

FINAL STATEMENT

Chile's National Contact Point OECD Guidelines for Multinational Enterprises

Non-official English translation

In Santiago, on 1 June 2015, Chile's National Contact Point for the OECD Guidelines for Multinational Enterprises (hereinafter referred to indistinctly as the NCP), having taken into consideration the specific instance request and supporting information submitted by both the Starbucks Coffee Chile S.A. Workers' Union and the Central Unitaria de Trabajadores (CUT – Unified Workers' Confederation) (hereinafter referred to indistinctly as the Starbucks Union and the CUT), which gave rise to a specific instance concerning alleged breaches of the OECD Guidelines for Multinational Enterprises (hereinafter referred to indistinctly as the Guidelines) by the multinational company Starbucks Coffee Chile S.A., and having also reviewed the information provided by the latter, as well as the meetings held throughout the specific instance process conducted by this NCP, hereby states the following;

I. OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or headquartered in adhering countries. They contain non-binding principles and standards for responsible business conduct in a global context, consistent with applicable laws and internationally recognised standards.

Their objective is to promote the positive contribution of enterprises to economic, environmental, and social progress worldwide, reflecting the shared values of the governments of countries that are the source of a significant portion of global foreign direct investment and are home to many of the world's largest multinational enterprises.

In this context, and with the aim of promoting and implementing the Guidelines, the governments of adhering countries have committed to establishing National Contact Points.

Among their responsibilities, National Contact Points are tasked with assisting enterprises and stakeholders in taking appropriate measures to promote the implementation of the Guidelines, serving as a platform for mediation and conciliation to resolve practical issues that may arise.

II. Procedure of the NCP

Submission of the specific instance request

Any person (natural or legal) currently affected by a multinational enterprise's non-compliance with the Guidelines may submit a formal complaint to the NCP.

Analysis of the submission

Every submission, along with its supporting documents, will be reviewed by the NCP and its Executive Secretariat. Based on this assessment, the NCP may conclude:

1. That it must request additional information from the submitter.
2. That it must request clarification on one or more points of the submission.
3. That it must request the submitter's authorisation to share the submission with the multinational enterprise.
4. That it is appropriate to inform one of its counterparts of the submission.

Information exchange

Once authorised, the NCP will share the information contained in the submitter's submission (complemented and clarified, where applicable), forwarding all relevant materials to the multinational enterprise. The enterprise will be given a non-extendable deadline to respond, which must also include a statement on whether it accepts or declines the NCP's good offices. This deadline will be determined on a case-by-case basis, taking into account the merits of the available information provided by the submitter(s).

Once the response from the multinational enterprise has been received, both the response and the supporting information will be reviewed by the NCP and its Executive Secretariat. Based on this assessment, the NCP may conclude:

1. That additional information regarding its response must be requested.
2. That clarification on one or more points of its response must be requested.

Assessment of the specific instance

Once the non-extendable deadline set by the NCP has passed, the following situations may arise:

1. The deadline has passed and no response has been received from the multinational enterprise.
2. A response has been received within the given deadline in which the good offices of the NCP are rejected.
3. A response has been received in which the good offices of the NCP are accepted.

In the event that either of the situations outlined in points 1 or 2 occurs, the process must proceed to the next stage, referred to as the Conclusion of the Process.

Once the response has been received (complemented and clarified, where applicable), the NCP, together with its Executive Secretariat, will assess whether it is appropriate to initiate a specific instance, through which mediation or conciliation may be carried out.

Conclusion of the process

Every submission to the NCP will conclude with the preparation of a Final Statement, which will indicate, as applicable:

1. The agreements and commitments adopted by the Parties.
2. The timelines and actions for the follow-up of those commitments.
3. The reasons why the Parties were unable to reach an agreement, along with the comments and proposed actions of the NCP.
4. The rejection of the NCP's good offices by the company concerned (whether by failing to respond within the deadline or by explicitly declining the offer of good offices).
5. The reasoning on the basis of which the NCP considered that the issues raised did not merit further consideration.

III. Submission of the specific instance request

On 28 May 2014, the Starbucks Coffee Chile S.A. Workers' Union and the CUT submitted a specific instance request to this NCP, seeking its good offices in a specific instance based on the alleged breach of the Guidelines through actions related to the infringement of rights to association, unionisation, collective bargaining, freedom of expression, publication of information, discrimination, and self-regulation by the multinational company Starbucks Coffee Chile S.A. These allegations have been summarised in the following actions:

1. Ongoing anti-union campaign, structured around Starbucks' corporate policy and philosophy;
2. Interference with workers' right to form and join a union;
3. Arbitrary violation and modification of the employment contract regarding employee share ownership, without consultation with the workers or the union;
4. Provision of false and misleading information to workers in order to discourage unionisation;
5. Infiltration and funding of workers within the union organisation with the aim of censoring the leadership and controlling the union;
6. Retaliation against unionised workers (unjustified disciplinary measures, discrimination in hiring and non-renewal of contracts due to union membership, refusal to assign agreed duties to supervisors with union leadership roles, dismissal of union members, negative discrimination in training and promotion, workplace transfers as a form of harassment and degradation, threats of loss of benefits, and discriminatory allocation of incentives);
7. Refusal to recognise the union and its role within the company;
8. Rejection of collective bargaining as a valid and effective mechanism for improving wage conditions;
9. Provision of false information to the union and refusal to provide necessary data to support meaningful negotiations on employment conditions;
10. Practices that undermine the financial and social development of the union as an institution; and
11. Failure to exercise due diligence in matters of Human Rights.

