

**Memorandum to the Ministry of Finance**  
**April 19 2010**

**Topic:**

Response to criticism raised by the organisation DanWatch concerning DONG Energy's collaborator CMC's coal mine in Cerrejon in Colombia.

**Summary:**

In the report "Curse of Coal" of January 28 2010, the organisation DanWatch raised serious criticism against DONG Energy's collaborator CMC concerning conditions in the company's coal mine in Cerrejon, Colombia.

In light of this, DONG Energy conducted in the beginning of March 2010 an extraordinary third-party audit of the mine to investigate the serious accusations on working conditions and labour union conditions, coal dust in the local area and expropriation cases.

With reference to the report made by the external auditors, the mine complied with international and national regulations as well as DONG's ethical requirements for suppliers on the following areas:

Child labour,  
Forced labour,  
Harassment/disciplinary practice,  
Discrimination,  
Freedom of association/negotiations  
on collective agreements,  
Wages/working time.

The involved parties express satisfaction concerning the current agreement regarding the expropriation cases for the areas Tamaquito and Tabaco.

There is satisfaction in labour union as far as concerns the co-operation with the Cerrejon mine.

There have been found signs that some employees have been exposed to lead poisoning, amongst other things. In light of this, DONG Energy is now going to get in touch with the mine to give them the opportunity to relate to the report and to ask the mine to formulate an action plan for how they are going improve the issues that have been pointed out.

DONG Energy does not find that there are circumstances in the external report that affect the future collaboration with the Cerrejon mine. With the external report, DONG Energy has been affirmed that the Cerrejon mine works actively at solving complex historical and current issues to the advantage of both employees and the local area.

**Appendix:**

Memorandum of February 3 2010

In connection with a consultation on February 10 2010, which dealt with the DanWatch report "Curse of Coal" of January 28 2010, the Ministry of Finance asked DONG Energy to account for the issues that have been raised in the report regarding the Cerrejon mine. In addition, the Ministry of Finance has asked DONG Energy to answer questions posed at the consultation, where DONG Energy was asked specifically to account for whether DONG Energy examine the conditions in a mine prior to entering into a contract, and whether it stated in their supplier contracts that DONG Energy can conduct audits of the mine and subcontractors to the mine.

## **DONG Energy's supplier conditions**

As a rule, DONG Energy's supplier conditions (Code of Conduct) is part of the basic contract for all purchases above approximately 6,700 euro. It is stated in the basic contract that DONG Energy "will promote standards through continual engagement and dialogue. However, in case of severe or repeated neglect, we reserve the right to discontinue the business relation". DONG Energy does not conduct specific audits of subcontractors, but subcontractors can, in special cases, be included in the audit of a supplier. Furthermore, we refer to information concerning supplier conditions provided to the Ministry of Finance in the memorandum of February 3 2010.

## **Audit of the Cerrejon mine in Colombia**

On basis of the serious accusations raised by DanWatch on 28 January 2010, DONG Energy decided in February to engage auditors from Specialized Technology Resources ("STR") to conduct an audit of the Cerrejon mine in Colombia. In collaboration with external specialists in environmental and working conditions (EHS) as well as specialists in the effects on local communities and rehousing<sup>1</sup>, the auditors conducted an audit from March 1 to March 12 2010. Each of the three elements in the review (labour, environment and working conditions as well as local communities) were carried out on location in five days by a team of two persons, i.e. 30 man-days in total. The review comprised the Cerrejon mine, the rail road between the mine and the port of shipment, as well as the harbour Puerto Bolivar, all of which owned by the mine. The review consisted of visits and observation on location, interviews of employees and management as well as examination of documentation and visits to the surrounding areas.

STR's assessment is based on the mine's fulfillment of DONG Energy's supplier conditions and present laws and regulations in Colombia. Reference standards, which are used to identify Best Practice, included International Finance Corporation (IFC) Performance Standards and IFC's EHS guidelines for mining. In addition to this, related independent reports were examined, including the final declaration from Australia National Contact Point concerning an OECD complaint, the report from the Independent Third Party Review Panel, which resulted in the OECD recommendation, the reports from the Social Capital Group (the consultant that was appointed by the Third Party Review Panel to carry out the field work and mentioned in the memorandum of February 3 2010), released reports from local anthropologists as well as international NGOs and support groups who are interested in Cerrejon's mining.

