# A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises

*Your Resource for Responsible Business Conduct*

August 2017

## Experiences with the U.S. NCP

"We had a very favorable experience working with the Office of the U.S. NCP, and we would encourage others to consider the benefits of engaging in constructive dialogue through this process."

**- Carolyn K. Fisher Vice President, Global Labor Relations, PepsiCo**

"The Office of the U.S. National Contact Point provides an essential venue to both aggrieved parties and business for addressing allegations and resolving disputes related to business conduct at home and abroad. The Office of the U.S. NCP offers a confidential and professional process for bringing parties together to work out mutually agreed steps for remedying impacts and preventing future harms. Any company subject to an NCP specific instance complaint should fully evaluate the considerable benefits that participating in the NCP process can offer in terms of meeting the corporate responsibility to respect human rights, including through effective remedies to victims, and the opportunity to clarify reputational questions over business conduct in a quick and confidential manner."

**- Ariel Meyerstein, Vice President, Labor Affairs, Corporate Responsibility & Corporate Governance, U.S. Council for International Business***

"The Office of the U.S. National Contact Point (U.S. NCP) has a dedicated and responsive staff, clear procedures, and the ability to call in professional, external mediators. Recent years have seen the U.S. NCP process improve significantly in terms of functionality. The U.S. NCP has increased its potential to help civil society resolve disputes with corporations and ensure implementation of the OECD Guidelines."

**- Joseph Wilde, Coordinator of OECD Watch**

"In relation to the practical and professional application of the Guidelines through the good Offices of the U.S. National Contact Point (NCP), we have appreciated the quality of work from the Office of the U.S. NCP. Complaints we have submitted have been treated with a degree of seriousness that is appreciated and processed by the NCP in a professional, fair, and balanced manner. In the past twelve months, we were particularly pleased that the Office of the U.S. NCP was able to secure agreement from two major companies to engage in formal mediation with the IUF and a good degree of credit for that clearly lies with the work of the U.S. NCP. Where final assessments have been issued to conclude the complaint process we have in general found them to be fair and of often of value in assisting us to maintain dialogue between ourselves as complainant and the opposite party."

**- Ron Oswald, International Union of Food Workers**

*Ariel Meyerstein currently sits on the Stakeholder Advisory Board to the U.S. National Contact Point to the OECD.

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## Introduction to the U.S. National Contact Point

### The OECD Guidelines and National Action Plan on Responsible Business Conduct

U.S. companies are among the global leaders in Responsible Business Conduct (RBC) and are widely recognized for their commitment to promoting human rights, respecting the rule of law, engaging in fair play, and strengthening local communities through long-term investments and corporate social responsibility programs.

RBC is a broad concept based on the idea that businesses can perform well while doing good, and that governments should set and facilitate the conditions of RBC to take place. In order to help U.S. companies and other stakeholders, the U.S. Government recently launched the U.S. National Action Plan (NAP) on Responsible Business Conduct. The U.S. NAP presents the various ways the U.S. Government, in collaboration with business, labor, foreign governments, and other stakeholders, supports open and accountable business practices that demonstrate principled governance, respect for human rights, and a commitment to transparency. It highlights the ways U.S. companies can promote positive change within the communities in which they operate.

The U.S. NAP also features new initiatives that build on this strong foundation and outlines how the U.S. Government, businesses, and other stakeholders can strengthen efforts to promote high standards. It also lays out a key role of government: providing guidance and encouragement to the private sector through a combination of laws, regulations, policies, programs, and initiatives to promote companies' respect for human rights and labor rights and operating responsibly. Outcomes from the NAP included a commitment to complete the U.S. NCP Peer Review in the fall of 2017 and also to create a website dedicated to centralizing government resources and tools on RBC for stakeholders, among other outcomes.

In addition, to provide a coherent and comprehensive approach to RBC globally, the 35 member governments of the Organization for Economic Cooperation and Development (OECD) and 12 non-member governments endorsed the OECD Guidelines for Multinational Enterprises.

In 1976, the OECD established its Guidelines for Multinational Enterprises ("the Guidelines"). The Guidelines have two roles:

1. To provide a set of recommendations to multinational enterprises (MNEs) to minimize and resolve disputes from a business' operations in a foreign country;
2. To encourage businesses to have positive impacts on economic social and environmental progress.

The non-binding Guidelines cover a broad range of corporate practices and issues, such as human rights, environment, labor, anti-bribery, corporate governance, disclosure, supply chain management, and taxation. The Guidelines have received broad support internationally, and are the only multilaterally agreed and comprehensive code of RBC that governments have committed to promoting. The Guidelines are not intended to override local law or expose MNEs to conflicting expectations. MNE compliance with the laws of the country in which they operate is a fundamental principle of the Guidelines. However, the U.S. government encourages businesses to treat tools like the OECD Guidelines as a floor rather than a ceiling for implementing responsible business practices, and to recognize that implementing RBC should be a continuous process.

The Guidelines form one part of a broader OECD investment instrument called the Declaration on International Investment and Multinational Enterprises, a policy commitment by adhering governments to provide an open and transparent environment for international investment.

The Chapters of the Guidelines include:

I. Concepts and Principles

II. General Policies

III. Disclosure

IV. Human Rights

V. Employment and Industrial Relations

VI. Environment

VII. Combating Bribery, Bribe Solicitation, and Extortion

VIII. Consumer Interests

IX. Science and Technology

X. Competition

XI. Taxation

The Guidelines are available here in English, French, Spanish, Arabic, Chinese, Czech, Dutch, Finnish, German, Italian, Norwegian, Portuguese, Russian, Slovenian, Swedish, and Turkish.

**Corporate Due Diligence**

The Guidelines require adhering governments to set up National Contact Points (NCPs) tasked with furthering the effectiveness of the Guidelines. NCPs undertake promotional activities, handle inquiries, and provide a mediation and conciliation platform for resolving issues that arise from cases of alleged non-observance of the Guidelines, which are referred to as "Specific Instances."

The Guidelines recommend that companies use due diligence to *identify, prevent and mitigate actual and potential adverse impacts, as well as account* for how these impacts are addressed.

Due diligence is a flexible, risk-based process and not a specific formula for companies to follow. It requires companies to know and describe the potential effects their operations could have on local communities and on that basis take steps to address the risk. The fundamentals of the concept are familiar to companies working on a daily basis with risk management and management systems. The Guidelines acknowledge that due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks of adverse impacts related to matters covered by the Guidelines. Companies implementing due diligence processes are much better equipped to handle actual and potential adverse impacts. Additionally, companies that fail to undertake sophisticated due diligence processes run the risk of complaints from different entities, such as civil society, under various grievance mechanisms. However, various factors (size of the company, context of its

operations and the severity of its adverse impacts, etc.) will affect the nature and extent of due diligence.

The due diligence concept as described in the OECD Guidelines is consistent with the UN Guiding Principles on Business and Human Rights.

**The U.S. NCP's Three Roles**

1. **Promote awareness and encourage implementation of the Guidelines** to business, labor, NGOs and other members of civil society, the general public, and the international community.

2. **Facilitate practical application of the Guidelines** by bringing business and civil society together to identify potential and emerging RBC-related risks and discuss appropriate actions and responses under the Guidelines.

3. **Offer a "Specific Instance" mediation process to** be used when a party raises allegations against an MNE's operations, focusing on finding a resolution between the parties through mediated dialogue.

**1) Promote Awareness and Encourage Implementation of the Guidelines**

The U.S. NCP is committed to its obligation to further the effectiveness of the Guidelines by undertaking promotional activities to raise awareness of the Guidelines among diverse stakeholders, including representatives of business, labor unions, NGOs, the general public, academia, and international organizations. In line with this commitment, the U.S. NCP was actively involved in the creation of the U.S. Government's National Action Plan on Responsible Business Conduct.

