

26 March 2021

**Via Email**

Clement Nyaletsossi Voule

*Special Rapporteur on the rights to freedom of peaceful assembly and of association*

Dante Pesce

*Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises*

United Nations, Human Rights, Special Procedures

PALAIS DES NATIONS

1211 Geneva 10

Switzerland

***Response to Correspondence Dated 27 January 2021***

***REFERENCE: AL OTH 3/2021***

Dear Messrs. Voule and Pesce:

The following is Cargill Turkey's timely response to the allegations described in your correspondence dated 27 January 2021.

**Executive Summary**

As the result of the Turkish Government's decision to reduce the domestic sugar quota in the spring of 2018, Cargill Turkey's Starches & Sweeteners business was forced to make economic decisions in order to ensure the continued viability of its business. That ultimately included the decision to make 16 employees redundant at its facility in Orhangazi, Bursa Province. Cargill Turkey conducted an assessment that included looking at both performance and criticality to the ongoing business operations in making those difficult decisions. Cargill Turkey did not consider union membership in that process.

Cargill recognizes the right of its employees to form or join a trade union, if they choose, and to bargain collectively. We prohibit discrimination against employees on the basis of union membership or affiliation.

Cargill Turkey's response to the allegations described in your correspondence have been consistent since 2018 because they are truthful: Cargill Turkey did not discriminate against these employees.

**Cargill**

As a global corporation operating in 70 countries around the world, Cargill employs more than 155,000 people. The Company's purpose is *to nourish the world in a safe, sustainable, and responsible way*. Cargill's dedication to that purpose is reflected in its Commitment on Human Rights (<https://www.cargill.com/doc/1432136529974/cargill-commitment-on-human-rights.pdf>). This extends to the workplace, where Cargill works to eliminate discrimination, promote equity, and adhere to all legal and regulatory requirements.

Cargill is unconditionally committed to respecting human rights, treating people with dignity in the workplace and in the countries where it does business, and operating responsibly across the

agricultural, food, industrial, and financial markets that Cargill serves. The Company is a signatory to the UN Global Compact.

Cargill has a strong, global record of adherence to the principles of freedom of association and the right to collective bargaining throughout its operations. At last count, the company actively maintains more than 350 collective-bargaining agreements with 194 bargaining representatives, and it enjoys a productive and constructive working relationship with the many trade unions that represent its employees throughout the world. Cargill supports the right of its employees to choose to bargain through these representatives, so long as that choice is made freely, without interference, and in a manner consistent with legal and regulatory requirements.

### **Cargill Turkey**

Cargill has been present in Turkey for nearly sixty years. Today, Cargill Turkey employs over 600 people in more than seven locations, through which it produces food starches and sweeteners, edible oils and fats, as well as industrial and bio-industrial products and animal feed.

As part of its Turkish operations, Cargill Turkey manufactures starches and sweeteners at its facility in Orhangazi in Bursa Province.

### **Reduction of Domestic Sugar Quotas in 2018**

The sugar industry in Turkey is highly regulated. The Turkish Government sets prices and assigns each industry participant a percentage of the expected domestic demand – a “quota.” For years, Cargill Turkey’s assigned quota remained consistent, and that quota became the basis upon which the sugar operations at Cargill Turkey’s Orhangazi facility were founded.

In late March 2018, the Turkish Government announced that Cargill Turkey’s quota would be cut in half (from 10% to 5%), with immediate effect.<sup>1</sup> Given the significant financial pressures caused by the sugar quota reduction, leadership felt it necessary to reduce headcount at the facility, in addition to taking other cost cutting measures to safeguard the location’s economic viability. This was not a decision taken lightly, and employment impacts were only considered when all other measures would not ensure Orhangazi’s ability to continue to operate.

Local plant management went through a careful business continuity exercise and determined which employees had required skills that were critical to keep the facility running. Sixteen employees with lower performance and repetitive skillsets were selected for redundancy. Union membership was not a factor in making these redundancy decisions.<sup>2</sup>

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<sup>1</sup> It was only later, in June, that the Government informed Cargill that the change would be effective in September 2018.

<sup>2</sup> Under Turkish law, membership in a union is confidential, and Cargill Turkey keeps no record of such membership. Some employees, of course, make their union membership known. At the Cargill facility in Orhangazi, those employees have fared no differently than employees who have remained silent about their union membership. For example, in 2013, a group of employees signed a manifest declaring their support for the union. Cargill Turkey would not have known of this manifest, except that it was published in a local newspaper. Many of the employees who professed their support for a union remain employed by Cargill Turkey at the Orhangazi facility to this day (now 8 years later), and two of those employees have been promoted to lead-operator positions.

