

**Office of the Extractive Sector
Corporate Social Responsibility (CSR) Counsellor
Closing Report
Request for Review File Number 2012-03-ARG**

***Accessible, Effective, Independent,
Predictable, Responsive, Transparent***

The Office of the Extractive Sector Corporate Social Responsibility Counsellor
Government of Canada
http://www.international.gc.ca/csr_counsellor-conseiller_rse

Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor

Errors and omissions remain the responsibility of the Office

October 2012

This report is available in French, English and Spanish.

The Office's Key Guiding Principles: Accessible, Effective, Independent, Transparent, Responsive, Predictable

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor is part of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The Counsellor reports to, and acts as a special advisor to, the Minister of International Trade. The Counsellor may make recommendations to parties and provide advice; however, the Office does not have any policy-making role. In executing its dispute resolution role, the Office acts as an impartial facilitator, an honest broker who brings parties together to fix problems before they become issues and resolve issues before they become intractable.

The first Extractive Sector CSR Counsellor, Marketa Evans, was appointed in October 2009. The Office was opened in Toronto in March 2010. To support the construction of this new Office, the Counsellor adopted a cross-sector, open and dialogue-based approach with the wide range of stakeholders interested in the issues of CSR and Canada's mining, oil and gas industries.

The construction of the Office's review mechanism, a dispute resolution process, was informed by a formal and proactive multi-perspective dialogue, during which over 300 individuals and organizations directly participated, both in Canada and overseas. The dispute resolution process was established in October 2010.

Supporting documents, including the rules of procedure, information brochure and Participant Guide, are available on the Office's website at http://www.international.gc.ca/csr_counsellor-conseiller_rse.

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1. Executive summary

This report closes the request for review file #2012-03-ARG, related to McEwen Mining Inc.'s Los Azules project in Argentina. This closing report reflects a summary of the request for review, and the activities undertaken.

The Office is part of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The role of the Office is to promote responsible practices for Canadian companies abroad and to resolve, through constructive dialogue, corporate/community disputes connected with the CSR Strategy's endorsed performance standards.

The request for review passed the intake screening. This intake screening determines if the request meets the criteria as set out in the Counsellor's legal mandate. The intake screening is not a judgment on the merits of the request or an assessment of the information contained in the request. The request then proceeded to step four in the review process: "informal mediation." Activities that take place under this stage include desk research, interviews, information-gathering, discussions with the parties, discussions with other relevant parties, information exchanges, etc. One part of informal mediation is a "situational assessment." Such an assessment is a common tool for third party dispute resolution. It is not a judgment on the merits of the complaint, nor of information contained in the request. Rather, it is a multi-perspective assessment of how different parties see the dispute and the issues; it informs the process going forward. An assessment helps to determine if a constructive dialogue under the auspices of the Office is likely to be effective or appropriate.

The Office's review mechanism is a voluntary dialogue process designed to explore interests and generate creative options in order to resolve and reduce disputes. This process was built to enhance the ability of Canadian extractive sector companies operating overseas to manage their social and environmental risks, including the risk of unresolved social or community disputes. Such a process requires good faith on all sides, mutual commitment, and two way responsibilities.

Information was sought from and delivered to parties in equal measure. The Office completed the situational assessment for the request in early October 2012. The main themes emerging from the assessment were (1) transparency and information-sharing and (2) stakeholder engagement. Prior to the completion of the assessment, McEwen Mining informed the Counsellor that it did not intend to proceed with facilitated dialogue. Information surfaced during the assessment was provided to McEwen Mining and the Office offered to re-engage in dialogue. The requesters reiterated their desire for facilitated dispute resolution with the company under the auspices of the Office. Given the voluntary nature of the Review Process, and the lack of willingness on the part of McEwen Mining to participate in constructive dialogue, this request is not amenable to resolution through facilitated dialogue.

The good offices of the Counsellor remain open to the parties, should circumstances so permit in future.

The file is now closed.

2. Introduction

Summary: This is the closing report for the request for review involving McEwen Mining Inc.'s Los Azules project in Argentina. The purpose of this report is to meet statutory reporting requirements and our commitment to our key guiding principles. This request for review file is now closed.

Reporting: In accordance with the Office's rules of procedure, as approved by the Canadian Minister of International Trade in September 2010 and renewed in October 2012, this closing report reflects a summary of the request for review, and the activities undertaken by the Counsellor and the participants to resolve the dispute.