The U.S. NCP offers itself as a resource to all of the above stakeholders, as well as to U.S. government agencies and U.S. embassies around the world. The U.S. NCP welcomes the opportunity to meet with groups or individuals and to speak at internal meetings and public conferences, including in academic settings. The U.S. NCP also regularly hosts training for U.S. government personnel on the Guidelines, including for the U.S. NCP's mediators. The Office has developed training for U.S. diplomats around the world in order to further integrate instruction on RBC and the Guidelines into their work, including those who focus on economic, trade, and labor issues. The U.S. NCP encourages them to conduct their own training on the Guidelines and provide information on the NCP role to their stakeholders once abroad. The U.S. NCP is available to participate in person, by video conference or by other means. **Please contact the U.S. NCP at USNCP@State.gov with any questions.**

We also love sharing positive experiences about implementing the Guidelines. If you have one, please email the U.S. NCP about it!

**2) Facilitate Practical Application of the Guidelines – the "Proactive Agenda"**

The May 2011 update of the Guidelines provided that the OECD, NCPs, and stakeholders would work together on a "Proactive Agenda." To that end, the U.S. NCP engages in the OECD multi-stakeholder process, which provides stakeholder the opportunity to work alongside companies in

developing strategies to avoid risk of adverse impacts by companies. The U.S. NCP uses sector specific guidance to:

- support the positive contributions enterprises can make to economic, social, and environmental progress;
- participate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries;
- consider new developments and emerging practices concerning RBC; and,
- promote the Proactive Agenda and OECD Guidelines.

Specific Instances often retrospectively address issues arising from a specific enterprises' operations. The proactive agenda intends to prospectively encourage responsible behavior. We constructively collaborate with enterprises and stakeholders to find way to reduce the number of future Specific Instances on particular topics.

The proactive agenda has led to the creation of sector-specific due diligence guidance in several key areas:

i. Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
ii. Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector
iii. Guidance for Responsible Agricultural Supply Chains
iv. Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

### 3) Offer Specific Instance Mediation

The OECD Guidelines' grievance mechanism is known as the "Specific Instance" process. A Specific Instance involves a complaint about conduct by an enterprise that is alleged to be inconsistent with the recommendations contained in the Guidelines. NCPs will consider all complaints they receive, which may be brought by any entity affected by a company's activities. Such entities could include a company's employees, members of a trade union, an NGO, or an individual. A party filing a Specific Instance may act on behalf of other identified and concerned parties.

As a part of its core function, the U.S. NCP addresses Specific Instances for the business conduct of an enterprise operating or headquartered in the United States. If there is no NCP in the country where the issues have arisen and a submitting party has requested the help of the U.S. NCP, the Office of the U.S. NCP will evaluate the situation and determine whether its assistance would be productive. The Office of the U.S. NCP handles such Specific Instances in accordance with its procedures, which are based on the OECD Guidelines, the Procedural Guidance for NCPs, and the Commentary on the Procedural Guidance for NCPs.

In this effort, the U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution through the offer of mediation. **The U.S. NCP does not make a determination as to whether the enterprise that is subject to the Specific Instance has acted consistently with the Guidelines, nor does the U.S. NCP have legal authority to investigate, prosecute, or adjudicate issues submitted under this process. The Office of the U.S. NCP makes clear that acceptance of the Specific Instance is not a determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to**

**assist the parties in voluntary, confidential and good faith efforts to reach a cooperative resolution of their concerns. The U.S. NCP sets clear expectations for participants by clearly stating in its procedural guidance that entering into such mediation or conciliation in no way implies that the parties will reach agreement. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem solving between the parties.**

Entering into such mediation or conciliation in no way implies that the parties will reach agreement. In mediation, the parties are responsible for arriving at their own solution. The process is designed to create an environment for cooperative problem solving between the parties. According to the OECD's recent stocktaking exercise of the National Contact Point mechanism, between 2011 and 2015, approximately 50 percent of all Specific Instances which were accepted for further examination by NCPs resulted in an agreement between the parties. Mediation can also lead to internal policy changes: according to the same stock-taking exercise, from 2011-2015, of all specific instances accepted for further examination and reported as concluded, approximately 36 percent resulted in an internal policy change by the company in question. Further information on the submission and handling of Specific Instances is provided below.

In some instances, an NCP may find that a Specific Instance should not be accepted, and that mediation services should not be offered. If a Specific Instance falls outside the scope of the Guidelines or the claims are not properly substantiated, the case will not be considered. In other cases, a mediation venue is not the appropriate way to address the issues raised against an MNE. Additionally, if a parallel proceeding is ongoing, an NCP can offer deferred mediation services for when the parallel proceedings are complete. According to the OECD's stocktaking exercise of the National Contact Points from 2000 to 2015, since 2002, 30 percent were reported as not accepted for further examination.

Regardless of whether or not the NCP accepts a case or the parties accept mediation, a final statement is published that details the proceedings and final results. The time at which the final statement is published varies depending on at what stage the case is closed, whether that is, for example when an agreement is reached, when an NCP does not accept a case for mediation, when a party declines an offer of mediation, or when the sides fail to reach an agreement.

**Get to know the U.S. NCP**

The Office of the U.S. NCP is housed within in the Economic and Business Affairs Bureau (EB) of the U.S. Department of State. The Senior Advisor for Corporate Responsibility, Melike Ann Yetken, holds the position of U.S. NCP and two officers, Alan Krill and Erin Clancy make up the Office of the U.S. NCP.

The U.S. NCP also oversees the "Responsible Business Conduct" (RBC) portfolio housed in the same office, the Office of Economic Policy Analysis and Public Diplomacy, in EB. The United States views RBC as a broad concept that is based on the idea that business can perform well while doing good and that governments should facilitate the conditions for RBC to take place. This work includes interagency coordination on all RBC efforts, staffing of the RBC committees and bureau at the OECD, coordinating the Secretary of State's Award for Corporate Excellence, an award that recognizes U.S. firms that uphold high standards of RBC and represent American values in the way they do

business, as well as leading the Advisory Committee on International Economic Policy, the State Department's premier senior executive stakeholder advisory body on economic issues.

**Who We Work With**

The Office of the U.S. NCP works with partners to support and inform its work. In order to operate impartially, avoid potential conflicts of interest, and consult experts, the Office of the U.S. NCP consults regularly with a broader group of stakeholders, including:

*Stakeholder Advisory Board*: In 2011, the Advisory Committee on International Economic Policy (ACIEP), the Department's leading stakeholder committee to engage on international economic issues, recommended the Bureau of Economic and Business Affairs (EB) create the Stakeholder Advisory Board (SAB) to the U.S. NCP. In January 2012, the State Department established the SAB, as a subcommittee of the ACIEP, to promote and facilitate the implementation of the Guidelines and encourage the use of the NCP Specific Instance process as a means to resolve disputes and promote RBC. SAB members are experts from a wide variety of backgrounds in business, labor, civil society, and academia, who possess experience useful for contributing to the work of the U.S. NCP and the U.S. government's RBC agenda.

*Interagency Working Group*: The Office of the U.S. NCP consults regularly with subject matter experts through an active interagency working group, which includes representatives from the:

- Agency for International Development;
- Department of Agriculture;
- Department of Commerce;
- Department of Labor;
- Department of State;
- Department of the Treasury;
- Export-Import Bank;
- Environmental Protection Agency;
- General Services Administration;
- Millennium Challenge Corporation;
- Office of the U.S. Trade Representative; and,
- Overseas Private Investment Corporation.

Within the Department of State, officials can include the Office of the Legal Adviser; the Bureau of Economic and Business Affairs, the Bureau of Democracy, Human Rights and Labor; the Bureau of Oceans and International Environmental and Scientific Affairs; regional country desk officers; and officers at U.S. missions abroad, as appropriate. As issues arise related to Specific Instances, the IWG helps the U.S. NCP remain informed on U.S. government positions on related issues and provides additional support.

*Other NCPs:* The United States works closely with other country NCPs on a range of matters, including the Specific Instance process. In Specific Instances involving more than one NCP, the Guidelines recommend that the host country NCP (i.e., the country in which the issues have arisen) take the lead, while consulting with the NCP of the home country (the country where the NCP is headquartered). The U.S. NCP follows this approach.

*Secretariat:* When relevant, the U.S. NCP consults the OECD Secretariat on issues arising within the NCP mechanism.

*Stakeholders:* The U.S. NCP actively engages with stakeholders who would benefit from our resources and grievance mechanism, including those within the business, NGO, and labor communities. Previous stakeholders who have used our Specific Instance process have greatly benefitted and a few of their testimonials are on the first page for reference.

