

National Contact Point of Switzerland

Initial Assessment

Specific Instance regarding LafargeHolcim submitted by Building and Wood Workers' International

Berne, Mai 26, 2020

Conclusion

This report on the initial assessment by the Swiss National Contact Point (hereafter "Swiss NCP") concludes that the issues raised in this submission merit further consideration on the specific context of the Philippines as well on the global group level. The Swiss NCP therefore accepts the specific instance and offers its good offices to the parties. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines for Multinational Enterprises (hereafter "OECD Guidelines") and should not be equated with a determination on the merits of the issues raised in the submission.

1 Submission and alleged violations of the OECD Guidelines

The Swiss NCP received a written submission on 12 December 2019 to consider a specific instance under the OECD Guidelines regarding LafargeHolcim (hereafter "LH" or "responding party"), which is headquartered in Rapperswil-Jona, Switzerland. The specific instance was raised by Building and Woodworkers' International (hereafter "BWI" or "submitting party"). BWI represents the Philippines' national trade union SENTRO¹ on behalf of its affiliated trade union DAHEWU. Some of DAHEWU's members are performing work at the cement plant held by Holcim Philippines (a member of LH group) in Davao, Mindanao, Philippines.

DAHEWU-SENTRO and Holcim Philippines are bound through a comprehensive collective bargaining agreement (hereafter "CBA") which is effective from 1 April 2015 to 31 March 2020 (currently in its 5th iteration). This agreement regulates inter alia issues on union recognition, employment status, union security and rights, hours of work and wages.

In the submission, BWI claims that Holcim Philippines has over time replaced regular employees at its cement plant in Davao with subcontracted workers (i.e. workers employed by service companies), hence depriving them of the wages, benefits and other working conditions (including health and safety standards) granted by the CBA. In March 2019, 84 workers received the wages and benefits according to the CBA whereas the majority of the workforce (266 workers) were subcontracted. According to BWI, this is in contradiction to national legislation which does not allow labour-only subcontracting and requires companies to "regularize" at least 80% of their workforce. Furthermore, BWI states that Holcim Philippines refused to recognize the subcontracted workers as trade union members, which is contrary to the spirit of the CBA.

¹ Sentro Ng Mga Nagkakaisa at Progresibong Manggagawa

DAHEWU-SENTRO supported workers in filing submissions with the Philippines Department of Labor and Employment (hereafter “DOLE”) as well as in filing a complaint to the National Labor Relations Commission (hereafter “NLRC”). In 2019, the DOLE ruled that the issue on labor-only contracting was dismissed. Regarding bulk loading and roto packing employees, DOLE directed Holcim to submit a voluntary regularization plan, which ended up in all contracted workers having to reapply for their job and in those belonging to trade unions being dismissed. In the same year, the NLRC ordered Holcim Philippines and the subcontractors to provide indemnity payments to some workers; the amounts paid were considered inadequate by the concerned workers.

Through additional information provided on 24 and 31 January 2020, the submitting party claims further unfair labour practices of LH in El Salvador (dismissal of unionized workers), India (casualties of contract workers) and the Philippines (mass dismissals). Of these additional information only the report on issues in El Salvador is substantiated by documents which were shared with LH. According to BWI, this additional information should contribute to have a dialogue with LH at group level on general topics related to trade unions, labour-subcontracting, health and safety, wages and discrimination.

In the submission, BWI claims the violation of the following recommendations of the OECD Guidelines of chapter V (Employment and Industrial Relations)²:

- Respect applicable law (V. chapeau)
- Rights of workers to be represented by a trade union (V.1.b)
- Provide the best possible wages benefits and conditions of work (V.4.b)
- Ensure occupational health and safety in operations (V.4.c)

2 Expectations of the submitting party regarding the Swiss NCP proceeding

The submitting party invites the NCP to mediate an agreement to solve the issues raised. In particular, BWI expects the NCP proceeding to address certain practices at LH group level as well on the particular context of its activities in the Philippines:

- At group level, BWI expects LH to conduct due diligence with respect to the adverse impacts on workers caused by the labour practices of group members, among others regarding trade union rights, compensation, health and safety as well as discrimination. In particular, BWI expects LH to ensure that the rights of workers to form or join trade unions and to bargain collectively is adequately taken into account including by subcontractors of LH.
- Regarding activities in the Philippines, BWI expects LH to grant all workers of Holcim Philippines treatment according to the CBA. Furthermore LH should take measures to compensate subcontracted workers for the difference in wages and benefits they would have received according to the CBA. Workers who were compensated on a piece rate basis should receive compensation for hours that were not compensated due to failure to base compensation on a time-motion study.

3 Statement of the responding party

On 23 January 2020, the responding party submitted a written statement to the Swiss NCP concerning the issues raised in this specific instance in the Philippines. According to LH, the

² Full text of provisions see [OECD Guidelines for multinational Enterprises](#), 2011

case has been discussed at various occasions with BWI and union representatives in the operations in Davao, as part of the ordinary social dialogue between LH and the respective employee representatives and unions.

An order of the DOLE confirmed the findings of the Labor Inspection on 21 January 2019³ that the case should be dismissed, concluding the inexistence of labor-only contracting. Holcim Philippines accepted that the services contracted, though, in its view, compliant with the labor regulations, were directly related to the business and offered to engage the affected employees based on its current needs. This was executed through a Voluntary Regularization Program introducing the necessary organizational changes and amending the service agreement with the contracting firm (subcontractor). LH views its position as fully legally compliant and respecting the workers and unions rights, verified by the DOLE and the NLRC. LH affirms to have acted in full compliance with the OECD Guidelines.

Furthermore, the responding party informed that on 9 May 2019 LH signed an agreement with San Miguel Corporation for the divestment of its 87,5% shareholding in Holcim Philippines. At the time of the statement, this agreement was pending for customary and regulatory approvals by the competent authorities in the Philippines. The completion of the divestment process was expected in the first quarter of 2020, but it is still pending a final resolution

According to the responding party, a mediation between the parties about the reported case in Davao would not provide any effective outcome at this stage of the divestment process, as the new employer will be fully accountable of all business and organization decisions in the upcoming future. However, the circumstances and decisions made in this case can be explained and clarified to prove their full compliance with the applicable laws and with the OECD Guidelines.

4 The proceedings of the Swiss NCP up to date

Since the receipt of the submission on 12 December 2019 the Swiss NCP took the following steps:

12.12.2019	Confirmation to acknowledge receipt of the submission to BWI.
16.12.2019	Submission was forwarded to the responding party.
17.12.2019	Information of the Swiss Embassy in the Philippines
9.1.2020	According to the Specific Instances Procedure of the Swiss NCP ⁴ , constitution of an ad hoc working group including representatives from the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs.
24.1.2020	Receipt of a written statement by the responding party
24./31.2020	Receipt of additional information regarding labour practices in LH sites in El Salvador, India and the Philippines by BWI
30.1.2020	Additional information provided by BWI forwarded to LH
27.2.2020	Report of draft initial assessment was sent to LH and BWI for comments on possible misrepresentations of factual information.
9.3.2020	Receipt of written comments by BWI
4.5.2020	Receipt of written comments by LH

³ Case no. ROXI-00-RI-2018-05-225-C

⁴ www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html

5 Considerations and decision of the Swiss NCP

Based on the Procedural Guidance for the OECD Guidelines and the Specific Instances Procedures of the Swiss NCP, the Swiss NCP has considered the following points in its initial assessment:

a) Identity of the parties concerned and their interest in the matter

The Swiss NCP comes to the conclusion that the submitting party has provided sufficient information regarding its interest in the issues raised. The submitting party is a global union federation representing workers in the building and construction, wood and forestry, building materials and allied sectors and has over 350 affiliated trade unions from 150 countries that represent over 12 million workers. BWI is acting on behalf of the Philippines' national trade union SENTRO⁵ and its affiliated trade union DAHEWU, some members of which are performing work at the Holcim Philippines cement plant in Davao, Mindanao, Philippines. DAHEWU-SENTRO has a collective bargaining agreement with Holcim Philippines.

