

The Shwe Gas Movement



# SHWE GAS MOVEMENT

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November 5<sup>th</sup>, 2010

Shwe Gas Movement

International Coordinating Office

PO Box 64

Mae Ping Post Office

Chiang Mai, Thailand

Attention:

Diane Bean

*U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises*

Jose Fernandez

*Assistant Secretary of State for Economics, Energy and Business Affairs*

Robert C. Hormats

*Under Secretary of State for Economic, Energy and Agricultural Affairs*

Dear Mrs. Bean, Mr. Fernandez & Mr. Hormats:

The Shwe Gas Movement is an independent non-governmental organization monitoring human rights and environmental impacts in the oil and gas sector in Burma.

The Shwe Gas Movement feels that our experience submitting a Special Instance complaint to – and having our submission rejected by – the South Korean NCP sheds light on a number of key reforms that would be beneficial at many NCPs across the OECD, including the US NCP.

If in the future the US government eases its current policy of strict sanctions on Burma, the Shwe Gas Movement hopes that the activities of any US companies in Burma would follow the OECD

Guidelines for Multinational Enterprises. If any of these Guidelines were ever violated by US companies we hope that the NCP would fairly and effectively hear the case.

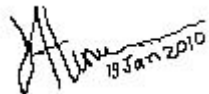
Based on our experience submitting a complaint to the South Korean NCP in October 2008, the Shwe Gas Movement recommends the following reform measures:

- **The US NCP should have clear and detailed procedures in place for how to deal with Specific instance complaints; including reasonable timetables and public disclosure measures.**
- **Any and all final statements produced by the US NCP, as well as the evidence and/or reasoning used to decide the case, in all Specific Instance cases should be released in a public statement to encourage the “public confidence” in the US NCP.**
- **The US NCP should not be located at or connected to one government ministry, especially the same ministry tasked with promoting international investments by US companies.**
- **Any and all possible direct and indirect conflicts of interest at the US NCP need to be specifically addressed and remedied.**
- **The US NCP should make efforts to independently verify or use independently verified information regarding the claims of both the subject of the complaint and the complainants.**
- **The US NCP should have a sufficient budget to hire permanent staff members to conduct independent verification - or at least to purchase these services from 3<sup>rd</sup> party organizations - of evidence submitted in Specific Instance cases, as required.**
- **There should be enhanced oversight of the decisions passed by individual NCPs, this could be in the form of an arms length oversight committee set-up to review and evaluate the work of the NCP.**
- **The OECD Investment Committee must work towards clarifying a number of aspects of the Guidelines to ensure some degree of procedural ‘functional equivalence’ between all of the NCPs, this should be encouraged and facilitated by the US NCP.**
- **The OECD MNC Guidelines should include provisions to enable the anticipation of probable future violations (e.g. When a company’s operations / investment are done in collaboration with a government whose human rights abuses has been well-documented in connection to similar projects), this should be encouraged and facilitated by the US NCP.**
- **The scope of exception to disclosure and confidentiality in relation to the Guidelines must be clarified (e.g. regarding Environmental and other impact assessments, and other relevant information about the project), this should be encouraged and facilitated by the US NCP.**

The Shwe Gas Movement hopes that the US NCP will function as a positive example for NCPs across the OECD (including the South Korean NCP), and that the US NCP will be effective at demonstrating best-practices that follow the spirit of the OECD Guidelines for Multinational Companies.

We appreciate your time in considering our recommendations to improve the functioning of the US NCP.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wong Aung', with the date '19 Jan 2010' written below it.

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