



OECD Guidelines for Multinational Enterprises
National Contact Point Peer Reviews
UNITED STATES



ABOUT THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

ABOUT NCP PEER REVIEWS

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the OECD Guidelines for multinational enterprises, NCPs agreed to reinforce their joint peer learning activities and, in particular, those involving voluntary peer reviews. The peer reviews are conducted by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

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1. Summary and key findings

This document is the peer review report of the US National Contact Point (US NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines). The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, they recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines.

This report assesses conformity of the US NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures of the Guidelines. The peer review of the US NCP was conducted by a team made up of reviewers from the NCPs of Denmark and Switzerland, an observer from the NCP of Colombia, along with representatives of the OECD Secretariat who facilitated the peer review. The peer review included an on-site visit that took place in Washington D.C. on 27-29 September 2017.

The US NCP has undergone significant positive changes since the 2011 update to the Guidelines and taken significant and important steps to promote the Guidelines and to handle specific instances with a focus on bringing about successful resolution for the parties involved.

Key findings and recommendations

Institutional arrangements

The US NCP is located within the Office of Economic Policy Analysis and Public Diplomacy in the Economic and Business Affairs Bureau (EB) of the US Department of State. A senior US government official has been designated in the NCP role. The US NCP is supported by two additional staff members on the NCP's team, a broader group of US government subject matter experts, called the Interagency Working Group (IWG) and a Stakeholder Advisory Board (SAB).

The current staff of the US NCP is recognised as being highly professional, knowledgeable, responsive and dedicated. Many stakeholders participating in the peer review noted that for many years the US NCP was not active or visible but that there have been significant improvements in its functioning in recent years, particularly since assigning a senior full-time official to the role. In order to maintain the positive gains made by , the US government should ensure that the NCP continues to be staffed by at least a full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the US and the global economic presence of US MNEs, an even larger team would be appropriate and should be considered.

Both the IWG and SAB were established after the 2011 update of the Guidelines to support the work of the US NCP. IWG members noted that they felt the body functioned well as it is currently organised and some members of the IWG noted that they themselves should be more proactive in raising awareness of the US NCP throughout their own networks. Given the limited resources of the US NCP and strong expertise of members of the IWG, the IWG should take ownership with respect to promotion of the Guidelines and raising awareness of the NCP mechanism and should act as “ambassadors” for the Guidelines within their own departments and beyond.

The SAB has detailed terms of reference which note that the primary objectives of the body are to advise on 1) promotion and implementation of the Guidelines, and 2) encouragement of the use of the specific instance process. In 2016, new terms of reference were introduced with respect to the SAB. Several members of the SAB perceived that the new structure—the NCP as chair with two vice chairs one each from industry and civil society—of the SAB changed its role and the nature of dialogue at SAB meetings. Several members of the SAB expressed concern about the steering of the SAB by the NCP and requested that some level of co-chair structure be restored to the SAB. In this respect, with a view to retaining the confidence of its civil society and labour stakeholders the NCP should ensure members increased input and ownership in the direction and meetings of the SAB.

Findings	Recommendations
1.1 For many years prior to the 2011 update to the Guidelines, the US NCP was not active or visible but that there have been significant improvements in its functioning in recent years, particularly since assigning a senior full-time official to the role.	In order to maintain the positive gains made by the US NCP, the United States should ensure that the US NCP continues to be staffed by at least one full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the US and the global economic presence of US MNEs, an even larger team would be appropriate and should be considered.
1.2 Some members of the IWG noted that they could be more proactive in promotion with respect to the NCP throughout their own networks.	The IWG members should take more ownership with respect to promotion of the Guidelines and raising awareness of the NCP mechanism and IWG members should act as “ambassadors” for the Guidelines within their own departments and beyond.
1.3 Several civil society and labour members of the SAB expressed the perception that the new structure of the SAB changed its role and the nature of dialogue at SAB meetings.	With a view to retaining the confidence of its civil society and labour stakeholders the US NCP should ensure members increased input and ownership in the direction and meetings of the SAB.

Promotion of the Guidelines

In 2016 the US NCP developed a strategic outreach plan which informs its participation in promotional activities. Between 2016 and as of August 2017, the US NCP participated in 51 promotional events, engaging with a total of 2,679 stakeholders to increase awareness of the US NCP and the Guidelines. Additionally the US NCP has developed various promotional materials to help raise awareness of the Guidelines including: a Guide to the US NCP, videos explaining the Guidelines and specific instance process including in different languages, streamlined its rules of procedure, developed metrics to measure impact, and produced stakeholder testimonials. These have all been published on the US NCP website along with other resources. Many stakeholders from business, civil society, labour, and academia noted that the establishment of the website and the publication of a comprehensive range of information and promotional materials related to the US NCP has been useful and are important to enhancing the accessibility, visibility, and transparency of the US NCP.

Strategic outreach efforts have led the US NCP to pursue outreach with two new stakeholder groups: legal practitioners and academia. The objective of outreach to the legal community is to educate and sensitise legal practitioners to the NCP specific instance mechanism. Outreach to academia is conducted with the objective of raising awareness and interest in RBC amongst the next generation of leaders. Many stakeholders also noted that increased outreach to potential users of the specific instance mechanism (such as NGOs, local communities) is important. The US NCP should continue strategic outreach efforts to the legal and academic community and should focus more attention on awareness raising and relationship building with civil society. In this respect, specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The SAB and IWG could be instrumental in these outreach efforts.

Findings	Recommendations
2.1 Many stakeholders noted that increased outreach to potential users of the specific instance mechanism (such as NGOs, local communities) is important.	The US NCP should focus more attention on awareness raising of the Guidelines and the NCP mechanism with civil society. In this respect, specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The SAB and IWG could be instrumental in these outreach efforts.

Specific instances

The US NCP has handled 45 cases since 2000. Of these, 18 were filed since 2012. Since the update of the Guidelines in 2011, significant efforts have been made to improve the specific instance process. These include:

- developing detailed rules of procedure;
- conducting thorough initial assessments and clearly explaining why submissions are not accepted for further examination based on criteria provided in the Procedural Guidance;
- organising informational meetings with parties to explain the process and encourage engagement;
- engaging professional mediators and involving subject matter experts from the government where needed.

These efforts are beginning to restore stakeholder's trust in the process and recent parties to the specific instance process have noted a high level of satisfaction with the professionalism of the US NCP in handling specific instances and identified tangible positive outcomes from the process.

In practice, encouraging companies to participate in mediation has been a challenge. Since 2012, in 67 % of specific instances which were offered mediation no mediation took place because the company declined to engage in the process.¹ The US NCP has made efforts to respond to this challenge through engaging in outreach to the business community to demystify the process, as well as more robust engagement procedures during the Initial Assessment and pre-mediation phases. This has achieved some positive results. The US NCP should consider additional efforts to encourage companies to participate in mediation and set up a process to better understand why companies are hesitant to engage and how they can be encouraged to. For example, systematically seeking feedback from companies who refuse to engage in the specific instance process or surveying business communities on this issue may contribute to a better understanding of the specific reasons companies may not wish to engage in the process and identify potential approaches to overcoming this issue.

While specific instance handling has been significantly improved, some parties to the specific instances process noted that their mediator did not have a strong grasp of the recommendations of the Guidelines, particularly international labour and human rights

¹ Of the twelve specific instances where mediation was offered, eight of the companies declined to participate. These were: Grupo Mexico and USW (2016); Crown Holdings, Inc. USW (2014); Nissan Motor Co, Ltd. and United Auto Workers of America (2014); Mondelez Ltd. IUF (2013); Deutsche Telekom AG (T-Mobile USA and Crnogorski Telekom A.D. Podgorica) (2011); American Sugar Refiners Inc. (ASR) and The Community Legal Education Center for Cambodia (CLEC) (2012); IMERYS and PACE (2004) and Chef Solution, subsidiary of Lufthansa and United Auto Workers (2003).

standards. In order to continue to promote strong outcomes from mediation, the NCP should ensure that the Guidelines are the standard used as a reference in mediation discussions and that mediators are knowledgeable about the Guidelines. In this respect the NCP can continue to build capacity of mediators with respect to recommendations of the Guidelines or may take an active role during the preparatory phase for mediation in clearly articulating the expectations of the Guidelines with respect to issues raised.

Many NGOs and trade union stakeholders which participated in the on-site visit also noted that the current confidentiality policy of the NCP acts as a deterrent to parties submitting cases to the NCP. The Procedural Guidance of the Guidelines is silent on the circumstances of the submission of a specific instance and any activities that may precede the submission. The NCP should ensure that its position around confidentiality and campaigning is equitable, meaning the preferences and needs of both parties should be taken into account, and promotes transparency to the greatest extent possible.

Findings	Recommendations
3.1 Some parties to specific instances noted that mediators did not have a strong grasp of the recommendations of the Guidelines, particularly international labour and human rights standards.	In order to promote strong outcomes from mediation the NCP should ensure that the Guidelines are the standard used as a reference in mediation discussions and that mediators are knowledgeable about the Guidelines.
3.2 In practice, encouraging companies to participate in the mediation process has been a challenge. The NCP has made efforts respond to this challenge through engaging in outreach to the business community to demystify the process, as well as more robust engagement procedures during the Initial Assessment and pre-mediation phases.	The NCP should consider additional efforts to encourage companies to participate in mediation and set up a process to better understand why companies are hesitate to engage and how they can be encouraged to.
3.3 Provisions on confidentiality and campaigning were seen by some stakeholders as a deterrent to some potential submitters of specific instances.	The NCP should ensure that its position around confidentiality and campaigning is equitable, meaning the preferences and needs of both parties should be taken into account, and promotes transparency to the greatest extent possible.

The US is invited to report to the Working Party on Responsible Business Conduct on follow up to all the recommendations within one year of the date of presentation of this report.

2. Introduction

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

The United States (US) adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1976. The Guidelines are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Declaration are required to establish NCPs. NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.²

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”³

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting.

In 2011 the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations. In the G7 Leader’s Declaration of June 2015, G7 governments committed to strengthen mechanisms for providing access to remedy, including NCPs. Particularly, G7 leaders agreed to lead by example to make sure NCPs of G7 countries are effective, and to complete NCP peer reviews by 2018.⁴

The objectives of peer reviews as set out in the OECD’s core template for voluntary peer reviews of NCPs⁵ are to assess that the NCP is functioning in accordance with the core criteria

² Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4)

³ OECD Guidelines for Multinational Enterprises (2011), Foreword.

