

Governing Corporate Accountability:

Extraterritoriality and the

Effectiveness of NCP

Mediation

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Abstract

As dominant actors in a globalised economy, multinational corporations can evade responsibility for labour and human rights violations and other misconduct within their own operations, those of their clients, or across supply chains. To address this challenge, OECD governments established the Guideline for Multinational Enterprises on Responsible Business Conduct, aiming to promote corporate responsibility and mitigate adverse impacts. The OECD Guidelines' enforcement mechanism is the non-judicial system of National Contact Points (NCPs), which mediates disputes between corporations and affected parties. Notably, NCPs can accept complaints concerning corporate conduct beyond their own jurisdiction, raising questions about whether extraterritorial cases are resolved as effectively as domestic ones. This paper examines the impact of extraterritoriality on NCP effectiveness, understood as the likelihood of mediation reaching an agreement, using a mixed-method approach. A logistic regression analysis of 233 NCP cases (2000–2022) finds that extraterritorial cases are less likely to result in an agreement. A comparative case study further reveals that extraterritoriality may weaken NCP effectiveness both directly, through the complexity of evidence—its availability and interpretability—and indirectly, via intercultural and language challenges that affect trust between parties. These findings underscore the need to strengthen NCP capacity to address the unique challenges of mediating transnational disputes.

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Introduction

In 2015, 168 former employees of Bralima, a subsidiary of the Dutch brewing company Heineken operating in the Democratic Republic of the Congo, accused the company of human rights violations, alleging that the company unlawfully dismissed them between 1999 and 2003 and cooperated with the rebel leaders of RCD-Goma, which negatively impacted on the workers. A year and a half later, the former employees and Heineken reached an agreement that all parties deemed satisfactory, reportedly including monetary compensation to the complainants (Nieuwenkamp, 2018; OECD Watch n/d; van't Foort et al. 2020). This agreement was mediated by the Dutch National Contact Point (NCP). NCPs are agencies established by OECD member states and non-member states adhering to the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD 2011, 2023).

The OECD Guidelines are recommendations by governments to multinational corporations “to encourage positive contributions enterprises can make to economic, environmental and social progress, and to minimise adverse impacts on matters covered by the Guidelines” (OECD 2023, p. 1). The Guidelines cover such key areas of business responsibility as human and labour rights, environment, bribery and corruption, consumer interests, disclosure, science and technology, competition, and taxation.¹ NCPs are established to promote the awareness and uptake of the Guidelines and contribute to the resolution of issues arising in relation to the implementation of the Guidelines in specific cases (Appendix A provides more information on the history of NCPs). In other words, NCPs serve as a non-judicial conflict resolution mechanism between corporations and those affected by the corporation failure to comply with the Guidelines. Currently NCPs operate in 52 countries (OECD 2021).

Since the NCPs are non-judicial conflict resolution mechanism, they primarily provide their “good offices” to facilitate dialogue, mediation, and conciliation between parties with the aim of reaching a mutually acceptable resolution. As demonstrated in the Heineken case, NCPs are not restricted to addressing cases within the jurisdictions of the states that established them. The OECD Guidelines allow complaints to be submitted to the NCP of the country where a parent company or subsidiary is registered, even if the alleged violations occur abroad. Since Heineken is a Dutch company, the Dutch NCP was qualified to mediate the case, despite the

¹ The 2023 edition of the Guidelines updated recommendations for responsible business conduct across key areas, such as climate change, biodiversity, technology, business integrity and supply chain due diligence.

alleged violation of the Guidelines taking place in the Democratic Republic of Congo. This extraterritorial reach distinguishes NCPs from other non-judicial mechanisms of dispute resolution, which are typically confined to the jurisdiction of the state that established them. Because an NCP can handle cases involving businesses whose parent company or subsidiary is registered within its jurisdiction but operating abroad, it allows individuals and organizations to seek redress for corporate misconduct regardless of where it occurs.

Existing literature has pointed to the importance of the extraterritorial competence for NCP mediation to reach an agreement that is acceptable to both parties – thereafter referred to as the NCP effectiveness – when the host country is either unwilling or unable to address complaints through other means (Achtouk-Spivak & Garden, 2022; Buhmann, 2019). While there is a small body of literature that has explored how institutional and operational features of NCPs influence their effectiveness (Černič, 2008; Daniel et al., 2015; Macchi, 2017; Otterburn 2014, 2025; Perillo, 2022; van't Foort et al. 2020), the impact of extraterritoriality on the effectiveness of NCP mediation remains unexamined. This paper therefore addresses the following research question: how does extraterritoriality influence the effectiveness of the OECD Guidelines' NCP procedure?

Answering this question is important for both research and policy. As one of the few global corporate social accountability mechanisms, NCPs provide a fitting case for understanding the conditions that lead to dispute resolution. While the OECD Guideline's NCP procedure is relatively new – established in 1984 but only assigned a role in fostering solutions for corporate compliance in the 2000s (OECD n/d) – similar mechanisms are likely to gain prominence. The United Nations Guiding Principles on Business and Human Rights (UNGPs), the first global instrument designed to address corporate human rights responsibilities, explicitly cite NCPs as an example of state-based non-judicial grievance mechanisms. In 2014, the UN Human Rights Council tasked an intergovernmental working group with developing a binding treaty on business and human rights. The draft treaty (OEIGWG, 2021) calls for states to establish non-judicial mechanisms for corporate human rights violations and expects companies to take responsibility not for their own operations but also those linked through their business relationships. In this context, the findings of this paper may inform broader policy discussions on the design of grievance mechanisms beyond NCPs.

The paper is structured as follows: it begins with a review of the literature on NCPs and extraterritoriality, followed by the theoretical framework and the working hypothesis. The

analysis is divided into two parts: a quantitative examination of 233 cases and a comparative case study, each assessing the impact of extraterritoriality on mediation outcomes.

Literature Review

The effectiveness of the OECD Guideline's NCP has been the focus of small, predominantly case study-based literature (Černič, 2008; Daniel et al., 2015; Macchi, 2017; Otterburn 2014, 2025; Perillo, 2022; van't Foort et al. 2020), and its overall effectiveness in achieving resolution remains debated (for a recent review, see Mayar & Maas, 2024). An optimistic view holds that the NCP's procedure has been used to bring grievances to the attention of business, trigger legal action, to tarnish corporate reputation through "naming and shaming" elements of the NCP conclusion, and discourage governments and financial institutions from supporting implicated companies, and the payment of compensation to the claimants (Achtouk-Spivak & Garden, 2022; Bhatt & Erden Türkelli, 2021). Furthermore, compared to litigation, it is more affordable and accessible (Macchi, 2017). Despite this, observers argue that NCPs' soft powers "might be just a bit too soft" to shift the balance between profit maximization and human rights protection in favour of human rights (Cîrlig 2016: 233). Among the most criticised aspects is the inability of NCPs to compel corporations to meaningful cooperation in the process or impose sanctions for non-compliance (Černič, 2008; Daniel et al., 2015; Marx & Wouters 2017; Khoury and Whyte, 2019).

Recent literature focuses on the institutional and operational characteristics of NCPs. For example, Otteburn (2025) examines the effect of five institutional features of NCPs on the likelihood of resolution in 81 cases concerning human rights violation, and finds that the mandate to make determination, a multistakeholder governance structure, and the engagement of external expertise all contribute to an effective remedy. The role of institutional "seat" of an NCP – for example being annexed to a single ministry, being an interagency (with representatives from several ministries and independent agencies), an organization with representative from government, business and civil society or an independent expert body – also plays a role in how NCPs handle their cases, which may impact effectiveness (Marx & Wouters 2017; Khoury and Whyte, 2019). Furthermore, the extent to which NCPs actively promote the guidelines, raise awareness, and inform civil society actors about their options in cases of noncompliance affects their effectiveness (Marx & Wouters 2017). The wide government support of the Guidelines in general and NCPs in particular is often considered an important factor in the likelihood of resolution (Černič, 2008; Khoury and Whyte, 2019).

Beyond these, the availability of financial support for complainants to reduce access barriers is deemed a relevant institutional factor for successful case resolution (van't Foort et al. 2020; Otterburn 2025).

While various institutional and operational factors have been studied in relation to NCP mediation effectiveness, the role of extraterritoriality has yet to be examined. The concept of extraterritoriality can take on a variety of meanings. Traditionally, international law has been primarily governed by the territorial principle, whereby states exercise jurisdiction only over offences committed within their borders (Akehurst, 1973). In contrast, extraterritorial jurisdiction refers to a state's authority beyond its territory, such as in relation to its nationals, foreign entities operating under its laws, or actions that have significant effects within its borders. (Akehurst, 1973). Addis (2012) differentiates between ordinary extraterritorial jurisdiction, which requires a connection to the case (e.g. the citizens of the perpetrators or victims), and extraordinary extraterritorial jurisdiction, which relies on customary international law without such a link (Addis 2012: 18). The term extraterritoriality also refers to the legal exemption of diplomats from local jurisdiction (Pal, 2019).

In the field of business and human rights, extraterritoriality is often seen as a solution to bridge the accountability gap in transnational corporate operations and supply chains – when host states fail to address corporate human rights abuses, home states may intervene (Bernaz, 2013; De Schutter, 2016;). Bernaz (2013: 496) defines extraterritoriality as “any measure taken by the state aiming at enhancing corporate accountability for acts committed abroad”. Expanding on this, Zerk (2010) argues that extraterritoriality includes the use of domestically imposed regulations that influence the conduct of business actors abroad, such as requirements for parent companies to oversee and report on the conduct of their subsidiaries. The UNGPs take a similar position. The second principle of the state duty to protect human rights permits (though does not require) states to act against human rights violations by corporations whose parent companies or subsidiaries registered within their jurisdictions, even when the violations occur abroad (UN, 2011).