### **Civil Litigation – Fully & Finally Resolved in Accordance with Turkish Law**

Of the 16 employees who were impacted in 2018, 14 filed civil lawsuits against Cargill, challenging their terminations.

It is important to note that the standard applied to Turkish employers in redundancy cases is high. Under Turkish law, such a termination is deemed to be invalid if the employer had any alternative measure that it may have taken to reduce costs; in other words, if a termination is due to redundancy, the employer must generally demonstrate that the termination was “unavoidable.”

Similarly, the burdens of proof in freedom-of-association cases lean heavily in the employees’ favor. An employee can prevail on a claim that his or her termination was the result of anti-union bias by offering only minimal evidence – for example, by showing that they wore a union hat to work or attended a union meeting. As a result, the overwhelming majority of such cases are resolved in the employee’s favor, especially with respect to performance terminations. To mitigate this imbalance, Turkish law limits the employee’s recovery: the employee may recover a minimum of one year’s and a maximum of two year’s salary – with no reinstatement.

Ultimately, the Turkish courts in these fourteen cases rendered final and unappealable decisions:

- in four of the decisions, the Court found that Cargill Turkey did not discriminate on the basis of union status;
- in two of the cases, the employees were not unionized, and, therefore, the opinions were moot on the issue; and
- in the other eight cases, the Court posited that given the timing of the headcount reductions, discrimination would be presumed.

As is customary in Turkey, the Court afforded Cargill Turkey the option of returning the employees to work or paying them additional severance in lieu of reinstatement. Cargill Turkey has paid all of the relevant severance required by the Court orders. The former employees have accepted those payments, and the matters are all settled as a matter of law.<sup>3</sup>

### **Building Back, Despite Setback**

Overall employee numbers at the Orhangazi facility continued to fall after April 2018. In the first year following the March 2018 quota announcement, fifteen workers resigned at the Orhangazi location; only nine of those positions were filled, and only four of those were blue-collar workers. Those blue-collar workers were brought in on temporary, six-month contracts, precisely because of uncertainty about the sugar quota and resulting volatile customer demands and production levels.

The plant’s volumes experienced a temporary production increase following the reductions – only because one of Cargill Turkey’s biggest customers unexpectedly ordered its entire year’s allotment of sweetener at one time. After that order was filled, volume declined as expected. In fact, it declined so far that the Orhangazi plant was forced to close for three weeks in the fall of 2018. Its domestic sales decreased by more than half during the first 18 months following the March 2018 announcement, and the Turkish Government reduced the quota again in 2019 from 5% to 2.5%.

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<sup>3</sup> Your correspondence also mentions court cases commenced by 7 employees over the course of 4 years – all of whom separated under unique circumstances and none of whom were discriminated against based upon their union status.

The facility has needed to fill a few positions when attrition numbers have reached the minimum level of employees required to keep the facility running safely and compliantly. This has been about maintaining the minimum number of employees required to keep the lines operating – despite the levels of production. In each of those cases, the positions were advertised as they historically had been and in keeping with local standards; there was nothing unusual or exclusionary about the process. The former workers have not applied for any open roles. All applicants go through the same selection process.

The sugar quotas have required Cargill Turkey to look for other ways to produce revenue. Indeed, the facility has needed to seek out new products and projects in order to remain viable. The facility has been retooling to produce additional starch, as refined sugar has been so deeply impacted. Cargill Turkey is proud of the fact that, despite the setbacks imposed by the sugar quota reductions, its employees and management have worked together to keep its Orhangazi facility operating.

### **Stepping Back: The Unions’ Failed Certification Attempt**

In March 2018 (shortly before the first sugar quota reduction was announced), Tekıda-İş, a Turkish labor union, filed a petition with the Turkish Ministry of Labor and Social Security to represent portions of Cargill Turkey’s workforce. In particular, it sought approval to bargain on behalf of Cargill’s “food industry business line” in Turkey.