**Key Principles**

The U.S. NCP Office is impartial and equitable when handling a complaint. The U.S. NCP Office will prioritize transparency, set and follow timelines, follow predictable procedures, and make itself visible and accessible to stakeholders. The U.S. NCP will contribute to resolving issues that arise in relation to the implementation of the Guidelines. It will operate in an efficient manner and in accordance with applicable law, the standards in the Guidelines and the following principles:

- **Transparency**: As a general principle, the activities of the U.S. NCP will be transparent. However, any sensitive business information, appropriately identified, that is provided to the U.S. NCP during the Special Instance process will be protected to the fullest extent legally possible.

- **Accessibility:** The Office of the U.S. NCP will facilitate access to its function by business, labor, NGOs, and other members of the public. The U.S. NCP will respond to all legitimate requests for information, and seek to deal with specific issues raised by parties concerned in an efficient and timely manner.

- **Impartiality**: The Office of the U.S. NCP will ensure impartiality in the resolution of Specific Instances.

- **Predictability:** The Office of the U.S. NCP will ensure predictability by providing clear and publicly available information on its role in the resolution of Specific Instances, including the offering of mediation, the stages of the Specific Instance process with indicative timeframes, and the potential role the U.S. NCP can play in monitoring the implementation of agreements reached between the parties.

- **Equitability**: The Office of the U.S. NCP will ensure that the parties can engage in the process on fair and equitable terms, for instance by providing reasonable access to sources of information relevant to the process.

- **Dialogue:** The Office of the U.S. NCP will offer a forum for discussion and assist the business community, labor organizations, other non-governmental organizations, and other interested parties concerned to deal with the issues raised. The U.S. NCP will seek to resolve the issues in dispute through dialogue and mediation.

**U.S. NCP Milestones and Peer Review**

In recent years, the U.S. NCP achieved several significant results. Between 2015 and 2016, the U.S. NCP had three cases go to mediation, the first in its history, leading to improved policy changes within companies, improved relationships between companies, workers and communities, and building trust among stakeholders. The NCP received support from G-20 Leaders, including

through a 2017 statement highlighting OECD Guidelines and work of the NCPs. In 2015, the G7 Heads of State, including from the United States, made a commitment in their Leaders' Declaration to strengthen NCPs and to lead by example through a Peer Review process.

For the first time, the United States will host an OECD Peer Review scheduled for September 27-29, 2017. This Peer Review is a constructive way for the U.S. NCP to demonstrate how the NCP mechanism is functioning in practice, including promoting RBC and resolving disputes between stakeholders. The U.S. NCP looks forward to the opportunity to reflect how the United States is putting OECD and RBC principles into practice through our mechanism.

If you have any questions or comments concerning the U.S. NCP Peer Review, please e-mail USNCP@State.gov.

## The U.S. NCP Specific Instance Process

On the next page is a flowchart showing the steps of the Specific Instance process of the U.S. NCP. Following the overview of the process is a breakdown with descriptions of each step as well as a chart explaining the possible outcomes from mediation.

### Submitting a Specific Instance

Any entity can submit a Specific Instance to the U.S. NCP at USNCP@state.gov or send it to the U.S. National Contact Point 2201 C Street, NW Room 3844 Washington, DC 20520. To consider a Specific Instance's admissibility, NCPs requires sufficient detailed information from the submitter:

- Submitters must have a specified interest in the case, be in a position to supply information about it, and have a clear view of the outcome they wish to achieve. They must also specify in the complaint which chapters or paragraphs in the Guidelines they consider to be breached by the company.

The U.S. NCP's assessment of Specific Instances is evidence-based and parties are encouraged to substantiate their claims with facts. Specific Instances falling outside the scope of the Guidelines or complaints that are not substantiated will not be considered. See the below "Specific Instance Submission Guidance" in the Resources section for critical information needed for a Specific Instance to be considered by the U.S. NCP. If the Specific Instance is deemed to be material and substantiated, the U.S. NCP will offer the parties to the dispute its mediation services.

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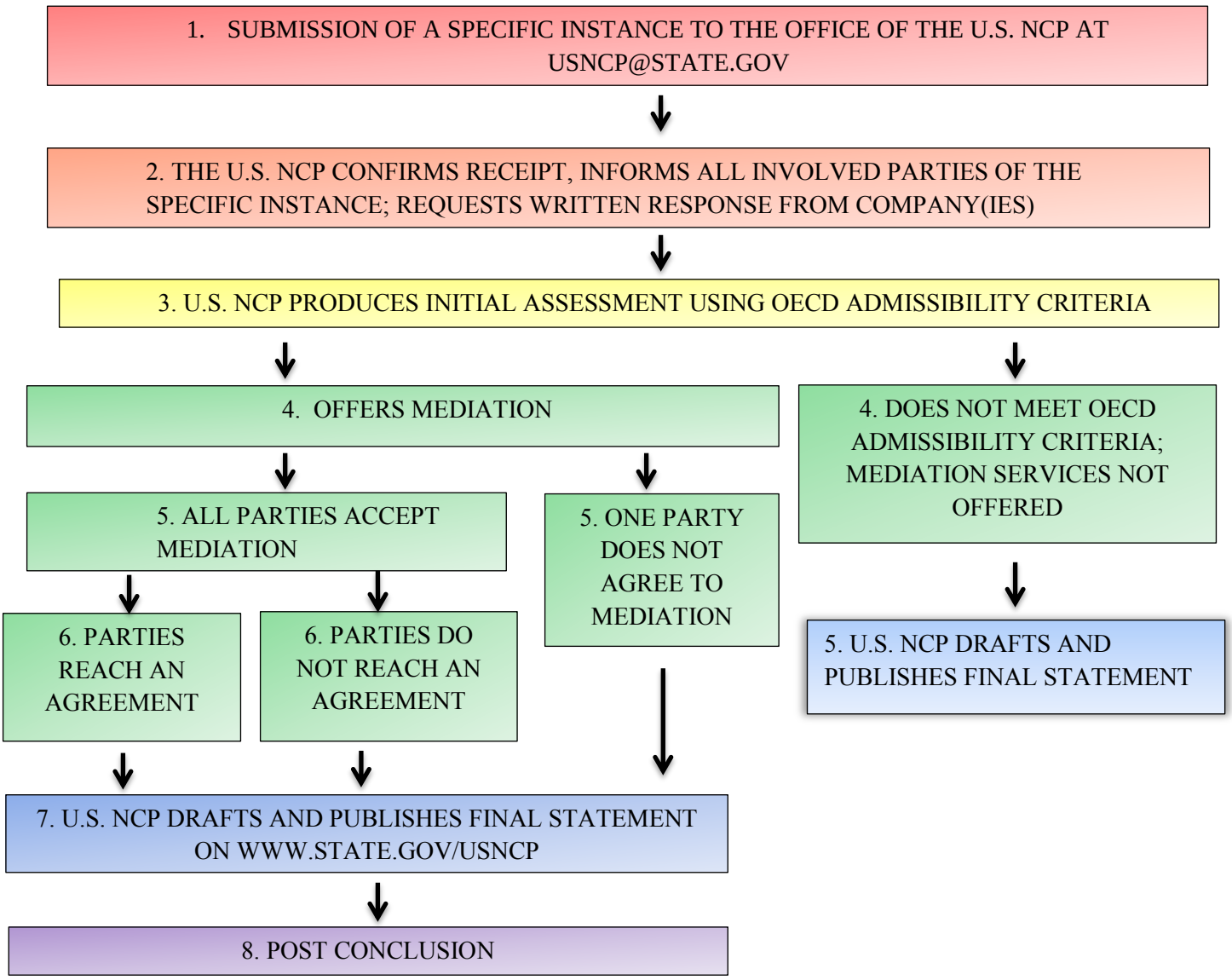
**OVERVIEW: U.S. NCP PROCESS FOR A SPECIFIC INSTANCE**



# U.S. NCP Detailed Specific Instance Process

## Phase 1: Submitting a Specific Instance (SI)

- To initiate the SI process, a submitter sends a SI to the Office of the U.S. NCP at USNCP@state.gov
- The U.S. NCP acknowledges receipt and informs all involved parties of the SI which includes →

- **The Submitter(s):** The U.S. NCP will acknowledge receipt, describing the Guidelines, explain the role of the U.S. NCP and its procedures, and request one lead point of contact.
- **The Company(ies):** The U.S. NCP will inform the company/ies named by sending a copy of the SI, describe the Guidelines and the purpose and function of the NCP, share the U.S. NCP procedures, request a senior point of contact within the company, and request a written response to the allegations made.
- **The Interagency Working Group (IWG):** The U.S. NCP will consult subject-matter experts within the U.S. government on the issues raised.
- **Other NCPs and the OECD Secretariat:** The U.S. NCP will inform and coordinate as appropriate.

