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

Your resource for responsible business conduct
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Introduction to the U.S. National Contact Point

Businesses face a range of different expectations for responsible practice from investors, consumers, employees, civil society organizations, the general public, and governments. To provide a coherent and comprehensive approach to responsible business conduct, the 34 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"), a comprehensive set of recommendations by governments to multinational enterprises (MNEs) to voluntarily adopt to minimize and resolve impacts which may arise from their operations in foreign jurisdictions and to encourage positive contributions to economic, social and environmental progress. 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 Guidelines cover 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 responsible business conduct 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.

The Chapters of the Guidelines include:

1. Concepts and Principles
2. General Policies
3. Disclosure
4. Human Rights
5. Employment and Industrial Relations
6. Environment
7. Combating Bribery, Bribe Solicitation and Extortion
8. Consumer Interests
9. Science and Technology
10. Competition
11. Taxation

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

The Guidelines require adhering governments to set up National Contact Points (NCPs) tasked with furthering the effectiveness of the Guidelines by undertaking promotional activities, handling inquiries, and providing a mediation and conciliation platform for resolving issues that arise from the alleged non-observance of the Guidelines, termed “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. The due diligence concept as described in the OECD Guidelines is consistent with the UN Guiding Principles on Business and Human Rights.

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 risk of adverse impacts as a result of their operations, 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. Due diligence processes may also reduce the risk of becoming the subject of complaints. It is recognized, however, that the nature and extent of due diligence will be affected by factors such as the size of the company, context of its operations, the severity of its adverse impacts, etc.

Note: The recommendations about the exercise of due diligence do not apply in the same way to the chapters of the OECD Guidelines covering Science and Technology, Competition and Taxation. More information on this subject is available in the OECD Guidelines’ chapters on General Policies and Human Rights.

The USNCP’s Three Roles

- **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.

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

- **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.
How we do it:

1) Promote Awareness and Encourage Implementation of the Guidelines

The USNCP 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.

The USNCP 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 USNCP welcomes the opportunity to meet with groups or individuals and to speak at internal meetings and public conferences, including in academic settings. The USNCP is available to participate in person, by video conference or by other means. Please contact the USNCP at USNCP@State.gov with any questions.

Have a good story to tell about implementing the Guidelines? Please email the USNCP about it!

2) Facilitate Practical Application of the Guidelines – the “Proactive Agenda”

The May 2011 update of the Guidelines included a provision that the OECD, adhering governments, and stakeholders would work together on a proactive agenda. The objective is for all partners to "look over the horizon" at potential challenges and, on a demand driven basis, collaborate on devising solutions, consistent with the principles of the Guidelines, to support MNE efforts to address challenges at an early stage.

In contrast with Specific Instances, which often retrospectively address issues arising out of the behavior of specific enterprises, the proactive agenda is intended to prospectively encourage responsible behavior by enterprises through constructive collaboration with stakeholders with the aim of reducing the number of future Specific Instances on those topics.

The Guidelines call on NCPs to maintain regular contact with stakeholders in order to:

- Consider new developments and emerging practices concerning responsible business conduct;
- Support the positive contributions enterprises can make to economic, social and environmental progress; and
- Participate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

3) Offer Specific Instance Mediation

The OECD Guidelines' grievance mechanism is known as the “Specific Instance” process. A Specific Instance raises 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 a community affected by a company’s activities, 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. Generally, issues should be dealt with by the NCP of the country in which the issues have arisen.
As a part of its core function, the USNCP addresses such Specific Instances with regards to the business conduct of an enterprise operating or headquartered in the United States. The office of the USNCP 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 (all available at http://www.oecd.org/investment/mne/).

In this work stream, the USNCP’s primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution through the offer of mediation services. The USNCP 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 USNCP have legal authority to investigate, prosecute or adjudicate issues submitted under this process.

Acceptance of the Specific Instance is in no way an acknowledgement of or 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. 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. Further information on the submission and handling of Specific Instances is provided below.

Get to know the USNCP

Melike Yetken (http://www.state.gov/e/eb/oecd/usncp/c67181.htm), Larry Memmott, and Alan Krill comprise the Office of the USNCP in the Economic and Business Affairs Bureau at the State Department.

