This document has been revised in light of the discussions which took place during the CIME meeting of 14-15 December 2000. Any comments should reach the Secretariat no later than c.o.b. on 12 January 2000. The Note will then be finalised and transmitted to the Committee on Cooperation with Non-Members (CCNM) and the Council.

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OBSERVERSHIP AND OTHER FORMS OF NON-MEMBER PARTICIPATION IN CIME

(Draft Note by the Secretary-General)

1. The report by the Committee on Investment and Multinational Enterprises (CIME) [C (2000) 107] regarding observship and other forms of participation in CIME was considered by the Committee on Non-members on 20 July 2000 [CCN/M (2000) 5/PROV] and by the Council on 27 July 2000 [C/M (2000) 19Prov]. The report proposes inter alia a special procedure for non-members to be invited, under certain conditions, to adhere to the 1976 OECD Declaration on International Investment and Multinational Enterprises and related Council Acts and to become full participants in that part of the CIME work. As no full consensus emerged from these discussions, the Council requested the CIME to reconsider its proposal in light of the Council discussion.

2. At the same meeting, the Council also considered the requests from Latvia, Lithuania and Venezuela to participate as observers in CIME [C (2000) 116 and C (2000) 148]. It noted that the Committee on Co-operation with Non-Members (CCN) had reacted favourably at its 20 July meeting to the recommendation that Latvia, Lithuania and Venezuela be invited to adhere to the 1976 Declaration on International Investments and Multinational Enterprises and the related Council acts and to join in CIME-related work. It requested, however, the CIME to re-examine the case of Israel and Slovenia which had previously expressed interest in CIME observship.

3. The CIME discussed these matters at its September and December 2000 meetings. The discussion took into account written comments transmitted by Belgium [DAFFE/IME/RD (2000) 23] and France [DAFFE/IME/RD (2000)24]circulated after the CIME’s September 2000 meeting. Two main issues were considered in this connection: (a) the potential practical problems of implementation that could result from a significantly larger number of non-member adherents to the Declaration and (b) the implications of granting “full participant” status to those adherents.

4. CIME delegations reiterated their agreement with the main thrust of document C (2000) 107. It was recalled that the OECD Ministerial Communiqué of 27 June 2000 announced that “the Organisation will encourage non-members to adhere to the Declaration on International Investment and Multinational Enterprises” that the procedure set out in the CIME report would provide the means for implementing this policy. The increased involvement of non-member economies in the Committee work should be welcomed as a logical consequence of the Ministerial decision and would extend the influence of key OECD instruments. The practical implications of a larger number of participants were manageable.

5. In his report to the Council, the Chairman of the CCN had recognised that the CIME proposal is fully in line with both CCN current thinking about alternative forms of co-operation to full-fledged observship, and existing rules governing the Participation of non-member Economies in the Work of Subsidiary Bodies of the Organisation [C (96) 64/REV1/FINAL, C (2000) 147[C(96)64/REV2/FINAL, C(2000)147 and CORR1], which provides that “full participation is generally accorded only to a non-member which is willing and able to comply with the relevant disciplines of the Organisation”. Accordingly, non-members have been granted “full participant” status in other OECD bodies, such as the Development Centre and the various bodies in charge of the OECD Codes and Schemes in agriculture. Full participation is also explicitly envisaged in the Council Decision concerning the adherence of non-member countries to the Council Acts related to the mutual acceptance of data in the assessment of chemicals [C(97)114/FINAL, C(97)114/FINAL]. In the case of CIME, the relevant disciplines of the Organisation include both strong political commitments such as the 1976 Declaration and legally binding
commitments such as the OECD Decision on the Guidelines. Whereas “full participation” status was not originally “envisaged” for certain Committees, including the CIME, this was prior to the Ministerial announcement in June 2000 to encourage adherence to the Declaration by non-members. Full participation in subordinate bodies of these Committees, including the CIME, is explicitly authorised (see C(96)64/REV2/FINAL, Appendix, paragraph 6d.).

