

# 2018

PROPOSALS FROM INDUSTRY

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FOR THE 2018 ELECTIONS

## BRAZIL ON THE OECD: A NATURAL PATH TO FOLLOW

EFFICIENCY OF THE  
STATE, GOVERNANCE  
AND RED TAPE  
REDUCTION

# 04



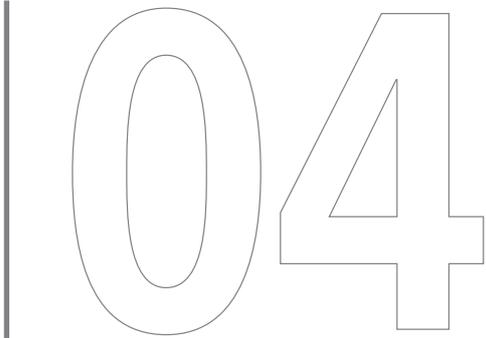
*National Confederation of Industry  
Brazil*

**CNI. THE STRENGTH OF THE BRAZILIAN INDUSTRY**



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# FOREWORD

It will take Brazil more than half a century to reach the Gross Domestic Product (GDP) per capita of developed countries if the average growth rate of the GDP registered in the last 10 years, which was only 1.6%, is maintained.

The challenge for the country will be to at least double the rate of the GDP growth in the coming years. To do so, policy errors that hinder the potential for expansion cannot be repeated – which includes having a coherent agenda of economic and institutional reforms.

Government changes are special occasions for us to reflect on national goals and strategies. They are also opportunities for the country to leave the comfort zone and increase its development ambition.

The 2018 elections have a unique feature that reinforces the meaning of this ambition. The end of the term for the next president and congressmen will coincide with the 200th anniversary of Brazil's independence.

We need to take advantage of this milestone to stimulate actions that eliminate the main obstacles to the country's growth and contribute to the construction of an industry that is competitive, innovative, global and sustainable.

The *Strategic Map of Industry 2018-1022*, released by the National Confederation of Industry – Brazil (CNI) in the beginning of the year, presents an agenda to increase the competitiveness of industry and of Brazil, and to elevate the population's well-being to the level of developed countries.

Based on the priorities identified in the Map, CNI offers 43 reports related to key competitiveness factors. The documents analyze the obstacles and present solutions to the main national problems.

The State must be efficient. It is necessary to improve the quality of governability, reduce bureaucracy and increase the ability to provide adequate public services. The state apparatus must be effective and professional, to ensure taxes collected from society have a return.

Brazil's eventual access to the Organization for Economic Cooperation and Development (OECD) will promote commitments with relevant consequences to state governance, industry and the Brazilian economy. Despite the challenges, the process could be a source of opportunities and support for the country's institutional modernization.

This document presents recommendations that aim to guide the access procedure, mainly in discussions on Brazil's concessions and commitments to the OECD. The modernization of the Brazilian tax regime, for example, is a measure with great potential for gain after the country joins the organization.

**Robson Braga de Andrade**

President of the National Confederation of Industry – CNI



# EXECUTIVE SUMMARY

**Brazil's eventual accession to the Organization for Economic Cooperation and Development - OECD - will produce commitments that can have major implications for the Brazilian economy and industry. Notwithstanding the challenges involved, such accession can be a source of opportunities and support to Brazil's institutional modernization.**

**The process of accession of a country to the OECD is the critical phase in its relationship with the organization.** Member countries seek to secure maximum concessions during this period and are likely to require the implementation of commitments - in terms of regulatory adequacy and domestic practices - before giving their final approval for accession of a new member.

**Besides Brazil, the following countries have requested accession to the OECD: Argentina, Bulgaria, Croatia, Peru and Romania.** This high number of requests (6) when the organization already has 36 members has sparked debate among member countries on the most relevant criteria for accepting new members. The main criteria for admission of a new country to the OECD are the following ones: convergence with the values (like-mindedness) of the organization and its vision, significant player, mutual benefit, and global considerations.

**Brazil is the non-OECD country with the highest degree of observance of the normative instruments of the organization and of participation in its committees<sup>1</sup>.** Nevertheless, the set of reforms that Brazil will have to carry out to be admitted to the OECD will involve major challenges. The areas with the greatest potential for difficulties are the following ones: tax regime, trade policy and the institutional framework for protecting intellectual property.

The Brazilian government has been assessing the degree of convergence (and divergence) between Brazilian laws and regulations and OECD's instruments and "consensuses" of its member countries.

**The results of the assessment indicate that, in 84% of the cases, the policy orientations defended by the OECD are in line with those advocated by government agencies.** In 4% of cases, even though there are no problems of incompatibility, government agencies have restrictions on the objectives of the OECD

1. For information on the institutional framework of the OECD, see Appendix A.

instruments. In 12% of cases, incompatibility problems were detected and government agencies don't agree with the orientations of the OECD.

## Recommendations

1. **The request for opening accession negotiations should be reiterated:** it is important that presidential nominees express their interest in Brazil's accession to the OECD.
2. **Efforts should be made to ensure that the request to initiate accession negotiations is accepted by the member countries of the organization:** there is competition for accession to the OECD and Brazil will have to make an effort to convince its member countries about the benefits that its accession can bring to the organization.
3. **Measures should be taken to ensure that Brazilian normative production is consistent with the OECD guidelines:** it is fundamental that Brazil's normative production during the accession period is in line with the organization's guidelines to avoid creating frictions that will have to be dealt with during the negotiation process.
4. **Liberalization of the trade in important services for the competitiveness of industry should be promoted:** the negotiations for Brazil's accession to the OECD Codes of Liberalization of Capital Movements and Current Invisible Operations afford an opportunity for the country to undertake modernizing reforms in the regulation of services with the aim of contributing to improving the competitiveness of the Brazilian economy globally.
5. **A realistic attitude in the evaluation of challenges should be adopted:** the fact that Brazil is the non-member country with the highest degree of adherence to OECD instruments does not mean that the set of reforms that the country will have to implement pose little challenge.
6. **Consistency with the international trade negotiations agenda should be ensured in the process of accession to the OECD:** the moves Brazil will make in its OECD accession process must be consistent with the country's preferential trade negotiations agenda, particularly those involving member countries of the organization.

# 1 MOTIVATION

In May 2017, Brazil requested the opening of negotiations for its accession to the Organization for Economic Cooperation and Development - OECD. In a letter addressed to the Secretary-General of the OECD, Brazil's Foreign and Finance ministers justified the request for accession by stating that "accession to the organization would not only be a natural next step to follow in our fruitful cooperation, but also an instrumental tool for the reforms our country is undertaking".

**If the OECD agrees to initiate "accession discussions" with Brazil, which must be a unanimous decision of the organization's Council, a period of analysis and evaluation of Brazilian public policies will begin that will likely take a few years and unfold into a process of negotiations on the terms for the country's entry into the OECD.** If the accession process and the negotiations that characterize it are successful, they will produce commitments that can have major implications for the Brazilian economy and industry.

There are several reasons that lead a country to draw closer to and eventually join the OECD. These reasons include status recognition and strengthening of domestic reform agendas. These are the motivations that seem to have led the Brazilian government to formally request the start of negotiations. Improvements in the regulatory environment, institutional modernization and improved governance and convergence toward best international practices are some of the expected benefits of this process.

**While this initiative brings expectations of an impulse for domestic reforms long defended by Brazilian industry, it also entails challenges.** In some areas, the commitments to be assumed will imply changes in the regulatory environment that will require adjustments in the industrial sector in the face of a more competitive environment with less state intervention.

**In its process of accession to the OECD, a country can maintain reservations in relation to certain legal instruments of the institution, making it possible for it to continue to pursue domestic policies** that are not fully in line with the standards of the organization. However, it is expected that the reservations to be made by Brazil refer to a small number of the organization's instruments.

**To be accepted as a member of the organization, Brazil will have to negotiate the terms of its entry with its current members, which may impose conditionalities/requirements to accept it as a member of the club.** These requirements may also include reforms in areas not regulated by the normative instruments of the OECD. Four main criteria are taken into account in the process

of allowing a new country to join the organization: convergence with its world view (like-mindedness); specific weight (being a relevant player); mutual benefit (adding value to the institution) and geopolitical balance (avoiding imbalance in representation among the world's regions).

**During the accession period, a country applying for membership of the OECD must show that it shares the world view of its peers.** It is therefore during this period that a prospective member must promote the most relevant reforms to conform to the normative framework of the organization. It will be up to Brazil to take advantage of this period to undertake the reforms it deems relevant and in line with the project to modernize the country's regulatory framework.

**Unlike the World Trade Organization, the OECD is a "toothless" organization.** Its mechanisms for inducing regulatory reforms and/or adjustments in practices are fundamentally based on moral persuasion means: the so-called peer reviews, which consist in policy evaluations by other members of the organization. Upon entry to the organization, Brazil will be able to decisively influence the course of OECD's normative production and will be less subject to being induced to implement reforms that are not in its interest.

**Since Brazil's request to start negotiations is still under analysis by the Council of the organization, the negotiating process is likely to take place during the term of the next elected president of the country.** Ensuring consistency between the design of the domestic reform agenda and the OECD regulatory framework is important for the accession process to contribute to improving the business environment in Brazil and the competitiveness of the industrial sector internationally.

## 2 FUNCTIONING DYNAMICS OF THE OECD: WHAT TO EXPECT FROM THE ACCESSION PROCESS

**OECD's activities and normative production are focused on the public policies and regulatory practices adopted by governments<sup>2</sup>.** Transparency and market liberalization are the principles guiding the normative production of the organization. Based on technical work and on analyses of domestic experiences in various public policy fields, the organization draws up proposals and recommendations for the adoption and implementation of measures designed to improve the quality of policies and regulatory practices.

**Although it has experienced different cycles of expansion and inclusion of new members since it was created, the OECD has preserved its vocation as a plurilateral organization - i.e. as less than a multilateral organization - and its characteristics as a "club".** It is an organization concerned with safeguarding and promoting values shared by its members: those of a political system based on representative democracy and of a market economy system.

**Initiatives designed to fight corruption, tax evasion and economic crimes have become increasingly important on the OECD agenda.** The website of the organization adds that "Along the way, we also set out to make life harder for the terrorists, tax dodgers, crooked businessmen and others whose actions undermine a fair and open society".

