

(Provisional Translation)

**Final Statement on a Specific Instance involving
Toyota Motor Corporation and Toyota Motor Philippines Corporation
in relation to the OECD Guidelines for Multinational Enterprises**

11 April 2019

Japanese National Contact Point (NCP)
for the OECD Guidelines for Multinational Enterprises

1. OECD Guidelines for Multinational Enterprises

(1) The OECD Guidelines for Multinational Enterprises (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are recommendations addressed by governments to multinational enterprises. The Guidelines provide the principles and standards for responsible business conduct in a wide range of fields, including disclosure, human rights, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition, and taxation.

(2) Governments adhering to the Guidelines establish National Contact Points (NCPs). In Japan, the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry jointly constitute the NCP for Japan (hereinafter referred to as the “Japanese NCP”), which promotes activities to disseminate the Guidelines and handles issues raised based on the Guidelines.

(3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.

2. Submission of a specific instance

On 4 March 2004, Toyota Motor Philippines Corporation Workers Association (hereinafter referred to as “TMPCWA”) and the Support Group for Philippine Toyota Union TMPCWA (hereinafter referred to as the “Support Group”) submitted a following

specific instance to the Japanese NCP concerning alleged violations of the Guidelines¹ by Toyota Motor Corporation and its affiliate Toyota Motor Philippines Corporation (hereinafter referred to as “TMP”).

- (1) Rejection of reaching labour agreements and collective bargaining (1. a) of IV. Employment and Industrial Relations of the Guidelines)

Toyota Motor Philippines Corporation, 34% of whose shares are owned by Toyota Motor Corporation, objects to labour-management negotiations with TMPCWA, which is officially recognised by the Philippine government as a labour union with the right to open labour-management negotiations. TMP has continued to reject collective bargaining by repeatedly filing lawsuits.

- (2) Lay-offs or dismissals (6. of IV. Employment and Industrial Relations of the Guidelines)

TMPCWA unavoidably organized a strike to make a breakthrough, but TMP unfairly dismissed 233 TMPCWA members who had joined the strike.

- (3) No respect for international obligations and human rights (2. of II. General Policies of the Guidelines)

In February 2003, TMPCWA lodged a complaint about alleged violations of ILO Conventions No. 87 and No. 98 by the Philippine government and TMP with the ILO Committee on Freedom of Association. In November 2003, the ILO Committee on Freedom of Association pointed out the Philippine government’s violation of the ILO Conventions, and made recommendations to the government.

- (4) Interference in exercising a right to organize and threatening to transfer an operating unit from the country concerned (7. of IV. Employment and Industrial Relations of the Guidelines)

Toyota Motor Corporation has no intention of solving the issues. When TMPCWA organises legal strikes, the company continuously puts pressure on the Philippine government, threatening that the company would withdraw from the Philippines if the strikes became prolonged.

- (5) Rejection of collective bargaining and labour-management negotiations (8. of IV. Employment and Industrial Relations of the Guidelines)

Toyota Motor Corporation has a heavy responsibility to directly instruct TMP to

¹ The Guidelines were revised in 2011 to include a newly inserted chapter IV on human rights. Therefore, the chapter numbers referred to in the specific instance differ from the current ones.

establish sound labour-management relations in compliance with the decision of the Philippine Supreme Court and the recommendations of the ILO Committee on Freedom of Association.

3. Initial Assessment

(1) On 10 March 2010, following the submission of the above complaint, the Japanese NCP made an initial assessment of whether the issues raised merited further examination in accordance with the Procedural Guidance of the Guidelines I. C. 1. and its Commentary.²

(2) More concretely, the Japanese NCP took into account such issues as the following points in accordance with paragraph 14 of the Commentary on the Procedural Guidance of the Guidelines.

(a) The identity of the party concerned and its interest in the matter

The parties that raised the issues are TMPCWA, which is an organization formed by workers at TMP, and the Support Group, which is its supporting group. The companies against which the issues were raised are Toyota Motor Corporation, which is a multinational enterprise based in Japan, and the Toyota Motor Philippines Corporation, which is its foreign manufacturing company based in the Philippines.