The Counsellor is not a judge or an arbitrator and does not pronounce on the merits of substantive points of disagreement between the parties. The views expressed in this report on such substantive issues are those of the parties, and not those of the Counsellor. The Counsellor listens to all points of view but does not take sides. The Counsellor believes that when different perspectives are surfaced, areas of common ground and mutual interest are often found. Information sharing has been found to be an effective way of clarifying and resolving disputes.

In accordance with the rules of procedure, parties are instructed not to share confidential information with the Office until the "express written consent" to proceed to structured dialogue is obtained. In this instance, the request did not proceed to that stage.

Results: The objective of the Office is to bring parties together, share information and develop a framework that would result in a productive and constructive path forward. The Counsellor understands that parties may come together in a dialogue forum and may be unable to reach an agreement for any number of reasons. Such dialogue is not always fruitful. In this case, McEwen Mining declined to participate in the next stages of the review process.

Steps in the review process – file#2012-03-ARG

July 9, 2012	Step 1: A complete request for review was submitted to the Office.
July 10, 2012	Step 2: The Office acknowledged the request and forwarded a copy of the request to the company.
July 25, 2012	Step 3: The request passed the Office's intake screening and the parties were advised accordingly. This intake screening determines if the request meets the criteria as set out in the Counsellor's legal mandate. The intake screening is not a judgment on the merits of the request or an assessment of the information contained in the request.
July-October	Step 4: Situational assessment, one part of "informal mediation/trust-building"
October 2012	The request was closed.

The context

According to Natural Resources Canada, Canadian investment in Argentina’s mining sector neared \$12 billion in 2010. About 50 Canadian mining companies are active in Argentina, including McEwen Mining, which holds a 100% interest in the Los Azules project.

According to McEwen Mining’s website,¹ Los Azules is an advanced-stage porphyry copper exploration project located in the cordilleran region of San Juan Province, near the border with Chile. It is accessible by road except seasonal closures in winter. The elevation at site ranges between 11,500 feet—14,750 feet (3,500 m—4,500 m) above sea level.

3. Background and review process in brief

The Government of Canada’s CSR Strategy for the International Extractive Sector was announced in March 2009, and this Office was created as a result of that Strategy.² The CSR Strategy seeks to improve the competitive advantage and reputation of Canada’s international extractive sector companies by enhancing their ability to manage social and environmental risks, including the risks arising from unresolved social conflict.

The Government of Canada encourages and expects all Canadian companies working around the world to respect all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner.

In addition to the OECD Guidelines for Multinational Enterprises, which the Government of Canada has long endorsed and supported, the CSR Strategy notes that the Government of Canada will promote three widely-recognized global CSR performance standards with Canadian extractive companies operating abroad. These endorsed standards are the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative.³ Working with these standards helps Canadian companies to understand, meet and exceed their obligations with respect to corporate social responsibility. Companies can use these standards to assess their environmental and social risks and current performance, and to formulate action plans based on their particular circumstances and unique operating environments.

¹ Available at <http://www.mcewenmining.com/Operations/Los-Azules-Exploration/default.aspx>.

² The strategy is entitled “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector”, posted at www.csr.gc.ca.

³ The Office does not receive requests for review pertaining solely to the OECD Guidelines for Multinational Enterprises. The review mechanism for the OECD Guidelines remains with the Canadian National Contact Point. A protocol between Canada’s NCP and the Office governs how the two work together; it is posted on our website.

The guidelines endorsed under the Government of Canada's CSR Strategy:

- The International Finance Corporation Performance Standards on Social & Environmental Sustainability for extractive projects with potential adverse social or environmental impacts
- The Voluntary Principles on Security and Human Rights for projects involving private or public security forces
- The Global Reporting Initiative for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance
- The OECD Guidelines for Multinational Enterprises

The role of the Extractive Sector CSR Counsellor is to promote responsible practices for Canadian companies abroad and to resolve disputes connected with the endorsed performance standards of the CSR Strategy.

The mandate of the Counsellor is linked solely to the voluntary standards of the CSR Strategy, not to host country laws, regulations or standards.

The role of the CSR Counsellor's Office

The Office promotes responsible practices for Canadian companies by promoting good practice international standards endorsed under the Government of Canada's CSR Strategy. The endorsed standards themselves reflect critical issues facing the extractives sectors – from security at site to biodiversity. The standards provide comprehensive guidance and practical tool kits. The job of the Office is to ensure Canadian companies are aware of the standards, and how the standards can help them to more effectively manage social and environmental risks. As many companies are financed by equity, not debt, IFC standards or Equator Principles standards would not automatically apply to their activities. As a result, many companies may be unaware of the CSR Strategy and the standards.