The ability of NCPs to address corporate misconduct beyond the borders of the state that instituted NCPs is recognized as one of their strengths as international courts with extraterritorial powers often do not have the mandate to address corporations (Achtouk-Spivak & Garden, 2022; Buhmann, 2019). Moreover, NCPs from different countries can cooperate with each other, and some complaints have been filed to multiple NCPs (Achtouk-Spivak & Garden, 2022). Experts agree that regarding their extraterritorial competences “NCPs currently

fill a gap that neither national law, nor international law, nor private corporate social responsibility (CSR) schemes cover” (Buhmann 2019: 10; Catá Backer 2012).

Despite this, no systematic research has examined how extraterritorial cases perform in practice, leaving it unclear whether extraterritoriality impacts the effectiveness of NCP mediation. However, a new knowledge on the impact of extraterritoriality on the likelihood of reaching agreement may inform recommendations for improving NCPs and designing other non-judicial redress mechanisms with similar mandates.

Theoretical Framework

Drawing on previous research on culture in negotiations (Adair et al., 2004; Brett 2000), conflict mediation (Lewicki, McAllister & Bies, 1998; Kydd 2006; Ross & LaCroix, 1996) and the effectiveness of NCPs, we argue that extraterritoriality is likely to reduce NCP effectiveness – that is, it makes it less probable that parties will reach a mutually acceptable agreement. The primary reason is that the NCP procedure brings to the negotiation table actors from different cultural backgrounds, and as the literature on culture and negotiation has shown, cultural differences can hinder the ability to achieve joint gains (Aidar et al., 2001; Adair et al., 2004; Brett, 2000). For example, anchored in cultures, different power strategies (positional, distributive or influence (Fisher, Ury & Patton, 2011; Shall, 2006) and communication strategies in negotiations – such as the amount of information contained in an explicit message versus implicit contextual cues (high versus low context cultures (Hall, 1976)) and approaches to information-sharing (direct versus indirect) – influence the likelihood of reaching joint gains (Aidar et al., 2021; Adair et al., 2004). For example, U.S. and Brazil negotiators exhibit direct communication style (low context) and low-power negotiation tactics, while negotiators from Japan and Russia adopt high-context and high-power approaches (Aidar et al., 2024: 371). Aidar et al. (2021: 371) compared negotiation behaviors in intercultural and intracultural dyads, finding that “culturally normative negotiation behaviors partially account for the lower joint gains generated by intercultural ...dyads”.

Furthermore, compared to an intracultural scenario – where the complainant, corporation and NCP are from the same country (a proxy for cultural similarity) – extraterritoriality is likely to generate lower trust towards both the NCP and the opposing party

from the outset of mediation.² As in any mediation (Lewicki, McAllister & Bies, 1998; Kydd 2006), participants in an NCP-mediated dialogue evaluate the costs and expected gains of engagement, the magnitude of which is moderated by their trust in the NCP procedure (which is assumed constant here), the mediating NCP, and the opposing party. These reassessed costs and benefits influence actors' willingness to negotiate in good faith, thereby affecting the likelihood of reaching an agreement. When mediation participants come from different countries, trust in both the mediating NCP and the opposing party is likely to be lower, as explained below, and their willingness to negotiate in good faith is also likely to be lower compared to an intracultural setting. This, in turn, may negatively affect the outcome of the procedure.

Consider complainants – individuals and civil society organisations, which often file complaints independently or on behalf of affected individuals and communities. Complainants must invest significant resources in the process (Daniel et al., 2015), resources that are lost if 1) an NCP conducts a biased initial assessment or subsequent mediation and 2) a corporation either declines to participate – thereby excluding the achievement the best possible outcome – a mutual agreement – or engages only superficially. Consequently, complainants must trust that the relevant NCP will conduct a thorough and fair initial assessment and mediation. This trust may be weaker when complainants are from a different country than the mediating NCP. For instance, complainants from Bukavu, Democratic Republic of the Congo, may have less confidence in an Amsterdam-based NCP than complainants from the Netherlands. This is because Congolese complainants may be wary of a foreign NCP's low sensitivity to their cultural background, inadequate understanding of the contextual circumstances of the case, or potential bias in favour of a corporation from its own country.³

Regarding complainants' trust in corporations, given that the NCP procedure is always initiated in response to alleged violations of the Guidelines by business entities, complainants are unlikely to have strong positive expectations about the opposing party's willingness to reach an agreement. In other words, their trust in the corporation is likely to be low from the outset. Moreover, corporations typically possess considerably greater resources than complainants

² Amidst the many definitions of trust (for review see Miloslav & Nisotskaya 2024), for the purposes of this study, trust is defined as “confident positive expectations regarding another's party conduct” (Lewicki, McAllister & Bies, 1998: 439).

³ That said, foreign NCPs – particularly those in countries such as the Netherlands or Sweden, where impartiality in public administration and the judiciary is a norm (Nisotskaya et al. 2021: 45; Öberg & Wockelberg, 2015) – may be perceived by complainants as more impartial than domestic NCPs, which may be organizationally weak, lacking credibility, or even be susceptible to corrupt.

(Bhatt & Erdem Türkelli, 2021). Resource asymmetry limits the foundations for reciprocity between actors, as one actor is less dependent on the cooperation of the other side (Lee & Lee, 2024), which may further reinforce negative expectations about the business party's intentions and conduct throughout the process and is therefore more likely to create distrust in their relationship. As Khoury and Whyte (2019: 376) point, a process with large resource imbalances between the parties "can never resemble a consensual process". When these concerns intersect with extraterritoriality, complainants' skepticism regarding the corporation's good-faith participation may be exacerbated, thereby affecting their negotiation conduct and reducing the likelihood of reaching an agreement.

For corporations, as the mediating NCP is typically from their home country, extraterritoriality should not negatively impact their trust in the adjudicating authority and, consequently, their willingness to cooperate in good faith is unlikely to be lower. However, just as for complainants, corporations may approach the NCP mediation with skepticism towards complainants because they must defend themselves against the alleged violations. If complainants are from a different country, corporations may be skeptical of the reliability of evidence that complainants would present, especially when allegations pertain to events in distant and complex operational environments, which decreases likelihood of good-faith mediation. Furthermore, given low trust in corporations globally (Kowitt, 2024; van Beemen 2019), corporations may fear that complainants (and their associates, like advocacy groups) have a fundamental distrust of businesses, which reduces the likelihood of fair negotiation. When these intersect with extraterritoriality, corporations' skepticism regarding complainants' good-faith participation may increase, thereby affecting their negotiation conduct and reducing the likelihood of reaching joint gains.

Based on these considerations, the following hypothesis is put forward:

H: Extraterritorial cases are less likely to result in an agreement.

Quantitative Analysis

In the first step we conduct a quantitative analysis of the hypothesized link between extraterritoriality and NCP effectiveness, using data on all completed cases filed by NGOs between 2000 and 2022. This section discusses the data, explains the modelling choices, and presents the results of the logistic regression analysis.

Three databases track complaints filed with NCPs: the OECD, the OECD Watch – a network of around 130 non-profit organizations that aims to improve the implementation of the

OECD Guidelines through advocacy and advice offered to NGOs on how to use the Guidelines, and the Trade Union Advisory Committee (TUAC), which serves as an interface of the OECD with organized labor. However, none of these databases capture all complaints (Ruggie & Nelson, 2015). For example, the OECD excludes complaints rejected before 2011, while OECD Watch and the TUAC only document complaints filed by civil society and trade unions, respectively. We opted for the OECD Watch database as it is the most complete of the three and offer greater detail and precision in categorizing case outcomes compared to the OECD database. While the OECD database classifies cases only as “concluded”, “not accepted” and “in progress”, OECD Watch provides a more nuanced classification, including “agreement”, “blocked”, “filed”, “no resolution”, “rejected”, “under review” and “withdrawn”. Between 2000 and 2020, NGOs accounted for 40% of NCP cases compared to 26% filed by trade unions and 25% by individuals (OECD, 2020). Nevertheless, the exclusion of complaints from actors beyond civil society presents a limitation, restricting the generalizability of the findings to all NCPs.

As of July 2023, 309 completed cases were identified in the OECD Watch database. Where a complaint is filed against multiple companies, OECD Watch lists a case for every company involved. For example, if a complaint against six companies is rejected by the NCP after initial assessment, the database will list six rejected specific instances. We reasoned that the inclusion of all six cases may bias our results and counted such cases as one. This reduced the number of eligible cases from 309 to 233 in our dataset.

Data

Dependent variable: Agreement

Our outcome of interest is whether the case resulted in an agreement. It is important to recognize that reaching an agreement does not necessarily mean that the case is completed to a full satisfaction of the parties. Even when a breach of the Guidelines has been established, meaningful improvements for the complainants are not always guaranteed. Daniel et al. (2015) find that between 2000 and 2015, only one percent of cases resulted in tangible benefits for affected individuals and communities, and financial compensation was never paid. Conversely, cases that do not end in an agreement can still have significant consequences. This is particularly true when NCPs determine that a violation of the Guidelines has occurred (OECD Watch policy advisor), as this can damage a company’s reputation, lead to penalties, such the withdrawal of economic benefits by governments (Achtouk-Spivak & Garden, 2022), and can

be “very important for the complainant, because it's really a big push for an agreement to be reached” (OECD Watch policy advisor). Nevertheless, since NCP procedure is designed to facilitate agreements between parties, the achievement of an agreement serves as an indicator of the NCP efficiency.

Therefore, we coded the completed cases from in the OECD Watch database as follows: agreement = 1, blocked = 0, no resolution = 0. Cases that were filed, under review or withdrawn by complaints (N = 35) were excluded from the analysis. Table 1 (Appendix B) reports the descriptive statistics.