Today, the organization is focused on helping governments around the world to:<sup>3</sup>

- restore confidence in markets and the institutions that make them function;
- re-establish healthy public finances as a basis for future sustainable economic growth;

2. However, certain instruments refer to activities of private entities, such as Annex I of the "Declaration on International Investments and Multinational Enterprises" - the Guidelines on Multinational Enterprises - which sets out voluntary principles and standards for "responsible" business conduct in a number of areas, including in the areas of environmental protection and industrial relations, to be followed by transnational corporations.

3. <http://www.oecd.org/about/>

- foster and support new sources of growth through innovation, environmentally friendly 'green growth' strategies and the development of emerging economies; and
- ensure that people of all ages can develop the skills to work productively and satisfyingly in the jobs of tomorrow.

## 2.1 OECD: an organization based on soft law

The OECD Convention provides for three basic types of regulation: Decisions, Recommendations and Agreements with countries, whether members or non-members, and international organizations. The dynamics of the activities carried out by the OECD and the diversity of areas in which it operates have led it to issue a multiplicity of normative instruments ranging from hybrid formats (such as Decisions-Recommendations) to more formal (such as Conventions) and informal formats (such as Declarations, Guidelines, Principles and Understandings).

**According to the OECD Convention, Decisions constitute the only commitments that create binding obligations among its members. A member country that accepts a Decision has the obligation to implement it within a reasonable period of time.** This time frame is provided for in relation to the adoption of internal measures of an administrative nature, which may go beyond traditional legislative acts (such as in the cases of technical standards and of the creation of internal bureaucratic structures for inspection, among others).

**With regard to non-binding commitments, Recommendations have been the type of optional commitment most used by the OECD.** Their non-binding nature makes it possible for member countries to accede to this type of instrument without the need for national legislative bodies to examine their subject matter. However, the monitoring and control mechanism used by the OECD committees are intended to promote the implementation of Recommendations. Member countries that take on the commitment to implement a Recommendation must notify the competent committee of the measures they took for this purpose, as well as of any difficulties they faced to implement it.

Despite the formal distinction provided for in the OECD Convention between Decisions as binding commitments and other standards as non-binding ones, this formal distinction has become less clear in practice. The monitoring and control mechanisms adopted by the OECD committees have significantly strengthened the implementation

of Recommendations and of other commitments contemplated in the Convention as non-binding.

**Therefore, OECD's normative production is largely of a soft-law nature, as it doesn't generate binding commitments, but rather define standards, principles of best practices and normative models whose adoption is recommended** and whose implementation is monitored through mechanisms such as peer reviews and peer pressure<sup>4</sup>.

## 2.2 The accession process: critical phase in the relationship between countries and the OECD

**As an organization operating mainly on the basis of non-binding instruments and soft law, the accession process constitutes a critical stage for defining the relations between prospective members and the OECD.** This is a long process involving predefined steps through which the OECD assesses the willingness and capacity of a country to assume obligations and commitments contemplated in normative acts of the organization and the extent to which the policies of a country are in line with those advocated for and applied by the members of the organization.

The fact that the OECD is made up of relatively homogeneous countries from the point of view of the values governing their economic and political systems and the international order made it possible for the organization to show a higher degree of concertation and "organizational efficiency" than that observed in most intergovernmental organizations. For this reason, some of its members are concerned with the possibility that an increase in the number of members of the organization may affect their like-mindedness, negatively affecting its institutional effectiveness.

If Brazil's bid for membership of the OECD is accepted by its Council, the process of discussions and negotiations with a view to the country's accession to it begins. The starting point is the adoption by the Council of a roadmap defining the terms, conditions and procedures for the accession of a specific country<sup>5</sup>.

**Based on the definition of the roadmap, the accession process can be seen as an analysis of the laws, policies and practices of the applicant country that is comprehensive in scope and detailed in content.** This policy review is carried out by 23 OECD committees made up of technical experts from each member of the

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4. This characteristic is confirmed by the fact that the OECD does not have a dispute settlement body.

5. This is a public document and the latest roadmaps are available on the OECD website.

organization. The roadmap defined for the applicant country sets out which OECD committees and bodies will review its policies and a timeline for them to conduct such review.

**It should be noted that the process of reviewing the policies and regulations of a prospective member includes not only an analysis of relevant rules and legislation, but also of their implementation.** The assessment carried out by the OECD is not restricted to checking the mere existence of appropriate rules, as it also checks the degree and characteristics of the enforcement of policies and regulations.

Throughout the process of review of its policies and regulations, a prospective member must:

- give transparency to, contextualize and explain the characteristics of its public policies and regulatory practices;
- undergo a peer review;
- respond timely and in detail to questions and concerns of the OECD committees; and
- be willing to amend laws and change practices that are not in line with the obligations set forth by the OECD and take on the commitment to implement measures within predefined deadlines in certain cases (SÁEZ, 2010).

**The OECD committees and bodies in charge of reviewing the policies and regulations of a prospective member may recommend changes to adjust them to the normative instruments of the organization.** Likewise, they can recommend policy monitoring actions after the accession process is completed. At the end of this process, each OECD committee or body involved adopts a formal opinion in their area of competence on the willingness and capacity of a prospective member to join the organization.

**The process of accession of a country to the OECD involves relatively long negotiations lasting at least three years.** During this period, current members seek to obtain commitments from a prospective member that it will adjust itself to the “OECD standards”, but in several cases they will also try and “push” agendas of interest to their domestic constituencies, especially to their business sector.

As mentioned above, there are different types of OECD legal instruments: legally binding decisions, such as the Codes of the organization, Recommendations, Declarations and other international agreements entered into within the framework of the OECD. At the end of the accession process, a prospective member must fully accept the OECD Convention, which sets out the internal rules of the organization. In the case of Decisions, the prospective member must accept them, but it may express reservations on certain provisions or sectors. The same applies to non-binding

Recommendations, which the prospective member must accept but may express reservations or make observations about them.

**A prospective member must express its position in relation to the about 270 legal instruments of the OECD** at the beginning of the process by means of an Initial Memorandum and, at the end of the process, by means of a Final Declaration. It is based on this Final Declaration and on the results of the process of reviewing national policies and regulations carried out by different OECD committees and bodies that the Council - which is composed of one representative from each member country plus one representative from the European Union - makes a unanimous decision<sup>6</sup> to accept the prospective member as a new actual member or not. If the country is accepted, it signs an accession agreement with the OECD, which includes the Final Declaration and the Council Decision<sup>7</sup>.

The OECD budget is divided into two parts. All member countries contribute to Part I of the budget, which is partly divided equally among its members and partly according to the relative size of the economy of each country. In 2017, the budget of this Part amounted to €200.1 million. The second Part covers only programs of interest to a limited number of members whose costs are covered by specific contributions or agreements between participating countries. The OECD consolidated budget in 2017 amounted to €374 million.

## 2.3 New criteria for evaluating applications

A recent document (June 2017) submitted to the OECD Council brings together the conclusions of a Working Group (WG) set up to undertake a strategic reflection on the size and composition of the organization. The group's mandate included setting criteria for evaluating applications from non-member countries and defining the Council's decision-making process on the admission of new members (OECD, 2017).

The document updates OECD's reflection on its size and composition in response to both requests for accession from certain countries and to the organization's own expansion goals as a result of perceived developments in the international scenario. A similar process conducted in 2004 led to discussions on the accession of five countries in 2007, four of which have become members of the OECD already (Chile, Estonia, Israel and Slovenia), and to the establishment of an enhanced engagement strategy

6. This is the necessary condition.

7. Once it is accepted, the country will have to contribute to the OECD budget. Appendix B presents the criteria for the apportionment of contributions and the year of admission of each member.

with five key partners (Brazil, China, India, Indonesia and South Africa) with a view to the possible accession of those countries into the organization<sup>8</sup>.

**The document reaffirms the idea that the OECD does not intend to be a “universal” organization in terms of size, but rather to consolidate itself as a “global policy network”** playing a relevant role in setting standards and policies at the global level - i.e. beyond its limits in terms of member countries.

The objective of the organization’s geographic expansion is based on its concern with preserving and promoting its capacity to generate and promote standards and policies compatible with its basic values: democracy based on rule of law and human rights and adherence to open and transparent market-economy principles.

The document adopts the criteria for admission of a country to the OECD as defined in a 2004 report - like-mindedness, significant player, mutual benefit and global considerations - emphasizing that there is no hierarchy among the four criteria, which are intended to be applied simultaneously.

On the basis of these criteria, the OECD developed a framework to be used by the General Secretariat to support the Council’s decision on whether or not to initiate accession discussions with a “prospective member”. In this regard, in addition to economic indicators and information on the country’s relations with the OECD, the framework will be used to produce evidence about:

- **the situation of a prospective member with regard to each of the “State of Readiness” characteristics outlined in the framework** (see Appendix C)<sup>9</sup>. According to the document, the commitment of a prospective member toward an OECD instrument is demonstrated by adherence to the instrument, progress toward adherence to it or by how its policies, laws, regulations and practices are aligned with those required by the instrument;
- **position of the prospective member with respect to the organization’s fundamental values, which is a relevant criterion for determining the degree of like-mindedness** of the country with the organization, instrumented through indicators of governance and economic openness such as the Foreign Direct Investment Restrictiveness Index, the UN Human Development Index, the UN Human Rights Control Council, the Corruption Perception Index of the NGO Transparency International, among others; and
- **the degree of high-level political commitment on the part of the prospective member to the OECD’s membership obligations and of**

8. According to the above-mentioned 2017 document, “the enhanced engagement strategy is still relevant today in the context of changes that have taken place in international architecture”.

9. Appendix C presents a box with the characteristics of a country that will be assessed to determine its degree of readiness for OECD membership and the evidence to be considered for such assessments.

**the commitment to use the accession process to drive the domestic reform agenda.** The document defines the accession process as “a powerful transformative instrument to secure a country’s convergence with the values, standards and membership obligations” of OECD members.

**In the assessment of the state of readiness, the instruments that are considered binding are the following ones:**

- Declaration on International Investment and Multinational Enterprises;
- Code of Liberalization of Capital Movements;
- Code of Liberalization of Current Invisible Operations; and
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

These four instruments refer to foreign investment and cross-border trade in services (the latter being dealt with in the Code of Liberalization of Current Invisible Operations). The importance of adhering to these instruments in the accession process reflects the priority attached by the OECD to the liberalization of capital markets and of the trade in services.

**Nevertheless, in the case of the Codes, countries may express reservations on specific commitments, provided that they can justify them** (for reasons of national security, for example) and that they meet certain criteria (proportionality, transparency, non-discrimination, among others).

Brazil is already a signatory to the Declaration and to the Convention and requested accession to both Codes in 2017. In the case of the latter, the accession process is still in progress<sup>10</sup>.

