

National Treatment for Foreign-Controlled Enterprises



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2005 Edition



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Note by the Editor

This publication has been prepared under the aegis of the Investment Committee, based on submissions by adhering countries, material assembled by the OECD Investment Division and other text approved by the OECD Council. Queries concerning the contents of this publication should be addressed to the Investment Division of the OECD Directorate for Financial and Enterprise Affairs (Pamela Duffin, Communications Officer, email: pamela.duffin@oecd.org).

Foreword

OECD member and nine other countries adhering to the Declaration on International Investment and Multinational Enterprises have declared that enterprises operating in their territory and controlled by nationals of another adhering country should be treated no less favourably than domestic enterprises in like situations, that is they should be accorded “National Treatment”. Adhering governments have gradually taken steps to extend their application of this principle by removing restrictions on foreign direct investment, thus contributing to a much improved investment climate. The OECD's Investment Committee supports adhering governments in these efforts by periodically reviewing their National Treatment commitments, by surveying their progress in removing non-conforming measures, and by making recommendations to encourage further liberalisation.

The purpose of this report is to provide adhering governments and the general public with a comprehensive and accessible explanation of the principle of National Treatment and how it is applied among OECD and other adhering countries. It is designed to improve implementation of the National Treatment principle through a better understanding of its nature and scope. It also provides increased transparency by recording all measures which do not conform to the National Treatment standard and which are currently maintained by adhering countries. Greater transparency can reinforce adhering countries' commitment to open and non-discriminatory foreign direct investment policies.

The report describes the main features of the OECD's National Treatment instrument and contains a complete survey of adhering government's measures relating to National Treatment, as of October 2005.

The countries adhering to the Declaration on International Investment and Multinational Enterprises, and the related Decisions and Recommendations of the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and nine non-member economies: Argentina (22 April 1997), Brazil (14 November 1997), Chile (3 October 1997), Estonia (20 September 2001), Israel (19 September 2002), Latvia (9 January 2004), Lithuania (20 September 2001), Romania (20 April 2005) and Slovenia (22 January 2002).

Further information on the OECD's National Treatment instrument can be found on the OECD Web site at the following address: www.oecd.org/daf/investment/instruments.

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PART I

**Making National Treatment
Exceptions Transparent**

“National Treatment” is the commitment by a country to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like situations. This commitment is enshrined in the Declaration on International Investment and Multinational Enterprises, adopted by the Governments of the 30 OECD member countries and nine other countries. It is supported by follow-up procedures in an arrangement known as the OECD National Treatment instrument (NTI).

This update of the lists of exceptions notified under the NTI is part of a major effort by the Investment Committee to promote the importance of policy transparency for international investment which includes the adoption of a report on “Public Sector Transparency and International Investment Policy” and a tool for assisting governments in reform – the “Framework for Investment Policy Transparency”. Transparency is also one of the principal means for monitoring the implementation of the NTI and ensuring its consistent application across adhering countries. This work complements an update in 2003 of the list of member country reservations under the OECD Code of Liberalisation of Capital Movements which concerns restrictions to the entry of investment.

The total number of exceptions under the NTI, including at sub-national level, comes to 305 (Table). On the basis of a comparable sample of adhering countries, the number of exceptions has continued to decline by 17% over the last 10 years. Only 9% of remaining exceptions concern general measures (general authorisation or screening procedures; special tax obligations; or restricted access to official aids, government procurement or local finance). The remaining 91% of the national treatment exceptions concern sectoral measures, of which 73 % affect public utilities and other services. Exceptions regarding the purchase of real estate and use of natural resources dominate in the non-services sector.

Table of exceptions to National Treatment by country

General measures					Sectoral measures									
Investment	Official aids and subsidies	Tax obligations	Government purchasing	Access to local finance	Banking and finance		Aviation		Water transport				Land transport	
					Banking and securities	Insurance	Air transport	Airports and air traffic services	Sea and coastal water transport	Inland water transport	Port services	Other	Road transport	Rail transport
Argentina	x		x										x	
Australia	x						x	x	x	x				
Austria							x			x				
Belgium			x		x				x	x		x		
Brazil				x	x		x	x					x	
Canada	x	x	x	x	x	x	x	x	x	x		x	x	
Chile	x						x		x	x	x		x	
Czech Republic							x							
Denmark							x							
Estonia					x		x		x	x				
Finland							x		x	x				
France	x						x		x	x				
Germany		x					x		x	x				x
Greece							x		x	x		x		
Hungary		x					x			x				
Iceland	x				x		x							
Ireland							x							
Italy							x	x	x	x	x			
Israel							x			x				
Japan							x							
Korea		x			x		x		x	x				
Latvia	x				x		x							
Lithuania		x					x		x	x			x	

Table of exceptions to National Treatment by country (cont.)

General measures					Sectoral measures									
Investment	Official aids and subsidies	Tax obligations	Government purchasing	Access to local finance	Banking and finance		Aviation		Water transport				Land transport	
					Banking and securities	Insurance	Air transport	Airports and air traffic services	Sea and coastal water transport	Inland water transport	Port services	Other	Road transport	Rail transport
Luxembourg							x						x	x
Mexico	x				x	x	x	x	x	x	x		x	x
Netherlands					x		x		x	x				
New Zealand	x		x				x							
Norway							x		x	x			x	
Poland							x							
Portugal					x		x							
Romania							x							
Slovak Republic							x							
Slovenia							x							
Spain	x				x		x							
Sweden					x		x		x	x				
Switzerland	x				x	x	x	x		x				
Turkey					x		x				x			
United Kingdom				x	x		x		x	x				
United States		x	x	x	x	x	x	x				x		

Table of exceptions to National Treatment by country (cont.)

Sectoral measures											
Post and telecom	Radio and television activities	Motion picture and video production and distribution	Publishing	Professional services						Casinos, gambling, gaming and lotteries	Tourism and travel
				Engineering	Architectural	Accounting, bookkeeping and auditing activities	Legal services	Education	Health professions		
Argentina		x									
Australia	x	x	x	x							x
Austria					x	x	x	x			
Belgium							x	x			
Brazil	x	x		x					x	x	
Canada	x		x	x							
Chile		x		x							
Czech Republic											x
Denmark						x	x				
Estonia											
Finland							x				
France		x		x			x				x
Germany											
Greece		x			x	x	x	x			
Hungary											
Iceland											
Ireland											
Italy				x							
Israel	x	x	x						x	x	
Japan	x										
Korea	x	x		x							
Latvia										x	x
Lithuania		x	x						x		x

Table of exceptions to National Treatment by country (cont.)

Sectoral measures											
Post and telecom	Radio and television activities	Motion picture and video production and distribution	Publishing	Professional services						Casinos, gambling, gaming and lotteries	Tourism and travel
				Engineering	Architectural	Accounting, bookkeeping and auditing activities	Legal services	Education	Health professions		
Luxembourg											x
Mexico	x	x	x				x	x			
Netherlands											
New Zealand	x	x	x								
Norway						x	x				
Poland		x									x
Portugal			x								x
Romania											
Slovak Republic											x
Slovenia											x
Spain		x					x				
Sweden						x	x				
Switzerland		x	x								
Turkey		x				x		x			
United Kingdom		x									
United States	x	x									

Table of exceptions to National Treatment by country (cont.)

Sectoral measures												
Access to real estate		Fishing and fish processing	Agricultural, pastoral and forestry	Mining and quarrying		Energy					Manufacture	
General	Agricultural and rural			Extraction, exploration and exploitation	Mining	Uranium, nuclear, atomic	Electricity	Hydro-power/geothermal	Oil and gas	Other	Leather products	Shipping
Argentina												
Australia	x		x									
Austria	x		x									
Belgium												
Brazil												
Canada	x	x	x		x					x		
Chile					x							
Czech Republic												
Denmark												
Estonia	x											
Finland												
France												
Germany			x									x
Greece	x		x		x							
Hungary												
Iceland	x		x					x			x	
Ireland		x	x	x								
Italy			x									
Israel								x				
Japan	x		x		x					x		x
Korea			x	x				x	x			
Latvia			x									
Lithuania	x	x	x									

Table of exceptions to National Treatment by country (cont.)

Sectoral measures												
Access to real estate		Fishing and fish processing	Agricultural, pastoral and forestry	Mining and quarrying		Energy					Manufacture	
General	Agricultural and rural			Extraction, exploration and exploitation	Mining	Uranium, nuclear, atomic	Electricity	Hydro-power/geothermal	Oil and gas	Other	Leather products	Shipping
Luxembourg												
	x	x	x									
Mexico												
Netherlands												
New Zealand												
Norway												
Poland												
Portugal												
Romania												
Slovak Republic												
Slovenia												
Spain												
Sweden												
Switzerland												
Turkey												
United Kingdom												
United States												

PART II

**List of Measures Reported
as Exceptions
to National Treatment**

Argentina

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Radio and television: Operating licences are granted only to Argentine individuals or Argentina-owned companies. Special authorisations may be granted on the basis of bilateral treaties.

Authority: Broadcasting Law No. 22285.

Road transport: International road transport is reserved to companies controlled by Argentine citizens.

Authority: Under-secretariat for Transport Resolution No. 263/90.

II. Official aids and subsidies

Films: Financial assistance including subsidies for production and participation in international festivals is granted only to Argentine productions or co-productions.

Authority: Law No. 17741 as amended by Law No. 24377.

III. Tax obligations

None.

IV. Government purchasing

In case of strictly equal prices and offers, Argentine-controlled companies will be preferred. Preference shall be given to offers of goods of Argentine origin under equal price conditions.

Authority: Decree No. 2284/91 of 1991 as confirmed by Law No. 24307; Law No. 25551/2001.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Australia

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: Proposals by foreign persons to establish new businesses in Australia involving total investment of A\$ 10 million or more and proposals for the acquisition of existing businesses with total assets valued at A\$ 50 million or more are notifiable. Proposals where the target assets or the planned investment outlays are valued above these thresholds but below A\$ 100 million will normally be approved without detailed examination. Proposals where the valuation is A\$ 100 million or more will be approved, unless judged by the Treasurer to be contrary to the national interest. Exceptions to these thresholds are outlined below.

Real estate: Acquisitions of developed non-residential commercial real estate valued at less than A\$ 50 million are generally exempt (unless the property is subject to heritage listing, then the exemption threshold is A\$ 5 million). There is an authorisation requirement for all other acquisitions of real estate unless exempt by regulation. Approval is normally granted for residential and commercial land for development and for acquisitions of dwellings, direct from a developer “off the plan”, either while under construction or completed but never occupied or sold, provided that no more than 50 per cent of the total number of dwellings are sold to foreign investors. Foreign acquisitions of established residential real estate are not normally approved except in cases involving temporary residents who require accommodation for a period in excess of twelve months, subject to resale of the property upon departure. Foreign persons who are entitled to be permanently resident in Australia are not required to seek approval to acquire any form of residential real estate. Foreign acquisition of residential real estate (including condominiums) within a designated Integrated Tourist Resort is exempt from authorisation.

Air transport: Cabotage reserved to Australian based airlines.

Air transport: Foreign investors can generally expect approval to acquire up to 100 per cent of a domestic carrier or establish a new aviation business, unless this is contrary to the national interest. Foreign

ownership of Australia's International flag carrier, Qantas, is not to exceed 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 25 per cent of Qantas' equity.

Newspapers: Restrictions on participation by foreign interest in mass circulation newspapers. All proposals to establish or acquire a 5 per cent or greater interest in an Australian newspaper require authorisation. The maximum permitted aggregate non-portfolio investment in national and metropolitan newspapers is 30 per cent with any single foreign shareholder limited to 25 per cent. Aggregate foreign direct investment in provincial and suburban newspapers is limited to less than 50 per cent.

Radio and television: A "foreign person" may not be in a position to exercise control of a television licence, or have company interest in such a licence exceeding 15 per cent individually, and two or more foreign persons must not have company interests in such a licence exceeding 20 per cent in aggregate. No more than 20 per cent of directors may be foreign persons. For all subscription television broadcasting service licenses, foreign interests are limited to a 20 per cent company interest for an individual and a 35 per cent company interest in aggregate. There are no foreign ownership and control limits on commercial radio or on other broadcasting services under the *Broadcasting Services Act 1992*.

Maritime transport: In order to be registered as an Australian vessel, a ship needs to be majority Australian owned (i.e. an Australian citizen, a body corporate established by or under a law of the Commonwealth or of a State or Territory of Australia).

Airports: In relation to airports offered for sale by the Commonwealth, there is a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports.

Telecommunications: The *Telstra Corporation Act 1991* limits aggregate foreign ownership in Telstra to 35 per cent of the Telstra shares that are not Commonwealth held. The maximum individual foreign ownership allowed in Telstra is 5 per cent of the Telstra shares that are not Commonwealth held. The Australian Government is required to hold at least 50.1 per cent of the voting shares in Telstra.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

I. Investment by established foreign-controlled enterprises

Victoria

Gaming and betting: Foreign shareholdings in TABCORP Holdings Limited is restricted to 2.5 per cent for an individual (unless a certificate relating to the person's shareholding is in forces permitting up to 5 per cent) and 40 per cent in aggregate.

Western Australia

Agricultural: Authorisation requirements for transfer of pastoral leases to ensure majority Australian ownership.

Western Australia

Casinos: Foreign ownership of a casino limited to 40 per cent.

Western Australia

Fishing: Foreign ownership in rock lobster processing is limited to 20 per cent; restrictions are placed on non-residents becoming directors or office bearers in corporations undertaking rock lobster processing. Pearling industry licences are restricted to Australian citizens and permanent residents and Australian owned or controlled corporations.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

Austria

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national airlines.

Maritime transport/fishing: Requirements to obtain the national flag: citizenship, residence in Austria, and more than 50 per cent local ownership, with principal location and full operational control in Austria in all cases of non-financial holding. The flag is required for registration of vessels.

Accountancy: Investment by non-EC residents in accountancy services exceeding 49 per cent.

Legal, engineering and architectural services: Investment by non-EC nationals in legal services and engineering and architectural services exceeding 49 per cent.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

I. Investment by established foreign-controlled enterprises

Real estate: Authorisation requirement for acquisition of real estate.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

Belgium

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Financial services: Prior authorisation by the Ministry of Finance required for public issues, offers for sale on the security market, listing on stock exchanges and other financial instruments created by a private person, a company or an institution under non-EC control, as well as offers for sale of Belgian securities by a private person, a company or an institution under non-EC control.

Accountancy and legal services: Investment by non-EC nationals in accounting and legal services.

Maritime transport: The King, in line with the practice of major maritime countries, determines the conditions of ship registration (the right to fly the national flag).

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

Public works: Contracts for public works when 25 per cent or more is financed or subsidised by the state or another public authority can only be awarded to the following: 1) private persons, who must be of Belgian nationality or from another EC Member state, and must be established within the EC; 2) companies, which must be organised in conformity with Belgian legislation or that of another EC Member state, and must either have their central administration or principal establishment within the

EC or must have their headquarters within the Community, on the condition that their activity has an effective link with the economy of an EC Member state.

Public markets: Restrictions concerning access to public contracts in the area of development co-operation.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Brazil

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Banking: Article 52 of the Transitional Constitutional Provisions of 1988 allows the Federal government to issue an authorisation for the establishment of foreign financial institutions or to allow any increase in foreign participation in the capital of Brazilian institutions, as well as the participation in privatisation of State owned financial institutions.

