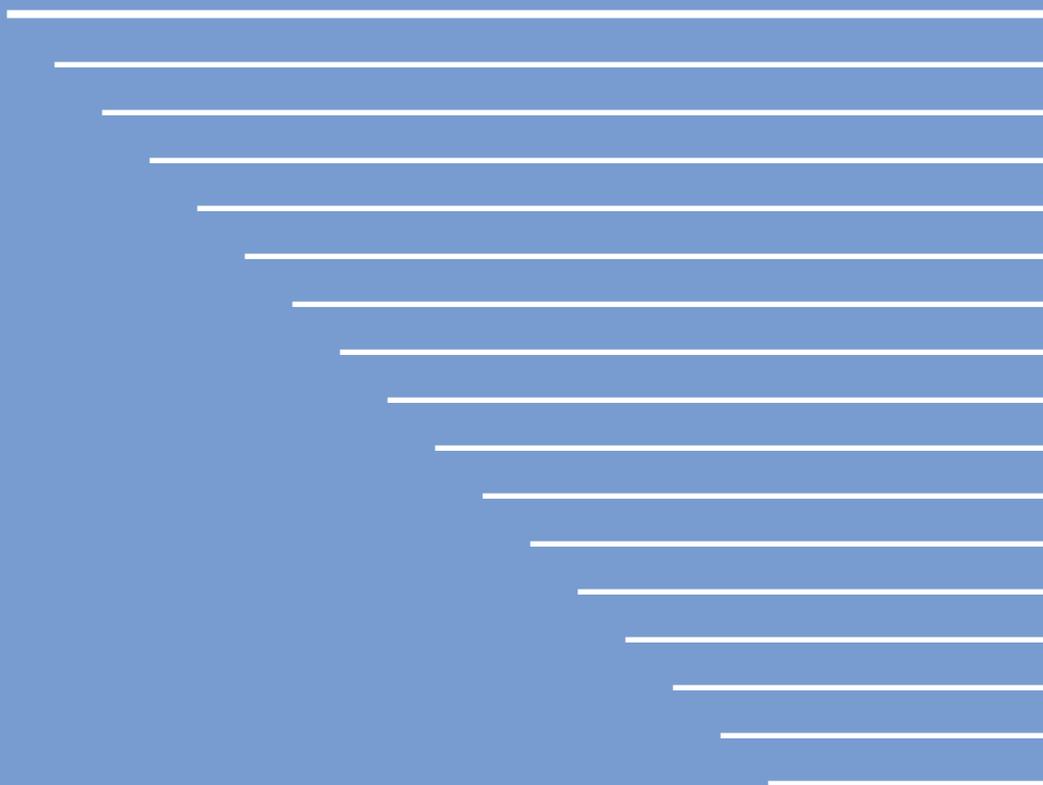


# FOREIGN DIRECT INVESTMENT, DEVELOPMENT AND CORPORATE RESPONSIBILITY



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## FOREWORD

Foreign direct investment (FDI) is receiving growing attention in relation to globalisation, economic development, the operating modes of multinational enterprises and international investment rules. FDI is a key ingredient of economic growth, employment, technological development and the spreading of managerial and marketing skills. FDI makes host countries more fit to compete in an increasingly globalised world. FDI benefits will also need to be more widely distributed and match in a more satisfactory manner the expectations of all the stakeholders in civil society, governments, business, labour, environment and other non-governmental organisations. Increased direct investment, economic development and responsible corporate behaviour would now appear to be the critical components of the winning strategy.

These issues were addressed at a conference entitled “The Role of International Investment in Development, Corporate Responsibilities and OECD Guidelines for Multinational Enterprises”, held in Paris on 20-21 September 1999. The conference brought together representatives of OECD member states, developing countries, business, trade unions, academics and other parts of civil society. Conference participants felt that the discussions contributed to a better understanding of the issues that arise at the interface of government, foreign investors and other parts of civil society. They also welcomed the opportunity to become better acquainted with corporate codes of conduct and the OECD Guidelines for Multinational Enterprises (MNEs) particularly at a time they are under active Review.

The conference was held under the auspices of the Committee on International Investment and Multinational Enterprises and the Centre for Co-operation with Non-members, with the sponsorship of the United Kingdom Department for International Development. Donald Johnston, OECD Secretary-General opened the conference. The keynote speaker was George Foulkes MP, UK Parliamentary Under-Secretary for Development.

This publication summarises the major findings of the conference and brings together selected papers of experts who attended. It was prepared in the Directorate for Financial, Fiscal and Enterprise Affairs by

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The views expressed here are the sole responsibility of the authors and do not necessarily reflect those of the OECD or its member governments. This book is published on the responsibility of the Secretary-General of the OECD.

Eric Burgeat  
Director  
Centre for Co-operation with Non-Members

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## **SUMMARY**

*by*  
The Secretariat

### **Introduction**

Raising standards of living on a sustainable basis is one of the most crucial policy challenges for the 21<sup>st</sup> century. Foreign direct investment (FDI) will be vital to the achievement of this goal. It has become one of the major and most reliable sources of outside capital, notably in transition and emerging economies. FDI is a key ingredient of economic growth, employment, technological development and the spreading of managerial and marketing skills. FDI makes countries compete in an increasingly globalised world. Increased direct investment, economic development and responsible corporate behaviour are the critical components of a winning strategy.

Conference participants acknowledged the value and timeliness of the Conference. They felt that the discussions contributed to a better understanding of the issues that arise at the interface of government, foreign investors and other parts of civil society. They also welcomed the opportunity to become better acquainted with corporate codes of conduct and the OECD Guidelines for Multinational Enterprises (MNEs) particularly at a time they are under active Review.

The main points which emerged from the presentations and discussions – which focussed, on the first day, on the benefits from FDI and the effectiveness of individual country policies, and second, on corporate codes and the OECD Guidelines for MNEs – can be summarised as follows.

## **FDI policy, individual country experiences and the role of foreign investors in developing countries**

### *i) The role of FDI in economic development*

*– FDI spectacular growth but in an insufficient number of countries*

Inflows of FDI increased by 39 per cent globally in 1998, amounting to \$460 billion in developed and \$166 billion in developing countries. Transition economies accounted for \$19 billion and least developed countries \$3 billion. A further increase in FDI flows is projected for 1999 with divergent trends in developed and developing countries. Most FDI is based in the developed world, although developing countries have witnessed dramatically growing inflows in recent years. Much of this investment has gone into only a dozen or so countries, as one of the main speakers noted, with five countries receiving over one half of developing country inflows in 1998. In spite of the relatively poor performance of most developing countries in attracting FDI, some poorer countries have actually done well relative to the size of their economies.

*– Substantial benefits of FDI acknowledged*

It was generally acknowledged that the link between investment and economic growth no longer needs demonstration. This is true not only for developed countries but increasingly also for developing countries, and the least developed among them. Economic growth is crucial to the eradication of poverty and investment is necessary to achieve the goal.

Most of the impacts of FDI are well known: it contributes to management, capital, technological capacities and expertise, and can facilitate the integration of local industry into global production and distribution networks.

This phenomenon allows for the exploitation of full economies of scale, more rapid upgrading of technology, highest quality control and greater penetration in external markets. The integration effects are not restricted to the plant itself. Integrated operations also tend to have more extensive linkages with the domestic economy as a whole. They lead to better human resource training and facilitate the transfer of skills and management capacities between enterprises.

Developing countries' commentators agreed that the issue was no longer whether foreign direct investment is good or bad for economic development but rather how to ensure that it contributes in a balanced and sustainable way to the legitimate aspirations of host economies. Some business community representatives acknowledged that their investment decisions and performance in host countries could have both positive and negative impacts on the local economy. They stressed that investment decisions are motivated by a hospitable, non-discriminatory business environment. Many companies are also very conscious of the need for integration into the local economy, technology transfers and supplier and customer networks to ensure the success of projects and point out that this can be facilitated by supporting policies of host countries.

– *But there are concerns...*

Concerns were raised by developing country participants and some NGO representatives. Such issues included the difficulties in promoting linkages in host countries with a weak industrial base, appropriate measures to consolidate and expand an established industrial base and environmental protection. Attention was also drawn to the fact that developing countries come under pressure from the business community – and in particular multinationals – to grant concessions such as market protection or reduced energy prices to facilitate profit projections. In the same context there was a call for greater transparency regarding transfer pricing policies on the part of multinationals and fewer fiscal incentives which may erode the tax basis of the developing host country.

## **ii) *Policy and country experiences***

### *Effectiveness of policy tools*

– *The necessary conditions*

There was general agreement that international investment benefits from sound macroeconomic policies, consistent competition rules, adequate protection of property rights and good governance. Host countries must be credible places to invest. Investors must have confidence in their investments. This requires transparent and reliable regulations, availability of legal redress and commitment that these policies will be upheld or improved in the long term.

– *Performance requirements and economic development*

It was pointed out that performance requirements are used more frequently by developing countries than in the developed world. For this reason, many foreign investors in developing countries may operate at sub-optimal scale.

There were examples of domestic content requirements which may lead to expensive and inefficient operations. Their ultimate effect may be to put a ceiling on FDI contributions to development as some investors tailor their inputs to current or ongoing requirements rather than best performance. It was argued that negative results also arise from ownership and technology sharing requirements, and that short-term benefits of export performance requirements may disappear in the long-term.

Developing countries might find it in their best interest to abandon performance requirements to allow FDI flows to respond to market forces rather than “rules and regulations”. Most developing countries were of the view however that performance requirements were still necessary, at least initially, to develop and upgrade the economy and ensure competitiveness of local enterprises during a period of transition.

– *Living with performance requirements*

On the question of performance requirements, the business community view expressed was that the need for them in some countries is understandable, given different levels of development. Investors are prepared to engage in discussions with host country authorities to arrive at mutually acceptable solutions at all stages of an investment project. In some cases – such as with joint venture requirements – they may be sensible and advisable to help establish a presence and become accepted by the local community until such time as mutual trust and confidence have been established.

It is important, however, for the business community to know that the requirements will be progressively removed in line with the development of the host country and the evolution of the investment project. Where performance requirements are used, it was emphasised that it is also necessary to differentiate sensibly between the sectors and projects involved.

In the long-term the business community favours the elimination of performance requirements suggesting the implementation of the present TRIMS agreement as a possible starting point.

– *Control of natural resources*

It was suggested that, in the case of the poorest countries, most of the FDI is in the natural resources sector and may justify the need for performance requirements if these countries are to retain control of their resources. This would include the sustainability and environmental performance of mining operations.

– *Other policy tools can be detrimental as well*

The discussion also covered other types of investment distorting policies. It was generally recognised that increased competition for international investment has led to the proliferation of incentives or subsidies in both developed and developing countries. While the evidence of the impact of these incentives or subsidies on actual investment decisions is anecdotal, they are very costly and impose constraints on future policies.

High domestic content rules of origin in preferential trade agreements constitute tools to attract FDI – to the detriment, however, of the countries which remain outside these agreements.

Anti-dumping regulations may also be used to divert foreign investment flows, serving as a trade barrier against which foreign investors may wish to protect themselves by investing in the country applying these regulations.

Some developing countries pointed out the discrepancy between the developed countries' calls for progressive liberalisation and their own interventionist policies in the form of such preferential trade agreements, rules of origin, subsidies, tax incentives or anti-dumping measures. These practices on the part of developed country groupings such as NAFTA, EU or Mercosur were equally felt to distort investment patterns and flows.

*Country and investors' experiences*

– *Progressive and paced liberalisation*

Whilst acknowledging the need for progressive liberalisation of FDI regimes, most of the developing countries' participants felt that this process must continue to be adaptable to the individual host country's specific needs, level of economic development and resource base. Objectives mentioned and achieved through suitable policies included privatisation, export-led growth and technological capacities and the development of local business.

Major recurring difficulties experienced by investors include foreign currency restrictions, bureaucracy, and lack of protection of intellectual property. The clear message from the business community was the more risk-free the investment environment, the more conducive the operating conditions to the sustainability of a project and its contribution to the host country.

The perception emerged that some problem issues affecting FDI flows into developing and transition economies cannot just be addressed through liberalisation but require additional capacity-building initiatives. Such issues range from combating corruption to promoting good public and corporate governance to ensuring sound legislative frameworks in areas like competition, environment, labour standards and developing effective investment promotion schemes. A number of participants actively called for capacity-building support by the international community for those countries where the internal reform process had not yet gone far enough.

Overall developing countries reported that benefits from FDI occurred in areas of productivity and competitiveness, management and marketing skill and technological standards. Some countries, however, despite a liberal approach to FDI, were disappointed with the degree of integration of foreign companies into domestic industry and access to international markets via export opportunities.

– *Privatisation*

Some host countries experienced significant inflows of FDI through privatisation which often involved key sectors of the local economy as well as infrastructure. It was noted that in such cases attention must be given to transparent and competitive selection of investors as well as the promotion of local participation to ensure that benefits are shared.

One successful and innovative public policy approach taken to privatisation and to address the question of improving redistribution of FDI benefits was capitalisation. This involved offering strategic investors a 50 per cent shareholding in state-owned companies. Whilst the invested capital remained in the companies, the remaining 50 per cent state shareholding was contributed to a privately managed capitalisation fund to ensure an annuity income for all citizens on reaching the age of 65. This model is now being studied by a number of other developing countries.

## **HIGHLIGHTS OF THE DISCUSSION OF THE FIRST DAY:**

- Consensus on the positive impact of FDI on development, but concern regarding the uneven distribution of flows and benefits.
- Stable regulatory framework and hospitable business environment indispensable to attract FDI.
- Progressive liberalisation of FDI regimes desirable in principle, but processes should respect different levels of development of host countries.
- Developing countries' concerns regarding FDI incentives and practices in developed world must be addressed as part of any global initiative.
- Business community aware of need to contribute to local development and capacity building through FDI.
- International support to capacity-building required in many areas in developing countries.
- Need for dialogue involving governments, social partners and civil society.

## **CORPORATE RESPONSIBILITIES AND THE OECD *GUIDELINES* FOR MULTINATIONAL ENTERPRISES**

Conference participants discussed the importance of corporate standards and responsibilities, notably voluntary codes of conduct and *the OECD Guidelines for Multinational Enterprises*, at a time when the latter are undergoing comprehensive review. They acknowledged the value of the OECD's work in this field, in an increasingly globalised and interdependent world where MNEs are subject to closer public scrutiny and responsibility and accountability for their economic activities are becoming important factors. A number of key points emerged around the two main topics: i) "Corporate responsibility: the importance of standards and the role of voluntary codes of corporate conduct" and ii) "The *OECD Guidelines* for Multinational Enterprises".

### ***i) Corporate responsibility***

*What is driving the development of codes of corporate conduct?*

- *Companies have come under increasing pressure from consumers, non-governmental organisations and other stakeholders to adhere to more demanding behavioural norms*

Most of the participants pointed out that the need for voluntary codes of conduct is greater in an environment where distribution networks and supply relationships are increasingly globalised. Stakeholders have reflected this trend by examining the effect of business practices on matters beyond those previously of concern to those participating in company ownership and control. Consumers want to know that the products they buy are not made through ethically questionable means. Pressures for social and environmental regulation arise out of the market, and the best instrument of accountability is public opinion and the media. The time has long gone when companies were dealing merely with laws and legal compliance: self-regulation can be more challenging than mere compliance.

One NGO participant evoked three elements that society expects, as business's contribution to sustainable development nationally and internationally: environmental responsibility, maintenance and achievement of high social standards and a contribution to economic equity. Transparency and accountability are central.

- *Today's competition relies not only on prices or technical quality but on social quality too*

An NGO representative said that, over the last years, more and more MNEs have seen benefits flowing from an approach to their relationship with stakeholders that involves more transparency and recognition of responsibility. They take seriously constructive dialogue with stakeholders on their environmental and social performance. Such companies find that they are rewarded through improved reputation, a very valuable asset in the market place.

- *Some participants were of the opinion that of codes of conduct are developing because of government failure*

A business representative as well as NGO representatives noted that some codes were a response to perceived policy failure of national governments to put in place or enforce basic employment or environmental standards.

### *Role of the codes of conduct*

- *Communications vehicle or management tool?*

A business representative said that codes of conduct are another communication vehicle, projecting certain intentions and standards outwards from the company to be better understood by civil society.

An NGO representative disagreed with the view that codes of conduct should be seen only as a communication vehicle and public opinion exercise and felt that they should be used as a management tool in the everyday life of the enterprise to promote high standards of behaviour.

### *Monitoring and implementation*

- *Management controls provide firms with an essential tool to make good on their ethical commitments*

Most participants agreed that management controls are essential elements of a code's effectiveness. Without agreed supervision and monitoring, individual codes of conduct are no more than statements of intent. Two control systems have been identified: the internal verification system and the external one (audit). There is no uniform internal management and verification process and the competence and independence of the external monitoring that exists varies greatly as well. There was divergence of opinion as to whether external verification is necessary.

– *and standardised management systems have emerged*

These systems typically consist of a code of conduct containing commitments to comply with the law and to engage in a process of continual improvement and of internal management procedures designed to make these commitments operationally effective. Two examples are ISO 14000 in the environment and SA 8000 for social standards. Specialised firms, large accountancy and consulting companies and NGOs have begun offering services (consulting, certification and auditing) designed to assist firms in doing this. The representative of the organisation which created the SA 8000 (CEPAA) described the code as one which sets specific performance standards with minimum requirements; this is what makes it verifiable. Its auditing techniques specify corrective and preventive action to be taken by the companies and it is based on "continuous improvement".

