

Transforming the U.S. National Contact Point for the OECD Guidelines

October 30, 2009

President Obama has endorsed the need for business to embrace the highest values and norms of responsible behavior. The Administration has an opportunity to become a global model for these norms by ensuring enforcement of the OECD Guidelines for Multinational Enterprises (“Guidelines”). These enshrine universal minimum standards of conduct accepted by a wide range of countries¹- including most of the world’s largest economies- in areas including the environment, labor, human rights, and transparency.

In our global economy, corporations often operate where national legal structures are too weak or corrupt to hold them accountable for even the most egregious violations. The Guidelines are the only multilateral instrument dealing with these issues that has any provision for dispute resolution through direct involvement by national governments. They incorporate the principles of some key ILO conventions as well as other international norms.

The United States has committed to implement the Guidelines since their establishment in 1976. The State Department houses a “National Contact Point” (NCP) committed to fill this function, as laid out in the Guidelines. Yet, despite the Guidelines’ potential for problem solving, the US has had one of the lowest rates in the world of responding to complaints and facilitating engagement. No known cases have been successfully resolved as a result of the application of the Guidelines in the US.

The Guidelines and the National Contact Points (NCPs)

The Guidelines provide a set of recommendations on good corporate behavior that all endorsing governments are required to enforce. Each adhering country is responsible for creating a National Contact Point (NCP) to promote the Guidelines and to respond to complaints regarding possible violations. Governments are given significant latitude in structuring the NCPs, which are expected to find ways to work with the parties to find a solution, including conciliation or mediation. If the parties do not come to agreement, the NCP can issue a final public statement indicating whether a violation of the Guidelines has occurred. These statements can have a significant bearing on a company’s image and reputation among the public and investors.

The Obama administration has an opportunity to transform the US NCP. This would create new opportunities for resolution of disputes concerning sustainable development and international human rights. It would also signal that the Obama administration is committed to serious engagement with multilateral institutions.

Recommendations

Without any changes to law, the State Department can restructure the NCP and set new procedures for responding to complaints and integrating the Guidelines into its work and public materials. The following changes, which draw on existing best practices, are recommended:

¹ To date there are 41 countries adhering to the Guidelines: 30 OECD members plus 11 non-member countries.

Structure and Oversight

- A quadripartite Advisory Board with equal representation of each of the stakeholder groups (government, business, labor, and NGOs) should be formed. Stakeholders should be able to request a review of NCP decisions by this Advisory Board when relevant. (This review would not “reverse” decisions but would offer suggestions for reconsideration).
- The NCP should be relocated to the DOS bureau with the most knowledge of the issues addressed in the OECD Guidelines, i.e., the Bureau of Democracy, Human Rights, and Labor.
- The NCP should hold regular consultations, at least annually, with stakeholder groups including worker organizations and NGOs.
- The NCP should be allocated sufficient resources to carry out its mission, including for at least one dedicated staff member and on-site visits/fact-finding missions.

Procedures

- A clear timeframe for reaching a final conclusion should be agreed upon by the parties, with an expectation that complaints will be resolved within 12 months. This timeframe should include a protocol for timely initial responses to complaints, including explanations of whether the NCP will or will not accept these claims for investigation and why.
- Neither parallel proceedings under any national or international law nor the lack of an investment nexus should preclude the NCP from accepting a case. In cases where the NCP considers that taking the case under the Guidelines would prejudice criminal proceedings, the NCP should provide a clear rationale which can be reviewed by the advisory board.
- The NCP should be prepared to mediate specific instances, if necessary by contracting with an external mediator. In line with this, the NCP should prepare a roster of qualified mediators approved by the advisory board.
- A final statement should be released in all accepted instances, including a review of the evidence provided and a determination of compliance with the Guidelines.
- In accordance with the Procedural Guidelines, the NCP should “strive for maximum transparency.” While the NCP should respect the Guidelines’ confidentiality provisions, procedures to ensure transparency should be implemented. At minimum, initial assessment results and final statements should be publicly posted.

Promotion and Outreach

- The NCP should ensure that information about the Guidelines and about the work of the NCP is publicly available to all stakeholders, both through the DOS website and through other materials and trainings.
- The NCP should make available information on the Guidelines and on investigations of specific companies to other agencies as relevant.