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Background information for Session 2 of the Roundtable

“BUILDING INVESTMENT POLICY CAPACITY: THE PEER REVIEW PROCESS”

The present document is work in progress. It has been prepared by the OECD Secretariat and does not necessarily reflect the views of the OECD or its Members. It will be revised in light of the Roundtable's discussions and comments by the OECD Investment Committee delegates.

“BUILDING INVESTMENT POLICY CAPACITY: THE PEER REVIEW PROCESS”¹

Executive summary

The purpose of this Note by the Secretariat is to describe how the OECD uses peer reviews – the Organisation’s most distinctive and renowned working method – to build investment policy capacity. It is intended as a contribution to responding to the mandate by the OECD/Africa Investment Initiative launched with NEPAD in 2003 in Johannesburg to “share OECD’s investment policy methodology and experience with NEPAD in support of its effort to develop a set of relevant best practices for African governments seeking to increase FDI”. It also responds to similar interest expressed by OECD’s partners from other regions.

Perhaps at no other time in postwar history has the awareness for the economic benefits of investment, notably international investment in an increasingly more global world, have been so widely shared across countries. Perhaps at no other time either has policy-makers’ determination to construct attractive enabling environments for investment been so strong. It is therefore not surprising that the subject of “building policy capacity” for maximizing investment’s contribution to economic growth and sustainable development, notably in the countries with the greatest needs, has found its way to the top of the international economic agenda. This issue rates very high in Doha Development Round, the UN Millennium Declaration and the Monterrey Consensus.² “Enabling globalization” was this year’s OECD Ministerial Council Meeting central theme. On May 3-4 2005, Ministers publicly stated their commitment “to helping countries build sound investment environments” and “increasing OECD investment policy-cooperation programs with leading developing countries, Africa (NEPAD), the Middle East and North Africa (MENA) and other regions”.³

But what does an “investment enabling environment” exactly mean? How do policy-makers acquire the capacity to shape their investment environment for the improved benefit of their economies and their societies? Many economists and analysts have brood over this question recently. While they do not necessarily agree on the solutions, they concur with the fact that creating an enabling environment for investment is an eminently complex task.

This complexity results from the large number of policy communities, institutions and influences involved (formal and informal, government and business, domestic and international), from the diversity of human interactions and economic transactions that take place and from exogenous factors such as technological or structural change, not to mention geography, weather or resource endowments.

Its most direct consequence is that there are no one-fit-all solutions -- the same policy action in two different environments will have two different impacts. Policy-makers do need to find their own solutions. Fortunately, they are not alone in this undertaking. They may learn from each other by exchanging information and experiences, giving each other advice or assistance and over time develop a “pool of good policy practice” on which they can draw to develop their own policies. International organisations can also

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1. This Note was prepared by Marie-France Houde, Senior Economist at the OECD Investment Division.
 2. The Monterrey Consensus identified private capital, including foreign investment, as “vital complements to national and international development efforts” and emphasised the need “to create the necessary domestic and international conditions to facilitate direct investment flows”.
 3. OECD Statement to the follow-up of the UN Millennium Declaration and Monterrey Consensus, paragraph 2. http://www.oecd.org/document/10/0,2340,en_2649_201185_34842314_1_1_1_1,00.html

help by creating “international communities of investment policy practices” on which policy practitioners can draw to pursue their own reform efforts.

This has been the objective of *OECD investment policy peer reviews (IPRs)*. This document describes investment-relevant peer review processes in selected other international organisations and highlights the main features of the OECD reviews which make them perhaps a unique government-to-government process devoted to investment policy in existence today. The main lessons that can be drawn from the OECD experience can be summarized as follows:

- Peer review has proven a well suited capacity building mechanism for addressing complex and inter-disciplinary issues such as those involved in designing and implementing effective policies for creating a sound business environment.
- Participating “peers” should involve government officials with a substantive role in the investment policy decision-making and implementation process.
- Peer review works best when recognised benchmarks for evaluation and recommendation, such as the ones derived from the OECD investment instruments and related jurisprudence, are available and used.
- Effective investment policy peer review requires a significant engagement on the part of the country reviewed and other actors in the process. OECD experience shows that this entails a thorough inter-agency preparation by the reviewed government and readiness to follow through the review’s recommendations and peer monitoring.
- The participation of countries from different regional perspectives and levels of development is a clear advantage.
- Investment policy reviews should be conceived as a living tool allowing for flexibility in taking up new issues. They can be an input into the collective development of new best practices.
- Publication of the results is desirable. It contributes to transparency and provides support for domestic reform efforts.

**“BUILDING INVESTMENT POLICY CAPACITY:
THE PEER REVIEW PROCESS”**

1. This note is divided into three parts. Part 1 discusses the concept of “capacity building” in light of what research has to say about the role of the “communities of policy practices” model in the reform process. Part 2 explains why the “peer review process” may be considered to be close to a perfect fit to this capacity building model and why it has become increasingly more popular among international organisations. Part 3 describes the main features of the OECD *investment policy* peer review mechanism, its main achievements and its expected future contribution to the improvement of enabling investment policy frameworks.

Part 1. The Challenges of Building Policy Capacity and the Role of “Communities of Policy Practices”⁴

2. The concept of capacity building for enabling environments has received considerable attention lately. Among other contexts, it is mentioned in both the Doha Declaration and the Monterrey Consensus, and has become an important concept for international economic policy. But what is it exactly? How do policy practitioners acquire it?

3. This chapter will attempt to provide some answers to these complex questions. It will recall interesting findings of the academic research on the importance of the “communities of policy practices” model in building capacity for enabling environments. The following chapter will in turn explain why “peer reviews” come close to a perfect fit of this model.

Defining the concepts

4. “Capacity” can be generally defined as the human inputs used to design, maintain, render effective and adapt the enabling environment. The “enabling investment environment” can in turn be defined as the array of social, technical, legal and regulatory processes that societies use to influence investment decisions and business behaviour.

5. Enabling environments are primarily characterised by their *complexity*. Such complexity stems from the large number of institutions and actors that interact at the national and international levels and from technical, social and organisational change that originates from various sources. These various players also evolve in a landscape of perpetual change.

6. Assessing these various influences, converting them into law, regulation and informal pressure and then translating these into business practice is also a complex task. *Managing this complexity* poses major challenges for policy-makers.

4. This part of the Note is based on a recent research internal paper prepared by Kathryn Gordon, Senior Economist at the OECD Investment Division.

7. One is “lack of predictability”. Lack of predictability means that it is difficult to foretell what will happen as a result of a policy change owing to the many variables and interactions that need to be taken into account.

8. Another is “low replicability”. Low replicability means that the same policy action taken in different contexts can produce different results.

9. The third challenge concerns the “human dimension” of the enabling environment. In other words, how do policy actors identify problems, propose improvements and monitor their part of the environment? Since human capital of various sorts (e.g. factual knowledge, management expertise, and leadership) underpins both formal rules and business compliance with these rules, it is of crucial importance to the functioning of the enabling environment. But how do policy practitioners acquire this capacity?

Learning theory

10. Sociologists that have studied adult learning in complex, group situations have shown that learning is not based mainly on transmission of abstract knowledge “from the head of someone who knows to the head of someone who does not”.⁵ Unlike school-based learning for children, adult learning about *complex phenomena* cannot rely solely on didactic, authoritarian approaches.⁶

11. Adult learning is necessarily a *collective effort* and involves *collaboration*. It is a process in which the learner comes to understand and share the view of past experiences accumulated by the group -- as reflected in the stories of these experiences that the group has developed. In this context, “understanding” means, in particular, that the learner shares the views contained in the descriptions and, perhaps more importantly, can use them in dealing with problems encountered in its own environment. Learning is thus a process in which the learner becomes a member of a group that shares the same “stories” and acquires the ability to use these stories as a guide for action. Such groups have been referred to as “communities of practice”.⁷

12. Research has also confirmed the importance of establishing a *learning community* or “communities of practice” in effecting systemic organisational change and transformation.⁸ Communities of practice or learning communities may arise on their own or they may be deliberately established by bringing together individuals and groups with diverse knowledge and experience. Their knowledge and experience enables or facilitates better gathering of information, building and sharing of knowledge and best practices, and engaging in complex problem solving.

5. Brown, John Seely and Paul Duguid (1991), “Organisational Learning and Communities of Practice: Toward a Unified View of Working, Learning and Innovation”, *Organisational Science*. Special Issue on Organisational Learning, Volume 2, Number 1, p. 47.

6. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002).

7. Lave, Jean and Etienne Wenger (1999) *Situated Learning: Legitimate Peripheral Participation*. Cambridge University Press, Cambridge.