⁴ See Leaders’ Declaration G7 Summit 7-8 June 2015
https://sustainabledevelopment.un.org/content/documents/7320LEADERS%20STATEMENT_FINAL_CLEAN.pdf

⁵ OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

set out in the implementation procedures; to identify the NCP's strengths and possibilities for improvement; to make recommendations for improvement and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in OECD Core Template for voluntary peer reviews of NCPs as well as responses to requests for additional information. The NCP has published its response to the NCP questionnaire on its website along with other information about the peer review.⁶ The report also draws on responses to the stakeholder questionnaire which was completed by 29 organisations representing enterprises, civil society, trade unions/representative organisations of the workers' own choosing (hereinafter worker organisations), academic institutions and government agencies (see Annex A for complete list of stakeholders who submitted written feedback) and information provided during the on-site visit.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Denmark and Switzerland, an observer from the NCP of Colombia, along with representatives of the OECD Secretariat. The on-site visit to Washington D.C. took place on 27-29 September 2017 and included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the review process is set out in Annex B. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review and organisation of the on-site visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2000. The methodology for the peer review is that set out in the OECD Core Template for voluntary peer reviews of NCPs.⁷

Economic context

Within the US there are approximately six million companies, including some of the largest multinational enterprises in the world, 1.5 million NGOs, and over 100 labour unions. The US economy is dominated by the service sector, representing 69% of GDP. In 2016 the accumulated value of FDI in the US economy over time was equivalent to 35 percent of US GDP and the outward stock of FDI was equivalent to 34 percent of US GDP. The main investors in the US are the United Kingdom, Japan, Canada, Germany and France, and the main inward investment sectors are manufacturing; financial and insurance; and wholesale and retail trade. The main destinations for outward investment from the US are the Netherlands, the United Kingdom, Luxembourg, Canada and Ireland, and the most important sector is finance and insurance.⁸

⁶ See U.S. NCP Peer Review Report Questionnaire (10 August 2017), <https://www.state.gov/e/eb/oeecd/usncp/peerreview/index.htm>.

⁷ Core Template for Voluntary Peer Reviews of National Contact Points (OECD, 2015), [https://one.oecd.org/document/DAF/INV/RBC\(2014\)12/FINAL/en/pdf](https://one.oecd.org/document/DAF/INV/RBC(2014)12/FINAL/en/pdf).

⁸ OECD foreign direct investment statistics database, <http://www.oecd.org/investment/statistics.htm>.

3. The US NCP at a glance

Established: 2000

Structure: Single agency supported by an Interagency Working Group and Stakeholder Advisory Board

Location: Economic and Business Affairs Bureau (EB), US Department of State

Staffing: One full-time NCP officer supported by two (full time) officers

Website: www.state.gov/usncp

Specific Instances received: 45

4. Institutional arrangements

The Commentary to the Procedural Guidance of the Guidelines provides:

“Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner.”

Legal basis

The US NCP was not established through a legal, regulatory, or administrative instrument.

NCP Structure

The US NCP is located within the Office of Economic Policy Analysis and Public Diplomacy in the Economic and Business Affairs Bureau (EB) of the US Department of State. A senior US government official has been designated in the NCP role. The US NCP is supported by two additional staff members, a broader group of US government subject matter experts, called the Interagency Working Group (IWG) and a Stakeholder Advisory Board (SAB) comprised of external stakeholders from business, labour, non-governmental organisations, and academia. (See *Core NCP* and *NCP Advisory Bodies*).

The stated role of the US NCP is to:

- **Promote awareness and encourage implementation of the Guidelines** to business, labour, and 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 and discuss appropriate actions and responses under the Guidelines; and
- **Offer a “Specific Instance” mediation process** to be used when a party raises allegations against a multinational enterprise’s operations, focusing on finding a resolution between the parties through mediated dialogue.⁹

The US NCP also oversees the RBC portfolio housed in the same office. 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, as well as leading the Advisory Committee on International Economic Policy (ACIEP), which is the State Department’s stakeholder advisory body on international economic issues.

The EB bureau engages on issues such as international trade, transportation, communications, agriculture and commercial business affairs and advises US businesses overseas. Some stakeholders noted that positioning the US NCP within the EB bureau may contribute to a perception of bias as the EB works to facilitate US business operations abroad.

⁹ US Department of State, A Guide to the US NCP for the OECD Guidelines for Multinational Enterprises (2017) <https://www.state.gov/e/eb/oecd/usncp/usncpguide/273553.htm>.

However, others have noted that locating the US NCP within the EB bureau makes sense as the office already has strong relationships with US businesses operating internationally and therefore its location promotes access and credibility with the business community.

NCP

The Senior Advisor for Corporate Responsibility has been designated in the role of the US NCP and works full-time on RBC issues. This role was created in 2011 to separate the US NCP from the US government's investment promotion responsibilities. Previously the US NCP was staffed by an official also working on investment promotion issues in the EB bureau and devoting only a portion of his/her time to the US NCP. The role was made a full-time position in 2011 and assigned to a foreign service officer. Recognising that continuity is important for establishing a strong NCP the role was converted in 2013 to a civil service role, meaning it would not be subject to regular rotations. The current staff member representing the US NCP has been in the role since 2014. The US NCP reports directly to the Principal Deputy Assistant Secretary of State for Economic and Business Affairs, a position of senior leadership within the government.

The US NCP is supported by two officers also based within EB who work full-time on RBC issues. The officials that support the work of the US NCP have been in their roles since August 2015 and August 2017, respectively.

The current staff of the US NCP is recognised as being highly professional, knowledgeable, responsive and dedicated. Many stakeholders participating in the peer review noted that for many years prior to 2011, the US NCP was not active or visible but that there have been significant improvements in its functioning in recent years, particularly since assigning a senior full-time official to the role. In order to maintain the positive gains made by the US NCP, the US government should ensure that the US NCP continues to be staffed by at least one full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the United States and the global economic presence of US MNEs, an even larger team would be appropriate.

US NCP Advisory bodies

The US NCP regularly consults with its two advisory bodies, the IWG and the SAB.

The IWG is a body composed of government 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 US Trade Representative
- Overseas Private Investment Corporation

Within the Department of State, officials 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; the Energy and Natural Resources Bureau; regional country desk officers; and officers at US missions abroad, as appropriate. The current members of the IWG have participated in the group for varying amounts of time, some since its establishment in 2012 and some more recently due to turn-over at their respective agencies.

Interagency working groups are common within the US federal government and are generally organised informally. In this respect the IWG itself does not have terms of reference. IWG members noted that there is a clear expectation of participation in the IWG and a willingness to do so by current members. The IWG meets quarterly and additional meetings may be organised as necessary. The meetings are organised to provide updates to specific instances as well as to discuss emerging issues with respect to NCPs and the RBC agenda within the US government as well as at the OECD. Meetings are informal and no minutes are taken. IWG members noted that they felt the body functioned well as it is currently organised and did not recommend any alterations to the existing way of operating.

According to the US NCP's rules of procedure for handling specific instances, it is noted that the US NCP circulates specific instance submissions to members of the IWG and consults with them in determining whether it meets initial assessment criteria under the Guidelines, in collecting further information about the submission; and in developing the final statement for a specific instance.¹⁰

All members of the IWG affirmed that they are informed when a new specific instance is filed and are given an opportunity to review and provide feedback in practice. They also noted that IWG members who have expertise with respect to the issues raised in a specific instance may be more active in providing additional input on the specific instance. The representative from the Office of the Legal Adviser may explain the relationship of US law to the issues raised in a specific instance submission and may also be involved in identifying how specific instance processes differ from legal proceedings. Some members of the IWG may also be involved in interfacing with stakeholders parties to the process. For example, the Department of Labor may be in touch with trade unions submitting a specific instance to collect additional information about a specific instance, as needed. Although the US NCP makes final decisions in practice there has always been consensus amongst the US NCP and IWG members on how to proceed with respect to specific instances.

In addition to providing substantive expertise in the context of specific instances the IWG also functions as a platform for sharing and collaboration on horizontal issues related to RBC. Some members of the IWG noted that they could be more proactive in the promotion of the US NCP throughout their own networks. Specifically US Agency for International Development (USAID) has significant contact with local communities globally who may be impacted by US business activities and likewise, the Bureau of Democracy, Human Rights, and Labor has access to worker organisations globally which may be associated with US companies. Given the limited resources of the US NCP and strong expertise of members of the IWG, the IWG members suggested that they should take ownership with respect to promotion of the Guidelines and the NCP mechanism and could act as “ambassadors” for the Guidelines within their own departments and beyond.

¹⁰ US NCP Procedures for Specific Instances Under the OECD MNE Guidelines (2011), <https://www.state.gov/e/eb/oeecd/usncp/links/rls/166661.htm>

The US NCP is also supported by a Stakeholder Advisory Board (SAB). The SAB was formally established in 2012 as a sub-committee to the ACIEP based on a recommendation by the ACIEP. At the time of publication, members of the SAB include representatives of:

- Accountability Counsel
- AFL-CIO
- Barrick Gold
- Citibank (Business Vice-Chair)
- The Coca-Cola Company
- Cornell University
- International Association of Machinists and Aerospace Workers
- International Corporate Accountability Roundtable
- International Labor Rights Forum (ILRF)
- Medtronic Inc.
- University of California, Berkeley
- University of Oklahoma
- United States Council for International Business (USCIB)
- United Steelworkers Union (Civil Society Vice Chair)
- Yahoo!

The Federal Advisory Committee Act (FACA), under which the ACIEP and SAB are formed, requires that the committee membership be “fairly balanced in terms of the points of view represented and the functions to be performed.” The original composition of the SAB was recommended by the former chairs to the committee and approved by the EB Assistant Secretary as required under the FACA. At that time, the SAB included equal numbers of organisations from NGOs, trade unions, academia and business. In 2016, the SAB was restructured. Under the new structure the US NCP now serves as the chair, with two vice-chairs (one from civil society and one from business) The US NCP consulted with the SAB members when restructuring and sought their input on the [Terms of Reference, not all SAB members supported the new structure or the Terms of Reference](#). Currently six of the SAB members are from the business community, and six are civil society representatives, including representatives from labour, trade unions, and NGOs. There are also three members from academia. SAB members are appointed in their individual capacity. The number of members is not fixed and the SAB may be enlarged or reduced in size as necessary to meet its objectives as a subcommittee of the ACIEP.

The 2016 Terms of Reference note that SAB’s primary objectives are to advise on:

1. Promoting and facilitating the implementation of the OECD Guidelines for Multinational Enterprises.
2. Encouraging the use of the NCP Specific Instance process as a means to resolve disputes and promote RBC.

In this respect the SAB makes recommendations to the ACIEP on the four subjects:

1. **Fulfilling Commitments Regarding the US NCP:** Provide feedback on how the US NCP is fulfilling US commitments made at the OECD and provide specific recommendations on the US NCP's performance.
2. **Promoting of the Guidelines:** Identify opportunities for NCP outreach to and engagement with stakeholders; seek to aid in building NCP advocates within stakeholder networks; provide advice on public communication strategies and materials (website, social media, and traditional media).
3. **Engaging in the Implementation of the Guidelines** (known within the OECD as the "Proactive Agenda"): Identify current and potential issues of shared stakeholder interest and ways to engage stakeholders on the Proactive Agenda of the OECD.
4. **Handling of Specific Instances:** Provide feedback and recommendations on US NCP procedures and any proposed procedural changes, particularly in the Specific Instance process.

