

Final Statement on a Specific Instance involving Renault S.A.S., Nissan Motor Co., Ltd., and
Renault-Nissan BV in relation to the OECD Guidelines for Multinational Enterprises

30 March 2022

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.

(4) According to the Guidelines, it is not required that the NCP determine whether the activities of enterprises are consistent with the Guidelines or not, therefore the Japanese NCP does not determine whether the enterprise’s activities are consistent with the Guidelines. Moreover, regarding the assertions by each party on the issues raised, the Japanese NCP does not make factual findings or judgements on its legitimacy.

(5) The Japanese NCP can make recommendations as appropriate on the implementation of the Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

2. Background of the submission of the Specific Instance and the selection of the Lead NCP

(1) Submission of the Specific Instance

On 20 December 2016, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter referred to as “UAW”) and the IndustriALL Global Union (hereinafter referred to as “IndustriALL”) (UAW and IndustriALL collectively referred to as “Complainants”) submitted the Specific Instance (hereinafter referred to as “Specific Instance”) to the Japanese NCP, as well as to the NCP of France (hereinafter referred to as “French NCP”) and the NCP of the Netherlands (hereinafter referred to as “Dutch NCP”), concerning the alleged failure of Renault S.A.S. (hereinafter referred to as “Renault”), Nissan Motor Co., Ltd. (hereinafter referred to as “Nissan”), and Renault-Nissan BV (hereinafter referred to as “RNBV”) (Renault, Nissan and RNBV collectively referred to as “Companies Involved”) to undertake due diligence in order to avoid and address violations of workers’ trade union rights at the Nissan North America, Inc.’s (hereinafter referred to as “NNA”) manufacturing facilities in Canton, Mississippi, a subsidiary of Nissan, which was allegedly violating the Guidelines specifically with regards to the matters listed in Section 2(2)(A) and (B) below. The Complainants also submitted an additional document on 12 September 2017 and 16 May 2018.

(2) Summary of the issues alleged by the Complainants

The Complainants asserted that they had uncovered serious violations of the Guidelines at NNA’s manufacturing plant located in Canton, Mississippi (hereinafter referred to as “Canton Plant”). The Complainants claimed that (A) these violations of NNA included “policies and practices of union avoidance, harassment and intimidation, which caused barriers to union organizing” and (B) the Companies Involved had failed to meet their responsibility to undertake due diligence at NNA in relation to the violations of NNA alleged by the Complainants.

(3) Guidelines Provisions Cited

The violations by the Companies Involved of the Guidelines alleged by the Complainants are as follows:

A. “Failure to conduct due diligence”

(Guidelines Chapter II. General Policies)

- “Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts, and account for how these impacts are addressed. The nature and extent of due diligence depends on the circumstances of a particular situation.” (Chapter II. A. 10.)
- “Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.” (Chapter II. A. 11.)

(Guidelines Chapter IV. Human Rights)

- “Have a policy commitment to respect human rights.” (Chapter IV. 4.)
- “Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.” (Chapter IV. 2.)
- “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.” (Chapter IV. 5.)

B. “Failure to avoid and address adverse impacts”

(Guidelines Chapter V. Employment and Industrial Relations)

- “Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing.” (Chapter V. 1. a)
- “Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on terms and conditions of employment.” (Chapter V. 1. b)
- “Provide such facilities to workers’ representatives as may be necessary to assist in the development of effective collective agreements.” (Chapter V. 2. a)
- “Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.” (Chapter V. 3)
- “While workers are exercising a right to organize, not threaten to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.” (Chapter V. 7)

(4) Requests made by the Complainants

When submitting the Specific Instance to the NCPs of Japan, France and the Netherlands, the Complainants claimed that “the responsibility to undertake human rights due diligence lies with multinational enterprise headquarters” and that “the RNBV has strategic decision-making responsibility for Renault and Nissan, and their subsidiaries and affiliates” based on its stockholder composition and so on. The Complainants requested that the Dutch NCP act as the Lead NCP for this reason.

Moreover, the Complainants demanded that the NCPs of the respective countries, including the Dutch NCP, offer their “good offices” in order to resolve the issues raised in the Specific Instance through mediation.