Under Turkish law, individuals can form labor unions without prior government approval, and the union gains legal status as soon as it forms and registers. However, it is not considered competent to bargain collectively until it can demonstrate that it enjoys enough support among the workforce of the company with which it seeks to bargain. To do that, it must complete a two-stage process: it must (1) show that it represents three percent of the workers engaged in a given “branch of activity” (*e.g.*, food production); and (2) demonstrate that it represents at least 50% of employees in a single workplace or 40% in the entire enterprise in the country where – as is the case here – the collective bargaining agreement would have been signed at an enterprise level that included all of Cargill Turkey’s food businesses. The scope of the election was determined by Tekıda-İş, and the allegation that Cargill Turkey somehow manipulated the process to include employees who were outside that scope is untrue.<sup>4</sup>

On 9 March, the Ministry expressly rejected Tekıda-İş’s petition, as the Union failed to show it represented at least 40% of the workers in the enterprise. Specifically, there were 490 employees in the relevant operations in the enterprise, and the Union represented only 156 (approximately 31%). Having failed to meet the minimum threshold, Tekıda-İş was unable to secure the right to bargain collectively on behalf of its members with Cargill Turkey. In fact, Cargill Turkey was prohibited from bargaining with Tekıda-İş over conditions in the Orhangazi plant, or anywhere else in its operations, consistent with Turkish law.

### **The Unions’ Subsequent Activities**

Several months after the redundancies were implemented, the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (IUF) and Tekgıda-İş filed a Specific Instance with the Organisation for Economic Co-operation and Development (OECD), which was managed by the National Contact Point (NCP) in the United States. The OCED process is

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<sup>4</sup> The allegation that “unionists were also warned that the company’s working rules would change in an unfavorable way if the bargaining unit status was obtained” is also false. Cargill Turkey is aware of no such “warning” and would take immediate and decisive action if it believed that such a “warning” had, in fact, been given.

voluntary. Cargill, agreed to participate and actively engaged with the NCP in good faith throughout the process. As recognized by the NCP, Cargill realized several positive benefits from the process. See <https://www.state.gov/wp-content/uploads/2020/07/USNCP-Final-Statement-IUF-Cargill.pdf>. Throughout that entire process, Cargill was communicating with the IUF through the NCP.<sup>5</sup>

Ultimately, the NCP acknowledged the parties' demonstrated desire to have an exchange on key issues of genuine concern, but the NCP determined that the parties were not able to bridge their differences as to what an agenda should entail. The NCP suggested, and the parties agreed, that mediation would not be productive at that time.

### **Responses to Specific Questions Set Forth on Page 4 of the 27 January Correspondence**

In response to the specific questions you have outlined on page 4 of your 27 January correspondence, Cargill Turkey states as follows:

1. *Please provide any additional information and any comment you may have on the above-mentioned allegations.*

Please see our response, above.

2. *Considering the ILO conventions 87 and 98, which prescribe reinstatement as a remedy for anti-union dismissal, please explain the reasons why none of the additional positions created since 2019 within the same departments in which the dismissed workers previously worked at Cargill's Bursa-Orhangazi plant, in Turkey, have not been offered to them.*

Turkey has ratified ILO Conventions 87 and 98, and because of that, is bound to conform its laws to those Conventions, which do not apply directly to private parties such as Cargill. As described above, Cargill Turkey respects and abides by Turkish law. In this case, reinstatement was not required or appropriate for several reasons. First, and most importantly, Cargill Turkey did not discriminate against the 16 employees because of their union activities or support. Second, Cargill Turkey followed the Turkish law completely, and the employees have been fully remedied in accordance with that law. The employees have accepted payment; and the matters are fully and finally resolved. And third, since 2018, Cargill Turkey has continued to feel the economic impacts of the sugar quota reduction, and, even with natural attrition, Cargill Turkey has not filled that number of positions. Finally, the former employees at issue have not applied for any of the few positions that have been open.

3. *Please explain if measures have been taken by Cargill in order to apply the ILO prescription mentioned above and provide for effective remedy to workers.*

Turkey has ratified ILO Conventions 87 and 98, and because of that, is bound to conform its laws to those Conventions, which do not apply directly to private parties such as Cargill. As described above, Cargill Turkey respects and abides by Turkish law. As Cargill noted during the OECD proceedings, that process worked to strengthen the relationship between Cargill

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<sup>5</sup> The IUF has complained that Cargill did not respond to an initial letter that it sent to Cargill's corporate headquarters shortly after the unions' failed attempt to unionize Cargill's Turkey's food industry employees. Given that the local union did not represent the legally-required threshold of our Cargill Turkey employees, the request did not seem appropriate. To our knowledge, Cargill has responded to all subsequent communications, including all communications by Cargill's existing union partners and third parties who have reached out to the Company at the IUF's behest.

