

**Stakeholder Questionnaire on the work of the U.S. National Contact Point for the OECD  
Guidelines for Multinational Enterprises**

Adherent governments of the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (“the Guidelines”) establish National Contact Points (NCP) who are charged with furthering the effectiveness of the Guidelines. The NCPs undertake promotional activities, consider inquiries for Specific Instances, and, when appropriate, provide a mediation and conciliation platform for resolving issues that arise from the alleged non-observance of the Guidelines. The OECD Working Party for Responsible Business Conduct developed this questionnaire. This Questionnaire is taken from the Core Template for Voluntary Peer Reviews.

**Instructions:** Please answer the following questions according to your opinion and experience engaging with the Office of the U.S. NCP. Whenever possible, please submit one survey per affiliation. Note: Throughout the document, “U.S. NCP” will refer to the Office of the U.S. NCP and its staff.

**E-mail Address** \_drew@tuac.org\_\_\_\_\_

**Affiliation Name (Optional)** \_\_Trade Union Advisory Committee to the OECD (TUAC)

**Your Name (Optional)** \_Kirstine DREW\_\_\_\_\_

**Stakeholder Group:**

- Business
- Civil Society
- Labor
- Other: \_\_\_\_\_

**Additional Group:**

- Specific Instance Participant
- Stakeholder Advisory Board Member
- Other: **OECD Institutional Stakeholder**\_\_\_\_\_

**Core Criteria**

NCPs are expected to operate in accordance with the core criteria of visibility, accessibility, transparency, and accountability to further the objective of functional equivalence. More information on the core criteria can be found on page 71 of the Guidelines, available at <http://mneguidelines.oecd.org/guidelines/>

1. Are stakeholders sufficiently aware of the U.S. NCP and its functions?

Yes  No

**Comment: Awareness of the US NCP is generally low and mainly limited to those in policy positions who engage on issues of corporate accountability, rather than stakeholders potentially affected by the activities of MNEs.**

2. Are the means used by the U.S. NCP to promote the Guidelines appropriate?

Please explain.

Yes  No

**Comment:**

**TUAC recognises that the US NCP has improved its promotional activities in recent years. However, more needs to be done to strengthen outreach to trade unions and other civil society organisations, both within the US and in other adhering and non-adhering countries. Greater emphasis should be placed on the role that US embassies and development agencies can play in strengthening outreach.**

**There is also a need to move beyond promoting the existence of the Guidelines and the US NCP, to improving understanding of the rights, standards and principles of the Guidelines. This should include conducting training on human rights, including trade union rights, which are generally poorly understood.**

3. Are the U.S. NCP resources easily accessible to stakeholders?

Yes  No

**Comment: The US NCP web site publishes key documents including the Final Statements of Specific Instances. It also usefully publishes information on its role and processes in Spanish and French. Translation is limited, however, and currently neither the 2016 Guide to the US NCP nor the Final Statements has been translated.**

**Language is a major barrier to accessibility. So is the cost of participating in the NCP process, especially for those complainants who are without the support of either international or US trade unions/NGOs.**

**A further barrier to accessibility is the US NCP's rules on confidentiality and campaigning, which serve to deter trade unions and others from submitting Specific Instances to the US NCP. Furthermore, the US NCP's confidentiality procedures undermine its efforts to increase awareness of the Guidelines/the US NCP. On campaigning, trade unions agree that it may be appropriate for complainants to refrain**

from campaigning during mediation, but consider that this is a condition to be agreed by the parties, not imposed by the US NCP. Agreement to stop the campaign by the complainant can serve as an incentive to help bring the company to the table, just as the threat of re-starting the campaign can be the “consequence” for companies refusing to participate. The US NCP’s provisions on confidentiality and campaigning are neither in line with the Procedural Guidance, nor the policies/practices of other NCPs.

In order for the mediation to be successful, all parties to the proceedings must abide by the principle of good faith and confidentiality. This is also why the USNCP will require that parties uphold confidentiality and request that they **refrain from campaigning** against the other party and/or using the media for any such purpose if mediation is offered and accepted.

