



MODIFICATIONS OF OECD COUNTRIES' POSITIONS UNDER THE CODES OF LIBERALISATION OF CAPITAL MOVEMENTS AND OF CURRENT INVISIBLE OPERATIONS AND THE NATIONAL TREATMENT INSTRUMENT

REPORT BY THE INVESTMENT COMMITTEE

**THE OECD COUNCIL ADOPTED THE CONCLUSIONS
TOGETHER WITH DECISIONS IN ANNEX 1 AND ANNEX 2 OF
THE REPORT ON 16 JULY 2009**

For more information, please contact:

pierre.poret@oecd.org

www.oecd.org/investment



Investment Division

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I. Introduction

Context. This Report by the Investment Committee transmits the results of a review initiated in 2007 to update Members' positions under the OECD Codes of Liberalisation of Capital Movements (CLCM) and of Current Invisible Operations (CLCIO) and the National Treatment instrument (NTI) of the OECD Declaration on International Investment and Multinational Enterprises.¹ Reviews of Members' positions to ensure compliance with the letter and spirit of the instruments and their jurisprudence are mandatory. The prospect of accession discussions and the need for Members to set the example were a factor in deciding to launch this work in 2007. Since, this work has also become part of the OECD Strategic Response to the Financial and Economic Crisis, as a deliverable by Spring 2009 "to ensure that Members live up to their legal commitments, including in respect to standstill and elimination of reciprocity" [C(2008)191/FINAL]. Finally, this work was conceived as a contribution to the Freedom of Investment process [DAF/INV(2008)11/FINAL].

OECD investment instruments and role of the Council. Under the OECD Codes, Members have the obligation to remove restrictions on foreign direct investment, other capital movements and international services, unless they have lodged reservations regarding those operations which they are not yet in a position to liberalise. Under the NTI, Members have committed to treat established foreign-controlled enterprises no less favourably than domestic enterprises and list all remaining exceptions to this principle. The Codes provide for "standstill" – new restrictions may not be introduced – and reservations and exceptions should be eliminated when the underlying restrictions no longer apply. The resulting so-called "ratchet-effect" ensures that the status quo can only evolve in the direction of liberalisation. By means of Decisions which are binding OECD acts, the Council, upon proposals by the Investment Committee, gives effect to deletions or modifications of countries' reservations under the Codes and to exceptions under the NTI. In accordance with the provisions of the Codes and the NTI, a number of Members have notified a series of new measures giving rise to proposed deletions and modifications in their lists of reservations and exceptions.

Proposed decisions for adoption by the Council to modify countries' positions under the Codes and exceptions under the NTI are included in C(2009)95/ANN1 and C(2009)95/ANN2 respectively. The updated list of measures other than those reflected in reservations under the Codes and exceptions under the NTI, which however have a bearing on foreign direct investment and need to be reported for transparency pursuant to the NTI, is included in C(2009)95/ANN3; this list, which is made public, is for information and not for Council's decision.

II. Overview

The main findings of the Committee's review are as follows:

Some further liberalisation of inward direct investment has taken place. Over the last five years, ten countries eased restrictions on foreign direct investment (FDI) in various sectors, including transportation and financial services. In addition, Australia, Canada and Turkey relaxed their all-sector FDI restrictions. These measures represent, however, only marginal progress in FDI liberalisation when compared with the last wave of generalised liberalisation measures which took place between the mid-80s

¹ Leaving aside the amendments under the insurance and private pension provisions of the CLCIO decided by Council in February 2008, the last modification made by Council to Members' positions under the Codes and the NTI goes back to 2005, when the Investment Committee completed a major horizontal review relating to the telecommunications sector.

and the mid-90s. The OECD FDI Regulatory Restrictiveness Index, which translates country positions under the OECD investment instruments into aggregate indicators, shows that liberalisation levels in OECD Members are converging and are high on average relative to those observed in major non-member emerging economies [DAF/INV(2008)8/REV3].

OECD countries, except Iceland, do not maintain general capital and exchange controls. With the removal of remaining restrictions in Korea on short-term capital movements, no OECD country, except Iceland, maintains capital and exchange controls for general economic and financial policy purposes. Iceland introduced temporary capital controls in November 2008 as part of a Stand-By Arrangement with the IMF in response to its financial crisis and is in the process of invocation of the derogation clauses of the Codes. Other remaining restrictions in OECD countries on capital movements, apart from FDI, concern mainly portfolio investment abroad by domestic institutional investors and acquisition of real estate by foreigners.

Cross-border trade in services has been further liberalised in a few countries. Four countries have liberalised the provision of financial services by branches of non-resident institutions. Four countries have eliminated or reduced the scope of restrictions on the cross-border provision of financial services by non-residents. Furthermore, two countries have liberalised trade in films.

Clarifications of the Codes' application and regularisation of countries' positions. The Investment Committee completed work initiated in 1999-2002 by its precursor – the Committee on Capital Movements and Current Invisible Operations (CMIT) – which clarified obligations under the Codes regarding the cross-border provision of professional services and the provision by branches of non-resident institutions of certain financial services to resident collective investment institutions. The clarifications have resulted in proposals for new reservations for EC countries, as well as for some other Members, to reflect long-standing restrictions. At the same time, the Committee encouraged countries to reconsider their restrictions on cross-border provision of professional services. It reiterated the CMIT's view that (i) particular attention should be given to the removal of nationality requirements; (ii) local presence requirements should be replaced with other less burdensome mechanisms that are equally available to ensure appropriate client protection; and (iii) national regulatory bodies should co-operate and promote recognition of foreign qualifications and competence.

Regularisation of countries' positions has also been proposed in a limited number of other areas for three countries which had unintentionally omitted to notify restrictive regulations. In all these cases, no breach of standstill has occurred in practice. The Committee agreed to examine in due course the treatment of mortgage bonds, which raises new issues of interpretation under the Codes.

Uneven progress in removing reciprocity and other discriminations among OECD countries. Pursuant to Articles 8 and 9 of the Codes, a Member's right to benefit from other Members' liberalisation commitments should not be conditioned by reciprocity. However, reciprocity measures which were in place in 1986 and concerned inward direct investment have been "grandfathered". They are listed in Annex E of the Capital Movements Code. The Committee welcomed the policy of *EC countries* (with the exception of *France*), not to apply the reciprocity provisions of their financial services legislation as part of their GATS commitments, and the proposed deletion of their entries in this area in Annex E. The Committee also welcomed withdrawal by *Australia, Japan, Norway* and *Turkey* of reciprocity requirements in financial services and corresponding entries in Annex E [C(2009)95/ANN1].

