



Final Statement of the Korean NCP for the OECD Guidelines for Multinational Enterprises

**Complaint from in-house subcontracted workers' union of Asahi Glass Fine Techno Korea
against Asahi Glass Co., Ltd. & Asahi Glass Fine Techno Korea Co., Ltd.**

December 8, 2016

1. Introduction

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are a set of recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their social responsibilities.

To ensure the effectiveness of the Guidelines, the government of Republic of Korea established the Korean National Contact Point (KNCP) in 2001 to promote the Guidelines and deal with issues concerning their implementation in specific instances.

2. Substance of the Specific Instance

On August 5, 2015, the in-house subcontracted workers' union of Asahi Glass Fine Techno Korea (hereinafter “the Union” or “Complainant”) submitted a complaint to the KNCP, arguing that the Japanese enterprise, Asahi Glass and Asahi Glass Fine Techno Korea (hereinafter “Asahi Glass” or “Respondents”) acted inconsistently with the Guidelines.

On October 15, 2015, Complainant submitted an additional written opinion, and Respondents submitted responses accordingly to the KNCP on September 11, 2015 and November 18, 2015, respectively.

Complainant argued as follows:

- Asahi Glass laid off a large number of workers without any appropriate prior notification in violation of the Guidelines II(A)(2), II(A)(4), II(A)(11), II(A)(14), IV(1), IV(2), and IV(6).

- Asahi Glass unilaterally terminated the contract before its expiry date without any failure by the subcontractor to perform its contractual obligations in violation of the Guidelines II(A)(3).
- Asahi Glass intervened in the Union's activity, which is against the Labor Union and Labor Relations Adjustment Act of Korea in violation of the Guidelines II(A)(13), V(1)(a), V(3), V(6), V(7), and V(8).

Respondents answered as follows:

- Respondents and Complainant had discussions on the termination of the contract in advance, and the lay-offs were not a direct consequence of Asahi Glass' contract termination notice.
- Respondents had a legitimate right to terminate the contract and the action was taken to ensure stable employment of the workers of its affiliated companies.
- As the establishment of the labor union was not the reason for the termination of the contract, there is no ground to argue there was an unfair labor practice involving intervention in or control of labor union activities.

3. Proceedings of the NCP

The Guidelines state *“In making an initial assessment of whether the issue merits further examination, the NCP will need to determine whether there is a bona fide issue and is relevant to the implementation of the Guidelines. In this context, the NCP will take into account the following:*

- *The identity of the party concerned and its interest in the matter.*
- *Whether the issue is material and substantiated.*
- *Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance*
- *The relevance of applicable law and procedures, including court rulings*
- *How similar issues have been, or are being treated in other domestic or international proceedings.*
- *Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.”*

To consider these factors at the initial assessment, the KNCP held meetings with Respondents, Complainant and both parties on February 3, February 4, and June 23, 2016, respectively.

On August 19, 2016, the KNCP made an initial assessment as stated below and informed both parties on August 31, 2016.

- Each party requested opportunities to have a meaningful and constructive dialogue during the meetings held in February and June 2016. In the initial assessment, the KNCP found that this case merited further consideration.

- An initial assessment only determines whether the issues raised merit further examination or whether the NCP can contribute to the resolution of the issues by offering its good offices. Therefore, the decision for further examination does not necessarily mean that the KNCP considers Respondents have acted inconsistently with the Guidelines.

The Implementation Procedures of the Guidelines state, *“If the issues raised merit further consideration, the NCP will discuss the issue further with the parties involved and offer its good offices in an effort to contribute informally to the resolution of issues.”*

The KNCP organized a Mediation Committee, provided its good offices to the parties in an effort to contribute to the resolution of the issues, and requested the parties' voluntary and active participation in the mediation procedure. The Mediation Committee consisted of three members, one from among the KNCP commissioners and two experts from relevant fields. The chairman of the KNCP appointed Mr. Sang-Young Hong (Director General, Development Cooperation Team of Korea Trade-Investment Promotion Agency) to serve as the chairman of the Mediation Committee. Dr. Prof. Sung-Ryong Kim (Kyungpook National University) and Dr. Yeonjae Bae (Yoon & Yang LLC) were appointed as the other two members of the Mediation Committee.

On September 8, 2016, the Mediation Committee held a meeting at the Korean Commercial Arbitration Board (Secretariat of the KNCP). Representing Complainant, a member of the Union attended the meeting. Representing Respondents, the Executive Director of Asahi Glass and an Asahi Glass staff member participated in the meeting. The Mediation Committee found that there was a wide gap between the parties.

On September 21, 2016, the Mediation Committee, both parties and the Secretariat of the KNCP met in the Dong-Daegu station conference room. Representing Complainant, 13 members of the Union participated. Representing Respondents, the Executive Director of Asahi Glass and an Asahi Glass staff member participated. Complainant insisted on the reinstatement of all the dismissed workers while Respondents suggested other options excluding reinstatement. The Mediation Committee tried to mediate the issue, but reached the conclusion that each party would not accept the suggestions of the opposite party.

After the meeting, the Mediation Committee asked if the parties were amenable to participating in a third meeting and changing their stances. Complainant clarified that it wanted to participate in the third meeting, but it would not accept the options previously suggested by Respondents. On September 23, 2016, Respondents sent an answer, stating that it would be to no avail to participate in the third meeting considering Complainant's assertion that is not possible for them to change their stance.

4. Conclusion

The grievance mechanism in the Implementation Procedures of the Guidelines is based on the voluntary participation of multinational enterprises and stakeholders. The Implementation Procedures of the Guidelines state, *“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.”*

The KNCP strives to promote understanding and ensure effective implementation of the Guidelines. Two meetings were held in an attempt to move forward with this case, but the differences between the stances of the parties hindered mutual agreement.

Despite continued efforts to mediate the situation, the responses from the two parties indicated there was little possibility of reaching a mutual agreement, so the KNCP reached the conclusion that no further processing is required.

Nevertheless, it was a meaningful effort for both parties to participate in the KNCP mediation procedure to resolve the issue. The case would have set a good example of the Guidelines establishing good practices, if the parties had more actively participated in the mediation procedure and shown greater flexibility to reach a consensus.

The KNCP would like to recommend that Respondents keep communication channels open and continue to engage in dialogue concerning the issues raised by Complainant.

Korean National Contact Point
for the OECD Guidelines for Multinational Enterprises