IV. Principles of the Guidelines allegedly breached

1. Principle N° IV. Human Rights.

2. Principle N° V. Employment and Industrial Relations.

V. Grounds for the submitters' specific instance request

The submitters state that their claim is specifically motivated by the fact that the multinational company *"Starbucks violates Human Rights, particularly those related to the rights of association, representation, and collective bargaining, along with the international covenants established to protect them. As a result, national labour legislation has been systematically breached since 2009, the year in which the union was formally established on 9 April. Since then, a series of behaviours, policies, and strategies have emerged aimed at preventing the normal development of the workers' organisation, with the sole objective of rendering it a "superfluous" and "unnecessary" institution"*¹ They add that the company began a much more aggressive campaign of harassment through District Managers, questioning employees at each branch. Strategically coordinated, the HR and Operations departments deployed all their resources in pursuit of various anti-union objectives: 'to discourage union affiliation,' 'to get some partners to withdraw their membership,' and 'to directly interfere in the affiliation process'"², among other practices described by the submitters.

In relation to the above, the submitters presented a series of pieces of evidence to support their submission and statements, among which the following stand out:

1. Statements by Howard Schultz (President of the multinational company Starbucks Corporation); *Pour Your Heart Into It: How Starbucks Built a Company One Cup at a Time*; regarding the usefulness of trade unions within the company³.
2. Statement by Starbucks International – Trade union matters⁴.
3. Inspection Report 13.60.2009.97, issued by the Labour Inspectorate.
4. ORD. 1100 - *Dresscode* Ruling.

¹ Submission by the submitters, number 4.

² Ibid.

³ Chapter. 7: "Benevolent managerial leadership should render trade unions superfluous" [...] "I was convinced that under my leadership, employees would realise that I would listen to their concerns. If they had faith in me and my motivations, they wouldn't need a union."

⁴ "While Starbucks respects the free choice of our partners, we firmly believe that our working environment, along with our outstanding benefits and compensation, makes trade unions unnecessary at Starbucks."

5. <http://www.adnradio.cl/noticias/economia/starbucks-lidero-por-tercera-vez-la-lista-negra-de-empresas-con-practicas-antisindicales/20140128/nota/2064956.aspx>
6. Court cases before the Courts of Justice, Case Numbers: RIT S-12-2012; S-94-2012; T- 175-2014; S-11-2012; S-5-2014.

All the information submitted led this NCP to conduct a detailed review thereof, establish contact with its counterpart in the United States (via email dated 29 August 2014), and request information from the multinational company Starbucks Coffee Chile S.A. regarding the alleged breaches of the Guidelines as outlined by the submitters.

I. Desired outcome sought by the requesting parties of the specific instance

Based on all the information presented by the submitters, this NCP concluded that the matters under discussion concerned five general themes encompassing all the concerns set out in the Initial Questionnaire⁵, which relate to:

1. Adoption of measures and criteria aimed at union rebuilding.
2. Elimination of anti-union practices through concrete policies.
3. Creation/regulation of safeguards for collective bargaining processes.
4. Discussion on the loss of union assets.
5. Creation/regulation of behavioural safeguards to ensure respect for trade union immunity.

VI. Submission by Starbucks Coffee Chile S.A.

On 2 October 2014, the multinational company Starbucks Coffee Chile S.A. made a submission to this NCP in response to the arguments presented by the submitters, stating the following “[...] *its firm denial of the accusations brought forward by the Starbucks Coffee Chile S.A. Workers’ Union and the CUT before this National Contact Point*”⁶.

⁵ When submitting a specific instance request, the party making the submission must provide the Chilean NCP with the information contained in the Initial Questionnaire, which can be downloaded from the website: <http://www.direcon.gob.cl/ocde/punto-nacional-de-contacto-pnc/>

⁶ Submission by the multinational company Starbucks Coffee Chile S.A. (pg. 1).

The company has also stated that it does not consider itself a multinational enterprise, as it is a Chilean company that does not belong to the group of companies of the multinational Starbucks Corporation, thereby failing to meet the initial criterion required by the Guidelines.

VII. Grounds for the submission by the multinational enterprise

The multinational company Starbucks Coffee Chile S.A. firstly argues that the NCP lacks competence to consider the submitted specific instance request, on the grounds that Starbucks Coffee S.A. is not a multinational enterprise and has no connection whatsoever with the multinational company Starbucks Corporation. This argument was reviewed in the Initial Statement of the present specific instance, and the response is provided in the following section. Secondly, the company argues that the submission made by the submitters should be outright rejected in its entirety by this NCP, and further requests that it be stated that the Initial Statement of a specific instance does not fall within the scope of the Guidelines, for the reasons set out below:

1. Starbucks Coffee Chile S.A. is a company with good practices and responsible business conduct, complying with both national and international standards.
2. The ongoing confrontational strategy historically employed by the submitter (referring to the Starbucks Union) towards the company is not shared by the rest of the employees, which may explain the low union membership and disengagement.
3. The company's actions are said to be guided by good faith, whereas the actions of the Starbucks Union are portrayed as anti-company in nature, contrary to both the collective and individual interests of the workers.
4. The low union membership and high staff turnover are attributed to a natural situation arising from the fact that most employees are students.
5. The vast majority of the facts presented to this NCP have already been reported, heard, and resolved by the Chilean Courts of Justice.

