

**The original documents are located in Box 58, folder “1976/04/28 - Economic Policy Board” of the James M. Cannon Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

EPB MEETING  
Wednesday, April 28, 1976  
8:30 a.m.

April 23, 1976

ECONOMIC POLICY BOARD  
EXECUTIVE COMMITTEE

Proposed Agenda

Monday, April 26, 1976 EPB/ERC Executive Committee Meeting

1. Clean Air Act Amendments Gorog
2. Report on Adjustment Assistance for the Footwear Industry Commerce/Labor

Tuesday, April 27, 1976

1. Social Security Decoupling Domestic Council
2. Role of Departmental Consumer Representatives Barody

Wednesday, April 28, 1976

1. Financial Reform Update Treasury
2. Status of Codes of Conduct and the MNC's State

Thursday, April 29, 1976

1. Report of the Subcommittee on Economic Statistics Malkiel
2. Task Forces to Reduce Waste and Inefficiency in Government Regulation

Friday, April 30, 1976 (Principals Only)

1. Arab Boycott NSC
2. Maritime Policy Review Commerce



THE WHITE HOUSE

WASHINGTON

April 27, 1976

MEMORANDUM FOR THE EXECUTIVE COMMITTEE, ECONOMIC POLICY BOARD

FROM: WILLIAM F. GOROG *WFG*

SUBJECT: Update of Selected Economic Statistics Release

1. Money Stock Measures

Change in March from:	<u>M<sub>1</sub></u>	(%Change)	<u>M<sub>2</sub></u>
December 1975	+4.6		+11.0
September 1975	+3.3		+8.8
March 1975	+5.0		+9.4

2. Total Industrial Production (Real terms, seasonally adj.)

(Index: 1967 = 100)	<u>Index</u>	<u>% Change</u>
March 1976	120.9	+0.6
February 1976	120.2	+0.7
January 1976	119.5	+0.8
December 1975	118.5	+0.8
November 1975	117.6	-
(Mar. 1975 - Mar. 1976)		+9.8

3. Retail Sales (Current dollars, seasonally adj.)

Total:	<u>\$ Billions</u>	<u>% Change</u>
March 1976	53.87	+2.8
February 1976	52.41	+1.6
January 1976	51.59	-
(March 1975-March 1976)	-	+17.2



4. Housing Starts and Building Permits (Seasonally adj.)

Starts (annual rates):	<u>Millions of Units</u>	<u>% Change</u>
March 1976	1,444,000	-7.6
February 1976	1,562,000	+27.6
January 1976	1,224,000	-5.0
December 1975	1,291,000	-
Permits (annual rates):		
March 1976	1,156,000	+1.9
February 1976	1,134,000	+1.2
January 1976	1,120,000	+9.0
December 1975	1,028,000	-

5. Employment and Unemployment (Seasonally adj.)

Civilian Labor Force:(CLF):	<u>Millions of Persons - 16 yrs.+</u>
March 1976	93.72
February 1976	93.50
January 1976	93.50
December 1975	93.12
March 1975	91.88
December 1974	91.64

## Employment:

March 1976	86.69
February 1976	86.30
January 1976	86.20
December 1975	85.39
March 1975 (low)	84.11
December 1974	85.05

## Unemployment:

	<u>Millions of Persons</u>	<u>% of CLF</u>
March 1976	7.03	7.5
February 1976	7.10	7.6
January 1976	7.30	7.8
December 1975	7.73	8.3
May 1975 (peak)	8.25	8.9
December 1974	6.58	7.2



Unemployment: (% of Group)

Heads of Households:

March	1976	-	5.0
February	1976	-	4.9
January	1976	-	5.1
December	1975	-	5.7
May	1975	-	6.1
December	1974	-	4.6

6. Manufacturers' Shipments and Orders (current dollars, seasonally adj.)

Total Shipments:		<u>\$ Billions</u>	<u>% Change</u>
February	1976	90.96	+1.9
January	1976	89.25	+1.9
December	1975	87.62	+1.1
November	1975	86.66	-

Total Inventories:			
February	1976	147.20	+0.1
January	1976	146.78	+0.1
December	1975	146.57	-
November	1975	146.67	-

Total New Orders:			
February	1976	90.37	+2.5
January	1976	88.19	+1.7
December	1975	86.75	+0.5
November	1975	86.35	-

7. Consumer Price Index

All Items - 12 mos. previous to:		<u>% Change</u>
March	1976 ( +0.2% for month)	+6.1
February	1976 ( +0.1% for month)	+6.3
January	1976	+6.8
December	1975	+7.0
September	1975	+7.8
June	1975	+9.3
March	1975	+10.3
December	1974	+12.2



8. Wholesale Price Index

All Commodities - 12 mos. previous to:		<u>% Change</u>
March	1976 (+0.2 for month)	+5.5
February	1976	+4.7
January	1976	+4.4
September	1975	+6.3
June	1975	+11.6
March	1975	+12.5

9. Gross National Product (constant 1972 dollars)

Change from previous Quarter:		<u>% Change</u>
First Quarter	1976	+7.5
Fourth Quarter	1975	+5.0
Third Quarter	1975	+12.0
Second Quarter	1975	+3.3
First Quarter	1975	-9.2