b) Responsibility of the Swiss NCP

A specific instance must be raised in the country in which the alleged breach occurred. If this country is not a signatory of the Guidelines and therefore has no NCP, the issue should be raised in the country where the multinational company has its headquarters. The Swiss NCP is responsible for this specific instance regarding the issues in the Philippines because this country is not a signatory state of the OECD Guidelines and LH has its headquarters in Switzerland⁶. For discussion regarding the group level (e.g. group policies and guidelines on labour issues) the Swiss NCP is also competent, as the responsibility for elaborating, implementing and monitoring group policies lays within LH management at its headquarters in Switzerland.

c) Scope of application of the OECD Guidelines and materiality of the specific instance

The submission is material in the sense that it refers to alleged breaches of specific provisions of Chapters V (Employment and Industrial Relations) of the OECD Guidelines. The submitting party has substantiated its submission by providing the necessary information for the NCP to consider the issues raised.

d) Legal context and parallel proceedings

The Swiss NCP will take into consideration ongoing parallel proceedings, including court rulings. According to the Specific Instances Procedures of the Swiss NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the Swiss NCP from pursuing a specific instance. However, in each individual case the Swiss NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings.

The Swiss NCP is aware that parallel procedures have taken place in the Philippines. As the allegations by BWI go beyond the issues treated in those national procedures, they do

⁵ Sentro Ng Mga Nagkakaisa at Progresibong Manggagawa

⁶ Register of commerce of St. Gallen:

www.zefix.ch/de/search/entity/list/firm/82135?name=LafargeHolcim%20AG&searchType=exact

not prevent the Swiss NCP to pursue this specific instance. Furthermore, as a non-judicial mechanism, the Swiss NCP does not assess the compliance with national legislations.

e) Contribution to the purpose and effectiveness of the OECD Guidelines

The role of the NCP is to offer a forum for discussion and to assist the parties concerned to address the issues raised. The submitting party expects to dialogue with LH on practices regarding workers issues at LH group level and in particular on the specific context of its activities in the Philippines. The ongoing divestment process in the Philippines may have an influence on the level of contribution of LH to the purpose and effectiveness of the OECD Guidelines regarding the activities in the Philippines. But the Swiss NCP considers that by accepting this specific instance and offering a confidential mediation, it could help the parties reach a mutually acceptable outcome concerning the issues raised at a global level and according to the circumstances regarding the activities in the Philippines.

6 Further proceedings

The Swiss NCP will offer its good offices to the parties and ask for confirmation of whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome. If the parties reach an agreement and find a solution for the questions raised, the Swiss NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be published with the express consent of the parties involved.

If no agreement is reached or one of the parties is not willing to take part in the proceedings, the Swiss NCP will also make this information public in a final statement. The latter will include a summary of the reasons why no agreement was reached.

The Swiss NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the final statement. In addition, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure.

Final statements are published on the Swiss NCP's website and in the annual report by the Chair of the OECD Working Party on Responsible Business Conduct. Before the statement is issued, the Swiss NCP gives the parties the opportunity to comment on a draft statement. If no agreement is reached between the Swiss NCP and the parties about the wording of the statement, the Swiss NCP makes the final decision.

The Swiss NCP requests that the parties agree to maintain confidentiality during the proceedings. In order to establish an atmosphere of trust, the OECD Guidelines foresee that no information regarding the content of the proceedings may be shared with third parties or supporters of the submission. If sensitive business information is provided or discussed during the meetings of the Swiss NCP, special requirements concerning the treatment of confidential information can be agreed upon by the parties involved in this specific instance. The NCP informs the parties that it reserves the right to stop the proceedings if one or other of the parties does not respect this confidentiality. Even after the proceedings have been concluded, parties concerned remain committed to treat information received during the proceedings in a confidential way unless the other party agrees to their disclosure.

The Swiss NCP will publish its report on the initial assessment on the Swiss NCP's website.