(5) Background on the Specific Instance submitted in the United States

This item describes the related issues which were previously handled by the National Contact Point of the U.S. (hereinafter referred to as “U.S. NCP”). On 28 April 2014, the same Complainants as in this Specific Instance submitted a Specific Instance (hereinafter referred to as “U.S. Specific Instance”) to the U.S. NCP against Nissan and its subsidiary NNA. After reviewing the U.S. Specific Instance and consulting the parties involved, the U.S. NCP decided the issues raised merited further examination under the Guidelines and offered its good offices for a voluntary mediation process between the two parties. However, such a process could not be established as Nissan and NNA were not willing to participate in this mediation. The U.S. NCP issued its final statement¹ closing the U.S. Specific Instance on 30 January 2015. In the final statement, the U.S. NCP recommended that: NNA, with cooperation and guidance of Nissan, conduct corporate-wide labour rights review processes consistent with the recommendation of the Guidelines; Nissan and NNA evaluate the allegations raised by the complainants and consider how to address them, including the opportunity to engage informally or formally with the complainants; and Nissan and NNA consider seeking for a resolution to the issues raised, either through its own internal processes or through third-party mechanisms.

(6) Selection of the Lead NCP

In this Specific Instance submitted on 20 December 2016, the Complainants requested that the Dutch NCP act as the “lead National Contact Point” (hereinafter referred to as “Lead NCP”) based on paragraph 23 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (hereinafter referred to as “Commentary on the Implementation Procedures”). The Complainants also requested that the Japanese, French and Dutch NCPs cooperate with the U.S. NCP.

On 31 January 2017, the Japanese, French and Dutch NCPs discussed which NCP should act as the Lead NCP with regard to this Specific Instance, based on paragraph 24 of the Commentary on the Implementation Procedures. The U.S. NCP also joined the discussion. As a result of the discussion, it was decided by consensus among the four NCPs that the Japanese NCP would be the Lead NCP with regard to the Specific Instance, for the reasons that neither Renault nor RNBV was in a position to be directly involved with regards to the rights of the Canton Plant workers, and it was thus reasonable to assume that the responsibility to conduct due diligence with regard to NNA lay mainly with Nissan, the parent company of NNA. Therefore, it was decided that the Japanese NCP, the national contact point for the country in which the headquarters of Nissan is located, would be the Lead NCP and act in coordination with the French, Dutch and U.S. NCPs, as supporting NCPs.

(7) Notification to the Complainants and the Companies Involved

¹ <https://2009-2017.state.gov/e/eb/oece/usncp/links/rls/236972.htm>

On 21 April 2017, the Japanese NCP notified the Complainants of the receipt of the Specific Instance. The Japanese NCP had phone calls and in-person interviews with Nissan concerning the Specific Instance in June and July of the same year. The Japanese NCP coordinated with the French, Dutch, and the U.S. NCP, and consulted with the OECD Secretariat in preparing the initial assessment. In the framework of NCP coordination as set out in the Commentary on the Implementation Procedures, the French, Dutch and U.S. NCPs forwarded the Specific Instance respectively to Renault, RNBV and NNA in their respective countries.

3. View of the Companies Involved

This section describes the view of Nissan, as this Specific Instance is linked mainly to Nissan among the Companies Involved because NNA, which operates the Canton Plant, is a 100 % owned subsidiary of Nissan. The view of Nissan towards the Complainants' claims (Section 2 above), which was obtained by the Japanese NCP prior to the Initial Assessment, is summarized in Sections (1) through (3) below. In addition, the company provided information on due diligence conducted by themselves, as is summarized in Section (4) below.

(1) The company's argument is as follows: the UAW, in its aim to seek labor representation to put an end to their declining membership in North America, has been targeting Japanese and European automobile plants as part of their, long-term multifaceted membership increasing activities, ; the requests made by the UAW towards the NNA to grant access to the Canton Plant and to remain silent about any activities conducted by the UAW is an unjust demand, which the NNA is not obligated under the U.S. labor law. Moreover, an overwhelming majority of the Canton Plant employees declined the representation of the UAW on 3 and 4 August 2017, with 2,244 votes against and 1,307 in favor of UAW's. The validity of this collective decision is not a point of contention between the complainants and the company.