Authority: Article 192 of the Federal constitution (to be regulated by Congress) Article 52 of the Transitional Constitutional Provisions of 1988.

Telecommunications: A licence is required to operate all telecommunication services. Criteria used to grant licences include the applicant's technical and financial capacity and, in certain cases, pricing policies and the amount offered for the license. In cellular telephone (band B frequency), satellite and value-added services, foreign interests are allowed to own all of a firm's non-voting shares (up to two-thirds of the total capital) and to control up to 49 per cent of the voting capital. In the latter case, restriction on foreign ownership remain for three years after the legislation comes into force in 1997.

Authority: Law No. 9472 of 16 July 1997.

Radio, television and publishing: Foreign participation is limited to native-born Brazilians or persons who have been naturalised citizens for at least ten years. The purchase of technical assistance from foreign enterprises or entities is also forbidden.

Authority: Article 222 of the Federal Constitution and Decree law 236/67.

Cable television: The concession to exploit this service is only granted to Brazilian firms. At least 51 per cent of the voting capital must be in the hands of native-born Brazilians or persons who have been naturalised citizens for at least ten years or must belong to firms whose headquarters are in Brazil and whose control is under native-born Brazilians or persons who have naturalised citizens for at least ten years

Authority: Law No. 8977 of 6 January 1995.

Air transport: Direct participation of foreign capital in air transport is restricted. Some foreign companies not established in the territory have been authorised to detain a minority stake, up to 20 per cent in some air national companies

Authority: Article 21 of the Federal Constitution, Brazilian Air Code and Law No. 7565 of 19 December 1986.

Airports and air traffic services: Foreign enterprises may not administer or operate airports nor provide navigation and air traffic services

Authority: Brazilian Air Code.

Road Transport: Foreign participation is limited to 20 per cent of the voting capital with respect to companies established in Brazil after 7 November 1990. Restrictions also apply to all foreign-controlled companies with respect to the raise of capital subscriptions.

Authority: Law 6813 of 10 July 1980 updated by Law 7092 of 19 April 1983 and regulated by Law 99471 of 24 August 1980.

Fishing: Exploitation of internal waters, areas within the territorial sea and some other activities are reserved to native-born Brazilians or persons who have naturalised citizens or must be undertaken by firms registered in Brazil. Foreign vessels need authorisation from the Ministry of Agriculture to develop fishing activities.

Authority: Decree No. 68459 of 19 April 1971.

Rural Properties: The foreign legal person or individual must be a resident in the territory and the purchase or renting of the rural property must be no greater than a quarter of the total area of the municipality ("município") to which the property belongs. This restriction is more flexible when the foreigner is married to a Brazilian citizen or has Brazilian descendants. Specific authorisations are needed according to the size of the property to be purchased or rented by foreigners.

Authority: Law 5709 of 7 October 1971, regulated by the Decree 74965 of 26 November 1974.

Health care: Direct and indirect participation of foreign capital or enterprises in the sector is forbidden, except in those cases established in law.

Authority: Article 199 of the Federal constitution.

Security services and transport of valuables: Foreign participation is forbidden.

Authority: Law 7102/83 and Administrative measure 91/92.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

The access of foreign companies to the national financial system may be restricted by the Central Bank in case of balance of payments disequilibrium.

The purchase of public financial institutions is restricted to finance enterprises whose central control belongs to individuals who are not residents in Brazil, except in the following cases:

- a) the funds were collected abroad;
- b) a special authorisation from the Ministry of Planning and Budget can be requested based on national interest (in the case of companies which are not yet established in Brazil);
- c) the enterprises that operate in sectors and geographical regions which were considered a priority by a President's decree (in the case of companies already established in Brazil).

Authority: Law 4728/65 of 14 July 1965; Law 4131, Articles 37, 38 and 39.

B. Exceptions by territorial subdivisions

None.

Canada

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: For non-US investors, the review thresholds for direct acquisitions of Canadian businesses are C\$ 5 million in assets, and C\$ 50 million in assets for indirect acquisitions. As a result of the Canada-US Free Trade Agreement, the threshold for US investors has been raised for direct acquisitions to C\$ 150 million (1992 constant dollars) in assets, and there is no longer a review of indirect acquisitions. Exceptions to the thresholds of US investors include cultural industries, transport, financial sectors, uranium, and oil and gas. Review requirements may also apply to specific acquisitions or new businesses in activities related to Canada's cultural identity or national identity.

Oil and gas: 50 per cent minimum Canadian ownership requirement for production licenses on Canada lands for discoveries made after 1st March 1982 (offshore, the Yukon and Northwest Territories).

Uranium: 51 per cent minimum Canadian ownership requirement at the final production stage in individual uranium mining properties. Less than 51 per cent Canadian ownership permitted if an individual project is in fact Canadian-controlled. Cabinet can grant exemptions where Canadian partners cannot be found.

Fishing: There is no limit on foreign ownership of fish processing companies that do not hold fishing licences. Canadian fish processing companies which have more than 49 per cent foreign ownership are not permitted to hold Canadian commercial fishing licences. Fish harvesting firms with foreign participation are subject to the same rules and policies as wholly Canadian-owned firms (e.g. Canadian registry and Canadian crews for licensed fishing vessels).

Banking: Non-US foreign bank subsidiaries' assets are limited to 12 per cent of total domestic assets of all banks. There is also a 25 per cent limit on the collective non-US foreign ownership of Schedule I banks (i.e. widely held Canadian-controlled commercial banks). Non-US foreign bank subsidiaries must obtain ministerial approval to open more than one branch.

Life insurance, trust, loan, investment companies: Non-US foreign acquisition of a federally chartered Canadian-controlled company is limited to 10 per cent, individually, and 25 per cent, collectively, of any class of shares.

Air transport: In order to obtain operating authority as a Canadian company, an airline must be 75 per cent owned by nationals and controlled in fact by nationals. Unless they are Canadian, airlines may not undertake the following activities: 1) cabotage; 2) international scheduled air services reserved by bilateral air agreements to “Canadian” airlines; 3) international non-scheduled air services from a base in Canada; 4) specialty air services.

Maritime transport: Cabotage, in general, reserved to Canadian flag vessels.

Maritime activities: Non-national vessels are not permitted to engage in certain offshore activities in coastal waters (e.g. dredging-salvage).

Road transport: Cabotage reserved to national firms.

Broadcasting and cable television: 20 per cent foreign ownership limitation for broadcasting and cable television broadcasting.

Book publishing/distribution: Canadian-controlled joint venture requirement for investment in Canadian-controlled businesses or in the establishment of new businesses. In extraordinary circumstances an exception to the limitation on the acquisition of an existing Canadian-controlled business by a non-Canadian investor may be considered. Investment in foreign-controlled businesses in Canada is allowed where review determines the investment likely to be of net benefit to Canada.

Film distribution: Canadian-controlled joint venture requirement for investment in Canadian-controlled businesses; investment in foreign-controlled businesses is subject to government discretion; investment to establish new businesses must be directly linked to the importation and distribution of proprietary products (i.e. the importer must own world rights of the film/video or be a major investor in the product).

Telecommunications: Foreign ownership of voting shares of Canadian common carriers is limited to 20 per cent direct and 33 $\frac{1}{3}$ per cent indirect (46.7 per cent combined direct and indirect). Facilities-based telecommunications service suppliers must be controlled by Canadians. There are no restrictions on foreign ownership of non-voting shares.

II. Official aids and subsidies

Trans-sectoral: Non-resident foreign corporations and partnerships with foreign partners cannot qualify for certain special status corporations like Investment Corporations. To qualify for such status, corporations may be required to be incorporated in Canada. However, there are generally no limitations on foreign ownership.

Agriculture: The benefits of the federal/provincial price stabilisation agreements on pork, lamb and several specialty crops are restricted to Canadian citizens or permanent residents, or in case of corporations, to those whose partners, shareholders or members are at least 50 per cent Canadian citizens or permanent residents. These corporations must also be at least 50 per cent beneficially owned by Canadians or permanent residents. Cattle operations with foreign ownership (in whole or in part) are now allowed in Canada to receive benefits from the stabilisation programmes.

III. Tax obligations

Trans-sectoral: Lower federal tax rates apply to a limited amount of the active business income of small Canadian-controlled private corporations. Such corporations may also be eligible for enhanced tax credits for research and development or industrial expenditures.

IV. Government purchasing

Consultancy: 51 per cent minimum Canadian ownership required for eligibility for contracts with the Canadian International Development Agency.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

I. Investment by established foreign-controlled enterprises

Alberta, British Columbia, Saskatchewan

Trans-sectoral: Foreign ownership restrictions or residency requirements apply to the purchase or lease of Crown land.

Nova Scotia

Real estate: Disclosure requirement for non-resident holdings of land.

Alberta

Real estate: Restrictions on the purchase of privately owned, non-urban real estate for foreign citizens and foreign-controlled corporations.

British Columbia

Forestry: Canadian citizenship or permanent residency is required of all applicants seeking to obtain a woodlot license.

British Columbia

Fishing: Nationality requirement to obtain a fish buyer's license.

British Columbia

Mining: Citizenship requirement to obtain a free miner certificate.

Nova Scotia

Oil and gas: Canadian ownership requirements for oil and gas production licences.

Quebec

Films: Nationality/residency requirements for film distributor's license.

Alberta, Ontario

Financial services: Foreign ownership limitations for trust companies (Alberta and Ontario), and loan companies, mortgage broking, and collection agencies (Ontario).

Ontario, Quebec

Insurance: Foreign ownership limits for licensing.

Ontario

Publishing: Foreign ownership limitation on paperback and periodical distribution firms: 25 per cent in total, 10 per cent per individual.

II. Official aids and subsidies

Nova Scotia

Financial services: The province provides loans to small businesses in fisheries, farming and venture enterprises. These loans are generally restricted to provincial corporations whose shares are majority-owned by residents. In the event of privately owned firms, Canadian citizenship as well as residency is generally required.

Alberta, Saskatchewan

Agriculture: Various income support programmes provide financial assistance to farmers. These programmes include loans or loan guarantees, revenue insurance, crop price stability, and rebates for such items as fuel and fertilisers. Eligibility is generally restricted to Canadian citizens or landed immigrants normally resident in the province.

Quebec

Books, recording industry, video industry: Nationality, residence and foreign ownership requirements for financial aid granted by the government.

Alberta

Financial services: Priority for loans and assistance given to enterprises owned and operated by Canadian citizens resident in the province.

III. Tax obligations

Ontario, Quebec

Agricultural and recreational land: Land transfer taxes/duties in Quebec and Ontario (for agricultural and recreational land) higher for non-residents

than for residents. A “non-resident” corporation is defined according to ownership of its shareholdings or occupancy of directors' positions by non-resident individuals.

IV. Government purchasing

Ontario

Advertising: Under administrative guidelines, administrative contracts are only awarded to wholly owned Canadian companies.

V. Access to local finance

None.

Chile

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: Foreign investment capital cannot be re-exported until one year after the date of entry.

Authority: Chapter XIV of the Compendium of Foreign Exchange Regulations and Decree Law 600.

Road transport: International road transport is reserved to companies controlled by citizens of the Latin-American Integration Association (ALADI).

Authority: Accord on International Land Transport signed by ALADI Members – Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay.

Shipping: Ownership of Chilean flag vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. Cabotage and tugging activities performed in Chilean ports are reserved to Chilean flag vessels.

Authority: Decree Law 3059, Official Gazette 22 December 1979; Supreme Decree 24, Official Gazette 10 March 1966; Decree Law 2222, Official Gazette 31 May 1978.

Fishing: Ownership of Chilean fishing vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. An owner of a fishing vessel registered in Chile prior to 30 June 1990 is not subject to the nationality requirement, however. Fishing vessels specifically authorised by the maritime authorities, pursuant to powers conferred by law in cases of reciprocity granted to Chilean vessels by other States, may be exempted from the above-mentioned requirements on equivalent terms provided to Chilean vessels by that State.

Resident enterprises constituted by foreign non-residents are not permitted to engage in small-scale fishing.

Authority: Law 18892, Official Gazette 22 December 1992, Decree Law 2222, Official Gazette 31 May 1978.

Air transport: Only Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile may register an aircraft in Chile.

Authority: Law 18916, Official Gazette 8 February 1990; Decree Law 2564, Official Gazette 22 June 1979.

Mining: Exploration and exploitation of hydrocarbons, lithium, uranium and offshore minerals and those located in strategically important areas can only be undertaken by private investors through administrative concessions or operating contracts under the conditions established for each case by Presidential decree.

Authority: Political Constitution of the Republic of Chile; Constitutional Organic Law 19097, of Mining Concessions; Law 18248, Official Gazette 14 October 1983; Mining Code; Law 16319, Official Gazette 23 October 1965, creating the Chilean Commission of Nuclear Energy.

Publishing: The owner of a magazine, a daily or weekly domestic newspaper or a national news agency must be Chilean with domicile and residency in Chile. If the owner is a corporation or a joint ownership, it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or Chilean juridical persons (based on 85 per cent Chilean capital ownership). In addition, the director and the acting director must be Chilean with domicile and residency in Chile. The exceptions to these rules are technical and scientific publications, any publishing in a foreign language and magazines of an international character printed in Chile and distributed in Chile and abroad.

Authority: Law 16643, Official Gazette 4 September 1967, "Law on abuse of publicity".

Broadcasting: The owner and director or acting director of a concession for radio stations must be Chilean with domicile and residency in Chile. If the holder of the concession is a corporation or a joint ownership (*comunidad*), it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or juridical persons (defined again as 85 per cent Chilean capital ownership). The president, directors, managers, administrators and legal representatives of the corporation owning a commercial television station must be Chileans. In addition, the director or acting director must have domicile and residency in Chile.

Authority: Law 16643, Official Gazette 4 September 1967.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Czech Republic

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: substantive ownership and effective control must be vested in the state or nationals of the Czech Republic (Civil Aviation Act No. 49/1997).

Gaming: (Lotteries and other Similar Games Act No. 202/1990 as amended).

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Denmark

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Cabotage reserved to national carriers.

Air transport: Licence to operate an airline is granted only to companies majority-owned by Danish nationals.

Air transport: An aircraft may not be registered in Denmark unless it is predominantly owned by Danish nationals or by companies or other entities controlled by Danish nationals.

Accountancy services: Investment in accountancy services by non-EC residents and in legal services by non-residents.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

Estonia

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Real estate: Ownership of land can be transferred to foreigners and foreign legal persons with the permission of the relevant county governor. On islands (except for the 4 biggest islands) and 19 local government units mostly bordering on Russia acquisition of land and real estate is forbidden for foreigners, foreign legal persons and foreign states.

Authority: Restrictions on Transfer of Immovable Property Ownership to Aliens, Foreign States and Legal Persons Act.

Securities services: Foreign capital in the assets of security undertakings may be restricted.

Authority: Article 6 of the Security Services Act (RT I 1993, 75, 1100; 1995, 62, 1056; 1996, 49, 953).

Air transport and related services: Licence to operate an air transport enterprise is granted only to companies majority-owned by the Estonian state, a local government and/or Estonian citizens.

Authority: Article 40 of Aviation Act (RT 1 1999, 26, 376).

Maritime transport and related services: Cabotage is reserved to sea-going vessels flying the national flag of the Republic of Estonia unless an approval is granted. Ships under the flag of an EU Member State are allowed to carry out cabotage on a reciprocal basis. The national flag of the Republic of Estonia may be flown by sea-going vessels owned by Estonian citizens, sea-going vessels in common ownership if the greater share of vessel is owned by Estonian co-owners; sea-going vessels which are the object of shared succession if the greater share of the succession is owned by Estonian citizens or Estonian legal persons which have inherited the sea-going vessel in common.