The Office of the USNCP also consults with a broader Interagency Working Group (IWG) of U.S. government experts through, which includes but is not limited to representatives from the Department of Commerce, the Department of Labor, the Department of the Treasury, the Office of the U.S. Trade Representative, the Export-Import Bank, the Overseas Private Investment Corporation, and the Environmental Protection Agency. The working group also includes Department of State officials from the Office of the Legal Adviser; the Bureau of Democracy, Human Rights and Labor; the Bureau of Oceans, International Environmental and Scientific Affairs; regional country desk officers; and officers at U.S. missions abroad, as appropriate. The USNCP Office also frequently meets with other NCPs to share experiences and encourage best practices internationally.

The USNCP Office is impartial and equitable when handling a complaint. The USNCP Office will prioritize transparency, set and follow timelines, follow predictable procedures, and make itself visible and accessible to stakeholders.

Key Principles

The USNCP 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 USNCP will be transparent. Any sensitive business information disclosed during the Special Instance process will be protected.
• **Accessibility:** The USNCP will facilitate access to its function by business, labor, NGOs and other members of the public. The USNCP 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 USNCP will ensure impartiality in the resolution of Specific Instances.

• **Predictability:** The USNCP 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 USNCP can play in monitoring the implementation of agreements reached between the parties.

• **Equitability:** The USNCP 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 USNCP 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 USNCP will seek to resolve the issues in dispute through dialogue and mediation.

**The USNCP Specific Instance Process**

On the next page is a flowchart showing the steps of the Specific Instance process of the USNCP. Following the overview of the process is a more detailed flowchart with descriptions of each step.

**Submitting a Specific Instance**

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.

- Submitters must specify in the complaint which chapters or paragraphs in the Guidelines they consider to be breached by the company.

The USNCP’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 USNCP. If the Specific Instance is deemed to be material and substantiated, the USNCP will offer the parties to the dispute its mediation and conciliation services.
1. The submitter submits a specific instance to the Office of the USNCP at USNCP@STATE.GOV

2. The USNCP informs all involved parties of the specific instance

3. Produce initial assessment using OECD admissibility criteria

   - Offer mediation
     - All parties accept mediation
       - Parties come to an agreement
     - Parties do not accept mediation
       - Parties do not come to an agreement

   - Does not meet OECD admissibility criteria, mediation services not offered
     - Publish final statement

- USNCP drafts and publishes final statement on WWW.STATE.GOV/USNCP

- Post conclusion
Acknowledges receipt of Specific Instance within two weeks, describing the OECD Guidelines, the role of the US NCP and its procedure, and requests a designated point of contact.

To the MNE
Informs the Multinational Enterprise (MNE) within two weeks by sending a copy of the Specific Instance and a description of the OECD Guidelines, the role of the office of the USNCP and its procedures, and a request for a designated senior point of contact within the company and asking for the MNE’s view of the

3. THE USNCP PRODUCES INITIAL ASSESSMENT OF SPECIFIC INSTANCE BASED ON INPUT FROM ABOVE ENTITIES

**Initial Assessment Considerations**

**OECD Criteria for Consideration:**
- The identity of the party concerned and its interest in the matter;
- Whether the issue is material and substantiated;
- Whether a link exists between the enterprise’s activities and the issue(s) raised;
- The relevance of applicable law and procedures, including court rulings;
- Whether the issue is ripe or moot considering any other domestic or international proceedings;
- Whether the consideration of the Specific Instance would contribute to the purpose and effectiveness of the OECD Guidelines.

In addition to consulting the above entities, the USNCP will consider the criteria by seeking advice from relevant authorities, and/or representatives of the business community, worker organizations, other nongovernmental organizations, and relevant experts.

**Threshold Not Met**

**Mediation Not Offered:**
Informs the parties by written response that the matter does not meet the OECD Criteria for Consideration and mediation will not be offered at this time. Then drafts and publishes Final Statement.

**Threshold Met**

**Mediation Offered:** The office of the USNCP offers its mediation services through FMCS to both parties and requests their participation in efforts to arrive at a consensual resolution to the issues raised, seeking their views on the best way to facilitate a consensual resolution.

