

## MICHELIN GROUP IN INDIA

27 September 2013

**Specific Instance withdrawn by the claimants on  
September 23, 2013**

**Statement of the French National Contact Point for the  
OECD Guidelines for Multinational Enterprises**

Although the complainants had informed the NCP in writing on September 23, 2013 of their decision to withdraw the specific instance, the NCP - in line with the procedural guidance of the OECD Guidelines for Multinational Enterprises and its rules of procedure - is publishing the statement on the specific instance adopted following its completed examination of the case, shown below.

**On 9 July 2012, the National Contact Point (NCP) for the implementation of OECD Guidelines** for Multinational Enterprises received a specific instance referral from five claimants including four Indian and French Non-Governmental Organisations and associations and a French trade union, concerning Michelin Group's construction of a tyre plant in the State of Tamil Nadu, India. These include the Tamil Nadu Land Rights Federation (India), the SANGAM (Thervoy Grama Makkal Munnerta Nala Sanga, India) Residents' Association of the Village of Thervoy, the NGO CCFD-Terre Solidaire (France), the SHERPA Association (France) and the Confédération Générale du Travail trade union (France). One of the French claimants, CCFD-Terre Solidaire, was selected to liaise with the Indian co-claimants.

The specific instance relates to the development of a major Michelin Group industrial project in Tamil Nadu where the company is building its largest truck tyre plant to produce for the Indian market. The Group is setting up on an industrial site created by the local authorities, an area previously covered by pastures. The specific instance concerns numerous recommendations of the OECD Guidelines for Multinational Enterprises (revised version of 25 May 2011) found in the chapters on General Policies; Human Rights; Employment and Industrial Relations; Environment; Combating Bribery, Bribe Solicitation and Extortion; and Taxation.

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### **The Facts**

*In January 2007 the Municipal Council of Thervoy village decided to convert a pastures site ("meikkal poromboke") made available to the village residents into an industrial site; this decision has encountered strong opposition from the village since March 2007. The change of land use was confirmed on 13 November 2008 by a decision of the administrative authorities of Tamil Nadu under the economic development policy of this State. After a large section of vegetation at the site was cut down in May 2009, opposition to the park development grew.*

*In 2009, the SANGAM association lodged several complaints, objecting in particular to the cutting of the vegetation and the change in land use for the site. Several decisions were made by the Madras High Court (in May, August and September 2009) and by the Supreme Court of India (on 29 June 2009). On 16 September 2009, the Madras High Court validated the change in land use for the site to create an industrial park. It called on the site managers (SIPCOT) and on the Tamil Nadu authorities to obtain an appropriate environmental authorisation ("environmental clearance") and requested that*

*they implement three measures to compensate Thervoy residents. This includes the relocation of 15 individuals who were illegally occupying<sup>1</sup> the site, the allocation of 40 hectares on the site for village dweller use and the granting of 167 hectares off site within three years. The first two measures have been implemented. In March 2010, the Supreme Court of India dismissed SANGAM's appeal against the Madras High Court decision of 16 September 2009. On 3 August 2011, SANGAM appealed to the Green Tribunal; in April 2012 the Tribunal declined jurisdiction because of the limitation period. On 16 October 2012, the Supreme Court where an appeal had been lodged in April 2012 dismissed SANGAM's complaint. A new complaint was lodged in early 2013.*

*On 16 November 2009, the Michelin Group signed a Memorandum of Understanding (MoU) with the local authorities, which outlines its industrial project (amount and duration of the investment, number of direct and indirect jobs expected, technical provisions regarding the environment, labour laws, taxation). In December 2009 and again in June 2010, Michelin carried out the impact and risk studies required to obtain the necessary local permits. The Group asked a local NGO TO carry out a socio-economic study of the neighbouring area of the site, i.e. 31 villages. The construction of the plant and CSR actions were launched. In late 2010 Michelin, the only active company on the site, was the focus of popular opposition which was re-launched in early 2011 (demonstrations, arrests, hunger strikes).*

