



United States Department of State

*Washington, D.C. 20520*

February 4, 2011

Bama Athreya  
Executive Director  
International Labor Right Forum  
2001 S Street, NW  
Suite 420  
Washington, DC 20009

Attention: Brian Campbell

Dear Bama Athreya:

Thank you for your letter and accompany exhibits of October 12, 2010, to the U.S. National Contact Point (US NCP) raising concerns that the activities of Dole Philippines, Inc., a wholly-owned subsidiary of Dole Food Company, Inc., has not been conducting its operations on its pineapple plantation and industrial facility in Polomolok, South Cotobato, Mindanao, the Philippines, in a manner consistent with the OECD Guidelines for Multinational Enterprises. The ILRF, representing the Amado Kadena-National Federation of Labor Unions-Kilusang Mayo Uno, requested that the US NCP offer its good offices to assist the parties in resolving these concerns. Dole Food Company, Inc., responded to your concerns in its letter and accompanying documentation of December 15, 2010, which was forwarded to your offices.

The US NCP has now completed its Initial Assessment in this matter and, for the reasons stated therein, declines to offer its good offices at this time. Please find enclosed the US NCP's Initial Assessment decision.

Thank you for your interest and cooperation in this matter.

Sincerely,



Diane R. Bean  
U.S. National Contact Point  
for the OECD Guidelines  
Bureau of Economic, Energy &  
Business Affairs

Enclosure:

INITIAL ASSESSMENT BY THE U.S. NATIONAL CONTACT POINT  
FOR THE OECD GUIDELINES FOR MULTINATIONAL  
ENTERPRISES: International Labor Rights Forum and Dole Philippines,  
Inc.



**INITIAL ASSESSMENT BY THE U.S. NATIONAL CONTACT POINT  
FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES:**

**International Labor Rights Forum and Dole Philippines, Inc.**

**February 4, 2011**

On October 12, 2010, the United States National Contact Point (US NCP) for the OECD Guidelines for Multinational Enterprises received a letter and six exhibits from the International Labor Rights Forum (ILRF), representing a labor union in the Philippines, Amado Kadena-National Federation of Labor Unions-Kilusang Mayo Uno (the union), raising concerns that Dole Philippines, Inc. (Dolefil), a wholly-owned subsidiary of Dole Food Company, Inc., has not been conducting its operations in the Philippines in a manner consistent with the Guidelines. Specifically, ILRF contends that Dolefil's activities on its pineapple plantation and industrial facility in Polomolok, South Cotobato, on the Philippines island of Mindanao, are inconsistent with the principles in paragraphs 1A and 2 of Chapter II and paragraphs 1B, 2B & C, 3 and 8 of Chapter IV of the Guidelines.

The ILRF requested that the US NCP offer its good offices to assist the parties in ensuring that employees' rights to freedom of association, political opinion and human rights are respected and protected at Dole's Polomolok facilities. Specifically, the ILRF asked to the US NCP to: 1) assist with monitoring the upcoming union elections scheduled to take place February 11, 2011, in coordination with the appropriate agencies of the Government of the Philippines; 2) mediate the ongoing labor conflicts laid out in the request, and 3) issue a written determination and recommendations regarding Dolefil's compliance with the OECD Guidelines.

The US NCP notified Dolefil's headquarters in the United States, Dole Food Company, Inc. (Dole), of the concerns raised by the ILRF, and shared the ILRF's letter and exhibits with Dole. On December 16, 2010, the US NCP received Dole's response to the ILRF letter, along with 26 exhibits, which the US NCP also shared with ILRF. The crux of Dole's response is that the concerns raised by the ILRF do not implicate the Guidelines because the real issue at hand is not *whether* Dolefil respects its employees' right to union representation but *which* union representation Dolefil has recognized. Dole contends that the ILRF's complaints in fact constitute an *intra-union* dispute, currently pending resolution before the Philippines Bureau of Labor Relations, as to which faction of the union, the "Gales group" or the "Teruel group," is legally authorized to represent its employees and to collect union dues under Philippines law. As such, Dole maintains, ILRF's assertions that Dolefil does not respect its employees' rights to be represented by a trade union or to negotiate in good faith with the authorized union representatives is not substantiated, and that, to the contrary, Dolefil has always supported its employees' right to join and elect any union or bargaining representative or officers they choose. Dole points to the fact that Dolefil has been unionized since the 1960s and that at present its employees are represented by multiple unions. Dolefil has pledged that it will accept the results of the current union election, as certified by the Philippines Department of Labor and Employment. Dole also denies that there is any evidence to support ILRF's claim that Dolefil discriminates against its employees on the basis of political opinion.

