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Foreword

This report examines Switzerland's foreign direct investment policies. It is the result of an examination held in October 1995 by an OECD Working Group made up of representatives of the Committee on Capital Movements (CMIT) and the Committee on International Investment and Multinational Enterprises (CIME). These committees promote liberal, non-discriminatory investment policies through the OECD Code of Liberalisation of Capital Movements and the National Treatment Instrument.

Following the Working Group examination, this report was adopted by the CMIT and the CIME. Factual updating has been made through December 1995. The report was approved and derestricted by the OECD Council on 12 February 1996.

Table of contents

Introduction 9

Chapter 1

The role of foreign direct investment in Switzerland's economy 13

A. FDI inflows, home countries and sectors 13

B. Direct investment outflows, host countries and sectors 18

C. Mergers and acquisitions 23

D. Data collection 24

E. Definitional issues 25

Chapter 2

Switzerland's policies towards foreign direct investment 27

A. Introduction 27

B. General issues 28

i) Programme of revitalisation of the Swiss economy and Swisslex 28

a) Competition policy 29

b) Internal market 30

c) Public procurement 31

d) Labour market: key personnel 32

e) Taxation 33

ii) Real estate (Lex Friedrich) 35

iii) Revision of corporate law and private practices 39

a) Corporate organisation 39

b) Private practices 39

iv) Monopolies and concessions 43
a) Manufacture and importation of distilled beverages 43
b) Importation of flour for making bread 44
c) Manufacture and sale of gunpowder 45

v) Privatisation 45

vi) Public order and essential security interests 45

vii) Regional economic development 46

C. Sectoral measures 47

i) Financial services 47
a) Banks and securities firms 47
b) Cantonal banks 51
c) Insurance 52

ii) Energy 53
a) Electricity 53
b) Nuclear energy 54
c) Oil and gas pipelines 54
d) Prospecting and exploitation of hydrocarbons 54

iii) Transport 55
a) Railways 55
b) Air transport 55
c) Shipping 57

iv) Telecommunications 57

v) Audio-visual works and broadcasting 58

Chapter 3

Conclusions 61

Notes 65

Annex 1

Switzerland's current position under the Code of Liberalisation of Capital Movements and the National Treatment Instrument 67

Annex 2

Statistics on Switzerland's foreign direct investment 75

Annex 3

Statistics on direct investment flows in OECD countries 79

Tables

1. Foreign direct investment in OECD countries: inflows 1971-1994 (US$ million) 80
2. Foreign direct investment in OECD countries: inflows 1983-1994 (as a percentage of GDP) 81
3. Direct investment abroad from OECD countries: outflows 1971-1994 (US$ million) 82
4. Direct investment abroad from OECD countries: outflows 1983-1994 (as a percentage of GDP) 83

Introduction

The Swiss Federal Government and cantonal authorities are reassessing their policies in light of the need to strengthen and improve the attractiveness of Switzerland as a location for business. This call for political action stems primarily from the globalisation of economic activities, but also from the rejection of Switzerland's association with the European Economic Area (EEA) by the Swiss electorate in 1992. But it comes also from a recognition that the internal Swiss market is itself not fully integrated. Lack of competition in a number of sectors of the Swiss market in turn implies higher costs of operating in Switzerland. A comparison of purchasing power in various OECD countries conducted by the OECD found that Swiss prices tend to be significantly higher than in other countries.[1]

Switzerland is one of the most important countries of origin for direct investment. Indeed, outward direct investment on a per capita basis is higher than in all other OECD countries, and the largest Swiss firms have historically been among the world's most active international direct investors. Globalisation, however, usually takes the form of locating manufacturing activities out of Switzerland. For various economic reasons (level of salaries, access to the EEA, "inherited" industry structure), it is less often the case that new production activities of multinational companies are located in Switzerland. One possible reason for the fact that there is very little foreign direct investment (FDI) in manufacturing is the characteristic that the vast majority of Swiss firms are small and family-owned. Switzerland rather qualifies for headquarters functions and services closely linked to them. As a consequence, most inward investment is in the service sector, not least because of the fiscal advantages of locating certain activities such as holding companies in Switzerland. The stock of outward investment is currently almost two and a half times as large as that of inward invest-

ment. This ratio has grown in recent years. While the surplus in direct investment is only part of Switzerland's overall position of important creditor, the impediments to foreign investment in Switzerland documented in this study have almost certainly reduced the level of inward investment. These impediments arise from a mixture of Federal and cantonal policies and from private practices.

Of the factors that have discouraged FDI in Switzerland, federal rules discriminating against foreign investment have been among the least important, restrictions on purchases of real estate being the main exception. The Federal Government has traditionally played a minor role concerning inward investment, just as it has in the economy as a whole. There is no general screening mechanism for investment and public monopolies have traditionally been less important than in many other OECD countries. There are a number of restrictions in individual sectors (some of which are also found in other OECD countries), such as transport, but there are no statutory restrictions at the Federal level in manufacturing, for example. The absence of Federal controls has been offset to some extent by regulations at a cantonal level and by private practices of Swiss companies. The cantons administer the authorisation for the sale of real estate to foreigners, hold a monopoly of several services such as fire insurance and provide guarantees for the cantonal banks. These obstacles are complemented by private practices which, though they are no longer permitted to discriminate against foreign investors, nevertheless restrict the possibilities to acquire many Swiss companies except those already eager to sell.

Switzerland is moving towards a more open environment for investment. With internal and external pressure for change mounting, the liberalisation of the Swiss economy has become a priority for the Federal Government. Establishments owned by public authorities have to take on new forms in response to the globalisation of their traditional markets. The direction of change is unambiguous. Nevertheless, the pace of reform is dictated by the referendum process; indeed, on several occasions, not least concerning EEA membership and real estate liberalisation, reform proposals have been rejected by the voters. Convincing the Swiss population of the need for change is sometimes an arduous task, made all the more difficult by the renewed growth, albeit slow, of the Swiss economy which appears to undermine the impetus for change.

This report is organised as follows. Chapter 1 analyses direct investment trends in Switzerland and the role of FDI in the Swiss economy; it also contains

tables and charts illustrating this subject. Chapter 2 discusses Switzerland's policy towards FDI, focusing on horizontal and sectoral issues, respectively. In Chapter 3, an assessment of these policies is made. Annex 1 presents Switzerland's present position *vis-à-vis* item I/A of the Capital Movements Code (inward direct investment) and its exceptions and ''transparency items'' under the National Treatment Instrument. Annex 2 presents statistics on Switzerland's foreign direct investment and Annex 3 provides statistics on FDI in the OECD area.

Chapter 1

The role of foreign direct investment in Switzerland's economy

A. FDI inflows, home countries and sectors

Switzerland offers a central location within Europe, a skilled workforce and a well-developed infrastructure. In spite of these advantages, however, there are a number of potential drawbacks to investing in Switzerland. Not only is the domestic market relatively small, but Switzerland does not belong to either the European Union (EU) or the European Economic Area (EEA). Empirical studies suggest that market size is an important consideration for firms investing abroad. A small national market is not an insurmountable obstacle given that Switzerland is surrounded by large neighbours, but the fact that it is not part of the EEA may have created the perception that full access to the larger market is not assured from a Swiss base. Foreign investment has also long been discouraged by anti-takeover clauses in Swiss enterprises statutes, restrictions on foreign acquisitions of real estate and lack of competition on the domestic market. As a result, direct investment in Switzerland has not shown the same dynamism as that found in other small Member countries in recent years. It remains concentrated in certain services sectors, notably banking and holding companies, and is motivated at least in part by tax considerations. Inflows declined steadily in the early 1990s and represented a net divestment in 1993 (Table 1, Chart 1). They have since recovered and were over SF 4 billion in 1994. This was due in part to an increase in reinvested earnings by foreign-owned companies, reflecting the situation in the foreign exchange market. Table 3 (Annex 2) provides additional measures of the importance of FDI for the Swiss economy.

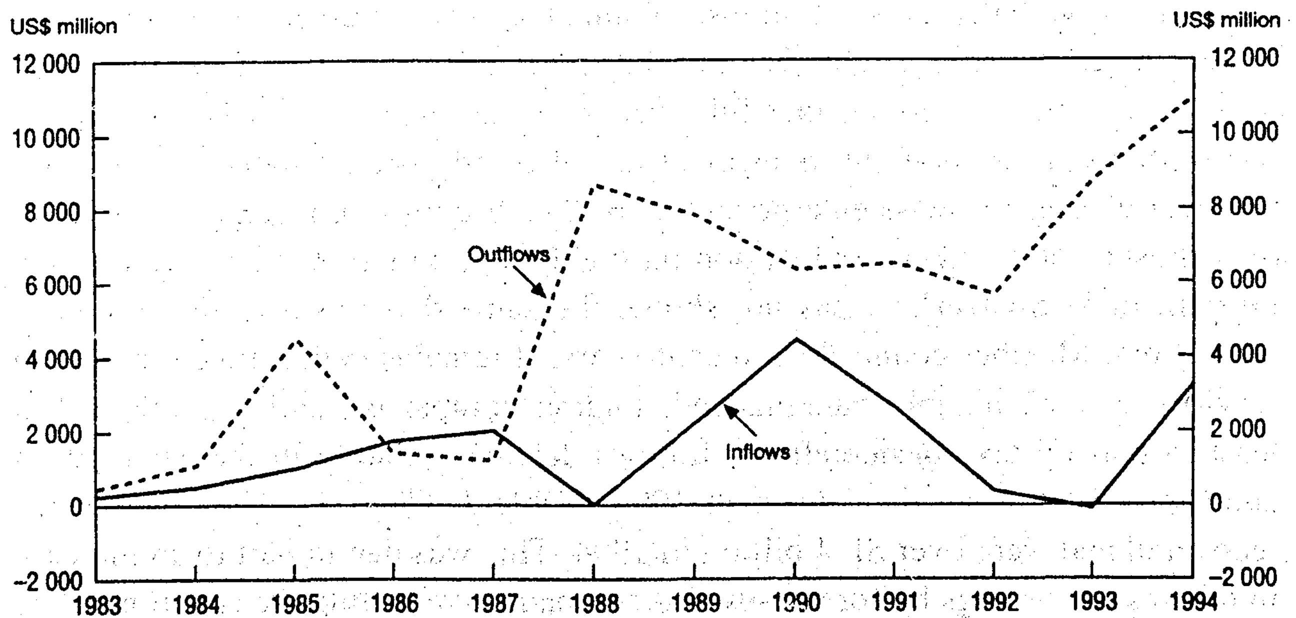
Table 1. **Direct investment flows, 1983-1994**

US$ million

	Inward	Outward
1983	286	492
1984	520	1 139
1985	1 050	4 572
1986	1 778	1 461
1987	2 044	1 274
1988	42	8 696
1989	2 254	7 852
1990	4 458	6 372
1991	2 613	6 543
1992	411	5 673
1993	–84	8 767
1994	3 296	11 018

Source: OECD/DAF.

Chart 1. **Foreign direct investment flows to and from Switzerland, 1983-1994**



Source: Swiss National Bank.

To understand the factors behind these trends, it is necessary to look more carefully at the sectoral distribution of inward investment. The decline in inward investment registered in 1993 could be attributed in part to the economic recession but was primarily the result of net divestment by financial and holding companies and by firms engaged in trading. These declines were only partly offset by increases elsewhere, notably in banking. Table 2 and Chart 2 show the distribution of the inward stock of direct investment in Switzerland by sector. Fully two fifths of all investment in Switzerland is in holding companies, reflecting *inter alia* favourable tax treatment accorded to such firms at both a Federal and a cantonal level. However, recent changes in EC tax legislation (see the section on tax policies) have eliminated Switzerland's competitive advantage for the establishment of holding companies by EC investors. This has already led to a net divestment in this sector, a trend which may well continue over the coming years.

Another one quarter of the stock of inward investment is in the banking sector. Until recently, foreign firms were generally interested in Switzerland as a location for issuing bonds. In the past two years, the emphasis has shifted towards custodial business or asset management. The insurance sector, in contrast, has a very small foreign presence and foreign firms represent only a

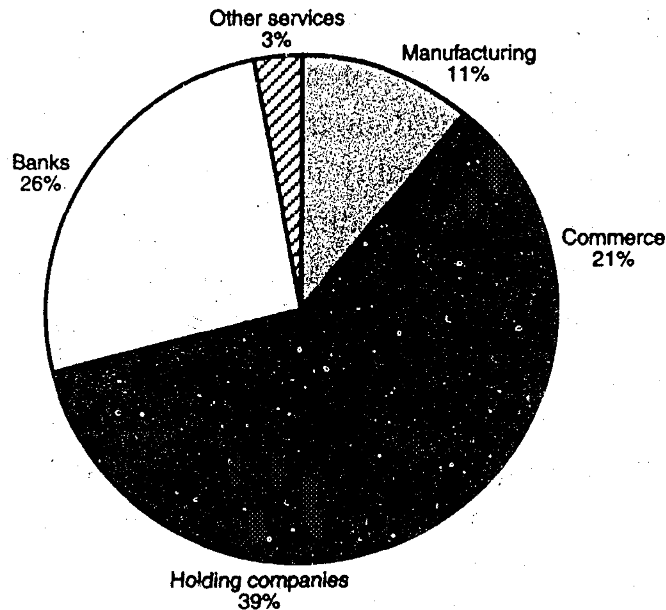
Table 2. **Inward investment in Switzerland by sector, stock 1993**

SF million

	Total	EU	EFTA	North America	Other
Manufacturing	**6 157**	**2 256**	**2 480**	**1 383**	**39**
Chemicals, plastics, rubber	1 112	277	43	753	39
Metals, machines, vehicles	480	461	20	0	0
Electrical, optical, watches, energy	3 494	684	2 393	418	0
Others (incl. construction)	1 071	835	24	212	0
Services	**47 883**	**27 941**	**864**	**14 515**	**4 563**
Trading, distribution, servicing	11 302	6 797	77	4 034	397
Holding companies	21 130	12 783	35	7 984	328
Banks	13 842	7 837	714	1 450	3 841
Insurance	429	256	39	128	6
Other services	1 181	269	0	922	–10
Total	**54 040**	**30 197**	**3 344**	**15 898**	**4 601**

Source: Swiss National Bank.

Chart 2. **Direct investment in Switzerland, stock 1993**



Source: Swiss National Bank.

minimal share of the Swiss insurance market. A large acquisition of part of the Swiss firm Swiss Re at the beginning of 1995 by the German insurance company Allianz should boost total foreign participation in this sector, and, depending on the extent to which it was financed from abroad, could have greatly increased Swiss inflows in 1995. The share of total foreign investment in Swiss industry is relatively insignificant, reflecting in part the small and fragmented nature of the Swiss manufacturing sector, together with the difficulties for investors to acquire control of large Swiss firms.

Where does this investment come from? Table 3 and Chart 3 show the stock of investment in Switzerland in 1993 by country of origin. As in many European countries, the United States is the largest single investor, but the largest share of investment comes from Europe, in Switzerland's case almost two thirds. France and Germany are the largest European investors in Switzerland. Investment from the European Union and North America are similar in terms of the most important sectors. Both have over 90 per cent of their stock of investment in Switzerland in services, primarily holding companies, banking and commerce.

The highest share of manufacturing investment comes from the former EFTA countries and can be explained in large part by the activities of the Swedish-Swiss company Asea-Brown Boveri. Without this investment, the activities of foreign firms in the Swiss manufacturing sector would be significantly smaller. Table 1 (Annex 2) tells a similar story for annual inflows.

