



Dutch National Contactpoint (NCP) for the OECD Guidelines for Multinational Enterprises

Final Statement

Notification IUF vs. Perfetti Van Melle

15 June 2020

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Notification to the Dutch National Contact Point concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Perfetti Van Melle Group B.V. (hereafter: Perfetti Van Melle). Submitted to the Dutch NCP on 9 August 2019 by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (hereafter: IUF).

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1. Introduction and executive summary

This Final Statement describes the NCP procedure followed in this specific instance and the process after reception of the notification to the Dutch National Contact Point (NCP) concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Perfetti Van Melle Group B.V. (hereafter: Perfetti Van Melle), submitted to the Dutch NCP on 9 August 2019 by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (hereafter: IUF).

This Final Statement marks the completion of the procedure by the NCP.

Confidential information disclosed to the NCP in the course of the NCP process was not used in the preparation of this Final Statement.

On 9 August 2019 the IUF, a global union federation based in Switzerland, submitted a specific instance to the Dutch National Contact Point (NCP) regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereafter: the Guidelines) by Perfetti Van Melle, which has its headquarters in the Netherlands.

The complaint concerned Perfetti Van Melle's operations in Gazipur, Bangladesh. According to the IUF, Perfetti Van Melle's wholly-owned subsidiary in Bangladesh would not have respected the right to collective bargaining and freedom of association. Furthermore, the IUF alleged that the company had employed child labourers, below the age of 18, in its factory in Bangladesh.

As part of its initial assessment of the specific instance, the Dutch NCP held separate, confidential meetings with both the business involved (30 October 2019) and the party raising the allegations (1 November 2019) to address the specific instance and related considerations.

In accordance with the Guidelines and the Dutch specific instance procedure, the Dutch NCP prepared a draft Initial Assessment in which it concluded that, the notification merited further consideration, and offered its good offices to address the issues raised in the specific instance. The IUF accepted the good offices. PVM however did not accept the good offices with regard to the issues raised regarding the right to collective bargaining and freedom of association, but stated that it reserved its position on the issue of child labour until further evidence was given on the alleged presence of child labour in its factory in Bangladesh.

The NCP then organised a meeting between the two parties to discuss the issue of child labour. The meeting between the parties led to a clarification regarding the current situation around child labour in the factory of PVM, with both parties agreeing that currently there was no child labour in the factory in Bangladesh, while underlining the importance of preventing any child labour (in the future). On the basis of these outcomes, the NCP decided to close the specific instance with a Final statement including recommendations to the parties regarding all the issues raised in the specific instance.

2. The NCP's assessment of this specific instance

In accordance with the Guidelines and the Dutch specific instance procedure, the Dutch NCP concluded in the first phase of the procedure that, in light of the following considerations, the notification merited further consideration and offered its good offices.

- the notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- Perfetti Van Melle is a multinational enterprise according to the Guidelines;
- the issues raised by the IUF are material and *prima vista* substantiated;
- there seems to be a link between Perfetti Van Melle's activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The NCP believed that dealing with this notification would contribute to the objectives and effectiveness of the Guidelines in the sense that it would help clarify the due diligence recommendations for multinational enterprises vis-à-vis their subsidiaries and branches world-wide regarding human, workers' and labour rights.

The decision on behalf of the Dutch NCP to examine this specific instance further was not based on substantive research or fact-finding, nor did it represent any judgment as to whether Perfetti Van Melle has violated the Guidelines.

2.1 Details of the party submitting this notification

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) is an international federation of trade unions representing workers in: agriculture and plantations; the processing and manufacture of food and beverages; hotels, restaurants, tourism and catering services; all stages of tobacco processing. The IUF is composed of 423 affiliated trade unions in 127 countries representing over 10 million workers. It is based in Geneva, Switzerland. The IUF states that from its founding in 1920, international labour solidarity has been the IUF's guiding principle. This principle is implemented through: building solidarity at every stage of the food chain; global action to defend human, democratic and trade union rights; international union organizing within transnational companies¹.

2.2 Details of the enterprise

Perfetti Van Melle is a multinational enterprise according to the Guidelines. According to its website, Perfetti Van Melle is the world's third largest manufacturer and distributor of confectionary and chewing gum. Perfetti Van Melle consists of 38 operating companies and 30 manufacturing facilities, it sells its products in over 150 countries, and it employs 17.800 people worldwide. Perfetti Van Melle is an Italian family-owned business and has its headquarters in Amsterdam, the Netherlands².