Our objective is not to audit for compliance, but rather to raise awareness and provide good practice guidance for performance improvement.

For example, IFC Performance Standards note that: "Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities." Stakeholders are defined by the IFC: "For the purposes of Performance Standard 1, stakeholders are defined as persons, groups or communities external to the core operations of a project who may be affected by the project or have interest in it. This may include individuals, businesses, communities, local government authorities, local nongovernmental and other institutions, and other interested or affected parties. Stakeholder identification broadly involves the determination of the various individuals, groups or communities who may have an interest in the project or who may affect or be affected by the project. "

Supporting documents about the review process, including the rules of procedure and participant guide, are available on the Office's website.

4. About this request for review

The Office of the Extractive Sector CSR Counsellor received a complete request for review on July 9, 2012. The requesters identified were The Centre for Human Rights and Environment (CEDHA) and Fundacion Ciudadanos Independientes (FuCI). The responding party identified was McEwen Mining Inc., relating to the Los Azules project in Argentina. In accordance with the rules of procedure, the responding party was notified by telephone and was forwarded a copy of the original request.

According to the request: "This Request for Review addresses past, present and future impacts to glaciers and periglacial environments by the Los Azules copper mining project in San Juan Argentina, owned by McEwen Mining of Canada (NYSE/TSX: MUX), previously owned by the also Canadian Minera Andes."

McEwen Mining Inc. (then US Gold Corporation) acquired Minera Andes Inc. in January 2012.⁴ According to the request for review, CEDHA had had previous engagement on the issues with representatives of Minera Andes.

The parties

According to the organization's website, CEDHA promotes greater access to justice and human rights on the environment through inclusive public policy, public interest litigation and capacity building of key actors. CEDHA was founded in 1999 and is based in Cordoba, Argentina.

According to the organization's website, FuCI aims to promote sustainable development through policy, law and the organization of domestic civil society. FuCI was founded in 2003 and is based in San Juan, Argentina.

According to publicly available information, McEwen Mining Inc. is a high growth, low cost mid-tier gold producer in the Americas. It is incorporated in Colorado, USA and has its principal offices in Toronto.

⁴ McEwen Mining's press release available at <http://www.mcewenmining.com/Media-Events/News-Releases/News-Releases-Details/2012/McEwen-Mining-US-Gold-and-Minera-Andes-Business-Combination-Completed/default.aspx>.

5. Developments with this request for review

Intake screening

The Office acknowledged the request on July 10, 2012 and the request moved to Step 3 of the process – intake screening. This intake screening determines if the request meets the criteria as set out in the CSR Counsellor’s legal mandate. The intake screening is not a judgment on the merits of the request or an assessment of the information contained in the request.

During the intake screening, careful consideration was given to four key issues connected with the Office’s mandate:

1. Does each of the two organizations bringing the request meet the requirements to be considered a “requester”?

The Office’s legal mandate states that the Counsellor can accept requests for review from “an individual, group or community that reasonably believes that it is being or may be adversely affected by the activities of a Canadian extractive sector company in its operations outside Canada.”

⇒ The Counsellor accepted that CEDHA and FuCI are “groups” for the purposes of the legal mandate.

Typically, requesters in the Review Process would be project-affected communities living close to or adjacent to the project site. However, in this case, the exploration project sits at approximately 3,500 M above sea-level, an elevation where permanent human populations are not typically found. There are no communities adjacent to the site. CEDHA and FuCI are, however, locally based groups, made up of individuals who are physically resident in the province and region of the exploration project. FuCI is based in San Juan, a major population area in the proximity of the site. It is plausible therefore that they “reasonably believe” that they are resident in the project’s potential area of influence. It is plausible therefore that they “reasonably believe” that the project currently has or may have an adverse effect on them, even though we recognize that the groups bringing the request are not living directly adjacent to the potential project.

⇒ The Counsellor accepted that CEDHA and FuCI meet the necessary requirements to be considered “requesters” for the purposes of the mandate criteria.

2. Can McEwen Mining Inc. be considered a “Canadian” company for the purposes of this request?

The legal mandate states that the Review Process applies to Canadian extractive sector companies. A “Canadian extractive sector company” is defined as “an oil, gas or mining company that has been incorporated in Canada or that has its head office in Canada.”