10. Real Spendable Earnings

12 Months previous to:		<u>% Change</u>
February	1976	+4.8
January	1976	+4.3
December	1975	+3.8
September	1975	+1.6
June	1975	+0.2
March	1975	-4.6
January	1975	-5.1

11. Personal Income (current dollars, seasonally adj.)

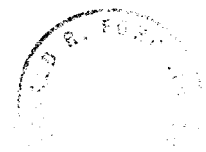
Annual Rate:		<u>\$ Billions</u>	<u>% Change</u>
March	1976	1,334.0	+0.6
February	1976	1,327.3	+0.9
January	1976	1,315.0	+1.1
December	1975	1,300.2	+8.3
December	1974	1,200.4	-



12. Composite Index of Leading Indicators

Change from previous month:		<u>% Change</u>
February	1976	+0.8
January	1976	+1.5 r
December	1975	+0.8 r
November	1975	+0.2 r
October	1975	-0.4 r
September	1975	0.0
August	1975	+0.9
July	1975	+2.5
June	1975	+3.0
May	1975	+1.9
April	1975	+3.0
March	1975	+0.9
February	1975	-0.8
January	1975	-3.4
December	1974	-2.2
November	1974	-3.1
October	1974	-3.9
September	1974	-4.1

(r = revised)





THE WHITE HOUSE

WASHINGTON

April 20, 1976

Nine months ago, our speeches reflected a sense of cautious optimism that the recession was bottoming out, and that an upturn could be expected. As we look at the economic indicators less than a year later, we see that the dynamic forces of the free market system have responded impressively:

- Gross National Product for the first quarter of this year grew at a rate of 7.5 percent; the two primary factors behind this large gain were a swell in inventories and the lowest inflation rate in 3 and 1/2 years.
- Total employment has increased by 2.6 million since the recession low in March of 1975. This gain has more than compensated for the loss of 2.2 million jobs during the recession.
- Total Industrial Production for March 1976 was up 9.8 percent, in real terms, over the previous twelve month period.
- Retail sales, which have led the recovery strongly, advanced to a high of almost \$54 billion in March of this year. This figure is over 17 percent above the level of March a year ago, without adjustment for inflation.
- Housing starts in March 1976 were at a level of 1.44 million units, or 46% ahead of the same period a year ago. This critical sector, however, remains well below the boom levels reached in the early Seventies.
- Prices, both at the wholesale and consumer levels, continue to decline from the double-digit growth rates of 1974. Consumer prices increased only 2/10 of 1 percent in March, while wholesale prices have actually declined in two of the last five months, with food prices and farm product prices declining in four of the past five months.
- Real spendable earnings, reflecting the moderation of inflation, have increased consistently since June of 1975, with the February figures showing a healthy rise of 4.8 percent over the previous twelve months.
- The Composite Index of Leading Indicators has registered a rise in each of the past four months, indicating that the recovery should have sufficient strength to continue into the months ahead.



DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM FOR: THE HONORABLE  
L. WILLIAM SEIDMAN  
ASSISTANT TO THE PRESIDENT  
THE WHITE HOUSE

SUBJECT: Status of Negotiations on OECD Guide-  
lines for Multinational Enterprises  
and Related Intergovernmental Agree-  
ments

The attached materials are for the reference  
of the EPB in connection with its April 28 meeting  
concerning the OECD investment exercise.

- Tab 1 - Summary of Private Sector Views Concerning  
the Four Remaining Issues in the OECD Invest-  
ment Exercise Expressed at April 20 Meeting  
of State Department Advisory Committee on  
Transnational Enterprises
- Tab 2 - Summary of Private Sector Views Concerning  
OECD Investment Exercise Expressed in  
Written Correspondence
- Tab 3 - Status Report on Actions Taken in the OECD  
on Specific Drafting Changes Recommended by  
Private Sector
- Tab 4 - Interagency Approved Position Paper for  
April 29-30 OECD Investment Committee Meeting
- Tab 5 - Copy of March 31 Briefing Memorandum from  
then Under Secretary Charles W. Robinson  
Concerning the OECD Negotiations

Joseph A. Greenwald  
Assistant Secretary  
for Economic and Business Affairs





Summary of Private Sector Views  
Concerning Four Remaining Issues in OECD  
Investment Exercise Expressed at April 20 Meeting  
of State Department Advisory Committee

Information Disclosure

Business spokesmen at the Advisory Committee meeting expressed concern that country-by-country disclosure of MNE operating data could:

- prove immensely burdensome for MNEs;
- be misleading due to variations in accounting standards among countries;
- disadvantage MNEs competitively if certain countries do not require disclosure of comparable information concerning national operations of domestic enterprises.

They did agree, however, that a reference to country-by-country disclosure would be acceptable if worded as an option strictly at the discretion of the enterprise, preferably accompanied by the language calling for avoidance of competitive disadvantage.

A labor representative emphasized the importance which European trade unions attach to increased information disclosure by business enterprises and thus the desirability of MNEs attempting to be forthcoming on this question.

