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November 20, 2013

Complaint to the OECD's Australian National Contact Point
under the Specific Instance procedures of the
OECD Guidelines for Multinational Enterprises (2011 revision)

To:

Australian National Contact Point
c/o Foreign Investment Review Board
The Treasury
Langton Crescent
Canberra, ACT 2600
by email: ancp@treasury.gov.au

Complaint submitted by:

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On behalf of IndustriALL Global Union's affiliates:

- (1) Free Trade Zones and General Services Employees Union (FTZGSEU) of Sri Lanka
- (2) National Union of Employees in Companies Manufacturing Rubber Products (NUECMRP) of Malaysia.

Against:

Ansell Limited
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A.B.N. 89 004 085 330

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Ansell Lanka PVT Ltd.
 Biyagama Export Processing Zone
 Biyagama, Malwana LK-11
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1. Summary

This complaint sets out breaches of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by Ansell in its operations in Sri Lanka and Malaysia, in relation to human rights, trade union rights, and occupational health and safety.

The complaint is submitted by IndustriALL Global Union, an international trade union federation representing some 50 million workers in 140 countries worldwide, on behalf of its affiliated unions, the Free Trade Zones and General Services Employees Union (FTZGSEU) of Sri Lanka, and the National Union of Employees in Companies Manufacturing Rubber Products (NUECMRP) of Malaysia.

It is submitted to the Australian National Contact Point (NCP). This is because Ansell's corporate headquarters are in Australia.

IndustriALL Global Union asserts that Ansell, at its operations in Sri Lanka and Malaysia, has engaged in repeated violations of human rights, repeated violations of labour rights, and a lack of concern for the health and safety of its employees. Ansell has refused to engage in any meaningful dialogue to resolve or to even investigate the concerns of its employees, the FTZGSEU of Sri Lanka, the NUECMRP Union of Malaysia, and IndustriALL Global Union.

2. Background

Ansell is a multinational producer of latex rubber products such as gloves and condoms, and related products. Its recent history arises from a restructuring and renaming of Pacific Dunlop Inc. in the early 2000s. Ansell Limited is incorporated in Australia; while Ansell Healthcare LLC is based in the USA.

IndustriALL Global Union is a federation of trade unions representing some 50 million workers in 140 countries. The FTZGSEU of Sri Lanka, and the NUECMRP of Malaysia, are affiliates of IndustriALL Global Union.

Ansell has devolved almost all of its industrial activity to developing countries, and so-called export processing zones within those countries. Since at least 2011, IndustriALL Global Union has become increasingly concerned about a pattern of behaviour on the part of Ansell: failure to respect human rights and trade union rights; and a disregard for the health, safety, and well-being of its workers

3. Parallel Proceedings

The Implementation Procedures of the OECD Guidelines for Multinational Enterprises, 2011

Edition: Commentary on the Procedural Guidance for NCPs (paragraph 26, page 83) states “(w)hen assessing the significance for the specific instance procedure of 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. 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”. Some of the complaints detailed below are the subject of investigation and/or action under the relevant labour laws of the host countries where Ansell’s production facilities are found. These proceedings should not delay or derail the requested investigation and intervention of the NCP.

4. Specific Instances

(i) Health and Safety: Uninvestigated Occupational Diseases in Sri Lanka

Since 2011, the FTZGSEU and IndustriALL Global Union (and its predecessor the International Federation of Chemical, Energy, Mine, and General Workers' Unions (ICEM)) have repeatedly expressed their desire to convene an effective joint investigation of a number of suspicious health issues, including reproductive effects and cancer and leukaemia cases at Ansell's Sri Lanka facility.

Correspondence with Ansell management has resulted only in:

- (1) demands for further information;
- (2) rejection of that information when provided;
- (3) rebuttals of specific cases raised without addressing the overall request for a proper investigation.

This lengthy and tragic pattern includes:

- Ansell’s failure to act on the results of the company's own medical test results indicating leukaemia in a worker;
- Reliance on a report by the Sri Lanka Commissioner of Labour praising Ansell's working conditions, although there is no evidence that any measurements of dust, radiation, or any other workplace contaminants were made and worker input was not sought;
- Failure to launch a proper joint investigation and instead insisting that the FTZGSEU must provide all necessary facts and proofs (knowing that Ansell's refusal to recognize the National FTZGSEU effectively prevents FTZGSEU from having the necessary resources and access to information).

Note, that the main request of the FTZGSEU is for a proper joint investigation to take place, understanding that without minimal cooperation from Ansell it is difficult or impossible to conduct an adequate investigation. It is clear that Ansell understands this, and that their demands that the FTZGSEU be in possession of and provide all the necessary facts and proofs are pure obfuscation and liability avoidance.