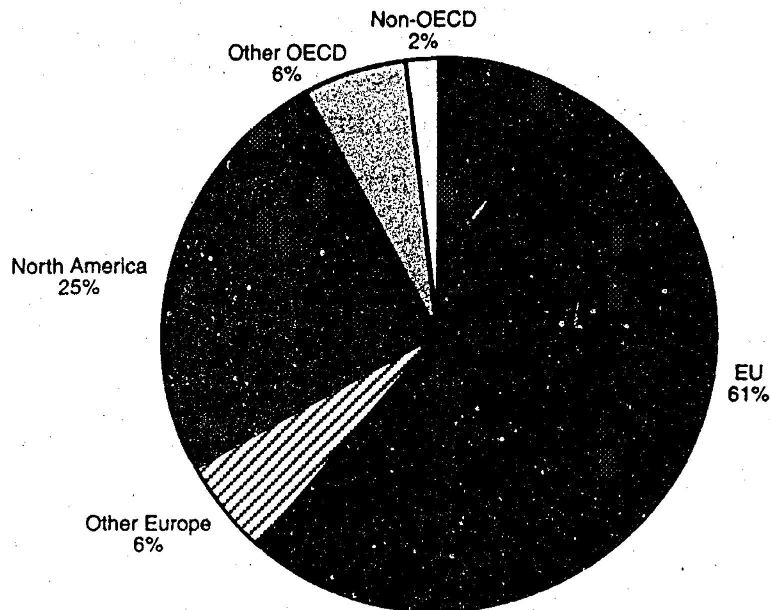
Looking at investment by American firms based on US Commerce Department data provides insights into the nature of foreign investment in Switzerland which are often lacking from the Swiss data. By industry of affiliate, three quarters of the assets of US firms in Switzerland are in finance (excluding banking), holding companies and wholesale and retail trades. By industry of the parent company, in contrast, three quarters of total assets are held by

Table 3. **Direct investment in Switzerland, 1994**
SF million

	Total stock	% of total
United States	15 348	24.2
France	11 883	18.8
Netherlands	10 559	16.7
Germany	7 600	12.0
Japan	3 610	5.7
Italy	3 205	5.1
Sweden	3 157	5.0
United Kingdom	2 854	4.5
Luxembourg	1 647	2.6
Canada	508	0.8
Belgium	392	0.6
Israel	306	0.5
Austria	216	0.3
Spain	192	0.3
Denmark	165	0.3
Turkey	75	0.1
EU	38 694	61.1
EFTA	3 739	5.9
Other Europe	157	0.2
North America	15 855	25.0
Asia/Australia	4 359	6.9
Latin America	479	0.8
Africa	59	0.1
Other	4	0.0
Total	**63 346**	**100.0**

Source: Swiss National Bank.

Chart 3. **Direct investment in Switzerland, stock 1994**



Source: Swiss National Bank.

manufacturing firms. Thus it appears that American manufacturing firms are investing in Switzerland to establish holding companies or regional headquarters for the European market. This trend has undoubtedly been strongly influenced by tax considerations.

B. Direct investment outflows, host countries and sectors

Switzerland has historically been a major outward investor. On a per capita basis, it has the highest stock of outward investment per person of all OECD Member countries reporting stock figures and ranks eighth in terms of the value of its overseas investment. Swiss firms now employ 1.3 million workers outside of Switzerland, equivalent to roughly one third of the Swiss labour force (3.8 million workers) and also similar to the number of foreigners living in Switzerland.

Swiss direct investment outflows have remained at high levels since 1988, with very little of the cyclical decline in flows seen in other countries. Annual

outflows have been between SF 8 billion and SF 15 billion since 1988. Almost one half of the increase in outflows between 1992 and 1993 can be explained by the new reporting requirements for Swiss firms. Furthermore, over one fifth of the outward stock of Swiss direct investment abroad is by firms which are themselves majority-owned by non-Swiss companies. Most of this investment is attributed to holding companies and those firms engaged in commerce.

As in certain other small economies, this outward investment is dominated by a few very large firms. Twelve Swiss companies account for one half of all outward Swiss investment, and six of these companies rank among the world's largest 100 multinational enterprises (see Table 4). Three of these companies are in the chemicals and pharmaceuticals sector, reflecting the historical importance of that industry to the Swiss economy. Almost one fifth of the stock of outward investment from Switzerland involves this sector. Similarly, another 14 per cent of outward stock is from the food industry, largely a result of Nestlé's acquisitions abroad.[2]

Table 4. **The largest Swiss multinational enterprises ranked by foreign assets, 1992**

World rank	Corporation	Industry	Foreign share of assets* (%)	Foreign share of sales* (%)	Foreign share of employment* (%)
7	Nestlé	Food	91.7	98.2	96.9
13	ABB	Electrical equipment	86.5	88.9	93.2
39	Ciba-Geigy	Chemicals	49.5	66.0	75.5
46	Sandoz	Pharmaceuticals	73.2	96.1	85.8
60	Roche Holdings	Pharmaceuticals	43.4	96.7	81.1
62	Holderbank	Building materials	92.7	89.3	93.8

* The foreign share relates to the share of assets, sales and employment of the firm which are outside of Switzerland
Source: *World Investment Report*, UNCTAD, 1994.

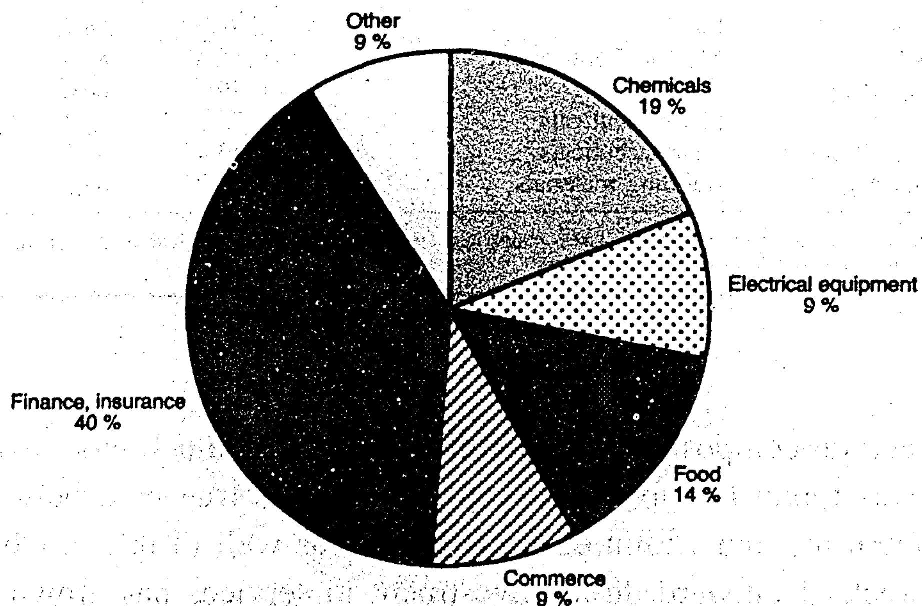
The sectoral composition of the outward stock is much more evenly distributed than was found for inward investment. This is true both between services and manufacturing and within each of the two as well (Table 5, Chart 4). Over time, the stock of outward direct investment in services has grown much more quickly than in manufacturing and in 1993 the share of outward direct investment in services exceeded that in manufacturing for the first time.[3] As recently

Table 5. **Direct investment abroad: position at year-end 1993, by sector**

	SF (million)	%
Manufacturing	**62 997**	**47.8**
Food, beverages and tobacco	17 840	13.5
Textiles, leather and clothing	723	0.5
Chemical products	25 196	19.1
Mechanical equipment	7 428	5.6
Electric and electronic equipment	11 810	9.0
Services	**68 793**	**52.2**
Wholesale and retail trade	11 178	8.5
Transport and storage	1 433	1.1
Finance, insurance and business services	53 839	40.9
Communication	1 956	1.5
Other services	387	0.3
Total	**131 790**	**100.0**

Source: Swiss National Bank.

Chart 4. **Swiss investment abroad, stock 1993**



Source: Swiss National Bank.

as 1985, the manufacturing share had been 70 per cent of the total. The growth of services can be explained by the need for Swiss banks and insurance companies to look beyond their own borders. Outward investment had previously been dominated by the large manufacturing firms such as Nestlé and Ciba-Geigy. As in other countries, the improved reporting in 1993 may also have added to the weight of services if relatively more service firms were declaring their foreign assets compared to when the survey was voluntary.

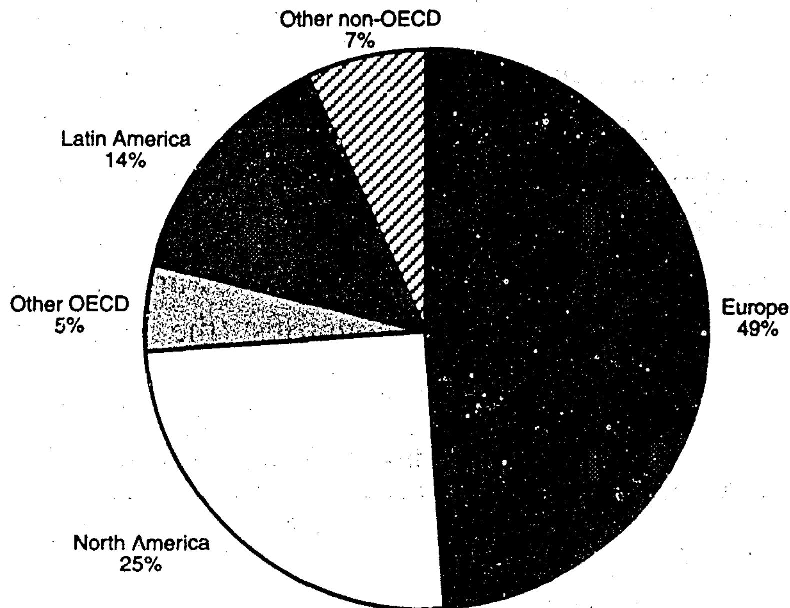
By destination, Swiss outflows are directed towards the largest national markets (Table 6, Chart 5). Four host countries (the United States, France,

Table 6. **Swiss direct investment position abroad, 1994**

	SF (million)	%		SF (million)	%
OECD	**116 873**	**78.8**	**Non-OECD**	**31 354**	**21.2**
Europe	**72 566**	**49.0**	**Africa**	**2 063**	**1.4**
Austria	2 544	1.7	South Africa	764	0.5
Belgium	3 787	2.6			
Denmark	801	0.5	**Central and Eastern Europe**	**1 121**	**0.8**
France	12 821	8.6	Czech Republic	197	0.1
Germany	12 472	8.4	Hungary	191	0.1
Greece	406	0.3	Poland	276	0.2
Ireland	1 930	1.3	Others	457	0.3
Italy	4 522	3.1			
Luxembourg	3 290	2.2	**Latin America**	**20 656**	**13.9**
Netherlands	9 017	6.1	Argentina	443	0.3
Norway	757	0.5	Brazil	4 352	2.9
Portugal	577	0.4	Chile	1 084	0.7
Spain	3 105	2.1	Others	14 777	10.0
Sweden	2 029	1.4			
UK	14 508	9.8	**Asia**	**6 182**	**4.2**
			Hong Kong	2 232	1.5
North America	**36 262**	**24.5**	South Korea	212	0.1
Canada	4 338	2.9	Malaysia	383	0.3
United States	31 925	21.5	Singapore	760	0.5
			Chinese Taipei	522	0.4
Other OECD	**8 047**	**5.4**	Thailand	511	0.3
Australia	2 104	1.4	China	261	0.2
Japan	4 198	2.8	India	195	0.1
Mexico	1 447	1.0	Indonesia	201	0.1
New Zealand	28	0.0	Philippines	262	0.2
Turkey	270	0.2			
			Others	**1 332**	**0.1**
			Total	**148 227**	**100.0**

Source: Swiss National Bank.

Chart 5. **Swiss investment abroad, stock 1994**



Source: Swiss National Bank.

Germany and the United Kingdom) receive almost one half of the total stock of outward investment. The same pattern characterises recent flows of Swiss direct investment abroad (Table 2, Annex 2). The rest of the investment is widely dispersed. By region, Europe has received one half of the stock of outward investment. The high share of Swiss investment in Latin America represents partly the presence of Caribbean finance affiliates, as is also true for many other OECD countries. But there are also substantial investments by companies such as Nestlé in the Latin American food industry. The evolving strategy of Nestlé towards greater emphasis on developing country markets should push up the non-OECD share of Swiss investment in the future.

Looking instead at employment figures which are not as affected by the presence of finance affiliates, the European share is even higher, at almost 60 per cent of the total. These shares have remained stable in the 1990s except for a reshuffling of positions within Europe. The share of employment accounted for by Central and Eastern Europe quadrupled and this was offset by a decline in the EFTA share (Table 7).

Table 7. **Employment by Swiss firms abroad**

Number of employees

	1990	%	1993	%
EFTA	105 575	10.9	101 785	7.8
EU	447 572	46.1	635 095	48.4
Central and Eastern Europe	5 995	0.6	34 223	2.6
Other Europe	5 191	0.5	5 581	0.4
North America	183 636	18.9	239 546	18.3
Latin America	90 046	9.3	116 162	8.9
Middle East	7 287	0.8	13 834	1.1
Africa	31 071	3.2	37 693	2.9
Australia, New Zealand	25 781	2.7	24 026	1.8
Asia, Oceania	69 032	7.1	103 283	7.9
Total	971 186		1 311 283	

Source: Swiss National Bank.

C. Mergers and acquisitions

The first half of 1995 has seen several notable acquisitions by Swiss firms abroad, as well as two major acquisitions of Swiss firms. The Swiss Banking Corporation acquired S.G. Warburg, the British investment bank for US$1.4 billion. Zurich Insurance acquired Kemper Corporation, the US life assurance and fund management company, for US$2 billion. Sandoz offered almost US$300 million for Genetic Therapy Inc. of the United States. Swissair paid US$212 million for a share in Sabena of Belgium. Only this last acquisition can be attributed in any way to the effect of the Swiss rejection of EEA membership. All the others represent an attempt by the investor to diversify its economic activities.

The largest single acquisition in Switzerland in the first half of 1995 involved the purchase by the German insurance firm Allianz of various subsidiaries of Swiss Re for US$4.1 billion, including the Swiss insurance company Elvia. In a smaller acquisition, Schwartau of Germany agreed to buy the Swiss jam maker Hero for US$342 million. Table 8 presents estimates of the number of M&As in Switzerland. Since 1988, foreign firms have been involved in almost 300 mergers or acquisitions involving Swiss firms, or 15 per cent of the total. In

Table 8. **Mergers and acquisitions in Switzerland**

Number of operations

	By foreigners	Total	Foreign share %
1988	31	253	12
1989	30	357	8
1990	51	320	16
1991	30	257	12
1992	54	333	16
1993	49	250	20
1994	52	266	20
Total	297	2 036	15

Source: Crédit suisse.

value terms, acquisitions of Swiss firms grew from only US$140 million in 1992 to US$740 million in 1993 to reach US$2.7 billion in 1994. In spite of this dramatic growth, acquisitions of Swiss firms by foreign investors in 1994 were less than one sixth the equivalent figure for Swiss firms abroad.

D. Data collection

The Swiss National Bank (SNB) collects data on foreign direct investment as part of its reporting of the balance of payments statistics and publishes the results in its monthly Statistical Bulletin. The SNB has conducted annual surveys of direct investment abroad by Swiss companies only since 1985. The survey collects information on the inward and outward stocks of direct investment and on annual flows, as well as on the employment of Swiss firms abroad. Because this survey is used as the basis for balance of payments reporting, annual FDI flow figures are presented only in August, which is considerably later than most other OECD Member countries. The SNB is currently endeavouring to speed up this process and is considering conducting separate surveys for flows and stocks which would greatly speed up the release of flow data.

Since the legal basis for the yearly survey was established only recently, reporting has only been compulsory since 1993. It is estimated that this change

added some 15 per cent to stocks and flows compared with the sample in earlier years. The Federal Law of Statistics requires all Swiss firms with foreign investments over 10 million Swiss francs and foreign firms with the equivalent level of investment in Switzerland to provide data for the annual survey. The number of responses doubled over previous years when reporting was not compulsory. About 500 Swiss firms and 1 000 foreign firms established in Switzerland participate in the survey.

