BUILDING TRUST AND CONFIDENCE IN INTERNATIONAL INVESTMENT

(Draft report to the OECD Ministerial on the “Freedom of Investment, National Security and ‘Strategic Industries’” Project)

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EXECUTIVE SUMMARY

1. The “Freedom of Investment, National Security and ‘Strategic Industries’” (FOI) process helps governments to preserve and expand open international investment markets while also safeguarding the essential security interests of their people. Discussions under the FOI process have been taking place for three years and Roundtables have been held involving the OECD members and 17 non-member countries. The following findings have emerged from these discussions:

2. Need for vigilance. Discussions under the FOI process took place during an active period for recipient country investment policies. Many countries have adopted or are considering new investment measures and some have used their investment review procedures to block foreign investments. Viewed as a whole, these measures present a mixed picture. Some seem clearly motivated by a desire to improve the transparency and accountability of investment policies and to safeguard essential security interests, while some appear to respond to protectionist pressures or to increase the potential exposure of policy mechanisms to protectionist influences (e.g. several countries expanded either the number of sectors or the list of concerns covered by investment reviews). The financial crisis and related real economy impacts may reinforce protectionist sentiment in recipient countries. Participants in the FOI process underscored the need to be vigilant in countering a resurgence of protectionism.

3. Honouring commitments to openness. For almost 50 years, the OECD investment instruments have embodied commitments to liberalisation and non-discrimination. They have also created follow up mechanisms to make these commitments credible by enhancing transparency and international accountability. Following in this long tradition, the FOI process seeks to make it easier for participating governments to choose openness and more difficult to cede to protectionist pressures.

4. Benefits of international investment for home and host societies. Roundtable participants explored the economic and societal benefits of international investment and urged recipient countries to design investment policies that will allow them to reap these benefits fully. They agreed that international investment: 1) is a necessary condition for the development of dynamic, efficient and innovative business sectors; 2) promotes peaceful international relations by raising living standards and by deepening ties of mutual dependence; and 3) allows nations to reduce their vulnerability to supply shocks in markets such as energy (e.g. by promoting diversity of suppliers).

5. Positive agenda. Although it has engendered huge costs, the financial crisis has also provided an opportunity to move forward on a positive agenda of building trust and confidence in international investment. The OECD hosts the only multilateral forum on investment policy and the OECD investment instruments provide principles for public policies and business conduct that, taken together, allow international investment to contribute to the sustainable creation of jobs and wealth. Future work under the FOI process will renew, strengthen and clarify commitments to: 1) open investment markets; 2) learning and continual improvement in policy frameworks that help societies benefit from investment and prevent abuses; 3) urging the business sector to conduct itself with integrity and to observe agreed norms for responsible business conduct. It will also enhance the monitoring of observance of OECD investment principles by the countries adhering to these principles.
6. *OECD and non-OECD countries – working together on shared investment principles.* Investment policy dialogue in the OECD cannot be successful without the active engagement of non-members. A key challenge for the future will be to find new ways to enhance non-member participation in OECD investment dialogue as full partners, with the same rights and responsibilities as members. This will include contributions to the further development of OECD investment policy principles and monitoring practices.
BUILDING TRUST AND CONFIDENCE IN INTERNATIONAL INVESTMENT

(Draft report to the OECD ministerial on the “Freedom of Investment, National security and ‘Strategic Industries’” Process)

7. The “Freedom of Investment, National Security and ‘Strategic Industries’” (FOI) process helps governments to preserve and expand open international investment markets while also safeguarding the essential security interests of their people. Discussions under the FOI process have been taking place for almost three years; nine Roundtables have been held involving the OECD members, the 11 non-member adherents to the OECD investment instruments and (in varying degrees) China, India, Indonesia, Qatar, Russia and South Africa. Participants are now ready to move onto the next phase of their work.

8. This report covers the lessons learned to date; how the financial crisis has shifted priorities for future work; and next steps under the FOI process. Future work will pursue a positive agenda promoting open investment policies, continual improvement in the design and enforcement of domestic policy frameworks and responsible business conduct. This positive agenda will build on the existing OECD investment instruments (the OECD Codes of Liberalisation, Declaration on International Investment and Multinational Enterprises, including the OECD Guidelines for Multinational Enterprises, and the Policy Framework for Investment). One of the main future challenges will be to enlist non-members as full partners in OECD investment dialogues.

