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OECD Investment Policy Reviews

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at the
UNCTAD Expert meeting on the Effectiveness of Foreign Direct Investment Policy Measures
Geneva, 25-27 June 2003

I. "Peer Review": an OECD trade-mark

1. There is, to the Secretariat's knowledge, no other international organisation in which the practice of peer review and the exercise of peer pressure have been as extensively developed as the OECD. Peer review has permeated into practically all the policy areas covered by the Organisation,[1] serving as a mechanism for exchanging information, comparing country experiences, identifying good practices and addressing policy recommendations to Member countries. It has proven to be an effective capacity building tool, well adapted to inter-governmental discussion of complex issues.

2. This has been facilitated by a like-minded membership and, more importantly, a high degree of trust shared among the Member countries. Peer review has also been used for assessing accession candidatures to the OECD, adherence requests to its legal instruments or observership or other forms of OECD partnership with non-Member countries.

3. A particularly unique feature of the peer review mechanism at the OECD is that it has played a central role as a *monitoring* and *compliance* tool for its "legal" instruments, notably the OECD Codes on Liberalisation of Capital Movements and Current Invisible Operations and the OECD Declaration on International Investment and Multinational Enterprises. Drawing their authority on legally binding notification and examination obligations, peer review and peer pressure have been these instruments' main leverage for locking in past liberalization gains and encouraging the progressive removal of non-conforming measures[2].

4. Peer reviews have been particularly well-suited to the task of promoting "unilateral" and "progressive" liberalization – the underlying philosophy of the OECD instruments. They have constituted a less confrontational approach to liberalization than formal negotiations and have facilitated the formulation of policy recommendations adapted to the economic situations and reform capacities of "reviewed" countries. OECD peer reviews have also contributed to providing international support for national policy-makers engaged in reforms.

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1. For a recent overview see *Peer Review: An OECD Tool for Co-operation and Change*, OECD, Paris, 2003.
2. See *Forty Years' Experience with the OECD Code of Liberalisation of Capital Movements*, OECD, 2002.

II. OECD FDI policy reviews

Origins

5. Peer reviews on foreign investment have been an important part of the work of the OECD Committee on International Investment and Multinational Enterprises (CIME) and that of the OECD Committee on Capital Movements and Invisible Transactions (CMIT), which have shared competences in this area. Following the adoption of the Capital Movements Code's amendment on inward direct investment and establishment and new procedures for strengthening the implementation of the National Treatment instrument of the OECD Declaration on International Investment, it was decided in the early 1990s to conduct "consolidated" country examinations on foreign direct investment. This was seen as an opportunity for undertaking more comprehensive and integrated FDI policy assessments of OECD countries, and for elaborating more robust policy recommendations to national authorities.

6. This has led to the creation of the OECD FDI peer review format in use today. It has so far been applied to eleven OECD countries,[3] the accession of five new Members of the Organisation[4] and the adherence of the eight non-member countries to the OECD Declaration on International Investment and Multinational Enterprises, either as CIME observers[5] or participants to Committee-related work.[6] The Committee has also sponsored separate FDI policy reviews of non-members such as Ukraine recently and in 2003 China in the context of its co-operation with non-member partners. The South-East Europe (SEE) Compact for Reform, Investment, Integrity and Growth has also launched investment examinations of SEE countries. A CIME investment policy progress review of Russia is being considered for early 2004, following up on the 2001 OECD survey.[7]

7. In addition to "country" reviews, peer pressure has also been exercised via "horizontal" peer exercises comparing all OECD countries on a particular category of investment measure. These horizontal peer reviews have also prepared the ground for major updates and extensions of the Code's obligations, such as that carried out on financial services at the end of the 1980s. More recently, the Committees have conducted horizontal peer reviews on what may be considered remaining "pockets of resistance" to liberalisation, such as foreign acquisition of real estate, and FDI in professional services and telecommunication services.

Content

8. The CIME investment "peer" reviews are normally divided into three parts:

- The *first* part consists of a general assessment of the country's performance in attracting FDI, its contribution to the economy and the channels through which this contribution is realized. It also helps situate the country in the globalisation map.

- The *second* part involves a thorough review of the country's regulatory framework for FDI and domestic business operations, including licensing, sectoral measures and administrative practices,

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3. Denmark, Finland, France, Greece, Ireland, Italy, Norway, Portugal, Sweden, Switzerland and the United States.

4. Mexico, the Czech Republic, Hungary, Poland, Korea and the Slovak Republic.

5. Argentina, Brazil and Chile.

6. Estonia, Lithuania, Israel and Slovenia. Latvia's adherence is expected to be completed during the summer of 2003.

7. *The Investment Environment in the Russian Federation – Law, policies and institutions*, OECD, 2001.

investment incentives and government procurement, privatisation and monopolies, anti-corruption efforts, national security or public order measures. It also analyses the country's international commitments relevant to FDI (bilateral investment protection treaties, double taxation agreements, regional or multilateral commitments). This integrated and comprehensive approach allows to address the investment interface of a broad range of public policy areas and to identify the main impediments to inward direct investment – including those that are not *de jure* discriminatory.