(2) The company alleges that the claims made by the Complainants with regard to NNA's alleged infringement of worker rights are identical in nature to the prior claims made in the U.S. Specific Instance in 2014. The Complainants are attempting in this Specific Instance to repeat the claims, which were already reviewed by the U.S. NCP. Making such duplicate claims is an abuse of the rights concerning raising issues. In addition, as to NNA's infringement of rights asserted by the Complainants in the Specific Instance, the UAW's claims are pending before the U.S. National Labor Relations Board ("NLRB") and the U.S. Occupational Safety and Health Administration ("OSHA"). In such circumstances, if the Japanese NCP reviews the Specific Instance and makes an assessment, such an assessment may be used in a misleading way in the ongoing proceedings under the U.S. law, and may jeopardize the U.S. law's supremacy over the Guidelines. Moreover, such an assessment may impose "conflicting requirements" on the Companies Involved, which the

Guidelines seek to avoid (Guidelines I. 2.).

(3) The company contends that the Guidelines provide that enterprises should “carry out human rights due diligence as appropriate to their size, the nature and context of their operations and the severity of the risks of adverse human rights impacts” (Guidelines IV. 5.). But the Commentary on Human Rights of the Guidelines makes it clear that there is no uniform manner in which an enterprise should undertake such due diligence, and respects the discretion of each enterprise as to the details of due diligence they undertake, and their flexible approaches to cope with each situation. Paragraph 45 of the Commentary on Human Rights of the Guidelines also notes that “human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders”, and recognizes that an enterprise may establish a system to carry out due diligence in a manner in line with the situation. (Such flexibility is consistent with the U.N. Guiding Principles on Business and Human Rights (“UNGP”) 17(b), which is quoted in the said Commentary.)

(4) The company contends that, at the Nissan group, which is composed of Nissan and its subsidiaries including NNA, due diligence is already undertaken as part of its broader enterprise risk management system that has been operating for many years. With respect to the labor issues at the Canton Plant alleged by the Complainants, Nissan has conducted due diligence.

4. Enquiries to the UAW and its answer

On 25 December 2017, the Japanese NCP posed to the UAW the following three questions:

- (a) Don't the claims overlap with those submitted in the U.S. Specific Instance?
- (b) Are the claims related to due diligence material and substantiated?
- (c) What is the Complainants' view on the outcome of the votes by the Canton Plant employees conducted in August 2017 and what is further expect of Nissan for the resolution of the issue?

The UAW answered to these questions in the letter dated 16 May 2018.

A. As regards to (a) above, the UAW maintains that:

- The current claim includes the description of the same violations outlined in the claim submitted to the US NCP on 28 April 2014 because it would not be possible to substantiate the claim that the Alliance Enterprises failed to conduct due diligence without describing those adverse impacts that they failed to avoid and address. This does not mean that the two claims are the same;
- The recommendations in the Guidelines that enterprises conduct due diligence concern the process that enterprises should have in place to avoid and address adverse impacts;

- In recent years a number of claims have been submitted to the home NCP concerning failures of due diligence;
- Due diligence means engaging with stakeholders and, had the enterprises conducted such due diligence, the violation of labor rights would not have occurred or would have been addressed.

B. As regards (b) above, the UAW maintains that:

- While the complainants have made numerous appeals to meet with the representatives of the Alliance Enterprises over the last five years to discuss free and neutral election process so that workers can make free decision about unionization, such requests have been systematically rebuffed;
- If the alliance enterprises had not rejected their requests for a dialogue, the violations on workers' rights to freedom of association would not have occurred, and that if the alliance enterprises had taken meaningful actions, the adverse impact would not persist today.

C. As regards (c) above, the UAW maintains that:

- The view of the UAW on the August 2017 Vote is that the result is entirely the product of Nissan's policy and practices of union avoidance, harassment and intimidation;
- The UAW considers that the resolution of the issue should involve immediate cessation of the tactics used by the NNA to harass and intimidate workers, the agreement of Nissan and the two alliance enterprises to meet with the UAW under the good offices of the NCP and NNA and the alliance enterprises' neutrality and respect of workers' trade union's rights.

5. Examination of the Initial Assessment

The Japanese NCP, in accordance with the Guidelines and the Procedural Guidance of the Japanese National Contact Point under the OECD Guidelines for Multinational Enterprises (2011 edition), examined the Initial Assessment as described in Section (1) to (6) below and gave a conclusion as described in (7) below on 6 August 2018,

(1) Identity of the party concerned and its interest in the matter

Major parties involved in the matter are the UAW and IndustriALL, the parties that submitted the Specific Instance, and Nissan and NNA. These parties also were the parties involved in the U.S. Specific Instance, regarding which the U.S. NCP issued its Final Statement on 30 January 2015. The former two parties are the labor unions active in the regions including the United States, and the latter two are the Japanese automobile manufacturer and its subsidiary company in the U.S. These parties are deemed to have an interest in the issues raised in this Specific Instance.

