

Thesis

The Role of the OECD in the Contemporary Global Governance

- Case Study of the BEPS (Base Erosion and Profit Shifting) Project

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Abstract

Growing transnational flows of goods and services, cash, ideas and culture, known as “globalization”, have always posed new challenges for policy makers. Given the inability to address transnational issues unilaterally by a national government and the absence of the global government, policy makers are in search for an optimal “global governance” architecture to deal with rule-making, political coordination and problem-solving for such transnational issues. Among various actors interacting in the global governance architecture, the Organization for Economic Co-operation and Development (OECD) has been a prominent figure since its establishment in 1961, and its relevance has become more remarkable in recent years owing to the increasing relationship with the G7 and G20. This paper explores how the OECD, with a relatively limited membership and being devoid of formal instruments to enforce its decisions, exerts what kind of influence in the contemporary global governance.

For this purpose, this paper takes the approach where a recent specific case that the OECD is involved is studied based on “policy-stage” model.

As the first step of this approach, the paper looks into the overview of the OECD in terms of its organizational structure and working process, as well as the recent trend of growing relationship between the OECD and the G20 (Chapter 1).

As the second step, the paper looks into how the OECD’s role in global governance is understood in the existing literature (Section 2-1). By thoroughly reviewing the literature and taking account of the insights about the role of international organizations posed by Keohane & Nye (1974), the paper infers the following hypothesis (Section 2-2). In the agenda-setting phase the OECD serves as an independent policy entrepreneur, acting mostly in the policy stream, while in the policy formulation phase it provides an arena where the deliberation, rather than negotiation, on what is right or appropriate to address the policy issue takes place. In terms of the policy implementation phase, the OECD exerts its influence through inquisitive activities such as peer review, the effectiveness of which is guaranteed by a shared identity among the member countries established through cognitive governance.

As the final step, the paper conducts a study on the OECD BEPS Project, a joint project by the OECD and the G20 aimed at the modernization of international corporate tax rules, based on the policy-stage model (Chapter 3). This case study shows consistency with the above-mentioned hypothesis on the role of the OECD in global governance, and at the same time, the findings reveal that the role of the OECD has recently been changing due to its growing relation with the G20 and its enhanced engagement with non-member countries. Increasing heterogeneity of the

countries participating in the OECD's working process is diluting its cognitive governance function that has traditionally facilitated it to reach unanimous consensus on policy instruments and to secure compliance with the standards through peer pressure. Thus, the OECD is facing dilemma between cognitive governance based on like-mindedness of the member countries and legitimacy based on inclusive participation, and how it will reconcile them still remains to be seen in the coming years.

The paper concludes by indicating three limitations of this study: 1) the lack of comprehensive case studies to verify the hypothesis, 2) the specificity of the case study that is insufficient to show how the new trends of increased cooperation with the G20 are permeating each section of the OECD and how each section copes with the above-mentioned dilemma, and 3) little attention on the aspect of competition between the OECD and other international organizations in global governance. All these limitations indicate the future paths to unveil the complex, floating roles of the OECD in global governance, for which I hope this paper has paved the way.

Acknowledgements

I got interested in the topic of international corporate taxation and the OECD BEPS Project when I took the class of 'Mapping Controversies: a Global Information System for Taxing Transnational Corporations' in the spring of 2016 at Sciences Po Paris, where I studied as exchange student from the University of Tokyo. This class made me draw attention not only to the significance of the issue of tax avoidance as illustrated by Luxleaks, Swissleaks and the very recent sensational information leaks of Panama Papers, but also to the relevance of the OECD as a pivotal actor in worldwide efforts to address this issue, which made me wonder how come the OECD plays an important role in the contemporary global governance. I tackled this puzzle within quite a brief time frame, two months, to write up this paper, just as the OECD had to carry through the BEPS Project in a very short period of two years. As a matter of fact, both attempts are not completed yet. Quite a few things remain to be explored to unveil the role of the OECD in global governance, as well as to properly address the BEPS issue, and both tasks require consecutive efforts. In this sense, I must admit that my paper is not finished at all, but I am grateful to be able to take one step in coping with this challenging issue and thankful to the professors and classmates at Sciences Po Paris who gave me some hints and insights in doing so.

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Acronyms and Abbreviations

ALP	Arm's length principle
BEPS	Base erosion and profit shifting
BIAC	Business and Industry Advisory Committee to the OECD
BMG	BEPS Monitoring Group
CFA	Committee on Fiscal Affairs
CFC	Controlled Foreign Corporation
CFP	Center for Freedom and Prosperity
CTPA	Centre for Tax Policy and Administration
DWG	Developing Working Group
EDRC	Economic and Development Review Committee
EU	European Union
HTC	Harmful Tax Competition
IMF	International Monetary Fund
MCAA	Multilateral Competent Authority Agreement
MCM	Ministerial Council Meeting
MNE	Multinational enterprise
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OECD	Organization for Economic Co-operation and Development
OEEC	Organization for European Economic Co-operation
PWB	Programme of Work and Budget
QMV	Qualified majority voting system
TJN	Tax Justice Network
TUAC	Trade Union Advisory Committee to the OECD
UK	United Kingdom
UN	United Nations
US	United States
WBG	World Bank Group
WP6	Working Party No. 6 of the Committee on Fiscal Affairs
WTO	World Trade Organization

Introduction

Globalization, the process of increasing international integration fostered by growing transnational flows of goods and services, cash, ideas and culture, poses new challenges for policy makers, giving impetus for new global governance architecture to manage such challenges. For example, in the 2008 financial crisis, the collapse of Lehman Brothers, an investment bank based in the US, triggered severe financial turmoil affecting the real economy worldwide. The world leaders have responded to this crisis by creating a new governance architecture in which the G20 at the leaders' level serves as the prime forum for global economic cooperation (Ramos 2011, p.35).