2.3 Relevant OECD Guidelines for Multinational Enterprises

The notification specifically concerns alleged non-compliance with the chapters of the Guidelines on General Policies (Chapter II), Human Rights (Chapter IV) and Employment and Industrial Relations (Chapter V).

3. The complaint

3.1 Summary of the complaint

In the notification of the specific instance under the OECD Guidelines for Multinational Enterprises of 9 August 2019 the complainant summarised the allegations as follows:

The IUF alleged that Perfetti Van Melle's operations in Gazipur, Bangladesh have "*consistently acted to prevent their employees from*

¹ <http://www.iuf.org/w/?q=node/149>

² <https://www.perfettivanmelle.com/who-we-are/at-a-glance/>

freely choosing to establish a union and engage in collective bargaining.” The IUF further alleged that Perfetti Van Melle, “at every level of the company, has also failed to take immediate and effective measures to eliminate the employment of child labourers in its Gazipur factory.”

“Perfetti Van Melle through its wholly-owned Bangladesh operating subsidiary has repeatedly violated basic rights set out in the Guidelines. The violations of the Guidelines are pervasive and of escalating severity in Perfetti Van Melle’s Bangladesh operations and have continued despite communications from the IUF, its affiliated unions with PVM union membership, and the PVM Union informing Perfetti Van Melle of these violations in its Bangladesh operations.”

According to the complainant, examples of the alleged conduct included: “Perfetti Van Melle management in Bangladesh attempting to prevent the Perfetti Van Melle BD Pvt. Ltd. Employees’ Union (hereafter: PVM Union) from obtaining legal registration by intimidating union members and by interfering in the union’s registration process with the relevant governmental Labour Department; approximately 25 child labourers, between the ages of 11 to 17, supplied by Perfetti Van Melle labour and services provider Rahat Corporation working in the Gazipur factory as of July 2019; Rahat Corporation launching an organised violent attack on workers in the Gazipur factory after the PVM Union had obtained collective bargaining status and formally demanded the elimination of child labour in the factory; Perfetti Van Melle management standing by and not reporting or alerting the police of the attack.”

Shortly after the above-mentioned attack in April 2019, the PVM Union mandated the IUF to directly address the use of child labour with Perfetti Van Melle corporate management. The IUF stated that the vast majority of unionized Perfetti Van Melle workers globally are members of the IUF. Furthermore, it stated that its affiliated union “PVM Union” mandated the IUF to directly address the use of child labour with Perfetti Van Melle corporate management, as PVM Union claimed to be unable to address this issue by itself on a local level, due to the difficult history at the Perfetti Van Melle Gazipur factory, which the IUF alleged to have included acts of physical violence, intimidation and harassment.

According to the complainant, the “IUF and its affiliated unions with Perfetti Van Melle union membership have repeatedly informed Perfetti Van Melle corporate management of the breaches of the Guidelines directly connected with the company’s activities in Gazipur, Bangladesh.” The IUF had written to Perfetti Van Melle corporate management four times and proposed an in-person meeting with Perfetti Van Melle to review evidence of child labour “under conditions which seek to protect the children involved.” According to the complainant, the IUF also spoke with Perfetti Van Melle corporate management twice by telephone, but unfortunately with no agreement reached to meet in person.

3.2 Summary of the response of Perfetti Van Melle

In its letter to the NCP (dated: 5 November 2019) Perfetti Van Melle stated that:

“We reconfirm that Perfetti Van Melle Group (PVM) and obviously Perfetti Van Melle Bangladesh (PVM Bangladesh) as well, are committed to respect

the laws, and the OECD Guidelines for Multinational Enterprises, as is laid down in our policies, like our CSR policy and our code of conduct. A global anonymous hotline and online reporting platform, managed by an external provider, are part of this.”

“PVM produces in Bangladesh for the local consumer market; we don’t use PVM Bangladesh as a ‘low cost’ production facility for other parts in the world. We aspire to be a locally admired and loved company and brand.”

“PVM fully supports the forming of the Union in Bangladesh. We have not organized any kind of physical, material or immaterial repression or coercion to the union representatives nor to any other worker of PVM Bangladesh. We have invested in the development and training of the union members.”

“Coming to an agreement of the PVM Bangladesh’s collective bargaining agreement is based on a commonly and widely used process of negotiation. This process is managed locally with oversight from business unit management in Dubai. This should not be misinterpreted as ‘going against’ OECD Guidelines.”

“PVM has never allowed and will never allow the use of Child Labour in our factories. We require a minimum age of our workers of 18 years and that (contractual) obligation also applies to our providers.”