Authority: Merchant Shipping Code, Ship Flag and Registers of Ships Act.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Finland

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Air cabotage reserved to national carriers.

Air transport: Government authorisation is required to engage in commercial aviation.

Maritime transport: Cabotage reserved to national flag.

Legal services: EC nationality and residency requirement for investment in a corporation or partnership carrying out the activities “asianajaja” or “advokat”.

Auditing: Investment in auditing companies by non-EU residents.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

France

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Legal services: In a SEL or SCP providing legal services, at least 75 per cent of the partners holding at least 75 per cent of the shares shall be lawyers fully admitted to the Bar in France.

Air transport: Authorisation to engage in activities in this field is granted only when the enterprise is owned entirely or majority controlled by nationals of the European Economic Area. Such enterprises have free access to international intra-Community or intra-EEA routes; access to domestic intra-Community or intra-EEA routes is limited to “consecutive cabotage” and is subject to a ceiling of 50 per cent of capacity.

Maritime transport: In order to be registered in France, ships must either:

- a) be owned at least 50 per cent by physical persons of the European Economic Area;
- b) be owned at least 50 per cent by moral persons headquartered in European Economic Area;
- c) be owned at least 50 per cent by physical persons, as described in a), and by moral persons, as described in b).

Authority: Act 2001-43 of January 2001.

Maritime transport: Maritime cabotage is open to flag vessels originating in EC member countries since 1993 and in European Economic Area since 1997.

Authority: Decree EC 3577-92 of 1992.

Inland waterways: The right to transport goods and persons between two points on the inland waterways covered by the Revised Convention for the Navigation of the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based in any of these States, which are majority-owned and controlled by nationals of these States.

Publishing: Without clauses of national assimilation or reciprocity, foreigners may not acquire, directly or indirectly, more than 20 per cent of the equity capital or voting rights of enterprises that publish in the French language.

Authority: Act 86-1067 of September 1986.

Radio and television: Without a reciprocity clause, nationals of OECD countries that are not members of the EC or the European Economic Area may not hold, directly or indirectly, more than 20 per cent of the equity capital or voting rights of a company licensed to provide terrestrial Hertzian television or radio broadcasting services in the French language.

Authority: Act of 86-1067 of 30 December 1986.

Tourism: A tour guide-interpreter license may be awarded to nationals of countries not members of the EC or the European Economic Area on the basis of reciprocity.

Authority: Decree 94/490 of 15 June 1994 in application of Act 92/645 of 13 July 1995.

Privatisation: Foreign participation in newly privatised companies may be limited to a variable amount, determined by the government on a case-by-case basis, of the equity offered to the public.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government procurement

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Germany

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Licence to operate an air transport enterprise is granted only to companies majority-controlled by nationals from EEA-countries.

Air transport: Cabotage reserved, in principle, to airlines from EEA-countries.

Maritime transport: Registration in the German Ship Register is reserved to ships owned by EC-nationals or companies controlled by EC-nationals, domiciled in the EC. Flag is required to engage in marine cabotage and fishing within territorial waters.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

Rail transport: Access to public rail infrastructure is reserved to:

- railway undertakings established in Germany;
- international groupings of railway undertakings; and
- railway undertakings providing international combined freight transport.

Access is also possible on the basis of reciprocity or governmental agreement.

II. Official aids and subsidies

Trans-sectoral: Branches of enterprises that are not established as legally independent companies are excluded from the provision of financial assistance or guarantees in some sectors.

Manufacturing-Shipping: The financial assistance programme to the German shipping industry provides for funds to be granted only to the owners of German flag ships.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Greece

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Real estate: Non-EC controlled enterprises are not allowed to acquire land rights in border areas. The prohibition applied to border land acquisition by non-EC enterprises may be waived by means of a decision by the Minister of National Defence.

Mining: Concession required for mining and mineral rights for non-EC controlled enterprises.

Air transport: Ownership in Greek airline companies is limited to 49 per cent of the capital for non-EC controlled enterprises. Cabotage is reserved to national airline companies.

Television and radio: Non-EC foreign-controlled enterprises may hold up to 25 per cent of capital in television (including cable television) operators, and up to 49 per cent of capital in radio operators.

Maritime transport and fishing: Non-EC ownership of Greek flag vessels including fishing vessels is limited to 49 per cent. Cabotage is reserved to national flag vessels, including also voyages with legs in foreign ports.

Accountancy, legal, engineering and architectural services: Investment by non-EC nationals in the accountancy, legal, engineering and architectural sectors.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Hungary

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Licences for domestic transport of persons or goods may be granted only to companies with Hungarian majority both in terms of capital and management control

Authority: Law on commercial aviation.

International waterways: Shipping licences may be granted only to Hungarian nationals or enterprises with majority Hungarian ownership

Authority: Decree 17/1992, Minister of Transport.

II. *Official aids and subsidies*

Preferential credit facilities and credit guarantees for promoting small enterprises may be reserved to Hungarian nationals and companies with majority Hungarian ownership

Authority: Government decree No. 59/1992; Act XI of 1993.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

Iceland

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: Authorisation requirement for investment by a single investor exceeding ISK 250 million and for investment in aquaculture, communications, manufacturing other than power intensive industries, trade and services, where total non-resident ownership exceeds 25 per cent. Foreign investment is accepted under reciprocity conditions. Authorisation may be refused if foreign investment is deemed to “seriously reduce competition” or to have an “undesirable effect on the Icelandic Economy”.

Trans-sectoral: Investment by foreign states or state-owned enterprises is prohibited unless an authorisation is granted.

Real estate: Foreign investment – other than for direct business use – is restricted, with the exception of acquisitions by limited liability companies in which non-residents do not own more than 20 per cent of the capital and do not hold a majority of the total voting power.

Fishing and whaling: Foreign investment in companies engaged in fishing and in companies applying for a licence to carry out whaling within the Icelandic territorial waters is prohibited.

Primary fish processing: Foreign investment in primary fish processing (*i.e.* excluding retail packaging and later stages of preparation of fish products for distribution and consumption) is prohibited. No foreign ownership limitations apply to further fish processing.

Natural resources: Foreign ownership of the exploitation rights of hydro and geothermal energy and investment in energy production and distribution by foreign persons is prohibited.

Banking: Foreign investment in Icelandic banks limited to 25 per cent of the capital stock.

Air transport: Foreign investment in air transport companies limited to 49 per cent of capital stock.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Ireland

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Cabotage is generally reserved to airlines licensed in the state, and direct investment in air transport by non-EC states or nationals of non-EC states may be restricted.

Fishing: Registration of fishing vessels requires ownership by citizens or companies from an EC Member State and a license to fish within Irish fishing limits. The acquisition by non-EC nationals of sea fishing vessels registered in Ireland may be restricted.

Land for agricultural purposes: Acquisition by non-EC nationals of land for agricultural purposes may be restricted.

Flour milling activities: Investment in flour milling activities by enterprises controlled by non-EC nationals may be restricted.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

Israel

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Land and real estate: Acquisitions of rights to use land and real estate by foreign nationals or companies controlled by foreign nationals are subject to the prior approval of the Israel Land Administration Council.¹

Authority: Israel Land Law (1960) and Israel Land Administration decision No. 342.

Air Transport: The licensing of an airline as an Israeli airline is conditional upon the holding of at least two thirds of the capital by Israeli nationals.

Cabotage operations may only be conducted by Israeli airlines.

Authority: Aviation Law (1927); Licensing of Aviation Services Law (1963).

Maritime Transport: Cabotage operations are limited to Israeli vessels or to foreign licensed vessels from countries having reciprocity with Israel.

Authority: Ministry of Transport; legislation pending.

Domestic Fixed Line Operator: The control of a domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least a 20 per cent interest.

Radio and Mobile Telephone Services: Satellite Broadcasting – At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel.

International Communications Services: At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel. A foreign operator may hold up to 49 per cent of the control of a licensee.

Cable Broadcasting:

a) at least 26 per cent of the control in the licensee must be held by nationals who are residents of Israel;

¹ The legal regime regarding land and real estate rights is currently under reform.

- b) a license shall not be granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorise an indirect holding in the licensee of up to 10 per cent by such a corporation.

Commercial Television and Regional Radio: At least 51 per cent of the control in the concession must be held by nationals who are residents of Israel.

Authority: Bezeq (communication) Law (1982); Second Authority for Television and Radio Law (1990).

Electricity: An applicant for a license to transmit, distribute or produce a substantial part of electricity may be required to fulfil the following conditions:

- a) the control of the licensee shall be held by a national who is a resident of Israel;
- b) the maximum proportion of control in the licensee to be held, directly or indirectly, by a non-resident of Israel, is subject to a determination by the Minister of National Infrastructures.

Authority: Electricity Economy Law (1996).

Education Services: Co-operation between an affiliate of a foreign university and equivalent Israeli institutions is subject to the approval of the Council for Higher Education.

Authority: The Council for Higher Education Law (1959).

II. Official aids and subsidies

Films, education, religion, academic research, arts and sports:

- a) The Government may set conditions for granting state aid in the above-mentioned sectors.
- b) The State does not contribute to the budget of an affiliate or branch of a foreign institution of higher education operating in Israel.

Authority: The Film Law (1999); Foundation of Budget Law (1985); The Council for Higher Education Law (1959).

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

Italy

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Fishing: Fishing in territorial waters reserved to nationals.

Air transport: Cabotage is reserved to national companies unless international conventions on air transport services state otherwise. Companies from EC countries are authorised to undertake cabotage that represents an extension of an international service.

Air transport: Registration of aircraft is reserved for Italian citizens, the State, Provinces, State authorities and institutions, and companies headquartered in Italy, with at least two-thirds of the share capital owned by Italian citizens. Air transport companies holding licences issued in Italy are subject to the nationality requirements established by Regulation 2407/92, which provides for the control of enterprises by EC States or Community citizens.

Air transport: Non-national airlines are not permitted to establish their own ground handling facilities in airports which are either directly managed by the State or awarded in partial concession to companies with essentially public capital.

Maritime transport: Maritime cabotage as well as maritime services of port areas are reserved for Italian- and Community-owned ships. Cabotage between islands remains exclusively reserved to Italian ships.

II. Official aids and subsidies

Films: Aids, subsidies and credit facilities are available for Italian film production or co-production with foreign-controlled enterprises from countries with co-production agreements. Credit facilities may also be awarded for the distribution of films by Italian-owned companies. EC companies are assimilated to Italian companies.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Japan

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Land: Reciprocity conditions may apply for the acquisition of land by foreign-controlled enterprises.

Agriculture, forestry, fisheries: Foreign-controlled enterprises may be restricted from engaging in agriculture, forestry, and fisheries.

Mining: Foreign-controlled enterprises may be restricted from engaging in mining.

Oil industry: Foreign-controlled enterprises may be restricted from engaging in oil industry, including development, refining, sales and stockpiling.

Leather and leather products manufacturing: Foreign-controlled enterprises may be restricted from engaging in leather and leather products manufacturing.

Air transport: A license to operate an air transport business may be granted only to enterprises where less than one-third of the voting rights are held by non-Japanese nationals and none of its' representatives and less than one-third of members of the board of directors are non-Japanese. Cabotage and other domestic services using aircraft are reserved to national airlines.

Telecommunications: Foreign capital participation, direct and/or indirect, in Nippon Telegraph and Telephone Corporation (NTT) must be less than one-third.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Korea

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Agriculture: This business sector is allowed except for the growing of rice and barley. Farming of beef cattle and wholesale of meat should be carried out by enterprises in which only foreign investors hold less than 50 per cent of the share capital.

Fisheries: Inshore and Coastal fishing is allowed to foreign-controlled enterprises with foreign investment ratio less than 50 per cent.

Publishing: Publishing of newspapers issued daily or three or more times per week is permitted to enterprises in which foreign investors hold less than 30 per cent of the share capital. Publishing of magazines and periodicals (containing weekly newspapers) is permitted to foreign-controlled enterprises with foreign investment ratio less than 50 per cent.

News agencies: Foreign investment ratio shall be less than 25 per cent.

Energy: In electric power generation sector, foreign investment ratio must not exceed 30 per cent of the total domestic power generation facilities. In power transmission, distribution and sales sector, foreign investment ratio must be less than 50 per cent, and the number of shares with voting rights owned by foreign nationals must not exceed those owned by the largest domestic shareholder. Processing of nuclear fuel is allowed except for the manufacturing and supplying of nuclear fuel for nuclear power plants.

Maritime Transport: Coastal water passenger and freight transport is allowed only between North and South Korea. In addition, foreign investors must enter into joint ventures with domestic shipping companies, and foreign investment ratio shall be less than 50 per cent.

Air Transport: Air transport is allowed to the foreign enterprises in which only foreign investors hold less than 50 per cent of the share capital.

Telecommunications: Foreign investment is allowed only when the total of shares or equities with voting rights owned by foreign governments, foreign nationals or domestic enterprises in which each of the following is 49 per cent or less of the total number of shares or equities. (However, in the case of KT, foreigners cannot become its major shareholder. Also,

the foreign investment ratio should be 49/100 or less, and the investment ratio per person should be 15/100 or less.)

- a) corporations whose ratio of shares or equities owned by the foreign governments or foreign nationals are 80 per cent or more;
- b) corporations whose major shareholders are foreign governments or foreign nationals, and whose ratio of shares or equity owned by them are 15 per cent or more.

Banking: Commercial banking and local banking are permitted. However, special banks, National Agricultural Cooperative Federation, National Federation of Fisheries Cooperatives and Livestock Cooperative Federation are excluded. Foreign investment in Securities investment and trust businesses is permitted. Foreign investment in trust fund related businesses is allowed wherein the commercial or special banks conduct businesses in conjunction with their primary business.

Broadcasting: Radio and TV broadcasting are wholly closed. However, program providing, cable and satellite broadcasting are allowed when foreign investment ratio is 33 per cent or less.

II. Official aids and subsidies

Foreign-controlled enterprises are not eligible to receive contributions from the Information Communications Promotion Fund.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Latvia

I. Investment by established foreign-controlled enterprises

Real estate: For the duration of the land reform programme, land can be purchased freely by:

- a) Latvian citizens;
- b) Latvian governmental bodies;
- c) companies listed at the Enterprise Registry of Latvia, provided that more than half of the fixed capital is owned by Latvian citizens, and/or Latvian governmental bodies, and/or natural or legal persons from countries with which Latvia has signed and ratified an international agreement on the promotion and protection of investments by 31 December 1996 or agreements concluded after that date, provided that the agreement provides for reciprocal rights to land acquisition; and
- d) public joint-stock companies listed on the stock exchange;
- e) religious organisations registered in Latvia before 21 July 1940 are able to purchase land in towns and cities, but in the rural regions the religious organisations should be registered not less than three years before they are able to claim ownership rights for the land.

Other physical and legal persons (not mentioned in the 1st paragraph) can obtain land and property, except territories in Latvia's border area, dune areas of the Baltic Sea and the Riga gulf and protected areas of other public waters, land of state reserves, land usable for agriculture and forestry, in accordance with the general plan of the region (having received permission from a local authority in whose territory the land is situated).

