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EXPERIENCE WITH THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

This note is for information at the Conference on the OECD Guidelines for Multilateral Enterprises which will be held in Budapest on 16-18 November 1998. It is also for consideration by the CIME at its meeting on 23 November 1998.

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I. Introduction

1. The OECD Guidelines for Multinational Enterprises are incorporated in the Declaration on International Investment and Multinational Enterprises. This Declaration was originally adopted by the Governments of 23 OECD Member countries¹ in 1976. Since then, the Declaration, and the related Decisions by the OECD Council, have been adhered to by all Member countries, including the five that acceded to OECD Membership after 1976, and by three non-Member countries (Argentina, Brazil and Chile)². Since its adoption, it has been reviewed three times (1979, 1984 and 1991). On the occasion of the 1991 review, the OECD governments reaffirmed the Declaration, added a chapter on the Environment and agreed to review the Guidelines again in six years' time [C/M(91)12, pages 156-157].

2. The current review has been delayed because of the negotiations of the Multilateral Agreement on Investment, where consensus emerged to associate the Guidelines with the agreement.

3. At the Council at Ministerial level, meeting on 27-28 April 1998, Ministers "reaffirmed their commitment to the Guidelines for Multinational Enterprises" and agreed "to continue to update them in a timely manner, to ensure their relevance and effectiveness."

4. The CIME, following a preliminary exchange of views in December 1997 [DAFFE/INV/IME/M(97)2], agreed in June 1998, to launch the review of the Guidelines. This review will provide an opportunity to examine their contents in the light of new developments and the effectiveness of their implementation procedures, including the role of National Contact Points. On this basis, proposals can be developed to improve both the contents and the effectiveness of the Guidelines. No specific deadline was set for concluding the review, but sufficient time should be allowed for a consultation process with other OECD Committees, BIAC, TUAC and other interested parties.

5. As a first step in this review, the CIME asked the Secretariat to prepare an analytical note which would describe and cover the experience accumulated with the Guidelines. To help prepare this note, the Secretariat asked Member countries, BIAC and TUAC to provide information on their experience with the Guidelines.

6. The rest of this note is divided into four parts. **Chapter II** presents a historical overview of the Guidelines. **Chapter III** describes the implementation of the Guidelines and discusses the way the relevant bodies (National Contact Points, CIME, and Social Partners) have played their roles. **Chapter IV** compares the Guidelines with other multilateral codes of conduct and with corporate ones. **Chapter V** presents international developments of interest to the Guidelines.

¹ Turkey abstained in the adoption of the Declaration and the Decisions of the Council along with the annexed Guidelines. It adhered later on, in March 1981.

² The EU has adhered only to one part of the Declaration, the National Treatment instrument, but not to the Guidelines.

II. Historical overview

A. *The genesis of the Guidelines: historical context, reasons for introduction and objectives*

7. The problems of international investment in the 1970s were complex. First, investment was growing in volume, which meant that people were more and more affected by economic decisions made in foreign countries. Second, the source of these flows was no longer limited to the OECD countries, but included increasing flows from others, initially mainly the main oil producers. Third, as multinational enterprises grew in size and importance, they were attracting increasing public attention. Some of them stood accused of circumventing, or even unduly influencing, national or local policies in their host countries. Finally, the trend of liberalisation which characterised the 1960s, had shown signs of reversing, as a number of countries put up barriers against the inflows of private capital or took discriminatory measures against foreign companies.

8. The concern about possible abuse of the rising power of the multinational enterprises led developing countries to bring the issue of the creation of codes of conduct, aimed at controlling them, to the United Nations in 1972. UN members embarked on protracted negotiations of a *United Nations Code of Conduct on Transnational Corporations*, which did not reach agreement. Various drafts of the Code exist, the latest one dates from 1988 (presented to the UN's Economic and Social Council by the chair of the negotiations in 1990).

9. The MNEs themselves were supportive of the idea of a code of a non-binding code of conduct. They recognised the need to accept corporate responsibilities to maintain goodwill in host countries and thus to preserve a favourable climate for new investments. The creation of codes of conduct would set a standard of good corporate behaviour for MNEs. This position was expressed in the *Guidelines for International Investment* adopted by the Council of the International Chamber of Commerce on 29 November 1972. These were designed to facilitate consultation between investors and governments. Their main objectives were "to create a climate of mutual confidence conducive to an increased, and mutually satisfactory flow of international investment" and "to be helpful to the United Nations and other intergovernmental organisations in their efforts to promote constructive discussions" on the subject of the codes of conduct.

10. In this climate, the OECD countries, home of the most important MNEs, decided that the OECD should undertake a study on the impact of MNEs on the world economy. In 1972, the High-Level Group on Trade and Related Problems submitted the so-called Rey Report (named after the Group's chairman) to the OECD Council. The report devoted a special section to international investment and multinational companies in industrialised countries, in view of the increase of international direct investment. It stressed the positive contribution made by MNEs to the world economy, but also set out the concerns within the international community over the rapid expansion of MNEs. Among matters of concern were the application of laws and regulations of the home country to the activities of foreign subsidiaries and the influence of MNEs on short-term capital movements through their financial operations and the management of their funds. The Group was of the opinion that problems posed by MNEs could be dealt with more effectively through international co-operation than through unilateral actions. Therefore, it suggested a systematic investigation which should cover a number of areas related to the activities and the treatment of MNEs. This investigation would provide the basis for determining whether it was necessary and possible to develop commonly agreed principles both for government policies and for the behaviour of the companies themselves.

11. The study recommended by the High Level Group resulted in 1974, in the “Interim report of the industry committee on international enterprises.” The Interim report dealt with the attitudes and policies concerning MNEs, the impact and development of MNEs and the economic consequences of MNEs for host countries. Following this study, the Secretary-General proposed the establishment of the Committee on International Investment and Multinational Enterprises, which became reality on 21 January 1975. One of the main tasks of the CIME was to formulate a set of guidelines to monitor the activities of MNEs.

12. In view of the complexity and the diversity of the problems involved, the CIME set itself the task to get political agreement in a short time on some basic principles governing investment relations among OECD countries. The emphasis was on voluntary action and a pragmatic, non-legalistic, approach to the problems, with an emphasis on procedures which would bring possible questions to the OECD for consultation and further clarification. On 21 June 1976, 23 OECD Member Governments adopted the Declaration on International Investment and Multinational Enterprises. Within three years from its adoption, the Declaration (and the accompanying Decisions by the OECD Council) were to be reviewed. Hence, the 1976 Declaration was seen as a first step in an evolutionary process. It was also the first time that agreement on many of these matters had been reached in any international forum. The Business Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) were consulted during this process, expressed their support and became associated with the Guidelines’ work and development from this time on.

13. The Guidelines for Multinational Enterprises, one of the four current components of this Declaration³, are recommendations jointly addressed by the OECD governments to multinational enterprises operating in their territories. Their objective is to provide guidance to these enterprises by setting standards of good corporate behaviour. In particular, they are intended to help ensure that the operations of these enterprises are in harmony with the national policies of the countries where they operate and to strengthen the basis of mutual confidence between enterprises and governments, which is important for the maintenance of a healthy investment climate.

B. Adoption of the Guidelines

14. The pragmatic approach of the OECD in the adoption of the Guidelines is shown not only by what they included, but also by what they did not include. They provide a broad description of a multinational enterprise but do not seek to establish a precise definition. The Guidelines apply to a broad range of multinational activities and arrangements and reflect good practice for all enterprises, multinational and national, in comparable situations⁴. The items included in the Guidelines: general policies, disclosure of information, competition, financing, taxation, employment, industrial relations and science and technology, were also drafted in general terms. Technical questions were raised on each point, and many of them were studied by OECD’s technical committees and other groups. However, in

³ The Declaration includes in addition to the Guidelines for Multinational Enterprises, three related elements:

- The *National Treatment Instrument (NTI)* sets out Member countries’ commitments to treat foreign-controlled enterprises operating in their territories no less favourably than domestic enterprises in like situations;
- An instrument on *International Investment Incentives and Disincentives* provides for efforts among Member countries to improve co-operation on measures affecting international direct investment;
- An instrument on *Conflicting Requirements* calls on member countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries.

⁴ *The OECD Guidelines for Multinational Enterprises*, 1997, OCDE/GD(97)40, p.21.

view of the differences between the countries' legal systems, it would have been a difficult and protracted task to develop more precise formulations⁵.

15. During the adoption of the Guidelines, some countries and TUAC indicated that they would like them to be the first step towards more binding rules. However, the view that they should be voluntary prevailed. It is expressly stated that observance of the Guidelines is "voluntary and not legally enforceable." On the voluntary character of the Guidelines, Mr Theodore Vogelaar, then Special Consultant to the OECD's Secretary-General on International Investment and Multinational Enterprises, observed that it, "is not so much a matter of principle as of judicial necessity (...) In the case of a mandatory code covering items like disclosure of information, taxation, company law, social and anti-trust laws, providing for separate obligations for multinational enterprises as distinct from others, the legislative work involved would be a tremendous, life-time undertaking requiring utmost care and precision. In addition, questions of uniform interpretation, non-discriminatory implementation and comparable enforcement would arise. In the present state of our diffused world of 146 countries, yes, even amongst the 24 OECD's parallel oriented, free countries, any attempt to establish a binding code is, I am afraid, doomed to remain illusory"⁶.