Then, what is the "global governance"? Global governance refers to "the sum of the many ways individuals and institutions, public and private manage their common affairs" (The Commission on Global Governance 1995, p.2). Given the absence of the global government in the real world, the concept of global governance enables us to describe and analyze the system of rule-making, political coordination and problem-solving across multiple levels (from local to global) among various actors such as states, international organizations, non-governmental organizations (NGOs) and multinational enterprises (MNEs) (Held & McGrew 2002, pp. 8-9). Among these actors, states have traditionally been considered as "the main managers of common affairs" (Woodward 2009, p. 5), but as they have been increasingly required to coordinate their actions in accordance with common rules to tackle transnational issues arising from globalization, international organizations have also gained considerable attention as important actors in global governance (Ibid, p. 5).

In terms of international organizations, the United Nations (UN), the International Monetary Fund (IMF), the World Bank Group (WBG) or the World Trade Organization (WTO) have often been mentioned in the literature on global governance. However, the Paris-based Organization for Economic Co-operation and Development (OECD) has also been a prominent figure in this regard since its establishment in 1961, and the eminence of the OECD in global governance seems to have become more remarkable recently as it has been mentioned more often than before in the communiqués of G7 (G8) or G20 (Woodward 2009; Wouters & Van Kerckhoven 2011). This fact poses a puzzle. How can the OECD, with a limited membership and lacking in formal instruments to enforce its policy instruments unlike other universal international organization, exert its influence in global governance? What are the roles it takes in the

contemporary global governance? The literature that deals with the role of the OECD in global governance is quite sparse compared to other international organizations such as the UN and IMF, and therefore this paper aims to shed light on this theme and make sense of the puzzle posed above.

For this purpose, the rest of the paper is structured as follows.

Chapter 1 deals with the description of the OECD in terms of its organizational structure and working process, to clarify what the OECD is and how it works. It also mentions the recent evolution of increasing relationship between the OECD and the G20 because it is one of the most important aspects of the OECD's performance in the global policy-making and is related to the case study explored in Chapter 3.

Chapter 2 presents an analytic framework to understand the role of the OECD in global governance. The chapter tries to derive hypotheses on the OECD's role in global governance based on the "policy-stage model", taking account of the existing literature on the OECD's role as well as the insights about the role of international organizations from Keohane & Nye (1974).

Chapter 3 focuses on the specific case study to analyze the role of the OECD in global governance based on the framework set out in Chapter 2. For this purpose, this paper chooses as a subject of study the BEPS Project, a joint project by the OECD and G20 aimed at the modernization of international corporate tax rules. The study on this project is expected to reveal the influence the OECD is exerting in handling transnational policy issues, as well as the impact of the increasing cooperation with the G20 on the role of the OECD in global governance.

Finally, the conclusion section summarizes the key findings from the case study, explains the limitations of this paper, and proposes some issues that are worth researching in the future.

1. Overview of the OECD

1-1. What is the OECD?

The OECD was established in 1961 as an economic counterpart to the North Atlantic Treaty Organization (NATO), where European and North American states could meet on an equal footing (Woodward 2009, pp. 16-18; Martens & Jakobi 2010 p. 3). It succeeded the Organization for European Economic Co-operation (OEEC), which had been established with a view to administering the Marshall Plan for the recovery of Europe after World War II. The OECD started with 18 European countries and the US and Canada, and it has gradually expanded its membership to 34 countries, which includes two Asian countries (Japan and South Korea) and emerging countries such as Mexico, Chile and Turkey, as of May 2016. However, it is still mostly composed of high-GDP countries, which collectively account for about 63% of the world GDP, and that is why it is often labeled a “rich man’s” or “rich country’s club” (Woodward 2009, p. 1). See Table 1 for the list of the OECD member countries, with their accession dates and GDP (in 2014)¹.

The goals of the organization are stipulated as follows in Article 1 of “Convention on the Organization for Economic Co-operation and Development”² (hereinafter, referred to as the “OECD Convention”):

- (a) to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;*
- (b) to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and*
- (c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.*

¹ Date of accession derives from OECD, “List of OECD Member countries – Ratification of the Convention on the OECD”, available at: <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> (Accessed on April 30th, 2016). The data on GDP are from World Development Indicators database provided by the World Bank.

² The OECD Convention is available at: <http://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm> (Accessed on April 30th, 2016).