In addition to adherence to binding instruments, the assessment of the state of readiness also includes participation in two international transparency and cooperation initiatives in the tax area, one of which is the BEPS (Base Erosion and Profit Shifting initiative).

After the international crisis of 2008 broke out, the OECD began to work jointly with other international institutions as sort of a G-20 Executive Secretariat to feed data, analyses and proposals to this forum for global discussion and negotiations. In playing this informal role in response to a request from the G20, the OECD developed and implemented a plan of action in 2012 to avoid erosion of the tax base of countries and discourage profit-shifting strategies of multinational companies based on differences between tax rules adopted in different countries.

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10. A brief summary of the content of these instruments can be found in Appendix C of this document.

The Action Plan was approved at the G-20 Summit in 2013 and the 15 actions set out in the plan were designed to be implemented by domestic measures or through provisions of international treaties on taxation - including bilateral treaties to avoid double taxation. As a member of the G-20, Brazil took part in the discussions and implemented some of the measures contemplated in the plan, but there is still a comprehensive agenda on tax issues that will certainly be discussed during Brazil's accession process to the OECD.

In June 2017, more than 70 countries from all regions and at all development levels participated in the signing ceremony of the Multilateral Convention for the Implementation of Measures Related to Tax Treaties to prevent BEPS. The intention is that, based on this instrument, signatory countries may make changes to the network of thousands of existing bilateral tax agreements. Brazil is not among the signatory countries, which is largely explained by the fact that the country does not adopt the OECD model in its international treaties to avoid double taxation.

The assessment of the state of readiness of a prospective member also includes checking adherence to two non-binding Recommendations on access to information (Principles for Internet Policy-Making and Good Statistical Practice, to which Brazil has not yet adhered).

Based on the information provided by the General Secretariat in the light of the roadmap outlined in the framework and on its own judgment, the Council may decide whether or not to open accession discussions or to engage with the prospective member through other means "using one or more of the available OECD global relations tools". If the Council decides to open access discussions with the prospective member, the General Secretariat will proceed to prepare the accession roadmap to be adopted by the Council and that will guide the whole long negotiation process between the prospective member and the organization.

The document specifically refers to possible accession negotiations with key partners with which the OECD has, since 2007, relations marked by the "enhanced engagement" goal, among which Brazil. According to the document, "upon receiving a request for membership from a key partner, the General Secretariat will prepare a proposal for consideration by the Council to invite the key partner to enter into accession discussions and to develop an accession roadmap for the country". Among the key partners of the OECD, only Brazil has requested accession to the organization and is awaiting a response to its request<sup>11</sup>.

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11. The document states that "the sequence and pace of invitations for prospective members to enter into accession discussions are determined by the Council in an orderly fashion according to an individual, case-by-case examination based on the framework", among other criteria and information.

## 2.4 The experience of other countries with the accession process

Countries may have many motivations to request accession to the OECD. The most common ones include their need to be supported in promoting economic reforms designed to ensure greater insertion in the international economy and to have their status recognized. They may also have political motivations (some countries may want to develop closer relations with the United States or Eastern European countries may wish to join the organization after the fall of the Berlin Wall, for example).

On the other hand, democracy, transparency and market economy are values nurtured by the organization that exclude countries that fail to adopt them. The permanent tension between the goals of continuing to be an exclusive club for like-minded countries and that of being an institution that “promotes policies designed to improve the economic and social well-being of people around the world” hampers the establishment of strict criteria for the acceptance of new members.

### 2.4.1 The stages of expansion of the OECD

**The OECD was established in 1961 as an outgrowth of the former Organization for European Economic Cooperation (OECC), which was established in 1948 to help implement the Marshall Plan.** In a period of increasing tensions arising from the Cold War, the OECD replaced the OECC with an expanded mandate focused on global economic issues and 20 founding members initially<sup>12</sup>.

The process of expanding OECD membership began shortly after the organization was established: in 1964, Japan acceded to it, followed by Finland in 1969, Australia in 1971 and New Zealand in 1973. With the accession of these members, the “rich-country club”, as the organization was referred to, consolidated itself: all developed countries were members of the OECD in the mid-1970s.

A second wave of accessions began after the fall of the Berlin Wall. By accepting Eastern European countries in transition to market economies as members, the OECD gradually became a more pluralistic and less homogeneous organization. For these countries, accession to the OECD secured support for their domestic reform process. Some of them completed their accession process before entering the European Union

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12. The founding members are the following ones: Germany, Austria, Belgium, Canada, Denmark, Spain, United States, France, Greece, Holland, Ireland, Iceland, Italy, Luxembourg, Norway, Portugal, United Kingdom, Sweden, Switzerland, Turkey. It should be noted that in its initial formation the degree of like-mindedness among its member countries was relatively low already. Portugal and Spain were still authoritarian states and Turkey and Greece also experienced reversals in their democratic processes.

(Czech Republic, Poland, Hungary and Slovakia), while others completed them after being admitted to the European bloc (Slovenia and Estonia, for example).

In the second wave of accessions, Mexico (1994) and South Korea (1996) also joined the organization. The accession of these two countries contributed to ensure greater regional balance at a time when the geographical distribution of members led to conflicting views in the discussions held within the organization. In the 1990s, the OECD ceased to be a “rich-country club” and began to accept countries in lower positions in income and development rankings<sup>13</sup>.

Concerns about regional balance increased with the entry of ten new members into the European Union in 2004 and with the European bloc’s expectation that they would all be admitted to the OECD. Europe’s expectations did not materialize. The process of accession of these countries took place individually and has not been completed yet.

The issue of geographical distribution became part of the criteria for assessing the acceptance of new applications. In 2007, applications from Chile, Israel, Slovenia, Estonia and Russia were accepted. The former four became members in 2010. Negotiations with Russia took a longer time and were suspended after the Crimean War broke out.

In 2013, negotiations began with Colombia and Latvia and in 2015 with Lithuania and Costa Rica. Latvia became a member in 2016. The other negotiations are still ongoing. Besides Brazil, the following countries have applied for accession to the OECD: Argentina, Bulgaria, Croatia, Peru and Romania. The large number of cases (6) when the organization already has 36 members led the OECD to set new criteria for accepting applications, which are described in section 2.3.

Such increasing interest in accessing the OECD raises a debate about the motivations of countries to follow this path. Considering that the commitments to market liberalization and transparency that countries assume in their accession process are not discriminatory, that information, studies and benchmarking are available to all countries and that it is possible to participate in OECD Committees and instruments without being a full member, what is leading countries to seek accession?

According to studies conducted by experts, their main motivations lie in their quest for recognition and status - to gain investor confidence and reduce the costs of external credit - and for external support for politically costly domestic reforms<sup>14</sup>.

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13. Strictly speaking, Turkey, which was a founding member, is ranked as a high-middle income country in the World Bank ranking, as is Mexico. In addition, Mexico was a member of the G-77, a coalition that defends the interests of developing countries in international forums. Mexico left the Group after its accession to the OECD, but other countries, such as Chile, joined the organization and are still members of the G-77.

14. For a summary of these studies, see DAVIS, 2016.

The experience of some countries in their process of accession to the OECD may be useful for assessing the challenges that Brazil may face in its own process<sup>15</sup>.

## Japan

Japan was the first country to join the OECD after it was established. For the organization, the entry of this new member represented an important step toward consolidating it as an institution of global relevance and a forum for coordinating the international economic order. For Japan, it represented the recognition of its acceptance in the “club” of industrialized countries.

In its process of acceding the OECD, Japan implemented a broad set of domestic reforms. In its industrialization trajectory, Japan had resorted to different industrial policy instruments that were contested by the OECD members during the negotiation period. Among the main requirements imposed on Japan in its accession process, the following ones stand out:

- reduction of incentives to the shipbuilding industry;
- liberalization of maritime transportation;
- elimination of restrictions on the inflow of foreign capital into manufacturing through screening mechanisms for approval of new technologies; and
- accession to Article 8 of the International Monetary Fund treaty, which provides for the elimination of restrictions on capital flows and currency convertibility.

During its accession process, Japan negotiated the maintenance of reservations that would allow the country to continue to apply some discriminatory policies, such as:

- restrictions on direct investment in some industrial segments;
- preservation of the role of the state in automobile insurance policies; and
- limitations on the participation of foreigners in Japanese bond markets.

In addition to opening up its economy, joining the OECD afforded an opportunity for Japan to reduce discriminatory measures that many of the organization’s members had been applying to Japanese exports. Although trade negotiations in this regard were being carried out within GATT, peer pressure from some OECD members contributed to removing some of these barriers.

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15. These experiences are described in DAVIS, 2016, the main source of the information presented in this section.

## Mexico

Mexico acceded to the OECD in 1994, in the wake of its negotiations with the United States and Canada to set up NAFTA, for which purpose a formal agreement was signed in 1992. The request for accession and subsequent negotiations took place during the process of NAFTA's ratification by the United States Congress, which was only concluded in 1994.

Since Mexico had joined GATT belatedly, in 1986, and had just concluded NAFTA negotiations, the domestic reforms negotiated during the process of accession to the OECD focused on areas other than trade liberalization.

The main domestic reform commitments that Mexico assumed in its accession process to the OECD were the following ones:

- liberalization of foreign direct investment laws;
- liberalization of maritime transportation services; and
- liberalization of the Mexican stock market.

Since the beginning of negotiations with the OECD, the Mexican government was reluctant and managed to maintain some reservations in the following areas:

- capital account liberalization;
- liberalization of the telecommunications sector; and
- privatization of oil production.

As mentioned above, after joining the OECD Mexico formally left the G-77, a coalition that defends the interests of developing countries in international forums.

## South Korea

South Korea's interest in developing closer relations with the OECD was part of the country's democratization process and its quest for international political and economic recognition in the second half of the 1980s. Although its decision to submit an application for OECD membership faced strong internal opposition, proponents of the idea argued that its accession to the organization would bring benefits to business through improved access to external credit and lower interest rates.

Unlike Mexico, which acceded to the OECD in the same period but had already conducted most of the required reforms as part of the NAFTA negotiations, South Korea's accession to the organization led to a major movement in favor of reforms in its economy.

The main liberalization requirements imposed on Korea in the negotiation period for accession to the OECD were the following ones:

- higher ceiling for foreign direct investment;
- elimination of restrictions on the operations of foreign banks;
- permission for full currency convertibility;
- elimination of capital controls on Korean multinational companies;
- easing of rules on mergers and acquisitions;
- trade liberalization; and
- revision of labor laws.