Authority: Law on Land Privatisation in Rural Regions (Official Journal No. 32 of 20.08.1992) and Law on Land Reform in Towns and Cities of Republic of Latvia (Official Journal No. 14 of 13.12.1991).

Real estate: Unbound as regards acquisition of land property.

Authority: Amendments to the Law on Land Privatisation in Rural Regions (Official Journal No. 58 of 15.04.2003).

Fishing: Reservation as regards registration of ownership of Latvia's fishing vessels by natural persons who are not either citizens or non-citizens of the Republic of Latvia or are not Latvia's legal persons, except through an enterprise established in Latvia.

Authority: Maritime Code (Official Journal No. 91 of 01.08.2003).

Air transport: Licence to operate an airline is granted only to companies majority-owned by Latvian nationals and foreign carriers holding traffic rights under bilateral agreements.

Authority: Law on Aviation, 1994.

Gambling and lotteries: The license for conducting activity in gambling and lotteries is issued to enterprises with foreign equity participation of 49 per cent or less, except that of the EU member states and the EU candidate states.

Authority: Law on Gambling and Lotteries (Official Journal No. 76 of 02.07.1994).

Security operations: The license for security operations is issued to enterprises where foreign investors, except investors of the EU member states, have no majority (controlling) interest.

Authority: Law on Security Operations (Official Journal No. 337/338 of 11.11.1998).

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

Lithuania

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Land: Acquisition into ownership of land, internal waters and forests is permitted to foreign-controlled enterprises meeting the criteria of European and transatlantic integration embarked on by Lithuania.

The criteria of European and transatlantic integration embarked on by Lithuania are met by foreign legal persons as well as other foreign organisations set up in:

- a) the European Union member states or states parties to the Europe (Association) Agreement concluded with the European Communities and their member states;
- b) Member states of the Organisation for Economic Co-operation and Development, North Atlantic Treaty Organisation and states parties to the European Economic Area Agreement.

Authority: The Constitutional Law of the Republic of Lithuania on the Implementation of paragraph 3 of Article 47 of the Constitution of the Republic of Lithuania No. IX-1381 (adoption 20 March 2003, entry into force 1st May 2004).

Air transport: The operation of an airline by enterprises with foreign equity participation requires a licence from the Lithuanian government and is based on reciprocity. The air carrier must have its principle place of business in Lithuania and be effectively controlled by the state of Lithuania an/or nationals of Lithuania. Exceptions may be granted by international agreements of the Republic of Lithuania.

Authority: Law on Aviation No. VIII-2066 (17 October 2000).

Maritime and inland waterway transport: Only ships and vessels with Lithuanian state flag and registered in Lithuania or any European Union member state flag are allowed to provide maritime waterway cabotage and inland cabotage services.

Authority: Law on Merchant Shipping No. I-1513 (12 September 1996); Inland Waters Transport Code No .I-1534 (24 September 1996).

Fisheries: Access to Lithuania's waters is only possible for vessels with Lithuanian or any European Union member state flag or for foreign country vessels on the basis of international agreement.

Authority: Law on Fisheries No. VIII-1756 (27 July 2000).

II. Official aids and subsidies

Health Services: Entry into the market is subject to authorisation by Lithuanian health authorities. Foreign private establishments may not be entitled to receive financial support from public resources, including usage of public medical insurance funds.

Authority: Law on Health System No. I-552 (1994); Law on Health Care Institutions No. I-1367 (1996).

State Subsidies: Foreign legal persons in any sector of the economy may be limited to receive state subsidies. Producers and exporters of some goods and services of Lithuanian origin are supported by legal acts or onetime decisions by the Government.

Authority: Various legislative acts on appropriate sectors of the economy. Government Resolution No. 1490 on Approval of Regulations of the Export Promotion Fund (30 December 1997).

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Luxembourg

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport/Land transport: Some restrictions may apply to regular scheduled air transport and public transport.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Mexico

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: Acquisitions exceeding a total of 49 per cent of the equity of the Mexican enterprise are subject to review if the total value of the assets of the enterprise to be acquired exceeds US\$50 million; this value will be raised to US\$75 million on 1st January 2000 and US\$150 million on 1st January 2003.

Authority: Foreign Investment Law 1993.

Real estate: Acquisition of land used for agriculture, livestock or forestry purposes is not permitted. However, "T" shares which represent the value of such land may be purchased by foreign-controlled enterprises up to 49 per cent of the value of the land.

Acquisition of land for residential purposes by foreign-controlled enterprises is not permitted.

Authority: Mexican Constitution; Foreign Investment Law 1993; Agrarian Law.

Oil and gas: Only Mexican nationals and Mexican companies with a foreigner exclusion clause may engage in retail trade in gasoline and distribution of liquefied petroleum gas. Participation in the supply of fuels and lubricants for ship, aircraft and railroad equipment may not exceed a total of 49 per cent of equity. Investment in the construction of oil pipelines and other derivative products and oil and gas drilling may be authorised above a total of 49 per cent of equity.

Authority: FIL; Reglementary Law to Article 27 of the Mexican Constitution in the Oil Sector and its Regulations; Regulations on Gas Distribution.

Fishing: Foreign investment is permitted up to 49 per cent in fishing in coastal and fresh waters or in the Exclusive Economic Zone and up to 100 per cent in aquaculture.

Authority: FIL, Fisheries Law.

Financial institutions: Foreign investment may participate in the following activities:

- a) Ownership up to a total of 49 per cent of the paid-in capital in insurance companies, financial leasing companies, factoring companies, general deposit warehouses, bonding companies and foreign exchange firms; and up to 49 per cent of the capital stock of limited scope financial institutions and securities advisory companies.
- b) Ownership of up to a total of 100 per cent of the common stock in credit information institutions and securities rating agencies.
- c) Ownership of at least 51 per cent of the common stock in a subsidiary of the following type: bonding companies, general deposit warehouses, foreign exchange firms, pension funds and managing companies and securities specialists, by non-resident financial institutions of the same general type of activities.
- d) Ownership of at least 51 per cent of the common stock in a subsidiary of managing companies of investment companies, and of the fixed stock of investment companies, by non-resident financial institutions of the same general type of activities.
- e) Ownership of at least 51 per cent of the common stock in a subsidiary of the following type: banks, securities firms, insurance companies, leasing companies, factoring companies and limited scope financial institutions (Sofoles), by non-resident financial institutions of the same general type of activities.
- f) Ownership of at least 51 per cent and up to a total of 100 per cent of the common stock of existing financial institutions, irrespective of any individual size limits or aggregate market share limits, provided an authorisation is granted.
- g) If the sum of the authorised capital of commercial banks owned and controlled by investors from OECD countries, measured as a percentage of the aggregate net capital of all commercial banks in Mexico, reaches 25 per cent, Mexico may request consultations with the OECD member countries on the potential adverse effects arising from the presence of commercial banks of the other OECD member countries in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultation shall be completed expeditiously. In considering the potential adverse effects, the OECD member countries shall take into account:
 1. the threat that the Mexican payments system may be controlled by non-Mexican persons;

2. the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange rate policy effectively; and
 3. the adequacy of the provisions of the Codes with respect to financial services in protecting the Mexican payments system.
- h) A non-resident financial institution authorised to establish or acquire a bank or a securities firm may also establish a financial holding company, and thereby establish or acquire other types of financial institutions.
- i) Foreign financial institutions other than banks, securities firms, securities specialists and limited scope financial institutions may establish only one institution of the same type.
- j) Subsidiaries of foreign financial institutions may not establish branches, subsidiaries or agencies outside Mexico.

Authority: FIL, Credit Institutions Law; Law for the Regulation of Financial Groups; Stock Market Law; General Law for Credit Organisations and Auxiliary Activities; Federal Bonding Institutions Law; Insurance Institutions General Law; Investment Companies Law.

Air transport and related services: Foreign investment is permitted up to a total of 25 per cent in national air transport, specialised air services and aerotaxi services and up to a total of 49 per cent of equity in the administration of air terminals. Full ownership may be authorised in the administration of air terminals.

Authority: Mexican Constitution; General Means of Communication Law; FIL; Law on Nationality.

Ground transport and related services: Foreign investment in the international ground transport of passengers, tourism and loading and in the administration of bus stations for passengers and auxiliary activities within Mexico is allowed up to 49 per cent of equity. This share will increase to 51 per cent as of 1st January 2001 and up to 100 per cent as of 1st January 2004. Foreigners may participate up to 49 per cent in a railway concessionaire enterprise without authorisation and above 49 per cent subject to authorisation.

Authority: FIL; General Means of Communication Law; Law on Nationality.

Maritime transport and related services: Foreign investment is permitted up to a total of 49 per cent of equity in interior navigation and coastal sailing – other than tourist cruises and the exploitation of dredges and other naval devices for ports where foreign investment is permitted up to 100 per cent – in integral port administration and port pilot services for interior navigation; and foreign investment may be authorised up to 100 per cent in foreign commerce shipping and port services pertaining to interior navigation.

Authority: Mexican Constitution; FIL; Law on Navigation; Law of Ports; Law on Nationality.

Radio and television broadcasting: Radio and television broadcasting (excluding cable television) are reserved to Mexican nationals and Mexican companies with a foreigner exclusion clause. Foreign investment through a Mexican corporation is permitted up to 49 per cent of equity in cable television.

Authority: Radio and Television General Law; Regulations of Cable Television; FIL and its Regulations.

Telecommunication services: Foreign investment in the telecommunications sector is permitted up to 49 per cent of equity through a Mexican corporation, except in cellular telephony where foreign investment may be authorised above a total of 49 per cent of equity. Investment in videotext and enhanced packet switching is free.

Authority: Regulations to the FIL.

Newspapers: Foreign investment in newspapers for exclusive internal circulation may not exceed a total of 49 per cent of equity.

Authority: FIL.

Legal services: Investment by foreign nationals in legal services¹ exceeding 49 per cent of equity, unless an authorisation is granted.

Education services: Investment by foreign nationals in private education services exceeding 49 per cent of equity, unless an authorisation is granted.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

¹ A professional license in law is required to be a public notary or a commercial public notary. Only a Mexican national by birth may be licensed as a public notary or a commercial public notary. Neither a public notary, nor a commercial public notary may have a business affiliation with any person who is not licensed in the same category of public notary.

Netherlands

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Financial services: Reciprocity requirements may be in force for institutions from non-EC countries for lead-managers of Guilder-denominated issues.

Air transport: Generally, nationality and ownership requirements apply for license to operate an airline.

Air transport: Cabotage reserved to national airlines.

Maritime transport: National flag is reserved for ships owned by nationals or by companies incorporated under Dutch law, established in the Kingdom, and having their actual place of business in the Netherlands.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

New Zealand

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: A foreign-controlled enterprise already established in New Zealand requires authorisation from the Overseas Investment Commission: 1) to establish a new business where the total expenditure to be incurred exceeds NZ\$ 10 million; 2) for acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand company where either the total consideration payable or the total assets of the business being acquired exceed NZ\$ 10 million; 3) for all acquisition of assets and of share participation exceeding 25 per cent regardless of their value, in specified sensitive sectors (currently broadcasting, commercial fishing, and rural land).

Rural land: Specific provisions pertaining to the acquisition of rural land: foreigners wishing to purchase rural land must demonstrate that the acquisition will give rise to significant benefits to New Zealand. There are no restrictions as to a specific maximum level of allowable foreign ownership.

Fishing: Purchase of fishing quota is restricted to enterprises where 75 per cent or more of the voting rights are held by New Zealand residents.

Air transport: Air New Zealand privatisation includes a 35 per cent foreign ownership limit. The sale of Air New Zealand entailed the establishment of three classes of shares: “A” shares available to New Zealand nationals only; “B” shares limited to 35 per cent of total equity and available to overseas persons; and the “Kiwi” shares held by the New Zealand government. The company's articles of association cannot be amended without the consent of the holders of the “Kiwi” share.

Air transport: Substantial ownership and effective control of international airlines operating scheduled services to/from New Zealand to be vested in the designating country under the respective bilateral agreements or nationals of that country.

Telecommunications: No person who is not a New Zealand national shall have a relevant interest in more than 49.9 per cent of the total voting shares in Telecom Corporation of New Zealand Limited for the time being

without, and except in accordance with the terms of, the prior written approval the Kiwi Shareholder.

II. Official aids and subsidies

Audio-visual: Payment of subsidies for production, distribution, exhibition and broadcasting of audio-visual works are limited to New Zealand persons and companies.

III. Tax obligations

Trans-sectoral: Branches of foreign companies operating in New Zealand subject to: 1) a higher rate of income tax; 2) non-resident withholding tax imposed on certain classes of payments to non-residents; 3) assessment of taxable income from films, insurance, and shipping.

Mining: Mining income of a non-resident mineral mining operator is taxed at a flat rate being the prevailing non-resident company rate. Non-resident mineral mining operators may not offset mineral mining losses against non-mining income.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Norway

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Fishing: As a general rule, processing, packing or re-loading fish, crustaceans and mollusc or parts and products of these, is not allowed on a foreign-controlled vessel inside the fishing limits or the Norwegian Exclusive Economic Zone.

Authority: Fishing Limit Act of 17/06/66; Economic Zone Act of 17/12/76.

Fishing: To obtain ownership, or part in, registered fishing vessel, a 60 per cent Norwegian ownership is required.

Authority: Regulation of participation in fishing Act of 15/03/99; Fishing Limit Act of 17/06/66.

Air transport: Cabotage reserved to airlines with an EU/EEA licence.

Maritime transport: Ships in the Norwegian Ordinary Ship Register (NOR) have to be owned by EEA citizens or by an EEA company where EEA citizens own at least 60 per cent of the capital. Exemptions from the 60 per cent rule may be granted. There is no such limitation for ships registered in the Norwegian International Ship Register (NIS).

When the ship is registered in NOR and the ship-owning company is a limited liability company, it must be headquartered in the EEA area. The majority of the members of the board, including the chairman, must be EEA citizens resident in the EEA area, having resided in the EEA area the preceding two years.

When the ship is registered in NIS and the ship owning company has more than 40 per cent non-EEA ownership, the ship must be operated by a Norwegian ship-owning company with head office in Norway, or by a Norwegian management company. If the ship is registered directly in the NIS by a foreign company, an EEA representative is required. The representative must be domiciled in Norway and be authorized to receive a lawsuit on behalf of the ship owner.

Authority: Maritime Act of 24/6/1994; NIS Act of 12/6/87.

Maritime transport: Licensing requirement for scheduled maritime transport of persons.

Road transport: In general, cabotage reserved to national hauliers.

Accountancy and legal services: Investment in the accountancy sector exceeding 49 per cent, and in the legal sector, by non-residents.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Poland

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Real estate: Foreign-controlled enterprises require authorisation for the acquisition of real estate for other purposes than direct investment and of land reserved for agriculture or forests, or water areas.

Authority: Act on acquisition of real estate by foreign parties (Journal of Acts, 24/1920, Item 202; last amended in 1996).

Air transport: The operation of an airline is reserved to enterprises with a foreign equity participation of 49 per cent or less.

Authority: Aviation Act of 2002 (Journal of Acts 130/2002, Item 1112).

Broadcasting: The transmission of radio and television programmes is reserved to enterprises with a foreign equity participation of 49 per cent or less for enterprises from outside the European Economic Area.

Authority: Act on broadcasting of 1992 (Journal of Acts 101/2001, Item 1114 with amendments).

Gambling and betting: Foreign-controlled enterprises from outside the European Economic Area are not permitted to conduct activity in gambling or betting, including casinos.