## Phase 2: Initial Assessment

The U.S. NCP conducts an Initial Assessment using the OECD's Admissibility Criteria:

- The identity of the party concerned and its interest in the matter;
- Whether the issue is material and substantiated;
- Likely link between the enterprise's activities and the issue raised;
- Relevance of applicable law and procedures, including court rulings;
- Treatment of similar issues in other domestic or international proceedings; and,
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines.

## Phase 3: Two Options

### Mediation Offered

If mediation is offered, parties have the opportunity to accept. If mediation is offered and accepted by the parties, the U.S. NCP will facilitate mediation through either the Federal Mediation and Conciliation Services (FMCS) or the Consensus Building Institute.

### Mediation Not Offered

If mediation is not offered, the parties are informed through the Initial Assessment and then the Office of the U.S. NCP drafts a Final Statement that is shared with the parties for fact checking input before it is published on www.state.gov/usncp.

**Some important things to note:**

**Post-Conclusion:** Following the conclusion of the proceedings, the Office of the U.S. NCP may consider requests by the parties to follow-up or monitor the implementation of an agreement reached or recommendations made by the Office of the U.S. NCP. However, such monitoring is done entirely at the discretion of the U.S. NCP and is completed on an exceptional basis, if the U.S. NCP determines this appropriate, and only as the U.S. NCP's resources allow. One year after successful mediation, each party is asked to submit a confidential report to the U.S. NCP on the status of the agreement.

**Confidentiality:** From the time that a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications with other parties and with the U.S. NCP, as laid out in the U.S. NCP Guide. A failure to honor confidentiality expectations may be considered bad faith and may lead to the U.S. NCP terminating the process. Information provided by a party to the U.S. NCP will be communicated to the other part[ies] to the Specific Instance, unless the providing party expressly requests that the information, or any part of the information, not be disclosed to any other party and provides a compelling reason to the U.S. NCP for such nondisclosure. The U.S. NCP will treat all information which is communicated to the U.S. NCP by a party to a Specific Instance , including information communicated in reference to a Specific Instance, as confidential, subject to any disclosures required by U.S. law.

**The Initial Assessment**

After reviewing the submission and corporate response, the U.S. NCP produces an Initial Assessment for the parties. The U.S. NCP's Initial Assessment of a Specific Instance is a preliminary written evaluation that determines whether the issues raised merit further examination. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines. Per the Guidelines' NCP Specific Instance Procedural Guidance, the criteria for determining the admissibility of the Specific Instance during the Initial Assessment include:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

Per the NCP's confidentiality policy, the U.S. NCP does not publish Initial Assessments, though in many cases language from the Initial Assessment will be used in the Final Statement once the process is completed. Specific Instances falling outside the scope of the Guidelines or which have not been substantiated will likely not be offered mediation. The U.S. NCP will consider Specific Instances where issues raised are already partially undergoing parallel proceedings to determine if there may be space for the U.S. NCP to bring parties together to find a broader solution under the Guidelines. If the Specific Instance is deemed to be admissible, the U.S. NCP will offer mediation services.

The U.S. NCP may request further information of the parties and will be open to the submission of amendments, clarifications or additional information from the parties throughout the process. Where necessary, the U.S. NCP will seek the guidance of the OECD Investment Committee regarding the interpretation of the Guidelines in particular circumstances.

**Parallel Proceedings**

The Commentary on the Procedural Guidance for NCPs states that:

> "NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings . . ."[1]
>
> And
>
> "Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honor such principles and standards to the fullest extent which does not place them in violation of domestic law."[2]

Many issues raised in a Specific Instances are already partially under adjudication or discussion in other fora when they are submitted to an NCP. However, local laws and standards rarely, if ever, duplicate the voluntary guidance found in the Guidelines. National courts and institutions, therefore, are not charged with and generally cannot speak to the international voluntary guidance incorporated into the Guidelines. For that reason, even where an issue has been decided by local courts according to local law, there may be space for the U.S. NCP to bring parties together to find a broader solution under the Guidelines which benefits them both. Given that the Guidelines extend beyond law in many cases, U.S. NCP mediation under a Specific Instance may prove valuable in dealing with such circumstances. National and local legal systems are also generally constrained as to the types of remedies available – constraints which also leave room for a U.S. NCP-mediated settlement to be more beneficial to both sides than what is available elsewhere.

During the Initial Assessment and throughout the process, the U.S. NCP will encourage the parties to resolve their differences through direct dialogue.

**Suppliers and Leverage**

The Guidelines have this to say about supply chain responsibility:

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[1] http://www.state.gov/e/eb/oecd/usncp/links/rls/140654.htm
[2] http://www.state.gov/e/eb/oecd/usncp/links/rls/140654.htm

> "Enterprises should . . . seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship."

And

> "If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm." (Commentary on General Policies, paragraph19)

This supply chain responsibility is further clarified in paragraph 20 of the Commentary on General Policies:

> "Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.''

From these passages, it is clear that enterprises are responsible for their supply chains even while suppliers remain responsible for their own actions. These two separate responsibilities do not contradict each other. The local contractor is responsible for any labor rights violations it commits (Guidelines, General Policies, para 12). However, that does not absolve the company contracting with it from the responsibility to do what it can to keep its supply chain free from such abuses, and ensure that the contracting arrangement does not dilute workers' access to their rights. The need for due diligence flows from this responsibility.

It is also clear that the enterprise is responsible for using its leverage to prevent or mitigate adverse impacts. Leverage is a complex issue. How much leverage a company may have in any given supplier relationship depends upon all the variables in play in that specific situation. In many cases, a company may not even be aware of the full extent of (or the limits on) its leverage until it attempts to wield that leverage in that particular case. However, the Guidelines also imply that a lack of leverage does not justify inaction.

The Guidelines recognize that there can be practical limitations on the ability of enterprises to effect change in the behavior of their suppliers, related to, amongst other issues, product characteristics, the number of suppliers, and the structure and complexity of the supply chain. Nonetheless, enterprises are expected to influence their suppliers in any way they can, such as through contractual arrangements, voting trusts, and participation in industry-wide collaborative efforts with other enterprises with which they share common suppliers (The OECD Guidelines for Multinational Enterprises, Chapter II, Commentary on General Policies, paragraph 21 and 23). The UNGPs (Guiding Principles on Business and Human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, p. 22) refer to this as increasing leverage.

**Mediation**

If the U.S. NCP determines that the Specific Instance meets the other OECD criteria, it will contact the parties involved and offer mediation to help resolve the issues raised. In order for the

mediation to be successful, the U.S. NCP routinely reminds parties that all sides must abide by the principles of good faith and confidentiality articulated in the Procedural Guidance to the NCP Specific Instance Process and the Commentary on the Procedural Guidance for NCPs. The mediators require that parties sign a Mediation Agreement, under which the parties agree to maintain the confidentiality of all information disclosed in the course of the mediation.

The preferred course of action is to bring the parties together for joint mediation sessions. It can, however, prove useful for the mediator to talk to the parties separately. The purpose of these talks, which are conducted by a neutral third party mediation service, is to facilitate a conversation between the parties involved, in order to find adequate solutions under the Guidelines.

