



UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

**Peter M. Robinson**  
President & CEO

April 15, 2010

The Honorable Hillary Rodham Clinton  
Secretary of State  
United States Department of State  
2201 C Street, NW  
Washington, DC 20520

Dear Madam Secretary:

I am writing to convey the views of the United States Council for International Business (USCIB) regarding the upcoming update of the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. In particular, I would like to provide our comments on the update of the text of the Guidelines, the operation of the U.S. National Contact Point and the need to use the Guidelines to foster partnerships to address common challenges.

USCIB is the U.S. affiliate of the Business and Industry Advisory Committee (BIAC) to the OECD, and as such represents U.S. business interests in the OECD. The OECD Guidelines for Multinational Enterprises are an authoritative and comprehensive set of inter-governmental recommendations on responsible business conduct that are relevant for all companies, large and small in both OECD and non-OECD countries. USCIB supports the effective implementation of the OECD Guidelines and promotes the Guidelines in the U.S. business community.

#### Updating the Text of the OECD Guidelines

USCIB supports a targeted update of the text of the OECD Guidelines to ensure that they remain relevant and incorporate best practices related to corporate responsibility.

A top priority in the update is to add a section on business and human rights, which we will strongly support to the extent that it is consistent with and follows from the UN framework on business and human rights being developed by Prof. John Ruggie, the UN Special Representative of the Secretary General. Other changes to the text should be considered on their merits and in consultation with business and other stakeholders.

Another priority should be to use this update as an opportunity to make the OECD Guidelines much more user-friendly. In contrast to many other international codes and initiatives on corporate responsibility, the OECD Guidelines are long (over 60 pages), dense and written in a manner that fails to speak clearly to their primary audience – the business community.

## The Role of the U.S. National Contact Point

A number of updates are also being considered regarding the structure and operation of the National Contacts Points (NCP), which serve as the implementing agents of the Guidelines. U.S. business supports discussion of ways in which NCP structures can be updated and made more effective. However, USCIB is concerned that the OECD is moving toward a “one size fits all” approach regarding NCPs. We do not believe that the NCP in every adhering country should necessarily follow the same process or have the same structure – national differences can and should be taken into account and reflected in the design and operation of each NCP.

The role of the NCP is to promote the use of the Guidelines and handle inquires on matters covered by the Guidelines. NCPs are not and should not be seen as either a regulatory body or a judicial process. Thus, some proposals, such as giving NCPs investigative powers, would be completely inappropriate in conjunction with a voluntary instrument.

We also strongly believe that the U.S. NCP should remain a function of the Bureau of Economic & Business Affairs, Office of Investment Affairs (OIA) for the following reasons: First, OIA has the expertise and experience necessary to promote the Guidelines in the context of international investment. Second, OIA has the mandate to oversee all the issues covered under the Guidelines rather than any single section. Third, OIA also has the institutional links with the OECD Investment Committee and other NCPs that are necessary to coordinate effectively with other adhering countries. And finally, OIA has a proven ability to address inquires that arise in an impartial and objective manner, which is crucial for their role in the process.

## Maintaining the Integrity of the OECD Declaration on International Investment

The OECD Declaration on International Investment and Multinational Enterprises is a balanced framework to improve the international investment climate and encourage the positive contributions foreign investors make to economic, social and environmental goals. The Declaration is one of the most important OECD instruments for U.S. companies because it provides for national treatment and protection from arbitrary government actions and conflicting requirements.

Some proposals have been made to split the Guidelines from the Declaration. We are convinced that this would be a serious mistake, since it would undermine the integrity of the Declaration as a balanced framework, essentially allowing countries to adhere to some parts of the Declaration and not others. The assumption that more non-OECD countries would adhere to the Guidelines if they were a stand-alone instrument is unproven. Indeed, this argument fails to address what we consider to be the biggest impediment to broadening adherence to the Guidelines – the fact that countries are unlikely to join an instrument they had no part in drafting, written by an organization to which they do not belong. There are, in fact, many ways to engage non-OECD countries, particularly through partnerships, that do not require adherence to the Guidelines.

In sum, we remain convinced that the Guidelines must remain as a part of the balanced framework of the OECD Declaration on International Investment and Multinational Enterprises, and that OIA is best placed to manage all the elements of the framework as the U.S. National Contact Point.

### Moving from Complaints to Problem Solving

U.S.-based multinationals are world leaders in corporate responsibility and have led a wide range of industry and multi-stakeholder efforts to address current social and environmental challenges in the countries where they operate. Most of these challenges stem from the lack of effective implementation and enforcement of national laws in many non-OECD countries, as well as endemic corruption, that require multiple actors working together to resolve.

Yet the OECD Guidelines have generally not been well positioned to help address these challenges since they have been almost exclusively focused on handling complaints, many of which were already the subject of regulatory or judicial proceedings. We believe that the update of the OECD Guidelines should be used as an opportunity to refocus the Guidelines toward a proactive program to develop effective public-private partnerships that can address common challenges and provide a forum for collaboration.

If the update of the Guidelines can be used to achieve a new focus on partnerships and collaboration, it will be a huge step forward in making the OECD Guidelines not just relevant, but a powerful initiative to promote responsible business conduct globally.

This is an objective I hope we can all share, and we look forward to joining with the U.S. Government and our employer and worker colleagues from around the OECD to help make it a reality.

Sincerely,



Peter M. Robinson

Cc: Robert D. Hormats, Under Secretary for Economic, Energy and Agricultural Affairs