The current SAB members possess a high degree of understanding about the work of the NCP and the Guidelines generally. In addition to the above mandates, some SAB members noted having undertaken independent initiatives to increase awareness of the US NCP and the Guidelines such as organising awareness raising events or workshops in which the US NCP has participated.

In February 2014, the SAB developed and released an extensive report on the operations of the US NCP, which included 72 recommendations on how it could be improved.¹¹ The report included recommendations regarding the structure and monitoring of the US NCP; accessibility, transparency and confidentiality; promotional activities; involvement in the Proactive Agenda; and handling specific instances. Within the report significant divergences were cited between business and civil society representatives with respect to the recommended approaches to the US NCP; 34 of the recommendations included divergent suggestions. As no uniform agreement existed on the recommendations at the level of the SAB, the US NCP, in order to implement the recommendations, had to therefore pick one of the two divergent recommendations to implement. In 2016 the US NCP published a public letter to reflect how it has responded to these recommendations noting that it had completed or taken action on 71 of the 72 recommendations with a completion rate of 99 percent. In the case of divergent recommendations, the US NCP noted it made a case-by-case policy decision based on one of the recommendations made either by business or civil society and considered these issues completed.¹²

In 2016, the SAB structure was also updated in the terms of reference. Between 2012 and 2014, the US NCP did not participate in meetings of the SAB and the chair role was shared by two members of the SAB one representing business and one representing civil society (representatives from Medtronic Inc. and the International Association of Machinists and Aerospace Workers, serving in their personal capacities). Under the new terms of reference, representatives from business and civil society now serve as vice chairs and the role of chair is assigned to the senior official representing the US NCP. Some civil society members of

¹¹ Report of the US State Department Stakeholders Advisory Board (SAB) on Implementation of the OECD Guidelines for Multinational Enterprises, February 24, 2014 <https://www.state.gov/e/eb/adcom/aciep/rls/225959.htm>

¹² Letter to The Stakeholder Advisory Board to the US NCP from Melike Ann Yetken, US NCP, 18 November 2016 <http://www.state.gov/documents/organization/267202.pdf>

the SAB perceived that the new structure of the SAB changed its role and the nature of dialogue at SAB meetings.

Some SAB members have expressed concern about the steering of the SAB by the US NCP and requested that some level of co-chair structure be restored to the SAB. In this respect, with a view to retaining the confidence of civil society stakeholders the US NCP should ensure member increased input and ownership in the direction and meetings of the SAB. For example, providing the opportunity to SAB members to develop a meaningful portion of the agenda of SAB meetings can be one way of achieving this. Making sure that the recommendations of SAB members regarding the composition of the board be taken into account can be another way of achieving this. Promoting shared leadership of the SAB with members would help to ensure that the functionality of the body is not solely dependent on strong leadership at the level of the US NCP, but will also necessitate strong engagement from SAB members.

Resources

The Office of the US NCP does not have a designated budget; it works within the State Department budget process to receive necessary funds to meet its mandate. According to the US NCP, to date it has been able to meet its needs with the current financial and personnel resources. That said, the US NCP anticipates more specific instances in the future, and more outreach opportunities, and will continue to evaluate resource implications and opportunities to further its work.

Resources accorded to the work of the US NCP have grown over time. Since 2011, the US NCP team has grown from one full time official, to three staff members working full-time on US NCP issues. The mediation budget for specific instances has also grown since 2014 in order to cover the full costs of mediation and maintaining a travel budget. The third staff position within the US NCP exists only on a temporary basis and is usually filled by a rotating foreign service officer or contractor for a period of one year. In order to maintain the positive gains made by the US NCP, the US government should ensure that the US NCP continues to be staffed by at least one full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the United States and the global economic presence of US MNEs, an even larger team would be appropriate and recommended.

Reporting

The NCP regularly reports on its activities to the OECD Investment Committee in accordance with the Procedural Guidance. From 2015, the US NCP began to publicly share its annual reports on its website.

The US NCP does not have the obligation to regularly report on its activities to any national authority or body, however, it regularly provides updates and consults with the SAB and IWG, on its structure, promotion, and implementation activities.

Institutionalisation of processes

The US NCP has developed systems of information management to assist with staff turnover. This includes documenting and standardising the US NCP's specific instance process by publishing rules of procedure, creating templates for initial assessments, final statements, and correspondence with parties of specific instances. The US NCP has also developed a US NCP

Guide¹³, its published rules of procedure, which details how the US NCP Office operates and which can serve as resource for new staff, in addition to external stakeholders. The US NCP has also developed a shared document space where all documents related to specific instances and other US NCP activities are stored and an official email account where all documentation involving specific instances is maintained.

Findings	Recommendations
1.1 For many years prior to the 2011 update to the Guidelines, the US NCP was not active or visible but that there have been significant improvements in its functioning in recent years, particularly since assigning a senior full-time official to the role.	In order to maintain the positive gains made by the US NCP, the US government should ensure that the US NCP continues to be staffed by at least one full-time senior staff member and supported by at least two full-time, permanent, staff members. Given the size of the United States and the global economic presence of US MNEs, an even larger team would be appropriate and should be considered.
1.2 Some members of the IWG noted that they could be more proactive in promotion with respect to the US NCP throughout their own networks.	The IWG members should take more ownership with respect to promotion of the Guidelines and raising awareness of the NCP mechanism and IWG members should act as “ambassadors” for the Guidelines within their own departments and beyond.
1.3 Several civil society and labour members of the SAB expressed the perception that the new structure of the SAB changed its role and the nature of dialogue at SAB meetings.	With a view to retaining the confidence of its civil society and labour stakeholders, the US NCP should ensure members increased input and ownership in the direction and meetings of the SAB.

¹³ A Guide to the US NCP for the OECD Guidelines for Multinational Enterprises (2017) <https://www.state.gov/e/eb/oece/usncp/usncpguide/273553.htm>

5. Promotion of the guidelines

Information and promotional materials

In response to a commitment made in the US National Action Plan on RBC, which was published in December 2016, the US NCP has developed and published on its website a strategy for outreach. The strategy lays out criteria to take into account when considering promotional activities and includes metrics for how to measure the impact of promotional activities.

Criteria for outreach include:

1. **Audience:** How do the Guidelines relate to this audience (industry, civil society, academia, lawyers, etc.)? How many engagements has the US NCP done with this stakeholder group this year? Is this a new event/audience for the US NCP? Could OECD due diligence sector projects be relevant to this group?
2. **Location:** Does this help the US NCP reach new locations—and therefore new audiences—inside or outside the United States? Is travel to this location feasible given budgetary constraints?
3. **Follow-Up and Multiplier Effect:** Are there follow-up opportunities beyond this engagement? Could attendees be force-multipliers to spread information about the Guidelines and NCP beyond this meeting?
4. **Technology & Invitational Travel:** How can the NCP utilize technology to expand its reach and save financial resources? Is acceptance of particular travel invitations permissible under US government ethics rules?

Measurement criteria for the impact of outreach activities include:

- the number of participants and opportunities for follow-up engagement;
- peer learning and capacity building opportunities; and,
- the multiplier effect: publicity generated surrounding the US NCP's engagement.

Strategic outreach efforts have led the US NCP to pursue outreach with two new stakeholder groups: legal practitioners and academia. The objective of outreach to the legal community is to educate and sensitise legal practitioners to the NCP specific instance mechanism. The legal culture of the US has in the past led in-house counsel to approach the specific instance process as legal proceedings, creating challenges for promoting voluntary mediation of issues. Outreach to academia is conducted with the objective of raising awareness and interest in RBC amongst future business leaders. Many stakeholders also noted that increased outreach to potential users of the specific instance mechanism (such as NGOs, trade communities and local communities) is also needed. The NCP should focus more attention on awareness raising and relationship building with civil society. In this respect, specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The SAB and IWG could be instrumental in these outreach efforts.

Promotional materials

The NCP has developed various promotional materials to help raise awareness of the Guidelines and the role of the NCP.

A Guide to the US NCP was developed in 2015 and updated in 2017. The Guide includes information on the Guidelines, the US National Action Plan on RBC, due diligence, the mandate and organisation of the NCP, and the specific instance process. It also includes resources such as US specific instance statistics, specific instance submission guidance and frequently asked questions. This Guide is available on the website of the NCP.¹⁴

In 2017, the US NCP published testimonials from stakeholders about their experience with the US NCP process to build credibility with stakeholders unfamiliar with the USNCP as well as to encourage enterprises to participate in specific instance proceedings. These are also available on the website of the NCP.

The US NCP has also developed two short videos introducing the US NCP, the OECD Guidelines, and the specific instance process, in English and French, which are also available on the US NCP website.¹⁵

The US NCP has made efforts to produce promotional materials and improve its online presence (see below). It has also made efforts to use plain language in statements relating to specific instances in order to make the recommendations of the Guidelines and information around the NCP specific instance process as accessible as possible to the broader public.

The US NCP also coordinates the Secretary of State's Award for Corporate Excellence, which recognises US firms that uphold high standards of RBC. Stakeholders noted that the US NCP has been active in tying criteria associated with this award to respect of human rights to align with the recommendations of the Guidelines and the UN Guiding Principles for Business and Human Rights and that it has been helpful in raising awareness of the expectations of the Guidelines.

Website and Social Media

The US NCP developed a website after the 2011 update to the Guidelines. The homepage of the US NCP is part of the website of the US Department of State. The website is easy to find and navigate.

In addition to the information outlined above (see *Promotional materials*) the website also provides:

- Detailed contact information for the US NCP, TUAC and its US affiliate, BIAC and its US affiliate.
- All final statements of specific instances
- Upcoming and past events
- Links to the OECD Guidelines and additional useful resources

¹⁴ A Guide to the US NCP for the OECD Guidelines for Multinational Enterprises (2017), www.state.gov/e/eb/oecd/usncp/usncpguide/273553.htm

¹⁵ See www.state.gov/e/eb/oecd/usncp/index.htm and www.state.gov/e/eb/oecd/usncp/us/index.htm

The US NCP is active on social media to promote events, including through the Bureau of Economic and Business Affairs' Twitter account (@EconAtState).

Many stakeholders noted that establishment of the website and publication of a comprehensive range of information and promotional materials related to the US NCP has been important to enhancing transparency of the US NCP.

Promotional events

Between 2016 and August 2017, the US NCP participated in 51 promotional events, engaging with a total of 2,679 stakeholders to increase awareness of the NCP mechanism and the Guidelines. Events included:

- Nineteen events with the private sector
- Five events with members from civil society
- Five events with attorneys
- Six events with members from academia
- Nine events with NCP counterparts
- Seven events with US Government officials

Organisation of and participation in promotional events is dictated by the US NCP's outreach strategy (see above).

Stakeholders recognised that the US NCP has been very active in outreach. Some suggested further ideas which could help raise awareness of the Guidelines and US NCP amongst relevant stakeholders including:

- Engaging in outreach at the city and municipal level for example, at conferences of mayors and city governments to promote outreach amongst SMEs.
- Identifying "ambassadors" for the US NCP and Guidelines in the legal and business community.
- Engaging with US missions overseas to train foreign officers and promote outreach on the Guidelines amongst international communities which may be impacted by US business operations.
- Publishing further data and analysis with respect to specific instances (e.g. reasons why mediation is not accepted).