In addition, the variable *Accept* was created where “1” stands for the accepted cases (which could end either in agreement or not) and “0” stand for the cases that were not accepted for consideration by NCP. As Table 2 (Appendix B) reports, 105 cases were accepted by NCPs, whereas 128 were not.

Independent variable: Extraterritoriality

The key independent variable is extraterritoriality, capturing whether a complaint is received by the same country in which the alleged violation took place or not. It is a binary variable, constructed by the authors based on the information contained in the OECD Watch database. If a violation happened in the same county of the adjudicating NCP, the case is code as “0”, otherwise “1”. The practice of filing complaints with NCPs from a different country is very common: there are 178 extraterritorial cases compared to 55 cases where the location of the adjudicating NCP and the violation is the same (Table 3, Appendix B), of which the majority were lodged to non-European NCPs.

Control variable: NCP Quality

The selection of control variables was guided by the literature and insights from informant interviews: representatives of the Dutch NCP’s secretariat and OECD Watch. The first control variable is *NCP quality*. To capture this, we use a set of measure produced by OECD Watch, presently consisting of 40 indicators, covering organizational, procedural and communication aspects of NCP work (OECD Watch 2024). These so-called key performance indicators represent civil society’s priorities for well-functioning NCPs – such an impartiality, expertise and transparency – and are based on the expected, permitted or recommended provisions of the Guidelines. Between 2017 and 2019, these indicators were developed in consultation with OECD Watch network members, union partners, the OECD secretariat, and NCPs. In 2019 and

2021, 38 indicators were used to assess individual NCPs, while the 2024 assessment expanded to 40 indicators.

The assessment consists of a set of questions with three possible answers: yes, partial and no. For example, the financial resources question is: “NCP has a dedicated budget that is published on its website?”, while one of the organization questions is “NCP is not housed within a ministry focused on economics, trade, or investment to limit risk of real or perceived conflict of interest?” To answer the evaluation questions, OECD Watch draw data from NCP’s website, annual reports, and peer reviews.

This study uses the 2021 evaluation results. We coded “yes” responses as “1” and all other responses as “0”. In our sample, extraterritorial cases were proceeded by 28 NCPs, with quality scores ranging from 35 (Norway) to 10 (New Zealand). For a detailed description, see Table 4 and Graph 1 in Appendix B.

Control variable: Host OECD membership

While previous researcher has examined how differences in the organization and operations of NCPs affect case outcomes (Buhmann, 2019; Černič, 2021; Sanchez, 2015; Otteburn 2025, 2024), the role of the country where an allegation occurs has been largely overlooked. The location of allegations – “the host country” – is the starting point for complaints and a relevant factor in both the case dynamic and outcomes.

Since complainants are typically citizens of the host country (OECD Watch, 2022), those from non-OECD nations often have fewer financial, organizational, and technical resources compared to those from OECD countries – a group of high-income economies with a very high Human Development Index. Despite non-judicial mechanisms offer a more accessible alternative to legal action, navigating the often years-long mediation process still demands substantial financial resources. Expertise is also a major challenge because “very, very rarely a local community has the expertise to speak to the complexities of the OECD guidelines” (Interview with OECD Watch policy advisor).

These obstacles can sometimes be mitigated through partnerships with well-established NGOs. Such organizations often have the necessary expertise and mediation (litigation) experience, as well as the resources and networks to attract media attention, increasing the likelihood of corporate participation in mediation (Interview with OECD Watch policy advisor). However, considering the stark disparity in civil society resources between OECD and non-OECD countries (Piewitt, 2010), NGOs in the latter are generally at a disadvantage. Furthermore, while research on the general awareness of the Guidelines in different countries

is lacking, it is reasonable to assume that they are less known in non-adhering countries. As a result, complainants in these contexts may struggle to leverage the Guidelines effectively, limiting their ability to hold corporations accountable and seek redress for grievances.

The link between the host country and extraterritoriality is clear: since only a few non-OECD countries adhere to the Guidelines and maintain their own NCPs, complainants from these countries must bring their cases abroad. Notable exceptions in our sample include Argentina, Brazil and Peru, which despite not being OECD members, have primarily handled cases within their own territories. The variable *HostOECD* takes on the value “1” if the case is processed in an OECD country (N=54) and “0” otherwise (N = 179).

Control variable: Year dummies and the 2011 update of the Guidelines

As shown in Figure 2 (Appendix B), the number of cases per year varies considerably. Similarly, Figure 3 (Appendix B) shows the share of cases resulting in an agreement over time. Interviewees also noted a shift towards a more legalistic approach to mediation, marked by the increasing presence of lawyers on both sides of negotiations, replacing regular NGO members and company representatives. Given these factors, it is reasonable to control for year-specific effects when analysing case outcomes.

Another important consideration is the 2011 update of the OECD Guidelines, which introduced several significant changes aimed at strengthening corporate responsibility, particularly in the areas of human rights, due diligence, and the role of NCPs. Besides expanding the scope of the Guidelines and strengthening due diligence requirements for corporations,⁴ the update introduced some important changes for NCPs. Specifically, the update provided detailed procedural guidance for NCPs, including a timeline for different stages of the process, making it clear which complaints should be accepted for further examination, and requiring NCPs to publish final statements on complaint outcomes, including reasons for accepting or rejecting cases. The update also put stronger expectations for the functional equivalence of NCPs and introduced a peer-review mechanism to ensure that cases are dealt equally fair, effective and transparent. To account for this change, the variable *Reform* was

⁴ The 2011 update introduced a human rights chapter, thereby aligning the Guidelines with the UNGPs. Businesses have a responsibility to respect human rights, conduct due diligence, and provide remediation when they cause or contribute to adverse impacts. Furthermore, the 2011 revision reinforced corporate responsibilities in areas such as climate change, biodiversity, and sustainable resource management. The 2011 update made multinational enterprises responsible for impacts linked to their business relationships, including those occurring in their supply chains, even if they do not have direct control over them. Procedurally, the updated Guidelines placed an expectation on companies to undertake risk-based due diligence not only in employment, but also in human rights, environment, and supply chain management. This was a shift toward a more proactive approach, requiring companies to identify and prevent negative impacts rather than merely reacting to them.

created, coded as “0” for cases filed until 2011 (N = 98) and “1” for those filed afterwards (N = 135).

Results

Since the dependent variable is dichotomous, we used logistic regression for data analysis. Table 1 presents the results. Model 1 is a bivariate regression, where the coefficient for *Extraterritoriality* is statistically significant (at the 95% confidence level) and negatively signed, indicating that the likelihood of an agreement decreases in extraterritorial cases. This provides initial support for the study’s hypothesis.

Model 2 introduces *NCP Quality*, rendering the coefficients for both *Extraterritoriality* and *NCP Quality* statistically significant at the 99% confidence level. The positive coefficient for *NCP Quality* suggests that higher-quality NCPs are more likely to facilitate agreement. Model 3 incorporates *HostOECD*. Here *Extraterritoriality* remains statistically significant (though only at the 90% confidence level), with a coefficient magnitude comparable to Model 2. The estimate for *NCP Quality* remains substantively similar to that in Model 2, while *HostOECD* is not statistically significant.

Model 4 adds the year in which the complaint was filed, which reduces the sample size to 147.⁵ In this model, *Extraterritoriality* is statistically significant (at the 95% confidence level), with a larger negative coefficient than in previous models. The estimates for *NCP Quality* and *HostOECD* remain substantively unchanged from Model 3. These results suggest that cases handled by a high-quality NCP in the same country where a breach of the Guidelines occurs are more likely to result in agreement.

To aid the interpretation of coefficient sizes, we transform the log-odds estimates from the logit regression into predicted probabilities and examine the average marginal effects (Table 2). Average marginal effects represent the average change in the predicted probability of reaching agreement resulting from a change in an independent variable across all observations (Long & Freese, 2001). As reported in Table 2, shifting from no extraterritoriality to extraterritoriality is associated with a 0.198 decrease in the predicted probability of reaching an agreement. Likewise, a one-point increase in *NCP Quality* is associated with a 0.019 increase in the predicted probability of agreement. All other variables held constant, the predicted

⁵ Years 2002, 2003, 2004, 2006, 2007, 2008, 2016, 2019, 2021 and 2022 were dropped because the dependent variable (*Agree*) was always 0 in those years.

probability of an agreement in a case handled by the highest-quality NCP in our sample (Norway), is 0.67, while for the lowest-quality NCP (New Zealand), it is 0.19.

Table 1. Extraterritoriality and NCP effectiveness

	Model 1	Model 2	Model 3	Model 4
Extraterritoriality	-0.79** (0.39)	-1.15*** (0.42)	-1.03* (0.59)	-1.31** (0.66)
NCP Quality		0.105*** (0.03)	0.103*** (0.03)	0.12*** (0.04)
HostOECD			0.17 (0.57)	0.04 (0.62)
Year dummies	no	no	no	yes
Constant	-1.17*** (0.32)	-3.75*** (0.90)	-3.82*** (0.94)	-2.37 (1.63)
N	233	233	233	147

Note: Dependent variable is *Agree*; standard errors in parentheses; ***p < 0.01, **p < 0.05, *p < 0.10.

Table 2. *Extraterritoriality* and *NCP Quality*: average marginal effects (N = 147)

	dy/dx	Std. Err.	z	P>z	[95% Conf. Interval]	
Extraterritoriality	-0.198	0.096	-2.060	0.040	-0.387	-0.009
NCP Quality	0.019	0.005	3.620	0.000	0.009	0.029

Note: Estimates are based on coefficient in Model 4, Table 1.

