



**VBDO**

**CSR voting advice:  
Discharge of  
executive board members**



## CSR voting advice: Discharge of executive board members

PROJECT NUMBER P671

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## 1./ Summary

VBDO began providing a CSR voting advice in 2005. Members of VBDO may use this voting advice when voting in meetings of shareholders of Dutch companies quoted on the stock exchange. At first the advice focused on one single agenda item: the approval of the annual report. In 2006, the voting advice was extended with two agenda items: the remuneration of executive board members and the appointment of supervisory executive board members. For the year 2007 VBDO again extended its CSR voting advice by issuing an advice for the discharge of executive board members. The CSR voting advice for the discharge of executive board members is the subject matter of this project. For the agenda items for which VBDO has so far formulated no advice of its own, VBDO makes use of European Corporate Governance Service (ECGS) profiles which are issued by Dutch Sustainability Research (DSR).

The idea behind the 'the discharge of executive board members' voting advice is that executive board members of companies who pursue a policy which can be associated directly with abuses in the economic, environmental and/or social fields can not be granted discharge. In other words: executive board members of companies which do not conduct business in a sustainable manner CSR (corporate social responsibility) will be held responsible for this.

In 2007, VBDO issued a CSR voting advice for ten companies for all the agenda items mentioned above. The intention is to increase the number of companies for which VBDO will develop a voting advice in 2008.

Before dealing in greater detail with the specific project, it is important to establish the interaction between the agenda item 'approval of the annual report' and the agenda item 'granting discharge to executive board members'. The first agenda item has a clear top-down approach. Companies provide information on a strategic level in their CSR report, sometimes supported by local initiatives. The intention of the discharge of executive board members project is to gain practical 'in the field' insight, in other words: a bottom-up approach. VBDO wants to hear from local non-profit organisations themselves how they feel about the activities of the companies. In this way a better balanced total picture is obtained of the performances of the company because a larger variety of parties are allowed to express their opinion. In connection herewith it has to be postulated that VBDO considers the information from the various parties to be of equal importance and tries to sketch an unbiased picture of the (often) differing opinions.

Research is required in order to arrive at reliable and independent information about the CSR performances of a company. VBDO commissioned Stichting Onderzoek Multinationale Ondernemingen (SOMO = Centre for Research on Multinational Companies) to carry out this research. Through research and the coordination of both national and international CSR networks, SOMO acquires and distributes information and analyses in order to promote Corporate Social Responsibility. The information gathered was the basis for the company profiles which SOMO prepared for the ten companies. VBDO used these profiles to compile a CSR advice on Discharge agenda item. In addition, VBDO asked a question at several General Meetings of Shareholders on the basis of a case which it believed to be the most urgent.

The crux of the message for this project is neutrality through transparency. The eventual goal of VBDO is to sketch a picture in which various international interest groups are allowed to speak and companies are offered an opportunity to give an answer.

## 2./ About VBDO

VBDO (Vereniging van Beleggers voor Duurzame Ontwikkeling = Association of Investors for Sustainable development), works at making the capital market more sustainable. It does so by means of activities which on the one hand challenge the capital market to take new initiatives: to initiate and on the other hand to indicate within that capital market which are desirable and which are undesirable developments: to form opinions. It does so on the supply side of the capital market (institutional and private investors) as well as on the demand side (the Dutch companies quoted on the stock exchange).

The most important instrument on the demand side is engagement. VBDO is the only organisation in the Netherlands which represents CSR interests of investors at companies. On behalf of its members, private and institutional investors, VBDO conducts a dialogue with Dutch companies quoted on the stock exchange about their CSR policy, performances and reports in the field of CSR. VBDO does so by asking critical questions at both Annual Shareholder Meetings, through meetings with those responsible for CSR within a company and by organising debates with stakeholders. VBDO each year formulates a CSR voting advice which it uses (with a power of attorney from its members) to vote on the CSR performance of companies in their meetings of shareholders. The members of VBDO may also use the CSR voting advice to determine their own voting behaviour.

VBDO has created the VBDO Platform at the request of its institutional members. This Platform meets on a regular basis to discuss the latest developments in Social Responsible Investments (SRI), CSR in general and future initiatives to further improve CSR levels in the Capital Market.

In addition VBDO conducts studies commissioned by several agencies (governments and social organisations) and in cooperation with consulting firms into the performances of companies in several CSR areas and the size and the growth of the Dutch/European saving and investment market in companies with a good CSR performance. VBDO is a co-organiser of seminars CSR and SRI. For its members VBDO publishes a newsletter (VBDO Bericht) every two months and a guide with all SRI funds available for individual investors on the Dutch capital market .

VBDO works on the basis of themes. An important theme in the past was transparency, because the CSR performances of companies can be assessed only if they themselves report about them in a transparent and reliable way. Actual criteria by which VBDO measures the performances of companies include energy consumption and biodiversity. In addition to chain management, the discharge of executive board members is an important theme for 2007. This theme will be elaborated in greater detail in Chapter 3. In addition, VBDO will conduct research into the contribution of companies to the realisation of the Millennium Development Goals and to local economic development.

This project fits within the core activity of VBDO, namely conducting a dialogue with companies quoted on the stock exchange about their policy and their performance in the field of CSR. During the annual visits to the meetings of shareholders and interviews with companies VBDO will draw attention to the CSR Benchmark. VBDO will ask the company for a reaction to the results of the benchmark.

The CSR Benchmark is part of the theme-based working method of VBDO. For the Transparency theme a benchmark has been used very satisfactorily for several years.

## 3./ Introduction

### 3.1 Problem analysis and backgrounds

#### Companies and sustainable development

All companies have a value chain. In this value chain most companies will make their best efforts to act as correctly as possible, both upstream (suppliers) and downstream (customers, recycling, waste processing). It is unavoidable, however, that violations occur. As a result, many companies are involved directly or indirectly in (or may be linked to) practices which are not sustainable. Examples are:

- production circumstances (in the chain) which harm the environment
- production circumstances which are not in line with internationally-accepted employment standards
- violations of human rights
- innovations are not aimed at sustainability (such as, for example, the extension of a product life cycle), but at increasing consumption, without having an eye for recycling and waste processing
- investments in, especially, developing countries, are made mainly for cost considerations. Ecological, economic and social sustainable development are lost from sight in many investments.

#### Influencing in order to achieve sustainable development

The pressure to develop sustainable business operations is brought to bear from several sides. Governments, consumers and environmental/social organisations have an important responsibility here. However, shareholders have the greatest influence on companies. A singular focus on Return On Investment (ROI) were and, to a large extent, still are dominant in the motivation of shareholders. Many private investors will not be aware of the possibilities and the influence which they can have with CSR voting on the policy of a company. This partly due to the fact that institutional and private investors often have a lack of reliable and independent information on the real CSR performances of a company and therefore can not make an optimal use of their influence to adjust the company policy. VBDO therefore want to offer this group the possibility to exercise this influence in a simple way.

#### Recent developments

The influence of shareholders has changed strongly in recent years. The various scandals concerning companies quoted on the stock exchange at home and abroad have had the consequence, among others, that the influence of shareholders (including private shareholders) has increased strongly. In the Netherlands too that process has been accelerated, especially because of the recommendations by the so-called Tabaksblat<sup>1</sup> Committee. One of the results is that the Cabinet has in the meantime introduced an amendment to the Act which offers shareholders the possibility of casting their votes in meetings of shareholders via the Internet, thus eliminating the necessity to be physically present at the meeting (Securities (Bank Giro Transactions) Act).

This development logically offers investors the possibility to vote on CSR matters in meetings of shareholders. An investor wishing to invest in CSR bases his or her voting behaviour on a large diversity of economic, social and environmental aspects. In the decision on the voting behaviour it is examined how the operations of a company defend the interests of all its key shareholders without jeopardising the needs of future generations.

Companies quoted on the stock exchange answer in the annual meeting of shareholders to their shareholders (= investors) about the (financial) policy conducted by them. VBDO asks companies to answer for their CSR policy, which means about economic, social and environmental aspects of the business operation. VBDO expects companies to report in a transparent way about their CSR policy and its results in a separate CSR report or integrated into the financial reports. And it expects the companies to show a continuous improvement in their CSR performance.

<sup>1</sup> Recommendation 6 Monitoring commission corporate governance code:  
[www.commissiecorporategovernance.nl/Aanbevelingen%20wetgeving](http://www.commissiecorporategovernance.nl/Aanbevelingen%20wetgeving)

### 3.2 Granting discharge to executive board members

As of 2005, VBDO has prepared a CSR voting advice for its members. This voting advice states how shareholders can vote on the CSR performance at the various agenda items of a meeting of shareholders. In 2005, VBDO CSR voting advice applied only to the agenda item "approval of the annual report". This agenda item judges companies on their transparency with respect to their CSR performance. In 2006, the CSR voting advice was extended with the agenda items "determination of remuneration policy for executive board members" and "appointment of supervisory executive board members".

In the meeting of shareholders season 2007 VBDO further extended its CSR voting advice by formulating an advice for the agenda item "discharge of executive board members". At these agenda items the company asks its shareholders for approval of the policy conducted in the past financial year (board of executive board members) and the supervision conducted (board of supervisory board members). With regard to the first agenda item (approval of annual report) in the VBDO voting advice, the company is subjected to a closer examination: it is examined in the field whether the company has acted in accordance with its own CSR policy.

The discharge of executive board members and supervisory board members takes place after the policy has been approved. This means: discharge is granted after the facts such as these have been formulated in the annual report and the annual accounts have been formally accepted. It is also declared that no legal steps will be taken against executive board members for their management of the organisation during the period described. The discharge is valid for the facts presented. After the discharge has been granted, the rights of shareholders to obtain compensation for any losses suffered are reduced and prosecution of executive board members becomes more difficult.<sup>2</sup> This agenda item is put to the vote separately in the general meeting.

If shareholders refuse to grant discharge, this means that they do not consent to the policy conducted and therefore the executive board members have not been discharged from the obligations which result from the policy conducted. It is then easier to hold the executive board members liable for violations. VBDO has developed its own interpretation of this agenda item. If a company is systematically involved in scandals and/or incidents in the social or economic field, discharge can not be granted. (NOTE: this has not happened yet to our knowledge).

### 3.3 Objectives of the project

The previous paragraph described the gradual development of the CSR voting advice of VBDO. As stated, VBDO further extended its advice by formulating a CSR voting advice for the agenda item "discharge of executive board members".

The project had a dual objective.

In the first place VBDO wanted further to increase the shareholders' activism with this project. The extension of the existing CSR voting advice has offered the investor wishing to invest in CSR an opportunity to exercise his CSR vote in more fields.

In the second place, companies must be motivated, by the vote of the investor in CSR, to improve overall CSR performance, including environment and social aspects. This is the ultimate goal of the total CSR voting advice.

<sup>2</sup> Triodos Proxy Voting guidelines; [www.triodos.nl/nl/static/pdf/nlnl\\_proxvotingnl.pdf?lang](http://www.triodos.nl/nl/static/pdf/nlnl_proxvotingnl.pdf?lang)

## 4./ Method and sources

### 4.1 Methods

For its own quick scans VBDO always uses the sources which companies themselves make publicly available. The results of these quick scans are used in the engagement with the companies concerned. In this specific project, the study for the 'discharge of executive board members' was conducted by SOMO on behalf of VBDO. SOMO made use of various sources including;

- databases (including press, professional journals and business information),
- journals
- information from the social organisation
- the Internet

The method which SOMO used for this was a quick scan method. With this method SOMO examines to what extent the investigated companies operate in accordance with internationally-accepted standards in the social and environmental field, such as the OECD directives.<sup>3</sup>

### 4.2 Project definition

Considering the fact that this project was a pilot, VBDO opted to restrict the research group to a select group of ten large stock quoted Dutch companies. These were selected on the basis of their quotation on the AEX, their activities abroad and the sensitivity of the branch of industry to violations: select group of ten large stock quoted Dutch companies. These were selected on the basis of their quotation on the AEX, their activities abroad and the sensitivity of the branch of industry to violations:

- 1 ABN AMRO
- 2 Akzo Nobel
- 3 DSM
- 4 Heineken
- 5 ING Groep
- 6 Numico
- 7 Philips
- 8 SBM Offshore
- 9 Shell
- 10 Unilever

For these companies a short description will be given in Chapter 5 of the results which became apparent from SOMO study. A short and general description of the experiences per company will be given as well. These 2 elements will constitute the basis of a paragraph on the items to be improved in the study of next year.

<sup>3</sup> CSR quick scan; company scan on corporate social responsibility, [www.somo.nl](http://www.somo.nl)



## 5./ Results and experiences

### 5.1 Introduction

SOMO has prepared a profile for each of the ten companies in the group under survey. The profiles were compiled on the basis of the information which was abstracted from several sources (see paragraph 4.1). VBDO then analysed these profiles and selected those cases which it believed to be the most relevant and urgent. For VBDO, the principal criterion determining relevance and urgency is that the case concerned is closely related to the core activities of the company.

Paragraph 5.1 describes per company the cases which VBDO considered to be the most relevant. The eventual CSR voting advice will also be described in this chapter. A more detailed summary of the various cases can be found in Appendix 1. Chapter 5.2 gives an overview of the voting advice of VBDO on granting discharge to of executive board members.

#### 5.1.1 ABN AMRO

ABN AMRO was one of the parties which had a great deal of criticism on the profiles which had been compiled by SOMO. An important plausible underlying motive for ABN AMRO not to react was the take-over battle in which the bank was involved at the time of the study. The company therefore decided not to react to the results of SOMO quick scan. The result of the decision of the bank was that the results of the study were included without a response from ABN AMRO. However, VBDO did take the take-over perils surrounding the bank into account in its CSR voting advice. Four cases from the study related directly to the core activities of the company. In addition there were several cases which were linked directly to core activities. As ABN AMRO gave no reaction it was difficult for VBDO to determine which cases merited further attention. The four cases which, according to VBDO, related to the core activities of the company were:

- The financing of an environmentally-sensitive mining operation in Rapu Rapu
- The involvement in the Sakhalin 2 project
- A case which involved the possible liability of ABN AMRO for leaks in the BTC oil pipeline.
- The financing of a loan to two cluster bomb producers in 2005. (The reason for including this project while one of the definition criteria is 'alleged incidents in 2006', is that this financing continued to have an effect into 2006.)

VBDO eventually decided to single out one of the four cases at the general meeting of shareholders by asking a question. This question related to the case in Rapu Rapu;

*"VBDO understood from the SOMO profile on ABN AMRO that the bank is part of a syndicate of banks which finances the mining operations of Lafayette Philippines in the island of Rapu Rapu. This project has been plagued by controversy since the very start. Several studies by the government as well as by non-profit organisations have identified a whole series of serious environmental, technical and social problems including oil leaks, fraud and damage to fragile environmental ecosystems. In February 2007, under heavy protests from non-profit organisations, the mine was reopened after having been closed down for some time by the Philippine government. In its CSR report ABN AMRO refers to a case dilemma which very probably relates to this event, although no names are mentioned.*

Although ABN AMRO explains its viewpoint well, VBDO considers the criticism from many sides to be severe and well-structured. VBDO would like to hear concretely from ABN AMRO a period within which the situation must have been improved.

The reaction from chairman of the board Rijkman Groenink made clear that he had other things on his mind. He made

apparent that he was not familiar with the case, but that he would come back to it at a later time. This to the dissatisfaction of VBDO because it had sent in the questions a number of days in advance. When VBDO pointed out to Mr. Groenink after a meeting which lasted 6 hours that he would come back to this topic, he claimed that the specific case was a confidential matter and that ABN AMRO could not say too much about it. It was promised that it would be 'looked into actively' and that the bank was prepared to consult about it with VBDO.

Altogether a disappointing answer to the question. However, this was consistent with the other answers and a major change compared with previous years in which ABN AMRO distinguished itself in its knowledge and answers in the field of CSR. To a certain extent VBDO could understand the situation in which the bank and its board of executive board members found themselves.

*Because of the take-over troubles and the fact that 2007 is the first year in which VBDO has undertaken this project, VBDO has given the advice to abstain from voting on the "granting discharge" agenda item.*

### 5.1.2 Akzo Nobel

The quick scan which SOMO performed on op AKZO NOBEL yielded for VBDO one case which it distinguished in an otherwise rather 'clean' profile. The incident related to a series of fines, claims and investigations concerning alleged anti-competitive behaviour and concerned the use of a placebo for a medical drug with the name Asenapine which was marketed by the subsidiary Organon. AKZO NOBEL has now sold off this subsidiary.

Because of the complexity of the case, the fact that this was a recently sold subsidiary and especially the fact that VBDO preferred questions which sprouted from other VBDO projects, (among which the remuneration and sustainability project), VBDO refrained from asking further questions about this subject matter.

Because of the small number of incidents, VBDO issued the advice to vote in favour of granting discharge to the members of the board of executive board members.

### 5.1.3 DSM

DSM, just like its fellow member of the sector AKZO NOBEL, had a relatively clean profile. At DSM there has been one case about which VBDO asked questions during the general meeting of shareholders. This was a case in India which related to an environmental problem where the local community was concerned about the quality of the drinking water as a result of contamination by the activities of a production facility of DSM. DSM has responded adequately to the case which SOMO submitted in the profile.

Still, VBDO asked a question concerning this alleged incident during the meeting of shareholders. VBDO asked in this matter for clarification and also asked whether this case could be included in the CSR next year. Mr. Zuidam, a board member, explained that DSM was not involved in the groundwater contamination about which the various villages complained. The factory is located downstream and, in other words, the water flowed away from the villages. He did worry, however, about an adjoining factory. This factory had been closed for some time but a further investigation had brought to light that it contained hazardous substances such as asbestos. VBDO is very curious about the case description next year.