*In 2010, the CCFD became involved in the case. It visited the site and launched a dialogue with the company in India and in France. In July 2012, the Indian associations and the CCFD, together with SHERPA and CGT, submitted their complaint to the French NCP. To coincide with the filing of the specific instance and its later admissibility (a confidential decision under the NCP Rules of Procedure), the claimants led a media campaign on the case (media releases, petition, conference).*

*Today, the construction of the plant has been completed. Production should start in late 2013. As foreseen in 2009, other enterprises have set up on the site where other factories are under construction.*

### **Specific instance process**

The NCP sets itself the goal: of analysing specific instances within 12 months of their referral, making a decision on the behaviour of the enterprise, and providing assistance in remediation between the parties where the conditions so allow.

The NCP acknowledged the admissibility of the specific instance on 20 September 2012. The company rapidly accepted the NCP's good offices and undertook to cooperate fully with the proceedings. The NCP promptly held a joint hearing of the Indian and French claimants. It then met with the company and the manager of the plant under construction in Tamil Nadu.

Other than a voluminous and well-researched referral, the parties made available to the NCP supporting documentation that they updated regularly. In accordance with the NCP's good offices, these documents were systematically transmitted to the parties and to the NCP members as quickly as possible. During the consultations, the company cooperated fully and behaved transparently with respect to the NCP and the claimants. The NCP consulted experts. In accordance with its Rules of Procedure, internal NCP documents are confidential (art. 10). The experts' advice is not communicated to the parties.

After the hearings, the detailed examination of the case and of the experts' advice, the NCP considered it served no useful purpose to hold new hearings with the parties. However, in April 2013 it invited them to an exploratory meeting for an update on the referral and to propose mediation. Noting the

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<sup>1</sup>Indian concept of "encroachers" or "illegal occupation": "*In the report of Village administration Officer, Thervoy Kandigai village about 15 encroachers are said to have put up shields/huts in or about 0.01 hectare each* " see § 110 in the Madras High Court decision

persistence of the disagreement between the parties, the NCP decided that the conditions for mediation were not present. The NCP finalised its decision on 2 July 2013.

## **PREAMBLE**

### **A complex specific instance, a sign of the challenges and difficulties of rural industrialisation in India**

**The referral highlights the issue of the economic, environmental, and social and human rights impact of industrialisation in India.** This subject goes beyond the strict framework of the specific instance. It has been the subject of strong tensions in India and in Tamil Nadu in particular (see Kudamkulam nuclear station) and also elsewhere, for example regarding the establishment of the Korean company Posco in Orissa.

**This overall context has contributed to significant levels of tension surrounding the facts and their interpretation, in particular regarding the identification of "adverse impacts" and knowing who these should be attributed to.** This has weakened the dialogue between the French stakeholders (CCFD-Terre Solidaire, Sherpa and the CGT) and the Michelin Group, which began in 2010 but has not progressed<sup>2</sup>. In India, the dialogue of the company with the numerous Indian stakeholders has not broken down, and continues in parallel with the construction of the plant and local development and CSR actions.

**The referral is highly complex.** The specific instance covers a wide range of revised Guidelines, several Indian laws and regulations, and involves a multiplicity of local players. The referral, its update and the responses of the company constitute a voluminous amount of documentation that requires detailed and accurate analysis.

**The referral is constructed around several parallel legal proceedings in India.** Such proceedings are not aimed at the French company but at the Indian authorities responsible for the development of the industrial site, SIPCOT in particular. The latest proceedings in progress when the referral was filed concluded before the hearings. The NCP was informed of the 8 Indian court decisions made between 2009 and 2012<sup>3</sup>, particularly the decision of 16 September 2009 on compensation measures, and the decisions of March 2010 and October 2012 in which the Supreme Court dismissed SANGAM's appeals. The NCP was informed of the filing of a new complaint in early 2013.

**It is difficult to deal with the referral because the facts and their interpretation have been systematically contested by the parties.**

**The age of the facts adds to the complexity of the case. The question of temporary applicability of the May 2011 Guidelines is essential.** The issues relate to due diligence, actual or potential adverse effects resulting from company activity or its business dealings, and human rights. These concepts were incorporated into the May 2011 Guidelines. The NCP decision therefore, is important because it defines the "scope" of these texts and their "enforceability" for enterprises.