Table 1 List of OECD member countries (as of May 2016)

Country	Date of accession	GDP (2014)	
		(millions of US dollars)	Ranking
AUSTRALIA	June 7, 1971	1,454,675	12
AUSTRIA	September 29, 1961	436,888	27
BELGIUM	September 13, 1961	531,547	25
CANADA	April 10, 1961	1,785,387	11
CHILE	May 7, 2010	258,062	42
CZECH REPUBLIC	December 21, 1995	205,270	51
DENMARK	May 30, 1961	342,362	34
ESTONIA	December 9, 2010	26,485	105
FINLAND	January 28, 1969	272,217	41
FRANCE	August 7, 1961	2,829,192	6
GERMANY	September 27, 1961	3,868,291	4
GREECE	September 27, 1961	235,574	45
HUNGARY	May 7, 1996	138,347	59
ICELAND	June 5, 1961	17,036	114
IRELAND	August 17, 1961	250,814	43
ISRAEL	September 7, 2010	305,675	37
ITALY	March 29, 1962	2,141,161	8
JAPAN	April 28, 1964	4,601,461	3

Country	Date of accession	GDP(2014)	
		(millions of US dollars)	Ranking
KOREA	December 12, 1996	1,410,383	13
LUXEMBOURG	December 7, 1961	64,874	71
MEXICO	May 18, 1994	1,294,690	15
NETHERLANDS	November 13, 1961	879,319	17
NEW ZEALAND	May 29, 1973	199,970	53
NORWAY	July 4, 1961	499,817	26
POLAND	November 22, 1996	544,967	23
PORTUGAL	August 4, 1961	230,117	46
SLOVAK REPUBLIC	December 14, 2000	100,249	64
SLOVENIA	July 21, 2010	49,491	83
SPAIN	August 3, 1961	1,381,342	14
SWEDEN	September 28, 1961	571,090	21
SWITZERLAND	September 28, 1961	701,037	20
TURKEY	August 2, 1961	798,429	18
UNITED KINGDOM	May 2, 1961	2,988,893	5
UNITED STATES	April 12, 1961	17,419,000	1
Total (OECD countries)		48,834,112	
Total (World)		77,845,107	

With these goals, in early years the organization's overall objective was to "develop a common value system at the level of civil servants in the OECD countries that should form the basis for consensually shared definitions of problems and solutions in the economic policy making" (Marten & Jakobi 2010, p.3), and much of its efforts were concentrated on technical questions such as ameliorating the speed, comparability and comprehensiveness of data and statistics, enhancing data dissemination, and perfecting the art of peer review (Woodward 2009, p. 19). These efforts formed the basis of "soft" regulation including inquisitive and meditative modes of governance (Jacobsson 2006) that the OECD has pioneered ahead of other international organizations and supranational organizations (Mahon & McBride 2008, p. 21). With this mode of governance, the OECD has covered a wide range of policy issues unlike other international organizations, from economic issue as its core field to peripheral issues such as education, health and family. The absence of clear mission, deriving from broadly defined goals in Article 1 of the OECD Convention, makes the role of the OECD elusive and its functional domain in "perpetual flux" (Woodward 2009, p. 4). Thus, framing the role of the OECD in global governance is a difficult and challenging task.

Before getting to this point, the next section will look into the roles and functions of the OECD's internal organs and the way in which external actors influence them, with a view to grasping the governance mechanisms within the OECD, which would be important to better understand how the OECD exerts its influence in global governance.

1-2. Organization and Working process

(1) Internal organs

With regard to the internal organs, the Council, the Secretary-General, the Secretariat, and Committees and working groups are the bodies responsible for the management and daily work of the OECD.

(a) Council

The Council consists of representatives from all member countries and the European Commission. There are two levels of the Council. On the one hand, the Council meets annually at ministerial level that is called "Ministerial Council Meeting (MCM)", where ministers of finance,

foreign affairs or trade from not only member countries but also selected non-member countries, observers from international organizations, experts from Business and Industry Advisory Committee to the OECD (BIAC) and Trade Union Advisory Committee to the OECD (TUAC), and the Secretary-General and Deputy Secretary-Generals of the OECD meet. On the other hand, the Council meets regularly at permanent representative level, chaired by the Secretary-General.

The Council exerts strategic influence by authorizing the Secretariat-General to direct the Secretariat to focus on certain issues and by taking binding decisions or recommendations to the member countries. It also exercises administrative control by approving the budget and staff rules. In practice, the MCM is strategically oriented while the Council at permanent representative level is concerned with routine matters (Woodward 2009, p. 48).

In principle, the Council takes decision by mutual agreement of all member countries (Article 6.1 of the OECD Convention). If a member abstains from voting on a resolution, such a resolution applies to all members except the abstaining member (Article 6.2). However, in order to improve responsiveness, flexibility, effectiveness and efficiency of decision-making mechanisms, the OECD has adopted the qualified majority voting system (QMV) in certain special cases since 2006. The QMV is a mechanism where decisions are taken if supported by 60% of the member states unless opposed by three or more members who represent at least 25% of the Part I scale of contributions (OECD 2013a, p. 30). The cases to which the QMV can be applied include creation, continuation and abolition of committees and programs, adoption and revision of staff and financial regulations, and the Programme of Work and Budget (PWB) within a consensus-agreed budget envelope (Ibid, p. 33). However many strategic decisions such as approval of the OECD's governance structure, accession or participation of non-member states, and adoption of the overall PWB, require mutual agreement or unanimity (Ibid, p. 32).

(b) Secretary-General

The Secretary-General is a head of the Secretariat and also a chair of the Council at permanent representative level. He or she is appointed by the Council for a term of five years (Article 10.1 of the OECD Convention).