Article 10 of the Codes allows Members which belong to a special customs or monetary system to take additional liberalisation measures among themselves. The EC has been recognised as such a system. Four EC countries have notified new liberalisation measures which apply only to investors established in EC countries. However, in the case of three EC countries, the measures are intended to also

benefit investors from the two OECD non-EC countries member of the European Economic Area (EEA) – Iceland and Norway – and, in fewer instances, also from Switzerland (which has applied for EEA membership). No formal invocation of Article 10 has been made by OECD countries which are members of the EEA and no decision has been taken by Council on the applicability of Article 10 to the EEA. The Committee agreed to resume consideration of this matter initiated in its 1992 report [C(92)218].

Australia has not yet extended to all OECD Members the liberalisation measures which have resulted from the 2004 Free Trade Agreement with the United States as far as operations falling under the purview of the Codes are concerned. The Committee urged Australia to normalise, at an early date, its situation with respect to its obligations under the Codes.

Extension of liberalisation measures to IMF members. Members' liberalisation measures applicable to all OECD countries have generally been extended to the other members of the IMF, consistent with their endeavour under Article 1 of the Codes.

More measures for essential security interests and public order reasons. Under Article 3 of the Codes, a Member has the right to take any measures which it considers necessary for the maintenance of public order or the protection of public health, moral and safety, and for the protection of its essential security interests. However, Member countries have been encouraged by the Committee and the Council not to invoke Article 3 as a general escape clause that could be used to cover the introduction of new restrictions and breaches of standstill in the pursuit of their other objectives. Members have also been encouraged to reflect discriminatory measures they maintain for national security motivations, to the extent possible, in reservations under the Codes and exceptions of the NTI, thereby bringing these measures within the standstill, most-favoured nation, periodic examination and other disciplines of the OECD investment instruments.

Since the last modification of Members' positions under the OECD investment instruments, new measures have been notified by Canada (2009), France (2005), Germany (2004 and 2009), Japan (2007), Korea (2008) and the United States (2007). In Japan, the list of sectors in which foreign investment is subject to prior notification has been extended. Canada introduced a new national security review mechanism. While the measures in some of these countries are intended to codify and clarify implementation of security-related investment reviews provided for under the law, these developments signal increased consideration to exercising investment safeguards, and indeed the number of individual investments reviewed or blocked on security grounds has recently increased.

These measures are also being monitored as part of the Freedom of Investment process hosted by the Investment Committee, against the agreed principles that investment safeguards for national security should be least discriminatory, transparent and predictable, proportional to clearly-identified national security risks and accountable in their application.

The list of measures reported for transparency under the NTI, including measures which countries have taken for essential security and public order reasons, has been updated accordingly [C(2009)95/ANN3].

III. Proposed action by the Council

In light of the preceding, the Council is invited to adopt the following draft conclusions:

THE COUNCIL

- a) noted the report by the Investment Committee C(2009)95;
- b) welcomed additional measures taken by ten Members in recent years to further liberalise inward direct investment and cross-border services, and the concomitant withdrawal of reservations under the OECD Codes of Liberalisation and of exceptions to the National Treatment instrument;
- c) agreed to regularise the positions of nineteen countries under the Code of Liberalisation of Current Invisible Operations, following the Investment Committee's clarifications concerning provision by non-residents of professional services and certain financial services to collective investment institutions, and the positions of Portugal, Switzerland and Turkey under the Codes, in order to reflect long-standing restrictions which were unintentionally omitted, noting that these regularisations do not entail a breach of the standstill principle;
- d) welcomed the withdrawal of reciprocity measures and corresponding entries in Annex E of the Code of Liberalisation of Capital Movements by Australia, EC Members, Japan, Norway and Turkey in the area of establishment in financial services;
- e) urged France to delete, at an early date, its entry on reciprocity in financial services in Annex E of this Code, in conformity with France's liberalisation commitments, including under the GATS, and the principles reaffirmed by the Investment Committee in April 2008 [DAF/INV(2008)4/REV1];
- f) noted that Australia allows preferential liberalisation for residents from the United States in certain areas covered by the Codes and urged Australia to normalise, at an early date, the situation with respect to its obligations under the Codes;
- g) noted that changes in financial services legislation in Canada have removed discriminatory foreign ownership limitations as well as restrictions on establishment in the form of a branch in insurance, banking and other financial services; noted that Canada was willing to update its position on the basis that it maintains the right to take measures for prudential reasons; recognized that Canada supports a discussion within the Committee on the treatment of prudential measures under the Codes; noted that subsequent to the discussion on the treatment of prudential measures, Canada will revisit the matter of updating its reservations to reflect the openness of its framework;
- h) noted that the Investment Committee will resume its consideration of the status of the EEA under the Codes in its report of 1992 [C(92)218] and looked forward to its report on this matter to the Council in due course;
- i) urged Members to use the essential security and public order clauses of the OECD investment instruments with restraint and to live up to their commitment that investment safeguards should be least discriminatory, transparent and predictable, proportional to clearly-identified risks and accountable in their application;

- j) encouraged all Members to make further progress in liberalisation and elimination of discrimination among countries;
- k) adopted the draft Decisions set out in:
 - (i) C(2009)95/ANN1 amending Annexes B of the Codes of Liberalisation of Capital Movements and of Current Invisible Operations and Annex E of the Code of Liberalisation of Capital Movements;
 - (ii) C(2009)95/ANN2 amending Annex A to the Third Revised Decision of the Council on National Treatment;
- l) agreed to declassify the present document and make it publicly available in order to maximise transparency of barriers to foreign investment and cross-border services and recent liberalisation measures in OECD countries.

IV. Inward direct investment

This section concerns countries' positions under item I/A of the CLCM and item E/7 of the CLIO, and the NTI.

1. All-sector measures

In 2007, *Australia* increased the asset value threshold above which foreign investment is subject to screening to AUD 100 million from the previous AUD 50 million. The new rules also raised the threshold for takeovers of offshore companies whose Australian subsidiaries or gross assets represent less than 50 per cent of global assets to AUD 200 million from AUD 50 million.

