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CONFERENCE ON THE ROLE OF INTERNATIONAL INVESTMENT IN DEVELOPMENT, CORPORATE RESPONSIBILITIES AND THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, PARIS, 20-21 SEPTEMBER 1999

ISSUES FOR DISCUSSION

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Conference on the Role of International Investment in Development, Corporate Responsibilities and the OECD Guidelines for Multinational Enterprises

OECD, Paris, 20-21 September 1999

Issues for Discussion

Introduction

1. During the last decade, foreign direct investment (FDI) has come to play an unprecedented role in the world economy as a source of management, technology and capital and ultimately economic growth and integration. This has been particularly been striking in the developing world where five sixths of all capital flows now originate in the private sector, with FDI by far the largest and most stable component.

2. Raising standards of living on a sustainable basis remains one of the most crucial policy challenges for the 21st century. In all likelihood, FDI will continue to be of vital importance towards the achievement of this goal. To be successful, however, the policy environment will need to take into account the legitimate expectations of governments and investors.

3. The present conference, supported by the OECD Committee on International Investment and Multinational Enterprises (CIME) and the UK government will aim at deepening the understanding of the issues that arise at the interface of government and business expectations, also taking into account the interests of other stakeholders in civil society. It will also attempt to contribute to the current thinking on the desirability and merits of international investment rules.

4. Four major subjects will be addressed: the role of FDI policies and individual country experiences, the foreign investor’s contribution to economic development and the importance of standards and responsibilities, notably the OECD *Guidelines for Multinational Enterprises* at a time when they are under active consideration and comprehensive review.

5. The conference will be driven by the sharing of experiences of high-level government officials from developed and developing countries, leading academics, representatives of the international business community and labour communities and other parts of civil society. It will build on the multidisciplinary character and long experience of the OECD as a forum for co-operation on international investment and development.

Session I: FDI policy and individual country experiences

6. FDI policy has traditionally been an integral part of the overall development strategy of host countries. But its form and scope have varied a great deal over time and between countries.

7. As an industrial policy tool, FDI policy has sought to achieve certain level of local content or export or foreign exchange payments balancing performance requirements. It has been used as a means to transfer technology, upgrade skills or associate foreign firms with domestic ones and also to increase the level of domestic competition. In other cases, FDI policy has kept foreign investors away from strategic sectors or operations (i.e. acquisitions) or, on the contrary, actively solicited the entry new foreign

investors and new businesses (greenfield investment). Screening has also been used as a substitute for weak or deficient domestic regulation (such as in the fields of competition and environment policy) while in other cases the same regulatory approach has been applied to foreign and domestic investors.

8. FDI has been influenced as well by other policies, notably those restricting imports (tariffs and non-tariff barriers), promoting exports (subsidies) or indirectly favouring local production (high domestic content rules of origin requirements). Foreign investors have also been attentive to levels of intellectual property protection and legal guarantees accorded to their operations.

9. The 1990s have witnessed unprecedented liberalisation of FDI, both in developed and developing countries. UNCTAD estimates that, of 750 changes in regulatory regimes world-wide in the 1990s, over 700 have been in the direction of the abandonment of discriminatory measures against foreign investors. These reforms have been part of more general policy reforms, encompassing deregulation, demonopolisation, and privatisation and trade liberalisation, which have greatly improved the scope for private enterprise and the business environment. Sound domestic policies are a necessary foundation for building business confidence.

10. At the same time, financial and tax incentives of various sorts have increasingly been used to attract foreign investors and influence their behaviour. Intense competition for high return mobile investments seems to have replaced traditional concerns over restrictive FDI policies. In fact, disciplinary action over their use may constitute one of the major policy challenges in the future.

Questions:

- *What lessons can be learned from individual FDI policy country experiences over the past decade? Could participants elaborate on how these policies may have contributed to the economic development of their countries*?