E. Definitional issues

Direct investment refers to investment that increases, reduces or results in a lasting interest in an enterprise operating in a country other than that of the investor, the investor's purpose being to have an effective voice in the management of the enterprise. The definition of direct investment used by the Swiss National Bank complies with the guidelines of the IMF and the OECD, with a lasting interest deemed to arise when the investor holds 10 per cent or more of the total shares of a company. Prior to 1995, however, the SNB left the question of whether the intention is to secure a lasting interest to the investor in each case rather than stipulating a precise cut-off point. The effect of this change is not likely to affect greatly the results, since most investments typically involve majority control.

Foreign direct investment data provide only a partial view of the activities of Swiss firms abroad and of foreign firms in Switzerland. They record only that share of the investment which is financed from abroad or through retained earnings. But much of Swiss investment in the United States, for example, is financed by affiliates already located in the market. The value of these acquisitions can be several multiples of the FDI figures and provide a fuller picture of the international activities of firms.[4] Recent figures on mergers and acquisitions involving Swiss firms suggest that both inflows and outflows increased dramatically in 1994 (Table 9). Swiss firms invested SF 18 billion abroad in 1994 in buying foreign firms. Much of this involved Swiss chemicals firms making purchases of American firms.

Two of the largest cross-border deals in 1994 involved Swiss companies as acquirers. Roche Holdings acquired the US company Syntex for US$5.3 billion

Table 9. **Mergers and acquisitions involving Swiss firms**

SF billion

	Swiss acquisitions abroad	Foreign acquisitions in Switzerland
1992	5.32	0.14
1993	1.18	0.74
1994	17.90	2.70

Source: Crédit suisse.

and Sandoz acquired Gerber Products, also of theUnited States, for US$3.7 billion. Since most of this was financed through existing affiliates, it will not have the full effect on flow figures as would otherwise have been the case. As of 1993, Switzerland was the fourth largest investor in the United States in terms of assets (market values).

Chapter 2

Switzerland's policies towards foreign direct investment

A. Introduction

There are no general screening mechanisms for foreign investment in Switzerland, although authorisation is required in certain sectors subject to special conditions. The only horizontal restrictions apply to the purchase of real estate, known as the *Lex Friedrich*, and the requirement that the majority of the board of directors of a limited liability company should be Swiss citizens domiciled in Switzerland. The Federal Government has endeavoured to ease both of these measures. State ownership of Swiss companies has traditionally been less common in Switzerland than in other European countries, although the cantons maintain a number of public monopolies. Certain steps have also been, or will be, taken to open up a number of sectors such as air and rail transport and telecommunications to private competition, but a complete privatisation is not envisaged at present. Policies towards the electricity sector are influenced by the traditional desire for self-sufficiency on national security grounds, in contrast to most other OECD countries, although this too is changing as part of the drive to lower the cost disadvantage of producing in Switzerland.

A number of restrictions on foreign investment arise in financial services, air transport, films and broadcasting. In banking, the law continues to require mirror-image reciprocity, implying that licences to foreign banks are given on the condition that Swiss banks receive similar treatment in the foreign bank's home country. However, in practice the Banking Commission often accepts reciprocal national treatment. Certain reciprocity conditions are being narrowed and home country supervision is being adopted as part of the drive to make Swiss law more

euro-compatible and as a result of World Trade Organisation (WTO) commitments stemming from Uruguay Round negotiations. Similar steps are being taken in insurance, although the majority of cantons maintain a monopoly in fire insurance.

B. General issues

i) Programme of revitalisation of the Swiss economy and Swisslex

Once an oasis of economic stability in an otherwise inflationary world, the Swiss image became tarnished in the late 1980s and early 1990s. Other European countries undertook structural reforms aiming to liberalise their economies, while new markets emerged in Asia, Latin America and in Eastern and Central Europe. Meanwhile in Switzerland, growth in the 1980s was unspectacular. By the end of the decade, loose monetary policies drove up inflation to unusually high levels and when policy was tightened around 1990, the economy even fell into recession. Unemployment started to creep up towards levels seen in other OECD countries. To this relative decline was added the problem of access to the internal market of the EU as Switzerland voted to remain outside of the EEA in a referendum in December 1992.

In response to these challenges, the Federal Council (Government) instituted a programme for the revitalisation of the Swiss economy and a legislative programme labelled "Swisslex" (in reference to its precursor "Eurolex" which was based on the presumption of Swiss accession to the EEA). The two initiatives encompass many of the reforms that would have resulted from EEA membership.[5] These include, in addition to a revision of cartel law, a framework law on the Swiss domestic market to promote deregulation at the cantonal and communal level, and a law against technical barriers to trade. As an amendment to the Swisslex programme, the Government tried, without success, to dismantle many of the restrictions in the law on the acquisition of real estate by foreigners (the *Lex Friedrich*). In the field of infrastructure, the reform of postal services, railways and telecommunications will imply a restrictive definition of the activities for which government-owned companies still hold a monopoly. Full privatisation is not envisaged at the present stage. Other measures seek to extend

reform efforts to include agriculture, social security and public finance, as well as institutional reform (primarily the acceleration of authorisation procedures). This revitalisation of the economy has a number of implications for foreign direct investment in Switzerland.

a) *Competition policy*

The combination of a small domestic market and a permissive government attitude towards cartels has meant that collusive behaviour in Switzerland has been commonplace. As of 1985, there were 500 business associations (*Verbände*) which often enforce both horizontal and vertical cartels. According to the OECD's 1991/1992 *Economic Survey of Switzerland*, "persistent cartels are fairly common in many production and distribution activities concentrating on national and particularly local markets. Strong cartels have also existed in banking and insurance up to the late 1980s".[6] Tacit collusion has also been reported. Partly as a result of this cartellisation of the Swiss market, the overall domestic price level is 40 per cent higher than in the rest of the OECD for private consumption and 30 per cent higher for capital investment.[7]

As part of the programme of revitalisation, draft legislation to overhaul the Cartels Act was submitted to Parliament by the Federal Council on 23 November 1994 and approved in October 1995. It became law in early 1996. The Council recognised the deficiencies of the old Cartels Act:[8]

- the vagueness of the legal norm and the wide range of acceptable grounds for justification have rendered the law ineffective and its application in each individual case unpredictable;
- the Cartels Commission, which carries out the investigations pursuant to the Act, is understaffed; as a result relatively few cartels are investigated;
- legal procedures under the Act differ from those commonly applicable under Swiss administrative law;
- the Act deals primarily with cartels and only marginally with other anti-competitive practices, notably the abuse of a dominant position.

To some extent, the competition policy of the EU has served as a model which not only allows for the adoption of a policy which has already been tested but which also guarantees to some extent that Swiss firms active in the EU will not be subject to regulations concerning competition policy which are in contra-

diction with those at home. Unlike EU law, however, Swiss legislation will not generally forbid anti-competitive agreements; such a prohibition would have required a change to the Swiss constitution.

The thrust of the new law is that it prohibits the elimination of "effective competition". It introduces the presumption that horizontal agreements setting prices, production volume or territorial distribution eliminate effective competition and are therefore unlawful. Limitations of competition are not prohibited if it can be demonstrated that they promote economic efficiency which benefits consumers. This could be the case for rationalisation or specialisation agreements. The proposed legislation has the following other innovative features.

- In respect of firms holding dominant positions, the bill contains a general clause and a list of potential abuses. The practices of such companies, on either the demand or the supply side, are treated in the same manner irrespective of whether the firms belong to the public or private sector.
- Instances of concentration exceeding certain thresholds (annual turnover of SF 2 billion worldwide or SF 500 million in Switzerland) would have to be reported. Concentration that might eliminate effective competition would not be authorised.
- The law would also apply to firms that perform public services or that operate in a government-regulated market, unless the legislation setting forth the state's role rules out competition with the firm concerned.
- Institutionally, the bill would separate investigative and decision-making powers, which would be assigned, respectively, to the Secretariat of the Competition Commission and to the Competition Commission (which would replace the Cartels Commission).

b) Internal market

The new domestic market law was approved by the Parliament in October 1995. The bill became law in early 1996. The law is aimed at establishing the fundamental principles of market access throughout the Confederation.

The new legislation will give all persons having their establishment or headquarters in Switzerland the right to offer goods and services, including labour services, throughout the whole of Switzerland. Market access will be regulated by the laws in force in the supplier's own market. This principle applies

to all lucrative activities which benefit from the protection of the freedom of commerce and industry. Cantonal qualifications, or those recognised at the cantonal level, are in principle valid throughout Switzerland.

The law is not intended to harmonise rules and standards across the cantons. Rather, it seeks to ensure market access by providing for recognition of the standards in the home canton of the supplier by the canton where the good or service is offered. This principle is analogous to the principle of "mutual recognition" established by the "Cassis de Dijon ruling" by the European Court of Justice,[9] which forms a corner-stone of the EU's internal market.

c) *Public procurement*

The law on the internal market also deals with public procurement on the cantonal and communal level. It provides for non-discriminatory access to public procurement. Market access will be regulated by the laws in force where the service is provided.

Regulations on public procurement can also be concluded by inter-cantonal agreement. Such agreements will take precedence over the law on the internal market, to the extent that they satisfy certain minimal conditions laid down in that law. These conditions include requirements concerning the publication of offers and a prohibition of discrimination. In order to avoid any discrimination against Swiss providers *vis-à-vis* foreigners, the rights offered to foreigners by international agreements signed by a canton should be bestowed on other cantons on the basis of reciprocity. An inter-cantonal agreement was signed in February 1995, aimed at implementing at cantonal level the agreement concluded on public procurement as part of the Uruguay Round. It does not meet all the minimum conditions of the law on the internal market, *i.e.* since it applies only to projects above certain thresholds as stipulated by the Uruguay Round agreement.

Separate legislation on public procurement at the federal level became law on 1 January 1996. Its objective is to transpose into national law the agreements concluded in the Uruguay Round concerning procurement by central governments. Federal procurement was previously governed by an amalgamation of laws based, like the new legislation, on the principle of non-discrimination between Swiss and foreign bidders, the Confederation having been covered by the relevant GATT agreement since 1979. The new law constitutes framework legislation to be implemented by decrees.

d) Labour market: key personnel

Switzerland has many foreign residents: about 18 per cent of its residents do not have a Swiss passport. At present, the following residency and work permits exist for foreign workers:

- the A permit, which has a seasonal validity; no residency; no right to bring family along; obligation to leave the country for 3 months a year;
- the B permit, which must be renewed annually; residency and right to bring family along;
- the C permit: an establishment permit with permanent validity;
- the L permit: a short-time residence permit for activities of limited duration (maximum 18 months).

Approximately three quarters of all foreigners possess a permanent residence permit (C permit), which is granted after five to ten years of legal residence (with B permit) depending on the country of origin. Permanent residents have practically the same rights as Swiss citizens (including the right to acquire real estate), except for voting and standing for public office.

Significantly for foreign investors, the regulation concerning the employment of foreign specialists has been liberalised. "The preference which, in normal circumstances, must be given to the recruitment of workers locally need not apply in the case of certain executive-level staff positions or qualified specialists from Europe and overseas, in various economic sectors and research areas."[10] In a modification of the ordinance limiting the number of foreign workers, the Federal Council, as of 1 May 1993, liberalised the procedures for allowing foreign managers and highly qualified specialists into Switzerland. In particular, enterprises wishing to bring in highly qualified foreign specialists no longer need to demonstrate that it was not possible to find a sufficiently qualified candidate within Switzerland, whether among Swiss workers or those foreigners already in Switzerland.

In 1995, a new short-term permit *(permis de séjour de courte durée)* was considered which would have improved the treatment of citizens from EEA and EFTA countries. One element would have been to allow short-term workers to bring their families along. A decision on this issue is still pending.

Following the conclusion of the General Agreement for Trade in Services (GATS) negotiations, Switzerland will permit the temporary movement of key

personnel in the services sector. Regarding managers and highly qualified specialists, the priority which is currently accorded to local employees will be suppressed. Both the quota system and the control of salaries and work conditions will continue to be maintained by the Government, however. An exception to the principle of most-favoured-nation allows Switzerland to accord preferential treatment to citizens of the EU and EFTA concerning the admission, length of stay and access to the labour market in Switzerland.

The competence of the Federal Council in matters concerning the labour market is limited by the federal law on the visits and establishments of foreigners which leaves much of the decision-making authority in the hands of the cantons.

e) Taxation

Switzerland has traditionally attracted inward investment partly through its low levels of taxation, both overall and in specific sectors. Almost 90 per cent of the stock of inward investment in Switzerland is in services, and a large share of this total can be attributed to the tax advantages of locating certain operations such as holding companies in Switzerland. The decline in inflows registered in 1993, together with a drop in revenues from stamp duties since 1989, testify to the weakening attraction of Switzerland as a place for establishing holding companies. The reasons for this decline relate not so much to changes in Switzerland as to initiatives in the rest of Europe which have liberalised cross-border capital flows within the European Union. In response, the Federal Council has initiated numerous changes to its own tax legislation and the issue of double taxation concerning dividends is being examined, along with other taxes on capital. But at the same time, the Government is constrained in this area by the objective of balancing the federal budget.

Forty per cent of inward investment in Switzerland is in holding companies, benefiting from the low levels of taxation of profits in Switzerland. A holding company is defined as a corporation whose purpose is permanently to hold substantial investments in the equity capital of other companies, whether foreign or Swiss. To qualify as a holding company, a certain percentage of total assets must consist of these holdings. Almost all cantons provide either relief or exemption from cantonal or communal taxes for holding companies subject to differing conditions. To the extent their income is derived from participation in other companies, those companies are also exempt from direct federal taxes.[11]

However, Switzerland imposes a withholding tax on interest on bank accounts and bonds and on dividends and other cash distributions to shareholders, including the repatriation of profits to non-Swiss investors. When other European countries applied such taxes to all non-resident foreigners, Switzerland was able to attract holding companies on the basis of its low rates of profits tax. With changes in tax policies in the European Union, however, Swiss withholding taxes have discouraged companies from setting up holding companies in Switzerland. In early 1992, the EU enacted two directives concerning tax policy which greatly liberalised cross-border payments from affiliates to parent companies within the European Union. The parent-subsidiary directive allows investors established in the EU to receive the full amount of dividends from their affiliates located in other EU countries free of withholding tax.[12] If, instead, these dividends are paid to a Swiss holding company, then a withholding tax is applied and only a part of the total will be sent to Switzerland depending on double taxation agreements. These non-Swiss investors may claim a partial or full refund if they are covered by a double taxation treaty between Switzerland and their country of residence, but it could take up to two years between when the tax is collected and when it is refunded. Parliament is discussing the possibility of paying interest during this period. This will not help when the refunding is only partial and the holding company is not paying enough federal income tax to be able to profit fully from the deductibility of non-refunded income or withholding taxes paid abroad. Another EU directive applies a neutral tax regime in the event of restructuring arising within the EU, while Switzerland taxes profits with respect to book values when such restructuring take place such as when a Swiss company sells an affiliate abroad.

Partly because of these tax changes, a number of companies have withdrawn their capital from their holding companies in Switzerland. Even Swiss companies may now contemplate moving their holding companies out of Switzerland. Switzerland has seen a migration of holding companies towards countries such as Luxembourg. In response, the Federal Council has begun to negotiate bilateral tax treaties which would eliminate withholding taxes between the signatories. Several such treaties have already been signed, notably with the Scandinavian countries. Others, such as with Germany and Belgium, are currently being negotiated. Other ways of tackling the problems stemming from the withholding tax are under study. The Swiss Government nevertheless intends

to retain the withholding tax, partly to ensure that investors declare their income.