In addition, in its submission, the company presents a descriptive breakdown of those internal policies through which its respect for and compliance with the Guidelines is made evident.

Finally, the company emphasises that both the specific instance request submitted to this NCP and the public accusations made by the Union through the press serve no other purpose than to harm the company. They state that the intent to damage the company was once again made explicit in the statements of the Union President, who, when asked in June 2011 about how the strike affects the company, responded: "Primarily in terms of image, more than anything else. The only changes that have occurred over time, not only in the US but also in Australia and New Zealand, within the company, have been because workers have chosen to destroy the idea of CSR (Corporate Social Responsibility). It is our most powerful weapon. Although memory is fragile, believe me, for companies like this one, what matters most is their image." They further add: "In fact, this very complaint to the OECD National Contact Point was published on social media and in a report on the Radio Del Mar website — these were the first indications we, as a company, had of the existence of this complaint."⁸

VIII. Competence of the NCP regarding the specific instance request submitted

Multinational Enterprise

According to the preface of the Guidelines, their purpose is to ensure "[...] *that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises*"⁹.

Although the Guidelines do not provide a definition of a multinational enterprise, they offer elements or characteristics that help to identify what should be understood as a multinational enterprise, stating that: "*They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities)*"¹⁰.

⁷ Response from the multinational company Starbucks Coffee Chile S.A. Pg. 21.

⁸ Ibid. Pg. 20.

⁹ OECD Guidelines for Multinational Enterprises. Preface.

¹⁰ OECD Guidelines for Multinational Enterprises. Concepts and Principles. Number 4.

In light of the above, to argue that Starbucks Coffee Chile S.A. does not qualify as a multinational enterprise on the grounds that it is a Chilean company not belonging to the group of companies of the multinational Starbucks Corporation — thereby implying that it is entirely disconnected from the parent or controlling company — does not appear to be a sustainable position. This is particularly so given that, in its own submission dated 2 October 2014¹¹, Starbucks Coffee S.A. cites, as supporting evidence of its daily work and commitment to people and sustainability, the words and speech of Mr Howard Schultz (Chief Executive Officer of Starbucks Corporation)¹² as well as the document entitled “Starbucks Company Recognition”, which lists the awards received by the multinational company Starbucks, which are: “No. 1 Best Coffee” (2009- 2011); “No. 1 Most Popular Quick Refreshment Chain” (2009-2011); “The 100 Best Companies to Work For” (1998-2000-2002-2012); “Most Admired Companies in America” (2003-2012); “World's 50 Most Innovative Companies” (2012); “World's Most Ethical Companies” (2007-2012); “100 Best Corporate Citizens” (2000-2012); “Sustainability Design Award” (2011); “Most Ethical Company, European Coffee Industry” (2009-2011); and “Business Person of the Year” Howard Schultz.

In addition to the above, Starbucks is a multinational enterprise of the type defined as “horizontally integrated”, meaning that it has production bases in different countries, yet produces the same or very similar products. Moreover, it is evident that both the U.S. and Chilean companies are connected, as they share the same strategic origins, management approach, and policies — particularly those related to Corporate Social Responsibility — all of which can be found on the website of the 'Chilean company', where it states, for example: “[...] *since we opened our first store in 1971, we have been dedicated to earning the trust and respect of our customers, partners (employees), and neighbours. How? By being responsible and doing things that are good for the planet and for others*”¹³, with the date referring to the opening of the first Starbucks store in the United States.

Binding nature of the Guidelines

The provisions contained in the Guidelines are not legally binding rules, but rather *“recommendations addressed by governments to multinational enterprises”*¹⁴ and while *“the Guidelines extend beyond the law in many cases”*¹⁵, they clearly state that *“in countries*

¹¹ Pages 18 et seq.

¹² Starbucks chairman, president and chief executive officer.

¹³ <http://www.starbucks.cl/responsibility>

¹⁴ OECD Guidelines for Multinational Enterprises. Foreword.

¹⁵ OECD Guidelines for Multinational Enterprises. Concepts and Principles. Number 2.

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”¹⁶.

From the above, it follows that compliance with or breach of the applicable national legislation does not necessarily imply adherence to or violation of the Guidelines. There may be situations in which companies comply with the law while simultaneously contravening the principles set out in the said Guidelines. This is because the Guidelines constitute international standards of good conduct for multinational enterprises and relate to principles of a general nature.

Parallel proceedings

On the other hand, the existence of ongoing legal proceedings or parallel processes in relation to specific instances (a non-judicial and non-adversarial mechanism) cannot be considered by the NCP as a justification for refraining from addressing specific instance requests that fall within its scope of competence. In this regard, the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises states that “*NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation*”¹⁷.

In this regard, these Procedures establish that when there are “*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, are under way or are available to the parties concerned*”¹⁸.

It should be clarified, then, that it is not the role of the NCP to decide on or interfere in the matters brought before such proceedings, but rather to contribute, through its Good Offices, to the resolution of the issues raised from the perspective of the Guidelines.

IX. Convening of a specific instance

¹⁶ OECD Guidelines for Multinational Enterprises. Concepts and Principles. Number 2.

¹⁷ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises. Number 26.

¹⁸ Ibid.

