1-1-1979

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Peter N. Wakkie

Recommended Citation
Available at: http://digitalcommons.lmu.edu/ilr/vol2/iss1/5
Some Comments on the Impact of the OECD Guidelines For Multinational Enterprises on European Employment Relations

by Peter N. Wakkie*

I. INTRODUCTION**

In recent years the multinational enterprise has been in the center of public attention. Developing countries in particular are often suspicious of the financial, economic, social, and political power with which the multinational enterprise is credited. In trade-union circles the multinational enterprise has also been the subject of critical discussion. Nevertheless, most developing countries welcome investments by multinational enterprises in their countries as a means of increasing the volume of employment and standard of living and facilitating the transfer of advanced Western technology.

This love-hate relationship has several causes. First, there have been a few isolated cases of questionable behavior by multinational enterprises which have been generalized. A second cause may be the multinational enterprise's often complicated and, to the nonexpert, frequently Byzantine organizational structure. Finally, the multinational enterprise must conform to the divergent national laws, regulations, and customs of various host countries. The existence of local controls often conflicts with the multinational enterprise's natural desire for intergovernmental coordination of policies, laws, and regulations which control multinational operations. This conflict be-

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* Mr. Wakkie is resident partner of the New York branch office of the law firm of deBrauw en Helbach, which is based in The Hague, The Netherlands. He holds a Master of Laws degree from the University of Utrecht. Mr. Wakkie is active in the ABA, the Association of the Bar of the City of New York, the Netherlands Order of Attorneys, and the Order of Attorneys at the Supreme Court of the Netherlands.

** This article is based on a presentation by the author at the American Bar Association National Institute on "Worldwide Legal Challenges to U.S. Transnational Businesses" held December 15-16, 1978, in New York City. The Guidelines for this article are updated through February 1979.


tween the need for local control and international unification often leads to tension. 3

On the international level, this continuing debate about the role of the multinational enterprise has tended to polarize along economic lines. The less developed countries stress the need for stringent local controls on multinationals while the developed countries favor some restraint upon such controls. 4 It has also been recognized that any viable set of universal guidelines must ultimately spring from a synthesis of these two views. 5 While the less developed countries have expressed their thoughts on such guidelines in the United Nations Commission on Transnational Corporations, the governments of the countries united in the Organization for Economic Cooperation and Development (OECD) have published a joint Declaration on International Investment and Multinational Enterprises. 6 Before discussing the importance of this document, it may be instructive to describe the OECD in a few words.

II. The History and Structure of the OECD

The OECD was created on December 14, 1960, as successor to the Organization for European Economic Cooperation (OEEC). This last mentioned organization, established on April 16, 1948, was created to administer the funds made available to sixteen European countries by the United States under the so-called Marshall plan and to promote the associated program of European cooperation. After termination of the Marshall plan, non-European industrialized countries gradually became members of the OEEC (which had meanwhile become the OECD). 7 The present members of the OECD are Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

The OECD has thus become an organization for economic con-

3. Id. at 425.
5. Id. at 190-93.
6. OECD Doc. PRESS/A(76)20 (1976), app. I infra [hereinafter cited as Declaration]. It took 18 months of preparation to draft a code that was acceptable to the divergent political views. Eventually, all the OECD member states except Turkey agreed to the code.
7. Weisglas, supra note 2, at 429.
consultation and cooperation between the governments of the Western industrialized world which enjoys considerable authority. The highest authority within the OECD is vested in the Council, which consists of representatives from all the member states. The Secretary-General of the OECD is the chairman of the Council. Within the Council there is an executive committee of varying composition which deals with the current affairs. The Council may create committees for various purposes and by resolution of January 21, 1975, exercised this power to appoint the Committee on International Investments and Multinational Enterprises (IME Committee). The IME Committee, broadly speaking, has been assigned the tasks of supervising the implementation of the Declaration on International Investment and Multinational Enterprises and coordinating intergovernmental consultation on this subject.

Since the OECD is an organization of governments, business and labor organizations cannot be members. However, employers’ organizations and trade unions from the various OECD member states have organized the Business and Industry Advisory Committee (BIAC) and Trade Union Advisory Committee (TUAC), respectively. Both BIAC and TUAC enjoy a consultative status at the OECD.

III. THE OECD DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

The June 21, 1976, OECD Declaration on International Investment and Multinational Enterprises consists of five articles8 which generally recognize the positive contributions that multinational enterprises have made to international investment and economic and social progress. The signatories’ declared aim is to encourage these positive contributions and to minimize and resolve difficulties which may arise from the operations of multinational enterprises.9 In article 1 of the Declaration, the governments jointly recommend that multinational enterprises operating in their territories observe the Guidelines as set forth in the annex thereto.10 The phrase “operating in their territories” indicates that the OECD member states intend to limit the territorial application of the Guidelines to

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10. Id. paras. 1-4.
11. Id. art. I.
the OECD member states themselves. However, in the third para-
graph of the considerations which introduce the Guidelines, the
OECD member states expressly endorse the principle of interna-
tional cooperation with nonmember countries in this area. This is
apparently a reference to efforts undertaken by the United Nations
Commission on Transnational Corporations to draft a worldwide
code of conduct applying to OECD, communist, and developing
countries.\textsuperscript{12}