(b) Whether the issue is material and substantiated

The issues raised are material and substantiated in relation to the right of employees, collective bargaining, etc.

(c) The relevance of applicable law and procedures

The issues raised include issues taken up in the courts of the Philippines where relevant law and procedures are applied. Among those, in regard to dismissals in paragraph 2. (2) above, judicial proceedings in the Philippines have already been concluded, as the Supreme Court made a final decision on 19 October 2007, and rejected the motion for retrial by TMPCWA on 17 March 2008.

(d) How similar issues have been, or are being, treated in other domestic or international proceedings

Similar labour-management disputes are referred to judicial courts and the Department of Labour and Employment in the Philippines.

² The Guidelines and related documents were revised in 2011. The initial assessment was made in accordance with the Guidelines and related documents that were valid in 2010.

(e) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

Since the issues raised come under “II. General Policies” and “IV. Employment and Industrial Relations” of the Guidelines, the consideration of the issues would contribute to the purposes and effectiveness of the Guidelines.

(3) The Japanese NCP, noting that the issues raised are based on the Guidelines, while not judging which involved party’s claim was right, determined that the issues “merit further examination” under the Procedural Guidance of the Guidelines I. C. 1., as there is seemingly room for the Japanese NCP to take certain actions. However, regarding the issue of dismissals stated in paragraph 2 (2) above, the Japanese NCP determined that the issue did not merit further examination, considering that judicial proceedings in the Philippines had already been concluded, as mentioned in paragraph (2) (c) above, and therefore there was no room for the Japanese NCP to take any actions.

4. Japanese NCP’s Assistance in Dealing with the Issues

(1) To assist both parties in solving the issues, the Japanese NCP has held a series of meetings with the complainants and the companies involved respectively, in which it has conveyed the views of the complainants to the companies involved, and at the complainants’ request, asked the companies involved for their views and conveyed the views to the complainants.

(2) In addition, the Japanese NCP has paid attention to the procedures adopted by the ILO, judicial proceedings in the Philippines, and actions taken by the Department of Labour and Employment of the Philippines.

(a) The ILO Committee on Freedom of Association in its 356th Report issued in 2010, recommends, together with other measures, that the Philippine government should initiate discussions in order to reach a solution with respect to dismissed TMP workers. Moreover, in its 376th Report issued in 2015, the Committee welcomed the Philippine government’s out-of-the-box settlement initiative to set up a Livelihood Project equally financed by the government and TMP that would benefit all dismissed workers.

(b) According to information which the Japanese NCP obtained from the complainants and the companies involved, the Department of Labour and Employment of the Philippines prepared to hold a meeting with attendance of TMP and TMPCWA, and actually held meetings on 13 and 27 January 2017, with the attendance of both parties.

The ILO attended at least one of these meetings.

(3) In the meeting with the Japanese NCP in April 2018, Toyota Motor Corporation expressed its position, as listed below. In addition, Toyota Motor Corporation later informed the Japanese NCP that TMP had adopted the same position as Toyota Motor Corporation.

(a) Toyota Motor Corporation understands that the issues raised have already been dealt with appropriately by the final decisions of the Supreme Courts of the Philippines and Japan or by the appropriate measures taken by the Philippine government.

(b) Regarding the ILO's recommendation, Toyota Motor Corporation understands that the Philippine government has made its best efforts. TMP has indicated that it is ready to agree to the Philippine government's out-of-the-box settlement initiative to set up a Livelihood Project. Meanwhile, difference in positions between TMP and the TMPCWA remains substantial, and thus negotiations have been stalled.

(c) Taking into account aforementioned facts, Toyota Motor Corporation cannot expect that dialogue with the complainants based on the procedure adopted by the Japanese NCP would lead to progress. It is thus inappropriate for Toyota Motor Corporation to participate in the dialogue.

(d) The issues related to this specific instance have been discussed in the Philippines. TMP would respond sincerely to the Philippine government's enquiries if any.

(4) While the NCPs' assistance in solving the issues should be based on agreement between the parties concerned, it appeared that there is no such agreement as noted in paragraph (3) above in this specific instance. In consideration of this fact, the Japanese NCP has decided to conclude the process as regards this specific instance in accordance with Paragraph 35 of Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises³.