Intergovernmental Consultations

The members of the Advisory Committee were seriously concerned at the possibility that the consultation procedure might develop into a tribunal for the judgement of MNEs, undercutting the voluntary nature of the guidelines. They generally supported deletion of any reference to enterprise involvement in the consultation process, but indicated willingness to accept a formulation specifying that enterprise participation in the consultations would occur only if the enterprises themselves desire it.

National Treatment

In general, the members of the Advisory Committee expressed the view that national treatment for foreign-controlled enterprises established in a country is



desirable and urged that the United States seek to preserve the strength of the proposed national treatment instrument.

Incentives/Disincentives

Although comments by members of the Advisory Committee on this issue were relatively few, they indicated that they share our desire to improve cooperation among OECD members regarding foreign investment policies, and therefore support our efforts to make the scope of application of the proposed instrument as broad as possible.





## Views of the Private Sector

### Concerning the OECD Investment Exercise

Since the beginning of the OECD investment exercise, we have sought and received the comments and advice of more than one hundred companies, business associations and other private sector groups, communicated both directly and through our Advisory Committee on Transnational Enterprises. In particular, these communications have focused on the need for improvements in the draft OECD Guidelines for Multinational Enterprises. In many cases, we have succeeded in obtaining OECD acceptance of the recommended changes in the course of the negotiations. Thus, we have received many comments similar to those of T. A. Murphy, Chairman of General Motors, of March 16:

As you may know, I have been following the development of these guidelines very closely as a representative on the BIAC Committee on International Investment and Multinational Enterprises ... and its counterpart committee in USA-BIAC .... Our efforts have been directed toward ... providing constructive criticism of the various drafts of the guidelines in the hope that the final draft will be a realistic document which can serve as a proper standard for multinational enterprises .... Fortunately, many BIAC comments have been accepted ... so that the problem areas that remain now are relatively few. These are in the sections on Disclosure of Information, Competition, Financing, and Employment and Industrial Relations.

At the same time, certain business spokesmen continue to seek fundamental changes in the tone and substance of the OECD guidelines. Here the comments of March 19 by F. Perry Wilson, Chairman of Union Carbide, are illustrative:

We find the overall tone of the guidelines too negative. Considering that the OECD represents the twenty-five advanced nations of the world and their members account for at least 95% of the multinationals, we would expect that the governments would develop a document that was more positive in its approach to the companies. This draft is a set of restrictions--a series of "thou shalt nots". We believe such a document.



should more appropriately contain broad policy guidelines on what the members conclude constitutes good corporate behavior ... In our view the OECD code could well set the precedent for all the other codes being considered by other international organizations, i.e. UN, UNCTAD, OAS, and could also serve as a model for legislation individual nations might adopt.

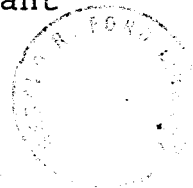
This contrasts with the view taken by many other business leaders, as exemplified by the following comments by Robert M. Norris, President of the National Foreign Trade Council:

We commend the efforts of the United States delegation in eliminating much of the more arbitrary and seemingful capricious language put forth by some of the OECD member countries ... [and in] introducing in the negotiations the positive note and premise that international investment and in turn multinational enterprises produce net benefits both to home and host countries. The latter drafts which we have reviewed in our opinion represent a decided improvement over earlier drafts.

Whatever their overall attitude toward the several investment instruments, many companies and representatives of business organizations have over the past several months suggested further improvements in some specific provisions of the guidelines. It should be noted, however, that these suggestions have been based on the January draft of the guidelines and that we have already obtained the acceptance of many of these suggestions by the CIME. A representative sampling of these suggestions is presented below.

#### Guidelines for Multinational Enterprises

A primary concern of most businessmen is with various provisions in the guidelines for MNEs which they perceive as going beyond the requirements of national law and thus containing the threat of discrimination between multinationals and their national competitors (this despite the statement in the Introduction that "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.")





For example, D.J. Pilliod, Jr., Chairman of Goodyear Tire and Rubber, states:

We feel that in many cases the guidelines set forth codes of behavior within countries which are different for multinational enterprises than are required by the laws of individual nations for national enterprises. We are convinced this is unwise and unfair.

In his view, the sections on Information Disclosure, Competition, and Employment, by establishing standards more stringent than those mandated by some national law, would "inflict the very supra-nationality of which many states complain."

#### Information Disclosure

With specific regard to Information Disclosure, Edwin D. Dodd, President of Owens-Illinois comments:

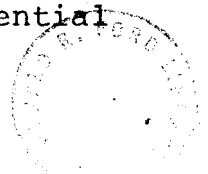
We are most concerned with the provisions dealing with disclosure of information. As now written in the OECD draft they are unrealistically detailed and specific. They provide for disclosure of much information of little real significance to any host country but which could be damaging and useful to competitors; further, many companies just do not have the specified information, could not provide it without excess administrative time and cost, and in some instances would simply find it impossible to develop. That's particularly true of the breakdown of sales, costs, and profits by geographic area ...

Business has been unanimous in endorsing our efforts to avoid the establishment of a standard based on a breakdown of corporate data on a country-by-country basis. A few, however, like G. S. Wolbert, Jr., Vice President of Shell Oil, also indicate that they are "bothered by the "geographical area" reference, whose vagueness could spell unpredictable trouble for some enterprises."