8. See, for example, T.A. Kochan and M. Useem, “Achieving Systemic Organizational Change,” in T.A. Kochan and M. Useem (eds.) (1992), *Transforming Organizations*, Oxford University Press.

Adversarial and coercive relationships may undermine learning

13. Adversarial and coercive relationships have been found to often undermine effective learning by taking away the responsibility, opportunity and motivation to learn.⁹ By contrast, opportunities for learning are usually enhanced when risks can be taken without fear of punishment, there is a climate of trust, and open and honest communication is honoured.¹⁰

The role of co-operative or consensus-based approaches in promoting learning has been reinforced by research on ways to improve countries' compliance with international law. This research emphasises that there are many different reasons why government actors fail to meet prescribed standards and suggests that co-operation can play an important role in enhancing countries' compliance. At least six different reasons have been articulated for countries' non-compliance with prescribed standards. First, governments and/or units of governments may perceive that the benefits of non-compliance exceed the costs of non-compliance and deliberately chose not to comply. Second, non-compliance may result from a lack of resources. Third, non-compliance may follow from administrative or technological incapacity to implement the standard or policy as planned. Fourth, the standard may not be clear and may be susceptible to more than one meaning. Fifth, the actions taken to meet the standard may be on the "right track" but not yet have achieved their goal. Sixth, non-compliance may result from inadvertence. Often, more than one reason will be responsible for any particular act of non-compliance. See, for example, A. Chayes and A.H. Chayes, *The New Sovereignty. Compliance with International Regulatory Agreements*, Harvard University Press (1995). Cooperative, learning based approaches are likely to be most useful in tackling the second to sixth reasons for non-compliance.

14. In general, learning is more likely where a spirit of enquiry exists, when there is a willingness to articulate the values, beliefs and assumptions, and when change is seen as an opportunity for growth and improvement.¹¹

Abstract knowledge also has limitations

15. There is also the need to *integrate abstract policy advice with knowledge of local conditions*. The literature on learning underscores the limitations of abstract knowledge when trying to make even moderately complex decisions or to solve even relatively simple, open ended problems.¹² While such knowledge is certainly useful, it is rarely sufficient. *Credit must be given to the knowledge and experiences of those who make and implement policy in the domestic environment*.

9. See also T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), pp. 24-25, 40, 52.

10. H. Preskill and R.T. Torres "The role of evaluative enquiry in Creating Learning Organizations" in M. Easterby-Smith, L. Araujo and J. Burgoyne, *Organizational learning and the learning organization*, Sage Publications (1999), p. 94.

11. H. Preskill and R.T. Torres "The role of evaluative enquiry in Creating Learning Organizations" in M. Easterby-Smith, L. Araujo and J. Burgoyne, *Organizational learning and the learning organization*, Sage Publications (1999), p. 94.

12. See, for example, T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), p. iv, highlighting that learning should not be inert, but should be "tied to building the capacity to act for improvement".

But narrative descriptions are useful

16. Learning theory has underscored in this context the usefulness of *narrative descriptions*. The value of narratives is in that they help organise and deal with information.¹³ Adults have been found to learn better when their past experiences and personal knowledge is respected and used as a resource for learning, and when they have an opportunity to talk about and share their experiences.¹⁴ Story construction and telling is also valuable because it provides a richer description of problems faced and of how and why various actions were taken. The resulting stories serve as repositories of accumulated information and understanding, which are useful when encountering similar challenges in the future. When one has a clearer understanding of how and why previous decisions were made, what has worked and what has not, and the nature of problems or obstacles faced, it is easier to make new decisions of better quality. For similar reasons, narratives enable the making of more accurate assessments of performance.

And evaluation stimulates learning

17. *Evaluation* promotes learning in a number of ways. First, evaluation assists those whose performance is being evaluated to identify their strengths and weaknesses, understand more clearly their roles and duties, as well as ways in which they could perform better. Second, evaluation enables the evaluator to have a clearer idea of the challenges faced by those being evaluated and what they need to be able to perform better. The utility and success of evaluation in promoting learning is generally enhanced when those whose performance is being evaluated are active participants in the process and are encouraged to engage in self-assessment.¹⁵ The kinds of activities that are believed to best promote learning include asking questions, identifying and challenging values, beliefs and assumptions; reflection; dialogue; collecting, analysing and interpreting data; developing plans of action based on what has been learned; and implementation.¹⁶ These activities enhance learning by helping individuals and teams develop new knowledge, insight, and skills.¹⁷ They help build understanding, clarify issues, identify misconceptions, and determine needs for and generate additional information.¹⁸ They also assist in making more clear the motivations and rationales for action, creating the possibility of acting in other ways.¹⁹

No end to learning

18. Finally, building capacity requires that *there be sustained opportunities for learning*. Ideally, the learning should continue after the policy intervention is finished. The delivery of best practice policy recommendations, without more, provides little in the way of learning opportunities. Nor does it promote ownership of the recommendations. To reinforce what is being learned, to best determine its utility, and be able to resolve uncertainties about how the policy advice should be implemented in practice, there should

13. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002) citing to J. Bruner and H. Amsterdam, *Minding the Law*, Cambridge: Harvard University Press (2000).

14. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), p. 25.

15. H. Preskill and R.T. Torres, "The Role of Evaluative Enquiry in Creating Learning Organizations" in M. Easterby-Smith, J. Burgoyne and L. Araujo (eds.), *Organizational Learning and the Learning Organization*, Sage Publications (1999).

16. Ibid. at 92, 94.

17. Id.

18. Ibid. at 93, 94.

19. Id.

be opportunities to put into practice what has been learned while the learning is occurring. One of the benefits of establishing a community of practice is that it provides a context for sustained interactions between the members of the community, including after the immediate objectives for the establishment of the community have been achieved.

Three important consequences

19. *First*, the main actors in building effective enabling environments are located in the domestic environment. These actors are the politicians, civil servants and representative of the business community, trade unions and civil society that can act as knowledgeable and legitimate proponents for change. They are necessarily at the forefront of efforts to build the enabling environment because they have the legitimacy and the local knowledge required to do the job.

20. *Second*, in trying to help countries build better enabling environments, international organisations should ensure that they do not inadvertently stifle domestic efforts by being overly interventionist. They should have a realistic view of what their contribution can be and avoid causing unintended harm through well meant intervention.

21. *Third*, the “communities of policy practice” model is a good model for building capacity for enabling environments. While domestic policy practitioners need to construct their knowledge of policy within their own environment, they can and need to learn from other policy actors as well.

Part 2. Experiences with Investment Policy Peer Reviews

22. The previous section described the concept of capacity to act for the improvement of enabling environments and the advantages of the communities of practice model as a policy capacity building instrument in an increasingly complex world. The purpose of this section is to show that the “peer review” mechanism approximates this model rather well and how major international organisations have use in pursuance of their respective objectives. This overview is intended to provide a better insight of the OECD review process, and notably that of “investment policy peer” reviews, which is examined in the last section of this Note.

*Characteristics and objectives of international peer review mechanisms*²⁰

23. While the term of international “peer review” has not been rigorously defined, it is generally understood to mean an intergovernmental process whereby a country’s performance is examined or assessed by other countries with the ultimate goal of helping the reviewed country improve its policy making, adopt and adapt best practices to national circumstances, and comply, as the case may be, with established standards and principles in a particular policy area.

24. “Peer review” is also often defined in relation to what it is not. It is a *non-confrontational* process which does not in itself involve sanctions in case of breach of obligations. It is a co-operative process which heavily relies on mutual trust and shared confidence among the participants.

25. As illustrated in the second part of this section, existing international peer review mechanisms share several of the features and functions of the “communities of practice” policy capacity model described in the previous section. They may, in particular, fulfil the roles of:

- *Assembler of policy practitioners.* Peer reviews may bring together policy practitioners that broadly share the same values and objectives and have the authority or the expertise or both to address and correct the problems they are confronted with. The greater is their involvement, the greater is the likelihood that improvements in policy making will eventually materialise.
- *Peer learning and dialogue.* Peer reviews provide a neutral and friendly forum for exchanging information, attitudes and views on policy decisions and their application and understanding their rationale and motivations. Participants also learn from each other about best policies and practices and how these “best” policies and practices might be applied in their own policy context. This is also referred by regulatory economists as competitive benchmarking, the idea being that by judging their own performance relative to other colleagues policy makers may be able progress in pursuing their own reforms.
- *Policy advice and policy convergence.* The mutual trust and collegial approach that characterises peer reviews are favourable to an *objective and neutral evaluation* of the performance of a given country by its peers and its general acceptability by the recipient country. This process may lead the peers to offer policy advice and make constructive proposals on the relevant policy dilemmas facing the reviewee. It may also force them to evaluate their own policies. The reviewee, on the other hand, may use the group to test the

20. The analysis in this chapter is based on *Peer Review: An OECD Tool for Co-operation and Change*, OECD, Paris, 2003 and *Peer review: Merits and Approaches in a Trade and Competition Context*, 6 June 2002 (COM/TD/DAFFE/COMP(2002)FINAL (www.oecd.org/olis/2002doc.nsf/LinkTo/com-td-daffe-comp(2002)4-final).

effectiveness or acceptability of a particular idea, opinion, or point of view. Over time, peer review may encourage policy co-operation and convergence.