- *Can the recent liberalisation and deregulation observed over this period in both developed and developing countries be seen as a disavowal of traditional "interventionist" policies (such as foreign ownership restrictions, performance requirements, joint venture requirements, mandatory licensing and R&D transfer requirements)?*

- *Even if some of these "interventionist" policies may have proven to be beneficial in the past in certain instances, can it be assumed that they will continue to be beneficial in the future? Have the globalisation of the world economy and widespread liberalisation, in fact, undercut the effectiveness of more traditional FDI policies? How can the legitimate interests and concerns of host countries be taken care of in this new context?*

- *What is scope for further unilateral liberalisation of FDI? Would the establishment of multilateral rules on investment facilitate future FDI liberalisation as well as help prevent the unravelling of past liberalisation gains?*

- *Do participants agree that a sound domestic regulatory framework is also essential for solid economic performance?*

Session II: Role of foreign investors in developing countries

11. It is widely acknowledged that multinational enterprises can fulfil an important role in promoting sustainable development, including economic growth and improved environment management and social welfare. They can bring capital, technology and know-how often unavailable locally. They can create backward and forward linkages in host economies, resulting in the creation of jobs, technology diffusion and the improvement of skills and distribution of income. They can raise local production and environmental standards through the use of more advanced and user-friendly technologies.

12. MNEs can also deepen the ties that bind economies to each other and to the rest of the world. Through trade and investment flows, they can interconnect host and home economies in the so-called "globalisation" process. There is increasing evidence that active participation in this process is becoming a prerequisite for sustainable growth and that there are major risks for individual countries in remaining on the outside.

13. Session II will review the most recent evidence on the economic benefits accruing from FDI. Participants – notably representatives from major MNEs – will be invited to comment on how they see the contribution of FDI to economic development and how this contribution could be enhanced in the future. They will also be invited comment on the evolution of their investment strategies and what that means for host economies.

***Questions**:*

- *What has been the experience of host countries concerning the economic benefits of FDI? What are the areas for satisfaction? Disappointment? Does FDI contribute to the fulfilment of social objectives? In what ways?*

- *How do investors assess the new policy environment? What are the priority areas for improvement?*

- *If the economic benefits of FDI are strongly correlated with the degree of integration of the foreign subsidiary into the global operations of its parent, what are the factors that could further enhance such integration?*

Session III. Corporate responsibility: The importance of standards and the role of voluntary codes of corporate conduct

14. Judging by their growing number and coverage, voluntary codes of corporate conduct have gained prominence in recent years. These corporate codes form part of a broader effort by many multinational firms to improve their standards of ethical conduct on a world-wide scale.

15. Companies have come under increasing pressure from consumers and from non-governmental organisations to adhere to more demanding behavioural norms. Employees too have an important impact. Leading companies find it necessary to meet high expectations of corporate behaviour to ensure they can recruit among the most able and motivated personnel. Many companies say that they see no long-term trade-off between their duty to generate profits for their shareholders and their wider sense of social responsibility as corporate citizens. Indeed, shareholder may be enhanced if the interests of all stakeholders are taken into account.

16. Internal management controls provide firms with an essential tool to make good on their ethical commitments. Standardised management systems have emerged which typically consist of a code of conduct containing commitments to comply with the law and to engage in a process of continual improvement and of internal management procedures designed to make these commitments operationally effective. Two examples are ISO 14000 in the environment and SA 8000 for social standards. Specialised firms, large accountancy and consulting companies and NGOs have begun offering services (consulting, certification and auditing) designed to assist firms in doing this.

17. Although not legally binding, codes of conduct signal that a company is aware of the importance of social responsibility and is ready to be judged on its performance. Since they are designed by the company itself they fit with the activities of the firm and its culture better than any law could do and can be quickly adapted to changing circumstances. Effectiveness however depends heavily on the commitment of the company's management and staff.

18. Codes vary in many respects: some target specific areas such as labour or environment, health and safety, while others cover a range of issues including bribery; they may address employees, suppliers and contractors or the general public; they may have external monitoring, internal monitoring or none at all.