Submitters of Specific Instances sometimes make explicit within their initial submission the objectives they have for the Specific Instance and any mediation process which may result. This can be useful, as it helps to define the parameters of the Specific Instance and of any mediation up front. However, such objectives should be seen as a starting point for approaching mediation. Mediation, as a process, looks for mutually agreeable solutions to disputes between the parties. Rarely will mediation result in the starting position of one of the parties being adopted in its totality by the other. It is important for both submitting parties and responding parties to recognize this. A successful mediation may result in a solution which neither party had imagined before entering the process and which improves the situation of both parties.

**Meet the Mediators**

When providing mediation, the U.S. NCP offers the services of objective and neutral mediators employed by one of two entities: the Federal Mediation and Conciliation Service or the Consensus Building Institute (CBI).

FMCS is an independent U.S. government agency with more than 65 years of experience resolving labor-management conflicts and promoting cooperative workplace relationships domestically and abroad. FMCS mediators are labor relations and conflict management professionals with years of training and experience in helping parties work through issues that separate them in complex individual, collective, and multi-party disputes. FMCS mediators regularly help parties identify the interests underlying their disputes, improve their communications and problem-solving skills and create an environment in which they can work together and achieve consensus resolutions of both the dispute at issue, and future conflicts that inevitably arise in any workplace.

CBI is a not-for-profit organization founded in 1993 by leading practitioners and theorists in the fields of negotiation and dispute resolution. CBI's mediators bring decades of experience brokering agreements and building collaboration in complex, high-stakes environments — and possess a deep understanding of the OECD Guidelines required to tackle negotiation and collaboration challenges in their practice areas. In 2017, the U.S. NCP hired CBI to widen expertise of the mediation team after a nine-month contracting process.

In order to introduce each party to their mediators, the U.S. NCP offers to host a one hour information session with each party (separately) during which representatives are consulted about the mediators, can raise any questions or concerns about the mediation process, and can get to know the mediators. Participation in the information session does not indicate agreement to participate in mediation; rather it is an opportunity to inform each party about the process and to build trust with their mediators. The U.S. NCP observes all mediations and, when needed, provides

video conferencing for parties who are unable to attend mediations in person. Mediators are selected on a case-by-case basis in accordance with their individual expertise in the specific issues raised in the submission.

For cases that go to mediation, each participant is required to sign a Mediation Agreement, which includes provisions for confidentiality and serves as a non-disclosure agreement. If an agreement is reached in mediation, parties will sign an outcome document reflecting the items agreed to. Parties are also asked to indicate to the U.S. NCP what wording, statement, or documents can be made public in the Final Statement. These steps were added to build trust between parties with the mediators. The U.S. NCP requests outcome documents be published, but ultimately it is up to the parties to identify what they wish to publicly disclose.

FMCS and CBI mediators are selected on a case-by-case basis in accord with their individual expertise in the specific issues raised in the submission.

**The Final Statement**

At the completion of a Specific Instance process, a Final Statement is published at www.state.gov/usncp detailing the proceedings and the results of the Specific Instance. The Specific Instance process can be considered complete at one of several different points:

- Mediation is not offered by the U.S. NCP
- One party declines the offer of mediation
- Mediation is accepted but the parties cannot reach an agreement, or
- Parties succeed in reaching agreement in mediation

The Office of the U.S. NCP will publish Final Statements when the Specific Instance has been completed, redacting any sensitive business information either party may request. The U.S. NCP will coordinate with the IWG, relevant NCPs, if applicable, and with the parties on when to end the mediation phase and on what information to include in the Final Statement.

Once the process has been deemed complete, a Final Statement will be drafted by the Office of the U.S. NCP. It will include information on allegations made, including which Guidelines chapters were cited in the Specific Instance submission. Nothing discussed during mediation will be included in the Final Statement without the agreement of both parties, per the confidentiality policy. In the interest of transparency and accountability, where possible and when agreed upon by the parties, the terms of the agreement reached in mediation will be made public.

A draft of the Final Statement will be sent to the parties who will be asked to make any comments and check the facts. The Final Statement will protect information deemed to be sensitive by either party. The U.S. NCP has the discretion to make any necessary changes before sending the final version of the statement to the parties. The Final Statement will include:

- Details of the parties, subject to any need to preserve the confidentiality of sensitive information;
- A summary of the Specific Instance process;
- Substance of the Specific Instance;
- Role of other NCPs, if applicable, and the role of IWG;
- If applicable:

- information detailing the decision to offer mediation based on the Initial Assessment and admissibility criteria outlined above;
- information regarding the outcome of the mediation or a statement agreed by the parties which summarizes the outcome;
- the reason why the mediation talks ended without an agreement;

- If applicable and deemed appropriate by the U.S. NCP, recommendations as to how the Guidelines are to be implemented.

The U.S. NCP will coordinate with U.S. NCP's IWG and with the parties on when to end the mediation phase and on what information to include in the Final Statement. A draft of the Final Statement will be sent to the parties who will be asked to make any comments and check the facts. The U.S. NCP has the discretion to make any necessary factual changes before sending the final version of the statement to the parties.

Final Statements are published here:

**Follow-Up**

Following the conclusion of the proceedings, the Office of the U.S. NCP may consider requests by the parties to follow-up or monitor the implementation of an agreement reached or recommendations made by the Office of the U.S. NCP. However, such monitoring is done entirely at the discretion of the U.S. NCP and is completed on an exceptional basis, if the U.S. NCP determines this appropriate, and only as the U.S. NCP's resources allow. One year after successful mediation, each party is asked to submit a confidential report to the U.S. NCP on the status of the agreement.

If a follow-up is deemed appropriate, the Office of the U.S. NCP , through a formal letter of request via email, will request all parties to submit a confidential update to the U.S. NCP on the status of the specific agreement the parties agreed to in their mediation. To ease the burden of the request, the U.S. NCP allows parties to submit the update in whatever form would be most helpful, including a written response via e-mail or a verbal update over phone, but recommends the parties include the following information:

- the status of the implementation of the agreement;
- the summary of the recommendations taken into effect since the Final Statement;
- any continued conversation between the involved parties; and,
- any other relevant information.

**Target Timelines**

The U.S. NCP is committed to efficient and timely handling of Specific Instances. The U.S. NCP has a general goal of publishing a Final Statement within one year of the submission of a Specific Instance. The timeline allows approximately one to three months for the Initial Assessment, three to six months for mediation (if offered), and one month for drafting the Final Statement. However, this timeline will vary from case to case depending on a number of factors, including whether the Specific Instance goes to mediation and how long the mediation lasts. Experience has also shown that in many cases complex negotiations with suppliers or other partners can be necessary for a company to come to the table, which requires additional time. While the U.S. NCP will insist on timely responses, it will prioritize successful conclusions, which may mean that some cases will extend beyond the target timeline.

**Confidentiality**

From the time that a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications with other parties and with the U.S. NCP, as laid out in the U.S. NCP Guide. A failure to honor confidentiality expectations may be considered bad faith and may lead to the U.S. NCP terminating the process. Information provided by a party to the U.S. NCP will be communicated to the other part[ies] to the Specific Instance, unless the providing party expressly requests that the information, or any part of the information, not be disclosed to any other party and provides a compelling reason to the U.S. NCP for such nondisclosure. The U.S. NCP will treat all information which is communicated to the U.S. NCP by a party to a Specific Instance, including information communicated in reference to a Specific Instance, as confidential, subject to any disclosures required by U.S. law.

The information in the submission will remain in confidence between the parties in the complaint, the Office of the U.S. NCP, the IWG and when relevant, the mediators, other NCPs and the OECD Secretariat. All communication between the U.S. NCP and the parties is confidential as well as all information which is communicated to the U.S. NCP by a party in reference to a Specific Instance. Additionally, the Office of the U.S. NCP shares the Initial Assessment only with the parties and does not publish it publicly. In the interest of transparency, the Office of the U.S. NCP allows parties to publicly reference the existence of the Specific Instance, but they should not disclose information learned during the NCP process or disseminate publicly documents internal to the process during or after the process has concluded.

Most Specific Instances come to the U.S. NCP after the substance of the dispute is already public. That is to be expected, and the U.S. NCP takes no position on public statements made by the parties before a Specific Instance is submitted. Likewise, as noted above, the U.S. NCP has no objection to parties informing the public that a Specific Instance has been submitted, though the U.S. NCP does recommend that parties consider whether such an announcement and the way in which it is made might affect the likelihood of successful mediation, if mediation is offered.