Because of the small number of incidents, VBDO issued the advice to vote in favour of granting discharge to the members of the board of executive board members.

### 5.1.4 Heineken

At Heineken, VBDO singled out one case from the profile. This case relates to the promotion of beer by women in Cambodia. Heineken deploys young ladies in South-East Asia to sell its beer. However, it is reported regularly that international employment standards are violated and that these ladies are exploited.

Heineken reacted adequately by sketching a clear picture of the way in which they look at the case. They admit that there is a problem and have taken their responsibility for years. Nevertheless, the complaints have not gone away.

The case was translated into a question for the general meeting of shareholders. VBDO recognised the efforts of Heineken by means of various programmes which had to improve the situation and complimented Heineken on the fact that the company dealt with the case of the CSR report. However, VBDO also established that the reports which VBDO receives on cases in which employment rights are still being violated are of a tenacious nature. VBDO therefore asked Heineken whether the company is prepared to comply with an established code monitored independently and to report on it in the next general meeting of shareholders. VBDO considered the positive answer to this question satisfactory.

In spite of the promise from Heineken regarding the beer promoting ladies, VBDO wants to see first what will happen in this case next year. On this basis VBDO advised to abstain from voting.

### 5.1.5 ING

ING was not satisfied at first with the quality of the profile prepared by SOMO. The argument was that many of the 'alleged' incidents mentioned did not relate to the core activities or were outdated. Moreover, many of the cases had been picked directly from newspapers and the whole profile had an accusatory undertone (in other words: it was not unbiased). Through satisfying mutual consultation, VBDO, SOMO and ING eventually came to a satisfactory result and this has led to a profile which can be used as an example for next year. The cases which related directly to the core activities were commented on adequately by ING.

VBDO distinguished the following cases;

- The financing of a loan to producers of controversial weapons (1). ING was in 2005 one of the 36 banks in a syndicate which had granted a loan to weapons producer Thales. ING does not deny the existence of this deal but indicates that its changed defence policy did not take effect until the year 2005. On the basis of this policy it will not grant loans again to a company whose core activity is the production of weapons.
- The financing of a loan to producers of controversial weapons (2). ING participated in the granting of a credit to EADS. EADS is the parent company of Airbus but also a major producer of weapons, including nuclear weapons. ING indicated that it did not intend to stop its financing of the Airbus operations of EADS. By means of exception, ING has also refrained in this case from issuing a letter of exclusion. A letter in which it states explicitly that it grants the loan exclusively for the financing of the Airbus.
- Asset management activities for third parties who violate human rights - Two cases, oil company Total and supermarket chain Walmart. Total has activities in Burma. Although ING itself does not do business in Burma, ING has carried out instructions from third parties which have opted for investing in Total. In response to the request to persuade third parties not to invest in Burma any more and to the question of disinvesting shares in companies which were active in Burma, it was decided after ample consideration that this was not feasible. Indirectly there is a large number of companies which can be linked to Burma. ING would limit its investment spectrum too much if it were to exclude such a large group of companies. The Walmart case related to the violation of employment rights. Although ING has reduced its stake in Walmart, a very small percentage can not be excluded because there are third parties which do not support the promotion of human rights.

The Burma case was submitted to the board during the general meeting of shareholders in 2007. The answer from CEO Tilmant was in accordance with the initial reaction from ING. ING does not invest directly in projects in dictatorial regimes. In the case of companies in general to which credit is granted such as Total, the impact of the activities is looked at. Total is active in Burma on a very small scale, not a reason for the ING to expel it from its recipients of credits. If it were to do this, then the investment domain would become too small.

VBDO has advised to abstain from voting on the discharge of executive board members. A large number of cases have appeared from the profile which can be linked directly to the core activities. ING, however, is transparent and has given adequate answers to the cases concerned. Moreover, it appears from the continuous improvement in CSR reports and from the fact that CSR is mentioned on the agenda as a separate item, that ING is very seriously concerned with CSR.

### 5.1.6 Numico

The cases of Numico which relate to the core activities are linked essentially to the alleged marketing violations with regard to baby food. Although these are serious cases, VBDO opted for giving priority to questions which arose from other VBDO projects.

In the SOMO profile, attention is also paid to the amount of the salary of the chairman of the board of executive board members of the company, Mr. Bennink. Although VBDO also considers 15 million by means of remuneration and bonuses to be exorbitantly high, VBDO focuses on the link between remuneration and the performance in the field of CSR. Therefore the question was asked from this angle of approach. The board of executive board members indicated that it could consider this favourably.

Finally there was a question from Mr. Tim Steinder, a staff member of SOMO, in the final question round. The question related to a violation of a number of codes with regard to the marketing of baby food. This is actually an ongoing problem, also because of the regional spreading. In the study, which VBDO commissioned from SOMO, a number of problems had already emerged in the Netherlands, England and Indonesia. The question was whether this was known at the level of the top management. And if so, are concrete measures being taken against these violations.

The board member who answered the question said that they were aware of the things which were taking place within the World Health Organisation (WHO) and also what the guidelines are. In reality this translates into special courses in order to stay informed and to check and make sure in all sorts of ways that these things do not happen again. This does not change the fact that things slip through the net every now and then and that certain regional interpretations may be different. Eventually there will be a general, globally-used WHO code. This code will probably be the global standard four or five years from now. Numico does not have the intention to violate this code but rather to comply with it and to correct the responsible parties in the undesirable event that the code is violated.

### 5.1.7 Philips

VBDO was surprised at the number of incidents which emerged from SOMO profile. Most of these events occurred in the chain. Based on the high level of reporting from Philips and the good results, VBDO had expected fewer incidents. In its reports Philips discusses in great detail its chain management activities and last year the company was one of the 4 nominees for VBDO responsible chain management award.

A number of alarming cases emerged from the study, especially in the field of employment rights, in China, Brazil and Mexico. Wages under the legal minimum, excessive overtime hours, forced work, poor health and safety conditions

and excessive fines are among the major violations mentioned. VBDO has singled out the following cases from SOMO profile of Philips;

- The violation of employment rights at some Chinese suppliers, especially with regard to low wages, extremely long working days, including forced overtime hours and poor health and safety conditions.
- Violation of employment rights at some suppliers in Mexico, especially serious health issues, prohibition of associations and excessive wage reductions because of punctuality issues, continuous temporary contracts, a fictitious trade union and discrimination at job applications.
- Health and safety at suppliers in Brazil.

During the general meeting of shareholders of Philips, VBDO drew attention to cases in Mexico in the form of a question. One of the reasons for highlighting these cases is that they originate directly from local non-profit organisations.

Mr. Kleisterlee announced that the mere fact that it was known that questions were going to be asked in the general meeting of shareholders, one of the Mexican suppliers announced that measures would be taken immediately. There was less clarity about the other suppliers but Mr. Kleisterlee said that if these suppliers do not improve the situation within a certain period of time, Philips will terminate the contract in accordance with the procedure. To the question of whether these cases will be included in the report next year, Mr. Kleisterlee did not give a final answer. This too will be an agenda item for the next engagement moment with Philips.

On the basis of the very detailed discussion of the suppliers in the CSR report, the relatively short period within which Philips set up its suppliers programme and the ambition of Philips to improve itself, VBDO advised to abstain from voting. However, VBDO found the number of cases to be alarming and pronounced the expectation that Philips will actively pick up the cases in 2007 and that the situation will have improved next year.

### 5.1.8 SBM Offshore

SBM Offshore, the former IHC Calland company, has been frequently in the news in the past because of their continuous activities in Myanmar, formerly known as Burma. Because of this continuous flow of criticism the company has become experienced in reacting adequately to such criticism. It has to be noted in connection herewith that they deal with the criticism in a very professional and, in the eyes of VBDO, positive way. The reaction to the critical notes emerging from SOMO profile was no different. A reaction to the cases lifted from the profile was given without any objection worth mentioning. VBDO selected the following cases from SOMO profile;

- The involvement of SBM in the Sakhalin project - The Sakhalin project has known controversy from the very beginning. Many environmental organisations point at the potential major damage to wildlife and to the environment, including the grey whale which has its feeding grounds close to the drilling site. Moreover, a significant social impact for the local population is mentioned. SBM Offshore uses a ship contracted by Shell which is involved in the project. It is feared that this ship may be damaged by extreme weather conditions, resulting in environmental damage. SBM Offshore said about this that the ship concerned, the Okha, was designed in such a way that it can break through fresh, thin ice. It has a reinforced hull. Also, Okha is disconnected during the winter months because no oil is produced during this time of year. However, since there have been minor leaks in the past, various non-profit organisations continue to be concerned.
- The involvement of SBM in the Kashagan project which is a project that, in terms of potential environmental damage as a result of extreme weather conditions, is comparable to the Sakhalin project. An additional problem is that this project is located in a protected area, the shallow waters of the Northern Caspian Sea.
- The continuous presence of SBM in Burma - SBM offshore was in the news frequently in recent years because

of their continuous presence in Burma. This presence supports the dictatorial regime of this country through taxes. The activities of SBM date back to 1998. It speaks in favour of the company that, in spite of the fact that SBM deploys continuous activities, major efforts are made to take appropriate measures. SBM is relatively transparent about its activities, has implemented SA8000 systems in order to guarantee a certain degree of social security (Incidentally, the actual verification of the implementation of the system is audited internally because external auditors do not wish to be associated with the regime) and participates in round table conferences on human rights.

VBDO did not present the cases in the form of a question during the general meeting of shareholders of SBM Offshore. The main reason for this is that the company is monitored actively by various parties and takes a clear viewpoint with regard to the various cases. Besides, VBDO has already had an earlier engagement interview with SBM Offshore in which several cases were discussed as well.

### 5.1.9 Shell

Shell was one of the parties in the study group which ultimately did not cooperate in the project. The company had objections to the quality of the information included in the profile. VBDO will include this in chapter 5.2 in the discussion of the general experiences. The general experiences will constitute the basis for recommendations for next year.

Nevertheless, the following cases were raised by VBDO:

- The torching off of gas in the Niger Delta; the Niger delta is seen by many parties as one of the world's ecosystems that have been damaged the most by fossil fuels. One of the causes of this damage is the torching off of gas. Shell, as one of the major participants in a joint venture of oil companies in Nigeria (SPDC), has been called to answer for its polluting operations for many years. In 1996, SPDC imposed on itself the objective of finally stopping the torching off of gas in 2008. It seems on the basis of the current activities that this objective will not be met. (Shell indicates in its CSR report that it has torched off 20% less gases since 1990. This has to do for the greater part with investments in gas-collecting techniques and partly with the fact that the operations in Nigeria were downsized because of unrest in the country.)
- Oil spills - The unrest in Nigeria is also an important reason for the oil spills. SPDC speaks of sabotage and refuses for this reason to compensate the affected surrounding communities, in spite of a resolution by the Nigerian senate which said that they had to do this. The CSR report of Shell offers no explanation with regard to the court action. Shell has included a separate action in the report in which it is indicated, by means of an interview, what the cause of the increased problems is. In the interview it is conspicuous that the organisation is very reluctant to put on the hair shirt and that a prudent optimism about an improvement of the situation is predominant.
- Sakhalin I & II - the environmental and social hazards of the projects are the same as those mentioned for SBM Offshore. With regard to the critically endangered grey whale most NGOs claim that even the smallest disturbance in the habitat of these mammals may have crucial consequences for the survival of the species. Furthermore the profile makes it clear that there are serious dangers for the spawning grounds of the salmon population and finally that the way of life of the local environment is at risk.
- Alleged health and safety violations in Brazil - several NGOs, including Friends of the Earth Nederland and International, have filed a complaint in Brazil at the OECD contact point about the violation of health and safety regulations towards their employees. The objections are based for the greater part on a report from the health secretary of Sao Paolo.
- The large number of private limited liability companies in tax havens.

Both Nigeria and Sakhalin were discussed during the general meeting of shareholders. Both were mentioned in the presentation by CEO Jeroen van der Veer. The board of the company had prepared itself for these cases which in the past years had been presented to the board of executive board members by a delegation of 'fence communities' (communities in the world which live directly next door to Shell operations). As these issues were already topics at the meeting, VBDO submitted other questions to the board of executive board members. One of these questions related to the large number of private limited liability companies in tax havens. VBDO wondered if Shell could perhaps state why it has no fewer than 30 subsidiaries in the Bermudas.

The answer was that this was obviously a very complicated matter, but Shell would be glad to discuss this subject, which has been on the CSR agenda for a short time only, with VBDO outside the meeting.

The CSR advice given by VBDO was to abstain from voting.

### 5.1.10 Unilever

Unilever was one of the mostly positive examples of cooperation with the project. Answers were given concerning the cases about which VBDO had questions. VBDO selected the following cases from SOMO profile;

- An employment conflict relating to a factory in Mumbai of the Indian subsidiary of Unilever Hindustan Lever Ltd. (HLL). - This concerned the sale of a HLL factory to a small company which then informed its employees one year later that the factory was going to be closed down. The employees were also advised to accept the compensation offered. The complaint is still pending: Hindustan Lever has tried to evade its obligations towards its employees and its tax obligations by means of this construction. Their action constitutes, according to the complainants, a violation of the OECD directives. In a reaction HLL indicated that it had provided very generous severance schemes which exceeded the applicable legal obligations by far. HLL is convinced that the OECD directives have not been violated.
- Industrial disputes at the Vinhedo plant in Brazil - In recent years there have been several industrial disputes at Unilever's IGL Industrial Ltd. A solution is still being sought for two of these conflicts. The first relates to a violation of the right of association (trade union related). The complaint which resulted from this violation and which was filed with the ILO, was addressed to the Brazilian government which asked Unilever for an explanation. Unilever gave an answer to the Brazilian government which in turn forwarded this answer to the ILO. An in-depth discussion of the conflict, the response from Unilever and the eventual resolution are available in Appendix 1. The second case related to a refusal by the board of executive board members of the Vinhedo plantation to negotiate with its striking employees about primary and secondary employment conditions.
- Chain responsibility for Palm Oil in Musim Mas, Indonesia. The case relates to the foundation of trade union and the refusal of the board of executive board members of Musim Mas to recognise this trade union. 701 of the employees who went on strike for better employment conditions were summarily dismissed. The contracts of 300 trade union members were not renewed. 700 trade union members were evicted from their homes and a number of the trade union leaders are now in prison. The reaction from Unilever to these case was that it has written a letter to the board of executive board members of Musim Mas and has demanded a clarification. Musim Mas has vehemently denied all accusations. Moreover, a 'series of strikes' and the fact that these had not been reported to the local authorities were the reason for arresting a number of trade union leaders. The case seems to have been "settled" eventually. In the opinion of Unilever it was not possible to intervene in an employment conflict which was already being dealt with by the Indonesian justice system. To VBDO this seems to be an evident case of violation of the freedom of association where the settlement of the case raises a fair number of questions. Besides, the response from Unilever that it is



impossible to intervene in a pending labour conflict is not a strong one because the business partner code states clearly that suppliers must respect all persons and all labour rights, such as the freedom of association. VBDO understands that Unilever only has a limited influence but that does not have to limit them in a continuous search for improvements.

The specific question concerning the Musim Mas case was how Unilever as a co-founder and as current chair of the Round Table on Sustainable Palm Oil (RSPO) deals with such a case and if checks have been carried out since at Musim Mas and, if so, which the results of these checks were.

The reaction from Unilever was not quite clear, it consisted mainly of a repetition of that which VBDO had already stated in its introduction. The general idea was that Unilever had done everything in its power with regard to this case and that it is impossible for the company to interfere in a national legal case.

VBDO recognises the efforts of Unilever with regard to its own operations and in the entire chain of value. In addition, VBDO finds it important that companies find a way to operate within a morally and legally defined framework and at the same time to create value for the largest possible group of core stakeholders. Unilever is one of the first countries to speak in terms of creation of value in Western countries as well as in developing and third world countries. Even more strongly, Unilever emphasises this creation of 'soft' value.

The study which VBDO instructed SOMO to conduct shows that reality and policy are not quite the same things yet. The study brought to light a number of alleged cases, especially in the field of employment conditions, that raise questions. Besides, a number of cases seem to be of a structural nature. Based on the positive efforts mentioned in the report, and the alleged negative cases which were discovered in the study by SOMO, VBDO issued the advice to abstain from voting.

## 5.2 CSR voting advice

Table 1 gives an overview of the companies in the study and the CSR voting advice which VBDO has associated with these companies.

	COMPANY	ADVICE
1	ABN AMRO	abstain
2	Akzo Nobel	in favour
3	DSM	in favour
4	Heineken	abstain
5	ING Groep	abstain
6	Numico	abstain
7	Philips	abstain
8	SBM Offshore	abstain
9	Shell	abstain
10	Unilever	abstain

Table 1

In two of the ten cases VBDO has given the advice to vote in favour of granting discharge to the executive board members. In the other eight cases the advice was to abstain from voting.

The reason to vote in favour of granting discharge to the executive board members is that SOMO profile brought very few cases to light in the case of two companies, AKZO NOBEL and DSM. In addition, both companies reacted adequately to the cases submitted and the CSR reports are of a very good level.



Why the VBDO advised in the other cases to abstain from voting is explained in the individual description of the companies. It must be clear that by abstaining from voting one indicates that one does not vote in favour of the executive board members. One issues a signal to the executive board members that one is not completely satisfied with the course of affairs.