Authority: Act on gambling and betting (Journal of Acts 68/1992, item 341).

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Portugal

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Establishment in regular domestic and international air transport unless through national companies, engaged in this activity on an exclusive basis, which are headquartered in Portugal and where the majority of capital and the management control belong to national entities. These restrictions are applied without prejudice to EC law.

New credit institutions: Creation of a new credit institution or a new financial company owned or controlled by non-EC investors may be restricted.

II. *Official aids and subsidies*

Film production: Financial assistance and subsidies are awarded to the production of Portuguese films or to co-productions between national producers and producers of countries with a co-production agreement, under certain conditions (composition of social capital and guarantees).

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

Romania

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air Transport: An operating air carrier license may be granted only to companies established in Romania and controlled by Romanian nationals or the State.

Authority: Government Ordinance No. 19/1997 on Air Code, approved by Law No. 130/2000 (published in M.O. No. 45/26.01.2001) and Minister Order No. 578/1998 approving the Regulation on Granting of Air Operating Licence (published in M.O. No. 257/4.06.1999).

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

Slovak Republic

A. Exceptions at national level

I. Investment by established foreign controlled enterprises

Air Transport: The purchase of more than 49 per cent of the equity capital in air transportation companies. The Aviation Act in force since 1st July 1998, specifies that the stake held by a foreign investor when acquiring the licence of a domestic air carrier has to be less than 50 per cent. However, after the Slovak Republic's accession to the European Common Aviation Area (ECAA), this restriction will be relaxed for companies established in a member state of the European Union. At such time, a modification of the Slovak Republic's position under item I/A of the Capital Movements Code will be required and permitted by virtue of the application of Article 10 to EC members.

Authority: Aviation Act of 1st July 1998.

Operation of lotteries and similar games: The operations in question can be permitted only to a legal entity established in the Slovak Republic, which means that such activities cannot be conducted through branching. As from the day of the Slovak Republic's accession to the European Union, this requirement will cease to apply.

Authority: Act No. 433/2002 Coll that amends and completes Act No. 194/1990 Coll. on lotteries and similar games.

II. Official Aids and Subsidies

None.

III. Tax obligations

None.

IV. Government Purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Slovenia

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Registration of an aircraft is only possible for aircraft owned by Slovenian nationals or companies controlled by them. Granting of an operating or AOC license for performing airline services is provided only to companies controlled by Slovenian nationals or to carriers complying with EC regulations on ownership and control (including principle place of business and activity, and majority-owned by EC Member States/nationals).

Authority: Aviation Act (OG RS 18/010; Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA).

Lotteries: It is prohibited for foreign investors to organise lotteries in Slovenia.

Authority: Law on gambling (OG RS 27/95).

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None. (under preparation).

B. Exceptions by territorial subdivisions

None.

Spain

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: Foreign participation in newly privatised companies may be limited to a variable amount, determined by the government on a case by case basis, of the equity offered to the public.

Banking: National treatment may be applied to non-EC subsidiaries and branches of Foreign Credit Institutions (FCIs) on the basis of reciprocity.

Financial services: Foreign investment in registered securities brokers and dealers by non-EC companies is subject to a reciprocity requirement. Stock exchange membership by securities brokers and dealers in which non-EC residents have a holding is subject to reciprocity.

Legal services: Investment originating in non-EC member countries in the legal services sector.

Air transport: Cabotage reserved to national airlines.

Air transport: Enterprises controlled by non-EC residents must obtain government authorisation to invest in air transport companies.

Broadcasting: Foreign participation, direct or indirect, in a radio broadcaster by non-EC companies is subject to authorisation, and, in any event, any individual investor, whether it is national or foreign, may not exceed 25 per cent of the paid up capital.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Sweden

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Real estate: Aliens and foreign corporations must have a special permit to acquire real property according to the Law on Foreign Acquisition of Real Property. Permission is not required for real property for commercial use in industry, including mining, or for rent as offices, commercial premises or blocks of residential flats.

Fishing: A legal entity, owned up to 50 per cent or more by foreign citizens, is subject to permission for having the right to pursue commercial fishing activities in Swedish waters without holding a private fishing right.

Financial services: In principle, permit to engage in credit information activities is not granted to foreign companies, or to Swedish corporations not having a foreigner's clause in their articles of association.

Accountancy: Investment in the accountancy sector by non-EC-residents exceeding 25 per cent.

Legal services: Investment in a corporation or partnership carrying out the activities of an "advokat" by non-EC residents.¹

Air transport: Cabotage reserved to national airlines.

Air transport: Foreign enterprises may be restricted from access to international air routes unless bilateral intergovernmental agreements provide otherwise.

Maritime transport: Cabotage is reserved to vessels flying the national flag.

II. Official aids and subsidies

None.

III. Tax obligations

None.

¹ Unless the Swedish Bar Association grants a waiver, the requirement for EC residency applies for ownership of law firms carrying out business under the title of "advokat".

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Switzerland

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Banking and financial services: Investment by foreign-controlled enterprises which are controlled by nationals or enterprises of countries that are not members of the WTO are subject to reciprocity conditions.

Air transport: The commercial transport of persons and goods by foreign-controlled enterprises is regulated by international agreements. In the absence of these, it is possible to permit foreign enterprises to exploit certain routes for commercial transport and to authorise commercial flights by foreigners outside these routes. An authorisation may be refused if the service offered is not consistent with essential Swiss interests or if reciprocity is not accorded.

Air transport: The business transport of people or goods between two points in Switzerland is reserved to Swiss companies.

Air transport: An aircraft may be registered in Switzerland if it is owned by Swiss citizens, or by foreigners resident in Switzerland using an aircraft for travel from Switzerland, or if it is owned by an enterprise under Swiss control. National treatment may nevertheless be accorded to foreign individuals or companies on the basis of international agreements

Air transport: Non-national airlines not permitted to establish ground-handling facilities.

Inland waterways: To be registered in Switzerland and to transport persons and goods between two points on the Rhine, a vessel must be owned by Swiss citizens resident in Switzerland, or by companies in Swiss hands, headquartered in Switzerland. Nationals of states party to the Revised Convention for the Navigation on the Rhine of 17th October 1868, and Member States of the EC, are assimilated as Swiss.

Maritime transport: An enterprise may register a vessel for the commercial transport of persons or goods or for commercial maritime activities if the majority of its capital and two thirds of its voting rights, together with its administrative bodies and board of directors, are Swiss.

Nuclear energy: Authorisation to build and operate a nuclear plant is granted only to Swiss-controlled companies.

Pipelines: An approval of plans for the construction and operation of pipelines to transport liquid or gaseous fuels is required. Foreign-controlled enterprises must have an administrative centre and an operation management in Switzerland and must be organised in a manner that warrants the respect of the applicable Swiss laws and regulations.

Broadcasting: A concession for the diffusion of radio and television programmes can only be granted to Swiss-controlled companies with their headquarters in Switzerland and where the majority of the board of directors are Swiss. If the foreign country offers reciprocity, the Swiss Government may grant concessions to foreigners resident in Switzerland or to foreign-controlled companies having their headquarters in Switzerland.

II. Official aids and subsidies

Film production: Contributions to the costs of film productions and assistance to quality films are only awarded to films produced by companies headquartered in Switzerland and under the control of Swiss citizens or of permanent residents of Switzerland and for films co-produced with non-residents.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

III. Investment by established foreign-controlled enterprises

Trans-sectoral: Acquisition of real estate by foreign-controlled enterprises is subject to an authorisation requirement by the cantons. As a rule, this authorisation is granted when the acquirer uses the property to operate his stable establishment.

Air transport: At the airports of Geneva and Zurich, foreign airline companies are not permitted to establish their own groundhandling facilities if their share of total traffic is below a certain percentage (4.5 per cent in Geneva and 1.5 per cent in Zurich). Foreign airline companies are not allowed to offer groundhandling services to third parties.

IV. Official aids and subsidies

None.

V. Tax obligations

None.

VI. Government purchasing

None.

VII. Access to local finance

None.

Turkey

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Mining: Foreign-controlled enterprises must invest through locally incorporated enterprises.

Banking: A minimum of TL 20 trillion of capital is required for establishing the first branch of a foreign bank in Turkey.

Air transport: Licences to operate airlines are only granted to companies majority controlled by Turkish nationals.

Maritime transport: Cabotage is reserved to Turkish citizens and/or ships flying the national flag. Ships belonging to legal persons set up in accordance with Turkish laws, with the majority of managerial staff and representatives of Turkish nationality and with the voting majority held by partners of Turkish nationality are accepted as Turkish and have the right to fly the Turkish flag.

Yacht harbours: Establishment and operation of a yacht harbour facility is permitted to companies or associations which obtain the necessary licences from the Ministry of Tourism, formed in accordance with Turkish laws and regulations, and which are in partnership with Turkish nationals and/or Turkish establishments.

Real estate/Retail trade: Foreign-controlled enterprises are prohibited from engaging in real estate trading, except for acquisitions related to their permitted operations.

Primary, secondary and other educational services: Established foreign-controlled enterprises may not set up education institutions unless all students are of foreign nationality. Private universities are founded by law and can only be established by foundations constituted under Civil Code. The majority of administrators of such foundations must be Turkish citizens.

Accountancy and financial advice: Persons of foreign nationality with the required qualifications for accountancy and financial advisory services can work as accountants and financial advisors upon the approval by the Prime Minister of the proposal of the Ministry of Finance. Such persons

can establish companies for financial advisory services. Reciprocity conditions apply.

Radio and TV broadcasting: Twenty-five per cent foreign ownership limitation for radio and/or TV broadcasting.

Authority: Law No. 3984 on Establishment and Broadcasting of Radios and Televisions.

Fishing: Foreign persons cannot fish within the fishing area defined in the 1st or 4th Articles of the Law on Territorial Waters or in internal waters.

Authority: Law No. 1380 on Marine Products, amended by Article 2 of Law No. 4950 dated 22 July 2003.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

United Kingdom

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Banking: Reciprocity conditions for foreign-owned institutions, which are UK based and which have the capacity in the UK to act as an issuing house, to be eligible to lead-manage sterling issues.

Banking, insurance, and financial services: Reciprocity conditions may apply for persons “connected with” a foreign country but carrying on, or intending to carry on, investment in these areas.

Financial services: Reciprocity conditions may apply as part of the recognition procedures for foreign exchanges and clearing houses with foreign headquarters.

Air transport: In general, registration of aircraft reserved to government, citizens of the Commonwealth or Republic of Ireland, British protected persons, bodies incorporated and having their principal place of business in part of the Commonwealth and firms carrying on business in Scotland.

Air transport: Air transport licences may not be granted to applicants if they are not United Kingdom nationals or bodies incorporated in the United Kingdom (or certain overseas territories) and controlled by United Kingdom nationals unless the Secretary of State consents to the grant of a license.

Air transport: Cabotage reserved to national airlines.

Air transport: The Articles of Association of British Airways empower the imposition of a restriction on the number of foreign held shares. These provisions may not restrict the foreign shareholding to less than 25 per cent of the ordinary voting equity.

Maritime transport: In order to obtain the national flag, fishing vessels must be at least 75 per cent owned by British individuals and/or by companies which are at least 75 per cent owned by British citizens in all cases resident and domiciled in the UK; vessels must be managed, directed and controlled from within the UK Without the national flag, vessels may not fish against the UK quotas under the Common Fisheries Policy.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

Radio and television: The following are disqualified from being licensees of the Independent Television Commission and Radio Authority: 1) individuals who are neither European Community nationals ordinarily resident there nor (whatever nationality) resident in the UK; 2) bodies corporate which are neither formed under the law of an EC country, having their registered head office or principal place of business within the EC, nor incorporated in the UK; and 3) bodies corporate not ordinarily resident in the UK or the EC. However, investment by such individual bodies up to, but not including, control will be allowed.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

Consultancy: Restrictions on the appointment of consultants under the Overseas Aid Programme. Restrictions on the appointment of consultants under the Overseas Aid Programme. The following criteria apply: 1) the firm must carry on business in the United Kingdom, or be a projection in the developing country concerned of such a firm. Carrying on business in the United Kingdom means having a headquarters organisation and associated facilities there, and not merely a registered office or accommodation address; 2) the firm must be willing to accept in sterling in London all payments due under contractual arrangements between the firms and the Ministry of overseas Development; 3) if the firm is a partnership, the majority of the partners must be United Kingdom citizens; 4) the staff, or the majority of the staff, who will perform the consultancy services must be United Kingdom citizens; 5) if the firm is organised as a company, United Kingdom citizens must have unrestricted control of the company.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

United States

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Fishing: Foreign-controlled enterprises may not engage in certain fishing operations involving coastwise trade. In addition, foreigners may not hold more than a minority of shares comprising ownership in companies owning vessels which operate in US fisheries. Also, corporate organisation requirements pertain to the registration of flag vessels for fishing in the US exclusive economic zone.

Fishing: Foreign-flag vessels may not fish or process fish in the 200 nautical mile US exclusive economic zone except under the terms of a Governing International Fisheries Agreement (GIFA), or other agreement consistent with US law.

Mining, oil and gas: The Mineral Leasing Act (1920) makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organised under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals. Non-US citizens may, however, own a 100 per cent interest in a US corporation that acquires a right-of-way for oil or gas pipelines across onshore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to US citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries.

Atomic energy production: Aliens and entities owned, controlled or dominated by aliens or foreign governments may not engage in operations involving the utilisation of atomic energy. This restriction applies primarily to nuclear reactors and reprocessing plants extracting plutonium.

Banking: As of August 1989, the Federal Reserve may refuse to designate as a primary dealer a foreign-controlled commercial or investment bank, if the government of the home country of the foreign bank denies national treatment to US-owned banks for government securities operations. Denial

of the primary dealer designation means that the Federal Reserve, at its initiative, will no longer deal with that firm in the conduct of monetary policy. The firm, at its initiative can continue unencumbered to purchase US Government securities in government auctions.

Air transport: Cabotage and exercise of US international air route rights are reserved to national airlines controlled by US citizens, and owned 75 per cent or more (voting stock) by US citizens.

Air transport: freight forwarding and charter activities: A reciprocity test on air freight forwarding and air charter activities applies any time a foreign-owned firm seeks authority to provide indirect air transportation either by cross-border or establishment for US-originating traffic. If a favourable determination is made by the Department of Transportation, indefinite registration is granted to the applicant, and subsequent applications of the same applications of the same nationality are routinely approved.

Maritime transport: The Federal Maritime Commission is authorised to take unilateral action when a foreign government, foreign carrier or other persons providing maritime-related services engages in activity that adversely affect US carriers in US ocean-borne trade; creates conditions unfavourable to shipping in the foreign trade; or unduly impairs access by US-flag vessels to trade between foreign ports. Sanctions proposed under these statutes most frequently affect the cross-border provision of services, however sanctions could affect a foreign-owned investment established in the US (e.g. revocation of freight forwarders' licenses, suspension of preferential terminal leases).

Communications: Foreign-controlled enterprises may not hold broadcasting (radio and television), common carrier, aeronautical en route, or aeronautical fixed radio station licenses as provided for in 47 United States Code § 310, unless an authorisation is granted under 47 United States Code § 310(b)(4).

Telecommunications: The Federal Communications Commission (FCC), under delegated authority from the President of the United States with concurrence of the State Department, is authorised to issue licenses to land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country. Under the Submarine Cable Landing Licence Act of 1921, the FCC may withhold or revoke licences if such action will assist, *inter alia*, in securing cable landing rights for US citizens in foreign countries.

