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EPB MEETING  
Tuesday, April 6, 1976  
8:30 a.m.

UNDER SECRETARY OF STATE  
FOR ECONOMIC AFFAIRS  
WASHINGTON

March 31, 1976

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

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

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

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

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

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



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

#### The Four Remaining Issues

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

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



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

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

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



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

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

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



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



Charles W. Robinson