**The referral is "dated".** The claimants request diligence measures even though the industrial project has been finalised for a long time and is currently being executed. Paradoxically, the dialogue between

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<sup>2</sup> Since September 2012, CCFD-Terre Solidaire has financed the thesis of an ESSC student on "Social responsibility and local development in multinational enterprise activities in India. The case of the Michelin plant in Tamil Nadu". The Michelin Group has welcomed this student both in France and in Tamil Nadu.

<sup>3</sup> Three are Supreme Court of India decisions, while 4 are conclusions of the Madras High Court and another is a decision of the Green Tribunal

the parties does not deal with the manner in which to improve the situation, but almost exclusively with the finding of alleged violations submitted by the claimants. As a result, the possibility of mediation has been sharply reduced.

**The referral relies on the persistence of a stalemate.** The principle of a medium-long term impact study as requested by the claimants in 2010 was accepted by the company from the beginning. But the study was not done because of the stalemate between the parties regarding the prior conditions requested by the claimants for its execution, which affected the possibilities of remediation. The claimants have held these principle positions to date. Noting the impossibility of launching a mediation process, the Group finally launched the preparatory work for this study after consulting the NCP and undertook to involve the NCP in the successive phases of the study.

**A media campaign was organised by the claimants to coincide with the referral (media releases, interviews, and petition).** This led the NCP to recall that the confidentiality principle applies to the entire OECD NCP proceedings and that it is one of the conditions for trust between the parties.

**As a result of all these elements, the decisions taken by the NCP in this specific instance, exceptionally, could not all be taken by consensus. There was consensus in the NCP on the draft communiqué with the exception of a member of the trade union group.**

#### **ANALYSIS OF THE SPECIFIC INSTANCE BY THE NCP:**

**The NCP confirmed that the Michelin Group has generally respected the Guidelines but noted cases of inadequate or incomplete compliance with some of the recommendations in the Guidelines.**

**Further to a long and detailed study of the file and consultations with the parties and experts:**

- The NCP believes that the establishment and operation of the Michelin Group in Tamil Nadu have not involved violations of the Guidelines with respect to the alleged violations of the Guidelines suggested by the claimants.
- The NCP has noted three inadequacies and partial compliance with four OECD recommendations.

**The 25 violations alleged by the claimants were the subject of 25 decisions by the NCP, as follows:**

- 15 were the subject of consensus which is the usual NCP decision-making method.
- 8 were the subject of consensus within the NCP with the exception of one member of the trade union group.
- 2 decisions were taken at the Chairperson's proposal in accordance with the Rules of Procedure (see article 8).

***== The detailed analysis of the specific instance referral is an internal NCP process. It is confidential. It may be consulted by the parties upon request submitted to the NCP Secretariat. ==***

## **Preliminary remark on the applicability of the Guidelines revised in May 2011**

The referral is mainly based on facts that occurred before May 2011. The revised Guidelines Foreword states that they include "a new and comprehensive approach to due diligence and responsible supply chain management representing significant progress relative to earlier approaches." The May 2011 amendments include a new chapter on human rights inspired by the Guidelines for enterprises and human rights and implementing the United Nations "Protect, Respect and Remedy" framework.

**The NCP believes that the OECD recommendations of May 2011 do not apply to events that occurred prior to this date and that the revised Guidelines cannot be applied retrospectively.** Therefore, the NCP cannot make a decision on the compliance of events that occurred before May 2011 with the recommendations introduced in May 2011 to the chapters on General Policies (A10, A11, and A14) and Human Rights.

### **1. The NCP believes that the Michelin Group has respected 18 OECD recommendations and that it has not violated human rights. The NCP has made the following comments on the issues covered by the referral:**

- **On the General Policies (Chapter II):**

(1) The NCP believes that the Group's project has not involved violations to human rights as defined by international conventions and by national law for the actions executed before May 2011 cited by the claimants<sup>4</sup>. The NCP regrets nonetheless the failure to take into account the general spirit of the Guidelines which encourage enterprises to ensure the respect of human rights throughout the development of their activities. The NCP expects the enterprise to adapt and implement an appropriate prevention and compensation policy in light of the impact study under preparation, which should cover social and societal issues and conform to the revised Guidelines.

