



Recommendation of the Council on
Member Country Exceptions to
National Treatment and National
Treatment related Measures in
the Category of Official
Aids and Subsidies

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Background Information

The Recommendation on Member Country Exceptions to National Treatment and National Treatment related Measures in the Category of Official Aids and Subsidies was adopted by the OECD Council on 11 April 1989 on the proposal of the Committee on International Investment and Multinational Enterprises (succeeded by today's Investment Committee). The Recommendation is one of five OECD instruments that sought to encourage the levy of restrictions on national treatment in specific areas where a wider use of exceptions had been diagnosed at the time. In addition to stating general principles, the instrument contains country-specific recommendations to lift certain exceptions.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention of the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises of the Governments of OECD Member countries of 21 June 1976;

HAVING REGARD to the Report on the Second Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises of 1984 [C/MIN(84)5(Final)];

HAVING REGARD to the Second Revised Decision of the Council of 17 May 1984 on National Treatment [C(84)91] and in particular its paragraph 4;

HAVING REGARD to the Recommendation of the Council of 16 July 1986 on Member country measures concerning National Treatment of foreign-controlled enterprises in OECD Member countries and based on public order and essential security interests [C(86)55(Final)] as this pertains to official aids and subsidies;

HAVING REGARD to the Recommendation of the Council of 22 February 1989 on Member country measures concerning National Treatment of foreign-controlled enterprises in Member countries related to the services sector [C(88)41(Final)] as this pertains to official aids and subsidies;

HAVING REGARD to the fact that the measures addressed in this examination may have differing degrees of restrictiveness in relation to National Treatment and that the number of measures maintained by a specific Member country may not by itself provide an adequate indication of the degree of restrictiveness of Member country policies concerning official aids and subsidies;

HAVING REGARD to the work and views of the Organisation in respect of matters relating to public assistance to enterprises;

HAVING REGARD to the fact that while this examination has contributed to an improved transparency of measures maintained by Member countries in the category under examination, there is still a need for further improvement in this regard, particularly with respect to areas where the State has a strong interest or stake in enterprises and with respect to greater clarity and predictability of the nature, scope and value of discriminatory aids and subsidies;

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

RECOMMENDS that Member Countries:

a) Reconsider the totality of their exceptions to National Treatment in the category of official aids and subsidies, with a view to examining the possibility of removing or relaxing such measures, possibly by adopting alternative means of achieving their objectives in a manner which would be consistent with the principle of National Treatment; in so doing, Member countries should give priority attention to limiting the scope and application of measures which may have important distortive effects or which may significantly jeopardise the ability of foreign-controlled enterprises to compete on an equal footing with their domestic counterparts;

b) Give particular attention to the application of the above recommendations in relation to the measures listed below:

- **Canada**, with respect to its measures in the agriculture sector concerning the limitation of stabilisation payments to majority owned Canadian corporations (federal level), concerning the non-availability of loan and loan guarantees to corporations where foreign ownership exceeds 20 per cent (Alberta), and concerning the exclusion of non-nationals from financial assistance (Saskatchewan);
- **New Zealand**, with respect to its measure limiting tax incentives in the mining sector to residents;

- **United Kingdom**, with respect to its two measures providing assistance to qualifying British films;
 - The **United States**, with respect to its trans-sectoral measure restricting eligibility to purchase Overseas Private Investment Corporation insurance or guarantees to locally-owned enterprises; and its measure in the area of agriculture, excluding foreign enterprises from special emergency or other government loans;
- c) Take full account, in the context of possible reviews of or changes to existing measures, or in considering the introduction of new measures, of the objectives of the National Treatment instrument, and seek to ensure that such changes do not result in the introduction of new exceptions to National Treatment;
- d) Give attention to the application of the foregoing observations and recommendations at the level of territorial sub-divisions.

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