Pursuant to the *Investment Canada Act*, at the beginning of 2009, *Canada* raised to CAD 312 million in asset value the threshold above which a review is required for direct acquisitions of Canadian businesses by WTO investors in all sectors, except for businesses that engage in uranium production and own uranium producing properties; provide transportation services; provide financial services (excluding the underwriting and selling of insurance policies); and constitute cultural businesses, where the limits remained CAD 5 million for direct acquisitions and CAD 50 million for indirect acquisitions. The change in the threshold was made according to the adjustment formula in the Act which is automatically applied annually and is reflected in the proposed revised reservation. Similar review threshold adjustments have been made every year since 1994. In March 2009 *Canada* passed legislation which eliminated the application of the lower threshold level in respect of direct acquisitions by WTO investors of Canadian businesses relating to uranium production and ownership of uranium producing properties; transportation services; and financial services (excluding underwriting and selling of insurance policies). An indirect acquisition of control of a Canadian business, other than a cultural business, by a WTO investor is not subject to review. The legislation will also enable *Canada* to raise the threshold above which a review is required under the *Investment Canada Act* for direct acquisitions of Canadian businesses by nationals of WTO member countries. Once the necessary accompanying regulations are in place, in all sectors, except for cultural businesses, the review threshold will be raised to \$600 million in enterprise value in the first two years. It will rise to \$800 million in the following two years. The threshold will then be raised to \$1 billion in enterprise value for one full year and the remaining portion of the calendar year in which the full year ends. Thereafter the threshold will be adjusted annually to reflect changes in GDP based on a formula in the *Investment Canada Act*.

Finland has notified that its reservation on the establishment of branches of foreign companies should be narrowed to apply only to non-EC companies.

Turkey notified that the previous reservation on investments below USD 50 000 can be eliminated.

2. Primary and manufacturing sectors

In the area of foreign direct investments linked to *real estate*, *Australia* notified that, according to new legislation, foreign custodian companies are now allowed to acquire interests in shares in relevant corporations and interests in Australian urban land, when acting at the direction of clients. Australia has also liberalised foreign acquisitions of certain categories of residential real estate.

In the *energy sector*, *Canada* proposes that the scope of its reservation to uranium production under item I/A be narrowed down, as the restriction only applies to the extent that at least 51 per cent Canadian ownership of individual uranium mining properties is required at the first stage of production. Canadian ownership of less than 51 per cent will be permitted if the project is in fact Canadian controlled. However, exemptions to the policy could be granted if Canadian partners cannot be found.

Finland notified that its reservation on investments in an enterprise engaged in activities involving nuclear energy or nuclear matter should be narrowed to be applicable only to non-EC companies. *Finland* also proposes that the reservation on investment in *real estate* in the Aaland Islands under items I/A and III/A1 of the CLCM should be more precise.

In *Korea*, the aggregate foreign ownership of shares in the Korea Tobacco & Ginseng Corporation (KT&G) had previously been limited to 49 per cent of its total capital under the Act on Business Restructuring and Privatization of Public Enterprises. However, privatisation of KT&G was carried out during the second half of 2002 through domestic sale of shares owned by the government and the issuing of Depositary Receipts abroad. Pursuant to that Act, the restriction on foreign ownership was abolished. The reservation can thus be eliminated.

Switzerland proposed that its reservation under item I/A on the acquisition of *real estate* be clarified to state that the authorisation by cantonal authorities is necessary only if the acquirers do not use the property to operate their permanent establishment.

3. Banking and financial services

In the course of the June 1998 examination of Hungary, the Committee was informed by the Hungarian authorities that the Act on Credit Institutions as amended in 1997 restricted the provision of custodial and asset management services to Hungarian investment funds by branches of non-resident institutions. The Hungarian authorities understood that such provisions were common in a number of other OECD Member countries and thus sought the Committee's views and recommendations on this issue. As a consequence, and in order to strengthen the Codes by ensuring coherence and consistency in their application, the Committee undertook a horizontal review of member countries' restrictions in 1999-2002, the results of which were, however, not transmitted to the Council due to budget reductions (DAFFE/INV(2002)7/REV1).

Based on this review, the Investment Committee agreed that for the 19 EC countries concerned, a common remark to item I/A of the CLCM and item E/7 of the CLIO should be added to read as follows: "Under EC Directive 85/611, a depository of an undertaking for collective investment in transferable securities (UCITS) must either have its registered office in the same EC country as that of the undertaking or be established in the EC country if its registered office is in another EC country". The Committee also agreed that non-EC countries that lodged broader-scope reservations (*Australia, Iceland, Mexico and Norway*) are understood to restrict the operation in question and thus no change to their current position under the Codes is required.

For *Iceland* and *New Zealand*, the reservations regarding branching in banking and financial services have been harmonised to appear under both item I/A of the CLCM and item E/7 of the CLCIO.

In *Canada*, foreign ownership restrictions and discriminatory restrictions on establishment in the form of a branch in insurance, banking and other financial services have been removed. These restrictions were the basis for Canada's present reservations in these areas under item I/A of the CLCM and item E/7 of CLCIO. While Canada has been willing to update its reservations under the CLCM on the basis that it reserves its right to take measures for prudential reasons, Canada will consider deleting its reservations subsequent to a discussion within the Committee on the treatment of prudential measures under the Code. The Committee has nonetheless urged Canada to delete its reservations. The Committee also stressed the importance for Members to set the example in a context where the Council's Accession Roadmaps require candidate countries not to lodge reservations which would not reflect existing restrictions.

Canada also reported that no single investor (Canadian or foreign) may own more than 20 per cent of the voting shares, or 30 of the non-voting shares of a bank with equity of CAD 8 billion or more and of a demutualized insurer with a surplus and minority interest of CAD 5 billion or more at the time of demutualization. Banks with equity of CAD 2 billion or more but less than CAD 8 billion and other federal financial institutions with equity of CAD 2 billion or more are permitted to be closely held, but must have at least 35 per cent of their voting shares widely held and traded on a recognized Canadian stock exchange. Institutions may apply to the Minister of Finance for an exemption from this requirement. Any fit and proper person (Canadian or foreign) may own 100 per cent of a small financial institution with equity of less than CAD 2 billion. These measures are non-discriminatory and do not call for reservations under the Code.

The Committee noted Canada's concern on the consequence of an eventual deletion of its reservations regarding foreign direct investment in the field of financial services on its continued ability to take prudential measures. The Committee recalled that nothing under the Codes prevents Members to take such measures provided that they are not discriminatory.² The Committee agreed to resume discussion on the treatment of prudential measures under the Codes in due course in consultation with the OECD Committee on Financial Markets and Insurance and Private Pension Committee with which the Committee jointly developed and approved the prudential provisions of the Codes.³

The *Czech* authorities requested a slight modification in the text of their reservation applicable for mortgage banks, noting that Czech law does not define "mortgage bank". Hence, the reference to the Czech law should be deleted.

² Extracts from the User's Guide on the Codes, approved by the Committee: "Members are allowed considerable scope for national prudential measures, as long as they do not discriminate against non-residents"; "measures which differentiate between residents and non-residents are, however, not always contrary to the obligations of the Codes. The Committee has accepted as equivalent treatment certain cases where a different regime applies to non-residents as compared to residents", "selective recognition agreements, which may affect the right to carry out operations covered by the Codes, are in general based on objective technical criteria. In other words, different treatment is based on different circumstances and thus does not violate the non-discrimination provisions of the Codes".