For the South Korean government, implementing some of these reforms as part of an OECD accession process was politically easier than doing so unilaterally. The biggest challenge for the country in connection with this agenda was that of liberalizing its financial sector: the *won* was not convertible and a set of regulations restricted the participation of foreigners in the South Korean capital market.

During the negotiations, the South Korean government managed to get approval for implementing financial market reforms sequentially and to maintain exceptions and reservations on various OECD instruments. According to press reports of the time, South Korea accepted only 65% of the Codes of the organization, while the average for other members is 89% (FINANCIAL TIMES, 1996, *apud* DAVIS, 2016).

Among the reservations and exceptions maintained by the South Korean government in the accession process, the following ones stand out:

- limitations on the control of South Korean companies by foreigners;
- restrictions on foreign participation in the stock market; and
- only partial implementation of labor law reforms.

Shortly after being accepted into the OECD (1996), South Korea faced a serious financial crisis with impacts on global markets, including in Brazil. At the time, many politicians and analysts blamed the crisis on its accession to the OECD and on the liberalization of its capital market. However, the problems seem to have been brought about by the option of the South Koreans to implement liberalization reforms sequentially - liberalizing short-term capital movements and maintaining restrictions on participation of foreign capital in long-term direct investment - and by the inability of the institutions in charge of managing financial markets to deal with the effects of liberalization.

**It should be noted that the Code of Liberalization of Current Invisible Operations, which regulates commitments related to capital movements, does not impose conditionalities on the adoption of prudential measures or restrictions on the movement of short-term capital.** The 2008 international financial crisis reinforced the view that recourse to such mechanisms may be necessary to preserve the external macroeconomic balance in periods of volatility in international markets.

## Chile

Chile acceded to the OECD in 2010, already under the criteria set out in the report adopted by the organization in 2004, which served as the basis for the accession processes that began in 2007. In the case of Chile's accession process, the OECD committees and bodies that assessed its public policies were divided into three groups:

- those that would assess Chile's position on the instruments, standards, benchmarks and policies adopted by the OECD in the specific areas of competence of those bodies (investment, corporate governance, competition policies, science and technology, etc.). The OECD is provided with specific legal instruments in these areas;
- those that would review Chile's overall policies and assess their consistency with those adopted by OECD members (statistics, employment, labor and social policies, trade and public governance). The OECD is not provided with legal instruments in these areas; and
- those that would assess Chile's policies in three specific sectors: fisheries, steel-making and agriculture.

Once the process of assessing policies and regulations was completed, the OECD asked the Chilean government to adopt and implement four legal reforms as a prerequisite for the organization's Council to issue a final opinion on the country's accession:

- changes in the corporate governance regulations applied to its state-owned copper company (Codelco);
- amendments to laws on the governance of private enterprises;
- adjustments in corporate liability laws on bribery of foreign officials; and
- adjustments in tax regulations that hindered the exchange of information between tax authorities on movements in bank current accounts (SÁEZ, 2010).

The experiences of some countries summarized here show that negotiations for accession to the OECD involve not only adopting the organization's legal instruments but also complying with requests from its current members for adjustments in domestic laws and regulations to make them compatible with good market economy practices.

During these accession negotiations, companies with businesses or interests in the prospective member country seek to influence the process by pressing member countries and the OECD Secretariat to make specific requests for changes in the regulations and policies adopted by the prospective member. These requests are usually focused on issues related to trade, investment, taxation, intellectual property rights and regulation.

In the most recent cases of countries negotiating accession to the OECD, the following requests deserve to be pointed out (FERNANDES, 2017):

- **Colombia:** the main requests refer to topics related to intellectual property, access to markets for pharmaceutical products, labor relations (trade union rights), signing of the Anti-Corruption Convention, government procurement, environment, rules for the scrapping of trucks, imports and taxation of beverages with alcohol content above 35%; and
- **Costa Rica:** the main requests refer to topics related to corporate governance and government transparency.

In policy areas not regulated by the various OECD instruments, the requests from the remaining member countries to a prospective member are not based on specific criteria. The assessment of the appropriateness of the policies adopted by prospective members is subject to business visions and interests not contemplated in OECD regulations. These requests are referred to the OECD through BIAC<sup>16</sup> and through the governments of member countries.

In the assessment of Colombia's application for accession, for example, the United States requested adjustments in provisions related to intellectual property rights negotiated in Colombia's free trade agreements with the United States and the European Union - outside the domain of the OECD.

**The process of accession of a country to the OECD is the critical phase of its relationship with the organization. Member countries seek to secure maximum concessions during this period and are likely to require the implementation of commitments** - in terms of regulatory adequacy and domestic practices - before giving their final approval for accession of a new member.

Once the accession phase is over and a country is accepted into the club, the country will be able to influence the future normative production of the organization and will carry out the reforms it deems convenient.

**The dynamics of OECD's normative production provides countries with the right not to adopt certain instruments or to express reservations on certain**

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16. BIAC (Business and Industry Advisory Committee), a committee made up of business representatives from OECD member countries.

**provisions of these instruments.** On the other hand, the organization requires transparency in the positions adopted and justifications for not incorporating the institution's regulations into the country's regulatory framework.

The domestic impacts of the OECD accession process largely depend on the original motivations for submitting applications. Countries interested in domestic reforms that are in line with OECD standards and wishing to rely on the support of the organization reap greater benefits during the accession process. Countries seeking status reap most benefits after being accepted into the club.

## 3 BRAZIL AND THE OECD: A LONG AND CAUTIONS PATH TOWARD CLOSER RELATIONS

**Brazil has a long history of relations with the OECD and its first contacts with the Steel Committee began in 1978.** The purpose was for the country, as a major global producer in this sector, to join the Committee as a full member. The invitation at the time had been made not only to Brazil, but also to other developing economies playing a relevant role in the sector: India, Mexico and South Korea. However, Brazil decided in the 1970s to maintain only informal, albeit regular, contacts with the Committee and it became a full member 18 years later, in 1996.

Relations became closer in the 1990s, as a result of the efforts made by the OECD to expand its work with emerging economies and of the liberalization vector that characterized many public policies in Brazil in that decade.

**However, the priority attached in the Brazilian foreign policy to the South-South agenda in its different dimensions in the first decade of the century reduced the importance, in that policy, of the agenda of relations with the OECD.** At that time, there was a political perception that a possible accession to the OECD would compromise the Brazilian strategy of acting in the international scenario as a representative of developing countries and of coalitions between these countries.

From the middle of the current decade, the Brazilian government began to signal its renewed interest in its agenda of relations with the OECD. A cooperation agreement between Brazil and the OECD was entered into in July 2015 contemplating a work program focused on five thematic areas:

- economic, trade, industrial and financial issues;
- public governance and fight against corruption;
- science, technology, environment and agriculture;
- social, educational, social security and labor issues; and
- development.

The signing of this agreement essentially reflected an initiative of the Brazilian Ministry of Finance to resume an economic liberalization agenda.

### Box 1 – History of Brazil’s relationship with the OECD

- 1978: Invitation for participation in the Steel Committee.
- 1994: Brazil begins to take part in the work of the Development Committee and to participate in other OECD committees increasingly as full member or as an observer.
- 1996: Brazil becomes a full member of the Steel Committee.
- 1997: Brazil signs the four (binding) Decisions and five Recommendations on international investment and multinational enterprises.
- 1999: The OECD creates a program focused on Brazil.
- 2000: Brazil signs the Convention on Combating Bribery of Foreign Public Officials and the revised version of the Guidelines for Multinational Enterprises and Foreign Investment.
- 2007: The OECD promotes “enhanced engagement” with a group of major emerging economies - Brazil, China, India, South Africa and Indonesia.
- 2012: The OECD grants the status of “key partners” of the organization to this group of countries that includes Brazil.
- 2015: The OECD signs a cooperation agreement with Brazil contemplating a work program to be developed by 2017.
- 2017: Brazil formally requests formal accession to the OECD.

Source: Prepared by CNI.

It was only after the political change in 2016 that the OECD was once again included in the Brazilian foreign policy agenda as a result of the significant shift recorded in that policy since then. As of the first quarter of 2017, the Executive Office of the President of Brazil (referred to as the Civil House) and the Brazilian Ministry of Foreign Affairs coordinated an initiative designed to assess, jointly with various ministries and public agencies, the degree of compatibility of Brazilian legislation and regulations with OECD instruments, as well as the need for and feasibility of eventual changes to adjust the country to those instruments. Subsequently, in June 2017, Brazil formally submitted its request for accession to the organization.

## 3.1 Brazil’s current participation in OECD instruments

**Brazil is the non-member country of the organization that participates in the largest number of bodies of the organization<sup>17</sup>.** In spite of oscillations in Brazil’s official position vis-à-vis the OECD, the country consolidated an intense dialogue with

17. Among major emerging economies, South Africa is the other country (besides Brazil) with broad and diversified participation in OECD initiatives and bodies.

the organization over the last decades, participating in 23 of its committees and bodies and initiatives linked to the organization. Brazil has the status of participant in several committees or in specific working groups of these committees - Trade and Agriculture, Public Governance, Tax Policy, Financial and Business Affairs and Statistics - and the status of associate member or guest in the remaining ones.

**Brazil has formally adhered to 38 OECD instruments. In addition, it requested adherence to 62 other instruments** and has plans to do the same in relation to eight other instruments, which would increase the percentage of Brazil's adherence to OECD instruments to 44%.<sup>18</sup> In relation to another 104 instruments (accounting for another 44% of the total), the federal government considers that there are no problems in making progress toward adherence. The greatest challenges are concentrated in a small number of instruments (12% of the total), where there appears to be discrepancies between the instruments and Brazil's regulatory (or legal) framework.

Brazil's adherence to OECD instruments is focused on five areas:

- **International investment and multinational enterprises** (adherence to 12 of 15 instruments - four of which are Decisions - out of a total of four), seven Recommendations - out of nine - and a Declaration). Brazil adhered to the Decisions and to the Declaration in 1997, while its adherence to the Recommendations is more recent (2011 and 2017);
- **Investment** - adherence to three Recommendations (out of a total of eight). Brazil adhered to these instruments in the current decade, in some cases in 2017. In addition, Brazil requested adherence to the Decisions regarding the Codes of Liberalization of Capital Movements and Current Invisible Operations;
- **Competition** - adherence to five of 10 instruments (all of which are Recommendations). Brazil adhered to these instruments in the second half of the 1990s (1997 and 1999) and in 2015/2017;
- **Tax matters** - adherence to five instruments (two Declarations, one Recommendation and two Conventions) out of 23. Brazil's adherence process, which began in this area in 1997, was intensified from 2013; and
- **Anti-corruption** - adherence to all six instruments (four of which are Recommendations). Brazil adhered to the instruments in 1997 and in 2015/2017.