The threat to Switzerland as a centre for holding companies comes not just from the migration of foreign firms to other locations but also from the transfer abroad of certain fund management activities by Swiss financial institutions. In 1988, three quarters of all public funds managed by Swiss companies were domiciled in Switzerland. By the end of 1993, only one third were domiciled in Switzerland. The rest had moved to Luxembourg.[13] One reason for this is the stamp duty on issuance and turnover. Luxembourg has neither withholding taxes nor a stamp duty. Other factors behind the shift to Luxembourg stemmed from the relative restrictiveness of Swiss regulations concerning fund management which were removed by the new law of 1994. Such regulatory reform is intended to prop up Switzerland's role as a financial centre, in addition to its continuing appeal as a safe haven for investors.

Reforms of the stamp duty were approved in a referendum in September 1992. The new law abolishes the stamp duty on transactions between foreigners and on Euromarket issues. It also provides for the exemption from stamp duty of own transactions by professional market makers, the issue of securities by Swiss investment trusts and by companies that have merged or have been taken over, and companies moving their domicile to Switzerland. The tax was abolished on banks' own holdings of bonds and on Swiss franc bonds issued by non-residents in Switzerland. The duty on the issuance of stocks was retained in 1992, but it was lowered at the beginning of 1996 from three to two per cent, the potential for revenue losses inhibiting a further loosening.[14] In addition, an exemption for share capital not exceeding SF 250 000 effective from 1 January 1996 was introduced. Nevertheless, further reform of company taxation remains under consideration.

A value added tax introduced in the beginning of 1995 replaced the old turnover tax.[15] The previous regime did not apply to services and energy, but did tax both intermediate inputs and investment goods and hence had a deleterious effect on investment and international competitiveness.[16]

ii) Real estate (Lex Friedrich)

Since 1961, the purchase of real estate in Switzerland by foreigners or Swiss not domiciled in Switzerland has been subject to authorisation. The legislation

grew out of concerns about the rapid increase in foreign acquisitions of Swiss property which began in the 1950s. The original regime was for five years, after which it was renewed several times. Over time, the legislation became stricter as the foreign demand for Swiss property grew. The motives for restricting investment also proliferated. The following justifications have all been used, at one time or another, for maintaining restrictions on foreign ownership of Swiss property:

- the scarcity of terrain available;
- the foreign demand for such property which, at times, can be considerable;
- the pressure on the market for holiday homes;
- the risks to the Swiss cultural identity;
- the economic independence of Switzerland;
- the threat to military security.

Many of these justifications were applied at specific points in time, such as the prohibition of foreign investment in Swiss property in the early 1970s in order to help stabilise the monetary situation in Switzerland. Most of them are now either irrelevant or can better be preserved by other means which do not discriminate against foreigners and which do not restrict foreign firms from investing directly in Switzerland.[17]

Since the initial measures were introduced, the legislation has progressively become more restrictive. The most recent legislative reforms occurred with the *Lex Friedrich* (Federal Law of 16 December 1983) which entered into force in 1985. An authorisation is not granted except for motives provided for in that law. The cantonal authorities are responsible for this authority. Their decisions can be appealed in the cantonal appeal courts or even in the Federal Tribunal. The authorisation can take up to six months, depending on the cantons.

Authorisation is required for foreign nationals and for foreign-controlled firms, except for those foreign persons possessing a permanent residence permit. Foreign control is established when foreigners hold more than one third of the capital or voting rights. The law distinguishes between federal motives for authorisation, which apply to all Swiss territory, and the supplementary motives which the cantons can introduce into legislation. With respect to real estate for industry and services, an essential criterion is that the property is operated to

serve the acquirer's long-term ("stable") economic establishment. Holiday homes are subject to a quota which is distributed among the cantons. Since 1985, these quotas have never been filled, but they are a constraint in some prestigious winter resorts.

It is difficult to measure the importance of foreign ownership of Swiss property, but one recent estimate suggests that the legislation has significantly constrained inward investment in this area. Since 1967, foreign investors have acquired property equivalent to only 0.05 per cent of the surface of Switzerland, or 0.8 per cent of the surface reserved for habitation. Only in the area of secondary or holiday homes, have foreigners acquired an important stake, in this case 17 per cent.

A Group of Experts was given a mandate to examine the existing legislation in November 1993.[18] The experts found that the existing legislation has only partially lived up to its expectations, that many of the objectives pursued in the *Lex Friedrich* could better be achieved through other means and that restrictions of the sale of property to foreigners has some undesirable economic side-effects. The Group stated that neither international treaties signed by Switzerland nor European law authorise, in principle, any restriction based on the nationality of the investor. The Group recommended that the *Lex Friedrich* should be abrogated and replaced by legislation at the cantonal level which addresses in a more narrowly defined way the concerns of the Swiss population such as the potential for over-development of the Swiss territory owing to an increase in demand for secondary homes.

Given the decline in demand for Swiss property and the pressures for Switzerland to conform to European norms in this area, the Federal Council proposed several major revisions to the *Lex Friedrich* which were approved by the Parliament in October 1994. However, enactment of the new law was prevented by the Swiss electorate which, on 25 June 1995, voted against these revisions in a referendum. The revised law would have permitted a controlled opening, while at the same time maintaining a "hard core" of regulation. The interdiction was to be maintained for the following investments: when the building is acquired uniquely for speculative purposes; when the investor is active in the property sector in Switzerland and earns his income from those activities; and when the building is intended as a holiday home, provided the local quota is exhausted.

Foreigners who reside in Switzerland or who had done so previously for a minimum of five years would no longer have been subject to the authorisation. Similarly, commercial, industrial and financial enterprises or those supplying other services would also have been exempt from authorisation provided that they acquired the property with a view to exercising some commercial activity there. Investments designed solely as a placement of capital would also be free from authorisation if the acquirer put the property at the disposition of a third party who would engage in some economic activity from that premises.

The revised law would have placed the emphasis on residence and not on nationality. Following the Danish model, persons resident in Switzerland for a minimum of five years would no longer have been subject to the authorisation. At the time of accession negotiations on the EEA, Austria, Sweden and Finland all tried to negotiate a solution along the lines of the Danish agreement with the EU concerning the sale of property to foreigners. The EU accorded them only a five-year transition period in which to remove their discriminatory policies. It is likely that the same outcome, going beyond the proposed Swiss law, would have occurred for Switzerland had it joined the EEA.

With the rejection of the proposed changes to the *Lex Friedrich*, the regulations concerning the sale of property to foreigners remain in place. As the Group of Experts reported, the requirements of authorisation will continue to discourage inward investors partly through the lack of transparency. The *Lex Friedrich* also has implications for reforms in other areas. For example, a foreign firm wishing to acquire a Swiss company will have to satisfy the authorities that its acquisition of the property held by that Swiss firm is permissible under the *Lex Friedrich*, before it can proceed with the acquisition of the firm itself. The acquisition by foreigners of a Swiss firm which is principally engaged in investing in property is forbidden.

Foreign investors might also be blocked at a communal level, such as through zoning laws and local planning regulations. In addition, the competitive conditions in certain segments of the Swiss market such as retailing might make collusion between communal authorities and local firms more likely. In this context, high priority is given to the acceleration of authorisation procedures as part of the revitalisation programme (see section B, *i*).

iii) Revision of corporate law and private practices

a) Corporate organisation

The board of directors of a corporation with limited liability (derogations are possible for holding companies) and the administration of a co-operative company must be composed of a majority of Swiss citizens domiciled in Switzerland. This rule may be waived for holding companies if a majority of their subsidiaries are established abroad. At least one member of the board of directors authorised to represent the company will have to be domiciled in Switzerland. If the board of directors consists of a single person, this person must have Swiss citizenship and be domiciled in Switzerland. The establishment of a commercial presence by persons or enterprises without a legal personality under Swiss law requires an establishment authorisation according to cantonal law. It is envisaged that the nationality requirement might be dropped in the future, with an emphasis on domicile instead.

The nationality requirement was first introduced in 1919 as a result of problems encountered during the First World War. One reason the requirement has since been retained is to ensure that a company can be brought to court in case of unlawful behaviour, the underlying assumption being that a Swiss director is less likely to flee the country in the event of possible prosecution. This argument is not valid for directors from those countries such as the contracting parties to the EEA which, like Switzerland, have signed the Lugano Convention. This convention makes it possible to bring civil lawsuits against persons resident in other signatory states in courts of the jurisdiction where the allegedly unlawful act has occurred, whereupon the court's ruling can be enforced against the defendant in his country of residency. This would make it unnecessary to retain either nationality or residency restrictions for citizens of signatory states.

b) Private practices

In spite of 236 take-overs of Swiss firms by foreigners over the past five years, Swiss firms have traditionally had a reputation for being impervious to hostile take-overs.[19] In Switzerland, the legal form of a joint stock company (*société anonyme)* is chosen not only by large enterprises but also by small and medium-sized firms which, by their nature, are private companies. Out of 170 000 such corporations in Switzerland, only 250 are actually listed. The

majority are family controlled. Swiss companies have long allowed foreign investors, but without relinquishing control. Foreign investors were generally restricted to bearer shares which only a fraction of the voting power of registered shares. Many Swiss firms had and often still have complex three-tiered share structures with "tied" registered shares (*vinkulierung*) and associated restrictions on ownership transfers. Such systems allowed them until recently to discriminate overtly against foreign investors, and this was frequently done.[20] Although dating back to the nineteenth century, *vinkulierung* gained greatest currency beginning in the 1930s.

Through a mixture of federal legislation and reforms within Swiss companies themselves, this overt discrimination has largely disappeared. The impetus for change at the company level has come from the need to raise more capital than can be provided simply through Swiss national savings on favourable terms. Furthermore, the distinction among types of shares made the process of issuing new shares cumbersome and has prompted some companies to switch instead to uniform shares. In 1988, Nestlé was the first company to abolish the discriminatory treatment of foreign shareholders. More than half of its shares are now owned by foreign investors.[21] Other large and medium-sized companies followed suit. Nestlé also began to publish interim financial statements and other budget information.

Although Swiss companies have mostly eliminated the overt discrimination, barriers to take-over nevertheless remain owing to limits on voting rights for individual investors for listed firms or to restrictions on the transferability of shares by unlisted firms. While these barriers no longer discriminate against foreigners, they do restrict the ability of any firms to undertake a hostile take-over in Switzerland. Since such acquisitions are often an important way for firms to expand abroad, these practices make it more difficult for foreign firms to enter the Swiss market.

Legislation has also helped to end overt discriminatory practices. The Revised Company Law enacted on 1 July 1992 generally forbids discrimination against foreigners concerning the acquisition of shares and the rights of shareholders. It remains possible to reject a potential shareholder in specific cases, but such a rejection can no longer be based on nationality except in certain cases where a Swiss law is transgressed (*e.g.* the *Lex Friedrich*). The rules on rejecting shareholders differ for companies listed and those not listed on the stock

exchange. Listed companies are governed by Article 685d of the Swiss Code of Obligations: companies may refuse an acquirer as a shareholder only if the articles of association restrict the shareholdings per individual investor by stipulating a maximum percentage of the company's registered shares up to which an acquirer must be recognised as shareholder. A company can otherwise refuse to sell shares to foreigners only if this would contravene existing Swiss law, such as through the sale of property to foreigners.[22] Listed companies have a transitional period of five years (*i.e.* until 1 July 1997) to comply with the new legislation, during which time they may still veto the registration of stocks without having to state the reasons why. Newly listed companies, however, are immediately subject to the law.

As to companies with unlisted shares, Article 685b of the Code of Obligations determines that refusals of an investor are permissible if the company gives a valid reason which is mentioned in the articles of association. Valid reasons include provisions regarding the composition of the shareholders' circle which justify the refusal in view of the company's purpose (*but social*) or the economic independence of the enterprise. In such a way, an independent company might avoid being integrated into a larger group of companies. Refusal on the basis of the company's purpose is very rare. It might involve, for example, the refusal of a newspaper to sell to an investor that was not of the same political persuasion. In the case of a refusal, the investor can appeal, and the company must demonstrate that its motives are compatible with its articles of incorporation.

The new system has not eliminated the quest for anti-take-over measures. To protect themselves under the new system, Swiss companies have established limits on the voting rights of any single investor: three per cent in the case of Nestlé and two per cent for Ciba-Geigy, for example. This system is also in use in a number of other Member countries.[23] Any change to the company's charter then requires a qualified majority. At Nestlé, for example, changes to the share structure require a two-thirds quorum and a three-quarters majority.[24] Even this defence is under pressure, however. In 1991, for example, an alliance of Swiss and foreign pension fund investors prevented an attempt by the board of Holzstoff Holding to limit individual voting rights.[25] These limits on voting rights are currently justified as a way of protecting the interests of small shareholders. As a result of these limits, a firm can only gain effective control through a takeover which involves the acquiescence of other shareholders. The potential

acquirer can, for example, propose to buy the shares of other holders on condition that they transfer their voting rights to the acquirer in an extraordinary general meeting. With sufficient votes, the acquirer can then amend the articles of incorporation of the enterprise.

There is no statutory law regulating take-overs in Switzerland. A voluntary take-over code developed by the Swiss Stock Exchange has been in effect since 1989. A new federal Stock Exchange Law that includes provisions on take-over rules has been approved by Parliament and is expected to come into effect in mid-1996. The Law is designed to promote shareholder rights and to boost the liquidity and transparency of the Swiss financial market. At present, large shareholders do not have to report their holdings except in the annual report. With the new Stock Exchange Law, potential acquirers would have to disclose their holdings once they reach five per cent. Some Swiss companies have therefore indicated a willingness to remove their voting restrictions if the new code leads to greater shareholder transparency.[26]

The new Law also seeks to protect the rights of minority shareholders. The purchaser must pay the current stock price to these shareholders, and once one third of the voting rights are acquired the purchaser must make an offer for all other shares. In this last case, however, an escape clause is available to companies. A company may simply state in its articles of incorporation that the obligation to make a public offer will occur only at 49 per cent. Many family-controlled companies are expected to make use of this provision in the Law. Under the new Law, a practice such as the acquisition by the American company Philip Morris of 28 per cent of the shares and 62 per cent of the voting rights of Jacobs Suchard would no longer be possible. Philip Morris purchased these shares at a substantial premium over the share price through a direct offer to the majority family holder. In addition, the new Law will rely largely on self-regulation. While the Banking Commission will have ultimate responsibility for regulating the securities market, no increase in its staff has been proposed for that purpose.[27]

In spite of the restrictions on take-overs mentioned above, there remain ways in which foreign investors might acquire certain Swiss companies. For example, an investor can make a tender conditional upon the election of a new board allowing that investor entry in the register.

The first case of a hostile take-over in Switzerland involves Holvis, a Swiss non-woven fabrics and paper distribution group. Holvis was the first widely-held

Swiss company to remove the voting restrictions on its shares. All bidders for the company offered to purchase all shares at the agreed price, rather than just enough to secure majority control even though such a practice is still not required under Swiss law. It remains to be seen to what extent other Swiss companies will follow the example of Holvis by removing voting restrictions.

Swiss take-over rules also face external pressure for change. While Swiss companies have been acquiring large firms throughout Europe and North America, the largest Swiss companies maintain formidable obstacles to hostile take-overs. The question of reciprocity arose in the United Kingdom at the time when Nestlé acquired Rowntree in 1989. Although the alleged lack of reciprocity in terms of acquisitions was not the only issue involved, there were cross-party calls for a referral to the Monopolies and Mergers Commission and some members of the Labour Party suggested that the United Kingdom invoke the 1975 Industry Act in order to block the take-over. Reciprocity was not the only issue of concern; the effect on local employment and the local economy of foreign control of a leading employer was also at issue. In the end, the UK Government refused to consider any such referral.[28]

iv) Monopolies and concessions

A list of the Swiss public and private monopolies and of sectors in which concessions are granted, is presented in Table 10. The sectors of finance, energy, transport en telecommunications will be discussed in section C on sectoral measures.

a) Manufacture and importation of distilled beverages

According to the Swiss constitution, the Confederation has the right to control the manufacture, importation and sale of distilled beverages. For certain activities, the Confederation distributes concessions to private enterprises. For alcoholic beverages with less than 75 per cent alcohol, private persons do not need either a concession or an authorisation. Importers should nevertheless pay a duty. For those beverages which are more than 75 per cent alcohol, an authorisation is needed from the competent authority. There exists no monopoly on the wholesale and retail trade in distilled beverages.