– *There was concern that these codes apply only to certain sectors*

Although this was confirmed by the CEPAA representative, additional work is under way to cover new sectors which are not covered today (i.e. mining, extraction and food industry).

– *and the cost of compliance to standardised codes could be high*

A number of participants called attention to the high cost of enforcement of these codes. There was a question of where these costs fall and a concern that they may fall on the suppliers in particular in the developing countries. The representative of CEPAA replied that there are real costs but these would be outweighed by long-run benefits. The same issue arises where environmental codes of conduct are considered; companies in developing countries see the environmental requirements as an additional cost, which might impinge on their competitive position. As a response to that problem, the idea was put forward to reduce the cost of the codes of conduct by linking the social and environmental improvements together, since they are not mutually exclusive.

## *Experience with codes of conduct*

### *– Positive contribution*

Although only anecdotal evidence is available, MNEs seem to have used codes as a powerful tool to enhance their credibility in explaining to existing or potential stakeholders that they expect and demand certain standards of behaviour. It was said that in some cases, the adoption of codes has led to improvement of working conditions with respect to child labour or health and safety at the work place.

### *– Problems encountered*

It was noted that the multiplicity of codes of conduct could create a number of problems. 1) Because of their diversity they may prove expensive and inefficient; 2) there may be a lack of consistency which causes confusion; 3) monitoring and verification of individual codes may be weak and 4) some of them are not comprehensive enough to be credible. These arguments, according to the CEPAA representative constitute the main reason for the establishment of the SA 8000.

### *– Assessment is difficult to make*

There was common agreement that, despite anecdotal evidence on their positive contribution, too little is really known to draw conclusions on their effectiveness. Corporate codes, however, constitute an important new approach that needs further study.

## *The development dimension*

### *– Relationship between governments and enterprises vis-à-vis codes of conduct*

A fundamental aspect raised by a representative of a developing country is to consider this relationship from the perspective of good governance and a proper legal environment. The codes of conduct cannot function in an environment where there is inadequate institutional capacity to deal in particular with problems of corruption and MNEs' behaviour.

## *The interface between voluntary and regulatory approaches*

### *– Two approaches to corporate responsibility*

A government representative said that there are two aspects of good corporate citizenship: compliance with national laws and regulations and adherence to ethical and environmental standards, even in cases where they are not required by the law of the host country.

To whom should this challenge be given? According to the voluntary approach, this task should be left to business and the proliferation of codes of conduct shows business responsibility. The regulatory approach sees in the big diversity of codes a lack of commitment, in particular in the absence of verification procedures and sanctions for non-compliance. In terms of creation of standards, government regulation can set only minimum or average standards. However, on a voluntary basis, the level of ambition can be higher; the companies can be encouraged to go beyond the set standards, even if they do not figure in legal codes.

A business representative wondered whether it wouldn't be better for a company to obey all the national laws in the countries in which it operates and achieve the desired results instead of having a meaningless corporate code that does not contribute to the improvement of standards.

### *– Partnership between governments, business, trade unions and civil society*

Most participants were of the view that there is no dichotomy between voluntary approaches, such as corporate codes of conduct, and regulatory action taken by governments. They agreed that the response to the new challenge calls for a better understanding of the interaction of private entities and public policy. As a result, the best way to proceed could lie in complementary and mutually reinforcing efforts by governments, companies and other stakeholders in a spirit of shared responsibility and partnership.

## **ii) *The OECD Guidelines for Multinational Enterprises***

The *OECD Guidelines for Multinational Enterprises* are recommendations by OECD governments to multinational enterprises (MNEs) which establish behavioural norms for the activities of these enterprises. They aim to ensure that MNE activities are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between MNEs and government authorities. The *Guidelines* cover a broad range

of MNE operations: employment and industrial relations, environment protection, information disclosure, competition, financing, taxation, and science and technology.

The *Guidelines* form a part of a wider and balanced package of OECD investment instruments (the 1976 OECD Declaration on International Investment and Multinational Enterprises), which are adhered to by the 29 OECD Members, as well as Argentina, Brazil and Chile. The Declaration includes the *Guidelines*, the National Treatment Instrument as well as instruments designed to avoid conflicting requirements on MNEs and promote co-operation in the area of international investment incentives and disincentives.

There was general agreement that the *Guidelines* could be seen as a vehicle for balancing government and corporate responsibilities combining elements of voluntary and regulatory approaches. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing their own codes of conduct. A business representative noted that the *Guidelines* were designed to be supranational and supracorporate: not specific to a country or to a company. They are drafted at the level of generality that would afford maximum portability (moving from country to country, being compatible with a broad range of regulatory systems).

a) *Review of the Guidelines*

*Context of the Review*

- *The new Guidelines should reflect changes in the world economy*

While participants agreed that the *Guidelines* continue to have an important role, the text and implementation procedures need updating to reflect important changes in the world economy and to ensure the *Guidelines'* relevance and effectiveness. Service and knowledge intensive industries have become more important relative to mining and manufacturing, many more firms are engaged in international business, strategic alliances and closer relations with suppliers and contractors have become more important. Although large enterprises still account for a major share of international investment, small and medium sized companies now play a significant role, MNEs have also emerged in non-OECD countries.

A trade union representative noted that the period when the *Guidelines* were adopted (seventies and eighties), was a period of governmental activism. Today, there are at least two different worlds with regard to how people see the role of MNEs. On the one hand, MNEs could be in the forefront of good employment practices by engaging in negotiations and encouraging partnerships with trade unions and, on the other hand, there could be a “race to the bottom”: competition with regard to suppression of core labour standards. He referred to cases where countries try to attract FDI by proposing low wages, child labour and barring strikes and labour unions. International standards such as the *Guidelines* are a key to development because they contribute to the “race to the top”.

- *The Review process is designed to be open and inclusive*

While OECD governments will take final responsibility for the text and the implementation procedure, it was understood and appreciated that the input being solicited from non-member governments, business, labour, NGOs and others is welcome. Frequent consultations are and will be taking place to ensure that the views of the different constituencies will be heard and considered.

#### *Suggestions for new text*

- *Labour and environmental standards are key issues*

There was general agreement that these areas were amongst the most desirable to change in this Review. Most of the participants said that the changes should reflect recent developments, such as the ILO Declaration on Fundamental Principles and Rights at Work establishing core labour standards (freedom of association, the right to collective bargaining, abolition of child and forced labour), the Rio Declaration on environment and other international instruments elaborated jointly by governments, private sector and civil society.

- *Sustainable development*

An NGO representative mentioned that society today expects business to contribute to sustainable development. Many participants invited the OECD to include the notion of sustainable development in the text of the *Guidelines* as reflecting today’s approach of economic development and responsibility for both developed and developing countries.

– *Information disclosure*

An NGO representative made the link between the *Guidelines* and the OECD principles on corporate governance, in particular in the light of the approach of the latter on disclosure of information: they encourage companies to disclose their policies on ethical, environmental and other public policy issues and they encourage them to provide information on issues relevant to employees and other stakeholders. He proposed that the *Guidelines* go even further in this respect: they should encourage companies to be involved in a more interactive process with stakeholders in determining what the priorities for information should be. They should encourage companies to report on their performance on environmental, social and other issues, involving stakeholders in this evaluation. They should also encourage the development of independent verification and auditing of the area of non-financial disclosure based on new models, i.e. the new AA1000 accountability standard that deals with environmental reporting and auditing methodology.

The same participant said that the test of whether corporate governance is good is whether it is delivering the objectives set out by the *Guidelines*, i.e. whether a company achieves high social, environmental and other standards. In institutional terms, some consideration could be given to the linkage between the *Guidelines* process and implementation and the new joint work programme between the OECD and the World Bank to promote and promulgate the corporate governance principles. In this context, it would be interesting to have a discussion on the *Guidelines* – content, implementation, translation into corporate governance structures, possibly through appropriate forum on stakeholder issues within the corporate governance programme.

– *Competition policy*

It was said that the text of the competition chapter would also need updating to reflect new developments in this area.

*Suggestions to enhance the profile of the Guidelines and improve their effectiveness*

– *Implementation: observation of the Guidelines by MNEs*

The *Guidelines* provide a standard for responsible business conduct which may supplement national laws. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing their own practices. Most participants agreed that the

*Guidelines* Review should look at improving the implementation of the *Guidelines*.

– *Institutional aspects of follow-up*

Although the *Guidelines* are not legally binding, OECD Governments are committed to promoting their observance. The OECD Committee on International Investment and Multinational Enterprises (CIME) acts as a forum of consultation, clarification and review. The establishment of National Contact Points (NCPs) is a binding obligation for participating countries; they have the task of promoting local awareness of the *Guidelines* and assist in dealing with issues that arise in the application of the *Guidelines* by MNEs. Through the Advisory Bodies to the OECD – the Business and Industry Advisory Council (BIAC) and Trade Union Advisory Council (TUAC) – both business and trade unions have endorsed the *Guidelines* and participate in the follow-up procedures to make the *Guidelines* work.

– *Specific proposals on implementation*

A government representative noted that the main challenge of the implementation is to reinforce the *Guidelines*' effectiveness as a non-binding instrument. Transparency and accountability of the MNEs' operations are important elements. The questions on how to encourage enterprises to comply with the *Guidelines*, the role of CIME and the NCPs, how to involve NGOs at the national and international level, are all to be answered in the review of implementation procedures.

A business representative stated that the *Guidelines* are effective only if they are reflected in the self-imposed disciplines of a company's management and its relationship with its different stakeholders (employees, shareholders, customers and suppliers). The *Guidelines* should be considered a useful benchmark for performance and their implementation should not be turned into a judicial or a quasi-judicial procedure for attacking and blaming businesses or governments. Business supports an improvement of the *Guidelines*, in particular in a context where new small companies enter the market place and need to be inspired by the same disciplines as the larger established companies.

A trade union representative gave full support to the Review. He considered that, although a new consensus is needed on updating the text, improving the implementation procedures is the key to success. Ideas include more vigorous promotion of the *Guidelines*, more active and efficient National Contact Points and a more transparent way of dealing with particular cases of non-observance of the *Guidelines*.

Another government representative proposed that when an issue relating to the behaviour of a specific enterprise arises, the enterprise could be named and the relevant decision published. He also proposed to replace consensus in the CIME decision-making by the majority principle and activate the role of the National Contact Points by giving them an interministerial and tripartite (participation of governments, business and trade unions) character.

An NGO representative suggested that the *Guidelines* should be given more “teeth” without changing their non-binding nature and suggested the following: a) linkage to official advantages, i.e. the *Guidelines* could form the basis for screening procedures for advantages given to companies investing overseas; b) use by “ethical” fund managers to screen companies they wish to invest in, and c) linkage to corporate risk measurement, i.e. compliance with the revised *Guidelines* could be a starting point for measuring a company’s environmental, social and reputation risks.

A representative from the academic community proposed a public, non-adversarial enquiry procedure that would enable interested parties to present views to an appropriate body or committee which would then prepare a report on a company’s responsibilities in a given field. Some companies may prefer to submit problems to this kind of public enquiry procedure voluntarily rather than engage in adversary legal procedures.

b) *The Role of the Guidelines beyond the OECD area*

*Currently limited application*

- *In the current situation, it is not clear that the Guidelines are addressed to the activities of their MNEs operating in non-Member countries*

Given the increasingly global operations and the expanding universe of MNEs, the role of the *Guidelines* outside the OECD area is also under discussion in the current Review. At present, the *Guidelines* clearly apply to the activities of enterprises operating in the territories of OECD-member countries, but it is not so clear that they are addressed to the activities of the same enterprises when they operate in non-Member countries. They do not apply to the activities of enterprises having no activity in the OECD area.

### *Rationale for applying the Guidelines worldwide*

- *To recommend a high worldwide standard for MNE behaviour*

In practice, many MNEs apply their standards worldwide and the *Guidelines* may be said to encourage “good corporate practice” in all countries. Not to confirm this principle might imply that OECD members apply a double standard, endorsing norms of corporate conduct that are lower than those of the *Guidelines* as long as they are applied outside the OECD area.

- *Value added from the application of the Guidelines outside the OECD area*

From the point of view of non-member economies, the application of worldwide standards by leading international companies may provide direct benefits in terms of corporate integrity, disclosure of information, employment conditions and environmental and product stewardship. There may also be valuable benefits via demonstration effects for local companies, training of personnel and assistance in the development of local and national laws, regulations and practices.

- *New emerging MNEs in developing countries*

The *Guidelines* were adopted in a period where the majority of the MNEs were from OECD countries. In the current situation, new MNEs emerge from previously developing countries which are not OECD members. To exclude these enterprises from the application of good business standards would create an unbalanced and unfair situation for MNEs of OECD member countries.

### *Challenges that this outreach may bring*

- *There was support for applying the Guidelines worldwide but there were no definite answers on how to proceed*

Participants agreed that there should be an open dialogue and continuing debate with the participation of non-members.

- *Introduction of new principles*

A business representative said that if the *Guidelines* were extended to developing countries, there would be a number of challenges. The notions of transparency, a level playing field, accountability in governance, good

governance and regulation, partnership with civil society, business and governments are not well established in many of these countries. Corruption is often an issue too. In order to promote and implement the *Guidelines* outside the OECD region, a broad political foundation is necessary and the challenge is open.

– *Respecting the sovereignty of host countries*

Calling on companies to apply OECD standards on behaviour worldwide is viewed by some as invading the sovereignty of countries that have not adhered to the *Guidelines* and do not participate in their follow-up procedures. Some participants responded to this concern with the following arguments: a) the *Guidelines* apply to companies and not countries and therefore do not force any change in host country policies; b) the *Guidelines* do not override the domestic laws of host countries because they are not legally binding and they do not change the principle that MNEs are subject to the laws and regulations of the country in which they operate; c) the principle that advantages given to foreign investors (subsidies, guarantees) can legitimately be subject to environmental and social conditions is already established in both national agencies and multilateral bodies (MIGA, IFC), and d) the *Guidelines* are a set of transparent plurilateral standards which cannot be unilaterally altered by any government.

– *Institutional aspects*

A participant from academia drew attention to the institutional aspects of this extension. The implementation machinery of the *Guidelines* operates within the framework of the OECD. There is a symmetry among the several actors involved, their functions and their institutional presence: the governments, the only actors that are represented in CIME with full-decision making responsibilities; the MNEs but also the BIAC and TUAC. If the geographical scope of the *Guidelines* were to expand, it would be reasonable that all the actors concerned would have to be represented within the institutional machinery for their implementation. Non-member governments as well as business and labour representatives from non-member countries, could then be asked to participate in the functioning of CIME, perhaps as observers or associate members, when the committee deals with matters related to the implementation of the *Guidelines*. A difficulty which might occur in this respect is to separate cleanly *Guidelines* related issues from other CIME issues. Matters of clarification and monitoring appear easier to deal with in this respect, than questions involving review of the *Guidelines* which may raise problems.

- *Adherence to the Guidelines only or to all parts of the 1976 Declaration?*

Under current arrangements, formal adherence to the *Guidelines* (with participation in monitoring and follow-up) is possible only if the non-Member concerned also joins in all parts of the 1976 Declaration on International Investment and Multinational Enterprises and meets all the relevant requirements including a “major player” and “mutual benefit” test. There was no clear view on the possibility of allowing non-Members to adhere only to the *Guidelines* and on the criteria that they would apply.

- *Informal arrangements*

A challenge will be to devise suitable arrangements for on-going or *ad hoc* co-operation with interested non-members that do not formally adhere to the *Guidelines*. It is possible that non-members, especially those that attract substantial foreign investment, or are themselves home countries to MNEs, will be interested in supporting the purposes of the *Guidelines* and will wish to participate in their implementation even in informal ways.

An NGO representative noted that one way could be to use existing diplomatic channels which represent a resource for home country contact points. “External” contact points could therefore be established in embassies through which host country actors could initiate *Guidelines* cases. Another method would be to incorporate mechanisms for implementing the *Guidelines* as protocols to the existing network of 1 900 bilateral investment treaties (BITs) and regional investment agreements; these protocols would define modalities for investigating cases and resolving any breaches of the *Guidelines*.

## OPENING REMARKS

*by*

OECD Secretary-General Donald J. Johnston

I would like to welcome you to the OECD for this important conference held under the auspices of the OECD's Centre for Co-operation with non-Members and the Committee on International Investment and Multinational Enterprises. I wish, in particular, to thank the United Kingdom's Department for International Development for helping to make this conference possible.

The objective of this conference is to identify the policies that will best help countries to reap the full benefits of foreign direct investment. The OECD has been exploring this matter for many years, and we are pleased to extend our discussion to policy-makers from non-Member countries and representatives of civil society.

### **Policy environment for reaping the full benefits of foreign direct investment**

Foreign direct investment (or FDI) can bring many benefits to the host economy. Among them are: jobs; transfer of best practices; innovative industries; a stable source of financing. In recognition of these potential benefits, virtually all countries are now eager to attract foreign direct investment. More and more countries are easing their remaining barriers to market access by foreign direct investors. I am told that of a total of 750 recent regulatory changes affecting FDI in host countries, 707 or 94 per cent were measures to make the environment for FDI more favourable.

The result has been impressive: global flows of FDI have grown from US\$160 billion as recently as 1992 to over \$600 billion in 1998. FDI inflows into non-OECD countries have grown in a similar proportion, from \$30 billion in 1990 to an estimated \$155 billion in 1998. This trend is welcome and should be encouraged.

At the same time, we know that, as with any investment, the real benefits to the economy from FDI flows depend on the policy environment in which the investment is made. OECD work suggests that international investment has been most beneficial for development when accompanied by sound macroeconomic policies, consistent competition rules, adequate environmental standards and social policy, and good governance. I am confident that the profound and courageous economic reforms which have been undertaken in many developing countries in the past years will provide a fertile environment in which to realise the benefits of FDI.