Article II of the Declaration imposes upon each government the
obligation to treat foreign controlled enterprises operating in its
territory no less favorably than domestic enterprises.\textsuperscript{13} This concept
is referred to in the Declaration as the concept of "national treat-
ment" and prohibits a government from discriminating between
foreign controlled and domestically controlled companies.\textsuperscript{14} But a
recent report, made at the initiative of the IME Committee, reveals
that each OECD member state continues to maintain discrimina-
tory measures in one or more of the following areas: tax obligations,
rights to official aids and subsidies, access to local bank credit and
capital markets, government purchasing and public contracts, in-
vestment by established foreign controlled enterprises, and the own-
ership and operation of aircraft and vessels.\textsuperscript{15}

Although the wording of article II indicates that each govern-
ment should abolish such discriminatory measures forthwith, this
literal interpretation was apparently not intended. The OECD
Council resolution on national treatment\textsuperscript{16} indicates that the gov-
ernments have agreed merely to notify the IME Committee of exist-
ing and new exceptions to the principle of national treatment. In the
case of new exceptions, an explanation of the reasons therefor and
the proposed duration thereof is required.\textsuperscript{17} The IME Committee is

\begin{footnotes}
\item[13] See Declaration, supra note 6, art. II. It should be noted that discriminatory mea-
sures taken by member states which are "consistent with their needs to maintain public
order, to protect their essential security interests and to fulfill commitments relating to
international peace and security" are condoned by article II (1) of the Declaration. Neverthe-
less, it would seem that few discriminatory measures fall into these categories.
\item[14] Id.
\item[15] OECD, National Treatment for Foreign Controlled Enterprises Established in
OECD Countries. The decision to de-restrict this document was made on September 15,
1978. See also OECD, International Investment and Multinational Enterprises, OECD Doc.
21(76)04/1 (1976) [hereinafter cited as International Investment].
\item[16] Decision of the Council on National Treatment, app. IV infra. See also International
\item[17] Id. arts. 1-2.
\end{footnotes}
expected to make proposals to extend the future application of national treatment. It may be somewhat disappointing to multinationals that what seems to be a firm commitment on the part of governments to abolish discriminatory measures forthwith is essentially a mere notification procedure. Some OECD members do not interpret the responsibilities which they have asked multinationals to observe in this lenient way.

Articles III and IV of the Declaration deal with international investment incentives, disincentives and consultation procedures, respectively, and these have been implemented by OECD Council resolutions. The OECD Council resolution on consultation procedures contains a provision to the effect that the IME Committee, when reviewing the application of the Guidelines, “shall not reach conclusions on the conduct of individual enterprises.” Finally, article V provides for review of the above matters within three years.

IV. THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The Guidelines for Multinational Enterprises are attached to the aforementioned Declaration and, together with the Declaration and the OECD Council resolutions, are intended to form a homogeneous set of rules. The Guidelines consist of an introduction followed by these sections: General Policies, Disclosure of Information, Competition, Financing, Taxation, Employment and Industrial Relations, and Science and Technology.

The innovative section on employment and industrial relations has generated the most controversy and will be of the most import to the international law practitioner. The scope and status of this section, and indeed of the Guidelines themselves, is unclear. Article 8 of the introduction to the Guidelines notes that “a precise legal

18. Id. art. 4.
19. See note 77 infra and accompanying text.
20. Declaration, supra note 6, arts. III-IV.
21. Decision of the Council on Inter-Governmental Consultation Procedures on the Guidelines for Multinational Enterprises, app. III infra, art. 3 [hereinafter cited as Inter-Governmental Consultation Procedures Council].
22. OECD Doc. PRESS/A(76)20 (1976), app. II infra [hereinafter cited as Guidelines]. Article 5 of the introduction to the Guidelines states that, “[t]he initial phase of the cooperation programme is composed of a Declaration and three Decisions promulgated simultaneously as they are complementary and inter-connected, in respect of guidelines for multinational enterprises, national treatment for foreign-controlled enterprises and international investment incentives and disincentives.” (Emphasis added.) The Guidelines are an annex to the Declaration and form an integral part thereof.
definition of multinational enterprises is not required for the purposes of the Guidelines.” Nevertheless, article 8 describes the characteristics of the multinational enterprise. It notes that multinational enterprises usually comprise

companies or other entities . . . established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and in particular to share knowledge and resources with the others. This description, it seems, makes sufficiently clear which entities fall within the scope of the Guidelines.

Article 8 contains another important concept which defines the scope of the Guidelines. Since within a multinational enterprise decisions are not always made at the locus or the level where they will have effect, the second part of article 8 provides that

[the] guidelines are addressed to the various entities within the multinational enterprise (parent companies and/or local entities) according to the actual distribution of responsibilities among them on the understanding that they will co-operate and provide assistance to one another as necessary to facilitate observance of the guidelines.

The Belgian government has construed this provision to mean that where the parent company exercises significant influence over its subsidiary and makes the decision to close it down, the parent company must ensure that the subsidiary can meet its responsibilities to its employees to the extent the Guidelines impose such responsibilities. This interpretation seems to be supported by reference to the last sentence of article 8, which provides as follows:

The word “enterprise” as used in these guidelines refers to these various entities in accordance with their responsibilities.