*Article II-A2 > This decision was adopted by NCP consensus with the exception of one member of the trade union group.*

(2) The NCP believes that the Group fully took into account India's policies and did not seek exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives or other issues.

*Article II-A5 > This decision was adopted by NCP consensus.*

(3) The NCP believes that the Group avoided causing adverse impacts and addressed such impacts when they occurred.

*Article II-A11 > This decision was adopted by NCP consensus with the exception of one member of the trade union group.*

The NCP noted that the Group used its business influence to prevent or mitigate adverse impacts. This includes SIPCOT, a para-public body in charge of developing various industrial sites in Tamil Nadu and the owner of the Thervoy industrial park, as well as Tamil Nadu competent authorities in industrial matters. In any case, the NCP recommends that the Group continue using its influence over its Indian partners in order to ensure the full implementation of the decision of the Madras High Court of 16 September 2009.

*Article II-A12 > This decision was adopted by NCP consensus.*

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<sup>4</sup> Article II-A2 of the 2000 Guidelines stipulates that enterprises should respect the human rights of persons affected by their activities, in compliance with the international obligations and commitments of the government of their host country.

- **On Human Rights and International Conventions (Chapter IV):**

The NCP believes that the project as implemented by Michelin respects the Guidelines which recommend that enterprises "*should avoid infringing on the human rights of others and should address adverse human rights impacts*". The NCP believes that corporate responsibility policies (CRS) set up in the neighbouring area of the site and based on the 2010 socioeconomic study, can contribute to this. An impact study on human rights (which the Group had agreed to in principle in 2010 but has not yet been carried out) will help adapt the Group's CSR or strategy to emerging needs. The Group has confirmed to the NCP its commitment to carry out a new medium-long term environmental, societal and human rights impact study in order to assess the implications of its plant at the Thervoy site, and that it has entered into discussions with different stakeholders in this sense.

The transformation of the environment and of the resources necessary to the local community's lifestyle seems to have had a strong impact on the life of the surrounding community. However, the NCP believes that the creation of the Thervoy industrial park is a decision of the Tamil Nadu Government, taken in application of its industrial development policy. It is not up to the NCP to express an opinion on such decisions. Consequently, the NCP believes that it is not up to the Michelin Group either to address the adverse impacts caused by this political decision.

*Article IV-1 > In the absence of consensus, this decision was taken by the Chairperson of the NCP.*

(6) The NCP believes that the Michelin Group made efforts to prevent and mitigate the adverse impacts on human rights directly linked to its operations or by virtue of its business dealings, by setting up a CSR policy that has been updated. The NCP considers that the Group is not directly responsible for potential infringements of the rights of neighbouring communities arising from the opening of the industrial zone.

The NCP has noted the statement by the claimants that the creation of the site would be the source of most of the infringements to the community's rights. It noted that the Michelin Group had had access to apparently limited data that had been collected between August and October 2010. Carrying out the impact study will help refine the CSR policy.

The NCP takes note of Michelin's undertaking to respect the fundamental rights (in particular ILO conventions on the right to organise and the right of collective bargaining) and to not use all the possibilities offered by the agreement signed with the Tamil Nadu Government (Memorandum of Understanding, 16 November 2009), in particular the limitation of the right to demonstrate and the authorisation of night-time work for women.

*Article IV-3 > This decision was adopted by NCP consensus with the exception of one member of the trade union group.*

(7) The NCP noted that the Michelin Group has respected the recommendation of due diligence regarding human rights, introduced in May 2011. In fact, since January 2011 the Group has agreed to carry out a medium-long term impact study on human rights in order to complete the 2010 socioeconomic study. The Group has reiterated its undertaking to the NCP and has launched the preparatory work for this study. The NCP deeply regrets that a study prior to the construction of the Group's tyre plant could not be conducted. The NCP believes that neither stopping plant construction works nor operations are necessary prior to the conduct of this study. The Guidelines do not recommend suspending or stopping an enterprise's operations in these cases.