In general there are several reasons for deciding to abstain from voting instead of voting against. Each and every one of the companies in the studies is very active, and usually in a positive way, in the field of CSR. All companies are active on a global level and have a very complex chain structure. It would sooner be suspicious if no incidents occurred in the chain. On the other hand it is true that SOMO profile has been compiled on the basis of a quick scan and that most likely there are other incidents which fall beyond the scope of the study.

Finally VBDO opted for the advice to abstain from voting because this is the first study in its series. VBDO and SOMO have looked together for a format to implement the project and they have amply succeeded in this. However, there is still room for improvement of the format which will be implemented next year. The possible items for improvement are mentioned in chapters 6 and 7.

## 6./ Conclusions

The 'Discharge of executive board members' study was conducted to provide further implementation of the CSR voting advice of VBDO. In the CSR voting advice of VBDO a CSR interpretation is given to the standard agenda of a general meeting of shareholders of a Dutch company which is quoted on the stock exchange. VBDO began in 2005 to provide a CSR voting advice to its members. At first the advice focused on one single agenda item: approval of the annual report. In 2006, the voting advice was extended with two agenda items: the remuneration of executive board members and the appointment of supervisory executive board members. For the year 2007, VBDO again extended its CSR voting advice by issuing an advice for granting discharge to executive board members. The CSR voting advice for the discharge of executive board members is the subject matter of this project. For the agenda items VBDO has not so far formulated a voting advice of its own, VBDO makes use of ECGS profiles which are provided by DSR.

The idea behind the 'Discharge of executive board members' voting advice is that executive board members of companies who pursue a policy which can be associated directly with violations in the economic, environmental and/or social field, can not be granted discharge. In other words, executive board members of companies which do not respect CSR (corporate social responsibility) will be held responsible for this.

The "discharge of executive board members" project in 2007 saw both positive and negative experiences. The negative experiences translated into the objections of three of the parties from the study group, of which two eventually decided not to react to the profile. The criticism from these parties was essentially as follows;

- The information was outdated - several of the cases mentioned were closed already, it takes too much time and for that reason, among others, it is not useful to answer again.
- Too many activities are mentioned which do not relate to the core activities of the company. Anything that could be found was included in the profile.
- The quality of some sources is doubtful.
- The tone of the profiles was negative.

The intention was precisely to see in reality whether structural "violations" occur in the social, environmental and economic fields. The criticism can therefore be put into perspective. Still, both VBDO and SOMO have learned a great deal from these critical notes and they have taken them into account in the recommendations.

On the other hand, there were also many positive experiences. This manifested itself in the way in which companies spent a great deal of time on the cases which were submitted to them and gave appropriate answers in many cases. Only in a minority of the cases objections were made. VBDO concludes from this that the quality of the study was amply sufficient.

Another positive experience was the way in which the questions were answered in the general meeting of shareholders. The companies DSM, Heineken, ING and Philips, among others, dealt satisfactory with the questions asked by VBDO. The last-mentioned company even announced that the supplier who was mentioned in the case was so alarmed by the fact that a question would be asked in the general meeting that it promised immediately that (positive) measures would be taken. It became very clear from the case at Philips how effective it can be to ask a question about a case which is presented by a local NGO. This project gives several NGOs all over the world a channel for presenting their issues to the top of a company.

Both VBDO and SOMO are satisfied with the way in which the project was carried out. The more so if one takes into account that this was the pilot of the 'discharge of executive board members' project. The project is a powerful supplement to agenda item one of VBDO voting advice on CSR and thus reinforces the aspiration of VBDO to come to a neutral and well-balanced picture of the companies which it monitors. Also for SOMO this project is a perfect match for its current activities. VBDO is determined, therefore, to continue the project in the years to come in cooperation with SOMO. The format VBDO expects to use to do this is described in Chapter seven 'Recommendations'.

## 7./ Recommendations

VBDO is determined to continue the project in cooperation with SOMO over several years to come. A description follows of the format which is expected to be used. This list is based on the experiences of the past year

- The number of companies will be increased in the study over 2008 to the 25 largest Dutch companies quoted on the stock exchange. In the longer term VBDO has the intention of extending this list with international, non-Dutch companies.
- The profiles will be focused on a number of cases, with a maximum of 6. A stronger focus will provide more room to deal with individual cases and will therefore lead to more concrete results. Moreover, this will make it easier to extend the study group.
- Each case in the profile can be linked directly to the core activities of the company
- Preferably the cases in the study will originate primarily from a (local) NGO or from another party wishing to raise an issue. Third party sources, such as newspapers, mainly have a supporting nature.
- The neutrality of the profiles will be communicated more clearly. The parties involved will all be given an opportunity to tell their side of the story. The cases which have been selected will be presented to the companies. These companies will be given ample time to formulate their answers. The answers will have an official character because they will be laid down in the final report. Companies and agencies presenting the case can both be referred to their story in the case concerned. If legal decisions are associated with the case, then these will be included in the final report.
- The study will be continuous in time with a fixed reporting point at the end of the shareholder season (June). By "continuous in time" is meant that it will be possible to submit the case(s) to a company at any moment in the calendar year.
- Like last year, alignment will take place between agenda item 1, approval of the annual report, and agenda item 2, granting of discharge to executive board members. In other words, there will be an examination of the extent to which relevant cases are dealt with in the CSR report.

*The preceding items make clear that continuity in the project will improve the quality of the results. Continuity will reduce the time pressure which played a role in the past year for all parties concerned. In this way there will be more opportunities to enter into a dialogue on certain cases and to implement concrete improvements prior to the general meeting of shareholders. For this reason VBDO, in cooperation with SOMO, wants to carry out this project for the next five years.*

## Bijlage 1/ Company cases

### ABN Amro

**Financing of environmentally sensitive mining operations** - Together with NM Rothschild, Sons of Australia Ltd, ANZ Investment Bank, Korea First Bank, Investec Bank Mauritius Ltd, ABN Amro is part of a syndicate of banks that raised \$35 million to finance the mining operations of Lafayette Philippines on Rapu-Rapu island, Albay province, 350 kms south-east of Manila. Lafayette Philippines is a subsidiary of Australia's Lafayette Mining Ltd. From the start the project has been plagued by controversy. Fact finding missions, undertaken by both the government and NGOs have identified a range of serious environmental and social problems, including inadequate Environmental and Social impact studies, two oil spills, fraud, damaging fragile environmental ecosystems and tax issues. On February 2007, accompanied by heavy protests of NGOs, the mine was reopened after being suspended on order of the Philippine government.<sup>4</sup> The financing of this project might be inconsistent with ABN Amro's commitment to the Equator Principles for project financing.

**ABN Amro involvement in Sakhalin II** - In May 2006, ABN Amro faced accusations of "environmental hypocrisy" from three conservation groups, Rainforest Action Network, Pacific Environment and Sakhalin Environment Watch which ran a full-page advertisement in the Washington Post condemning the bank's bidding to fund the Sakhalin II oil and gas project. Sakhalin II is a 20-billion-dollar project that aims to extract oil and gas from beneath the coast of far eastern Russia's Sakhalin Island.

The accusations came on the eve of a ceremony in which ABN Amro was awarded the 2006 Gold Medal Award for "International Corporate Achievement in Sustainable Development" from the World Environment Centre, a Washington-based industry-backed organisation. The groups say that:

*"the project will harm marine life and several endangered species, including the world's 100 remaining western grey whales, as well as the local fishing community and indigenous people in the fragile area. They are worried about a planned pipeline that would span 21 active seismic faults and hundreds of wild salmon spawning habitats. The project will dump two million tonnes of dredging spoil into Aniva Bay, threatening a key fishery and the livelihoods of many Sakhalin islanders. According to Banktrack, an international campaign network focusing on private investments, the project also lacks a comprehensive oil spill response plan, despite great risks due to the icy conditions in the area. A significant oil spill occurred in 2004 at the port of Kholmsk."*<sup>5</sup>

In a recent article it was pointed out that Gazprom has mandated ABN AMRO to arrange a US\$2billion three-year and five-year loan. The loan is part of the US\$7.45 billion to pay Shell, Mitsubishi and Mitsui for their stakes in Sakhalin.<sup>6</sup> The financing of this project might be inconsistent with ABN Amro's commitment to the Equator Principles for project financing.

**ABN Amro's liability in possible BTC pipeline leaks** - ABN Amro is one of the fifteen major banks that financed the controversial Baku-Tbilisi-Ceyhan (BTC) oil pipeline. The \$3.3 billion pipeline runs from Baku in Azerbaijan through Georgia to Ceyhan on Turkey's Mediterranean coast and is operated by British Petroleum (BP). Evidence has been found that pipeline suffers from flaws which may result in oil spills and pollution. Experts have testified that the anti-corrosion coating does not stick to the pipeline, resulting in widespread peeling and cracking of the coating. Corrosion experts have pointed out that the only course of action that would remove the high risks (and potential liabilities) of a leak would be for the pipeline to be re-coated with a coating that is fit for the purpose. ABN Amro, like the other banks that financed the BTC oil pipeline have been warned by UK, Georgian and Azeri campaign

<sup>4</sup> "Unit of Australia's Lafayette calls for end to Philippine ban," Asia Pulse, 16 May 2006 and Mineral Policy Institute, "Backgrounder on the Rapu Rapu Mining Operation," July 2006, <http://www.banktrack.org/doc/File/dodgy%20deals/Lafayette%20Mine,%20Rapu%20Rapu%20island/060701%20MPI%20backgrounder%20on%20Rapu%20Rapu.pdf> (8 Mar 2007) and website Bank Track, <http://www.banktrack.org/?show=news&id=98> (8 Mar 2007).

<sup>5</sup> E. Mekay, "Netherlands: Dutch Bank Urged to pass on Russian Oil Project," Inter Press News Service, 12 May, 2006.

<sup>6</sup> Project Finance International, 27 Feb 2007

groups that they could face court if the pipeline leaks. The banks would be liable if they had knowledge of a potential cause of pipeline failure, yet failed to act to remove the risk of pollution.<sup>7</sup> The financing of this project might be inconsistent with ABN Amro's commitment to the Equator Principles for project financing.

Investment in cluster munition manufacturers - In 2005 ABN Amro participated in two loan syndicates to finance cluster munition manufacturers. First, in January 2005 the bank was one of the 28 banks of an international banking syndicate, which offered a five-year € 1,5 billion (US\$ 2 billion) loan to Thales. Thales is the mother company of TDA a European producer of missiles, including cluster munitions. The company admitted to the Norwegian Central Bank that it produces a PR Cargo bomb containing 16 dual effect submunitions. In 2006 Forges De Zeebrugge, a fully-owned subsidiary of TDA, acknowledged that it is working on a 70mm FZ101 rocket containing eight submunitions for the Tiger Helicopter program of the German army. Second, ABN Amro was one of the lead banks in arranging a € 3 billion (US\$ 3.65 billion) seven year revolving credit facility to EADS. Until the end of 2005 TDA was a joint venture by Thales (50%) and EADS (50%). These investments can be regarded as highly controversial.

## AKZO NOBEL

Placebo use in asenapine trials - Currently asenapine is the main drug in the clinical development pipeline of Organon, the pharmaceuticals business unit of Akzo Nobel which is being divested to Schering-Plough. Asenapine has been tested for treatment of schizophrenia and Bipolar Disorder in collaboration with Pfizer in 19 phase III trials. In nine trials, a placebo comparator was used along with the comparator drugs olanzapine and/or haloperidol. Two of these (with identifiers NCT00156065 and NCT00156091) are still ongoing<sup>8</sup> and the other seven were concluded in 2006. Furthermore, in one trial that is still ongoing (with identifier NCT00150176), asenapine is compared with a placebo only and not with existing drugs.<sup>9</sup>

This last trial is conducted in the US, India, the Russian Federation, Latvia, Ukraine, and Croatia. The nine trials including both placebo and active comparators are also mainly located in these countries plus some others countries in Asia and Central and Eastern Europe. The regulatory systems for clinical trial ethics in these countries are sometimes regarded as relatively weak. In contrast, the asenapine trials with active comparator drugs only are mainly conducted in EU countries, South Africa, and Australia.

Statistically significant effectiveness in placebo-controlled trials is a sufficient proof of drug effectiveness for approval in most countries, including the US. However, using a placebo control where effective alternative drugs already exist is generally considered unethical, with a number of exceptions. The Declaration of Helsinki of the World Medical Association (WMA) sets global standards for ethics in clinical trials. European regulations specify that the trials providing the underlying data for marketing applications of new drugs need to comply with the Declaration of Helsinki. The World Health Organization (WHO) Guidelines for Good Clinical Practice (GCP) for trials on pharmaceutical products also endorses it as the accepted basis for clinical trial ethics.

Article 9 of the Declaration of Helsinki states: *'The benefits, risks, burdens and effectiveness of a new therapy should be tested against those of the best currently available therapy. Placebo-controlled trials are only allowed if no proven therapy exists or under special circumstances.'* These special circumstances include: *' - Where for compelling and scientifically sound methodological reasons its use is necessary to determine the efficacy or safety of a prophylactic, diagnostic or therapeutic method; (...).'*<sup>10</sup>

<sup>7</sup> Banks warned of liability if Baku-Ceyhan pipeline leaks, <<http://www.banktrack.org/?show=news&id=49>> (01 Mar 2007), and B. Condie, "New spills crisis threatens BP," 8 Jan 2007, Evening Standard.

<sup>8</sup> ClinicaTrials.gov, "An Extension Study of the Efficacy and Safety of Asenapine With Olanzapine," <<http://clinicaltrials.gov/ct/show/NCT00156091?order=6>>; "An Extension Study of the Efficacy and Safety of Asenapine With Haloperidol," <<http://clinicaltrials.gov/ct/show/NCT00156065?order=5>> (21 Mar 2007).

<sup>9</sup> ClinicaTrials.gov, "To Determine Long Term Efficacy and Safety of Asenapine in Schizophrenic Patient Population," <<http://clinicaltrials.gov/ct/show/NCT00150176?order=1>> (21 Mar 2007).

<sup>10</sup> WMA, Declaration of Helsinki, 2004 (latest clarification), <<http://www.wma.net/e/policy/b3.htm>> (Mar 2007).

**Organon claims** that placebo-controlled trials in schizophrenia meet these criteria and are in agreement with the Declaration of Helsinki.<sup>11</sup> The company also points out that a note for guidance on schizophrenia trials, published in 1998 by the European Medicines Authority (EMA), states: 'Therefore in principle placebo-controlled trials will be required to show efficacy of a new product'.<sup>12</sup> A more recent appendix to this note for guidance refers to ICH E10 for the choice of control in clinical trials.<sup>13</sup> ICH E10, a note for guidance published in 2001, leaves open the possibility of a placebo control, pointing out that acceptability is a matter of judgement of various actors and 'could depend on the specific design of the trial and the patient population chosen'.<sup>14</sup> Thus, the use of a placebo comparator could be defended on the basis of specific methodological requirements and trial characteristics.<sup>15</sup>

Organon also points out that in academic literature,<sup>16</sup> 'there is an extensive debate on the use of placebos in schizophrenia research' and there exists 'no consensus on the topic'.<sup>17</sup> However, the only article referred to by Organon that explicitly supports placebo use was written by P. Leber, who had a conflict of interest because his company NeuroPharm Group was assisting Pfizer on the approval of psychiatric drugs.<sup>18</sup>

Organon lists various arguments in favour of placebo use, including that there would be significant placebo-effects and no substantial risk of harm associated with being randomized to placebo treatment. However, a study referred to by Organon found that schizophrenia patients assigned to placebo did not achieve improvement in symptoms, while patients receiving active treatment experienced a modest reduction in symptoms.<sup>19</sup> Thus, it appears that not all arguments provided by Organon are equally valid.

Moreover, the reaction from Organon does not explain why in most EU countries only active comparator drugs are used, while placebo controls are included in other asenapine trials conducted elsewhere. An EMA position statement on the use of placebo controls, published in 2001, states: 'Similar ethical standards should be applied in trials performed in the European Union as well as in foreign countries'.<sup>20</sup> Thus, it seems that the asenapine trials are not in accordance with this EMA policy regarding the choice of comparator.

**Organon provided** the following statement on the matter:

*'The quality standards that Organon uses are the same irrespective the location of the trial, i.e. conduct according to ICH-GCP [Good Clinical Practice], Declaration of Helsinki and applicable regulatory guidelines. In all of our trials, Regulatory and Ethics Committee approvals are obtained, and written informed consent is given by the patients. Regulatory guidelines are very often more stringent in the countries mentioned above [i.e. India, Russian Federation, Latvia, Ukraine and Croatia] than in traditional Western countries.'*<sup>21</sup>

<sup>11</sup> H. J. Out, Organon International, Reaction Organon on "Akzo Nobel: Overview of controversial business practices in 2006", SOMO draft report by Irene Schipper and Francis Weyzig, 2 Apr 2007.

<sup>12</sup> EMA/CPMP, Note for Guidance on the Clinical Investigation of Medicinal Products in the Treatment of Schizophrenia, Feb 1998, CPMP/EWP/559/95, <<http://www.tga.gov.au/docs/pdf/euguide/ewp/055995en.pdf>> (Apr 2007), p. 2.

<sup>13</sup> EMA/CPMP, Appendix to the Note for Guidance on the Clinical Investigation of Medicinal Products in the Treatment of Schizophrenia, Feb 2003, CPMP/EWP/49/01, <<http://www.emea.eu.int/pdfs/human/ewp/004901en.pdf>> (Apr 2007), p. 2.

<sup>14</sup> EMA/CPMP, ICH Topic E 10: Note for Guidance on Choice of Control Group in Clinical Trials, Jan 2001, CPMP/ICH/364/96, <<http://www.emea.eu.int/pdfs/human/ich/036496en.pdf>> (Apr 2007), p. 16.