Textron lists problems of three types posed by the Information section:

(1) costs in compiling, editing, publishing and distributing data.

(2) risks incident to exposure of previously confidential information to government agencies, unions, employers, competitors, customers, and suppliers.



(3) conflict of management responsibilities because shareholders may suffer because of adverse uses of published data.

### Competition

Business (primarily MNEs engaged in manufacturing) concern with the Competition section focuses on the extent to which it appears to go beyond national law. R.T. Kelly, Vice President of Caterpillar Tractor, indicates that:

This provision gives us concern because of its inconsistency with antitrust laws of many nations. Item (2) does not recognize that price differentiation is often a principal method of competition. Item (4) could be misinterpreted as including purchases of raw materials from or service contracts with governments. Item (5) is not appropriate for this section as it deals with issues dealt with in the disclosure section.

Similarly, Union Carbide suggests that "In our opinion, the Restrictive Business Practices section could most appropriately be left with only the opening sentence: "Enterprises should conform to official competition rules and established policies of the countries in which they operate."

### Employment and Industrial Relations

Many enterprises have commented on the need to assure that this section does not tilt the balance in labor-management relations in favor of the former. Most consider that this section is much improved over earlier drafts. At the same time, they have suggested certain additional revisions. In the view of Goodyear Tire, "Paragraphs (1) and (2) appear to mandate union recognition and/or collective bargaining. As this is not required in some countries, these guidelines should not impose them on multi-nationals operating in those countries." The National Foreign Trade Council comments that "We take exception to any guidelines for Employment and Industrial Relations which would place a moral obligation on a company to open its books to employees or their union representatives and put the company at a substantial disadvantage on labor organizations."



## Intergovernmental Consultation Procedures

The fundamental issue in this section from the business point of view is whether or not enterprises should become involved in any intergovernmental consultations concerning the implementation of the guidelines. Although business has split on this question, some feeling that enterprises should be given the opportunity to defend their actions against any accusations which may be made against them, the balance of sentiment seems to be with the position taken by the members of the Task Force on MNCs of the U.S. Chamber of Commerce:

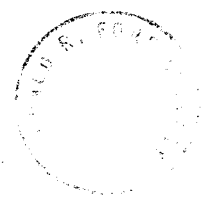
The Task Force is deeply concerned that paragraph 2 could jeopardize enterprises by requiring their presence during an intergovernmental discussion concerning an enterprise's adherence or non-adherence to the guidelines. If specific examples of "enterprise behavior" are used for illustrative purposes in the implementation of the guidelines, discussion of such examples should not require the presence of a representative of an enterprise. If the procedure to implement the guidelines is to be handled among OECD governments (as it should be), then enterprises should not be permitted to take part in the procedure.

The exclusion of enterprise representatives is particularly important in view of the language in paragraph 3. Indeed, "conclusions being passed on the behavior of specific enterprises" could very well take place, in the public mind at least, if enterprises are required to defend their behavior in an intergovernmental forum.

## Other Comments

Private sector comments on the other sections of the guidelines and the national treatment and incentives/disincentives instruments have been less extensive but nonetheless important. A letter prepared by the members of the Task Force on Multinational Corporations and International Organizations of the U.S. Chamber of Commerce provides a comprehensive summation of the concerns expressed by business regarding the various provisions of the three instruments. We have therefore prepared the attached list of the points raised in that letter together with indications of the actions which we have taken in response to those comments.





Status of OECD Investment Package:  
Actions Taken with Regard to Changes Proposed  
by Private Sector Groups

Private Sector Recommendations

General Comments

1. Declarations should apply to OECD member country enterprises and governments only.
2. If guidelines are to apply to enterprises, references to direct cooperation with governments should be eliminated.
3. Instruments on Incentives and Disincentives and National Treatment lack provisions for sanctions against governments that fail to adhere to them and provide no recourse for foreign investors who are victimized by governments that ignore the principles or who radically alter the ground rules once an investment has been consummated.

Actions Taken by the OECD Investment Committee (CIME)

1. No change necessary: as noted in para. 3 of the Introduction to MNE Guidelines, Member Governments agree that world-wide cooperation on MNE issues is desirable and necessary; at the same time, para. 6 states that the MNE guidelines are recommendations addressed to MNEs operating in the territories of Member countries with regard only to their activities in the different Member countries.
2. Cooperation with governments and their laws is a vital aspect of MNE activities and therefore could not be omitted from the guidelines. Also, it is important from our point of view that the guidelines contain reference to the responsibilities of governments as well as MNEs.
3. These instruments are aimed at establishing norms. While they do not provide for sanctions as such, they do represent undertakings by governments that are subject to consultations, and there is a clear expectation that they will influence the behavior of governments.