- *Information gathering and dissemination.* Peer reviews often entail the collection of information about the policies of the participants and other useful factual information on their particular situation. If this information is made public, it also benefits private actors and the general public. Peer reviews can play an important role in enhancing transparency.
- *Compliance monitoring.* Peer reviews can also be used to enhance progressive compliance with internationally agreed policies, standards, and principles. The soft law nature of peer review may prove better suited to encouraging incremental improvements in policy making than a traditional enforcement mechanism by focusing on achievable goals which take into account a country's policy objectives and its performance in a historical and political context.
- *Technical expertise and assistance.* Peer review may supply expertise in policy-making that is scarce in certain countries. For example, training of government officials can occur informally through the interaction of secretariat staff and government officials during the peer review process.²¹
- *Delivering the message.* This is an extension of the policy advice role. By providing countries with policy recommendations on certain topics, peer reviews may disseminate the prevailing consensus and best practice to government and policymakers worldwide, and provide international support for reviewed governments' reform efforts.

International Peer Reviews Mechanisms

26. Given their propensity to build capacity for reform and better policies, it is not surprising that peer reviews have become an increasingly popular working method among international organisations. For example, all the Bretton Institutions – the IMF, the World Bank and the WTO – now have peer review mechanisms in one form or another even though this was not necessarily part of their original mandate or primary functions. The OECD, on the other hand, has adopted this method since its creation in 1961 and, as fully documented in a recent OECD publication,²² peer review characterises now characterises the Organisation's work in most of its policy areas.

27. It is interesting to observe how international organisations have adapted the peer review process to their respective needs, and there are indeed, a number of noticeable differences. These differences may be attributed to the different mandates or memberships of the organisation, different political sensibilities or different budgetary or resources constraints among others. Some of the peer reviews emphasises peer learning through gathering and exchange of information and technical assistance by the Secretariats of the organisations concerned. Others are more prescriptive or political. What is starkly apparent, however, is that, despite these differences, peer reviews constitute a valuable policy capacity building tool for the countries concerned, well adapted to inter-governmental discussion of complex issues. This is confirmed by the remainder of this section which examines the contribution of the WTO, UNCTAD, APEC and IMF peer review mechanisms to investment policy capacity building. Details on the respective coverage and practical modalities of these schemes are provided in Annexes 1-4 to the present Note.

21. Chayes, A., and A. Chayes (1995), *The New Sovereignty: Compliance with International Regulatory Agreements*, Harvard University Press, Cambridge, MA, p. 198.

22. *Peer Review: An OECD Tool for Co-operation and Change*, OECD, Paris, 2003. The reader is accordingly invited to refer to this study since the present Note will not reproduce this information.

Investment Aspects of WTO Trade Policy Review Mechanism

28. The Trade Policy Review Mechanism (TPRM), whose GATT origins date back to the late 1980s, was established during the Uruguay Round of multilateral trade negotiations as the main transparency mechanism of the World Trade Organization (WTO), the *looking glass*²³ through which members examine each other's trade policies. It was not intended to serve as a basis for the enforcement of specific obligations under the WTO Agreements or for dispute settlement procedures, or to impose new policy commitments on Members. Rather it was conceived as a genuine capacity building instrument for collective understanding and appreciation of individual member's trade policies and practices and their impact on the functioning of the international trading system.

29. The TPRM is required to *periodically* review *all* Members. The four Members with the largest share of the World Trade (currently the European Union, the United States, Japan and Canada) are to be reviewed every two years, the next 16 every four years, and the remaining countries are reviewed every six years. A longer interim period may be fixed for least-developed country Members. The first reviews were mostly done on a voluntary basis, while subsequent reviews follow a fixed cycle. At the end of 2004, 197 reviews have been conducted through the TPRM, having covered 114 out of 148 Members, representing around 88 per cent of the share of world trade.²⁴

30. The TPRMs cover all trade and investment policy issues addressed by the various WTO agreements, including Mode 3 service-related activities, trade-related aspects of intellectual property and trade-related investment measures. The assessment is carried out against the background of the wider economic and development needs, policies and objectives of the Member concerned, as well as of its external environment.

31. As acknowledged by the practitioners,²⁵ beyond constituting a wealth of information, the TPRM has served as an independent, objective and non-confrontational forum for assessing WTO Members' trade and economic policies. It has provided a useful input into national policy making, reinforcing in many instances the hands of reformers. The lessons learned have propagated through the WTO system. The TRPM has also paved the way for greater transparency across the WTO.

32. Since the late 1990s, increased emphasis has been placed on the inclusion of developing countries in the review process.²⁶ The trade policy reviews of these countries have also given a greater weight to technical assistance, which to some extent, has led them to become more prescriptive. The greatest challenge, however, with which the TPRM is being confronted, is that of matching its resources with the increasing membership of the organization. The WTO Secretariat has accordingly attempted to reduce the burden of Members under review as well as to space the reviews more evenly over time while paying more attention to possible clashes with regular WTO meetings. Other acknowledged weaknesses

23. Expression used by a seminal article by Sam Laird, "The WTO's Trade Policy Review Mechanism – From Through the Looking Glass, *The World Economy*, Vol.2, No.6, August 1999, Blackwell Publishing, UK, pp. 741-764.

24. WTO (2004) *Report of the Trade Policy Review Body for 2004* (WTO Document WT/TPR/154, 28 October).

25. See for instance the 1996 *Trade Policy review Body Report to the Singapore Ministerial Meeting* (WTO document WT/TPR/27, 22 October).

26. The increased importance attributed to the reviews of Least Developed Countries (LDCs) has led to 20 such reviews since 1998. For chronological list of TPR and TPR by country see http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm

are the unequal level of attendance of members to the reviews – which is lower for smaller and developing countries – and the lack of recommendations or prescriptive elements in the reports.

UNCTAD Investment Policy Reviews (IPRs)

33. UNCTAD Investment Policy Reviews were formally launched at UNCTAD IX in Midrand, South Africa in May 1996, to help developing countries and transition economies to help improve their investment policies and to familiarize governments and business with their investment environment and policies. Support for this programme was reiterated on the occasion of UNCTAD in Bangkok, Thailand, in February 2000 and UNCTAD XI in Sao Paolo, Brazil, in June 2004.

34. The reviews are initiated at the request of individual governments and they are prepared in close cooperation with national governments. The views of investors and other stakeholders are also actively sought through interviews, surveys and workshops. The resulting reports analyse the country's international and regional comparative advantages in attracting investment. They also make concrete recommendations to improve the investment climate. This is done, *inter alia*, by reference to good international regulatory practices by follow-up technical assistance or training to help the authorities implement the recommendations.

35. UNCTAD's IPRs are funded by donor governments,²⁷ UNDP and in some cases host governments. A number of the IPRs are funded through cost-sharing arrangements. By the end of 2004, IPRs have been completed for Algeria, Botswana, Ecuador, Egypt, Ethiopia, Ghana, Lesotho, Mauritius, Nepal, Peru, Sri Lanka, Tanzania, Uganda, and Uzbekistan. The IPRs of Benin, Brazil, Colombia, Iran, Kenya and Zambia are under way, and a number requests for IPRs are pending.²⁸

36. While the programme has picked some speed recently, UNCTAD IPRs still represents a relatively young process and most of the burden still lies in UNCTAD Secretariat's shoulders. While the review takes place under the auspices of the UNCTAD Investment Commission, most of the reviewers are based in Geneva missions and they often lack expertise in the investment policy area. Furthermore, developed countries, which are the main source of investment in developing countries, do not, as a general rule, actively participated in the process. The UNCTAD has recently approached the OECD to explore the possibility of conducting joint investment policy reviews.