After establishing a relationship between extraterritoriality and the predicted probability of an agreement, it remains unclear whether the lower number of agreements is due to extraterritorial complaints being more frequently rejected by NCPs after the initial assessment or whether the dialogue breaks down at a later stage – for instance, if corporation refuses to participate. To examine whether *Extraterritoriality* influences NCPs' initial case assessments, we replace the dependent variable *Agree* with *Accept*.

Table 3 reports the results, showing that *Extraterritoriality* is not statistically significant. This finding, together with the main analysis, indicates that while extraterritoriality does not impact an NCP's decision to accept or reject a case, it does influence the mediation process once a complaint has been accepted. The coefficient for *NCP Quality* remains significant,

suggesting that higher-quality NCPs are more likely to allow for mediation following the initial assessment.

Table 3. The effect of *Extraterritoriality* on *Accept*

	Model 1
Extraterritoriality	-0.65 (0.46)
NCP Quality	0.048** (0.02)
HostOECD	-0.34 (0.46)
Year dummies	yes
Constant	0.25 (1.36)
N	232

Note: Dependent variable is *Accept*; standard errors in parentheses, ***p <0.01, **p<0.05, *p <0.10.

We assess the parsimony of our modelling choices by conducting a likelihood-ratio test, which compares the full model (Model 4 Table 1) to a restricted model that excludes a specific variable (Long & Freese, 2001). As shown in Table 3 of Appendix C, only a model including *NCP Quality* as a control provides a significantly better fit to the data than a model excluding it. In contrast, the inclusion of the *HostOECD* and year dummies do not improve the model's explanatory power and are therefore excluded from further analyses.

To account for the possible effect of the 2011 update of the Guidelines, we include the *Reform* control variable in the analysis. As Table 4 shows, the coefficient for *Extraterritoriality* is statistically significant at the 95% confidence level, while *Reform* is not statistically significant, suggesting that the 2011 update hasn't made an impact on the NCP effectiveness.

To further investigate the effect of the 2011 update, we considered running separate analyses for cases concluded before and after its implementation: 2001-2011 (N=98) and 2012-2022 (N=135). However, due to the limited number of cases where Y = 1 in both periods (11 and 23 respectively), even models with two predictors would likely yield unstable or even unreliable estimates (Peduzzi et al 1996).

Table 4. Extraterritoriality and NCP effectiveness accounting for 2011 Guidelines' update

	Model 1
Extraterritoriality	-1.09** (0.43)
NCP Quality	0.107*** (0.03)
Reform	0.528 (0.41)
Constant	-4.17*** (0.97)
N	233

Note: Dependent variable is *Agree*. Standard errors in parentheses, ***p <0.01, **p<0.05, *p <0.10.

In conclusion, the study's hypothesis is supported by the data. Extraterritorial cases are more likely to end without an agreement. Moreover, we found that extraterritoriality does not appear to influence an NCP's decision to accept a case. Instead, the lower number of agreements seems to result from extraterritorial complaints more frequently experiencing dialogue breakdown at the moderation stage. Additionally, the quality of NCPs plays an important role, as higher-quality NCPs are more likely to facilitate agreements between the parties. Finally, Appendix C presents the regression diagnostics, which remain within accepted ranges. Table 5 in Appendix C also reports the results of the analysis excluding influential observations, which align with those of the main analysis.

Qualitative Analysis

Research Design and Data

Following the quantitative analysis, which supports the proposition that extraterritoriality negatively affects the NCP-mediation outcomes, in the next step we try to identify potential mechanisms underlying this relationship through a comparative case study. This study employs the most similar systems design, in which two cases share all relevant factors except for one key variable, yet produce different outcomes (Mill 1843). Although no two NCP cases are identical, some share similarities on substantive attributes, making them well-suited for this type of analysis.

We compare *Dutch NGOs vs. ING Bank* and *Milieudefensie et al. vs. ING*. Both cases involve complaints filed against ING Group – a global banking and financial services

corporation headquartered in Amsterdam, at the Dutch NCP by civil society organizations, alleging breaches of the OECD Guidelines. They share a focus on ING's responsibility for environmental and human rights impacts linked to its financing practices, with the former case concerning ING's insufficient commitment to climate targets under the Paris Agreement and the latter addressing ING's contribution to adverse environmental, human rights, and labour right impacts caused by ING's clients and their business affiliates. The cases differ in terms of extraterritoriality: in the Dutch NGOs vs. ING Bank case, the allegations focused directly on the bank's action (specifically, the bank's failure to reduce the emission of greenhouse gasses resulting from its financial products) and all complainant NGOs were based in the Netherlands. In contrast, in Milieudefensie et al. vs. ING, the allegation's focus was on the actions of the bank's clients (Noble Group Ltd., Bolloré Group/Socfin Group S.A., and Wilmar International Ltd. And their business associates), the alleged harm occurred across countries in Africa and Asia, and the complaint was filed by NGOs from the Netherlands, Indonesia and Liberia. Regarding the outcome, while the former case resulted in an agreement, the latter did not. Table 5 highlights the key similarities and differences between the cases.

Table 5. Overview of cases

	Dutch NGOs vs. ING Bank	Milieudefensie et al. vs. ING
Date filed	May 8, 2017	July 5, 2019
Date concluded	April 19, 2019	April 7, 2022
NCP	The Netherlands	The Netherlands
Complainants	BankTrack, Greenpeace Netherlands, Milieudefensie, Oxfam Novib	Milieudefensie, SDI, WALHI
Defendant	ING	ING
Extraterritoriality	No	Yes
Outcome	Agreement	No agreement

Note: ING is a global financial corporation with nearly 38 million customers, including retail and corporate customers, over 100 countries. BankTrack is the international tracking, campaigning and civil society support organization targeting commercial bank and the activities that they finance with the aim "to challenge the banks globally to act urgently, decisively and in a just manner on the accelerating climate crisis, the ongoing destruction of nature and the widespread violation of human rights" (BankTrack 2024, n/p). Milieudefensie is the Dutch branch of Friends of the Earth, working to achieve "a safe and healthy environment, a just distribution of and access to the natural wealth of the earth, respect for nature and a voice for people on how to manage these" (Milieudefensie 2025, n/p). Greenpeace Netherlands is part of a global network of national and regional organizations, working "to protect biodiversity in all its forms, prevent pollution and abuse of the earth's ocean, land, air and fresh water, end all nuclear threats, promote peace, global disarmament and non-violence" (Greenpeace 2025). Oxfam Novib is the Dutch affiliate of Oxfam International, a confederation of NGOs operating in 79 countries and focusing on the alleviation of global poverty. WALHI is the Friends of the Earth Indonesia, and SDI is the Sustainable Development Institute/Friends of the Earth Liberia.

The data included official statements and press releases from the Dutch NCP, the participating NGOs and ING, as well as interviews with representatives of the Dutch NCP and

OECD Watch. The following sections outline the timelines of each case before moving to the analysis.

Case Description

Case 1: Dutch NGOs vs. ING Bank

On 8 May 2017, four Dutch NGOs filed a complaint against ING with the Dutch NCP, alleging the bank's failure to commit appropriately to achieving climate targets under the 2015 Paris Agreement. Specifically, the complaint argued that ING did not disclose the so-called indirect emissions – that is CO₂ emissions of the companies and activities it financed, which is the most significant source of ING's environmental impact – constituting a breach of Chapter III (Disclosure) of the Guidelines. Additionally, the complainants alleged that ING had failed to set specific and measurable targets to limit ING's indirect emissions to no more than 1.5°C, thereby violating the environmental and consumer interest provisions of the Guidelines.

On 14 November 2017, the Dutch NCP accepted the case, despite ING's initial evaluation of the complaint as premature and unnecessary (Dutch NCP, 2019, p. 2), and invited the NGOs and ING to participate in a dialogue, which all parties agreed to. Between February 2018 and January 2019, the parties came together in four dialogue sessions and two expert meetings (Dutch NCP, 2019). A central part of the dialogue revolved around a methodology which would allow ING to assess its indirect emissions and steer its lending portfolio towards meeting the 2015 Paris Agreement's goal well-below 2 degrees. ING had been working with external parties to develop such a methodology since 2015, particularly with an internationally recognized think tank 2DII,⁶ and the NCP procedure influenced ING's decision to adopt the so-called Terra approach – “comprising multiple methodologies like the Paris Agreement Capital Transition Assessment (PACTA) and Platform Carbon Accounting Financials (PCAF)” (Dutch NCP, 2019, p. 4) – to assess the carbon footprints of its clients and their activities across eight most carbon-intensive sectors: energy (including oil, gas, and conventional power), automotive, shipping and aviation, steel, cement, residential mortgages, and commercial real estate. As a result of the mediation, the bank also committed to set science-based targets to align its lending portfolio with the Paris Agreement's goal of keeping global temperature increase well-below 2°C (above pre-industrial levels), as well as to set and publish intermediate targets (f.e. 2020, 2025, and 2030) with the further development and implementation of its Terra approach. The NGOs failed to convince ING to commit to a more ambitious end-goal – 1.5°C target, but the

⁶ Currently known as Sustainable Finance Observatory.

parties called upon the Dutch government to facilitate the development of a better understanding of the pathways to reach the 1.5 degrees target. In addition to this, ING reiterated its previous commitment to refrain from financing new coal-firing power plants.

On April 19, 2019, the NCP issued the final statement, noting the constructive “attitude of ING during the process, its willingness to cooperate in good faith with the notifying parties and be open, given the confidentiality” (Dutch NCP, 2019, p. 6). Given this, the NCP found that making a determination whether ING did or did not comply with the OECD Guidelines was “not helpful to the future process between parties” (Dutch NCP, 2019, p. 7). Nevertheless, the final statement reiterates the Guidelines’ requirements of setting concrete greenhouse gas emissions and climate change targets. The NCP had invited the parties to evaluate the outcomes of the dialogue in the second quarter of 2020, which both parties accepted.

