SUMMARY RECORD OF THE CMIT MEETING HELD ON 12-13 OCTOBER 2000

This summary record is subject to the Committee’s approval. Any amendment will be recorded in the summary record of the next meeting.
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1. Adoption of the Agenda

The Agenda [DAFFE/INV/A(2000)2/REV1] was adopted with one additional item: It was agreed that the draft Report to Council concerning the post-accession examination of Poland [DAFFE/INV/IME(99)1/REV2] be discussed under item 5 and that formal consideration of this item be preceded by an informal session without record.

2. Approval of the Summary Record of the CMIT meeting held on 15 March 2000

The Summary Record of the March meeting [DAFFE/INV/M(2000)1] was approved without amendment.

3. Developments since the Committee’s last meeting

The Secretariat gave an oral report about developments since the Committee’s last meeting, and submitted a current status report as a room document (see Annex 1).

4. Recent Measures

The Committee discussed recent measures (laws, policies, regulations,) relevant to the OECD Codes of Liberalisation on the basis of a Note by the Secretariat [DAFFE/INV(2000)17] and contributions made by Committee members:

a. Canada - Banking and Tax legislation/Newspaper Industry

The Canadian expert informed the Committee about pending new banking and tax legislation. The introduced legislation would reform the policy framework for Canada’s financial services sector. The tax proposal relates to the taxation of foreign banks that operate branches in Canada, and would make the taxation of new foreign bank branches broadly comparable to the taxation of Canadian banks [see also DAFFE/INV/RD(2000)6,7].

The Canadian expert also informed the Committee that that there are currently no plans to liberalise foreign investment in the Canadian newspaper industry.

b. Czech Republic - Telecom Liberalisation

The Czech expert confirmed that as of 1 January 2001, the telecommunication sector will be fully liberalised in accordance with the Czech Republic’s commitments at the time of accession.
c. Italy - Gas liberalisation

The Italian expert confirmed that the Italian legislation on gas liberalisation does not contain any discriminatory investment rules.

d. Japan - Telecommunications

The Japanese expert informed the Committee that the Japanese government currently has no plans to amend the existing rules on foreign ownership of NTT, the country’s dominant telecommunications operator.

The Japanese authorities were invited to consider reflecting the existing restriction as a reservation under item I/A of the Code of Liberalisation of Capital Movements - instead of having recourse to Article 5 of the Code. This would be consistent with the Committee’s established policy set out in the Introduction to the Codes, Chapter II, section 2k. It was agreed to revert to this issue at the next meeting.

e. Mexico - Admission of Foreign Securities

The Mexican expert informed the Committee about new liberalisation measures aimed to remove existing restrictions on the admission of foreign securities on the domestic capital market. Further liberalisation measures are under consideration and the Mexican expert agreed to keep the Committee informed.

f. Poland

The Polish expert informed the Committee that a decision on full liberalisation has still to be taken. The Polish expert also informed the Committee that new legislation, including on the protection of minority shareholders, will probably be ready in spring 2001. The Committee agreed to return to these issues at its next meeting in the context of a broader discussion of Poland’s position under the Codes (see item 5a).

g. Portugal - “Golden Shares”

The Portuguese expert informed the Committee that for the time being Portugal will maintain its golden share rule that enables the government to veto strategic decisions by certain companies. The EC expert mentioned that the European Court of Justice will probably decide upon this issue in spring 2001, but that there were five other cases involving “golden shares” under investigation with respect to other EU member states. It was agreed that the Committee will revert to this matter at its next meeting.

h. Spain/France/Netherlands - "Golden Shares"

As in the case of Portugal (see above), it was decided to come back to this issue at the next meeting.
i. Slovak Republic - Bank Privatisation

The Slovak expert confirmed the sale of several Slovak banks in the framework of the Slovak banking restructuring programme. It also confirmed that the Slovak authorities will respect the principle of non-discrimination.

j. United States/Germany

Telecommunication/Postal Services

Concerning the intended acquisition of VoiceStream Wireless Corp. of the US by Deutsche Telekom, the US expert informed the Committee that the deal is subject to a “public interest” test. The approval by the US authorities is still pending. The German expert pointed out that Deutsche Telecom would not be controlled by the German government.

With regard to the intended acquisition of DHL Worldwide Express by Deutsche Post, the US expert confirmed that the legal situation is similar to that in the above case (VoiceStream).