Besides the external audit team, three representatives from DONG Energy visited the area and the mine themselves in the period February 28 to March 5 to get an overview of the situation in Colombia, the mining industry and the appertaining harbour and to discuss the accusations raised by DanWatch. DONG Energy furthermore met with the Colombian ministry for mining to get his take on the Cerrejon mine. The ministry considers the mine one of the most progressive mines in terms of working and environmental conditions in Colombia.

This memorandum is based on the external audit team's report and DONG Energy's own observations. It will be stated clearly in the memorandum when a particular assessment is that of the external auditor (STR). It should be emphasised that in order to ensure the best possible investigation of the case, the Cerrejon mine has given DONG Energy and the audit teams access to classified and business sensitive information. Therefore, DONG Energy cannot disclose the full report. It should be pointed out that DONG Energy has not been able to live up to the minister's request at the consultation on February 10 2010 to retrieve further background information from DanWatch about the facts on which DanWatch bases its accusations. DONG Energy has, both in

1 Det er i hvert fald sådan jeg forstår betydningen af den ellers lidt uklare danske sætning.

writing and by telephone, asked for more detailed information. DanWatch, however, has not wished to pass on this information. Therefore, DONG Energy has only been able to examine the information that was available in the DanWatch report.

### **Work injury cases**

In the DanWatch report, three work injury cases are mentioned, which DONG Energy asked STR to examine. Two of the injured are no longer employed in the mine, and STR did not speak with them. STR therefore could only interview the employee who still works in the mine. The employee presented results from a medical examination that showed that he suffered from lead poisoning. He confirmed that he had been treated for lead poisoning by the mine. He confirmed that a selection of employees (approx. 40) had been examined for exposure to lead after his diagnosis.

In connection with STR's interview of the trade union SINTRACARBON, the trade union presented detailed results of medical examinations carried out on Cerrejon employees. The results from the auditor's review of these examinations indicated that a large number of employees show signs of having been exposed to chemical substances, including lead. DONG Energy takes this seriously and is going to ask the mining company to investigate this more closely and to work out a plan of action for how the mining company is going to right these issues.

DanWatch criticises the Cerrejon mine for not giving compensation to or providing necessary help for employees who have suffered work injuries. DONG Energy is not aware that Cerrejon is not paying what they ought to in connection with work injuries. Nor has it been mentioned in connection with the interviews with employees and the labour union that have been conducted by STR.

With reference to STR, the mine's facilities are certified in accordance with ISO 14001 (environment management systems) and OSHAS 18001 (working environment system). Additionally, SA 8000 is used as a reference standard. This confirms previous information given to the Ministry of Finance in the memorandum of February 3 2010.

### **Handling of coal dust in the mine and the local area**

STR describes that Cerrejon is very active in its attempt to handle the dust from the mine and in the harbour area. This is, however, very difficult due to the natural scarcity of rain in the region, the lack of normal precipitation, the size of the mine and the lack of water supply to the roads inside the mine. The mine is in the process of developing a system whereby the public receives information about the air quality, including explanations to the local communities about its meaning. Cerrejon's system monitors in realtime, and employees from the environment department receive messages about the dust problems on their cell phones. If the measurements are high, certain activities are shut down. Under serious dust conditions, the mining equipment automatically shuts down.

Cerrejon's environment department is very competent at handling systems for simulating the air quality and has put many resources into understanding the conditions that affect the mine and the local community. In recent years, the predominant wind direction in the Guajira region has shifted several degrees in a south western direction. Even though the change is small, it has had a measurable impact on the deposition of dust. Thanks to the advanced simulations, this change is measured and is part of the mine's plan to reduce the dust level as much as possible.

The environment department is in the process of developing a system that can measure PM 2.5 dust particles. At the moment, Colombia regulates PM10 dust particles. While there are serious

problems with dust control, the mine seems to have initiated an ambitious programme to completely understand the challenges it faces.

