I. THE NEW REVIEW OF THE GUIDELINES AND THE NEGOTIATIONS FOR THE PREPARATION OF A MULTILATERAL AGREEMENT ON INVESTMENT

The Review of the Guidelines for Multinational Enterprises (the 2000 Review) was concluded by the Member countries of the Organisation for Economic Co-operation and Development (OECD). This Review was launched by the OECD Committee on International Investment and Multinational Enterprises (CIME) in June 1998, not only in order to update the text of the Guidelines, but also to help advance the conclusion of the negotiations for the preparation of a multilateral agreement on investment (the so-called MAI), negotiations which were still pending among Members of the OECD.

The negotiations for the preparation of the MAI—which began on the initiative of the United States in 1991—aimed, on the one hand, at strengthening the international regime in the field of foreign investments and, on the other hand, at carrying liberalization into effect on the basis of rules fit for the harmonization of the different interests of home and host countries, especially as regards admission and treatment of foreign investments, compensation for any kind of taking and settlement of disputes between the host country and the foreign investor. At the same time, the negotiations were particularly centred on reaching a good equilibrium of the various interests at stake, since the OECD wished that other countries would also adhere to the MAI.

However, such negotiations reached no successful conclusion and were put off indefinitely in October 1998, following the official decision of the French government not to take part in them any longer. On 12 February 1998, OECD Member countries had, however, succeeded in approving a Draft Agreement. The lively criticism set out—mainly by some Canadian, French and American public opinion trends, and by several developing countries—against this Draft Agreement, which was considered as

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1 See Fatouros, 1995; Whitherell, 1995; Engering, 1996; Sacerdoti, 1997; Messing, 1997; Daly, 1998; and Symposium, 1998.

2 OECD, 1996b; Kodama, 1998; and Vadcar, 1998.

3 DAFFE/MAI/NM(98)2.
exceedingly favourable to the interests of the investors, revived the interest of OECD Members in the Guidelines. As a consequence, at the time of the subsequent negotiations in March 1998, some delegations made the proposal to attach to the MAI the text of the Guidelines—confirming their being not binding—in order to give a positive reply to these objections. At that time, the conclusion of the Agreement still seemed to be possible. But when, after a few months, suddenly the overall willingness of Members of the OECD failed, upsetting the attitude that up until then had featured in the MAI negotiations, it was agreed to start a new review of the Guidelines, which could represent the starting point for the resumption, not too far in the future, of the negotiations for the conclusion of a global multilateral agreement on foreign investments.

In this respect, it is worth remarking that, in the opinion of many non-OECD countries, the World Trade Organization is nowadays the fittest international organization for the preparation of a global multilateral agreement on foreign investments. This opinion is mainly based on the fact that during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), foreign investments and international trade were—at least partially—the subject of common negotiations, since these two issues are in effect increasingly tied. As a matter of fact, nowadays, a large share of international trade covers transactions between companies operating in different countries but belonging to the same group, and which are therefore the result of the investment policy of the parent company. This is the reason for the conclusion in Marrakesh in 1994 of the Agreement on Trade-Related Investment Measures (TRIMS Agreement) and of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the latter being one of the Agreements included in the so-called WTO package. As is well known, among the other Agreements of this package, the General Agreement on Trade in Services (GATS) is also particularly important in the field of foreign investments.

II. THE REASONS FOR THE GUIDELINES

Members of the OECD approved the Guidelines for the first time on 21 June 1976 as an Annex to the Declaration on International Investment and Multinational Enterprises which these countries adopted on the same day. Both the Guidelines and the Declaration are not acts of the Organisation and are not binding, either in international

4 See, for instance, DAFEE/MAI/IN(98)1; DAFEE/MAI(98)10.
5 Already in 1997, CIME received written proposals from Belgium, the United Kingdom and the Trade Union Advisory Committee (TUAC) for a new review of the Guidelines (DAFFE/INV/IME(97)14, 15, 16, 19, 20 and 21; and DAFEE/INV/IME/M(97)2). In June 1998, CIME decided to embark on the review with a view to “save” the MAI negotiations, whose failure was already evident (DAFFE/IME(98)3). The review was then begun officially at the end of a special Conference convened on the initiative of the OECD in Budapest from 16 to 18 November 1998. An overview of the topics submitted by the CIME to Members during the Conference is contained in DAFEE/IME(98)14; DAFEE/IME(98)15; DAFEE/IME(98)10/REV1. For a brief account of the works of this Conference, see DAFEE/IME(98)18.
6 See Juillard, 1994 and 1996; Geist, 1995; Brewer, 1995; and Wilkey, 1995.