*Article IV-5 > This decision was adopted by NCP consensus*

(8) The NCP took note of the explanation by the Michelin Group that it had set up a mediation cell and that it has had informal contact on several occasions with the local authorities and neighbouring communities. These measures are consistent with the OECD's recommendation consisting in establishing or participating in a legitimate mechanism to remediate adverse impacts on human rights.

However, the NCP recommends that the Group establish or participate in a more appropriate and formal mechanism.

*Article IV-6 > This decision was adopted by NCP consensus.*

(8) The NCP believes that the construction of the Michelin plant does not seem to be at the root of direct infringements to the right to life and to livelihood enshrined in the 1948 Universal Declaration of Human Rights. However, the NCP considers that the fast establishment of the Group prevented it from taking into account all the community's needs at the start.

*International conventions on the right to life and to livelihood > This decision was adopted by consensus, with the exception of a member of the trade union group.*

(10) The NCP considers that the Michelin Group cannot be held responsible for the methods of intervention used by the Tamil Nadu police and that the Group has respected the right of association.

*International conventions on the right of association > This decision was adopted by NCP consensus with the exception of a member of the trade union group.*

(11) The NCP confirmed that the Group has respected the rights of indigenous peoples. The NCP recommended that the Group take further into consideration the specificities and needs of these communities, particularly within the framework of the medium-long term human rights impact study.

*International conventions on the rights of indigenous peoples > This decision was adopted by NCP consensus.*

- **On Employment and Industrial Relations (Chapter V):**

(12) The NCP confirmed that the Group does not seem to practice discrimination against workers with respect to employment. In fact, the elements available to NCP do not lead it to conclude that there have been discriminatory employment practices with respect to neighbouring communities. Local employment is one of the goals of the establishment of the industrial site. The NCP noted that the training component of the CSR policy aims to increase the employability of local neighbouring communities. However, this component does not include a sufficiently significant part of the population section that has little or no schooling. The NCP noted that the Group has undertaken to use the learnings of the social and societal impact study to adapt its medium- and long-term (15 years) training policy.

*Article V-1e > This decision was adopted by NCP consensus.*

(13) The NCP confirmed that the Michelin Group employs local personnel and trains them wherever possible. Its employment and training strategies are consistent with the provisions of the MoU that

provide for the creation of 1,500 direct jobs. It is consistent with OECD recommendations. Particular attention is paid to Thervoy residents and neighbouring communities, especially regarding training to improve their potential employability in production at the plant. However, the NCP encouraged the Group to recruit as many people as possible within the local communities for its future production operations, particularly by intensifying and targeting its vocational training activities with a view to the employability of these populations.

*Article V-5 > This decision was adopted by NCP consensus.*

(14) **The NCP believes that the Memorandum of Understanding (MoU) concluded by Michelin in 2009 includes provisions relating to work reform which are not consistent with OECD standards.** The NCP noted that the Michelin Group has undertaken not to implement such provisions and to implement its own standards instead.

The CEO of the Michelin Group has confirmed formally to the NCP that *"Despite the provisions in the Memorandum of Understanding signed by Michelin Group with the Tamil Nadu Government on 16 November 2009, Michelin Group undertakes to respect at its Thervoy plant employment standards that are consistent with common Indian law, with ILO recommendations, with OECD Guidelines for Multinational Enterprises, and consistent with its own internal principles as applied in every Group plant, anywhere in the world"*.

*Article V-8 > This decision was adopted by NCP consensus*

- **On the Environment (Chapter VI):**

(15) The NCP believes that the Michelin Group supplies workers and the public with information on its activities and that it strives to communicate in this respect. The Group has made important clarifications that show that it has made provision for supplying information to employees and individuals from local, regional and national communities and to stakeholders in general, during the operational phase of the site.