(2) Whether the issue is material and substantiated

The Japanese NCP considers that the issues raised by the Complainants are material and substantiated in relation to labor issues at the Canton Plant and the conduct of human rights due diligence.

(3) Whether there seems to be a link between the enterprise's activities and the issues raised in the Specific Instance

The specific issues raised in the Specific Instance refer to the NNA's Canton Plant, and the assertion is made that the Companies Involved have failed to conduct due diligence. As NNA, which operates the Canton Plant, is a 100% owned subsidiary of Nissan, the Specific Instance is linked mainly to Nissan among the Companies Involved.

(4) The relevance of applicable law and procedures, including court rulings

The Japanese NCP is aware, and the U.S. NCP has confirmed, that the United States has a comprehensive body of relevant law, addressing actions of labor unions, employers and employees in the areas related to collective bargaining and workplace safety, as well as a robust judicial system. The Japanese NCP is aware that several parallel proceedings related to facts referred to in the Specific Instance are pending at U.S. National Labor Relations Board ("NLRB") and at the U.S. Occupational Safety and Health Administration ("OSHA") – see (5) B below.

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

A. On 28 April 2014 the Complainants submitted a Specific Instance to the U.S. NCP against Nissan and its subsidiary NNA. After reviewing the Specific Instance and consulting the parties involved, the U.S. NCP decided that the issues raised merited further consideration under the OECD Guidelines and offered the parties a voluntary mediation process. The mediation process was not established as Nissan and NNA were not willing to participate in this mediation. The U.S. NCP issued its Final Statement closing the U.S. Specific Instance on 30 January 2015. In the Final Statement, due diligence issues were not mentioned.

B. With regard to NNA infringement of workers' rights asserted by the Complainants, the Japanese NCP is aware that the UAW's claims are pending before the NLRB and OSHA in the U.S. The Japanese NCP is also aware of the UAW's additional filings with NLRB in response to the outcome of the election conducted on 3 and 4 August 2017. These pending claims before the NLRB and OSHA are national-level parallel proceedings with regard to the issues in the Specific Instance. Though as noted in Paragraph 26 of the Commentary on the Implementation Procedures, NCPs should not decide that issues do not merit further consideration solely

because parallel proceedings have been conducted, under way or are available to the parties concerned.

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

The Specific issues can be associated with several provisions of the Guidelines as described in Section 2(3) above. The Japanese NCP considers that further examining the issues would contribute to the purposes and effectiveness of the Guidelines. The Japanese NCP considers that placing a focus on the due diligence responsibility of NNA's parent company, Nissan, and of Nissan's business relationships –Renault and RNBV- will make the consideration more effective and efficient.

(7) Conclusion of the Initial Assessment

Based on the consideration in Section (1) to (6) above, the Japanese NCP concludes that the Specific Instance merits further examination. Therein a focus shall be placed on the due diligence responsibility of the Companies Involved. The Japanese NCP, being mindful of the U.S. Specific Instance of which the process was concluded in January 2015 and with a view to avoid the duplication with the aforementioned process, sees the merit of focusing on the due diligence responsibility of the Companies Involved, notably Nissan, which will enable an effective and efficient discussion, thus contributing to effective resolution of the issues.

6. Japanese NCP's assistance in dealing with the issues

(1) On 6 August 2018, the Japanese NCP sent the Initial Assessment to the Complainants and Nissan on a confidential basis and asked both parties if they were willing to participate in a dialogue through the Japanese NCP's good offices as regards the issues raised in the Specific Instance.

(2) In the framework of NCPs coordination, the French, Dutch and U.S. NCPs shared the Initial Assessment with Renault in France, RNBV in the Netherlands and NNA in the U.S. on a confidential basis.

(3) In the letter dated 27 August 2018, which the Japanese NCP received on 1 September 2018, UAW expressed the willingness to participate in a dialogue with Nissan through the good offices of the Japanese NCP. On 11 September 2018 IndustriALL sent a letter to the Japanese NCP in which IndustriALL expressed their support for UAW's position to accept good offices of the Japanese NCP.