**In the area of trade, the OECD normative production contemplates only a generic Trade Policy Declaration, of 1980, to which Brazil has not adhered.** There

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18. Brazil has also undergone several peer reviews within the OECD, in addition to holding the vice presidency of the Steel Committee and of the PISA (Program for International Student Assessment) governing body - which are aspects that are taken into account in assessing the country's "state of readiness/adequacy" to join the organization.

are also instruments related to export credits in this area. In this case, Brazil adhered to two instruments, a Recommendation and an Arrangement, the Aircraft Sectoral Understanding (ASU/OECD), which is an Annex to the Arrangement on Officially Supported Export Credits, of whose main text Brazil is not a signatory.

On the other hand, Brazil did not adhere to any instrument in certain areas in which OECD's normative production is intense, such as in the environmental area (39 instruments), in the digital economic policy area (17 instruments), in the consumer protection policy area (14), in the public governance area (10 instruments) and in the nuclear energy area (nine instruments). In the area of chemicals, Brazil has adhered to only two instruments out of a total of 19.

**Brazil is a signatory to the four Decisions that generate binding commitments since 1997 and of seven of the nine Recommendations associated with the Declaration<sup>19</sup>.** The profile of Brazil's adherence to OECD instruments includes policy areas that are very relevant to the institution and are characterized by intense normative production, and in which Brazilian policies, in their design and implementation, are generally convergent with the guidelines of the organization - among which those set for international investment and investment policies, as well as for competition policies.

On the other hand, the "adherence fee" is low in the areas mentioned above, including in some areas that are relevant to shaping a favorable environment for private business: public governance, regulatory policy, among others.

**With regard to instruments specifically focused on productive sectors (steelmaking, shipbuilding, chemicals, insurance, maritime transportation, nuclear energy and others), Brazil's adherence is rather limited,** as it is concentrated in three of the 19 instruments related to chemicals, one instrument related to steelmaking and one instrument related civil aircraft (the Aircraft Sectoral Understanding).

## 3.2 Negotiations under way: Brazil requests accession to OECD Codes

**Even before its request to start negotiations for accession to the OECD was accepted, Brazil requested, in May 2017, adherence to the two main instruments that led to the creation of the OECD: the Codes of Liberalization**

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19. Of the nine Recommendations, Brazil is not a signatory to those related to the OECD-FAO Guideline for Responsible Agricultural Supply Chains and to the Member Country Exceptions to National Treatment and Related Measures concerning Access to Local Bank Credit and the Capital Market.

**of Capital Movements and of Liberalization of Current Invisible Operations.**

Adherence to these two Codes is mandatory for OECD members and by requesting accession before becoming a member, Brazil is taking a few additional steps toward becoming a full member.

The binding rights and obligations created by adhering to these two Codes are related to restrictions on the movement of capital, including foreign direct investment, and on the right to establish an enterprise from another country, as well as on the liberalization of cross-border trade in services.

Both Codes provide for the establishment of a (negative) list of national reservations<sup>20</sup>, besides adopting principles such as those of standstill (the lists of reservations can only be changed for reducing reservations or their degree of restrictiveness), of rollback (the Codes are intended to implement a continuous liberalization process) and of non-discrimination between countries that are signatories of the Codes, in relation to the liberalization process promoted by them.

In December 2017, the OECD Council approved the “preliminary opinion” of its Investment Committee on the adherence process, as well as the invitation for Brazil to adhere to the two instruments. The next steps represent the critical phase for Brazil: preparing the lists of its reservations on the two instruments.

The Code of Liberalization of Capital Movements contemplates commitments regarding foreign direct investment and poses less challenges to Brazil. The country already has stable and relatively liberal regulations on foreign capital that impose few sectoral barriers on the establishment of foreign enterprises or on the participation of foreign capital in sectors of the Brazilian economy.

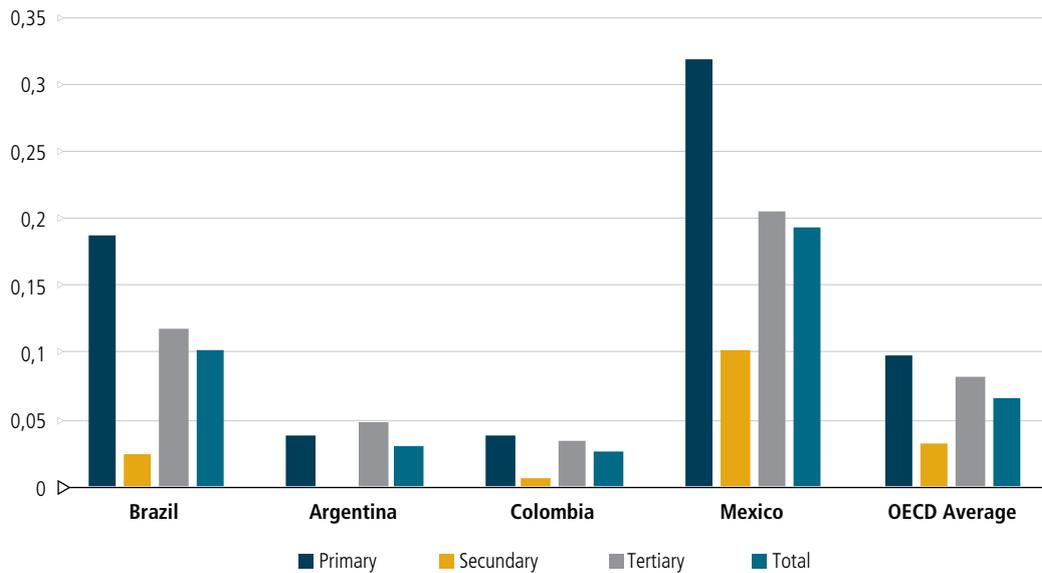
The OECD calculates an indicator for the restrictiveness of countries’ laws in relation to foreign investment. The indicator is calculated for OECD countries and for several non-member countries and is broken down by sectors of the economy. According to this indicator, the levels of restrictiveness in Brazil are significantly lower than in Mexico, which is already a member of the organization, and slightly higher than the OECD average.

On the other hand, the two OECD countries that are also candidates for membership - Colombia, with negotiations under way, and Argentina, which has submitted its candidacy for membership - have lower levels of restrictiveness than Brazil. It should be noted that the degree of restrictiveness of Brazilian regulation for investments in the industrial sector is low, even lower than the OECD average.

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20. Only the measures included in this list will not be subject to liberalization commitments.

**Chart 1 – Foreign Direct Investment Restrictiveness Index**



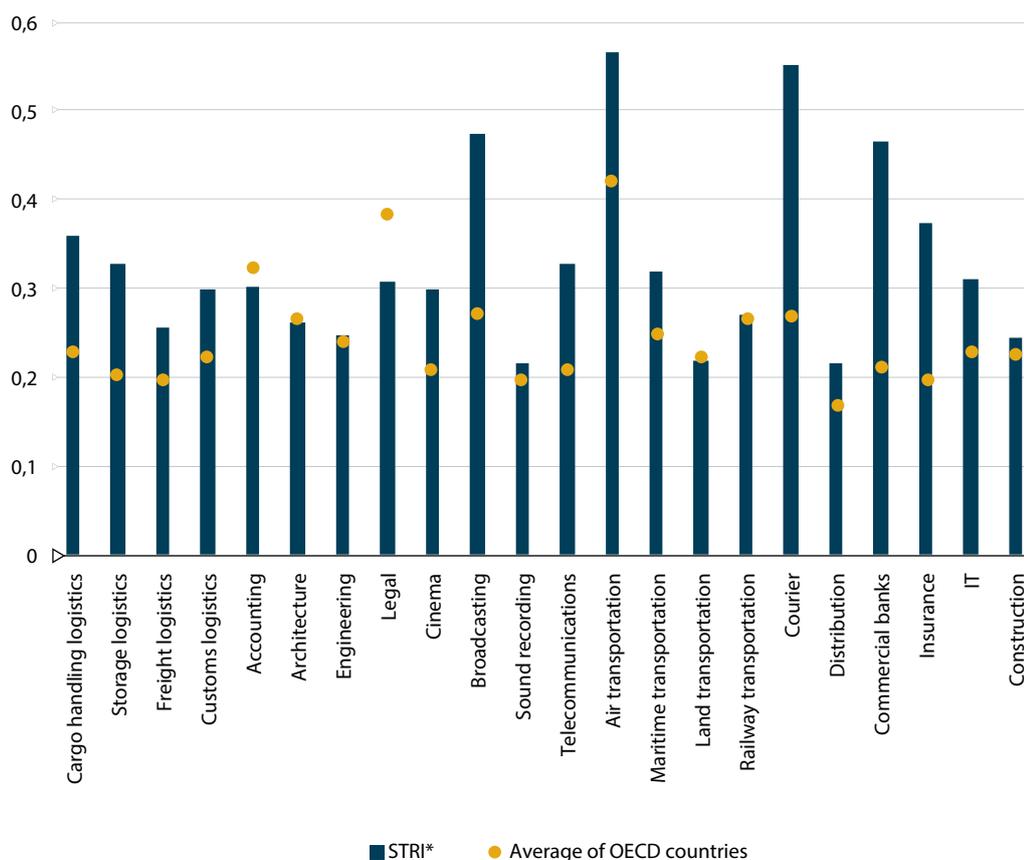
Source: Prepared by CNI, based on data from OECD, 2016.

The Brazilian government may seize the opportunity of acceding to the Code of Liberalization of Capital Movements to update Brazilian regulation in certain sectors. Increasing the percentage of foreign capital participation in the Brazilian aircraft industry, which is being discussed for some time already, is an example.

The Code of Liberalization of Current Invisible Operations addresses primarily the provision of cross-border services and is intended to eliminate discrimination in domestic regulations between domestic and foreign service providers. The Code also regulates financial transfers derived from the provision of services by foreigners.

Brazilian regulation tends to be more liberal in relation to the establishment of foreign companies in the country than to allowing the provision of cross-border services. The OECD also calculates an index of restrictiveness for the trade in services by economic sectors. The indices calculated for Brazil show that the country is more restrictive in relation to the cross-border trade in services than the average of OECD countries in most sectors.