## **Enhancing corporate responsibilities**

While governments need to provide an appropriate domestic regulatory framework for investment, it is equally important that multinational corporations conduct themselves as good corporate citizens.

Tomorrow's discussion will begin by looking at recent trends in the development of voluntary corporate codes of conduct. In a globalising economy, the far-flung operations of multinational firms are coming under growing public scrutiny. Many firms have now developed voluntary codes of conduct partly to address these public concerns, but also out of a growing recognition that such codes of behaviour reinforce rather than conflict with other central corporate objectives. One key element of this effort has been to develop internal management controls that allow firms to make good their ethical commitments.

## **The OECD contribution**

Governments also have a role to play in the promotion of corporations' awareness of their development and societal responsibilities. As an inter-governmental organisation, the OECD has already made important contributions to this process. Recent examples include the entry into force earlier this year of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the adoption of the OECD Principles of Corporate Governance, both of which have received the support of the World Bank and the international community.

OECD countries are currently undertaking a major review of the OECD Guidelines for Multinational Enterprises. These Guidelines are recommendations by governments to multinational firms which provide a supplemental, voluntary standard for responsible corporate conduct consistent with applicable laws. The Guidelines aim to ensure that activities of

multinational firms are in harmony with government policies and to strengthen the basis of mutual confidence between enterprises and the societies in which they operate.

The Guidelines offer a complement in the public sphere to stand-alone corporate codes of conduct. They have their specific strengths for which individual codes of conduct do not substitute: government sponsorship, international business and labour support, broad coverage of issues and follow-up procedures.

The aim of the current Review is not simply to update the Guidelines – important as that is – but also to find ways of raising their profile and making them more effective. The Review is also examining the possibility of extending their geographical scope beyond the OECD area. I warmly invite non-Member participants to this Conference to comment on the orientations of the Review of the OECD Guidelines and to assess the merit of supporting the process, whether by joining with OECD countries on an equal footing to take responsibility for the Guidelines, or through informal means. Your input will make a valuable contribution to this important international initiative.

### **Concluding remarks**

This Conference provides a unique opportunity to address the problem of reaping the full benefits of foreign direct investment as seen from many standpoints: home and host countries, investors, labour and civil society. I am sure the subject will inspire a lively and constructive discussion, and I thank you all for joining us to contribute to a better understanding of this important issue.

## CONCLUDING REMARKS

*by*

Dr. Manfred Schekulin

Director, Federal Ministry of Economic Affairs and  
Vice-Chairman of the OECD Committee on International Investment  
and Multinational Enterprises

Let me take the opportunity to express my satisfaction with the proceedings of the last two days and to identify some of their highlights. I make these remarks as an investment policy official in an OECD Member country and as Vice-Chairman of the OECD Committee on International Investment and Multinational Enterprises, which has not only been instrumental in improving our understanding of the functioning and the effects of international investments over the last decades, but also closely involved in the preparation of this conference.

This was an impressive gathering with an important topic for discussion, the role of international investment in economic development and the special responsibilities of economic agents internationally active in this process. The Conference attracted a diverse group of specialists, more than 200 participants, including officials from the 29 OECD member states, 30 non-member countries, business community representatives, members of the labour community, academics, representatives of international organisations and NGOs.

I was very pleased with what I understood to be the main points on which there appeared to be common ground among all participants:

Firstly there was a broad consensus on the important and probably indispensable role that foreign investments and multinational enterprises play in the development process. In fact the consensus went so far that the Chairman<sup>1</sup> of yesterday afternoon's session explicitly stated that we need not discuss these issues any longer, but instead could focus on more controversial matters. This is indeed good news.

The second common spirit I felt throughout this Conference was that the benefits of FDI need to be shared fairly between all stakeholders, home and host, industrial and developing countries, and, within each country, among all parts of society.

That does of course not mean that all is perfect. On the contrary, a number of areas for possible and necessary improvement were identified. Professor Moran<sup>2</sup> referred to these as “bad news”. I would call them “policy challenges”.

The first “policy challenge” is that well-intentioned policies such as technology-sharing mandates may have adverse effects and actually harm those they aim to protect. For these Professor Moran offered simple advice: “Just say no!”

The second “policy challenge” is that markets are sometimes unfair. A country may try very hard and improve its policy considerably and get the situation eighty per cent right. That is, however, no guarantee that it will realise eighty per cent of its potential investment inflows. It may even receive none whatsoever, which could prove especially hard for small and poor countries highly dependent on capital inflows and for those which are victims of developments beyond their control, such as wars along their borders. The catchphrase I would adopt here is “better get it right - one hundred per cent right!” In other words, the role of stable and sound economic and other policies cannot be over-emphasised. By the same token, the role of institutional capacity building and the responsibility of developed countries and especially the OECD members, has been mentioned on a number of occasions.

The third point I would like to emphasise is that, whilst recognising that a level playing field and liberal investment climate are actually in their own interest, many developing countries feel constrained in their efforts in this direction by what they perceive, on the one hand, as the overwhelming power of multinational enterprises compared to local business and, on the other hand, as the unfair competition for mobile, high-quality investments from host countries with deep pockets. The key here of course is competition policy and there was a call for a well functioning competition policy as a prerequisite for investment liberalisation as well as a call for international discipline in the area of investment incentives. As one discussant put it, “if developed countries want a level playing field, they have to level the playing field”.

Other issues mentioned in this context were transfer prices and possible harmful effects of double taxation agreements.

The second day of the Conference was devoted to the special responsibilities of multinational enterprises. Good governance in host countries has to be complimented by “good corporate citizenship” on the part of international investors. And “good corporate citizenship” is not just adherence to a host country’s legislation, but goes beyond this to embrace universal and ethical standards.

The relatively new phenomenon of voluntary corporate codes of conduct was discussed first. It was said that it was too early for a final assessment. The existing codes of conduct are too diverse, there is too little background literature and too little is known about their effectiveness. They were, however, recognised as an important new approach that deserves further study. For me the discussion showed that there is no dichotomy between voluntary approaches, such as corporate codes of conduct, and regulatory action taken by governments. On the contrary, the best way to proceed could – as in many other areas - lie in complementary and mutually reinforcing efforts by governments, companies and other stakeholders in a spirit of shared responsibility and partnership.

Mr. Sikkel’s<sup>3</sup> presentation covered all the relevant points on the review of the OECD Guidelines for Multinational Enterprises. It is clear that all parties involved in the review process are aware of the importance of achieving a significant result with value-added. This is not just a question of “business as usual”, but a matter of prime importance. And though, as Mr. Sikkel explained, we are just at the beginning of this process, there is no time to lose, as the deadline for the completion of this review is the next OECD Ministerial Meeting scheduled for June 2000.

I would even go one step further – we are not only just at the start of the *Guidelines* review, but also just at the start of understanding the key elements of what I would like to call the “investment policies for the 21<sup>st</sup> century”. This Conference and your contributions to the discussion here have provided substantial inputs to this topic that is an important part of the current CIME work programme as well as to other possible initiatives in other fora. “Food for thought”, it was called, and that is how we see it and for which we are grateful to you.

We are not, however, only at the beginning of a new substantive discussion on investment issues in a globalised world, but also at the start of a new approach towards discussion and decision-making in this Organisation: An open approach based on inputs not only from the traditional OECD-actors, the representatives of member governments, of business and of labour, but from all stakeholders including non-member countries.

In a nutshell, we may, over the last two days, not have settled all issues, but we have learned a lot from each other, and we have set an important precedent for the usefulness of an open dialogue.

I invite the Secretariat to ensure that the proceedings are published as quickly as possible. They should be available before the WTO Ministerial Conference in Seattle where some of the same issues are expected to be considered.

Finally, I would like to thank the Secretary-General and Mr. Foulkes, M.P., Parliamentary Under-Secretary of State for International Development of the United Kingdom, whose attendance reflected the importance of our meeting. I would also like to thank the United Kingdom Government and the OECD Centre for Co-operation with Non-Members for their sponsorship of this conference, the OECD-Secretariat for its smooth organisation, the interpreters for helping us to overcome language barriers, and all the speakers and commentators for their well-prepared and thoughtful interventions. But most of all I want to thank you, the participants: Without you and your active participation in the discussion, all the other efforts would have been in vain.

## NOTES

- 1 Mr. Dato' Jegahthesan, Chief Executive Officer, JJ International Consultants Sdn. Bhd, Kuala Lumpur, Malaysia
- 2 Professor Theodore Moran, Georgetown University, Washington, D.C.
- 3 Mr. Marius Sikkel, Head of Investment Policy and International Organisations, Ministry of Economic Affairs of the Netherlands and Chairman of the OECD Working Party on the Guidelines presented the major stakes in the Guidelines Review and chaired the last session of the Conference devoted to the Role of the Guidelines outside the OECD area.

## KEYNOTE ADDRESS

*by*

George Foulkes M.P.

Parliamentary Under Secretary of State, United Kingdom

We see around us a rapidly-integrating world economy. One of the advantages of this transformation, as far as we in the UK are concerned, is that the OECD has shaken off its reputation as a club for rich nations. We now have a forum for dialogue and co-operation between rich and poor, where we can share problems and - I hope - solutions. Today's meeting is an ideal opportunity for all of us - governments, business enterprises and NGOs - to clear the air and decide how we can best promote international investment for sustainable development.

My government hopes the conference will discuss how can we ensure that the undoubted benefits of international investment are more widely shared, and that investment brings not only profit but makes a contribution to reducing world poverty. I want to say a few words first of all about how to stimulate investment which is beneficial to development. Then I'll speak about investor responsibilities. Finally I'll say what the donor community can do to foster partnership between the public and private sectors.

Can I quote firstly Paul Robertson, Minister of Industry and Investment for Jamaica, who said last year - at about this time:

“The crucial linkage between investment and output has been well established and is well known.”

His words bear constant repetition. It's difficult to exaggerate the importance of investment in achieving sustainable development - and in meeting the internationally agreed development targets we have set ourselves. Economic growth greater than population growth is crucial to poverty elimination - and we need investment to achieve this. We have convincing evidence from the countries of south-east Asia and, more recently China, that

openness to trade and investment, promotes growth and competition. The experience of China show the positive impact that investment can have on reducing poverty.

Yet in spite of major reforms throughout the developing world over the last ten years, direct investment in developing countries is still concentrated in just a few of those countries. Around 80 per cent of all foreign direct investment in the developing world during the past decade has gone to just twelve countries - and of course those who aren't getting it are the ones who need it most. What can we do to enable more countries to benefit? How can we make sure that the poorest countries in the world take advantage of international investment funds, and that the benefits of investment are shared by the poorest people in all countries?

There are many factors behind the continued *marginalisation* of so many countries. Three stand out:

- if countries are to integrate into the global economy they must be *open* to foreign investment and trade. And although developing countries have opened up enormously over the last decade more needs to be done;
- they must be *credible* as a place to invest; and
- investors must then have the *confidence* to invest.

Credibility and confidence are obviously related. Unfortunately, too many countries have exaggeratedly poor reputations among investors. The poorest countries need investment in the primary sector and infrastructure. But these investments often have a high set-up cost and a long pay-back, which is why uncertainty about business conditions is so damaging to these essential sectors.

I suggest a two-pronged approach to resolving the problems of credibility and confidence-building:

- first, domestic reform of the policy, legal and regulatory framework – in other words create a transparent and predictable environment for investment; and
- second, enter into an external commitment to maintain these policies.

This means getting the framework right. It means getting good governance in place at both the national and the international level.

At the national level there are a large number of actions which will be helpful. One of these is effective competition law to tackle the abuse of market power. Another is reducing the scope for fraud and corruption through law enforcement. Countries need sound company and commercial law, accounting and purchasing practices. They may also need to reduce bureaucratic red tape and unnecessary restrictions, and to enforce well defined employment and environmental rules.

These are all matters to tackle domestically. But domestic reform alone is not enough.

External commitment is just as necessary. Without it, we see outdated negative and false perceptions persist, denying countries access to investment.

What sort of external commitments are we talking about?

The main ones as far as we're concerned are:

- First, treating inward investors exactly the same as domestic investors – ownership of the company should not be relevant to the application of national laws and regulations. Transparent and reliable regulation is also important;
- Second, defining precisely those fields of activity where non-nationals are seeking to invest and where they can have market access - subject of course to domestic laws and policies;
- Third, full transparency about laws, regulations and procedures applicable to all investors;
- Finally, legal redress – a guarantee that all investors whatever their ownership or nationality have the right to appeal against what they consider to be unfair treatment.

External commitments can be entered into either through:

- Bilateral Investment Treaties. There are now well over 1 100 of these, but their usefulness in raising credibility varies according to their quality; or - I think better - through
- Regional or multilateral agreements which can establish a more visible and credible framework of investment rules.

And now the WTO is a promising venue for the development of appropriate rules and procedures on external commitment. We will see what happens in Seattle in two months' time. But I can tell you that Britain is among those countries which would like to see WTO Ministers make at least modest progress on building a framework of external commitment to which all WTO member states, particularly the poorest, can subscribe.

I should stress we're not suggesting that WTO members should be invited to agree anything which prevents their governments from pursuing their social, economic and environmental goals in a non-discriminatory manner.

I now want to turn to investors' behaviour. You are going to discuss the obligations as well as the rights of investors. And you're going to consider the effectiveness of voluntary **corporate codes of conduct** and how these stand in relation to the laws of the host country in ensuring good corporate citizenship.

And clearly investors must obey the laws of the countries in which they operate. But codes may enforce higher standards than those required by domestic labour and environmental laws.

The Conference will be examining the work of the OECD guidelines. We in Britain would be very interested in feedback on how effective they have been in influencing the conduct of international investors, many of which now seek to apply higher standards than the host countries would wish. International investment can do good not only by carrying on business in poor countries but also by improving standards of legal compliance, corporate responsibility and governance, by sheer force of example in those countries. It is hard however to legislate for this extra-territorially, though OECD governments have an agreement on the specific issue of corrupt practice in foreign countries. As far as the law is concerned, there should be a level playing field in host countries for both foreign and domestic investors.

Just before concluding, I want to say a word on the role of us in the donor community in helping to create a transparent environment which is conducive to inward investment in poor countries.

I began my remarks on the topic of domestic reforms and governance. We recognise however that for many countries these are difficult targets which can only be implemented over the long haul. It's our responsibility as donor countries to provide suitable and carefully tailored capacity-building assistance, while not undermining partner countries' ownership of the reform process.

Let me highlight a few aspects of this.

First, investors operating in global markets need an alert and adaptable labour force, which can adjust to the constantly changing needs of world markets, and seize new opportunities for employment. Young people entering the labour force must have basic education and the skills which this requires. Developing countries have long striven to achieve the development goal of universal primary education, but many still need substantial support in reaching it - support which we in Britain, with other donors, are now giving.

Then, there is the area of property rights, including intellectual property. Property rights need to be clear and enforceable, otherwise investors will be deterred, credit will be in limited supply and access to technology will be reduced. In countries with competitive advantage in farming, land rights for example are still often confusing and need clarification. And mortgage laws need updating. Assistance with legal drafting, legal training, cadastral surveys, patent laws, etc., can be of enormous value.

Thirdly, there is the question of competition and of restraining anti-competitive business practice. The principles are relatively simple, but the practice is complex. Many countries still lack modern anti-monopoly legislation, and even more lack effective investigation and enforcement. Yet they will need this capability if they are to enjoy the confidence and collaboration of other countries' competition authorities which they may require to participate in the global economy. International assistance and resources in building and operating capacity in this field is an important building block of the investment climate.

Fourth, responsible firms also need to be clear about environmental by-laws and regulations and about what they must do to comply with these laws. This implies a local environmental management capability, focused on the principal threats to sustainability. And once again, local capacity is often in practice inadequate to the task. But, without local enforcement uncaring enterprises are likely to damage the local environment. Without it countries are also unable to honour their commitments under the Multilateral Environment Agreements. So we need to build this capacity in this area also.

Finally, investors need to know what labour and employment standards they are supposed to respect. ILO Conventions, though adopted, are often not enforced. The 1998 ILO Declaration on Fundamental Principles and Rights at Work, and the 1999 Convention on eliminating the worst forms of child labour are particularly welcome for us in the UK. They offer the perspective of technical assistance and advisory services to promote the ratification and implementation of conventions on core labour standards. But we mustn't underestimate the difficulties of making a reality of these important objectives in countries with limited administrative services.

The donor community including the UK has many imaginative programmes of capacity building in these areas. I pay tribute to the work of the OECD Development Assistance Committee in inculcating coherence of vision and approach and co-ordinating the actions of the bilateral and multilateral agencies which it comprises. This labour, of course, will never be complete. It needs to be pursued with continuing vigour to promote an effective complementarity and partnership between international private investment and national public sector action. Innovative approaches are always welcome - can I just mention the new Public-Private Infrastructure Assistance Facility supported by the World Bank and the governments of Japan and the UK? This fosters private investment in infrastructure, according to Best Practice principles.

Can I in conclusion invite this Conference to throw new light on how these domestic and external elements of the jigsaw puzzle fit together, and how they make host countries credible, investors confident, and international investment beneficial to sustainable growth and to removing the poverty which disfigures so much of the world? The British Government looks forward to hearing about your conclusions.