(5) The complainants have expressed the following views concerning the conclusion of the process of the Japanese NCP. (The footnotes in this section provide the view/stance of the Japanese NCP regarding respective passages indicated by them.)

(a) While this case has been pending for a very long time, in which there were issued the recommendations of the Committee on Freedom of Association of the International

³ Paragraph 35 of Commentary illustrates, as one of conditions for the conclusion of the process, the case in which "the NCP finds that one or more of the parties to the specific instances is unwilling to engage or to participate in good faith".

Labor Organization (“ILO”) and the Department of Labor and Employment (“DOLE”) of the Philippine Government strived for providing a negotiation table for Toyota Motor Philippines Corporation (“TMP”) and TMPCWA, TMP has not accepted this offer by reason of the decision of the Philippine Supreme Court having already been fixed final.

(b) While Toyota Motor Corporation and the Japanese NCP are referring to the “Livelihood Project” as being the possible solution plan as allegedly offered by DOLE and endorsed by ILO, the key solution plan that has been sought by DOLE and ILO is to “reinstate the dismissed workers to their original employment, and, if it is impossible, to pay adequate compensation to them”, and thus the Livelihood Project is nothing but a plan that was offered in order to help save the dismissed workers from poverty.

(c) It is unacceptable that the Japanese NCP has decided to wrap up the process while the matter has not yet come to its solution. If it dares to so conclude, the Japanese NCP should issue a recommendation to Toyota Motor Corporation in line with the Guidelines. Also, it is quite regrettable that, while it has already passed such a very long period of time as six years from the filing of the complaint to the delivery of the initial assessment and 15 years to the issuance of the Final Statement, there is not mentioned by the Japanese NCP even a mere word of persuasive reason thereof at all, indeed⁴.

(d) For the past 18 years from the very beginning of this case Toyota Motor Corporation has been repeating its stock phrase, “Any local matter is to be dealt with locally.” Whereas the United Nations Guiding Principles on Business and Human Rights clearly states that the head offices of multinational companies are responsible to make sure that human rights are respected in their supply chains, and the OECD Guidelines were revised reflecting the said UN Guiding Principles, Toyota Motor Corporation is totally disregarding such international trend; nevertheless, the process that has been

⁴ Since the submission of the specific instance, the Japanese NCP collected information from those concerned, tried to grasp the labor-management relations and judicial procedures in the Philippines. As this specific instance took place outside of Japan and the situation evolved even after the submission of the instance, it took a certain amount of time for the Japanese NCP to gather information, consider and decide whether this specific instance would merit further examination. After the initial assessment, the Japanese NCP has made utmost efforts to provide assistance for settlement including carefully hearing the views of the both parties. One of reasons for this process taking a certain amount of time was that this issue was also dealt in the legal procedures in the Philippines as described in paragraph 3. (2) (c), which required additional time for information gathering and consideration on the aforementioned legal process. These reasons have already been communicated from the Japanese NCP to the complainants.

taken by the Japanese NCP is in approval of such attitude of Toyota Motor Corporation, we do consider⁵.

(6) The Japanese NCP prepared a draft of its final statement, and on 27 November 2018, asked the complainants and the companies involved for their views on the draft of the final statement. Both sides submitted their comments. Japanese NCP considered them and made some modifications on the final statement.

5. Conclusion

The NCPs' assistance in solving the issues should be based on agreement of the parties concerned. Since there is no such agreement in this specific instance, as shown in the position of Toyota Motor Corporation and Toyota Motor Philippines Corporation referred to in 4. (3) (c) above, and the complainants' views referred to in 4. (5) (c) above, the Japanese NCP concludes the process as regards this specific instance in accordance with Paragraph 35 of Commentary on the Implementation Procedures of the Guidelines.

The Japanese NCP recommends that Toyota Motor Corporation and Toyota Motor Philippines Corporation conduct activity while respecting the OECD Guidelines for Multinational Enterprises.

– End of document –

⁵ The Japanese NCP keeps a neutral position, and does not judge the justification of positions of the complainants or the companies involved.