³ Extracts from the Current Invisibles Code, item D6: "Members may take regulatory measures in the field of insurance and pensions, including the regulation of the promotion, in order to protect the interests of policyholders and beneficiaries, provided those measures do not discriminate against non-resident providers of such services" (adopted by Council in 2008); item E/7: "Domestic laws, regulations and administrative practices needed to assure the soundness of the financial system or to protect depositors, savers and other claimants shall not prevent the establishment of branches or agencies of non-resident enterprises on terms and conditions equivalent to those applying to domestic enterprises operating in the field of banking or financial services" (adopted by Council in 1992).

Mexico has notified that it has eliminated restrictions on investments by non-residents in financial leasing, factoring and investment companies. It has also allowed foreign financial institutions, other than banks, securities firms, securities specialists and limited scope financial institutions to establish more than one financial institution of the same type.

Portugal has suggested that a new reservation might be included under item I/B, reading “Establishment in a non-EC Member country of subsidiaries of credit institutions, investment firms and investment fund management companies.” The underlying measure is not new and does not refer to a procedure more burdensome than necessary under generally accepted prudential practice for the purpose of consolidated financial sector supervision. The Committee agreed that no reservation is needed. By the same token, Portugal is now in a position to propose the elimination of two existing reservations under item I/B (the establishment in a non-EC country of branches of credit institutions and financial companies; as similar non-discriminatory prudential procedures apply in these areas).

Also *Portugal* proposed that all reservations to items V/D1, VI/D1, VII/D1, IX/B, XI/B1 and B2, which were applicable to private pension funds’ acquisition of foreign securities, credits and loans, swap operations and deposits of domestic currency with non-resident financial institutions, can now be eliminated. The authorities have indicated that the underlying restrictions no longer apply and that they have been replaced by limits on permitted categories of assets which pension funds can acquire based the level of risks associated with them irrespective of whether the asset is domestic or foreign.

4. *Transport and other services sectors*

Belgium proposed a new reservation to cover a restriction on majority ownership by non-EC nationals in *air transport*, explaining that the restriction is required by EC legislation. *Finland* proposed to narrow the wording of its reservation to only cover investments by non-EC states or nationals of non-EC states in enterprises operating air transport. Some other EC countries (*Austria, Czech Republic, Denmark, Germany, Ireland, Italy, Poland, Slovak Republic, Spain, Sweden and the United Kingdom*) presently have broader reservations under item I/A of the CLCM while their positions under the NTI and other information suggest that they in fact allow non-EC investment in airline companies up to 49 per cent of equity ownership. It is proposed to revise their reservations along the wording proposed for Finland.

The 2007 EU-US Air Transport Agreement provides that EC investors may own up to 25 per cent of the voting equity in a US airline. This is already the rule applicable in US legislation to foreign investors, whether of EC or non-EC origin. Under the agreement, investment by US nationals in an EC airline is permitted up to 49 per cent ownership, which is also the rule applicable in EC countries’ legislation to any non-EC nationals. Therefore, the Committee concluded that the agreement does not raise an issue of discrimination among OECD members under the Codes.

Canada proposes to narrow the previous broad reservation on air transport to reflect the fact that only Canadians (citizens, permanent residents or companies incorporated in Canada and of which at least 75 per cent of the voting interests are owned and controlled by Canadians) may register an aircraft as “Canadian” and obtain Operator Certificates to provide the following commercial air services: 1) domestic air services; 2) scheduled international air services where those services have been reserved to Canadian carriers under air services agreements; 3) non-scheduled international air services where those services have been reserved to Canadian carriers under the Canada Transportation Act; and 4) specialty air services. This narrowing of the reservation is reflected under item I/A of the CLCM and the list of exceptions under the NTI. *Switzerland* proposes to narrow its reservation for the investment in an airline under Swiss control, to apply only to airlines that are majority Swiss owned.

In the *water transportation sector*, the overall reservation on the ownership of Finnish flag vessels should be narrowed to the acquisition of 40 per cent or more in Finnish flag vessels, including fishing vessels, except through an enterprise incorporated in Finland or unless an authorisation is granted by the Ministry of Transport and Communication. The reservation does not apply to EC residents who own 60 per cent or more of a vessel and have their central place of management or principal business in an EC state.

The Netherlands has requested that the text of its reservation on the ownership of Netherlands flag vessels be modified to better reflect the wording of the Dutch Commercial Code. According to the proposed revised reservation, the national flag may be flown on ships owned by nationals of a EC country or by companies/legal bodies incorporated under the law of an EC country, one of the countries, and having their actual place of business in the Netherlands (previously, the companies had to be incorporated under Netherlands law).

Portugal eliminated the reservation on the establishment of enterprises engaged in internal maritime transport. *Portugal* also requested that its reservation on the investment in television operations exceeding 15 per cent of capital by a non-EC investor or investment of more than 25 per cent in complementary telecommunications services by non-EC investors be deleted.

In the *land transportation sector*, as agreed at the time of accession to the OECD, *Mexico* eliminated in 2004 the reservation on foreign investment in Mexican corporations engaged in land transportation of international passengers and freight between points in Mexico and related services.

In the *telecommunications sector* in *Australia*, the Broadcasting Services Amendment (Media Ownership) Bill 2006 has removed restrictions on foreign ownership of commercial and subscription television, foreign ownership restrictions applying to commercial and subscription television, newspapers and cross-media ownership (in the case of the latter with the condition that there remain a minimum number of commercial media entities in the relevant markets – four in regional markets, five in mainland state capitals). The reservations in the CLCM and the exceptions in the NTI can be changed accordingly.

Korea notified that the government amended Clause 2 and 3 of Article 14 of the Broadcasting Law on 22 March 2004. Foreigners are now allowed to acquire 49 per cent or less of the shares in a business that is involved in CATV broadcasting or in program providing in Korea (excluding general programming or specialised programming of news reports).

Turkey notified that the 1994 Law on the Establishment and Broadcasting of Radio and Television opened up radio and television enterprises to private investment for the first time, while maintaining restrictions on foreign ownership. This restriction was not notified due to unintentional oversight. Under Article 2, b. iii), Members are entitled to lodge reservations to liberalisation obligations when they begin to apply – as in the case of privatisation. In practice therefore no breach of standstill by Turkey has occurred. The law was amended in 2002 to allow foreign participation in a private radio or television enterprise up to 25 per cent of the paid-up capital.

Finland noted that its reservations on investment in *legal services* (“EC nationality and residency requirement for investment in corporation or partnership carrying out the activities ‘asianajaja’ or ‘advokat’”) and on investments in auditing companies by non-EC residents are too wide. Hence, it recommended that the sentence “The reservation does not apply to investment in a corporation or partnership supplying other legal services” be added and the reservation on auditing companies be modified to reflect that this is a restriction only on majority ownership.