**FOREIGN DIRECT INVESTMENT AND DEVELOPMENT:  
A REASSESSMENT OF THE EVIDENCE AND POLICY  
IMPLICATIONS**

*by*

Professor Theodore H. Moran  
School of Foreign Service, Georgetown University, Washington, DC

**Introduction: Enthusiasm or Scepticism about Foreign Direct Investment?**

Amidst all the upheaval in capital markets over the past decade, foreign direct investment (FDI) has come to play an unprecedented role as a source of management, technology, and external funding for the developing countries and economies-in-transition. Five-sixths of all capital flows to the less developed world now originate in the private sector, with FDI by far the largest component, climbing to \$120 billion per year by the beginning of 1998, nearly half of the total.

Surrounded by instability in equity markets and in international lending, FDI -- where a parent corporation establishes its own affiliate in a host country to engage in production, or processing, or distribution -- is also the most stable source of outside capital. Embodied in plant, equipment, and workforce, it may expand or contract in response to underlying economic conditions, but not "flee" with the rapidity of stock market investors or commercial bank lenders. Moreover, as in the history of financial crises in Mexico and other parts of Latin America, foreign investment flows appear to be prepared to resume rather quickly as economic stability returns to Asia, with the competitive position of those who have local operations strengthened following devaluations and economic restructuring.

But, despite the new-found enthusiasm for the jobs and products created by the presence of foreign firms, the record shows that the impact of FDI on the development process has been problematic in the past. In a sample of 183 foreign investment projects in some thirty countries over almost two decades (up to the early 1980s), a majority (fifty-five to seventy-five per cent)

provided large positive benefits to host growth and economic welfare. But in a large minority of cases (twenty-five to forty-five per cent), foreign investment projects had a clear negative impact on host growth and economic welfare.<sup>1</sup>

When does FDI -- in particular foreign investment in manufacturing, rather than natural resources or infrastructure<sup>2</sup> -- contribute most to the development process? When least? What kinds of foreign investment projects are actually harmful to the prospects for development? How can host authorities in the developing countries and the economies-in-transition enhance the positive contribution that foreign manufacturing investors bring to the local industrial base, and avoid negative or damaging consequences? To a large extent, the answers lie in host government policies themselves.

## **I. The Most Valuable Foreign Manufacturing Investments**

Foreign direct investment contributes most to the development process when the affiliate is wholly-owned and fully integrated into the global operations of the parent company. Export performance requirements have, in the past, encouraged this integration process.

The evidence from the sectors where the spread of foreign manufacturing investment has been most extensive -- automobiles and auto parts, petrochemicals, and electronics/computers -- shows that there is an important distinction between investors producing solely for domestic consumption in the (often protected) host economy, and investors using the host country locale as a site from which to strengthen their larger competitive position in international markets.<sup>3</sup>

Full-scale foreign plants, integrated into the global sourcing network of the parents, provide benefits to the economies where they are located *far in excess* of the capital, management, and marketing commonly assumed.

Ford in Mexico, General Motors in Brazil, Philips and Sony in Malaysia, Mobil petrochemicals in Indonesia -- aimed at penetrating global as well as domestic markets -- certainly bring high wages and benefits, advanced technology, sophisticated managerial and marketing techniques. But beyond this -- once the parent investors commit themselves to incorporate the output from a host country into a larger strategy to meet global or regional competition -- there is evidence of a dynamic "*integration effect*", which provides newer technology, more rapid technological upgrading, and closer positioning along the frontier of best management practices and highest industry standards, than any other method for the host economy to acquire such benefits.

The term “outsourcing” does not at all capture the potent interaction between the home corporation and the (almost always wholly-owned) subsidiary. The Ford, GM, Philips, Sony, or Mobil subsidiary enjoys persistent parental supervision in raising the state of play to major league standards, so to speak, and keeping it there.

The economic benefits from these production systems integrated across borders extend beyond the workers at the foreign-owned plants. Contradicting charges that wholly-owned affiliates only engage in low value-added “screwdriver” operations, there is extensive evidence that these kinds of operations include substantial value-added (including responsibility for design and system-integration) by the affiliates themselves, and generate dynamic backward linkages that provide spill-overs and externalities to local firms in the industry.

Where foreign investors have established automotive and electronics/computer operations in Latin America and Southeast Asia that were oriented to international as well as domestic markets and conducted with wholly-owned subsidiaries, there is evidence of more intensive coaching for suppliers in quality control, managerial efficiency, and marketing than any other means for firms in the local economy to gain these skills.

Indigenous suppliers to these investors often themselves begin to export to other affiliates of the parent in other countries, then to independent buyers in the international marketplace. Once the Mexican automotive sector reoriented its operations from purely internal toward external markets, more than one hundred Mexican suppliers soon achieved sales of more than \$1 million per year.<sup>4</sup> Six of the ten largest auto parts exporters who emerged during the early outward expansion of the industry were entirely locally-owned.

Similarly, in Malaysia, a dynamic indigenous machine tool industry has grown up around the foreign-owned semiconductor exporters, first supplying the entirety of their rather simple output to the foreigners, then learning to manufacture high precision computer-numeric tools and factory automation equipment for international as well as domestic buyers. Their early export sales were to the sister subsidiaries of the firms they supplied locally -- Motorola, Toshiba, and Siemens -- in the regional neighbourhood. They then grew to export more than one-third of all their production to completely new customers abroad, winning sales against mature competitors from Germany, Japan and Chinese Taipei.<sup>5</sup>

Contrary to contemporary perceptions about the rapid pace of globalisation, however, the history of the spread of foreign investment in the automotive, petrochemical, and computer/electronics industries shows that

international markets have been quite sluggish in reallocating the global and regional sourcing networks of the major international corporations along lines of comparative advantage. Instead, to capture the dynamic benefits enumerated above, host governments in Latin America and Southeast Asia have had to use a forceful combination of carrots and sticks -- including export subsidies and export performance requirements -- to induce a first mover to reposition the structure of international production. This then triggered a burst of moves and matching moves on the part of international companies within an industry that produced new sourcing patterns involving many billions of dollars of globally competitive exports.

In the automotive, petrochemical, and computer/electronics industries, economic geographers will find the establishment of industrial complexes around Sao Paulo, Minas Gerais, Monterrey, Matamoros, Surabaya, Jubail, and Penang tied to one or two investment decisions on the part of major international companies in these sectors, driven simultaneously by competition at home and export performance requirements in the host country, which then generated follow-the-leader effects on the part of other members of the industry and their suppliers.

In contrast to the conventional condemnation of export performance requirements as a waste of public monies and trade rents to create a weak and uncompetitive dribble of external sales, the record from using export performance requirements in these three sectors has been to generate a new structure of internationally competitive production now in its second decade of expansion. What public support has been expended can be rigorously justified as a worthwhile transitory method to "lock into" the parents' externality-filled sourcing network (differentiating this approach, consequently, from simply subsidising all exporters).

In designing host country policies for the future, is the appropriate conclusion that export performance requirements should, therefore, now be considered a legitimate tool of public policy for developing countries and economies-in-transition? Or, should developing countries and economies-in-transition be willing to control and limit the use of export performance requirements as part of some larger policy bargain among capital-importing and capital-exporting nations, rich and poor?

The answer to these questions -- and an explanation of why the deployment of export performance requirements may have been a good tactic for developing countries and economies-in-transition in the past, but a bad strategy for the future -- must await consideration of other more harmful and more troublesome problems in the treatment of international investors.

## **II. The Most Harmful Foreign Manufacturing Investments**

Foreign direct investment is most likely to be harmful -- actually damaging -- to the growth and welfare of the developing countries and the economies-in-transition when the investor is sheltered from competition in the domestic market and burdened with high domestic content, mandatory joint venture and technology-sharing requirements.

There is a common assumption that if international companies conduct their activities with the same “good citizenship” standards abroad as at home their contribution to the host economy can only be positive. But this reasoning hinges, implicitly, on the presence of highly competitive conditions that are fundamentally at odds with both theory and evidence about foreign investment behaviour. In fact, foreign direct investment typically originates in international industries where there are high barriers to entry and deploys itself in domestic markets in the developing countries and economies-in-transition where there are high degrees of concentration. Quite apart from important specific potential harmful activities (like permitting pollution, carrying out operations with inadequate health and safety standards, or tolerating the behaviour of abusive subcontractors) that could be righted by common “good citizenship” standards for behaviour at home and abroad, the possibility that foreign investment might lead to fundamental economic distortion and pervasive damage to the development prospects of the country is ever present.

The key variable is the degree to which the injection of foreign investment into the host economy brings with it an increase in competition in the sector or sub-sector where it occurs -- an increase often derived from the influx of multiple investors simultaneously, with freedom to source their inputs from the local economy or abroad -- or a decrease in competition, with particular investors and particular suppliers awarded exclusive domain over the given sector or sub-sector.

The most frequently used intervention on the part of host authorities in the developing countries and economies-in-transition -- insisting that foreign investors meet high domestic content requirements in tightly protected markets -- falls into the latter category, of stifling rather than enhancing competition. Inviting foreign firms to invest under such conditions has a demonstrably negative impact on the hosts’ prospects for development -- effective rates of protection ranging from 50 per cent to more than 600 per cent, prices 200 per cent to 300 per cent higher than the cost for comparable products outside the host economy, intensity of use of those products reduced to less than half of what might be expected by international standards -- an impact sufficiently negative that the host society would often be better off not receiving the foreign investment at all. Yet developing countries and economies-in-transition

continue to find ways to protect foreign investors who promise high domestic content levels, despite Uruguay Round pledges to phase out such practices.

The resulting operations are not only highly inefficient, but the infant industry rationale of trying to demonstrate the underlying appeal of a given host to multinational corporations is ineffective. Except in the largest countries, economies of scale are seldom realised, and there are weak incentives for the foreign firms to upgrade technology, or to maintain highest standards of quality control and improvement of human resources. Contrary to conventional expectation, backward linkages to domestic suppliers are *less* sophisticated and exhibit *fewer* indications of training, assisting, or providing technological and marketing externalities than foreign operations with fewer restrictions.

The imposition of high domestic content requirements in protected markets tends moreover to generate a perverse political economy in which foreign investors themselves frequently join domestic forces in *opposing* further liberalisation of trade and investment. The case of IBM's proposal for an outward-oriented production facility in Mexico, in return for wholly-owned status and much greater freedom over sourcing of inputs -- a proposal that marked a turning point in Mexico's approach to foreign investment -- shows heavily-protected Hewlett-Packard and Apple helping to wage the fight within the higher echelons of the Mexican political establishment, in vain, *against* the IBM initiative and the policy shift it represented.<sup>6</sup> There is similar evidence from contemporary Eastern Europe, where Suzuki (in Hungary) and Fiat (in Poland) have successfully lobbied for continued, even increased trade restrictions to safeguard their small domestic assembly operations, allying with local workers and suppliers to *slow* the prospects for accession into the European Union.

For both economic and political reasons, therefore, protecting foreign investors in return for high domestic content levels generates a drag on economic growth and the creation of higher standards of living. Instead of the foot-dragging and obfuscation that is taking place in some countries, strict adherence to obligations under the WTO to phase out domestic content requirements rapidly and thoroughly is squarely in the host countries' own interest.

### **III. Problematic Operations: Mandatory Joint Ventures and Technology-Sharing Requirements**

While imposing domestic content requirements on foreign investors may produce the most damaging consequences for developing countries and economies-in-transition, two of the other most popular approaches in the

treatment of foreign firms -- joint venture mandates and technology licensing mandates -- also have negative impacts, and are highly questionable as policy tools.

For many kinds of operations, the joint venture relationship offers benefits to all parties. When the partnership is required rather than spontaneous, however, rates of dissatisfaction are intense, with the likelihood of dissolution within a few years high. US and European parent firms shun joint venture arrangements where international sourcing, quality control, rapid technological change, product differentiation, and integration with external markets rather than purely domestic sales dictate corporate strategy; Japanese firms may now be exhibiting the same tendency.<sup>7</sup>

Many host governments justify joint venture requirements with arguments that joint ventures achieve greater technology transfer, expanded access to external markets, and more robust backward linkages to the domestic economy than wholly-owned subsidiaries. *None* of these contentions is supported by the data.<sup>8</sup> Technology transferred to joint ventures is older (almost one-third older) and speed of upgrading is slower than to wholly-owned subsidiaries. Export performance is comparatively weak. Joint ventures may purchase more inputs from indigenous firms, but their sourcing networks lack most of the technological, managerial, and export marketing spill-overs for local suppliers that comes from the more potent relationship with the parent corporation in the case of wholly-owned subsidiaries, described earlier.

As for technology licensing requirements as a substitute for FDI (the so-called “Japan-Korea” model), the evidence shows that indigenous corporate operations that are built via mandatory technology licensing are likely to suffer the same kind of economic disadvantages as joint ventures: *lags* in technology acquisition, *absence* of “best management” techniques, *weak* penetration of foreign markets, and *feeble* performance in development of a competitive supplier base.

The adoption of a strategy to build national champions via mandatory technology licensing (to the exclusion of foreign investment and foreign acquisitions) opens the door, inevitably, to the core “industrial policy” problem of special pleading and special preferences on the part of powerful rent-seeking constituencies who may well not be able to distinguish their own self-interest from their interpretation of the national interest. Learning from the Asian financial crisis of 1997-98, there is reason to doubt that a system of import restraint and export promotion that focuses on chosen sectors and preferred national firms, powered by state-dictated technology licensing arrangements, can ever escape the political-economic corruption and “crony capitalism” that have figured so prominently in the history of many Asian economies.

As for political benefits from autonomy, the extent to which maintaining ownership in national hands has a legitimate national security rationale -- to avoid monopolistic external suppliers who might delay, deny, or set conditions upon the use of inputs -- is quite limited, and the drawbacks in terms of cost and performance that self-sufficiency imposes are quite large.

#### **IV. The Counter-Attack by the Developed Countries against Globalisation**

But, while domestic, joint venture and technology licensing requirements are all ill-advised methods to capture the benefits from FDI, it would be mistaken to suppose that, in their absence, host authorities in the less developed world are best advised merely to sit back, improve the “fundamentals” in their own economies, and wait for international markets to deliver appropriate amounts of foreign investment to their countries.

Policy strategists in the developing countries and economies-in-transition will require a canvas broad enough to include the investment-attracting and the investment-distorting practices of others, in particular the home countries of the international corporations. In reaction to the globalisation of manufacturing activity, developed countries have launched a counter-offensive of their own to capture and hold international corporate operations within their own economies.

One prong of this counter-offensive has been the growing use of economic carrots and political sticks to keep already-present firms from moving, and to attract new international investment to developed country sites. There are learned disputes about whether Ireland, the eastern regions of Germany, the provinces of Canada, or individual US states lead in this incentive competition. While not every developed country site competes with every developing country site, the evidence from the automotive, petrochemical, and computer/electronics sectors shows nonetheless that international companies are making their location decisions in the midst of a fierce subsidy war in which locational incentives of more than \$50 000-\$100 000 per job (as calculated by the OECD) are frequently acting as *tie-breakers*, at the margin.

A second prong of the counter-offensive against the loss of productive capacity has been the use of protectionist and investment-diverting trade measures, most notably high domestic content rules of origin and anti-dumping regulations, in a discriminatory and demonstrably distortionary manner.

The United States and the European Union have imitated each other in designing rules of origin -- with high domestic content required to qualify for

preferential treatment within a regional trading bloc -- to protect local industries and to shift foreign investment into member states. This complicated mix of protectionism and investment-shifting was evident in the US effort in NAFTA to prevent assembly operations from being set up within the borders of Canada, the United States, and Mexico using low cost inputs from outside. For automobiles, electronic products (printers, copiers, television tubes), textiles, telecommunications, machine tools, forklift trucks, fabricated metals, household appliances, furniture, and tobacco products, NAFTA rules of origin require that a substantial portion of inputs originate in the NAFTA states.<sup>9</sup> The EU has adopted high domestic content rules of origin in semiconductors and has entertained proposals for even tighter requirements for printed circuit boards and telecom switching equipment.

In terms of anti-dumping regulations, investment diversion takes place in two ways: first, indirectly, by generating an obstacle, or an uncertainty, that retards an international firm from investing in potential export operations, and second, directly, by causing the redeployment of production to the market protected by anti-dumping regulations. The easiest way to avoid anti-dumping liability is to establish operations within the market where a company hopes to sell its products rather than exporting to that market from abroad.<sup>10</sup>

Taken together, the central components of the counter-offensive – locational incentives, high domestic content rules of origin, and anti-dumping regulations – are not simply being used to protect inefficient industries but more broadly to recast the international economic landscape, along paths that do not follow what comparative advantage would otherwise dictate.

The need to offset these investment-diverting policies on the part of developed countries helps explain (along with evidence of other market imperfections) the crucial role of export subsidies and export performance requirements -- noted earlier -- in inducing international companies to include developing countries and economies-in-transition in their regional or global sourcing networks.

But the temptation to engage in locational subsidy races, or to mimic the self-centred and myopic use of rules of origin and anti-dumping regulations of the developed world, does not offer a path that coincides with the long term interests of these less developed hosts. It leads them into a competition they cannot win, and whose outcome they are likely only to make worse.

What policy agenda, then, should developing countries and economies-in-transition adopt, and pursue, to maximise the contribution that FDI can make to their development process?

## **V. Maximising Flows of Foreign Direct Investment and the Benefits therefrom**

Many of the most important actions that host countries can take to attract and utilise FDI in their development programmes, they must initiate on their own -- in particular, improving the micro- and macro-economic functioning of their economies, and strengthening commercial and judicial institutions that provide stability and dependability to all investors, domestic as well as foreign.

At the same time, the most important foreign investment policy improvements recommended here -- abandoning the use of domestic content, joint venture, and technology licensing requirements -- could also be adopted unilaterally, to the benefit of host authorities in the developing world and economies-in-transition.