However, in order for the mediation to be successful, all parties to the proceedings must abide by the principle of good faith and confidentiality. This is why the U.S. NCP requires that parties uphold confidentiality and requests that parties refrain from campaigning against the other party and/or using the media for any such purpose if mediation is offered and accepted, though the U.S. NCP recommends suspending campaigning for the duration of the Specific Instance process. The U.S. NCP defines campaigning as an entity taking on publicity activities that aim to curry favor for their opinion on a matter, and can include but is not limited to ads, blogs, and dedicated websites that negatively frame the opposing party's views on the issue. The purpose of these campaigning and confidentiality policies is to facilitate the building of mutual trust, which is an important element for reaching any mediated solution.

The Guidelines have the following to say about good faith:

> "The effectiveness of the specific instances procedure depends on good faith behavior of all parties involved in the procedures. Good faith behavior in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding

a solution to the issues raised in accordance with the Guidelines." (Commentary on the Procedural Guidance for NCPs, paragraph 21)

The Office of the U.S. NCP strives to be as transparent as possible, while also considering the importance of protecting sensitive business information. As a result, the Office of the U.S. NCP maintains a clear balance and communicates its confidentiality procedures to all parties involved to ensure they are fully aware and understand them.

## Resources

***Global Trends:***

Fifteen years after the creation of National Contact Points, the OECD Secretariat conducted an analysis of the functioning and performance of NCPs: 15 years of the National Contact Points. The following are global statistics and trends from that analysis:

- To date since 2000, over 400 Specific Instances have been handled by NCPs, addressing impacts from business operations in over 100 countries and territories.
    - Of the specific Instances recorded since 2015, 56 percent have been reported as concluded, 30 percent were reported as not accepted for further examination, and 14% are in progress.
    - Of the Specific Instances reported between 2011 and 2015, 40 percent (68 specific instances) have been reported as concluded, 35 percent (59 specific instances) were not accepted for further examination, 9 percent (15 specific instances) were recently filed, and another 16 percent (27 specific instances) are pending.
- During 2011-2015, approximately 50 percent of all Specific Instances which were accepted for further examination by NCPs and reported as concluded resulted in an agreement between the parties.
- During 2011-2015, of all Specific Instances accepted for further examination and reported as concluded, approximately 36 percent resulted in an internal policy change by the company in question.
- Since the introduction of the chapter on human rights to the Guidelines in 2011, Specific Instance proceedings have resulted in stronger human rights policies and due diligence processes in a number of companies. NCPs have handled Specific Instances dealing with a wide range of human rights issues such as the rights of indigenous peoples, and the right to privacy.
- NGOs have historically been the main group using the Specific Instance mechanism globally, accounting for 80 Specific Instances or 48 percent of all Specific Instances since 2011, followed by trade unions which account for 41 specific instances since 2011. However, in the United States, trade unions account for approximately 70 percent of Specific Instance submissions.
- Specific Instances dealing with employment issues have led to some important results, such as engagement with governments to end child labor, formalization of employment, and improved workplace health and safety.
    - For example, one Specific Instance resulted in a mutually acceptable solution in which a company agreed to the establishment of 200 permanent positions in one of its factories, a significant change for the factory which had been employing high proportions of temporary labor.

## U.S. Specific Instance Statistics

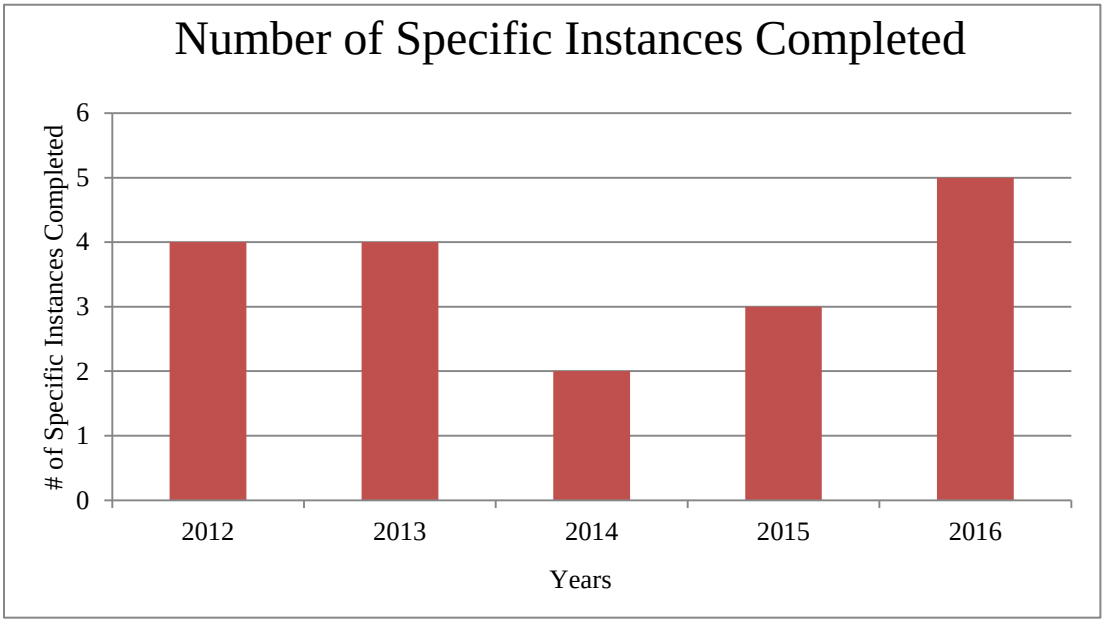
Globally, between 2000 and 2016, the 47 NCPs have received 400 Specific Instance cases. The U.S. has received 45 of those cases, making it the second most utilized NCP in the world and recipient of 11 percent of global cases. Since 2012, after the 2011 revision of the Guidelines, the U.S. NCP has handled 18 Specific Instances. You can read more about the Specific Instances here.

The following include statistics on Specific Instances completed between February 2012[3] and August 2017:

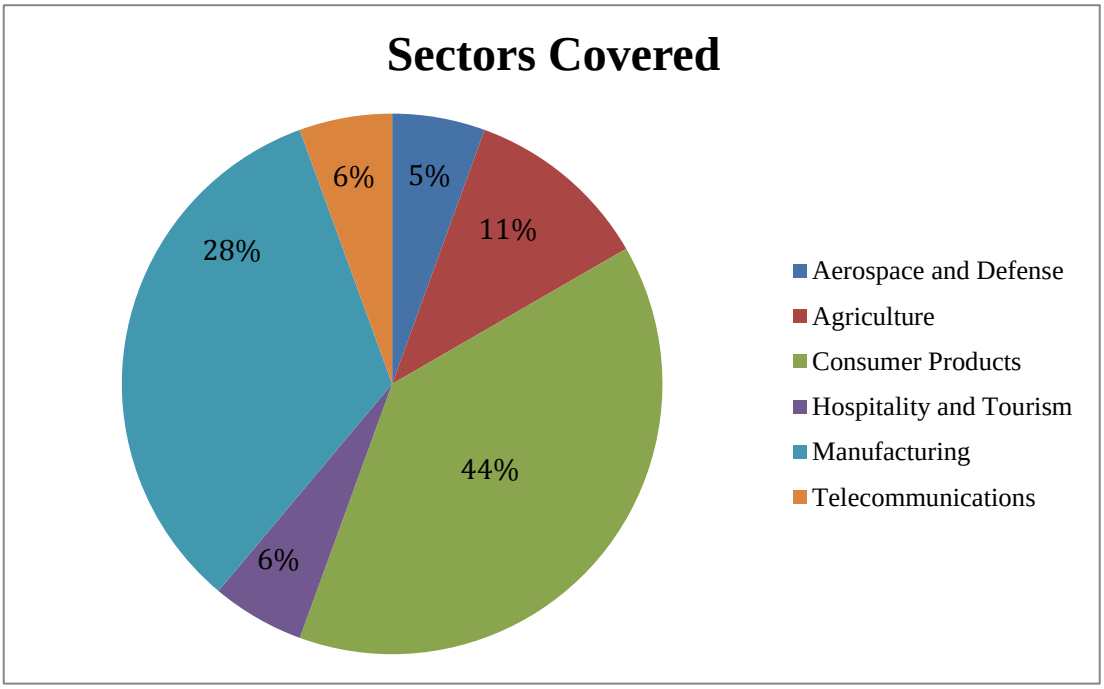
**U.S. Specific Instance Analysis (from February 2012 to August 2017):**