“With all what is possible, we have checks and balances in place to ensure the minimum age requirement of our workers. This approach continues; e.g. recently a sophisticated entrance system (finger print access) has been installed, the use of our labour supplier will be further reduced by bringing more people on our own payroll, and we continue to put pressure on authorities to give access to people data systems to validate workers’ date of birth and identity.”

“We expect from IUF that they communicate in a transparent, constructive and honest way. We cannot and will not entertain a dialogue when false facts and statements are being presented as the truth. The use of unpredictable communication is simply not acceptable. We believe the IUF is blowing the issues out of proportion, misusing our workers good faith and discrediting the company, its reputation and its brands.”

4. The course of the Dutch NCP procedure in this specific instance

After the NCP received the notification, it held separate, confidential meetings with both the enterprise involved (30 October 2019) and the party raising the allegations (1 November 2019) to address the specific instance and related considerations.

During this first phase of the NCP-process, the following issues have come up. According to IUF’s complaint, Perfetti Van Melle failed to comply with the OECD Guidelines considering the company’s due diligence processes regarding the right to collective bargaining and the elimination of child labour at the level of its subsidiary in Bangladesh. According to the IUF, the union had written several times to Perfetti Van Melle corporate

management in the Netherlands and also had contact with the company by telephone, but the parties were not able to reach agreement on terms for a meeting to discuss the issues raised.

According to Perfetti Van Melle, the company fully supported the forming of a local union in the Bangladeshi factory and it had checks and balances in place to ensure the minimum age of 18 years was met for its own employees as well as for employees provided by third party contractors. Furthermore, the company stated that these processes were overseen at a local level in Bangladesh and by the business unit management in Dubai. Finally, the company first required evidence for the allegations with respect to child labour before it was willing to meet and discuss these issues with the IUF.

After having spoken with both the complainant and the company, the NCP prepared a draft Initial Assessment in which it stated that this specific instance merited further consideration and offered to facilitate a dialogue between the parties around the two issues raised in the specific instance: child labour and worker's rights (the right to collective bargaining and the right to freedom of association). However, the company first wanted to discuss the evidence for child labour in their factory in Bangladesh before making a decision on accepting the NCP's good offices. With respect to the issue of violating the right to the freedom of association and the right to collective bargaining, the company was of the opinion to have always fully supported these rights, and therefore did not accept to discuss the matter further with the complainant in the context of this NCP procedure.

The IUF was open to deliver the evidence on child labour, but only in person, because of concerns for the safety of the concerned individuals.

In light of these developments the NCP proposed, and scheduled per mail on the 10th of January 2020, to set up a meeting under the neutral chairmanship of the NCP with a focus on child labour, which means that in this meeting only a dialogue about the alleged child labour would take place, taking into account the offer of the IUF to keep the evidence concerning the alleged occurrence of child labour confidential and to bring it to the table during an in-person meeting. Both parties accepted this offer and the meeting on this subject took place on February 6, 2020.

5. The course and outcomes of the meeting between the parties

5.1 The issue of child labour

During the joint meeting of February 6, the complainants stated to have indications that among the employees working in the Bangladeshi factory of Perfetti Van Melle in 2019, 25 would have been children under the age of 18. For 9 of these alleged under-aged employees, the IUF had further documentation to support their complaint. They stated that the irregularities between the

birth- and primary school-certificates of these employees indicated that this documentation contained unreliable dates and had been tampered with. All of them would have been working in the factory through a third party contractor.

Perfetti Van Melle stated to firmly oppose any form of child labour. During the meeting they clarified that they were taking measures intended to ensure that no one under 18 is employed in the Bangladeshi Factory. Amongst others, Perfetti Van Melle had taken and was taking the following measures: phasing out of the involved third-party contractor by spring 2020, subjecting its own employees to a thorough age verification process, raising the minimum age to 20 years, and installing a biometric identification verification system.

The NCP also noticed that there were (possible) irregularities between the birth- and primary school-certificates of these employees. It was ultimately not possible for the parties to come to an by both parties accepted view about the exact ages of these 9 employees. In this regard, it is not possible to determine with certainty if there had or had not been child labour in the company's factory in 2019.

The NCP praised the IUF for pointing out the risk of child labour in the factory of Perfetti van Melle. The NCP concluded that the company had rightly taken action on combating any form of child labour in the factory. The parties agreed that – without prejudice to the different views of the parties with regard to the occurrence of child labour in the past – at that moment there was no child labour in the Bangladeshi factory. Both parties underlined the importance of eliminating child labour.