Promotion of policy coherence

In 2017, the United States launched a National Action Plan (NAP) on Responsible Business Conduct. This was the first NAP to be developed explicitly on RBC going beyond human rights issues and making a clear link to expectations under the Guidelines. Although there were many reasons why the United States decided to create a NAP on Responsible Business Conduct, one was in response to the UN Working Group's call to develop such a plan. The US NCP was part of the core team working on the NAP under the leadership of the White House, and engaged with stakeholders inside and outside the government to develop the NAP. Outcomes under the NAP related to the US NCP include: improving the performance

of the US NCP, increased outreach on RBC by the US NCP and publishing an outreach plan, and the commitment to undertake a peer review in the fall of 2017.

Another outcome under the NAP is conducting due diligence in US development funding and trade finance. This will involve development of enhanced procedure by the Overseas Private Investment Corporation (OPIC) and Export-Import Bank of the United States that require companies receiving their support to implement RBC principles. USAID will also develop a social safeguards screening questionnaire that international missions may use as an assessment tool when designing new projects to ensure due diligence on social and human rights issues. The development and implementation of the NAP also serves as a framework for coordination on RBC activities at the level of the US government.

In addition to outcomes under the NAP, the US NCP has engaged in capacity building for government officials on RBC. This has included developing training for US diplomats around the world, in order to further integrate instruction on RBC and the Guidelines into their work. The US NCP has also conducted trainings with labour officers, political officers, economic officers, and developed webinars for internal training purposes. The US NCP also hosts an annual mediation training on the Guidelines for its mediators and US government officials and IWG participants.

The US NCP also contributes to elevating RBC issues in the context of international agendas as well as domestic policy. For example, the US NCP was active in securing support from senior government officials for commitments related to the US NCP and Peer Reviews in the 2015 G7 Leaders Statement, the 2016 US NAP on RBC, and the 2017 G20 Labor and Employment Ministers Declaration.¹⁶ In the context of domestic policy, investment climate statements for specific geographies issued by the US Office for Investment Affairs now include a specific section on RBC. The Export-Import bank of the US has reported having formal processes in place for considering specific instance statements or reports from the US NCP. The IWG provides a good platform for collaborating on issues related to RBC across government offices (see above). In addition, several other US interagency working groups exist which treat issues related to RBC including groups working on implementation of the Sustainable Development Goals, combating human trafficking, and sustainable procurement. The US NCP sometimes participates directly in such bodies or may rely on participation by IWG members to ensure alignment with recommendations of the Guidelines.

The US NCP also coordinates with subject-matter experts within the US government to determine the best lead-officer to represent the US in various Proactive Agenda guidance processes (see below).

The US NCP's ability to raise the profile of the Guidelines and the NCP mechanism and promote government coordination on RBC can be partially attributed to the fact that the US NCP is represented by a senior official who oversees the broader RBC portfolio within the US government.

Cooperation with other NCPs

The US NCP regularly attends meetings of the Network of National Contact Points at the OECD and co-chaired the meeting of June 2016. The US NCP is also active in collaborating

¹⁶ G20 Labour and Employment Ministers Meeting 2017, Ministerial Declaration "Towards an Inclusive Future: Shaping the World of Work" (2017), www.g20.org/Content/EN/Artikel/2017/05_en/2017-05-17-g20-arbeitsministertreffen_en.html

with other NCPs to promote peer learning. To date, the US NCP has participated in four NCP peer reviews (Japan, Italy, Denmark, and Germany), as well as NCP Peer Learning activities in Austria, Hungary, Poland, Israel, Italy, and the United Nations Business and Human Rights Forum. In the margins of the on-site visit of the peer review, the US NCP also organised a two-day interactive workshop on mediation to which 14 NCP representatives and several members of the OECD Secretariat participated.

Engagement with the Proactive Agenda

As noted earlier, the US NCP engages in outreach to government officials to facilitate US involvement in Proactive Agenda projects at the OECD. Representatives from the US government participate in advisory groups for OECD projects on the garment and footwear sector, responsible mineral supply chains, and responsible agricultural supply chains. The NCP also regularly solicits the input of SAB members to inform the position of the United States with respect to deliverables developed under the Proactive Agenda and SAB members have participated directly in OECD Proactive Agenda projects.

Requests for information

The US NCP notes that it is available as a resource to stakeholders from business, labour unions, NGOs, the general public, academia, and international organisations on its website and in the US NCP Guide. The ability to approach the US NCP with enquiries about the Guidelines, short of filing a specific instance, is not clearly outlined in promotional materials. Business stakeholders noted they did not typically approach the US NCP with questions around RBC issues, although many stakeholders recognised a high degree of expertise on these issues amongst NCP staff. More clearly advertising the US NCPs ability to discuss and provide support on issues of responsible business conduct for stakeholders, including outside of a Specific Instance process, could be an important opportunity.

	Findings	Recommendations
2.1	Many stakeholders noted that increased outreach to potential users of the specific instance mechanism (such as NGOs, local communities) is important.	The US NCP should focus more attention on awareness raising of the Guidelines and the NCP mechanism with civil society. In this respect, specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The SAB and IWG could be instrumental in these outreach efforts.

6. Specific instances

Overview

The US NCP has handled 45 cases since 2000 – the second highest number of cases among NCPs globally. Of these, 18 were filed since 2012. (See Annex E)

Stakeholders noted that from 2000-2011 the US NCP was not responsive or effective in handling specific instances.

Since the update of the Guidelines in 2011 significant efforts have been made to improve the specific instance process including: developing detailed rules of procedure; conducting thorough initial assessments and clearly explaining why submissions are not accepted for further examination based on criteria provided in the Procedural Guidance; organising informational meetings with parties to explain the process and encourage engagement; engaging professional mediators and involving subject matter experts from the government were needed. These efforts are beginning to generate stakeholder's confidence in the process and recent parties to the specific instance process have noted a high level of satisfaction with the professionalism of the US NCP in handling specific instances and identified tangible positive outcomes from the process.

US NCP Rules of Procedure

The US NCP published written procedures explaining how to use the US NCP mediation mechanism after the 2011 update to the Guidelines. (See Annex C for detailed flow-chart of the US NCP's specific instance procedure.) These procedures are easily accessible on the website of the NCP and available in English, French and Spanish. The US NCP uses plain language in order to ensure its procedures are easily accessible and understandable and to demystify the specific instance process.

Submission of Specific Instances

The US NCP has detailed guidance on its website on how to develop a specific instance, including a template identifying broadly which information should be provided in a submission.¹⁷ This guidance also includes a detailed description of the US NCP's confidentiality policy (see section on *Confidentiality and Transparency*). The US NCP also encourages parties to reach out prior to submitting a specific instance so that they can better understand the process and how to develop a complete submission.

The US NCP Guide notes that submitters of a specific instance 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 which chapters or paragraphs in the Guidelines they allege have been breached by the company.

According to the US NCP Guide, upon receiving a specific instance submission, the US NCP confirms receipt of the submission and provides further information on the Guidelines, the role of the US NCP and its procedures, and the role of other NCPs as appropriate. The US

¹⁷ See US National Point Specific Instance Submission Guidance, <https://www.state.gov/e/eb/oeed/usncp/specificinstance/filing/index.htm>

NCP may provide technical support to submitting parties if their submission is incomplete or unclear. If applicable, the US NCP requests a designated point of contact for further correspondence. The US NCP also informs the relevant company(ies) of the submission and provides the accompanying information.¹⁸

In order to encourage company participation in the specific instance process, the US NCP has noted that it invests time in identifying the correct contact person within a company such as a sustainability or corporate social responsibility manager. Additionally, the US NCP takes time to speak with all parties to clearly explain the nature of the process. Parties to specific instances noted that the US NCP was effective in clearly communicating the nature of the process and managing expectations. As noted earlier, the US NCP has also made efforts to demystify the specific instance process by developing promotional materials and engaging in outreach to the legal community and business (see *Promotional events*). Several stakeholders noted that these efforts have helped to improve receptiveness to engagement in the specific instance process by companies.

Once a response is submitted by the company, the US NCP then circulates the submission to members of the IWG including members of other US government agencies or departments to discuss the submission, see if the issue raised is pending in any other proceeding involving their agency, and discuss and/or propose a way forward. Subject matter experts from the IWG may be specifically approached to provide additional context or expertise with respect to the submission as relevant. Members of the IWG all commented that this coordination and engagement works well.

Initial assessment

The US NCP's initial assessment of a specific instance determines whether the issues raised merit an offer of mediation, in line with the Procedural Guidance. The US NCP undertakes the initial assessment in consultation with the IWG and assesses submissions using the following criteria:

- whether the matter is international in nature;
- whether the issues raised are bona fide and relevant to the implementation of the Guidelines, taking into account:
 - the identity of the party concerned and its interest in the matter;
 - whether the issue is material and substantiated;
 - whether there seems to be a link between the enterprise's activities and the issue(s) raised;
 - the relevance of applicable law and procedures, including court rulings;
 - how similar issues have been or are being treated in other domestic or international proceedings;
- where the issues raised are also being considered in another forum, whether offering assistance at this time would make a positive contribution to the resolution of the

¹⁸See US NCP Procedures for Specific Instances Under the OECD MNE Guidelines, <https://www.state.gov/e/eb/oecd/usncp/links/rls/166661.htm>

issues raised and would not create serious prejudice for any party involved in this or any other proceeding or cause a contempt of court situation.

In reaching an initial assessment the NCP consults with the IWG. The NCP holds the decision-making power on whether or not to offer mediation but in practice this decision has always aligned with the position of the IWG.

Out of the 45 specific instances handled by the US NCP since 2000, 19 were not accepted for further examination,¹⁹ 18 were accepted for further examination,²⁰ and 8 were withdrawn prior to initial assessment.²¹ A number of these specific instances were withdrawn as parties were able to reach agreement through parallel proceedings in other US dispute resolution systems.

Reasons provided for not accepting the 19 specific instances were as follows:

- In **one** specific instance: it would not advance the implementation of the Guidelines as it would entail examination of state conduct²²
- In **three** specific instances: Not substantiated²³
- In **one** specific instance: the submitter refused to engage with the Lead NCP of the Specific Instance.²⁴
- In **one** specific instance: Violation of confidentiality policy²⁵
- In **four** specific instances: Not amenable to resolution under the Guidelines²⁶
- In **one** specific instance: No international linkage²⁷
- In **two** specific instance: No investment nexus²⁸

¹⁹ See footnotes 22-30 for specific instances referenced.

²⁰ See footnotes 32-36 for specific instances referenced.