Greece has notified that as a result of recent liberalisation measures its reservation on non-residents' investments in the legal, engineering and architectural sectors can now be eliminated.

Luxembourg has liberalised investments by non-residents in the *accountancy sector* and hence proposed the elimination of its reservation.

Switzerland notified that the reservation on the distribution and exhibition of *films* concerns the establishment of subsidiaries, while previously the reservation was erroneously drafted to apply to branches.

5. *Exceptions to the National Treatment Instrument*

Because exceptions to the NTI mostly cover the same items as item I/A under the CLCM (except branching), the changes under the above section also need to be reflected in the exceptions to the NTI. In addition, a few changes have been recorded in the list of exceptions to the NTI in the area of monopolies and official aids, subsidies, and government purchasing.

Canada notified it has removed the restriction that provided that non-resident foreign corporations and partnerships with foreign partners were not allowed to qualify for special status corporation (such as Investment Corporation), which was required to obtain certain subsidies and official aid. In agriculture, it no longer maintains that federal/provincial price stabilisation agreements are restricted to Canadian citizens or permanent residents or corporations whose majority is owned by Canadians or permanent residents. Also, the province of Ontario no longer imposes foreign ownership limits on collection agencies or insurance licensing.

Korea eliminated all exceptions to official aids and subsidies.

Spain has notified that the trans-sectoral exception related to newly privatised companies that allowed the government to limit foreign participation on a case-by-case basis can now be eliminated.

The *United Kingdom* requested the deletion of the exception in the area of government purchasing of consultancy services. The United Kingdom also eliminated its exception to government purchasing that previously covered restrictions on the appointment of consultants under the Overseas Aid Programme.

The *United States* eliminated two trans-sectoral exceptions to national treatment within the category of official aids and subsidies. These measures included financial assistance under the Advanced Technology Program and participation in the Technology Reinvestment Project. The United States also requested that its exception covering financial assistance under the Advanced Technology Program, under which a company had to show that its participation is in the interests of the United States, be deleted.

V. *Other capital movements*

This section concerns all operations of the CLCM other than item I/A (inward direct investment).

1. *Inflows*

Canada no longer maintains restrictions at the federal level regarding the acquisition of real estate by non residents for non-business purposes. Hence, the Canadian reservation to item III/A1 can be deleted.

Italy has a reservation on item XV/B1 regarding the physical import of gold which goes back to the work by the CMIT on the extension of the Code's disciplines to all capital movements in the late 80s'. The Italian authorities have not confirmed that the underlying restriction has remained in place following the entry into force of EU treaty provisions on freedom of capital movements. Consequently, the reservation can be eliminated.

After 2002 *Korea* eliminated all restrictions on capital inflows, except the sectoral restrictions under item I/A (which may affect foreign portfolio investment and are also conventionally reflected under item IV/C1) and certain limits on investment abroad by domestic insurance companies.

Mexico has reservations under items IV/A1 and A2 and V/A1 and A2 to reflect restrictions on the issue and introduction in foreign markets of debt securities denominated in pesos by Mexican residents. These restrictions were in place at the time of accession by Mexico in 1994 and were part of a broader package of restrictions to prevent the internationalization of the peso abroad. This package was dismantled in 1995-96 [C(1997)164]. The Mexican authorities have not confirmed that there still exists a legal basis for the remaining reservations mentioned above, which can therefore be deleted.

Sweden has opened up the purchase of secondary residences by persons who have not formerly been residents of Sweden for at least five years. Hence, the reservation to item III/A1 can be deleted.

Switzerland requested the same change in item III/A1 as under item I/A, namely that cantonal authorisation is needed only if the acquirer does not use the property to operate a permanent establishment.

2. *Outflows*

Canada proposes to remove its reservation regarding investment in foreign assets by domestic private pension funds.

The *Czech Republic* now allows pension funds to invest in real estate abroad, within a limit of 10 per cent of their total assets. Similarly, insurance companies are now allowed to invest 20 per cent of their technical provisions in real estate located within the EC. Hence, the scope of its reservation to item III/B1 can be narrowed down accordingly. The *Czech Republic* also notified that pension funds are allowed to purchase bonds issued not only by governments and central banks of OECD Member countries (which was the wording in the original reservation), but also those issued by the EIB, EBRD and IBRD and those guaranteed by OECD Member countries. Furthermore, similar rules pertain to insurance companies, with special rules for the acquisition of money market securities, the limit for which is tied to the technical provisions of the insurance companies. Pension funds are also free to invest in securities traded in a regulated market of OECD Member Countries. Insurance companies now are also allowed to invest in securities issued in the EC to cover certain percentages of their technical provisions (there are both territorial and percentage limits).

Similar rules apply for the purchase by *Czech* pension funds and insurance companies, to money market securities, collective investment funds (where the limit for an insurance company is 20 per cent of its technical provision) and deposits abroad (where the pension fund is only allowed to place these in banks registered in the OECD and the insurance company may place only 50 per cent of its technical provisions in a bank registered in the EC). Insurance companies may also lend to EC borrowers maximum 10 per cent of their technical provisions and 5 per cent to non-EC borrowers. All these changes require a narrowing of the *Czech Republic's* reservations to items III/B1, IV/D1, V/D1, VI/D1, VII/D1, IX/D1 and XI/B2 of the CLCM.

Finland has liberalized investments by private pension funds administering statutory pension schemes abroad and raised the limit for such investments for Finnish insurance companies to 10 per cent of

their cover of technical reserves from the earlier 5 per cent. These steps require a narrowing of Finland's reservations under items III/B1, IV/D1, V/D1, VI/D1, VII/D2, IX/B and XI/B1 and B2.

Hungary now allows the mandatory and voluntary pension funds to invest in debt securities, money market securities and collective investment securities issued by non-residents. These liberalisation steps allow for the narrowing of the Hungarian reservations under items IV/D1, V/D1 and VII/D1.

Italy has a long-standing reservation on item XV/B2 – the physical export of gold. The Italian authorities have not confirmed that the underlying restriction has remained in place following the entry into force of EU treaty provisions on freedom of capital movements. Consequently, the reservation can be eliminated.

Korea took sweeping capital movement liberalization steps during 2006-2007, allowing residents almost complete freedom to invest abroad. As a result, most of the reservations have been eliminated under items IV, V, VI, VII, VIII, IX, X, XI and XII. A further liberalisation step was taken in June 2008, when the Korean authorities eliminated the previous USD 3 million ceiling on residents' purchase of real estate abroad. Korea's remaining reservations on the outflow of capital concern only portfolio investments abroad by institutional investors.