Article 9 contains another important concept which extends the sweep of the Guidelines by providing that observance of the Guide-

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23. Id. art. 8. This statement must be understood in the context of article 6 of the same introduction, which provides that “[o]bservance of the guidelines is voluntary and not legally enforceable.” It is indeed understandable that, since the Guidelines do not purport to be a legally enforceable instrument, a precise legal definition of what constitutes a “multinational enterprise” has been omitted. See Schmitthoff, Group Liability of Multinationals, in LEGAL PROBLEMS OF MULTINATIONAL CORPORATIONS 71 (K. Simmonds ed. 1977).
24. Guidelines, supra note 22, art. 8.
25. Id.
26. See notes 41-58 infra and accompanying text.
27. Guidelines, supra note 22, art. 8.
lines is recommended to both multinational and domestic enterprises whenever relevant to both. Obviously, those Guidelines which presuppose the existence of international activities cannot apply to domestic enterprises which have no operations outside their country of domicile. However, many of the Guidelines are also relevant to domestic enterprises. In this connection the converse question arises as to whether an OECD member state may demand that a multinational enterprise operating in its territory observe a Guideline when the government does not demand the same compliance from a domestic enterprise.

V. GENERAL PROVISIONS OF THE SECTION ON EMPLOYMENT AND INDUSTRIAL RELATIONS

The controversial nature of the Guideline sections with respect to employment and industrial relations has already been mentioned. The first article of this section recognizes the right of employees to be represented by trade unions and other bona fide organizations of employees and imposes on the multinational enterprise the obligation to negotiate with such trade union or other bona fide organization. The language of this article seems to indicate that not every organization which labels itself a trade union qualifies thereunder as a bargaining partner. To qualify as such, the trade union must "represent" employees of the enterprise concerned. It is unclear when a trade union satisfies this requirement under the article. This question must apparently be resolved on the basis of the law and practice of each country where such an issue arises.

The third article requires the submission of information on the multinational enterprise as a whole. This requirement appears superfluous, since the section on disclosure of information requires

28. Id. art. 9.
   It should be emphasized that there are very few elements in the Guidelines that apply to uniquely international types of operations or activities in which only multinational companies would be involved. The kinds of responsibilities imposed on multinationals here are simply international parallels of what would be proper standards of business practice domestically.
   Id. at 15.
30. See note 52 infra and accompanying text.
31. See notes 22-23 infra and accompanying text.
32. Guidelines, supra note 22, art. 1.
33. Id.
34. Id. art. 3.
more extensive information on the multinational as a whole. The fourth and fifth articles will probably not raise many interpretive problems. The sixth and seventh articles provide for notice to employees in the event of a change in operations which affects employment and for a prohibition on discriminatory hiring practices, respectively.

The eighth article has been the subject of discussion in a case involving the Hertz Rent-a-Car Company. In October 1976, Hertz employees in Denmark went on strike in support of a demand for a salary increase. The company subsequently moved employees from its other branches in Europe to keep its operation in Denmark going. Although the wording of article 8 does not directly prohibit the "import" of employees to the plant affected by the strike, some have contended that this practice unfairly influences the outcome of labor disputes and therefore violates the spirit of this article. This contention is open to dispute, since it may be argued that a company has the right to move employees from other branches in order to minimize its damages as much as possible. In addition, where only a percentage of the employees are on strike, as is frequently the case, it may be maintained that the company is acting in the best interests of those who are not on strike by keeping the business going.

The ninth article has given rise to some concern, because labor organizations have construed it to require negotiations regarding collective bargaining between the international trade unions and the top management of multinationals. A contrary construction seems more in accord with the language of article 9 itself. First, since the article refers to "authorized representatives of their employees," the international trade union will seldom, if ever, qualify as a bargaining partner under the Guidelines. The international trade union rarely receives a mandate from national unions to conduct collective bargaining on behalf of the employees of such national unions. Conflicting national interests and the desire of national unions to retain their autonomy have prevented this development so far. Apart from this, it is hard to see how one international

35. Id. arts. 4-5.
36. Id. arts. 6-7.
37. See A BUSINESS APPRAISAL, supra note 29, at 109.
38. The matter was debated at the European Assembly in Luxembourg and a resolution was passed condemning the misuse of "free movement of labour." Id.
trade union could effectively bargain on behalf of employees in different countries, where there are different wages, social security systems, taxes and employment conditions. The language of the Guidelines may be construed as recognizing that this task is more properly left to national labor unions. In addition, article 9 does not define the level of management at which negotiations must be conducted. As long as those who sit around the table on the company side are authorized to make decisions on the issues under consideration, the requirements of the Guidelines are satisfied. Much will therefore depend on the decision-making process within each multinational enterprise. It may be assumed that, in general, the management of a subsidiary has a rather broad power of attorney to make decisions in negotiations with trade unions on employment conditions and related issues concerning the subsidiary.40