Lessons learned to date

9. The key lessons relate to: 1) the benefits of open investment policies; 2) the importance of well-designed domestic policy frameworks; 3) the role of restrictive investment policies in protecting national security; 4) trends in investment policies; and 5) learning to work together with mutual trust and confidence.

Benefits of open investment policies

10. Roundtable participants explored both the economic and societal benefits of foreign direct investment and urged recipient countries to design investment policies that will allow them to reap these benefits fully. They agreed that the benefits are:

- **Dynamic, efficient and innovative business sectors.** International investment plays a key role – along with domestic product and capital markets – in the development of high performance business sectors capable of the sustainable creation of jobs and wealth. It does this by providing channels for enhanced competitive pressures, physical and human capital accumulation and dissemination of innovations.

- **Fostering peace.** International investment helps to foster the conditions for more peaceful international relations. Breakdowns of security and public order are more frequent in states where material standards of living are low. International investment, supported by healthy domestic policy environments, helps raise standards of living. Moreover, international investment reinforces bonds of mutual dependence among countries, thereby increasing the costs of
international conflict. For example, the EU’s Single Market has deepened economic integration among members and provided an economic and social reform agenda for non-members aspiring to join. This appears to have exerted a stabilising effect on countries with aspirations to join the EU all across Europe.

- **Pooling risks of supply shocks.** International investment can also enhance security in other ways. The Roundtables examined this in relation to energy security and concluded that open and competitive markets help to reduce national vulnerabilities to supply shocks in three ways. First, competitive markets (which, by definition involve rivalry among incumbents and the threat of new entry) promote diversity of supply. Second, competitive markets provide incentives for making investments that enhance market ability to adapt to shocks (e.g. investments in surge capacity, stockpiles, and market information systems). Third, a broad international energy market connects numerous local markets and allows them to pool their supply risks, thereby providing a kind of insurance against supply disruptions.

### Be prepared for globalisation – the role of domestic policy frameworks

11. Of course, greater openness also means greater exposure to risks originating in the global economy. National policy frameworks need to be prepared to manage these risks. One of the key findings of the FOI process is that countries wishing to enjoy fully the benefits of globalisation need to put policy frameworks in place – sectoral regulation, prudential controls, national defence and crime prevention strategies – that allows them to counter threats emanating from both domestic and foreign sources. Active participation in international policy cooperation is also important (for example, coordinated prudential regulation in finance and international efforts to combat abuse of tax havens).

12. If these basic policies are not in place, discriminatory investment policy can do little or nothing to take their place. Moreover, effective policies can often be designed to be non-discriminatory toward foreign investors by embodying practices that treat domestic and foreign investors equally. For example:

- **Beneficial ownership.** Countries need to have in place securities market regulations that protect markets from penetration by criminal, politically-motivated or irresponsible actors, both domestic and foreign. Roundtable participants agreed that effective policies for obtaining information on beneficial ownership, and international cooperation in this area, are essential to countering criminal activity or other abuses. Discriminatory investment measures might complement, but are never substitutes for policies of this type.

- **Critical infrastructure protection (CIP)** involves managing risks related to natural events or human action (negligence, sabotage or other criminal activity). The authorities responsible for CIP expect private operators of such infrastructure to be active participants and partners in the national CIP strategy. Assessments of reliability of these operators can be (and often are) based on criteria that do not discriminate against foreigners (e.g. whether or not a business, be it domestic or foreign, has a solid reputation for reliable service provision).

### How important are restrictive investment measures for protecting essential security interests?

13. Many countries have broad national security and critical infrastructure protection strategies that define the roles of various public sector authorities in protecting essential security interests. These national strategies tend to embody a comprehensive approach to security risk management including both natural and human (e.g. sabotage or negligence) risks. They identify risks and establish plans for prevention, preparedness, response and recovery.
14. Generally, national security and critical infrastructure protection strategies, if they mention restrictive investment policies at all, assign them a small role relative to those of the national defence, law enforcement, and sectoral policies. Indeed, many countries do not use restrictive investment policies at all as a way to achieve national security goals. Among the 41 countries adhering to the OECD Declaration on International Investment and Multinational Enterprises, sixteen report that they do not depart from national treatment in policies addressing “public order and essential security considerations.” Others report only minor departures; for example, Portugal has a security-related ban on maritime cabotage, while Sweden partially restricts foreign investment in the production of war munitions. Thus, these countries implicitly adopt the view that investment policy has a small or non-existent role to play in the broader security policy framework.