As head of the Secretariat, the Secretary-General is in charge of appointment of the staff and establishment of staff regulations, which are subject to approval by the Council (Article 11.1). The Secretary-General determines the agenda for each session of the Council and the meetings of the subsidiary bodies of the OECD (OECD 2013a, p. 23), and is generally responsible for

communications among the various bodies of the OECD on the one hand and between member states, non-member states and international organizations on the other (OECD 2013a, p. 15). He or she is assisted by one or more Deputy Secretaries-General appointed by the Council on the recommendation of the Secretary-General (Article 10.1), and currently there are four Deputy Secretaries-General each of who supervises a respective policy area (See Table 2 for the list of the current Secretary-General and Deputies as of May 2016).

Table 2 List of Secretary-General and Deputies

Name	Position	Nationality	Dates
Angel Gurría	Secretary-General	Mexico	Since June 2006
Rintaro Tamaki	Deputy Secretary-General	Japan	Since August 2011
Mari Kiviniemi	Deputy Secretary-General	Finland	Since August 2014
Stefan Kapferer	Deputy Secretary-General	Germany	Since October 2014
Doug Frantz	Deputy Secretary-General	United States	Since November 2015

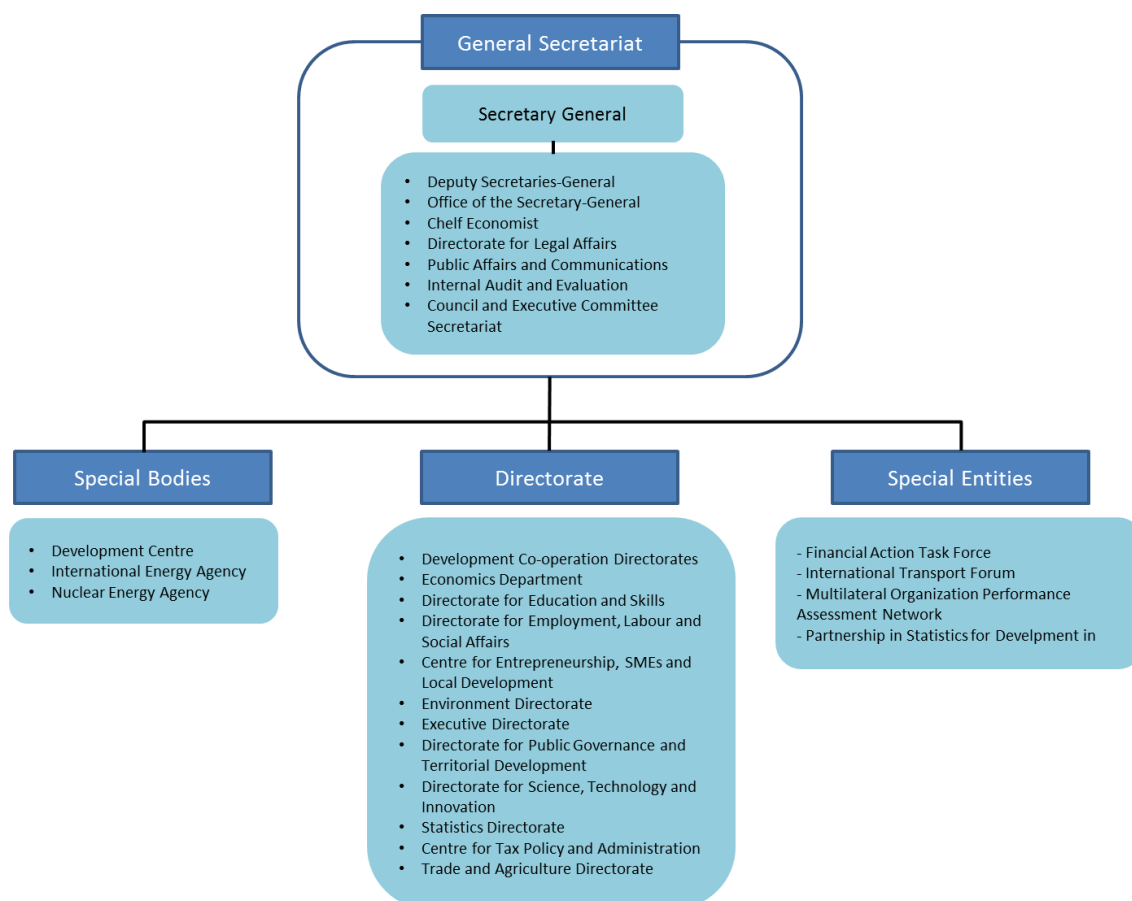
(Source: OECD, “List of OECD Secretaries-General and Deputies since 1961”, available at: <http://www.oecd.org/about/secretary-general/listofocdsecretaries-generalanddeputiessince1961.htm>, Accessed on April 30th, 2016)

(c) Secretariat

The Secretariat is composed of directorates and departments (see Figure 1 for organizational structure) that support the Council, the Secretary-General, the special bodies or entities, and the Committees. The Secretariat, consisting of about 2,500 members who are bureaucrats dispatched from national governments or policy experts the OECD recruits by itself, conducts policy analysis and drafts proposals for the Council, the Secretary-General and the Committees. It is one of the largest international bureaucracies, much larger than the World Trade Organizations (WTO) (Porter & Webb 2008, p. 45), enjoying considerable autonomy in carrying out their tasks (Busch 2006, p. 12; Deacon & Kaasch 2008, p. 239; Mahon & McBride 2008, p. 8). In Woodward’s words, it “forms an impartial body that trades on its reputation and expertise to

advocate and accustom committee members to innovative approaches to policy dilemmas” (Woodward 2009, p. 50).