²¹ LSG Sky Chefs and UNITE HERE (2011); United Water and UWUA (2011) General Mills Korea and Haagen Dazs Korea and Korean Federation of Trade Unions (2009); Voestapline AG (VAE) in Birmingham and Alabama Brotherhood of Maintenance of Way Employees Division (DMWED) (2006); National Wire Fabric and Steelworkers of America (2006); French company Saint-Gobain's facility in Worchester, Massachusetts and AFL-CIO (2003); Brylane and AFL-CIO (2002); IMERYYS and PACE (2000)

²² The Boeing Company and European Centre for Democracy and Human Rights (2016)

²³ Herkales and Greenpeace (2014); Johnson and Johnson and FFW (2013); AES Corporation and Teumagnie (2011)

²⁴ Abbott Laboratories and Korean Federation of Trade Unions (2009)

²⁵ MNEs and Hungarian Resident (2011)

²⁶ Roquette and IUF (2011); Dole Foods and International Labor Rights Forum (2010); Papua New Guinea, CTP Holdings and Cargill (2010); Hyatt Regency and IUF (2009)

²⁷ Usibelli Coal Mine, Inc. and Chicaloon Native Village Traditional Council (2011)

²⁸ Delta Airlines and Association of Flight Attendants CWA (AFA) (2008); Angelica Textile Services and UNITE HERE (2004)

- In **one** specific instances: Lack of engagement from participants²⁹
- In **five** specific instances: The issues raised were being addressed through other means³⁰

It should be noted that, prior to the 2011 Guidelines update, the criteria for accepting specific instances was different on issues such as parallel proceedings, investment nexus, etc.

Since 2011 the NCP has been active in including detailed analysis and explanation of initial assessment in final statements.

Good offices

According to the US NCP Guide, if both parties agree to participate, the US NCP assists with mediation or otherwise facilitates a resolution to the issues raised through its offer of mediation.

In practice, the US NCP encourages companies to participate in the specific instance process especially when mediation is offered. Getting companies to agree to mediation when offered has been a challenge. Since 2012, in 67 % of specific instances which were offered mediation no mediation took place because the company refused to engage in the offer of mediation.³¹ The NCP has used outreach and introductory meetings with parties to demystify the process to further encourage participation, as well as more robust engagement procedures during the Initial Assessment and pre-mediation phase. This has achieved some noteworthy results. In one case, outreach by the NCP to explain the specific instance process resulted in a company requesting reopening of mediation by the NCP it had previously rejected (see Box 1). Several civil society and trade union stakeholders were of the view that the NCP's confidentiality policy (see below) along with lack of consequences attached to non-participation in mediation do not incentivise participation in mediation by companies.

The US NCP should consider additional efforts to encourage companies to participate in mediation. Publicising existing processes which take into account final statements produced by the NCP such as in the context of the Export-Import Bank of the US (see *Confidentiality and Transparency*) and continuing to publicise potential positive outcomes of the process may be helpful in promoting increased participation in the process. Systematically seeking feedback from companies who refuse to engage in mediation or surveying business communities on this issue may contribute to a better understanding of the specific reasons companies may not wish to engage in the process and identify potential approaches to overcoming this issue.

According to the NCP Guide, mediation or facilitation can take any form the parties and the NCP agree would be beneficial to reaching a consensual resolution. The NCP has been using professional mediators since the 2011 update of the Guidelines. In this respect the NCP offers the services of mediators employed by the Federal Mediation and Conciliation Service (FMCS) or the Consensus Building Institute (CBI). FMCS is an independent US government agency specialised in resolving labour-management conflicts domestically and abroad. CBI

²⁹ Tire North America and United Steelworkers Union (2006)

³⁰ Motors Limited and GKM (2011); Cabot Corporation and Friends of the Earth and RAID (2004); Adidas and Nike and Clean Clothes Campaign (2002); Liberian International Ship and Corporate Registry and International Transport Workers Federation (2001); Trico Marine Services, Inc. and Seafarers International Union (2001)

³¹ See footnote 1

is a not-for-profit organisation founded in 1993 by practitioners and theorists in the fields of negotiation and dispute resolution. CBI services had not been used yet for a mediation at the time of the peer review on-site visit.

Box 1. Starwood Hotels & Resorts Worldwide and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)

In 2015 IUF submitted a specific instance to the NCP alleging conduct inconsistent with the Guidelines' chapters on General Policies, Human Rights and Employment and Industrial Relations by Starwood affiliates in the Maldives and Ethiopia. The NCP offered mediation which was accepted by both parties. Both parties to the specific instances noted that the NCP handled the specific instance professionally and that they were satisfied with the outcomes and final statement.

A party to the case noted that it was a useful process and that they would recommend it to others, particularly as an alternative to legal avenues. Both parties noted that the mediation could be improved through using mediators with a stronger understanding of the Guidelines, particularly international human rights and labour standards.

The final statement for the case noted that "the parties have reached full resolution of the concerns raised by IUF pertaining to the discharge of workers and the collective bargaining process at the Sheraton Addis Ababa hotel." In regards to Sheraton Maldives, the parties agreed to reconvene to continue to explore options in good faith to resolve the matter." In its final statement, the NCP also recommended that Starwood review their human rights policies and supplier code of conduct to make reference to the guidance on responsible business conduct available in the OECD Guidelines and indicated it would follow up with the parties within a year.

Mediators are selected on a case-by-case basis in accordance with their individual expertise with respect to issues raised in submissions. The US NCP offers each of the parties an information session during which they are consulted about the selected mediators, can raise any questions or concerns about the mediation process, and can get to know the mediators. Several parties which participated in a mediation through the US NCP noted that mediators handling the specific instance did not have a strong grasp of the recommendations of the Guidelines, particularly on the chapters related to international labour and human rights standards and that, at times, mediators used national labour standards as the reference for dialogue.

The US NCP has made attempts to respond to this feedback and has been active in trying to enhance the capacity of mediators with respect to the Guidelines by hiring the services of CBI and organising trainings. It has also worked to expand the pool of mediators available for specific instances so that parties may have more options in selecting a mediator. In order to promote strong outcomes from mediation the US NCP should ensure that the Guidelines are the standard used as a reference in mediation discussions and that mediators are knowledgeable about the Guidelines. In this respect, the US NCP should continue to build the capacity of mediators with respect to recommendations of the Guidelines and should continue to take an active role during the preparatory phase of mediation in clearly articulating the expectations of the Guidelines with respect to issues raised.

The NCP has been creative in developing arrangements to allow for remote participation of parties to mediation. When needed the NCP provides video and/or tele conferencing for parties who are unable to attend mediations in person. The NCP takes part in all mediations as an observer. (See Box 2).

Box 2. Herakles Farms' affiliate SG Sustainable Oils Cameroon (SGSOC) and Center for Environment and Development (CED)

In June 2013 the NCP received a specific instance from the NGOs' Center for Environment and Development (CED) and Network to Fight against Hunger (RELUFa) alleging that Herakles Farms' affiliate SG Sustainable Oils Cameroon (SGSOC) based in Cameroon had not observed the combating bribery chapter of the Guidelines. The NCP offered its confidential mediation services to assist the parties in seeking a mutually agreeable resolution to the issues raised.

The mediation sessions, facilitated by the US Federal Mediation Conciliation Service (FMCS), started in 2014 with separate sessions over the phone culminating in final joint in-person sessions held on June 16-17, 2015. The final mediation session took place via video-conference, with the mediators based in Washington and a local mediator in Cameroon communicating with the parties convened in Cameroon. In order to facilitate interpretation and mediation expertise on the ground, a local mediator was also appointed. The NCP led the organisation of all aspects of the mediation to make the transnational mediation possible.

The mediation successfully concluded with a mutually agreed upon agreement signed by all parties which was published as an annex to the final statement for the case. A party to the specific instance participating in the on-site visit noted a high degree of satisfaction with the NCP's support in handling the process and the outcomes achieved. In addition to the agreed to terms, the process also led to greater awareness of the recommendations of the Guidelines at the level of the company, and management changes to improve implementation of recommendations of the Guidelines. It also resulted in stronger relationships between the community and SGSOC who now meet quarterly.

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. Some civil society stakeholders have noted that the usage of a non-disclosure agreement discourages potential users of the system from submitting specific instances and contributes to likening the process to a legal proceeding. (See section on *Confidentiality and Transparency*).

Members of the IWG are not present during mediation but are updated on the outcomes (to the extent permitted by the confidentiality policy) by the NCP. The NCP will coordinate with the IWG, as well as other 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.

The United States is the second-most utilized NCP around the world, accounting for approximately 11% of all specific instances submitted since 2000. Out of the 45 specific instances submitted to the NCP since 2000, mediation has been offered in 12 specific instances (27%). (Out of the 18 specific instances submitted to the NCP since the 2011 update to the Guidelines, mediation has been offered in 10 specific instances (56%).) Since 2000,

six other specific instances were accepted for further examination but mediation was not offered.³²

Out of 12 the cases where mediation was offered:

- In **two** specific instances mediation resulted in an agreement between the parties.³³
- In **one** specific instance mediation did not result in an agreement despite willingness of both parties to engage, but did result in policy changes by the company.³⁴
- In **eight** specific instances the company did not accept the offer of mediation³⁵
- In **one** specific instance parties were undergoing mediation in a separate process with the same mediators used by the NCP and as such the NCP deferred offer of mediation until that process was completed.³⁶

If an agreement is reached in mediation, parties will sign an outcome document reflecting the items agreed to and asked to indicate what wording, statement, or documents can be made public in the final statement (see below).

Parties which engaged in mediation through the US NCP all praised the responsiveness, professionalism and expertise of the US NCP in handling the case. All parties at the peer review noted they would use the mechanism again and many, as a result of their positive experience, have been active in promoting the NCP mechanism amongst their networks. The outcomes of mediated specific instances as well as the strong endorsements by parties which have been involved in the proceedings indicate the potential for strong performance of the US NCP in mediating resolution to the issues raised.

Box 3. PepsiCo and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Works' Associations (IUF).

In 2013 the IUF submitted a specific instance alleging that PepsiCo India, a subsidiary of PepsiCo Inc. did not observe the recommendations of the Employment and industrial relations chapter of the Guidelines. Initially PepsiCo responded that it had already engaged in discussions directly with the IUF and because agreement on the issues in question could not be reached, PepsiCo declined the NCP's offer of mediation. However in November 2015, PepsiCo reached out to the US NCP to ask if mediation would still be offered and available and both parties returned to the table. The initiative to recommence the process occurred

³² Mondelez Pakistan Limited and IUF (2013) Innospec and LEAD Group (2011); Wackenhut Corporation and UNI Global Union (2004); Reynolds American and IUF (2006); Three mile Canyon Farms in Oregon and United Farm Workers of America (2005); N/A and Numerous NGOs (2002).

³³ Starwood Hotels & Resorts and IUF (2015) and Herakles Farms and CED (2013)

³⁴ Pepsico and IUF (2013)

³⁵ Grupo Mexico and USW (2016); Crown Holding and USW (2014); Nissan Motor Car and United Auto Workers of America (2014); Mondelez and IUF (Egypt and Tunisia) (2013); Deutsche Telekom AG and CW (2011); American Sugar Refiners and CLEC (2012); IMERYYS and PACE (2004); Chef Solution and United Auto Workers (2003)

³⁶ Bodega Latina (El Super) and United Food & Commercial Workers (2016)

after a representative from PepsiCo attended an event during which the US NCP explained in more detail the nature and possible outcomes of the specific instance process.