4. If not, how can the U.S. NCP be more accessible?

Comment:

- **Translate the web site and priority documents into Spanish and other selected languages, to be agreed in consultation with the Stakeholder Advisory Board (SAB);**
- **Translate NCP Initial Assessments/Final Statements into the languages of the complainants;**
- **Develop strategies for reducing language and cost barriers including providing resources for interpretation and travel, and making use of technologies such as video-conferencing, as well as US embassies and development agencies;**
- **Limit confidentiality restrictions to the mediation process/offer of good offices;**
- **Lift restrictions on public campaigning;**
- **Support the OECD in the development of a common on-line form for submitting Specific Instances to be used by all NCPs. This should be translated into multiple languages.**

5. Does the U.S. NCP respond to legitimate requests for information in a timely manner

\_\_\_\_\_ Yes \_\_\_\_\_ No

Comment: **Don't know.**

6. Does the U.S. NCP provide relevant information on its functions in national languages, such as on NCP activities and functions?

\_\_\_\_\_Yes \_\_X\_\_No

Comment: **Full information should be available in Spanish and other languages to be agreed in consultation with the SAB. The US NCP should make its Assessments and Statements on Specific Instances available in the languages of the complainants, in addition to English.**

7. In your view, how can the U.S. NCP improve its performance on each of the four core criteria (accessibility, transparency, visibility, and accountability)?

Comment:

**TUAC welcomes the improvements that the US NCP has made since 2011 including: the creation of the Stakeholder Advisory Board (SAB) in 2012, the improved web site, the publication of procedures and promotional material, the publication of Final Statements including stronger recommendations and the willingness to follow-up in some Specific Instances.**

**TUAC considers that priority steps for the US NCP to strengthen compliance with the core criteria are:**

**Accessibility: Limit restrictions on confidentiality such that confidentiality only applies to the mediation proceedings once the NCP has offered its good offices and lift restrictions on public campaigning allowing the parties to agree the conditions under which mediation should take place;**

**Transparency: Publish Specific Instances and Initial Assessments so that regular and balanced information on Specific Instances is available in the public domain. This would be in line with the practices of other NCPs: Belgium, France, Norway, Switzerland and the UK are examples of NCPs which publish their Initial Assessments;**

**Visibility: Develop a promotional plan for increasing awareness as well as understanding of the Guidelines in both the US and priority adhering and non-adhering countries. This should involve joint activities with other NCPs as well as the use of embassies and development agencies, involving the social partners;**

**Accountability: re-locate the US NCP to the Bureau of Democracy, Rights and Labor, where there is a pool of expertise on many of the issues covered by the Guidelines, and upgrade the Stakeholder Advisory Board to an Oversight Board.**

8. Do you believe the U.S. NCP adequately reports on its activities?

\_\_\_\_\_ Yes  No

Comment:

**The US NCP has published its last two Annual Reports to the OECD on its web site but previous reports are not available. It states on the web site that the June 2014-December 2015 report was the first published report by the US NCP “[T]his is the first time in the fifteen-year history of the USNCP that the office has issued a public annual report”.**

**In addition, as discussed above, no information on Specific Instances is placed in the public domain until the end of the process.**

9. How do you assess the U.S. NCP’s performance on achieving each of the four criteria of visibility, accessibility, transparency, and accountability?

Option to Comment: **See above**

10. In your view, what are the most significant challenges faced by the U.S. NCP in terms of achieving the core criteria of accessibility, transparency, visibility, and accountability? Please elaborate.

Comment:

- **The lack of transparency, which can be addressed by changing the US NCP’s restrictions on confidentiality;**
- **The restrictions on campaigning, which similarly can be lifted;**
- **The lack of confidence and trust of stakeholders;**
- **The low awareness of stakeholders directly affected by the activities of MNEs;**
- **The barriers to the participation of stakeholders, who do not have the support of international or US trade unions/NGOs, including capacity, language and participation costs.**

### **Structure of the U.S. NCP and Institutional Arrangements**

11. Do you consider that the current structure of the U.S. NCP enables the Office to meet the core criteria of accessibility, transparency, visibility, and accountability? Please elaborate.

Yes  No

**Comment: The location of the US NCP in the Bureau of Economic and Business Affairs gives rise to the perception of trade unions and other civil society organisations that the US NCP pays more attention to the concerns of business than to those of complainants.**

12. Do you consider that the current arrangements and structure of the U.S. NCP is adequate to avoid potential conflicts of interests in the functioning of the U.S. NCP (e.g., between attracting foreign investors, promoting the interest of domestic enterprises abroad versus those of relevant stakeholders, etc., and promoting observance of the Guidelines)?