APEC Individual Action Plan Reviews

37. Asia-Pacific Economic Cooperation, or APEC, was created in 1989 to further enhance economic growth, cooperation, trade and investment in the Asia-Pacific region. In its own words, APEC is the only inter governmental grouping in the world operating on the basis of non-binding commitments, open dialogue and equal respect for the views of all participants. APEC has no treaty obligations required of its participants. Decisions are reached by consensus and commitments are undertaken on a voluntary basis.²⁹

27. France, Norway, Germany, Italy, Sweden and Switzerland in particular.

28. Requests have been received from Bangladesh, Belarus, Bolivia, Cambodia, Central African Republic, Gabon, Guinea-Bissau, Kyrgyzstan, Lebanon, Mali, Mauritania, Moldova, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Rwanda, Senegal, Swaziland, Republic of Congo-Brazzaville, Republic of Trinidad and Tobago and Vietnam.

29. http://www.apec.org/apec/about_apec.html

38. APEC's 21 "Member Economies"³⁰ – constitute nonetheless one of most powerful and economically dynamic region in the world. They account for more than a third of the world's population (2.6 billion people), approximately 60 per cent of world GDP (US\$19, 254 billion) and about 47 per cent of world trade. They have generated nearly 70 per cent of global economic growth in its first 10 years.

39. The consensual and voluntary character of APEC and its diversified membership have led it to adopt the peer review mechanism as the main operational tool for achieving the "Bogor Goals" *of free and open trade and investment in the Asia-Pacific by 2010 for industrialised economies and 2020 for developing economies*. This mechanism was introduced in 1998 to review, on a voluntary and non-binding basis, Individual Action Plans (IAPs) submitted annually by Members to report progress on the Bogor goals in accordance with the Osaka Action Agenda.³¹ Investment was included as one of the 15 issue areas for reporting progress on the implementation of the Bogor goals.

40. The value of the IAP peer review process has been underlined by APEC Ministers several times.³² At the 11th APEC Ministerial Meeting in Auckland in 1999, APEC Ministers noted the value of the IAP peer review process and stated that APEC should seek to raise the profile and increase the rigour of the process. As part of the 2000 work programme, Ministers directed officials to consider conducting regular peer reviews of Members.³³ In 2001, the 13th APEC Ministerial Meeting in Shanghai adopted a Proposal by Japan to increase the objectivity and transparency of the IAP peer review process. An improved peer review mechanism was launched. At the 16th APEC Ministerial Meeting in Santiago in 2004, Ministers reaffirmed their commitment to complete all twenty-one IAP peer reviews in early 2005 in order to support preparations for the mid-term stock-take to be conducted over the year.³⁴ This mid-term stock-take review is under preparation.

Investment Aspects of IMF Country Surveillance Mechanism (Article IV consultations)³⁵

41. IMF Article IV consultations with its member governments is the Fund's main capacity building instrument. Its existence derives from its general mandate to oversee the international monetary system and members' compliance with their general obligations under the Agreement. This role has expanded considerably over the years after the collapse of the Bretton Woods system which led the Fund to abandon its initial post-war functions on the par value system and the convertibility of the current account and turn more broadly to the surveillance of the exchange rate and economic policies of its members.

30. APEC's 21 Member Economies are Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Republic of the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; Viet Nam.

31. The Osaka Action Agenda, adopted in Osaka, Japan in November 1995 created a framework for meeting the "Bogor Goals" through trade and investment liberalisation, based on policy dialogues and economic and technical cooperation. http://www.apecsec.org.sg/apec/leaders_declarations/1995.html

32. Woo, Yuen Pau (2003), "A Review of the APEC Individual Action Plan Peer Review Process", paper prepared for the APEC Study Centre Consortium Conference, Phuket, Thailand, 25-28 May.

33. OECD (2003), *Practical Modalities of Peer Review in A multilateral Framework on Competition*, OEC Paris (CCNM/GF/COMP/TR(2003)10), pp.20-21.

34. In the 2002-2004, fifteen IAP Peer Reviews of APEC Members were completed. The peer reviews of the remaining six Members, Brunei Darussalam, Indonesia, Malaysia, Philippines, Russia and Viet Nam, are scheduled to be completed by mid-2005.

35. For a detailed discussion of IMF surveillance practices see www.imf.org/external/np/exr/facts/surv.htm

42. The Fund conducts *every year* bilateral consultations with the majority of the organization's 184 members.³⁶ These consultations involve detailed analysis of member countries' economic and financial situations as well as advice for the improvement of their economic and financial policies. While investment is not the main focus of IMF country reports, their assessment of macro-economic performance provide one of the most reliable means for evaluating the investment environment. In addition, IMF staff reports cover various aspects of investment policy. Privatisation, deregulation, investment in infrastructure are recurrent themes of current IMF consultations.

43. The task of overseeing of surveying practically the entire international monetary system "to achieve financial stability and sustainable growth" is an enormous one and this has had some important consequences.³⁷ The Executive Board may not have the time required to discuss in depth the Article IV reports and this may limit the interaction between Executive Directors. The bulk of bilateral surveillance is therefore undertaken primarily by IMF staff. This means that both the form and content of the IMF advice – which reflects the collection of policy lessons and prescriptions compiled over the years and sees as the foundation of IMF wisdom – are, to some extent, determined informally and in the context of bilateral interaction with the country surveyed.

44. The Article IV consultations provide, however, a form of peer review system dealing with members of with quite different levels of government and quite different levels of development. For developing countries, the Article IV consultations have played an important role in assisting in the training of finance officials, both through information interaction between IMF staff and government officials and through scholarships and employment at the IMF. Even in developed countries, Article IV consultations play an important role in training, educating and stimulating the civil service and improving their understanding of processes affecting their economy.

36. In 2003 and 2004, IMF conducted 134 and 115 bilateral consultations with Member countries respectively.

37. This analysis is drawn from International Monetary Fund (1999), External Evaluation of IMF Surveillance: Report by a Group of Independent Experts IMF, Washington.

Part 3: OECD Investment Policy Reviews: a tool for attracting and maximizing the benefits of investment

45. This last part of the document is devoted to the contribution of the OECD “Investment Policy Reviews (IPRs) to increasing the ability of practitioners to make investment policy better. This section will describe the origins and purposes of OECD IPRs and explain the conduct of an IPR, its content and practical modalities.

Overview

46. The strengths of this unique investment policy capacity building tool include:

A process run by “investment peers”

OECD IPRs are conducted by the investment policy-makers themselves. These are the middle to high-ranking officials who are responsible on a day-to-day basis for the elaboration and administration of government’s policy toward foreign investment and who usually exercise an oversight on any regulatory matter affecting the investment environment. They negotiate investment treaties, represent their country at international meetings and may even be held accountable for the activities of domestic enterprises abroad. They are “the” government experts on the complex investment policy questions arising in today’s globalised world.

Who speak on behalf of the world’s largest investment players

The 30 OECD countries and 9 non-OECD adherents to the Declaration which participate in an IPR account for the bulk of world international investment flows. The views of OECD reviewers are thus truly representative of the views of the countries which play a determinant role in the field of international investment. They bring into the process a wealth of experiences and practices matched so far by no other inter-governmental investment peer learning forum.

Guided by unique policy benchmarks

OECD IPRs constitute the main implementation tool of the most developed set of multilateral investment rules in existence today – namely the OECD Codes of Liberalisation and the OECD Declaration of International Investment and Multinational Enterprises. The commonly shared values embodied in these instruments not only provide a unique sense of purpose to the reviews but also objective benchmarks for assessing the individual policies and practices of its signatories and monitoring their progress.

IPRs are comprehensive

OECD IPRs cover all investment regulatory barriers. They seek to understand their motivations, to assess their economic effects and to identify ways to dismantle them taking into account the particular circumstances of the reviewed country, without compromising the achievement of legitimate public goals. Their recommendations benefit both foreign and domestic investment.

Fair and objective

Participants have different economic backgrounds and experiences. The collegial approach of the process constitutes a guarantee that the reviewed authorities would not be asked to undertake policy actions that the peers would not, individually or collectively, be prepared to undertake.

OECD IPRs create a partnership of trust which endures a long time after a completion of a peer review.

And open to new “peers”

OECD IPRs are no longer reserved to OECD Member countries. Non-Members countries may participate in this process by adhering to the OECD Declaration on International Investment and Multinational Enterprises. Furthermore, IPRs are a central component of the Committee’s proactive strategy towards the participation of Non-Members in its work. IPRs are expected to play a key role in putting into action the *Policy Framework for Investment*.

Recommendations are endorsed at a high political level

The recommendations of the “peers” carry the weight of the 39 adherent countries to the Declaration, are normally endorsed by the OECD Council, the highest organ of the Organisation.