The NCP acknowledges that the enterprise has submitted a global information strategy for local stakeholders, by using various channels of communication. Nonetheless, in the face of the current spread of these pieces of information, the NCP has recommended a comprehensive resumption of these consultation and information modes, including a summary of the consultations held in future impact studies. The NCP appreciates the Group's efforts to provide information and its willingness to remain transparent, and recommends that such information is also made available to the various stakeholders.

*Article VI-2ab > This decision was adopted by NCP consensus.*

- **On Combating Bribery, Bribe Solicitation and Extortion (Chapter VII):**

(16) The NCP noted that the Group has internal control mechanisms to combat corruption.

*Article VII-2 > This decision was adopted by NCP consensus.*

(17) The NCP noted that the Group applies due diligence with respect to recruitment, by taking into account specific corruption risks it may face.

*Article VII-4 > This decision was adopted by NCP consensus.*

- **On Taxation (Chapter XI):**

(18) The NCP believes that the Group complies both with the letter and the spirit of Tamil Nadu taxation laws and regulations as provided by the Guidelines.

*Art. XI-1 > This decision was adopted by NCP consensus.*

## **2. The NCP noted that there was inadequate or incomplete compliance with 7 OECD recommendations:**

- **On General Policies (Chapter II):**

(19) The NCP noted **inadequacies** regarding the Guidelines with respect to due diligence and community information. The NCP noted that the Michelin Group had implemented various CSR initiatives that were laudable in this sense. The NCP further noted that the Group continues in its efforts to comply with the Guidelines, and encourages it to continue along these lines. The NCP noted

that in order to correct the lack of socio-environmental impact study relating to the recommendations introduced in 2011 (therefore after its decision to establish the plant), the Michelin Group prepared "a medium and long-term environmental, societal and human rights impact study" and that it intended "to include the NCP in its successive stages of execution". The NCP hails this initiative that will allow the enterprise to update its due diligence measures.

*Article II-A10 > In the absence of consensus, this decision was taken by the Chairperson of the NCP.*

(20) The NCP believes that the informal contacts established by Michelin **do not entirely fulfil** OECD recommendations to "provide stakeholders with meaningful opportunities for their views to be taken into account (...)". The NCP concluded that there is a lack of opportunities for local communities to express their views, taking into account the excessively informal nature of the contacts made by Michelin. The NCP recommends therefore that the Group set up a formal mechanism to provide stakeholders with better opportunities to put their views forward.

*Article II-A14 > This decision was taken by NCP consensus*

- **On Human Rights (Chapter IV):**

(21) The NCP took into consideration the fact that the Michelin Group carried out a first socioeconomic study in 2010 which helped identify the local risks of adverse impacts on human rights. The NCP took note that preventative measures were taken targeting the community. However, the NCP noted that an in-depth human rights study consistent with OECD recommendations **is still pending** as a result of the failure of the parties to agree on the terms of reference for the study. The NCP regrets this, and notes that the Group is now preparing such a study.

*Article IV-2 > This decision was adopted by NCP consensus with the exception of one member of the trade union group*

- **On Employment and Industrial Relations (Chapter V):**

(22) The NCP was unable to check whether the information made available to Michelin employees in France is consistent with OECD recommendations. Subject to the information that Michelin may provide to the NCP, the latter considers that this OECD recommendation **has not been fully respected**. In any case, it encourages the Michelin Group to ensure that its employees and their representatives are provided with information that allows them to have a precise idea of the enterprise as a whole.

*Article V2c > This decision was adopted by NCP consensus.*

- **On the Environment (Chapter VI):**

(23) The NCP noted the fact that the Michelin project in India includes the objective of protecting the environment, and public health and safety in accordance with the MoU, as well as contributing to the more general goal of sustainable development. Nonetheless, according to the experts consulted, despite the fact that the Michelin Group has formally complied with its local obligations, the NCP believes that the information it has received on the industrial risks at the site are **insufficient** to ensure that such risks are taken into account in a satisfactory manner.