Armed with these insights, development planners might want to reconsider the efficacy of bestowing sole right of establishment upon individual foreign investors or foreign investor groups for each segment of a given industrial sector, while insisting upon partnerships with indigenous firms. These joint operations utilise demonstrably older technology and have a poor record of adopting cutting edge management methods. In the automotive sector -- to give one example -- this approach has already set in place an array of undersized plants more than ten years behind the competitive frontier of new products, processes, and management practices.

To be sure, there is no underestimating how painful the decision will be for hosts and potential hosts in the developing world and transition economies to give up the imposition of domestic content requirements and to forego the use of joint venture and technology licensing mandates. Rules governing local content, ownership structure, and technology acquisition represent a vast pool of favours to bestow upon rent-seeking constituencies, and the abandonment of public sector regulation in these areas is sure to generate powerful opposition.

But there is a broader opportunity to be gained by a forceful redirection of policy here, if the policy reform process can be combined with similar efforts to stem the deployment of protectionist and investment-distorting measures on the part of the developed countries as well.

Unilateral self-abstention from the use of domestic content, joint venture, and technology licensing requirements -- however beneficial the outcome will be to those countries who follow this route -- leaves host authorities in the developing countries and the economies-in-transition tactically

disarmed, so to speak, in the face of the “counter-offensive” against the globalisation of industry launched by developed countries, tactically disarmed against the escalation in the use of high domestic content rules of origin, locational subsidies, and distortionary anti-dumping actions that is hindering economic activity from moving along lines of comparative advantage in a North-South direction.

Host authorities in the developing countries and the economies-in-transition might want to think more broadly, therefore, about how they could work collectively to shape the treatment of international corporate activity around the world, seeking support in such an endeavour among their own counterparts as well as among developed country governments. The elements of what constitutes sensible self-interested policies toward FDI outlined here are in fact well-suited to assertive negotiations in the next trade Round, incorporating trade-offs among the most objectionable investment-related policies of all parties, North and South.

In the review of the TRIMs agreement, for example, in which the developing countries have committed themselves to ending all domestic content and trade- and financial-balancing requirements on foreign firms, developing countries will find it in their own self-interest to phase out such practices as rapidly as possible. But developing countries will want to note the increasing use of high domestic content rules of origin that create the same distortions within the NAFTA region, the EU, and Mercosur as well. The technical trade-law defence of the latter, originating in Article 24 of the GATT which allows preferential trade agreements as long as those agreements do not raise external tariffs against outsiders, has justifiably been receiving critical scrutiny for shielding the same protectionist practices as the TRIMs agreement has been trying to eliminate. Considerations of consistency and fairness dictate, therefore, that the WTO’s work programme on harmonisation of non-preferential rules of origin be transformed into an exercise on harmonisation (and reduction) of high domestic content preferential rules of origin.

Export performance requirements that take the form of trade-balancing or foreign exchange-balancing obligations are also subject to elimination under the TRIMs agreement. The consideration of such export performance requirements raises complex strategic considerations. On the one hand, developing countries have sometimes used such requirements to trigger the reorientation of global and regional sourcing strategies on the part of multinational investors. On the other hand, developing countries would benefit from restraining the competition for world scale-sized investment facilities among themselves and between themselves and developed countries.

Once the principle of avoiding subsidy competition for export-oriented production becomes the guide for developing country policymakers, however, it is not logical for developing country negotiators to disregard other interventions to hold or attract world scale-sized facilities, in particular the award of locational incentives (including subsidies and tax breaks on the national and sub-national level) that perform the same function in reshaping patterns of international production.

Ireland's fiscal incentive programmes to draw international firms into using the country as an export platform into the European Union, for example, are similar in impact to the trade-balancing TRIMs that propelled Mexico and Brazil into the ranks of international auto parts suppliers (albeit simpler and neater from an economic point of view). More generally, given the new econometric evidence on the high response rate of production location on the part of international firms to differential incentive structures, it is disingenuous to conclude that the investment incentive packages of Alabama or South Carolina do not alter trade patterns while the export performance requirements of developing countries do.

In the negotiations of the next trade Round, developing countries might offer to refrain from all new export performance requirements and to phase out existing requirements within ten years (as specified, for example, in the NAFTA) in exchange for a commitment on the part of the world trade community to subject the use of locational incentives, at the national and sub-national level, to simultaneous restraint.

Joint venture and technology-sharing requirements are not included in the illustrative list of the TRIMs Agreement. The demonstration of the drawbacks that joint venture and technology-sharing mandates impose on the ability of host countries to compete in the international marketplace, however, opens a broad new vista for developing country negotiations.

As the appreciation of the detrimental impact of joint venture and technology-sharing requirements, along with domestic content and (possibly) export requirements, increases, the rationale for awarding national treatment to some foreign firms and denying right of establishment to others in return for meeting such requirements disappears. The pledges of foreign firms about which local companies they will choose as partners or about what technology the foreigners will provide to indigenous participants in their projects have been the predominant elements (along with promises about how much local content they will purchase and about the degree to which they will export) in host country determinations of whether to award right of establishment, on the one hand, or deny national treatment, on the other.

This opens the door to the possibility that developing countries might want to propose the negotiation of new multilateral investment rules (albeit with a fresh name) which serve the interests of developed and developing countries alike.

But if developing countries show a willingness to put national treatment and right of establishment on the negotiating table, in a major move toward letting comparative advantage be the sole criterion for the deployment of FDI around the world, they should aim at having the world community complete the list of investment-shifting and investment-distorting measures, by adding not just discipline on high domestic content rules of origin and locational incentives to the negotiations, as indicated before, but by including anti-dumping reform as well.

Anti-dumping reform would limit the definition of what constitutes unfair practice to international price discrimination, and would abandon the protectionist and discriminatory use of average-cost-plus-mark-up in determining guilt. This reform would have vast implications for the ability of developing countries to utilise indigenous as well as multinational firms in penetrating international markets.

To be successful in extracting concessions from the developed countries, however, the developing countries and economies-in-transition will have to ensure that blocking coalitions do not emerge from within their own ranks. Reformers in Latin American countries such as Brazil, Argentina, Chile, and Mexico, for example, may have to join reformers from India, China, Egypt, and the Philippines to edge the governments of the latter away from the lingering desire to maintain domestic content or joint venture requirements. Similarly, the members of regional groupings such as Asean or Mercosur will have to sublimate their urge to deploy investment incentives against each other into global limitations on locational subsidies.

In short, a potent negotiating strategy in the next trade Round will depend upon the ability of leaders from the developing and transition economies to weave together agreement on sensitive investment policy issues among their own members.

There is no doubt that achieving the changes and reforms in the most objectionable investment-related policies of all parties, North and South alike, will be a long, hard, up-hill battle, with the outcome highly dependent upon the ability of visionaries in developed and developing countries to galvanise the international business community to deploy its clout on the side of multilateral reform. But at least it is possible to see more clearly now what kinds of trade-offs are essential and what kind of outcome would be most beneficial to all parties.

## NOTES

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**THE IMPORTANCE OF STANDARDS  
AND CORPORATE RESPONSIBILITIES:  
THE ROLE OF VOLUNTARY CORPORATE CODES OF CONDUCT**

*by*

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**The notion of codes of conduct** which apply to multinational enterprises has undergone a thorough transformation since the OECD instruments on international investment and multinational enterprises were adopted in 1976. A code of conduct as an answer to perceived problems emerged from the debate in the United Nations after the coup d'état in Chile in 1973, in light of the involvement of a multinational enterprise in activities leading to the military take-over. The United Nations response was to set up a Commission and a Centre on Transnational Corporations. The list of their priority items of work was headed by a code of conduct.

This work started in 1976 - the same year the OECD instruments, including the Guidelines on Multinational Enterprises, were approved. The OECD decision had an essential influence on the debate in the United Nations, as it carried the weight of being the position of countries which overwhelmingly were home countries of the multinationals. It could be argued that this already prevented a United Nations code from ever being approved. However that may be, changes in priorities, and above all structural changes, rendered the United Nations code of conduct exercise obsolete by the late 1980s. Well before that,

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\* The author of this paper wishes to underline that it is not an official ILO position. Some of its observations are based on his experiences as a staff member of the U.N. Centre on Transnational Corporations 1976-197; General Secretary of the Trade Union Advisory Committee to the OECD (TUAC) 1996-1985; and chairperson of TUAC working parties on globalization, trade, and labour standards (1990 - 1996). In his current position in the ILO he has senior management responsibility for the follow-up of the Declaration on Fundamental Principles and Rights at Work.

the OECD Guidelines had a decisive influence on the ILO, whose Governing Body adopted in November 1977 a Tripartite Declaration on Multinational Enterprises and Social Policy.

This ILO Declaration not only paralleled the OECD Guidelines. It was also to have been the social and employment chapter of the United Nations code, if such a code had emerged. In this respect the OECD countries made successfully what could be called a “pre-emptive strike” in the process of international regulation of multinational enterprises.

**The approach of the 1970s** was based on a number of hypotheses which seemed both obvious and simple at the time but may no longer be entirely valid. There was a perceived conflict of interest between home and host countries. Multinational enterprises were seen as potential tools of home country policies against host countries. A case in point was Chile in 1973, which triggered the international action. Multinationals seemed to be octopus-like structures, with their head in home countries, reaching out to a multitude of host countries which had insufficient capacity to cope with them.

Due to this perception, another element in the programme of action by the United Nations was the strengthening of the bargaining position of host countries *vis-à-vis* multinational enterprises. From today’s perspective it is intriguing that this part of the programme became a much greater success than the code of conduct approach, although possibly in quite a different way than many of its proponents thought. By the early 1980s, the desire to have multinational investment had clearly outweighed the wish to control it. Strengthening the bargaining position of host countries blended with investment promotion. One remarkable success story is that of the special economic regions in China.

Early on it became clear that binding international codes addressed directly to multinational enterprises were neither politically nor legally feasible. Not one of the OECD countries would entertain this approach. Business was adamantly against it, and by the beginning of the 1980s the trade unions in practice shifted their focus to the follow-up of the OECD Guidelines instead of their legal nature. The ILO Declaration on Multinational Enterprises and Social Policy became a special voluntary instrument, not a Convention. As to the United Nations code negotiations, the task of reconciling possible binding obligations on multinational enterprises with binding obligations on governments proved impossible.

The result was a blend of normative and voluntary approaches, with the stress on follow-up mechanisms. In the OECD, the follow-up involved not only regular reviews but also a discussion on specific situations with

clarifications provided, although the Committee on International Investment and Multinational Enterprises did not specifically name the enterprises concerned. The trade unions were not inhibited from naming the enterprises in their presentations. Due to a fear of “multinational collective bargaining”, the business side did not want to enter into a discussion on specific situations with the participation of the trade unions.

In the ILO, the follow-up mechanism of the 1977 Declaration was tripartite, due to the nature of the Organisation. However, this mechanism has yielded limited results. Freedom of association, which is one of the trade unions’ main concerns, remained in a separate system. In addition, the tripartite structure has virtually ensured that in specific contentious situations it is very difficult, if not impossible, to reach consensus. Instead, the process has veered towards highly polarised votes.

**A key contribution of the process** which started in the mid-Seventies was the general approach consisting of a voluntary instrument with a follow-up mechanism. This approach is more promotional than normative. For instance, it is a significant feature of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference in June 1998.

**The world of the late 1990s is different** from that of the Seventies. The multinationals of a quarter of a century ago were more monolithic, more hierarchical structures than those of today. They functioned in a world which was divided by the Cold War and its consequences on emerging countries. Since the 1980s, internationalisation has spread with the help of new production and management technologies and made closed and command economies increasingly impossible, or at least hopelessly inefficient, thus contributing to the collapse of Communism.

This collapse led to a new situation where for the first time since 1914, there is no real alternative to the market economy. But this market economy functions in a different way than its predecessors, whose “controlling heights” the disciples of Marx wanted to conquer. Those controlling heights have turned out to be information systems into which the managers of multinational conglomerates - entities with different kind of links with one another - could plug into virtually irrespective of where in the world they were.

When corporate structures move from hierarchies to networks, the relative importance of, e.g. “home countries” fades away, and the earlier real or potential home and host country policy conflict goes with it. Structures are no longer octopus-like. The modern multinational encompasses up to hundreds of entities worldwide, with different cultures and different formal and actual

linkages. There is something approaching just-in-time production on a worldwide scale.

**Today's discussion on voluntary corporate codes** focuses on requirements of performance of entities within such systems. They arise out of desires of enterprises in this new global market economy to set out minimum standards of behaviour for their subcontractors and others whose production they are marketing. Consumers want to know that the products they buy are not made by children, by forced labour, in sweatshops, with miserable pay, or through otherwise ethically questionable means. Pressures for social regulation arise out of the market, not out of concerns over sovereignty felt by the political leaders of countries in which the work for a multinational enterprise takes place.

This has produced a significant change in the parameters. The debate of the Seventies was spurred by the concerns of host countries. The tone of the current one is set more by the former home countries which are the major markets. The perceived problem is not "exporting" a headquarters/home country policy which would be subversive or exploitative. Rather, the issue is to require a decent minimum level of standards from subcontractors and other parts of the corporate supply chain. The former "host" countries see themselves more on the defensive now, as they fear that the socially motivated market pressures can be used against them for protectionist purposes.

The emphasis on self-regulation mirrors yet another change of approach since the end of the Cold War. The codes of conduct addressed to multinational enterprises were drafted in a period where the United Nations was grappling with the concept of a New International Economic Order. There were profound divergences over the NIEO, which was seen by many (including OECD countries) as a state-controlled approach to economic development. This, incidentally, was the reason why the international trade union movement had serious difficulties with the NIEO although it strongly supported measures to control multinational enterprises. The concept of a New International Economic Order was undermined by the same forces which ended the Cold War and brought about the current stage of globalization.

The discussion on regulation has also taken on a different emphasis. With globalization there has been a growing recognition of a need to establish an international minimum level of social and labour standards. This debate on "core labour standards" has been taken forward in steps by discussions in the ILO, the OECD (the 1976 report on trade and labour standards), and the WTO (Declaration of the Ministerial Meeting in Singapore in December 1996).

Two important milestones are the World Summit on Social Development, in Copenhagen, in March 1995, and the negotiations for,

adoption, and consensus on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The contents of the core labour standards were determined in Copenhagen, as was the *modus operandi*. Countries that have ratified the ILO Conventions on freedom of association and the right to collective bargaining, forced and child labour, and non-discrimination must also fully respect them. Countries which have not ratified them must in any case respect the principles. The 1998 ILO Declaration sets out the framework in which this is done, with the emphasis on developing promotional measures to assist countries in reaching this objective.

**It is to be underlined that this Declaration** is on policies countries put in place - not on corporate policies. It leaves intact the 1977 Tripartite Declaration on Multinational Enterprises and Social Policy, together with its follow-up arrangements. As that Declaration and the OECD Guidelines for Multinational Enterprises are parallel, any significant changes in the Guidelines would probably have to be reflected in the ILO instrument in one way or another.

Even though the 1998 Declaration does not directly apply to multinational enterprises, it is liable to have consequences to the extent that the promotion of fundamental principles and rights at work leads to government policy changes. A relevant comparison could be with the work of the Committee on Freedom of Association of the ILO Governing Body. A complaint presented to this Committee on alleged violations of the principles of freedom of association and the right to collective bargaining may be based on specific situations involving an enterprise. The conclusions and recommendations of the Governing Body, however, are addressed to the governments as it is their task to ensure compliance with these principles.

In the long run the ILO Declaration on Fundamental Principles and Rights at Work and corporate policies should be expected to converge. This does not, however, imply that the follow-up of the Declaration, now being put into place, would directly address enterprise policy practices.

**Another relevant question is,** what new aspects do the core labour standards bring to the instruments which originated in the Seventies? Freedom of association and non-discrimination are specifically covered by the Guidelines. The fact that there is no strong emphasis on forced and child labour is due to the fact that the Guidelines were drafted by industrialised countries. In addition, the consensus on worldwide action against child labour (and particularly its worst forms) is only a couple of years old. On the other hand, this consensus against child labour has been a decisive factor for many enterprises when taking socially motivated action within their sphere of influence.

Somewhat problematic is the fact that despite the strengthened consensus on core labour standards, only a third of existing voluntary corporate codes refer to international standards generally, including international labour or human rights standards. There is a wide spread in the treatment of these standards, too. Frequently only some of the standards are addressed, and some codes explicitly discourage union organisation. When codes have been drafted with a degree of labour-management co-operation, they tend more to refer to core labour standards.

Unilateral corporate codes are both statements of intent and, when monitored and followed up with subcontractors and other economic links, rules of the game for gaining the benefits of participation in a global enterprise. As such, they can complement internationally recognised labour standards. They can serve as catalysts to advance the respect of minimum labour standards which, in any event, should be a guiding principle for law and practice.

However, the very fact that such codes are deemed necessary bears witness to the fact that core labour standards are not yet universally observed. In some cases they lead to monitoring which actually should be the responsibility of national labour inspectorates or other authorities if they would exist and be sufficiently effective.

Without agreed supervision and monitoring, individual codes of conduct are no more than statements of corporate policy. Such mission statements are sometimes better known in the import markets (comparable with the earlier notion of home countries) than where production takes place. No uniform systems of monitoring such codes exist; the competence and independence of the external monitoring that exists varies greatly; and the costs of such services are not insignificant. As particularly the consumer goods sector (sporting goods, clothing, household goods etc.) is under competitive pressure to demonstrate that what is being marketed is not produced in a sub-standard manner, there is a proliferation of monitoring services - which, in fact, is a new growth area.