Guidelines for Multinational Enterprises

Introduction

1. Delete "abuse of" in para. 1; also, add "and misunderstandings" after "difficulties" in sentence 1 of para. 2.
2. Retain last phrase of para. 2 dealing with "investment climate".
3. In para. 6, delete phrase in 2nd sentence "which take into account the problems which can arise because of the international structure of these enterprises."
4. In para. 8, eliminate references to "understanding" and "compliance", as these go beyond voluntary concepts.
5. Clarify last sentence of para. 9 as follows: "Accordingly, multinational and domestic enterprises should be subject to the same guidelines wherever they are relevant to both."
6. Delete the last four lines of para. 9 and substitute the following: "Indeed, in the area of restrictive practices and competition, it is essential for a proper functioning of free markets that all enterprises engaged in trade between nations, as well as domestic companies competing with multinational enterprises, be subject to the same rules of competition."
1. Other countries have insisted on the current wording. On balance, we feel that the Introduction reflects favorably on the benefits of MNE activities.
2. This phrase has received general approval in the CIME.
3. Other countries insisted on the inclusion of this language. At the same time, we obtained the unequivocal affirmation of the voluntary nature of the guidelines.
4. "Compliance" has been replaced by "observance".
5. This provision has not been substantially revised. At the same time, it has been discussed at great length in the OECD and we view it as a strong affirmation of the principle of non-discrimination in the application of the guidelines.
6. The broader language has been retained. The rationale for non-discriminatory treatment is based on the broad benefits which investment flows can offer to an economy, which includes but is not limited to stimulation of competition. We consider this language to represent a firm commitment that these guidelines will not be employed to disadvantage MNEs in comparison to their local competitors.

7. Preserve "Having Regard" para. as is.

General Policies

1. Endorse strengthened language on political activities and corrupt practices.
2. Para. 5 is too equivocal; it should be stated as an absolutely flat prohibition.

Disclosure of Information

1. In para. 1, like para. 2, make reference to requirements of business confidentiality; make para. 1 less ambiguous; specify what "policies" means.
2. Support "geographical areas" as basis for information disclosure.
3. In sub-para (iii), indicate that "sales and operating results" would be reported along "geographical areas" and "major lines of business" separately.

7. This paragraph has received CIME approval.

1. This language, with non-substantive wording changes, has now received general approval.
2. We view these provisions as a firm proscription of bribery and similar practices. A statement of voluntary general guidelines for business conduct does not lend itself to a more stringent, regulatory approach.
1. Paras. 1 and 2 have been combined, and these problems no longer exist. "Policies" has not been defined, but, in context, may be interpreted to refer to the intra-group pricing and accounting policies of the enterprise as mentioned in sub-paras. (viii) and (ix).
2. This has been accepted by the CIME. Nevertheless the language in the definitional footnote remains unresolved. We are taking the position that the guidelines should not prescribe individual country disclosure, or even include this as a secondary option without a qualification making it clear that it is up to the enterprise to determine the basis upon which such disclosure is to be made.
3. Language revised to confirm this separation and to call only for "sales" in the major lines of business.



4. In sub-para. (vi), delete reference to total annual employee remuneration.
5. Delete sub-para. (viii), since information on pricing policies would not be informative.

Competition

1. Change section title to "Competition."
2. In para. 1, delete "by abusing a dominant position of market power", and sub-points (a)-(d), since these are unnecessary to the meaning of the provision.
3. In para. 2, delete "discriminatory (i.e., unreasonably differentiated)," as well as the phrase dealing with using pricing transactions to affect adversely competition.
4. In para. 3, delete "and, when competitively important, controlled affiliates."
5. Para. 3 may be construed as allowing distributors and franchises to enter third country markets and compete with company distributors or franchises in those countries.
6. In para. 4, exclude reference to "cooperating with" cartels.
7. Delete para. 5 or provide for procedural safeguards.

4. Our recommendation in this regard is still under consideration by the CIME. We have agreement that in any case no regional breakdown is expected.
5. We were unable to obtain agreement to this change.

1. Recommendation accepted by CIME.
- 2.-3. These changes have been discussed but have been opposed by most OECD members and therefore have not been accepted by the CIME. The U.S. Justice Department believes the present language is appropriate and consistent with U.S. antitrust law.
4. Recommendation accepted by the CIME.
5. We believe inclusion of the phrase "consistent with law, trade conditions, the need for specialization and sound commercial practice "reserve the necessary discretion for the enterprise.
6. This concern has been met, and the reference is now to "purposely strengthening the restrictive effects of" cartels.
7. Para. 5 now specifies that provision of information should be "in accordance with safeguards normally applicable in this field by these countries."





Financing

- |   |  |
|---|--|
| <ol style="list-style-type: none"><li>1. Delete "Trade" from section title.</li><li>2. In para. 1, eliminate linkage of transfer pricing to national balance of payments objectives.</li><li>3. Delete para. 2 dealing with freedom for component entities.</li></ol> | <ol style="list-style-type: none"><li>1. Recommendation accepted by the CIME.</li><li>2. We are continuing to press for this change. The new para. 2 may provide a basis for resolving this problem.</li><li>3. This paragraph has been amended to refer to "exploiting their competitive advantage in domestic and foreign markets consistent with the need for specialization and sound commercial practice," and moved to the General Policies section.</li></ol> |
|---|--|