*Section VI Introduction > This decision was adopted by NCP consensus with the exception of one member of the trade union group.*

(24) The NCP concluded that the Group has made significant clarifications that show that environmental management mechanisms have been foreseen for the operational phase of the site. According to the Group, this system will be identical to the one that has been set up in 70 other Group plants throughout the world. However, the NCP has highlighted that, in the opinion of the experts

consulted, the description of the establishment and implementation of this system **is not sufficiently specific**. In fact, a study of the available documents shows that several potential adverse effects of the activities of the plant on the environment and on health and safety have not been analysed adequately and that numerous measurable objectives have not been clearly outlined.

*Article VI-1abc > This decision was adopted by NCP consensus with the exception of one member of the trade union group.*

(25) The NCP underlined that the Michelin Group has carried out the necessary studies in India for this type of mega-project and that it has obtained all necessary authorisations. *A priori*, the 2010 studies assessed foreseeable effects on the environment in general. The NCP recalls that the environmental impact study was only completed in June 2010, 7 months after signing the MoU. According to the experts consulted by the NCP, **the evaluation of foreseeable environmental impacts in this study is not sufficient**. The NCP believes that it is therefore not possible to state that Michelin took into account the foreseeable impacts on the environment and on health and safety, at the time of their decision.

*Article VI-3 > This decision was adopted by NCP consensus.*

### **NCP ANALYSIS OF THE MEASURES REQUESTED BY THE CLAIMANTS**

In the conclusion of the referral, the claimants propose three measures which, as they have restated, are indivisible. These include:

- The request to "*immediately suspend construction work of the production plant while waiting for: the completion of all legal proceedings launched against SIPCOT for irregularities and infringements in opening the Thervoy industrial park; and the implementation by SIPCOT of the High Court decision of 16 September 2009*"
- The establishment of a multi-stakeholder committee to ensure the involvement and engagement of all players (...) in defining the terms of reference for the study (...) and the follow-up of recommendations;
- An independent study on medium and long-term social, environmental and human rights impacts of the construction of the plant and of its future operation.

The OECD Guidelines do not recommend suspending construction of a site or suspending the operation of an enterprise while waiting for the implementation of a legal decision by one or several of the enterprise's business contacts, in this case the Tamil Nadu targeted authorities (including SIPCOT). Furthermore, the NCP believes that neither stopping construction work of the plant or stopping plant operations are preconditions for carrying out this study (see here-above §7 on Article IV-5).

The NCP takes note that the Michelin Group has used its influence on its Indian partners regarding the implementation of the Madras High Court decision of 16 September 2009. Therefore, the NCP requests that the Group continue using its influence on its business contacts to ensure the full and appropriate implementation of this decision which constitutes compensation linked to the decision of the Indian authorities to create the Thervoy industrial site in an area previously used for grazing by village cattle.

The NCP underlines that already in 2010 the Michelin Group gave its agreement in principle to the claimants regarding the implementation of the impact study. This study would have helped better identify the human rights risks and prepare for the expansion of the plant. Disagreement between the company and the claimants delayed the implementation of the study.

The NCP believes that the impact study is a priority. This innovative impact study examines environmental, social and societal aspects, including human rights; it will be a first for the French NCP, for the Michelin Group and will doubtless be very useful for Tamil Nadu. In parallel with the study of the referral, the NCP has offered to support the parties in defining the terms of reference. Its mediation proposal made in April 2013 has yet to be accepted by the claimants who in particular would like it to benefit from the outset from the NCP's detailed study of the case.

The NCP welcomes the Group's initiatives in preparation for this study. The CEO of the Michelin Group has confirmed formally to the NCP *"its commitment to undertake a new medium and long-term environmental, societal and human rights study to evaluate the consequences of the plant built and operating on the Thervoy site. This study will be conducted on the basis of best practices, and its conclusions will be fully communicated to the members of the NCP. To this end, the Group has already engaged in discussions with different stakeholders and will certainly include the NCP in the successive phases of its execution"*.

The NCP responded positively to the Group's request for more specific information on the current standards in this respect. The NCP also noted that the Group would be willing to launch a short, medium and long-term action plan that takes into account the recommendations of this study, and that it would be willing to continue cooperating with the NCP to transmit the final study and later the action plan resulting from it.