Yes  No

**Comment: As above.**

13. Do you consider that the U.S. NCP’s structure enables it to carry out its functions in an impartial manner? Please elaborate.

Yes  No

**Comment:**

**There are no mechanisms in place for ensuring accountability or addressing conflicts of interest. An Oversight Board should be created, on which external stakeholders should be represented.**

**TUAC also understands that changes made to the structure of the Stakeholder Advisory Board (SAB) in 2016 have served to weaken its independence and representativeness. Formerly the SAB was co-chaired by 2 representatives of unions and business respectively who in addition to chairing the meetings, also set the agenda and selected new members. Today the NCP plays a much more active role in the SAB. In addition, business is now the largest of the constituency groups represented on the SAB, whereas prior to the changes, all constituencies were equally represented.**

14. Do you consider that the U.S. NCP adequately reaches out to or takes into account the views of stakeholders?

Yes  No

Comment:

**TUAC understands from trade union representatives on the SAB that there is dissatisfaction with the extent to which the recommendations made by trade unions and other civil society representatives have been taken on board, whether they concerned changes to the NCP or to the SAB.**

15. What are the advantages and disadvantages of the U.S. NCP's structure?

Comment: **See above.**

### **Main Role, Function, and Activities of the U.S. NCP**

#### **Information on Promotional Activities**

16. Do you believe that the communication tools or resources used by the U.S. NCP (e.g., website, brochures, leaflets, participation in public events, etc.) are adequate? Please elaborate.

Yes  No

Comment:

**The US NCP has produced a number of useful promotional documents including the Guide to the US NCP and a Fact Sheet prepared specifically for the OECD Peer Review. As discussed above, there is a need for information to be made available in priority languages.**

**There is, however, no information explaining the meaning of the provisions of the Guidelines, including the human rights of workers to form or join trade union, and to have unions recognised for the purposes of the collective bargaining.**

17. What other communication tools would be useful for raising awareness of the Guidelines?

Comment: **all of these should be in priority languages:**

- **Case studies of Specific Instances to provide a concrete illustration of what can be achieved by using the US NCP;**
- **Information customised for different stakeholder groups;**
- **Information explaining what it means for companies to be in compliance with the human rights and employment and industrial relations provisions of the Guidelines. This could draw on information developed by the ILO and by the UN on the UNGPs.**

18. Do you consider that the Guidelines are sufficiently known and used by key enterprises and integrated into their decision-making processes? Please elaborate.

Yes  No

Comment:

**TUAC considers that the low level of awareness of the Guidelines among business is a problem in all countries.**

19. Do you consider that the Guidelines are sufficiently known by key stakeholders (business, trade unions, and civil society organizations)? Please elaborate.

Yes  No

Comment:

**While the Guidelines are known by a limited circle of stakeholders – mainly those working on the corporate accountability agenda – much more needs to be done by the US NCP to increase awareness among potentially affected stakeholders in the US as well as in other adhering and non-adhering countries.**

20. How can the U.S. NCP and stakeholders further cooperate in raising understanding of the value of the Guidelines with businesses?

Comment:

**In priority adhering and non-adhering countries, US embassies or development agencies could play a role in promoting the Guidelines through events, working with the social partners to identify participants, as well as by disseminating information in national languages.**

### **Implementation in Specific Instances**

According to the Procedural Guidance, the U.S. NCP is expected to contribute to the resolution of issues stemming from implementation of the Guidelines in Specific Instances in a manner that is impartial, predictable, equitable, and compatible with the principles and standards of the Guidelines. Consideration of a Specific Instance may involve three stages (initial assessment of the merits of a Specific Instance, the provision of good offices, such as mediation or conciliation, and the conclusion of the procedures, including the publication of the main results in the form of a Final Statement). As a general principle, NCPs should strive, to the extent possible, to conclude the procedure within 12 months from the submission of the Specific



Instance with the publication of the Final Statement at the end of the Specific Instance procedure. Sensitive business and stakeholder information should be protected.