Questions:

- *How significant are these efforts by firms? Have they translated into significant changes in how these firms conduct business?*
- *Are the pressures of market competition necessarily in conflict with pressures for more responsible corporate behaviour? Where are the most severe conflicts likely to be found?*
- *What are the ingredients of successful integration of high standards of corporate behaviour within a company?*
- *What monitoring and implementation steps are necessary in order to ensure that the commitments made by companies are honoured? Is the involvement of an external party necessary (i.e. auditors or certifiers)?*
- *What is the role of external standards such as ISO 14000 for the environment and SA 8000 for social accountability? Are they complementary to the individual company codes?*

Session IV: The OECD Guidelines for Multinational Enterprises

19. The *OECD Guidelines for Multinational Enterprises* are recommendations by OECD governments to multinational enterprises (MNEs) which establish behavioural norms for the activities of these enterprises. The *Guidelines* aim to ensure that MNE activities are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between MNEs and government authorities. The *Guidelines* cover a broad range of MNE operations: employment and industrial relations, environmental protection, information disclosure, competition, financing, taxation, and science and technology.

20. The *Guidelines* provide a supplemental voluntary standard for responsible business conduct consistent with the laws applying wherever they operate. They express the shared expectations for business conduct of the governments adhering to them and provide a reference point for firms developing

their own codes of conduct. Hence, they complement and reinforce private efforts to define and implement responsible business conduct.

21. The *Guidelines* form part of a wider and balanced package of OECD investment instruments (the 1976 OECD Declaration on International Investment and Multinational Enterprises), which are adhered to by the 29 OECD members, as well as Argentina, Brazil and Chile.[1] The Declaration includes the National Treatment Instrument (which stipulates that foreign enterprises be accorded treatment no less favourable than domestic enterprises by host country governments in like circumstances), as well as instruments designed to avoid conflicting requirements on MNEs and to promote co-operation in the area of international investment incentives and disincentives.

22. The *Guidelines*, like other parts of the 1976 Declaration, are not legally binding, but OECD Governments are committed to promoting their observance. The OECD Committee on International Investment and Multinational Enterprises (CIME) acts as a forum for consultation, clarification and review. National Contact Points (NCPs) in participating countries promote local awareness of the *Guidelines* and assist in dealing with issues that arise in the application of the *Guidelines* by MNEs. Through the Advisory Bodies to the OECD -- the Business and Industry Advisory Council (BIAC) and Trade Union Advisory Council (TUAC) -- both business and trade unions have endorsed the *Guidelines* and participate in the follow-up procedures to make the *Guidelines* work.

(a) Review of the Guidelines

23. OECD countries are currently undertaking a thorough Review of the *Guidelines*.[2] While governments are convinced that the *Guidelines* continue to have an important role, the text and implementation procedures need updating to reflect important changes in the world economy and to ensure the *Guidelines'* relevance and effectiveness. Service and knowledge intensive industries have become more important relative to mining and manufacturing, many more firms are engaged in international business, strategic alliances and closer relations with suppliers and contractors have become more important. Large enterprises still account for a major share of international investment but small and medium sized companies now play a significant role, and MNEs have emerged in non-OECD countries. These developments need to be taken into account.

24. The Review process, which is expected to be concluded by June 2000, is designed to be open and inclusive. While OECD governments will take final responsibility for the text and implementation procedure, input from non-member governments, business, labour, non--governmental organisations (NGOs) and others is welcome and is being solicited both in capitals and here at OECD.[3] BIAC and TUAC can contribute through well-established channels, but ways are being sought to obtain the views of other interested parties. This conference provides an important opportunity for different perspectives to be brought to bear on the review process and to engage in dialogue. This may be an especially important opportunity for officials from non-member governments to explore the *Guidelines*, ask questions and give their views.

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1 For simplicity, this note refers to OECD countries, even where the intention is to include the three non-members that have adhered to the Declaration.

2 Earlier reviews occurred in 1979, 1984 and 1991.

3 Further information on the Guidelines, including the current text of the Guidelines and a report on the Framework for the Review can be found on the OECD website at *www.oecd.org/daf/cmis/cime/mneguide.htm*

Questions:

- *Do participants agree that continued international co-operation among governments is needed to promote high standards of business conduct? What can governments do to help ensure that the Guidelines are a meaningful instrument in a market-based international economy ?*

- *What are the key policy areas where the Guidelines need updating, strengthening or re-casting: employment and industrial relations, environment, bribery, consumer interests, competition policy? Are there issues, such as human rights, which are not mentioned explicitly in the existing text which should be considered for inclusion?*

