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OBSERVERSHIP AND OTHER FORMS OF PARTICIPATION IN CIME

(Note to Council)

This note to Council takes into account the Committee's discussion in December 1999. It is for consideration under item 3 a) of the Committee's agenda for its 19-20 April meeting.

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OBSERVERSHIP AND OTHER FORMS OF PARTICIPATION IN CIME

(NOTE TO COUNCIL)

I. Summary

1. Three years have passed since Argentina became the first observer in the Committee on International Investment and Multinational Enterprises (CIME). Brazil and Chile are the other two non-Member economies to have obtained CIME observership status under the Guidelines developed by the Council on Participation by Non-Members in the work of subsidiary bodies of the Organisation [C(96)64/REV1/FINAL]. and the CIME Guidelines for Considering Requests for Observership [C/NM(95)118]. These guidelines are based on the “major player” and “mutual benefit criteria”. Slovakia is an observer as candidate for accession to the OECD.

2. Other non-Members have applied for observer status but their requests have not been successful or are still under consideration:

- Israel and Slovenia were respectively found not to meet the “major player” criterion for observership in 1998 and 1995;¹ Russia’s request was considered premature in 1998;²
- Latvia’s, Lithuania’s³ and Venezuela’s requests are being reviewed by the Committee, but they may not meet the “major player” criterion.

3. A large majority of delegations⁴ is of the view that the criterion of “major player” remains appropriate for observership. (Currently, CIME is one of the committees for which “full participation” is not envisaged by Council Resolution C(96)64/REV1/FINAL). However, in the Committee, it is also generally recognised that the present policy leads, for all practical purposes, to an “automatic” exclusion of small economies, even when a close involvement in regular Committee work presents strong elements of “mutual benefit”.

4. A few additional non-Members (e.g. Hong Kong, China; Singapore) would be able to simultaneously meet the two Council criteria and become CIME observers in the foreseeable future. The Committee proposes that Council offer non-Member economies the possibility of adhering to the OECD

1. It was considered that “acceptance of Israel as an observer would have set a precedent which would have made it difficult to reject possible candidates on the basis of the major player criterion” [C(98)185]. The CIME felt it “compelled to give a negative opinion on the suitability of Slovenia for observer status”. Two delegations did not join the majority of this conclusion while several delegations considered that the “major player” criterion could systematically exclude small countries [C/NM(95)118].

2. See DAF/INV/IME(98)1/ANN1.

3. See DAF/IME(2000)6.

4. Austria suggested that the criteria for becoming an observer should be re-considered.

Declaration on International Investment and Multinational Enterprises and related OECD acts, and become full participants in that part of the CIME work which directly concerns them. As a condition, the applicants would have to apply liberal policies towards foreign direct investment and be willing and able to meet the requirements of the Declaration and the related OECD acts. In effect, for participation by such economies in this part of the CIME's work, which will be kept separate from other elements of its agenda, the Council would agree to apply only the criterion of mutual benefit.

5. In addition, the CIME believes that it would be useful to strengthen and upgrade the Committee's regular contacts with non-member economies in various ways, including through the organisation, at regular intervals, say annually, of "special sessions" with important non-OECD recipients or hosts to foreign direct investment not interested or eligible for full observership in the Committee. This type of activity requires Council approval since it will be useful to treat these "special sessions" as "official sessions" of the CIME within the meaning of C(96)64/REV1/FINAL.

6. Wider adherence to the Declaration will enhance the Committee's role in promoting a favourable climate for foreign investment outside the OECD area. The Declaration on International Investment and Multinational Enterprises is composed of four complementary and balanced components – the National Treatment instrument, the Guidelines for Multinational Enterprises, the Incentives and Disincentives instrument and the Conflicting Requirements instrument. Opening the Declaration to new members will increase the effectiveness of these instruments by extending the circle of their influence. The National Treatment instrument provides essential guarantees to foreign investors and their investments. The Guidelines for Multinational Enterprises encourage OECD enterprises to make positive contributions to economic, environmental and social progress and minimise the difficulties to which their various operations may give rise.