**One alternative consists of joint implementation** structures involving enterprises and trade unions. This, of course, presumes a degree of acceptance of trade unions as partners which is not always the case. Subcontractors and other parts of the chain may be small and medium enterprises where arrangements for workers' representation are either lacking or not very developed. There is still some distance between accepting the rights of workers to organise and actively involve their organisations in a process of improving working conditions.

Voluntary private sector initiatives will no doubt continue to play an important role, particularly as the diversification of economic activities, privatisation, and deregulation continue and there are more market pressures for self-regulation. However, universally applicable solutions (which promote the “level playing field” which also many business representatives call for) will not be produced by the market alone. Equally clear is that a *dirigiste* approach, reminiscent of the times of the New International Economic Order, will not produce the desired framework.

A more complex approach is called for, together with a better understanding of the interaction of private entities and public policy. In January 1999, at the Davos World Economic Forum the Secretary-General of the United Nations called on the multinational investors, producers and employers to uphold human rights and decent labour and environmental standards in the conduct of their own business. Referring explicitly to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, he suggested that business leaders do not have to wait for legislation to ensure that core labour standards are respected in their own spheres.

**Promotional measures by the ILO** as a follow-up of the 1998 Declaration will have a positive impact on the framework, as an over-all policy corresponds with the desire to ensure a level playing field. From the point of view of corporate policies, one might think about a three-tier approach, where:

1. compliance with core labour standards by all countries is promoted through the follow-up of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, thus creating a recognised and decent global social minimum level;
2. there is continued agreement that expectations set for the corporate sector are contained in existing instruments and particularly the OECD Guidelines for Multinational Enterprises and the Tripartite ILO Declaration on Multinational Enterprises and Social Policy, with whatever amendments the current focus on core labour standards might call for; and
3. relevant international organisations, such as the ILO, are ready to offer services of knowledge, advice and support to the corporate sector, upon request, for initiatives aimed at specifically promoting core labour standards and decent conditions of work.

This might also give an impetus to revisit the way in which national contact points in the OECD countries function, in order to enhance their potential for offering advice and other services to the corporate sector. Enterprises which decide to undertake action in this field - on their own, or in consultation with the representatives of workers, and/or following approaches by NGOs - should be able to benefit from information and advice on what is the “state of the art” regarding principles to be respected.

On occasions, there have been references to the thought of having a “model code” for the corporate sector. However, the consensus on the importance of the core labour standards and continued support for the contents of the OECD Guidelines and the 1977 Tripartite ILO Declaration beg the question: What new aspects could such a model code bring in? The basic elements exist. The challenge rather is to adapt their promotion to the new global situation.

## **REVIEW OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

*by*

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The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations to enterprises, made by the Governments of all 29 OECD Members and three non-Member countries (Argentina, Brazil and Chile). Their aim is to encourage the positive contributions which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise. The Guidelines cover a broad range of MNEs' operations and they are supported by follow-up procedures in the participating countries.

The OECD Guidelines for Multinational Enterprises (MNEs) are the only comprehensive, multilaterally endorsed code of conduct for MNEs. They set non-legally binding standards covering a broad range of issues relating to corporate responsibility. Currently, these issues are addressed in nine chapters:

- *Introduction* (which explains the context, purpose and scope of the Guidelines; acknowledges important principles such as the fact that MNEs are subjected to the laws of the host countries where they operate and underlines that the Guidelines are not aimed at introducing differences between multinational and domestic enterprises: they are good practice for all);
- *General Policies* (which recommends *inter alia* that MNEs take full account of the general policy objectives of the host country; co-operate with the local community and business interests and refrain from bribery)

- *Disclosure of Information* (MNEs are encouraged to increase the transparency of their structure and activities)
- *Competition*
- *Financing*
- *Taxation*
- *Employment and Industrial Relations* (includes employee representation, observance of employment standards and industrial relations no less favourable than those observed by comparable employers in the host country, training and upgrading of employees, provision of reasonable notice of changes in operations, implementation of employment policies without discrimination, and issues relating to unfair influence and the conduct of labour negotiations)
- *Environmental Protection* (Added as a result of the 1991 review, this chapter contains recommendations to protect the environment and avoid creating environmentally related health problems. Enterprises are encouraged to assess foreseeable environmental consequences of their activities, co-operate with authorities by providing adequate and timely information, take appropriate measures to minimise the risk of accidents and damage to health and the environment and co-operate in mitigating adverse effects)
- *Science and Technology*

The Guidelines were adopted by a Declaration of OECD Governments in 1976 as a part of a wider and balanced package of investment instruments (the 1976 OECD Declaration on International Investment and Multinational Enterprises), which have been ratified by all OECD members and Argentina, Brazil and Chile. The advisory bodies to the OECD -- the Business and Industry Advisory Council (BIAC) and Trade Union Advisory Council (TUAC) -- have endorsed the principles of the Guidelines, and have a role in applying them. The Declaration also includes the National Treatment Instrument (which stipulates that foreign enterprises be accorded treatment no less favourable than domestic enterprises by host country governments in like circumstances), as well as instruments on conflicting requirements and on international investment incentives.

The reasons for agreeing on the Guidelines, quoted in their introduction, are remarkably relevant more than 20 years later: “Multinational enterprises now play an important part in the economies of Member countries and in international economic relations, which is of increasing interest to governments. Through international direct investment, such enterprises can bring substantial benefits to home and host countries by contributing to the efficient utilisation of capital, technology and human resources between countries and can thus fulfil an important role in the promotion of economic and social welfare. But the advances made by multinational enterprises in organising their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives. In addition, the complexity of these multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern”. Today we might use different words to reflect the developments of the economic and social context. Nevertheless, the basic idea has not really changed: MNEs can bring substantial benefits but their operations may also give rise to concern.

Notably, the purpose of the Guidelines is also as relevant in 1999 as it was two decades ago: “The common aim of the Member countries is to encourage the positive contributions which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise”.

To ensure the implementation of the Guidelines the OECD Council established an institutional framework composed of the Committee on International Investment and MNEs (CIME), National Contact Points (NCPs), BIAC and TUAC. The CIME, comprising investment policy officials from Member countries, is the OECD's official focal point for discussion on foreign investment policy and MNEs. One of its tasks is to provide clarifications of the *Guidelines*. The establishment of an NCP is a binding obligation for participating countries. NCPs provide information and act as a forum for enquiry, discussion, and problem solving.

Finally the review process, allowing for a periodic examination of the *Guidelines*, is an important part of the follow-up procedure. There have been four formal reviews since the *Guidelines*' inception in 1976, the most recent being completed in 1991.

The current Review was launched by the CIME in June 1998. It is arguably the most important review of the *Guidelines*, coming at a time where social responsibility of enterprises is high on the public agenda. It provides a crucial opportunity to address the operating procedures as well as the text with a view to ensuring their continued relevance and effectiveness.

To start this review, the CIME delegations were asked to evaluate their experience with the *Guidelines*. Next, a conference was held in Budapest, Hungary, where representatives from governments, business, labour, and other representatives of civil society discussed the influence of the *Guidelines* on corporate behaviour and explored ways to strengthen their role. There was a strong feeling in that meeting that the review should be serious and meaningful. It should address the reasons why the *Guidelines* have not been as effective as they could have been and should make the *Guidelines* once again an instrument of relevance and utility to governments, business, and other social partners in furthering good relationships between firms and the societies in which they operate.

Since then, the CIME has established a Framework for the Review (also available on the OECD website at [www.oecd.org/daf/cmisis/cime/mneguide.htm](http://www.oecd.org/daf/cmisis/cime/mneguide.htm))<sup>1</sup> and conducted further consultations with BIAC, TUAC and several other non-government organisations (NGOs) to obtain views on the key issues. It also gave a new mandate to the Working Party on the Guidelines, which held its first meeting in June 1999.

In that meeting the Working Party devoted an important part of its time to the subject of sustainable development. It was encouraging to see that the subject was approached in a multidisciplinary way. The meeting papers were produced in good co-operation between the investment and environment communities. The EPOC (the environment policy committee of the OECD) had already discussed the Guidelines and several joint CIME/EPOC bureau meetings took place. The Working Party benefited from the input of an UNEP representative and the availability in many national delegations of experts from both the investment and environment domains. This integrated approach will certainly lead to better results. Thus it will be used also in the discussions on the other subjects in the (three) further meetings during this year. In December we plan to have discussed all the chapters at least once and to have the first complete draft text available. We will discuss this and our report to CIME during further meetings in 2000. This should enable the CIME to table a final report for the Council meeting at Ministerial Level in June 2000.

Let me finalise by briefly mentioning some of the key issues of our discussions.

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<sup>1</sup> Further information on the Guidelines, including the current text of the Guidelines and a report on the Framework for the Review can be found on the OECD website at [www.oecd.org/daf/cmisis/cime/mneguide.htm](http://www.oecd.org/daf/cmisis/cime/mneguide.htm)

- Level of ambition: “best practice”, “good practice”, “minimally acceptable practice”?
- Effectiveness: transparency; accountability and credibility; role of CIME, NCPs, BIAC, TUAC, NGOs; i.e. implementation Global application
- Textual matters: sustainable development; labour rights; human rights; subcontractors

Regarding all these issues, and many more, quite a few suggestions have been made.

While governments are convinced that the *Guidelines* continue to have an important role, the text and implementation procedures need updating to reflect important changes in the world economy and to ensure the *Guidelines*' relevance and effectiveness. Service and knowledge intensive industries have become more important relative to mining and manufacturing, many more firms are engaged in international business, strategic alliances and closer relations with suppliers and contractors have become more important. Large enterprises still account for a major share of international investment but small and medium sized companies now play a significant role, and MNEs have emerged in non-OECD countries. These developments need to be taken into account.

The Review process is designed to be open and inclusive. While OECD governments will take final responsibility for the text and implementation procedure, input from non-member governments, business, labour, non-governmental organisations (NGOs) and others is welcome and is being solicited both in capitals and here at OECD. BIAC and TUAC can contribute through well-established channels, but ways are being sought to obtain the views of other interested parties. This conference provides an important opportunity for different perspectives to be brought to bear on the review process and to engage in dialogue.

A number of issues have already attracted attention during this review, among them making implementation procedures more effective, and further work on the role of the Guidelines beyond the OECD area. Indeed this latter issue is also on the agenda of this conference and the subject of a presentation by Professor Fatouros of the University of Athens.

It's clear that much work remains to be done - on these issues as well as many others. Any suggestions, especially from those of you we didn't have the benefit of consulting earlier, for further issues, or possible ways to handle them, would certainly help us to get that work done.



## **SEVEN AND A HALF PROPOSITIONS ON THE ROLE OF THE OECD GUIDELINES OUTSIDE THE OECD AREA**

*by*

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The geographical scope of the OECD Guidelines and their follow-up proceedings are currently limited to the OECD countries alone. As stated in the very first clause, the Governments of the OECD countries “jointly recommend to multinational enterprises operating in their territories the observance of the Guidelines”. The point is repeated in several other provisions. Nonetheless, in a few provisions, the Guidelines may arguably be said to have standing outside the OECD area: in paragraph 3 of the introduction, for instance, where it is acknowledged that since MNE activity takes place worldwide, “international co-operation in this field should extend to all states”. More importantly, several of the recommendations are said to extend to firms in “the countries in which they operate”.

Nonetheless, it may be said that formally confirming the application of the Guidelines outside the OECD might raise a series of questions, which can be conveniently arranged around the two principal issues of the desirability and the feasibility of such application -- in simplest terms, the “Why” and the “How” of the matter. For these questions to be answered, it is necessary to understand both the Guidelines themselves and their operation and the States (and the societies and economies) in which they are or may be applied. Properly to examine these questions, one would ideally have to start by looking into the main features of the Guidelines, analyse their contents and determine what exactly is involved in their “application” or “follow-up”, then study the relevant characteristics of OECD and non-OECD countries, at least as far as foreign direct investment and the operation of multinational enterprises (MNEs) are concerned, proceed to examine the ways in which application outside the OECD area may affect these characteristics and in particular the modes of application of the Guidelines, and conclude by considering what may have to be done to cope with such effects.

This is too tall an order for a short paper. To proceed expeditiously, I shall accordingly offer a series of propositions, complemented with a few comments, which will attempt to cover some of the pertinent territory.

***Proposition 1. This inquiry is necessary despite the fact that the enterprises concerned are free to apply the Guidelines in their worldwide operations***

The Guidelines are voluntary principles of corporate behaviour addressed to MNEs, even if only to the MNEs operating in the OECD countries. Those same MNEs operate in non-OECD countries and they are and have always been free to apply the Guidelines outside the OECD area. Indeed, firms themselves in their own codes of conduct rarely draw a distinction between their conduct in OECD vs. non-OECD countries, or developed vs. developing countries. With a little encouragement, they might be expected to act in the same manner with respect to the Guidelines without any further ado and with no further study, discussion or negotiations. Such an outcome is in a way the easiest, from the point of view of the Governments concerned, and for this reason, it may even be probable. A number of considerations point in the opposite direction, however, and the present paper will try to marshal the pertinent arguments.

To begin with, the history of the Guidelines shows that they were never meant to be solely a declaration of appropriate principles of business conduct, communicated to the world at large and left to the good will of the executives of MNEs. From the very start, the OECD has remained in control over the Guidelines and has continued to be concerned with their substance and content as well as their application. A complex process was created, for the promotion of their application and for their further development, through procedures for their "clarification" and for successive reviews. The process involves (and depends on) the Governments of the member States, through the Committee on International Investment and Multinational Enterprises (CIME), in co-operation with the "social partners", in the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), and with the support of the OECD Secretariat. The Guidelines cannot be properly understood if this process is disregarded.

It is by no means self-evident, therefore, that the Guidelines can (or should) be applied outside the organisational framework of the OECD, which is responsible for that process, or alternatively that that framework and process can be active beyond the territories of the States members of the organisation. The continuing force and further development of the Guidelines depend on the active commitment of the Governments that have adopted the Guidelines and their co-operation in putting them into effect. In this context, it may be noted

that three non-OECD countries (Argentina, Brazil, and Chile) have indeed adhered to the instrument, and participate in implementation procedures, including the current Review.

***Proposition 2. Application of the Guidelines outside the OECD area is desirable for the countries concerned and for the world economy.***

The question how far the Guidelines are appropriate for countries outside the OECD area, in particular, developing countries, is, of course, not a legal one. It has to do primarily with the prevailing economic, political and administrative conditions and the policies in effect in these countries. A proper answer should be country-specific. General considerations and generalisations, such as those offered here, are of limited usefulness and may only serve as pointers to likely problems and probable answers. Still, a number of such pointers may be noted.

A first indication concerning the desirability (or acceptability) of the Guidelines outside the OECD may be garnered by looking at the experience since their adoption. It is clear that, despite the express limitation in their geographical scope, the approach and even the text of the Guidelines have proven to be very attractive, and even widely influential, outside the OECD area. Their influence was particularly apparent during the late 1970s and early 1980s, when several efforts at drafting international standards for MNEs were undertaken in the framework of international organisations of the United Nations family. One could even say that the OECD Guidelines were the principal model for these “international codes of conduct”, even though the particular aims and concerns of these codes, and to some extent the motivations of their proponents, differed in important respects from those of the Guidelines and the OECD countries.

This history suggests that the substance of the Guidelines is acceptable to most countries, including developing ones. One might raise a hypothetical problem concerning possible differences in the underlying perceptions as to the respective roles of Government and business firms. It is possible that, in particular instances, the Guidelines do not go far enough -- or do not go as far as particular Governments may wish -- in providing for the obligations of enterprises. But the Guidelines allow expressly for the effect of the “laws, regulations and administrative practices in the countries in which [MNEs] operate”. Local policies would then prevail in case of conflict, at least to the extent that they have taken the form of laws or regulations.

In a way, the difficulty may lie in the reverse direction: In the view of some Governments, the Guidelines may go too far, rather than not far enough. They may go counter to national policies adopted in order to "attract" investors, by imposing restrictions on labour union freedoms (contrary to the provisions of the Guidelines on employment matters), excessively protecting business secrecy (contrary to the provisions on information disclosure) or allowing restrictions on competition (again contrary to the Guidelines). In this respect, however, one would have to take sides and to defend the substantive content of the Guidelines, the policies they embody. One would argue that it is precisely in this respect that the Guidelines are particularly useful, in that they make clear a broadly-based international consensus to the effect that policies favouring the immediate interests of some foreign investors to the detriment of the interests of the local society and economy and of the proper operation of markets are short-sighted and harmful, from the point of view of both the countries concerned and the operation of global markets.

The actual situation in many cases may lie between those two possibilities. In many countries, especially developing ones, some of the laws and policies provided for in the Guidelines may be lacking, incomplete or, perhaps more likely, ineffectively administered. To the extent that the Guidelines may supplement existing laws and regulations or serve as a model for new prescriptions, they appear to be eminently useful for such countries, especially in helping ensure the proper operation of the (national and global) market by protecting competition, providing for information disclosure, discouraging the destruction of the environment or not allowing the exploitation of workers, etc. Even though the Guidelines may prove ineffectual in fully coping by themselves with respect to such matters, they provide useful support to the Governments concerned. Difficulties may still arise because of the particular ways local institutions function or because of specific characteristics of the various legal and political systems. Many such systems, for instance, are not familiar with rules which are formally, that is to say, legally, non-binding; in a way, there is no slot in the system for them and the system has difficulties in dealing with them. But these are problems of a different order.

As already noted, the Guidelines help to fill the need for internationally agreed standards on a number of important topics, not only from the point of view of host countries but also from the perspective of the proper operation of the international economy. Such standards supplement national rules, which may be undeveloped or ineffective because of their diversity and because of jurisdictional constraints. The presence of such standards also makes possible joint action by more than one State.