16. "Voluntary" means that they constitute recommended behaviour, since they are recommendations by Member countries to the MNEs. Significantly, both business and labour accepted the Guidelines as the standard of behaviour to expect from enterprises. This means that the Guidelines constitute an accepted statement of the rules of conduct which society as a whole expects the MNEs to respect. As such, they can influence the development of national legislation. The Guidelines are also susceptible, in some national legal systems, of forming the basis for reliance by employees in national procedures. In one case, the national court decided to apply them.

17. Questions arise concerning the relationship between these non-binding standards and the legal obligations under national law. Paragraph 7 of the introduction states that "the entities of a multinational enterprise located in various countries are subject to the laws of these countries". The Guidelines are not a substitute for national laws but represent supplementary standards of behaviour of a non-legal character with respect to the multinational operations and structures of these enterprises.

C. The Guidelines and non-Members

18. The Guidelines are recommendations jointly addressed by Member countries to enterprises operating in their territories. However, paragraph 3 of the Introduction to the Guidelines stipulates that, "since the operations of multinational enterprises extend throughout the world, including countries that are not members of the Organisation, international co-operation in this field should extend to all States". Thus, MNEs are encouraged to extend good corporate practice throughout the universe of their operations and all host governments are invited to co-operate pragmatically if any problems arise.

D. The Guidelines and Multilateral Investment Rules

19. The Guidelines returned to the front line of attention with the MAI negotiations. There was a widespread view among the MAI negotiators that since the provisions of the MAI would benefit the activities of MNEs, there ought to be counterpart undertakings by MNEs to strengthen corporate responsibility. This balance could be found if the text of the Guidelines were annexed to the MAI without changing its non-binding character.

⁵ *The OECD Observer*, 1976, no.82, pp.12-13.

⁶ Speech, 13 December 1976.

20. The main propositions which were raised during the MAI negotiations were the following:

- the commitment to the Guidelines of OECD countries should be reaffirmed in the MAI;
- the Guidelines should be annexed to the MAI without changing their non-binding status;
- non-OECD-countries joining the MAI should join in the commitment to the Guidelines and establish National Contact Points to ensure effective follow-up; arrangements should be put in place to ensure that non-Members could participate in follow-up procedures on an equal footing with OECD Members.

21. Interest in the Guidelines has been expressed by the WTO Working Group on the Relationship between Trade and Investment, which considered a paper comparing the Guidelines to the draft UN Code of Conduct for Transnational Corporations [WT/WGTI/W/52, 21 August 1998] (see below paragraph 58). The OECD submitted a background paper on the Guidelines to the Working Group at its meeting in June 1998 [DAFFE/IME(98)5].

III. Implementing the Guidelines: the role of National Contact Points, CIME and Social Partners (BIAC and TUAC)

22. The institutional bodies involved in the implementation of the Guidelines are the National Contact Points, the CIME, BIAC and TUAC. According to the Second Revised Decision, in addition to business and trade unions, other interested parties should be informed of the possibility to discuss or bring cases to the attention of NCPs.

A. National Contact Points (NCPs)

a) Their role

23. On the occasion of the 1979 review, the OECD Council, in its Decision on the Guidelines for MNEs, called on Member countries to establish National Contact Points to ensure the follow-up of the Guidelines at a national level. In the 1979 report on the review of the Guidelines, the CIME asked those Member countries that had not yet done so to provide facilities for handling enquiries and for discussions with the parties concerned on matters relating to the Guidelines. At the 1984 review, the Council Decision explicitly stated that Member countries shall set up NCPs. Member countries therefore have a legal obligation to do so.

In the 1984 review, the Committee distinguished three possible organisational patterns:

- the functions of an NCP may be entrusted to an existing ministerial department or government agency;
- a Member country may decide to establish an inter-ministerial Working Group; or
- NCPs may be composed of government officials and representatives of employers' and employees' organisations.

24. Common functions of the NCPs⁷ include: *i*) the dissemination, promotion and, to the extent necessary, explanation of the Guidelines; *ii*) the collection of information concerning the experience with the Guidelines at the national level; *iii*) the provision of a forum for discussion, particularly with business and trade unions, on problems which may arise in relation to the Guidelines and of facilities which could contribute to their solution; and *iv*) direct contacts with other NCPs, if necessary. In providing such facilities, the NCPs can usefully contribute, within the framework of national laws and practices, to the resolution of problems related to the Guidelines.

25. Apart from these common elements, the institutional setting and the practices of NCPs may vary significantly from country to country. For instance, contact points in some countries have been particularly active in promoting discussion with business and workers organisations, whilst in other countries, contact points have been rarely approached, if at all, and in some countries the existence of the Contact Point was hardly known to the parties concerned.

b) The NCPs since the 1991 review

26. The latest evaluations of the National Contact Points were carried out separately by the CIME and by TUAC in 1993 and 1996. The CIME evaluation was based on the replies to a questionnaire given by sixteen Member countries (the others did not respond). The questionnaire asked information about the role and activities of the NCPs and the availability of the Guidelines in the country concerned. A survey of the replies is reproduced in Box 1.

27. Few delegations have given detailed information on the *modus operandi* of their NCP. An illustrative example given in reply to the Secretariat's questions concerns the United States NCP. This NCP takes the form of an interagency committee, chaired by the State Department and including representatives of the departments of the Treasury, Commerce and Labour and the Office of the US Trade Representative. Whenever a case is brought to the NCP, the Committee meets to discuss follow-up activities. The NCP forwards the matter to the enterprise concerned and requests it to respond. On receipt of the company's reply, the NCP considers the appropriateness of forwarding the correspondence to the home country of the enterprise, together with explanatory material indicating what sections of the Guidelines are at issue.

28. Considerable caution is required in interpreting the results of the 1993-1996 questionnaire. Indeed, some respondents listed all possible activities, whereas others may have focused exclusively on actual activities, while yet others may not have aimed at providing a complete list. Only a few countries mentioned concrete activities in detail. *E.g. Belgium* indicated that its NCP had discussed actual cases concerning the implementation of the Guidelines, sometimes in consultation with other NCPs, and that it had been invited to communicate its point of view on matters concerning the organisation of enterprises. *Germany* reported that, on a number of occasions, its NCP has been approached by labour organisations or other NCPs on cases of alleged breaches of the Guidelines. *Japan* listed five publications that have been issued as a result of the efforts by its NCP to disseminate the Guidelines. *The United States* presented a list of companies that have made public statements of support for the Guidelines.

29. Caution in interpreting the results is also needed for other reasons: *(i)* there are no standards by which to evaluate the performance of the NCPs, *(ii)* there is in practice no accountability or peer pressure. However, the scant detail provided in most answers to the questionnaire conveys the impression that the actual activities of many NCPs have indeed been very limited, if not non-existent. This is also the

⁷ In addition to this role, NCPs could sometimes handle enquiries concerning the National Treatment and Investment Incentives and Disincentives instruments, and could in any case, assist enterprises or workers' representatives with such enquiries, for instance in directing them to the competent national authority.

conclusion TUAC has drawn from the responses to its own questionnaire from its constituency: TUAC observes that, with a few notable exceptions, the NCPs are reactive, rather than proactive and do little to fulfil their terms of reference. Some national trade union centres stated that the NCP in their country were inactive.

30. Member countries' replies⁸ to the Secretariat's questions indicate that there is little awareness of the Guidelines. *Spain* reports that the Guidelines have not been applied. *Sweden* reports that since 1980 they have only been used in two cases and notes that, since the Guidelines are not binding, most local labour unions refrain from using them even in cases where it might be beneficial to use them. The *United Kingdom* also reports two cases since 1991. *Italy's* NCP has been called to intermediate in one case (1988), together with that of the United States. The *United States* reports that trade unions have submitted to the NCP approximately twelve cases of alleged violations of the Guidelines, but only three cases since 1991 when the last Guidelines review was undertaken. All cases brought in the US related to the industrial relations provisions of the Guidelines and addressed such issues as freedom of association, the right to organise, and the hiring of replacement workers during the strike. *Switzerland* reports that although the problems among social partners are usually resolved by direct negotiations, the Guidelines are taken into account as a point of reference. Therefore, the National Contact Point rarely intervenes although it has been called to respond to questions regarding the interpretation and the implementation of the Guidelines. *Finland* reports that awareness of the Guidelines is not extensive, but this could be explained by the lack of major conflicts. Also, the National Contact Point has so far never been an individual problem settlement forum. MNEs in Finland use the normal labour market mechanism or other fora to resolve possible problems. *Belgium* reports that in general the Guidelines had little influence on the conduct of MNEs. However, the last case introduced in the CIME (1997) provoked some reactions at the management level of some national enterprises, although these did not result in anything concrete.