Taxation

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. In para. 1, delete last phrase dealing with operations in other countries.</li><li>2. Delete para. 2 dealing with tax avoidance.</li></ol> | <ol style="list-style-type: none"><li>1. We believe that calling only for disclosure of "relevant" information to taxation authorities preserves the discretion of the MNE in judging what is relevant. Additional procedural protection has been obtained by adding the phrase "in accordance with the procedures and safeguards of the national laws of these countries."</li><li>2. Para. 2 has been revised to make clear that it is "transfer pricing which does not conform to an arms length standard" which is the object of concern.</li></ol> |
| <ol style="list-style-type: none"><li>3. Revise para. 2 to limit requirement to that of national laws and regulations.</li></ol>  | <ol style="list-style-type: none"><li>3. Para. 2 calls only for avoidance of practices which modify enterprises' taxable income "in ways contrary to national laws."</li></ol>  |



Employment and Industrial Relations

1. The Employment section overly encourages union activities on the part of employees and overly limits the ability of companies to deal with the problems associated with many union activities. This section should be changed to provide that employees have the right to join or not to join a union. Also, it should recognize the rights of management as well as of employee representatives in the bargaining process.
  2. Clarify reference in para. 1 to "provisions for dealing with disputes arising over the interpretation of employee agreements."
  3. Delete paras. 2(a) and 2(b) or revise to make clearer what is meant by the "facilities" and "information" necessary to assist in the development of effective collective agreements. For example, who determines what facilities and information is necessary--the employees or the multinational enterprise?
1. This section is the result of extended negotiations aimed at agreement on language that takes into account the concerns of many different countries and yet does not set up requirements not in accord with law and practice in any of them. It is not intended to suggest that employees have an obligation to bargain collectively.
  2. This paragraph has not been revised. The negotiating history in the CIME has, however, made clear that the language does not reflect an endorsement of compulsory arbitration by the OECD member governments.
  3. Item 2(b) has been revised to clarify the limitations on the right of employees to demand information concerning enterprise operations from enterprise management. Although some vagueness remains in both paragraphs, this is with the intention that they will be interpreted in the context of national law. In any case, the voluntary nature of the guidelines means that their implementation will be determined by the enterprises.



4. The reference to cooperation with employee representatives and governmental authorities regarding local employee training is unnecessary.
5. Delete "good" as characterization of local employers whose labor standards MNEs should match.
6. Revise para. 8 to refer to "authorized local or national representatives of employees" engaging in consultations with management.
7. In para. 8, substitute "bargain in good faith" for "take decisions" since neither employee nor management representatives can take decisions without specific authorization.

#### Science and Technology

1. Clarify para. 2 to confirm right of enterprise to sell technology at a fair price.
2. In para. 3, delete "within an adequate market area" as criterion for licensing of industrial property rights.

#### Intergovernmental Consultation Procedures

1. In para. 2, eliminate requirement for enterprise presence in consultations.

4. Other countries insisted on the retention of this language. We do not view it as harmful.
5. Recommendation was accepted by CIME.
6. The CIME has agreed on "authorized representatives."
7. See No. 1 above. This paragraph has not been changed.

1. There is no implication in the present language that technology should be sold at less than its fair price.
2. This phase has been deleted.

1. We have indicated that, to the extent that any reference at all is made to giving enterprises an opportunity to express their views on specific issues, it must make



clear: (1) that such communication will be at the sole discretion of the enterprises themselves; (2) that, if they choose to do so, this need not necessarily be through their presence as opposed, for example, to a written submission or to communication through BIAC; and (3) that, in any case, the inter-governmental consultations will not result in conclusions being reached on the conduct of specific enterprises.

II. Draft Declaration and Decision on National Treatment

1. It would be preferable to make the national treatment standard applicable to the establishment of new investment as well as to the treatment of established investment. Hence, para. 2 stating that the instrument does not apply to regulation of entry, should be deleted.
2. The United States should not accept further weakening of this instrument.

1. Despite considerable effort, we were unable to obtain the consent of the other OECD members to the application of the instrument to entry of foreign investment. Inclusion of para. 2 was a precondition for obtaining the support of these countries for the instrument.
2. We are attaching top priority to obtaining a meaningful national treatment instrument. We view this as a sine qua non for promulgation of the entire package.



III. Draft Declaration and Decision on Official Incentives and Disincentives for International Direct Investment

- |  |  |
|--|--|
| 1. Delete "international" wherever it appears in brackets.   | 1. This remains a difficult and controversial issue. As a compromise, we propose to accept a consultation procedure dealing only with incentives/disincentives for international direct investment, on the condition that the Declaration section will refer to all incentives/disincentives which affect international direct investment. |
| 2. In para. 2, substitute "clear" for "transparent."   | 2. "Transparent" has been retained. Based on the negotiating history of the instrument, we consider its meaning to be defined by the last phrase of the paragraph: "so that their importance and purpose can be ascertained and that information on them can be readily available."  |
| 3. Delete paras. 4 and 5 excluding macroeconomic measures and measures taken in the process of integration from coverage under the instrument. | 3. Although we continue to favor deletion of these paragraphs, we may agree to inclusion of the language excluding macroeconomic measures as part of a final agreement on the incentives/disincentives instrument.   |
| 4. Amend para. 7 to call for disclosure by countries of "all relevant information" relating to the subject of a consultation.                  | 4. Para. 7 has not been amended since governments must protect confidential information where required by law even if it happens to be relevant.   |



Position Paper for Meeting of CIME  
on April 29-30, 1976

Our major objective in this meeting is to resolve the remaining unsettled issues so that the investment package can be forwarded to the OECD Council with a recommendation that its final approval and announcement be put on the agenda of the Council when it meets at the Ministerial level on June 21-22. It is important that this timetable be met and that the CIME forward a clean document with no substantive loose ends. A failure to accomplish this would jeopardize the planned announcement of this investment package by the Ministers in June, and quite possibly lead to the abortion of this attempt to achieve a re-affirmation and codification of the developed countries' commitment to a liberal international investment regime.