21. How do you assess the U.S. NCP's performance in handling Specific Instances in a manner that is consistent with the guiding principles (impartial, predictable, equitable, and compatible with the Guidelines)? For example:

Comment:

**The major challenge facing the US NCP in handling Specific Instances is companies refusing to participate in NCP-supported mediation.** In 2016, the US NCP, for the first time, successfully brought business and *trade unions* together for NCP-supported mediation in 2 Specific Instances: IUF and Starwood; and IUF and PepsiCo. Of these 2 mediations<sup>1</sup>, the Starwood-IUF mediation resulted in a successful mediated outcome.

While this is welcome progress, overall the number of mediations held and the level of success at the US NCP is extremely low:

- Since the 2011 Update, **trade unions** have filed **12 Specific Instances** at the US NCP as the Lead NCP:
  - 9 accepted
    - 1 successfully mediated
    - 1 mediation held but no agreement
  - 1 fully withdrawn (Deutsche Lufthansa);
  - 1 partially withdrawn by the trade union but not by the NGO co-requester (Suez-United Water);
  - 1 rejected (Johnson & Johnson);

The low success rate in bringing companies to the table underlines the need for the US NCP to review and strengthen its processes.

The US NCP should develop incentives for companies to participate in the Specific Instance procedure including making **findings** (determination) on whether the company has violated the Guidelines and **introducing consequences** for companies that refuse to participate in the NCP process.

It should also develop alternative strategies for assisting complainants with dispute resolution in the event that the company refuses to participate in the mediation process. These alternative strategies should be developed in consultation with representatives of the SAB.

22. Does the U.S. NCP adequately inform stakeholders on how to submit Specific Instances?

\_\_\_\_\_ Yes \_\_\_\_\_ No

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<sup>1</sup> There was a third mediation at the US NCP involving an NGO. TUAC is confining its comments in this Survey to the experience of trade union cases.

Comment:

**The US NCP provides useful guidance on how to submit a case on its web site and in its Guide to the US NCP.**

**TUAC considers that the process could be made simpler for complainants by publishing an on-line form for complainants to use to submit Specific Instances. This should be shared by all NCPs and translated into multiple languages.**

23. Does the U.S. NCP provide clear and publicly available information on its role in the resolution of Specific Instances?

Yes  No

Comment:

**The US NCP provides a description of its role on the web site and in the US NCP Guide. This information should be made available in different languages. While translations in French and Spanish are published on the web, the most up-to-date information has not been translated. Using case studies would make the NCP system easier for potential complainants to understand.**

24. Does the U.S. NCP deal with Specific Instances in an efficient and timely manner?

Yes  No

Comment:

**Of the 12 Specific Instances submitted by trade unions since the 2011 Update, most have been completed within the indicative timescale (see below).**

**Starwood and Pepsico were extended due to late decisions to participate in the mediation process. Deutsche Lufthansa was withdrawn and the trade union part of Suez/United Water Specific Instance was also withdrawn. Crown Holdings and Deutsche Telekom both exceeded the indicative timescales:**

- 24 weeks, 5 days (Grupo Mexico, 2016)
- 35 weeks (Chedraui Commercial, 2015)
- 65 weeks, 3 days (Starwood, 2015)
- 59 weeks (Crown Holdings, 2014)
- 39 weeks, 4 days (Nissan, 2014)
- 24 weeks, 2 days (Mondelez, Pakistan, 2013)
- 26 weeks (Pepsico, 2013 – this was originally closed but then re-opened again 18 months later for mediation)

- 25 weeks, 3 days (Johnson & Johnson, 2013)
- 32 weeks, 5 days (Mondelez, Egypt and Tunisia, 2013)
- 22 weeks, 3 days (withdrawn: Deutsche Lufthansa, 2011)
- 104 weeks (Deutsche Telekom, 2011)
- 38 weeks (Suez (United Water, 2011)

25. Does the U.S. NCP act in an impartial manner in the resolution of the Specific Instances?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Comment:

**TUAC's understanding is that the NCP staff does act impartially. However, the location of the NCP together with the US NCP's rules and procedures - specifically its provisions on confidentiality and campaigning and its failure to create incentives/tools to bring companies to the table - give the impression of partiality in favour of business.**

26. How does the U.S. NCP ensure that parties engage in the process in a fair and equitable manner?

Comment:

27. If the U.S. NCP has received no or very few submissions for Specific Instances-what can explain this?

Comment:

**Since 2000, the US NCP has received the highest number of trade union Specific Instances – more than any other NCP: 38 Specific Instances in total, 33 of which as the Lead NCP and 5 as the Supporting NCP <sup>2</sup>. These 33 Specific Instances represents c17% of all trade union cases (186 trade union Specific Instances filed). 26 trade union Specific Instances (14%) concern violations/adverse impacts in the US – this is also the highest of any country.**

**Since the 2011 Update, 12 trade union Specific Instances have been submitted to the US NCP as the lead NCP (see table below). This is 24.5% of trade union Specific Instances filed since the 2011 Update. In addition, in 2016, 3 Specific Instances were submitted to the home NCPs concerning failures of due diligence to identify and address adverse impacts that were occurring in the US: (i) Natixis, ii) Renault S.A., Nissan Motor. Co., Renault Nissan B.V. and iii) British American Tobacco.**

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<sup>2</sup> <http://www.tuacoecdmneguidelines.org/cases.asp?organisationid=22729&NCP=Y>

DATE	NO. TRADE UNIONS CASES SUBMITTED TO US NCP AS LEAD	NO. CASES SUBMITTED TO OTHER NCPS CONCERNING VIOLATIONS IN THE US
2017	0	0
2016	1	3
2015	2	0
2014	2	0
2013	4	0
2012	0	0
2011 (post 25 May)	3	0

The adverse impacts referred to in the Specific Instance against Renault, Nissan and Renault-Nissan BV had already been the subject of a Specific Instance filed against Nissan at the US NCP. The US NCP had accepted the Specific Instance but Nissan had refused to participate in mediation. In its Final Statement, the US NCP had indicated that other concerned NCPs “remained available” to offer assistance:

*“[T]he U.S. NCP notes that this Specific Instance has been shared with other foreign NCPs who have been consulted throughout this process and that these NCPs remain available to offer assistance to the parties. The U.S. NCP remains available to assist the parties in facilitating dialogue in the future on these matters, if the parties later agree to pursue mediation or another form of alternative dispute resolution.”*

TUAC knows first-hand from discussions, that potential complainants are deterred from filing Specific Instances at the US NCP for the following three reasons:

1. **Confidentiality and campaigning**: overly restrictive provisions on confidentiality and campaigning;
2. **Companies refusal to participate in mediation**: potential complainants know that there is a track record of companies refusing to participate in mediation at the US NCP;
  - a. While the 2 mediations held in 2016 are encouraging, complainants are nonetheless concerned that companies will not participate in the mediation process of the US NCP;
3. **Weakness of the US NCP System**: complainants also know that the US NCP does not have measures in place to incentivize/encourage companies to participate in mediation or to impose consequences on those that refuse mediation:
  - i. conducting an investigating;
  - ii. making findings/determination on violations of the Guidelines;
  - iii. withdrawing economic or diplomatic support.

These 3 reasons combine to increase the risks/costs and reduce the benefits for complainants when making an assessment of whether to submit a specific instance to the US NCP.

How does the U.S. NCP balance the need for transparency with confidentiality of Specific Instance proceedings and sensitive business information?

Comment:

**TUAC considers that the US NCP has prioritised confidentiality and the concerns of business over transparency and the concerns of complainants.**

**Trade unions agree that mediation proceedings should be confidential, but not that there should be restrictions on posting the Specific Instance or discussing the issues described in the Specific Instance. The US NCP should publish Initial Assessments so that formal information is placed in the public domain earlier in the process, in addition to the Final Statement/Reports.**

**On campaigning, the parties should be allowed to agree the terms of the mediation including conditions regarding the cessation of campaigning.**

28. What are the most significant challenges facing the U.S. NCP in fulfilling its mandate?

Comment:

**Strengthening the authority of the NCP and creating incentives so that companies participate in the NCP process.**

**Building the trust of trade unions and civil society.**

29. Are there opportunities to improve the U.S. NCP's performance under each of the four core criteria (accessibility, transparency, visibility, and accountability) for handling Specific Instances?