Figure 1 Organizational Structure of the OECD Secretariat



(Created by the author, based on OECD 2015a, pp. 64-65)

(d) Committees and working groups

The Committees and their subsidiary working groups are composed of representatives of the OECD Secretariat, members of permanent delegations from member states, senior officials and national experts appointed by member states, non-member states, international organizations and civil society. At present, there are over 200 Committees and working groups (OECD 2015a, p. 4), and every year over 40,000 delegates attend the meetings³.

³ OECD, “The OECD Conference Centre Practical information”, available at: <http://www.oecd.org/site/conferencecentre/> (Accessed on April 30th, 2016).

The Committees and their subsidiary working groups are the place where specific questions that are instructed by the Council are discussed with the support from the Secretariat. They produce the policy advice and, subject to approval from the Council, the “soft law” instruments, which will be explained in detail in Section 2-1. They also conduct monitoring the implementation of the instruments through peer review process (Woodward 2009, p. 52).

(2) External actors

(a) Member countries

The member countries exert their influence in the OECD’s work in four ways (Woodward 2009, pp. 44-45). Firstly, each member country sends permanent representatives in Paris to communicate the views of their government to other member countries and to represent the government in the Council. Secondly, the member countries supply most of the budget of the OECD. The OECD budget consists of core (Part I) budget and supplementary (Part II) budget. The Part I budget, accounting for about 54% of the OECD’s consolidated budget⁴, is contributed to by each member country according to the size of their economy (see Table 3). The Part II budget is contributed to voluntarily by member countries and non-member countries to support particular work. Thirdly, officials from the member countries dominate the Committees. Lastly, the member countries have the authority to appoint the Secretary-General at the Council.

(b) Non-member countries, International organizations, and Civil society

Non-members such as non-member countries, international organizations and civil society organizations are allowed to participate in the meetings of the OECD bodies in accordance with preconditions set by the Council. There are three levels of participation (Woodward 2009, p. 54). The lowest level is adhoc participation in individual meetings where they contribute only to preliminary discussions. The intermediate level is participation as “regular observer”, where they are expected to actively contribute to the work of the body, but they may be prevented from participating in some meetings designated by the Council (OECD 2013a, p. 9), they are allowed to make a statement only with the consent of the chair (OECD 2013a, p. 9), and they

⁴ OECD, “Member Countries’ Budget Contributions for 2015”, available at: <http://www.oecd.org/about/budget/member-countries-budget-contributions.htm> (Accessed on April 30th, 2016).

Table 3 Member countries' shares of Part I budget contributions for 2015

Country	Contributions (%)	Country	Contributions (%)
UNITED STATES	21.07	CHILE	1.43
JAPAN	11.92	ESTONIA	1.43
GERMANY	7.57	ISRAEL	1.43
FRANCE	5.53	POLAND	1.43
UNITED KINGDOM	5.21	SLOVENIA	1.43
ITALY	4.35	AUSTRIA	1.36
CANADA	3.87	DENMARK	1.21
AUSTRALIA	3.28	FINLAND	1.08
SPAIN	3.11	GREECE	1.06
KOREA	2.82	PORTUGAL	0.99
MEXICO	2.71	CZECH REPUBLIC	0.96
NETHERLAND	2.18	IRELAND	0.95
SWITZERLAND	2.00	NEW ZEALAND	0.91
TURKEY	1.79	HUNGARY	0.81
BELGIUM	1.56	SLOVAK REPUBLIC	0.58
NORWAY	1.56	LUXEMBOURG	0.48
SWEDEN	1.55	ICELAND	0.38

(Source: OECD, "Member Countries' Budget Contributions for 2015", available at:

<http://www.oecd.org/about/budget/member-countries-budget-contributions.htm> Accessed on April 30th, 2016)

are not bound by the body's decisions. The highest level is "full participation", where they assume rights and responsibilities equivalent to the member states, that is, they are bound by the decisions, participate in the peer review and monitoring process, and have to pay the contributions under the Part II budget. In reality, the participation of non-members in these meetings is concentrated in peripheral committees such as those dealing with agriculture, and the access to the important committees such as Economic Policy Committee (EPC) and Economic and Development Review Committee (EDRC) is limited to a handful of international organizations and significant economies (Woodward 2009, p. 54).

There are other channels through which non-members can provide their inputs to the OECD work, namely Global Forums and Annual Forum. OECD Global Forums, initiated in 2001, “provide a hub where a diversity of stakeholders from specific policy communities can probe transdisciplinary policy problems whose solutions require contributions from non-members and civil society (Woodward 2008, p. 90)”. Currently there are Global Forums on agriculture, biotechnology, competition, development, education, environment, finance, international investment, knowledge economy, public governance, responsible business conduct, tourism statistics, trade, tax matters⁵. The Annual Forum, first convened in 2000, is an annual multi-stakeholder summitry, where ministers, heads of international organizations, NGOs and civil society gather and “impart and share information, improve communication and foster a climate of enlightened policy making” (Woodward 2008, p. 90).