II. Official aids and subsidies

Trans-sectoral: Eligibility for Overseas Private Investment Corporation (OPIC) insurance and guarantees for investments in eligible developing

countries is limited to entities organised in the US and substantially (more than 50 per cent) beneficially owned by United States citizens, or to foreign entities at least 95 per cent owned by US citizens.

Trans-sectoral: To receive financial assistance under the Advanced Technology Program, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a US-owned company or a company incorporated in the United States whose parent is incorporated in a country which 1) affords to US-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; 2) affords US-owned companies local investment opportunities comparable to those afforded any other company; 3) affords adequate and effective intellectual property rights of US-owned firms.

Trans-sectoral: To participate in the Technology Reinvestment Project (TRP), a company must conduct a significant level of its research, development, engineering, and manufacturing activities in the United States, or is US-owned company. A foreign-owned firm may be eligible if its parent company is incorporated in a country whose government encourages US-owned firms' participation in R&D consortia to which that government provides funding, and affords effective intellectual property rights for US companies.

Energy: To receive financial assistance under the Energy Policy Act, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a US-owned company or a company incorporated in the United States whose parent is incorporated in a country which 1) affords to US-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; 2) affords US-owned companies local investment opportunities comparable to those afforded any other company; 3) affords adequate and effective intellectual property rights of US-owned firms.

Agriculture: Foreign-controlled US enterprises cannot obtain special government emergency loans for agricultural purposes.

III. Tax obligations

None.

IV. Government purchasing

Technical services contracting: Restrictions on eligibility for consideration by the US Agency for International Development as a contractor.

Air transport: Foreign-controlled carriers cannot compete for Federal Government contract for the international air carriage of persons or property: 1) between the United States and foreign points to the extent service by US carriers is available; and 2) between two foreign points to the extent service by US carriers is reasonably available. These prohibitions may be waived in instance where reciprocal national treatment has been negotiated on the basis of an exchange of rights or benefits of similar magnitude.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

I. Investment by established foreign-controlled enterprises

California, Illinois, Iowa, Kansas, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, South Dakota

Limitations on the foreign ownership of agricultural land: The following states, in addition to those noted below, have some sort of restriction on aliens owning land: California, Illinois, Kansas, Nevada, New Hampshire, New Jersey, New York, and North Carolina.

Iowa: A non-resident alien, a foreign government, or business incorporated in a foreign country or majority owned directly or indirectly by non-resident aliens, may not purchase or acquire agricultural land, with certain exceptions. Agricultural land acquired under the exceptions is subject to reporting requirements.

Minnesota: Only US citizens, permanent resident aliens, and business entities whose stock and beneficial ownership are at least 80 per cent held by US citizens or permanent resident aliens may own agricultural land.

Missouri: Non US citizens and businesses in which non-US citizens own a controlling interest may not own agricultural land unless the non-US citizen is a resident in the US No corporation, Missouri or out-of-state, may engage in agriculture after 1975.

North Dakota: A non-US or non-Canadian citizen who is not a resident alien in the US may not hold agricultural land.

Pennsylvania: Foreign governments and non-resident non US citizens may not hold more than 100 acres of agricultural land.

South Dakota: Foreign governments and non-resident, non-US citizens may not hold more than 160 acres of agricultural land. No in or out-of-state corporation may own agricultural land.

Guam, Indiana, Oklahoma, South Carolina, Wisconsin, Wyoming Florida, Hawaii, Idaho, Kentucky, Mississippi, Montana, Oregon

These states have some limitation on the ownership of real property and preference in the access to – or ownership of land

1) Real property: Limitation on the ownership of real property

Guam: Alien owned businesses may only own or rent land through Guam corporations.

Indiana: Limits amount of land held by aliens. Resident and non-resident aliens may acquire real estate but must dispose of any land over 320 acres within five years of acquiring it, or the excess acreage will escheat to the state.

Oklahoma: Non-US citizens may not own real estate, in the state, with certain exceptions.

South Carolina: Non-US citizens or corporations controlled by non-US citizens may not hold more than 500 000 acres of land.

Wisconsin: Non-US citizens not resident in the US, corporations with more than 20 per cent of their stock owned by them and non-US corporations may not hold more than 640 acres of land.

Wyoming: A non-resident not eligible for citizenship may not hold real property except for personal use and not exceeding one acre.

2) Preference in the access to/or ownership of land

Florida: Non-immigrant visa holders do not receive a homestead exemption.

Hawaii: Citizens and residents of Hawaii and US military war veterans receive preference in drawings from residential and agricultural leases of state lands. Residency requirements exist for aliens and stockholders of corporations and associations who wish to rent land in designated agricultural parks.

Idaho: State land may only be sold to US citizens.

Kentucky: Real estate owned by a non-resident alien may be escheated by the State eight years following its acquisition unless: a) the alien becomes a US citizen, b) they have declared their intent to become US citizens; or c) the corporations are organised under state law.

Mississippi: Non-resident aliens may not hold land longer than 20 years before becoming a US citizen except that they may acquire 320 acres for industrial development and 5 acres for residential purposes. Moreover, a non-resident alien may not purchase public land, except that they may purchase 320 acres of public land for industrial purposes and 5 acres for residential purposes.

Montana: State lands may only be sold to US citizens, those who have declared their intent to become US citizens or corporations organised under state law.

Oregon: State lands may only be sold to US citizens or those who have declared their intent to become US citizens.

Montana

Mining: Montana has a reciprocity test for coal leases on state owned land.

Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Michigan, Minnesota, Mississippi, N. Carolina, Texas, Virginia, Washington, Wisconsin

Banking: operational restrictions

Alabama, Arkansas, Florida, Georgia, Minnesota, Mississippi, North Carolina, Virginia and Wisconsin effectively prohibit US affiliates of non-US banks from acquiring in-state banks by requiring an acquiring bank to have its “home state” or “principal place of business” in a state of a regional banking pact where the majority of its consolidated deposits is located.

California: Deposit agencies of non-US banks are prohibited from accepting deposits other than from a foreign nation or a person domiciled in a foreign nation. State chartered banks and out-of-state US banks owned by non-US banks are treated differently than other California or US banks in acquisition of a California bank.

Connecticut: Banking corporations organised under the laws of another country cannot maintain an office in the State to solicit deposits or conduct a general banking business.

Delaware: Non-US banks may maintain only one office and may not act in a manner to attract customers from the general public. They may not act as a fiduciary of any sort nor accept deposits from US persons, unless they could do so if operating in the state as a federal agency under the International Banking Act.

Florida: Non-US banks may not establish full service branches or banks. Non-US bank agencies may not accept domestic deposits or act as fiduciary. Out-of-State banks may not establish full service branches.

Illinois: Banking corporations shall be licensed to transact business in the State. Non-US banks organised in a foreign country may have one bank office in the central Chicago business district.

Iowa: Banks organised under the laws of a foreign country or a part of the US not a state or DC may not acquire Iowa banks or bank holding companies.

Maryland: A person who is not a US citizen may not directly or indirectly control state savings and loan associations.

Mississippi: Upon approval and licensing by the State Banking Board, foreign banking corporations shall be limited to transactions that are clearly limited to and are usual in international or foreign business and financing international commerce, shall be unable to exercise fiduciary powers and unable to receive deposits. For a foreign banking corporation the first application fee shall be a minimum of two thousand five hundred dollars (\$2 500) and a maximum of ten thousand dollars (\$10 000), annual licence renewal shall be two hundred fifty dollars (\$250).

North Carolina: A bank or bank holding company within the state can only be acquired by a bank holding company from the South Eastern Region (14 states and DC).

Texas: A foreign bank agency must be located in a county of at least 1.5 million people. Deposits can be accepted and loans made only through the bank, not the agency.

Washington: Non-US bank branches may not have more than one office in the state. Branches are effectively prohibited from accepting initial deposits of less than \$100 000 from US citizens. Non-US banks may not hold real estate other than as a place of business or residence for its employees, incidental to its loan business. Non-US banks may not acquire already established financial institutions, nor shall their officers serve as directors. Non-US bank agencies are effectively limited to international business.

Florida, Illinois, New Jersey, Pennsylvania, Texas, Washington

Banking: Reciprocity conditions

Florida: Establishment of an agency or representative office by non-US Bank is conditioned on reciprocity.

Illinois: Non-US bank corporations cannot be given a certificate of authority to transact business unless Illinois or other US banks are accorded similar privileges in the non-US bank's home country, or pays a special \$50 000 annual "reciprocal fee".

New Jersey: Limits may be placed on the amount of a New Jersey bank that a non-US person owning more than 25 per cent of a non-US bank may acquire. Under special circumstances, a bank holding company organised out-of-state, but non-US owned, may acquire New Jersey banks or bank holding companies on a reciprocal basis.

Pennsylvania: The state banking department may deny to non-US banks permission to operate in the state in the absence of reciprocity for US banks in the country in which the non-US bank is domiciled.

Texas: An agency of a bank organised in a foreign country may be denied a licence to operate in Texas if that country denied Texas banks the ability to operate there, and if denial is in the public interest.

Tennessee, North Carolina, North Dakota

Insurance: licensing.

These states do not issue a licence to foreign government owned or controlled insurance companies.

Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Minnesota, Nebraska, New York, Ohio, Oklahoma, Washington, Wisconsin

Insurance: reciprocity provisions.

These states have reciprocity laws enabling insurance Commissioners to retaliate against perceived unfair insurance trade rules in other countries.

Alabama, Arkansas, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Virginia, Wisconsin

Insurance: Surplus fund requirements.

US branches of non-US firms are required to maintain surplus funds in excess of deposits; these "trusteed surplus" funds are usually held in trust by either a state or a US-incorporated trustee such as a local bank or Port-of-Entry State bank.

II. Official aids and subsidies

Hawaii, North Carolina

Agriculture: Hawaii, restricts State agricultural loans to Hawaii corporations with at least 75 per cent of each class of stock owned by US citizens who have resided in the state for five years. North Carolina excludes non-US citizens from its Farm Ownership Loan Program.

Florida

Trans-sectoral: Foreign persons may not qualify for Small Business Administration loans.

III. Tax obligations

Montana

Trans-sectoral: Small businesses with a non-resident shareholder may not take the Montana small business income tax credit.

IV. Government purchasing

None.

V. Access to local finance

None.

ANNEX A

Declaration on International Investment and Multinational Enterprises

27 June 2000

ADHERING GOVERNMENTS¹

CONSIDERING:

- That international investment is of major importance to 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 international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE :

- Guidelines for Multinational Enterprises
- I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, as set forth in Annex 1,² having regard to the considerations and understandings that are set out in the Preface and are an integral part of them.

- National Treatment³
- II.1. That adhering governments 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 adhering government (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 adhering governments will consider applying “National Treatment” in respect of countries other than adhering governments.
 3. That adhering governments will endeavour to ensure that their territorial subdivisions apply “National Treatment”.
 4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises.
- Conflicting Requirements
- III. 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.⁴
- International Investment Incentives and Disincentives
- IV.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 adhering governments 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 adhering governments 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.

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| Consultation
Procedures | V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council. |
| Review | VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises. |

Notes

1. As at 27 June 2000 adhering governments are those of all OECD members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.
2. This Annex is not reproduced herein. The text of the Guidelines for Multinational Enterprises is available on the OECD Web site www.oecd.org/daf/investment/.
3. The text of the National Treatment instrument is reproduced in Annex B of this publication.
4. This Annex is not reproduced herein. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Web site www.oecd.org/daf/investment/.

ANNEX B

*National Treatment: Third Revised Decision of
the Council*¹*(December 1991)***Article 1
NOTIFICATION**

- a) Members² shall notify the Organisation of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment. All exceptions shall be set out in Annex A to this Decision.
- b) Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures covered in paragraph a).
- c) The Organisation shall consider the notifications submitted to it in accordance with the provisions of paragraphs a) and b) with a view to determining whether each Member is meeting its commitments under the Declaration.

**Article 2
EXAMINATION**

- a) The Organisation shall examine each exception lodged by a Member and other measures notified under Article 1 at intervals to be determined by the Organisation. These intervals shall, however, be not more than three years, unless the Council decides otherwise.
- b) Each Member shall notify the Organisation prior to the periodic examination called for in paragraph a), whether it desires to maintain any exception lodged by it under Article 1 and if so, state its reasons therefore.
- c) The examinations provided for in paragraph a) shall be directed at making suitable proposals designed to assist Members to withdraw their exceptions.

- d) The examinations provided for in paragraph a) shall be country reviews in which all of the exceptions lodged by a Member are covered in the same examination.
- e) Notwithstanding paragraph d), the examinations provided for in paragraph a) may focus on specific types or groups of measures of particular concern, as and when determined by the Organisation.

Article 3

REFERENCE TO THE ORGANISATION

- a) If a Member considers that another Member has, contrary to its undertakings with regard to National Treatment, retained, introduced or reintroduced measures and if it considers itself to be prejudiced thereby, it may refer to the Organisation.
- b) The fact that the case is under consideration by the Organisation shall not preclude the Member which has referred to the Organisation from entering into bilateral discussion on the matter with the other Member concerned.

Article 4

INVESTMENT COMMITTEE: GENERAL TASKS

- a) The Investment Committee (hereinafter called “the Committee”) shall consider all questions concerning the interpretation or implementation of the provisions of the Declaration or of Acts of the Council relating to National Treatment and shall report its conclusions thereon to the Council.
- b) The Committee shall submit to the Council any appropriate proposals in connection with its tasks as defined in paragraph a) and, in particular, with the abolishing of measures constituting exceptions to National Treatment.

Article 5

INVESTMENT COMMITTEE: SPECIAL TASKS

- a) The Committee shall:
 - i) consider, in conformity with paragraphs (a) and (b) of Article 2, each exception notified to the Organisation and make, where appropriate, suitable proposals to assist Members to withdraw their exceptions;
 - ii) consider, in accordance with Article 1, the notifications submitted to the Organisation;
 - iii) consider references submitted to the Organisation in accordance with the provisions of Article 3;

- iv) act as a forum for consultations, at the request of a Member, in respect of any matter related to the Declaration and its implementation.
- b) The Committee may periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters related to National Treatment and shall take account of such views in its reports to the Council.

Article 6

REVIEW OF THE DECISION

This Decision shall be reviewed within three years.³

Article 7

PARTICIPATION BY THE EUROPEAN ECONOMIC COMMUNITY

The present Decision, as well as any further Decision amending it, shall be open for accession by the European Economic Community. Such accession shall be notified to the Secretary-General of the Organisation.

Notes

1. C(91)147/FINAL.
2. For the purposes of this Decision, "Members" means all parties to the Decision.
3. In February 1995, the Council agreed that no change of the Decision was necessary.

ANNEX C

Clarifications of the National Treatment Instrument

“Clarifications” refer to opinions by the Investment Committee on how particular aspects of the instrument should be applied in practice. They may concern general provisions of the instrument or the specific categories used for classifying National Treatment measures.

Clarifications help adhering governments decide whether a specific measure is an exception to National Treatment, whether it should be reported for purposes of transparency, or whether the measure falls outside the scope of the instrument. They also assist in classifying measures in their proper categories.

In general, the Committee develops clarifications during its periodic reviews of the instrument or when it examines adhering government measures relating to National Treatment. The Committee may however, formulate a clarification whenever it sees the need.