7. This innovation is not expected to negatively impact on the organisation of the CIME discussions, nor to interfere with the present budgetary allocations of the Committee. The most immediate beneficiaries of the new policy are likely to be limited to a few countries, namely the three Baltic states⁵ and Venezuela. It also possible that Slovenia and Israel may want to adhere to the Declaration. The cost of FDI examinations for adherence to the Declaration, will, as in the case of observers, continue to be borne by the applicants. The presence of these additional countries in instrument-related work will not create serious logistical problems because three of them⁶ already participate in the discussion on international investment issues. The Committee will make the appropriate arrangements (for instance the creation of a special working party to deal with items arising in the implementation of the Declaration) should this prove necessary in the future.

8. With regard to future "outreach activities", the Committee will entertain a more interactive and effective dialogue with non-Member economies exercising a growing influence on the world economy and globalisation. It will organise on a regular basis (at least once a year) "special sessions" with these countries, focussing in particular on (a) ongoing issues on the Committee work programme, (b) horizontal issues; and (c) the particular interests and needs of the targeted economies.

5. While Estonia has not formally applied for observer status, the authorities have indicated informally that they would be willing to adhere to the Declaration if this possibility was made available to them.

6. Argentina, Brazil, Chile, Latvia, Lithuania, Estonia, Hong Kong, China and Slovakia. This participation is subject to annual review under the normal rules of the Organisation [C(99)105].

9. In addition, more traditional outreach events⁷ (conferences, workshops) will be conducted with a view to addressing topical issues of a broad interest for members and non-Member economies.⁸ Regional events will on the other hand be more focussed and address issues of particular interest to the economies concerned. In addition, the Committee will continue to provide *ad hoc* technical advice, for instance, on the elaboration of new foreign investment legislation or sponsor, country studies at the request of (and with financing from) a non-Member economy or a member country. Outreach activities will rely on CCNM funds and voluntary contributions.

II. The present situation

10. The CIME policy for considering participation by non-Members in the work of the CIME is presently defined by Council Resolution C(96)64/REV1/FINAL as complemented by the CIME Guidelines for Considering Requests for Observership [C/NM(95)118].

11. The Council Resolution provides various means of co-operation with non-Members including (a) regular observers; or (b) full participation in official sessions of a subsidiary body; participation in activities conducted by the Organisation within various frameworks or programmes; (c) participation in workshops, seminars or other *ad hoc* informal meetings; and (d) any other form of co-operation that may be appropriate. These guidelines are intended to respond in a flexible, efficient and cost-effective manner to the growing interest of non-Members in the work of the Organisation.

12. Regular observership is considered to be the norm for non-Member participation in Committee meetings. Regular observers are subject to the “major player” and “mutual benefit” tests.

13. The CIME guidelines aim to assist delegations in applying the Council criteria of “major player” and “mutual benefit”. The main consideration for a “major player” is the importance of a host and home country for foreign direct investment. “Mutual benefit” has been defined in terms of the openness of a country to international direct investment, particularly from abroad, and the conformity of national policies with the requirements of the Codes of Liberalisation concerning direct investment flows. In addition, the CIME takes into account the willingness and ability of the country to adhere to, and implement, the OECD Declaration on International Investment and Multinational Enterprises and related Decisions.⁹ All past technical opinions by the Committee – positive or negative – were based on these guidelines.

14. With one major exception – full participation¹⁰ – the Committee made use, within the scope of available resources – of a number of the means of co-operation identified in the Council Resolution for “outreach activities”. The Committee has made a significant contribution to “CCNM Investment Policy

7. Such as the Conference on FDI and the Environment held in the the Hague, 28-29 January 1999 and the Conference on “FDI and Development, Corporate Responsibility and the OECD Guidelines for MNEs”, held in Paris on 20-21 September 1999.

8. FDI in information technologies and related activities, for instance, belongs to this category of issues.

9. Initially, the Committee also took into consideration the country's willingness to subscribe to the OECD Recommendation on International Business Transaction. With the coming into force of the OECD Convention to Combat Bribery, however, the Committee has decided to dissociated the procedures for CIME observership from accession to the Convention [DAFFE/IME(99)39/REV1].

10. While the Committee does not presently have any non-Member with “full participant” status, prior to its accession to the OECD, Hungary was invited in April 1994 to join the OECD Declaration on International Investment and Multinational Enterprises and to participate fully to related work of the CIME [C(94)87/ANN].