15. The OECD investment instruments recognise the right of countries to take measures needed for the protection of “essential security interests” and the “maintenance of public order”. The countries that have such policies use three types of policy instrument: 1) investment reviews that use national security as a criteria for potentially restricting investments, 2) outright bans (for example, prohibitions on any foreign investment in sectors using nuclear materials); and 3) powers given to sectoral regulatory authorities. Policies and practices in this area vary widely. For example, under investment review procedures, countries use various criteria to determine whether a foreign investment proposal is potentially subject to review (e.g. size of investment, degree of control, sector of operation). Likewise, investment review policies differ in terms of the length of time allowed to review authorities to complete the review, in the number and type of government agencies involved in the process and in the level of the public official who is authorised to make a decision to block an investment (e.g. head of state, Minister or civil servant).

16. The Roundtable participants have agreed that restrictive investment measures should be used only as a last resort, but, when measures of general application are not adequate to address security concerns, then restrictive measures should be as non-discriminatory as possible. They have developed guidance that helps recipient governments ensure that their security-related investment measures are effective in achieving their aims and are not disguised protectionism. This guidance, which is based on the principles of non-discrimination, transparency/predictability, proportionality and accountability, is presented in the Annex. [In order to make this guidance part of the formal OECD acquis and to allow official association of non-members with it, the guidance has been submitted to OECD Council as a “Recommendation”.]

**No overwhelming trend toward protectionism, but a need for vigilance**

17. Investment policy changes reviewed in the course of FOI discussions do not constitute an overwhelming trend toward protectionism, but instead showed eddies and cross currents that reflect the complex pressures facing investment policy makers. On one hand, recipient countries genuinely want – indeed, compete for – foreign investment projects and are reluctant to take protectionist measures that would further undermine business confidence. On the other, all recipient countries have political constituencies for protectionist policies and the financial crisis and related real economy impacts may sharpen protectionist sentiments. Thus, policy makers are simultaneously pushed in two directions, toward both openness and protectionism. The FOI process seeks to make it easier for them to choose openness and more difficult to cede to protectionist pressures.

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1 The sixteen countries are: Belgium, Canada, Czech Republic, Estonia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, the Netherlands, New Zealand, Romania, Slovak Republic and Switzerland. Based on information provided in the “List of Measures reported for Transparency” under the National Treatment Instrument.
18. Many of the policy changes discussed in the FOI Roundtables involve clarifications or refinements of existing investment review policies relating to essential security interests (e.g. France, Japan, and the United States). Australia published principles that set out the main factors that it considers in determining whether particular investments by foreign governments and their agencies are consistent with Australia’s national interest. Germany is considering security-related revisions to its investment laws and has received extensive comments on its draft law from Roundtable participants. China has introduced new screening requirements on mergers and acquisitions by foreign investments in “major” industries having an impact on “national economic security”. A new Russian law entered into force in May 2008 which defines 42 sectors in which control by foreign investors will be subject to prior authorisation delivered by a special governmental commission (the new law improves the transparency and predictability of Russia’s review procedure, but also expands its sectoral coverage). Thus, observed policy changes present a mixed picture: there is some tendency to widen the scope of security-related issues or to increase the number of sectors that can be dealt with by investment authorities, but other changes appear to be motivated by a desire to improve the transparency and accountability of security-related investment policy.

19. A number of decisions to block particular investment proposals have been made by investment review boards and these decisions have been reviewed by Roundtable participants. In some cases, Roundtable participants were unable to determine whether such decisions were motivated by protectionist pressures in the recipient country and this is a source of concern. One of the problems in such peer reviews is the asymmetry of information – Roundtable participants rely for information on the media and on the country taking the blocking decision. Some information may be commercially sensitive or classified for reasons of national security. Thus, there are inherent limits to the ability of Roundtable participants to monitor the decisions of other participants’ investment review decisions. Despite these difficulties, they intend to monitor these decisions as closely as possible. They also note that such decisions are important determinants of whether investment policy is, in practice, protectionist or receptive to international investment and called upon all countries to adhere to the OECD guidance on security-related investment issues when making such decisions (Annex).

