

T R A N S L A T I O N

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Undersecretariat of International Economic Affairs  
Chilean Government

**RBC - RESPONSIBLE BUSINESS CONDUCT**

**National Contact Point to the OECD**

**FINAL STATEMENT**

**FOREIGN MINING COMPANY & NATURAL PERSONS**

**(2021)**

November 17, 2022

CHILE'S NATIONAL CONTACT POINT

RESPONSIBLE BUSINESS CONDUCT DIVISION

UNDERSECRETARIAT OF INTERNATIONAL ECONOMIC AFFAIRS

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Undersecretariat of International Economic Affairs

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**CER RESPONSIBLE CONDUCT**

**National Contact Point to the OECD**

Contents

**I. Introduction**

**II. Parties**

- a) Notifiers Details
- b) Company Details

**III. Request for review**

- a) Summary of Application
- b) Summary of company's response

**VI. NCP Evaluation of the specific Instance**

- a) Preliminary Issues
- b) NCP Evaluation

**V. Conclusion**

- a) NCP Remarks and Recommendations

**I. Introduction**

1. Chile's National Contact Point (hereinafter NCP) to the Organization for Economic Co-operation and Development (hereinafter OECD) for the OECD Guidelines for Multinational Enterprises (hereinafter Guidelines), housed in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs (hereinafter SUBREI), hereby makes its Final Statement.

2. The Final Statement describes the process and results of the analysis of the specific instance to which it refers. It is based on the information received from the parties and the steps taken by the NCP. If there was confidential information presented to the NCP during the proceeding, it has not been disclosed in this statement. According to the rules of procedure of Chile's NCP, it will always draft a Final Statement, which is public, whether or not preceded by an Initial Declaration or good offices.

3. The Final Statement sets the closing of the procedure, before the NCP, without prejudice to the fact that there may be a follow-up stage.

**II. Parties**

a) Notifiers Details

4. Natural persons, relatives of a worker from a subcontractor company (hereinafter the employer) who died at work, on duties related to a ship that transports minerals acquired from a mining company, Chilean subsidiary of a foreign mining company (hereinafter the notifiers).

b) Company details

5. Foreign mining company (hereinafter the Company), a company with activities in different countries and owner of a mining company in Chile.

### **III. Request for review**

a) Summary of the application

6. On January 20, 2021, the NCP received a specific instance request, in which the notifiers identified alleged breaches of the Guidelines by the Company.

7. The request indicates that the Chilean subsidiary of the Company (hereinafter the subsidiary) is the controller of a port, located in the Antofagasta region (hereinafter the Port). Through this port, the subsidiary exports copper cathodes obtained from its mining production.

8. As indicated, on June 23, 2020, adverse weather conditions seriously affected port activities in the Antofagasta region. These conditions caused strong waves that made it very difficult to perform shipping operations in the indicated ports. This allegedly forced several mining ports to temporarily suspend their activities in the area that day, which was not done by the Port of the subsidiary.

9. In this context, the subsidiary shipped part of its production on a ship, so the employer of the injured worker assigned him the task of measuring the draft of the ship. The request also mentions the existence of an occupational report from the Chilean Safety Association (ACHS) prior to the events, recommending not to assign the injured worker to

**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

these types of tasks, for medical reasons. It is added that the injured worker boarded a boat which repeatedly tried to approach the hull of the ship, without results, due to the waves. During the process and because of the cargo loaded on the ship, the flotation level of this larger vessel dropped, which produced strong waves around it. As a result, the boat strongly impacted the hull of the ship, by the side of the anchor, causing the injured worker to be crushed between the anchor and the boat.

10. After occurrence of the events, a group of co-workers allegedly assisted the injured worker and took him to the dock. From the pier, he was allegedly transferred in a vehicle that was not adequately equipped as an ambulance. It is said that, apparently, there was no health personnel at the time of the events to care for the injured worker nor pain relievers, even though the Port has a polyclinic. The injured worker was allegedly placed in a booth for an hour and a half, without the ambulance arriving that would take him to a hospital in Antofagasta, which resulted in his death.