VI. THE SECTION ON EMPLOYMENT AND INDUSTRIAL RELATIONS IN PRACTICE

A. The Badger Case

The section on employment and industrial relations, and in particular article 6 thereof, has drawn attention in connection with the Badger case.41 Badger concerned the closing down of Badger (Belgium) N.V., a subsidiary of The Badger Company, Inc. (Badger), based on Massachusetts, which itself is an affiliate of Raytheon, Incorporated. As a result of the Belgian company's failure, its 250 employees were dismissed, although some of them were subsequently hired by other Badger affiliates.42 Under Belgian law, dismissed employees are generally entitled to substantial severance payments. The size of these payments depends on the age, function, salary, length of service and the likelihood of obtaining future employment among those affected. In this case, employees claimed the equivalent of approximately $6 million. Badger (Belgium) N.V., which had been a solvent company, was able to pay only half this amount and went bankrupt.43 The Belgian government, joined by trade unions, turned to the American parent, Badger, with the request that it supply its subsidiary with funds to pay the other half of the required severance payments. Badger initially refused, invoking the principle of limited liability afforded to the shareholders of

41. See Blanpain, supra note 39.
42. Id. at 51.
43. Id. at 76.
a limited liability corporation under Belgian law. The Belgian government, however, continued to exert pressure on Badger and finally brought the matter up for discussion in the IME Committee.

The Belgian government contended that under the OECD Guidelines, Badger was responsible for severance payments to the employees of its subsidiary. The Belgian position relied upon article 8 of the introduction to the Guidelines and article 6 of the section on employment and industrial relations. It was submitted that article 8 obliges the parent company to enable its subsidiary to meet its obligations to its employees, in the event that the parent company, as was Badger, is responsible for the decision to close down the subsidiary. Article 6 defines the scope of these obligations. It provides inter alia for cooperation with the employee representatives and appropriate governmental authorities "so as to mitigate to the maximum extent practicable adverse effects" on the dismissed employees. These last words, it was submitted, imply that Badger was obligated to ensure that the dismissed employees received no less than the amount they were entitled to under Belgian law. It is interesting to note that the trade unions accused Badger of having maneuvered its subsidiary into an unprofitable position, forcing it to accept orders without adequate remuneration. However, these and other contentions have been disputed by Badger, and their correctness or incorrectness has never been determined; the only facts which appear to have been established are that Badger, by itself and through its Dutch affiliate, had always exercised significant control over the subsidiary and was responsible for the decision to close the subsidiary. The IME Committee discussed the Badger case in its meeting of March 31, 1977; Badger was not represented.

Although the minutes of this meeting are confidential, the Belgian delegation emerged with a statement that the conclusions of the debate were as follows:

1. the subsidiary enterprise is obliged to live up to the national laws of the country in which it operates; this is the Belgian law;

44. Code de Commerce [CDC] bk. I, tit. IX, art. 26 (Belg.).
45. Blanpain, supra note 39, at 114, 131.
46. Id. at 105-07, 114.
47. Id. at 95-96.
48. Inter-Governmental Consultation Procedures Council, supra note 21, art. 3 provides that individual enterprises can express their views concerning the application of the Guidelines if invited to do so by the IME Committee at the proposal of a member state. The Belgian government proposed that the IME Committee invite Badger to present its views on the Guidelines but the Committee did not extend an invitation.
2. the OECD guidelines refer to the company as a whole;
3. the parent company is, under certain circumstances, morally
   responsible for the liabilities of its local entities.49

Subsequent to the IME Committee meeting, the Belgian govern-
ment and Badger entered into negotiations on the size of the supple-
ment Badger should pay to its subsidiary. The settlement ulti-
mately agreed upon amounted to approximately 25 million Belgian
francs (approximately U.S. $650,000). This is substantially less
than the amount originally demanded. However, Badger estab-
lished an important precedent among multinational enterprises by
recognizing the principle of responsibility to its subsidiary's
employees.

**B. Badger and the Principle of Equal
Treatment for Foreign and Domestic Entities**

The principle of national treatment was an important issue in
the Badger case. Under the Guidelines, domestic and foreign con-
trolled enterprises are subject to the same standards with respect to
their conduct wherever the Guidelines are relevant to both.51 Fur-
thermore, each government has assumed the responsibility to treat
foreign controlled enterprises no less favorably than domestic enter-
prises.52 It then follows from these two propositions that the Belgian
government could rightly exert pressure on Badger only if it also
exerted similar pressure on domestic shareholders of other Belgian
companies under the same circumstances. A representative of
Badger voiced this position to the Belgian government:

[O]f the several bankruptcies of Belgian national companies
within the recent past, I am not aware of any accusation or pres-
sure put on the shareholders of these companies to be responsible
for debts over and above the net worth of the company. I have
been led to believe that in cases of bankruptcy of national compa-
nies the indemnity fund has made up any deficit not covered by
the assets of the company, to meet severance pay of employees.53

The Belgian government did not satisfactorily answer this state-
ment.54 The Belgian Secretary of State at one time said that his

49. BLANPAIN, supra note 39, at 116-17.
50. Id. at 123-24.
51. Guidelines, supra note 22, art. 9.
52. Declaration, supra note 6, art. II.
53. BLANPAIN, supra note 39, at 109.
54. See Aalders, Sociale Gedsagsrels Voor Multinationale in Sociaal Maandblad Arbeid
(1978).
views concerning the responsibility of the parent company would be the same if both the parent company and the subsidiary were Belgian enterprises. This statement implied that the Belgian government had never before undertaken action such as that in the Badger case, although the closing down and subsequent bankruptcy of subsidiaries is not an exceptional phenomenon. There have been no subsequent reports of similar governmental pressure applied to domestic shareholders of closed down, bankrupt Belgian subsidiaries. The Belgian government's actions can therefore hardly be reconciled with the principle of national treatment.