Learning to work together with mutual trust and confidence

20. Recent OECD data suggest that, while aggregate FDI flows in the OECD region are down over the 2007-2008 period, investments from non-OECD countries into OECD economies have held steadier than intra-OECD investment flows. The growing relative importance of non-OECD countries as sources of capital and the emergence of new classes of investors, such as SWFs, have meant that OECD host societies and government officials have had to deal with investors with whom they have relatively little experience. Likewise, the non-OECD investors have had to adapt to different ways of conducting business in OECD countries. When new actors emerge on the international scene, the players need to become better acquainted. Inter-governmental dialogue provides opportunities for shared learning, increases mutual understanding and contributes to well-informed policy development.

21. One example of shared learning under the FOI process is the parallel development of two sets of guidance relevant for SWFs – the OECD guidance for recipient country policies was developed as part of the FOI process while the International Working Group of SWFs developed guidance for the SWFs themselves. These complementary projects show that governments can work together to formalise thinking about good policy practice in ways that allow the participants to engage in international investment with greater confidence and trust. Roundtable participants have stressed the importance of continuing to work together in the ‘follow up’ phase of work on both sets of guidance.

22. At present, it is not clear that the FOI process has fully met the needs and expectations of non-OECD countries. As already noted, in addition to the 11 non-member adherents to the OECD Declaration on International Investment and Multinational Enterprises, non-member participants have included China,
India, Indonesia, Qatar, Russia and South Africa. While Russia has consistently participated, others’ participation has been more sporadic. The Roundtables need to do more to attract their participation. Without full and mutually beneficial engagement with non-member countries, investment policy cooperation under the FOI process cannot be deemed fully successful. Roundtable participants agree that one of the priorities for future work will be to create the conditions in which non-members are both willing and able to be fully engaged partners, with equal rights and responsibilities in the OECD investment dialogue (see Next Steps below).

Open Investment Policies after the Financial Crisis

23. The “Freedom of Investment” process began in 2006 at a time of heightened concerns about national security, but widespread support and confidence in open markets. A 2007 global opinion poll\(^2\) showed that “overwhelmingly, the surveyed publics see the benefits of increasing global commerce and free market economies.” In 17 of the 35 countries for which data were available, support for free markets had risen substantially over the 2002-2007 period, while declines were registered in just five countries.

24. Thus, during its earlier phases, the FOI process benefited from strong public confidence in free markets. The major concern for investment policy makers was dealing with perceived threats to national security posed by certain foreign investment proposals and with possible concerns posed by “non-traditional” investors such as those from emerging markets or those controlled by foreign governments (e.g. state-owned enterprises and sovereign wealth funds).

The financial crisis has undermined public confidence in open investment markets

25. These concerns are still with us. More recently, however, the financial crisis and its real economy impacts have shifted the priorities of investment policy-making. The crisis has imposed significant human and economic hardships (job insecurity, lost homes and lowered savings) on millions of people. Shock waves have emanated from the originating countries to “innocent bystanders”: countries (especially developing countries) that had no part in the behaviours that led to the crisis but that are nevertheless suffering from its consequences. The budget costs of policy responses to the crisis may have reduced governments’ ability to respond to other policy priorities (e.g. global warming, international development, domestic health care and ageing populations).

26. In view of these significant costs, it is reasonable to conclude that the crisis has undermined public support for and confidence in open markets, including open international investment. The crisis is still unfolding and its lessons are being digested. However, it is safe to say that shortcomings of both public and private actors in taking up their responsibilities were among its root causes. For the investment policy community, the immediate challenge is to counter protectionist pressures likely to be unleashed by the crisis and to point the way toward investment policies that are open, legitimate and fair and that contribute to a broader political and social system that motivates all parties (governments, companies and households) to live up to their responsibilities.

27. For the time being, high level policy statements have recognised the dangers of protectionism and reaffirmed commitments to openness. For example, the G20 Leaders Declaration on the World Economy and Financial Markets (Washington 15/11/2008) states: “(…) we underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services.

(...). This commitment will have to be followed-up and the OECD’s peer review mechanism could offer a suitable institutional framework.