The involvement of non-member countries in the OECD work has been expanding, especially since the 2000s. In 2007, the OECD MCM opened membership discussions with five candidate countries, Chile, Estonia, Israel, Slovenia and the Russian Federation, and as a result the first four countries became the OECD members in 2010. The OECD has subsequently started accession discussions with Columbia and Latvia in 2013 and with Costa Rica and Lithuania in 2015⁶. In parallel to these enlargement efforts, the OECD has launched the enhanced engagement program in 2007, in which five key partner countries, Brazil, China, India, Indonesia and South Africa are encouraged to get engaged in the OECD work, through direct participation in the OECD Committees, regular economic surveys, and adherence to OECD instruments⁷.

As for civil society, there are two organizations that traditionally have a privileged access to the OECD bodies (Woodward 2009, pp. 55-56). The one is the TUAC, which consists of over 58 national trade union centers representing some 66 million workers⁸. The other is the BIAC, which encompasses some 90 business organizations as its members⁹. They represent the voice of trade unions and business community respectively vis-à-vis the OECD, and they are the only

⁵ OECD, “Global Forums”, available at: <https://www.oecd.org/globalrelations/globalforums/> (Accessed on April 30th, 2016)

⁶ OECD, “OECD and enlargement”, available at: <http://www.oecd.org/globalrelations/enlargement.htm> (Accessed on April 30th, 2016)

⁷ OECD, “The OECD’s Relations with its Key Partners”, available at <http://www.oecd.org/general/theoecdrelationswithitskeypartners.htm> (Accessed on April 30th, 2016).

⁸ TUAC, “About TUAC”, available at: <http://www.tuac.org/en/public/tuac/index.phtml> (Accessed on April 30th, 2016).

⁹ BIAC, “Our Members”, available at: <http://biac.org/our-members/> (Accessed on April 30th, 2016).

civil society organizations that are allowed to have permanent secretariats in Paris. Their voices are heard in the course of consultations with the Committees or through their participation in the Committees as observers. They also have a ritual annual meeting with the OECD at the Liaison Committee for Non-Governmental Organizations, which is made up of members of the OECD Council.

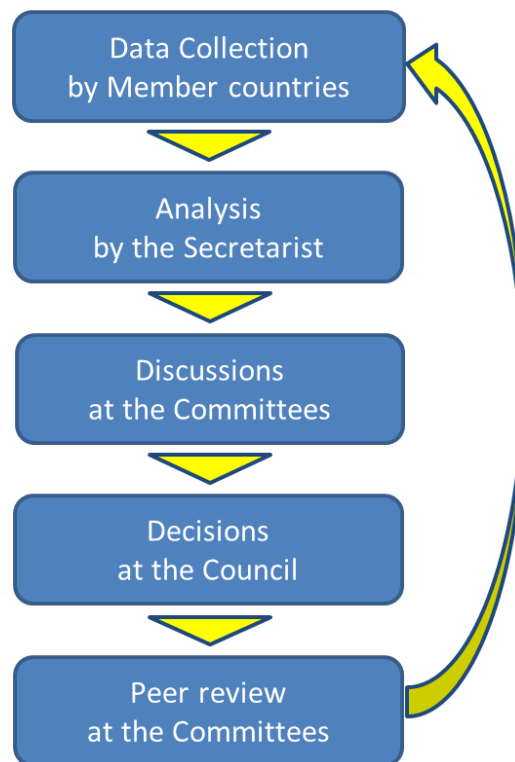
(3) Working process

In general, the OECD's working process takes the following cycle (Woodward 2009, pp. 56-58). After a decision is taken to deal with a certain policy problem, the first step is the collection of data from the member states. This data collection is backed up by the obligation of the member states to supply the OECD "with the information necessary for the accomplishment of its tasks" (Article 3(a) of the OECD Convention). After the data collection, the second step is the analysis of the data by the Secretariat to prepare for the third step, discussions at the Committees. If the discussions succeed in converging recognition of solutions to the problem, they move to the stage of decision by the Council. Once the decision is taken, the implementation is monitored by the peer review process for which the OECD is renowned. The most well-known peer review system of the OECD is '*Economic Surveys*', biennial country surveys on macroeconomic and structural policies conducted by the Economics Department of the Secretariat and the EDRC. The production of an Economic Survey involve three phases (Woodward 2010, p. 59). The first phase is a preparatory phase, where the OECD Secretariat, the Economics Department, gathers background data from the country under review through a questionnaire and on-site interview with government officials, specialists from civil society and academic organizations. The second phase is a consultation phase, where the Secretariat publishes a draft survey on the internal network and related parties look through it. A second site visit is conducted in this phase "to revise earlier information and to instigate policy oriented discussions on frailties identified by the preliminary survey" (Woodward 2010, p. 60). The final draft is written after this visit, and is circulated to all the members of the EDRC about four weeks prior to the Committee meeting. The final phase is an evaluative phase, where a one-day meeting of the EDRC is held. In this meeting the country under review is scrutinized based on the draft report by all the members led by the main peer reviewers who are representatives from two other member countries

designated by the EDRC. The following day, the examined country and the Secretariat elaborate an agreed version of the final document, which is released to the public afterwards.

This procedure of peer review is followed by many parts of the OECD Secretariat and Committees, in and of itself creating new data about policies that lead to new analysis and discussion (See Figure 2).