11. The notifiers point out that on September 9, 2020, the Antofagasta Regional Ministerial Health Secretariat (hereinafter SEREMI) concluded in a report that the subsidiary, at the time of the facts, "did not maintain health and environmental conditions in the workplace, necessary to protect the life and health of its workers".

12. In the specific instance request, the notifiers identify alleged breaches by the Company, to the following chapters of the Guidelines:

1. Chapter IV. Human Rights.

2. Chapter V. Employment and Industrial Relations.

13. The result expected by the notifiers through the NCP procedures, as indicated in the presentation of the specific instance, is the following:

That there is a comprehensive reparation for the victims.

14. After submission of the specific instance request, on June 24, 2021, the notifiers' lawyer informed the NCP of their withdrawal from the instance, in consideration of an agreement reached with the companies involved. These companies are the employer of the injured worker and the one that acts as port agent for the ship.

b) Summary of company's response

15. On August 6, 2021, the Company responds to the specific instance request. It points out that the accident would be outside the scope of its responsibility and that it would not have a contractual or legal link that grants a safety obligation in favor of the worker, as he was not its direct worker nor of its contractors or subcontractors.

16. The Company states that the injured worker was a worker for a company that provides transport services for the personnel in charge of carrying out the main draft measurement, but not to carry out such measurement. It adds that this company which employed the worker is a subcontractor of a contractor company that, in turn, would have a contract with the company acting as port agent for the ship (owned by a Panamanian company), in charge of determining the logistics for conducting the draft measurement.

17. Therefore, according to the Company, the worker allegedly

**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

did not provide services for the subsidiary nor for contractors of the subsidiary.

18. The Company also states that, according to the corresponding Incoterms, the operation is governed by the acronym CIF, according to which it is the seller who assumes the costs of maritime transport to the port specified by the buyer of the merchandise.

19. It adds that the foregoing, at any rate, does not mean that the work of taking drafts is under the supervision of the subsidiary or the Company. Hence, the transaction by which the conflict was settled, and which gave rise to the withdrawal presented before the NCP, was not signed with the subsidiary nor with the Company.

20. The Company affirms that, based on the information available resulting from the accident investigation, it is possible to hold that the captain of the boat allegedly asked the injured worker to attach the gauge to the hull of the ship, although he was prohibited from doing so. The accident allegedly occurred because in the process, the injured worker decided to approach the edge of the boat, to try to attach the gauge "manually", being repeatedly warned by his co-workers to stop the maneuver, warnings that were ignored by the worker, which caused him the accident.

21. The Company adds that immediately after the crew members got off the boat, an ambulance was allegedly waiting for the injured worker, whose personnel performed the first resuscitation maneuvers. From there, he was allegedly transferred to the Port polyclinic, where his death was confirmed, 20 minutes after the accident occurred. With regard to SEREMI's resolution, it states that in addition to

committing serious errors in the classification of the facts, it was not final and was subject to a legal claim.

22. The Company points out that, on the day of the accident, personnel from the Antofagasta Maritime Prosecutor's Office got in touch to initiate a Maritime Administrative Summary Investigation. The result of said investigation determined that the subsidiary had no responsibility in the facts.

23. The Company indicates that allegedly the weather conditions were adequate. The port operations were allegedly authorized by the Maritime Authority at the Port and, on November 17, 2020, the Port Captain of the Antofagasta Maritime Governorship indicated that he had no records of anomalies having occurred between June 19 and 23, 2020, during the mooring, unmooring and running maneuvers of the ship.

24. Regarding the occupational evaluation report from ACHS, the Company states that there is no evidence whatsoever to show that the subsidiary was aware of such report. This, as it mentions, would not be strange, considering that the injured worker was not a direct worker of the subsidiary or of any of its contractors or subcontractors.