As a result of the above, this NCP determined that the issues raised by the submitters warranted further analysis. It was therefore deemed appropriate to offer its Good Offices and, consequently, the parties were invited to engage in a dialogue and mediation process, with the aim of exploring the best way to reach an agreement on the unresolved conflicts between the multinational company Starbucks Coffee S.A. and the submitters, in light of the provisions set out in the Guidelines.

X. Course of the procedure

1. On 15 January 2015, this NCP sent the interested parties an invitation and agenda for the first joint meeting of this specific instance, which, as previously mentioned, took place on 22 January 2015.

At the said meeting, the following matters were reviewed:

1. Formal transfer of the specific instance to the new National Contact Point¹⁹.

At this stage, this NCP informed the interested parties of its knowledge of the background of the case, the positions expressed by each of them to date, as well as its understanding of what both parties expect and intend from the mediation process to be carried out in the upcoming working meetings.

2. Delivery of the NCP's Initial Statement of the specific instance²⁰.

On this occasion, the parties were informed that the content of the Initial Statement would no longer be open to discussion or comments, as that stage had already been concluded. Consequently, the focus would now shift to defining the work to be carried out in the sessions scheduled for the coming months.

3. Explanation of the specific instance procedure before this NCP.

¹⁹ The undersigned has held the role of NCP since January 2015.

²⁰ Having reviewed the parties' comments on the draft Initial Statement, this NCP delivered the final version thereof.

On that occasion, the concept of mediation was reviewed as a process aimed at providing a space for direct and participatory dialogue between two or more parties, in which they examine and discuss possible scenarios for resolving a conflict that may exist between them.

It was noted that the NCP would act as an impartial third party, without decision-making power, assisting the parties in seeking a resolution to the conflict and its effects on their own.

Finally, it was noted that this is a non-adversarial and non-judicial mechanism, and the parties were therefore asked to focus their efforts on reviewing the points proposed by the NCP for discussion, with the aim of identifying those measures each party would be willing to propose and/or accept.

4. Review of the facts to be addressed in the mediation.

In light of the above, this NCP proposed five general topics which, in its view, encompass the matters on which the mediation should focus²¹.

The parties were also informed that they would have full freedom to determine which of these topics they are or are not willing to discuss. A reasonable period of time was granted for them to review these matters, so that they could present their views accordingly at the next individual meeting that this NCP would hold with each party, prior to the first joint working meeting (which would be the second joint meeting chronologically).

5. Mediation timeline and meeting schedule.

In light of the amount of information provided by the parties and the extent of the topics to be discussed, this NCP deemed it appropriate to set a 6-month mediation period with a monthly joint meeting (the date and time of which are indicated in the document provided to each party at that meeting).

6. Confidentiality and Good Faith.

²¹ Generic Topics proposed by the NCP:

1. Adoption of measures and criteria aimed at union rebuilding.
2. Elimination of anti-union practices through corrective policies.
3. Creation/regulation of safeguards for collective bargaining.
4. Discussion on the loss of union assets.
5. Creation/regulation of behavioural safeguards that ensure respect for trade union immunity.

Confidentiality

According to the Guidelines and the Implementation Procedures of the OECD Guidelines, the confidentiality obligation has been established in relation to what is currently being mediated, as well as the potential agreements discussed in the working sessions proposed by this NCP. Therefore, the existence of a specific instance currently in progress or the fact that the Good Offices of the NCP have been requested are excluded from this obligation, a situation that has been communicated to both parties in both individual²² and joint meetings.

With regard to what is set out in the preceding paragraph, the Guidelines indicate that *"In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained [...] However, **information and views provided during the proceedings by another party involved will remain confidential**"²³, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law"*²⁴.

Good Faith

As with confidentiality, Good Faith in the processes conducted by this NCP is specifically regulated by the principle with which the parties must act in specific instances. That is, the effectiveness of the procedure depends solely on

²² This matter was addressed in the first individual meeting held with each party (17 November 2014, with the Starbucks Union and the CUT, and 18 November 2014, with the multinational company Starbucks Coffee S.A.). In these meetings, the Chilean NCP procedure was explained, the upcoming stages and associated deadlines were outlined, the possible outcomes of the request were presented, and an informational brochure about the procedure and matters of interest regarding the Chilean NCP was provided.

²³ The bolded text is our own.

²⁴ II. Implementation Procedures of the OECD Guidelines for Multinational Enterprises. C. Implementation in Specific Instances. Paragraph 4.

the conduct and willingness of each of the parties involved in the proceedings²⁵.

In this regard, we must understand that Good Faith means “[...] *responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines*”²⁶.

2. On 19 February 2015, this NCP held the first separate working meeting with the Starbucks Union and the CUT to review possible points of agreement between them and the multinational company Starbucks Coffee S.A. regarding the issues proposed for mediation by the NCP. In that meeting, the Starbucks Union expressed the daily problems they faced with the company, as well as their personal views on those issues.

This NCP again outlines the scope of the working sessions (the matters to be discussed in them) and the methods of joint and separate work. Furthermore, they once again discuss the concept and scope of the confidentiality of the matters addressed in the working sessions.

At the end of the meeting, the Starbucks Union was asked to send a list of ideas regarding what they would be willing to accept as a potential agreement/solution to the issues raised, in order to contrast them with what would be requested from the multinational company Starbucks Coffee S.A., with the aim of creating productive discussion opportunities between both parties.