***Proposition 3. Application of the Guidelines outside the OECD area is desirable from the point of view of the MNEs involved.***

To look at the issues from the viewpoint of the MNEs, one must proceed on the assumption that MNEs, or some MNEs, have “internalised” the Guidelines and shape their policies and actions in conformity with them. Even if this is not true of all OECD-based MNEs, it may well be true of an important fraction of them, of the group of major firms that are in a hegemonic position in the private sector, and help to shape the attitudes and policies of “business” at large.

Seen in such terms, the issue may be understood as involving a potential conflict between policies pulling in opposite directions. On the one hand, it is at first blush convenient and beneficial for an MNE to apply the same basic principles in its operations in many countries. To the extent the principles of the Guidelines have been adopted by major MNEs, they have become part and parcel of company policy, as they are intended to be, and are routinely applied in worldwide operations. It takes considerable deliberate effort and is, in a way, costly, for a firm to differentiate among countries in regard to the application of the kind of principles that are found in the Guidelines. On the other hand, adapting to many countries and economic environments in order to take advantage of the differing characteristics -- physical, social or political -- of many economies is what MNEs do best. It is a major element of their ability to internalise, to their profit, differing conditions and situations. To that extent, adoption of a uniform policy on such matters as employment or the environment may not be seen by some MNEs as a positive trait.

Still, to the extent that MNEs have an interest in the proper, unobstructed operation of the market, adoption of similar, if not common, policies on basic issues by many of the countries in which they operate has advantages for smaller and larger firms alike, which for a series of reasons, already follow responsible, “respectable” policies.

***Proposition 4. For the Guidelines to be applied outside the OECD area, the Governments of the countries concerned should express formally their assent.***

As already noted, MNEs are free to apply the policies of the Guidelines in their worldwide operations. It is not enough to say, however, that it would be the MNEs, not their home Governments, that would be applying these policies in the non-member countries. It should not be forgotten that the Guidelines embody certain principles which the Governments of OECD

member States have accepted; these principles imply a certain understanding of the proper conduct of business firms and correspondingly of Governments, as well as certain rules regarding the proper relations between MNEs and Governments. It should not be taken for granted that this understanding is shared by all States and all Governments. It is obvious that the best way to find out what is the precise case with respect to any particular Government is to have it declare its adherence to the principles in question. If a policy declaration by several Governments is to be applied outside their territories, in the territories of other countries, an appropriate, if not a necessary, precondition for such application would appear at first blush to be the acceptance or at least the toleration by the Governments of the countries involved.

Experience for nearly twenty-five years has shown, moreover, that the Guidelines can be fully effective only where they have the active support of the local Government. For this substantive reason, in addition to formal considerations, it is appropriate that, for the Guidelines to be applicable in any country, the formal assent of the Government involved be expressed, even though not in the form of a legal commitment, since the initial Declaration itself is not legally binding. This seems necessary in principle, while it also touches on important questions of implementation, that will be addressed a little later. After all, although not formally binding on Governments, the Guidelines still constitute statements of agreed policy.

It seems reasonable, on the other hand, to allow such assent or acceptance to be limited to the Guidelines alone, and not require commitment to the entire 1976 Declaration on International Investment and Multinational Enterprises, which includes a number of other instruments. In spite of the close interconnection and interdependence among the several instruments in the Declaration (and of the fact that the substance of some of them -- e.g., the decision on national treatment -- has by now been widely accepted among non-OECD countries) adherence to all of them at the same time may create additional difficulties for a number of countries. On the other hand, for the purposes of implementation, such assent should also cover the contents of the "second revised decision" concerning review and clarification procedures as well as the National Contact Points.

An incidental question that may be raised at this point has to do with the voluntary character of the Guidelines. When, in the usual formulations, we refer to the Guidelines as being voluntary, we are normally referring to their lack of binding force *vis-à-vis* the MNEs to which they are addressed. Similar, but not identical, considerations arise, however, with respect to their effect *vis-à-vis* Governments. Being a "Declaration", not a formally binding instrument, the Guidelines do not formally commit Governments; in the usual terminology, they constitute "soft law", expressions of agreed policy, compliance with which

cannot be enforced through legal action. Like all soft law, however, they do not lack an element of obligation; it cannot be assumed that when States formally declare their acceptance of certain principles they do not mean to conform to them. It is only the precise means for ensuring such conformity that differs, not the underlying expression of commitment. It follows that Governments that have subscribed to the Guidelines, whether they be members or non-members of the OECD, cannot contest the legality of the principles they have accepted (or of measures taken by other States in accordance with such principles).

Thus, while the voluntary character of the Guidelines endows them with greater flexibility and adaptability, which may facilitate their application outside the OECD area, it does not dispense us from specific study of the prerequisites for their better adaptation to local conditions. Such a study would be an element of a proper thorough examination of the issue.

***Proposition 5. Some elements of the existing procedural and institutional machinery for the application of the Guidelines can function with respect to their application outside the OECD area without extensive changes.***

The questions that arise with respect to the follow-up and implementation of the Guidelines are similar to those already touched upon, but they take differing concrete forms, which need to be explored in some detail. As already noted, despite the emphasis on their voluntary character, application of the Guidelines has not been left to the goodwill of the enterprises alone. The Guidelines have been endowed from the very start with a mechanism for their promotion and follow-up which is intended to ensure, by indirect means, that companies conform to them. An institutional structure has been set up, whose centrepiece is CIME, a committee composed of representatives of OECD member States. This Committee is charged with persuading companies to declare their commitment to the Guidelines and with monitoring the companies' conduct in this respect. It is also responsible for the continuing review of the Guidelines and their adaptation to changing conditions. Possible application of the Guidelines outside the OECD area raises therefore questions concerning the operation of this institutional framework. The role and position of States which are not members of the organisation have to be clarified.

It is important to recall that the pattern of "follow-up" or implementation of the Guidelines is more complicated and more diverse than appears at first glance. Some elements, especially those involved in the promotion of the Guidelines and their "adoption" and routine application by companies, although orchestrated by CIME, do not raise difficult issues with respect to application outside the OECD area. This is somewhat less valid with

respect to another significant element of the implementation process, which is the setting up of National Contact Points, which might be able to function on the basis of each (non-OECD) country's consent and commitment to the Guidelines, without elaborate institutional involvement, but might also require action and support by CIME. (And again, it is worth recalling that procedures associated with the Guidelines, including setting up National Contact Points, have already been implemented by three non-OECD adherents to the Guidelines: Argentina, Brazil, and Chile.)

Similar considerations may be said to apply to other aspects of follow-up, to the extent that participation of Governments (or even non-governmental agencies) in formal decision-making is not involved. Ultimately, however, these points are moot, since for full participation in the Guidelines process involvement in the operation and decision-making of CIME is necessary, as the next proposition suggests. There is little sense therefore in seeking to find ways in which partial participation, not involving decision-making, may be possible in some partial respects.

***Proposition 6. Application of the Guidelines outside the OECD area would involve significant changes in the institutional machinery responsible for clarification and review.***

The implementation machinery for the Guidelines operates within the framework of the OECD; CIME is an organ of an international organisation and it functions at the intergovernmental level, even though non-governmental organisations (BIAC and TUAC) are part of the machinery. There is a complicated symmetry among the several actors involved, their functions and their institutional presence: the Governments, the only actors that are represented in CIME with full decision-making responsibilities; the MNEs, as the object of the voluntary process of regulation, but also, through the BIAC, as participants in the decision-making process; and the trade unions, whose presence is in a way symbolic of all the other interests and perceptions affected by the presence and operation of MNEs.

If the geographical scope of the Guidelines were to expand, it would be reasonable that all the additional actors concerned would have to be represented within the institutional machinery for their implementation. This applies to Governments, to begin with, but it also applies to business and labour representation. Non-member Governments as well as business and labour representatives from non-member countries, could then be asked to participate in the functioning of CIME, perhaps as "observers" or "associate members", when the Committee deals with matters related to the implementation of the Guidelines.

Of course, this is not as simple as it sounds. A first question that arises is whether it is always possible to separate cleanly Guidelines-related issues from other issues that fall within the competence of CIME. Matters of clarification and monitoring appear easier to deal with in this respect, than questions involving review, that is to say, revision, of the Guidelines, which may raise more difficult problems. Another question that may arise, hypothetically, at least, is how to deal with a possible future situation when non-member countries may constitute the majority in an enlarged CIME, since, after all, non-member countries are, and are likely to continue to be, far more numerous than members.

Contrary to what may appear at first glance, problems of this type would be much more difficult to resolve in practice if the OECD were to adopt decision-making by majority vote. As long as this is not the case, the presence of additional actors, non-members of the OECD, might make agreement on particular policies more difficult and decision-making more cumbersome, and action that might be strongly opposed by member (or, for that matter, participating non-member) Governments would not be possible. Governments would remain the “masters of the treaty”. Increased “difficulty” may even be a good thing, to the extent that it would signify that more points of view and more interests would have to be taken into account in the process of making decisions on these issues. Obviously, very careful procedural rules would have to be adopted, but it does not appear that the OECD would be unable to do it. It would be still possible to adopt new policies and amend texts.

***Proposition 7. Application of the Guidelines outside the OECD area should be perceived as an opportunity for serious study and reformation of the Guidelines and their implementation; alternatively, [Proposition 7 1/2] any current review of the Guidelines should keep in mind the prospect of their application outside the OECD area.***

In seeking to extend application of the Guidelines outside the OECD area, one might imagine two polar cases of attitudes that the OECD might adopt. One possibility is to expand application gradually and quietly, with an effort to limit as much as possible the impact of such expansion on the existing structures and patterns. In such a case, there would be very few or no amendments to the text of the Guidelines, very few or no changes in the approaches to the issues already in effect, and very few, if any, changes in the institutional mechanisms, essentially only those which are strictly necessary. Expansion of the application of the Guidelines, under these conditions, would probably have to rely primarily on voluntary action by the enterprises and would come back largely to the policy rejected under Proposition 1. In fact,

such an approach would appear to function more or less along the lines of the corporate codes of conduct adopted by many firms and industries.

The other possibility is to attack head on the issue of the expansion in the application of the Guidelines, to approach it in positive, pro-active terms, in a way using such expansion as an instrument for increasing the effectiveness of the Guidelines and adapting them further to current conditions. In the case of the MAI, the OECD missed a chance to contribute to the creation of a stable international legal framework for foreign direct investment possibly because it tried to go too far, too fast, and, in my personal judgement, in a number of wrong directions, in response to issues that are no longer of prime importance. At any rate, it missed a chance by trying too hard. It would be a pity if, in the case of the Guidelines, it would again miss a chance significantly to contribute to the emerging legal framework for international investment, but this time by not trying hard enough, by not setting its sights high enough.

An approach such as the one suggested would not necessarily require abandoning the fundamental voluntary approach that characterises the Guidelines, although it might bring about changes in its operation; more generally, it might involve considerable departures from existing approaches. A large-scale campaign on a worldwide level for the promotion of the policies informing the Guidelines might be a starting point. But things would not have to stop there. One can imagine actual changes in the text of the Guidelines as well as some significant changes in approach; among the latter one could see less emphasis on the interplay between MNEs and host Governments and more reliance on the need for the proper operation of markets, at the national and worldwide levels. Obviously one can imagine various innovations in the institutional machinery for the application of the Guidelines, which might render easier their adaptation to expansion in application. Yet, the Guidelines would continue to avoid the excessive judicialisation of issues, the trend towards treating economic and political issues as legal that seems often to prevail today. Thus, CIME or any other organs would continue not to act as tribunals; a public hearing on a particular case (e.g., for "clarification" purposes) could be more appropriate than any kind of adversarial proceedings.

An expansion in their application could be instrumental in bringing about other changes in the Guidelines' functions, reflecting essentially the changes in the international economy since 1976. Despite their prudent provision to the effect that they "are not aimed at introducing differences of treatment multinational and domestic enterprises; wherever relevant they reflect good practice for all," the Guidelines evidently addressed the problems arising from the operations of MNEs. One might wonder, however, whether and how far domestic enterprises are today radically different from MNEs and what consequences can any pertinent conclusions have for the Guidelines.

In their original form, the Guidelines sought to establish rules of the game for the enterprises, in view of their increased margin of freedom vis-a-vis Governments. But the Governments (and trade unions) involved were essentially those of the developed countries -- or at least the aims and functions of the Guidelines were perceived in terms of the developed countries. If the geographical scope of application is to change, it would include other categories of countries, as well. Although the time is past, when rigid dichotomies were validly established (developed and developing, market and central planning), important differences persist. Such differences in the institutional and administrative structures of the countries involved may raise new issues. The mode of operation of Governments and, perhaps even more, of non-governmental institutions, as well as the effectiveness of government action and of the legal and political system in general, differ significantly as between the countries to which the Guidelines initially applied and those which an expanded scope would bring in.

Finally, an expansion in the area of application of the Guidelines would make them applicable to developing countries, even to the least developed ones, to countries in transition, as well as to the countries in the process of "graduating" into the developed country status. It is interesting to speculate as to the manners would such a change affect the contents and the application patterns of the Guidelines. It is arguable, for instance, that, in such a case, the promotion of economic development would become one of the basic aims of the Guidelines, in addition, but not in subordination, to their other functions. What specific changes would this involve ?

One could go on speculating about various specific, possible or desirable, changes. The point that seems worth repeating, however, is that, for the effectiveness of the Guidelines to be enhanced, with an expanded space of application, a serious effort at "renovation" of the Guidelines is necessary. A valuable opportunity would be wasted if application of the Guidelines were to expand outside the OECD area with no serious consequences in terms of innovation and change.



*Annex I*

**CONFERENCE PROGRAMME**

*Monday, 20 September 1999*

**Opening remarks by the Secretary-General of the OECD,  
Mr. Donald J. Johnston**

**Keynote Address by Mr. George Foulkes, M.P., Under-Secretary of State  
for International Development, United Kingdom**

**FDI policy and individual country experiences**

Chair: H.E. Mr. Egbert Jacobs, Netherlands Ambassador to the  
OECD and Chairman of Committee on Co-operation with  
Non-Members  
Presentation by Professor Theodore Moran, School of Foreign  
Service, Georgetown University, Washington, D.C., USA

Commentators:

*H.E. Mr. Man Soon Chang, Korean Ambassador to the WTO  
and UNCTAD, Geneva, Switzerland and Chairman of the  
WTO Working Group on Trade and Investment*  
*Dr. György Bobok, Deputy Director General, Ministry of  
Economic Affairs, Budapest, Hungary*  
*Dr. Ibrahim Fawzi, Chairman, General Authority for  
Investment (GAFI), Cairo, Egypt*  
*Dr. Thomas Aquino, Governor, Philippine Board of  
Investments, Manila, The Philippines*

**General Discussion**

Commentators:

*Dr. Kristian Ehinger, General Counsel, Foreign Holdings,  
Volkswagen AG, Germany*  
*Mr. Jiwei Chen, Vice-President, Foreign Investment  
Administration of the Ministry of Foreign Trade and  
Economic Co-operation, Beijing, China*

## **Role of foreign investors in developing countries**

Chair: Mr. Dato' Jegathesan, Former Deputy Director General, Malaysian Industrial Development Authority and Chief Executive Officer, JJ International Consultants Sdn. Bhd., Kuala Lumpur, Malaysia  
Presentation by Mr. H.K. van Egmond, Economic Advisor, Unilever N.V., the Netherlands and Mr. Takuya Negami, Executive Advisor, Kobe Steel, Ltd., Japan and Vice-Chairman of the BIAC Multinational Enterprises Committee.

Commentators:

*Mr. José Valdez, ex Sub-Secretary for Capital Investment in Bolivia and visiting Scholar at Georgetown University, Washington, D.C., USA*  
*Professor David Robertson, Centre for International Trade, Melbourne Business School, University of Melbourne, Australia*  
*Ms. Yoke-Ling Chee, Third World Network, Malaysia*  
*Mr. Hank Schilling, Managing Director, Structured Finance Group, GE Capital Services, USA*

## **General Discussion**

Commentators:

*Mrs Anabel Gonzalez, Vice Trade Minister of Costa Rica*  
*Mr. Mansour Cama, President of the Senegalese Investment Authority and President of the National Council of Employers in Senegal, Dakar, Senegal*  
*Mr. Zbigniew Zimny, Chief, Investment-related development issues section, Division on Investment, Technology and Enterprise development), United Nations Conference on Trade and Development (UNCTAD), Geneva*  
*Mr. Denis Jacquot, Confederal Secretary, International Department, French Democratic Confederation of Labour (CFDT), Paris, France*

*Tuesday, 21 September 1999*

## **The Importance of Standards and Corporate Responsibilities - The Role of Voluntary Corporate Codes of Conduct**

Chair: Mr. Seiichi Kondo, Deputy Secretary-General, OECD  
Presentation by Mr. Kari Tapiola, Executive Director for Fundamental Principles and Rights at Work, International Labour Office, Geneva, Switzerland

Commentators:

*Dr. Manfred Schekulin, Director, Federal Ministry of Economic Affairs, Austria and Vice-Chairman of the OECD Committee on International Investment and Multinational Enterprises*

*Ms. Deborah France, Senior Advisor, International Organisation of Employers, Geneva*

*Ms. Ritu Kumar, Council on Economic Priorities Accreditation Agency, London and the Commonwealth Science Council, UK*

*Mr. Dwight W. Justice, Multinational Companies Group, International Confederation of Free Trade Unions, Brussels*

## **General Discussion**

### **The OECD Guidelines for Multinational Enterprises**

Chair: Mr. Seiichi Kondo, Deputy Secretary-General, OECD

(a) Review of the Guidelines

Presentation by Mr. Marius Sikkel, Head of Investment Policy and International Organisations, Ministry of Economic Affairs of the Netherlands and Chairman of the OECD Working Party on the Guidelines

Commentators:

*Mr. Olivier Ferrand, Treasury Department, Ministry for Economic Affairs, Finance and Industry, France*

*Mr. Fernando Paulo de Mello Barreto Fillho, Assistant to the Minister and Secretary for International Affairs at the Ministry of Development, Industry and Foreign Trade, Brazil*

*Mr. Doug Worth, Secretary-General, Business and Industry Advisory Committee to the OECD (BIAC)*

*Mr. John Evans, General Secretary, Trade Union Advisory Committee to the OECD (TUAC)*

*Professor Sol Picciotto, Department of Law, Lancaster University, UK*

*Mr. Rob Lake, Head of Policy, Traidcraft Exchange, UK*

## **General Discussion**

## **Afternoon Session**

Chair: Mr. Marius Sikkel  
(b) The Role of the Guidelines outside the OECD Area  
Presentation by Professor A.A. Fatouros, Greece

Commentators:

*Mr. Alexis Guardia Basso, Embassy of Chile in Paris*  
*Mr. Fouad Ben-Seddik, Moroccan Representative of*  
*International Confederation of Free Trade Unions*  
*Mr. Nick Mabey, World Wide Fund for Nature -UK*  
*Mr. Shabanji Opukah, Head of International Development*  
*Issues, BAT Industries PLC, UK*

## **Concluding remarks**

Dr. Manfred Schekulin, Director, Federal Ministry of Economic Affairs, Austria and Vice-Chairman of the OECD Committee on International Investment and Multinational Enterprises.