**Service sectors with an impact on the competitiveness of industrial products - such as logistics, transportation, courier, banks and IT - are among those marked by the highest degrees of restrictiveness in Brazil and in the average of OECD member countries.** Liberalizing rules for the provision of these services by foreigners can have a positive impact on the Brazilian industry.

**Chart 2 – Services trade restrictiveness index**

Source: Prepared by CNI, based on data from OECD, 2017.

\*Services Trade Restrictiveness Index (STRI).

**Preparing the lists of reservations to be submitted by the Brazilian government in the negotiations of the country's adherence to the Code of Liberalization of Current Invisible Operations is an important step not only for acceding to that Code, but also for reducing the costs of services and for the competitiveness of the Brazilian economy.** It provides an opportunity to implement modernizing reforms in the regulation of services in Brazil. In addition, this step will make it possible for Brazil to participate more actively in service negotiations in international trade agreements.

Although it is possible to submit lists of reservations on the two Codes, the negotiation process involves prior submission of a comprehensive questionnaire on domestic measures and legislation, as well as of justifications for such reservations. The final decision to accept Brazil's adherence to these Codes is the responsibility of OECD member countries, who may seize this opportunity to negotiate the removal of barriers on trade in services.

It can therefore be expected that Brazil's adherence to these two Codes will pave the way for updating and modernization the Brazilian legislation on direct foreign investment and on service sectors.



# 4 BRAZIL'S ACCESSION PROCESS: AGENDA, CHALLENGES AND IMPLICATIONS

The actual beginning of Brazil's accession process to the OECD is conditional on the unanimous approval of its request to the organization's Council. It is highly likely that the OECD Council will approve the start of the process, but there are doubts mainly as to when this will occur.

## 4.1 Brazil is well positioned among candidates

When considering the prospect of Brazil's accession to the OECD, the following should be taken into account:

- the country's current position in its relationship with the organization and its state of readiness and ability to adhere to the main OECD instruments; and
- the constituent characteristics of the OECD and its vocation to be a "less than multilateral" organization.

Regarding the first aspect, Brazil is the non-member country with the highest participation in OECD committees and mechanisms due to the long history of their relations and identification of convergent visions and interests. In addition, Brazil is a relevant international actor in relation to agendas of great interest to the OECD and is seen as a key partner of the organization since 2012. These facts define a favorable starting point for accepting Brazil's membership application.

In this regard, Brazil is very well positioned in relation to the criteria presented in Appendix C, which lists what the OECD considers as evidence of efforts and initiatives taken by a prospective member to align itself with the OECD instruments and vision.

Brazil has adhered to almost all the instruments and initiatives cited under the heading Economic and Public Governance and is in the process of adhering to the two above-mentioned Codes and to the Recommendations on Good Statistical Practice and on

Principles for Internet Policy. The country's economic policy was also assessed by the organization in 1998.

The evidence listed under the heading Ability, Capacity and Engagement in Appendix C includes participation, as a member or associate member, in OECD Committees, especially in those dealing with relevant areas for demonstrating the country's State of Readiness to accede to the organization. Brazil unquestionably fulfills this requirement.

Also under that heading, Brazil must have undergone at least one "peer review", preferably in areas such as public governance, regulatory policy, economy or corporate governance, and must have provided the required national data for inclusion in at least one of the flagship publications of the organization. Brazil has undergone several "peer reviews" already.

Under the heading Reach and Impact, requirements related to the country's participation in international and regional organizations and to its ability to contribute to the OECD's engagement in global or regional governance are listed. Brazil's positioning in relation to the requirements listed in that heading also appears to be very favorable because, among other reasons, since Mexico joined the organization Brazil is the largest economy to request accession to the OECD and the first one among those that the organization itself classified in 2007 as key partners.

In a club-like organization like the OECD, there will always be tension between preserving the homogeneity of the group and expanding its membership. This expansion can be seen as a factor leading to less cohesion in the group and to a reduced focus on the original objectives of the organization. Brazil is not the only country seeking accession to the OECD currently: Colombia, Costa Rica and Lithuania are in the process of negotiating their accession and other countries (Argentina, Peru, Bulgaria, Croatia and Romania) have already formally expressed interest in acceding to the organization. The existence of a heterogeneous list of candidates tends to increase the resistance of certain members to accepting new members.

Taking into account the two aspects mentioned above, Brazil's candidacy will likely be accepted and the beginning of the negotiating process may be preceded by the opening of negotiations with one or two other prospective members.

## 4.2 What would be the implications of Brazil's accession?

And what would be the implications for Brazil of acceding to the OECD? How can one assess ex ante the costs and benefits of acceding to an organization that no longer sees itself as a "rich-country club" and has evolved into a club of "like-minded

countries” whose policies are aligned, with non-significant domestic variations, with the economic and political principles of liberal democracy?

**For Brazil, the costs of acceding to the OECD are associated with (a) the need to carry out regulatory reforms and review public policies to align them with the organization’s binding and non-binding instruments; and (b) the regular submission of the country’s public policies to “peer reviews”.**

Regarding the first point, an assessment of the degree of convergence (and divergence) between Brazilian laws and regulations and the OECD instruments and “consensuses” can be instrumental for measuring the costs of adherence according to the scope and depth of the required reforms.

Such assessment was carried out domestically by the Brazilian government in 2007 and is being conducted once again today. In its current version, the assessment carried out in different ministries and government agencies contemplates two questions:

- Would OECD membership require changes in Brazilian regulations?
- Are the objectives of the OECD instruments consistent with the desired orientation of the public policies in question?

**According to the results of the assessment, in two-thirds of the cases there is no legal incompatibility between the OECD instruments and Brazilian regulations, and Brazilian government agencies see the policy orientation suggested by the OECD as convergent with the country’s objectives.** In 18% of cases, there is some regulatory or legal incompatibility, but there is no divergence in policy orientations and objectives. In 4% of cases, even though there are no problems of incompatibility, government agencies have restrictions on the objectives of the OECD instruments. Finally, in 12% of cases, there are incompatibility problems and Brazilian government agencies disagree with the orientation defined by the OECD. This means that in 70% of cases there are no problems of legal or regulatory incompatibility and in 84% of them the policy orientations defended by the OECD converge with those advocated by Brazilian government agencies.

## 4.2.1 Main challenges

In 84% of the cases, the assessment of whether there is regulatory compatibility or convergence of views between the Brazilian government and the OECD regulatory framework suggests that, once Brazil’s candidacy is accepted, it will not be difficult to negotiate its accession to the organization. It could be assumed that, having the right to express reservations on certain instruments and commitments, Brazil would be able to accede to the OECD without making substantive reforms in its economic

regulation. Nevertheless, two issues suggest that major challenges in the negotiation process will have to be addressed:

**First issue:** regulatory divergences are concentrated in relevant areas of economic regulation, particularly in the tax regime.

The areas where the greatest challenges related to regulatory divergences are concentrated are the following ones:

#### a) Tax regime

**It is in the tax area that the main difficulties related to Brazil's convergence with OECD instruments are concentrated.** The peculiarities of the Brazilian tax system - inconsistencies in the taxation regime applied to legal entities and non-residents, adoption of a transfer pricing regime that is not convergent with the OECD model, and adoption of a unique model for agreements to avoid double taxation - have implications for the business environment and the movement of capital.

The assessment carried out by government agencies is likely to indicate that it is possible for Brazil to accede the OECD without significant changes in the Brazilian tax system. However, regardless of the process of accession to the organization, Brazil will have to reform some of its tax rules in order to remain competitive in the international market.

**One of the consequences of the BEPS process is that several countries have reformed their domestic legislation to continue to attract foreign direct investment. If Brazil does not follow suit, it will face difficulties to continue to attract foreign direct investment,** as some of the companies that operate and generate jobs in the country will end up moving to other countries and penalizing Brazilian companies that have productive investments abroad.

The main requirements that Brazil will have to comply with in the tax area during the OECD accession negotiations are the following ones:

- flexibility in adopting fixed margins and acceptance of compensatory credits in transfer prices;

## Box 2 – Transfer prices: main differences between the Brazilian regulation and the OECD model

- Adoption of distinct export and import methods and of a specific method for commodities.
- Establishment of the principle of fixed profit margins predetermined in law.
- Limited use of the arm's length principle.
- Application of the product to product rule; the “basket approach” is not allowed.
- Very broad definition of the related party concept.
- Unavailability of administrative instruments to avoid litigation (advanced pricing agreements).

Source: Prepared by CNI.

- reform of the taxation regime for imports of intangibles and services, eliminating barriers on service imports resulting from the current model; and

## Box 3 – Problems in the service taxation system in Brazil

- At least six types of taxes are levied on service imports: IRRF (withholding income tax), CIDE (Contribution for Intervention in the Economic Domain), PIS (Social Integration Program benefits), Cofins (Contribution for Social Security Financing), ISS (Tax on Services) and IOF (Tax on Financial Operations). The IRRF is the tax that accounts for most of the tax costs borne by companies.
- The high cost involved in importing services results, among other things, from how the Brazilian internal revenue service interprets the agreements to avoid double taxation currently in force in Brazil.
- Imports of services are taxed at a rate of 41%. Applying international tax practices, Brazil could reduce this tax by means of a network of 33 agreements to avoid double taxation in force.
- Brazilian regulation implies withholding taxes on services, as Brazil applies an interpretation of its own of the classification of income generated by service imports (it sees it as services fees and not as business income), which allows service imports to be taxed even when it has an agreement with the country from which the services were imported.
- For international operations related to trade in services, Brazil's interpretation of agreements in force generates a high tax cost in relation to international standards and clear discrimination against international providers in relation to domestic service providers.

Source: Prepared by CNI.

- reform of the Brazilian model for treaties to avoid double taxation, so as to make it compatible with OECD standards.

**Box 4 – Comparison between the models adopted by Brazil and the OECD for Agreements to Avoid Double Taxation (AADTs)**

AADT: Comparison between the Brazilian model and that of the OECD				
Yield	Brazil	X	OECD	Impacts
<b>1. Dividends</b>	0% at source (withholding income tax contemplated in AADTs)		5% - 15% at source	Decrease in tax revenues in Brazil  Little bargaining power in new negotiations
<b>2. Interest rates</b>	15% at source (idem domestic rate)		10% at source	A high withholding income tax is absorbed and becomes an additional cost  The additional cost is passed on to Brazilian payers
<b>3. Royalties</b>	15% at source (idem domestic rate)		0% (only residence)	A high withholding income tax is absorbed and becomes an additional cost  Little bargaining power in new negotiations
<b>4. Technical services</b>	15% at source (idem domestic rate)		0% (only residence)	A high withholding income tax is absorbed and becomes an additional cost  Little bargaining power in negotiations and cost passed on to Brazilian payers
<b>5. Matching credit</b>	15% to 30%		Practice condemned by the OECD	Few companies use it  Little bargaining power in new negotiations

Source: Prepared by CNI.