Between the final statement (April 2019) and its evaluation (November 2020), the parties remained in contact. For example, the NGOs provided feedback on ING’s first Terra Progress Report issued in 2019, while ING sought input from the NGOs for comments on other climate impact reports in the market to discuss potential best practices and lessons learned.

During the evaluation meeting, the NGOs criticised ING for not meeting its commitments under the agreement. Specifically, they pointed to the absence of intermediate targets for the sectors covered by the Terra approach, expressed doubts about the usefulness of the PACTA methodology in measuring financed emissions (CO₂ emissions of the companies and activities the bank finances) in the oil and gas sector, and noted that “the vast majority of ING’s loans to energy companies still go to fossil energy companies (Dutch NCP, 2020, p. 2). Despite this, the NCP noted that both parties “expressed appreciation for the constructive and open conversation” during the evaluation of the agreement (Dutch NCP, 2020, p. 4).

Case 2: Milieudefensie et al. vs. ING

On 5 July 2019, Friends of the Earth (Milieudefensie) from three countries filed a complaint against ING with the Dutch NCP. The complainants argued that ING had breached the Guidelines by contributing to adverse impacts caused by its clients and their affiliates involved in palm oil production across multiple countries, including Indonesia, Cameroon, Sierra Leone and Liberia (Milieudefensie et al., 2019). The complaint alleged that these harmful impacts were foreseeable, yet ING took no action to prevent them. Instead, the bank continued providing loans to companies implicated in human rights, environmental and labour rights violations. This, the complainants argued, constituted a failure by ING to fulfil its due diligence obligations

under the Guidelines. The NGOs presented seven points for mediation, the most radical of which called on ING to immediately cease its contribution to the ongoing harm by divesting from the client named in the complaint. They also sought stronger sustainability criteria in ING's financing contracts, as well as a clause requiring clients to consent to ING's disclosure of its relations with them. Additionally, the NGOs called for ING's public disclosure of its engagement with all clients regarding their environmental, social and human rights-related risks and impacts (Dutch NCP, 2020, p. 3).

In response, ING explained its policy of not disengaging from clients that are members of the Round Table on Sustainable Palm Oil (RSPO), citing the RSPO as a recognized "good practice" for palm oil practices. ING further argued that "disengagement of companies that adhere to the RSPO principles will in general not benefit the goal of sustainability" (Dutch NCP, 2020, p. 3). The bank also rejected the claim that it "contributed to" the harm, insisting it was merely "linked to" the alleged adverse impacts through its client relationship, which it argued does not constitute a breach under the Guidelines. ING maintained that its environment and social risk (ESR) policy was adequate and that its focus on engagement over disengagement was compliant with the Guidelines. The bank also made it clear that it was not willing to discuss the NGOs' demand for disclosure, citing client confidentiality.

On 20 January 2020, the Dutch NCP accepted the case for mediation. Between February 2020 and February 2021, the parties five dialogue sessions, as well as separate meetings with the NCP in July 2021 (Dutch NCP, 2022, p. 6). The dialogue agenda was set around three questions: ING's due diligence policies and practices, its degree of involvement in the actual or potential adverse impacts, and its responsibilities regarding remedy. The parties agreed on transparency and confidentiality during the mediation, given ING's concerns over its client confidentiality obligations.

After a "fruitful start" (Dutch NCP, 2022, p. 3), the parties agreed at the fifth joint meeting to proceed with an expert session on the distinction between "linked to" and "contributed to", as well as a more detailed discussion of ING's business with Wilmar International Ltd, SocFin Group S.A. and Noble Group Ltd. However, ING withdrew from the mediation, citing a lack of trust in Milieudefensie's good-faith participation following the publication of a report commissioned by Milieudefensie in March 2021 (Milieudefensie, 2021). The report reiterated Milieudefensie's criticism of the RSPO, specifically its inadequate consultation process with affected communities during the certification of sustainable palm oil. This report was followed by a critical article in *De Volkskrant*, one of the leading and well-

regarded newspapers of the Netherlands, titled “ING and pension funds invest in controversial palm oil company, land grabbing in Cameroon continues” (Vos, 2021), published on May 29, 2021.

Although the report did not mention ING directly, it built on a case study of the RSPO certification process in West Africa, which involved one of the ING’s clients, SocFin Group S.A. *De Volkskrant*’s article criticised financial institutions, including ING, for excessive reliance on RSPO certifications in due diligence (Vos, 2021). In response to these publications, ING argued that Milieudedefensie had violated the mediation’s terms of reference, as the article “specifically referred to the core of the dialogue; the use of RSPO as part of ING’s due diligence of SocFin’s Cameroon plantations” (Dutch NCP 2022, p. 7). ING further stated that “[T]hese publications created the strong impression at ING that Friends of the Earth was no longer interested in an open dialogue pursuing a joint agreement” as it “had already drawn its conclusions” (Dutch NCP 2022, p. 7).

In reply, Milieudedefensie maintained that it had not disclosed any confidential or sensitive information from the specific case nor mentioned ING directly, emphasizing that the issues raised in the articles were more general in nature (Dutch NCP 2022, p. 8). However, Milieudedefensie acknowledged that it could have informed ING and the NCP about the publications, given the ongoing mediation, and apologised for the oversight, expressing its willingness to continue the dialogue good faith (Dutch NCP, 2022, p. 8). Despite this, a further meeting between the parties to address ING’s concerns did not resolve the issue, and ING ultimately ended its participation in the dialogue. ING invited Milieudedefensie to jointly submit questions to the OECD regarding due diligence and the “linked to” vs “contributed to” distinction as part of the OECD public feedback process on the Guidelines, but Milieudedefensie declined, preferring to address these matters within the mediation process (Dutch NCP, 2023, p. 8). In August 2021, the dialogue came to an end, and the NCP issued its final statement in April 2022.

In the final statement, the NCP noted that the parties were unable to reach an agreement on any of the issues raised by the procedure. It recommended that the parties remain in contact regarding the issues discussed, including the RSPO certification, and made some specific recommendations to ING regarding the implementation of the Guidelines. Specifically, the NCP noted that participation in initiatives such as the RSPO does not transfer responsibility from the corporation to the initiative itself, and that the corporation remains responsible for

conducting effective due diligence. The NCP also invited the parties to evaluate the final statement one year later, which both parties accepted.

In spring 2023, the NCP received responses from the parties regarding the evaluation of the final statement, showing that their positions remained in line with those during the NCP procedure (Dutch NCP 2023, p. 1). Moreover, there had been no meaningful dialogue between the parties since the end of the mediation in August 2022, and the parties did not act jointly on the NCP's recommendations, instead taking separate actions (Dutch NCP 2023, p. 1). In October 2022, Milieudefensie organized an expert session to clarify the shift from “directly linked” to “contributing to” by corporations, including financial institutions. Milieudefensie sought clarification on ING's palm oil policy, which led to some exchange; however, ING refused to disclose details, citing client confidentiality. Additionally, Milieudefensie conducted a study on the RSPO-certification processes for the cases involved in the complaint, given its significant role in the due diligence practices of financial corporations. ING, in turn, reported adopting internal guidance on due diligence for financing companies which own palm oil plantations. Without providing specific details, ING stated that it no longer relied solely on the RSPO-certification but took into account information provided by multiple sources, including NGOs.

Analysis

Our analysis draws on actual case events and insights from interviews with representatives of the Dutch and UK NCPs, as well as OECD Watch. One author conducted online interviews with two representatives from the Dutch NCP's secretariat on March 20, 2023, and with two OECD Watch employees at their headquarters on March 9, 2023. Another author interviewed two representatives of the UK NCP on November 22, 2024 online. All interviewees opted to remain anonymous.

First, drawing on the literature on culture in negotiations, we examine the potential impact of intercultural differences – likely to arise in extraterritorial cases – on case outcomes through the trust mechanism. Second, we report our findings on the complexities of transnational quasi-judicial proceedings – particularly in evidence production and adjudication – how these can pose additional challenges to resolution.

Trust

In Case 1, both sides acknowledged the imperative to tackle climate change and the challenges of accurately measuring financed emissions. However, ING's initial response – dismissing the complaint as premature and unnecessary – was not conducive to building trust between the parties. Nevertheless, ING's eventual agreement to participate in the NCP process, along with its efforts to develop appropriate methodologies with a highly reputable external party (2DII) well before mediation, may have fostered the claimants' confidence that the bank's commitment to climate action was more than mere rhetoric. Both sides' participation in an expert session on measurement methodologies signalled a shared willingness to engage in substantive discussions and explore potential solutions, thereby reinforcing the potential for a constructive agreement. Following the case's conclusion, all parties emphasized the constructive nature of the dialogue, and communication continued regarding the implementation of the agreement. Furthermore, as both the NGOs and the bank were Dutch entities, intercultural negotiation dynamics did not appear to intervene into the trust mechanism of NCP effectiveness.

At the outset of the Case 2, the parties' positions were markedly different. Milieudefensie called for stronger due diligence and greater transparency, whereas ING asserted the adequacy of its due diligence policies and practices and refused to discuss any disclosure of client relationships due to confidentiality concerns. As ING did not demonstrate openness to the NGOs' demands, this likely undermined the compliants' trust in the bank early on. However, both parties' willingness to engage in expert sessions to explore the complexities of the extent of ING's involvement in the adverse impacts, signaled potential for a constructive dialogue. This was disrupted with Milieudefensie's participation in two publications criticizing the RSPO's certification process, which underpinned ING's due diligence. ING, having been named in one publication and with a client's operations scrutinized in another, declared that it lost trust in Milieudefensie's good faith and withdrew from the process. Considering that the parties had planned next mediation steps, it is unlikely that ING had preemptively decided to exit. More plausibly, Milieudefensie's actions led to a sharp decline in ING's expectations of the NGOs' future cooperative conduct. Although the complainants were from three different countries, it was the actions of the Dutch chapter of Milieudefensie that prompted the bank's response. As in Case 1, extraterritorial and intercultural dynamics did not seem to influence the trust mechanism of NCP effectiveness. Ultimately, the erosion of already fragile trust prevented a resolution.