C. The Role of the IME Committee

Another aspect of the Badger case which merits further consideration is the role of the IME Committee. The Committee decided to hear the principles involved in the Badger case, although by its own rules, it "shall not reach conclusions on the conduct of individual enterprises." The Committee defended its action by noting:

The discussions could not and did not focus on the merits of the case; the Committee did not examine or question the factual situation but accepted the facts as put forward by the Belgian government and used them as an illustration which could help to clarify the meaning of a text the Committee itself has negotiated some months ago.

The Committee's approach is understandable, since clarifying the rather vague Guidelines without using concrete examples is not easy. Nevertheless, the Committee's approach has disadvantages. Public and press will not always realize, or indeed want to realize, that the Committee does not investigate the facts as presented to it, and that the Committee's decision is not binding upon the particular multinational enterprise utilized as an "example." Indeed, after the Belgian delegation summarized the debate of the IME Committee in the Badger case, the Belgian news media hailed the outcome of this meeting as a moral condemnation of Badger, although according to its own statement, the Committee did not examine or question the facts presented by the Belgian government and disputed, for the most part, by Badger, which was unrepresented at the Committee hearing.

55. BLANPAIN, supra note 39, at 115 n.130.
56. Inter-Governmental Consultation Procedures Council, supra note 21, art. 3.
58. BLANPAIN, supra note 39, at 117.
D. The Batco Case

The Batco case arose from the actions of Batco Nederland B.V. (Batco) an affiliate of the British multinational, British American Tobacco Company. In December 1977, Batco announced that it would close down its Amsterdam plant; as a result, more than 200 employees would become jobless. The cigarette production of the Amsterdam plant was to be taken over by a Belgian subsidiary of the British American Tobacco Company.

A local trade union initiated successful litigation in the Dutch courts. The president of the Amsterdam District Court granted an injunction against Batco on March 9, 1978, prohibiting the company from implementing its disinvestment plans for a period of one year. The president held inter alia that Batco's management had not timely and adequately consulted the local employees' council concerning the contemplated measures. Such prompt and adequate consultation is required by article 25 of the Dutch Act on Employees' Councils.

The merits of the president's opinion are outside the scope of this article, since the decision was grounded exclusively on a violation of Dutch law connected with the particular circumstances of the case. What is of interest, however, is the trade union's express allegation that the OECD Guidelines had also been violated. The president declined to address this contention in his opinion. A logical inference of this avoidance is that the Dutch court considers the Guidelines to be voluntary and not legally binding on the company.

The Dutch government placed the Batco decision before the IME Committee to determine whether the Guidelines limit a multinational's ability to make disinvestment decisions where, as the trade union maintains, the entity to be closed down is profitable. It is to be expected that the IME will answer in accordance with the terms of the Guidelines themselves, that the Guidelines do not limit the multinational's right to discontinue its investment in a certain country.

It should be noted that the section on employment and industrial relations, in particular article 6 thereof, is not concerned with disinvestment decisions as such, but only with the consequences thereof, which must be mitigated to the extent possible.

60. Id. at 165.
Second, while the section on general policies demands attention to the established general policy objectives, aims and priorities of the member states with regard to economic and social progress, this language does not specifically limit a multinational enterprise's power to disinvest. The section merely urges that multinationals take into account the interests of the member state concerned to the extent possible, in undertaking a decision to disinvest. Though article 5 prohibits a multinational enterprise from utilizing its affiliates to implement restrictive business practices, this provision does not appear to apply to the majority of multinational disinvestments.

The foregoing analysis should apply equally to the case in which the closed down entity is a profitable one. Although the trade union involved in the *Batco* case has submitted that the Amsterdam plant demonstrated positive performance records and there are no economic reasons to close it, it is hardly conceivable that anyone would close a genuinely lucrative operation. Although the Amsterdam plant as an isolated unit may have been profitable, there may be equally compelling reasons, relating to the multinational as a whole, which require the rationalization of operations, perhaps to avoid serious problems which arise in other areas. Nothing in the Guidelines purports to restrict a multinational's discretion to determine the profitability of a particular enterprise by reference to its operations in other markets.

It must be borne in mind that while the Guidelines do not appear to limit the multinational's ability to disinvest, the local laws of each jurisdiction may provide some obstacles. For example, in France, collective dismissals for economic reasons are subject to prior approval of an administrative agency. Under French law, the employer who sends letters of dismissal without having secured this authorization may have to pay considerable fines and indemnities. In the Netherlands, collective dismissals are also subject to the approval of an administrative agency. Failing such approval, the employment contracts cannot be validly terminated. In Germany, the employer must reach a compromise with the works council on the amount of compensation to be paid for the disadvantages which the employees will suffer as a consequence of the contemplated disinvestment. Failing agreement, an arbitration committee shall decide the issue. Furthermore, the Council of the European Eco-

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64. German Works Council Act of 1972, paras. 111-12.
nomic Community adopted a directive on collective dismissals on February 17, 1975, which lays down certain minimum procedural standards to be followed in the handling of redundancies. These procedural standards entail the obligation to consult workers' representatives on the contemplated measures in order to determine means of avoiding collective redundancies or reducing the number of workers affected and mitigating the consequences. Also, the employer must notify the competent public authority and give all relevant information, and projected redundancies may not take effect earlier than thirty days after this notification.

