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March 31, 2004

VIA FACSIMILE and U.S. MAIL

Mr. Wesley Scholz  
Director, Office of Investment Affairs and National Contact Point  
for the OECD Guidelines for Multinational Enterprises  
Department of State  
2201 C Street, NW  
Washington, DC 20520

Dear Mr. Scholz:

We are writing concerning the investigation by a United Nations (UN) Security Council-appointed Panel of Experts into the illegal exploitation of natural resources in the Democratic Republic of the Congo (DRC).

As you know, the Panel has produced a series of reports that concluded that “elite networks” consisting of key political and military elites and business persons have fueled the conflict in order to retain their control over the DRC’s vast natural resources. The Panel’s third report, published in October 2002, stated that several American companies were in violation of the Organisation for Economic Cooperation and Development’s (OECD) “*Guidelines for Multinational Enterprises*” (Guidelines) for helping to perpetuate the conflict through their commercial ties with the DRC.

In its fourth and final report, submitted to the UN Security Council on October 28, 2003, the Panel concluded that the circumstances that led to the U.S. companies being named for violating the Guidelines in its third report are considered resolved and no further action is required. However, we continue to be concerned by the issues raised in this process and in particular, the way in which the State Department interpreted the applicability of the OECD Guidelines to the commercial activities of the U.S. companies.

As voluntary standards for responsible corporate behavior that have been formally adopted by OECD governments, the Guidelines serve as a valuable point of reference for U.S. companies in their international operations. Indeed, high-level declarations by the Group of Eight leaders in 2002 and 2003 reaffirming governmental support of the OECD Guidelines underpins their role as the prevailing international instrument to foster greater corporate responsibility worldwide.

It is our understanding that your office advised the Expert Panel that the Guidelines were not applicable to several of the U.S. companies due to the absence of an “investment nexus” through which the U.S. companies exercised a degree of influence in the DRC or had investment-like relationships with the relevant actors directly responsible for the illegal exploitation. This interpretation by the State Department was apparently based on a June 2003 statement issued by the oversight body for the

Guidelines within the OECD, the Committee for International Investment and Multinational Enterprises (CIME), which clarified that the applicability of the Guidelines to suppliers is based on the presence of an “investment nexus.”

We are troubled by the State Department’s application of the “investment nexus” test in this instance, because it sets a harmful precedent for the use of the OECD Guidelines. Based on the State Department’s current interpretation of the Guidelines, U.S. companies would apparently not be expected to ensure that their trade in natural resources or other goods do not assist in financing violent conflict and human rights abuses.

We believe it is imperative that companies based in OECD countries ensure that they are not indirectly financing violent conflict and human rights abuses by purchasing natural resources or other goods when the resulting revenues are used to buy arms and sustain conflict. The CIME should adopt clear guidance that the Guidelines do apply in such instances, if necessary through a revision of the Guidelines themselves.

Therefore, we urge that your office, as U.S. National Contact Point for the Guidelines, initiate action within the CIME that will expand the scope of the OECD Guidelines, so that they explicitly apply in these circumstances. We believe that all OECD-based companies should have the necessary guidance in this regard to ensure their commercial activities are consistent with the spirit and letter of the Guidelines.

We respectfully request a written response indicating how your office intends to proceed in this regard. Please send a written response to Colleen Freeman, Friends of the Earth, 1717 Massachusetts Avenue, NW, Suite 600, Washington, DC 20026.

Sincerely,

Colleen Freeman  
Friends of the Earth-United States

Adotei Aakwei  
Amnesty International USA

Stephen Mills  
Sierra Club

Doug Norlen  
Pacific Environment

Betsy Apple  
EarthRights International

cc: Marinus Sikkel, Chair, Committee on International Investment and Multinational Enterprises,  
Organization for Economic Cooperation and Development (via air mail)