*Country in which the concern arose is the "host" country. The country where the MNE is headquartered is the "home" country*
4. THE USNCP AIDS IN MEDIATING A RESOLUTION BETWEEN PARTIES

Mediation: If both parties agree, the USNCP will offer mediation or otherwise facilitate a consensual resolution of the issues raised. Mediation or facilitation can take any form the parties and the USNCP agree would be beneficial to reaching a consensual resolution.

5. CONCLUSION OF PROCEEDINGS

Publish Final Statement: At the conclusion of the process, the USNCP will draft a Final Statement communicating the result. The USNCP will then seek the input of all parties on the draft Final Statement in a timely manner before publishing the Final Statement and making it publicly available on its website, taking into account the need to protect sensitive business and other stakeholder information. Final Statement are posted on the USNCP website at: www.state.gov/usncp

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<tr>
<th>One Party Does Not Agree to Mediation</th>
<th>If An Agreement Is Reached</th>
<th>If An Agreement Is Not Reached</th>
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<tr>
<td>Publishes a Final Statement when one or all parties do not agree to participate in the mediation offered. The statement will at a minimum describe the issues raised and the parties’ stated reason for choosing to not participate. The Final Statement may also include any recommendations on the implementation of the OECD Guidelines the USNCP may consider appropriate.</td>
<td>Publishes a Final Statement. The Final Statement will at a minimum identify the parties, describe the issues raised, the procedures used in assisting the parties and when agreement was reached. Parties can identify which information from the mediation will be published in the Final Statement. Information about the content of the agreement may be included with the consent of the parties. The Final Statement may also include recommendations on the implementation of the OECD Guidelines the USNCP may consider appropriate.</td>
<td>Publishes a Final Statement when no agreement is reached or when a party is unwilling to participate in the process. This statement will at a minimum describe the issues raised, the reasons why the USNCP decided that the issues raised merit further consideration and the procedures the USNCP initiated in assisting the parties. Where appropriate, the statement could also include any recommendations on the implementation of the OECD Guidelines the USNCP may consider appropriate.</td>
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Post-Conclusion: Following the conclusions of the proceedings, the office of the USNCP 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 USNCP. However, such monitoring will be entirely within the discretion of the USNCP and will only be done on an exceptional basis, if the USNCP determines this appropriate, and only as the USNCP’s resources allow. One year after successful mediation, all parties are asked to separately submit a confidential report to the USNCP on the status of the agreement.

Confidentiality: Once 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 USNCP. Parties may publicly reference the existence of the Specific Instance, but should not disclose information learned during the NCP process. A failure to honor confidentiality expectations may be considered bad faith and may lead to the USNCP terminating the process. The USNCP will treat as confidential all information which is communicated to the USNCP by a party to a specific instance (including parties to the submission, the enterprise concerned, and other parties with whom the USNCP consults), subject to any disclosures required by U.S. law, except that the information provided by a party to the USNCP will be communicated to the other party(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 USNCP for such nondisclosure.
The Initial Assessment

The USNCP will provide a written response to the submitter and written notification to the subject company within two weeks of receipt of a Specific Instance. The USNCP will establish clear expectations throughout the process for timing of responses. The USNCP will be flexible in the application of deadlines, but reserves the right to move the process forward without the participation of a party if that party is not reasonably responsive.

After receiving a written response to the Specific Instance from the company, the USNCP will undertake an Initial Assessment of the Specific Instance. The USNCP 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. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised are bona fide and merit further consideration by the USNCP. Where necessary, the USNCP will seek the guidance of the OECD Investment Committee regarding the interpretation of the Guidelines in particular circumstances. 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

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 . . .”

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 honour such principles and standards to the fullest extent which does not place them in violation of domestic law.”
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 USNCP 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, USNCP 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 USNCP-mediated settlement to be more beneficial to both sides than what is available elsewhere.

During the initial assessment and throughout the process, the USNCP will encourage the parties to resolve their differences through direct dialogue.

**Suppliers and Leverage**

The Guidelines have this to say about supply chain responsibility:

“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, paragraph 19)

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 cooperation 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 such a 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 to) 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 USNCP determines that the Specific Instance is material and substantiated and 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 USNCP routinely reminds parties that all sides must abide by the principle 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, to find adequate solutions under the Guidelines.