3. On 23 February 2015, a similar meeting was held with the representatives of the multinational company Starbucks Coffee S.A., where the same matters discussed with the Starbucks Union and the CUT were addressed. The same task was assigned, with a reasonable deadline provided to prepare and submit the required information to this NCP in order to adequately prepare the working materials for the upcoming meetings.

²⁵ Ibid. Paragraph 29. “As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure”.

²⁶ Ibid. Paragraph 21.

4. On 10 April 2015, the second joint working meeting was held ²⁷.

1. This meeting focused on reviewing the information provided by both parties, with particular emphasis on the communications as a first step towards building trust between the parties and creating a more conducive environment for mediation.

In the view of the undersigned, communication is an essential element in order to achieve work that is consistent with the guidelines set in the first joint meeting, and thereby, to bring about a positive change in the relations between both parties. To achieve this, it was deemed necessary to establish formal communication channels that would allow for the establishment and rebuilding of trust, leading to progress and a smooth discussion both within and outside the working sessions proposed by this NCP.

2. In light of the statements made by the Starbucks Union, the situation arising from the lack of response (in a timely and proper manner) by the multinational company Starbucks Coffee S.A. to the requests made by them was discussed. From this discussion, it emerged that the delays in responding were due to internal issues arising from the length and content of the emails sent by the Starbucks Union.
3. In this context, the internal communication formalities of the multinational company Starbucks Coffee S.A. were reviewed, and it was agreed that the Starbucks Union would submit information in an objective and concise manner, so that their requests could be addressed promptly. Furthermore, the parties agreed on a weekly day for the submission of requests by the Union and a response deadline from the multinational company Starbucks Coffee S.A.

In this regard, an initial approach was outlined regarding the issues related to in-person communications, where it was left as a pending task for the multinational company Starbucks Coffee S.A. to respond to the proposal made by the Starbucks Union regarding the attendance of its Operations Manager at in-person meetings with the Union. It is worth mentioning that the deadline for

²⁷ En atención a lo dispuesto en el calendario de reuniones fijado en la primera reunión conjunta

delivering this response was set before the scheduled date for the second joint meeting (as of this date, this NCP has not received a response on this matter).

In light of the above, and taking into account the time that has passed in order to maintain the parties' focus, it was agreed that in-person communications would be discussed in depth in the next mediation session.

5. On 13 April 2015, this NCP sent an email to the parties with the agreements made and the commitments undertaken in order to follow up on their implementation.

The exact wording of the aforementioned communication is as follows:

Topic raised: *Communication Channels*

Channel reviewed: *Email*

Characteristics of the emails:

The union will work to summarise the issues in the body of the email (in the form of bullet points or a table at the beginning that allows for an inference of the issues to be addressed).

The presentation of the issues will be made with a neutral tone so that they can be forwarded without delay to the relevant individuals within the company.

The explanation or description of each issue will be provided in a document attached to the main email.

The union's emails will be sent by a single person on a weekly basis (on Wednesdays), except in exceptional urgent situations where immediate submission is required.

The company will inform the union of the receipt of the emails and the actions and/or steps it is taking to respond to each of the requests made, providing a

"follow-up" in those cases where responses require further internal processing within the company, in order to maintain continuity in the communication between both parties.

The company will have up to five working days to respond to the emails sent by the union.

Focal points for email submission:

Company: Claudia Figueroa – Francesca Faraggi.

Union: Andrés Giordano – Antonio Páez.

Topic raised: Information (commitments to be reviewed)

The company must send a response to this NCP regarding the possibility that, in the in-person meetings held between the union and the company, not only Human Resources representatives attend but also the Operations Manager, in order to address any issues that may arise (including those that could be raised in advance by email) regarding matters that fall exclusively within their competence and which would constitute the bulk of the union's requests.

Regarding the dismissal of unionized workers, the company must inform this NCP about the possibility of having the union president present in such instances (for this, it will be sufficient to provide the day, time, and place, without needing to specify the name of the worker).

Regarding the Improvement Plan, the company must inform this NCP about the possibility of involving or incorporating the union, so that they can support the improvement of the affected worker.

Internal (by the company) and external (by the union) communications of information. Each party commits to sending this NCP the points and potential solutions regarding the topic raised in this meeting, so that they can be included in the corresponding session and thereby foster a better work environment and mutual relations.

At the end of this second joint meeting, in order to maintain an environment conducive to mediation and in accordance with the fundamental criteria for functional equivalence²⁸, this NCP mentioned the invitation received from TUAC²⁹ to participate in the 'Regional Seminar: OECD Guidelines for Multinational Enterprises' held in Mexico, where the Chilean NCP procedure would be presented. Similarly, it was noted that a similar invitation had been sent to the representative of the CUT, as the TUAC focal point in Chile, to share their experience in specific instances with the Chilean NCP, in which they have been directly or indirectly involved, including the present specific instance.

In light of the above, this NCP reiterated the scope and extent of the confidentiality of the matters discussed in the working sessions and stated that it would attend the presentation by the representative of the CUT in order to act as a guarantor of the adherence to this principle.

In addition to the above, in the interest of maintaining greater transparency, it was agreed between the parties to hold a joint meeting between the representative of the CUT, the head of the legal team of the multinational company Starbucks Coffee S.A., and the undersigned, in order to review the issue and clarify any doubts regarding the aforementioned presentation. This meeting took place on 14 April 2015.

