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January 31, 2011

Professor John Ruggie
Special Representative of the Secretary General
The United Nations
760 United Nations Plaza
New York, NY 10017

**Re: Comments of the United States Chamber of Commerce
on the Draft Guiding Principles on Business and Human Rights**

Dear Special Representative Ruggie:

We are pleased to submit these comments on behalf of the U.S. Chamber of Commerce (Chamber) on the draft Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework on Business and Human Rights. The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees.

Although primary responsibility for participation in the consultations surrounding these draft Guiding Principles has been with our colleagues at the U.S. Council for International Business and various international employer associations, we have closely monitored the process since you first received your mandate to create them. In general, we applaud your efforts to forge a consensus among the many interested stakeholders in this debate. More importantly, we have been comforted by what we see to be your willingness to actively engage the business community in your consultations and consider our point of view. Ultimately, in order for the Guiding Principles to have sufficient credibility within the business community and therefore to be of any use, the business community must have significant input into their development. It is, after all, a goal of your mandate to create an instrument that will be supported by the business community.

To that end, we have carefully studied the combined comments submitted by the International Organization of Employers, the Business and Industry Advisory Council and the International Chamber of Commerce. They point out critical aspects of the draft Guiding Principles that warrant attention and in some cases modification. As a general statement, we endorse and support their comments, and ask you to consider incorporating their suggestions into the final Guiding Principles.

Like these employer groups, we believe the Guiding Principles can become an important tool to guide business and governments in their activities worldwide, and we support the principle that underlies the entire endeavor which is to “do no harm.” We would, however, like to emphasize one comments made in the joint IOE-BIAC-ICC comments and offer some further comments that we ask you to consider.

We wish to emphasize their comments with respect to draft Guiding Principle 12. These comments emphasize the distinction between the ILO Declaration on the Fundamental Principles and Rights at Work and specific ILO Conventions. This distinction is an important one as the detailed ILO Conventions apply to governments, not to businesses or any other entity. The Guiding Principles should refer solely to the principles articulated in the 1998 Declaration and not the specific Conventions.

We also have four areas of additional comments. First, because the Guiding Principles speak to further empowerment of governments to address human rights, they encourage an enhanced regulatory scheme at the national level. While we accept the fact that a certain amount of regulation of business by governments is a reality, we also believe that an appropriate balance should be struck between regulation by governments, and permitting business to operate independently. We do not support a premise that business will not respect human rights without a comprehensive regulatory scheme to force them to do so. The very purpose that underlies the Guiding Principles is to give business certain tools to achieve the common goal to “do no harm” in a manner that best suits the individual enterprise. Before considering further regulation in this area, as suggested by the draft Guiding Principles, governments should consider their effect without it.

Second, while we acknowledge the value of the Guiding Principles as a tool for business, we are deeply concerned about how they may be used or abused by labor unions and other advocacy organizations once they have been finalized. It is this concern that will have the greatest impact on our ultimate decision to recognize them for use by the business community we serve. Indeed, we are already seeing these groups use the concept of “human rights” as a means to further their institutional interests against employers. We are concerned that once the Guiding Principles become final, it will only be a matter of time before every aspect of labor management relations, no matter how trivial, will be transformed into a dispute over human rights. Indeed, the risk that these organizations will attempt to define the parameters of what constitutes acceptable behavior by business with respect to human rights is deeply troublesome. While we applaud your repeated statements that “no one size fits all” with respect to this, we fear

those statements will fall on deaf ears, and may be lost by misuse of the Guiding Principles in this way.

Third, we are concerned that the Guiding Principles do not make any mention of how they might apply to labor unions. Business is not the only sector capable of failing to respect human rights. Labor unions can similarly fail to respect them. Labor unions often place their institutional interests before those of the workers they seek to represent, by denying workers access to information that would enable them make an informed decision about representation, or seeking to enter into agreements with employers that accord one union favorable treatment over others irrespective of the wishes of the employees themselves. We regularly see employers subjected to disparaging, brutal and well-funded corporate campaigns orchestrated by labor unions that are designed to pressure an employer into silence and accord one labor union favorable treatment over others. Such conduct, which adversely impacts the employer and thus indirectly, the very workers the union claims it seeks to help, is the antithesis of the premise of the Guiding Principles to “do no harm.”

Fourth, we note that the combined employers organizations did not comment on the draft principle related to the Effective Criteria for Non-Judicial Grievance Mechanisms. We believe, however, that the framework established by this principle lends itself too easily to be construed as support for the use of the International Framework Agreement between labor unions and employers, and we would hope that the final text makes it clear that there are many ways to achieve this end.

As you are no doubt aware, many companies already have mechanisms that enable interested parties to raise issues with the corporation internally in accordance with codes of conduct or social responsibility. Businesses dedicate extensive resources to ensuring internal and external compliance with these codes. They are effective and have done a tremendous amount to further the principle of “do no harm.” Curiously, labor unions and global union federations have long opposed unilateral corporate social responsibility initiatives by employers. They have done this, in our opinion, not because these initiatives are wrong—who can argue with such efforts—but rather, they have opposed them because they deny these groups a seat at the table. In short, we believe their opposition stems from the fact that such practices make these organizations less relevant.

We do not believe that a grievance mechanism established by an employer without involvement of an outside organization is inherently problematic or unfair. In fact, we believe, consistent with your statements regarding there being no one size that fits all, that employers should be permitted to establish such mechanisms that best suit their individual situation to the extent they wish to do so.

We hope you give our comments due consideration when finalizing the Guiding Principles, and we wish to thank you for your efforts in this project.

Sincerely,



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