### **The Decision of the US NCP**

In light of the union election currently being conducted under the auspices of the Philippines Department of Labor and Employment, and of Dolefil's express pledge to respect its results, the US NCP does not believe it would be appropriate to offer its good offices to assist the parties at this time. It is our view that in certifying the results of the elections, the Department of Labor and Employment will resolve the intra-union dispute that is at the heart of the ILRF's complaints, whereafter both Dolefil and the legally authorized union representative will be in a position to move forward in a manner consistent with the Guidelines.

In reaching the decision not to offer good offices at this time, we have considered all of the documentation presented by both parties in the context of the

Guidelines, as well as the types of assistance the ILRF has requested. We have consulted with experts within the U.S. Government and considered the views of the U.S. Embassy in Manila, the Philippines. We are guided by the principle that the OECD Guidelines are voluntary, non-binding recommendations for responsible business conduct addressed to multinational enterprises operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to encouraging their multinational enterprises to follow the Guidelines in their global operations and to appointing a national contact point (NCP) to assist parties in reaching a consensual resolution to issues that may arise under the Guidelines.

Under the Procedural Guidance to the Guidelines, the US NCP's primary functions are: 1) to assist parties affected, when appropriate, in their efforts to resolve concerns raised under the Guidelines about the business activities of multinational enterprises operating in or from the United States, and 2) to broadly promote and to act as a source of information about the Guidelines. Consistent with the voluntary nature of the Guidelines, the US NCP does not determine that a "violation" of the Guidelines has occurred, nor does the US NCP have authority to adjudicate labor-management disputes. The US NCP's role is a prospective one – to take up issues that are amenable to resolution under the Guidelines and, where appropriate, offer its good offices to assist the affected parties and the businesses find a constructive solution that is consistent with the Guidelines. One of the most important criterion in determining whether to accept a complaint is whether consideration of the specific issues raised would contribute to the purposes and effectiveness of the Guidelines going forward.

Conversely, the US NCP does not become involved where it appears that the US NCP's participation would not contribute to a resolution, such as where the issues raised are already being resolved by another lawful process or where the issues are not otherwise currently amenable to resolution under the Guidelines. This is where we believe the ILRF complaint currently stands, pending the outcome of the current union election and Dole's response to it. The facts that the ILRF has provided which underlie its concerns about the seven Guidelines' principles cited in its letter all pertain to ILRF's view that Dole has intentionally,

unlawfully and/or in bad faith recognized the Gales group, rather than the Teruel group, as the sole union representative of its employees. In our opinion, this situation primarily constitutes an intra-union dispute which will be resolved soon by the union election and the certification of a new sole representative, in accordance with Philippines' law and regulations. Therefore, we do not see a constructive role for the US NCP to play at this time.

With respect to the ILRF's request that the US NCP assist appropriate agencies of the Philippines' Government in monitoring the union election, the US NCP also declines to intervene. In our view, the Procedural Guidance does not support the *active* intervention of an NCP in the legitimate governmental activities of another sovereign country. Rather the NCP's role is primarily to assist private parties in reaching a consensual and not-adversarial resolution, through conciliation, mediation, or other agreed-upon means (which could, in appropriate circumstances, include working with other governments), to issues raised under the Guidelines. Moreover, we note that in this case, the Philippines Department of Labor and Employment boasts a robust capacity to oversee union elections.

For these reasons, we decline to accept the ILRF's request for US NCP assistance at this time.

More information about the role of the US NCP and a link to a full copy of the Guidelines can be found at: <http://www.state.gov/usncp>.

Respectfully submitted: February 4, 2011.



Diane Reimer Bean

U.S. National Contact Point, OECD Guidelines for Multinational Enterprises  
Bureau of Economic, Energy & Business Affairs  
U.S. Department of State  
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