McEwen Mining Inc. is incorporated in Colorado, USA. However, on the company’s website, it identifies Toronto as its head office. In documents filed with American and Canadian regulators, the company identifies Toronto as the “address of principal executive offices.”

⇒ Given the company's identification of Toronto, Canada as the location of its head office, the Counsellor accepted that McEwen Mining Inc. can be considered a Canadian company for the purposes of the mandate.

3. Are there issues in the request connected with the voluntary performance guidelines endorsed under the Government of Canada's CSR Strategy?

The legal mandate sets forth four performance guidelines as the basis of the Counsellor's review and advisory roles. These are the four performance guidelines in the Government of Canada's CSR Strategy for the Canadian International Extractive Sector (see page 7 above).

The mandate specifies that a requester must "believe that the [company's] activities...are inconsistent with the performance guidelines." The Counsellor's approach is not compliance or audit-based. At no time does the Office determine whether a responding party is in compliance with, or in breach of, standards. Instead, the Counsellor determines if the issues raised in the request are in some way connected with the endorsed voluntary performance guidelines, sufficient to begin with dialogue.

In their request, CEDHA and FuCI raised issues connected with the IFC Performance Standards, the Global Reporting Initiative, and the OECD Guidelines for Multinational Enterprises. As issues related to these standards, they fall under the mandate of the Office.

⇒ For the purposes of the intake screening, the Counsellor accepted that there are issues raised in the request that are connected with the voluntary performance guidelines endorsed under the Government of Canada's CSR Strategy.

4. Has the request been made in "good faith"?

The Office's mandate states that in accepting a request "the Counsellor shall consider...whether the request was made in good faith." As the request contains a statement from the requesters that they may pursue legal action in future, a concern arose as to whether the request was brought in good faith.

The Counsellor acknowledged this concern, and efforts were made to ensure that issues related solely to host country laws were bracketed off from the request. That said, there is recognition that litigation often remains in the background of these kinds of disputes.

The Counsellor had no reason to believe that the requesters were not acting in good faith. The Counsellor continuously monitors and works to confirm good faith participation by both the requesters and responding party.

⇒ For the purposes of the intake screening, the Counsellor presumed good faith on the part of the requesters.

The Office completed the intake screening on July 25, 2012 and advised parties that the request had passed the screening.

Clarification of the issues

In early conversations with the Office, McEwen Mining noted concerns. In the company's view, the request raised issues that are matters of Argentina's domestic laws. To address this concern, the Office formally clarified with the requesters that only the issues raised that were connected with the endorsed performance guidelines would form part of the request and eventual dialogue. In a letter to requesters dated August 9, 2012, the Office stated that the following issues mentioned in the request are outside of the Office's mandate and therefore are not subject to the Office's process:

1. Judicial processes unfolding in Argentina.
2. Interactions between the governments of Argentina and San Juan province and the company.
3. Disputes between local populations and the governments of Argentina and San Juan province.
4. Actions of the governments of Argentina and San Juan province.
5. Enforcement of laws in Argentina including the national Glacier Protection Act and the province of San Juan's Glacier Protection Act.
6. Activities of companies other than McEwen Mining Inc.
7. Violations of Canadian legal or regulatory authorities.

The letter further clarified that the Office considered there to be potential opportunity for a constructive dialogue between the parties on issues directly related to the Counsellor's mandate.

The requestors agreed to the above parameters for the request; the Office published an interim report (available on our website).

What is the Situational Assessment in the context of the Office's review process?

Following initial clarification of issues, the Office began the situational assessment. This assessment is a key tool widely used by third party neutrals to inform a dispute resolution process, and it forms a critical part of the Office's due diligence.

The Office's methodology follows standard best practice for third party dispute resolution, modeled for example, by the World Bank Group's Compliance Advisor Ombudsman, the US Institute for Environmental Conflict Resolution, and many others.

The Office's situational assessment is not a judgment on the merits of the complaint, or an assessment of the information contained in the request. It is a way to inform the process going forward, and to ascertain if a dialogue-based approach is likely to be effective or appropriate. Refer to Appendix A for an outline of our approach.

The assessment: a) gathers further information on the issues; b) maps stakeholders; and c) provides information to stakeholders about the process. Its objective is to inform next steps. It can relatively quickly illuminate cases where dialogue-based alternatives are not likely to work.

The aim of the Office is to ensure a fair and balanced process. The Office meets in person and by telephone and other means with the parties in equal measure to the extent possible. These meetings allow the Office to educate parties about the process, and allow parties to share information, perspectives, and concerns. It allows the parties to educate the Office on the issues and the dispute, as the parties see them.