E. The Voluntary Character of the Guidelines

There is a noticeable and understandable tendency to treat the Guidelines as if they are binding rules rather than nonbinding and unenforceable recommendations. Indeed, as the result in the Badger case demonstrates, in practice, the observance of the Guidelines may prove to be less optional than their terms would indicate. It is entirely plausible that decision-makers within multinational enterprises recognize that they must comply with the Guidelines—even with those provisions to which they do not agree—in order to avoid adverse press publicity and trade union charges of misbehavior. It must also be remembered in this connection that the Guidelines have been jointly recommended by the governments of twenty-three countries, which account for 60 percent of the world's industrial production and 70 percent of its trade, and which are the home countries for over 90 percent of the world's multinational corporations. In addition, BIAC and TUAC have issued statements in support of the Guidelines on behalf of the employer and labor organizations, respectively. The United States Senate, the European Parliament, and the Council of Europe, as well as many multinational enterprises, have also endorsed the Guidelines.

66. Id. art. 2.
67. Id. art. 3.
69. See note 11 supra and accompanying text.
70. A BUSINESS APPRAISAL, supra note 29, at 5.
72. See EUR. PARL. RES., PB 0118 of May 16, 1976 (Apr. 19, 1977); EUR. CONSULT. ADV. ASS'N, 14TH ORD. SESS., Res. no. 666 (1977); EUR. CONSULT, ADV. ASS'N, 28TH ORD. SESS., Res. no. 639 (1976).
Because of this consensus, a multinational enterprise which flaunts or ignores the Guidelines may do serious damage to its reputation.

VI. THE GUIDELINES AND THE UNITED NATIONS CODE OF CONDUCT

The OECD Declaration and Guidelines possess independent significance as embodiments of important concepts which both Western governments and multinational corporations want to include in any future guidelines which may be codified by other organizations. The most important of these concepts are the voluntary character of the OECD Guidelines, the provisions covering obligations of multinationals and governments alike, and the principle of equal, or national, treatment to multinational enterprises by host country governments. It is significant that these three points are exactly those upon which there is the greatest difference of opinion between the OECD member states and the developing countries in the United Nations Commission on Transnational Corporations. This commission was established in 1974 by the United Nations Economic and Social Council to draft a worldwide code of conduct for multinationals; the code is still a long way from completion. Many of the developing countries perceive the role of multinationals in terms far different than those of the industrialized countries.

Developing countries feel that multinationals should contribute to increasing the welfare and standard of living in their countries and conform to their national policies, without the benefit of well defined and objective standards to protect industrial and intellectual property against arbitrary and discriminatory confiscation by the host country. Consequently, the developing countries aim at a mandatory rather than voluntary code, which would impose obligations upon multinationals, not upon host governments, and which would not embody the concept of equal treatment of multinational and domestic corporations by host countries.

73. A Business Appraisal, supra note 29, at 108.
76. See Sanders, TVVS ONVERNEMINGSRECHT 257 (1978).
VII. EXPECTED DEVELOPMENTS

Whatever the outcome following the review of the OECD Declaration, Guidelines and OECD Council resolutions, it is reasonable to expect that there will be pressure from various OECD member states to expand the powers of the IME Committee, either by explicitly giving the Committee the power to investigate the facts of a case about which a complaint is made, or by giving the Committee the even wider power to investigate the facts of a case and render a decision on the merits.

The grant of such adjudicatory powers would certainly deviate from the original spirit of the Guidelines and such a move would be likely to meet with strong opposition. The United States, in particular, can be expected to resist any attempt to convert the IME Committee into an international tribunal. Beyond the determined opposition from certain OECD members, there are other problems inherent in such a step. In their present form, many of the Guidelines are simply too vague to be of much assistance in judicial analysis. In addition, there is the problem of implementing procedures for the appointment of such an expanded tribunal, not to mention the hurdles involved in drafting a workable jurisdictional statute.

If opposition prevents the expansion of the IME Committee’s powers, particularly the power to investigate the facts of a particular case about which a complaint is made, it is conceivable that some member states will be moved to unilaterally incorporate certain of the Guidelines into their municipal law, rendering them legally enforceable. Such a step would probably be delayed as long as possible, for fear of creating an adverse effect on foreign investment, but some countries may be forced to such action if no progress can be reported from the OECD front. The mere existence of the Guidelines indicates support for the principles which they embody. It is only natural that certain governments may want to strengthen those principles.
APPENDIX I

DECLARATION
ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES
(21st June 1976)

THE GOVERNMENTS OF OECD MEMBER COUNTRIES

CONSIDERING

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

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

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

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

DECLARE:

Guidelines for Multinational Enterprises

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

National Treatment

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

2. that Member countries will consider applying "National Treatment" in respect of countries other than Member countries;

3. that Member countries will endeavor to ensure that their territorial subdivisions apply "National Treatment;"

4. that this Declaration does not deal with the right of Member countries to regulate the entry of foreign investment of the conditions of establishment of foreign enterprises;