And followed up throughout by the reviewed authorities

OECD recommendations are addressed to high level government officials in the reviewed country. They culminate a process designed to build consensus among domestic constituencies in the reviewed country and achieve a “whole government” approach to investment. These recommendations are normally implemented. Progress reports and subsequent peer reviews allow for monitoring of results and mid-course adjustments where needed.

IPRs findings are made public

OECD IPRs are published by the Organisation. Publication reinforces the hands of policy reformers and provides a basis for discussion among investors and other civil society stakeholders. They provide a valuable and objective source of information on the reviewed country.

Origins and purposes

A catalyst to liberalization

47. The origins of OECD Investment Peer Reviews go back to the Organisation itself. In 1961, the OECD Codes of Liberalisation³⁸ mandated the Organization to promote the progressive liberalisation of capital movements and services across national frontiers through a consultation process giving precedence to understanding and persuasion over negotiation.

48. This was done by inviting Member countries to notify restrictions standing in the way to free circulation of capital, right to establishment and cross-border financial and other services and to submit themselves to periodic examinations designed to make suitable proposals for the progressive elimination of their restrictions.³⁹ Peer reviews became the main mechanism for *monitoring* and *compliance* of Members obligations under the Codes. They were used as a leverage for *locking in* past liberalization gains and as

38. See OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations, User’s Guide, OECD, 2003.

39. Article 12 of the Code of Liberalisation of Capital Movements and Code of Invisible Operations.

well as a vehicle for identifying and encouraging progressive elimination of non-conforming measures under the Codes.⁴⁰

49. The adoption of the OECD Declaration on International Investment and Multinational Enterprises in 1976 launched an unprecedented effort devoted to the improvement of the investment climate, the encouragement of the positive contribution multinational enterprises can make to economic and social progress and the minimisation and resolution of difficulties which may arise from conflicting requirements imposed on foreign investment and incentives and disincentives. The Declaration asked two major commitments from OECD countries, namely to accord *national treatment*⁴¹ to foreign-controlled enterprises operating on their territories and to recommend to multinational enterprises operating in from their territories the observance of the *guidelines* for responsible business conduct annexed to the Declaration. Peer reviews were again chosen as the main tool for promoting the objectives of the Declaration. Indeed, Member governments were invited to notify their exceptions to national treatment and submit themselves to periodic reviews of their exceptions.

50. Following the adoption of new procedures for strengthening the implementation of the National Treatment instrument of Declaration in early 1990s, a new format was introduced for conducting more comprehensive and integrated foreign direct investment policy assessments of OECD countries, and for elaborating more robust policy recommendations to OECD authorities. This format was also used for the examination of the six countries which became Members of the Organisation during the 1994-2000 period.

51. In 2000, two new decisions were taken to enhance the application and influence of the Declaration. The OECD Guidelines were extensively revised to reinforce the economic, social and environmental elements of the sustainable development agenda and new procedures were introduced to ensure their effectiveness. In the same year, the OECD Ministerial Communiqué invited the Organisation to encourage non-Members to adhere to the Declaration on International Investment and Multinational Enterprises. Investment policy reviews were again chosen as the basis for determining whether the non-Member applicant was “able” and “willing” to live up to the Declaration’s undertakings.

52. Overall, all 30 OECD countries and nine non-Member countries to the Declaration have benefited from the review of their investment policies by their peers.⁴² These reviews represent an impressive pool of knowledge and experiences on these countries’ policies and are at the root of important liberalisation steps.

53. This does not give full justice, however, of all the work accomplished over the years. In addition to “country” reviews, peer reviews have also been conducted horizontally. These “horizontal” reviews have prepared the ground for major updates and extensions of the Code’s obligations, such as that carried out on financial services at the end of the 1980’s. Horizontal peer reviews have also been conducted as means of discussing in depth what might be considered “pockets of resistance” to liberalisation, such as those conducted more recently on foreign acquisition and real estate, and FDI in professional services and

40. See *Forty Years’ Experience with the OECD Code of Liberalisation of Capital Movements*, OECD, 2002.

41. The National Treatment instrument defines *national treatment* as the commitment by a country to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like situations.

42. Argentina, Brazil, Chile, Israel; Latvia, Lithuania, Slovenia and Romania.

telecommunications services. They have been an indispensable transparency tool⁴³ and have led to robust policy recommendations endorsed at the highest level of the Organisation.

A promising new outreach instrument

54. OECD IPRs were originally conducted only among its Member countries. The political developments of the 1990s, notably in Central and Eastern Europe, created, however, an unprecedented demand on the Organisation to share its knowledge and expertise with the outside world in all its policy areas. In the investment field, the Organisation's developed at first technical assistance programmes in the form of investment guides for transition economies, conferences, seminars and interne ships. It is not until towards the latter part of the decade that investment policy reviews were conducted on non-Member countries, namely in connection with Argentina's, Brazil's and Chile's applications for observer status in the OECD Committee on Investment and Multinational Enterprises.

55. Since the 2000 Ministerial Decision to open up adherence to the Declaration to any non-Member willing and able to meets its obligations – peer reviews has become one of the most important outreach activity of the Investment Committee. In addition to the reviews of the six new adherences to the Declaration (Slovenia, Estonia, Latvia, Lithuania, Israel and Romania) flagship peers reviews have been completed with China (2003) and Russia (2004). The pro-active strategy adopted by the Investment Committee in March 2005 on the participation of non-Members in Committee work states its intention to make peer review “an important vehicle for policy dialogue” with non-Member countries. In particular, IPRs are expected to play an important role in OECD expanding investment policy co-operation programmes with leading developing countries, Africa (NEPAD), the Middle East and North Africa (MENA), and other regions as well in regard to the implementation of the “Policy Framework for Investment”.⁴⁴

Conduct of an Investment Policy Review

Content

56. The content of OECD investment policy reviews has significantly evolved over time, gaining much in breath and depth in the process. One of the most significant changes has been the shift of emphasis from blatant discriminatory measures to the consideration of broader and “behind the border” regulatory impediments to inward direct investment. In this connection, the reviews have increasingly highlighted the fact that regulatory transparency, adequate property rights protection, non-discrimination and other general principles of investment policy are of broader benefit to the business community --both domestic and foreign. Another has been a more in-depth analysis of the beneficial effects of foreign investment to the local economy. The Organisation has, in addition, paid increased attention to the way in which reviewed economies translate internal liberalisation into international commitments, either at the bilateral, regional or multilateral levels.

57. These changes have aimed to reflect the important policy changes which have taken place in the field. In the last twenty years, formal discriminatory measures have receded notoriously across countries, uncovering the importance of regulatory barriers affecting investment generally. The international investment policy community has also gained a better understanding of the interfaces between investment policy and other policy areas and the implications that malfunctioning in these areas may have on the

43. A major update of the lists of exceptions notified under the NTI has been completed in December 2004 is part of a broader effort by the Investment Committee to promote transparency in international investment policy. See <http://www.oecd.org/dataoecd/32/21/1954854.pdf>

44. http://www.oecd.org/document/61/0,2340,en_2649_34863_33696253_1_1_1_1,00.html

investment climate. The spectacular growth of international investment globally and a better realisation of its positive contribution to sustainable economic development have created a strong demand for identifying remaining obstacles to foreign investment.

58. In addition, greater attention has been given to making the peer reviews more user friendly to government officials, the business community and other interested parties. This has been achieved by presenting the information in more concise and laymen language. Another important decision has been to publicise the results of the reviews to promote investment policy transparency and enhance the hands of investment policy reformers.

59. Today's IPRs are divided into three parts, one devoted to the economic dimension of FDI in the reviewed country, the second to a diagnosis of the regulatory environment and degree of openness and receptiveness to FDI and the third to the formulation of policy recommendations.

First Part: Impact of FDI on the Reviewed Economy

60. This first part of the review consists of a general assessment of the country's performance in attracting FDI, its contribution to the economy and the channels through which this contribution is realized. It aims more precisely to situate the country in the globalisation map, identify its most pressing needs and evaluate future trends.

61. The analysis make use of various indicators such as the importance of FDI inward and outward flows and stocks, country and sectoral composition, percentage to GDP, current account and domestic capital formation. Available data on foreign enterprises assets and employees, their contribution to trade and technology are also exploited. Statistical tables and charts and bibliographical references are also provided.

62. While the Secretariat relies on its own independent research and data base to prepare the background material for this part of the review, it also often seeks concrete input from government economists and renowned research institutes in the reviewed country. This not only presents the advantage of the work done by local specialists to the attention of investment policy makers in OECD countries, but more importantly, their contribution helps to understand better the economic rationale underpinning the reviewee's policies towards foreign investment.