The Counsellor is not a judge or an arbitrator and does not pronounce on the merits of substantive points of disagreement between the parties. The views expressed in this report on such substantive issues are those of the parties, and not those of the Counsellor. The Counsellor listens to all points of view but does not take sides.

From the perspective of the requesters:

- They see value in a dispute resolution process, with the Counsellor as a neutral third party, to build constructive working relationships with the company.
- They see themselves as engaged and informed stakeholders who have a constructive contribution to make. They would like to be heard and included. They will continue to be engaged on these issues in future. They work directly with local populations.
- They have concerns about impacts that they would like to share with McEwen Mining, and they are open to learning about McEwen Mining's work and perspectives on the issues.
- They see rising levels of fear, mistrust and anger around mining projects in Argentina and wish to help reduce the levels of social conflict. They stated they do not want to stop the project from proceeding.
- They are open to McEwen Mining's comments on their work, including the recent CEDHA report on McEwen Mining. They stated they would like to hear what the company thinks about the report and would be open to hearing about any incorrect information or statements. They would like to receive feedback on aspects of the earlier report and/or the request.
- The lack of consistent, proactive public information sharing about the Los Azules project is leading to heightened fears, sensitivities and mistrust.
- Rumors in the region are on the rise.
- They would like to hear that McEwen Mining is committed to environmental stewardship and protection of a resource they see as critical.
- Although the project is at the exploration stage at this time, they see "imminent risk" in a few specific areas of exploration and this adds to their sense of urgency in building understanding and gaining information. They acknowledge that the company has much more information, and they remain open to being corrected in their concerns. They would like to learn about what the company has been doing.

From the perspective of McEwen Mining:

- The issues raised in the request are primarily connected with domestic laws in Argentina, either federal or provincial.
- There is a robust legal framework in Argentina to address stakeholder concerns and this should be the primary place for concerns to be addressed.
- The project has both social and legal license.
- The requesters are not necessarily stakeholders of the company for the purposes of the issues raised.
- Due to the early stage of the project, environmental impacts are minimal. Therefore, the company does not ascribe the same level of urgency as the requesters do.
- The company is currently conducting due diligence and environmental impact assessments to high international standards. Glaciologists are at work on the project and scientific data is being gathered.
- Stakeholder engagement and information sharing have been done, to a level consistent with the project stage.
- The value of the Office's process is not sufficiently high.

Closing the file

The Office recognizes that there is a regulatory regime in place in Argentina and San Juan province. Legal or regulatory processes alone do not necessarily identify and mitigate all material social risks. The role of global best practice standards, therefore, is to assist companies in enhancing social performance and in proactively managing dynamic social expectations. The requesters “fully understand” that the Review Process is not designed to engage on host country laws, and have provided such acknowledgement in writing.

The Office’s situational assessment uncovered two major areas where standards might be helpful:

- (1) transparency and information-sharing, and
- (2) stakeholder engagement.

Prior to the conclusion of the situational assessment, McEwen Mining informed the Office that it was withdrawing from the process. The Office continued with the situational assessment to ensure a balanced approach that heard from all parties. The situational assessment, which serves to flesh out issues and interests, offers parties information on which they can make and evaluate decisions. Information surfaced during the situational assessment was shared with parties. At the conclusion of the situational assessment, the requesters reiterated a desire to participate in a facilitated dialogue with the assistance of the Office as a third party neutral. The Office then offered to McEwen Mining to facilitate a re-engagement into an information sharing process with the requesters. McEwen Mining declined. Given the voluntary nature of the review process, the request is not amenable to resolution through facilitated dialogue.

The good offices of the Counsellor remain open to the parties for future engagement, should circumstances permit.

The file is now closed.

Appendix A

What is a situational assessment in the context of the Office of the Extractive Sector CSR Counsellor Review Process?

The mandate of the Office of the Extractive Sector CSR Counsellor is to promote responsible practices for Canadian extractive companies abroad and to resolve disputes connected with social and environmental standards endorsed by the Government of Canada under the CSR Strategy.

The Office of the CSR Counsellor was opened in March 2010 in response to stakeholder demands for balanced, effective conflict resolution between Canadian extractive sector companies and project-affected stakeholders overseas. These calls came from both industry and civil society, and mirror global developments. Stakeholders overwhelmingly expressed interest in seeing the Office succeed in carrying out its mandate, while recognizing the complexity of the mandate. Civil society organizations expressed a hope that the CSR Counsellor's Office would contribute to positive change on the ground; industry saw the Office as "a positive step towards further enhancing our [industry] CSR commitments" and the review process of the Office as a "valuable forum for parties to engage in constructive dialogue and work through differences."