Forum”¹¹ and the CCNM regional and country programmes by organising conferences or workshops and undertaking special country studies.¹² More recently, it has made known its readiness to contribute to the “Stability Pact for South Eastern Europe” where FDI is an important element of this programme [ECSS(99)14].¹³

15. Experience has brought to light, however, a number of shortcomings with the present policy towards non-Members. The ranking of “major players” by the size of FDI flows allows little room of manoeuvre for accepting new observers in the Committee. In fact, few of the non-Members in the world’s 25 leading host countries (Annex 2) for FDI would seem to simultaneously meet the two Council criteria for observers or full participants. The “mutual benefit” criterion is more flexible but it cannot override the “major player” test. This policy penalises smaller non-Members which have adopted or already apply liberal policies towards FDI. A wider geographical application of the Declaration on International Investment Instrument will, on the other hand, promote the effectiveness of the fundamental provisions contained therein.

16. The present situation is also deficient in other respects. While the outreach activities carried out in the recent past under the auspices of the CCNM have been very useful in sharing experiences, gathering information and establishing contacts with non-Members, they have not/not been proven to be the best or most efficient vehicle for associating these economies – and notably those which are playing a growing role in the FDI field, to the Committee’s core activities. Given the determinant role of international investment in globalisation and the increasing role of non-Members in the world economy, it is clear that CIME work can no longer be limited to the OECD geographic area alone. This argues in favour of finding new ways for involving non-OECD economies in CIME mainstream of activities. Leaving the situation as it is could, for instance, handicap the Committee contribution to two of the eight strategic priorities set up for the Organisation for 2001-2002 – trade and investment and outreach to non- member economies – [paragraph 12 of C(2000)36].

III. Role of the Committee

17. The CIME has wide experience and accumulated knowledge of international investment issues. As foreseen by its mandate and work programme [DAFFE/INV/IME/(99)5], the Committee’s role can be defined in different ways including:

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- 11 . The CCNM Investment Policy Forum currently consists of the Emerging Market Forum programme, the Transition Economy Forum programme, the Special Programme of Policy Dialogue on Issues Arising from Financial Instability in non-Member Economies.
 - 12 . The main activities in 1999 were the Conference on FDI and the Environment, the Hague, 28-29 January 1999 [DAFFE/EMEF/EPOC/CIME(98)7], the Conference on “FDI and Development, Corporate Responsibility and the OECD Guidelines for MNEs”, Paris, 20-21 September 1999, the Conference on “FDI Policy and Private Sector Development in the Baltic States”, Tallinn, 17 November . The Committee has also launched two major studies on FDI in the Russian Federation [DAFFE/INV/IME/RD(99)3] and on the economic impact of FDI in China [DAFFE/INV/IME/RD(99)4]. A full description of these activities can be found in the CCNM Integrated Programme of Operational Activities (1999 edition).
 - 13 . As part of the programme, Austria may host a Conference on the Investment Policy and the Reconstruction of SEE economies in the course of the year.

- It is the guardian (with the CMIT) of the comprehensive international liberalisation instruments for foreign direct investment.¹⁴ It is engaged in examining international investment issues. It is also the only governmental international body to have developed guidelines of behaviour for multinational enterprises, which will be enhanced by the current Review.
- The CIME has an important analytical function in deepening understanding of major FDI trends and policies and their economic effects.
- The CIME can develop synergies with other OECD Committees which are dealing with issues important for FDI policy (environment, labour, taxation, corporate governance, social policy, competition policy and technology).
- The CIME Secretariat works closely with a number of international organisations such as the WTO Working Group on the Relationship between Trade and Investment (to which it has provided several submissions on international investment), UNCTAD (notably concerning analysis) and the IMF (the CIME has recently co-operated with the IMF in conducting a survey of the methodologies for reporting FDI in Member and non-Member economies).
- The CIME can provide technical assistance on the elaboration and implementation of FDI legislation (as was the case with economies in transition and Russia). Several developing economies at the September Conference on FDI, Development and Corporate Responsibilities spoke in favour of the OECD role in improving the institutional capacity of developing countries.

IV. Other forms of participation in CIME

18. In considering new arrangements, the Committee has been guided by the interests of Member countries, the needs of non-Member economies, the role of the Committee, the implications for its work programme over the medium-term, past experience with outreach activities, effectiveness, efficiency and budgetary considerations.

19. The Committee recognised the need to maintain a differentiated approach to future co-operation with non-Members in recognition of the fact that Members' and non-Member's interests and needs may vary and evolve differently in time. In addition to responding to areas of interest, it also reserved the possibility of taking the initiative in developing new ties with those non-Members which may present a particular interest for its own work.