Mediation, Flexibility and Openness

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 USNCP offers the services of objective and neutral mediators employed by the U.S. Federal Mediation and Conciliation Service (FMCS). In order to introduce
each party to the FMCS and its conflict-resolution services, after offering mediation services in the Initial Assessment, the USNCP offers to host a one hour information session separately with each party during which representatives can raise any questions or concerns about the mediation process as well as get to know the mediators. Participation in this information session does not mean either party agrees to participate in mediation; rather it is simply an opportunity to better inform each party about the mediation process and for them to meet their mediators. For cases which go to mediation, each party is required to sign the FMCS Mediation Agreement, which includes provisions for confidentiality and other requirements. If agreement is reached in mediation, the parties are requested to put it in writing and sign it, and it will be given to the USNCP. They are also asked to indicate to the USNCP what wording, statement, or documents can be made public.

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.

Selection of Mediators

FMCS 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

The Specific Instance process can end at one of several different points: 1) mediation is not offered by the USNCP, 2) one or both parties refuse the offer of mediation, 3) mediation is accepted but the parties cannot reach an agreement, or, 4) the parties succeed in reaching agreement on substantial points in mediation. Once the process has been deemed complete, a Final Statement will be drafted by the Office of the USNCP and made public on the website (www.state.gov/usncp), subject to the Parties reviewing the statement and providing any comments on its accuracy or the need to keep certain sensitive business or other information confidential. Where possible and when agreed upon by the parties, the terms of the agreement reached in mediation will be made public in the interest of transparency and accountability. When parties are offered mediation and agree, the outcome of the Final Statement text is agreed upon by the parties.

The Final Statement will provide information on the allegations on which the Specific Instance is based, including which Guidelines were mentioned. Nothing discussed during mediation will be put in the Final Statement without the agreement of both parties, per the confidentiality clause.

The Final Statement will include the below information:

- 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 Interagency Working Group;
• If applicable, information detailing the decision to offer mediation based on the initial assessment and admissibility criteria outlined above;
• 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 without an agreement;
• If applicable and deemed appropriate by the USNCP, recommendations as to how the Guidelines are to be implemented.

The USNCP will coordinate with the Interagency Working Group for the OECD Guidelines 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 USNCP has the discretion to make any necessary factual changes before sending the final version of the statement to the parties.

Follow-Up

If mediation is successfully completed and an agreement is reached, parties will be asked to submit a confidential follow-up report six months later providing an update on the status of their agreement and any impacts.

Confidentiality

Once a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications during the Specific Instance process. Parties may publicly reference the existence or filing of the Specific Instance, but should not disclose information learned during the USNCP process. A failure to honor confidentiality expectations may be considered bad faith and may lead to the USNCP terminating the process. At the conclusion of the process, if the parties involved have not agreed on a resolution of the issues raised, the parties are free to communicate about and discuss these issues, so long as information and views provided during the proceedings by any party involved remain confidential, unless that party agrees to their disclosure or it would be contrary to the provisions of national law.

The Guidelines have the following to say about good faith:

“The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour 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)

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 also why the USNCP will require that parties uphold confidentiality and request that they refrain from campaigning against the other party and/or using the media for any such purpose if mediation is offered and accepted.

The purpose of this confidentiality policy is to facilitate the building of mutual trust, which is an important element for reaching any mediated solution. Similarly, and with the same objective in mind, the USNCP recommends that any “campaigning” be suspended for the duration of the Specific Instance process, especially if mediation is offered.
Most Specific Instances come to the USNCP after the substance of the dispute is already public. That is to be expected, and the USNCP takes no position on communications strategies used by the parties before a Specific Instance is submitted. Likewise, the USNCP has no objection to parties informing the public that a Specific Instance has been submitted, though the USNCP 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.

Non-public information learned through the process should not be disseminated publicly, and documents internal to the process should not be made public either during or after the process. After the Specific Instance has concluded, information learned through the Specific Instance process should not be made public.

Who We Work With

Stakeholder Advisory Board: In January 2012, the State Department established a Stakeholder Advisory Board (SAB), whose function is to provide recommendations on implementation of the OECD Guidelines, including their public promotion, collaboration between the USNCP and stakeholders to anticipate and address future challenges in a proactive manner, and the operations of the USNCP. The SAB is a subcommittee of the Advisory Committee on International Economic Policy and is led by co-chairs representing business and civil society. The membership list is available here: http://www.state.gov/e/eb/oecd/usncp/us/index.htm.