This analysis highlights the critical role of trust in mediation and the challenges inherent in sustaining productive dialogue, which was further supported by the interviews. Interviewees from both the Dutch and UK NCPs, as well as from OECD Watch were unequivocal about the crucial importance of trust, its fragility, and the efforts NCPs invest to build and maintaining it. Furthermore, the Dutch and UK interviewees acknowledged that cultural differences can influence negotiations and that they consider participants' cultural background when offering their good offices.

Dutch NCP, interviewee 1: *“the way people react and the information they give and what is important to them”*.

UK NCP, interviewee 1: *“a gesture, facial expression, or even silence can be as strong as a verbal statement”*.

Furthermore, all interviewees maintained that language differences pose challenges in mediation, including building trust. While translation services can prevent misunderstandings, they may not facilitate rapport.

UK NCP: interviewee 2: *“How can you build any [trustful – authors] relationship when at breaks representatives don't speak with each other... because they don't speak the same language?”*

UK NCP: interviewee 2: *“...translators do a very important job – to bring all on the same page in terms of technicalities, but it [translation services] kills the personal contact... People don't look at each other when they speak via translators...”*

Furthermore, all interviewees noted that pre-COVID-19, all sessions, including extraterritorial ones, were conducted in person, fostering more effective mediation of meetings, hence more effective negotiation.

UK NCP: interviewee 2: *“...it is easier for us [mediators – authors] to intervene in face-to-face sessions than online. We can ask to clarify... to ask another party whether all points were clear to them ... we can do a lot of things ... [that cannot be done online - authors].”*

Interviewees from the UK NCP acknowledged recalling cases where cultural differences affected not only the course, but also outcome of mediation. However, due to the sensitivity of the issue, they refrained from providing specific details. Thus, evidence from employees of both the Dutch and UK NCPs suggests that extraterritoriality may indirectly weaken NCP effectiveness through intercultural and language complexities, which in turn affect parties' trust.

Evidence Availability and Interpretation

In Case 1, which concerned an alleged breach of Chapter III (Disclosure) of the Guidelines, the NGOs relied on evidence that was “literally in their [ING – authors] financial statements” (OECD Watch policy advisor). As an established financial institution, ING’s reporting adhered to recognized accounting and other standards, making it relatively straightforward for complainants to identify instances of non-disclosure and for the NCP to assess whether a breach had occurred. Once the case was accepted, the dispute centered on the complexities of measuring financed emissions — an issue that both parties had only a limited understanding of.

In contrast, Case 2 involved allegations of human and labour rights violations, as well as environmental harm resulting from ING’s inadequate due diligence on palm oil plantations across several countries in Asia and Africa. Establishing the bank’s degree of responsibility and identifying potential remedies required extensive evidence, which varied across companies (ING’s clients found in breach of the Guidelines), plantations, and communities. Beyond the logistical challenges of gathering evidence from different jurisdictions – including securing witness testimony and documentary proof – the case also posed interpretative difficulties. The mediator had to determine the admissibility, relevance, and weight of evidence from diverse socio-legal contexts. Reflecting on an extraterritorial case mediated by the UK NCP, an interviewee noted the difficulty in drawing “equivalency between what happened to X [affected party – authors] from country A and what happened to Y from country B, despite the seemingly similar actions of the company” (UK NCP, interviewee 2). While Case 2 had not yet progressed to mediation regarding ING’s responsibility and potential remedies, the scale and severity of the alleged breaches – spanning human rights, labor rights, and environmental standards across multiple locations – suggested a low likelihood of reaching an agreement. These contrasting cases illustrate how the complexity of evidence – both in terms of availability and interpretability – can significantly influence the likelihood of resolution.

Alternative explanations

Although the time span between the two complaints is relatively short – just two years – there is a marked difference in the rate of success. Of the eight NCP complaints filed in 2017, four ended in an agreement, marking the highest annual agreement since the establishment of the NCP system. In contrast, in 2019 the number of had complaints reached 16, yet none led to an

agreement. The reason for this sharp fluctuation is not immediately apparent and requires further research.

One possible explanation is the onset of the COVID-19 pandemic. In Case 1, meetings between the parties took place between February 2018 and January 2019, while in Case 2, discussions occurred between February 2020 and July 2021 (Dutch NCP, 2019; Dutch NCP, 2022). The Dutch government's contact restrictions, introduced in March 2020 to curb the spread of SARS-CoV-2, disrupted the NCP's operations by shifting meetings to remote formats (Dutch NCP interviewee #2). However, the impact of this procedural shift on the dialogue's outcome remains unclear. In interviews with Dutch NCP representatives, they did not comment on this aspect of the case. The UK NCP interviewees were in the opinion that the pandemic impacted the chances for mediation success, however due to limited interview time, this argument could be probed in greater depth. It is therefore plausible that the circumstances of the pandemic impeded the parties' ability to build mutual trust or that the bank, grappling with economic uncertainty, was less inclined to engage in the dialogue.

In sum, while extraterritoriality did not appear to affect trust between the parties in the selected cases, evidence from the Dutch and UK NCPs indicates that intercultural cases – typically linked to extraterritorial cases – suffer from low trust, which could in turn weaken NCP effectiveness. Moreover, the complexities of transnational quasi-judicial proceedings – particularly evidence production and adjudication – may further reduce the likelihood of resolution. Additionally, sharp fluctuations in mediation success rates suggest that external factors, such as the COVID-19 pandemic, may also play a role in shaping NCP outcomes, highlighting the need for further investigation into these dynamics.

Conclusion

NCPs are a non-judicial grievance mechanism established by the OECD states to promote corporate accountability under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The Guidelines enable complaints to be filed with the NCP of a country where a parent company or subsidiary is registered, regardless of where the alleged violations occur. This extraterritorial reach is a distinctive feature of NCPs that remains insufficiently studied.

The paper seeks to address this gap by examining how extraterritoriality impacts NCP effectiveness, understood as the likelihood of mediation reaching an agreement. To do so, the paper employs two strategies. First, we ran a quantitative analysis of all cases filed by NGOs in the period between 2000 and 2020. Our findings suggest that extraterritorial cases are less likely

to result in an agreement. However, extraterritorially is not associated with the likelihood of a case being accepted for mediation, indicating that its impact is primarily felt during the mediation process. Additionally, NCPs of higher quality are more likely to mediate cases to agreement, suggesting investment in NCPs quality is a viable strategy for higher success rate.

Second, a comparative case study aimed at illuminating how extraterritoriality impacts the likelihood of agreement probed the trust (between the parties) mechanism but found no direct evidence linking extraterritoriality to trust deficit. However, interview insights suggest that trust tends to be lower in cases where parties come from different countries—typically in extraterritorial disputes—which may, in turn, weaken NCP effectiveness. Furthermore, the case study provided evidence that the complexities of transnational quasi-judicial proceedings – particularly in evidence production and interpretation – pose additional challenges to resolution, with broader, multi-jurisdictional claims being especially difficult to mediate.

Several factors should be considered when interpreting these findings. First, the quantitative analysis excludes cases submitted by actors other than NGOs – such as trade unions or affected individuals and communities – limiting the generalizability of the results. Second, the qualitative analysis focuses on cases adjudicated by a well-established, high-quality NCP – the second highest-scoring NCP in the sample, with a performance more than one standard deviation above the average. This is not representative of many NCPs, some of which have yet to accept a complaint. Furthermore, since certain sectors and types of corporate conduct are closely associated with extraterritoriality – such as labour rights violations in the textiles industry, which often occur in non-OECD countries without their own NCPs – these factors should be controlled for in future research.

The paper sheds light on an important governance arrangement in the realm of corporate business conduct. Non-judicial mechanisms such as NCP mediation provide an alternative to formal litigation, which is expected to proliferate in the future. However, our analysis highlights that the challenges of mediating disputes involving parties from multiple countries may have been underestimated. If, as our findings suggest, extraterritoriality negatively affects the likelihood of reaching an agreement and NCP quality plays a crucial role in mediation success, then strengthening the capacity and independence of NCPs should be a priority. Ensuring that complainants are heard in a high-quality NCP – regardless of their country of origin – is a feasible strategy to improve the effectiveness of NCPs and preventing successful cases like the Heineken case from remaining rare exceptions. Ultimately, enhancing NCP effectiveness is

not just a matter of procedural improvement but a necessary step toward ensuring meaningful access to remedy in the evolving landscape of corporate accountability.

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Appendix A. History of the OECD Guidelines National Contact Points (NCPs)

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct are a set of recommendations adopted by governments from 51 countries – including 38 OECD members and 13 non-members – to promote responsible business practices by multinational corporations operating or headquartered within their territories. As the Guidelines are not legally binding, each adhering country is required to establish a National Contact Point (NCP) to oversee their implementation. The primary responsibility of NCPs is to investigate complaints, referred to as “specific instances”, concerning corporate failure to comply with the Guidelines. Any interested party – individuals, communities, civil society organisations and trade unions – may file a specific instance with an NCP for corporate noncompliance with the Guidelines domestically or abroad. A specific instance may be filed with the host state NCP, where the issue has arisen, or with the NCP of any other country where the firm operates.

