



The USNCP Specific Instance Process Flowcharts
June 2016

USNCP PROCESS FOR A SPECIFIC INSTANCE

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

ONE PARTY DOES NOT AGREE TO MEDIATION



PARTIES COME TO AN AGREEMENT

PARTIES DO NOT COME TO AN AGREEMENT



USNCP DRAFTS AND PUBLISHES FINAL STATEMENT ON WWW.STATE.GOV/USNCP



POST CONCLUSION



DOES NOT MEET OECD ADMISSIBILITY CRITERIA, MEDIATION SERVICES NOT OFFERED



PUBLISH FINAL STATEMENT

U.S. PROCEDURES SUBMITTING A SPECIFIC INSTANCE

1. THE SUBMITTER SUBMITS A SPECIFIC INSTANCE TO THE OFFICE OF THE USNCP AT USNCP@STATE.GOV

2. THE USNCP ACKNOWLEDGES RECEIPT AND INFORMS ALL INVOLVED OF THE SPECIFIC INSTANCE

To the IWG

Consults with the interagency working group (IWG) about the Specific Instance to see if the issue raised is pending in any other proceeding involving the U.S. Government and to solicit questions and reactions to the Specific Instance.

To the Submitter

Acknowledges receipt of Specific Instance within 1 week by email describing the OECD Guidelines, the role of the USNCP and its procedure, and requests a designated point of contact.

To Other NCPs

Informs host country/home country* NCP and other relevant foreign NCPs with copy of request soliciting views and questions on the Specific Instance.

To the MNE

Informs the Multinational Enterprise (MNE) by sending a copy of the Specific Instance with a letter describing 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 matter.

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. Target Timeline: 6 months



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

One Party Does Not Agree to Mediation	If An Agreement Is Reached	If An Agreement Is Not Reached
<p>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.</p>	<p>Publishes a Final Statement when the parties have reached agreement on the issues raised. The Final Statement will at a minimum identify the parties, describe the issues raised, the procedures the USNCP initiated 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 will be included in accordance with the confidentiality standard. The Final Statement may also include any recommendations on the implementation of the OECD Guidelines the USNCP may consider appropriate.</p>	<p>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.</p>

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 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 USNCP for such nondisclosure.