6. On 23 April 2015 (while the aforementioned presentations were taking place at the "Regional Seminar: OECD Guidelines for Multinational Enterprises"), the multinational company Starbucks Coffee S.A. sent an email to this NCP containing a letter dated 22 April of the current year, in which Starbucks Coffee S.A. expressed its concerns regarding the mediation process it is currently part of, referring to the principles of Confidentiality and Good Faith, its interpretation of the scope of these principles, and the situations which, in its view, would inherently constitute a breach of them.

²⁸ NCPs must operate in accordance with the principles and standards established in the Guidelines.

²⁹ <http://www.tuac.org/en/public/index.phtml>
<http://oecdwatch.org/lineas-directrices/tuac>, which states:

"The OECD Trade Union Advisory Committee (TUAC) is an interface for trade union organisations with the OECD. It is an international trade union organisation that holds consultative status with the OECD and its various committees.

TUAC was founded in 1948 as the trade union advisory committee for the European Recovery Programme – the Marshall Plan. Through regular consultations with the various OECD committees, the OECD Secretariat, and member countries, TUAC coordinates and represents the views of the trade union movement in industrialised countries, ensuring that global markets are balanced by an effective social dimension. TUAC is also responsible for coordinating the trade union input to the economic summits and employment conferences of the G8".

In this regard, the multinational company Starbucks Coffee S.A. stated, "*We believe it is unacceptable for such circumstances to continue happening in the future, as they undermine the effectiveness and seriousness of the mediation process conducted before the NCP*"³⁰. The communication concluded by stating, "*We hope that in the future, this and any other situations involving breaches of agreements made in meetings or principles ensuring the procedure will not be repeated, and that trust can be restored, confirming that this is an appropriate platform for seeking solutions to the issues raised by the Union.*"³¹

In this way, the multinational company Starbucks Coffee S.A. has stated that the participation of the CUT representative in the aforementioned event would have breached the principles of Good Faith and Confidentiality that govern the process carried out by this NCP, as the mere mention or public reference to the existence of a specific instance before the Chilean NCP, its presentation, or the indication that a mediation process is currently ongoing would breach the agreement adopted. This situation undoubtedly, and in light of what has been outlined in the preceding paragraphs, is completely unfounded.

Public statements that each party may make prior to, during, or following a specific instance request do not prevent the NCP from offering its Good Offices or carrying out a mediation or conciliation (as the case may be), as each party is free to make any declarations, statements, or submissions it deems appropriate, provided these do not contradict or breach the principles we have referenced. In this regard, this NCP has consistently reiterated that Confidentiality must safeguard what is presented and discussed in the working sessions to which both parties have voluntarily and actively chosen to participate, and it is not related to the existence of a specific instance or the reasons that gave rise to the request for its Good Offices.

7. On 28 April 2015, this NCP held a meeting with the Starbucks Union and the CUT (at the request of that party) to review their request regarding the need to bring forward the review of Safeguards for Collective Bargaining – corresponding to item 3 of the generic topics proposed by the NCP in its Initial Statement – at the next joint meeting (scheduled for Friday, 8 May), given the particular circumstances that, as the Starbucks Union,

³⁰ Letter dated 22 April 2015 from the multinational company Starbucks Coffee S.A. to this NCP. Pg. 3.

³¹ Ibid. Pg. 4.

they were currently experiencing in the process of collective bargaining with the multinational company Starbucks Coffee S.A.

In this context, and given the proximity of the new joint meeting, this NCP requested that the Starbucks Union send, as soon as possible, a document outlining the points of interest they deemed relevant to address in that meeting, which were related to the topic proposed for discussion. This was in order to request the same information from the multinational company Starbucks Coffee S.A. in a meeting that would be scheduled, so that points of agreement could be prepared between each party and provide both with the necessary tools for a productive discussion at the upcoming joint working meeting.

On 5 May 2015, this NCP held a meeting with the multinational company Starbucks Coffee S.A. (at the request of that party). During this meeting, the multinational company Starbucks Coffee S.A. requested that this NCP share its impressions regarding the presentation made by the mentioned representative of the CUT, which was done, outlining what it consisted of and what was said regarding the specific instance currently in progress. The NCP concluded that, in its view, there had been no breach of the principles of Confidentiality and Good Faith.

For its part, the multinational company Starbucks Coffee S.A. strongly expressed its view regarding the presentation made by the representative of the CUT, stating that they had information that conflicted with the statements made by this NCP. In this regard, they mentioned that the presentation included discrediting remarks that were inconsistent with what was perceived and stated by this NCP, concluding that the only viable course of action, in the view of the undersigned, should be the invalidation of the working session.

After reviewing and studying the information presented verbally by the multinational company Starbucks Coffee S.A., this NCP responded to the letter (dated 22 April 2015, signed by Ms. Francesca Faraggi, Corporate Human Resources Manager) with a letter dated 6 May of the same year, reiterating the content and scope of the principles of Confidentiality and Good Faith, and stating that, in its view, the mere reference to the existence of a specific instance would not breach these principles as long as the matters discussed and opinions expressed in the working sessions were not disclosed.