- Replying, when it bothered to reply at all, to FTZGSEU's and IndustriALL's letters of concern with legalistic formulations expressing no interest whatsoever in doing a proper investigation.
- Criticizing the FTZGSEU for having sought external resources and advice, and engaging in acts of retribution against the union for having done so.

(ii) Health and Safety: Unilateral Production Speed-Ups

In another health and safety related industrial relations issue (the boundary between the two areas is often blurred in the Ansell world), the health effects of Ansell-imposed production speed-ups at its Sri Lankan site are under dispute. FTZGSEU describes them as inhuman, with workers fainting or being forced to urinate at their workstations in order to try to keep up. An effort to bring in an engineer from the office of the Sri Lanka Commissioner of Labour failed to generate any meaningful dialogue. Instead, the company forced workers to sign letters “voluntarily agreeing” to the speed-up and coercing union members to relinquish their union membership.

(iii) Trade Union and Human Rights Violations: Refusal to Recognize Sri Lankan Trade Union

Ansell's record is a lengthy one of refusal to fully recognize the trade union freely chosen by its employees. Although they will talk about some issues to local union officers who are Ansell employees, under no circumstances have they afforded recognition or engaged in meaningful dialogue with the parent union. Ansell does not respect the collective bargaining process, and feel free to unilaterally change conditions of work whenever they so desire. Ansell then blames the union for the resulting and predictable employee unrest.

(iv) Trade Union and Human Rights Violations: Refusal to Recognize and Negotiate in Good Faith with the Malaysian Trade Union

Ansell management refuses to negotiate in good faith or have meaningful dialogue with the NUECMRP at its Kurim and Melaka plants. In particular, Ansell management have refused to recognize the NUECMRP since taking over the Kurim works in 2013.

At the Melaka site, Ansell refused to provide a counter-proposal or other meaningful reaction to the NUECMRP's proposals for a new Collective Bargaining Agreement upon the expiry of the most-recent agreement in December, 2011. Instead, Ansell attempted to provoke industrial action by making unilateral changes to working conditions and treated attempts by the Malaysian government conciliator to arrange dialogue on the issues with arrogance and contempt, even failing to appear at a scheduled meeting in August 2012. When this predictably triggered worker protests, Ansell took disciplinary action against union leaders and member activists. Union officials were barred from assisting the members involved. When the Malaysian government finally persuaded Ansell to provide a counter-proposal to the NUECMRP on 14 January 2013, they did so through a lawyer, still refusing to meet directly with the union. The counter-proposal demanded an end to union dues check-off and paid union leave of absence, among other concessions.

(v) Trade Union and Human Rights Violations: Threats and Violence against Trade Union Officers

IndustriALL Global Union believes that, following a long campaign by Ansell to impose production speed-ups and an effective reduction in incentive payments with rising tensions and provocations by Ansell management, Ansell resorted to direct physical attack on a trade union officer. On 10 April 2013 or about 9 April 2013 the Sri Lanka local union president, Athula Kamal Kaluarachechi, was chased down and physically assaulted by two unknown persons on motorcycle. The incident was reported to local police whose investigation of the matter was unsatisfactory and inconclusive. Suspicions of Ansell local management involvement in the attack continue but are, admittedly, unproven. In a letter to IndustriALL, Anton Marcus expresses his suspicion that the attack and workplace provocations are intended to encourage industrial action by the FTZGSEU, which would allow the company to justify the replacement of permanent employees with temporary and contract workers.

In apparent retaliation for Mr. Kaluarachechi's report of the above incident to the local police, Ansell has since dismissed Mr. Kaluarachechi. This action was taken despite meetings with the Sri Lanka Commissioner of Labour office, where following extensive discussions, Ansell was requested to reinstate Mr. Kaluarachechi and follow a normal disciplinary procedure.

Ansell is engaged in full-on union busting at its Sri Lankan and Malaysian operations. Almost all branch union office bearers have been summarily dismissed. Ansell has even gone so far as to threaten workers and union officials for discussing the matter with their national union and international organizations to which they are affiliated. Letters of protest to Ansell, if answered at all, are answered with disinformation; for example claiming that Ansell is striving to resolve the matter according to national laws when in fact Ansell has treated every request and recommendation from the Commissioner of Labour in Sri Lanka with contempt and refusal to comply.

(vi) Human Rights Violations: Failure to Provide Wages that Ensure Human Dignity

Wages offered by Ansell and the resulting living conditions of its workers do not ensure an existence worthy of human dignity. While ruthlessly exploiting its workers within the workplace, Ansell has likewise shirked its duties to the community and thereby failed to protect them from ruthless exploitation outside of the workplace. This can be seen in the housing conditions of many of its workers and their limited access to medical care and social services. It is also clear from Ansell's determination to use an increasing number of precarious workers – contract agency labourers who will endure even lower wages, worse working conditions, and no union representation.