<sup>15</sup> See also Carpenter, Appelbaum & Levine, The Declaration of Helsinki and Clinical Trials: A Focus on Placebo-Controlled Trials in Schizophrenia, *Am J Psychiatry* 2003, 160:2, 356-362. Organon refers to: Leber P. The use of placebo control groups in the assessment of psychiatric drugs: an historical context. *Biol Psychiatry* 2000; 47: 699-706; Khan A, et al. Symptom Reduction and Suicide Risk Among Patients Treated With Placebo in Antipsychotic Clinical Trials: An Analysis of the Food and Drug Administration Database. *Am J Psychiatry* 2001; 158: 1449-1454; Fleishacker WW, et al. Placebo or active control trials of antipsychotic drugs? *Arch Gen Psychiatry* 2003; 60: 458-464.

<sup>16</sup> H. J. Out, Organon International, Reaction Organon on "Akzo Nobel: Overview of controversial business practices in 2006", SOMO draft report by Irene Schipper and Francis Weyzig, 2 Apr 2007.

<sup>17</sup> Cleveland Clinic, 2007 Medical Innovation Summit, Speaker Biographies, <<http://www.clevelandclinic.org/innovations/summit/bios.asp>> (Apr 2007); D. Healy, Let them eat Prozac (Toronto: James Lorimer & Co, 2003), <<http://www.healyprozac.com/Book/Chapter10.pdf>> (Apr 2007), Chapter 10.

<sup>18</sup> Khan A, et al. Symptom Reduction and Suicide Risk Among Patients Treated With Placebo in Antipsychotic Clinical Trials: An Analysis of the Food and Drug Administration Database. *Am J Psychiatry* 2001; 158: 1449-1454.

<sup>19</sup> EMA/CPMP Position Statement on the Use of Placebo in Clinical Trials with Regard to the Revised Declaration of Helsinki, Jun 2001, EMA/17424/01, <<http://www.emea.eu.int/pdfs/human/press/pos/1742401en.pdf>> (Apr 2007), p. 2.

<sup>20</sup> H. J. Out, Organon International, Reaction Organon on "Akzo Nobel: Overview of controversial business practices in 2006", SOMO draft report by Irene Schipper and Francis Weyzig, 2 Apr 2007.

## DSM

DSM might have been involved in contamination of groundwater in the industrial village of Toansa in Punjab, Northern India. The groundwater in Toansa and surrounding villages has been heavily polluted for many years. There have been complaints about the contamination groundwater since 1999 or earlier. In 2002, the Punjab Pollution Control Board (PCCB) found that the groundwater contained too high concentrations of fluoride and chloride and other pollutants. In 2003, the environmental consulting agency Tetra Tech India found certain solvents in groundwater samples indicating that the pollution can only have been caused by three chemical and pharmaceutical companies: Ranbaxy Laboratories Ltd, DSM Anti-Infective India Pvt Ltd, and/or Montari Industries (which closed down in 2001).

After orders of the PCCB, the chemical companies upgraded their effluent treatment systems. According to the national Environmental Engineering Research Institute, in early 2006 DSM still had an insufficient effluent treatment process, while Ranbaxy had a more effective treatment and monitoring system in place. However, because the effluents of Ranbaxy and DSM are mixed, it is not possible to determine how much pollution is caused by either of them separately.

On 30 November 2005, the local Water Supply and Sanitation Department formally advised inhabitants of 11 villages not to use the water anymore. This announcement revived the ongoing dispute about the groundwater contamination, since not all inhabitants can afford piped water connections.<sup>22</sup> The dispute continued in 2006 and the issue was also brought under the attention of the DSM management in the Netherlands.<sup>23</sup>

In response to the Times of India article about the pollution in Toansa, **DSM provided** the following statement: *'DSM took notice of the complaints about the water quality in certain villages in the Toansa area. Until now it is not yet confirmed if at all water is polluted, and if so, to what extent and who/what the possible polluting source is. DSM fully cooperates with the Punjab Pollution Control Board who investigate the water quality. Apart from this investigation, DSM has taken several measures to reduce the use of solvents and to introduce environmentally-friendly, biotechnology-based production processes and build and operate a waste water treatment plant using the latest technologies. The current measures and regular ground water checks make DSM involvement in a possible pollution case unlikely.'*<sup>24</sup>

<sup>22</sup> P. Ghosh, "Drug abuse: Ranbaxy, Dutch pharma put paid to groundwatre," Down to Earth, 31 jan 2006; K. Singh, "Pharma factories poison village water," Times of India, 6 Dec 2005, <<http://timesofindia.indiatimes.com/articleshow/1319632.cms>> (Feb 2007).

<sup>23</sup> See e.g. India Committee of the Netherlands (ICN), "Brief Landelijke India Werkgroep aan DSM," 2 Feb 2006, <<http://www.indianet.nl/br060202.html>> (Feb 2007).

<sup>24</sup> "Response of DSM to concerns regarding pollution of groundwater near one of its facilities in India", via Business and Human Rights website, 21 Dec 2005, <<http://www.reports-and-materials.org/DSM-response-India-21-Dec-2005.doc>> (Feb 2007).



## Heineken

### Beer promotion by women

For several years, Heineken and other breweries operating in Cambodia have been criticised for the working conditions of so-called 'beer girls', 'promotion girls', or 'beer promotion women', who are hired to market beer brands in bars and restaurants.<sup>25</sup> A brief background is provided before describing the situation in 2006 and recent developments.

Heineken is present in Cambodia through its 41.9% stake in Asia Pacific Breweries Ltd. This Singapore-based business partner markets Heineken brands as well as its own brands and has a major stake in Cambodia Breweries Ltd, which produces local brands such as Tiger beer. The situation of beer promotion women has been reported for several years, amongst others by the Cambodian organisation Siem Reap Citizens for Health, Educational and Social Issues (SiRCHESI).<sup>26</sup>

In 2003, Care International carried out a study sponsored by Heineken and found that physical abuse was a serious problem among beer promoters. It also found evidence of forced sex with customers and beer promoters having paid sex to supplement their income.<sup>27</sup> Linked to this, Heineken started a training programme in collaboration with Care International that includes health and safety as well as human resources issues, called Selling Beer Safely (SBS), and adopted a Promotion Girls Policy in 2004. Heineken was the first beer company in Cambodia adopting such a policy.<sup>28</sup>

In 2005, a second survey by Care International among 640 beer promoters working for various companies confirmed that '*harassment and abuse are rife within beer promotion*'. For example, 80% of the women reported unwanted sexual touching, 54% had experienced physical abuse, and 38% had been coerced to perform a sexual act in the workplace, such as touching a customer's penis. This mostly happens at the table when serving a customer. Even though some beer companies prohibit the women from sitting with or drinking with customers, 36% of the women were forced to do so to by the managers or owners of the outlets. Most beer promoters, however, stated that they did not have paid sex.<sup>29</sup>

In May 2006, the Australian Council of Trade Unions (ACTU) launched a new campaign against the perceived exploitation of promotion women by beer companies. Apart from sexual harassment and violence, the ACTU pointed out that their average wages of US\$ 55 were insufficient by one-half. In addition, about 20% of the women were infected with HIV,<sup>30</sup> but they did not have access to Highly Active Anti-Retroviral Therapy (HAART). The women were not considered employees of the breweries, and therefore they would not be protected by labour law or companies' corporate responsibility policies. Regarding Heineken, the ACTU estimated that the company now has some 1,200 promotion women in China as well.<sup>31</sup>

<sup>25</sup> See e.g. R. Feilzer and F.P. van der Putten, "Heineken en promotiemeisjes in Cambodja - deel A," p. 85-96, and F.P. van der Putten, " - deel B," p. 109-13, in: Bedrijfsgevallen, Eds. W. Dubbink and H. van Luijk (Assen: Van Gorcum, 2006).

<sup>26</sup> SiRCHESI website, <<http://www.angkorwatngo.com>>; see also <[www.beergirls.org](http://www.beergirls.org)> ,< [www.ethicalbeer.com](http://www.ethicalbeer.com)>, and <[www.fairtradebeer.com](http://www.fairtradebeer.com)> (Mar 2007).

<sup>27</sup> I. Quinn, Selling Beer Safely: A Baseline Survey & Needs Assessment of Beer Promoters in Phnom Penh, (Phnom Penh: Care International Cambodia, Sep 2003) <<http://www.fairtradebeer.com/reportfiles/CARE/ingridquinnCARE2003.pdf>> (Mar 2007).

<sup>28</sup> L. Bury, A Report on the Situation of Beer Promotion Women in the Workplace, Cambodia: Results of a Harassment and Abuse Survey, 2005, <<http://www.fairtradebeer.com/reportfiles/CARE/louiseburyCARE2005.pdf>> (Mar 2007), p. 12; the text of the policy is not available from the Heineken website.

<sup>29</sup> L. Bury, A Report on the Situation of Beer Promotion Women in the Workplace, Cambodia: Results of a Harassment and Abuse Survey (Phnom Penh: Care International Cambodia, 2005) <<http://www.fairtradebeer.com/reportfiles/CARE/louiseburyCARE2005.pdf>> (Mar 2007).

<sup>30</sup> Apparently, this figure is based on: National Centre for HIV/AIDS Dermatology and STD, Report on HIV sentinel surveillance in Cambodia 2002 (Phnom Penh: Ministry of health, 2004).

<sup>31</sup> ACTU Press Release, "New Campaign To Lift Wages and Prevent HIV Deaths Among Beer Promotion Women," 27 May 2006, <<http://www.actu.asn.au/Campaigns/YourRightsatWork/YourRightsatWorknews/NewCampaignToLiftWagesandPreventHIVDeathsAmongBeerPromotionWomen.aspx>>; Global Coalition for Women's Rights Worker's Rights, "Background Briefing Visit to Cambodia," 25-28 May 2006, <[http://www.actu.asn.au/Images/Dynamic/OldSite/downloads/files/Coalition\\_Background.doc](http://www.actu.asn.au/Images/Dynamic/OldSite/downloads/files/Coalition_Background.doc)> (Mar 2007); "Unions seek better deal for beer girls," Bulletin Wire 27 May 2006.



In early June 2006, **Heineken responded** to the ACTU campaign and explained that in Cambodia approximately 180 promotion women work for the Heineken brand and 700 for the company's regional and local brands. The women are employed through special agencies and via business partners of Heineken. The company states it considers the matter 'to be a human rights issue and (...) will continue to act accordingly'. However, Heineken questioned the estimate of HIV prevalence and pointed out that women 'working for the Heineken brand' earn more than US\$ 55 even though they work part-time.<sup>32</sup> The response did not comment on wages of women working for the company's regional and local brands.

In September and October 2006, **a different coalition urged Heineken** to expand its existing free HAART programme for employees in African countries to beer promotion women in Cambodia.<sup>33</sup> A press release was issued after separate meetings between SiRCHESI advisor Ian Lubek and the corporate managements of Heineken,<sup>34</sup> Carlsberg, and INBEV. In these meetings, the companies reportedly refused to recognise the promotion women as employees and to provide them with free HAART. After the press release, Heineken indicated it wanted to clarify its position on the issue and was invited to do so in a public discussion in the Netherlands, but since then a public discussion has not yet taken place.<sup>35</sup>

In October 2006, the Beer Selling Industry Cambodia (BSIC), an industry association founded by Heineken, Asia Pacific Breweries, Cambodia Brewery, Guinness, Carlsberg, and Cambrew, adopted a common Code of Conduct for Beer Promoters (BPs).<sup>36</sup> The code contains seven minimum standards recognised by the BSIC members. These include legal employment relationships, the rejection of commission-only work, a fixed base salary, and remuneration in accordance with national regulations. Furthermore, the BSIC policy is that 'during work, BPs should not sit or drink with consumers'.<sup>37</sup>

However, in a new briefing, Ian Lubek and others emphasise that **the problems outlined above still persist**. In 2006, students conducted new surveys and found that many Heineken and Tiger beer promoters had only received health and safety training of less than two hours or had recently started their job without receiving such training first. Workplace dangers such as coercion to drink more than one liter per night were still common. Furthermore, the Heineken and Tiger beer promoters interviewed reported average monthly wages including bonuses of less US\$ 60. The researchers suggest that perhaps bonuses are not fully paid out. The full 'brief for Heineken shareholders' is available from the FairTradeBeer website (see footnote).<sup>38</sup>

Since 1 January 2007, Cambodia provides access to free HAART for all citizens meeting certain medical criteria, mainly a CD4 T-cell count of less than 250 per mm<sup>2</sup>, and social criteria, including being able to access a health centre every day to ensure uninterrupted treatment. This programme is funded by the Global Fund to fight AIDS, Tuberculosis and Malaria (GFATM). Heineken explains that since free HAART treatment is available in Cambodia,

<sup>32</sup> Heineken, "Heineken response to Australian Council of Trade Unions campaign raising concerns about the situation of women promoting beer brands in Asia," 2 Jun 2006, <<http://www.reports-and-materials.org/Heineken-response-to-ACTU-campaign-re-beer-promotion-women-2-Jun-2006.doc>> (Mar 2007).

<sup>33</sup> T. van Merode, B. Chhem Dy, S. Kros, and I. Lubek, "Antiretrovirals for employees of large companies in Cambodia," <<http://www.thelancet.com/journals/lancet/article/PIIS0140673606694361/fulltext>>; "Scientists and practitioners criticise Heineken's anti-AIDS policy: Suggest International brewers must urgently do more for women's health and security in Cambodia," Oct 2006, <<http://www.ethicalbeer.com/oct2006/pressreleaseenglish.rtf>>; "Background Information For Press Release: International Brewers Urged To Move Faster To Reduce Mortality And Improve Workplace Health And Safety For Their Women Beer Sellers In Cambodia," <<http://www.ethicalbeer.com/oct2006/Backgroundinfoforpressrelease.rtf>> (Mar 2007); E. Schouten, "Promotiemateriaal," NRC Handelsblad, 21 Oct 2006, sec. *Wetenschap & Onderwijs*, p. 51; "Na lof nu kritiek voor Heineken," De Telegraaf, 25 Oct 2006, p. 19.

<sup>34</sup> The following presentation was given at the corporate headquarters of Heineken: I. Lubek, Combining Alcohol and HIV/AIDS Risks in Cambodia, 29 Sep 2006, <<http://www.fairtradebeer.com/presentations/Heineken2006.exe>> (Mar 2007).

<sup>35</sup> E-mail correspondence with T. van Merode (Mar 2007).

<sup>36</sup> "Brewers join efforts to improve health, safety and working conditions of beer promoters in Cambodia," joint press release Heineken/Cambodia Brewery/Cambrew/Carlsberg, 24 Oct 2006.

<sup>37</sup> Beer Selling Industry Cambodia (BSIC), Code of Conduct for Beer Promoters (BPs), Oct 2006, <<http://www.fairtradebeer.com/reportfiles/breweries/codeofconduct25oct2006.pdf>> (Mar 2007).

<sup>38</sup> I. Lubek, T. van Merode, and S. Kros, Brief for Heineken shareholders, Mar 2007, <<http://www.fairtradebeer.com/shareholders/BriefforHeinekenshareholders2007.rtf>> (Mar 2007).

there is no need for the company to set up an infrastructure of its own. Heineken also indicates that it will actively promote testing and - if necessary - treatment by the beer promoters who work for the Tiger or the Heineken brands.<sup>39</sup>

Finally, Heineken states: *'(...) we are seeking independent monitoring of the activities that take place in the context of our Selling Beer Safely programme and that we will ask our business partners who employ the beer promoters to look into the primary labour conditions.'*<sup>40</sup>

<sup>39</sup> Heineken, comment on draft report, 10 Apr 2007; Heineken Sustainability Report 2006 <[http://www.heinekeninternational.com/content/live//files/downloads/InvestorRelations/Heineken\\_Sustainability\\_Report\\_2006.pdf](http://www.heinekeninternational.com/content/live//files/downloads/InvestorRelations/Heineken_Sustainability_Report_2006.pdf)> (Apr 2007), p.34.

<sup>40</sup> Heineken, comment on draft report, 10 Apr 2007 (spelling corrections by SOMO); Heineken Sustainability Report 2006, <[http://www.heinekeninternational.com/content/live//files/downloads/InvestorRelations/Heineken\\_Sustainability\\_Report\\_2006.pdf](http://www.heinekeninternational.com/content/live//files/downloads/InvestorRelations/Heineken_Sustainability_Report_2006.pdf)> (Apr 2007), p.34.

<sup>41</sup> Netwerk Vlaanderen, *Explosieve portefeuilles- Bankgroepen en clustermunitionie*, Jun 2006, <[http://www.netwerkvlaanderen.be/nl/files/documenten/campagnes/bankenwapens/dossier6\\_explosieve\\_portefeuilles.pdf](http://www.netwerkvlaanderen.be/nl/files/documenten/campagnes/bankenwapens/dossier6_explosieve_portefeuilles.pdf)> (Mar 2007); Netwerk Vlaanderen, "Explosive investments: Financial Institutions and Cluster Munitions, Feb 2007, <<http://www.netwerkvlaanderen.be/nl/files/documenten/publicaties/mini-dossiers/net-vl.briefingpaper0207.pdf>> (Mar 2007); "68 banken pompen miljarden dollars in clustermunitionieproducenten," Netwerk Vlaanderen, 27 Feb 2007, <[http://www.netwerkvlaanderen.be/nl/index.php?option=com\\_content&task=view&id=398&Itemid=59](http://www.netwerkvlaanderen.be/nl/index.php?option=com_content&task=view&id=398&Itemid=59)> (Apr 2007).