8. On 6 May 2015, the multinational company Starbucks Coffee S.A. responded to the letter from this NCP with an email that contained a new letter (signed by Giampaolo Zecchetto,

Head of the Legal Team of the multinational company Starbucks Coffee S.A.), in which they reiterated their statements and impressions and once again requested that this NCP annul the working session. Additionally, the email included a set of 10 photographs taken from the presentation of the representative of the CUT at the event previously mentioned, and a memo (without author) outlining what was allegedly expressed in that presentation, stating: "[...] Notwithstanding this assessment, according to the information we have and have attached to this submission (10 photographs of PowerPoint slides presented and notes from the presentation), Mr. Urrutia – in addition to making a series of disqualifications towards the company – referred to the facts contained in the complaint, which are precisely the subject of this specific instance"³². The letter concluded by stating, '[...] we believe that, based on the information available to you, you should make a decision regarding the continuation of this mediation process. In the meantime, we request that the tripartite meeting scheduled for the day after tomorrow, Friday 8 May, be postponed so that this NCP can analyse the provided information and make a well-founded decision regarding the continuation of the session [...]'"³³.

9. Regarding the presentation at the event organised by TUAC, it is important to highlight and contextualise this meeting with the following information:
 1. It is a seminar that brought together trade union leaders at the international level, meaning that the topics discussed there necessarily relate to the behaviour of multinational companies in matters of Corporate Social Responsibility, particularly from the perspective of workers, which is the subject matter relevant to the members of TUAC.
 2. The seminar consisted of a meeting held privately, as it required an invitation to participate, along with the necessary accreditation for access.
 3. The purpose of the meeting was the presentation of a manual addressed to trade union leaders, prepared by TUAC, which outlines the way in which specific instance requests should be submitted to the NCPs.

³² Letter dated 6 May 2015 from the multinational company Starbucks Coffee S.A. to this NCP. Pg. 1.

³³ Ibid. Pg. 3.

4. As a result of the above, only trade union leaders, from different countries with an interest in the particular matter, attended the aforementioned presentation.
5. The meeting was attended by approximately 25 people (including this NCP).
6. The NCP attended the aforementioned presentation and did not observe any behaviour that would breach the principles of Confidentiality or Good Faith in any way.
7. In the set of 10 photographs (provided by the multinational company Starbucks Coffee S.A.), there is no evidence that the aforementioned principles were breached, as they relate to the circumstances that led to the presentation before this NCP.
8. The report presented does not have an author or responsible party. Furthermore, the contents of the report do not align with what was observed by this NCP.
10. Given that this NCP, as an impartial third party, would act as a guarantor of compliance with the principles of Confidentiality and Good Faith in the presentation made by the representative of the CUT at the TUAC meeting, it is notable that neither the submitters nor this NCP were notified or informed of the participation of personnel from the multinational company Starbucks Coffee S.A. Furthermore, the fact that there was no communication regarding the existence of a focal point or representative from said company is noteworthy, as it was publicly known, due to the very nature of the meeting – outlined in the previous item – that Starbucks Coffee S.A. had not been invited to participate.
11. Given the above, and in light of repeated doubts and questions about the truthfulness of the statements and assessments made, this NCP has concluded that there is no trust on the part of the multinational company Starbucks Coffee S.A. in its role as an impartial third party and guarantor of Good Faith in the mediation it currently presides over. As a result, it finds itself compelled to terminate the mediation and issue its Final Statement.
12. On 13 May 2015, the parties were summoned to an informational meeting, where the above was communicated, and the process was concluded.

The date on which both parties would receive the draft of the Final Statement was indicated, in order to allow them to make any observations they deemed appropriate.

XI. Conduct of the parties

In accordance with Implementation Procedures of the OECD Guidelines for Multinational Enterprises: "If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance **is unwilling to engage or to participate in good faith**, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement"³⁴.

In this context, it is relevant to note that the closure of the specific instance was prompted by the multinational company Starbucks Coffee S.A., which based its decision on the statements made in a meeting with the characteristics already outlined, using them to justify the breakdown of trust between the parties and the decision not to continue discussing the substantive issues raised by the Starbucks Union and the CUT^{35 36}.

As with the argumentation presented in response to the request for the Good Offices of this NCP, where the multinational company

³⁴ Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Number 35. (The bolded and underlined text is ours).

³⁵ Email from the lawyer of the legal team of the multinational company Starbucks Coffee S.A., Ms. Maria Teresa Quintana Abbate, to this NCP, dated 30 April 2015.

"I hope this email finds you well. The purpose of this email is to request a meeting prior to the tripartite meeting on 8 May, as it is in our interest to share with this NCP our position and the company's stance regarding the participation and statements made by the representative of the CUT at the TUAC meeting that took place on 23 April.

We remain available for the day and time you propose, preferably in the afternoon, due to the availability of the company executives who are particularly interested in participating in this meeting".

³⁶ Email from the Head of the Legal Team of the multinational company Starbucks Coffee S.A., Mr. Giampaolo Zecchetto Guasp, to this NCP, dated 6 May 2015.

"Given that the second tripartite meeting is scheduled for the day after tomorrow, we consider it prudent to suspend this meeting until this NCP makes a determination regarding the continuation of this mediation process, as we have stated, Mr. Urrutia, in his capacity as the complainant, breached the duties of Good Faith and Confidentiality agreed upon in this specific instance".

Starbucks Coffee S.A. argued that it is not a multinational company and therefore the provisions of the Guidelines would not apply to it³⁷, the actions and statements made in the recent communications between the undersigned and said multinational company indicate a clear interest in not persevering or reaching a solution to the issues raised in accordance with the Guidelines, thereby breaching the principle of Good Faith³⁸.