B. The Committee on International Investment and Multinational Enterprises (CIME)

a) Its role

31. The CIME, from its inception, was given a number of specific ongoing responsibilities. These include:

- regularly reviewing the Guidelines;
- responding to requests from members on specific or general aspects of the Guidelines;
- proposing changes in the Guidelines and/or the procedural Decisions;
- exchanging views periodically on the role and functioning of the Guidelines;
- organising promotional activities like symposiums, seminars and other activities.

32. The 1979 review resulted in the addition of two more responsibilities: the Decisions on Intergovernmental Consultation Procedures on the Guidelines were amended to confirm the role of the CIME *i)* to respond to requests from the social partners -- BIAC and TUAC-- on various aspects of the Guidelines and *ii)* to be responsible for clarification of the Guidelines.

⁸ So far, only eight replies have been received.

i) Reviewing the Guidelines

33. These reviews take place at regular intervals; so far there have been reviews in 1979, 1984 and 1991. In 1977, the CIME established the Working Group on the Guidelines to assist in its work. Since 1992, this Working Group has met jointly with the CIME Working Group on Investment Policies⁹ (itself established in 1978). Finally, the CIME in 1979 established the Working Group on Accounting Standards, to conduct a survey on the accounting requirements, standards and practices in Member countries which are of particular relevance to the Guidelines¹⁰.

ii) Clarifying the Guidelines

34. An important objective of the Committee's work is that enterprises clearly understand the expectations of governments as expressed in the Guidelines with regard to the range of activities and operations they cover. It is also necessary that the Guidelines address new concerns and developments. An important element of the Committee's work is therefore, to clarify the provisions of the Guidelines.

35. *Clarifications*, issued by the Committee in response to questions raised -- in general on the basis of cases -- explain in more detail the meaning of existing provisions in order to assist the parties concerned when using the Guidelines. They are not intended to modify the Guidelines, but rather, to constitute a common understanding reached by OECD countries on the scope and meaning of the Guidelines. In this context, the CIME looks at the underlying issues without focusing its attention on the individual case, i.e. the name of the company concerned is not mentioned.

36. Since the adoption of the Guidelines in 1976, a considerable number of cases have been brought up to the CIME for discussion and clarification, although not all of them resulted in the adoption of clarifications. The overwhelming majority of the cases was introduced by TUAC and the remainder were brought by Member countries, including one joint request for clarification (*Renault case*). None were introduced by BIAC. With the exception of a few cases that referred to the General Policies and the Competition chapters, all cases referred to the chapters on Employment and Industrial relations and Disclosure of Information.

37. The clarifications have been included in the 1994 publication on the Guidelines. Since that publication, the CIME has adopted one further clarification (1997). In another instance, a clarification was considered but not issued.

38. It is worth noting that, although there were many cases in the first years since the adoption of the Guidelines -- 30 cases between 1977 and 1981 -- the number of cases declined drastically in the subsequent years.

39. Various reasons could be offered for this decreasing interest: the clarifications which had been given may have eliminated relevant ambiguities; the proliferation of voluntary codes of conduct that go further than the Guidelines may demonstrate the willingness of the MNEs to adopt good corporate behaviour; the development of other international instruments covering chapters of the Guidelines, such as environment, labour relations and competition, may offer a wider scope of protection against abusive behaviour by MNEs; even the development of more comprehensive and elaborate national laws, drawn from these instruments or of independent nature, may render direct recourse to the implementation procedures of the Guidelines unnecessary. Finally, the implementation mechanism of the Guidelines may need strengthening.

⁹ Officially, both Working Groups still exist, only their meetings are combined.

¹⁰ All three Working Groups have not met since 1995.

Box 1: Activities of NCPs

Replies to 1993/1996 questionnaire

General role

1. Providing information and advice to the Government on issues in the field of foreign direct investment;

Austria, Canada, France, Germany, Norway, Portugal, Spain, Switzerland, United Kingdom

2. Ensuring interdepartmental co-ordination on matters related to multinational enterprises.

Austria, Canada, France, Germany, Italy, Japan, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom, United States

Promotional activities

3. Offering a forum for preparation for discussion on matters related to the Guidelines;

Austria, Belgium, Canada, Czech Republic, France, Italy, Norway, Spain, Switzerland, Sweden, United Kingdom, United States

4. Making available the text of the Guidelines to the interested parties of the business and labour community;

Czech Republic, Italy, Japan, Norway, Spain, Switzerland, Sweden, United States

5. Providing a forum for exchanges of views with the business community;

Austria, Belgium, France, Germany, Japan, Netherlands, Switzerland, Sweden, United Kingdom, United States

6. Providing a forum for exchanges of views with the labour community.

Austria, Belgium, Japan, Netherlands, Switzerland, Sweden, United States

Dissemination of the Guidelines

7. Collecting information on country experiences in applying the Guidelines at national and sectoral level;

Belgium, Canada, Czech Republic, Italy, Japan, Switzerland, Sweden, (France: in preparation)

8. Preparing, on a regular basis, a report on national observance and experience with the Guidelines;

Belgium, Switzerland

9. Circulating clarifications by the Committee to interested parties (Government, Business, Labour).

Austria, Canada, France, Italy, Spain, Switzerland, Sweden, United Kingdom

Regarding specific issues

10. Providing a framework for discussion when conflicts arise between government, business and labour concerning the Guidelines;

Austria, Belgium, Czech Republic, France, Italy, Spain, Switzerland, Sweden, United Kingdom, United States

11. Replying to inquiries concerning the Guidelines;

Czech Republic, France, Italy, Japan, Spain, Switzerland, United Kingdom

12. Assisting in finding solutions in matters arising under the Guidelines.

Austria, Czech Republic, France, Italy, Japan, Switzerland, United Kingdom, United States

13. Pursue, when appropriate, bilateral contacts in conformity with the procedures applicable in such situations

Sweden, United Kingdom

40. However, it has been recognised that the Guidelines have provided value added -- at least in the Employment and Industrial Relations area -- in the sense that often they have gone beyond national standards and have been used by trade unions in their negotiations with employers. Another area where the Guidelines and their clarifications have had an impact on corporate practices is the *Section on Disclosure of information*.

41. In this area, the Guidelines can be seen as recommending additional rules to the basically national ones in force. These recommendations are intended to supplement, where necessary, the disclosure and reporting requirements laid down by national law to increase public understanding "on the structure, activities, and the policies of the enterprise as a whole". Also, headquarters must furnish subsidiaries with sufficient information so that they can fulfil their national obligations under the Guidelines.

42. A number of accounting terms and disclosure items in the chapter on disclosure of information required further explanation to assist enterprises in complying with them. A number of clarifications on operating results, sales, new capital investment, sources and uses of funds, average number of employees, research and development expenditure, accounting policies and segmentation of information, including the special characteristics of some specific sectors, such as banking and insurance were published in the brochure *Multinational Enterprises and Disclosure of Information: Clarification of the OECD Guidelines* (1988). In general, the Guidelines indicate a general objective of disclosure of information, namely to increase transparency of the structure, policies and activities of multinational enterprises, promoting harmonisation of international accounting and reporting practices is an important element in meeting those objectives. With respect to the accounting and reporting issues arising from new financial instruments, it was concluded that the information set out in the chapter is illustrative and non-exclusive and can therefore cover disclosure of significant off-balance sheet risks associated with these new financial instruments (*results of the work of the Working Group on Accounting Standards, 1988*).

iii) Amending the Guidelines

43. Any *amendments* to the text of the Guidelines are proposed to the Council. They are adopted by the Governments, including those of Non-Members that have adhered to the Guidelines. Amendments to the text have been relatively rare and infrequent. The Guidelines have been considered to present a comprehensive set of recommendations covering the full range of business operations and activities. Moreover, the sentiment has been expressed repeatedly at the CIME that the stability of the Guidelines is a crucial factor in their continued acceptance by enterprises and that this has made a strong contribution to their effectiveness. The overall approach of the Committee therefore, has been to limit changes to those necessary to meet new situations or growing concerns¹¹. The amendments that have been made are: to paragraph 8 of the chapter on Employment and Industrial relations on unfair influence in bona fide negotiations with employees (1979 review); the addition to the General Policies chapter of a specific reference to consumer interests (1984 review) and the introduction of a new chapter on Environmental protection (1991 review).

iv) Exchanges of views and analytical work

44. In 1993 and 1996, information was gathered on the functioning of the National Contact Points [see above III A b)]; this resulted in a CIME report on the matter. The Committee has also undertaken