Interagency Working Group: The USNCP Office consults regularly with subject matter experts through an active interagency working group, which includes representatives from the Department of Commerce, the Department of Labor, the Department of the Treasury, the Office of the U.S. Trade Representative, and the Environmental Protection Agency. The working group also includes Department of State officials from the Bureau of Economic and Business Affairs, Office of the Legal Adviser; the Bureau of Democracy, Human Rights and Labor; the Bureau of Oceans, International Environmental and Scientific Affairs; regional country desk officers; and officers at U.S. missions abroad, as appropriate.

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 USNCP follows this approach.
Specific Instance Statistics

Below is a summary of the Specific Instances, as of May 15, 2016, submitted to the USNCP since November of 2011 when the United States created its Specific Instance process based on the 2011 update to the OECD Guidelines. You can read more about the Specific Instances here: http://www.state.gov/e/eb/oecd/usncp/specificinstance/assessments/index.htm

Note that the 2016 figure covers only the first four months of the year.
### Sectors Covered
- Industrial: 5
- Services: 1
- Agriculture: 6

### Submitters
- Labor: 9
- NGO: 3

### Specific Instance Results
- Offered/Rejected: 5
- Not Offered: 3
- Agreement Reached: 2
- No Agreement: 1
Specific Instance Submission Guidance

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

Please provide information to the questions outlined below in writing, completing each question as entirely as possible, and submit to the USNCP 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 USNCP 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.

Confidentiality

The information in the submission will remain confidential between the parties in the complaint, the office of the USNCP, and when relevant, the mediators. The Specific Instance document itself is not for public dissemination. Once a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications. Parties may publicly reference the existence of the Specific Instance (that it was submitted), but should not disclose any non-public information learned during the USNCP process. A failure to honor confidentiality expectations may lead to termination of the process. The USNCP will treat as confidential all information which is communicated to the USNCP by a party to a specific instance (including parties to the submission, the enterprise concerned, and other parties with whom the USNCP consults), subject to any disclosures required by U.S. law, except that the information provided by a party to the USNCP will be communicated to the other parties 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 USNCP for such nondisclosure.

At the conclusion of the process, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss the issues raised in the Specific Instance. However, information and views provided during the USNCP process by any party involved will remain confidential, unless both parties agree to disclosure or if it would be contrary to the provisions of national law.

For questions regarding a Specific Instance submission, please contact the USNCP at USNCP@State.gov. Parties are encouraged to contact the USNCP prior to submitting a Specific Instance to discuss the submission.

Below is Specific Instance submission guidance. In order to consider a Specific Instance, the USNCP needs to have as much information and material evidence as possible to determine whether to offer mediation. Including the information below will provide the USNCP the information necessary for that consideration.
Specific Instance Submission Guidance

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.

PART III: Objectives and Outcomes

- Include answers to questions like:
  o What is your objective in bringing the case?
  o What is your desired outcome(s) of mediation?
  o 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 USNCP

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 USNCP including all details in the Specific Instance guidance. Once submitted the submitter is responsible for providing any further information requested by the USNCP, 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. Per the procedures, what are the roles and responsibilities of the company, if any?
   a. If a company is the subject of a Specific Instance, the company will be informed of the Specific Instance by the USNCP over email, likely to the CEO within two weeks of the USNCP receiving the Specific Instance. 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 USNCP managed?
   a. The USNCP 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.

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 USNCP. While the USNCP 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 USNCP have gone to mediation?
   a. As of the time of this publication, one Specific Instance has gone to mediation.

2. Does the Office of the USNCP have translation services available?
   a. The office the USNCP 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 USNCP 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 incurred by the Office of the USNCP.

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 USNCP 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 USNCP 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 (below).

2. How is a Specific Instance submitted? In what form and where?
   a. A Specific Instance should be submitted to USNCP@State.gov.

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 USNCP?
   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 an 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 USNCP protected under the Freedom of Information Act (FOIA)?
   a. Whether information submitted to the USNCP 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 detailed written 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 USNCP 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 1 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 USNCP will insist on timely responses, it will prioritize successful conclusions, which may mean that some cases will extend beyond the target timeline.