6. It is true that observer invitations should continue to be the norm for non-member participation in official sessions [C(96)64/REV2/FINAL]. However, non-member economies adhering to the Declaration and related acts would recognise that observer status does not give them rights commensurate with the commitments they are undertaking. For example, an observer could be excluded from meetings or parts of meetings even where the instruments they have adhered to are under discussion; an observer does not take part in decision-making processes, nor can it place an item on the agenda; observship is normally for a renewable two-year period and can be suspended by Council at any time.

7. The majority of the Committee considered that The CIME agreed that many of the concerns raised with respect to the main CIME proposal in C(2000)107 could be accommodated in the following ways.

- The possibility of adhering to the OECD Declaration on International Investment and Multinational Enterprises and to the related Acts (Decisions, Recommendations, ) would be open only to those countries willing and able to meet the requirements of these instruments. The Council would issue the invitation after a full review of the applicant’s foreign direct investment policies.

- Adherents to the Declaration would be entitled to participate in the work related to the Declaration and Related acts as a counterpart to the obligations undertaken under these instruments. Under the OECD rules of procedure, participation includes the right to be present in all the relevant discussions and to speak as well as the right to have an opinion recorded in any report to Council. However, such participation would not enable non-member adherents to the Declaration to prevent the transmittal of a committee report to Council. They would not have veto rights over any OECD Acts and they would not participate in Council discussions or decisions.

- The exchange of letters to be concluded with a non-member economy adhering to the Declaration and related OECD Acts would contain specific language to ensure that that full participation in selected activities under CIME is not interpreted as a precedent and truly reflects the sui generis character of the CIME proposal. This language would read as follows:

  “The status of full participant contemplated in this exchange of letters is granted to [country name] in view of the political and legal commitments that your country is willing to undertake. Nothing in this exchange of letters should be interpreted as giving a right to regular observship or other form of participation in OECD activities not covered by the exchange of letters.”

- As proposed in paragraph § 25 of C(2000) 107, CIME observers -- currently Argentina, Brazil and Chile -- would be given the same participant status concerning CIME’s work related to the Declaration. This would ensure equal treatment in this respect among all non-members adhering to the Declaration and related OECD Acts.
In their discussion in December, the CIME addressed two separate but related issues:

(a) It is true that observer invitations should continue to be the norm for non-member participation in official sessions of the Committee but such participation should be recommended sparingly. Many delegations felt however that the CIME’s application of the "major player" test for regular observership has been too restrictive. The Committee is ready to be more flexible in this regard in considering future applications for observership for example to take into account the influence of the countries concerned on international investment matters. If the Council agrees, the Committee would consider how this might be applied in practice.

(b) There is agreement in the Committee that adherents to the Declaration on International Investment and Multinational Enterprises should be invited to participate fully in the work related to the Declaration and Related Acts as a counterpart to the obligations undertaken under these instruments. However, for those non-Members that do not apply for regular observership in the Committee or are unable to meet the requirements of regular observer status in the Committee, participation rights will be limited to a working party responsible for matters relating to the Declaration. Non-Members adherents to the Declaration would also be entitled to participate in special sessions of the Committee where decisions relating to the Declaration are being considered.

Turning to the potential beneficiaries of the proposed CIME policy, the Committee recommends extension to inviting Israel and Slovenia the invitation to adhere to the Declaration and related Acts. Their earlier requests for observership were turned down on the sole ground of their not being a "major player". Their situation corresponds to the situation covered by C(2000)107. These two countries would need to submit themselves, however, to a policy examination.

Accordingly the Secretary-General invites the Council to adopt the following draft conclusions:

"THE COUNCIL

a. Noted the document [C(2000)…];

b. endorsed the Committee’s plans for the development of forms of participation other than observership set out in paragraphs 4-5 of [C(2000)107] as complemented by [C(2000)…]; the present document [C(2000)…] and in particular paragraphs 7 and 8;

c. endorsed the revised CIME guidelines for considering requests for observership and other forms of participation by non-Members which are reproduced in the annex to this document;

d. agreed that Latvia, Lithuania and Venezuela as well as Israel and Slovenia should be invited to adhere to the 1976 Declaration on International Investment and Multinational Enterprises and related Decisions by the Council, subject to a full examination of their respective FDI policies.

Germany reserved its position.

Belgium considered that the words "would also be entitled" should be replaced by the words "could also be invited".