¹¹ *The OECD Declaration and Decisions on International Investment and Multinational Enterprises; 1991 Review*, OECD Publications (1992)

analytical work. It has discussed the relationship between the Guidelines and negotiations in other international fora (ILO, UN, UNCTAD, ECOSOC) and the impact of the OECD's work on the Guidelines on the work of these fora (1979), the change of attitudes towards multinational enterprises since the introduction of the Guidelines in 1976 and their role in this evolution¹² (1991). It has also undertaken studies on "Multinational enterprises and the structural adjustment process"¹³ (1984) and the "Structure and Organisation of Multinational Enterprises"¹⁴ (1987).

v) *Promoting the Guidelines*

45. Finally, a number of *promotional activities* have been undertaken by the Committee, BIAC and TUAC in order to bring together the main players -- business, governments and trade unions -- and to make the Guidelines better known and applied.

b) *The CIME since the 1991 review*

46. After the 1991 review, the Committee has made a major effort, together with BIAC and TUAC, to promote public awareness of the Guidelines by publishing and disseminating the "green book" (*The OECD Guidelines for Multinational Enterprises*, OECD Publications, 1994). A number of other promotional activities have also taken place, including: *i*) a symposium on the Guidelines to explain their purpose and intent and review experience (1991); *ii*) publications and translation of the Guidelines into different languages and making them available on the World Wide Web [<http://www.oecd.org/daf/cmismis/cime/mneguide.htm>]; *iii*) meetings with non-OECD members and *iv*) surveys on the role and functioning of the National Contact Points (1993 and 1996)¹⁵. It has also held regular consultations with BIAC and TUAC, on various issues, including those covered by the Guidelines.

¹² It concluded that while many factors were responsible for the positive evolution in the attitudes, much of it could be linked to trends in international direct investment and experience with and the performance of multinational enterprises.

¹³ The conclusions of this study confirmed the Committee's view that the instrument, complemented where appropriate by comments or clarifications was adequate and sufficiently flexible to deal with changing conditions.

¹⁴ This study concluded that a large variety of factors affect the organisational structures chosen by multinational enterprises and the position of the subsidiary as a whole, i.e. characteristics of the corporation such as those related to the parent or group as a whole (sector, nationality, size, corporate strategy) to specific features of the subsidiary (performance, country of location) or the nature of links between parent and subsidiary. Other sets of factors concern the environment in which the enterprise operates, including the economic situation and the role of host government policies. As the above forces change over time, and many of them had changed quite dramatically over the decade previous to the report, it could be expected that these will be associated with changes in what was felt to be more suitable organisational form. On the basis of this work, the CIME examined possible implications of the issues involved in the Guidelines. The discussion focused on the provisions of information on organisational structures to the general public (item 1 of the Disclosure of Information chapter) and to employees (paragraph 3 of the Employment and Industrial Relations Guidelines) and on the freedom of entities to develop their activities and exploit competitive advantage (paragraph 5 and relevant parts of paragraphs 1, 2 and 4 of the General Policies chapter).

¹⁵ As a follow-up to its discussion of the questionnaire on the functioning of NCPs, in 1996, the CIME agreed that the follow-up given by countries to the Guidelines would be included in the examinations of Members' FDI policies.

47. Only three cases have been brought to the Committee's attention for clarification since 1991. The *first* case was introduced by France in 1993 and concerned the relocation of a factory from France to the United Kingdom and the requirement to inform employees about this closure decision. The request for clarification touched upon three provisions of the Guidelines: i) paragraph 7 of the Introduction to the Guidelines which states that "the entities of a multinational enterprise located in various countries are subject to the laws of these countries"; ii) paragraph 6 of the Section on Employment and Industrial relations regarding the provision of reasonable notice in case of changes of operations and iii) paragraph 8 of the same Section on the transfer of employees in order to influence unfairly negotiations with the representatives of employees. The CIME considered the case but no clarification was issued.

48. The *second* case which was brought up by Belgium in 1995, concerned the sudden closure of the Belgian subsidiary of a company of metal works and raised issues relevant to paragraphs 1 and 2 of the Introductory chapter of the Guidelines and paragraph 6 of the Section on Employment and Industrial Relations again on reasonable notice. This case was discussed by the CIME but the discussions were not conclusive.

49. The *third* case which led to a clarification, was submitted jointly by France and Belgium and concerned the closure of a plant in Belgium for reasons of restructuring. The request for clarification raised two main issues: a general question regarding the responsibilities between parent companies and subsidiaries (paragraph 8 of the Introduction to the Guidelines) and the question of the provision of reasonable notice of changes in operations (paragraph 6 of the Employment and Industrial relations). This case was of particular importance for the following reasons: i) it was the first time in the history of the Guidelines that a request for clarification was submitted jointly by two countries (France and Belgium); ii) it was also the first time since the 1991 review that a clarification was issued, which demonstrates the interest in respecting the Guidelines and in following their procedures.

50. The following clarifications were issued in connection with the last case:

-- relations between parent companies and/or local entities

To the extent that parent companies exercise control over the activities of their subsidiaries, they have a responsibility for observance of the Guidelines by those subsidiaries.¹⁶ As long enterprises can ensure this co-operation and assistance, it would be up to the various entities to decide the division of responsibilities between parent companies and local entities. Since, based on a previous clarification, the expectations are that all entities will co-operate to ensure observance of the Guidelines, it would be reasonable to expect that a "prudent enterprise" would set up whatever internal procedures would be necessary to ensure that the Guidelines are known and applied by its various entities. The Guidelines do not, however, imply a model of corporate decision-making nor do they interfere with the way parent companies communicate with their affiliated entities.

-- reasonable notice of changes in operations

The CIME has examined the question of what constitutes reasonable notice, in particular the timeliness of such notice. The clarifications developed in 1979 and 1991 were intended to provide assistance in interpreting this concept: in considering change in operations or closures, the MNEs should give information -- "reasonable notice". The notice has to be sufficiently timely for the purpose of preparing and implementing mitigating action, and it would be appropriate, in the light of the specific circumstances of each case, if management were able to provide such notice prior to the final decisions being taken. The clarification also recognises

¹⁶ Chapter II, paragraph 5, the OECD Guidelines for Multinational Enterprises (OECD Paris, 1986).

that there may be circumstances in which early notice of impending changes in activities cannot be given, but these are considered "exceptional". Since the Committee did not consider that there were business sectors or activities where these exceptional circumstances would usually prevail, this would seem to imply that an enterprise would be expected to state the reasons why it considers that exceptional circumstances apply.

C. The Social Partners: BIAC and TUAC

51. Both BIAC and TUAC have played an active role in the Guidelines exercise by:

- requesting consultations with National Contact Points on general and specific issues related to the promotion of the Guidelines and their application or follow-up;
- raising Guidelines issues at the CIME¹⁷;
- informing their Member federations about Guidelines developments, and seeking members' input on the follow-up procedures to the Guidelines; and
- using their offices to represent business or labour interests to the CIME on matters related to the Guidelines.

52. *BIAC* has supported the creation of the Guidelines, while strongly advocating the legally non-binding character of Codes of Conduct for MNEs and the stability of their text. Throughout the years, *BIAC* has participated, through its Committee on Multinational Enterprises, in consultations with the CIME and has been active in promoting the Guidelines by encouraging enterprises to make them more widely known through seminars and training courses. It has advised its Member federations to suggest that their companies disseminate the Guidelines through internal company communications and it has published a brochure with comments. It has also recommended that multinational enterprises note their practices with regard to disclosure of information in annual reports and some MNEs have in fact included reference to the Guidelines in their reports.

53. Labour organisations, through *TUAC*, considered the Guidelines, in 1976, as an important initial step taken by OECD Member governments. Subsequently, they have undertaken a major effort to distribute and promote the Guidelines widely to employee representatives, who, in turn, have referred to the Guidelines on a number of occasions in negotiations with MNEs. *TUAC* has set up a Working Group on Multinational Enterprises which is co-ordinating *TUAC* work on matters related to the Guidelines, in particular, preparing for the exchanges of views between *TUAC* and the Committee and considering and, where necessary, passing on to the Committee questions and problems encountered in the application of the Guidelines, especially with respect to the chapter on Employment and Industrial Relations. It is worth noting that most of the cases related to the Guidelines were brought up by *TUAC*.

¹⁷ Since the first review (1979), an individual enterprise, if so wishes, is be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests. Thus far, no enterprise has availed itself of this opportunity.

IV. The Guidelines and other codes of conduct

A. Multilateral codes

54. While addressed to enterprises operating in Member countries (where the majority of the parent companies of MNEs are located), the Guidelines have had an influence extending beyond the OECD area, in particular in the first years since their adoption. As stated in paragraph 3 of the Introduction to the Guidelines, Member countries were aware of the interests of non-Member countries in this regard and confirmed their willingness to contribute in co-operative efforts with these countries in all matters dealt with in the Declaration on International Investment and Multinational Enterprises. They supported and participated actively in negotiations on related issues in other fora.