This Annex reproduces the clarifications from Chapter III of the 1993 edition of *National Treatment for Foreign-Controlled Enterprises*. It looks first at the general clarifications before turning to those concerning the specific categories of measures.

Clarifications of the scope of the instrument

Operating in their territories

The National Treatment instrument calls for treatment by a host government of foreign-owned or controlled enterprises operating in their territories no less favourable than that accorded to domestic enterprises in like situations. The term “operating in their territories” in the instrument conveys the idea of doing business from a place of business in the host country, as distinct from conducting business in the country from abroad. This recognises that adhering countries’ practices differ regarding recognised

forms of business organisation, but that the main forms of doing business are through locally incorporated subsidiaries and branches. The main factor is the existence of an effective presence and not the legal form this present may take, except in certain cases concerning direct branches (see the clarification of the category of measures “Investments by Established Foreign-Controlled Enterprises”, below.)

Foreign-controlled enterprises, owned or controlled

The Declaration provides that National Treatment should be accorded to foreign-controlled enterprises owned or controlled directly or indirectly by nationals of adhering countries. However, it is not appropriate, or feasible, to follow the lines of ownership which might result in excluding companies already established in an adhering country. The key element is the recognition of the parent company as a national enterprise by an adhering government, provided that it is effectively present in the adhering country's area.

Treatment no less favourable than that accorded in like situations to domestic enterprises

As regards the expression “in like situations”, the comparison between foreign-controlled enterprises established in an adhering country and domestic enterprises in that adhering country is valid only if it is made between firms operating in the same sector. More general considerations, such as the policy objectives of adhering governments, could be taken into account to define the circumstances in which comparison between foreign-controlled and domestic enterprises is permissible inasmuch as those objectives are not contrary to the principle of National Treatment. In any case, the key to determining whether a discriminatory measure applied to foreign-controlled enterprises constitutes an exception to National Treatment is to ascertain whether the discrimination is motivated, at least in part, by the fact that the enterprises concerned are under foreign control.

Equivalent Treatment

According National Treatment to branches and other unincorporated entities of foreign-controlled enterprises may sometimes be subject to certain constraints. The Committee developed the concept of equivalent treatment to take care of situations where identical treatment cannot be accorded to these entities because of their special nature. These situations are those where prudential considerations relating to financial or insurance sector activities, or legal/technical differences preclude an adherent from according identical treatment.

These considerations, as opposed to those relating solely to foreign control, permit adherents to apply measures to branches and other unincorporated entities of foreign-controlled enterprises which differ from those applied to domestic enterprises. The difference in treatment should, however, be no greater than that which is strictly necessary to meet prudential requirements or other legal/technical differences, and should not, beyond that, result in requirements that unfavourably affect the equality of competitive opportunities on the market.

Under these circumstances, measures providing equivalent treatment conform with the National Treatment commitments and are not notified to the Organisation. Where an adherent believes that equivalent treatment is not given in a specific instance, that adherent may ask that the measure in question be reported and explained. The measure can then be examined by the Committee.

Relation to the OECD Codes of Liberalisation

The Committee has established a clear operational dividing line between the National Treatment instrument and the OECD Codes of Liberalisation, thereby avoiding any gaps or overlaps in regard to direct investment operations. The Codes deal with investment by non-resident enterprises including the right of establishment, *e.g.* limitations on non-resident (as opposed to resident) investors affecting the operations of enterprises; and other requirements set at the time of entry or establishment, even if these concern operational requirements. After entry, the treatment accorded to foreign-controlled enterprises operating in adhering countries, including new investment by already established foreign-controlled enterprises, is covered by the National Treatment instrument.

Although the scope of the instruments are quite distinct, a given measure may have to be reported under both if that measure sets conditions at the level of entry/establishment as well as on the activities of foreign-controlled enterprises already operating in the country concerned. In applying this general rule, it is necessary to look separately at the situation of subsidiaries and branches (and other non-incorporated entities).

In the case of subsidiaries, the general rule is applied without difficulty. In the case of branches, a distinction is made between “direct” branches (whose parent company is a non-resident) and “indirect” branches (whose parent company is the local subsidiary of a non-resident). “Indirect” branches are clearly covered by the National Treatment instrument in respect of all categories of measures in the same way as subsidiaries. The National Treatment instrument does not, however, cover measures concerning the investment activities of “direct” branches, (*i.e.* measures in the category of investment by established foreign-controlled enterprises). These branches are

not considered legally capable of direct investment operations on their own account. Rather, when making such investment, direct branches are considered as agents of their foreign parent which would be the beneficial owner of assets acquired. However, measures affecting investment by direct branches are covered by the Code of Liberalisation of Capital Movements. Measures in all other categories (government procurement, official aids and subsidies, access to local finance, and tax obligations) affecting “direct” branches continue to be covered by the National Treatment instrument. [See also, the clarification below of the category “Investment by established foreign-controlled enterprises”.]

Standstill

The Committee reaffirmed its understanding on standstill reached in November 1988. According to that understanding, the Committee stressed that it was particularly important that adhering governments avoid the introduction of new measures or practices which constitute exceptions to the present National Treatment instrument.¹

Non-discrimination and reciprocity

The principle of National Treatment applies regardless of the home country’s treatment of enterprises from the host country. According favourable treatment to a foreign-controlled enterprise only if the home country of the enterprise accords the same treatment to host-country enterprises, usually reflects a different motivation from other restrictive measures covered by the instrument. These measures may be thought to encourage other countries to liberalise their treatment of foreign-controlled firms in general or at least their treatment of host-country firms.

Nevertheless, one reason for allowing foreign-controlled firms to engage in business on the same basis as domestic firms is that the benefits of that investment flow to the host country regardless of whether the home country of that firm provides equal treatment to host country firms. Moreover, denial of National Treatment because of reciprocity considerations conflicts with multilateral approaches to international economic relations as embodied in the National Treatment instrument, and is an exception to National Treatment if it results in less favourable treatment for foreign-controlled enterprises than for domestic enterprises in an adhering country.

Certain exceptions to National Treatment involve reciprocity considerations by host countries. Under these measures the enterprises that are accorded National Treatment are from countries that meet the reciprocity conditions. However, the measures are exceptions because not all adhering country companies are accorded National Treatment.

Exceptions to National Treatment

Exceptions by the European Economic Community

Once it becomes a party to the OECD National Treatment Decision, the European Economic Community is expected to notify all measures which concern National Treatment. The Committee noted statements by the European Commission that these measures are intended to achieve liberalisation of investment regimes and will not result in treatment that is less favourable than that accorded before the introduction of these measures. The Committee recognised that the fundamental safeguard for third countries is that Community legislation respects Article 58 of the Treaty of Rome, the result of which is to accord National Treatment to companies or firms “formed in accordance with the law of an adhering state and having their registered office, central administration or principal place of business within the Community”.

Discriminatory measures in force but not applied

Some exceptions to the principle of National Treatment may not be applied in practice. While the non-application of a discriminatory measure is a positive feature, the continued existence of the measure is contrary to the spirit of National Treatment and contains the potential for discriminatory application. Accordingly, such measures are recorded as exceptions.

Non-discriminatory measures more burdensome for foreign-controlled enterprises

Where there are differences in treatment between the foreign-controlled enterprise and its domestic counterpart in like situations they are contrary to National Treatment and are recorded as exceptions. Measures which do not discriminate between foreign-controlled enterprises and domestic enterprises may, however, result in a difference in impact, imposing a greater burden on the foreign-controlled enterprise. Such measures are notified for transparency purposes.

Measures taken by associations or regulatory bodies

National Treatment addresses governmental measures in the form of laws, regulations and administrative practices which are discriminatory in the sense of the instrument. As long as the measures are attributable to government, they are covered by the instrument. Restrictive practices of purely private bodies, where there is no government involvement in the setting of such practices, fall outside its scope. In practice, the nature of associations or regulatory bodies is likely to vary between adhering countries; in some cases, these may be autonomous from government while in others

there may be clear government involvement. It is also possible that in some countries, the situation may fall between these two.

The Code of Liberalisation of Current Invisible Operations covers all associations and regulatory bodies in the area of banking and finance, whether or not there is government involvement. This approach avoids an imbalance of commitments between different countries, some of which regulate such associations or regulatory bodies under direct governmental authority, while others rely to a greater or lesser extent on self-regulation. The same approach is followed under the National Treatment instrument and thus restrictive conditions concerning membership of associations or regulatory bodies are covered irrespective of whether there is full, partial or no governmental involvement in the setting of such conditions.

The Code of Liberalisation of Current Invisible Operations, in addressing the banking and finance sector, includes such bodies as stock exchanges, financial futures exchanges and options exchanges. The National Treatment instrument covers the area of banking and finance to the same extent as the Code. No decision has been taken whether the National Treatment instrument covers other areas, such as the liberal professions.

Measures overlooked in good faith

All exceptions presently maintained by adhering countries are listed in Annex A to the Revised National Treatment Decision. When notifying exceptions, it is considered contrary to the understanding on standstill for adhering governments to formulate new exceptions (*e.g.* of a precautionary nature) beyond those which they presently maintained. Existing measures, inadvertently overlooked are to be promptly reported.

Monopolies

Monopolies are not exceptions in the context of the National Treatment instrument but are reported for transparency purposes.

Measures by sub-nationals

In a number of countries, those with federal or confederal institutional structures, certain laws, regulations or practices may come under the competence of local authorities. This may also be the case in countries implementing regional policies bearing on investment matters, or countries in which local authorities are granted certain powers, or in which government lands may be subject to specific legislation. Differences in laws, regulations and practices according to geographical areas may include differences in rules of establishment. Furthermore, in certain cases, establishment may be granted only for a given geographical area, implying that an enterprise

established in the geographical area concerned is not considered as established in another geographical area of the same country. The scope of the National Treatment instrument, and in particular its coverage of measures restricting new investment by a foreign-controlled enterprise already established on an adhering country's territory, has been clarified in these cases.

The Declaration refers specifically to territorial subdivisions in its Section II.3, where it states: "adhering governments will endeavour to ensure that their territorial subdivisions apply National Treatment". The issues raised by this statement are as follows:

- a) which measures are covered by Section II.3 of the Declaration rather than only by its more general Section II.1?;
- b) are measures covered by Section II.3 of the Declaration, *i.e.*, measures taken by territorial subdivisions of an adhering government, exceptions to National Treatment?

With respect to the first issue, the term "endeavour to ensure" in Section II.3 implies that this section covers the situations where an adhering country government is not in a position to "ensure" that territorial subdivisions apply National Treatment. Thus, Section II.3 refers to states, provinces, cantons, municipalities, regions and communities, but not to national government lands; and it covers the areas of legislation in which the powers of states are not subordinated to those of the national government.

The phrase "adhering governments will endeavour to ensure" (Section II.3) when contrasted with the phrase "adhering governments should" (Section II.1) indicates that adhering governments may not be in the same position when reducing or eliminating exceptions which come under Section II.3 and those under Section II.1.

An exception to National Treatment exists where all domestic enterprises, both in-state as well as out-of-state, are given the same treatment and where the foreign, out-of-state enterprise is given less favourable treatment than these domestic enterprises. However, where there are differences in the treatment of domestic enterprises, *i.e.*, between in-state and out-of-state domestic enterprises, discriminatory treatment of out-of-state foreign-controlled enterprises by the territorial subdivisions in question need not, in itself, constitute an exception to National Treatment. In such situations, however, the measures in question should be examined pragmatically, taking account of the degree to which the foreign-controlled and domestic enterprises concerned are placed in the same circumstances. Such measures are reported to the Organisation in the interests of transparency and to enable their examination.

In determining if a measure constitutes an exception, it is important to identify whether the discrimination implied by the measure is actually motivated, at least in part, by the fact that the enterprises affected are under foreign control. For measures at the national level, the definition of “foreign” is clear, but this may be less so at the level of territorial subdivisions, i.e., where all “out-of-state enterprises”, both domestic and foreign-controlled, may be treated as “foreign” to that jurisdiction.

Public order and essential security interests

The Declaration excludes from the scope of the National Treatment instrument those measures necessary to maintain public order and essential security interests. Interpretation of these concepts depends on the specific context in which they are applied and may evolve over time as circumstances warrant. However, these provisions should be applied with caution, bearing in mind the objectives of the instrument, and should not be a general escape clause from adhering governments’ commitments. Public order and security can, in certain circumstances, be interpreted to include public health. In addition, measures taken for economic, cultural or other reasons should be identified as such and should not be shielded by an excessively broad interpretation of public order and essential security interests.

Excessive recourse to public order and essential security interests as a justification for measures not conforming to National Treatment weakens the application of the instrument and raises questions about the overall balance of commitments by adhering governments. Attention is drawn to the following considerations:

- Special attention should be given to measures covered by this provision where similar measures are reported as exceptions by most adherents. While the particular circumstances of individual countries must be taken into account, coherence of the instrument requires that similar measures be classified in the same way by different countries. The key factor is whether or not security considerations are predominant.
- In some cases, for example in the transport and communications fields, circumstances have evolved and it is difficult to see how restrictions on foreign investment can be justified entirely by national security considerations.
- Where motivations are mixed, (i.e. partly commercial and partly national security) the measure should preferably be shown as an exception rather than as a transparency item. In this connection, new measures not conforming to National Treatment can be taken if genuinely justified by national security considerations, and this is true even if the country concerned previously lodged an exception for related measures in the same sector.

- Where, in respect of a particular non-conforming measure, members had lodged a reservation to the inward direct investment item of the Code of Liberalisation of Capital Movements, there is no apparent reason why the same measure cannot be reported as an exception to National Treatment, even if its motivation rests partly on national security considerations. Indeed, as the National Treatment instrument deals with enterprises already operating in the territory of the country concerned, recourse to national security concerns should be less common than under the Code.

Clarifications of exceptions by category of measures

Investment by established foreign-controlled enterprises

The National Treatment instrument makes no reference to the circumstances under which an operation by a foreign-controlled enterprise already established in an adhering governments' territory is considered as new investment. Nevertheless, the following types of operations appear to be covered by the National Treatment instrument, whether they are carried out, *inter alia*, through reinvested profits and local borrowing or with injection of fresh foreign capital:

- a) growth of the foreign-controlled enterprise;
- b) extension (by whatever technique) in the same line of business or related area;
- c) creation of new activities (by fully-owned enterprises or joint ventures) in different lines of business;
- d) participation in or take-over of existing national enterprises.

The Code of Liberalisation of Capital Movements defines direct investment as:

- a) the creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;
- b) participation in a new or existing enterprise;
- c) a long-term loan (five years or longer).

The National Treatment instrument does not refer to the sectors or activities in which the new investment of foreign-controlled enterprises already established in the country concerned is made, nor does it refer to the means of new investment, in particular the way in which new investment is financed. This implies that the instrument covers investments in all sectors of economic activity and whatever the means used.

The National Treatment instrument applies to new investment by foreign-controlled enterprises already established in adhering governments' territories. Paragraph II.1 of the Declaration covers restrictions on new

investment in certain sectors by established foreign-controlled enterprises, except where such restrictions are part of the conditions for approval of the initial investment; this latter case, as part of establishment conditions covered by the Capital Movements Code, is excluded by the provisions of Paragraph II.4 of the Declaration.

