extended period, upon a regular stream of business transactions - as was the case between CPH and its Congolese partners - involves a conscious investment in the development of commercial relations and the establishment for itself of a stable line of business. CPH was explicitly taking the risk of not being able to access alternative sources of supply. In so doing, CPH was taking a commercial business risk in creating dependency. All in all, the case against CPH should have been accepted because of the existence of an investment nexus.

Dutch politicians and officials repeatedly emphasize the importance of the OECD guidelines for a more balanced process of globalisation. Both inside and outside Parliament, the Dutch minister for trade has highlighted the importance of the guidelines, for instance in the context of a new trade round. The outcome of the case against CPH indicates that this promotion of the guidelines is not backed up by actions.

More information:

Sander van Bennekom (Oxfam-NL)

Sander.van.bennekom@novib.nl

Kirsten Hund (NiZA)

Kirsten.hund@niza.nl