- The *third* part is devoted to the elaboration of policy recommendations to the national authorities. For countries wishing to subscribe to the OECD Declaration on International Investment and Multinational Enterprises, the Committee must determine whether the applicant's proposed exceptions to National treatment "are not incompatible with the overall level of liberalisation expected from adherents to the National Treatment Instrument". It must also be satisfied that the applicant will undertake the necessary steps to promote effectively the OECD Guidelines for Multinational Enterprises, notably the establishment of a National Contact Point.

9. In addition to the fulfilment of these "legal requirements", the reviews under the Declaration lead to the formulation of specific recommendations to the country's national authorities on how to further promote a favourable business climate. For other peer reviews conducted by the Committee, the main objective is to establish a fair diagnosis of the reviewed economies' general openness to foreign investment and to make constructive suggestions for enhancing the country's regulatory and institutional capacity to attract foreign investment.

Costs and Benefits

10. The peer reviews clearly represent a "substantive investment" in terms of time, human resources and money. A single exercise may require, from start to finish, a minimum of six to nine months. It needs to involve senior officials from several ministries and internal co-ordination. An official memorandum must be prepared by the national authorities of the "reviewee" explaining the motivations for existing FDI restrictions and government's intentions about their removal. A field mission by the OECD Secretariat is undertaken to prepare the supporting material for the review. This highly inter-active and demanding process can nevertheless bring substantive rewards.

11. As the Committees have been told several times by the reviewed countries, the reviews provide a unique opportunity for officials to test the merits and coherence of the various components of a country's FDI policy and to achieve a "whole of government" approach to investment. It has also helped build consensus among domestic constituencies over needed reforms. At the same time, the "peers" benefit from the reviewee's particular experience and the views expressed during the discussion. It is not unusual that the reviewers bring back home new ideas for their own regulatory reform.

12. Two other distinctive advantages of this working method is its "fairness and objectivity" and its "no one size fits all" approach to problem solving. The 38 countries which have participated in CIME peer reviews under the Declaration have different economic backgrounds. They may bring to bear on the discussion different points of views which reflect their own experiences. The collegial approach also constitutes a guarantee to the reviewed authorities that they would not be asked to undertake policy actions that the peers would not, individually or collectively, be prepared to undertake. Peer review creates a partnership of trust which endures a long time after completion of an examination.

III. Modalities for Peer Reviews

13. FDI peer reviews appear to work best if a certain number of conditions are fulfilled:

- *First*, the reviews should be conducted by "peers", namely government officials familiar with the increasingly complex set of policy questions to which foreign investment gives rise in a globalised world. Lead examiners from governments are designated. The coverage should also be tailor-made to the particular reform priority areas of the reviewed country.

- *Second*, the objectives should be clearly defined and lead to policy recommendations that can realistically be implemented.

- *Third,* established *policy benchmarks* should be used wherever possible. They can contribute to the objectivity of the review and provide a yardstick for monitoring implementation of policy recommendations. Recently, for example, the CIME has adopted a checklist of operational criteria to assess the costs and benefits of using incentives to attract FDI,[8] which will allow robust reviews of this particular aspect of FDI policies.

- *Fourth,* the policy recommendations should be addressed to policy-makers at a high political level and a follow-up mechanism should be in place to monitor the country's implementation of the recommendations. The Committees' recommendations are adopted by the OECD Council, the highest governing body of the Organisation and their implementation is closely monitored by the Committees, which report back to the Council on progress made after the review.

- *Fifth,* the main findings of the reviews should be published. While this puts the reviewed country "on the spot", it also underscores international support for reform efforts. The reviews are also a valuable source of information for, and a basis for discussion among, investors and other civil society stake-holders. Often reviewed countries have translated the reports into the domestic language, organised seminars and given a circulation to the publications, including via the embassies and investment promotion agencies.

8. See http://www.oecd.org/pdf/M00040000/M00040467.pdf.

REFERENCES

OECD Reviews of FDI series:

New Zealand, 1993; Sweden, 1993; Portugal, 1994; Ireland, 1994; Greece, 1994; Italy, 1994; Denmark, 1995; Norway, 1995; Finland, 1995; United States, 1995; Switzerland, 1996; France, 1996; Argentina, 1997; Chile, 1997; Brazil, 1998; Hungary, 2000; Czech Republic, 2001; Lithuania, 2001; Estonia, 2001.

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Ukraine, 2001, and Investment Reform, 2002; Slovenia, 2002; Israel, 2002;
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