Second part: Informing about and Understanding Regulations

63. The *second* part of the review involves a thorough review of the country's regulatory framework for FDI and domestic business operations. The approach followed is an integrated and comprehensive analysis of the investment interface of a broad range of public policy areas. Its main objective is to identify the main impediments to inward direct investment.

64. The basic laws and regulations governing business activity are addressed first. These include in particular those dealing (at all level of government) with company law, authorisation and registration or other administrative requirements, exchange controls, acquisition of real estate, employment, competition policy, intellectual property and corruption. While the analysis may reveal the existence of discrimination, this analysis brings out more often to light non-discriminatory impediments to investment in the form of over regulation, implementation or red tape.

65. This is followed by an analysis of restrictions in key economic sectors such as finance, energy, transport, or telecommunication. These are also the areas where discriminatory measures limiting foreign participation are usually found, although their scope is now much more reduced than in the past. "Market access" barriers in the form of public or private monopolies or concessions have also been traditionally

lodged in individual sectors but their importance has also declined in recent years with deregulation and privatisation.

66. The last part of the regulatory review is devoted to more in-depth analysis of selected issues of particular importance to foreign investors. Privatisation has been a recurrent theme of peer reviews in transition or developing economies. Increased competition for mobile investments has generated great interest for a cost/benefit analysis of fiscal and non-fiscal incentives. Corporate governance and market integrity issues, such as corruption and administration of justice have also come in the limelight in many countries.

67. Finally, as a result of the rising number of bilateral investment treaties, regional agreements and double taxation agreements, most recent reviews have paid increased attention to obligations contracted at the bilateral or multilateral levels. This analysis is particularly useful in assessing the extent to which domestic reforms have been locked in the form of international commitments.

Third Part – Evaluation

68. The *third* part is devoted to the evaluation of the general performance of the reviewed country and to the elaboration of policy recommendations to the national authorities concerned.

69. For countries wishing to subscribe to the OECD Declaration on International Investment and Multinational Enterprises, the Committee must determine whether the applicant's proposed exceptions to National treatment "are not incompatible with the overall level of liberalisation expected from adherents to the National Treatment Instrument". It must also be satisfied that the applicant will undertake the necessary steps to promote effectively the OECD Guidelines for Multinational Enterprises, notably the establishment of a National Contact Point. In addition to the fulfilment of these "legal requirements", the reviews under the Declaration lead to the formulation of specific recommendations to the country's national authorities on how to further promote a favourable business climate. These recommendations are approved by the OECD Council, the highest organ of the Organisation. They form part of the Council decision's to acquiesce the applicant country request to adhere to the Declaration and are expected to be implemented the national authorities concerned. The results of the peer review are finally published by the OECD.

70. For investment policy reviews conducted outside the framework of the Declaration, as those recently conducted by the Investment Committee on China and Russia as part of its expanding co-operation with influential non-OECD investment players, the diagnosis of the Investment Committee is accompanied by constructive suggestions for enhancing the country's regulatory and institutional capacity to attract foreign investment. These are adopted by the Investment Committee. The results of the review are published by the OECD.

71. Finally, it is not unusual for these recommendations to be accompanied by an invitation to report progress on their implementation. This has been the case with the investment policy reviews of Israel and Romania. The 2004 Investment Policy Review of the Russian Federation also evaluated the progress made by this country in responding to the recommendations formulated in 2001 on the investment environment and identified further offers options for improving it further during the next cycle of co-operation which is currently underway.

Practical Modalities

72. Together with the expanded coverage the investment policy reviews and their enhanced concern for investment policy capacity building, the procedures for conducting an investment policy review have also significantly improved. Today's conduct of a peer review involves three distinct phases, namely (a) the preparatory or investigation stage; (b) the examination stage; and (c) the dissemination and follow-up

stage. It also involves three main protagonists – the reviewed, the OECD peers and the Secretariat. Each of them is called upon to make a “substantive investment” into the conduct of the review, be it in terms of time, human resources or money.

73. The holding of a peer review can be either “demand driven”, or “instrument-driven” or “Committee driven”. In the first instance, the reviewee makes the request to the Organisation. For instance, a non-Member application for adherence to the Declaration must clearly spell out the applicant government’s willingness to subject itself to a full review of its investment policies by the Investment Committee. Accession requests to the Organisation also require the conduct of an investment policy review of the prospective Member. IPRs are also an important element of Investment Committee’s co-operation programmes with Africa (NEPAD), the Middle East and North Africa (MENA) and other regions.

74. In the second instance, the Committee may indeed be required by the OECD instruments to conduct peer reviews on a country-by-country basis or across countries on a particular issue. In the third instance, the Committee takes advantage of peer reviews to engage in a more in-depth policy dialogue with major non-Member investment players.

75. A peer review is formally launched when the Organisation and the reviewed country agree on the practical modalities for conducting the review. This includes the timing of the peer review – which needs to be integrated in the Committee’s work programme -- and the sharing of the inputs and cost of the examination between the reviewee and the Organisation.

The preparatory/investigation stage

76. The objective of this initial stage is the preparation of a background analytical note by the Secretariat for the peer review to be conducted under the aegis of the Investment Committee. The background note is prepared by the Secretariat in close cooperation with the reviewed country authorities.

77. As a first step, the reviewee’s authorities are requested to submit a *memorandum* providing basic information on their country’s regulatory investment regime and other information normally covered by the review (as described in the previous section). In the case of an application for adherence to the Declaration, the applicant is also requested to provide a tentative list of its proposed exceptions to National Treatment instrument and to indicate the government’s intentions as regard to the establishment of a National Contact point for the implementation of the Guidelines for Multinational Enterprises.

78. The memorandum paves the way to a two-to-three day mission by two to three staff members of the Investment Committee to the reviewed country. It involves meetings and interviews with key governmental agencies responsible for various aspects of economic and investment policy as well as other interested parties including business, civil society and academics. The visit is usually organised by the Ministry of Foreign Affairs or the Ministry of the Economy which act as the focal point for the review.

79. Government officials normally consulted include officials from the Central Bank and Ministry of the Economy for the assessment of general foreign investment trends and their impact on the national economy, central government agencies for the assessment of the investment climate and strategic governmental priorities or ongoing reforms, regulatory agencies and line departments regarding the administration of specific regulatory requirements, restrictions, or investment incentives and investment promotion agencies. In recent years, the consultations have extended to privatisation agencies, competition policy councils, and independent regulatory agencies as well judiciary institutions (regarding issues such as corruption and money laundering). The Ministry of Foreign Affairs or the Ministry of the Economy is the interlocutor on international obligations.

80. Greater attention has also been paid in recent years to the views of non-governmental stakeholders. Separate meetings are organised with representatives of the domestic and foreign investment communities, independent research institutes or academics as well as accredited civil society representatives (such as local chapters of Transparency International). Foreign embassies and local representatives of international development banks occasionally consulted as well. These consultations have proven to be particularly helpful in identifying sensitive issues that might eventually surface during the examination itself. All precautions are taken to protect confidential information.

81. In addition, the Secretariat seizes the opportunity of the visit to “coach the “reviewee” to better prepare for the review. The visit provides the occasion to explain how the examination will be conducted and what would be expected from the reviewed delegation.

The peer review

82. The Secretariat circulates on its own responsibility its background investigation note to the Investment Committee delegates no later than two-weeks before the date of the examination. In the case of an application to adhere to the Declaration, the Secretariat also prepares a draft report to Council for the consideration by the Committee.

83. Once the date of the policy review is confirmed and the background note is circulated, the Investment Committee *takes over complete ownership and control* of the process. Lead reviewers, normally in the number of three, are chosen by the chair on the basis of their particular knowledge of the policy issues to be addressed during the review and due consideration for regional balance. The review takes place in the OECD as part of the Investment Committee meeting (usually half a day) in the presence of the applicant's delegation.

84. At the opening of the meeting, the head of the reviewed delegation (usually a deputy minister or an assistant deputy minister ranking official) is invited to make a short policy statement. The chair then explains how the examination will be conducted and invites the first examiner to start the review. An allocated time is given to each lead examiners and follow-up question periods corresponding to different parts of the investigation report.

85. The Committee proceeds afterwards with the examination of the draft report to Council containing recommendations or options for further action. After the necessary modifications, the report is transmitted to the Council for a final decision if the review is part of an accession or adherence process. The reviewed party is invited to react to the draft conclusions. Delegations may also formulate separately policy recommendations to the reviewed authorities.