5.2 The issue of worker's rights

Regarding the issue of worker's rights (the right to collective bargaining and the right to freedom of association) the IUF and Perfetti Van Melle had diverging views. Perfetti Van Melle was of the opinion that this issue was the responsibility of the factory management in Bangladesh itself and that they had always fully supported these rights. Furthermore, the company indicated to have appointed a new HR-manager in 2019 in order to improve local relations with employees and local unions. Finally, it was concluded that local relationships between local company management and the local union (PVM Union) have normalised.

5.3 The NCP's conclusions about the meeting

Due to the course of the above described process and the fact that the parties had reached an agreement during the meeting on the fact that there was at that moment no child labour in Perfetti Van Melle's factory in Bangladesh and measures were taken to prevent its occurrence in the future, the NCP proposed not to publish an Initial Assessment, but to conclude this specific instance with a Final Statement³ in which it would describe the outcomes of the

³ According to the Procedural Guidance for National Contact Points (OECD Guidelines for Multinational Enterprises, 2011, p. 73) NCPs are not obliged to publish an Initial Assessment.

meeting and make recommendations. During the meeting the IUF asked the NCP to address the possibilities of remedy and on April 2, the IUF sent the NCP a general note on possible remediation measures in cases of child labour. The NCP will further elaborate on this topic in the next chapter on recommendations.

6. Recommendations of the NCP

The complaint shows that enterprises that conduct business in Bangladesh have to be very thorough in their due diligence processes regarding human rights issues, as this country can provide for a complex and risk prone context. Companies and civil society organisations can support each other in this process. The NCP recommends that Perfetti Van Melle will do its utmost and will take all the managerial measures necessary to be globally in control in this field.

The NCP recommends that the parties to this specific instance will remain in good contact, will ensure that the raised issues of child labour will not (re-)occur and take responsibility for these processes at a higher level if needed. In addition, the NCP welcomes the improvements in the HR-department in the factory in Bangladesh and hopes that this will lead to better relations on the local level of the company with unions and employees. The NCP notes that the parent company in the Netherlands also has responsibility to make sure that these policies are implemented well at the factory-level in Bangladesh and to oversee this process.

Furthermore, the NCP recommends the parties to remain in good contact about the issues raised in the specific instance regarding the alleged non-observance of the right to freedom of association and the right to engage in collective bargaining, and to ensure full observance of those rights in the company's operations in Bangladesh. The company has indicated that it is prepared to do so.

In the IUF's letter to the NCP of April 2, about possible remedy measures in cases of child labour, the IUF has proposed to discuss possibilities around educational programmes, such as amongst others the payment of school fees and apprenticeship schemes.

Regarding the request of the IUF to elaborate on the topic of remedy, the NCP concludes that the parties have not reached an agreement on the occurrence of child labour in the past. For the NCP, it has not been possible in this procedure to determine with certainty if there has or has not been child labour in the company's factory. Nevertheless, the NCP wants to point out that, according to the OECD Guidelines, access to remedy is also part of the responsibilities of multinational enterprises. According to the OECD Due Diligence Guidance (2018, p. 34): "The type of remedy or combination of remedies that is appropriate will depend on the nature and extent of the adverse impact and may include: [...] educational programmes... [and] taking measures to prevent future adverse impacts." The NCP observes to its satisfaction that Perfetti Van Melle has decided to phase out as a complicating factor the activities of Rahat Corporation.

Taking into account that the parties have not been able to agree on the occurrence of child labour in the past, and that it has not been possible for the NCP to identify the extent and nature of the possible adverse impact in the past, the NCP recommends the parties in this case to discuss what measures can be taken in the context of remedy with a forward looking and preventative perspective.

7. Monitoring and evaluation

The NCP recommends that in autumn 2020 an evaluation be conducted of the outcomes of the dialogue, namely the agreements made by the parties and the follow up of the recommendations of the NCP. It is important in this regard that the IUF and Perfetti Van Melle continue to carry on a constructive dialogue in the intervening period to ensure a positive outcome of this process. The NCP notes that, in order to have a constructive dialogue, it is important that the parties are aware of potential negative (side) effects of publicity surrounding the topics handled in the dialogue.

The NCP will invite the parties to come together for this evaluation in due time. This statement and the outcomes of the evaluation will be published on the NCP's website.

Published by:

National Contact Point OECD Guidelines for
Multinational Enterprises

Ministry of Foreign Affairs
P.O. Box 20061 | 2500 EB The Hague | The Netherlands
www.oecdguidelines.nl
© Ministry of Foreign Affairs | February 2020

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl.