RECENT MEASURES

(Note by the Secretariat)

This document is submitted to the Committee for consideration at its meeting on 12-13 October 2000.
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1. This note gives an overview of recent measures (laws and regulations, policies and practices) in Member countries concerning the liberalisation of capital movements and current invisible transactions. It covers recent developments in the period from 1 March 2000 to 14 September 2000 that may affect the position of Member countries under the Codes. In most cases, the information is derived from press reports that have not been verified. Comments by the Secretariat have been added to indicate how the items might concern the two Liberalisation Codes and the National Treatment instrument, or might otherwise be of particular interest to the Committees.

2. This note is intended to assist the CMIT in its task of overseeing the implementation of the Codes.

3. Written material supporting responses by experts to questions in this Working Document should be provided to the Secretariat, if possible, before the meeting. To facilitate the presentation of factual matters, it is intended that these responses be made available to all members of the Committee in the form of a room document.
Recent Measures

1. Canada

   a. Banking and Tax Legislation

      The Canadian expert will inform the Committee about recent developments concerning the banking and tax legislation as a follow-up to the discussion in March 2000 [DAFFE/INV(2000)2].

   b. Newspaper Industry

      The Canadian government said it is examining whether to relax its restrictions against foreign ownership of the country’s newspapers. Canadian law effectively limits foreign ownership of newspapers to 25 per cent. Opening newspapers in Canada to foreign ownership would signal a major shift in Canadian cultural policy, which also mandates Canadian majority ownership of magazines, television and radio.

      (Source: OECD Press Review, 4 May 2000)

      Question: Could the Canadian expert comment? Canada maintains a reservation under item I/A of the Code of Liberalisation of Capital Movements concerning “activities related to Canada’s cultural heritage or national identity (in particular, those areas involving the publication, distribution, and sale of books, magazines and newspapers;…)”.

2. Czech Republic - Telecom Liberalisation

   The Czech Republic is to delay the liberalisation of its telecoms market by two years, dealing a blow to foreign telecom companies preparing to challenge the state-owned national carrier. The Czech lower house of parliament passed an act on Friday allowing Cesky Telecom until the end of 2002 to provide rivals with the conditions they argue are required for full competition on voice traffic. The act now goes to the Senate but is expected to pass unchanged.

   (Source: Financial Times, 6 March 2000)

   Question: During discussion of the recent Progress Report submitted by the Czech authorities1, it was expected that the telecommunication sector would be fully liberalised as of 1 January 2001. Accordingly, the remaining Czech reservation concerning access to local telephone network and services will cease to apply on 31 December 2000. Could the Czech expert comment?

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3. **Italy - Gas liberalisation**

British Gas was last night set to mount an important test of the degree of liberalisation in Italy’s energy market after winning a contract to supply 4bn cubic metres of gas to a consortium of Italian companies (Gas Plus). The agreement between BG and Gas Plus is the first time a non-Italian group has been selected to supply gas to clients in Italy. The announcement follows the implementation of Italy’s gas liberalisation decree a few days ago. However, European gas companies have warned in recent weeks that it is still uncertain whether Italy’s gas liberalisation will make agreements such as the one between BG and Gas Plus practicable. “The current legislation …contains many provisions to protect the incumbent national champion (Snam) and preserve the status quo”, wrote Keith Mackrell, one of BG’s non-executive directors, recently.

(Source: Financial Times, 18 July 2000)

**Question:** Italy’s reservations to item I/A of the Code do not refer to investments by non-residents in the gas sector. Could the Italian expert comment?

4. **Japan - Telecommunications**

Japan’s ruling Liberal Democratic party aims to push through legislation to relax the 20 per cent limit on foreign ownership of NTT, the country’s dominant telecommunications operator, as early as the next regular session of parliament beginning in January according to an influential member of the party. In addition to removing the 20 per cent limit on foreign ownership, the parliamentary group is considering a significant reduction in the government’s 53 per cent stake in NTT.

(Source: Financial Times, 14 July 2000)

**Question:** Japan does not have a reservation on telecommunication concerning item I/A of the Code of Liberalisation of Capital Movements, regarding foreign investment in this sector as a matter of national security (Article 5 of the Code). Could the Japanese expert comment?

5. **Mexico - Admission of Foreign Securities**

At the Executive Committee meeting on 22 September 2000, the Mexican authorities announced new liberalisation measures aimed to remove existing restrictions on the admission of foreign securities on the domestic capital market. By this statement, the Mexican authorities reacted to the invitation by Council to proceed, according to their original commitment, with an early liberalisation of the issue through public sale of foreign securities on domestic markets (items IV/B1, V/B1, VII/B1) - see C(2000)54, paragraph 30.

**Question:** Could the Mexican expert provide more information on the measures taken and further liberalisation measures planned that would affect the Mexican position under the Codes?
6. Poland

a. Capital Flows Liberalisation

It is becoming increasingly likely that the Finance Ministry will fully liberalise capital flows as of 1 January 2001, despite having signed an agreement with the OECD to liberalise capital flows as of 1 January 2000. Poland still limits short-term portfolio capital flows, and Polish citizens are prohibited from opening accounts in foreign banks or investing in instruments with over three-months’ maturity.