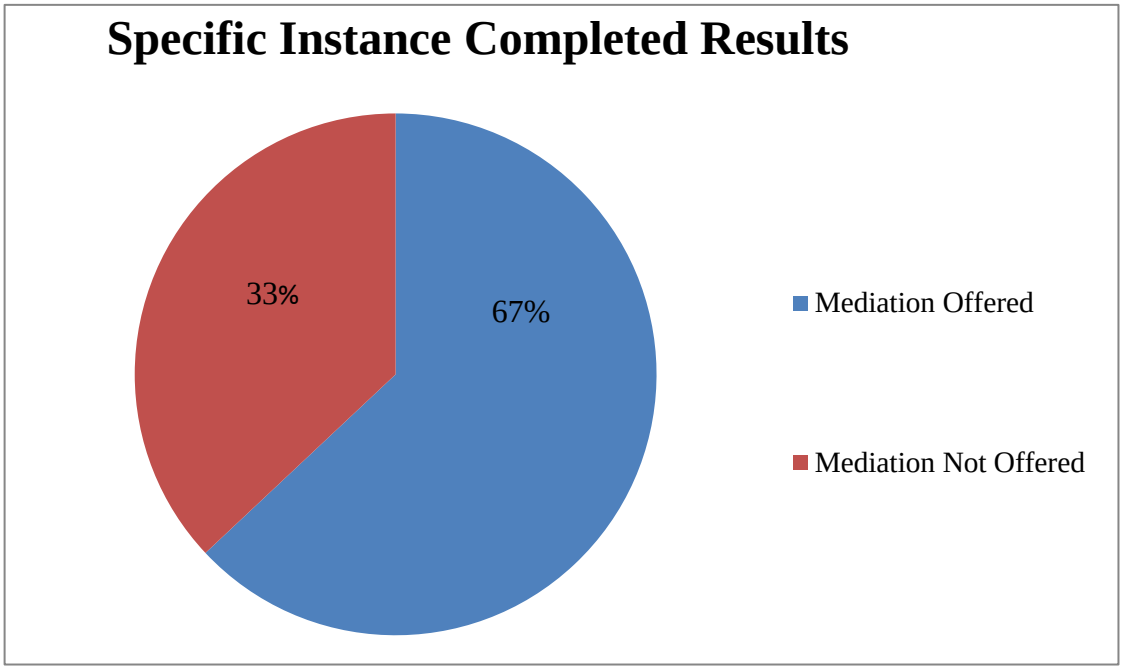
- The U.S. NCP has completed a total of 18 Specific Instances.[4]
- As a result of improvements made to the NCP process, three Specific Instances have gone to mediation
- The first Specific Instance that went to mediation was in 2015
- The most cited Guidelines Chapters for U.S. NCP Specific Instances are Chapter V: Employment and Industrial Relations, Chapter IV: Human Rights, and Chapter II: General Policies
- Mediation was offered in 67 percent of Specific Instances (which includes 11 percent of Specific Instances that were offered deferred mediation)
- Of the Specific Instances where mediation was offered, 25 percent accepted mediation
- Of the Specific Instances where mediation was offered and accepted, 67 percent led to a mediated agreement, which is higher than the NCP global average of 47 percent according to the OECD NCP Highlights-June 2017 document
- Sector Represented in Specific Instances:
  - ✓ Agriculture: 2
  - ✓ Aerospace and Defense: 1
  - ✓ Consumer Products: 8
  - ✓ Hospitality and Tourism: 1
  - ✓ Manufacturing: 5
  - ✓ Telecommunications: 1

[3]Note: February 2012 was when the United States published its Specific Instance process based on the 2011 update to the OECD Guidelines.
[4] Completed refers to any case where a Final Statement has been published at www.state.gov/usncp

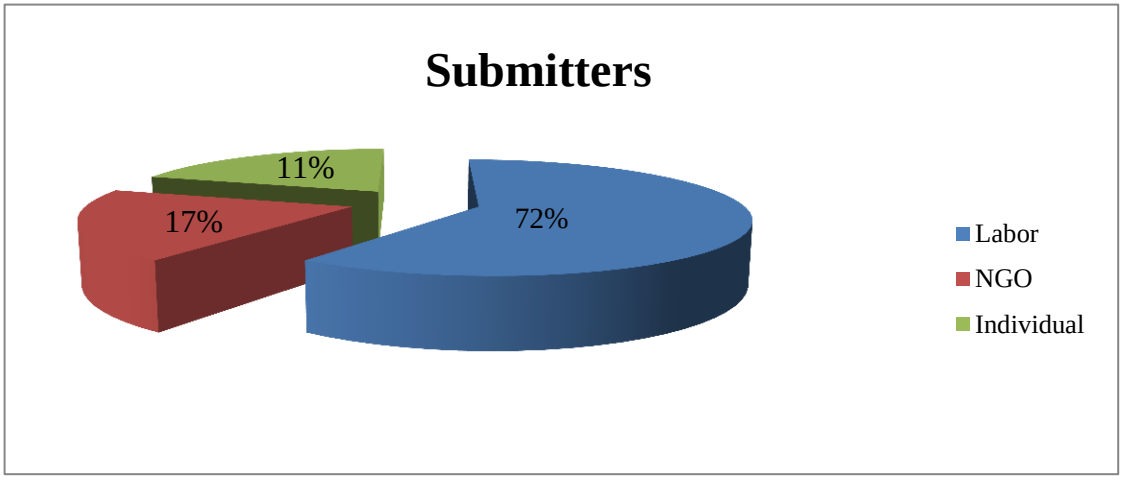



Note that the 2016 figure covers only Specific Instances completed until August 2017.






*Of the Specific Instances where mediation was offered (12 Specific Instances), 25 percent accepted mediation. Of the Specific Instances where mediation was offered and accepted, 67 percent led to a mediated agreement (two out of three).*



**Specific Instance Submission Guidance**

Parties are encouraged to use the below guidance when submitting a Specific Instance to the U.S. NCP. Whenever possible, submitters should contact the U.S. NCP at USNCP@State.gov before submitting the Specific Instance to alert the U.S. NCP that their submission is coming and to ask any questions.

Please provide information to the questions outlined below in writing, completing each question as fully as possible, and submit to the U.S. NCP at USNCP@State.gov. Specific Instances should be submitted in English, if possible. Parties that are unable to submit their Specific Instance in English should contact the U.S. NCP which will work to facilitate submission in other languages, where possible.

This Specific Instance submission will be shared with the Multinational Enterprise(s) mentioned in the submission. If a submitting party wishes for any portion of this Specific Instance to remain anonymous, please provide a justification for the request.

## PART I: Background Information

- Date of Submission
- Name of Submitter(s), Title, and Organization(s)
- Primary Point of Contact Information for Submission (name, affiliation, phone number, email address, mailing address)
- Optional: Another Organization's Point of Contact Information (name, affiliation, phone number, email address, mailing address)
- Point of Contact Information of business subject of the Specific Instance (name, affiliation, phone number, email address, mailing address)

## PART II: Subject of Specific Instance

- Name of the Multinational Enterprise Cited in Specific Instance
- Company Location (Include details of Headquarter location and location of Specific Instance occurrence)
- Description of Company and Corporate Structure (if known)
- List the chapter(s) and paragraph(s) in the Guidelines that you allege the company to have violated
- As concise and clear as possible, with relevant dates, locations, and parties, provide facts or detailed examples of situations which are alleged to have violated a specific chapter(s) and section(s) of the OECD Guidelines
- Provide detailed information and/or evidence that supports the allegations listed above.
- Official documents, reports, studies, articles, witness statements, affidavits, can all be considered. Note: Anecdotal statements or unsubstantiated allegations are not sufficient.
- Identify if and when you have contacted the company identifying the point of contact at the company with whom you tried to reach.
- Point of company and contact information of company representative you recommend the U.S. NCP use to contact about the Specific Instance.