In general we should support the chairman's efforts to override remaining reservations that are not strongly held and to avoid reopening drafts on which there exists a large measure of agreement. Our position on the principal remaining contentious issues are as follows:

National Treatment:

Top priority should be given to obtaining a meaningful national treatment document. To get it and at the same time make some movement toward the Canadians, we would agree to amend the first sentence of the Declaration as contained in IME(76)5 so that it would read "member countries should accord to foreign-controlled enterprises...". The focus of consultations in the decision should be to reduce and, where possible, to eliminate exceptions. Among the various formulations of the consultation process, we could not accept one with a primary focus of examining economic difficulties involved in exceptions.

We will attempt to place the Canadians in a position where they have to consider the investment package with this national treatment text. At some point--not now--we might be willing to discuss with the Canadians letting them make an interpretative statement to which we would not react when they vote for the OECD package but would not agree to any OECD Council action taking note of a Canadian reservation.



Information Disclosure:

Our bottom line is that any reference to country disclosure in the footnote must be clearly at the option of the company concerned. The best way to ensure this is to have the footnote read as follows:

"For the purposes of this guideline the term 'geographical area' means groups of countries or individual countries as appropriate for each enterprise in its particular circumstances. While no single method of grouping is appropriate for all enterprises, the factors to be considered by an enterprise in making this decision would generally include effects on its competitiveness, geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprises' operations in the various countries."

We should stick to these points. While the retention of the reference to competitive disadvantage is not an issue on which we would see the agreement on the Guidelines stand or fall, we should push for it.

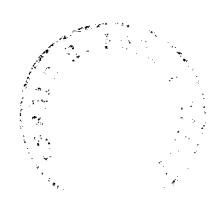
Consultations:

We should seek more general language which submerges the "specific issue." We should try for deletion of all of paragraph 3 with the exception of the last sentence ("The reviews shall not result in conclusions being passed on the conduct of specific enterprises."). Recognizing that this will be hard to get we would, as a fall back, be willing to drop all of paragraph 3 if the consultation process could be confined to that described in paragraphs 1, 2 and 4. The delegation could as a final fall back accept paragraphs 1, 2, 3 and 4 if paragraph 3 contains the phrase in the first set of brackets (regarding the desirability of permitting enterprises an opportunity to express their views) and in the context of an acceptable solution on all remaining major issues.

Incentives/Disincentives:

We must have this as part of the package, but should seek a bilateral solution with the French, along the lines of our draft document attached.

4/19/76







UNDER SECRETARY OF STATE  
FOR ECONOMIC AFFAIRS

WASHINGTON

March 31, 1976

MEMORANDUM FOR: THE HONORABLE  
L. WILLIAM SEIDMAN  
ASSISTANT TO THE PRESIDENT  
THE WHITE HOUSE

SUBJECT: Status of Negotiation on OECD Guide-  
lines for Multinational Enterprises  
and Related Intergovernmental  
Agreements

This memorandum is intended to bring the EPB up to date on negotiation of the OECD Guidelines for Multinational Enterprises and two related intergovernmental undertakings.

Negotiations in the OECD's Investment Committee on a package of three measures on international investment are now down to four issues. The text of the Guidelines for Multinational Enterprises is virtually complete except for two provisions where differences remain to be bridged: an explanatory footnote on information disclosure describing the desired amount of geographic breakdown for some financial data; the procedure for obtaining the views of enterprises on any issues of direct concern to them that the Investment Committee might decide to take up during the course of its periodic review of experience under the Guidelines. Also remaining to be resolved are the degree of commitment involved in OECD Governments' undertaking to extend national treatment to foreign-controlled enterprises and the scope of consultation on investment incentives and disincentives -- specifically the extent to which it includes incentives and disincentives for domestic investment.

These four issues will have to be resolved by the OECD Investment Committee at its April 29 and 30 meeting, if the proposed investment package is to be ready for adoption by Ministers at the OECD Ministerial June 21-22.

While some of the Scandinavian countries are still espousing more extreme positions on the remaining two issues relating to the MNE Guidelines, the more serious opposing views to be resolved relate to the U.S. on the one hand and the EC countries, particularly the U.K. and Germany, on the other. In the case of national treatment



the major issue is one between the U.S. and Canada; in the case of incentives and disincentives guideline, the major issue is one between the U.S. and France. Thus, while we are involved in each of the remaining issues, negotiating trade-offs are difficult to construct.

### The Four Remaining Issues

1. Geographic breakdown of information. This is the toughest issue and the significant remaining issue of concern to U.S. business. If we can settle this one on a basis satisfactory to the U.S. business community, chances are quite good that their reaction to the OECD Guidelines will be positive. On the other hand, a bad outcome on this provision could cause several business groups and large firms to rethink their developing positive attitude with uncertain outcome.