### **Expropriation cases**

In its report, DanWatch raises criticism of the handling of expropriation cases concerning the areas Tamaquito and Tabaco. DONG Energy therefore asked STR to investigate the Cerrejon mine's interaction with its neighbours and the surrounding towns. With reference to STR's audit, it was reported that representatives for both local communities are of the impression that there is a more friendly tone amongst the company's managers. However, both local communities bemoaned the delay they have experienced regarding the purchase of the plot of land where the reconstruction of the villages is to take place. The delay is not Cerrejon's fault, however, since the death of the land owner has delayed the negotiations.

Cerrejon and the negotiators from Tabaco made on December 12 2008 an agreement on how the ongoing case is to be concluded. DONG Energy representatives met directly with the involved parties from Tabaco and spoke with the parties about whether they had confidence in the agreement and that the mine would go through with it. This they confirmed to DONG Energy. It is Tabaco's representatives' view that the reason for the delayed fulfillment of commitments is that there is a strong resistance in the company to changing the fundamental attitude towards these cases. To DONG Energy the representatives have expressed confidence that this attitude has changed. It should be noted that according to representatives of previous residents, the money that was paid as compensation for the reconstruction of their homes has gradually been spent on covering the primary needs of individual families. Regarding the plot of land that the residents of Tamaquito have chosen, the delay is due to a disagreement between owner and seller about the value of the property.

### **Labour union and working conditions**

DONG Energy is criticised by DanWatch report for having provided the Ministry of Finance information in 2006 regarding the Cerrejon mine's relationship with the labour union. In light of this, DONG Energy asked STR to examine the relationship between the labour union and the mine. DONG Energy did not hold any meetings with labour unions during the visit, but left this task to STR in order to ensure utmost objectivity. According to STR, employees do not experience any hindrances to achieving freedom of association and collective agreements. SINTRACARBON is the labour union associated with the mine. It has been reported that the employees are familiar with the labour union. The employees indicated that they know their rights as members of this labour union. The employees stated that they are not forced to be members of the labour union.

SINTRACARBON and Cerrejon have entered into a collective agreement which secures special benefits and working conditions. Interviews with the leaders of SINTRACARBON were held outside the mine. With reference to the labour union representatives, the management of the Cerrejon mine regularly holds meetings with the labour union, and the labour union is strongly represented in the mine.

Employees of suppliers reported that they wished to join a labour union, but did not know how this would be possible. Representatives from SINTRACARBON stated that subcontractors do not permit their employees to join a labour union. However, it was confirmed by STR that one of the four subcontractors that was reviewed in the audit, has established a labour union and is in the midst of negotiating a collective agreement. The employees were interviewed, and they confirmed that the labour union exists and that the employees have contributed to its establishment.

The average wage of a Cerrejon worker is 4.5 times as high as the minimum wage in Colombia. In addition to the wage, workers receive other benefits, such as obtaining interest free loans, payment of university fees for children of employees, health-related bonuses. All these benefits raise the total, average income to a level that is 10.7 times higher than the minimum wage. DONG Energy is familiar with the specific wage rates. The employees work 42 hours per week at the most, which is within the maximum limit of 48 hours per week, which the law prescribes.

With reference to STR, the mine complied with regulations and DONG Energy's ethical requirements for suppliers in the following areas:

Child labour

Forced labour

Harassment/disciplinary practice

Discrimination

Freedom of association/negotiations  
on collective agreements

Wages/working time

STR noted that employees of subcontractors had significantly different wage rates compared to direct employees. However, there were no signs of discriminatory or illegal practice in this respect. Cerrejon has implemented a monitoring system for the purpose of examining recruitment practices amongst subcontractors, with emphasis on wages and working time.

### **Conclusion**

DONG Energy does not find that there are issues in external report that affect the future collaboration with the Cerrejon mine. With the external auditor's report, DONG Energy has been affirmed that the Cerrejon mine works actively at solving complex historical and current issues to the advantage of both employees and the local area.

On basis of the issues that STR points to in their report, DONG Energy is now going to get in touch with Cerrejon to give them the opportunity to relate to the report. After this, DONG Energy is going to ask the mine to formulate an action plan for the areas that do not live up to DONG Energy's expectations of their collaboration, and how they are going to right the issues that have been pointed out.