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***“Market Openness and Regulatory Reform – the
Review and its Findings”***

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**OECD REGULATORY REFORM REVIEW
OF**

H U N G A R Y

CHAPTER IV : MARKET OPENNESS AND REGULATORY REFORM

ITEMS, CONCLUSIONS AND DISCUSSION OF THE REVIEW DOCUMENT

ASSESSMENT BY THE DELEGATION OF HUNGARY

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MARKET OPENNESS AND REGULATORY REFORM – THE REVIEW AND ITS FINDINGS

EXPERIENCE OF HUNGARY

The regulatory reform review of Hungary concluded in November 1999 was an important checkpoint to evaluate the progress since Hungary's accession to the OECD in 1996. The review report consists of four main chapters: the overall evaluation of the economic situation in Hungary, the implementation of the basic regulatory principles, the assessment of the implementation of the mentioned principles in various sectors and finally the policy recommendations resulting from the evaluation. Worth to mention that the overall part is relatively short, it discusses trade related aspects of the economic developments only.

The overall part of the Hungarian country review document and its discussion by the Working Party of the Trade Committee recognised the solid achievements of Hungary in the following areas:

- Structural reforms, enforcing the integration in regional and multilateral cooperation,
- Trade liberalisation, and
- Attracting foreign direct investment.

The details of the achievements and their assessment during the discussion of the country review go beyond the scope of the present report. At this juncture I would like to refer to the OECD publication available from the secretariat. The only concern we met referred to the incentives Hungary deemed as appropriate to direct foreign investors to eastern regions of the country not benefiting from the proximity to western markets. Another question emerged during the discussion concerning the so-called free trade zones offering cash-flow advantage for export-oriented firms. While explaining the economic reasoning and interest in these temporary measures the Hungarian delegation successfully argued that the measures taken are in conformity with our international obligations. Moreover these incentives will be reduced after the Hungarian accession to the European Union.

The policy framework for market openness was evaluated by the *six “efficient regulation” principles* established in the 1997 OECD Report on Regulatory Reform and developed further in the Trade Committee. The principles have been identified as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system, concerning which many countries have undertaken certain obligations in the WTO and other contexts. The OECD country reviews do not judge the direct implementation of these principles but rather assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness.

Having in mind the importance of the regulation principles giving the main part of the country review let me refer only to some of the main conclusions of the Hungarian report. I will not dwell into details; I just try to pinpoint the main elements featuring the expectations of the OECD member countries in evaluating the implementation of the said principles. At the same time I deem it appropriate to mention some of the concerns raised and the position the Hungarian delegation expressed during the debate.

Principle 1: Transparency, openness of decision-making and of appeal procedures

In order to ensure international market openness, the process of creating, enforcing, reviewing or reforming regulations needs to be transparent and open to domestic as well as foreign firms and individuals seeking access to a market, or expanding activities in a given market. There were three factors monitored here:

- a. availability of information, which offers market participants a clear picture of the rules on the basis of which the market operates, enabling them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities,
- b. dialogue with affected parties, which should offer well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation.
- c. appeal procedures to voice concerns about the application of existing regulations.

During the discussion of the *availability of information* the OECD member countries recognised the wide variety of sources where information on different level of legislation can be retrieved. These sources include not only official publications, but also that of commercial nature. Moreover some of these compendia offer multi-language text of the legislation.

There are no formal mechanisms in Hungary for *consulting* with concerned constituencies when preparing or reviewing regulations. Nevertheless, the administration organise informal consultations in the course of the enactment of new legislation or the amendments. Such consultations are primarily addressed to existing professional associations, including the national chambers of commerce and foreign business associations. The discussion on this item expressed the satisfaction of the OECD member countries with this solution. The Hungarian delegation noted at the same time, that one of the main problems encountered was to identify among interest groups the appropriate interlocutors that should be consulted in a systematic way. In the international arena, consultations with trading partners on adopted regulations can take place in the WTO framework, following notification of such regulations by Hungary.

As regards to the concerns about administrative measures there are different levels to *appeal*. Specific attention was given to the role of the parliamentary commissioner of citizen's rights (Ombudsman). The Ombudsman may invite the legislative agency to motivate its decision, put forward recommendations for amendments, or call upon the agency to withdraw a decision in breach of the law. It was noted also that Hungarian and non-Hungarian parties enjoy full equality before the law in public administrative procedures.