55. Since 1976, other international organisations have taken up various issues related to the activities of MNEs. The ILO, in 1977, adopted the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. In the framework of the United Nations, negotiations were undertaken on a *Code of Conduct on Transnational Corporations* (which were inconclusive, as mentioned above), whilst in UNCTAD, an international Code of Conduct for the transfer of technology and a set of multilateral principles and rules concerning restrictive business practices were negotiated¹⁸.

56. There was a link between these negotiations in other international fora and the OECD Guidelines, although there is no necessary symmetry between them. The OECD's work, being the first to be made public and to be applied, had an impact on work elsewhere, both through the Guidelines' general approach and through its provisions on specific subjects. At the same time, the context in other fora differed from that which prevailed inside the group of OECD countries; each setting had its own specificity.

57. The *ILO Tripartite Declaration*, which OECD Member countries as well as business and trade union representatives have supported, has a different geographical scope than the Guidelines. Also, while the Guidelines are recommendations of OECD governments to multinational enterprises, the ILO Declaration is addressed to governments, employers and workers organisations. Finally, the Guidelines cover all major aspects of corporate behaviour, while the ILO Declaration sets out principles only in the field of employment, training, conditions work and industrial relations which governments, employers and workers, as well as MNEs are recommended to observe. The 1979 review stated in this regard that, wherever the principles of the ILO Declaration refer to the behaviour expected from enterprises, they parallel the OECD Guidelines and do not conflict with them. They can, therefore, be of use in relation to the OECD Guidelines to the extent that they are more elaborated, as in the case of Employment and Industrial relations.

58. The UN's Draft *Code of Conduct on Transnational Corporations* (1988-1990 version) was meant to be a universally applicable instrument. Furthermore, it would address both MNEs and governments: in addition to rules of conduct, the draft contains provisions on the treatment of enterprises by governments and on inter-governmental co-operation. The institutional instrument for the implementation of the Code would be the UN Commission on Transnational Corporations; however, the rules on implementation have never been fully worked out. The rules for corporate conduct in the Draft Code cover much of the same ground as do the OECD Guidelines, e.g. non-interference in political affairs of the host countries, abstention from corrupt practices, disclosure of information, competition, taxation, employment and labour relations, environmental protection, consumer protection and transfer of

¹⁸ Of these instruments, only the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was adopted, in 1980.

technology. Unlike the Guidelines, the Draft Code contains explicit references to the respect for human rights and fundamental freedoms and the adherence to socio-cultural values of the host countries.

B. Corporate codes of conduct

59. Although it is difficult to evaluate the impact of the Guidelines on corporate behaviour, it is interesting to note the proliferation of individual corporate codes of conduct in recent years and the increased interest in “good corporate citizenship” on the part of a growing number of MNEs. Due to the lack of an existing database of codes of conduct, it is not an easy task to make a comparison with the Guidelines. Also, private codes of conduct are as diverse as they are plentiful. A comparison of the Guidelines and the voluntary codes of conduct of 18 MNEs¹⁹, indicates that:

i) with respect to general characteristics:

- The codes of conduct of individual enterprises are sector/enterprise specific, while the Guidelines are addressed to all sectors;
- the Guidelines are a multilateral instrument covering the territory of all OECD countries, while the codes of conduct are limited to the countries where the particular company operates;
- the Guidelines and corporate codes do not deal with all issues at the same level of specificity;
- the Guidelines are the result of government involvement, while the codes of conduct are a pure product of the private sector;
- the Guidelines have a very elaborate monitoring mechanism for their follow-up, which consists of the establishment of National Contact Points, the provision for multilateral clarifications, review and amendment, while the corporate codes are subject only to the company’s own follow-up.

ii) with respect to substance:

These codes cover the same ground as the Guidelines, and encompass the same principles. In some respect, many corporate codes are more general and summary than the Guidelines but in some other respects, e.g. employment relations and human rights go further. In particular, almost all of the codes prohibit to the suppliers of the particular enterprise the use of child or forced labour. Some recommend the respect of private life (freedom of religion, sexual orientation, marital status *etc.*) and include prohibition of every kind of harassment (physical, sexual, psychological or verbal). On the other hand, many private sector codes do not include the principle of respect for freedom of association which is found in the Guidelines.

60. The United States Government, following consultations with the US business and labour communities, have developed a Voluntary Statement of Business Practices covering the conduct of corporations operating in foreign countries. These model business principles (MBPs) call on US companies operating overseas to provide a safe workplace, to recognise the rights of workers to organise, and not to use either child or forced labour in the production of their products. The MBPs also ask companies to voluntarily report on their activities abroad. They are to be used by corporations as reference point in framing their own codes of conduct and are based on a variety of similar sets of

¹⁹ These MNEs are: Unilever, British Gas, Matsushita Electric, ICI, Framatome, Renault, EMI, American Express, Boeing, Texas Instruments, DuPont, Adidas, Reebok, Mattel, Levi Strauss, Glaxowellcome, Polaroid and Nordstrom.

principles US companies have put into practice. They cover essentially the same guidelines for corporate conduct regarding labour issues as those embodied in the Guidelines with the added provisions on child and forced labour.

61. Also in the US, apparel companies, labour and NGOs, have agreed to elements of a code of conduct and independent monitoring systems to ensure that member company products are made under decent and human working conditions. Final elements of the Code²⁰ and its monitoring mechanism²¹ are still under discussion.

V. International developments of interest to the Guidelines

62. At the two latest CIME meetings, where the current review was proposed and launched, a number of delegates expressed the view that a textual update of the Guidelines, in particular of the chapters on Environmental Protection, on Employment and Industrial Relations and on Competition, would be necessary. There have also been developments in other areas such as corporate governance and bribery in international business transactions which are relevant to the general policy and disclosure of information sections of the Guidelines as well as taxation.

A. *Environmental protection*²²

63. Since the Guidelines were adopted, increasing concern has been expressed about the possible impact of MNEs' operations on the environment. This was recognised by the drafting (in 1985) of clarifications concerning the environment and the addition in 1991 of a new Section 8 to give prominence to environmental factors.

64. The continued rise of the public concern about the environmental effects of trade, investment and globalisation, may be seen as a reason in its own right for raising the environmental expectations contained in the Guidelines.

65. Currently, there is a wide range of voluntary codes of conduct in the field of the environment. The earliest one dates from the 1970s, but the majority of activity seems to have arisen around the 1992 UNCED and the 1995 Rio Summit. They range from inter-governmental, to international and national business declarations, to industry-based codes to individual corporate policy statements. The subject matter, the level of detail, the degree of commitment required by these statements varies enormously. Some statements, are written in terms of the environment, whereas some have adopted the broader concept of sustainable development.

²⁰ The Code of Conduct would require member company contractors to:

- prohibit child labour, worker abuse or harassment and discrimination;
- recognise worker's right of freedom of association and collective bargaining;
- adopt a minimum or prevailing industry wage, and a cap on mandatory overtime to twelve hours per week;
- provide a safe and healthy working environment.

²¹ Independent external monitors will conduct reviews of company policies and practices and verify that the company is in compliance with its obligations and commitments under the Code of Conduct. Companies will also maintain an internal monitoring system that outlines the company's obligations to ensure that the Code is enforced in its facilities and in its contractors' facilities both domestically and internationally.

²² This section is largely based on an analysis made by Ms Jan Adams, Consultant to the OECD.

66. *Agenda 21* is particularly important, since it is a statement that governments have subscribed to, and since it was prepared with both NGO and business input. It dedicates a chapter to business and addresses other recommendations throughout the document to enterprises. Both the Rio Declaration and Agenda 21 were specifically mentioned in the preamble to the draft MAI²³.

67. Also of particular interest are two leading international business codes of environmental conduct, namely the *Business Charter for Sustainable Development* of the International Chamber of Commerce and the *CERES principles*. The former is the most widespread and well known of the generic codes of environmental conduct. The latter is the most ambitious and demanding of the general statements.

-- *Agenda 21*

68. Chapter 30 of Agenda 21 is entitled "Strengthening the Role of Business and Industry" and sets out two "Programme areas" (promoting cleaner production and promoting responsible entrepreneurship), each with a set of specific "activities" (with a recommendation-like connotation), addressed generally to "business and industry, including transnational corporations". In summary, the main concepts which governments have agreed to under Agenda 21, but which do not feature (or are only marginally referred to) in the OECD Guidelines are:

- Recognition of environmental management as high corporate priority and establishment of environmental management systems;
- Clean production/eco-efficiency;
- Environmental reporting including public disclosure of emissions;
- Adoption and implementation of other codes of environmental best practice;
- Establishment of world-wide corporate policies of sustainable development;
- R&D in environmentally sound technologies and management systems;
- Use of home country standards in management of toxic chemicals and hazardous waste management;
- Provisions of information for contaminated land inventories.

-- *The ICC Business Charter for Sustainable Development*

69. As mentioned above, more than 2000 companies have endorsed the Charter. The Charter consists of 16 principles, described as a framework to help industries and individual corporations define their own more specific environmental policies. This approach has a broad framework, sets out the basic desirable principles for good environmental practice by inviting further elaboration by industries and corporations.