**A renewed social contract: open investment, appropriate public policy and responsible businesses**

28. Earlier Investment Committee work notes the “mutual dependence of business and society – a business sector cannot prosper if the society in which it operates is failing and a failing business sector inevitably detracts from general well-being. ‘Corporate responsibility’ refers to the actions taken by business to nurture and enhance this symbiotic relationship. Of course, societies can also act to nurture this relationship by providing such services as law enforcement, appropriate regulation and investment in the many public goods used by business …” This relationship of mutual dependence is governed by what can be thought of as an implicit social contract defining the rights and responsibilities of the business sector and of surrounding societies for the benefit of both. If the terms of this “contract” are well designed and respected, then the business sector will be succeed in sustainably creating wealth and raising general welfare and living standards.

29. The crisis has underscored the need for governments and the business community to clarify the terms of this social contract in many fields. The OECD investment instruments shed light on its investment dimension. Through them, governments commit to non-discriminatory investment policies and to well designed and carefully enforced regulatory frameworks (e.g. through the Policy Framework for Development). On the corporate responsibility side, the OECD Guidelines for Multinational Enterprises help the international business sector to operate with integrity and in harmony with home and host societies.

30. Thus, the OECD investment instruments provide a solid basis for renewing the global social contract for investment; that is, for building consensus on appropriate public and private sector roles in the economy and for rebuilding trust and confidence in international investment. For the investment policy community, future work will strengthen and clarify commitments to: 1) open investment markets; 2) learning and continual improvement in policy frameworks that help societies benefit from investment and prevent abuses; and 3) urging the business sector to conduct itself with integrity and with due regard for agreed norms for responsible business conduct.

**Next steps – Building trust and confidence in international investment**

31. The crisis has imposed heavy costs, but it also provides an opportunity to move forward on a positive agenda of building confidence and trust in international investment. This will be the theme of the next phase of the FOI process. The OECD, with its comprehensive approach to investment policy and to responsible business conduct, is well placed to deliver on this positive agenda. For almost 50 years, it has promoted liberalisation and made it more difficult for countries to slip back into protectionism. Its investment instruments also commit governments to “continual improvement in both domestic and international policies with a view to improving the welfare and living standards of all people” and to encouraging “the positive contributions of multinational enterprises” and to “minimising the difficulties to which their various operations may give rise”.

32. Future work under the FOI process will continue this tradition of strong commitment to open markets and close attention to the roles and responsibilities of the public and private sectors. The work on corporate responsibility (via ongoing follow up on the OECD Guidelines for Multinational Enterprises) and improved domestic policy frameworks (via ongoing follow up on the Policy Framework for

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4 Quotes from the Preamble of the OECD Guidelines for Multinational Enterprises.
Investment) will continue to evolve in their usual institutional settings (the Working Party and cooperation with non-members). The difference will be that greater efforts will be made to integrate the messages from these other areas into the messages developed as part of the FOI process.

33. The principal areas of future work will be:

- **Strengthened peer monitoring.** All FOI Roundtables include a session on peer monitoring of investment policy developments. Participants have agreed to strengthen this peer monitoring through: 1) timely and more thorough notification of policy measures by participating countries; 2) more thorough question and answer sessions during the Roundtables; and 3) published accounts of the discussions. Roundtable participants have also agreed to extend their peer reviews to decisions taken by investment review authorities. Future work will focus on putting these agreed changes into practice for more robust peer monitoring under the “Freedom of Investment” process.

- **Locking in open investment policies.** An Investment Committee report to Council updating all Members’ positions under the OECD Codes to ensure they live up to their legal commitments, including to standstill (not introducing new restrictions), avoidance of “precautionary reservations” under the Codes and elimination of reciprocity. This report will be completed by March 2009. Other modifications to the OECD investment acquis might also be useful in this respect.