Table 10. **Swiss monopolies and concessions**

I. On national and government level

1. *Public monopolies*
   - Post and telecommunications services.
   - Scheduled passenger transportation by boat, automobile, cablecar or other, similar installations (concessions can be granted to private enterprises).
   - Railways (concessions can be granted to private enterprises).
   - Manufacture and importation of distilled beverages with an alcohol content of more than 75 per cent.
   - Importation of bread-making flour (in exceptional circumstances).
   - Production, sale and importation of gunpowder.

2. *Private or mixed monopolies*
   - Air transport (for certain lines of general interest).

3. *Concessions*
   - Besides the concessionary regimes mentioned in the context of public, private and mixed monopolies, are notably subject to the granting of concessions: radio and television broadcasting (concessions can be granted to private enterprises).

II. At the level of territorial subdivisions

1. *Public monopolies*
   - A certain number of cantonal or communal monopolies exist, for example concerning fishing, hunting, mines, salt, fire insurance and the utilities industry (distribution of water, gas and electricity).

2. *Private or mixed monopolies*
   - As a general rule, all monopolies can be transferred to third parties.

3. *Concessions*
   - As a general rule, all monopolies can be converted into a concession to a third party.

b) Importation of flour for making bread

The Constitution permits the Confederation to have the exclusive right to import flour for making bread if the supply is seriously compromised in case of

war or if the price of such flour becomes excessive. The Government has never had recourse to such a monopoly.

c) Manufacture and sale of gunpowder

Neither cantons nor private persons have the right to manufacture or sell gunpowder. The article of the Constitution concerning this monopoly is currently under review with the eventual removal of this monopoly envisaged.

v) Privatisation

As part of the programme of revitalisation and following from the experience of other countries in privatisation, a number of measures have been proposed which would substantially improve the opportunities for private firms to participate in certain sectors, without necessarily envisaging a complete privatisation. Few companies are owned by the federal Government, but those that are tend to be viewed as national symbols, a perception implying obstacles to their privatisation and subsequent sale to foreign investors. The major public companies in Switzerland are the PTT (post and telecommunications) and the CFF (railways). The electricity industry is also 75 per cent publicly-owned. There is more scope for privatisation in other sectors at a cantonal level, notably in banking. To mention one exceptional example, in the canton of Bern there are 140 companies in which the cantonal authorities hold shares valued at around SF 825 million, mostly in the cantonal bank (SF 607 million), the power generation company, the public transport companies, Swissair and Crossair, and agricultural co-operatives.[29] These investments are currently being reconsidered.

vi) Public order and essential security interests

Switzerland has no general screening mechanism for foreign investment for the purpose of preserving public order and essential security interests. In a number of sectors, it retains restrictions originally motivated by such considerations. These measures were formerly listed for transparency purposes on the basis of public order and essential security considerations within the National Treatment Instrument (see Annex 1) which have lost much of its meaning in the present political situation. Accordingly, they have now been reclassified as exceptions. They applied to maritime transport, hydropower, pipelines and

nuclear energy. These measures have also been listed as reservations to item I/A of the Codes of Liberalisation of Capital Movements.

vii) Regional economic development

Incentives and grants to both foreign and Swiss investors remain modest in Switzerland and are confined to small-scale projects. A federal decree of 6 October 1978 was adopted following the fragility of certain regional economies in the wake of the recession in 1975-1976. The objective is to encourage innovation and diversification in afflicted regions and to promote new investment by means of investment credits, contributions to interest payments and reductions in federal income taxes.

The intervention of the Confederation in such projects is based on the principle of subsidiarity. It will only contribute to a project if the capital invested reaches at least 20 per cent of the total for the project and if a bank lends towards the project applying normal credit conditions but with a reduction in interest payments equal to that offered by the Confederation. The canton in which the project occurs should also take charge of a share of interest payments at least equal to that agreed by the Federal Council. Fiscal incentives will only be granted if the enterprise is newly-established and receives a cantonal subsidy and if the canton also accords tax reductions. Subsidies, assistance with interest payments and fiscal incentives are focused essentially on depressed regions but can also be given in other areas.

By the end of 1994, there had been 537 projects complying with this decree, of which one fourth (128) involved foreign firms. One fifth (108) involved the creation of new Swiss companies and the rest (301) involved diversification or innovation of existing Swiss companies. The volume of the supported investment projects were the following (in millions of Swiss francs): 1990: 254; 1991: 243; 1992: 77; 1993: 99; 1994: 190. German and American investors were the principal beneficiaries of this aid. The decree has recently been prolonged until 30 June 1996. In order to assure the continuation of these efforts beyond that date, the Parliament has adopted a new system following on the federal decree of 6 October 1978, while at the same time leaving open the possibility of new solutions. This system includes:

- a federal decree in favour of afflicted economic zones by which the Confederation hopes to encourage private sector project in order to create

or to reorient employment in these zones. The measures envisaged for this purpose are as follows: loan guarantees, fiscal incentives and interest subsidies. The commitments of the Confederation in the form of loan guarantees for a duration of at most eight years cannot exceed the total of 300 million Swiss francs. Fiscal incentives offered by the Confederation, regardless of their form, their importance and their duration, cannot exceed those which are offered to the enterprise by the canton. Interest subsidies are granted for a maximum of five years and cannot exceed one quarter of the usual commercial interest payments (in an overall credit limit of 10 million Swiss francs);

- a federal decree concerning the promotion abroad of information on Switzerland as a business location in order to attract foreign investment. The Confederation contributes to this information flow, especially through publications, participation in trade fairs, exhibitions and seminars, and through information sessions organised by the Confederation. The Confederation is putting forward 24 million Swiss francs for ten years towards this goal;
- a federal decree concerning the participation in international informational events for small and medium-size enterprises. The Confederation is offering 10 million Swiss francs for a period of five years.

C. Sectoral measures

i) Financial services

a) Banks and securities firms

Swiss banks are permitted to provide securities services as much as banking services. However, Switzerland does not have a "pure" universal banking system such as exists in Germany or Austria where all securities services are considered banking activities and foreign securities firms require a banking licence. Specialised foreign securities firms can be given a licence limited to securities brokerage and dealing; they may or may not receive a banking licence.

Switzerland is not the only OECD Member country that has strict rules to guarantee banking confidentiality; its regulations are not even the strictest among

Members. Nevertheless, the combination of secrecy and a banking system of high standing has worked as a magnet to clients seeking banking services from around the world. It has promoted Switzerland as a financial centre, but also created an impression that the country might offer a transfer point for illegal financial flows. Aware of the need to counter this reputation, Switzerland has amended its penal code and changed some of its regulations and has shown a greater willingness to co-operate with foreign law enforcers. In particular, the "Form B" accounts were abolished in 1991. These were accounts operated by lawyers, notaries or trust administrators on behalf of anonymous clients and which could have offered a venue for money laundering operations. Although no solid data on the economic consequences of the 1991 measure are available, it reportedly provoked an outflow of assets managed by Swiss banks to competing financial centres in the following year. Furthermore, Switzerland has strengthened laws on money laundering, improving the powers of law enforcers to seize assets allegedly linked to such practices. The 1991 measure led to a marked drop in the volume of assets managed by Swiss banks in the following year.

Swiss banking legislation has not traditionally provided a strict cut-off point to determine whether or not a bank is foreign-controlled. Previously, a bank could be considered foreign-controlled even if a minority stake was in the hands of a dominant foreign investor, if ownership of the remainder of the shares was scattered among a large number of relatively small investors. The Banking Commission (*Commission fédérale des banques*) determined on a case-by-case basis whether a bank was deemed foreign-controlled. Recent legislation relies on the notion of qualified participation. A bank is considered to be foreign-controlled if qualified foreign participation, whether direct or indirect, exceed one half of the voting rights or if the bank is dominated in some other way by foreigners. A qualified participation is defined as any investment by persons or firms which constitutes at least ten per cent of the voting rights or which gives the participant a notable influence over the management of the bank. In this latter case, a firm might be considered to have a qualified participation in another firm if it has provided significant loans to that firm.

The establishment of a foreign-controlled bank in Switzerland is authorised only if, in addition to those conditions to which Swiss banks are subject, the following two conditions are also met:

- the foreign country concerned must guarantee reciprocity;

- the corporate name must not give the impression that the institution is Swiss.

The same conditions apply to head offices, branches and agencies of a foreign or foreign-controlled bank, as well as to the permanent representatives of a foreign bank. The legislation does not call for a strict mirror-image reciprocity, but it is based on the qualitative comparison of market access and operational conditions prevailing in Switzerland and the country of origin of the foreign bank applying for a licence. In practice, a flexible policy is applied on a case by case basis. The intention is to ensure that Swiss banks in the country of the investor receive substantially full market access and de facto national treatment on a most-favoured nation basis. Reciprocity is based on the control principle (as opposed to the incorporation principle), that is the country of origin of the applying investor is required to grant reciprocity. The Banking Commission is responsible for deciding whether the reciprocity condition is met. By virtue of its commitments taken at the conclusion of the follow-up negotiations on financial services under the GATS, Switzerland has suspended the application of reciprocity measures to GATS signatories until the end of the agreed interim period (November 1997). There have rarely been formal denials of authorisation to foreign banks motivated by an absence of reciprocity, but according to the Swiss authorities, the regulation has deterred foreign banks from applying for authorisation in cases where the reciprocity condition was not met.

The condition concerning the corporate name is designed to protect the perceived cachet associated with any reference to Switzerland in a bank's name. There have been instances where a bank's name was refused on this ground. On the other hand, Swiss banks are not permitted to draw excessive attention to their Swiss status in advertisements. Foreign banks may still put "Switzerland" in parentheses in their title. This applies equally to banks which are acquired by foreign investors. This restriction on foreign banks would have been dropped had Switzerland joined the EEA.

Branches of foreign banks are not subject to any particular condition as to own equity ratios and/or risk spreading. All national rules apply concerning adequacy of organisation and resources and quality of staff. The Swiss authorities require that a foreign bank's parent company and home country supervisory authority exercise proper supervision and that the latter undertakes to inform the

Federal Banking Commission of any deterioration in the parent company's situation. Ten per cent of the assets of the branch must be located in Switzerland, and the branch should publish separate accounts. A proposed revision intends to drop these two requirements for branches in recognition of home country control. An agreement that aims at facilitating the conditions for establishment of bank branches is under negotiation with Germany. In addition, the revised banking law empowers the Federal Council to sign reciprocal international agreements which would allow for branches to be opened without authorisation. No such agreements have been negotiated yet.

For representative offices, the Banking Commission insists once again on reciprocity, home country surveillance and a guarantee of irreproachable conduct. The establishment of representative offices of foreign banks[30] requires authorisation.

Members of the boards of directors of all banks must have their residence in a place which permits them to exercise effective management of the affairs of the bank and to assume responsibility. This last clause represents a slight modification from previous regulations which required that the board members reside in Switzerland. It was modified in order to allow directors to reside in countries bordering on Switzerland but nevertheless in the immediate vicinity of their place of employment.

A number of revisions have been made to Swiss regulations concerning foreign banks in order to make Swiss law compatible with that in the EU and because of agreements as part of the Uruguay Round. Firstly, the requirement that reciprocity must be guaranteed by the investor's home country applies henceforth only if no international agreement stipulates otherwise. Secondly, if the foreign bank forms part of a financial group (*i.e.* a group which includes also a securities house or an insurance firm, or both) authorisation to the bank to establish in Switzerland can be granted subject to the condition that the home country provides for adequate consolidated supervision.

In judging foreign investment applications in the banking and investment services sector, Switzerland requires reciprocity. Despite the fact that, in practice, no mirror-image reciprocity is asked, it seems that Switzerland applies its reciprocity clauses in a far more active manner than is the practice among other Members, where the reciprocity provisions are often dormant, or "clubs in the closet" as an instrument of last resort. A reason given for this by the Swiss

authorities is the international role of the Swiss financial centre and its banks that operate world-wide. The policy concept of reciprocity was introduced in 1969 and further developed in the 1970s when many banks sought access to the Swiss market, *i.e.* to manage the "petrodollars" from major oil-producing countries. Recent changes in regulation following from the Uruguay Round suggest that in Switzerland too there is a tendency to qualify the application of reciprocity.

As part of the financial services agreement in the context of the World Trade Organisation, Switzerland may terminate the use of reciprocity, together with other parties to the agreement in November 1997. This would indeed be welcome given the fact that reciprocity runs counter to the principles of non-discrimination embodied in the OECD's Codes of Liberalisation which stipulate *i.e.* that reciprocal measures are generally not permissible and, in the field of foreign establishment, are tolerated temporarily, but should be progressively abolished.

b) Cantonal banks

Cantonal banks continue to play a significant role in the Swiss economy. Not only are their liabilities guaranteed by the canton, they are also usually publicly-owned. The origin of these banks dates back to the nineteenth century when they were created to stimulate the cantonal economies. They account for more than one third of savings deposits in Switzerland, and their share of total banking assets represented 21 per cent in 1993.[31] The performance of many of these cantonal banks has been poor in recent years, and some cantons are now considering privatisation. For the moment, any moves have involved only a partial privatisation to enable the cantons to share the banks' risks with the private sector. Several banks have been converted into joint-stock companies, but the cantons have retained majority shares. Furthermore, these tentative steps have been confined, for the moment, to banks in difficulty.

Pressure for reform is also coming from another direction. The Swiss Cartel Commission has recommended limiting or eliminating cantonal guarantees for these banks because of the unfair advantage it gives them in terms of lower costs of borrowing money and because of the difficulties such a guarantee implies for privatisation. The cartel office nevertheless suggested that these banks provide a valuable counterweight to the larger commercial banks.[32] One stumbling block is that the Central Government can presumably not remove the state guarantee for these cantonal banks without changing the Constitution.

c) Insurance

Insurance companies with a head office outside of Switzerland wishing to operate in the direct insurance business in Switzerland require authorisation by the Federal Department of Justice and Police. It must maintain an office in Switzerland and appoint to manage that office a general agent resident in Switzerland and well-versed in insurance matters. Companies that operate both life and non-life insurance in their home countries are not allowed to operate life assurance in Switzerland, but only those non-life insurance classes they are licensed for in their home countries. Business not related to insurance is not permitted. The legal form of the insurance company in the head office country must be in line with the Swiss joint-stock company or co-operative. As a rule, a minimum experience of three years in the head office country is required.

The organisation and the executive staff of the branch or agency must provide sufficient guarantees for sound management in Switzerland. The branch or agency must have its own capable staff which it pays itself. A general representative with the power to represent the insurance company before the supervisory authority must be appointed as its manager; he must reside in Switzerland and actually direct the entire Swiss business. The appointment of the general agent must be ratified by the Federal Office of Private Insurance. Foreign insurance companies are subject, too, to specific regulations in respect of legal deposits. They must establish an organisation fund. Switzerland does not require reciprocity in the insurance sector.

By virtue of the EC/Swiss agreement on direct insurance other than life assurance of October 1990, branches and agencies of insurers based in EC countries are no longer subject to any requirement concerning the constitution and maintenance of deposits and solvency margins in Switzerland. The Swiss authorities and those of EU countries accept from each other an attestation that the investor has adopted a legal form in its home country. For non-EU countries, the old requirements apply.

At cantonal level, there is still a public monopoly in 19 cantons concerning fire and natural disaster insurance on buildings, which has a 200-year history. The cantons not only provide this insurance, they also provide information on fire protection as well as training for fire fighters. Because these services are so closely tied with fire insurance, it is unlikely that this monopoly will be changed,

in spite of the opposition from the private insurance firms. Possibilities for reform are discussed, nevertheless.