Official aids and subsidies

All adhering governments use aids and subsidies to some degree, but there exists a wide variance among individual country practices and policies. The types of official aids and subsidies which might constitute exceptions to National Treatment are classified as follows:

- i) Aids and subsidies granted by the State as a shareholder. The category covers:
 - a) the initial subscription to the capital of an enterprise;
 - b) State participation in a capital increase;
 - c) surrender by the state of return on capital invested in an enterprise;
 - d) cover of operating losses.
- ii) Official aids and subsidies designed to offset a particular cost imposed by the State itself.

In certain cases the State may seek to further its economic and social policies through its management of public enterprises or supervision of private enterprises. This may impose specific burdens on these enterprises. Such costs are sometimes offset by aids or subsidies designed to protect the viability of these enterprises.

iii) Aids provided by the State as supplier of funds

This includes external aids to enterprises of a financial or non-financial nature and which are granted by the State in connection with its counter-cyclical, industrial, sectoral, regional and other policies. It includes grants, low-interest loans, interest subsidies and State guarantees.

Measures in category iii) might be more likely to entail exceptions to National Treatment than measures in categories i) and ii). Although measures in categories i) and ii) are not exceptions to National Treatment as a general rule, some of the measures in category i) might constitute exceptions in specific circumstances.

When official aids and subsidies are provided to some, but not all, domestic enterprises in a given situation, the non-provision of such assistance to a foreign-controlled enterprise need not in itself constitute an exception to National Treatment. However, for transparency and to enable the examination of the measures concerned, such measures are reported to the Organisation.

Tax obligations

In applying the National Treatment instrument to fiscal measures, the key concern is whether a specific tax treatment is less favourable to foreign-controlled enterprises than to domestic enterprises in like situations.

It is therefore important to establish in each instance the proper level of comparison between domestic and foreign-controlled enterprises. Reference should be made to the OECD Model Double Taxation Convention which gives further indications on this issue in Article 24 dealing with non-discrimination.

National Treatment in the area of taxation raises complex issues because of governments' interest in an equitable sharing of the tax base between the country of source and the country of residence. There is also a legitimate concern to prevent tax evasion through the particular transfer pricing facilities available to international groups of affiliated enterprises. Furthermore, account has to be taken of the considerable network of bilateral tax treaties governing these matters.

Imputation systems

These systems, by granting tax credits or refunds to resident shareholders (whether or not they are nationals of the country) for all or part of the corporation tax attributable to their dividends, are designed to reduce economic double taxation of a company's income. An issue is whether, under National Treatment, foreign non-resident shareholders are entitled to the same credits or refunds as resident shareholders. The OECD's Committee on Fiscal Affairs considered this problem but has not concluded whether the non-payment of such tax credits to non-resident shareholders, especially parent companies, constitutes discrimination.

Imputation systems operate at the level of the ultimate shareholder whereas companies are taxed alike. On the other hand, the denial of tax refunds to foreign parent companies could expose an international group of affiliated enterprises to a higher tax burden as compared to domestic groups and therefore might prove an impediment for the operations of foreign-controlled enterprises. This result could be avoided if the country of residence of the parent company provided a total or partial credit for the corporation tax borne by the subsidiary abroad. The issue arises of an equitable tax sharing between the country of source and the country of residence. The Fiscal Affairs Committee noted that issues implying mutual concessions by the countries concerned can be resolved in the framework of bilateral treaties, or by allowing different tax rates for distributed and undistributed profits. It is difficult to give a clear-cut answer applicable in all circumstances. Everything considered, the problem should be left to bilateral negotiations, where the advantages and disadvantages can best be evaluated.

International allocation of central group costs

The Fiscal Affairs Committee's Report on Transfer Pricing and Multinational Enterprises examined the burden of proof for allowing the allocation of central group costs. The report noted that satisfactory evidence depends largely on the type of services rendered and on the circumstances of each individual case. To substantiate the allocation of central expenditure of a multinational enterprise, the taxpayer should submit information about the structure and organisation of the enterprise and the functions and responsibilities of its component entities. Although this may imply a greater effort on behalf of larger enterprises, in particular, multinational enterprises, the report concluded that a higher burden of proof in order to prevent tax evasion cannot be considered to discriminate against foreign-controlled enterprises. There might be National Treatment implications if, however, in similar circumstances, undue or unreasonable burdens are imposed on foreign-controlled enterprises as compared with domestic firms. Reference is also made to the first recommendation of the chapter on Taxation of the OECD Guidelines for Multinational Enterprises, which states:

“Enterprises should 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

International dividend taxes

This matter also raises the issue of government interest in maintaining an acceptable balance in sharing the tax base between the country of source and the country of residence, and avoidance or limitation of resulting double taxation. Article (10) 2 of the OECD Model Double Taxation Convention makes recommendations in this regard. The fact that not all adhering governments have followed these recommendations does not in itself constitute a departure from National Treatment. Comparison is not between the foreign-controlled subsidiary and a domestic parent but between the foreign-controlled and a domestic subsidiary in like situations. Withholding taxes on dividends reduce the return of the ultimate shareholder on his invested capital only to the extent that he does not receive a tax credit from his country of taxation. They do not directly affect the taxes borne by the subsidiary itself. Withholding taxes are anticipatory payments of the tax finally due. The incomplete elimination of double taxation is not an exception to National Treatment.

Fiscal units

Tax treatment of affiliated enterprises as a single fiscal unit, or other forms of consolidated taxation granted as exceptions to the principle of separate taxation of each entity, are generally designed to avoid economic double taxation of corporate profits and imply the possibility of off-setting gains and losses between affiliated enterprises at the national level. These measures are addressed to parent companies representing the group as a whole and, therefore, comparison for the purpose of National Treatment is between domestic and foreign parents. For tax purposes, these entities are not in a comparable situation, as domestic parents are subject to unlimited domestic corporate taxation on their total income including that derived from their subsidiaries, whereas foreign parents are generally not liable to such taxation in the host country. This consideration also applies to the so-called affiliation privilege which, as a general rule, is limited to domestic enterprises.

Unitary tax systems

Such systems may not be in accord with internationally-accepted principles of taxation of income from international investment. Insofar as they do not impose a greater burden on foreign-controlled corporations than on domestic-controlled corporations, they are not contrary to National Treatment. Factors relating to foreign corporations included in the unitary tax base may result in distortions in the assessment of income for tax purposes. These factors, however, are present whether the controlling corporation of the group is domestic or foreign.

Tax treatment of loans by foreign parent companies

The Fiscal Affairs Committee considered this issue in its Report on Transfer Pricing and Multinational Enterprises. The report discussed several approaches to deal with the legitimate concern of tax authorities to prevent the use of loans as disguised equity contributions for purposes of tax evasion. Although a “multiple criteria test” making allowance for each specific situation was considered preferable, other methods such as the application of debt-equity ratios were not rejected as unreasonable or unacceptable. Such rules are not inherently discriminatory to foreign-controlled enterprises, other than in very exceptional circumstances. The various rules and thresholds in this area in adhering countries do not constitute exceptions to National Treatment.

Pension contributions

Although existing restrictions to the deductibility of contributions to pension funds located outside the national territory apply to both domestic

and foreign-controlled enterprises, they may constitute a special burden for the latter in view of the mobility of employees within multinational enterprises. Complex international tax law issues are raised by the diversity of pension systems and the tax treatment of contributions and benefits in various countries. These differences could justify a difference in the tax treatment of the contributions. While the host country knows that the pensions of domestic residents are taxed in that country, this is not normally the case for the pensions of employees of foreign firms who retire abroad. The mobility of these employees makes the application of National Treatment unclear.

Government purchasing

Government's interest in procurement practices is underlined by the considerable efforts which have been undertaken at the international level – the National Treatment instrument, the GATT Code on Procurement Practices and the activities of the EEC. There are important differences in the geographical coverage and, particularly, in the scope of application of the OECD National Treatment instrument. Three types of discriminatory practices should be distinguished:

- i) discrimination against products and/or services supplied by a non-resident foreign enterprise;
- ii) liberal policies towards procurement of imported goods and/or services but discrimination against bids submitted by locally established foreign-controlled enterprises;
- iii) preferential treatment for local production and/or services supplied by domestic firms excluding both foreign and locally-established foreign-controlled enterprises;

A clear distinction as to the application of the GATT Code and the EEC Directives on one side, and the National Treatment instrument on the other can usually be made. Procurement of imported products from non-resident enterprises is covered by the GATT Code while procurement from locally-established enterprises falls under the National Treatment instrument. If preference is given to domestic firms over non-resident and locally-established foreign-controlled enterprises, both the GATT Code and National Treatment are relevant (within the European Economic Community, the EC Procurement Directives also apply).

Since national practices vary with respect to the determination of the origin of products, there may be uncertainty as to whether the supply of goods by locally-established foreign-controlled enterprises falls under the GATT Code or the National Treatment instrument. However, whenever the rules of origin qualify goods and services offered by foreign-controlled enterprises as

imported ones, the GATT Code applies; whereas if these goods or services are qualified as domestic ones, the OECD National Treatment instrument is relevant. Pressure on foreign enterprises to establish local production as a condition for access to government contracts, is not covered by the National Treatment instrument.

Discrimination through the use of administrative practices in the absence of clear procurement rules is one of the major obstacles to liberalisation of government purchasing. Lack of transparency, while not constituting, *per se*, an exception of National Treatment, may impose particular burdens on foreign-controlled enterprises to the extent that these enterprises are less familiar than domestic ones with the operations of national administrative procedures. In relation to National Treatment, adhering governments should take account of the clarifications on the issue of government procurement in completing their notifications, especially since notifications of publicly available laws and regulations may not provide an adequate picture of the actual situation.

A second aspect of government procurement practices involves government purchasing and public contract activities of public enterprises and other entities under public control or supervision. Purchasing practices of public or semi-public enterprises is an area of concern, particularly since a majority of adhering governments maintain public monopolies in significant economic areas, including telecommunications and transportation. The area of defence-related purchasing by the government, or by entities under public control, is one where preferential policies for domestic products and services may be more prevalent than is actually perceived. This may be due to the fact that activities in this area are linked to national security concerns. These concerns should not mask considerations of a more economic nature, including the development of indigenous industries, especially where products destined for military or defence purposes also have important civilian applications.

In addition to these purchasing practices, discriminatory practices may be taken by these entities through government policies which may restrict, for example, their freedom to subcontract. The Committee has not yet reached a decision on whether the National Treatment instrument applies to either discriminatory purchasing or awarding of public contracts by public enterprises or entities under public control. The issue for consideration is whether or not the government owned or controlled enterprise is managed on a commercial basis with no government interference in its transactions including procurement practices. The existence of public, private, or mixed monopolies and areas subject to concession is in any case to be reported for transparency purposes and the obligations of the National Treatment instrument as concerns government procurement apply to the procurement

of goods as well as services, and to all government measures whether taken on the national or subnational level.

The Committee has focused on the role of the government in buying goods and services. But the government (for example through its public monopolies and other entities under public control) may equally sell goods and services. On a parallel basis, the provision or sale of goods and services by the government (e.g. telecommunications services) in a discriminatory manner (e.g., preferential access or preferential financial, technical or other practices) also appears to be, contrary to the objectives of the instrument. In addition, discriminatory conditions for access to basic network services and other facilities provided by public utilities can imply significant competitive disadvantages to foreign-controlled enterprises or even effectively deny their access to certain markets.

Access to local finance

This issue concerns both the position of foreign-owned banks and other financial institutions in gaining access to funds of local origin in particular deposits, as well as the access of foreign-owned financial and non-financial companies to local credit.

Financial institutions

Some adhering countries' laws, regulations and practices restrict the possibility for banks operating in the country concerned to open branches or agencies for the purpose of taking deposits. Similar measures may sometimes apply to other types of financial institutions, for example, insurance companies wishing to set up branches or agencies for the purpose of canvassing. Such measures can restrict the access to that part of the local capital market consisting of domestic deposits. However, a locally incorporated bank that opens a new branch for the purpose of taking deposits extends the activities of that bank. Such an operation would thus rather fall under the category of "investment by established foreign-controlled enterprises".

On the other hand, obtaining a loan from another financial institution is not considered as expanding the activities of an established foreign-controlled bank. Thus, any measure affecting such loans which discriminates against foreign-controlled banks (or enterprises) operating in the country concerned, is an exception to National Treatment under the category "access to bank credit and the local capital market". Such exceptions might restrict the foreign-controlled banks in question (preventing them for instance from borrowing from certain domestic lenders) or the potential domestic lenders (imposing on them restrictions as to their loans to foreign-controlled banks).

The coverage of the National Treatment instrument may not be easily determined as concerns such measures as credit controls, lending requirements to certain sectors, requirements that banks' loan portfolios maintain a specified term structure, reserve requirements, other measures concerning deposits, capital asset ratios or swap limits. In principle, they are exceptions to National Treatment only if they discriminate against foreign-controlled banks or financial institutions operating in an adhering country *vis-à-vis* domestic banks or financial institutions in like situations. If discriminatory measures affect foreign-owned subsidiaries incorporated under local law, the exception to National Treatment is apparent. But measures applied to local branches of banks under foreign control are motivated by prudential concerns such as consumer protection. In determining whether measures applied to local branches of banks under foreign control are exceptions to National Treatment, comparisons should not be limited to those with branches under domestic control. Account should be taken of specific circumstances applying in each case, relating, for instance, to the commitment of local branches under foreign control in a way comparable to the capital stock of domestic enterprises. The answer should be guided by applying the "equivalent treatment" principle (see above).

Financial and non-financial institutions

Another issue is that of the access of foreign-controlled enterprises, whether financial or non-financial, operating in an adhering country to special credit institutions, or special credit lines in the context of policies involving credit control. Measures restricting access to such advantages are exceptions to National Treatment if they treat the foreign-controlled enterprises less favourably than domestic enterprises in like situations. Where the credits concerned are not provided at market prices or at the conditions generally prevailing in that country for the category of borrowers concerned, the discriminatory measures relate to both "government aids and subsidies" and "access to bank credit and local capital markets" and both categories of exceptions apply. Where the credits concerned are provided at market prices or on conditions generally prevailing in that country for the category of borrowers concerned, a discriminatory measure relates only to the "access to local finance" category.

Notes

1. The understanding reached by the Committee on a standstill on National Treatment Measures in November 1988 was as follows: "In the context of its continued discussion of extending the application of National Treatment, the Committee noted that Ministers had also called for the avoidance of back-sliding by Member countries (Ministerial Council communiqué of 19th May 1988). In order

to comply with the intention expressed by Ministers in this regard, the Committee stressed that it is particularly important, in the period leading up to the completion of the 1990 Review of the OECD Declaration and Decisions on International Investment and Multinational Enterprises and to the adoption of a possible new and strengthened National Treatment instrument, that Member countries avoid the introduction of new measures or practices which constitute exceptions to the present National Treatment instrument. The Committee further agreed that it would pay particular attention to this question in its regular follow-up of changes in practices and policies in adhering countries.”

2. The OECD Guidelines for Multinational Enterprises were revised in June 2000 (www.oecd.org/daf/investment/guidelines). The text of the Taxation Chapter now reads as follows:

“It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s length principle.”

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National Treatment for Foreign-Controlled Enterprises

OECD member and other countries adhering to the Declaration on International Investment and Multinational Enterprises have declared that enterprises from adhering countries should be accorded National Treatment in their territory. This means that, in like situations, enterprises controlled by nationals of another adhering country should be treated by the host government no less favourably than domestic enterprises. This publication describes the main features of the OECD National Treatment instrument and contains a complete survey of adhering governments' measures relating to National Treatment.

The full text of this book is available on line via this link:
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