Turkey and its parent company and formed even more open lines of communication; Cargill Turkey has taken measures to see that Cargill's Guiding Principles (which are presented to employees upon hire) are also available to employees, both online and in its Turkish facilities;<sup>6</sup> Cargill Turkey has worked to ensure that all relevant company policies are available electronically in Turkish; Cargill Turkey continues to enhance awareness of industrial relations issues and global grievance channels through HR communications and specific training; and, Cargill Turkey has continued to improve its retrenchment program.

4. *Please provide information on the steps that Cargill Turkey is taking to ensure that its workers can fully enjoy their right to associate and unionize, and what results have been achieved.*

Please see our responses to Questions 3 and 5.

5. *Please provide information about the human rights due diligence policies and processes put in place by Cargill Turkey to identify, prevent, mitigate and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.*

Cargill Turkey has multiple human rights due diligence mechanisms in place to identify, prevent, mitigate, and remedy adverse human rights impacts, in line with the United Nations Guiding Principles. For example, as noted above, Cargill's policy statements (such as those included in its Corporate Code of Conduct) expressly call out and support employees' right to freely associate. Cargill Turkey is also part of Cargill's corporate-wide risk assessments and auditing mechanisms. And Cargill has effective mechanisms in place, which provides employees with the opportunity to report a concern to any manager or HR professional; submit a concern through a corporate HR portal; or to make either a self-identified or anonymous complaint through the Company's ethics open line, which can be accessed over the phone or electronically twenty-four hours a day, seven days a week, and is available in global languages. Remediation is dependent upon the particular facts and circumstances and whether a human rights violation occurred.

Cargill is currently updating and enhancing its global approach to strengthen its human rights due diligence program, which will, in turn, work to enhance Cargill Turkey's processes.

6. *Please indicate to which extent workers were able to shape these measures to ensure they are adapted to their actual needs.*

Cargill's policies take workers' voices into consideration. Similarly, in Cargill Turkey, there are periodic conversations with employees to gauge their engagement and satisfaction and to ensure that there are not underlying issues or concerns that are going unaddressed.

Two more formal processes are also of note:

(1) Instigated by the fourteen court cases discussed above, the Turkish Ministry of Family, Labor and Social Services Directorate for Guidance and Inspection performed an onsite visit at the Orhangazi facility during which they interviewed employees on 30 September 2019 and reviewed documents on site between 30 September and 3 October 2019. The Ministry issued a report on 3 October, in which they found that "[t]he workers at the workplace are not led or pressured to join or leave the union membership and the employer does not

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<sup>6</sup> Cargill's Guiding Principles apply to all employees and operations globally and make clear, among other things, that "[o]ur employees have a right to freedom of association and collective bargaining."

engage in any action, behavior or conduct which is against the union freedom . . . .” With respect to the union election in 2018, the Ministry further determined that Cargill Turkey did not engage in “any action with an intention to prevent exercise of union rights.”

(2) In the fall of 2019, Cargill Turkey also engaged an independent agency, Intertek, to perform a Workplace Conditions Assessment at the Orhangazi facility. Intertek’s review was very comprehensive. The organization gave the Orhangazi facility a 100% rating with respect to labor conditions.

7. *Please provide information on steps taken by your company to establish operational-level grievance mechanisms to address alleged human rights abuses and adverse human rights impacts caused by your company throughout your operations.*

From an “own operations” perspective, please see our response to Question 5, above. The significant mechanisms include the MyHR portal and the Company’s extensive ethics open line.

8. *Please describe the measures that Cargill Turkey has taken, or plans to take, to prevent recurrence of such adverse human rights impacts in the future.*

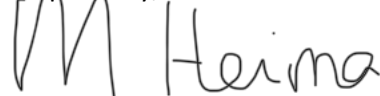
Cargill Turkey, once again, respectfully denies that it discriminated against the employees in question in any form or manner. Because of that, the presumption that such actions taken were adverse human rights impacts or that Cargill committed such actions is misplaced. Cargill Turkey continuously works to improve its operations. Please see our response to Question 5, above.

### **Closing**

Cargill Turkey takes its responsibilities to its employees very seriously and puts people first. We are comfortable that the rights of Cargill Turkey workers were not violated, and we will continue to operate in accordance with our commitments to Human Rights at the Orhangazi facility and elsewhere.

I hope that this response has been helpful. Please let me know if there is any additional information you need.

Respectfully,



Moniek Heima

Global Employee Relations Lead