70. The principles which are not addressed neither in the OECD Guidelines, nor in the Agenda 21 are the following:

- Integration of environmental policies fully into each business as an essential element of management;

²³ "The Contracting Parties to this Agreement (...) resolving to implement this agreement in a manner consistent with sustainable development, as reflected in the Rio Declaration on Environment and Agenda 21..."

- Advice to and education of customers, distributors and the public in the safe use, transportation, storage and disposal of products provided;
- Precautionary approach to prevent serious environmental degradation, by modifying the manufacturing, marketing or use of products;
- Promotion of respect of these environmental principles by contractors and suppliers.

-- *The CERES principles*

71. The Coalition for Environmentally Responsible Economies (CERES) was formed in 1989. It brought together fifteen major US environmental groups and an array of socially responsible investors and public pension funds representing more than US\$150 billion in invested funds. This Coalition designed the ten principles, originally known as the Valdez Principles, but now called the CERES Principles. CERES endorsers are businesses and other organisations which are publicly committed to observe the CERES Principles. According to the CERES website, 46 companies and organisations have endorsed these Principles, including General Motors, Polaroid, Bethlehem Steel, the Body Shop, Aveda, Sun Oil and H.B. Fuller.

72. The Principles are different from the Agenda 21, OECD or ICC approaches in that they focus on actual environmental indicators as well as management approaches. They cover the substantive environmental issues of protection of the biosphere (emissions and biodiversity), sustainable use of resources, disposal of wastes, energy conservation, risk reduction, safe products and services and environmental restoration, as well as public information, management commitment and audits and reports. They recognise explicitly that companies endorsing the Principles pledge to go voluntarily beyond the requirements of the law.

73. Apart from the substantive content, the CERES Principles also include the highest existing standards in terms of commitment to monitoring implementation and reporting on progress. Endorsers commit to annually complete a CERES report on progress in implementing the Principles and to make it public. In addition, CERES has a 'Global Reporting Initiative' which constitutes an attempt to bring together the various initiatives world-wide on corporate environmental reporting and to turn them into one set of coherent, consistent global standards. The aim is to generate standard environmental information akin to existing standard financial information. There is a close relationship to reporting on the Principles and reporting environmental information, as a result of the strong substantive content of the Principles.

B. Employment and industrial relations

74. The chapter on Employment and Industrial relations has been the object of numerous cases and clarifications since the adoption of the Guidelines. It is the most extensively developed and the clarifications made render its content quite comprehensive. However, there are new developments relevant to the review of the Guidelines: the ILO Declaration on Fundamental Principles and Rights at Work, the 1975 Council Directive as amended in 1992 on the approximation of the laws of Member States relating to collective redundancies and the 1994 "European Works Councils Directive".

-- *The ILO Declaration on Fundamental Principles and Rights at Work*

75. The new "*ILO Declaration on Fundamental Principles and Rights at Work*" adopted in 1998, refers to the following principles:

- Freedom of association and the effective recognition of the rights to collective bargaining;
- Elimination of all forms of forced or compulsory labour;
- Effective abolition of child labour;

- Elimination of discrimination in respect of employment and occupation.

76. Among these principles, the ones not covered by the Guidelines under their current form, are the elimination of forced or compulsory labour and the effective abolition of child labour.

-- *The 1975 EC Council Directive, as amended in 1992, on the approximation of the laws of the Member States relating to collective redundancies*

77. According to this Directive, “collective redundancies” means dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where there is a defined amount of redundancies. Whenever an employer is contemplating collective redundancies, he shall begin consultations with the workers’ representatives sufficiently timely so as to reach an agreement on ways to avoid and reduce such redundancies and to mitigate their consequences by recourse to accompanying social measures, in-house transfers and/or retraining. He should also notify the competent public authorities and forward to them copies of all relevant material concerning redundancy proceedings.

-- *The 1994 European Works Council Directive*

78. The European Work Directive requires that central management provide for the establishment of a Works Council or a procedure for the purpose of informing and consulting employees in Community-scale undertakings²⁴ and Community-scale groups of undertakings. According to this Directive, the European Works Council should have the right to meet with the central management once a year to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local management should be informed accordingly. In cases of relocation, establishment closure or collective redundancy, the Works Council has the right to meet and consult with management at the most appropriate level.

C. Competition

79. In the field of competition legislation, a number of developments have taken place since the first adoption of the Guidelines, i.e. the 1994 *Interim Report on Convergence of competition policies*, the 1995 *Recommendation concerning Co-operation between member countries on Anticompetitive Practices Affecting International Trade* and the 1998 *Recommendation concerning effective action against hard-core cartels*.

80. The 1994 *Interim Report on Convergence* outlines the progress that has been made within the Committee on Competition Policy towards convergence in such areas as objectives and principles of competition law, analytical tools, enforcement practices and some areas of substantive law such as horizontal agreements and resale price maintenance. The report also notes important differences among countries with respect to coverage of competition laws, the treatment of non-price vertical restraints, abuse of dominance and monopolisation and merger review.

81. The 1995 *Recommendation on international co-operation among competition authorities* incorporated some of the recommendations that came out of a 1994 study of nine international mergers (Merger Cases in the Real World). Discussions continue on ways to extend such co-operation not only with respect to mergers but also with respect to cartels and other potentially anticompetitive conduct.

82. The 1998 *Recommendation concerning effective action against hard-core cartels* calls on Member countries to ensure that their competition laws effectively halt and deter hard core cartels by

²⁴ “Community-scale undertaking” means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States.

providing effective sanctions and enforcement procedures. It defines hard-core cartels and a number of principles which Member countries should take into account when they co-operate with each other.

D. Corruption and Bribery

83. The current text of the Guidelines in this area is included in the General policies chapter (paragraph 7) and is limited to a general statement which has not been subject to any clarification. According to this statement “*Enterprises should not render and they should not be solicited or expected to render any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office.*”

84. At the time of the adoption of the Guidelines, this was the first statement the OECD ever made in the field of corruption and bribery and the first ever adopted on the international level as well. However, since then, in particular during the 1990s, this issue has come to the forefront and has become the subject of numerous discussions and international action. The adoption in 1994, of the OECD Recommendation on combating bribery of foreign public officials in international business transactions, was a breakthrough and broke the ground for the adoption, in 1997, of a new Recommendation and a Convention on the subject.

85. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions stipulates that countries should make it a criminal offence to offer, give, or promise a bribe to a foreign public official. In addition, Parties “shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for omissions and falsifications related to the:

- non-maintenance of adequate records of the sums of money received and expended by the company;
- establishment of off-the-books accounts;
- making of off-the books or inadequately identified transactions;
- recording of non-existent expenditures;
- entry of liabilities with incorrect identification;
- use of false documents,

for the purpose of bribing foreign public officials.

86. The Recommendation, in this respect, calls on Member countries to require from their companies to abstain from the above-mentioned acts and encourage their companies to:

- develop and adopt adequate internal company controls, including standards of conduct;
- make statements in their annual reports about their internal control mechanisms, including those which contribute to preventing bribery;
- provide channels for communication by, and protection for, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors.

E. Corporate Governance

87. Key events in the world economy over the past decade have highlighted the close connection between corporate governance and economic performance, both at the firm and the macroeconomic levels. Outside the OECD countries, the systemic transition in the former Communist economies and the crisis

that has overtaken Asian countries since 1997 both have called attention to the need to adhere to better standards of corporate governance.

88. Government officials and private market participants have been accelerating efforts to evolve better standards and practices. Companies law and securities laws have been modified to improve the transparency of board practices and to assure the accountability of management and controlling shareholders to shareholders. In addition, a number of special commissions, often formed at the request of stock exchanges or employer associations have formulated codes of best practices for corporate governance in a large number of OECD countries and in many non-members as well. These commissions and often focused on disclosure, executive remuneration or board structure and practices. A partial list of these commissions includes the three commissions in the United Kingdom (Cadbury of 1992, Greenbury of 1995, and Hampel of 1998) the Peters Commission in the Netherlands (1997), the Vienot Commission in France (1995), the Swedish Academy Report (1994), the Dey Report in Canada (1994), the Bosch Commission of Australia (1995) and the Corporate Governance Forum Guidelines in Japan (1998). Additionally, many groupings of investors have formulated codes of conduct that are meant to apply to companies as well as to investors.

89. In the OECD, an ad hoc Business Sector Advisory Group (BSAG), composed of independent experts from major Member countries, completed an initial report which was submitted to Ministers in April 1998. The BSAG report summarised major issues in corporate governance and suggested possible ways in which governments could follow-up in facilitating the improvement of international standards.