## PART III: Objectives and Outcomes

- Include answers to questions like:
    - What is your objective in bringing the submission?
    - What is your desired outcome(s) of mediation?
    - What actions do you think the company should take to resolve the problem?
- Also include any additional details you wish to bring to the attention of the U.S. NCP

**Please Make Submission by Mail or Email To:**

**Melike Ann Yetken**
U.S. National Contact Point for the OECD Guidelines
Bureau of Economic and Business Affairs
U.S. Department of State
2201 C St. NW
Rm 3844, Harry S Truman Building
Washington, DC 20520
+01 (202) 647.2744
USNCP@State.gov

**Frequently Asked Questions**

**Participation**

1. What are the roles and responsibilities of the submitter of a Specific Instance?
    a. The submitter is required to submit the Specific Instance to the U.S. NCP including all details from the Specific Instance guidance. Once submitted the submitter is responsible for providing any further information requested by the U.S. NCP, maintaining communication, and abiding by the confidentiality agreement throughout the entire process. The submitter also has the responsibility to participate in the process in good faith and honor confidentiality.

2. What are the roles and responsibilities of the company?
    a. If a company is the subject of a Specific Instance, the company will be informed of the Specific Instance by the U.S. NCP through email, likely to the CEO. If a company receives a Specific Instance, one of the most important things a party can do is to be prepared to engage in a constructive dialogue with all parties. It is the responsibility of the company to participate in the process in good faith and honor confidentiality.

3. If an issue is raised in a country that does not adhere to the OECD Guidelines, how is a Specific Instance submitted to the U.S. NCP managed?
    a. The U.S. NCP will proceed in accordance to its procedures with respect to the fact that there potentially will not be an NCP from that country to engage with. However, thematic and regional expertise will be engaged through the Interagency Working Group.

4. Since the OECD Guidelines are non-binding on businesses and engagement in a Specific Instance process is voluntary, what incentive do parties have to participate?
    a. Mediation is an efficient and often lower cost way to work towards a resolution between two parties as opposed to other potential mechanisms. The agreement

reached by the parties themselves can meet the needs to both parties while strengthening the relationship between the two. The U.S. NCP also offers a neutral, third party mediator and venue to allow the space for the parties to directly resolve the issue. For instance, in 2016, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) submitted a Specific Instance report regarding the actions of PepsiCo Inc. (PepsiCo), through its subsidiary in India. The case involved alleged violations of Chapter IV (Human Rights) and V (Employment and Industrial Relations) of the Guidelines. Although PepsiCo did not initially accept mediation when it was offered, they accepted after exploring other avenues. While it was not ultimately possible for the parties to reach an agreement in mediation, the U.S. NCP and the parties were pleased with the impact of this Specific Instance and the dialogue that was fostered. The Specific Instance brought the parties into a conversation which has continued (to date) for two years, and while a consensual resolution to the particular issues of this case has eluded the parties, the U.S. NCP believes that the process did lead to greater understanding of the Guidelines and will result in a quicker recognition of and easier solution of such issues when they arise in the future.

5. How will the NCP process affect any ongoing judicial or dispute resolution proceedings?
    a. The Specific Instance process is wholly independent of any ongoing dispute resolution proceedings. The process of mediation is completely separate from any parallel proceedings and all mediation session will be confidential, by agreement of all parties with FMCS and the U.S. NCP. While the U.S. NCP process takes into account the relevance of applicable law and procedures, including court rulings, it is independent of ongoing proceedings.

6. Will other National Contact Points be involved in a Specific Instance? If so, how?
    a. Upon submission of the Specific Instance, the NCPs of each country involved in the case will be contacted. A "lead NCP" will be determined, and the lead NCP's procedures will be honored and she or he will have the final say in the Specific Instance process. The other NCPs involved will act in supporting roles providing local communication and information as needed for the lead NCP.

**Mediation**

1. How many Specific Instances' submitted to the U.S. NCP have gone to mediation?
    a. As of the time of this publication, three Specific Instance have gone to mediation.

2. Does the Office of the U.S. NCP have translation services available?
    a. The Office the U.S. NCP will consider translation services on a case-by-case basis. Parties should identify early on what, if any, translation services may be needed and why.

3. If mediation is offered, will mediators travel to the location of the allegations to conduct the mediation?
    a. The Office of the U.S. NCP will consider travel to local locations on a case-by-case basis. Where necessary, local mediators may be used in addition to FMCS mediators.

4. If so, how are those expenses paid for?

a. The cost of the mediators and, when relevant, their travel, would be borne by the Office of the U.S. NCP.

5. Do parties have a say in the selection of the mediators?
    a. Yes, when appropriate, the parties may be given options for mediators and may have the opportunity to request a specific mediator with FMCS with justification for the request, upon which the U.S. NCP will have the ultimate decision.

6. Can a party leave the mediation once it's started if it isn't working?
    a. The parties have the right to walk away from mediation at any time; however, the U.S. NCP encourages parties to communicate issues to the mediators as a way to try and find alternate solutions.

**Specific Instances Submission**

1. What does an effective Specific Instance submission entail?
    a. In most cases, an effective Specific Instance submission would contain as much detail and material evidence as possible as outlined in the submission guidance.
2. How is a Specific Instance submitted? In what form and where?
    a. A Specific Instance should be submitted to USNCP@State.gov in pdf form, using the submission guidance from this document.
3. Is there a different process if there are multiple Specific Instances against the same company?
    a. Specific Instances will be treated individually as they are submitted. Once a Specific Instance is submitted, it cannot be combined with any other complaint during the procedures, though the scope of discussions during mediation is determined by the parties and mediator(s).

**Final Statement**

1. Where can I find Final Statements from previous Specific Instances submitted to the U.S. NCP?
    a. All Final Statements are available on www.state.gov/usncp.

2. What does the Final Statement look like?
    a. The Final Statement will contain: Details about the parties; a summary of the Specific Instance process; if applicable, information regarding the outcome of the mediation or a statement agreed by the parties which summarizes the outcome; if applicable, the reason why the mediation talks were ended; if applicable, recommendations as to how the Guidelines are to be implemented.

**Other**

1. Are there expenses that occur for any party during the Specific Instance process?
    a. There will be no required costs for any party during the Specific Instance process. If in-person mediation is determined to be feasible and advantageous--a decision made in consultation with all parties-- then the cost of travel would be the responsibility of the parties.

2. Is information submitted to the U.S. NCP protected from disclosure under the Freedom of Information Act (FOIA)?

a. Whether information submitted to the U.S. NCP in the course of a Specific Instance is subject to public disclosure under FOIA depends on the nature of the information that has been submitted. Generally speaking, there is an exemption ("Exemption 4") to the FOIA disclosure requirements available for information that is considered a trade secret or that is commercial or financial; that exemption is applied on a case-by-case basis. In the event certain information is selected by the Department for potential disclosure in response to a FOIA request, submitters of confidential business information would first receive notice and would have an opportunity to object before the Department discloses that information. If the submitter of the information objects to disclosure, the submitter would have an opportunity to provide to the Department a statement to support its objection. If the submitter's objections do not support withholding under Exemption 4, and after consultation with the Department the issues cannot be resolved, the Department will provide notice to the submitter of its intent to release the information, including a specified disclosure date, which will be a reasonable time subsequent to the notice. Please note that the written statement may also be subject to disclosure under FOIA.

3. What is the timeline for the process to be completed?
    a. The U.S. NCP has a goal of publishing a Final Statement within one year of the submission of a Specific Instance. The timeline allows 1-3 months for the Initial Assessment, 3-6 months for mediation (if offered) and one month for drafting the Final Statement. However, this timeline will vary from case to case depending on a number of factors, including whether or not the Specific Instance goes to mediation and how long the mediation phase lasts. Experience has also shown that in many cases complex negotiations with suppliers or other partners can be necessary for a company to come to the table. While the U.S. NCP will insist on timely responses, it will prioritize successful conclusions, which may mean that some cases will extend beyond the target timeline.