20. While some flexibility needs to be retained on how available resources will be allocated, it is clear, however, that any new arrangements regarding non-Members should not interfere with existing Committee resources. This means that any new activity should be financed with additional resources. Against these considerations, the Committee will privilege the following elements in its future relations with non-Member economies.

14. Namely those contained in the 1976 OECD Declaration on International Investment and resulting from item I/A of the Capital Movements Code. The CIME is also responsible for the Convention on Combating Corruption of Foreign Officials in International Business Transactions.

i. Associating a larger number of non-Members to the Declaration on International Investment and Multinational Enterprises “willing and able” to meet its provisions.

21. The Committee is of the view that all non-Member economies with policies favourable to FDI should be allowed, irrespective of their size, to adhere to the OECD Declaration on International Investment and Multinational Enterprises, provided that such adherence is found to be of “mutual benefit” to the Committee.

22. This policy will provide an effective means of implementing the Committee’s role of promoting equitable and non-discriminatory treatment of investors and responsible behaviour of MNEs within the context of a balanced framework for international co-operation. It will also offer the greatest possibilities for developing a close relationship, both at a policy and analytical level, with non-Member economies.

23. Non-Member economies adhering to the Declaration will be entitled to participate fully in related Committee work (including in subsidiary bodies to CIME). Following existing practice for observership, any favourable opinion on a request to adhere to the Declaration will be preceded by a thorough policy examination on the basis of Secretariat research and analysis. All costs relating to such a review – Secretariat time, preparatory mission, consultants ... – will be borne by the applicant country. It will also pay the cost of their full participation to the Committee work on the Declaration.

24. The most immediate beneficiaries of the new policy are likely to be limited to a few countries, namely the three Baltic states and Venezuela. Slovenia and Israel might also be interested in joining the Declaration if the criterion of “major player” is no longer an obstacle. The presence of these additional countries in related work should not pose logistical problems since three of them already participate in the discussion on international investment issues. In any case, the Committee will make the appropriate arrangements (for instance the creation of a working party or *ad hoc* arrangements on the implementation of the Declaration) should this proved to be necessary in the future.

25. To avoid the anomaly that the major players which are CIME observers have a lesser status in the Declaration related work, these countries should be offered the possibility of being “full participants” in that part of the CIME work and would, in that case, be charged the greater of the relevant fees for non-member participation.

ii. Intensification of the dialogue with influential non-members economies

26. The Committee also intends to establish a major player dialogue with emerging market economies or economies with substantial two-way investment flows. This will be done by allocating a certain portion of CIME regular time to the discussion of specific issues with concerned non-Member economies. The Committee intends, for instance, to organise, a “special session” with selected non-Members at least once a year. The issues may be selected from the CIME’s own agenda (e.g. globalisation and international investment issues, corporate responsibility, the implementation of the OECD instruments), from developments in non-Member economies or regions, (e.g. FTAA, MERCOSUR, ASEAN) or other relevant fields. The Committee will take the initiative in organising such meetings or respond to expressions of interest by non-Members. Targeted non-member economies will be expected to cover their own costs. The OECD will also seek voluntary contributions.

iii. Outreach events and other activities

27. Outreach events are useful for building bridges with non-Member economies, gaining non-Member input on issues of interest to the Committee and exploring common ground. They also increase

the visibility of the Committee and reach out to a large number of non-Members. They will therefore be continued subject to the availability of funding by the CCNM or voluntary contributions. A number of improvements will be introduced in the future however.

28. With the exception of major economies such as Russia or China, which deserve special attention, the Committee will in future try to maximise externalities between various outreach activities. This would involve seeking a larger number of economies for events or conferences focussing on horizontal topics (such as development, environment technology). Regional outreach activities will, on the other hand, be more focussed and address issues of particular interest to the regions. Special efforts will also be deployed to regroup economies, which share the same geography or interests (for instance the Baltic Rim countries as opposed to the Baltic States). More events will be scheduled in the OECD Paris headquarters to facilitate the involvement and contacts with CIME delegates who are not able to travel long distances. As in the past, these outreach activities will be financed by CCNM funds or voluntary contributions.