(Source: OECD Press Review, 7 July 2000)

Question: Could the Polish expert comment?

b. Disclosure Requirements

In an effort to curb a tide of foreign takeovers of listed companies, Poland plans to tighten disclosure requirements faced by strategic investors, the country’s top stock market regulator said. A planned amendment to Poland's securities laws will lower the ownership thresholds at which would-be buyers must declare their intentions to regulatory authorities and shorten the period for such reporting. It would also limit strategic bidder’s ability to side-step disclosure rules by acting in concert with other buyers.

(Source: OECD Press Review, 4 April 2000)

Question: What is the motivation for this planned legislative change? Can the Polish expert confirm that the amendment will respect the non-discrimination principle of the Code?

7. Portugal - “Golden Shares”

Portugal has created a golden share that enables the government to veto strategic decisions by Electricidade de Portugal, the national power utility, despite facing court action over the issue by the European Commission. The move signals the Lisbon government’s determination to maintain special voting rights to control the strategies of privatised companies despite opposition from Brussels. The golden share gives the government the right to veto strategic decisions, including mergers, spin-offs, and capital increases. The government also reserves the right to appoint at least one board member, regardless of how other shareholders vote.

(Source: Financial Times, 20 July 2000)

Question: Could the Portuguese and the EU expert comment? Portugal maintains a reservation under item I/A of the Code of Liberalisation of Capital Movements concerning “investment by non-EC investors, which may be subject to an authorisation procedure taking into account its effects on the national economy”.
8. **Spain/France/Netherlands - "Golden Shares"**

The European Commission yesterday decided to take Spain to court over its use of so-called “golden share” holdings to stop foreign takeovers of Spanish businesses. A 1995 Spanish law requires the boards of companies involved in providing essential public services or operating in regulated markets to receive authorisation if a company that is more than 25 per cent owned by the state acquires more than 10 per cent of its shares. Spain used this legislation recently to block a takeover of a Spanish utility by a German company owned by Electricité de France, the French government-owned utility. The Spanish government has also put pressure on the board of Telefonica, the Spanish telecommunications group, leading to a breakdown in merger talks with KPN, a partly state-owned Dutch operator.

(Source: OECD Press Review, 6 July 2000)

**Question:** Could the Spanish (French and Dutch) expert comment? Spain maintains a reservation under item I/A of the Code of Liberalisation of Capital Movements concerning “investment originating in non-EC member countries by governments, official institutions, and public enterprises”.

9. **Slovak Republic - Bank Privatisation**

Slovakia will this week start the sale of the country’s biggest bank in a move that will revolutionise its once highly fragile banking sector. Controlling stakes in Slovenska Sporitelna, the main retail bank, as well as the smaller Banka Slovacia will be offered for sale this week, with Vseobecná Uverová banka, the main commercial bank, following later. A tender for Investicná a Rozvojová Bank was called last month and the government also plans to sell minority shareholdings in several smaller banks. The tenders follow one of the most ambitious banking restructuring programmes in Central Europe.

(Source: Financial Times, 10 July 2000)

**Question:** Can the Slovak expert confirm that the principle of non-discrimination will be respected during privatisation?

10. **United States/Germany**

a. **Telecommunication**

i) Despite the possibility of major regulatory hurdles, Deutsche Telekom is expected to announce on Monday that it has agreed to acquire VoiceStream Wireless Corp. of the US for $50.7 billion, according to executives close to the deal. The acquisition represents the first time a company that is controlled by a foreign government has attempted to buy a US based telephone operator. It will be closely watched as a test case for whether the US government will allow other such deals in the future.
More than two dozens US legislators have already voiced opposition to the deal in a letter sent last week to the director of the Federal Communication Commission. The European Union has countered that legislator’s opposition by arguing that the US government would be in violation of its WTO commitment to open and competitive markets if it decided to block the deal.

(Source: International Herald Tribune, 24 July 2000)

ii) Deutsche Telekom will face political and regulatory problems if it attempts to acquire the US company Sprint, even though three years ago the US government adopted rules intended to make it easier for foreign companies to enter the American telecommunication market.

Telekom will be up against a US law governing the transfer of radio licences (The Communications Act of 1934) which contains an outright ban on foreign governments owning American spectrum licences (fifty-nine percent of Telekom is still held by the German government. The Act also contains strict ownership limits on private foreign companies.

US law allows the FCC to grant a waiver except that the purchase would amount to a violation of the competition and national security standards

(Source: Financial Times, 11 July 2000)

**Question:** The United States has a reservation with regard to item I/A of the Code of Liberalisation of Capital Movements on broadcasting (radio and television) and certain other forms of communication. What is the US government’s view concerning the permissibility of the purchase of Voicestream by Deutsche Telekom under current US law and Code obligations?

b. Postal Services

Deutsche Post, the German government’s postal and logistics group, is poised to take control of DHL Worldwide Express, the US parcel delivery company. The transactions which could be announced within the next ten days, value DHL at $ 18.92 bn and will add to controversy in Washington over German government-owned companies making US acquisitions. The German government is preparing to float about a quarter of Deutsche Post’s equity in November.

(Source: Financial Times, 14 September 2000)

**Question:** The United States does not have a reservation on postal services with regard to item I/A of the Code of Liberalisation of Capital Movements. What is the US government’s view concerning the permissibility of the purchase of DHL by Deutsche Post under current US law?