## ING

Financing of controversial weapons manufacturers - In 2006, the NGO Netwerk Vlaanderen published a report, which mentioned that ING has participated in a general loan facility for two controversial weapons manufactures since 2005.<sup>41</sup>

- In January 2005, ING was one of the 36 banks of an international banking syndicate, which offered a five-year €1.5 billion (US\$ 2 billion) loan to Thales. Thales is the parent company of TDA, a European producer of missiles, including cluster munitions. The company admitted to the Norwegian Central Bank that it produces a PR Cargo bomb containing 16 dual effect sub-munitions. In 2006, Forges De Zeebrugge, a fully-owned subsidiary of TDA, acknowledged that it is working on a 70mm FZ101 rocket containing eight sub-munitions for the Tiger Helicopter program of the German army.

The case described dates back to January 2005. ING explains it renewed its defence policy in March 2005. In line with its defence policy, ING will not provide new financing to Thales. Due to contractual obligations, it will take approximately three years to phase out all existing loan obligations.<sup>42</sup>

- In July 2005, ING participated in a €3 billion (US\$ 3.65 billion) seven year revolving credit facility to EADS. ING contributed with €85 million to that credit facility. EADS is the parent company of Airbus and is also a large producer of arms, including nuclear weapons (and, until end 2005, cluster munitions).<sup>43</sup>

From the beginning, as ING reviewed its defence policy in March 2005, ING made clear it would not withdraw from financing the Airbus operations of EADS. The ING Defence Policy explicitly makes an exception for EADS.<sup>44</sup>

But even so, the ING Defence Policy requests for a side letter for general purpose loan facilities to EADS at holding level, because in theory those funds could be used anywhere within the company. Such a letter would state ING funds are not to be used to finance controversial weapons. ING requested a side-letter for the corporate loan described by Netwerk Vlaanderen. However, as ING was one creditor among many, EADS refused to provide a side-letter. It was then decided ING would allow an exception to its policy, not to ask for a side-letter for corporate loans at holding level for two aircraft building companies involved in the French and US nuclear deterrent programme, being EADS and Boeing. The exception made is for side letters in corporate loans only. The financing of controversial weapons remains prohibited under ING's Defence Policy.

Shareholdings for third parties in controversial weapons producers - ING Investment Management invests in shareholdings for third parties, including pension funds. According to its own SEC-filings, ING Investment Management holds shares in three companies that produce cluster bombs. These holdings are listed in the table below.

Name of Issuer	Value (x \$1000)	% of outstanding shares
GENERAL DYNAMICS CORP	5,866	0.03%
LOCKHEED MARTIN CORP	4,072	0.01%
RAYTHEON COMPANY	2,861	0.02%

Source: SEC-filing, ING Investment Management, quarter ended 31 Dec 2006.

In addition, via its investments for third parties, ING holds a substantial stake (the latest figure available is 0.91%) in BAE Systems, a British arms manufacturer that has been supplying arms to regimes that systematically violate human rights.<sup>47</sup> These shareholdings can be regarded as highly controversial.

<sup>45</sup> ING, response to draft report, 5 Apr 2007 and 13 Apr 2007.

<sup>46</sup> Profundo, "Controversiële beleggingen van Nederlandse pensioenfondsen; een onderzoeksrapport voor Zembla," March 2007, <sup>45</sup> <<http://www.profundo.nl/downloads/zembla.pdf>> (Mar 2007).

<sup>47</sup> BAE Systems plc, Bankscope, ING Shareholdings data from Sep 2005 (accessed Mar 2007).

<sup>48</sup> Campagne tegen wapenhandel, "Pensioenfondsen beleggen in kernwapens, marteling en wapenbeurzen," press release, 19 March 2007, <<http://www.stopwapenhandel.org/actueel/persberichten/2007/persbericht1903pensioenfondsen.pdf>> (Mar 2007).

**ING explains** that it must respect the investment instructions from third parties, such as investing in or beating a certain index. The defence policy of ING only applies to ING's proprietary assets, the investments of which ING itself is both economic and legal owner. ING emphasises that it does offer sustainable investment funds and portfolio screening for customers who wish to exclude defence industry securities from their portfolio.

Please note the case occurred in 2007 and not in 2006, but it has been included here because it might be of interest to readers.

In March 2007, an NGO issued a press release, stating the ING employee pension fund has been investing in shares of the company L-3 communications that makes parts of cluster bombs and that provides personnel for the prison of Guantanamo Bay. The pension fund of ING is also investing in the biggest weapon producers in the world, including Lockheed Martin, Northrop Grumman, Raytheon, General Dynamics, and EADS.<sup>48</sup>

ING replied the employee pension fund to be a separate legal entity. Like all third party investments, the ING Defence Policy does not apply to the fund.<sup>49</sup>

**Botnia pulp mill in Uruguay** - ING was asked to participate in the financing of the construction of a huge paper mill of Botnia in Uruguay. According to the Argentinian human rights organisation CEDHA, this project would result in human rights violations and would have detrimental economic and environmental impacts.<sup>50</sup>

As ING was asked to participate in the financing of the project, the company started an assessment for compliance with the Equator Principles. However, on 12 April 2006, **ING communicated** 'further participation in the process - whereby funds would be made available to the project - is no longer under consideration.'<sup>51</sup> In other words, ING would no longer consider financing the project. ING stated the decision was not based on ING's assessment of the project's compliance with Equator Principles. The reason for the decision was not disclosed.<sup>52</sup>

Shareholdings for third parties in companies violating human rights - At its annual shareholders' meeting in 2006, ING has been accused of holding shares in companies that violate human rights in different ways.<sup>53</sup> These include Total and Wal-Mart. ING holds shares in these companies for third parties through ING Investment Management and ING Investments.

- Total, part of TotalFinaElf S.A., is an oil company with operations in Birma. The regime of this country has internationally been condemned for constant breach of human rights. The investment and income from Total is supporting the financial means of the government of Birma. Also, the government used to support and protect the operations of Total with forced labourers, which has resulted in lawsuits against Total in Belgium and France.<sup>54</sup> ING has increased its shares in Total by around 11% in the last quarter of 2006, up to a total of around US\$ 55 million or 0.02% of all outstanding shares.<sup>55</sup>

<sup>48</sup> Campagne tegen wapenhandel, "Pensioenfondsen beleggen in kernwapens, marteling en wapenbeurzen," press release, 19 March 2007, <<http://www.stopwapenhandel.org/actueel/persberichten/2007/persbericht1903pensioenfondsen.pdf>> (Mar 2007).

<sup>49</sup> ING, comment on draft overview, 5 Apr 2007 and 13 Apr 2007.

<sup>50</sup> See e.g. CEDHA, OECD Guidelines Specific Instance Regarding Pulp Paper Mill Investment in Fray Bentos Uruguay by Botnia S.A., <[http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/oecd-specific-instance-botnia-eng.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/oecd-specific-instance-botnia-eng.pdf)> (Mar 2007).

<sup>51</sup> A. Cohen Stuart, ING Group, letter to Centre for Human Rights and Development, 12 Apr 2006, <[http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/ing-pullout-letter-april-12-2006.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/ing-pullout-letter-april-12-2006.pdf)> (Mar 2006).

<sup>52</sup> ING, comment on draft overview, 5 Apr 2007 and 13 Apr 2007.

<sup>53</sup> Netwerk Vlaanderen, "Aandeelhouders protesteren tegen ING-investeringen in mensenrechtenschendingen," Press release, 24 April 2006, <[http://www.netwerkvlaanderen.be/nl/index.php?option=com\\_content&task=view&id=263&Itemid=256](http://www.netwerkvlaanderen.be/nl/index.php?option=com_content&task=view&id=263&Itemid=256)> (Mar 2007).

<sup>54</sup> See e.g. Burma Centrum Nederland, "Total campagne, Achtergrond," <[http://www.burmacentrum.nl/index.php?option=com\\_content&task=view&id=157&Itemid=0](http://www.burmacentrum.nl/index.php?option=com_content&task=view&id=157&Itemid=0)> (Mar 2007); Netwerk Vlaanderen, *Investeert uw bank in Birma? Een onderzoek naar de financiële links tussen vijf bankgroepen en bedrijven die mensenrechten schenden*, Feb 2006, <[http://www.netwerkvlaanderen.be/nl/files/documenten/campagnes/bankmensenrecht/mini\\_dossier\\_Birma\\_NL.pdf](http://www.netwerkvlaanderen.be/nl/files/documenten/campagnes/bankmensenrecht/mini_dossier_Birma_NL.pdf)> (Mar 2007), p. 8.

<sup>55</sup> Nasdaq, TotalFinaElf ,Holdings summary, <<http://holdings.nasdaq.com>> (20 Mar 2007).

<sup>56</sup> ING, Dilemmas, <[http://www.ing.com/group/showdoc.jsp?docid=151985\\_EN&menopt=ins|dil](http://www.ing.com/group/showdoc.jsp?docid=151985_EN&menopt=ins|dil)> (20-03-07).

On its corporate website, *ING responds*:

'In 1997, ING closed its Burma Representative Office. Since then, we are no longer present in this country, nor do we conduct business or finance projects in Burma.

ING was requested to convince companies doing business in Burma to stop their activities in this country. If the companies involved chose to continue their activities in Burma, ING was asked to divest its shares in these organizations or to stop financial dealings with these companies.

After thoughtful consideration, ING considers the requested addition to the current policy not feasible. In the international business environment there are hundreds of companies with some form of relationship with Burma, many of which are large international conglomerates. ING is not able to exclude such an extensive group of companies from its business portfolio.'<sup>56</sup>

- Wal-Mart is a US-based supermarket that has engaged in repeated violations of core labour standards. Wal-Mart has been charged with discrimination against women in a class action suit,<sup>57</sup> was fined in February 2006 for offering employees illegal pay rise to give up union rights, and has been accused of severe breaches of core labour rights<sup>58</sup> in factories directly producing for its UK subsidiary Asda,<sup>59</sup> for example. In 2006, ING reduced the amount of shares held in Wal-Mart to 0.09% of the total value of Wal-Mart's shares, with a combined value of US\$ 275 million.<sup>60</sup> The remaining shareholdings do not support the promotion of human rights, including core labour rights and non-discrimination, as stated in ING's Business Principles.

56 ING, Dilemmas, <[http://www.ing.com/group/showdoc.jsp?docid=151985\\_EN&menopt=ins|dil](http://www.ing.com/group/showdoc.jsp?docid=151985_EN&menopt=ins|dil)> (20-03-07).

57 "Federal Court of appeals upholds largest class certification in history in Wal-Mart gender discrimination case," 6 Feb 2007, <[http://www.walmartclass.com/walmartclass\\_press\\_advisory-9th\\_circuit.html](http://www.walmartclass.com/walmartclass_press_advisory-9th_circuit.html)> (Mar 2007).

58 Food & Drink Europe-com, "Asda Wal-Mart guilty of anti-trade union activity," 14 Feb 2006, <<http://www.foodanddrinkeurope.com/news-by-product/news.asp?id=65803&idCat=140&k=asda-wal-mar>> (22-03-2007)

59 War on Want, Fashion Victims - The true cost of cheap clothes at Primark, Asda and Tesco, Dec 2006, <<http://www.waronwant.org/Fashion+Victims+13593.twl>> (22 Mar 2007).

60 Nasdaq, Holdings Summary, Wal-Mart Stores Inc., <<http://www.nasdaq.com>> (20-03-2007); for shareholding in 2004-2005, see Netwerk Vlaanderen, Waar ligt de grens? - Een onderzoek naar de financiële links tussen vijf bankgroepen en bedrijven die mensenrechten schenden, Brussels, November 2005, p. 48.

61 WHO, International Code of Marketing of Breast-milk Substitutes, 1981, <[http://www.who.int/nutrition/publications/code\\_english.pdf](http://www.who.int/nutrition/publications/code_english.pdf)>; WHO International Code of Marketing of Breast-milk Substitutes: Frequently Asked Questions, 2006, <[http://www.who.int/child-adolescenthealth/New\\_Publications/NUTRITION/ISBN\\_92\\_4\\_159429\\_2.pdf](http://www.who.int/child-adolescenthealth/New_Publications/NUTRITION/ISBN_92_4_159429_2.pdf)> (Mar 2007).

62 IBFAN, Indonesia: Code Violations, March 2004, <[http://www.ibfan.org/site2005/abm/paginas/articles/arch\\_art/261-3.pdf](http://www.ibfan.org/site2005/abm/paginas/articles/arch_art/261-3.pdf)> (Mar 2007).

## Numico

Marketing in Indonesia - The International Baby Food Action Network (IBFAN) focuses on violations of the International Code for Marketing of Breast-milk substitutes by baby food companies. This code was officially adopted by the WHO in 1981. All member states have been urged to translate the code into national legislation or regulations and monitor compliance with the code. Responsibility for ensuring compliance lies with individual governments.<sup>61</sup>

As IBFAN points out, the points of the Code are the following:

- A ban of all advertisements and promotions of products to the general public
- A ban on samples and gifts to mothers and health workers
- A requirement of information materials to advocate for breastfeeding, to warn against bottle feeding and NOT contain pictures of babies or text that idealize the use of breast-milk substitutes
- A ban on the use of the health care system to promote breast-milk substitutes
- A ban on free or low-cost supply of breast-milk substitutes
- Health officials are only allowed to receive samples for research purposes
- A demand that all product information is factual and scientific
- A ban on sales incentives and direct contact with mothers
- A requirement that labels inform fully about the correct use of infant formula and the risks of misuse
- A requirement for labels to NOT discourage breastfeeding

In 2004, IBFAN published a report on violations of the code in Indonesia.<sup>62</sup> It reports that promotional materials of Nutricia and its subsidiary Sari Husada, including calendars, posters, clocks and baby ID cards, were found at health clinics and hospitals. IBFAN also states that Nutricia supplied these hospitals and clinics with free samples and bulk supply of formula. In another report by the same NGO, accusations are made about Nutricia regarding violations of the code on a number of points. Concrete examples, including from Indonesia, are given about direct promotion to the public, promotion in health facilities and to health workers, labelling that violates the Code, and the use of baby pictures on their products.

These violations have also occurred in 2006; a doctor in Indonesia reports about visits that he and a team of medical experts made to health clinics in rural Indonesia in February 2007.<sup>63</sup> They visited the Indonesian islands of Aceh, Medan, Banteng, Yogyakarta, Central and Eastern Java, and Lombok. He reports that in all the clinics and hospitals that the team visited, products by Nutricia and Sari Husada were promoted. The labels advertise these products for babies in the age groups 0-6 months and 0-12 months. This is in direct violation of the International Code, as well as Numico's own Guiding Principles on the Marketing of Infant Formula. While the packaging has pictures of teddy bears in the front, the mention of breast feeding as the best option is only in very small print on the back. Numico distributes its products to clinics and hospitals through agents, who are paid on a commission basis. It is the doctor's professional opinion that the presence of these infant formula products has had an effect on the high rates of diarrhoea in Indonesia.

Numico provided the following statement on the matter: *'Both companies [Numico/Nutricia and Sari Husada]] conduct their business in accordance with the principles of fair competition, local practice and all applicable regulations. This is also stated in the Company's Code of Conduct.'*<sup>64</sup>

61 WHO, International Code of Marketing of Breast-milk Substitutes, 1981, <[http://www.who.int/nutrition/publications/code\\_english.pdf](http://www.who.int/nutrition/publications/code_english.pdf)>; WHO International Code of Marketing of Breast-milk Substitutes: Frequently Asked Questions, 2006, <[http://www.who.int/child-adolescenthealth/New\\_Publications/NUTRITION/ISBN\\_92\\_4\\_159429\\_2.pdf](http://www.who.int/child-adolescenthealth/New_Publications/NUTRITION/ISBN_92_4_159429_2.pdf)> (Mar 2007).

62 IBFAN, Indonesia: Code Violations, March 2004, <[http://www.ibfan.org/site2005/abm/paginas/articles/arch\\_art/261-3.pdf](http://www.ibfan.org/site2005/abm/paginas/articles/arch_art/261-3.pdf)> (Mar 2007).

63 Email contact with doctor in Indonesia, 07 Mar 2007; IBFAN-ICDC & UNICEF, Pelanggaran Kode di Indonesia: Survei tentang tingkat penerapan Kode Internasional pemasaran Pengganti SAI dan Resolusi WHA terkait, Indonesia, 2006..