Figure 2 Working Process of the OECD



1-3. Recent evolution - Growing relationship between the OECD and the G20

Recently, there has been growing cooperation between the OECD and the G20. Since this aspect is related to the case study explored in Chapter 3, this section will overview the recent evolution of this relationship, to see how it may influence the governance mode of the OECD.

The G20 was first founded, in response to the Asian financial crisis, as a forum of finance ministers and central bank governors in 1999, out of “the desire of the G7 to find other countries with the capacity to support the international financial system by lending funds to the IMF in case of emergencies” (Wouters & Van Kerckhoven 2011, p. 352). At the global financial crisis in

2008, the G20 was elevated to the leaders' level, and subsequently it has widened its agenda from crisis management to structural economic issues (Ibid, pp. 354-5). However, as the G20 lacks its own secretariat who performs the function of preparing meetings and implementing its decisions, the G20 has called on other international organizations to support its functioning, one of which has been the OECD (Ibid, p. 356).

The growing cooperation between the two entities can be found in the G20 communiqués. Since the 2003 G20 Finance Ministers meeting, the OECD's work has been continuously referred to in the G20 communiqués (Ibid, p. 361). The final communiqué of the 2010 Washington Finance Ministers meeting mentioned that OECD contributions were invited where appropriate, which led to a growing number of contributions by the OECD in a variety of policy issues (Ibid, pp. 362-3). One of these contributions is the BEPS Project that will be explored in the next chapter.

The rationale of this growing cooperation can be explained from viewpoints of both the G20 and the OECD. On the part of the G20, the OECD, who has the comparative advantage over other international organizations in capacity to handle, supplements the secretariat function and knowledge pool it lacks. On the part of the OECD, who has faced declining relevance of its role in global economic governance due to the duplication or acquisition of its functions by other institutions such as the IMF and the EU and due to absence of several important emerging economies, the G20 enables it to revitalize its role in global economic governance by providing a political commitment to the OECD's agenda.

Now the relationship between the two entities is evolving in a way that the G20 provides high-level political attention and commitment to the OECD's agenda and the OECD works on the policy issues based on the endorsements by the G20. One of such examples is the issue of tax havens. While this issue had been the OECD's agenda since the 1990s, it gained strong political attention only after 2008 when the G20 added tax havens as one of the issues to be addressed in order to prevent further crises (Ibid, p. 369). This pattern is also detected in the case study covered in Chapter 3.

2. Analytic framework to understand the role of the OECD in global governance

This chapter aims to present an analytic framework to examine the role of the OECD in global governance that will be used in the case study explored in the next chapter. For this purpose, this chapter first looks into the existing literature on the OECD's role in global governance (Section 2-1). Next, having in mind the literature review and drawing on the insights from Keohane & Nye (1974), Section 2-2 establishes a theoretical framework and derives hypotheses on the role of the OECD in global governance, which will be examined in the next chapter.

2-1. Literature review

Several frameworks have recently been proposed to understand the role of the OECD in global governance. McBride and Mahon, in their book 'The OECD and Transnational Governance', focused on two modes of soft regulation the OECD exerted: *inquisitive* and *meditative* modes of regulation (McBride & Mahon 2008, p. 6). On the one hand, inquisitive mode of governance refers to the surveillance or monitoring of the performance of countries in certain policy areas, where "member states are not obliged to follow up specific policies, but they are required to 'open up' to others to examine and critically judge what they are doing" (Jacobsson 2006, p. 207). The peer review system explained in the previous chapter is a classic example of this mode of governance. On the other hand, meditative functions involve "discussions among experts about what is the best way or ways of doing something" (Ibid, p. 208). The concept of "polluter pays" devised by the Environment Directorate is a well-known example of this type of activities by the OECD. After going through several case studies on the OECD's application of meditative and inquisitional techniques to a wide range of policies, McBride and Mahon concluded that the OECD's most effective role in global governance is not one of rule-making, but rather one of influencing policies by identifying and disseminating ideas, norms and principles through meditative and inquisitive activities (McBride & Mahon 2008, p. 278).

The effects of these OECD activities were explored by Martens & Jakobi, in their volume 'Mechanisms of OECD Governance: International Incentives for National Policy-Making'. They distinguished three types of governance instruments: idea generation, policy evaluation, and data production (Jakobi & Martens 2010, p. 265). According to their definition, idea generation

refers to “the construction of discourses in order to highlight important issues, stimulate political debates, and develop new policy concepts for the national context” (Ibid, p. 265), which is akin to meditative function. On the other hand, the other two instruments serve for inquisitive activities, since policy evaluation aims at “improving national policies by assessing the current situation, by diffusing knowledge about best practices, and by offering recommendation” and data production “allows for comparisons between states as it visibly highlights deficits of participating countries and makes rating” (Ibid, p. 265). After evaluating the effects of these instruments in a variety of policy areas including economy, finance, tax, labor, education, health and family, they concluded that policy convergence was likely to take place through idea generation while policy evaluation tended to cause policy change and data generation facilitated policy coordination (Ibid, p. 275).