International Investment Incentives and Disincentives

III. 1. that they recognize the need to strengthen their cooperation in the field of international direct investment;

2. that they thus recognize the need to give due weight to the interests of Member countries affected by specific laws, regulations and administrative practices in this field (measures) providing official incentives and disincentives to international direct investment;

3. that Member countries will endeavor 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;

Consultation Procedures

IV. that they are prepared to consult one another on the above matters in conformity with the Decisions of the Council relating to Inter-Governmental Consultation Procedures on the Guidelines for Multinational Enterprises, on "National Treatment" and on International Investment Incentives and Disincentives;

Review

V. that they will review the above matters within three years with a view to improving the effectiveness of international economic co-operation among Member countries on issues relating to international investment and multinational enterprises.
ANNEX to the Declaration of 21st June 1976 by Governments of OECD Member Countries on International Investment and Multinational Enterprises

GUIDELINES FOR MULTINATIONAL ENTERPRISES

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

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

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

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

5. The initial phase of the co-operation program is composed of a Declaration and three Decisions promulgated simultaneously, as they are complementary and inter-connected, in respect of Guidelines for Multinational Enterprises, “National Treatment” for “Foreign-Controlled Enterprises” and International Investment Incentives and Disincentives.

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

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

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

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

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

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

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

Enterprises should

1. take fully into account established general policy objectives of the Member countries in which they operate;

2. in particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities, the promotion of innovation and the transfer of technology;

3. while observing their legal obligations concerning information, supply their entities with supplementary information the latter may need in order to meet requests by the authorities of the countries in which those entities are located for information relevant to the activities of those entities, taking into account legitimate requirements of business confidentiality;

4. favor close co-operation with the local community and business interests;

5. allow their component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialization and sound commercial practice;

6. when filling responsible posts in each country of operation, take due account of individual qualifications without discrimination as to nationality, subject to particular national requirements in this respect;

7. not render—and they should not be solicited or expected to render—any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office;

8. unless legally permissible, not make contributions to candidates for public office or to political parties or other political organizations;

9. abstain from any improper involvement in local political activities.

Disclosure of information

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

i) the structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including shareholdings between them;

ii) the geographical areas*** where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;

iii) the operating results and sales by geographical area and the sales in the major lines of business for the enterprise as a whole;

iv) significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;

v) a statement of the sources and uses of funds by the enterprise as a whole;

vi) the average number of employees in each geographical area;

vii) research and development expenditure for the enterprise as a whole;

viii) the policies followed in respect of intra-group pricing;

ix) the accounting policies, including those on consolidation, observed in compiling the published information.

**Competition**

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

1. refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example,

   a) anti-competitive acquisitions,

   b) predatory behavior toward competitors,

   c) unreasonable refusal to deal,

   d) anti-competitive abuse of industrial property rights,

   e) discriminatory (i.e., unreasonably differentiated) pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises;

2. allow purchasers, distributors and licensees freedom to resell, export, purchase and develop their operations consistent with law,
trade conditions, the need for specialization and sound commercial practice;

3. refrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation;

4. be ready to consult and co-operate, including the provision of information, with competent authorities of countries whose interests are directly affected in regard to competition issues or investigations. Provision of information should be in accordance with safeguards normally applicable in this field.

Financing

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

Taxation

Enterprises should

1. upon request of the taxation authorities of the countries in which they operate, provide, in accordance with the safeguards and relevant procedures of the national laws of these countries, the information necessary to determine correctly the taxes to be assessed in connection with their operations, including relevant information concerning their operations in other countries;

2. refrain from making use of the particular facilities available to them, such as transfer pricing which does not conform to an arm’s length standard, for modifying in ways contrary to national laws the tax base on which members of the group are assessed.

Employment and industrial relations

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

1. respect the right of their employees, to be represented by trade unions and other bona fide organizations or employees, and engage in constructive negotiations, either individually or through employers' associations, with such employee organizations with a
view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities;

2. a) provide such facilities to representatives of the employees as may be necessary to assist in the development of effective collective agreements,

b) provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment;

3. provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole;

4. observe standards of employment and industrial relations not less favorable than those observed by comparable employers in the host country;

5. in their operations, to the greatest extent practicable, utilize, train and prepare for upgrading members of the local labor force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities;

6. in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects;

7. implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectivity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity;

8. in the context of bona fide negotiations**** with representatives of employees on conditions of employment, or while employees are exercising a right to organize, not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of a right to organize;

9. enable authorized representatives of their employees to conduct negotiations on collective bargaining or labor management relations issues with representatives of management who are authorized to take decisions on the matters under negotiations.
Enterprises should

1. endeavor to ensure that their activities fit satisfactorily into the scientific and technological policies and plans of the countries in which they operate, and contribute to the development of national scientific and technological capacities, including as far as appropriate the establishment and improvement in host countries of their capacity to innovate;

2. to the fullest extent practicable, adopt in the course of their business activities practices which permit the rapid diffusion of technologies with due regard to the protection of industrial and intellectual property rights;

3. when granting licences for the use of industrial property rights or when otherwise transferring technology do so on reasonable terms and conditions.

NOTE: The Turkish government did not participate in the Declaration and abstained from the Decisions.