**There are other criteria (principles) for handling Specific Instances – impartiality, predictability and equitability.**

**Accessibility: Lift restrictions on confidentiality such that confidentiality only applies to the mediation proceedings once the NCP has offered its good offices; remove restrictions on campaigning; include information on its web site on the steps the US NCP will take if complainants do not speak English;**

**Transparency and visibility: Publish Specific Instances and Initial Assessments so that regular and balanced information on Specific Instances is placed in the public domain. This would be in line with the practices of other NCPs (Belgium, France, Norway, Switzerland and the UK are examples of NCPs which publish their Initial Assessments). The US NCP should also formally submit Final Statements/Reports to other relevant departments/Congressional Committees such as EXIM and OPIC and public procuring departments.**

**Accountability and impartiality: relocate the US NCP to the Bureau of Democracy, Rights and Labor where there is a large pool of expertise on many of the issues covered by the Guidelines and upgrade the Stakeholder Advisory Board to an Oversight Board.**

**Equitability: translate key documents, develop strategies for reducing the costs of translation and provide financial support so as to overcome the barriers to potential complainants from participating in the NCP process. Conduct communication with parties within the NCP process on a transparent basis so that parties have confidence that the NCP is dealing with all side in an even-handed manner and have trust in the process;**

**Predictability: widen the scope of the procedures to explain what steps the complainant should follow to provide new/supplementary information once a specific instance is filed.**

Yes  No

Comment:

30. If you have been involved in a Specific Instance, please provide feedback on your experience. Please use the above questions to guide you in providing feedback.

Comment:

### **Reporting**

NCPs report annually to the OECD Investment Committee on the nature and the results of their activities, including their implementation in Specific Instances processes. This information is included in the Annual Report on the OECD Guidelines for Multinational Enterprises. Some NCPs, like the U.S. NCP, make their annual reports publicly [available](#).

31. Does the U.S. NCP sufficiently report on its promotion and implementation activities? Please elaborate.

Yes  No

Comment: **As above. The US NCP's first published report was its 2014-2015 report.**

32. Are reports on the functioning's of the U.S. NCP, including handling of Specific Instances, easily available to all stakeholders? Please elaborate.

Yes  No

Comment: **The Final Statements/Reports are easily accessible on the US NCP web site, although they are published only in English. But there is no information at all available on the Specific Instances earlier in the process. TUAC considers that the US NCP should publish the Specific Instances and the Initial Assessments.**

### **Contributing to the Proactive Agenda**

The introduction of the “proactive agenda” is one of the major innovations found in the revised Procedural Guidance. Under the proactive agenda, the OECD Investment Committee is expected, in cooperation with NCPs and stakeholders, to support the positive contributions that enterprises can make and assist them to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries with a view of helping them observe the Guidelines. Information on projects under the proactive agenda is available on the OECD website <http://mneguidelines.oecd.org/sectors/>

33. How do you assess the U.S. NCP’s role in contributing to and promoting the proactive agenda under the Guidelines?

Comment:

**TUAC is not aware of the US NCP’s in-country activity on the proactive agenda. It notes, however, that in its Guide to the US NCP the US NCP identifies three main roles including proactively bringing business and civil society together to address emerging RBC risks.**

- **Promoting awareness and encouraging implementation of the Guidelines...**
- **Facilitating practical application of the Guidelines by bringing business and civil society together to identify potential and emerging RBC-related risks for MNEs and discuss appropriate actions and responses regarding the Guidelines.**
- **Offer a “Specific Instance” mediation process...**

34. Does the U.S. NCP provide information to stakeholders about ongoing projects under the proactive agenda, and does it seek stakeholder input?

\_\_\_\_ Yes \_\_\_\_ No

Comment: **Don’t know.**

35. Does the U.S. NCP promote the outcomes of these processes?

\_\_\_\_ Yes \_\_\_\_ No

Comment: **Don’t know.**

### **U.S. NCP’s Additional Questions**

36. Have you worked with the U.S. NCP outside of the Specific Instance Process?

Yes  No

If so, in what capacity? We have had contact with the US NCP at the OECD in the context of various consultations/committees.

37. Would the U.S. NCP benefit from additional staff?

Yes  No

If so, why?

38. Would the U.S. NCP benefit from additional budget and funding increases?

Yes  No

If so, why? For language translation and supporting participation in the Specific Instances.

39. Should the U.S. NCP translate its resources into more languages?

Yes  No

40. If so, which languages and why? Spanish as a priority. Other priority languages should be identified in consultation with stakeholders.

41. Is the U.S. NCP title an appropriate and descriptive enough title for the role?

Yes  No

If not, why and what title would you suggest?