86. This Committee's input is unquestionably IPRs most valuable contribution to investment policy capacity building. The 39 countries which participate in the review have different economic backgrounds. They bring to bear on the discussion different points of views which reflect their own experiences. The collegial approach constitute a guarantee to the reviewed authorities that they would not be asked to implement policy actions that the peers would not, individually, or collectively be prepared to undertake. They also take full account of the reviewed country policy objectives and constraints. It is not unusual for the reviewed country to report back progress in implementing the Committee's recommendations. IPRs create a partnership of trust which endures a long time after completion of a review.

Publication

87. Final IPR reports are approved by the Investment Committee and published. This is usually followed by a press release, summarizing the main findings of a review for the media.

88. While the publication of the IPR reports puts the reviewed country “on the spot”, it also underscores international support for reform efforts, The reviews are also a valuable source of information for, and a basis, of discussion among investors and other civil society stake-holders. Often reviewed countries have translated the reports into domestic language, organized seminars and given a circulation to the public

Main conclusions and lessons

89. As this Part of the study has attempted to show, OECD investment policy reviews are a unique investment policy capacity building tool. The “peers” are the investment policy decision-makers themselves, who, in addition, speak on behalf of the largest world’s investment players. They rely on longstanding and well tested international “benchmarks, namely those of the OECD Declaration on International Investment and Multinational Enterprises and the OECD Code of Liberalisation of Capital Movements. OECD IPRs are comprehensive in scope – they address all types of investment barriers – covering discriminatory restrictions in the first place but also administrative and other obstacles. Recommendations are developed by a body composed of all Member and other adhering governments’ officials – the OECD Investment Committee – and endorsed at the highest level of the Organisation, the OECD Council, and carry the weight of all its Members. Member countries at the receiving end are held accountable to the Organisation with their follow-up.

90. OECD investment policy reviews have shown a great capacity to adapt to the needs of the “peers” and “open up” to new ones in recognition of the growing complexities of the global economy and the development aspirations of the developing world. They have become the Investment Committee’s most prominent outreach tools and can be expected to play an important role in the promotion and implementation with due regard to national circumstances of the “Policy Framework for Investment” currently being developed by the Investment Committee which is currently been developed in partnership with non-OECD countries and the support of the World Bank and other organisations.⁴⁵

91. Important lessons have been learned:

- OECD investment policy reviews evolve around a “community of practices” consistent with learning theory which recommends them as an effective capacity building mechanism.
- “Peers” are government officials with a role in the investment policy decision-making process.
- Peer review is well suited for addressing complex issues such as those involved in designing and implementing investment policies.
- Peer review works best when benchmarks for evaluation and recommendation, such as the ones provided by OECD investment instruments and their jurisprudence are widely accepted and used.
- Effective peer review represents a significant investment on the part of the country reviewed and other parties contributing to the process. Experience shows that it involves serious

45. The main objective of the *Policy Framework for Investment* is to develop a non-prescriptive checklist of issues for consideration by any interested governments engaged in domestic reform; regional co-operation or international policy dialogue aimed at creating an environment that is attractive to domestic and foreign investors and that enhances the benefits of investment to society
http://www.oecd.org/document/61/0,2340,en_2649_34863_33696253_1_1_1_1,00.html

internal inter-agency preparation by the reviewed government and readiness to follow through the review's recommendations and peer monitoring.

- Participation from different regional perspectives and levels of development is an advantage found in OECD reviews.
- Investment Policy Reviews should be conceived as a living tool allowing for flexibility in taking up new issues and can be a source of collective development of international best practices.
- Publication of the results provides transparency and support for domestic investment policy reform efforts.

ANNEX 1 WTO TRADE POLICY REVIEW MECHANISM

Legal source/mandate

Annex 3 of the Marrakesh Agreement establishing the WTO states the objectives of the TRPM as:

“to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures or to impose new policy commitments on Members”.⁴⁶

Coverage/Methodology

The trade policy reviews are undertaken by the Trade Policy Review Body (TPRB)⁴⁷ on the basis of a “policy statement” by the Member under review that describes its trade policies and practice. A second report is prepared by the WTO Secretariat (the Trade Policy Review Division or TPRD). The structure of the Secretariat reports normally consists of four chapters, preceded by Secretariat’s Summary of Observations.

Chapter I covers macroeconomic situation of the Member, including trade patterns in goods and services, foreign investment, and trade-related aspects of the foreign exchange regime. Chapter II deals with institutional aspects of trade and policy-making, including participation in multilateral and regional arrangements, as well as trade disputes and consultations. Chapter III addresses measures directly affecting imports, exports and production, while Chapter IV looks at measures by sector (agriculture, forestry, fisheries, mining, industry and services). The standardized form of the report helps to ensure consistency of treatment, and delegates often value the ability to find given topics in the same places across the reports.⁴⁸

The most critical sources of information for the report are the responses to detailed Secretariat questionnaires and missions to the capital for fact-finding purposes, which include consultations with the government as well private enterprises and research institutes or think tanks. The Secretariat also gathers information from official reports, published sources and the internet, in cases where adequate published sources are available.

46. See Annex 3 of the Marrakech Agreement, WTO, 1995.

47. The TPRB is actually the WTO General Council – comprising the WTO full membership – operating under special rules and procedures.

48. For a more detailed description of the WTO TPR Process see Laird, S. (1999), “The WTO’s Trade Policy Review Mechanism – From through the looking Glass”, *The World Economy*, Vol. 2, No. 6, August, Blackwell Publishing, UK, pp. 741-764.

The Secretariat submits its draft report to the Member under review for verification and factual content. The Secretariat then revises its text in light of government comments, and finalises the report on its own authority.

Discussions of the report normally take place over two days at the meeting of the TPRB. The Member under review first makes an introductory statement. The TPRB's debate is then stimulated by two discussants chosen from the Membership to act in their personal capacity and not as representatives of their Governments. The discussants are chosen to represent a balance between developed and developing countries as well as regional interests.⁴⁹ Subsequent to the discussants' statements, other members may make statements and raise questions.⁵⁰ Concluding remarks, representing his or her assessment of the collective views of the meeting, are presented by the Chair at the end of the meeting.

An important development since 2000 is the inclusion of technical assistance in LDCs reviews. The review process for a LDC review includes a section a three to four day seminar for its officials in WTO, and in particular, the trade policy exercise and the role of trade in economic policy. In addition, the Secretariat report for a LDC review includes a section on technical assistance needs and priorities identified in co-operation with the WTO's Technical Co-operation Division.

Publication

After the meeting the Secretariat report and the Member Policy Statement are published and made available on the WTO website, along with the minutes of the meeting and the text of TPRB Chair's concluding remarks.

49. Laird (1999), p. 749.

50. Laird (1999) describes the process in greater detail: "One week before the meeting, the discussants distribute an outline of the main points they intend to raise (...) Written questions may be submitted prior to the meeting and countries which do so are given priority in being called to make their statements. At the end of the first morning, the Chairperson, the Government delegation, the two discussants and the Secretariat agree on a series of headings for the presentation of responses the following day. When the replies are given, there is an informal debate and follow-up questions. Answers are expected immediately, but sometimes written technical answers are provided later."

ANNEX 2 UNCTAD INVESTMENT POLICY REVIEWS (IPRS)

Origin/mandate

UNCTAD Investment Policy Reviews were formally launched at UNCTAD IX in Midrand, South Africa, in May 1996 to help developing countries and transition economies improve their investment policies and to familiarize governments and business with their investment environment and policies.⁵¹ The Investment Policy Review (IPR) Team of UNCTAD's Division on Investment Technology and Enterprise Development (DITE) is responsible for their preparation and follow-up.

Coverage/Modalities

The objectives are two-fold. At the national level, IPRs aspire to improve the investment policy framework, national policy, making capacity and to strengthen institutions. At the international level, IPRs aim to provide a forum for the exchange of experiences and best practices.

The IPR process consists of several parts. First, there is the evaluation, conducted by a fact-finding mission of UNCTAD staff and international experts, of the country's objectives and potential to attract FDI. This part of the examination also includes an audit of the country's FDI policy framework and administrative structures and procedures and frank discussion on how legislative, administrative and institutional structures can be made more efficient. The team may also rely on a survey of investors' perceptions and experiences, with the aim to inform policy makers on how firms are likely to react to different policies and strategies and why.

This leads to the preparation of a draft report by the UNCTAD Secretariat assessing the reviewed country's investment environment and economic policies, as compared with regional and global competitors. The report also analyses the country's economic comparative advantages and evaluates the country's FDI policies and institutions. The last part of the report is devoted to policy recommendations geared not only to attracting increased FDI, as a source of external financing, but also toward increasing the contribution of FDI to sustainable economic and human development. A national workshop is organised to discuss the preliminary findings and recommendations of the report.