64 Email from Numico in response to this report, 05-04-07.

**Nutrition claims in the UK** - The Food Standards Agency (FSA) in the UK has announced in March 2007 that it would increase efforts to ban certain nutritional claims made on packaging of infant formula.<sup>65</sup> The decision relates to all claims made that compare the formula with mother milk, in order to avoid misleading mothers. The crackdown does not follow new legislation, but is a renewed attempt to make infant formula producers follow existing EU legislation. Claims such as 'Now even closer to mother milk' as can be found on Nutricia's Cow & Gate products, and 'supports your baby's immune system' and 'the closest to breast-milk' on Milupa's Aptamil First, are targeted by the FSA. In response, a Nutricia representative said that the company will change the labelling from next month on, incorporating FSA's requests. In response to this report, Numico states that all claims they make are in line with existing legislation. If these claims are not in line, they will be changed.<sup>66</sup>

In its Code of Conduct, Numico states: *We and our employees are committed to comply with all applicable laws and regulations of the countries in which we operate.*<sup>67</sup> The abovementioned case implies that Nutricia was not abiding by the EU legislation up until this moment. In The Netherlands, Numico made similar, illegal claims in a letter sent to a mother.<sup>68</sup> The letter can be found in full in the annex. No reports have been found that show that Nutricia is planning to change the packaging in The Netherlands or other European countries. Numico's response to this report was that: *"the company's intention is not to compare breastfeeding to Nutrilon. It is only to stress the working of pre-biotics which is comparable with the effects of breastfeeding. We will not use these wordings again since we understand that this can give a different perception."*<sup>69</sup>

**Misinterpretations of the International Code of Marketing of Baby food** - The IBFAN has published a report, in which it accuses Numico of a conscious misinterpretation of the International Code for Marketing of Baby food, in order to make it suitable for its own interests.<sup>70</sup> Numico has its own Guiding Principles for the Marketing of Infant Formula. IBFAN shows eight points in which the principles differ from the code, and point out how this benefits Numico:

- Scope (Numico changed the term "*breast-milk substitutes*" to "*starter formula*")
- Universality (Numico will adopt the code only "*as legally and socially appropriate to the specific situation in each country where NUMICO products are sold.*")
- Information and education (Numico has guidelines on promoting advertising and other promotional material, which is banned altogether by the Code)
- Promotion of breast-milk substitutes other than infant formula (Numico ensures that marketing will not discourage continued breastfeeding, while the marketing itself is not according to the code)
- Advertisements to health workers for the purpose of trade (Numico will not state that breastfeeding is the best option when advertising to health workers, while health workers should only be contacted for research purposes).
- Labelling, sampling and free supplies (Numico's restrictions only cover infant formula, while the Code restricts all breast-milk substitutes)
- Legislation and monitoring (Numico uses the term "as appropriate in each individual country", while the code is universal)
- Missing points (Numico leaves a number of points from the Code out of its Guiding Principles)

Whereas IBFAN only points out the differences in policies, the abovementioned claims by the Indonesian doctor show that the practices also follow Numico's internal guidelines, rather than the International Code. This would be inconsistent with official norms set by the WHO and agreed upon by all member states. According to Numico, *"Numico's companies are following the WHO guidelines as stated in Code of Conduct. If exceptions are found then this will be corrected."*<sup>71</sup>

65 S. Coulter, "Baby milk firms told to drop nutrition claims," The Daily Mail, 12-03-07, [http://www.dailymail.co.uk/pages/live/articles/health/healthmain.html?in\\_article\\_id=441566&in\\_page\\_id=1774](http://www.dailymail.co.uk/pages/live/articles/health/healthmain.html?in_article_id=441566&in_page_id=1774) (21-03-07).

66 Email from Numico in response to this report, 05-04-07.

67 Numico, Numico 05/06 Sustainability Report, p.55.

68 Email contact with Dutch IBFAN representative, 16-03-07.

69 Email from Numico in response to this report, 05-04-07.

70 Y.J. Kean, International Code Documentation Centre, "Nutricia and the International Code: Where Do They Differ?," March 2006.



**Marketing violations in The Netherlands** - The Dutch branch of IBFAN, the Stichting Baby Voeding, has reported a number of baby food marketing violations in The Netherlands.<sup>72</sup> Through email contact, the NGO sent a number of pictures and descriptions of Nutricia's marketing practices. These include the use of baby pictures on the packages (see annex), which is in violation article 9.2 of the International Code of Marketing of Breast-milk Substitutes that states: *Neither the container nor the label should have pictures of infants, nor should they have other pictures or text which may idealise the use of infant formula.*<sup>73</sup>

For 2006, Stichting Baby Voedsel has reported four violations of the International Code, including a stand at a pregnancy fair, letters sent to mothers promoting their products, and the use of a teddy bear in a door-to-door advert for infant formula.<sup>74</sup> These violations include cases related to follow-up formula products.

Numico responded that the company does not use advertising or direct marketing to the 'full range of Infant Formula'.<sup>75</sup> It only markets products from 6 months onwards, or in certain countries from 12 or 24 months, depending on local legislation. However, according to the International Code of Marketing of Breast-milk Substitutes, follow-up formula, used for children 6 months of age or older, is also regarded as a breast-milk substitute and therefore falls under the scope of the code.

71 Email from Numico in response to this report, 05-04-07.

72 H. Hayes, chairperson Stichting Baby Voedsel, email, 16-03-07.

73 IBFAN website, The International Code of Marketing of Breast-milk Substitutes, no date, <http://www.ibfan.org/english/resource/who/fullcode.html> (20-03-07).

74 H. Hayes, chairperson Stichting Baby Voedsel, email, 16-03-07.

75 Email from Numico in response to this report, 05-04-07.



## Philips

**Violation of labour rights at Chinese supplier Jiangmen Gloryfaith** - SACOM (Students and Scholars against Corporate Misbehaviour) has published a research report on labour conditions in the ICT Industry. For this research, which was commissioned by SOMO,<sup>76</sup> SACOM interviewed of Gloryfaith's production workers (seven male and three female young migrant workers in individual interviews) outside the plant in August 2006.

Gloryfaith manufactures of printed circuit boards (PCBs), laminates, copper foil, glass fabric, bleached craft paper, and specialty chemicals. Gloryfaith's average monthly production output is 180,000 square feet of single-side and 150,000 square feet of multi-layer (up to 50 layers) printed circuit boards (PCBs). Various types of PCBs are further processed by other factories in the upper stream of the supply chains. Finished products include desktop and laptop computers, LCD and magnetic products, household electrical appliances, audio-visual devices, and digital consumer electronic products. Brand-name corporations such as IBM, HP, Philips, TCL, LG, Sharp, Samsung, and Sony are major buyers.

**Illegally Low Wages** - At Gloryfaith the basic monthly wage is well below the legal minimum level. In this factory overtime wages are not paid at the levels of 1.5 times the normal rate on weekdays, 2 times on Saturdays and Sundays, or 3 times on statutory holidays.

**Excessive Working Hours and Forced Overtime** - The major problem is that the factory adheres to a 'normal' work month of 26 days, instead of five-day weeks (or 20.92 days in a month in Jiangmen City). The day-shift workers typically do three hours overtime work for everyday between Mondays and Saturdays. In other words, for a 26-day work month, the overtime working hours are as many as 110 hours (3 hours x 22 week days + 11 hours x 4 Saturdays = 110 hours; which far exceeds the maximum legal limit of 36 overtime hours in a month). Night-shift workers even have to do overtime work for four hours per day, by starting at 8 PM and finishing at 8.30 AM with only a 30-minute break at midnight. During peak production seasons workers are further required to work on Sundays. Overtime work is mandatory. Our interviewees felt stressed because the working hours were extremely long (Articles 36, 38, and 41 of the Chinese Labor Law on working time are not enforced). One worker of the PT department testified that he did not have a rest day for an entire month.

**Delay of Wage Payments** - In addition to the serious problem of illegally low wages, Gloryfaith pays the workers for the first month of work only until the end of the second month. Such deliberate delay in wage payment is a violation of workers' legal rights (Article 50 of the Chinese Labor Law).

**Fines and Punishments** - Absenteeism is penalized by a fine of 70 yuan, "misdemeanor offenses" and "disruptions to production" workers are charged between 10 to 300 yuan. From the workers' point of view the managers are subjective and abusive in exercising their power. According to Article 50 of the Chinese Labor Law, workers wages cannot be deducted without justification.

**Poor Health and Safety** - What is worrying is that none of the workers have received any training on the potential hazards of using industrial chemicals. The management has not provided the workers with chemically-resistant, face-masks, or safety glasses in the production processes. Two out of the seven male workers interviewed at the factory were able to name the chemicals they used frequently: sulphuric acid and nitric acid - both are strong oxidizing agents. Contact with the eyes or skin can cause serious permanent damage. The workers all suffered skin redness and pains (hands, face, and shoulders) and have called for medical aid. Similarly, nitric acid is a highly corrosive liquid, which is a toxic acid that cause severe burns. Inhalation of vapors may cause breathing difficulties and lead to pneumonia and pulmonary edema. Vapors may also cause damage to the eyes. Occupational health and safety measures are neglected in Gloryfaith. There is also no provision of regular health check services to the production workers. They have long been exposed to a hazardous environment without any protective gear.

<sup>76</sup> SACOM, An Investigative Report on Labor Conditions of the ICT Industry: Making Computers in South China, Submitted to SOMO, Part II of the two-series studies of the ICT Industry in South China, November 2006. See for a complete description of the case in the report available at: [http://www.campagneoecumenique.ch/IMG/pdf/9.\\_Chine-SACOM\\_sector\\_report\\_Nov2006.pdf](http://www.campagneoecumenique.ch/IMG/pdf/9._Chine-SACOM_sector_report_Nov2006.pdf)

**Non-Provision of Social Insurance Benefits** - Lowest-rank workers are excluded from insurance schemes. No medical or industrial injury insurance is provided.

**Managerial Disciplines** - Installation of 24-hour surveillance cameras on the shop floors.

**Violation of labour rights at Chinese supplier Dongguan Primax Electronic Products** - SACOM has published a research report on labour conditions in the ICT Industry. For this research, which was commissioned by SOMO, SACOM<sup>77</sup> interviewed 10 of Primax' production workers (six female and four male workers) outside the plant in February 2006.

Taiwan-owned Primax Electronics Ltd. is a supplier of consumer and business electronics, founded in 1984 and listed on the Taiwan Stock Exchange in January 1995. Its Chinese plants and workers' dormitories are located in industrialized Shijie Town, northeast Dongguan City. The main plant has a large workforce of over 3,000. Including its branches, it employed tens of thousands workers at the time of the field investigation in February 2006. They supply computer peripherals (such as wired or optical wireless "PC mouse") and imaging products (such as scanners and printers) for IBM, Dell, HP, and Philips. They also manufacture other office equipment (such as shredders) and communication devices (for example, MP3 players).

**Illegally Low Wages** - The management also hires short-term or casual laborers to fill rush orders. These workers have to complete a standardized 11-hour work shift, six to seven days a week. Their wages are fixed either at 700 or 800 yuan a month, depending on their work positions. They are seriously underpaid. The legal minimum wages in Dongguan City between 2005 and August 2006 should at least be 574 yuan / month (hourly wages = 3.43 yuan).

For example: a casual worker is required to do overtime work for three hours on weekdays (overtime wages at 1.5 times the normal wages) and for 11 hours on Saturdays (2 times the normal wages). The payment is follows.

- Basic wages: 574 yuan
- Overtime wages on weekdays: 5.14 yuan x 3 hours x 20.92 days = 322.57 yuan
- Overtime wages on Saturdays: 6.86 yuan x 11 hours x 4 days = 301.84 yuan
- Total: 1,198.41 yuan

Obviously, even if the worker at Primax Dongguan could receive the highest possible monthly payment of 800 yuan, it still falls short of 398.41 yuan.

**Excessive Working Hours and Forced Overtime** - At Primax Dongguan, in addition to the normal 168 working hours a month (8-hour work days x 20.92 days), workers are required to do overtime work from 80 to 100 hours a month. The 10 interviewees declared that overtime work on weekdays and Saturdays was mandatory. During peak seasons, they also had to work on Sundays, without one day of rest. This far exceeds the maximum overtime limit of 36 hours a month (Article 41 of the Chinese Labor Law).

**Fines and Punishments** - A worker will be fined 100 yuan if he or she loses the staff card, which is part of the work uniform. Workers told that when they fail to achieve the hourly output quota, they are forced to work overtime without pay.

**Labour rights violations at Jabil Circuit de Chihuahua, Mexico** - Jabil Circuit, an electronics manufacturer with large operations in Chihuahua, Mexico. The Guadalajara plants had around 4000 workers in 2006.<sup>78</sup> End 2006 and beginning 2007, Jabil Circuit fired a large number of workers and it currently has approximately 2,300 employees in Chihuahua.<sup>79</sup> Philips has been a customer of the company for at least three years and it was one of the two principal customers in 2006, next to HP. In total, some 1,000 employees worked on production lines for Philips. The address of the plant is:<sup>80</sup>

77 SACOM, An Investigative Report on Labor Conditions of the ICT Industry: Making Computers in South China, Submitted to SOMO, Part II of the two-series studies of the ICT Industry in South China, November 2006. See for a complete description of the case in the report available at: [http://www.campagneoecumenique.ch/IMG/pdf/9.\\_Chine-SACOM\\_sector\\_report\\_Nov2006.pdf](http://www.campagneoecumenique.ch/IMG/pdf/9._Chine-SACOM_sector_report_Nov2006.pdf)

78 Electronicsonline, 23 May 2006, "Nuevo director de Jabil México," <[http://electronicsonline.com/noticias/notas.php?id=3419\\_0\\_1\\_0](http://electronicsonline.com/noticias/notas.php?id=3419_0_1_0)> (23 Feb 2007).

79 Circuitree, 1 Feb 2007, "Jabil Awarded AS9100 Aerospace Certification in Chihuahua," <[http://www.circuitree.com/CDA/Articles/Fabrication\\_News/BNP\\_GUID\\_9-5-2006\\_A\\_1000000000000047124](http://www.circuitree.com/CDA/Articles/Fabrication_News/BNP_GUID_9-5-2006_A_1000000000000047124)> (23 Feb 2007).

80 Jabil website, <[http://www.jabil.com/contact\\_us/worldwide\\_operations.html](http://www.jabil.com/contact_us/worldwide_operations.html)> (23 Feb 2007).

**Intoxications of workers** - In 2006 there were three intoxications in Jabil Circuit. At the first, starting on 27 March, more than 600 workers were intoxicated after consuming contaminated water and 72 of them were hospitalized. In the months after the big intoxication many workers continued with having complaints. The source of the problem was contamination of the drinking water system inside the plant.

Jabil tried to conceal the problem. The workers were given pills and being told that if they should go back to work. Even though the complaints such as diarrhoea, vomiting and dizziness continued, workers did not get sick leave or an exit pass required to leave the plant to receive medical treatment. Workers were threatened with dismissal and losing their productivity bonus if they would inform the press about the accident. One worker was fired while she was interned as a consequence of the intoxication.

The company did not inform the local authorities or health services, which therefore could not provide timely assistance. They were informed by family members of the workers and arrived at the plant three days after the mass the intoxication had started, while work had continued in different shifts and more workers become sick. When they arrived, they were still denied access to the plant for several hours. There had been instances in the past where the company has denied access to the plant in case of emergencies. Authorities announced that the company would be sanctioned for denying the emergency services access to the company.<sup>81</sup> The intoxication affected workers of the entire plant, thus including the production lines of the main clients HP and Philips. At the end of May there was another intoxication. This time 23 people suffered from intoxication after eating a soup in the plant restaurant. Whereas the cause of the intoxication was the same as for mass intoxication in March, less workers were affected and the symptoms were less severe.<sup>82</sup>

**Health problems** - In 2005, a female employee asked her supervisor to move her to another production line when she found out that she was pregnant, since she was working with lead. Her supervisor refused. On 17 November, being three months pregnant, she arrived to her work not feeling well. When she went to the bathroom she found out that she was bleeding and went to the doctor, who told her that she could go back to work. Back to the production line she told her supervisor she was feeling sick and asked him permission to leave. After calling the doctor, he did not give permission immediately, but later in the morning she was given an exit pass to leave the plant and was admitted to the hospital. The baby had not grown properly because of contact with lead and she had a miscarriage. HP responded by requiring Jabil Circuit to improve health and safety conditions in the plant. Philips did not respond.

**Prohibition to organise** - Jabil Circuit in Chihuahua does not have a trade union and workers were not allowed to organise themselves. When new employees entered the company, they had to sign a declaration that they will not organise themselves. In June 2006, after a meeting with CEREAL, Jabil Circuit promised to end this practice. However, workers are still not able to organise themselves.<sup>83</sup>

**Excessive wage deductions** - From the workers' point of view, Jabil Circuit makes excessive wage deductions for punctuality failures, which is a common practice in the Mexican electronics industry. One worker of Jabil Circuit explained that for one missed working day, the company deducts 550 pesos (approx. €40), while workers earn on average some 100 pesos (approx. €7) per day. Electronics companies responded that the deductions do not concern the basic wage, but missed punctuality bonuses for workers who have not missed work and have not been late in during full month.<sup>84</sup>

81 F. Meza, "Se intoxican con agua más de 300 en maquila," "También en 2002 negaron acceso a servicios de emergencia," O. Chavez, "Sancionaran a empresa por ocultar emergencia," El diario de Chihuahua, 30 Mar 2006; J.M. Vergara Gonzalez, "Mas intoxicados ayer en la maquila," El diario de Chihuahua, 1 Apr 2006; "Desmiente maquiladora a El Heraldo," El diario de Chihuahua, 4 Apr 2006; "Aplican sancion minima a Jabil," El diario de Chihuahua, 4 Apr 2006.

82 "Intoxicados en maquila," El heraldo de la tarde, 26 May 2006; "Intoxicados con comida 13 empleados de Jabil Circuit," El diario de Chihuahua, 27 May 2006.

83 E-mail correspondence with CEREAL, Feb 2007.

84 CEREAL, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, <[http://www.imfmetal.org/main/files/06071816152666/cereal\\_electronics\\_report.pdf](http://www.imfmetal.org/main/files/06071816152666/cereal_electronics_report.pdf)> (26 Feb 2007), p. 38; E-mail correspondence with CEREAL, Feb 2007.