As with banking, the Swiss authorities intend to adopt EU legislation concerning the insurance sector. It has no reservations against the Capital Movements Code, nor exceptions to the National Treatment Instrument, concerning the establishment of foreign-owned insurance firms.

ii) Energy

a) Electricity

Switzerland has traditionally sought to be self-sufficient in energy production and has maintained a high degree of public ownership in electricity generation. Even without a tax on final consumption, Switzerland has almost the highest prices for electricity for industry in Europe and the third highest within the OECD. The Swiss electricity industry is currently 75 per cent publicly-owned. There is no monopoly in production, transport or the import and export of electricity. Concessions for electricity generation by hydropower are granted only to Swiss nationals resident in Switzerland or to companies under Swiss control headquartered in Switzerland. However, the Federal Council will open its public procurement in this sector to foreign firms as part of the Uruguay Round agreements.

As part of a second package of measures aimed at revitalising the Swiss economy, the Federal Department of Transport, Communications and Energy commissioned a report on the opening of the Swiss market for energy in June 1994. The so-called Cattin Report recommended several changes:

- third party access (once EU countries offer the same access);
- unbundling (separating production, transport and distribution);
- higher efficiency of the electricity sector and lower production costs;
- more rapid and transparent authorisation procedures;
- international harmonisation of security and environmental standards.

Between 55 and 60 per cent of the production of electricity in Switzerland comes from hydropower. Concessions concerning water rights are granted by the competent authority of the canton in the territory in which the water is located. The cantonal legislation determines the administrative level which has the right

to grant concessions for the utilisation of hydropower (*e.g.* district or commune). Such a concession can only be granted to Swiss nationals domiciled in Switzerland during the whole time of the concession and to Swiss-controlled legal entities headquartered in Switzerland.

The Confederation monitors the utilisation of hydropower of public waterways and the Federal Council grants concessions on water rights concerning sections which touch the national border. The legal basis for these restrictions is currently under revision. There is a proposition to abandon these restrictions and to create a more transparent system. At present, most hydropower is already exploited and there is no likelihood of many new concessions, although since concessions are limited to a specific period, some are coming up for renewal.

b) Nuclear energy

The construction and operation of nuclear power plants requires an authorisation which may be granted only to Swiss citizens domiciled in Switzerland or Swiss-controlled companies which have their headquarters in Switzerland. This restriction based is aimed at preventing foreign majority control of a Swiss energy producing company and was based on the desire for self-sufficiency alluded to earlier. Since there is no possibility to construct a new nuclear power centre, this restriction will probably not disappear until 1996 or 1997 when the whole question of nuclear power will be re-examined.

c) Oil and gas pipelines

A concession is required for the construction and operation of a pipeline to carry liquid or gaseous combustibles. For those pipelines which cross the Swiss border, concessions are only offered to Swiss citizens domiciled in Switzerland or to Swiss companies which are not controlled, either as regards capital or in any other way, by foreign interests. Foreign participation in pipelines is nevertheless possible and occurs in practice. As with other energy related issues, these restrictions will be re-examined.

d) Prospecting and exploitation of hydrocarbons

A concession is required in order to prospect for or to exploit oil and gas reserves. The concession is granted by the canton. In the ten cantons that have signed an accord on prospecting and exploitation, a concession is not granted

unless three quarters of the capital of the company is in Swiss hands. This restriction is mentioned for transparency under the National Treatment Instrument. Other cantons not signatories to this agreement have analogous restrictions concerning the capital, as well as requirements concerning the headquarters and representation of the company. There is no prospecting at the moment, and no commercially exploitable reserves have been found in the past in spite of SF 300 million having been invested.

iii) Transport

a) Railways

The Swiss rail system is shared by the state-owned *Chemins de fer fédéraux* (CFF) and over 50 semi-private regional companies. Many smaller railway companies are majority-owned by the cantons. The control and use of the infrastructure is controlled by those companies on their own network. A federal concession is necessary to construct or to run a railway. According to a recent revision of the law on railways, from 1996 these concessions are offered and renewed by the Government. For as long as the concession is valid, the holder has the right and the obligation to construct and run the railway and to make use of the necessary auxiliary services. The restrictions concerning the nationality of the board and of the employees of railway companies were abolished in 1994. For new projects such as the transalpine railway, there is now national treatment for all those submitting bids. The Government plans to separate the infrastructure from rail services in 1998, establishing a licensing system and an independent regulatory agency. Goods transport will be opened up and possibly also passenger transport. The Government will submit a proposal to Parliament in the course of 1996.

b) Air transport

With effect from 1 April 1994, the rules concerning the registration of aircraft have been modified. To be registered, the aircraft must be the exclusive property of one of the following:

- Swiss citizens;
- foreigners assimilated to Swiss citizens by virtue of international accords concerning capital participation and the management of Swiss air transport service firms, providing that they reside and they are authorised to remain in Switzerland for a certain period of time;

- foreigners who reside in Switzerland and are authorised to remain for a certain period of time and who use the aircraft principally to depart from Switzerland;
- commercial companies or co-operatives which are incorporated in Switzerland and which are inscribed in the commercial register;
- collectives or companies established under Swiss public law;
- associations constituted according to Swiss law, if two thirds of their members and of their governing board, as well as their president, are Swiss citizens or foreigners who are associated with Swiss citizens by virtue of international accords and who reside in Switzerland.

The Federal Department of Transport, Communications and Energy can nevertheless authorise the registration of an aircraft which does not fulfill these foregoing conditions if the aircraft will be used for a considerable period by a Swiss commercial air transport company.

The transportation by foreign airline companies of passengers and freight is governed by international agreements. Where no such agreement exists, a concession for certain scheduled flights may be granted. In order to obtain such a concession the following conditions must be met: the airline must have a legal domicile in Switzerland; three fifths of its capital and voting rights must be in Swiss hands; and two thirds of the board of directors must be Swiss citizens. Operation of commercial flights other than scheduled flights is subject to authorisation. International agreements remain valid. A license may be refused if it is prejudicial to essential Swiss interests or if Swiss airlines cannot benefit from a reciprocal agreement in the applicant airlines home country. Cabotage is restricted to Swiss companies.

EEA negotiations provided the impetus for changes in this sector in spite of the no vote in the referendum. National treatment is envisaged in those cases where there are likely to be international agreements one with the EU is being prepared although there are no such agreements yet. The Government has indicated its willingness to sign accords with any willing parties. If such an accord is signed, then a foreign airline will be able to invest, while retaining a fully foreign board and may also acquire a share of a Swiss airline company. The Government maintains a significant minority share of Swissair (6 per cent by the Confederation and 14 per cent by the cantons), and requires that at least 60 per

cent of the company is in Swiss hands. A minority share of 40 per cent is available for foreign investment, but Swiss investors have the first right to buy. Presumably, the restriction is motivated by the Chicago Convention, which demands a "genuine link" between the nationality of a company's owner and the flag the company's aircraft fly.

Above a certain share of total traffic, cantonal provisions permit foreign airlines to do their own ground-handling at Swiss airports, including check-in. At Geneva airport, all foreign airline companies with a share of total traffic exceeding 4.5 per cent may perform such services, while at the larger Zurich airport, the share is 1.5 per cent. These companies are not allowed to offer such services to third parties, however.

c) Shipping

To be incorporated in the Swiss shipping register, a ship destined to provide professional maritime transport services must meet the following requirements: the majority of its capital and two thirds of the voting rights must be in Swiss hands; Two thirds of its directors and of its administrators must also be Swiss. This recently liberalised regulation was introduced in a more restrictive form, together with the maritime register, in the war years and, hence, used to be motivated by essential security considerations.

A ship transporting persons or goods between two points on the Rhine may only be registered in Switzerland if it is owned by Swiss nationals, or by companies in Swiss hands, headquartered in Switzerland. For the purpose of this regulation, agreed on a multilateral basis between contracting parties to the Revised Convention for the Navigation on the Rhine of 1868, nationals of these contracting parties and of EC Member States are assimilated to Swiss nationals. The present regulation constitutes differential treatment of EC and non-EC Members. Since Switzerland is not an EC Member, such treatment is not permitted by Article 10 of the OECD's Capital Movements Code.

iv) Telecommunications

The monopoly for the transmission of data through the international telecommunications network has been abolished. Similarly, the former monopoly of the PTT over the electronic services of Videotex was eliminated in 1994. The market for corporate communications and for voice transmission within closed

user groups over leased lines was liberalised in 1995. In addition, the possibility to offer telecommunications services through alternative infrastructures has been introduced on an experimental basis. In August 1995, the Swiss Government published a pre-draft of a new telecommunications law for public consultation which envisages a complete liberalisation of the sector. Furthermore, the Government intends to separate the postal from the telecoms activities of the PTT and to open the possibility of partial privatisation of the Swiss Telecom PTT, with the state controlling the majority share. For the state to relinquish majority control would require a constitutional change. A substantial part of postal services will remain an exclusive monopoly of the state in order to ensure that services are offered throughout the country. Certain services, such as packages above 2 kg, newspapers and magazines and many transfers, will nevertheless be opened to competition.

v) Audio-visual works and broadcasting

Since 1 January 1993, the limitations on the establishment of foreign subsidiaries in Switzerland in the area of distribution and operation of films have been abolished. The establishment of foreign branches in this area are not permitted, however. The justification for this restriction is based on cultural considerations. It intends to preserve market access for Swiss films that are threatened on the local market by large foreign film companies requiring distributors in Switzerland to offer packages of films, which include less marketable films together with the more popular ones. In order to ensure effective implementation of competition policy measures, foreign companies are required to establish subsidiaries.

In Switzerland, broadcasting of radio and TV programmes is based on a dual system providing for a public service parallel to private firms. The SSR (*Société Suisse de Radiodiffusion et Télévision*) is mandated by the Swiss Government to operate as a public service agency and is financed at 75 per cent by reception fees. So-called windows in public programmes for private media companies are allowed on the fourth TV channel (S4), an opportunity which is actually used and which contributes to opening the market for regional TV programmes.

After being allowed on an experimental basis for a decade, local radio stations now stand on firm legal ground. Licences for broadcasting local radio programmes are awarded carefully due to the limited availability of frequencies

and to the restricted size of the market. A large number of regional and local television broadcasting companies whose programmes are distributed by cable have been granted a licence. Such restrictions are based on the concern that local culture ought to be protected.

Foreign investment is currently permitted only up to a maximum of 49 per cent in the share capital of radio or television broadcasting companies. However, the Government issued a framework law in 1994 allowing foreign operators to be granted licences under the condition that reciprocity is assured in their home country. No country has yet satisfied the reciprocity conditions.

Chapter 3

Conclusions

Switzerland is a generally open economy and offers a favourable business climate. The prospects for maintaining its international competitiveness are intact. Nevertheless, in the political sphere and large-enterprise sectors there is a growing realisation that the Swiss economy, traditionally highly integrated in the world economy, has not been well-served by the private and statutory barriers against foreign investment, nor by the stifling of competition on the domestic market. Concerns about their adverse consequences, at a time of increasing economic integration in Europe, together with the country's recently lacklustre economic performance, have engendered an intense debate within Switzerland on its relationship with the rest of Europe. The political response has been an endeavour to improve the regulatory framework for economic activities against the background of the increasing globalisation. In this context, the Swiss Government's bid to make Switzerland enter the European Economic Area was an important building block of the Government's strategy. The rejection by the voters and cantons of their country's accession to the EEA, and the subsequent disapproval of a more liberal legislation on foreign real estate ownership, show that the old perception of Switzerland's place in the world is still widespread among the population.

In spite of the political difficulties involved in implementing reforms, the direction of change in Swiss policies on foreign direct investment is towards greater liberalisation. The sense of urgency felt among policy-makers is most manifest in their adoption, after the rejection of EEA Membership, of the "Swisslex" programme, which, together with many other undertakings of legislative reform, would make Switzerland a "virtual" EEA Member from the point

of view of its internal market legislation. A positive feature of Switzerland's regulatory system is that it already lacks general screening mechanisms for foreign investment. The new internal market law and the strengthening of the competition law should benefit both foreign investors and Swiss consumers. The effectiveness of the latter will depend strongly on how the new Competition authority uses its powers. At the level of the cantons, the rising costs associated with the maintenance of government guarantees for cantonal banks and of public control of certain services, is forcing the pace of change. At the corporate level, the need for foreign capital has led a number of Swiss companies to allow greater scope for foreign shareholdings.

Nevertheless, the question arises whether the changes being pursued are sufficiently pervasive. A point of concern is the continued existence of the authorisation procedure for real estate acquisitions by foreign investors (*Lex Friedrich*) who are not in possession of a permanent establishment permit. Although authorisation is granted when the acquirer uses the property to operate his long-term establishment, the law does constitute an obstacle to new investors located, or intent on locating, in Switzerland. The Government is aware of this and, now that the substantial amendment of the law has fallen through, it should seek ways to amend the existing law in such a way that its negative impact on FDI is minimised.

Constraints on foreign ownership continue to exist in some other areas, even though there seems to be scope for liberalisation. The objectives for the energy market formulated in the Cattin report (see chapter 2, section C, *ii*) would be brought closer by an abolition of the current restrictions on foreign investment in the energy sector. Restrictions in this sector, as well as those in shipping (a sector of marginal importance in Switzerland), have their origins in national security considerations during the war years that have lost much of their relevance in the current political and military situation. Indeed, many other members have take similar steps. Switzerland would also be well-advised to reconsider restrictions on investment in air transport, railways, telecommunications and the audio-visual sector.

The formation of the EEA has provided an impetus to liberalisation in Switzerland, even though Switzerland did not join. On the other hand, joining the EEA might have encouraged a tendency to assimilate EEA citizens to Swiss citizens, whereas exceptions to the principle of non-discrimination would run

counter to the principles on which the OECD Codes of Liberalisation are based. In fact, the plans for special permits for short-term stays of EEA and EFTA citizens have not been introduced for the time being and, at present, the only distinction between EC and non-EC citizens bearing directly on investment is in shipping. Switzerland should be encouraged not to make distinctions between EC and non-EC Member States and to extend the benefits of liberalisation to all OECD Members.

The prominent role played in Switzerland's banking regulation by the reciprocity principle also elicits the question of discrimination. Unlike most other Members, Switzerland implements this principle actively. Swiss banking reciprocity is based on the "mirror-image" concept, although the legislation leaves room for a flexible and less stringent implementation which is reportedly the authorities' practice. The conviction that reciprocity is a useful instrument to open up and improve access to foreign financial markets is motivated by the prominent international role of the Swiss financial centre and its banks that operate world-wide. However, the conclusion of the agreement on financial services in the GATS context is likely to diminish the emphasis put by the Swiss authorities on reciprocity. Indeed, Switzerland should be encouraged to reduce, if not eliminate, the application of reciprocity. This would help foster the trend towards multilateralism.

The prohibition of nationality discrimination in company statutes is to be welcomed as an incentive to foreign investment. Stimulated by the need for larger foreign capital inflows, Swiss companies themselves have also removed impediments to (foreign) take-overs by dismantling multi-tiered share structures which could discriminate against foreigners, while replacing them by unitary shares, open to all investors. The earlier restrictions made it more cumbersome to raise equity capital and restricted buyer options. Limited demand for the shares of these companies caused share prices to be chronically undervalued, which in turn made these companies less willing to open their shares to foreign investors. Under the new law, many large Swiss companies have placed limits of two or three per cent on voting rights for any individual investor with a view to preventing any potential hostile take-overs in the new environment of unified shares. While these limits, primarily motivated by considerations relating to the relationship between management and the shareholders, do not discriminate between foreign and Swiss shareholders, they may constitute a substantial obsta-

cle to possible foreign control. Thus, even while these companies may be majority foreignowned, they are still Swiss-controlled. Pressure for change in this area is largely external and has not yet had a substantial impact on these private practices. This being so, large Swiss take-overs abroad prompt occasional calls for reciprocal possibilities to acquire major Swiss firms. Swiss acquisitions abroad have been six times greater that foreign purchases in Switzerland over the past three years.