Mexico notified that it now allows its resident securities firms to purchase abroad on their own account and the account of their clients, capital market and money market securities. This leads to the elimination of part of Mexico's reservations under items IV/D1 and V/D1. Mexico also liberalised the issue of foreign securities and other instruments on the domestic financial markets.

Portugal requested that three new reservations be included under List B, item III/B1 regarding the acquisition of real estate abroad if the asset in question is to form part of the cover of the technical reserves of a local branch of a non-EU insurance undertaking and of the available solvency margin correspondent to the guarantee fund of a local branch of a non-EU insurance undertaking or to the acquisition of real estate outside the EU territory"). These measures have been inadvertently omitted when the Committee in 2002 clarified the application of the Codes and undertook a horizontal review of all Members' position in the area of portfolio investment abroad by institutional investors [C(2002)30]. The Committee agreed that Portugal's position can be regularised accordingly.

Sweden changed its reservations to items IV/D1, V/D1, VI/D1, VII/D1, IX/B and XI/B2 to reflect that now only the purchase of securities issued by non-residents, the granting of credits and loans to non-residents and the deposit of funds outside Sweden by insurance companies is restricted. This restriction is limited to the case when all assets of an insurance company in other currencies form more than 20 per cent of the cover of the technical reserves in the same currency as the liability. Previously, the reservations applied to the purchase of securities, swap operations, credits and loans and deposits if these assets were to form more than 20 per cent of the technical reserves of the insurance companies.

Turkey notified that part of the remarks under items IV/B1, B2 and VII/B1, B2 that allowed the issuance, placement and introduction of securities on the Istanbul Stock Exchange International Securities Free Zone without constraints should be removed as this stock exchange does not operate anymore (it was abolished in 2006). Turkey also narrowed the reservation on collective investment securities under items VII/B1 and B2 by eliminating the requirement that these securities issued by foreign unit trusts should be generating no less returns than comparable unit trusts in their country of origin. This narrowing was not due to a specific liberalization measure, but because the same rules apply to domestic securities and hence there is no discrimination. In addition, the requirement that the foreign unit trusts that issue these securities should be at least one year old has been made more stringent by prescribing that the foreign unit trusts have to be at least three years old. According to the notification, this rule has been in effect since 1998 and but

due to an oversight it was not correctly reflected in the reservation. The Committee agreed that Turkey's position under item VII/B2 be regularised as the proposed reservation concerns a long-standing restriction, which was not notified due to unintended oversight.

Turkey also took a significant liberalisation measure by eliminating the surrender requirement on export proceeds by a February 2008 amendment of the relevant decree. This measure allows the deletion of Turkey's reservation to item XII/B2 (the "sale of foreign currency with domestic currency abroad by residents").

VI. Cross-border trade in services and other current invisible operations

This section concerns countries' positions under the CLCIO, except item E7 discussed in Section IV and all insurance items D which have already been reviewed by Council in February 2008 [C(2008)4].

Business and industry

With the Foreign Direct Investment Law No. 4875 entering into force in 2003, *Turkey* is ready to withdraw its limited reservation under item A/7. Non-resident owned companies are now free to transfer abroad any fees or participation in expenses of the parent company.

Transport

Canada notified that it can remove its reservation to item C/1 in respect of port regulations and pilot charges for maritime freights.

Finland requested that the remark to its reservation under item C/2 (inland waterways) be made more precise by adding that it covers only non-EC flag vessels or vessels that have not obtained an exemption for special reasons from the Ministry of Transport and Communications. Regarding road transport (item C/3), the reservation should specify that it covers road transport operations only by non-EC residents unless international agreements provide otherwise.

France eliminated its restrictions under item C/1 (maritime freight) and hence the reservation can now be removed.

Mexico's reservation under item C/1 (maritime freight) ceased to apply on 1 January 2004 in accordance with Mexico's commitment when acceding to the OECD.

The *Netherlands* proposes the deletion of its reservation under item C/2 (inland waterways) and the addition of a new reservation under item C/3 (road transport) for passenger transit. The Committee agreed that the *Netherlands's* position under item C/3 be regularised as the proposed reservation concerns a long-standing restriction, which was not notified due to unintended oversight.

Cross-border banking and financial services

Austria requested that its broad reservations under items E/2, E/3 and E/4 be deleted simultaneously with the lodging of a specific reservation under item E/7 (referred to above under the discussion on item I/A of the CLCM). The Austrian authorities confirm that no further restrictions are maintained in the field of "banking and investment services" (item E/2), "settlement, clearing, custodial and depository services" (item E/3) and "asset management" (item E/4).

Finland liberalised some of the items under financial services and consequently recommended that the reservations to item E/2 (banking and investment services), part of the reservation under E/4 (with

the asset management services of mandatory pension fund schemes remaining) and the reservation under E/5 be removed.

Hungary proposed that some reservations falling under E/2 and E/4 be narrowed to include only services provided by financial institutions from non-EC member countries.

Korea notified that the provision of underwriting, broker/dealer and asset management services by non-residents are not restricted any longer and thus the reservations to items E/2, E/3 and E/4 can be deleted.

Portugal notified the removal of restrictions on two sub-items under item E/2 (lead management or co-lead management of issues in Portugal by non-residents and access by residents to broker/dealer services provided abroad by non-residents). In addition, the last remaining reservation on the provision of broker/dealer services by non-residents in Portugal concerns only non-EC service providers. The authorities also requested that one of the reservations under item E/4 (asset management), namely the access by residents to trust services provided abroad by non-residents be deleted and the remaining reservation in asset management services be narrowed to cover only non-EC residents.

Switzerland narrowed its reservation to item E/2 by requesting the deletion of the reservation to lead management activities by non-resident underwriters for the issue in Switzerland of bonds or other debt instruments denominated in Swiss francs and having a maturity of one year or more.

Turkey proposed the partial deletion of its reservations to item E/7 (establishment and operation of branches), Annex II to Annex A, paragraphs 8b) and 8c) following the repeal of the 1954 Law for Encouragement of Foreign Capital and the enactment of the Regulation on the Incorporation and Operating Principles of Leasing, Factoring and Consumer Finance Companies of 2006. According to the new regulation, there is no minimum capital requirement for additional branches of non-resident leasing companies and the limitation that the financial requirements for additional branches of non-resident banks, leasing companies and other financial institutions must be met with foreign exchange brought from abroad has been eliminated.

Printed films

Finland notified that the reservation to item H/1, covering exports, imports and distribution of video-cassettes is to be deleted.

Korea proposed the deletion of part of its reservation to item H/1. Article 6 of the Promotion of the Motion Pictures Industry Act was deleted and importers no longer require a recommendation for import of a motion picture from the Korea Media Rating Board in accordance with the Sound Records, Video Products and Game Software Act.