It has been agreed that the basic guidelines for information disclosure would call for breakdown of financial results, sales, new investment projects and number of employees by "geographic area". This text has been generally accepted by others and causes no significant problems for U.S. business. The remaining difficulty arises in connection with an interpretative footnote which says basically that an individual company should have discretion to define what types of country groups comprise a meaningful geographic area breakdown of its worldwide operations in its particular context. The British, the Germans and most countries, other than the Japanese and Swiss, wish to state that such a geographic area breakdown could, at the company's option, include some individual countries as well as groups of countries. We have so far resisted even this optional reference to country disclosure because of some concern that it creates an opportunity for governments to pressure super-good corporate citizens to disclose by country instead of groups of countries, with resulting damage to their competitive position vis-a-vis domestic companies which may not have to disclose such data. (The Scandinavians are pressing for some country disclosure without leaving the option clearly to companies, but the other Europeans -- while not opposing such disclosure-- seem reluctant to press this version.) The German chairman has proposed a compromise which would say in effect that



"geographic area" could, at the clear option of the company concerned, include some individual countries as well as groups of countries, recognizing that the country option would be exercised only where this entailed no significant competitive disadvantage (a reference intended to cover the case where no comparable disclosure was required by domestic firms). We have not yet tested this compromise proposal with U.S. business but will do so at a private Advisory Committee meeting prior to the next session of the OECD Investment Committee.

2. Procedure for obtaining views of enterprises on issues concerning them. Our major concern on this procedural question has been to preclude any formal complaint procedure against individual firms under the OECD Guidelines. This concern now seems to be taken care of by (a) agreement to describe the consultation procedure in general terms, (b) explicit statement that "issues of particular concern to specific enterprises" will be taken up by the OECD Investment Committee only by unanimous decision of the members and (c) explicit statement that any such issues, if taken up, can result in no conclusions being reached on the conduct of particular enterprises. (The Swedish still dissent from the first two points but they appear to have no chance of sustaining their position.)

The remaining issue between the U.S. and the Europeans generally is a narrow procedural one: that is, when and if the Committee decides to take up an "issue of particular concern to specific enterprises" should it then as a regular practice accord these enterprises an opportunity to express their views or should it then consider as a subsequent decision whether enterprises should be offered such an opportunity. (The Europeans no longer support the concept of an "invitation" to enterprises or an enterprise being accorded an opportunity to appear in the Investment Committee.) While we have favored the concept of two separate decisions, this does not appear to be a major point since it is reasonable enough that when and if the Committee takes up an issue of particular concern to particular enterprises it should provide that enterprise an opportunity to express its views, whether by letter, participation on a national delegation, participation in periodic consultations by the Committee with BIAC (the OECD's Business and Industry Advisory Committee) or otherwise.



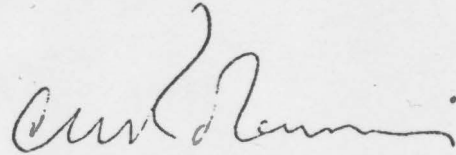
3. The degree of commitment involved in the national treatment undertaking. A significant policy issue is involved here for the United States in particular as a result of a recent change in the Canadian position. Throughout 18 months of OECD negotiations, the Canadian Government has maintained that national treatment of foreign investors is not Canadian policy and therefore Canada has not participated in the negotiation of the national treatment guideline. At the March meeting of the Investment Committee, however, the Canadian representative delivered a prepared statement reportedly approved at the Cabinet level stating that the Government of Canada had, in effect, belatedly changed its mind. The Canadian position is now that it wants "in" on the OECD investment package and is willing for this purpose to contemplate approval of the national treatment guideline if the present draft is significantly amended. The important changes the Canadians have proposed are two. First, the Canadians want to weaken the basic declaration of principle: the present text states flatly that governments will accord national treatment to established foreign enterprises, except where national security dictates otherwise; the Canadians want to change "will" to "should" or "should endeavor". Second, the Canadians wish to fuzz the objective of the consultation procedure: the present text states that the objective of consultations will be to eliminate and/or reduce the scope of any exceptions to the principle; the Canadians wish this objective stated along the lines of "to examine the possibilities for strengthening the application of the instrument."

Given our major investments in Canada it is obviously a close call for us whether we should go for a strong national treatment commitment without Canadian accession, or whether we would be better off with a somewhat weaker undertaking which would involve some commitment by the Canadians to the principle of national treatment and to a multilateral consultation procedure on their exceptions thereto. We will be testing business community reaction to this choice, but anticipate a hung jury and a need for the basic call to be made by the U.S. Government.

4. The scope of consultation on investment incentives and disincentives. While this draft agreement is now less significant to us than when we first proposed it in the context of "investment reform" under a regime of fixed exchange



rates, it would still be of some use to have the multi-lateral consultation process on the international effects of investment aids and restrictions. The remaining negotiating problem here is one primarily between the French and us revolving around French reluctance to contemplate OECD consultations upon investment measures with a predominant domestic significance and objective. We plan to try to work this out bilaterally with the French Treasury.



Charles W. Robinson