(4) On 26 April 2019, Nissan submitted a reconsideration letter to the Japanese NCP. Main points of the letter are as follows.

A. Between April 2015 and September 2018, the U.S. National Labor Relations Board (“NLRB”) dismissed, or the UAW withdrew the majority of allegations of NNA’s violations of U.S. labor law filed by the UAW against NNA. Soon thereafter, the NLRB approached NNA with an offer to resolve the few remaining of UAW allegations against NNA. This resolution included no finding of any U.S. labor law violations by NNA; no admission of any labor law violations by NNA; no monetary penalties against NNA; no employee reinstatements; and no additional remedies. On or about November 20, 2018, the NLRB’s Regional Director approved this resolution. Thus, the dismissal or resolution of all allegations therefore moots the Complainants’ issues; there is nothing for the Japanese NCP to mediate.

B. The Complainants may not have disclosed material facts to the Japanese NCP, including that the UAW did not contest the results of the NLRB election in Canton, therefore, the Japanese NCP may not have fully considered these material facts in connection with the Initial Assessment.

C. The Initial Assessment does not properly evaluate that the Specific Instance is seeking to censor NNA, in contravention with explicit U.S. Constitution and U.S. labor law or properly respect the said laws.

D. Accordingly, Nissan requests that the Japanese NCP rescind the Initial Assessment and issue a new assessment finding that the issues raised in the Specific Instance do not merit further consideration. Barring a new assessment, Nissan respectfully declines the Japanese NCP’s offer of mediation.

(5) View of the Japanese NCP with regards to the Nissan’s reconsideration letter is as follows:

The Japanese NCP conducted the Initial Assessment appropriately after necessary examination. In particular, the Initial Assessment related to this Specific Instance was conducted in August 2018, based on the Guidelines and the related documents as well as the information obtained by the time of issuance of the Initial Assessment, and also based on the related law and the judicial system in the United States.

(6) On 30 May 2019, based on the view which is described in Section 6(5) above, the Japanese NCP explained to Nissan that the Initial Assessment has been conducted appropriately. In this context the Japanese NCP asked Nissan if its position is to decline to participate in the consultation through the good offices of the Japanese NCP, and Nissan confirmed its position to decline to participate in the consultation.

(7) The Japanese NCP found that one or more of the parties to the Specific Instance is unwilling to

engage, therefore determined to conclude the consultation on the Specific Instance in accordance with Paragraph 35 of the Commentary of the Implementation Procedures of the Guidelines.

(8) In the preparation of this final statement, the Japanese NCP had prior consultations with supportive NCPs. The Japanese NCP made the draft of its final statement available to the Complainants and the Companies Involved and requested for comments on this draft on 26 August 2021. UAW and Nissan submitted their comments to the Japanese NCP. In response to the request by UAW, the Japanese NCP asked Nissan what steps it had taken to address the recommendations of the U.S. NCP. The Japanese NCP considered their comments and made some modifications on the final statement.

(9) Since the submission of the Specific Instance, the Japanese NCP has held multiple meetings with Nissan, as well as with UAW at the occasion of the OECD meetings in Paris.

7. Conclusion

The Japanese NCP reminds the importance of the Guidelines for RBC, and notably Due Diligence, social dialogue and engagement with workers representation organization. The NCP observes that Nissan, a signatory of the United Nations Global Compact since 2004, introduced the various guidelines respecting the International Labor Organization (ILO)'s Declaration on Fundamental Principles and Rights at Work. The NCP welcomes Nissan's recent initiatives aligned with the OECD MNE Guidelines, among others, the fact that it referenced the United Nations Guiding Principles on Business and Human Rights (UNGPs) as framework and formulated the "Nissan Human Rights Policy Statement" in 2017 and revised in 2021. Nissan also issued the "Nissan Global Guideline on Human Rights." The Japanese NCP recommends Nissan to continue to ensure the implementation of the OECD Guidelines in all the Group activities while respecting the OECD Guidelines.

The NCPs' assistance in solving the issues should be based on agreement of the parties concerned. Since the NCP finds that one or more of the parties to the Specific Instance is unwilling to engage, the Japanese NCP, regrets notwithstanding, concludes the process regarding this Specific Instance in accordance with Paragraph 35 of Commentary on the Implementation Procedures of the Guidelines.

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