Both parties to the specific instance noted that the US NCP was professional and responsive in handling the specific instance and that the US NCP possessed a high degree of expertise on the issues. Although they were not able to reach a mediated agreement, after the second attempt the parties found the dialogue and mediation process to be productive and useful and noted they would recommend the process to others.

In 2016, the US NCP released a final statement concluding the specific instance in which it recommended that PepsiCo update its Human Rights Workplace Policy, committing itself explicitly to the Guidelines and incorporating the human rights and labour chapters of the Guidelines as the standard for PepsiCo activities. The US NCP expressed its hopes that PepsiCo's efforts would help promote the Guidelines by ensuring workers in PepsiCo supplier and contractor sites are able to fully exercise their human rights without fear of retaliation. Parties noted that their comments had been adequately reflected in the final statement.

Reporting on specific instances

At the completion of a specific instance process, a final statement is published on the US NCP website detailing the proceedings and the results of the specific instance. The US NCP also tweets a link to the final statement and sends it to members of the IWG and SAB.

According to the US NCP Guide and in line with the Procedural Guidance 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;
 - information on allegations made, including which Guidelines chapters were cited in the specific instance submission
- Role of other NCPs, if applicable, and the role of IWG;
- If applicable:
 - information detailing the decision to offer or not 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 summarises the outcome;
 - the reason why the mediation talks ended without an agreement;
- If applicable and deemed appropriate by the NCP, recommendations as to how the Guidelines are to be implemented.

The US NCP has developed a streamlined template for final statements to standardise the specific instance process outcomes.

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 US NCP has the discretion to make any necessary changes before publishing the final version of the statement. Parties which participated in the peer review all noted that they felt their comments were adequately reflected in final statements by the US NCP. One noted that development of the final statement was a useful extension of

the specific instance process as it facilitated in understanding where gaps in agreement still existed between the parties.

Nothing discussed during mediation will be included in the final statement without the agreement of both parties, as set out in the confidentiality policy. Likewise, the final statement will protect information deemed to be sensitive by either party. However, 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.

Final statements have been published for all specific instances handled since the 2011 update of the Guidelines.

Ten out of the 13 specific instances accepted for further examination since the 2011 update of the Guidelines include recommendations in their final statements.³⁷ Many recommendations included in final statements encourage companies to continue dialogue or revisit their RBC policy. Stakeholders noted that the final statements of the US NCP have been improving in quality and most noted satisfaction with the recommendations included in recent final statements. One stakeholder noted that the recommendations are limited to company policies or processes.

Publishing an initial assessment is not required under the Procedural Guidance and the US NCP chooses not to do so. Some stakeholders that may file specific instances noted that publishing initial assessments could help improve transparency with respect to specific instance proceedings. The US NCP has certain confidentiality requirements from the point of filing of a complaint—specifically it asks that submitters do not share the text of the Specific Instance publically—but they can reference the filing of a specific instance and the issues raised. (See *Confidentiality and Transparency*, below).

Follow-up

Following the conclusion of the proceedings, the US NCP considers requests by the parties to follow up or monitor the implementation of an agreement reached or recommendations made by the US NCP. According to the US NCP, such monitoring is done at the discretion of the US NCP on an exceptional basis and only as resources allow.

Where follow up is undertaken one year after successful mediation, each party is asked to submit a confidential report to the US NCP on the status of the agreement. To date, the US NCP has conducted follow up on the two specific instances resulting in agreement between the parties.³⁸ Through a formal letter of request via email, the US NCP asked all parties to submit a confidential update to the US NCP, specifically on:

- the status of the implementation of the agreement;
- the summary of the recommendations taken into effect since the final statement;

³⁷ The Boeing Company and European Centre for Democracy and Human Rights (2016); Grupo Mexico and USW (2016); Bodega Latina (El Super) and United Food & Commercial Workers (2016); Starwood Hotels & Resorts Worldwide and IUF (2016); Pepsico and IUF (2013); Crown Holdings, Inc. and USW (2014); Nissan Motor Co and United Auto Workers of America (2014); Mondelez Pakistan and IUF (2013) Mondelez and IUF (2013); American Sugar Refiners Inc. (ASR) and CLEC (2012)

³⁸ Starwood Hotels & Resorts Worldwide and IUF (2016); Herakles Farms and CED (2013)

- any continued conversation between the involved parties; and,
- any other relevant information.

Follow up information provided was shared with all parties. No parties have requested the NCP re-engage in mediation discussions. Many stakeholders participating in the peer review noted that follow up is a useful activity to ensure meaningful outcomes are achieved through the specific process.

Feedback

At the conclusion of mediation, the US NCP and its mediators ask parties to fill out a survey of the mediation process. Additionally, the US NCP contacts the parties to seek feedback on the process and what can be improved. Informal engagement with the parties on feedback also happens between the NCP and the parties throughout the process.

Timeliness

Target timelines for different stages of the process are provided in the US NCP Guide and are as follows:

- 1 week for the submission phase
- 3 months for initial assessment
- 6 months for mediation
- 3 months for conclusion of the proceedings

In line with the Procedural Guidance, the US NCP has a general goal of publishing a final statement within one year of the submission of a specific instance. However, according to the US NCP, this timeline varies from case to case depending on a number of factors, including whether the specific instance goes to mediation and how long the mediation lasts. The US NCP also notes that experience has 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.

Of the 18 specific instances handled by the US NCP since the 2011 update of the Guidelines, the initial assessment phase exceeded three months in 11 specific instances³⁹ (in two of these initial assessment exceeded one year).⁴⁰ In four specific instances initial assessment was completed within three months.⁴¹ Information on the time frames for initial assessment is not

³⁹ The Boeing Company and European Centre for Democracy and Human Rights (2016); Grupo Mexico and USW (2016); Bodega Latina (El Super) and UFCW (2015); Starwood Hotels & Resorts and IUF (2015); Herakles Farms and CED (2013); Nissan Motor Co and United Auto Workers of America (2014); Johnson & Johnson, Inc. and Federation of Free Workers (2013); Mondelez Ltd. and IUF (2013); Deutsche Telekom AG and CW (2011); AES Corporation and Mr. Teumagnie (2011); MNE and Hungarian resident and Company (2011)

⁴⁰ Deutsche Telekom AG and CW (2011); AES Corporation and Mr. Teumagnie (2011)

⁴¹ PepsiCo and IUF (2013); Herakles and Greenpeace (2014); American Sugar Refiners Inc. and CLEC (2012); LSG Sky Chefs and AFL-CIO (2011)

available for the remaining three specific instances.⁴² The US NCP has noted that additional time during initial assessment phases was provided to allow parties necessary time to engage and respond.

Most specific instances handled since the 2011 update to the Guidelines have been closed within approximately one year. In two specific instances, the process took over two years.⁴³

Confidentiality and transparency

The US NCP Guide provides that, once the specific instance proceedings begin, (i.e. the submission of the specific instance), complete confidentiality of communications with the NCP and between the parties and of sensitive business information is expected. Specifically, the “NCP will treat as confidential all information which is communicated to the US NCP by a party to a specific instance, subject to any disclosures required by US law, except that it will be communicated to the other party[ies] to the specific instance, unless the providing party expressly requests that the information not be disclosed to any other party and provides a compelling reason for such nondisclosure.”

The US NCP Guide further notes that a failure to honour confidentiality expectations will be considered bad faith and may lead to the immediate termination of the US NCP’s involvement in a specific instance.

Parties may publicly reference the existence of the specific instance (the fact that it was submitted), but should not disclose any non-public information learned during the NCP process. The US NCP submission guidance further provides that the specific instance submission itself is not for public dissemination.

According to the US NCP Guide, “[t]he US 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.” According to the US NCP, cessation of campaigning is something that is encouraged rather than required.

When necessary, the US NCP includes an assessment of whether parties respected their confidentiality policy in final statements. In one specific instance it has terminated proceedings due to parties not respecting the confidentiality policy.⁴⁴

Many NGOs and trade union stakeholders participating in the peer review were of the view that the confidentiality policy of the US NCP was overly restrictive. Specifically, they noted that having rules against publishing the specific instance submission and the US NCP choosing not to publish the initial assessment diminishes transparency of the process. They also noted that the policy discourages submitters from communicating to their membership or communities (as relevant) about the specific instance and has given rise to allegations of bad faith behaviour against them for communicating information related to the specific instance which was not learned during the course of the proceedings. They noted that the provisions on confidentiality and campaigning were seen as a deterrent to some potential submitters of specific instances.

⁴² Crown Holdings and USW (2014); Mondelez Pakistan td. And IUF (2013); Innospec and LEAD Group (2011)

⁴³ Herakles Farms and CED (2013); Deutsche Telekom AG and CW (2011)

⁴⁴ MNE and Hungarian Resident and Company (2011)

Out of the companies who participated in mediation with the US NCP and provided feedback during the peer review, two stated that publication of the initial specific instance submission would have not affected their decision to engage with the process. The third company who participated in mediation stated that maintaining confidentiality of the submission was important to building trust in the process.

While the Procedural Guidance identifies specific types of information which may need to be kept confidential during certain times in the specific instance proceedings, transparency is recognised as a core criteria for the functional equivalence of an NCP. As such, an NCP should ensure that its rules around confidentiality are transparency-driven, i.e. that they promote transparency to the greatest extent possible, and equitable, i.e. any rules around confidentiality and campaigning should take into account the preferences and needs of both parties.

Parallel proceedings

In line with the Procedural Guidance, NCP rules of procedure clearly note that neither the existence nor the availability of a “parallel proceeding” to resolve the issues raised prevent an NCP’s involvement where offering mediation would contribute to a positive resolution and to the purposes and effectiveness of the Guidelines. Six specific instances have been accepted for further examination during parallel proceedings.⁴⁵ Since the update the Guidelines in 2011, no specific instances were refused due to parallel proceedings.

Cooperation with other NCPs

The US NCP informs any relevant NCPs of the receipt of a specific instance submission they may have an interest in and forwards a copy of the submission. If it is determined that the US NCP should not take the lead, the US NCP informs the parties of this fact and refers them to the appropriate lead NCP. In these cases the US NCP will continue to consult with the lead NCP and provide assistance, as appropriate.⁴⁶ Since 2012, the US NCP has consulted on approximately nine cases where other NCPs have led.

Findings	Recommendations
3.1 Some parties to specific instances noted that mediators did not have a strong grasp of the recommendations of the Guidelines, particularly international labour and human rights standards.	In order to promote strong outcomes from mediation the US NCP should ensure that the Guidelines are the standard used as a reference in mediation discussions and that mediators are knowledgeable about the Guidelines.
3.2 In practice, encouraging companies to participate in the mediation process has been a challenge. The NCP has made efforts respond to this challenge through engaging in outreach to the business community to demystify the process, as well as more robust engagement procedures during the Initial Assessment and pre-mediation phases.	The US NCP should consider additional efforts to encourage companies to participate in mediation and set up a process to better understand why companies are hesitate to engage and how they can be encouraged to.
3.3 Provisions on confidentiality and campaigning were seen by some stakeholders as a deterrent to some potential submitters of specific instances.	The US NCP should ensure that its position around confidentiality and campaigning is equitable, meaning the preferences and needs of both parties should be taken into account, and promotes transparency to the greatest extent possible.