**b) Maritime transportation policy**

Still in relation to OECD instruments, another complex topic, albeit of a more limited scope, refers to the collection of the Additional Tax for the Renovation of the Merchant Marine (AFRMM) and to Merchant Marine Fund (MMF) subsidies for shipbuilding and for the activities of shipowners in Brazil. This additional tax is levied on freight and port costs of imported products at a rate of 25%, which constitutes an additional barrier on imports. In addition, financing for shipbuilding and merchant marine activities with FMM resources constitutes a subsidy that is not in compliance with OECD guidelines.

**c) Environment and chemical safety**

**The OECD has about 25 instruments in this area and the preliminary assessment carried out by government agencies is that Brazil is not likely**

**to face major difficulties in this sector.** The country has very strict laws on the environment, and its National Environmental Policy is in line with the OECD guidelines, according to representatives of the Brazilian government.

**Brazil has already undergone a peer review in the environmental area and the report of this review recognizes that it made a lot of progress in its environmental regulations and that the main problem in this field lies in gaps in infra-legal regulations.** Divergences are likely to be detected mainly in the implementation of regulations - which is a very relevant matter for the OECD.

Regarding chemical safety, the regulatory vacuum in this area in Brazil is more significant. One of the main gaps in this area is the lack of a national register of chemical substances. Through CONASQ (National Chemical Safety Committee), the Ministry of Environment launched a preliminary project in June 2017 proposing appropriate foundations for implementing a National Register of Chemical Substances in Brazil.

The purpose of that preliminary project is that of controlling industrial chemical substances used in Brazil with the aim of minimizing the adverse health and environmental impacts of producing and importing these substances. A regulatory framework is also lacking for defining the institutionalization of chemical safety in Brazil.

#### **d) Development cooperation**

This is a topic included in the OECD social agenda. Development cooperation involves financial aid, technical support, human resource training, technology transfer processes, donation of equipment and materials, among other mechanisms.

The OECD instruments that are seen as problematic by Brazilian government agencies include those referring to international development cooperation, an area in which Brazilian policy has traditionally favored criteria and methods that are not exactly in line with the principles defended by the OECD.

Although they do not exhaust the potential difficulties that Brazil may face in adhering to the instruments of the OECD regulatory framework, Brazilian government representatives directly involved in analyzing the accession process have identified these four areas as the most problematic ones.

**Second issue:** Like-mindedness is becoming increasingly important in the assessment made by member countries.

The experience of other developing countries (Chile, Costa Rica and Colombia) with OECD accession negotiations shows that during this process other member countries

press for adjustments in public policies that, albeit not regulated in the formal instruments of the organization, are considered as conditioning factors for accepting a country's entry into the club. In the case of Brazil, informal assessments suggest that two issues will be the most sensitive ones: trade and industrial policies and intellectual property.

#### **a) Degree of openness of the economy**

**Although the organization is not a forum for trade liberalization negotiations, there are indications that trade partners will put pressure on Brazil to advance in its trade liberalization process,** particularly in what regards non-tariff barriers.

The document *OECD Economic Surveys: Brazil 2018* includes a section dedicated to analyzing the causes of the low integration of the Brazilian economy into world trade and global value chains. That survey suggests that “this reflects several decades of policies focused on the domestic market, including the adoption of an industrialization strategy based on import substitution”.

The country must be prepared to face demands for lowering the protection levels afforded by its current tariff structure and for reviewing its industrial policies with a view to removing instruments that condition fiscal and credit benefits to local content in production.

Although it has no well-defined regulations or criteria for trade (only a generic Trade Policy Statement, as mentioned above), the OECD has a wide range publications focused on trade liberalization. Taxation and trade policy will likely be the most complex issues to be addressed by Brazil in its negotiations for accession to the OECD.

#### **b) Intellectual property**

This is another issue in connection with which Brazil will likely experience pressure from current member countries in the accession process. An analysis of the most recent accession processes, especially of those involving Latin American countries, shows that increasing emphasis is being placed on the protection of intellectual property rights and patents as a result of demands from business sectors, mainly from the United States.

**The stock of patent applications and the long time it takes for the Brazilian patent office (INPI) to analyze them, the intervention of Anvisa (National Health Surveillance Agency) in the patenting process, which further delays the issuing of patents, the need to fight piracy, and the interference of the INPI in private technology transfer agreements are some of the topics**

on the agenda of business organizations in OECD member countries that may be discussed during the process of negotiations for Brazil's accession to the organization.

The Brazilian government and the agencies involved in the negotiations have been making efforts to address these shortcomings and positive results are expected over the next few years. Brazil will likely have positive results to report in this area during the negotiations.

**What the assessment that was carried out indicates is that there are no insurmountable obstacles in legal and regulatory terms preventing Brazil's accession process to the OECD from being completed in a satisfactory manner.** However, the country will have to make a major reform effort to have its accession approved.

**In relation to the second type of cost usually associated with entry into the OECD (submission of public policies for regular and systematic peer reviews), it is worth noting that this is a mechanism designed to press for the enforcement of agreed standards that is much less incisive** than, for example, the WTO dispute settlement mechanism.

On the other hand, it is a mechanism regularly used and accessed by OECD member countries that is much easier and more expeditious than the WTO instrument - which requires considerable institutional resources and time to be applied. Therefore, it can be effective as an instrument to pressure members to reform public policies that are seen as incompatible with the OECD's vision and guidelines.

## 4.2.2 Potential benefits

Despite the challenges to be faced, there are several reasons for industry to support this initiative:

- **deepening of the reform of the Brazilian state with a view to enhancing the efficiency, transparency and accountability of its various agencies and bodies.** The OECD emphasizes aspects that are generally not very valued in the country, such as policy coherence and consistency, the quality of regulation and of its implementation process, policy evaluation, etc. Accession to the OECD could generate a major incentive for a more sophisticated view of the regulatory process in the Brazilian state, with very positive social and economic impacts;

- **a more stable and predictable regulatory framework in Brazil**, “anchored” in a long-term commitment to international good practices in various policy and regulatory areas, leading to positive impacts on the perception of the business climate in the country by domestic and foreign actors;
- **external support to reforms that Brazilian industry has long advocated for, such as changes in the tax regime** that penalizes the operations of Brazilian companies in the international market, reduction in the cost of services and access to imported technologies, improving procedures for accessing patents and ensuring intellectual property rights, among others;
- **Brazil’s increased capacity to influence the international scenario** as a full member may become a stronger factor in the debates and deliberations of the different OECD committees;
- **the opportunity to influence consensus-building around rules that will influence the business environment** in which companies operate. The OECD has been exerting a major influence on the agenda of country forums (e.g. G-20) and on international institutions such as the WTO, the World Health Organization (WHO) and the United Nations Framework Convention on Climate Change (UNFCCC);
- **the opportunity to exchange experiences, learning and policy evaluations** during peer review processes, contributing to the adoption of good international practices and to generate support to the implementation of policies; and
- **gains in terms of status and benefits associated with the external evaluation of the country and its commitment to transparent policies** and good international practices, contributing to reducing the cost of external financing and to attracting foreign direct investments.

## 5 RECOMMENDATIONS

The assessment of challenges and benefits arising from Brazil's eventual accession to the OECD suggests that this initiative represents a natural path for an economy that needs to grow and integrate better into the global economy.

The accession process would afford an opportunity for the country to carry out, in a synchronized and consistent manner, a set of necessary reforms that will make the business environment in Brazil more modern, efficient and transparent.

The set of necessary reforms for Brazil to accede to the OECD may vary according to how the negotiations with its current member countries will evolve, but they will certainly entail major challenges.

Based on the analysis made in this document, the National Confederation of Industry makes the following recommendations to the next federal administration:

### **5.1 The request for opening accession negotiations should be reiterated**

Brazil requested the opening of negotiations for accession to the OECD in July 2017, during a transitional government and shortly before the start of the 2018 election campaign. Some member countries have doubts as to the continued interest of Brazil in acceding to the OECD due to their doubts about the outcome of the upcoming elections. The history of Brazil's relationship with the OECD is old and dense: Brazil is the non-member country with the greatest adherence to the instruments of the organization and with the greatest participation in its committees. Its accession to the OECD is a natural path that should not be reversed. It is important that candidates for the presidency of the Republic express their interest in acceding to the OECD.

## **5.2 Efforts should be made to ensure that the request to initiate accession negotiations is accepted by the member countries of the organization**

There are five countries competing with Brazil for starting OECD accession negotiations. No formal limit has been imposed on the number of countries that will have their applications accepted, but dilemmas surrounding the expansion of the organization suggest that they will be selected for acceptance in stages. Brazil will have to make an effort to convince member countries of the specific benefits that its accession can bring to the organization. This effort will require structured and well-coordinated actions of ministerial and presidential diplomacy.

## **5.3 Measures should be taken to ensure that Brazilian normative production is consistent with the OECD guidelines**

Once they are accepted, accession negotiations will be long - they may last for about three years. Meanwhile, it is fundamental that normative production in Brazil is convergent with the organization's guidelines to avoid creating frictions that will have to be addressed during the negotiations. The decision to join the OECD implies recognition of like-mindedness with the organization. This recognition should guide domestic regulatory policies and practices even before the request to start negotiations is accepted.

## **5.4 Liberalization of the trade in important services for the competitiveness of industry should be promoted**

Negotiations for Brazil's adherence to the Code of Liberalization of Capital Movements and to the Code of Liberalization of Current Invisible Operations afford an opportunity

for the country to undertake modernizing reforms in the regulation of services, contributing to improving the global competitiveness of the Brazilian economy.

## 5.5 A realistic attitude in the evaluation of challenges should be adopted

**The fact that Brazil is the non-member country with the highest degree of adherence to OECD instruments does not mean that the set of reforms that the country will have to carry out is not very challenging.** It will be necessary to invest in analyzing regulatory divergences and likely demands for economic openness, to prepare a reform agenda consistent with the objectives of economic growth with international insertion and to reinforce the country's negotiating capacity.