25. Finally, in its response, the Company states that the notifiers withdrew their specific instance request. This, as a result of a transaction agreed with the employer of the worker and the company that acts as port agent of the ship, where they committed themselves to withdraw a number of claims and actions against different people and entities, including the subsidiary.

#### **IV. NCP Evaluation on the specific instance**



**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

a) Preliminary issues

26. The preliminary question is whether the Chilean NCP is competent to hear the specific matter.

27. To determine that, it is necessary to verify two requirements: (1) that the requested company is a multinational enterprise, and (2) that the alleged breaches have occurred in national territory or that, occurring in a foreign country without a NCP, the multinational is a Chilean company.

28. Regarding the first requirement, the Company is a multinational enterprise because it has entities and operations in several countries, and they are related in such a way that they can coordinate their activities. Therefore, the first requirement is met.

29. Regarding the second requirement, the alleged violations of the Guidelines occurred in national territory. In this way, the second requirement is met and, accordingly, the Chilean NCP is competent to hear the specific matter.

b) NCP Evaluation

30. On June 24, 2021, the notifiers informed the NCP of their withdrawal from the instance.

31. Consequently, there are no sufficient grounds to give further consideration to the question raised.

**V. Conclusion**

32. By virtue of the foregoing, the NCP issues this Final Statement, putting an end to the specific instance and making pertinent recommendations, in view of the circumstances and information available.

**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

a) NCP Remarks and Recommendations

33. The NCP concludes this Final Statement, with the following recommendations for the Company:

34. Always to favor in its management the implementation of risk-based due diligence processes, according to the Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct.

35. To encourage, to the extent possible, that its business partners and its value and supply chain apply principles of responsible business conduct and implement due diligence processes, according to the Guidelines, including its chapter on Employment and Industrial Relations, taking particular account of what is stated in paragraph 4c) of that chapter: "Enterprises should adopt the adequate steps to ensure health and safety in their operations."<sup>1</sup>

36. To strive to prevent or mitigate negative impacts, even in cases where the company has not contributed to them, if they are directly related to its activities, products or services by virtue of a business relationship.

If the NCP offers its good offices or, in its Final Statement, it makes recommendations to the company, this should in no way be interpreted as an affirmation that the requested multinational had breached the OECD Guidelines.

The Guidelines indicate that during the development of the proceeding, its confidentiality will be maintained. The information and opinions provided during the proceedings will

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<sup>1</sup> For greater certainty, this recommendation does not seek to determine the existence or non-existence of a relationship between the Company and the employer of the injured worker.

**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

be kept confidential, unless the party in question consented to the disclosure of such information or opinions or when the non-disclosure would be contrary to the provisions established in the national legislation.

In accordance with the principle of transparency that governs the functions of the NCP, Final Statements are published on its website and are translated into English and sent to the OECD Working Group on Responsible Business Conduct.

Before issuing the Final Statement, the parties are given the opportunity to comment on the draft of the Final Statement, keeping in mind that the drafting of the statement is always the responsibility of the NCP, who will define the final version of the document.

**Felipe Henríquez Palma**

**Chilean National Contact Point before the OECD**

**Head, Responsible Business Conduct Division- SUBREI**

FHP/VMG/BPB

Chilean NCP

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TRANSLATED BY: RENÉ VALENZUELA GARCÍA - Resolution No. 65 of November 22, 1983.

DONE at SANTIAGO, CHILE, on this 1<sup>st</sup> day of December, 2022.

CRISTIAN ARANCIBIA RAMÍREZ

INFRASTRUCTURE AND LOGISTICS DIRECTOR

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Revised by the Chilean NCP, on the 30<sup>th</sup> day of March 2023. In

**REPÚBLICA DE CHILE**  
MINISTERIO DE RELACIONES EXTERIORES

case of discrepancy, the Spanish version shall prevail.

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