⁴⁵ Bodega Latina (El Super) and United Food & Commercial Workers (2016); Crown Holdings, Inc. and USW (2014); Mondelez Pakistan Ltd. and IUF (2013); American Sugar Refiners Inc. (ASR) and CLEC (2012); LSG Sky Chefs and AFL-CIO (2011); United Water and UWUA (2011)

⁴⁶ <https://www.state.gov/e/eb/oecd/usncp/links/rls/166661.htm>

Annex A. List of organisations which responded to the NCP peer review questionnaire

Business
Barrick Gold Inc.
Citibank
The Coca-Cola Company
Crown Holdings, Inc.
Foley Hoag LLP
Herakles Farm
Hewlett-Packard (HP)
Lockheed Martin
LSG SKY Chefs
Medtronic Inc.
PepsiCo.
Starwood Hotels & Resorts
US Council for International Business (USCIB)
Yahoo!
NGO
Accountability Counsel
International Corporate Accountability Roundtable (ICAR)
Labor
International Labor Rights Forum (ILF)
The Lead Group
The American Federation of Labor - Congress of Industrial Organizations (AFL-CIO)
Birlesik Metal İşçileri Sendikası
IndustriALL Global Union
International Association of Machinists and Aerospace Workers
International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW)
Trade Union Advisory Committee to the OECD (TUAC)
United Steelworkers Union (USW)
Academia
Cornell University
University of California Berkeley Haas School of Business
University of Oklahoma College of Law

Annex B. List of organisations that participated in the on-site visit

Government

1. US Agency for International Development
2. Office of the US Trade Representative
3. General Services Administration
4. Department of State, Economic and Business Affairs
5. Department of State, US Mission to the OECD
6. Millennium Challenge Corporation
7. Department of Labor
8. Department of State, Democracy, Human Rights and Labor
9. Department of State, Energy and Natural Resources
10. Export Import Bank
11. Department of State, Office of the Legal Adviser
12. Department of the Treasury

Business

1. Arent Fox LLP
2. Hewlett Packard
3. The Boeing Company
4. Barrick Gold
5. Medtronic, Inc.
6. US Council for International Business
7. Citi
8. The Walt Disney Company
9. Yahoo!
10. The Coca-Cola Company
11. Marriott International
12. PepsiCo.
13. SG Sustainable Oils Cameroon (SGSOC), Herakles Farms

NGO and Academia

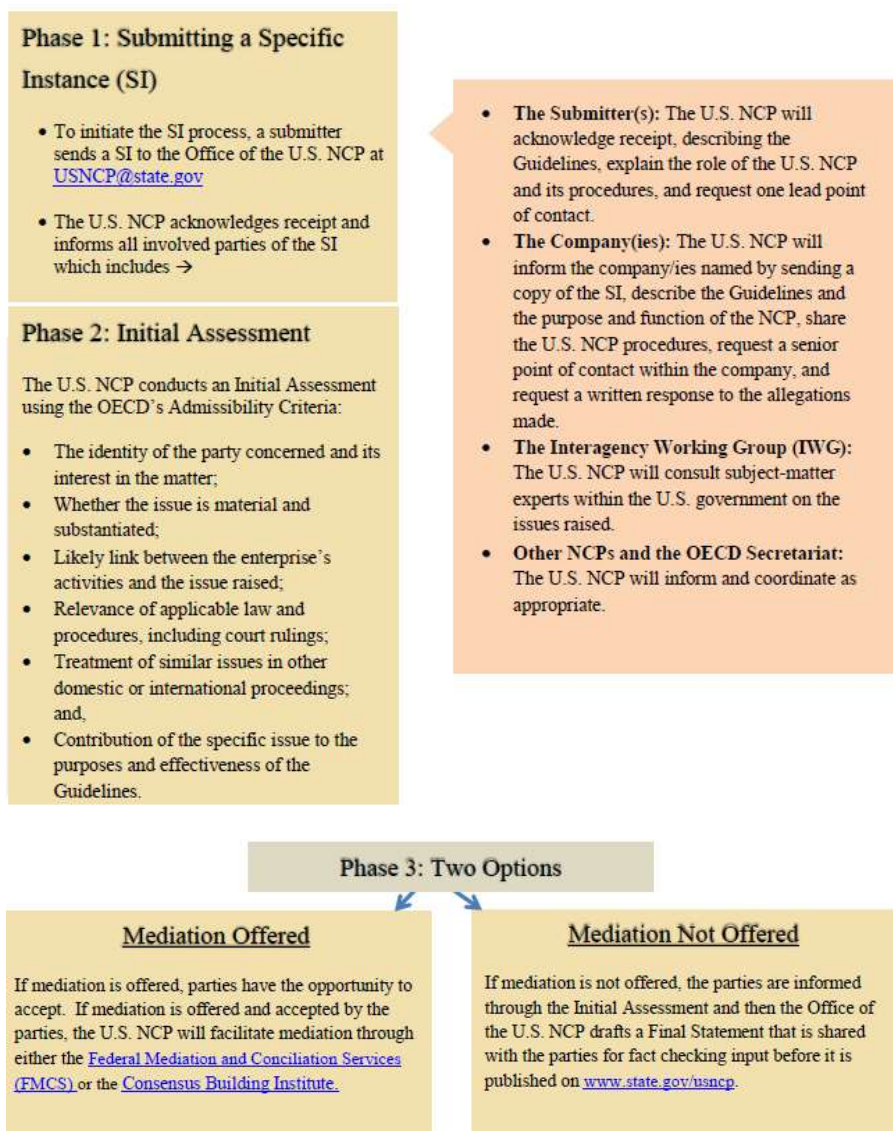
1. Accountability Counsel
2. Center for International and Environmental Law (CIEL)

3. MSI Integrity
4. International Labor Rights Forum (ILRF)
5. International Corporate Accountability Roundtable (ICAR)
6. OECD Watch
7. University of Oklahoma School of Law
8. Cornell University
9. Center for Environment and Development (CED)

Labor

1. United Food and Commercial Workers
2. AFL-CIO
3. International Association of Machinists and Aerospace Workers
4. United Steelworkers
5. United Automobile Workers (UAW)
6. Federation of Free Workers
7. UNITE HERE
8. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Annex C. Detailed flow-chart of the US NCP's specific instance procedure



Annex D. Promotional events 2017

NCP-organised and co-organised events to promote the Guidelines and/or the NCP

Title	Date (dd/mm/yyyy)	Location	Type of event	Size of audience	Organised or co-organised?	Targeted audience <i>e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc.</i>	Theme <i>e.g. the OECD Guidelines, the NCP activities on sector due diligence guidance documents, etc.</i>
Webinar with US Embassies on RBC	16 February 2017	Washington DC	Webinar	50-100	Organised	US economic officers at embassies and consulates	One hour webinar on the US NCP, the OECD Guidelines, and RBC
RBC Briefing for Legal Experts	22 February 2017	Washington DC	Meeting	>100	Co-organised	Law professionals	US NCP and the OECD Guidelines
BSR Human Rights Working Group	28 July 2017	Washington DC	Meeting	10-50	Co-organised	BSR professionals and their clients	US NCP and the OECD Guidelines

Total number= 3

Presentations by the NCP to promote the Guidelines and/or the NCP in events organised by others

Title	Date (dd/mm/yyyy)	Location	Type of event	Size of audience	Targeted audience <i>e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc</i>	Organiser(s)	Type of intervention	Theme of the intervention
The US National Action Plan on Responsible Business Conduct: Initial Reflections on the Way Here and the Road Ahead	12 January 2017	American University Washington College of Law, Washington DC	Conference	50-100	Business representatives, NGOs, Trade unions, Academia, General public, Government representatives	American University, International Corporate Accountability Roundtable	Panelist	US NAP on RBC
Global Reporting Initiative Reporters' Summit	13 February 2017	Phoenix, Arizona	Conference	>100	Business representatives	GRI	Keynote	US NCP and the OECD Guidelines
AIM-Progress	24 February 2017	Atlanta Georgia	Conference	>100	Business representatives	AIM-PROGRESS	Remarks	US NCP and the OECD Guidelines
Vigeo Eiris Briefing	6 March 2017	Paris, France	Meeting	50-100	Social auditors, business representatives	Vigeo Eiris	Remarks	US NCP and the OECD Guidelines
US Fashion Industry Association Briefing	7 March 2017	Washington DC	Meeting	10-50	Business representatives	US FIA	Remarks/Briefing	OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sectors
US Govt Approach to Business & Human Rights Through Political Transition	21 March 2017	Washington DC	Meeting	10-50	Business representatives, NGOs, Trade unions, Academia, General public, Government representatives	Fund for Peace	Remarks	US NCP and the OECD Guidelines, and the US National Action Plan on Responsible Business Conduct
IPIECA Conference	4 April 2017	Houston, Texas	Conference	>100	Business representatives	IPIECA (oil and gas industry assoc)	Remarks	US NCP and the OECD Guidelines
USCIB Corporate Responsibility & Labor Policy Committee Meeting	2 May 2017	Washington DC	Meeting	10-50	Business representatives	USCIB	Remarks	US NCP and the OECD Guidelines
Ethical Sourcing Forum	5 May 2017	New York, NY	Conference	>100	Business representatives, NGOs, Trade unions,	Ethical Sourcing Forum	Remarks	US NCP and the OECD Guidelines

Title	Date (dd/mm/yyyy)	Location	Type of event	Size of audience	Targeted audience e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc	Organiser(s)	Type of intervention	Theme of the intervention
					Academia, General public, Government representatives			
JUSTRAC Private Enterprise Engagement in the Rule of Law	17 May 2017	Washington DC	Conference	50-100	Business representatives, NGOs, Trade unions, Academia, General public, Government representatives	JUSTRAC, Wilson Center	Remarks	US NCP and the OECD Guidelines
ABA Labor and Employment Relations Conference	2 June 2017	Anaheim, CA	Conference	50-100	Lawyers and labor practitioners	ABA	Roundtable moderator	US NCP and the OECD Guidelines
Public Affairs Council	4 October 2017	Washington DC	Meeting	10-50	Business representatives	Public Affairs Council	Briefing	US NCP and the OECD Guidelines
RBA (EICC) Annual Conference	22 October 2017	Santa Clara, California	Conference	>100	Business representatives	Responsible Business Alliance (RBA)	Remarks	US NCP and the OECD Guidelines

Total number=	13
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Annex E. Overview of specific instances handled by the US NCP as the lead NCP

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
1	The Boeing Company Lockheed Martin Corporation	European Centre for Democracy and Human Rights Defenders for Medical Impartiality Arabian Rights Watch Association	Yemen	Concepts and Principles; General Policies; Disclosure; Human Rights; Employment and Industrial Relations	23 June 2016	18 November 2016	Not accepted for further examination as the issue raised would entail examination of state conduct.
2	Grupo Mexico ASARCO LLC.	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) Sindicato Nacional de Trabajadores Mineros, Metalurgicos, Siderurgicos y Similares de la Republica Mexicana (Mineros)	United States	General Policies; Human Rights; Employment and Industrial Relations; Taxation	18 February	8 August 2016	Concluded. Mediation was offered but the companies declined to participate.
3	Bodega Latina (El Super) Grupo Comercial Chedraui	United Food & Commercial Workers Local 770 (UFCW) Los Angeles Alliance for a New Economy (LAANE), Frente Auténtico del Trabajo (FAT) Project on Organizing, Development, Education and Research (PODER)	United States	Employment and Industrial Relations	12 November	14 July 2016	Concluded. The offer of mediation was deferred because parties sought an agreement through other procedures under US law.