## 5.6 Consistency with the international trade negotiations agenda should be ensured in the process of accession to the OECD

**Becoming a member of the OECD is part of the effort to better integrate the Brazilian economy into the global economy.** Although the OECD normative framework does not include specific trade policy provisions, adherence to various instruments will entail commitments commonly negotiated in modern free trade agreements (e.g. liberalization of services, access to investments, strengthening of intellectual property rights, etc.). The moves that Brazil will make in its OECD accession process must be compatible with the country's agenda of preferential trade negotiations, particularly those involving member countries of the organization.



# APPENDIX

## Appendix A – OECD’s institutional framework

The work carried out by the OECD is based three basic institutional structures: the OECD Council, Secretariat and Thematic Committees. While the role of the Council is focused on its annual meeting, the relationship between the Secretariat and the thematic committees is what defines the dynamics of the organization’s functioning, which is largely based on what might be termed “technical diplomacy”, since OECD’s efforts and resources are largely focused on drawing up technical papers. In addition to the committees, the organization also relies on working groups and groups of experts, totaling about 240, set up to address different thematic areas.

The committees are organized around twelve thematic axes and are referred to as departments or divisions: Economics Department; Trade and Agriculture Division; Environment Division; Public Governance and Territorial Development Division; Tax Policy and Administration Division; Science, Technology and Innovation Division; Employment, Labor and Social Affairs Division; Entrepreneurship, Small and Medium Enterprises, Local Development and Tourism Division; Education Division; Statistics Division; Development Cooperation Division; Financial and Enterprise Affairs Division.

The committees are always chaired by one of the OECD members and include full member countries and other invited observers. The latter may be *tout court* or *ad hoc* observers; in the former case, once the status is ensured, it is valid for two years. There are also committees that admit countries that are not members of the OECD as full members. This is usually occurs according to the economic or political relevance of the country in question to the OECD in a given sector or thematic area.

In addition to the formal framework of the OECD itself, there are a number of satellite organizations linked to the OECD Secretariat, as well as forums and other global initiatives that keep a close dialogue with the OECD. In this regard, special mention should be made of the Financial Action Task Force on Money Laundering (FATF) and of the Development Center, which Brazil takes part in and in which it plays a relevant role.

The organization also relies on special mechanisms for the participation of groups from the private business sector and from workers’ trade unions (known by the acronyms *Biac* - in which CNI has been participating since 2008 - and *Tuac*), apart from specific programs and partnerships with other international organizations and members of parliament.

## Appendix B – The OECD budget

The OECD budget is divided into two parts. All member countries contribute to Part I of the budget, which is partly divided equally among its members and partly according to the relative size of the economy of each country. In 2017, that budget of this Part amounted to €200.1 million. The second Part covers only programs of interest to a limited number of members whose costs are covered by specific contributions or agreements between participating countries. The OECD consolidated budget in 2017 amounted to €374 million.

Table 1 shows the participation of each of the current OECD members in the organization's budget in 2017, as well as the year of their entry into the institution.

**Table 1 – OECD member countries: participation in the 2017 budget and year of entry into the organization**

Member countries	Percentage contribution	Year of entry
Germany	7.4	1961
Austria	1.5	1961
Belgium	1.6	1961
Canada	3.6	1961
Denmark	1.3	1961
Spain	3.0	1961
United States	20.6	1961
France	5.4	1961
Greece	1.1	1961
the Netherlands	2.2	1961
Ireland	1.1	1961
Iceland	0.5	1961
Luxembourg	0.6	1961
Norway	1.6	1961
Portugal	1.1	1961
United Kingdom	5.5	1961
Sweden	1.6	1961
Switzerland	2.1	1961

Turkey	2.0	1961
Italy	4.1	1962
Japan	9.4	1964
Finland	1.2	1969
Australia	3.1	1971
New Zealand	1.1	1973
Mexico	2.8	1994
Czech Republic	1.1	1995
South Korea	3.1	1996
Hungary	1.0	1996
Poland	1.5	1996
Slovakia	0.8	2000
Chile	1.4	2010
Slovenia	1.4	2010
Estonia	1.4	2010
Israel	1.4	2010
Lethonia	1.4	2016

Source: OECD, 2017.

## Appendix C – Assessment of the state of readiness

The box below table lists the characteristics of the country that will be assessed with the aim of determining its state of readiness for OECD membership and the evidence that will be considered in such assessment, according to the document Report of the Chair of the Working Group on the Future Size and Membership of the Organization to Council - Framework for the Consideration of Prospective Members (C - MIN - 2017 - EN).

**Table 2 – Characteristics for assessing prospective members**

State of Readiness	
<b>1. Economic and Public Governance</b>	
Characteristic	As evidenced by
Rules-based open market economy	Evidence of progress toward adherence to the Declaration on International Investment and Multinational Enterprises (adherence to this Declaration involves adherence to 13 other OECD acts, four of which are legally binding);
	Completed Investment Policy Review which demonstrates progress regarding the Policy Framework for Investment;
	Evidence of progress towards accession to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention is an international treaty that creates binding obligations);
	Adherence to the OECD Corporate Governance Principles.
Tax transparency and international cooperation	Membership of the Global Forum on Exchange of Information and Transparency for Tax Purposes;
	Membership of the Inclusive Framework on BEPS (Base Erosion and Profit Shifting).
Stable and transparent financial system	Evidence of progress towards adherence to the Code of Liberalization of Capital Movements and to the Code of Liberalization of Current Invisible Operations (both codes generate binding obligations for OECD members).
Access to information	Adherence to the Recommendation on Good Statistical Practice;
	Adherence to the Recommendation on Principles for Internet Policy Making.
<b>2. Ability, Capacity and Engagement</b>	
Characteristic	As evidenced by
Ability to sustain the accession process and membership obligations	Agreement to provide adequate resources and coordination for the accession process.

State of Readiness	
Active participation and engagement in OECD substantive committees	Participant or Associate/Member status in OECD committees (with particular focus on committees whose instruments support the evidence of the state of readiness): including the track record and level of participation.
Comparability of data and evidence-based analysis and policy development	Completion of at least one Analysis/Peer Review, preferably on topics such as Public Governance, Regulatory Policies, Corporate Governance or Economy;
	Provision of the necessary country data required by at least one OECD flagship publication ( <i>Going for Growth</i> , <i>Education at a Glance</i> , <i>Government at a Glance</i> ).
3. Reach and Impact	
Characteristic	As evidenced by
Regional or global role in the world economy	Constructive membership in other international and regional organizations/institutions, consistent with the aims and undertakings of the OECD;
	Recognized ability to contribute to and support the organization's involvement in Global or Regional Governance.

Source: Prepared by the OECD.

## Appendix D – Binding instruments related to the topic of direct foreign investment and cross-border trade in services

With regard to the Declaration on International Investment and Multinational Enterprises, it should be mentioned that it is made up of four binding Decisions:

- the Decision on international investment incentives and disincentives, according to which consultations are to be carried out at the request of a country which considers that its interests may be adversely affected by the impact, on its flow of international direct investment, of measures taken by other countries that generate significant official incentives or disincentives for international direct investment;
- the Decision on conflicting requirements imposed on multinational enterprises. The binding commitment in this case refers to the obligation of a country A being questioned by another country B to agree to enter into consultations on any conflicting requirements applied by country A to multinational companies of country B;
- the Decision on national treatment (referring to the third revision of the Decision on the topic). The general obligation to grant national treatment is not binding, but rather the commitment to submit lists of measures that constitute exceptions to the granting, by the country, of national treatment to investors of the OECD and of other countries adhering to the declaration; and
- the Decision on the OECD Guidelines for Multinational Enterprises, which contemplates a binding commitment related to the mechanism for implementing this Decision, which consists in establishing a National Contact Point (NCP) in charge of promoting the Guidelines and of helping to settle issues and disputes involving topics related to the operations of multinational companies in the country and referred to in the Guidelines: human rights, employment and labor relations, anti-corruption measures, transparency, competition, etc. It is incumbent upon the NCP to operate as a platform for mediation and reconciliation between the parties involved with a view to assisting in settling cases related to the non-observance of the Guidelines by multinational companies<sup>21</sup>.

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21. Since 2000, PCNs have received more than 400 "cases" in more than 100 countries, most of which are related to labor and employment issues and, more recently, to human rights. Almost invariably, such cases are submitted to NCPs (90% of the total) by NGOs, trade unions and individuals. The action plans of NCPs are subject to peer reviews at the rate of four per year. Brazil's action plan will be discussed and assessed in the fourth quarter of 2019.

In addition, adherence to the Declaration requires adherence to nine other non-binding instruments involving different issues pertaining to international investment, practices adopted by multinational corporations and regulation of their activities by member countries.

Regarding the two Codes (the Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Transactions), the binding rights and obligations created by adherence to them are related to restrictions on the movement of capital, including foreign direct investment and, in this regard, on the right to establish a company from another country, as well as on the liberalization of cross-border trade in services.

Both Codes provide for the establishment of a (negative) list of national reservations, in addition to adopting principles such as those of standstill (the lists of reservations can only be changed for reducing reservations or their degree of restrictiveness), of rollback (the Codes are intended to implement a continuous liberalization process) and of non-discrimination between countries that are signatories of the Codes, in relation to the liberalization process promoted by them.

## Appendix E – The national contact point for the OECD guidelines for multinational enterprises and foreign investment

After acceding to the revised Guidelines in 2000, Brazil took on the commitment to implement a National Contact Point - NCP - to receive and mediate cases of alleged violation of the provisions of the instrument. It is incumbent upon the NCP to assess whether an accusation or complaint should be upheld and considered. If it decides to uphold the accusation or complaint, it must offer to act as a mediator to settle the matter.

In Brazil, the NCP was created in May 2003 at the Secretariat for International Affairs of the Ministry of Finance, where it has been “based” ever since. More recently, a NCP Working Group was set up in Brazil that includes representatives from the Ministry of Finance, Ministry of Foreign Affairs, Ministry of Labor, Ministry of Justice, Ministry of Industry and Foreign Trade, Ministry of Planning, Ministry of Science, Technology and Innovation, Central Bank of Brazil, Human Rights Secretariat and Comptroller General of the Union.

This Working Group (WG) operates as an advisory body that meets three times a year to decide whether or not a Notification of Noncompliance will be accepted for further examination. All matters and decisions of the NCP are presented and discussed by the WG, whose members also act as rapporteurs of allegations.

The *2016 Annual Report* of Brazil’s National Contact Point mentioned a case in progress, two cases completed (with an agreement) in 2016 and one whose notification of non-compliance was not accepted by the NCP.

As already mentioned above, the Action Plan of Brazil’s NCP is scheduled to be discussed and assessed by the OECD in the fourth quarter of 2019.

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