## *Annex II*

### **ISSUES FOR DISCUSSION**

#### **Introduction**

During the last decade, foreign direct investment (FDI) has come to play an unprecedented role in the world economy as a source of management, technology and capital and ultimately economic growth and integration. This has been particularly striking in the developing world where five sixths of all capital flows now originate in the private sector, with FDI by far the largest and most stable component.

Raising standards of living on a sustainable basis remains one of the most crucial policy challenges for the 21<sup>st</sup> century. In all likelihood, FDI will continue to be of vital importance towards the achievement of this goal. To be successful, however, the policy environment will need to take into account the legitimate expectations of governments and investors.

The present conference, supported by the OECD Committee on International Investment and Multinational Enterprises (CIME) and the UK government will aim at deepening the understanding of the issues that arise at the interface of government and business expectations, also taking into account the interests of other stakeholders in civil society. It will also attempt to contribute to the current thinking on the desirability and merits of international investment rules.

Four major subjects will be addressed: the role of FDI policies and individual country experiences, the foreign investor's contribution to economic development and the importance of standards and responsibilities, notably the OECD *Guidelines for Multinational Enterprises* at a time when they are under active consideration and comprehensive review.

The conference will be driven by the sharing of experiences of high-level government officials from developed and developing countries, leading academics, representatives of the international business community and labour

communities and other parts of civil society. It will build on the multidisciplinary character and long experience of the OECD as a forum for co-operation on international investment and development.

### ***Session I: FDI policy and individual country experiences***

FDI policy has traditionally been an integral part of the overall development strategy of host countries. But its form and scope have varied a great deal over time and between countries.

As an industrial policy tool, FDI policy has sought to achieve certain level of local content or export or foreign exchange payments balancing performance requirements. It has been used as a means to transfer technology, upgrade skills or associate foreign firms with domestic ones and also to increase the level of domestic competition. In other cases, FDI policy has kept foreign investors away from strategic sectors or operations (i.e. acquisitions) or, on the contrary, actively solicited the entry of new foreign investors and new businesses (greenfield investment). Screening has also been used as a substitute for weak or deficient domestic regulation (such as in the fields of competition and environment policy) while in other cases the same regulatory approach has been applied to foreign and domestic investors.

FDI has been influenced as well by other policies, notably those restricting imports (tariffs and non-tariff barriers), promoting exports (subsidies) or indirectly favouring local production (high domestic content rules of origin requirements). Foreign investors have also been attentive to levels of intellectual property protection and legal guarantees accorded to their operations.

The 1990s have witnessed unprecedented liberalisation of FDI, both in developed and developing countries. UNCTAD estimates that, of 750 changes in regulatory regimes worldwide in the 1990s, over 700 have been in the direction of the abandonment of discriminatory measures against foreign investors. These reforms have been part of more general policy reforms, encompassing deregulation, demonopolisation, and privatisation and trade liberalisation, which have greatly improved the scope for private enterprise and the business environment. Sound domestic policies are a necessary foundation for building business confidence.

At the same time, financial and tax incentives of various sorts have increasingly been used to attract foreign investors and influence their behaviour. Intense competition for high return mobile investments seems to have replaced

traditional concerns over restrictive FDI policies. In fact, disciplinary action over their use may constitute one of the major policy challenges in the future.

**Questions:**

- *What lessons can be learned from individual FDI policy country experiences over the past decade? Could participants elaborate on how these policies may have contributed to the economic development of their countries?*
- *Can the recent liberalisation and deregulation observed over this period in both developed and developing countries be seen as a disavowal of traditional “interventionist” policies (such as foreign ownership restrictions, performance requirements, joint venture requirements, mandatory licensing and R&D transfer requirements)?*
- *Even if some of these “interventionist” policies may have proven to be beneficial in the past in certain instances, can it be assumed that they will continue to be beneficial in the future? Have the globalisation of the world economy and widespread liberalisation, in fact, undercut the effectiveness of more traditional FDI policies? How can the legitimate interests and concerns of host countries be taken care of in this new context?*
- *What is scope for further unilateral liberalisation of FDI? Would the establishment of multilateral rules on investment facilitate future FDI liberalisation as well as help prevent the unravelling of past liberalisation gains?*
- *Do participants agree that a sound domestic regulatory framework is also essential for solid economic performance?*

**Session II: Role of foreign investors in developing countries**

It is widely acknowledged that multinational enterprises can fulfil an important role in promoting sustainable development, including economic growth and improved environment management and social welfare. They can bring capital, technology and know-how often unavailable locally. They can create backward and forward linkages in host economies, resulting in the creation of jobs, technology diffusion and the improvement of skills and distribution of income. They can raise local production and environmental standards through the use of more advanced and user-friendly technologies.

MNEs can also deepen the ties that bind economies to each other and to the rest of the world. Through trade and investment flows, they can interconnect host and home economies in the so-called “globalisation” process. There is increasing evidence that active participation in this process is becoming a prerequisite for sustainable growth and that there are major risks for individual countries in remaining on the outside.

Session II will review the most recent evidence on the economic benefits accruing from FDI. Participants – notably representatives from major MNEs – will be invited to comment on how they see the contribution of FDI to economic development and how this contribution could be enhanced in the future. They will also be invited to comment on the evolution of their investment strategies and what that means for host economies.

***Questions:***

- *What has been the experience of host countries concerning the economic benefits of FDI? What are the areas for satisfaction? Disappointment? Does FDI contribute to the fulfilment of social objectives? In what ways?*
- *How do investors assess the new policy environment? What are the priority areas for improvement?*
- *If the economic benefits of FDI are strongly correlated with the degree of integration of the foreign subsidiary into the global operations of its parent, what are the factors that could further enhance such integration?*

***Session III: Corporate responsibility: The importance of standards and the role of voluntary codes of corporate conduct***

Judging by their growing number and coverage, voluntary codes of corporate conduct have gained prominence in recent years. These corporate codes form part of a broader effort by many multinational firms to improve their standards of ethical conduct on a worldwide scale.

Companies have come under increasing pressure from consumers and from non-governmental organisations to adhere to more demanding behavioural norms. Employees too have an important impact. Leading companies find it necessary to meet high expectations of corporate behaviour to ensure they can recruit among the most able and motivated personnel. Many companies say that they see no long-term trade-off between their duty to generate profits for their shareholders and their wider sense of social responsibility as corporate citizens.

Indeed, shareholdings may be enhanced if the interests of all stakeholders are taken into account.

Internal management controls provide firms with an essential tool to make good on their ethical commitments. Standardised management systems have emerged which typically consist of a code of conduct containing commitments to comply with the law and to engage in a process of continual improvement and of internal management procedures designed to make these commitments operationally effective. Two examples are ISO 14000 in the environment and SA 8000 for social standards. Specialised firms, large accountancy and consulting companies and NGOs have begun offering services (consulting, certification and auditing) designed to assist firms in doing this.

Although not legally binding, codes of conduct signal that a company is aware of the importance of social responsibility and is ready to be judged on its performance. Since they are designed by the company itself they fit with the activities of the firm and its culture better than any law could do and can be quickly adapted to changing circumstances. Effectiveness however depends heavily on the commitment of the company's management and staff.

Codes vary in many respects: some target specific areas such as labour or environment, health and safety, while others cover a range of issues including bribery; they may address employees, suppliers and contractors or the general public; they may have external monitoring, internal monitoring or none at all.

### ***Questions:***

- *How significant are these efforts by firms? Have they translated into significant changes in how these firms conduct business?*
- *Are the pressures of market competition necessarily in conflict with pressures for more responsible corporate behaviour? Where are the most severe conflicts likely to be found?*
- *What are the ingredients of successful integration of high standards of corporate behaviour within a company?*
- *What monitoring and implementation steps are necessary in order to ensure that the commitments made by companies are honoured? Is the involvement of an external party necessary (i.e. auditors or certifiers)?*

- *What is the role of external standards such as ISO 14000 for the environment and SA 8000 for social accountability? Are they complementary to the individual company codes?*

#### ***Session IV: The OECD Guidelines for Multinational Enterprises***

The *OECD Guidelines for Multinational Enterprises* are recommendations by OECD governments to multinational enterprises (MNEs) which establish behavioural norms for the activities of these enterprises. The *Guidelines* aim to ensure that MNE activities are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between MNEs and government authorities. The *Guidelines* cover a broad range of MNE operations: employment and industrial relations, environmental protection, information disclosure, competition, financing, taxation, and science and technology.

The *Guidelines* provide a supplemental voluntary standard for responsible business conduct consistent with the laws applying wherever they operate. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing their own codes of conduct. Hence, they complement and reinforce private efforts to define and implement responsible business conduct.

The *Guidelines* form part of a wider and balanced package of OECD investment instruments (the 1976 OECD Declaration on International Investment and Multinational Enterprises), which are adhered to by the 29 OECD members, as well as Argentina, Brazil and Chile.<sup>1</sup> The Declaration includes the National Treatment Instrument (which stipulates that foreign enterprises be accorded treatment no less favourable than domestic enterprises by host country governments in like circumstances), as well as instruments designed to avoid conflicting requirements on MNEs and to promote co-operation in the area of international investment incentives and disincentives.

The *Guidelines*, like other parts of the 1976 Declaration, are not legally binding, but OECD Governments are committed to promoting their observance. The OECD Committee on International Investment and Multinational Enterprises (CIME) acts as a forum for consultation, clarification and review. National Contact Points (NCPs) in participating countries promote local awareness of the *Guidelines* and assist in dealing with issues that arise in the application of the *Guidelines* by MNEs. Through the Advisory Bodies to the OECD -- the Business and Industry Advisory Council (BIAC) and Trade Union Advisory Council (TUAC) -- both business and trade unions have

endorsed the *Guidelines* and participate in the follow-up procedures to make the *Guidelines* work.

*(a) Review of the Guidelines*

OECD countries are currently undertaking a thorough Review of the *Guidelines*.<sup>2</sup> While governments are convinced that the *Guidelines* continue to have an important role, the text and implementation procedures need updating to reflect important changes in the world economy and to ensure the *Guidelines*' relevance and effectiveness. Service and knowledge intensive industries have become more important relative to mining and manufacturing, many more firms are engaged in international business, strategic alliances and closer relations with suppliers and contractors have become more important. Large enterprises still account for a major share of international investment but small and medium sized companies now play a significant role, and MNEs have emerged in non-OECD countries. These developments need to be taken into account.

The Review process, which is expected to be concluded by June 2000, is designed to be open and inclusive. While OECD governments will take final responsibility for the text and implementation procedure, input from non-member governments, business, labour, non-governmental organisations (NGOs) and others is welcome and is being solicited both in capitals and here at OECD.<sup>3</sup> BIAC and TUAC can contribute through well-established channels, but ways are being sought to obtain the views of other interested parties. This conference provides an important opportunity for different perspectives to be brought to bear on the review process and to engage in dialogue. This may be an especially important opportunity for officials from non-member governments to explore the *Guidelines*, ask questions and give their views.

***Questions:***

- *Do participants agree that continued international co-operation among governments is needed to promote high standards of business conduct? What can governments do to help ensure that the Guidelines are a meaningful instrument in a market-based international economy ?*
- *What are the key policy areas where the Guidelines need updating, strengthening or re-casting: employment and industrial relations, environment, bribery, consumer interests, competition policy? Are there issues, such as human rights, which are not mentioned explicitly in the existing text which should be considered for inclusion?*

- *Implementation procedures associated with the Guidelines are also important. What should governments do to promote the Guidelines and help make them more effective?*
- *Business and labour have an established role through BIAC and TUAC in promoting the Guidelines and participating in their follow-up? Should business be more active in encouraging observance of the Guidelines? What role could NGOs play?*
- *To what extent does the effectiveness of the Guidelines depend on a sound framework of government policy and the rule of law? Are higher standards of corporate conduct evident in countries offering non-discriminatory investment policies and effective investment protection?*

*(b) The Role of the Guidelines beyond the OECD Area*

Given the increasingly global operations of MNEs and the expanding universe of MNEs, including from developing countries, the role of the *Guidelines* outside the OECD area is also under discussion in the current Review. At present, the *Guidelines* clearly apply to the activities of enterprises operating in the territories of OECD-member countries, but it is not so clear that the *Guidelines* are addressed to the activities of the same enterprises when they operate in non-member countries. (Clearly, the *Guidelines* do not apply to the activities of enterprises having no activity in the OECD area.)

The *Guidelines* could be seen as providing a benchmark for corporate behaviour worldwide. From the viewpoint of enterprises, the *Guidelines* could provide a focal point for their efforts to contribute to sustainable development and to improve their global corporate image. Officially-sponsored *Guidelines* give helpful directions on important issues of social responsibility, such as environment and labour standards, and may help avoid misunderstandings and conflicts in host or home country societies.

In practice, many MNEs already apply their standards worldwide, and the *Guidelines* may be said to encourage “good corporate practice” in all countries. Not to confirm this principle might imply that OECD Members apply a double standard, endorsing norms of corporate conduct that are lower than those of the *Guidelines*, as long as they are applied outside the OECD area.

From the viewpoint of non-member economies, the application of worldwide standards by leading international companies may provide direct benefits in terms of corporate integrity, disclosure of information, employment conditions and environmental stewardship. There may also be valuable indirect

benefits via demonstration effects for local companies, training of personnel and assistance in the development of local and national laws and regulations.

Nevertheless, the *Guidelines*' effectiveness depends on a delicate interplay of national rules and international standards, corporate behaviour, and relations between companies and host governments and sometimes between host and home governments. Hence, calling on companies to apply OECD standards of behaviour worldwide could be viewed by some as encroaching on the sovereignty of countries that have not adhered to the *Guidelines* and do not participate in their follow-up procedures. That said, the *Guidelines* would not override the domestic laws of host countries because they are not legally binding and they do not change the principle that MNEs are subject to the laws and regulations of the country in which they operate.

If non-member governments wished to associate themselves with the *Guidelines*' work, various possibilities might be considered, including eventually adherence to the instrument on the same terms as OECD countries. Informal arrangements might include workshops to promote principles of corporate responsibility generally, or more targeted events to allow discussion and clarification of the functioning of the *Guidelines*.

### ***Questions:***

- *In an increasingly global economy, how can an international set of recommendations by states to MNEs, such as the OECD Guidelines, assist in the proper functioning of markets by setting a benchmark for corporate behaviour worldwide?*
- *Given that most MNEs are headquartered in OECD member-countries and often global in scope and aspiration, would it be helpful that the Guidelines state explicitly that OECD-based companies should respect the Guidelines wherever they operate throughout the world?*
- *If the Guidelines are to be applied globally, do the text and procedures need to be adapted to the circumstances and concerns of non-member countries?*
- *Is there reason for concern about the competitive effects on MNEs headquartered in OECD countries versus competitors in non-member countries not subject to the Guidelines?*
- *Are non-member governments interested in exploring ways of closer cooperation with OECD countries on Guidelines matters? Is there interest in promoting the Guidelines in relation to their own enterprises, especially those that operate internationally?*

- *How would non-member governments respond to requests for co-operation from OECD governments with regard to the behaviour of an OECD based company operating in their territories?*

### ***Session V: Concluding session***

The concluding session will bring together the various elements of the previous discussions and highlight their possible implications for international investment rules and international development. It will also seek to identify areas that would deserve further co-operative work in the areas of FDI policy, corporate responsibilities and codes of conduct, including the OECD *Guidelines for Multinational Enterprises*.

## NOTES

- 1 For simplicity, this note refers to OECD countries, even where the intention is to include the three non-members that have adhered to the Declaration.
- 2 Earlier reviews occurred in 1979, 1984 and 1991.
- 3 Further information on the Guidelines, including the current text of the Guidelines and a report on the Framework for the Review can be found on the OECD website at [www.oecd.org/daf/cm/cime/mneguide.htm](http://www.oecd.org/daf/cm/cime/mneguide.htm)

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