The Starbucks Union has shown genuine interest throughout the specific instance process, taking actions such as:

1. It requested a working meeting with the NCP to progress on matters that, in the union's view, are substantive, regardless of the initial agreements, which would address matters of form regarding communications.
2. They have not addressed the issues under discussion in the Specific Instance in the media.
3. They have not succeeded in judicial or administrative instances on matters directly or indirectly related to those concerning the specific instance.
4. They have tried to reach agreements, encouraging dialogue between the parties despite the dismissals of unionised workers, as stated by the Starbucks Union in an individual meeting.

XII. Recommendations

Based on the information reviewed, the statements made by the parties, and the other merits of the specific instance, it is evident that the multinational company Starbucks Coffee S.A. has a fundamental issue with its corporate policy,

³⁷ Response from the multinational company Starbucks Coffee S.A., dated 2 October 2014.

"Secondly, we request that this complaint be outright rejected in its entirety and declare that it does not fall within the scope of the Guidelines, as:

Our client is a Chilean company, managed locally, with no affiliation or ownership relationship, nor any connection to the management of the U.S. multinational Starbucks Corporation [...]"

³⁸ Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Implementation in Specific Instances, Number 21.

"The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines".

which is reflected in its lack of interest in recognising the Starbucks Union as a legitimate representative of the workers' interests within the company.

The above stems from the very genesis of the multinational's Corporate Social Responsibility policies, such as the practice of defining workers as 'partners,' which in a way distorts their nature and merits. Despite what may or may not be stated, not all workers within a company are the same. The mere nomenclature used to refer to a worker does not, in itself, affect the better treatment they may receive or the benefits to which they may have access. On the contrary, it can be used to disguise the resource imbalances in labour relations.

Evidence of the above can be found in the statements of Starbucks' CEO, Howard Schultz, who states, "Benevolent managerial leadership should make trade unions superfluous," and that his "partners" should believe "in their hearts that management trusts them and treats them with respect," and "that under my leadership, employees would realise that I would listen to their concerns. If they had faith in me and my motivations, they wouldn't need a union." Also, from the company spokesperson, Tara Darrow, in her praise of the tradition of direct communication with employees, rather than through a union.

The above does not imply that there is animosity from the staff and Human Resources Management at Starbucks Coffee in Chile, who clearly have the intention of improving relations between the union and the company they represent. However, they lack the sufficient authority to make decisions that could effectively influence or be reflected in a change in the multinational company's organisational policy at the international level.

In this regard, this NCP recommends making modifications to the multinational company's responsible business conduct policy in light of the following points:

1. Workers cannot be defined as partners as they do not hold such status (generally speaking, they are not shareholders, partners, nor do they receive profits from the company's sales, not referring to commissions but to profits in the strict sense of what that means).
2. It is beneficial for workers to have representation within a company of this size, ensuring that their rights are protected and their contracts are negotiated with the bargaining power that only a validly recognised union can provide.

3. It is indisputable that the multinational company Starbucks Coffee S.A. provides benefits (the opportunity and relevance of these benefits can be discussed – particularly when it comes to benefits that the Starbucks Union seeks to negotiate on the brink of a collective bargaining process). However, this does not mean that workers should not have a say in them, in their extent and matters.

In this regard, it is important to note that the intent of these words is not to undermine the multinational company Starbucks Coffee S.A., but rather to highlight, on the contrary, what is currently slowing down its growth as a company under the framework of international standards regulating Corporate Social Responsibility. This is in light of what is outlined in the Guidelines, where they “[...] *acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training*”³⁹.

The importance of paying special attention to the previous paragraphs lies in the fact that it is no secret today that it is the companies who “[...] *can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards.*”⁴⁰ Thus, within the framework of the applicable legal and regulatory provisions and the current practices in employment and labour relations, companies must “[...] *Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing [...]*”⁴¹, as well as “*Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations,*

³⁹ OECD Guidelines. Commentary on General Policies. Number 5.

⁴⁰ OECD Guidelines. Commentary on Human Rights. Number 40.

⁴¹ OECD Guidelines. Employment and Industrial Relations. Paragraph a).

with such representatives with a view to reaching agreements on terms and conditions of employment”⁴².

In this regard, and after the draft of this Final Statement was shared with the parties on 18 May 2015, it was communicated to this NCP by the parties that an agreement had been reached on the matters and topics raised in the working sessions related to the present process.

In this context, it is important to highlight that the achievement of this historic and first agreement of its kind, between the company and the union⁴³, is a first step towards recognising the representational validity of the Starbucks Union. Furthermore, it is a significant step towards seeking a change in the organisational policy of the company, one that responds to the proper observance and respect for international recommendations on Corporate Social Responsibility, as well as promoting healthy collaboration between both parties, which is undoubtedly essential to maintaining a work environment that aligns with the collective needs and interests.



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Non-official English translation. In case of discrepancy, the Spanish version of this Final Statement shall prevail.

⁴² Ibid. Paragraph b).

⁴³ First Collective Agreement signed by the multinational company since its establishment in Chile, as reported in: <http://www.biobiochile.cl/2015/05/26/starbucks-suscribe-contrato-colectivo-con-sus-trabajadores-tras-dias-de-huelga.shtml>