**Labour rights violations at Sanmina SCI Systems de México** - Sanmina SCI, an electronics manufacturer, has five plants in Guadalajara with a total of more than 10,000 employees. The company has been operating in Guadalajara for more than 18 years. Worldwide, Philips is one of the 15 top customers of Sanmina SCI.<sup>85</sup> Although it may not be the principal customer of Sanmina SCI in Guadalajara, it is known that at least one of the plants produces for Philips.<sup>86</sup> Apparently, this is Plant 1 of Sanmina SCI Systems de México, S.A. De C.V (previously plant 29 of SCI Systems de México, S.A. De C.V. ).<sup>87</sup>

Research by CEREAL in 2006 found various problems regarding labour issues at Sanmina SCI in Mexico in general. These are described below. The findings have not been directly communicated to Philips. It is not clear to what extent Philips has been aware of these practices and is monitoring its supplier Sanmina SCI to ensure compliance with minimum labour norms in the future.

**Repeated temporary contracts** - In some plants, Sanmina SCI has been employing plant workers on series of temporary contracts. This is a common practice in the electronics industry in Mexico but is illegal under Mexican law. In practice, it increases job insecurity, rights to vacation days, and rights to compensation in case of dismissal. In one case (in a different plant than the one mentioned above), an employee of Sanmina SCI had worked for three years on repeated contracts of 28 days, 2 months, or 3 months. It is not known to what extent such contracting practices occur throughout the company in Mexico.

Sanmina SCI responded that it would sever links with some employment agencies and would, from 2006 onwards, provide severance pay to unfairly dismissed employees. In addition, the company will implement a plan to reduce the number of subcontracted employees to 60% in 2007.<sup>88</sup>

**Phantom trade union** - Sanmina SCI has a so-called phantom union, which collaborates with the management and is unknown to the workers themselves, while they are automatically affiliated to it. Plant workers only found out that a trade union exists because a membership fee is deducted from their wage. The name of the trade union is the *Sindicato de Trabajadores y Empleados en Comercio y Oficinas Particulares del Estado de Jalisco* (Trade Union of Commerce and Private Offices' Employees of the State of Jalisco). The contract between the management and the union forces around 7,500 workers to be members of the union.<sup>89</sup> Although such practices are relatively common in Mexico,<sup>90</sup> they violate core conventions of the International Labour Organisation (ILO) and the OECD Guidelines for Multinational Enterprises. The latter state in chapter IV on Employment and Industrial Relations, article 1a) based on the corresponding ILO conventions, that enterprises should 'respect the rights of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations (...)'

**Recruitment discrimination** - During past recruitment interviews by employment agents for jobs at Sanmina SCI, questions suggesting discriminatory practices were asked, for example:

- 'Do you have relatives who are lawyer or belong to a labour union?'
- 'When was your last menstruation period?'
- 'Do you have tattoos?'
- 'Do you have family who are politicians or militaries?'

In addition, urine samples of women candidates were taken to test for pregnancy and men and women were required to remove some of their clothes to check for tattoos.

85 Sanmina SCI, Prospectus, 2006, <[http://www.shareholder.com/sanm/downloads/Sanmina-SCI\\_Prospectus2006.pdf](http://www.shareholder.com/sanm/downloads/Sanmina-SCI_Prospectus2006.pdf)>; Sanmina-SCI Corporation, Form 10-K, 2005, <[http://yahoo.brand.edgaronline.com/EFX\\_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=9f81f2b12EMBC8Z&ID=4098040](http://yahoo.brand.edgaronline.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=9f81f2b12EMBC8Z&ID=4098040)> (26 Feb 2007).

86 E-mail correspondence with CEREAL, Feb 2007.

87 Gerencia de Seguridad Radiológica, "Registro," Aug 2003, <[http://www.cnsns.gob.mx/agosto\\_2003.pdf](http://www.cnsns.gob.mx/agosto_2003.pdf)> (26 Feb 2007).

88 CEREAL, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, <[http://www.imfmetal.org/main/files/06071816152666/cereal\\_electronics\\_report.pdf](http://www.imfmetal.org/main/files/06071816152666/cereal_electronics_report.pdf)> (26 Feb 2007), p. 18-21.

89 CEREAL, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, <[http://www.imfmetal.org/main/files/06071816152666/cereal\\_electronics\\_report.pdf](http://www.imfmetal.org/main/files/06071816152666/cereal_electronics_report.pdf)> (26 Feb 2007), p. 42.

90 See e.g. SOMO, Philips Mexicana - Summary report, 2006, <<http://www.companymonitor.org/download/publications/PhilipsMexicosummaryreport.pdf>> (Feb 2007), p. 8-11.

Sanmina SCI responded that it has a non-discrimination policy. Representatives acknowledged that some of these practices had taken place until late 2003, but have gradually disappeared. CEREAL has confidence in the efforts of SCI Sanmina to eliminate discriminatory practices, but called for better monitoring of employment agents.<sup>91</sup>

**Excessive wage deductions** - From the workers' point of view, Sanmina SCI makes excessive wage deductions for punctuality failures similar to Jabil Ciruicts. The deduction for a missed working day is 200 pesos, compared to average earnings of 90 pesos per day.<sup>92</sup>

**Health and safety problems in Philips Manaus, Brazil** - In 2002 and 2003, there have been substantial reorganisations in the operations of Philips in Manaus, Brazil, which included imposing higher productivity requirements. Apparently, this has resulted in an increase in the number of accidents and work-related diseases, although the latter might not always be recognised as such by the management of Philips Manaus. The most common types of accidents are cuts in the hands or fingers caused by the operation of production machinery or assembly operations.

The table below lists the number of accidents known by the union for the period 2002-2006. The figure of 2006 corresponds to the period of January to July only. Note that it is not certain whether Philips has informed the union of all accidents in these years.

Year	2002	2003	2004	2005	Jan-Jul 2006
<b>Number of reported accidents</b>	<b>10</b>	<b>12</b>	<b>18</b>	<b>44</b>	<b>11</b>

Source: *Comunicados de Acidente de Trabalho (CATs)*

Although it seems that the frequency of accidents has decreased from 2005 to 2006, it is still higher than in 2002 and 2003, before higher productivity levels were imposed. This might not be consistent with company policies to minimize workplace accidents and Philips' GBP Directive 10 on Health and safety, which includes a commitment to '*consult and co-operate with employees and/or their representatives*' and '*maintain preventive practices and responsive procedures with regard to emergencies and accidental events*'.

91 CEREAL, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, <[http://www.imfmetal.org/main/files/06071816152666/cereal\\_electronics\\_report.pdf](http://www.imfmetal.org/main/files/06071816152666/cereal_electronics_report.pdf)> (26 Feb 2007), p. 12-3.

92 CEREAL, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, <[http://www.imfmetal.org/main/files/06071816152666/cereal\\_electronics\\_report.pdf](http://www.imfmetal.org/main/files/06071816152666/cereal_electronics_report.pdf)> (26 Feb 2007), p. 38; E-mail correspondence with CEREAL, Feb 2007.

93 E-mail correspondence with Instituto Observatorio Social, Brazil, Feb 2007, based on data obtained in Jan-Jul 2006 from, amongst others, the Centro de Referência Estadual em Saúde do Trabalhador da Amazônia (CEREST/AM), the Secretaria do Sindicato dos Metalúrgicos de Manaus, the Delegacia Regional do Trabalho de Manaus.

## SBM Offshore

**Sakhalin project** - SBM Offshore is involved in the Sakhalin II oil and gas project in Russia. The Sakhalin II project has seen controversy for a number of environmental and social issues. It poses a threat to the endangered Western Grey Whales, as the drilling areas are close to the feeding grounds of these animals.<sup>94</sup> According to Friends of the Earth Netherlands (Milieudedefensie), there are only 100 specimens left.<sup>95</sup> Environmental contamination and noise could drive the animals away from their feeding grounds. The disposal of waste water and solid waste could also pose a threat to other marine life, such as wild salmon, crab and shrimp. According to the organisation Sakhalin Watch, this could also cause negative economic impacts for local fishermen.<sup>96</sup> The project has also been the target of protests by indigenous communities on the island, who feel they that were not consulted properly and that no account was taken on the project's impacts on them.<sup>97</sup>

SBM Offshore operates a Floating Storage and Offloading (FSO) vessel called 'Okha', which is contracted by Shell. The FSO has been deployed in this region since 1999<sup>98</sup>, and the contract was extended with two years in 2003<sup>99</sup>. According to the 2005 Annual Report, the contract was extended with an additional year until the end of 2006, and it was expected that the contract could last until the end of 2007. According to the Offshore Technology website, "*the FSO is designed in such a way that it can push through 'young' or 'light' ice. This allows the vessel to remain on-site without risking its ability to reach open water, thereby maximizing oil production*".<sup>100</sup> SBM Offshore explained that the FSO can disconnect from its mooring system in the winter and that no oil is produced in the winter months. The company clarified that it is not '*increasing oil production*'.<sup>101</sup>

In the past, the Okha FSO has caused minor oil leakages in the region. In 1999, for example, the vessel spilled 1.5 tonnes (10 barrels) of oil in the sea, when connections with the platform snapped and the vessel drifted away.<sup>102</sup> Several NGOs are concerned that precautions are not sufficient and that a catastrophic event, even though it would be unlikely, could cause severe environmental damage.<sup>103</sup>

**Kashagan project** - In its Annual Report, SBM Offshore makes mention of '*the design and construction of three flash gas compression barges for the Kashagan field in the shallow waters of the Northern Caspian sea offshore Kazakhstan*'.<sup>104</sup> SBM Offshore received the order for this project in 2004, in partnership with Siemens Demag Delaval Turbomachinery BV.<sup>105</sup> The operator of the barges is Agip KCO, a company fully owned by Eni S.p.A. on behalf of a consortium of oil companies, including Royal Dutch Shell, Total and ExxonMobil. The first two barges will be delivered to Agip in the summer of 2007. The flash gas compression barges will be used to compress the gas that is associated with the production of oil. The gas has a high concentration of hydrogen sulphide (H<sub>2</sub>S).<sup>106</sup>

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- 94 Sakhalin Environment Watch, Sakhalin II Oil and Gas Project: An Overview of the Problems (draft), 11 Apr 2006, <[http://pacificenvironment.org/downloads/Sakhalin%20II%20Overview%20of%20Problems\\_PDF%2011apr06.pdf](http://pacificenvironment.org/downloads/Sakhalin%20II%20Overview%20of%20Problems_PDF%2011apr06.pdf)> (12-04-07).
- 95 Milieudedefensie website, Globalisering, "*Will The Netherlands invest in a dangerous, large-scale oil and gas project which threatens whales?*", August 2004, <<http://www.milieudedefensie.nl/globalisering/doemee/earthalarm/eng93.htm/view?searchterm=sakhalin>> (12-04-07).
- 96 Sakhalin Environment Watch website, "Economic problems", no date, <<http://www.sakhalin.environment.ru/en/index.php?-section=economicproblems>> (12-04-07).
- 97 BankTrack, Paper on Sakhalin for non-equator banks, April 2005, <weblink> (12-04-07).
- 98 Single Buoy Moorings Inc. website, FSO/FSPO Turnkey, Lease and Operation, "FSO and FSPO Lease Units", no date, <<http://www.singlebuoy.com/HTML/LeaseOperations/Systems/Okha.htm>> (12-04-07).
- 99 Euronext website, Equities, Stocks, "SBM Offshore", no date, <weblink> (12-04-07).
- 100 Offshore Technology website, Industry Projects, Central Asia, Sakhalin II, "Sakhalin II, Sea of Okhotsk, Russia," no date, <<http://www.offshore-technology.com/projects/sakhalin>> (19-04-07).
- 101 H. Peereboom, SBM Offshore NV, email 16-04-07.
- 102 J. Wills, "Counting Russia's Black Gold," The Ecologist, July 2000, <[http://findarticles.com/p/articles/mi\\_m2465/is\\_5\\_30/ai\\_63859399](http://findarticles.com/p/articles/mi_m2465/is_5_30/ai_63859399)> (12-04-07).
- 103 D. Lawn, R. Steiner & J. Wills, Sakhalin Oil: Doing it right, November 1999, <<http://www.bankwatch.org/documents/sakhalinsoil.pdf>> (24-03-07).
- 104 SBM Offshore, Annual Report 2005, <http://www.sbmoffshore.com/PDF/annrep2005EN.pdf> (12-04-07), p.22.
- 105 BankTrack website, Dodgy Deals, "Kashagan oil project," <<http://www.banktrack.org/?show=dodgy&id=63>> (12-04-07).
- 106 GustoMSC, "Inside: foresight in offshore," Vol.6, April 2006, <<http://www.gustomsc.com/download/Inside%207%20-%20April%202006.lowres.pdf>> (19-04-07).



The Kashagan project is controversial for a number of reasons.

- **Environmental issues:** The project is located within a protected area, the natural reserve of the shallow waters in the northern Caspian sea.<sup>107</sup> This region is home to endangered sturgeon species, as well as the whelping grounds of the Caspian Seal. Due to the extreme climate of very hot summers (+40 oC) and very cold winters (-40 oC) and the shallow waters, the risk of accidents and pollution is very high. Other concerns expressed by NGOs include waste management and oil tanker traffic without the proper oil spill response plans.<sup>108</sup>
- **Health issues:** Due to the high concentrations of sulphur in the oil that is extracted in Kashagan, the nearby populations, including people living in the city of Atyrau, face risks of toxic contamination.<sup>109</sup> Both the development of the oil fields and the separation of various sulphides from the oil in the nearby Bolashak Processing Plant increase the risk of exposure to hydrogen sulphide. Hydrogen sulphide is highly toxic for humans, and can lead to permanent memory loss, vision problems, dizziness, headaches and nausea.
- **Transparency:** According to Kazakhstani law, public consultation hearings need to be held before the commencement of any construction project. These public hearings were held in the early autumn of 2006, but were not open to the public, environmentalists or outside experts, nor were local residents informed about these public hearings. The public was also not involved in the project's Environmental Impact Assessment (EIA), and the EIA is not publicly available. This is in violation of the Aarhus convention,<sup>110</sup> an international convention on public rights in environmental matters, which has been signed by Kazakhstan.

Although it should be recognised that these issues do not directly relate to the activities of SBM Offshore, the company's involvement in the construction project would entail a shared responsibility for insufficient public consultation and disclosure regarding environmental impacts.

**Continuing presence in Burma (Myanmar)** - For a number of years, SBM Offshore has been the target of NGO campaigns regarding its continuing presence in Burma (Myanmar). Through a 15-year contract with Petronas, and previously with Premier Oil, SBM Offshore is operating a Floating Storage and Offloading (FSO) vessel in the Yetagan gas field in the Bay of Andaman.<sup>111</sup> The activities date back to 1998, and in 2000 the first gas was produced in this region.

The continuing presence in the oil industry in Burma made SBM Offshore the target of a campaign by the Burma Centrum Nederland (BCN).<sup>112</sup> This campaign, that continued in 2006, focuses on the fact that the Burmese junta is supported by the presence of large multinationals such as SBM Offshore. Through taxes and other payments, they generate revenues for a regime that is subject to UN sanctions due to widespread and serious human rights abuses. These include forced labour, political prisoners and violations against minority women. Large scale environmental damages, in part due to the presence of natural gas projects, have also been regularly reported. The ILO has questioned whether the Burmese government upholds the ILO convention on forced labour, and has, in the past, called on all of its members to review or cut all ties with the country and its government.<sup>113</sup>

According to SBM Offshore's Annual Report 2006, the total amount of taxes paid to the Burmese government was US\$ 475,000.<sup>114</sup> The company also reports that it has performed internal SA8000 audits, as externally auditing and certification in Burma have been disallowed until the ILO lifts its sanctions against the country.<sup>115</sup> According to SBM Offshore,

107 BankTrack website, Dodgy Deals, "Kashagan oil project."

108 Crude Accountability website, "Kashagan Campaign," no date, <http://www.crudeaccountability.org/eng/campaigns/kashagan/kashagan.htm#environment> (12-04-07).

109 Idem

110 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 25 Jun 1998, <<http://www.unece.org/env/pp/documents/cep43e.pdf>> (Apr 2007).

111 SBM Offshore, Annual Report 2005, <<http://www.sbmoffshore.com/PDF/annrep2005EN.pdf>> (12-04-07), p.35.

112 Burma Centrum Nederland website, "Campagne SBM Offshore," <[http://www.burmacentrum.nl/index.php?option=com\\_content&task=view&id=160&Itemid=0](http://www.burmacentrum.nl/index.php?option=com_content&task=view&id=160&Itemid=0)> (12-04-07).

113 See e.g. International Labour Organisation website, Press Room, "ILO governing body concludes 297th session; Considers labour situation in Myanmar, Belarus and other countries," 17-1-06, <<http://www.ilo.org/public/english/bureau/inf/pr/2006/53.htm>> (12-04-07).

114 H. Peereboom, SBM Offshore NV, email 16-04-07.

these internal audits of its suppliers showed that the supplier's activities were acceptable for all SA8000 norms, except for freedom of association.

SBM Offshore has been in dialogue with a number of Dutch NGOs and trade unions about its presence in Burma. In these dialogues, the company has pointed out that its contractual obligations, including a long-term lease contract with Petronas, make it impossible to abandon all of its activities in Burma.<sup>116</sup> In April 2002, SBM Offshore announced that it would not engage in any new business activities in Burma. In the joint statement, SBM Offshore (then IHC Caland) also indicated that it would use its position to pressure the Burmese government to uphold human rights, both through direct dialogue as well as through dialogue with Petronas.

BCN's campaign became less intensive in 2003, after SBM Offshore pressured the Burmese government to uphold human rights, and its partner Petronas to uphold the OECD Guidelines on Multinational Enterprises. However, BCN feels that while these are small steps in the right direction, the company should abandon all its activities in Burma. In July 2006, BCN sent a letter to SBM Offshore, urging the company to take additional steps to increase the pressure on the Burmese government.<sup>117</sup>

BCN received a reply several months later, and followed up with another letter to the company in January 2007.<sup>118</sup> In this letter, the BCN states that it regrets not having received an adequate reply on BCN's call to apply maximum pressure on the government to improve the human rights situation. BCN also called on SBM Offshore to join the roundtable discussion on human rights for Dutch multinationals, organized by Amnesty International.