Upon receiving a complaint, an NCPs conducts a preliminary assessment and, if accepted, attempts to mediate between the parties to resolve the dispute. In cases where a resolution is reached – success cases – outcomes have included acknowledgement of misconduct by the company, policy or procedural changes to improve due diligence, and direct measures benefiting affected complaints (Daniel et al., 2015).

First introduced in 1976, the OECD Guidelines have been revised several times, most recently in 2023. National Contact Points (NCPs) became mandatory in 1984 but gained their current role in the 2000, when procedural standards for NCPs were established (OECD, 2016). The 2000 review also expanded the Guidelines to cover disclosure, environmental and labour standards, bribery, consumer interests, science and technology, competition and taxation. Up to 2010s, the most common issues raised in NCP cases were labour rights and the environment (Ruggie & Nelson, 2015).

The 2011 update added a chapter on human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and expanding corporate responsibility beyond their own operation to supply chains and other business relationships (OECD, 2016). It also introduced the concept of due diligence, defined as “the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems” (OECD 2016, 23). Following this update, human rights complaints and cases in the manufacturing and financial sector increased (Ruggie & Nelson, 2015).

The principle of functional equivalence set by the Guidelines requires adhering states to establish NCPs that fulfil certain standards but may differ in their institutional setup. Structures range from monopartite NCPs consisting of members of a single ministry to independent agencies that are supported by civil servants from one or multiple ministries. The number of staff members and their access to economic resources vary, with some NCPs only having limited capacity to address complaints (Macchi, 2017). Consequently, the workload of the institutions differs substantially: since their inception in 1984 and up until 2022 several NCPs have handled more than fifty cases, while others have received no complaints (OECD, 2023). Among 13 non-OECD adherents – Argentina, Brazil, Bulgaria, Croatia, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, Ukraine, and Uruguay – only the NCPs of Brazil and Argentina have received a notable number of complaints. Scholars have pointed out regional differences in the work of NCPs. Ryngaert and Wouters (2009: 974) note the relatively low number of complaints filed to the NCP in the United States given the large number of multinational corporations headquartered in the country and attribute this observation to legal and cultural differences: victims of corporate abuse in the US may prefer legal action to maximise media attention while Europeans are more likely to seek dialogue through informal conflict resolution mechanisms. As measured by concrete improvements for victims, EU-based NCPs, in particular, in Belgium, France, Germany, the Netherlands and the United Kingdom, are among the most successful (Macchi, 2017). Moreover, the prevalence of some issues differs substantially. For instance, nearly all complaints concerning human rights or due diligence until 2018 were filed to NCPs in North-Western Europe (Buhmann, 2019).

Appendix B. Descriptive statistics

Table 1. *Agree*: frequency

	Freq.	Percent	Cum.
0	198	84.98	84.98
1	35	15.02	100
Total	233	100	

Table 2. *Accept*: frequency

	Freq.	Percent	Cum.
0	128	54.9	54.9
1	105	45.1	100
Total	233	100	

Table 3. *Extraterritoriality*: frequency

	Freq.	Percent	Cum.
0	55	23.6	23.6
1	178	76.4	100
Total	233	100	

Table 4. *NCP quality*: descriptive statistics

Descriptive Statistics					
Variable	Obs	Mean	Std. Dev.	Min	Max
NCPevl	233	25.5	6.98	10	35

Table 5. *Host OECD membership*: frequency

	Freq.	Percent	Cum.
0	179	76.8	76.8
1	54	23.2	100
Total	233	100	

Table 6. *Reform*: frequency

	Freq.	Percent	Cum.
0	98	42.1	42.06
1	135	57.9	100
Total	233	100	

Figure 1. *NCP Quality*

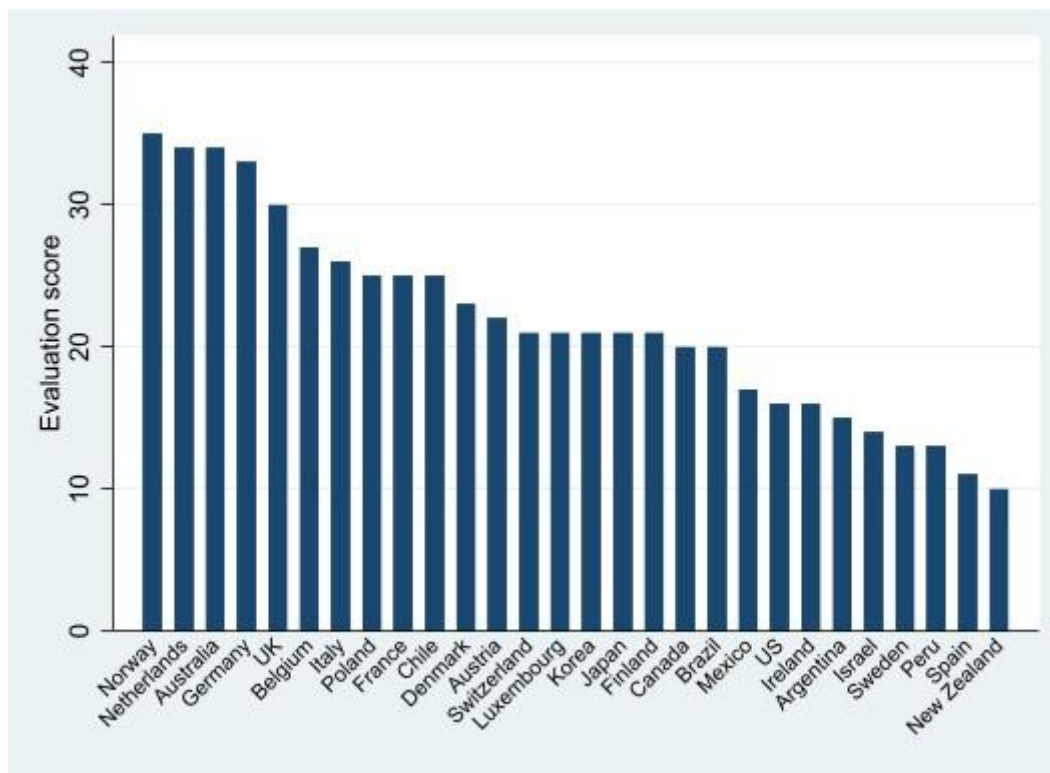


Figure 2. Number of completed cases per year

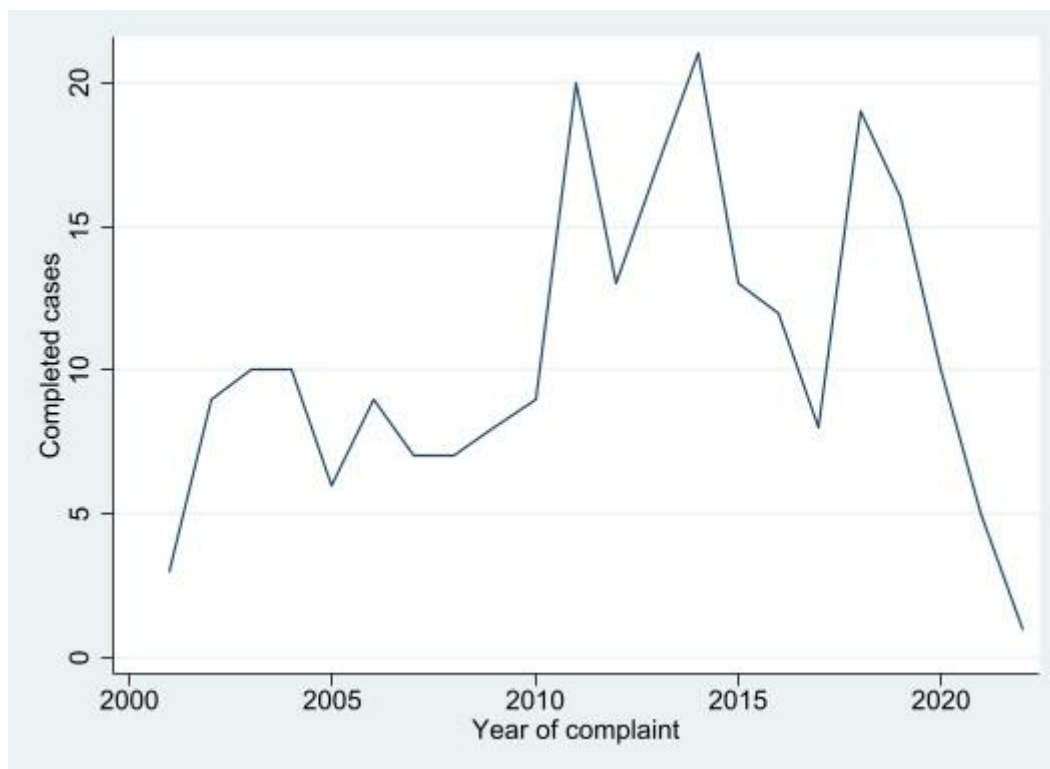
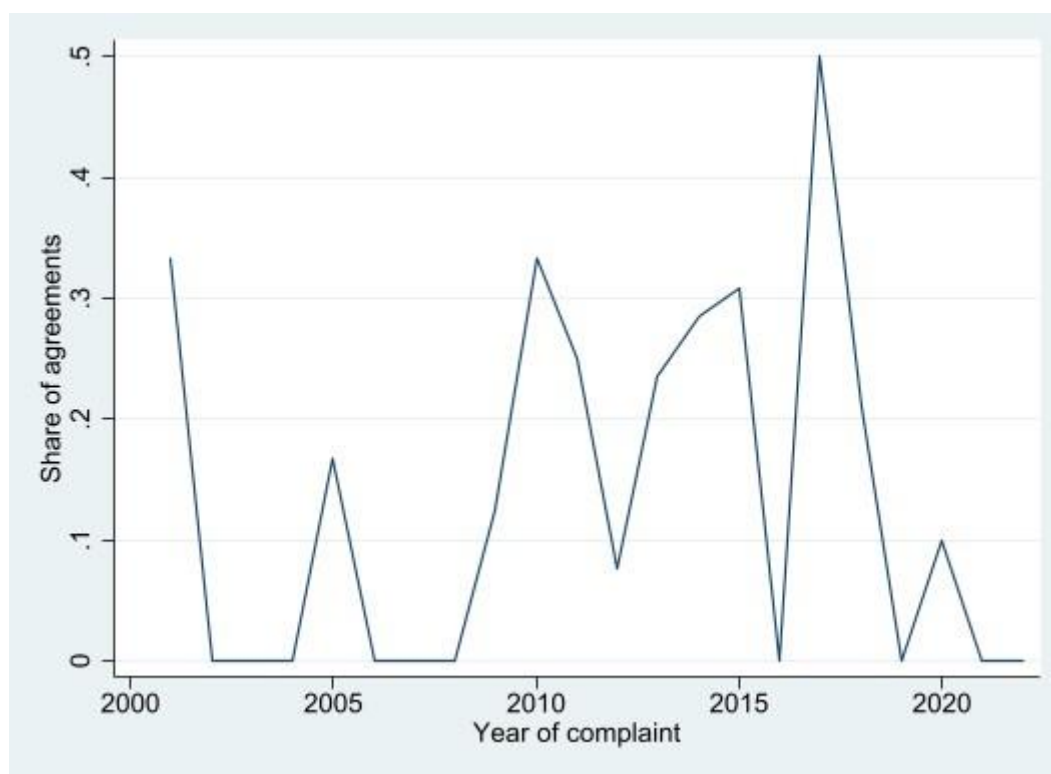