These same Swiss companies have also responded to the particular position of the Swiss economy in Europe and to the high costs of doing business in Switzerland by investing abroad. In many cases, these investments are driven primarily by the requirements of proximity to major markets as well as the relatively small size of the domestic market. However, there have been incidences of investments outside of Switzerland in response to political and regulatory obstacles in the country. The diminished attractiveness of Switzerland as a location for holding companies, following the changes in EC tax legislation, highlights the necessity for Switzerland to improve its standing among foreign investors. The removal abroad of production and research constitutes another reason for concern.

Thus, at federal, cantonal and corporate level, there is ample scope for improvement in terms of policies towards inward investment. The Swiss Government is to be encouraged to remove many of the outdated sectoral restrictions originally based on essential security, to modify regulations concerning the sale of property to foreigners and to promote greater liberalisation and transparency of regulation at the federal and cantonal level.

Notes

1. *Purchasing power parities 1990* (OECD, 1992).
2. Outward investments are categorised according to the sector in which the investor operates in Switzerland, irrespective of the sector in which the investment is made. All foreign investment by Nestlé, *e.g.*, is considered investment in the food sector. Hence, the sectoral breakdown of Swiss outward investment in Swiss statistics may not match that in statistics produced in other countries.
3. The share attributed to the service sector includes outward investments of SF 19 billion by foreign-owned holding companies in Switzerland. However, many of the foreign firms which control these holding companies are in manufacturing. If this amount were attributed to manufacturing instead, then the services share of the total outward stock would still lag behind that of manufacturing.
4. The value of M&As compared to FDI flows is also higher because the former do not include divestment.
5. The Swisslex legislation includes 27 out of 42 items which were in the original Eurolex legislation.
6. *OECD Economic Surveys: Switzerland 1991/1992* (OECD, Paris), p. 72.
7. *Ibid.* p. 84.
8. M. Baldi, "Zur Konzeption des Entwurfs für ein neues Kartellgesetz", in: R. Zach & P. Zweifel, *Grundfragen der schweizerischen Kartellrechtsreform*, St. Gallen, 1995, p. 253-297.
9. In the Cassis de Dijon case, the European Court stipulated the principle that standards in force in one Member of the European Community should be recognised in all other Member states.
10. Quoted from: Jean-Luc Nordmann (Director Swiss Federal Office for Industry and Labour), "Distinguished by quality", *Business Guide to Switzerland* (issued by Swiss Federal Department of Labour and Industry and the Swiss Office for Trade Promotion), 1995.
11. The percentage of income derived from holdings must be anywhere from 51 to 90 per cent depending on the canton.
12. An EU Member country may instead give a tax credit at a later date for the relevant amount of tax withheld.
13. "Private banks abandon their exclusive tag", *Euromoney*, August 1994.

14. The reduction in stamp duty was decided in the interest of young, rapidly growing companies and was enacted in 1995.
15. The introduction of a value-added tax had been rejected by voters in referenda in 1977, 1979 and 1991. It was finally approved in a referendum in November 1993.
16. See *OECD Economic Surveys: Switzerland 1994*, pp. 66-68 for a discussion of the turnover tax.
17. Rapport de la Commission d'experts chargée d'examiner les conséquences d'une abrogation de la loi sur l'acquisition d'immeubles par des personnes à l'étranger, Département fédéral de justice et police (Berne, April 1995), p. 12.
18. Rapport de la Commission d'experts chargée d'examiner les conséquences d'une abrogation de la loi sur l'acquisition d'immeubles par des personnes à l'étranger, Département fédéral de justice et police (Berne, April 1995).
19. "Switzerland has often been dubbed the 'Fortress of the Alps' by the international financial community", R. Monks and N. Minow *Corporate Governance*, (Blackwell Business: Oxford) 1995, p. 320.
20. According to the *OECD Economic Surveys: Switzerland 1991/92*, Swiss stockbrokers declared publicly that they would refuse to exercise buy orders from clients that are unlikely to qualify for registration. This actually discouraged a bidder during a take-over attempt on a Swiss company in 1988.
21. Guy de Jonquieres, "A thirst for expansion", *Financial Times*, 8 July 1992.
22. If more than one third of a company's assets consist of real estate, the *Lex Friedrich* prohibits the acquisition of a controlling interest by foreigners in agriculture, real estate, banking and insurance and requires an authorisation in other industrial and trade branches.
23. Derogations from the principle of one share, one vote are particularly prevalent in the Netherlands, Germany and Sweden, as well as in Switzerland.
24. Bruno Boesch, "Takeover of Swiss companies: the myths and realities", *Financial Times*, 8 November 1990.
25. Ian Rodger, "Stepping out on to a wider stage", *Financial Times*, 6 February 1992.
26. Ian Rodger, "Bid battle opens doors in Switzerland", *Financial Times*, 15 June 1995.
27. Margaret Studer, "Swiss law to give boost to shareholders' rights", *Wall Street Journal Europe*, 11 April 1995.
28. D. Bailey, G. Harte and R. Sugden, *Transnationals and Governments*, Routledge, London, 1994, p. 174.
29. *OECD Economic Surveys: Switzerland 1995*, (OECD, Paris).
30. Unlike branches and subsidiaries, the establishment of representative offices is not covered by item I/A of the Capital Movements Code, but it is covered by the Code of Liberalisation of Current Invisible Operations (Annex II to Annex A, paragraph 4).
31. For more details on cantonal banks, see the *OECD Economic Surveys: Switzerland 1995*.
32. Ian Rodger, "Swiss cantonal bank changes", *Financial Times*, 23 May 1995.

Annex 1

Switzerland's current position under the Code of Liberalisation of Capital Movements and the National Treatment Instrument

Introduction

As a signatory to the OECD Code of Liberalisation of Capital Movements (the Code) and the National Treatment Instrument (NTI), Switzerland has undertaken a number of obligations in the foreign direct investment field. The present annex highlights the main provisions of these instruments as well as Switzerland's position under them.

The OECD commitments

The Code and the NTI are the two main instruments for co-operation among OECD member countries in the field of foreign direct investment.

The Code, which has the legal status of OECD Council Decisions and is binding on all Member countries, covers the main aspects of the right of establishment for non-resident enterprises and requires OECD members to progressively liberalise their investment regimes on a non-discriminatory basis and treat resident and non-resident investors alike.

The NTI is a ''policy commitment'' by Member countries to accord to established foreign-controlled enterprises treatment no less favourable than that accorded to domestic enterprises in like situations. While the NTI is a non-binding agreement among OECD Member countries, all measures constituting exceptions to this principle and any other measures which have a hearing on it must be reported to the OECD.

Member countries need not, however, liberalise all their restrictions upon adherence to the above instruments. Rather, the goal of full liberalisation is to be achieved progressively over time. Accordingly, members unable to fully liberalise are permitted to maintain ''reservations'' to the Code of Capital Movements and ''exceptions'' to the NTI for outstanding foreign investment restrictions. These limitations to the liberalisation obligations may be lodged at the time a member adheres to the Codes, whenever specific obligations begin to apply to a member, or whenever new obligations are added to the instruments.

The investment obligations of the Code and the NTI are, in fact, complementary, both dealing with the laws, policies and practices of Member countries in the field of direct investment. However, the Code addresses the subject from the point of view of non-resident investors in an OECD host country, while the NTI is concerned with the rights of established foreign-controlled enterprises. Limitations on non-resident (as opposed to resident) investors affecting the enterprises' operations and other requirements set at the time of entry or establishment are covered by the Code. The investment operations of foreign-controlled enterprises after entry, including new investment, are covered by the National Treatment Instrument.

Measures pertaining to subsidiaries fall under the purview of the Code or the NTI, depending on whether they set conditions on entry/establishment or concern the activities of foreign-controlled enterprises already established. As to branches, the 1991 *Review of the OECD Declaration and Decisions on International Investment and Multinational Enterprises* introduced a distinction between ''direct'' branches of non-resident enterprises and ''indirect'' branches, that is branches of already established foreign-controlled enterprises. The latter are subject to all the five categories of measures covered by the NTI (investment by established enterprises, government procurement, official aids and subsidies, access to local financing and tax obligations). The investment activities of ''direct'' branches of non-resident enterprises, which concern the category of measures covered by the NTI, fall, however, exclusively under the purview of the Code.

The Committee on Capital Movements and Invisible Transactions and the Committee on International Investment and Multinational Enterprises together conduct country examinations of Member country measures covered by these OECD commitments. These examinations involve a face to face discussion between representatives of the two Committees and experts from the country being examined. The discussion is based on submission by the Member concerned and a document prepared by the Secretariat. The objective is to clarify the nature and purpose of remaining restrictions and to identify possible areas for further liberalisation. The examinations usually conclude with modifications to the Member country's position and recommendations by the OECD Council to the Member's authorities concerning the future direction of the country's foreign direct investment policies.

Switzerland's position under the Capital Movements Code and the National Treatment Instrument

Switzerland's remaining restrictions on foreign direct investment are represented in its reservation against item I/A of the Code of Liberalisation of Capital Movements and its exceptions to the National Treatment Instrument. As a result of the examination carried out by the two above-mentioned OECD Committees, Switzerland's position has changed in certain respects. Several restrictions which were justified on the basis of national security and public order have now come under the discipline of the OECD instruments. Restrictions concerning maritime transport, hydropower, nuclear power and oil and gas pipelines have now been introduced as part of the reservation to item I/A of the Capital Movements Code and as exceptions to the National Treatment Instrument.

Switzerland retained its entry in annex E to the Capital Movements Code, an annex that lists Members' reciprocity measures and practices concerning foreign enterprises' right of establishment. The broadcasting sector was also included in the annex, where it had not previously been reflected adequately.

Broadcasting was also removed as an exception to the National Treatment instrument and lodged instead as part of the reservation to item I/A of the Capital Movements Code to reflect better the nature of the restriction.

a) *Switzerland's reservation on foreign direct investment under the Code of Liberalisation of Capital Movements and mention of reciprocity in Annex E of the Code.*

1. "List A, I/A — Direct investment:

   – In the country concerned by non-residents.

   Remark: The reservation applies to:

   i) The establishment of branches for the distribution and exhibition of films;
   ii) The acquisition of real estate, which is subject to authorisation by the competent cantonal authority. As a rule, this authorisation is granted when the acquirer uses the property to operate his permanent establishment;
   iii) The registration of a ship in Switzerland serving two points on the Rhine and of a vessel intended to offer commercial maritime transport services;
   iv) The registration of an aircraft in Switzerland and investment in an airline under Swiss control, unless otherwise implied by the provisions of international agreements to which Switzerland is a party;
   v) Investment in the sectors of hydroelectricity, oil and gas pipelines and nuclear energy;
   vi) Investment in a broadcasting company, bringing foreign ownership above 49 per cent of the company's share capital."

2. Switzerland's position in Annex E to the Code of Liberalisation of Capital Movements (reciprocity)

   "*i)* Foreign investment in the banking and financial services sector is subject to a reciprocity requirement.

   ii) Foreign investment in broadcasting is subject to a reciprocity requirement."

b) Switzerland's exceptions to the National Treatment Instrument

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Banking and financial services

Investment by foreign-controlled enterprises is subject to reciprocity conditions.

Authority: Law : RS 952.0 of November 1934.

Air transport

The commercial transport of persons and goods by foreign 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. Such authorisation may be refused if the service offered is not consistent with essential Swiss interests or if reciprocity is not accorded.

Authority: Laws PS 748.0 of December 1948 and RS 748.01 of August 1973.

Air transport

An aircraft may only 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 companies in Swiss hands. National treatment may nevertheless be accorded to foreign individuals or companies on the basis of international agreements.

Authority: Law: RS 748.01 of August 1973.

Air transport

Cabotage is reserved to Swiss companies.

Authority: Law: RS 748.0 of December 1948 (and Article 7 of the Chicago Convention).

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.

Authority: Law RS 747.3 of 23 September 1953.

Hydropower

A concession for the use of hydropower is granted only to Swiss nationals resident in Switzerland or to companies under Swiss control headquartered in Switzerland.

Authority: Law RS 721/80 of 22 December 1916.

Nuclear energy

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

Authority: Law RS 732.01 of 6 October 1978.

Pipelines

A concession for the construction and operation of a pipeline that crosses the Swiss border, to transport fuels or liquids or gas, is accorded only to companies not controlled by foreign interests.

Authority: Law RS 746.1 of 4 October 1963.

Broadcasting

A concession to broadcast 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 abroad, as long as Swiss participation is at least equivalent to that of abroad. If Swiss participation is less important, the foreign state should ensure reciprocity or be linked to Switzerland by a co-production agreement.

Authority: Law RS: 443.11 of 24 June 1992.

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

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 permanent establishment.

Authority: Law RS 211.412.41 of December 1983.

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.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

c) Switzerland's measures reported for transparency under the National Treatment Instrument

A. Transparency measures at the level of National Government

I. Transparency measures based on public order and essential security considerations

None.

II. Other measures reported for transparency at the level of National Government

a) Investment by established foreign-controlled enterprises

None.

b) Corporate organisation

Trans-sectoral

The board of directors of a corporation with limited liability (derogations are possible for holding companies) and the administration of a co-operative company must be composed of a majority of Swiss citizens do miciled in Switzerland.

Authority: Law RS 220 of March 1911.

c) Government purchasing

None.

d) Official aids and subsidies

None.

B. Measures reported for transparency at the level of territorial subdivisions

a) Investment by established foreign-controlled enterprises

Cantons

Oil and gas

An inter-cantonal agreement among ten cantons requires that a concession for the production of petroleum be accorded only to companies where Swiss participation is at least 75 per cent.

b) Corporate organisation

None.

c) Government purchasing

None.

d) Official aids and subsidies

None.

Annex 2

Statistics on Switzerland's foreign direct investment

Table 1. **FDI inflows into Switzerland**

SF million

	1993	1994
Europe	**–616**	**2 385**
European Union	**–743**	**1 849**
Belgium	59	47
Denmark	–19	–2
France	125	210
Germany	–156	763
Italy	–373	44
Luxembourg	–60	374
Netherlands	–246	391
Spain	1	6
UK	–76	26
Other Europe	**127**	**536**
Austria	95	–13
Sweden	45	543
Turkey	8	2
Other	–21	4
North America	**10**	**2 117**
Canada	122	0
US	–112	2 117
Asia/Australia	**359**	**7**
Israel	34	22
Japan	178	–23
Africa	**2**	**2**
Latin America	**123**	**–4**
Total	**–123**	**4 506**

Source: Swiss National Bank.

Table 2. **Swiss direct investment flows abroad, 1993-1994**

SF million

	1993	1994		1993	1994
OECD	**9 564**	**14 165**	**Non-OECD**	**3 385**	**896**
Europe	**3 322**	**8 982**	**Africa**	**62**	**98**
Austria	246	557			
Belgium	889	–295	**Central and Eastern Europe**	**162**	**330**
Denmark	–245	169	Czech Republic	54	33
France	1 451	1 276	Hungary	34	50
Germany	–3	1 460	Poland	38	159
Greece	26	95	Others	36	89
Ireland	215	210			
Italy	–281	109	**Latin America**	**2 351**	**–484**
Luxembourg	137	412	Argentina	46	47
Netherlands	–550	1 170	Brazil	308	–91
Norway	67	4	Chile	106	61
Portugal	–22	33	Others	1 891	–501
Spain	–122	–87			
Sweden	69	535	**Asia**	**822**	**1 025**
UK	1 202	3 264	Hong Kong	300	436
			South Korea	12	28
North America	**5 722**	**5 275**	Malaysia	104	9
Canada	407	825	Singapore	127	115
United States	5 315	4 450	Chinese Taipei	70	92
			Thailand	23	88
Other OECD	**520**	**–206**	China	32	163
Australia	273	–6	India	56	31
Japan	88	–283	Indonesia	21	15
Mexico	122	82	Philippines	74	14
New Zealand	–4	9			
Turkey	41	–8	**Total**	**12 949**	**15 061**

Source: Swiss National Bank.