*> This decision was taken by NCP consensus with the exception of one member of the trade union group.*

#### **NCP RECOMMENDATIONS:**

In April 2013, the NCP proposed mediation to the parties in order to resume dialogue and to help them initially with the development of terms of reference for the impact study. Noting the underlying divergences on the issue and on the opportunity of engaging in mediation, the NCP considered that the conditions for mediation were not present. The Group wished to engage in mediation in order to ensure the early launch of the impact study, while the claimants preferred to wait for the NCP to finalise its examination of the case before considering a potential mediation.

#### **In conclusion, the NCP makes the following recommendations:**

- Considering the importance of putting in place the compensation measures for Thervoy villagers, the NCP recommends that the Group continue using its influence on its Indian partners to ensure the full implementation of the Madras High Court decision of 16 September 2009. The NCP asks the Regional Economic Department of the French Embassy in India to monitor the steps that the Indian authorities will need to take to ensure that every compensation measure decided by the Madras High Court in 2009 is implemented, and to keep it informed on the issue.
- Because the NCP considers the impact study a priority, it recommends that the Group proceed promptly with its launch, if possible before the end of 2013, after discussions and agreement with renowned experts and with the communities that may be impacted by Group activities. The NCP recommends that the terms of reference for the study should be consistent with OECD recommendations, in particular with respect to human rights and the environment (including identification of industrial risks) to ensure due diligence and the Group's CSR strategy, particularly in environmental protection, human rights, employment, and training matters. The NCP recommends that the Group keeps it updated, as it has undertaken to do. The NCP shall ensure study follow-up.

- The NCP recommends that the Group ensure the involvement of local communities in the study follow-up. To this end, the NCP recommends that the Michelin Group set up or participate in a more appropriate mechanism to follow up on human rights matters. It further recommends that a more formal system be developed to ensure that communities' views are expressed. These issues could be included in the terms of reference of the human rights impact study, and could be followed-up by the NCP.

The contract concluded with the Tamil Nadu Government before any enterprise set up on the industrial site, provides for unusual reforms regarding employment conditions ("*labor reforms*" Article 14 of the MoU). The NCP has taken good note of the Michelin Group's formal undertaking regarding the non-implementation of such provisions, which confirms compliance with the Guidelines. The Group has confirmed formally "*that it undertakes to respect at its Thervoy plant, employment standards that are consistent with common Indian law, with ILO recommendations, with OECD Guidelines for Multinational Enterprises, and consistent with its own internal principles as applied in every Group plant, anywhere in the world*". The NCP shall ensure follow-up in this respect.

#### **CONCLUSION:**

The NCP noted that the Michelin Group has not violated OECD Guidelines, but that several recommendations have been inadequately complied with or not fully implemented. The NCP regrets that an impact study could not be conducted earlier because of the parties' failure to come to an agreement since 2010 on its terms of reference and implementation conditions. Throughout its examination of this matter, the NCP has noted the ongoing differences between the parties. The NCP believes that the conditions for mediation with a view to initial remediation of the discussion on the terms of reference for the impact study were not present.

Despite the ongoing stalemate between the parties, the NCP has noted that, as a result of its good offices, the Michelin Group has undertaken preparatory work for an environmental, societal and human rights study, and that it has committed to the development of a subsequent action plan to adapt its CSR policy and internal due diligence systems in response to the outcomes of the study. The NCP appreciates the Michelin Group's cooperation and believes it has shown transparency and a renewed willingness to dialogue with the NCP. Furthermore, the NCP requests that the Group take into account its recommendations in order to ensure compliance with the Guidelines in the production start-up phase at the site, and then in the development of the industrial project.

The NCP shall provide follow-up of the implementation of its recommendations in the next 12 months, under Article 32 of its Rules of Procedure.

*Website: <http://www.pcn-france.fr>*

*Email: [pointdecontactnational-France@dgtresor.gouv.fr](mailto:pointdecontactnational-France@dgtresor.gouv.fr)*