Principle 2. Measures to ensure non-discrimination

The discussion on the non-discrimination principle was fairly short as the participants acknowledged the generally non-discriminatory character of Hungarian domestic rules. It stems from the fact that Hungary has subscribed to the MFN and national treatment principles *inter alia* in the context of its membership to the WTO. In reply to a specific question with respect to the local content preference by the Government Procurement Act we noted that it was not used in practice as the inviting authorities could not afford to select anything but the less expensive bid.

Principle 3. Measures to avoid unnecessary trade restrictiveness

In general the discussion concluded that Hungary has undertaken a wide range of international obligations. Successive Hungarian governments have largely resisted protectionist pressures, and the non-tariff measures introduced with the stabilisation package in 1995 have been progressively eliminated.

However it was stated, that this assessment is more mixed as far as everyday implementation is concerned. Special reference was given to the customs procedures that were frequently perceived as cumbersome for trading partners. At the time of the discussion it might have been a concern, but since then customs law was among the priority areas where Hungary undertook commitments to harmonise its legislation to current and future EU legislation.

At present the elaboration of an appropriate RIA (regulatory impact analysis) procedure is under way and it will greatly enhance the efficacy of trade impact scrutiny. This new RIA system will include a trade impact assessment.

Principle 4. Measures to encourage use of internationally harmonised measures

The review noted the fact that the Hungarian legislative practice lays particular emphasis on harmonising domestic legislation with the country's international obligations under international treaties and agreements. Hungary has made considerable progress towards increased reliance on internationally harmonised measures. The change in the basic philosophy of standardisation was probably the most important of all positive steps. This policy has been shaped to a large extent by the commitments undertaken in the framework of the Europe Agreement and the preparation for accession to the European Union. Once member of the European Union Hungary will benefit from harmonisation efforts undertaken at the European level, since harmonised standards transposed in any of the EU members will be directly applicable in Hungary too.

Principle 5. Recognition of equivalence of other countries' regulatory measures

Hungary has undertaken to enhance the institutional framework for quality control, certification and accreditation. This covers the activities of the testing and certification bodies, the inspection authorities and the accreditation institutions. At present, serious shortcomings exist in the area of conformity assessment where a satisfactory network of testing laboratories and supervisory bodies still needs to be developed. However, Hungary set out to develop such a network in the context of the implementation of the PECA (Protocol on European Conformity Assessment). Since the report Hungary closed the negotiations with the European Union on the modalities to join the PECA network.

Principle 6. Application of competition principles from an international perspective

During the discussion of this principle, the delegations expressed their view that Hungarian regulatory procedures for initiating and advancing complaints about alleged anticompetitive regulatory or private actions are broadly satisfactory from the perspective of international market openness. The equality of opportunities for action between foreign and domestic firms and the independence of competition policy authorities offer considerable guarantees for an application of competition principles which is supportive of a market open to global competition

In *the sector related part* of the trade chapter of the regulatory reform review examines the implications for international market openness arising from Hungarian regulations in several sectors. By the consent of the OECD Trade Committee members the telecommunications (both equipment and services), automobile industry and electricity sectors were monitored, evaluating the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied.

In the area of *telecommunications services* it was noted that the Hungarian government has adopted a strategy of infrastructure development and network expansion largely based on a significant privatisation program introduced in the early 90s. As a result of the negotiations on the privatisation, the main Hungarian service provider was granted monopoly rights to provide domestic and international long distance public telephony services throughout Hungary until 2002. A specific question was raised concerning the so-called "golden share" still held by the government, which gives it control over future mergers and acquisitions. The Hungarian delegation also noted that Hungary placed limitations on market access to cover the exclusive rights granted on international long-distance and domestic services until 31 December 2002 and for local services until 31 December 2003 when signed the WTO Agreement on Basic Telecommunications.

The report rightly stated that the telecommunications equipment sector heavily benefited from the inflow of foreign direct investments during the last decade. This sector became the fastest growing manufacturing sector in Hungary, both in terms of output, export and employment. It is worth to note that Hungary is a member of the European Telecommunications Standards Institute (ETSI) and generally adopts European Telecommunications Standards (ETS), which is inevitable prerequisite to maintain the impetus in the developments of the telecommunications sector.