- *Implementation procedures associated with the Guidelines are also important. What should governments do to promote the Guidelines and help make them more effective?*

- *Business and labour have an established role through BIAC and TUAC in promoting the Guidelines and participating in their follow-up? Should business be more active in encouraging observance of the Guidelines? What role could NGOs play?*

- *To what extent does the effectiveness of the Guidelines depend on a sound framework of government policy and the rule of law? Are higher standards of corporate conduct evident in countries offering non-discriminatory investment policies and effective investment protection?*

(b) The Role of the Guidelines beyond the OECD Area

25. Given the increasingly global operations of MNEs and the expanding universe of MNEs, including from developing countries, the role of the *Guidelines* outside the OECD area is also under discussion in the current Review. At present, the *Guidelines* clearly apply to the activities of enterprises operating in the territories of OECD-member countries, but it is not so clear that the *Guidelines* are addressed to the activities of the same enterprises when they operate in non-member countries. (Clearly, the *Guidelines* do not apply to the activities of enterprises having no activity in the OECD area.)

26. The *Guidelines* could be seen as providing a benchmark for corporate behaviour world-wide. From the viewpoint of enterprises, the *Guidelines* could provide a focal point for their efforts to contribute to sustainable development and to improve their global corporate image. Officially-sponsored *Guidelines* give helpful directions on important issues of social responsibility, such as environment and labour standards, and may help avoid misunderstandings and conflicts in host or home country societies.

27. In practice, many MNEs already apply their standards world-wide, and the *Guidelines* may be said to encourage “good corporate practice” in all countries. Not to confirm this principle might imply that OECD Members apply a double standard, endorsing norms of corporate conduct that are lower than those of the *Guidelines*, as long as they are applied outside the OECD area.

28. From the viewpoint of non-member economies, the application of world-wide standards by leading international companies may provide direct benefits in terms of corporate integrity, disclosure of information, employment conditions and environmental stewardship. There may also be valuable indirect benefits via demonstration effects for local companies, training of personnel and assistance in the development of local and national laws and regulations.

29. Nevertheless, the *Guidelines'* effectiveness depends on a delicate interplay of national rules and international standards, corporate behaviour, and relations between companies and host governments and sometimes between host and home governments. Hence, calling on companies to apply OECD standards of behaviour world-wide could be viewed by some as encroaching on the sovereignty of countries that have not adhered to the *Guidelines* and do not participate in their follow-up procedures. That said, the *Guidelines* would not override the domestic laws of host countries because they not legally binding and they do not change the principle that MNEs are subject to the laws and regulations of the country in which they operate.

30. If non-member governments wished to associate themselves with the *Guidelines'* work, various possibilities might be considered, including eventually adherence to the instrument on the same terms as OECD countries. Informal arrangements might include workshops to promote principles of corporate responsibility generally, or more targeted events to allow discussion and clarification of the functioning of the *Guidelines*.

Questions:

- *In an increasingly global economy, how can an international set of recommendations by states to MNEs, such as the OECD Guidelines, assist in the proper functioning of markets by setting a benchmark for corporate behaviour world-wide?*

- *Given that most MNEs are headquartered in OECD member-countries and often global in scope and aspiration, would it be helpful that the Guidelines state explicitly that OECD-based companies should respect the Guidelines wherever they operate throughout the world?*

- *If the Guidelines are to be applied globally, do the text and procedures need to be adapted to the circumstances and concerns of non-member countries?*

- *Is there reason for concern about the competitive effects on MNEs headquartered in OECD countries versus competitors in non-member countries not subject to the Guidelines?*

- *Are non-member governments interested in exploring ways of closer co-operation with OECD countries on Guidelines matters? Is there interest in promoting the Guidelines in relation to their own enterprises, especially those that operate internationally?*

- *How would non-member governments respond to requests for co-operation from OECD governments with regard to the behaviour of an OECD based company operating in their territories?*

Session V. Concluding session

31. The concluding session will bring together the various elements of the previous discussions and highlight their possible implications for international investment rules and international development. It will also seek to identify areas that would deserve further co-operative work in the areas of FDI policy, corporate responsibilities and codes of conduct, including the OECD *Guidelines for Multinational Enterprises*.