Figure 3. Share of agreements per year



Appendix C: Regression diagnostics and robustness check

Logistic regression requires certain assumptions to be met to ensure fitting and unbiased maximum likelihood estimates. First, although the model specification is primarily based on theoretical considerations, potential issues can also be detected by a link test. A correctly specified model is indicated by a significant *_hat* variable, while the *_hatsquared* variable should not be significant. As Table 1 shows, both conditions apply at p-values of 0.010 and 0.710, respectively, suggesting that the functional form of the model is appropriate.

Table 1. Link test of full model including Extraterritoriality, NCP quality, HostOECD and year dummies.

	Coefficient	Std. err.	z	P>z	[95% Conf. Interval]	
<i>_hat</i>	1.132	0.441	2.560	0.010	0.267	1.997
<i>_hatsq</i>	0.059	0.159	0.370	0.710	-0.253	0.371
<i>_cons</i>	0.025	0.325	0.080	0.939	-0.613	0.662
Number of obs			147			
LR $\chi^2(2)$			24.82			
Prob > χ^2			0.0000			
Log likelihood			-68.272782			
Pseudo R ²			0.1538			

To evaluate the model's goodness of fit, we compare the predicted values to the observed outcomes. A probability of more than 0.5 is interpreted as a prediction that a case will result in an agreement, while a lower probability predicts that it will not. As shown in Table 2, the model predicted 11 cases to end in an agreement and 136 cases not to. Among the 11 predicted agreements, 7 were correctly classified and 4 misclassified. Of the 136 cases predicted to be unsuccessful, 108 cases were correctly classified, whereas 28 cases were misclassified. This results in an overall classification accuracy of 78.23%. However, despite this relatively high overall accuracy, the model's low sensitivity in identifying successful cases must be considered when assessing its goodness of fit.

To assess the relevance of each variable in the analysis, we conduct a likelihood-ratio test, which compares the full model to a restricted model that excludes a specific variable. This test evaluates whether the removal of a variable significantly reduces the model's log likelihood (Long & Freese, 2001). If the exclusion leads to a statistically significant change, it suggests that the variable contributes to the explanatory power of the model and should be retained.

Table 2. Classification statistics, full model.

	D	~D	Total
+	7	4	11
-	28	108	136
Total	35	112	147

Classified + if predicted $\Pr(D) \geq .5$
True D defined as agree !=0

Sensitivity	$\Pr(+ D)$	20.00%
Specificity	$\Pr(- \sim D)$	96.43%
Positive predictive value	$\Pr(D +)$	63.64%
Negative predictive value	$\Pr(\sim D -)$	79.41%
False + rate for true D	$\Pr(+ \sim D)$	3.57%
False – rate for true D	$\Pr(- D)$	80.00%
False + rate for classified +	$\Pr(\sim D +)$	36.36%
False – rate for classified –	$\Pr(D -)$	20.59%
Correctly classified		78.23%

Table 3 presents the results of likelihood-ratio tests for each of the three control variables. The χ^2 value is statistically significant only in the first test, indicating that a model including *NCP Quality* provides a better fit to the data than a model excluding it. However, since the tests for OECD membership and year dummies are not statistically significant, these control variables do not improve the model's explanatory power and should be excluded to improve efficiency.

Table 3. Likelihood-ratio test for *NCP Quality* (1), *HostOECD* (2) and year dummies (3).

1	2	3
1) Likelihood-ratio test Assumption: Mod a nested within Mod d LR $\chi^2(1) = 12.76$ Prob > $\chi^2 = 0.0004$	2) Likelihood-ratio test Assumption: Mod b nested within Mod d LR $\chi^2(1) = 0.00$ Prob > $\chi^2 = 0.9499$	3) Likelihood-ratio test Assumption: Mod c nested within Mod d LR $\chi^2(1) = 9.65$ Prob > $\chi^2 = 0.5624$

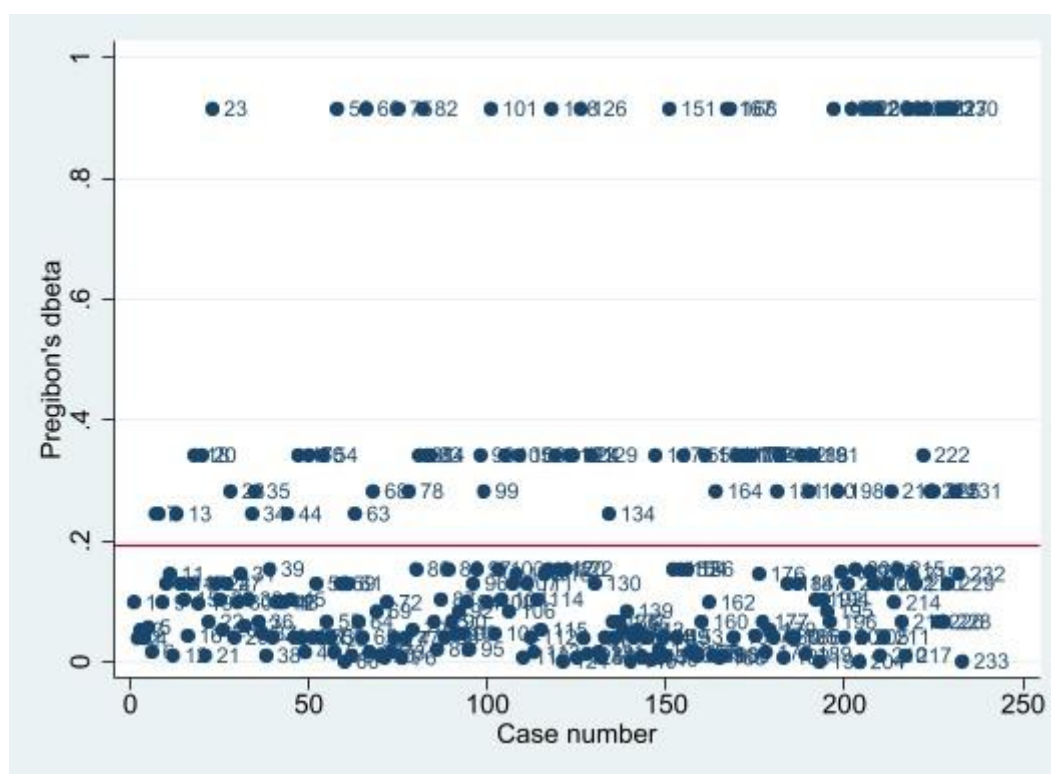
To test whether the independent variables are correlated with each other, we run a VIF test. Table 4 shows that the VIF values for *Extraterritoriality*, *NCP Quality* and *HostOECD* are close to 1, suggesting no multicollinearity issues.

Table 4. Variance Inflation Factor (VIF) Analysis

Variable	VIF	SQRT VIF	Tolerance	R-Squared
Extraterrit	1.77	1.33	0.5665	0.4335
NCPQual	1.07	1.03	0.9370	0.0630
hostOECD	1.70	1.30	0.5890	0.4110

To assess the undue impact of influential observations, we apply Pregibon's (1981) dbeta measure. A scatterplot of dbeta in Figure 1 reveals twenty outliers, indicating potential influential cases that may warrant further examination.

Figure 1. Influential Observations



Note: The red line marks the mean of dbeta at 0.191.

We re-run the analysis, excluding these twenty observations and retaining only two explanatory variables, in line with the results of our efficiency analysis. The coefficient for *Extraterritoriality* is statistically significant and negatively signed, and of a similar magnitude as in the main analysis. Similarly, the coefficient for *NCPQuality* remains substantively consistent with the main analysis. These findings suggest that the influence of the outliers on the results is minimal.

Table 5. Extraterritoriality and NCP Efficiency: excluding outliers

	Model 1	Model 2
Extraterritoriality	-0.703* (0.39)	-1.014** (0.42)
NCP Quality		0.119*** (0.03)
Constant	-1.173*** (0.32)	-4.099*** (0.93)
N	213	213

Note: Dependent variable is *Agree*; standard errors in parentheses; ***p <0.01, **p<0.05, *p <0.10.