The report stated that the liberal investment regime prevailing in the *automotive sector* in Hungary is not matched by corresponding liberalisation of the trade regime. Apart from noting the otherwise internationally applied and justified measures to protect infant industry the main concern of the member countries related to the strict control of import of used cars. At the time of writing the report the control measures in Hungary aimed at limiting the import of cars above 4 years of age because of shortcoming in infrastructure and of environment protection considerations. It should be noted that the limitation is already lifted. At the same time the report noted that taking account of the overall economic situation, balance of payment concerns might still partly justify controls over import quantities. Accession to the EU will considerably improve this situation through the implementation by Hungary of EU bound tariffs on automobiles as a part of the common trade policy. It is worth to note that by the end of 1997, the production of vehicles and components accounted for 10% of Hungarian manufacturing production, 6% of total exports and 40% of the growth of manufacturing exports. Almost two thirds of automobiles and components export is destined to the EU.

The electricity sector has been subject to the general liberalisation process undertaken in Hungary over the past ten years. At the beginning of the decade the Hungarian electricity sector was a monopoly controlled by the State-owned power supplier. A new legislation is currently under preparation to adapt Hungarian legislation to the EU Electricity Directive in view of Hungary's accession to the European Union. The conditions set by the EU Electricity Directive, for example in bidding procedures, are likely to reinforce the application of transparency and non-discrimination principles in regulatory procedures. By granting some third party access, the EU Directive also provides the opportunity to increase competition. Under the new legislation, large end-users or distribution companies should be given some possibility to contract with producers offering better prices.

The concluding part of the country review sums up the evaluation and elaborates policy options. In the case of the Hungarian review the summary in connection with the above mentioned principles highly evaluated the non-discriminatory manner of the Hungarian legislation as well as the standard and equivalence related measures moreover the application of competition principles. The Hungarian delegation was satisfied with this result witnessing its commitment to create a sustainable policy framework to integrate the economy of Hungary to its international environment. On the other hand the less enthusiastic assessment of transparency as well as trade distortion related issues clearly showed the path to follow. The transparency related comments as it was indicated earlier noted the difference of the provisions and their field implementation (at least through the example of the customs procedures). It is worth to note that by now preparations for the EU accession resulted significant developments and the findings of the report in 1999 might not be valid neither from legislative nor from practical point of view. The same might apply for the non-tariff barriers where most of the provisional measures, such as application of tariff quotas, control of import of the used cars are already lifted. This clearly indicates the progress Hungary made in reforming its trade policy.

The country review of Hungary rightly stated that international scrutiny of the domestic regulatory regime was topped by the assessment of Hungarian regulations undertaken by the European Commission with a view to the Hungarian accession to the European Union. In historical terms we are closing to the final round of the negotiations on accession, which is the primary target of the successive Hungarian governments since the early nineties. At the same time we deem it evident that periodic assessment of the Hungarian reform process in a wider audience the OECD can provide should also contribute to achieve this goal. We are convinced that the pursuit of reform efforts aimed at further enhancing the market orientation of the national regulatory system will facilitate the progressive catch up with developed economies.

Finally, the policy options for consideration at the end of the report were based on international consensus on good regulatory practices and on concrete experiences in OECD countries. These recommendations are likely to enhance the contribution of the regulatory environment in Hungary to the openness of the market. In my report I already referred to these recommendations elaborating some elements of concerns and the Hungarian position. For the sake of order and make the picture full on the structure of the document let me follow the pattern of the review and repeat the recommendations with one comment: the recommendations are incorporated in the final, overall document, the discussion did not alter their content. In case of major difference in opinions there is a possibility in principle to incorporate a statement of the examined country on the disputed matter.

Improve the transparency of prospective regulation and widen the opportunities of concerned constituencies to provide input to the decision making process

Ensure a clear understanding by prospective bidders of the criteria used for the evaluation of public procurement bids and for the selection of successful bidders

Continue to promote non-discrimination in the domestic regulatory system and its enforcement

Promote a consistent regulatory impact analysis (RIA) system for the whole range of regulations, including administrative rules; develop a consistent practice for the assessment of trade and investment effects of proposed regulations

Strengthen the administrative and judicial capacity for the enforcement of applicable regulation

Enhance the transparency and the uniform application of customs procedures

Maintain the momentum in the area of standardisation

Streamline conformity assessment procedures and institutions

Replace environmental protection motivated import restrictions for automobiles by enhanced controls of the environmental performance of vehicles in use

Thank you for your kind attention.