29. In addition, the Committee can be expected to continue to respond to *ad hoc* requests for special advice which may not involve all CIME experts. These requests may originate, for instance, in the case of the SEE countries. In addition to that, the Committee may undertake special studies or country reviews either at its own initiative or at the request of a non-Member. These activities will be carried within the limits or working capacity of the Committee and the Secretariat. The costs for any special reviews or studies will in principle be financed by the economies requesting or supporting these undertakings.

30. Accordingly, the Council is invited to adopt the following draft conclusions:

“THE COUNCIL

- a) noted the Note by the CIME [C(2000)...];
- b) endorsed the Committee's plans for the development of alternative forms of participation to observership set in out in paragraphs 4-5 of [C(2000)...] and the revised guidelines and procedures reproduced in the Annex to this document which the Committee will follow in the future when considering requests for observership and other forms of participation by non-members economies."

ANNEX 1

**REVISED CIME GUIDELINES FOR CONSIDERING REQUESTS FOR OBSERVERSHIP
AND OTHER FORMS OF PARTICIPATION BY NON-MEMBER ECONOMIES¹⁵**

1. a. Upon the request of the Council to provide its justified technical opinion, the CIME will consider requests for observership on their merit. The Council criteria of “major player” and “mutual benefit” will be applied by taking into account the following considerations, which, however, cannot be applied in an automatic or mechanical fashion to determine the technical opinion of the CIME.

- i) The importance of the non-Member economy as a host and home economy for foreign direct investment.
- ii) The openness of the non-Member economy to international direct investment flows, particularly from abroad, and the extent to which its policies conform to the requirements of the OECD Codes of Liberalisation concerning direct investment flows.
- iii) The willingness and ability of the non-Member economy to adhere to the OECD Declaration on International Investment and Multinational Enterprises and related Decisions, and to participate fully in the implementation of these instruments.

b. The CIME will give a positive technical opinion on a request for observership only after conducting an investment policy examination on the basis of Secretariat research and analysis. (The undertaking of an examination shall not be taken as a commitment to give a positive opinion.)

c. The same conditions should apply to all non-Member economy observers. They will participate in joint meetings of CIME/CMIT in accordance with Council procedures including consultation with the CMIT.

2. Non-Member economies willing to adhere to the OECD Declaration on International Investment and Multinational Enterprises and to the related acts and able to meet their requirements, may be invited to do so. Adherence to the OECD instruments mentioned above will entail full participation in the CIME activities related to these instruments provided that this is to the “mutual benefit” of parties concerned.

3. Other non-Member economies may be invited to any outreach activities (including “special sessions” of the Committee) on an *ad hoc* basis.

15. Changes to the previous CIME Guidelines [C/NM(95)118] are in bold.

ANNEX II

Total Foreign Direct Investment by country from 1990 to 1998

In millions of US dollars

		Inflows	Outflows			Inflows	Outflows
1	United States	623,876	800,405	21	Denmark	24,456	29,440
2	China	244 331	21,454	22	Poland	24,145	516
3	United Kingdom	240,513	531,678	23	Thailand	24,118	3,517
4	France	177,492	323,357	24	Chile	23,723	8,479
5	BLEU	105,859	94,394	25	Indonesia	23,298	2,390
6	Netherlands	101,028	231,347	26	Finland	19,817	45,435
7	Spain	84,039	56,335	27	Norway	19,709	30,247
8	Brazil	76,141	8,024	28	New Zealan	19,523	6,280
9	Canada	74,727	139,858	29	Austria	19,147	17,986
10	Mexico	68,577	..	30	Colombia	18,836	2,402
11	Sweden	67,799	113,341	31	Hungary	17,193	1,012
12	Germany	60,253	388,645	32	Venezuela	16,325	3,328
13	Singapore	56,391	30,991	33	Portugal	16,091	8,238
14	Australia	55,603	49,637	34	Korea	15,582	26,285
15	Malaysia	40,283	..	35	Russia	15,038	4,857
16	Argentina	36,270	11,802	36	Japan	13,630	369,635
17	Italy	31,279	92,718	37	Peru	13,145	20
18	Hong Kong, China	29,009	..	38	India	12,592	600
19	Switzerland	26,936	125,992	39	Chinese Tai	11,665	..
20	Greece	26,403	..	40	Nigeria	11,144	..

Sources: International Direct Investment Statistics, OECD ; International Financial Statistics, IMF ; National source

Note: Data are converted using the yearly average exchange rates.

Base for ranking = 1998 inflows

.. Not available or not applicable or data not provided for confidentiality purposes