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115 Minutes from the meeting between VBDO and SBM Offshore, 09-08-06, received by email 17-04-07.

116 Ministerie van Economische Zaken, Joint Statement by the NCP, FNV, CNV and IHC Caland, July 2004



## Shell

**Gas flaring and oil spills in the Niger Delta, Nigeria** - In Nigeria, Shell operates Shell Petroleum Development Company (SPDC), a joint venture between Shell (30%), Total (10%), Agip (5%) and the Nigerian government (55%). In May 2006 the Nigerian Federal Ministry of Environment, Nigeria Conservation Foundation, and individual scientists concluded in a joint scoping report that the Niger Delta is one of the five most severely petroleum-damaged ecosystems in the world. Gas flaring and oil spills are two of the main causes of environmental damage in Nigeria.

**Gas Flaring** - Flaring of natural gas mixed with crude oil during oil production has long been a practice of Shell and other oil companies operating in Nigeria, and SPDC's operations account for approximately two-thirds of its flaring worldwide.<sup>121</sup> Gas flaring emits a number of toxic substances that can have severe health effects for local populations and cause environmental problems such as acid rain. In 1996, SPDC committed to ending gas flaring by 2008, but delays have caused the company to set 2009 as the new end date.<sup>122</sup> Despite this promise, SPDC flared more gas (in cubic feet) in 2005 than it did in 2002, and its flaring target for 2006 was even higher than 2005 levels.<sup>123</sup> In November 2005 the Federal High Court of Nigeria ordered SPDC to immediately stop flaring gas, noting that gas flaring is a 'gross violation' of the rights to life and dignity of the Nigerian people. After SPDC appealed the ruling, on 11 April 2006 the High Court granted SPDC a one year stay of execution to stop flaring on the condition that SPDC, along with the Nigerian National Petrol Corporation, submit a detailed plan of action on how gas flaring would be stopped by 30 April 2007. As of 9 May 2007, SPDC had not stopped flaring nor submitted a plan of action.<sup>124</sup> SPDC has indicated that it disagrees with the ruling.<sup>125</sup>

**Oil Spills** - According to the above-mentioned May 2006 report by the Nigerian government, "An estimated 9 million - 13 million barrels (1.5 million tonnes) of oil has spilled in the Niger Delta ecosystem over the past 50 years. This means the estimated total volume spilled by the Exxon Valdez in Alaska in 1989 is approximately equivalent to the average oil spill in the Niger Delta each year."<sup>126</sup> In one example, on 14 August 2006, a conflagration broke out at SPDC's Yorla Well Head-13 in Ogoniland (Rivers State).<sup>127</sup> The complex well fire raged for nearly three months, spilling tonnes of oil for more than 80 days, before it was put out. The cause of the conflagration has not yet been determined, but SPDC has suggested that the cause was sabotage.<sup>128</sup> As a policy, SPDC refuses to take responsibility for oil spills caused by sabotage, and it does not compensate communities affected by such spills.<sup>129</sup> Shell does claim, however, that it will always arrange and pay for clean-up.<sup>130</sup> In August 2004, the Nigerian Senate passed a resolution demanding that SPDC pay US \$1.5 billion to Southern Niger Delta Ijaw communities as compensation for environmental pollution and degradation in the Delta. When SPDC refused, citing the Senate's lack of jurisdiction, the issue was taken up by

117 Burma Centrum Nederland, letter to SBM Offshore, 18-07-06.

118 Burma Centrum Nederland, letter to SBM Offshore, 07-01-07.

119 Shell 2005 Sustainability Report, p. 27,

<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

120 Nigerian Federal Ministry of Environment et al, "Niger Delta Natural Resource Damage Assessment and Restoration Project; Phase 1 - Scoping Report," 31 May 2006.

121 Shell 2005 Sustainability Report, p. 32,

<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

122 Ibid.

123 Ibid.

124 Friends of the Earth, "Shell fails to obey gas flaring court order," 2 May 2007,

<[http://www.foe.co.uk/resource/press\\_releases/shell\\_fails\\_to\\_obey\\_gas\\_fl\\_02052007.html](http://www.foe.co.uk/resource/press_releases/shell_fails_to_obey_gas_fl_02052007.html)> (May 2007).

125 Shell 2005 Sustainability Report, p. 32,

<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

126 Nigerian Federal Ministry of Environment et al, "Niger Delta Natural Resource Damage Assessment and Restoration Project; Phase 1 - Scoping Report," 31 May 2006, p.1.

127 It should be noted that SPDC owns and is responsible for the well, but due to political unrest, the company has not had active operations or access to its assets there since 1993.

128 Shell Accountability Coalition, "Use your profit to clean up your mess," 1 February 2007, p.16

<[http://www.foeurope.org/publications/2007/SHELL\\_Use\\_profits\\_for%20damage\\_report.pdf](http://www.foeurope.org/publications/2007/SHELL_Use_profits_for%20damage_report.pdf)> (Apr 2007).

129 Shell 2005 Sustainability Report, p. 27,

<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

130 Shell, comment on draft overview, 27 April 2007.

the courts, and in February 2006, the Federal High Court of Nigeria in Port Harcourt upheld the resolution and ordered SPDC to pay the compensation. Nevertheless, SPDC has not paid and has appealed the High Court's decision.<sup>131</sup>

**Environmental damage on Sakhalin Island, Russia** - The Sakhalin II project is the world's largest integrated oil and gas production project. Sakhalin II was designed by SEIC and is being executed by the Shell-managed Sakhalin Energy Investment Company, Ltd., (SEIC) in which Japan's Mitsui and Mitsubishi also participate. Until recently, Shell owned 55% of the shares in SEIC, but in December 2006 Shell announced that together with the Japanese companies it would sell 50% plus one share in SEIC to Russia's Gazprom. Shell's share was reduced to 27.5%. Shell will continue to manage the project under the new agreement.<sup>132</sup>

**Platforms threaten endangered whales** - Sakhalin II includes three offshore platforms, two of which are located close to the feeding grounds of the 100 remaining Western Pacific Gray Whales and therefore threaten that critically endangered population. In November 2006 the Western Gray Whale Advisory Panel (WGWAP), an expert panel set up to protect the whales, issued a report stating that although SEIC had complied with some recommendations, SEIC's construction activities in 2006 clearly breached three of the Panel's recommendations.<sup>133</sup> According to Robert Napier, Chief Executive of WWF-UK, "Shell has ignored the expert panel's recommendations".<sup>134</sup> The WGWAP report also criticises the lack of data provided by SEIC and concludes that even limited analysis has shown that there was an effect on the whales by displacing them offshore.<sup>135</sup> SEIC has repeatedly claimed that its operations are causing no impact on the whale population,<sup>136</sup> but according to the WWF, these claims are "unfounded".<sup>137</sup>

**Pipeline damages salmon rivers** - Sub-sea pipelines will transport oil and gas from the offshore platforms to Sakhalin Island and then traverse 800 kilometres down the length of the island, crossing over 19 active seismic faults and trenching through more than a thousand watercourses, over 100 of which constitute active spawning beds for wild salmon.<sup>138</sup> Approximately 85% of the pipeline has already been laid, and SEIC has acknowledged that contractors constructing the pipeline have, in some cases, not followed the project's river crossing strategy.<sup>139</sup> As a result, many of Sakhalin's wild salmon rivers were damaged in 2003-2005.<sup>140</sup> SEIC revised its strategy and strengthened contractor monitoring in 2006,<sup>141</sup> but local groups<sup>142</sup> and the Russian federal officials<sup>143</sup> documented further violations and damage from pipeline construction throughout 2006. An 18 September 2006 report by the Sakhalin Department of the Russian Federal Service for Environmental Protection and Enforcement (Rosprirodnadzor) cites serious violations along the pipeline route and led to a temporary injunction being issued to stop all construction works on the pipeline route

131 Ibid.

132 International Herald Tribune, "Shell cedes control of Sakhalin-2 to Gazprom," 21 December 2006  
<<http://www.iht.com/articles/2006/12/21/business/shell.php>> (Apr 2007).

133 Western Gray Whale Advisory Panel, "Report of the Western Gray Whale Advisory Panel at its First Meeting," 9-11 November 2006  
<[http://www.iucn.org/themes/marine/pdf/WGWAP%201\\_3%2021%2011%2006.pdf](http://www.iucn.org/themes/marine/pdf/WGWAP%201_3%2021%2011%2006.pdf)> (Apr 2007).

134 WWF news 29 November 2006,  
<[http://www.panda.org/about\\_wwf/where\\_we\\_work/asia\\_pacific/news/index.cfm?uNewsID=89080](http://www.panda.org/about_wwf/where_we_work/asia_pacific/news/index.cfm?uNewsID=89080)> (Apr 2007).

135 Western Gray Whale Advisory Panel, "Report of the Western Gray Whale Advisory Panel at its First Meeting," 9-11 November 2006  
<[http://www.iucn.org/themes/marine/pdf/WGWAP%201\\_3%2021%2011%2006.pdf](http://www.iucn.org/themes/marine/pdf/WGWAP%201_3%2021%2011%2006.pdf)> (Apr 2007).

136 Shell 2005 Sustainability Report, p. 24,  
<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

137 WWF news 29 November 2006,  
<[http://www.panda.org/about\\_wwf/where\\_we\\_work/asia\\_pacific/news/index.cfm?uNewsID=89080](http://www.panda.org/about_wwf/where_we_work/asia_pacific/news/index.cfm?uNewsID=89080)> (Apr 2007).

138 Pacific Environment, "Risks to Sakhalin's Fisheries," 7 Apr 2007 <<http://www.pacificenvironment.org/article.php?id=250>> (Apr 2007).

139 Shell 2005 Sustainability Report, p. 25,  
<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

140 Shell Accountability Coalition, "Use your profit to clean up your mess," 1 February 2007, p.19,  
<[http://www.foeurope.org/publications/2007/SHELL\\_Use\\_profits\\_for%20\\_damage\\_report.pdf](http://www.foeurope.org/publications/2007/SHELL_Use_profits_for%20_damage_report.pdf)> (Apr 2007).

141 Shell 2005 Sustainability Report, p. 25,  
<[http://www.shell.com/static/envandsoc-en/downloads/about\\_this\\_site/shell\\_sustainability\\_report\\_2005.pdf](http://www.shell.com/static/envandsoc-en/downloads/about_this_site/shell_sustainability_report_2005.pdf)> (Apr 2007).

142 Sakhalin Environment Watch, "Photographic Report on the Public Monitoring of the Onshore Pipeline Route of the Sakhalin II Project," Jul 2006, <[http://www.bankwatch.org/documents/SEW\\_monitoring\\_report\\_July\\_06.pdf](http://www.bankwatch.org/documents/SEW_monitoring_report_July_06.pdf)> (Apr 2007).

143 Russian Ministry for Natural Resources report, 27-30 Sept 2006,  
<<http://www.mnr.gov.ru/part/?act=more&id=2964&pid=11>> (Apr 2007).

in the Makarov District. <sup>144</sup> SEIC has also arranged for independent monitors to be present at the crossing sites and has posted the monitors' reports on its website. <sup>145</sup> The monitors' reports for the 2006-2007 winter crossing season indicate that contractor performance is improving but document a number of continuing violations. For example, the handling of spoils (removal, storage) was done correctly only 40% of the time; sufficient clean gravel only 65% of the time. Also, the monitors identified several instances of the dewatering of rivers, which can result in the death of aquatic life. <sup>146</sup> On 20 March 2007, SEIC and Gazprom submitted a correction plan to the Russian Natural Resources Ministry to remedy the environmental violations; the Russian authorities approved the plan on 16 April 2007. <sup>147</sup>

**Violation of indigenous people's and women's rights on Sakhalin Island** - In April 2006, with the Sakhalin II project more than 75% complete, SEIC released its Sakhalin Indigenous Minorities Development Plan. <sup>148</sup> The indigenous peoples of Sakhalin have expressed numerous concerns about the Sakhalin II project, principal among which are the project's impacts on hunting, fishing, gathering, and reindeer pasturing grounds; the lack of economic benefit for indigenous people; and the long absence of any kind of indigenous peoples' development plan for the project. In 2005, the Russian Association of Indigenous Peoples of the North, Siberia, and Far East (RAIPON) complained that:

*"The indigenous peoples of Sakhalin - who have a traditional self-subsistence economy based on fishing, hunting, reindeer herding and wild plant gathering - disproportionately suffer the negative ecological consequences of project implementation. Structural engineering has destroyed reindeer pastures and forests and construction on the shelf has led to an abrupt decline in fishing and fishing limits for the indigenous population. Indigenous peoples in northern Sakhalin are being left without any sustainable, long-term source of livelihood".* <sup>149</sup>

After hundreds of Sakhalin Island's indigenous people protested against the project in 2005, SEIC prepared an Indigenous Peoples' Development Plan and Cultural Heritage Plan in October 2005, but this was after project construction was already 60% complete. SEIC's Sakhalin Indigenous Minorities Development Plan was not developed until April 2006, but, pursuant to ILO Convention 169 "Concerning Indigenous and Tribal Peoples", which the Russian Federation signed, development projects must consider the impacts to indigenous peoples as a "fundamental criteria". <sup>150</sup>

In 2006 Shell worked with the Sakhalin Indigenous Minorities Council to develop the Sakhalin Indigenous Minorities Development Plan, and in January 2007 it published an independent review of the first six months of the Plan's implementation. <sup>151</sup>

**Women's rights** - In September 2006 NGOs CEE Bankwatch Network and Gender Action released a report documenting the rise of prostitution, human trafficking, HIV/AIDS and violence against women in communities affected by SEIC's Sakhalin II project. <sup>152</sup> The report claims that local communities and women bear an increased burden and poverty as a result of the inflow of predominantly foreign male workers as well as the environmental degradation, land loss and damaged communal infrastructure that the Sakhalin II project has caused. Shell claims that a substantial social investment programme is in place alongside SEIC business activities. <sup>153</sup>

144 Rospirodnadzor report 15 Sept 2006, <[http://www.bankwatch.org/documents/Rospirodnadzor\\_15Sept2006.pdf](http://www.bankwatch.org/documents/Rospirodnadzor_15Sept2006.pdf)> (Apr 2007).

145 SEIC website, River Crossing Performance, <[http://www.sakhalinenergy.com/en/default.asp?p=channel\\_home&c=8](http://www.sakhalinenergy.com/en/default.asp?p=channel_home&c=8)> (May 2007).

146 Ibid.

147 L. Kim, "Russia Approves Sakhalin Environmental Plan From Shell, Gazprom," Bloomberg 16 April 2007.

148 SEIC, "Sakhalin Indigenous Minorities Development Plan", April 2006, <[http://www.sakhalinenergy.com/en/documents/doc\\_lender\\_soc\\_4.pdf](http://www.sakhalinenergy.com/en/documents/doc_lender_soc_4.pdf)> (Apr 2007).

149 Russian Association of Indigenous Peoples of the North, Siberia, and Far East letter to EBRD, 21 January 2005.

150 Article 7, paragraph 3 of ILO Convention 169.

151 G.E. Guldin, "1st External Monitor Report," January 2007, <[http://www.sakhalinenergy.ru/docs/en/180/External%20Monitor%20Report\\_eng.pdf](http://www.sakhalinenergy.ru/docs/en/180/External%20Monitor%20Report_eng.pdf)> (Apr 2007).

152 CEE Bankwatch Network and Gender Action, "Boom time blues: Big oil's gender impacts in Azerbaijan, Georgia, and Sakhalin," September 2006, <<http://bankwatch.org/documents/boomtimeblues.pdf>> (Apr 2007).

153 Shell, comment on draft overview, 27 April 2007. Shell refers to SEIC, "Sakhalin II: A Summary of Social Performance" July 2006, <[http://www.sakhalinenergy.com/en/documents/SEIC\\_Social\\_Performance\\_Summary.pdf](http://www.sakhalinenergy.com/en/documents/SEIC_Social_Performance_Summary.pdf)> (May 2007).

154 OECD, Towards global tax co-operation - Report to the 2000 Ministerial Council Meeting and recommendations by the committee on fiscal affairs (Paris, Organisation for Economic Co-operation and Development, June 2000), p 17

155 Shell, comment on draft overview, 7 May 2007.

**Subsidiaries in tax havens** - Shell has a large number subsidiaries of which the country of incorporation suggests that they may be involved in arrangements to avoid corporate tax payments in other countries. The number of fully or partly owned subsidiaries in a selection of countries that have been identified by the OECD as tax havens <sup>154</sup> is shown in the table below.

Country	Subsidiaries
Bermuda	39
Barbados	6
Isle of Man	4
Cayman Islands	2
Bahamas	2
Vanuatu	1
St Kitts & Nevis	1

*Source: UK Companies House, Royal Dutch Shell plc (April 2007).*

It is unlikely that all these subsidiaries have real business operations. This is an indication that they may be used in artificial corporate constructions to avoid taxes. Note that the number of subsidiaries in Bermuda is especially large. Furthermore, some countries of incorporation such as Vanuatu and St Kitts & Nevis are relatively uncommon, even among multinational firms with complex holding structures and substantial numbers of subsidiaries in other tax havens. Shell could not give details on the operations of all of these subsidiaries, but explained that some of them would probably sell fuel for local transport. <sup>155</sup>