- **Non-members as equal partners in OECD investment dialogue.** The FOI process cannot be deemed a success without the active engagement of non-members as equal partners and for the mutual benefit of all participating countries. Although non-members have participated in all Roundtables held under the FOI process, there is a need to improve the depth of mutual engagement. There is no technical impediment to adherence of non-members to the Codes of Liberalisation. Steps will be taken to facilitate such adherence, giving non-members the same rights and obligations as members. Development of OECD investment instruments will be done as an inclusive process involving non-members as equal partners. With regard to peer monitoring under the FOI process, Roundtable participants have already agreed to invite non-member governments that might feel that their investors have been adversely affected by a FOI participant’s investment policy measure. Another step could involve deepening cooperation and communication with the Heiligendamm Dialogue Process in which G8 and major emerging economies (China, Brazil, India, Mexico and South Africa) participate in investment policy dialogues.

- **Improving policy information.** The investment policy positions of all OECD and other countries adhering to the OECD investment instruments are already publicly available. This includes investment review procedures, sectoral restrictions and national security measures. The FOI process is working on further developing this comprehensive repertoire of policy information by harmonising reporting procedures and extending coverage to non-OECD countries.

- **Renewed message on responsible business conduct.** An update of the OECD Guidelines for Multinational Enterprises could be launched on the occasion of the 10th anniversary (that is, June 2010) of their latest revision in 2000. The update could transmit a renewed message from the international policy investment community on responsible business conduct. Furthermore, a fact finding study (an update of a 2005 study) could look at the degree to which OECD and non-OECD countries share adherence to international standards in such areas as transparency, anti-corruption, labour and environmental management.
Future analytical work. Many areas of international investment policy would benefit from further analytical clarification in support of policy dialogue under the FOI process. [FOI participants have identified many areas for possible analytical work in the future. These include: 1) a fact-finding study of how “foreign sovereign immunity” is handled in national laws and in international legal instruments should be undertaken; 2) an exploration of the diversity of meanings of “reciprocity” – whether as a concept in international investment law, in international treaty negotiations or in regulatory practice; 3) a study of the meaning, in international legal instruments and in national policy practice, of the terms “national security”, “essential security interests” and “public order” and of the role of international processes and national policies in safeguarding essential security interests; and 4) a study of the political economy of investment policy formation in periods of crisis.] The degree to which this analytical agenda can be completed in its entirety will depend on funding.
REFERENCES

**Legal instruments:** OECD legal investment instruments can be accessed on the OECD website at [www.oecd.org/daf/investment/instruments](http://www.oecd.org/daf/investment/instruments).

- OECD Codes of Liberalisation of Capital Movements, 1961,
- OECD Declaration on International Investment and Multinational Enterprises and related Decisions, including National Treatment, 1976-2000
- OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies, 2008

**Background documents.** Freedom of Investment documents are available on the OECD website at [www.oecd.org/daf/investment/foi](http://www.oecd.org/daf/investment/foi), unless specified otherwise:

- Transparency and predictability for investment policies addressing essential security interests: A survey of practices, April 2008
- Proportionality of security-related investment instruments: A survey of practices, May 2008
- Accountability of security-related investment policies, October 2008.
- Protection of “critical infrastructure” and role of investment policies relating to national security, May 2008
- Government-controlled investors and recipient country investment policies (forthcoming).
- Competition, international investment and energy security, April 2008
- Summary reports of OECD Roundtables on Freedom of Investment, National Security and “Strategic” Industries
- Economic and other impacts of foreign corporate takeovers in OECD countries, *International Investment Perspectives, OECD, 2007*
- Essential Security Interests under International Investment Law, *International Investment Perspectives, OECD, 2007*
ANNEX
OECD GUIDANCE FOR RECIPIENT COUNTRY INVESTMENT POLICIES RELATING TO NATIONAL SECURITY*

Non-discrimination – Governments should be guided by the principle of non-discrimination. In general governments should rely on measures of general application which treat similarly situated investors in a similar fashion. Where such measures are deemed inadequate to protect national security, specific measures taken with respect to individual investments should be based on the specific circumstances of the individual investments which pose a risk to national security.

Transparency/predictability – while it is in investors’ and governments’ interests to maintain confidentiality of sensitive information, regulatory objectives and practices should be made as transparent as possible so as to increase the predictability of outcomes.

- Codification and publication. Primary and subordinate laws should be codified and made available to the public in a convenient form (e.g. in a public register; on internet). In particular, evaluation criteria used in reviews should be made available to the public.

- Prior notification. Governments should take steps to notify interested parties about plans to change investment policies.

- Consultation. Governments should seek the views of interested parties when they are considering changing investment policies.