**The title of the US NCP is neither descriptive nor authoritative. An alternative could be the 'US Office of Corporate Accountability' or the 'US Office for Responsible Business Conduct'.**

42. Are there additional activities the U.S. NCP could undertake to promote the Guidelines?

Yes  No

If so, what are they?

**The US NCP could do more to strengthen understanding of the meaning of the provisions of the Guidelines. This could be done in cooperation with the UN and the ILO so as to have a coordinated approach to promoting the three authoritative instruments in the area of Responsible Business Conduct: the UNGPs, the ILO MNE Declaration and the OECD Guidelines for Multinational Enterprises.**



43. Is it helpful for the work of the U.S. NCP to be on the team that handles global policy on responsible business conduct issues?

Yes  No

Comment:

**TUAC is not in a position to judge the potential benefits and costs. The concern would be whether scarce resources are further diluted by carrying out this wider role.**

44. Have the operations and functions of the U.S. NCP changed over the past five years?

Yes  No

If so, how:

**The US NCP has improved significantly since the 2011 update. As discussed earlier in the survey including particularly through the creation of the SAB in 2012, the improved web site, the publication of procedures and promotional material, the publication of Final Statements including stronger recommendations, and the willingness to follow-up in some Specific Instances.**

**However the 2016 changes to the Stakeholder Advisory Board represent a backward step.**

45. Has the U.S. NCP been proactive in improving its processes?

Yes  No

If so, how?

**See above.**

46. Has the U.S. NCP provided opportunities to actively engage and hear stakeholder feedback?

Yes  No

Comment:

**Yes. However the capacity of the SAB to support this function has been curtailed following the 2016 changes.**

47. If not, how could the U.S. NCP provide opportunities to actively engage and hear stakeholder feedback?

Comment:

**Return to the previous Terms of Reference for the SAB.**

48. Has the U.S. NCP been responsive to stakeholder feedback on its processes?

Yes  No

If so, how and when?

**See previous comments.**

49. If you have been a party to a Specific Instance submission and proceeded to mediation, please provide feedback on your experience with the mediation process and specifically the mediators involved.

Comment: N/A

50. If not addressed in this questionnaire, what other ways could the U.S. NCP improve?

Comment:

**Non-binding not Voluntary**

**The NCP should remove reference to the voluntary nature of the Guidelines and NCP process as this can be misunderstood. It would be accurate and unambiguous to use the term “non-binding”.**

**Independence of the Corporate Responsibility to Respect**

**The OECD Guidelines (in line with the UNGPs) explain that the responsibility of companies to respect human rights exists independently of whether States are able or willing to fulfill their human rights obligations (#37 of the Commentary on Chapter IV. Human Rights). Whether States have ratified the Human Rights Treaties is not relevant to the responsibility of enterprises to respect human rights.**

**The text on the US NCP web site suggests that the applicability of the Human Rights Treaties depends on the ratifications/reservations of States.**

**This should be amended to explain the independent responsibility of enterprises under the Guidelines to respect human rights.**

Human Rights

[Universal Declaration of Human Rights](#)

[Guiding Principles on Business and Human Rights \(Ruggie Guiding Principles\)](#)

Determining which human rights treaties are relevant to particular operations depends on several factors, including the country in which the operations are taking place. The texts, ratification status and relevant reservations, understandings and declarations regarding multilateral human rights treaties in the UN system are available [here](#).

51. If not addressed in this questionnaire, please provide additional information that maybe helpful in evaluating the U.S. NCP.

### **Parallel Proceedings**

**The US NCP has taken a progressive position on parallel proceedings underlining in its Statement that the existence of former or current legal proceedings is not a reason to reject a Specific Instance and that the issues before the law may not be the same as issues raised in the OECD (e.g. Crown Holdings Specific Instance: “These judgments, as well as the fact that national court systems do not always speak to the international standards of the Guidelines, emphasize the need for companies to commit themselves to the Guidelines and for processes such as this Specific Instance process”).**

### **Deferred Mediation**

**According to the US NCP’s Final Statement, mediation was deferred in the Chedraui V UFCW Specific Instance because mediation was already under way as a result of national processes with the same mediator as used by the NCP –the Federal Mediation and Conciliation Service (FMCS). This raises a question of whether in such cases the FMCS is able and equipped to take account of the international standards of the Guidelines and not only national law.**