5. Post-Accession Issues

a. Poland

The Committee

- Adopted the Report concerning the examination of Poland’s position under the Codes of Liberalisation and the Declaration and Decisions on International Investment and Multinational Enterprises [DAFFE/INV/IME(99)1/REV2] with deletion of the square brackets to paragraph 245;

- Considered and agreed upon the text of a short Report to be forwarded to Council including a recommendation to amend Poland’s position under the Codes of Liberalisation and the Declaration and Decisions on International Investment and Multinational Enterprises to reflect Poland’s position at the end of 1998 [DAFFE/INV/IME(2000)7];

- Took note of the statements made by the Representatives of the United States and the European Commission and agreed that these statements should be annexed to the summary record and constitute an integral part of this record (see annexes 2 and 3);

- Agreed to undertake a progress report on Poland's position under the Codes of Liberalisation, for consideration at the Committee’s first meeting in 2001.

b. Hungary

The Committee discussed a note by the Secretariat [DAFFE/INV(2000)19], prepared on the basis of a Report by the Hungarian authorities on progress towards full liberalisation [DAFFE/INV(2000)13] and agreed upon a set of conclusions to be incorporated into a report to Council for approval under written procedure [see DAFXE/INV(2000)19/REV1].
6. Professional Services

a. Cross-Border Trade in Professional Services

The Committee discussed a draft Report to the Council on cross-border trade in professional services that takes into account the results of the discussion on 25 June 1999 [DAFFE/INV(99)5/REV2]. Delegations were invited to submit written proposals concerning the drafting of their reservations until the end of October. The Report will then be circulated for approval under written procedure before transmittal to Council.

b. Inward Direct Investment and Establishment in the Professional Services Sector

The Committee discussed a Secretary’s note on Inward Direct Investment and Establishment in the Professional Services Sector [DAFFE/INV(2000)18]. Delegations were invited to submit written proposals concerning the drafting of their reservations before the end of November. The Secretariat will then present a revised text for consideration at the next meeting.

7. Financial Services by Branches of Foreign Banks

The Committee agreed, in principle, on the Note by the Secretariat [DAFFE/INV(99)15/REV2]. The Secretariat announced that it will get in bilateral contact with delegations concerning the drafting of their reservations. Delegations were invited to react until end of November. The Secretariat will then present a draft report to Council for approval under written procedure.

8. Insurance services

a. Activities of the Joint Working Group on Insurance Services

The Chair of the Joint Working Group on Insurance Services reported on the Group's activities and indicated that the Group's next meeting on 27 November will probably be its last. The resulting reports on the examination of the insurance provisions of the Current Invisible Code will be transmitted to the CMIT and the Insurance Committee for approval in due course.

b. Investment Abroad by Insurance Companies and Pension Funds

The Committee:

- Discussed the Joint Working Group's report on "Portfolio Investment Abroad by Insurance Companies and Private Pension Funds" [DAFFE/INV(2000)20] and the draft of a cover note by the Secretary-General;
- Agreed that delegations should provide their comments to the Secretariat by 31 October, especially on the draft reservations attached to the report;
- Agreed that thereafter the report and its cover note would be submitted to both the CMIT and the Insurance Committee for final approval and transmittal to the Council.
9. Cross-Border Trade in Financial Services

The Committee:

- Was informed by Mr Dryden (Head of Division, Directorate for Science, Technology and Industry) about a wide range of OECD activities on electronic commerce, by Mr. Pecchioli (Deputy Director, DAFFE) on a recent mapping exercise on potential concerns and ongoing work on e-finance carried out by the Financial Stability Forum, and by Mr Christiansen (Financial Affairs Division, DAFFE) on the planned work of the Committee on Financial Markets concerning the impact of internet technology on cross border trade in financial services [DAFFE/CMF(2000)33, Annex III].

- Was invited by the Chair to consider the implications of these developments for the OECD Codes of Liberalisation, and to consider practical ways of moving forward on this issue which was central to the evolution of the modern economy and deserved the closest attention by the Committee.

- Agreed that a practical way to start would be to hold a brainstorming meeting with representatives of international organisations, practitioners and regulators in the field and noted the Chair’s intention to come forward with proposals after consultation with the Secretariat.


The Committee:

- Noted the Chair’s introductory remarks emphasising the need for the Committee to move into a pro-active phase to be marked by a new emphasis on current or emerging issues of importance to the Codes, a closer relationship with the work of other committees, greater emphasis on outreach activities with non members and a willingness to experiment with new procedures for consultation with delegations and non governmental experts and bodies, including BIAC and TUAC.

- Noted that the document DAFFE/INV(2000)10/REV1 reflected the results of a consultation with CMIT members, that it provided the basis for the Secretary-General’s Council submission on CMIT matters in the OECD’s Programme of Work and Budget for 2001-2002 [C/PWB(2000)01/02 and annexes]; further noted the corrections to DAFFE/INV(2000)10/REV1 (para. 7) proposed by the Austria expert to add a reference to the Joint Working Group of CMIT and the Insurance Committee, and by the Polish expert who pointed out that Poland’s first post-accession review was now completed; and agreed to keep the Committee’s work programme under review in the light of developments.