5. Applicability of OECD Guidelines

The following list of references to the OECD Guidelines is not exhaustive.

References to OECD Guidelines: The applicable references of the OECD Guidelines to this complaint include, but are not limited to, the following.

I. Concepts and Principles

4. ... The Guidelines are addressed to all the entities within the multinational enterprise (parent company and/or local entities)

II. General Policies

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities and address such impacts when they occur.

IV. Human Rights

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Commentary on Human Rights 37. ... Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.

Commentary on Human Rights 38. A State's failure either to enforce relevant domestic laws or to implement international human rights obligations or the fact that it may act contrary to such law or international obligations does not diminish the expectation that enterprises respect human rights ...

Commentary on Human Rights 39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognized expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning the fundamental rights set out in the 1998 Declaration on Fundamental Principles and Rights at Work.

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

Commentary on Human Rights 42 ... Where an enterprise causes or may cause an adverse human right impact it should take the necessary steps to cease or prevent the impact. ... Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

Commentary on Human Rights 43. ... Meeting the expectations in paragraph 3 would entail an enterprise acting alone or in cooperation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impacts to prevent or mitigate that impact.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of the adverse impacts.

6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Employment and Industrial Relationships

1. (a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing.

1. (b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

4. (b) ... provide the best possible wages, benefits and conditions of work within the framework of government policies. These should be at least adequate to satisfy the basic needs of the workers and their families.

4. (c) Take adequate steps to ensure occupational health and safety in their operations.

Commentary on Employment and Industrial Relations 57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimize the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the Guidelines, most notably in chapters on Consumer Interests and the Environment. The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the Guidelines.

Human Rights (included by reference in the OECD Guidelines)

Referenced articles from the United Nations Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948. The following references applicable to this complaint are not an exhaustive list.

Article 3. Everyone has the right to life, liberty and security of person.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association. ...

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. ...

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

Workers' Rights

The International Labour Organization (ILO) is the competent authority to set global labour standards. They are included by reference in the OECD Guidelines. The following list of references to ILO instruments applicable to this complaint is not exhaustive.

The ILO Declaration on Fundamental Principles and Rights at Work specifically references the following ILO Conventions:

C-87 Freedom of Association and Protection of the Right to Organizer

C-98 Right to Organize and Collective Bargaining Convention

However, the obligations of multinational enterprises to uphold labour standards are not limited to these eight conventions. Rather, with the incorporation of the Ruggie Principles into the OECD Guidelines, all of the international standards of the ILO, including its various health and safety Conventions, Recommendations, and Guidelines, apply as a minimum standard of behaviour notwithstanding national law.

6. Request for Mediation

The complainants request that the Australian NCP offers its good offices for conciliation or mediation to the parties in order to support the parties to resolve the issues. We consider that the resolution of the issues presented in this complaint would contribute significantly to the purposes and effective of the Guidelines. Specifically we would be seeking to cover the following in the mediation:

1. That Ansell immediately convene a joint investigation into employee health, including present and past employees, with the full participation of the FTZGSEU. This investigative committee shall be provided full access to all information in the possession of or available to Ansell, and be empowered to seek additional information, including epidemiological evidence, as it sees fit. The full costs of this investigation, including the engagement of external experts if desired by either the employer or the union, are to be borne by Ansell.
2. That Ansell immediately cease and desist all anti-union activities and afford FTZGSEU and NUECMRP full recognition and respect. This includes not only the in-plant committees but recognition of the legitimate role that must be played by the parent organizations: the national FTZGSEU and NUECMRP respectively.
3. That Ansell in collaboration with FTZGSEU and NUECMRP undertake to fully investigate and identify any local managers who have engaged in illegal anti-union activities and take the appropriate actions, including sharing evidence of same with local authorities.
4. That Ansell cease its attempts to avoid liability for the wellbeing of its workers by unilaterally increasing its use of precarious contract and agency labour.
5. That Ansell immediately commence a program of social dialogue with its trade union partners to resolve outstanding issues, restore trust, and engage in collective bargaining in good faith.

7. Conclusions

The specific facts of Ansell's behaviour listed above present only a snapshot of a much broader pattern of misbehaviour. Ansell disgraces its shareholders and its Australian and American management offices. It is particularly shameful and ironic that this company's main products are meant to improve or protect people's health. The OECD Guidelines for Multinational Enterprises were specifically intended to ensure that MNEs contribute to economic, environmental and social progress so as to achieve sustainable development. The complainants are convinced that mediation supported by the National Contact Points could help the parties resolve the issues presented in this complaint thereby laying the foundations for a more sustainable future and more effective implementation of the OECD Guidelines.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Jyrki Raina', consisting of a vertical line for the 'J', a horizontal line for the 'y', and a stylized 'R'.

Jyrki Raina
General Secretary
IndustriALL Global Union

cc. FTZGSEU
NUECMRP