Our approach has been to build an effective mechanism through listening and learning. The Rules of Procedure were constructed after extensive, balanced consultations and peer benchmarking. Although direct Canadian experience with dialogue-based conflict resolution in this space is limited, similar mechanisms are in increasing use around the world. Grounded in the Order-in-Council mandate, the construction of our review process was informed by, and continues to evolve based on:

1. Extensive and wide-ranging formal stakeholder workshops and consultations on the draft rules of procedure (summer 2010)
2. Three legal experts workshops
3. Practitioner expertise and global good practice
4. Input from our expert Advisory Panel
5. Continuous stakeholder involvement, engagement, input

Even in robust regulatory environments, the past decade has witnessed a significant global upsurge in the use of third party facilitators and dialogue-based conflict resolution. The process we have adopted is based on a proven conflict resolution methodology called "interest-based negotiation," backed by over a decade of practical experience, and the highest caliber of academic research. The approach is promulgated by the Harvard Program on Negotiation, and is practiced by leading conflict resolution offices including the World Bank Group's Compliance Advisor Ombudsman (CAO), the Inter-American Development Bank's Independent Consultation and Investigation Mechanism (MICI), and the US Institute for Environmental Conflict Resolution, among others. The approach offers an alternative to litigation or social protest; it seeks solutions, rather than blame. With the recent endorsement of the UN Guiding Principles on Business and Human Rights, and additional focus on access to remedy, we expect such non-judicial processes to be in even greater demand.

The situational assessment tool of the Review Process

A situational/conflict/problem assessment is a key tool widely used by third party neutrals (as above) to inform the dispute resolution process, and it forms a critical part of the Office's due diligence. The situational assessment usually includes briefings for all parties, desk research, document review, in-field interviews.

The Office follows global best practice in using a situational assessment first, as a due diligence tool. For example, the World Bank Group's mechanism (CAO) notes:

"The CAO assessment seeks to clarify issues and concerns raised by complainants, to gather information on how other stakeholders perceive the situation, and to assist the parties in determining whether a collaborative resolution is feasible through a process facilitated by the CAO Ombudsman...The CAO Ombudsman does not gather information to make judgments on the merits of a Complaint"

Our situational assessment is not a judgment on the merits of the complaint, or an assessment of the information contained in the request. It is a way to inform the process going forward, and to ascertain if our process is likely to be effective or appropriate. Our assessment aims to clarify:

- (a) What are the issues raised by requesters?
- (b) Who are the stakeholders?
- (c) How do other stakeholders, including the responding party, see the issues?
- (d) What suggestions do people have for resolution?

Another important objective of the situational assessment is to provide more detailed information to stakeholders about the Office's process.

The situational assessment informs next steps. Parties will be better informed about the issues and possible options. A situational assessment can relatively quickly clarify the key issues, reflect possible areas of overlapping interest among various stakeholders, and what they see as potential ideas for a way forward. It can also relatively quickly illuminate cases where dialogue-based alternatives are not likely to work. Again, this follows best practice globally. For example, the World Bank Group's CAO notes that

"If, any time after completion of the assessment...the CAO Ombudsman believes that resolution of the complaint is unlikely to be possible or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision to conclude the ombudsman process."

Our process, as outlined in the rules of procedure dated October 2010 (approved by the Minister of International Trade in September 2010 and renewed in October 2012), is:

- Step 1: Request submitted
- Step 2: Acknowledgement of receipt
- Step 3: Intake screening
- Step 4: Informal mediation/trustbuilding (includes situational assessment)
- Step 5: Informal mediation/structured dialogue
- Optional: Access to formal mediation

Once the situational assessment is completed, and still within Step 4 informal mediation/trustbuilding, if a way forward looks feasible, parties are asked to provide written consent before moving to Step 5 and a framework for dialogue. The written consent of parties to participate in a more structured dialogue is only sought if the situational assessment indicates a reasonable prospect of constructive problem solving and of the continued need and value added for the Office's involvement. Such written consent might define a way forward for the parties, for instance, on the parameters of information sharing beyond publicly available documents, timelines and milestones, possible cost sharing of technical reports, selection of formal mediators, public reporting, etc.

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