*** For the purposes of the guidelines on disclosure of information the term “geographical area” means groups of countries or individual countries as each enterprise determines is appropriate in its particular circumstances. While no single method of grouping is appropriate for all enterprises or for all purposes, the factors to be considered by an enterprise would include the significance of operations carried out in individual countries or areas as well as the effects on its competitiveness, geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprises’ operations in the various countries.

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

DECISION OF THE COUNCIL
ON INTER-GOVERNMENTAL CONSULTATION
PROCEDURES ON THE GUIDELINES
FOR MULTINATIONAL ENTERPRISES

The Council,

Having regard to the Convention on the Organization for Economic Cooperation and Development of 14th December, 1960 and, in particular, to Articles 2(d), 3 and 5(a) thereof;

Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, to paragraph 2 thereof [C(74)247(Final)];

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

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

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

Decides:

1. The Committee on International Investment and Multinational Enterprises (the Committee) shall periodically or at the request of a Member country hold an exchange of views on matters related to the Guidelines and the experience gained in their application. The Committee shall periodically report to the Council on these matters.

2. The Committee shall periodically invite the Business and Industry Advisory Committee to OECD (BIAC) and the Trade Union Advisory Committee to OECD (TUAC) to express their views on matters related to the Guidelines and shall take account of such views in its reports to the Council.

3. On the proposal of a Member country the Committee may decide whether individual enterprises should be given the opportunity, if they so wish, to express their views concerning the application of the Guidelines. The Committee shall not reach conclusions on the conduct of individual enterprises.

4. Member countries may request that consultations be held in the Committee on any problem arising from the fact that multina-
tional enterprises are made subject to conflicting requirements. Governments concerned will co-operate in good faith with a view to resolving such problems, either within the Committee or through other mutually acceptable arrangements.

5. This Decision shall be reviewed within a period of three years. The Committee shall make proposals for this purpose as appropriate.
APPENDIX IV

DECISION OF THE COUNCIL ON NATIONAL TREATMENT

The Council,

Having regard to the Convention on the Organization for Economic Cooperation and Development of 14th December, 1960 and, in particular, Articles 2(c), 2(d), 3 and 5(a) thereof;

Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, paragraph 2 thereof [C(74)247(Final)];

Taking note of the Declaration by the Governments of OECD Member countries of 21st June, 1976 on national treatment;

Considering that it is appropriate to establish within the Organization suitable procedures for reviewing laws, regulations and administrative practices (measures) which depart from “National Treatment;”

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

Decides:

1. Measures taken by a Member country constituting exceptions to “National Treatment” (including measures restricting new investment by “Foreign-Controlled Enterprises” already established in their territory) which are in effect on the date of this Decision shall be notified to the Organization within sixty days after the date of this Decision.

2. Measures taken by a Member country constituting new exceptions to “National Treatment” (including measures restricting new investment by “Foreign-Controlled Enterprises” already established in their territory) taken after the date of this Decision shall be notified to the Organization within thirty days of their introduction together with the specific reasons therefore and the proposed duration thereof.

3. Measures introduced by a territorial subdivision of a Member country, pursuant to its independent powers, which constitute exceptions to “National Treatment,” shall be notified to the Organization by the Member country concerned, insofar as it has knowledge thereof, within thirty days of the responsible officials of the Member country obtaining such knowledge.

4. The Committee on International Investment and Multinational Enterprises (the Committee) shall periodically review the application of “National Treatment” (including exceptions thereto)
with a view to extending such application of "National Treatment." The Committee shall make proposals as and when necessary in this connection.

5. The Committee shall act as a forum for consultations, at the request of a Member country, in respect of any matter related to this instrument and its implementation, including exceptions to "National Treatment" and its application.

6. Member countries shall provide to the Committee, upon its request, all relevant information concerning measures pertaining to the application of "National Treatment" and exceptions thereto.

7. This Decision shall be reviewed within a period of three years. The Committee shall make proposals for this purpose as appropriate.
APPENDIX V

DECISION OF THE COUNCIL
ON INTERNATIONAL INVESTMENT INCENTIVES AND DISINCENTIVES

The Council,
Having regard to the Convention on the Organization for Economic Cooperation and Development of 14th December, 1960 and, in particular, Articles 2(c), 2(d), 2(e), 3 and 5(a) thereof;
Having regard to the Resolution of the Council of 21st January, 1975 establishing a Committee on International Investment and Multinational Enterprises and, in particular, paragraph 2 thereof [C(74)247(Final)];
Taking note of the Declaration by the Governments of OECD Member countries of 21st June, 1976 on international investment incentives and disincentives;
On the proposal of the Committee on International Investment and Multinational Enterprises;
Decides:
1. Consultations will take place in the framework of the Committee on International Investment and Multinational Enterprises at the request of a Member country which considers that its interests may be adversely affected by the impact on its flow of international direct investments of measures taken by another Member country specifically designed to provide incentives or disincentives for international direct investment. Having full regard to the national economic objectives of the measures and without prejudice to policies designed to redress regional imbalances, the purpose of the consultations will be to examine the possibility of reducing such effects to a minimum.

2. Member countries shall supply, under the consultation procedures, all permissible information relating to any measures being the subject of the consultation.

3. This Decision shall be reviewed within a period of three years. The Committee on International Investment and Multinational Enterprises shall make proposals for this purpose as appropriate.