Personal income and expenditure

Canada has notified that its reservation under item J/6 (subscription to newspapers, etc.) should be deleted. The reservation was related to advertisements aimed at Canadians. Since this item in the CLCIO deals with restrictions on the payments and transfers related to newspapers, etc., restrictions on advertisements fall outside the scope of the Code.

Cross-border advertising

Switzerland reported restrictions on advertising for alcohol, tobacco and related products (item L/1). Because these restrictions are not discriminatory against non-residents, they fall outside the scope of the Code and do not have to be reflected as a reservation.

Cross-border professional services

Regarding *cross-border trade in professional services* falling under item L/6 of the CLIO, the CMIT launched a horizontal review of Member countries' position under the CLIO in 1999 [DAFFE/INV(99)5/REV3]. The review focused on measures applicable to accounting, legal, engineering and architectural services, as these have been among the fastest growing sectors in OECD countries. The results of the review were, however, not transmitted to the Council, due to OECD budget restrictions.

The review concluded that Member countries' restrictions in this area are not adequately reflected in their reservations. Proposed modifications (i.e. the inclusion of new reservations) concern *Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Greece, Italy, Japan, Luxembourg, Mexico, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United States*.

VII. Reciprocity

Annex E of the CLCM lists and "grandfathers" reciprocity conditions for FDI which were into force in 1986.

The Committee welcomed the notification by France that the entry concerning reciprocity for tour guides in Annex E can now be eliminated.

Regarding establishment in the financial services sectors, EC countries waived reciprocity requirements for non-EC investors as part of their commitments under the GATS Agreement of 1994 (GATS/EL/31). All OECD countries are party to the GATS. All EC countries concerned, except France, have therefore accepted that their corresponding entries on reciprocity can now be removed from Annex E.

The Committee urged France to delete, at an early date, its entry on reciprocity in financial services in Annex E of the Code, in conformity with France's liberalisation commitments under the GATS and with the OECD policy tradition of avoidance of reciprocity reaffirmed by the Investment Committee in April 2008 [DAF/INV(2008)4/REV1]. The Committee also stressed the importance for Members to set the example in a context where the Council's Accession Roadmaps require candidate countries not to apply reciprocity. The Committee noted that France's removal of its reciprocity entry in Annex E for financial services would be without prejudice to a broader discussion on approaches to reciprocity in international law and state practices in the future within the Committee and under Freedom of Investment process at the OECD.

The Committee also welcomed the notifications by *Australia, Japan, Norway and Turkey* that they also had eliminated reciprocity requirements in banking and financial services and thus that their corresponding entries in Annex E can be deleted.

VIII. Other discriminatory measures

Both Codes of Liberalisation allow for an exception to the principle of non-discrimination (Article 9) for Members forming part of a special customs or monetary system (Article 10). European Union Member States and OECD countries which are members of the European Economic Area (EEA) – Norway and Iceland – provide preferential treatment to each other, notwithstanding the principle of non-

discrimination under Article 9 of the Codes. Some EC countries and Switzerland (which applied for EEA membership) have entered into bilateral agreements which provide preferential treatment similar to the EEA in selected areas – a few of which are covered by the Codes. No country has formally invoked Article 10 and no decision by the Council has been reached regarding recognition of the EEA as a special customs or monetary system within the meaning of Article 10. In 2008, in the course of discussions of the seventh examination of member's reservations to the insurance and private pensions provisions of the CLCIO [C(2008)4], Council invited the Investment Committee to resume its consideration of the status of the EEA under the Codes initiated in its report of 1992 [C(92)218] and report back to Council in due course. Within the time frame of this revision of the Codes and the NTI, it was not possible to consider the treatment of EEA under the Codes. The Investment Committee endeavours to do this examination as part of its future work cycle and report its findings to the Council.

In 2004 *Australia* concluded a free trade agreement with the United States and to give effect to its policy commitments, the government (i) gave exemption to the US from the Foreign Acquisitions and Takeovers Act 1975 for the acquisition of interests in financial sector companies; (ii) introduced a screening threshold of AUD 800 million (indexed annually) for US investments in non-sensitive sectors and for US investments in non-residential developed commercial property (other than accommodation facilities); and (iii) allowed life insurers incorporated and regulated in the US to establish branches in Australia to conduct life insurance business, while it requires life insurers from other OECD countries to establish domestic subsidiaries. When the measures were notified in 2005, the Committee welcomed Australia's confirmation that it is well aware of the provisions of the Codes and will report to the Committee within a reasonable timeframe on any review of its policies relevant to these provisions in the Codes [DAF/INV/WP/M(2005)2]. The Committee urged Australia to normalise, at an early date, the situation with respect to its obligations under the Codes. The Committee also stressed the importance for Members to set the example in a context where the Council's Accession Roadmaps require candidate countries to commit to full compliance with the principle of non-discrimination.

Members' liberalisation measures applicable to all OECD countries have generally been extended to the other members of the IMF consistent with their endeavour under Article 1 of the Codes. *Erga omnes* liberalisation may be conditional on the existence of information exchange and mutual recognition agreements between supervisory authorities for prudential and other legitimate purposes. As Members stand ready to pass similar agreements with other interested parties where equivalent conditions can be met, no discrimination is involved. *Belgium, Hungary and Poland* explained that they allow portfolio investment by domestic institutional investors in foreign securities issued in non-EC markets which met equivalent standards of prudential regulation and supervision.

IX. Essential security interests and public order

Measures to protect essential security interests and public order having a bearing on the Codes and the NTI shall be notified by Members. Measures which affect foreign direct investment are published by the Organisation as part of the NTI's procedures. They are also submitted to peer monitoring under the Freedom of Investment process at the OECD. New such measures have been taken by Canada (2009), France (2005), Germany (2004 and 2009), Japan (2007), Korea (2008) and the United States (2007).

In March 2009, in *Canada* the *Investment Canada Act* was amended to include a new Part IV.1 (Investments Injurious to National Security), which allows the Canadian government to review foreign investment that could be injurious to national security. Under this new Part of the Act, if national security threats associated with investments in Canada by non-Canadians are identified, primarily by Canada's security and intelligence agencies, they will be brought to the attention of the Minister of Industry. Once identified, the Minister of Industry, after consultation with the Minister of Public Safety and Emergency Preparedness, is responsible for deciding whether to refer these investments to the Governor in Council

(GIC), which determines whether a review should be ordered. Once the GIC orders a review, the Minister of Industry, after consultation with the Minister of Public Safety and Emergency Preparedness, conducts the review and, if required, submits a report to the GIC with recommendations. The GIC has the authority to take any measures in respect of the investment that it considers advisable to protect national security.