The peer review takes place at the UNCTAD headquarters in Geneva, under the auspices of the UNCTAD Investment Commission. First, a presentation is given by the UNCTAD Secretariat. A government policy statement at the ministerial level follows, and the discussion is then animated by lead discussants that are chosen to act on their own capacity, and not as representatives of their governments. The discussants are chosen to represent a balance between developed and developing countries as well as regional interests. Following the discussants' statements, private sector representatives give their views on the investment climate of the country discussed. Subsequently, other participants of the meeting may make statements and raise questions. Concluding remarks are presented by the Chair at the end of the meeting.

Publication

UNCTAD policy reviews, including their recommendations, are made public.

51. See <http://www.unctad.org/Templates/Page.asp?intItemID=2752&lang=1>

ANNEX 3 APEC INDIVIDUAL ACTION PLAN REVIEWS

Origin/Mandate

This peer mechanism was introduced in 1998 to review Individual Action Plans (IAPs) submitted annually by Members to report progress on the Bogor goals of attaining free and open trade by 2010 for industrialised countries and by 2020 for developing countries, in accordance with strategic road map agreed by APEC Economic Leaders in Osaka, Japan the Osaka in 1995. Actions recorded under IAPs are voluntary and non-binding basis and APEC Member Economies are free to set their own timelines and goals.

A new review process was adopted in 2001 with a view to strengthening the IAP peer review process, including organizing the IAP Review Teams to conduct studies of economies under review. APEC Ministers agreed in 2004 to complete the first round of reviews of Member economies in early 2005 and conduct a stocktaking evaluation exercise during the year.

Coverage/Modalities

The reporting in the IAPs is based on fifteen issue areas specified Osaka Action Agenda: tariffs; non-tariff measures; services; investment; standards and conformance; customs procedures; intellectual property; competition policy; government procurement; deregulation/regulatory reform; WTO obligations (including rules of origin); dispute mediation; mobility of business people; and information gathering and analysis.⁵²

The peer review process is conducted in a number of stages. A Review Team is formed comprising a Moderator and Discussant (officials from two different APEC countries), and independent expert (selected by the APEC Secretariat from a list of experts),⁵³ and a member of the APEC Secretariat. The names of the proposed members of the Review Team are submitted to the Senior Officials Meeting (SOM) for approval.

All APEC Members review the information compiled in the most recent IAP of the country under review and submit their questions to the APEC Secretariat. The Review Team then compiles a questionnaire based on the comments and questions submitted by Member Countries, as well as the APEC Business Advisory Committee (ABAC), and other APEC bodies. The questionnaire is then sent to the Member under review, to be answered by the relevant government ministries and agencies. A written response is then sent to the Review Team approximately a month later.⁵⁴

Subsequently, members of the Review Team (usually the independent expert and a member of the APEC Secretariat) conduct an on-site visit of a country under review. The Review Team meets with

52. http://www.apecsec.org.sg/apec/about_apec/how_apec_operates/action_plans_.html#Individual

53. A country under review can exclude certain experts from the Secretariat list.

54. OECD (2003), *Practical Modalities of Peer Review in A multilateral Framework on Competition*, OECD Paris (CCNM/GF/COMP/TR(2003)10), pp.20-21.

representatives from ministries and agencies that contribute to annual IAPs and gather further information, in addition to discussing any outstanding issues. The independent expert then compiles a draft investigation report (the IAP Study Report) on the IAP of the Member under review and analyses its progress toward the Bogor Goals of trade liberalisation. The APEC Secretariat then sends the draft investigation report, to the Member under review, the Moderator, and the Discussant, who have about a week to comment on the report. The Review Team then finalises the report.

The IAP Peer Review Session is held during a Senior Officials Meeting.⁵⁵ The Moderator chairs the IAP Peer Review Session, where formal presentations by the independent expert, the Member under review and the Discussant, are given. Questions can then be posed by the Review Team, representatives from other APEC Member countries, and the business community, represented by ABAC. The representatives from various government ministries and agencies from the Member under review then respond to the questions posed. Questions may also be taken on notice and written responses to these questions are prepared by a country under review at a later date. Each IAP Peer Review Session last approximately three hours.

Publication

After the session is over, the Report of the IAP Peer Review session is published on the internet. This report includes: Summary of the Peer Review session; the IAP Study Report; Discussant Remarks (comments and questions submitted by APEC Members after reviewing the IAP of the Member under review); the presentation of the Member under review; and questions and answers (both written and oral) from the session.⁵⁶

55. “Senior Officials” tend to be high level civil servants from Trade or Foreign Affairs Ministries from APEC Member Countries.

56. They can be found at http://www.apec.org/content/apec/documents_reports/senior_officials_meetings/2004.html

ANNEX 4

ASPECTS OF IMF COUNTRY SURVEILLANCE MECHANISM (ARTICLE IV REPORTS)

Legal source/mandate

The IMF Articles of Agreement call for the Fund to oversee the international monetary system in order to ensure its effective operation, and to exercise oversight or “surveillance”, including monitoring and analysis over its member countries’ exchange rate policies. Article IV, in particular, invites the Executive Board to hold regular consultations with each of its members on the country’s economic and financial policies, including their international repercussions. In 1997, an Executive Board decision recognized that the Fund’s appraisal of exchange rate policy requires a comprehensive analysis of the general economic situation and policy strategy of each member country. The decision also emphasized that the ultimate objective of surveillance is to help member countries to achieve financial stability and sustainable economic growth.

Coverage/Methodology

The coverage of Article IV consultations has evolved from examination of Member’s exchange rate and macroeconomic (monetary and fiscal) policies to include several other policy areas, including capital mobility and capital account convertibility, and resultant interrelationships among countries (external shocks, spill over, and contagion effects). It also seeks to achieve greater understanding of the linkages between macroeconomic policies and outcomes, on one hand, and structural and institutional factors, on the other.

Article IV Consultations are divided into three parts. First, prior to the Fund mission visit to the country examined, a briefing paper is prepared. This briefing paper describes the current economic situation in the country and includes the views of the IMF staff on current policies and possible needed changes. This briefing paper also serves as an agenda for the mission to the country and contains major issues to be discussed during the mission and in the subsequent Staff Report. Senior staff and Fund management generally review the briefing paper before the mission to the country is under way.

Second, the IMF team of four or five staff members from different departments of the Fund visits the Member country to meet government and central bank officials, and collect economic and financial information. The consultations also cover recent economic developments and the monetary, fiscal, and relevant structural policy the country is pursuing. The Executive Director for the member country usually participates as an observer. The team also meets with the representatives of the business community and financial market participants, as well as trade unions, employer associations, academics and legislative bodies.⁵⁷ The IMF team normally prepares a Concluding Statement, or memorandum summarising the discussions with national authorities, and leaves it with national authorities, who have an option of publishing it.

57. For a detailed description of the Article IV Consultation mission, see Harper, Richard (1998), *Inside the IMF*, Academic Press, San Diego, California, pp. 173-230.

After the conclusion of the mission to the Member country, IMF staff members prepare a Staff Report describing the economic situation in the country, generally treating nearly every important macroeconomic policy issue, and increasingly, a variety of structural and institutional considerations. The nature of the policy discussions with the national authorities and evaluation of the country's policies are also covered by the report.

Third, the Staff Report is discussed by the 24-member Executive Board (the IMF permanent decision-making body).⁵⁸ The views of the country's authorities are conveyed to the Board by the Executive Director of the Member under review.⁵⁹ The views expressed by Executive Directors during the meetings are summarised by the Chair or Acting Chair of the Board (usually the Managing Director or Deputy Managing Director), and a written summary is produced.

Publication

Subject to the approval of a Member country concerned, the full Article IV consultation report and a Public Information Notice (PIN) are released to the public and published on the IMF website. A PIN contains a summary of main economic indicators,⁶⁰ recent economic developments and a summary of the discussion in the Executive Board. The country authorities may authorise a release of PIN even if they do not authorise the release of a full report.⁶¹

58. One notable characteristic of the Executive Board is its representation and voting weights. Voting weights are assigned in proportion to Member contributions. As a result, large countries, and particularly the Group of Seven tend to dominate the Board.

59. The time normally allocated for each discussion is about one and one-half to two hours. However, this may not materialise in practice. See footnote 30.

60. Indicators published in Public Information Notices include: Real GDP growth rate, inflation, unemployment, savings, investments; budget deficit, public debt; money growth supply, domestic credit; short- and long-term interest rates; trade balance, current account, reserves; as well as exchange rate regime, nominal rates, and real effective rates.

61. See *IMF 2004 Annual Report*, available at <http://www.imf.org/external/pubs/ft/ar/2004/eng/index.htm>