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
4	Starwood Hotels & Resorts Worldwide	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	Maldives and Ethiopia	General Policies; Human Rights; Employment and Industrial Relations	9 February	12 May 2016	Concluded. Mediation was offered and accepted. An agreement was reached.
5	PepsiCo.	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	India	Human Rights; Employment and Industrial Relations	18 November	15 April 2016	Concluded. Mediation was offered and accepted. No agreement was reached between the parties.
6	Crown Holdings, Inc.	The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) Birlesik Metal-Iscleri Sendikasi (Birlesik Metal-IS)	Canada and Turkey	General Policies; Employment and Industrial Relations	6 November 2014	24 December 2015	Concluded. Mediation was offered but the company declined to participate.
7	Herakles Farms ' affiliate SG Sustainable Oils Cameroon (SGSOC)	Center for Environment and Development (CED) Network to Fight against Hunger (RELUFA)	Cameroon	Environment	13 June 2013	28 July 2015	Concluded. Mediation was offered and accepted. An agreement was reached.
8	Nissan Motor Co, Ltd.	United Auto Workers of America IndustriALL Global Union	United States	Human Rights; Employment and Industrial Relations	28 April 2014	30 January 2015	Concluded. Mediation was offered but the company declined to participate.
9	Mondelez Pakistan Ltd.	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF)	Pakistan	Concepts and Principles; General Policies; Disclosure; Human Rights; Employment and Industrial Relations	18 December	6 June 2014	Concluded. Mediation not offered because the parties came to an agreement and the enterprise did not agree to consider engaging in mediation outside of the negotiations taken place under Pakistani law. .
10	Herakles Farms Herakles Capital	Greenpeace	Cameroon	Disclosure	11 March 2014	19 May 2014	Not accepted for further examination because the issue raised was not substantiated.
11	Johnson & Johnson, Inc.	1. Federation of Free Workers (FFW)	Philippines	Employment and Industrial Relations	14 May 2013	8 November 2013	Not accepted for further examination because the issue raised was not substantiated.
12	Mondelez Ltd.	1. International Union of Food, Agricultural, Hotel, Restaurant,	Egypt and Tunisia	Human Rights; Employment and Industrial Relations	14 March 2013	29 October 2013	Concluded. Mediation was offered but the company declined to participate.

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
		Catering, Tobacco, and Allied Workers' Associations (IUF)					
13	Deutsche Telekom AG (T-Mobile USA and Crnogorski Telekom A.D. Podgorica)	1. Communications Workers of America (CW) UNI Global Union	United States and Montenegro	Concepts and Principles; Employment and Industrial Relations	12 July 2011	9 July 2013	Concluded. Offer of mediation was withdrawn because NCP felt that it no longer was able to contribute to a positive resolution of the dispute.
14	American Sugar Refiners Inc. (ASR)	The Community Legal Education Center for Cambodia (CLEC) EarthRights International (ERI)	Cambodia	General Policies; Human Rights	31 October 2012	20 June 2013	Concluded. Mediation was offered but the company declined to participate.
15	AES Corporation (parent company of AES Sonel)	Mr. Teumagnie, an AES Sonel employee	Cameroon	General Policies; Disclosure; Employment and Industrial Relations	27 August 2011	13 September 2012	Not accepted for further examination because the issue raised was not substantiated.
16	MNE # 1 (anonymized)	Hungarian resident and Company X	Hungary	General Policies; Disclosure; Human Rights; Environment	23 August 2011	28 August 2012	Not accepted for further examination due to substantial lack of cooperation and misuse of confidential information.
17	LSG Sky Chefs Deutsche Lufthansa AG	UNITE HERE AFL-CIO International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF)	United States	General Policies; Employment and Industrial Relations; Consumer Interests;	26 September 2011	1 March 2012	Specific instance was withdrawn because parties came to an agreement through other procedures under US law.
18	Innospec	1. LEAD Group	United States	Environment	27 August 2011	1 February 2012	Concluded. Mediation was not offered because the company declined to participate.
19	1. Roquette America, Inc.	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF)	United States	General Policies; Employment and Industrial Relations	8 January 2011	N/A	Not accepted for further examination because the issues raised were not amenable to resolution under the Guidelines.
20	United Water	United Workers Union of America (UWUA) Food & Water Watch	United States	Employment and Industrial Relations; Environment	8 June 2011	N/A	Submitters decided not to continue the Specific Instance process but they did not formally withdraw Specific Instance.
21	1. Usibelli Coal Mine, Inc., Alaska, USA and Electric	Chicaloon Native Village Traditional Council	United States	General Policies; Disclosure; Environment	May 2011	N/A	Not accepted for further examination because the US firm was a solely domestic enterprise and the nature of the business

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
	Power Development Co., Ltd., Japan						relationship did not meet the conditions for resolution under the Guidelines.
22	Motors, Ltd.	Gujarat Kamdar Mandal (GKM)	India	Disclosure; Employment and Industrial Relations	May 2011	N/A	Not accepted for further examination because the issues raised in the specific instance were subject to parallel judicial proceedings.
23	Dole Food Company	International Labor Rights Forum	Philippines	General Policies; Employment and Industrial Relations	October 2010	N/A	Not accepted for further examination because the outcome of union elections was pending.
24	Papua New Guinea, CTP Holdings (CTP PNG)	Cargill, Incorporated	Papua New Guinea	Disclosure; Employment and Industrial Relations	April 2010	N/A	Not accepted for further examination as the issues raised were not amenable to resolution under the Guidelines.
25	Abbott Laboratories	Korean Federation of Trade Unions	Korea	Disclosure; Employment and Industrial Relations	November 2009	N/A	Not accepted for further examination as the issues raised were not amenable to resolution under the Guidelines.
26	General Mills Korea and Haagen Dazs Korea	Korean Federation of Trade Unions	Korea	Employment and Industrial Relations	October 2009	N/A	Specific Instance was withdrawn because parties came to an agreement through other procedures under US law.
27	Hyatt Regency Manila	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF)	Philippines	Employment and Industrial Relations	March 2009	N/A	Not accepted for further examination as the issues raised were not amenable to resolution under the Guidelines.
28	Delta Airlines	Association of Flight Attendants CWA (AFA)	United States	Employment and Industrial Relations	September 2008	N/A	Not accepted for further examination due to a lack of investment nexus.
29	Voestapline AG (VAE) in Birmingham, Alabama	Brotherhood of Maintenance of Way Employees Division (DMWED)	United States	Employment and Industrial Relations	November 2006	N/A	Specific Instance was withdrawn.
30	Tire North America, subsidiary of German Continental	United Steelworkers Union	United States	Employment and Industrial Relations	August 2006	N/A	Not accepted for further examination as the parties did not respond to the NCP's inquiries.
31	Reynolds American's two tobacco manufacturing plants in Winston-Salem in the US state of North Carolina	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF)	United States	Employment and Industrial Relations	May 2006	N/A	Concluded. Mediation was not offered because parties came to an agreement through other procedures under US law.

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
		Bakery, Confectionery, Tobacco Workers and Grain Millers Union(BCTGM) and the Machinists and Aerospace Workers (IAM),					
32	Party: National Wire Fabric (NWF)	Steelworkers of America	United States	Employment and Industrial Relations	March 2006	N/A	Specific Instance was withdrawn because parties came to an agreement through other procedures under US law.
33	Party: Three mile Canyon Farms in Oregon	United Farm Workers of America	United States	Employment and Industrial Relations	May 2005	N/A	Concluded. Mediation was not offered because parties came to an agreement through other procedures under US law.
34	IMERYS	PACE	United States	Employment and Industrial Relations	September 2004	N/A	Concluded. Company declined the US NCP's offer of assistance.
35	The Wackenhut Corporation	UNI Global Union	United States	Employment and Industrial Relations	August 2004	N/A	Concluded. Mediation not offered because the company declined the US NCP's offer of assistance.
36	Cabot Corporation, Trinitech Holdings, and OM Group	Friends of the Earth-United States and Rights and Accountability in Development (RAID)	Democratic Republic of Congo	Numerous chapters	August 2004	N/A	Not accepted for further examination because the NCP concluded that issues raised were addressed through other means.
37	Angelica Textile Services	UNITE HERE	United States	Numerous	August 2004	N/A	Not accepted for further examination due to a lack of investment nexus. Parties came to an agreement through other procedures under US law.
38	French company Saint-Gobain's facility in Worchester, Massachusetts	United Automobile, Aerospace and Agricultural Implement Workers of America International Union (UAW), International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), and the American Federation of Labor (AFL-CIO)	United States	Employment and Industrial Relations	June 2003	N/A	Specific Instance was withdrawn because parties sought an agreement through other procedures under US law.
39	Chef Solution, subsidiary of Lufthansa	United Auto Workers	United States	Employment and Industrial Relations	June 2003	N/A	Concluded. Mediation was offered but the company declined to participate because parties came to an agreement through other procedures under US law.

No.	Enterprise(s)	Submitter (s)	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
40	Adidas and Nike	Clean Clothes Campaign	Vietnam and Indonesia	Employment and Industrial Relations	November 2002	N/A	Not accepted for further examination because parties sought an agreement through other procedures under US law.
41	N/A	Numerous NGOs	Democratic Republic of Congo	Numerous chapters	October 2002	N/A	Concluded No mediation offered because the issues raised were addressed through other means.
42	Brylane	Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE)	United States		November 2002	N/A	Specific Instance was withdrawn because parties sought an agreement through other procedures under US law.
43	Liberian International Ship and Corporate Registry (LISCR)	International Transport Workers Federation	Liberia	General Policies, Disclosure and Combating Bribery, Bribe Solicitation and Extortion	November 2001	N/A	Not accepted for further examination because parties sought an agreement through other procedures under US law.
44	Trico Marine Services, Inc.	Seafarers International Union	United States	Employment and Industrial Relations	February 2001	N/A	Not accepted for further examination because parties sought an agreement through other procedures under US law.
45	IMERYS	PACE	United States	Employment and Industrial Relations	June 2000	N/A	Specific Instance was withdrawn.

National Contact Point Peer Reviews: United States

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the United States NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

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