90. The OECD Council, meeting at Ministerial level on 27-28 April 1998, called upon the OECD to develop, in conjunction with national governments, other relevant international organisations and the private sector, a set of core corporate governance standards and guidelines (hereafter "guidelines) for consideration by Ministers in May 1999. In order to carry out this mandate, the Council established an Ad Hoc Task Force on Corporate Governance which has decided upon procedures to produce the guidelines as well as a timetable for completion of the task.

91. The Task Force contains representation from all Member governments as well as a limited number of representatives of relevant international organisations and some private sector groupings. BIAC and TUAC have been invited to attend part of the Task Force meetings in an advisory capacity. However, all decisions of substance are made by the representatives of the Member governments.

92. The guidelines, which will build upon the experience of Member countries as well as previous work within the OECD, are non-binding and do not give detailed prescriptions for national legislation but rather delineate those basic principles that can serve as a reference point for Member countries' efforts to evaluate and improve their own legal, institutional and regulatory frameworks for corporate governance. The guidelines will also provide guidance for stock exchanges, investors, private corporations and national commissions on corporate governance as they elaborate best practices, listing requirements and codes of conduct.

93. The Task Force met in July 1998 and October 1998 and decided that the guidelines would cover five broad headings: ownership and control; the role of stakeholders, the equitable treatment of shareholders; disclosure and transparency and the role of boards. The guidelines will be brief but will contain annotations which explain the significance of the specific points in the guidelines and suggest how they might be applied in practice.

94. A wider consultative process will commence around the start of 1999 when the guidelines are made available to the general public for comments. In the third week of January 1999, the Task Force will

hold its third meeting, which will be preceded by a special meeting with independent experts on corporate governance as well as other interested parties such as labour and consumer groups. Inside the OECD, the guidelines will be considered by the relevant committees, including the Committee on Financial Markets, the Committee on International Investment and Multinational Enterprises, and the Industry Committee. The Task Force will hold its fourth and last meeting in late March or early April of 1999. The guidelines will be submitted to Ministers at the May 1999 Ministerial.

F. Taxation

95. The Committee on Fiscal Affairs has been at the forefront of the development of rules of the game in the area of international taxation. The most important of these rules are contained in the following three instruments.

96. The OECD Model Tax Convention on Income and on Capital is the basic instrument used by all Member countries and a large number of non-Member countries for the purposes of the negotiation, application and interpretation of tax conventions. First adopted in 1963, the Model Tax Convention on Income and on Capital was subsequently revised in 1977 and in 1992, when it became a loose-leaf publication. It has since been updated in 1994, 1995 and 1997. Tax authorities, taxpayers and domestic courts regularly rely on it for the purposes of interpreting the text of the more than 1300 bilateral tax conventions that are largely based on its provisions.

97. Based on the arm's length principle that is adopted in tax conventions, the OECD Transfer Pricing Guidelines provides practical guidance as to how the arm's length principle should be applied in determining, for taxation purposes, the appropriate profits of associated enterprises operating in different countries. Following previous reports on transfer pricing issued in 1979 and 1984, the guidelines were published in 1995 and are subject to regular review. Updates have been issued in March 1996, September 1997 and February 1998.

98. The Guidelines on harmful tax competition were adopted in April 1998 by the Council of the OECD (Switzerland and Luxembourg abstaining) as part of a report by the Committee entitled Harmful Tax Competition: an Emerging Global Issue. These Guidelines constitute a commitment by Member countries to refrain from adopting new measures constituting harmful tax competition, to list such existing measures within two years and to eliminate them within a further three years (with possible grandfathering for two more years).

99. The Committee on Fiscal Affairs also produces standardised forms and procedures that facilitate the efficient exchange of tax information between countries. It is also currently examining the issue of taxation and electronic commerce to determine, among other things, whether the rules contained in the above instruments need to be clarified or supplemented to deal with electronic commerce transactions.

ANNEX 1

OECD Declaration on International Investment and Multinational Enterprises

The Governments of OECD Member countries

CONSIDERING:

That international investment has assumed increased importance in the world economy and has considerably contributed to the development of their countries;

That multinational enterprises play an important role in this investment process;

That co-operation by Member countries can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic and social progress, and minimise and resolve difficulties which may arise from their various operations;

That, while continuing endeavours within the OECD may lead to further international arrangements and agreements in this field, it seems appropriate at this stage to intensify their co-operation and consultation on issues relating to international investment and multinational enterprises through inter-related instruments, each of which deals with a different aspect of the matter and together constitute a framework within which the OECD will consider these issues;

DECLARE:

I. Guidelines for Multinational Enterprises

That they jointly recommend to multinational enterprises operating in their territories the observance of the Guidelines as set forth in Annex [1] hereto having regard to the considerations and understandings which introduce the Guidelines and are an integral part of them;

II. National treatment

1. That Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another Member country (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");
2. That Member countries will consider applying "National Treatment" in respect of countries other than Member countries;

3. That Member countries will endeavour to ensure that their territorial subdivisions apply National Treatment";
4. That this Declaration does not deal with the right of Member countries to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

III. Conflicting requirements

That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex [2] hereto.

IV. International investment incentives and disincentives

1. That they recognise the need to strengthen their co-operation in the field of international direct investment;
2. That they thus recognise the need to give due weight to the interests of Member countries affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
3. That Member countries will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

V. Consultation procedures

That they are prepared to consult one another on the above matters in conformity with the Decisions of the Council on the Guidelines for Multinational Enterprises, on National Treatment and on International Investment Incentives and Disincentives;

VI. Review

That they will review the above matters within three years with a view to improving the effectiveness of international economic co-operation among Member countries on issues relating to international investment and multinational enterprises.

ANNEX 2

OECD Guidelines for Multinational Enterprises

Introduction

Multinational enterprises now play an important part in the economies of Member countries and in international economic relations, which is of increasing interest to governments. Through international direct investment, such enterprises can bring substantial benefits to home and host countries by contributing to the efficient utilisation of capital, technology and human resources between countries and can thus fulfil an important role in the promotion of economic and social welfare. But the advances made by multinational enterprises in organising their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives. In addition, the complexity of these multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern.

The common aim of the Member countries is to encourage the positive contributions which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise. In view of the transnational structure of such enterprises, this aim will be furthered by co-operation among the OECD countries where the headquarters of most of the multinational enterprises are established and which are the location of a substantial part of their operations. The Guidelines set out hereafter are designed to assist in the achievement of this common aim and to contribute to improving the foreign investment climate.

Since the operations of multinational enterprises extend throughout the world, including countries that are not Members of the Organisation, international co-operation in this field should extend to all States. Member countries will give their full support to efforts undertaken in co-operation with non-member countries, and in particular with developing countries, with a view to improving the welfare and living standards of all people both by encouraging the positive contributions which multinational enterprises can make and by minimising and resolving the problems which may arise in connection with their activities.

Within the Organisation, the programme of co-operation to attain these ends will be a continuing, pragmatic and balanced one. It comes within the general aims of the Convention on the Organisation for Economic Co-operation and Development (OECD) and makes full use of the various specialised bodies of the Organisation, whose terms of reference already cover many aspects of the role of multinational enterprises, notably in matters of international trade and payments, competition, taxation, manpower, industrial development, science and technology. In these bodies, work is being carried out on the identification of issues, the improvement of relevant qualitative and statistical information and the elaboration of proposals for action designed to strengthen inter-governmental co-operation. In some of these areas procedures already exist through which issues related to the operations of multinational enterprises can be taken up. This work could result in the conclusion of further and complementary agreements and arrangements between governments.

The initial phase of the co-operation programme is composed of a Declaration and three Decisions promulgated simultaneously as they are complementary and inter-connected, in respect of Guidelines for multinational enterprises, National Treatment for foreign-controlled enterprises and international investment incentives and disincentives.

The Guidelines set out below are recommendations jointly addressed by Member countries to multinational enterprises operating in their territories. These Guidelines, which take into account the problems which can arise because of the international structure of these enterprises, lay down standards for the activities of these enterprises in the different Member countries. Observance of the Guidelines is voluntary and not legally enforceable. However, they should help to ensure that the operations of these enterprises are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between enterprises and States.

Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of a multinational enterprise located in various countries are subject to the laws of these countries.

A precise legal definition of multinational enterprises is not required for the purposes of the Guidelines. These usually comprise companies or other entities whose ownership is private, state or mixed, established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with the others. The degrees of autonomy of each entity in relation to the others varies widely from one multinational enterprise to another, depending on the nature of the links between such entities and the fields of activity concerned. For these reasons, the Guidelines are addressed to the various entities within the multinational enterprise (parent companies and/or local entities) according to the actual distribution of responsibilities among them on the understanding that they will co-operate and provide assistance to one another as necessary to facilitate observance of the Guidelines. The word "enterprise" as used in these Guidelines refers to these various entities in accordance with their responsibilities.

The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; wherever relevant they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.

The use of appropriate international dispute settlement mechanisms, including arbitration, should be encouraged as a means of facilitating the resolution of problems arising between enterprises and Member countries.