Table 3. **Statistical indicators on foreign direct investment, 1983-1994**

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Inflows of FDI (million SF)	622	1 333	2 188	2 868	2 621	64	3 468	5 790	3 531	596	–124	3 296
Outflows of FDI (million SF)	1 070	2 921	9 525	2 356	1 633	13 176	12 080	8 275	8 842	8 222	12 949	15 061
Net flows (million SF)	448	1 587	7 338	–511	–987	13 112	8 612	2 486	5 311	7 626	13 073	11 765
GDP (billion SF)	203.4	213.2	228.0	243.4	254.7	268.4	290.3	314.0	331.1	338.8	343.0	356.2
GDP nominal growth (%)	. .	4.6	6.9	6.8	4.7	5.4	8.2	8.1	5.4	2.3	1.3	3.8
GFCF (billion SF)	47.5	49.8	54.2	59.0	64.4	71.5	79.9	84.5	84.8	80.5	77.0	. .
GFCF growth (%)	. .	4.8	8.8	8.8	9.1	11.0	11.7	5.9	0.3	–5.2	–4.2	. .
Inflows/GDP (%)	0.3	0.6	1.0	1.2	1.0	0.0	1.2	1.8	1.1	0.2	0.0	0.9
Outflows/GDP (%)	0.5	1.4	4.2	1.0	0.6	4.9	4.2	2.6	2.7	2.4	3.8	4.2
Inflows/GFCF (%)	1.3	2.7	4.0	4.9	4.1	0.1	4.3	6.8	4.2	0.7	–0.2	. .
Outflows/GFCF (%)	2.3	5.9	17.6	4.0	2.5	18.4	15.1	9.8	10.4	10.2	16.7	. .

Source: Swiss National Bank; OECD/DAF.

Annex 3

Statistics on direct investment flows in OECD countries

Table 1. **Foreign direct investment in OECD countries: inflows 1971-1994**[1]

US$ million

	Cumulative flows		Flows of foreign direct investment											
	1971-1980	1981-1990	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Australia	11 295	40 369	2 994	428	2 099	3 457	3 873	7 936	7 887	7 060	4 904	4 912	3 381	3 789
Austria	1 455	3 274	219	116	169	181	402	437	578	647	359	940	982	1 315
Belgium-Luxembourg[2]	9 215	28 182	1 271	360	957	631	2 338	4 990	6 731	8 162	8 919	10 959	10 458	8 899
Canada[2]	5 534	33 699	2 003	4 754	1 298	2 781	8 038	6 456	5 018	7 852	2 747	4 461	4 980	6 031
Denmark	1 561	3 388	64	9	109	161	88	504	1 084	1 133	1 530	1 015	1 684	5 006
Finland	376	2 838	84	138	110	340	265	530	489	787	–247	396	593	1 475
France[2]	16 908	43 194	1 631	2 198	2 210	2 749	4 621	7 204	9 552	9 040	11 073	15 928	12 142	10 955
Germany	13 969	17 591	1 712	534	553	1 139	1 818	1 115	7 068	2 492	4 089	2 384	240	–3 003
Greece	..	6 145	439	485	447	471	683	907	752	1 005	1 135	1 144	977	981
Iceland[2]	..	12	..	14	23	8	2	–14	–27	6	35	17	..	..
Ireland	1 659	1 212	168	119	159	–43	89	91	85	99	97	102	88	90
Italy[2]	5 698	24 888	1 200	1 329	1 071	–21	4 144	6 882	2 181	6 344	2 481	3 210	3 751	2 236
Japan[2]	1 424	3 281	416	–10	642	226	1 165	–485	–1 054	1 753	1 368	2 728	86	888
Mexico	..	24 418	2 192	1 542	1 984	2 400	2 634	2 879	3 174	2 634	4 762	4 393	4 389	7 978
Netherlands	10 822	38 520	1 383	1 701	1 412	3 085	3 031	4 830	8 460	12 154	6 521	7 640	6 507	4 371
New Zealand	2 598	3 945	243	119	227	390	238	156	434	1 686	1 695	1 089	2 376	..
Norway	3 074	4 831	336	–210	–412	1 023	184	285	1 511	1 004	–291	720	1 951	652
Portugal[3]	535	6 918	150	194	273	241	465	925	1 740	2 608	2 451	1 914	1 378	1 241
Spain[2]	7 060	46 000	1 647	1 773	1 945	3 442	4 548	7 016	8 433	13 681	10 423	8 115	6 746	8 221
Sweden	897	8 618	223	290	396	1 079	646	1 661	1 810	1 970	6 327	–125	3 690	6 328
Switzerland	..	12 432	286	520	1 050	1 778	2 044	42	2 254	4 458	2 613	411	–83	3 296
Turkey[4]	228	2 340	46	113	99	125	106	354	663	684	810	844	1 016	..
United Kingdom	40 503	130 469	5 132	–241	5 780	8 557	15 450	21 356	30 369	32 889	15 826	16 448	14 536	11 066
United States	56 276	359 650	10 458	24 748	20 010	35 623	58 219	57 279	67 737	47 916	22 004	17 599	41 107	49 448
Total	**188 249**	**846 214**	**34 297**	**41 023**	**42 611**	**69 823**	**115 091**	**133 336**	**166 929**	**168 064**	**111 631**	**107 244**	**122 975**	**131 263**

1. Data updated in January 1996. Including data for Mexico who became a Member of OECD on 18 May 1994.
2. Reinvested earnings are not included in national statistics.
3. Figures for Portugal are only available from 1975 onward.
4. Includes cumulated inflows since 1954.

Source: OECD/DAF – Based on official national statistics from the balance of payments converted in US$ at daily average exchange rate.

Table 2. **Foreign direct investment in OECD countries: inflows 1983-1994**[1]

As a percentage of GDP

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Australia	1.8	0.2	1.3	2.1	2.0	3.2	2.7	2.4	1.6	1.7	1.2	1.1
Austria	0.3	0.2	0.3	0.2	0.3	0.3	0.5	0.4	0.2	0.5	0.5	0.7
Belgium-Luxembourg[2]	1.5	0.4	1.1	0.5	1.6	3.2	4.4	3.9	4.5	5.0	5.0	3.9
Canada[2]	0.6	1.4	0.4	0.8	2.0	1.3	0.9	1.4	0.5	0.8	0.9	1.1
Denmark	0.1	0.0	0.2	0.2	0.1	0.5	1.0	0.9	1.2	0.7	1.3	3.4
Finland	0.2	0.3	0.2	0.5	0.3	0.5	0.4	0.6	–0.2	0.4	0.7	1.5
France[2]	0.3	0.4	0.4	0.4	0.5	0.7	1.0	0.8	0.9	1.2	1.0	0.8
Germany	0.3	0.1	0.1	0.1	0.2	0.1	0.6	0.2	0.3	0.1	0.0	–0.2
Greece	1.3	1.4	1.3	1.2	1.5	1.7	1.4	1.5	1.6	1.5	1.3	1.3
Iceland[2]	0.0	0.5	0.8	0.2	0.0	–0.2	–0.5	0.1	0.5	0.3	0.0	..
Ireland	0.9	0.7	0.8	–0.2	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2
Italy[2]	0.3	0.3	0.3	0.0	0.5	0.8	0.3	0.6	0.2	0.3	0.4	0.2
Japan[2]	0.0	0.0	0.1	0.0	0.1	0.0	0.0	0.1	0.0	0.1	0.0	0.0
Mexico	1.8	1.0	1.9	2.8	3.0	1.7	1.7	1.1	1.7	1.3	1.4	2.2
Netherlands	1.0	1.4	1.1	1.7	1.4	2.1	3.7	4.3	2.3	2.4	2.0	1.3
New Zealand	1.0	0.5	1.0	1.4	0.7	0.4	1.0	3.9	4.0	2.6	5.9	..
Norway	0.6	–0.4	–0.7	1.5	0.2	0.3	1.7	1.0	–0.3	0.6	1.9	0.6
Portugal	0.7	0.9	1.1	0.6	1.0	1.7	3.4	3.9	3.2	2.0	1.5	1.4
Spain[2]	1.0	1.1	1.2	1.5	1.6	2.0	2.2	2.8	2.0	1.4	1.4	1.7
Sweden	0.2	0.3	0.4	0.8	0.4	0.9	0.9	0.9	2.6	–0.1	2.0	3.3
Switzerland	0.3	0.6	1.1	1.3	1.2	0.0	1.3	2.0	1.1	0.2	0.0	1.1
Turkey	0.1	0.2	0.2	0.2	0.2	0.5	0.8	0.6	0.7	0.8	0.2	..
United Kingdom	1.1	–0.1	1.3	1.5	2.2	2.6	3.6	3.4	1.6	1.6	1.5	1.1
United States	0.3	0.7	0.5	0.9	1.3	1.2	1.3	0.9	0.4	0.3	0.7	0.7

1. Data updated in January 1996. Including data for Mexico who became a Member of OECD on 18 May 1994.
2. Reinvested earnings are not included in national statistics.

Source: OECD/DAF – Based on official national statistics from the balance of payments.

Table 3. **Direct investment abroad from OECD countries: outflows 1971-1994**[1]

US$ million

	Cumulative flows		Flows of direct investment											
	1971-1980	1981-1990	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Australia	2 510	22 261	518	1 402	1 887	3 419	5 096	4 985	3 267	260	3 105	113	1 087	5 908
Austria	578	4 132	190	68	74	313	312	309	855	1 663	1 288	1 871	1 404	1 255
Belgium-Luxembourg[2]	3 213	20 862	358	282	231	1 627	2 680	3 609	6 114	6 008	6 179	11 134	3 843	2 492
Canada[2]	11 335	41 847	2 633	3 685	3 862	3 501	8 538	3 848	4 583	4 732	5 652	3 689	5 805	4 778
Denmark	1 063	6 292	159	93	303	646	618	719	2 027	1 509	1 851	2 225	1 379	4 162
Finland	605	12 132	143	493	352	810	1 141	2 608	3 108	3 263	1 049	406	1 831	3 769
France[2]	13 940	85 618	1 841	2 126	2 226	5 230	8 704	12 756	18 137	26 920	20 501	19 097	12 167	10 895
Germany	24 846	90 868	3 681	4 736	5 140	10 076	9 681	12 087	15 181	23 945	23 677	19 557	14 587	14 672
Iceland[2]	..	27	..	..	..	2	7	1	8	9	10	27	..	..
Italy[2]	3 597	28 707	2 133	2 012	1 820	2 652	2 339	5 554	2 135	7 612	7 326	5 948	7 231	5 108
Japan[2]	18 052	185 826	3 612	5 965	6 452	14 480	19 519	34 210	44 130	48 024	30 726	17 222	13 714	17 938
Netherlands	27 829	67 335	3 847	4 877	2 680	4 036	8 576	7 164	14 808	15 272	13 589	14 240	10 093	11 502
New Zealand	375	4 563	404	31	174	87	562	615	135	2 365	1 472	391	–1 455	..
Norway	1 079	8 995	360	612	1 228	1 605	890	968	1 352	1 478	1 840	434	882	1 637
Portugal[3]	21	374	17	8	15	–2	–16	77	85	165	474	687	107	194
Spain[2]	1 274	8 196	245	249	252	377	754	1 227	1 470	2 845	3 574	1 273	2 599	4 241
Sweden	4 597	47 976	1 459	1 506	1 783	3 947	4 789	7 468	10 288	14 645	7 019	395	1 394	6 649
Switzerland	..	31 858	492	1 139	4 572	1 461	1 274	8 696	7 852	6 372	6 543	5 673	8 765	11 018
Turkey[4]	..	–7	..	..	..	..	9	–	–	–16	27	133	175	..
United Kingdom	55 112	185 581	8 211	8 039	10 818	17 077	31 308	37 110	35 172	18 636	16 071	19 444	25 697	29 721
United States	134 354	170 041	4 889	10 948	13 401	17 089	27 182	15 448	36 835	29 950	31 369	42 640	72 601	49 370
Total	**302 306**	**1 023 484**	**35 192**	**48 271**	**57 270**	**88 433**	**133 963**	**159 459**	**207 542**	**215 657**	**183 342**	**166 599**	**183 906**	**185 309**

1. Data updated in January 1996. No data available on outflows for Greece, Ireland and Mexico.
2. Reinvested earnings are not included in national statistics.
3. Figures for Portugal are only available from 1975 onward.
4. Includes cumulative investment since 1954.

Source: OECD/DAF – Based on official national statistics from the balance of payments converted in US$ at daily average exchange rate.

Table 4. Direct investment abroad from OECD countries: outflows 1983-1994[1]

As a percentage of GDP

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Australia	0.3	0.7	1.1	1.9	2.4	1.9	1.1	0.1	1.0	0.1	0.4	0.3
Austria	0.3	0.1	0.1	0.3	0.3	0.2	0.7	1.0	0.8	1.0	0.8	0.3
Belgium-Luxembourg[2]	0.4	0.4	0.3	1.4	1.8	2.3	3.8	3.1	3.1	5.0	1.8	1.1
Canada[2]	0.8	0.7	0.8	1.1	1.7	1.1	0.8	0.8	1.0	0.7	1.1	0.9
Denmark	0.3	0.2	0.5	0.8	0.6	0.7	1.9	1.2	1.4	1.6	1.0	0.3
Finland	0.3	1.0	0.7	1.2	1.3	2.5	2.7	2.4	0.9	0.4	2.2	4.0
France[2]	0.4	0.4	0.4	0.7	1.0	1.3	1.9	2.3	1.7	1.4	1.0	0.8
Germany	0.5	0.8	0.8	1.1	0.9	1.0	1.3	1.6	1.5	1.0	0.9	0.7
Iceland[2]	0.0	0.0	0.0	0.1	0.1	0.0	0.1	0.1	0.2	0.4	0.0	..
Italy[2]	0.5	0.5	0.4	0.4	0.3	0.7	0.2	0.7	0.6	0.5	0.7	0.5
Japan[2]	0.3	0.5	0.5	0.7	0.8	1.2	1.5	1.6	0.9	0.5	0.3	0.4
Netherlands	1.5	3.9	2.1	2.3	3.9	3.1	6.5	5.4	4.7	4.4	3.5	3.5
New Zealand	1.7	0.1	0.8	0.3	1.5	1.4	0.3	5.4	3.5	0.9	−2.8	..
Norway	0.7	1.!	2.1	2.3	1.1	1.1	1.5	1.4	1.7	0.4	0.9	0.7
Portugal	0.1	0.0	0.1	0.0	0.0	0.2	0.2	0.2	0.6	0.7	0.2	0.2
Spain[2]	0.2	0.2	0.2	0.2	0.3	0.4	0.4	0.6	0.7	0.2	0.5	0.9
Sweden	1.6	1.6	1.8	3.0	3.0	4.1	5.4	6.4	2.9	0.2	0.8	3.4
Switzerland	0.5	1.3	4.9	1.1	0.7	4.7	4.4	2.8	2.8	2.4	3.8	4.1
Turkey	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0	..
United Kingdom	1.8	1.9	2.4	3.0	4.5	4.4	4.2	1.9	1.6	1.9	2.7	2.9
United States	0.2	0.3	0.3	0.4	0.6	0.4	0.7	0.6	0.6	0.7	1.2	0.7

1. Data updated in January 1996. No data available on outflows for Greece, Ireland and Mexico.
2. Reinvested earnings are not included in national statistics.

Source: OECD/DAF – Based on official national statistics from the balance of payments.

OECD REVIEWS OF FOREIGN DIRECT INVESTMENT

Switzerland has long played an important role as both home and host to multinational enterprises. Certain large Swiss firms are among the most active foreign direct investors, and foreign firms are often keen to exploit the advantages of investing in Switzerland. These advantages stem partly from a general openness to inward investment, a central geographical location within Europe and a well-developed infrastructure.

This report analyses trends in inward and outward investment in Switzerland, including the decline in inflows throughout the early 1990s. It provides a thorough review of those government policies and private practices which impede inward investment and suggests areas for further reform.

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