In *France*, a December 2005 decree as codified in the Financial and Monetary Code of 2003 requires prior approval, for national security and public order reasons, for the making of investments by foreign-controlled enterprises in eleven sectors, including cryptology, dual-use technologies, arms and munitions, gambling, as well as on firms that are privy to national defence classified information or that have concluded research or supply contracts with the Ministry of Defence. The list of sectors in which investment originating from EC countries is subject to prior approval is shorter. The French authorities justify this discriminatory treatment of non-EC OECD countries on the grounds that the sectors excluded have adequate security safeguards by virtue of EC law.

Since 2005, the number of proposed transactions reviewed increased from 25 in 2005 to 31 in 2006 and 38 in 2007, most of which concerned the national defence sector. None has been blocked, and around half of them have been approved after mitigation measures proposed by the investors, the other half having approved with no conditions attached.

In *Germany*, on 18 April 2009, an amendment to the Foreign Trade and Payments Act introduced a comprehensive review mechanism for any investments with 25 per cent or more equity ownership by investors of non-EU and EFTA nationalities on public policy and public security grounds in the sense of Article 46 paragraph 1 and Article 58 paragraph 1 of the EC treaty. The procedure is initiated by the Federal Ministry of Economics and Technology and there is no obligation for the companies to notify the authorities before the acquisition. The contract remains valid throughout the examination procedure. The measure is examined under the Freedom of Investment process in light of the principles of non-discrimination, transparency and predictability, proportionality and accountability. This amendment to the Act supplements the rules in the Foreign Trade and Payments Regulation of 2004 that enables the government to block foreign investment on “vital security interests” grounds in the defence sector. In this sector, prior notification is required when a foreigner acquires 25 per cent or more of a German company if it manufactures war weapons according to the War Weapons Control Act or tank engines and is involved in certain crypto-technology.

The *Japanese* government has expanded the coverage of the prior notification requirement for foreigners acquiring a stake in companies in designated sectors. According to the Foreign Exchange and Foreign Trade Act, the government can order investors to alter or withdraw from investment plans if it produces a significant impact on Japan’s national security, public order and public safety. According to amendments approved by Cabinet in September 2007, the list of industries covered by the regulation has been adjusted to include those that produce sensitive products (such as arms, nuclear reactors and dual use products), as well as industries that produce sensitive products or provide related services. The stated purpose of the amendments is to prevent the proliferation of weapons of mass destruction or damage to the defence production and technology infrastructure. The new measures are reflected in the “transparency list” of the NTI.

In May 2008, for the first time, the Japanese government ordered a foreign investor to discontinue further acquisition of shares under the Foreign Exchange and Foreign Trade Act on public order grounds. The Japanese authorities have indicated that some other 762 notifications submitted in the past three years have passed the review within 30 days, in accordance with the regulation and within this about 95% of the notifications have passed the review within two weeks.

The *Korean* government amended the decree under which the Ministry of Knowledge Economy (MKE) exerts its authority to limit those foreign investments that may have a negative impact on national security. In the exercise of the broad powers granted under the Foreign Investment Promotion Act, the MKE must now comply with procedural rules and more transparent criteria. These adjustments reflect refinement of procedural aspects and do not substantially modify the nature of already existing measures. No changes are needed in the text of the list of measures reported for transparency.

In the *United States*, the 1988 amendment to the Defence Production Act, known as the Exon-Florio Act, established a review process for mergers, acquisitions and takeovers by foreign persons. The review process is carried-out by the Committee on Foreign Investment in the United States (CFIUS) within a national security focus. It evaluates each individual transaction on its own merits; there are no prohibitions on foreign investment in specific sectors or equity caps. Filings by foreign investors are voluntary (although CFIUS may itself make a filing to initiate an investigation, the mechanism has not been used) and action to block a transaction remains a last resort. A transaction may be blocked only if there is credible evidence of a threat to national security and other provisions in law do not provide adequate and appropriate means to protect national security. The decision to block a transaction is made by the President of the United States. Mitigation measures may be negotiated with the interested party in order to address national security risks, thus allowing the transaction to proceed.

The Committee carried out a detailed examination of the Exon-Florio Act at its meetings of September and December 1989 and transmitted a report [C(92)141 and CORR1] to the OECD Council expressing its view that “the Exon-Florio provisions conform to Article 3 of the CLCM providing for the protection of essential security interests and do not create formal difficulties with respect to the United States position under the Code”. In assessing the draft implementing regulations issued in 1989, the Committee suggested ways of addressing concerns regarding uncertainty introduced by the lack of a definition of “national security” and “foreign control”, the risk of ex-post divestment and the possibility for domestic enterprises to use the review procedures to disadvantage their foreign competitors. The Council noted the Committee’s report and encouraged the United States to continue their long-standing open policy towards foreign investment.

The approval of the 2007 Foreign Investment and National Security Act (FINSA) does not seem to warrant modification to the existing entry of the United States regarding national security measures reported for transparency under the NTI. However, practices have evolved in recent years: the number of transactions filed with CFIUS is reported to have increased from 65 in 2005 to 113 in 2006; in 2006–2007, there were 13 second-stage investigations by CFIUS, more than in the previous fifteen years combined, and 27 mitigation agreements compared with 13. The new regulations implementing FINSA are examined under the Freedom of Investment process in light of the principles of non-discrimination, transparency and predictability, proportionality and accountability.

The Committee took note of minor corrections in the description of previous measures reported under the NTI for *Austria* and *Norway*.

X. Other measures reported for transparency

The NTI requires Members to notify other measures than discriminatory restrictions on FDI which nevertheless may have a bearing on the instrument, for transparency purposes. The list of such measures was last updated in 2007. Since then, several notifications have been received from countries that have changed their positions.

Austria lifted the public monopoly for radio and television broadcasting and transferred this activity to the area of concessions. Also, private mail systems are now allowed to deal with pieces

weighing 50 grams, instead of the earlier 100 grams. At the same time, concessions are now required for the operation of mobile phones.

Finland notified numerous measures that are reported for transparency and concern EC residence requirements in limited liability companies generally, with added rules for financial sector institutions. In the financial sector, EC residence is required for at least one of the board members, auditors or in some cases even founders of many types of financial institutions (e.g., in banks, insurance companies, pension funds, etc.).

Switzerland has narrowed the measure applicable to corporate organisations that can now be represented by persons domiciled in Switzerland (instead of having Swiss nationality). It also eliminated the public monopoly at the level of the national government for the import of distilled beverages. The country included new monopolies by cantonal authorities on natural damage insurance on buildings, notaries, gas meters, environmental services (potable water, waste management), outdoor advertising, casinos and lotteries.