Member countries have agreed to establish appropriate review and consultation procedures concerning issues arising in respect of the Guidelines. When multinational enterprises are made subject to conflicting requirements by Member countries, the governments concerned will co-operate in good faith with a view to resolving such problems either within the Committee on International Investment and Multinational Enterprises established by the OECD Council on 21 January 1975 or through other mutually acceptable arrangements.

Having regard to the foregoing considerations, the Member countries set forth the following Guidelines for multinational enterprises with the understanding that Member countries will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and international agreements as well as contractual obligations to which they have subscribed.

General policies

Enterprises should:

- 1) Take fully into account established general policy objectives of the Member countries in which they operate;
- 2) In particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment and consumer interests, the creation of employment opportunities, the promotion of innovation and the transfer of technology;
- 3) While observing their legal obligations concerning information, supply their entities with supplementary information the latter may need in order to meet requests by the authorities of the countries in which those entities are located for information relevant to the activities of those entities, taking into account legitimate requirements of business confidentiality;
- 4) Favour close co-operation with the local community and business interests;
- 5) Allow their component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialisation and sound commercial practice;
- 6) When filling responsible posts in each country of operation, take due account of individual qualifications without discrimination as to nationality, subject to particular national requirements in this respect;
- 7) Not render and they should not be solicited or expected to render any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office;
- 8) Unless legally permissible, not make contributions to candidates for public office or to political parties or other political organisations;
- 9) Abstain from any improper involvement in local political activities.

Disclosure of information

Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improve public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, in so far as necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular:

- a) The structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including shareholdings between them;
- b) The geographical areas²⁵ where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;

²⁵ For the purposes of the Guideline on Disclosure of Information, the term "geographical area" means groups of countries or individual countries as each enterprise determines is appropriate in its particular circumstances. While no single method of grouping is appropriate for all enterprises or for all purposes, the

- c) The operating results and sales by geographical area and the sales in the major line of business for the enterprise as a whole;
- d) Significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;
- e) A statement of the sources and uses of funds by the enterprise as a whole;
- f) The average number of employees in each geographical area;
- g) Research and development expenditure for the enterprise as a whole;
- h) The policies followed in respect of intra-group pricing;
- i) The accounting policies, including those on consolidation, observed in compiling the published information.

Competition

Enterprises should, while conforming to official competition rules and established policies of the countries in which they operate:

- 1) Refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example:
 - a) Anti-competitive acquisitions;
 - b) Predatory behaviour toward competitors;
 - c) Unreasonable refusal to deal;
 - d) Anti-competitive abuse of industrial property rights;
 - e) Discriminatory (*i.e.* unreasonably differentiated) pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises;
- 2) Allow purchasers, distributors and licensees freedom to resell, export, purchase and develop their operations consistent with law, trade conditions, the need for specialisation and sound commercial practice;
- 3) Refrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation;
- 4) Be ready to consult and co-operate, including the provision of information, with competent authorities of countries whose interests are directly affected in regard to competition issues or investigations. Provisions of information should be in accordance with safeguards normally applicable in this field.

Financing

factors to be considered by an enterprise would include the significance of geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprises' operations in the various countries.

Enterprises should, in managing the financial and commercial operations of their activities, and especially their liquid foreign assets and liabilities, take into consideration the established objectives of the countries in which they operate regarding balance of payments and credit policies.

Taxation

Enterprises should:

- 1) Upon request of the taxation authorities of the countries in which they operate provide, in accordance with the safeguards and relevant procedures of the national laws of these countries, the information necessary to determine correctly the taxes to be assessed in connection with their operations, including relevant information concerning their operations in other countries;
- 2) Refrain from making use of the particular facilities available to them, such as transfer pricing which does not conform to an arm's length standard, for modifying in ways contrary to national laws the tax base on which members of the group are assessed.

Employment and industrial relations

Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate:

- 1) Respect the right of their employees to be represented by trade unions and other bona fide organisations of employees, and engage in constructive negotiations, either individually or through employers' associations with such employee organisations with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities;
- 2) a) Provide such facilities to representatives of the employees as may be necessary to assist in the development of effective collective agreements;
b) Provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment;
- 3) Provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole;
- 4) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
- 5) In their operations, to the greatest extent practicable, utilise, train and prepare for upgrading members of the local labour force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities;
- 6) In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects;
- 7) Implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectivity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity;

- 8) In the context of bona fide negotiations²⁶ with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to utilise a capacity to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise;
- 9) Enable authorised representatives of their employees to conduct negotiations on collective bargaining or labour management relations issues with representatives of management who are authorised to take decisions on the matters under negotiation.

Environmental protection

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and recalling the provisions of paragraph 9 of the Introduction to the Guidelines that, inter alia, multinational and domestic enterprises are subject to the same expectations in respect of their conduct whenever the Guidelines are relevant to both, take due account of the need to protect the environment and avoid creating environmentally related health problems. In particular, enterprises, whether multinational or domestic, should:

- 1) Assess, and take into account in decision making, foreseeable environmental and environmentally related health consequences of their activities, including siting decisions, impact on indigenous natural resources and foreseeable environmental and environmentally related health risks of products as well as from the generation, transport and disposal of waste;
- 2) Co-operate with competent authorities, inter alia, by providing adequate and timely information regarding the potential impacts on the environment and environmentally related health aspects of all their activities and by providing the relevant expertise available in the enterprise as a whole;
- 3) Take appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular:
 - a) by selecting and adopting those technologies and practices which are compatible with these objectives;
 - b) by introducing a system of environmental protection at the level of the enterprise as a whole including, where appropriate, the use of environmental auditing;
 - c) by enabling their component entities to be adequately equipped, especially by providing them with adequate knowledge and assistance;
 - d) by implementing education and training programmes for their employees;
 - e) by preparing contingency plans; and
 - f) by supporting, in an appropriate manner, public information and community awareness programmes.

Science and technology

Enterprises should:

- 1) Endeavour to ensure that their activities fit satisfactorily into the scientific and technological policies and plans of the countries in which they operate, and contribute to the development of

²⁶ Bona fide negotiations may include labour disputes as part of the process of negotiations. Whether or not labour disputes are so included will be determined by the law and prevailing employment practices of particular countries.

national scientific and technological capacities, including as far as appropriate the establishment and improvement in host countries of their capacity to innovate;

- 2) To the fullest extent practicable, adopt in the course of their business activities practices which permit the rapid diffusion of technologies with due regard to the protection of industrial and intellectual property rights;
- 3) When granting licenses for the use of industrial property rights or when otherwise transferring technology, do so on reasonable terms and conditions.

ANNEX 3

The Guidelines for Multinational Enterprises: Second revised Decision of the OECD Council

(Amended June 1991)

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960 and, in particular, to Articles 2d), 3 and 5a) thereof;

Having regard to the Resolution of the Council of 28th November 1979, on the Terms of Reference of the Committee on International Investment and Multinational Enterprises and, in particular, to paragraph 2 thereof [C(79)210(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June 1976 in which they jointly recommend to multinational enterprises the observance of Guidelines for multinational enterprises;

Having regard to the Revised Decision of the Council of 13th June 1979 on Inter-Governmental Consultation Procedures on the Guidelines for Multinational Enterprises [C(79)143(Final)];

Recognising the desirability of setting forth procedures by which consultations may take place on matters related to these Guidelines;

Recognising that, while bilateral and multilateral co-operation should be strengthened when multinational enterprises are made subject to conflicting requirements, effective co-operation on problems arising therefrom may best be pursued in most circumstances on a bilateral level, although there may be cases where the multilateral approach would be more effective;

Considering the Report on the Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C(79)102(Final)] and the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises [C/MIN(84)5(Final)], including the particular endorsement of the section in the Second Review Report relating to conflicting requirements;

On the proposal of the Committee on International Investment and Multinational Enterprises:

DECIDES:

- 1) Member Governments shall set up National Contact Points for undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters related to the Guidelines so that they can contribute to the solution of problems which may arise in this

connection. The business community, employee organisations and other interested parties shall be informed of the availability of such facilities.

- 2) National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
- 3) The Committee on International Investment and Multinational Enterprises (hereinafter called "the Committee") shall periodically or at the request of a Member country hold an exchange of views on matters related to the Guidelines and the experience gained in their application. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. The Committee shall periodically report to the Council on these matters.
- 4) The Committee shall periodically invite the Business and Industry Advisory Committee to OECD (BIAC) and the Trade Union Advisory Committee to OECD (TUAC) to express their views on matters related to the Guidelines. In addition, exchanges of views with the advisory bodies on these matters may be held upon request by the latter. The Committee shall take account of such views in its reports to the Council.
- 5) If it so wishes, an individual enterprise will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests.
- 6) The Committee shall not reach conclusions on the conduct of individual enterprises.
- 7) This Decision shall be reviewed at the latest in six years. The Committee shall make proposals for this purpose as appropriate.
- 8) This Decision shall replace Decision [C(79)143].