- Welcomed the proposal to undertake a study on liberalisation experiences of member countries [DAFFE/INV(2000)21]; encouraged the Chair and the Secretariat to seek voluntary contributions to cover the costs of the necessary consultant work; and looked forward to a first draft of the study in March 2001.

- Encouraged delegations to consider providing additional support to the Committees’ work through secondments or voluntary contributions.
11. Future Work and Other Business

It was noted that the next meeting has been scheduled for 12/13 March 2001. A tentative agenda was circulated for information (see Annex 4).
This note gives an overview of the current state of affairs concerning Reports to Council finalised since the last meeting of the CMIT:

1. **Approved by Council**
   - Korea – Examination of Position under the Codes [C(2000)121]
   - Mexico – Modification of Position under the Codes [C(2000)54 and CORR1
   - Czech Republic – Modification of Position under the Code [C(2000)158]
   - Belgium – Modification of Position under the Code [C(2000)150];
   - Finland – Modification of Position under the Code [C(2000)120];
   - Germany – Modification of Position under the Code [C(2000)151];
   - Japan – Modification of Position under the Code [C(2000)123];
   - Turkey – Modification of Position under the Code [C(2000)128];

2. **Approved by CMIT**
   - Australia – Modification of Position under the Code [C(2000)180];
   - New Zealand – Modification of Position under the Code [DAFFE/INV(2000)15];

3. **Pending**
   - Poland – Post-Accession Examination [DAFFE/INV/IME(99)1/REV2].

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1 Currently under consideration by the Council under written procedure.
Annex 2

Statement by U.S. Delegation Representative
to the Committee on Capital Movements and Invisible Transactions
October 13, 2000

The United States strongly disagrees with the position of the European Community expressed in its declaration that suggests that Poland’s audiovisual (or any other) liberalization commitments in the OECD’s Code of Liberalization of Current Invisible Operations are subordinate to its obligation in its association with the European Union or the Council of Europe’s Convention on Transfrontier Television or to its commitment to the European Union to implement the Acquis Communautaire.

Contrary to the assertion in the EC’s declaration, neither Article 10 nor Article 4 of that Code would justify Poland introducing new restrictions, such as broadcast quotas, which are not permitted according to the standstill provisions of the OECD Codes.

In response to the EC’s suggested interpretation of Article 10 of the Codes, I point out that Article 10 refers explicitly to applying new measures of liberalization among members of a special customs union or monetary system. It says nothing at all about applying new restrictions, which are not permitted according to the standstill provisions of the OECD Codes.

Furthermore, Poland is not yet a member of the European Union. Therefore, it is premature to consider invoking Article 10 for Poland, which in any event could not justify the introduction of protectionist measures, such as broadcast quotas.

We also do not accept that Article 4 means that Poland’s obligations under the OECD Codes to all members of the OECD are subordinate to its obligations to the European Union.
The European Commission on behalf of the European Union accepts the amended reports DAFFE/INV/IME(99)REV1/CORR and DAFFE/INV/IME(98)17/REV2/CORR2 concerning the examination of Poland whilst underlining that given the rights which any OECD member has under the OECD Codes, and in particular Articles 4 and 10 thereof, the obligations undertaken under those Codes by Poland do not impinge on the implementation of previous international commitments, such as the Council of Europe Convention on Transfrontier Television and the Europe Agreement between Poland and the European Communities and their Member States. Neither do they impinge on the take over and the implementation of the Community acquis to which Poland is committed within the framework of its accession process to the European Union.

We are aware that the US Delegation is not in agreement with this interpretation and that it is possible problems might arise in the future. For the time being, our respective statements imply an agreement to disagree in respect of such potential future problems, leaving them to be settled if and when they may arise. Should such problems materialize, we hope that they will be dealt with in a pragmatic and constructive manner.
Annex 4

CMIT Future Work

I. Tentative Agenda for CMIT meeting 12-13 March

1. Recent Measures

2. Post Accession Reviews:
   - Poland: Progress Report
   - Mexico: Follow-up to Council recommendations

3. Reports to Finalise:
   - FDI and Professional Services
   - Insurance: Updating the Codes – Final Report by the Joint Working Group

4. New Activities:
   - Cross-border financial services and e-commerce
   - Study on Liberalisation Experiences of OECD Members;
   - Derivatives and Similar Instruments under the Codes: Questionnaire
   - User’s Guide to the OECD Codes of Liberalisation: Outline

5. Future Work

II. Under written procedure:

   - Hungary: Progress report
   - Cross-Border Trade in Professional Services
   - Financial Services by Branches of Foreign Banks
   - Investment Abroad by Insurance Companies and Pension Funds

III. Pour memoire

   - Cross-border financial services: CMF Bankers’ meeting 26 March and informal meetings of interested CMIT members
   - Outreach event on liberalisation
   - New editions of the Codes
Annex 5

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