- Procedural fairness and predictability. Strict time limits should be applied to review procedures for foreign investments. Commercially-sensitive information provided by the investor should be protected. Where possible, rules providing for approval of transactions if action is not taken to restrict or condition a transaction within a specified time frame should be considered.

- Disclosure of investment policy actions is the first step in assuring accountability. Governments should ensure that they adequately disclose investment policy actions (e.g. through press releases, annual reports or reports to Parliament), while also protecting commercially-sensitive and classified information.

Regulatory proportionality - Restrictions on investment, or conditions on transaction, should not be greater than needed to protect national security and they should be avoided when other existing measures are adequate and appropriate to address a national security concern.

- Essential security concerns are self-judging. OECD investment instruments recognise that each country has a right to determine what is necessary to protect its national security. This determination should be made using risk assessment techniques that are rigorous and that reflect the country’s circumstances.

* OECD Investment Committee report on recipient country policies and SWFs, approved by governments on 4 April 2008. The text on accountability was finalised by governments at the 8th Roundtable on Freedom of Investment which took place under the auspices of the OECD Investment Committee on 8 October 2008. OECD countries that have SWFs are participants in the roundtables on Freedom of Investment. Non-OECD SWFs are also invited.
institutions and resources. The relationship between investment restrictions and the national security risks identified should be clear.

- **Narrow focus.** Investment restrictions should be narrowly focused on concerns related to national security.

- **Appropriate expertise.** Security-related investment measures should be designed so that they benefit from adequate national security expertise as well as expertise necessary to weigh the implications of actions with respect to the benefits of open investment policies and the impact of restrictions.

- **Tailored responses.** If used at all, restrictive investment measures should be tailored to the specific risks posed by specific investment proposals. This would include providing for policy measures (especially risk mitigation agreements) that address security concerns, but fall short of blocking investments.

- **Last resort.** Restrictive investment measures should be used, if at all, as a last resort when other policies (e.g. sectoral licensing, competition policy, financial market regulations) cannot be used to eliminate security-related concerns.

**Accountability** – procedures for internal government oversight, parliamentary oversight, judicial review, periodic regulatory impact assessments, and requirements that important decisions (including decisions to block an investment) should be taken at high government levels should be considered to ensure accountability of the implementing authorities.

- **Accountability to citizens.** Authorities responsible for restrictive investment policy measures should be accountable to the citizens on whose behalf these measures are taken. Countries use a mix of political and judicial oversight mechanisms to preserve the neutrality and objectivity of the investment review process while also assuring its political accountability. Measures to enhance the accountability of implementing authorities to Parliament should be considered (e.g. Parliamentary committee monitoring of policy implementation and answers or reports to Parliament that also protect sensitive commercial or security-related information).

- **International accountability mechanisms.** All countries share a collective interest in maintaining international investment policies that are open, legitimate and fair. Through various international standards, governments recognise this collective interest and agree to participate in related international accountability mechanisms (e.g. the OECD notification and peer review obligations in relation to restrictive investment policies). In particular, these help constrain domestic political pressures for restrictive and discriminatory policies. Recipient governments should participate in and support these mechanisms.

- **Recourse for foreign investors.** The possibility for foreign investors to seek review of decisions to restrict foreign investments through administrative procedures or before judicial or administrative courts can enhance accountability. However, some national constitutions’ allocation of authority with respect to national security may place limits on the scope of authority of the courts. Moreover, judicial and administrative procedures can be costly and time-consuming for both recipient governments and investors, it is important to have mechanisms in place to ensure the effectiveness, integrity and objectivity of decisions so that recourse to such procedures is rare. The possibility of seeking redress should not hinder the executive branch in fulfilling its responsibility to protect national security.
The ultimate authority for important decisions (e.g. to block foreign investments) should reside at a high political level. Such decisions require high-level involvement because they may restrict the free expression of property rights, a critical underpinning of market economies, and because they often require coordination among numerous government functions. The final decision to prohibit (or block) an investment should be taken at the level of heads of state or ministers.

Effective public sector management. Broader public sector management systems help ensure that the political level officials and civil servants responsible for security-related investment policies face appropriate incentives and controls for ensuring that they exercise due care in carrying out their responsibilities and are free from corruption, undue influence and conflict of interest.