The kinds of ideas or norms the OECD creates and diffuses have also been an important subject of study in understanding the OECD’s contribution to global governance. Until the mid-1970s the OECD reflected the Keynesian principles of postwar consensus, but since the publication of ‘McCracken Report’ which proposed removal of rigidities and enhancement of flexibility within the labor market to address the stagnation, neoliberalism has begun to characterize OECD policy approach (Mahon & McBride 2008, pp. 15-18). From a neo-Gramscian perspective, “the OECD is an important forum for the development of transnational class consciousness among capitalists and the promotion of neoliberal hegemony in the interests of the class” (Porter & Webb 2008, p. 46). However, the recent studies have shown that the OECD is not monolithic in this regard. The above-mentioned book by Mahon and McBride concluded that, while strong neoliberalism was detected in the discourse of economic policy and labor market policy, new ideological currents of “inclusive” or “innovative” liberalism were found in the area of social policy, health, and public management (McBride & Mahon 2008, p. 279). Meanwhile, though different ideological and policy currents are found in different branches of the OECD, the dominant norms and ideas are definitely western, such as individual human rights, modern bureaucracy, and market economy (Mahon & McBride 2008, p. 7).

As seen above, most studies on the role of the OECD in global governance have focused on ideas and norms it creates and purveys, and discussed what kind of ideas and norms it produces, how they influence other actors, especially states, and what effects they bring about. These studies certainly capture an important dimension of influence the OECD exerts, but they ignore other dimensions, such as its Council’s capacity to make binding decisions (Article 6 of the OECD

Convention) and its role in agenda setting in the international policy sphere (Ruckert 2008, p. 98). Woodward (2009) took into account these various aspects of the OECD's role in global governance, distinguishing four dimensions: cognitive governance, normative governance, legal governance, and palliative governance.

Cognitive governance:

Cognitive governance refers to “the OECD's capacity to engender and reproduce a sense of identity and community amongst its members by engineering and propagating a set of values, perspectives, expectations, and discourses about their place and that of the organization in the global polity” (Woodward 2009, p. 63). The OECD embodies a consensus about the superiority of capitalism and democracy as the organizing principles for global governance (Ibid, p.63), and defines appropriate behavior that a modern, democratic, economically efficient government should follow. The OECD does so, for example, by calling attention to differences between “leaders” and “laggards” among countries in terms of the extent to which they comply with the defined norms (March & Olsen 1998, p. 961). This practice gives impetus for a state to live up to the identity of the ideal modern state that the OECD defines (Porter & Webb 2008, p. 47), leading to the effectiveness of normative governance explained below.

Normative governance:

Normative governance means “the advancement of cooperation through the dissemination of convergent knowledge and ideas through recurrent OECD meetings” (Woodward 2009, p. 64), which comprises both meditative and inquisitive modes of governance explained earlier. As described in Section 2-2, OECD activities occur in committees and working groups populated by government officials, staff of the Secretariat, technical experts and civil society. These fora constitute “epistemic communities”, where experts from national governments and the OECD Secretariat evolve common language for framing policy. Frequent interaction in these communities facilitates policy learning from each other, and generates expectations about standards of behavior amongst senior policy-makers (Ibid, p.8). Though the OECD lacks any financial or formal legal resources to enforce the policies it proposes, the knowledge and norms it produces have significant influence in global governance for two reasons. Firstly there is a diffuse sense that they are expressions of “best practice” (Porter & Webb 2008, p. 48), owing to the dimension of cognitive governance described above. Secondly, there is strong peer pressure

in OECD bodies, where participants feel obliged to “follow prescriptions agreed with their peers to avoid a loss of credibility, especially as they are conscious that OECD bodies are continually assessing compliance through monitoring and peer review” (Woodward 2009, p. 68).

Legal governance:

Legal governance refers to “the ability of member states to conclude international agreements using the OECD’s decision-making apparatus” (Ibid, p. 8). The OECD’s legal instruments are collectively referred to as “the OECD Acts” and take several forms as described below¹⁰.

“Decisions” are the most formal and binding form of legal governance. Unless they abstain, all the member states are bound by decisions and they only have some discretion to decide when and how they are translated into national laws.

“Recommendations” are not legally binding, but in practice they have moral force as representing the political will of member states and thus are expected to be implemented. Therefore, member states tend to abstain if they have no intention to implement a recommendation.

Decisions and Recommendations are the main forms of legal governance that account for over 80% of the OECD Acts¹¹. The remainder includes International Agreements, Declarations and Arrangement or Understandings.

“International Agreements” are legally binding instruments concluded within the framework of the OECD, while “Declarations” (solemn texts setting out relatively precise policy commitments subscribed to by the governments of member states), “Arrangements” and “Understandings” (instruments that are negotiated and adopted within the framework of the OECD by some member states) are not legally binding. Though the latter three forms of legal governance are not legally binding, they are noted by the Council and their implementation is generally monitored by the relevant OECD bodies (Ibid, pp. 71-72).

These OECD Acts are classified as “soft law”, because they just commit states to general standards of appropriate behavior or principles of best practice, whose implementation is

¹⁰ OECD, “OECD Legal Instruments”, available at <http://www.oecd.org/legal/legal-instruments.htm> (Accessed on April 30th, 2016).

¹¹ As of March 31st, 2016, there are 30 Decisions, 188 Recommendations, and 47 other forms of the OECD Acts are in force, according to OECD, “Decisions, Recommendations and other Instruments of the Organization for Economic Co-Operation and Development”, available at <http://webnet.oecd.org/oecdacts/> (Accessed on April 30th, 2016).

monitored through deliberation, persuasion, surveillance and self-regulation (Ibid, p.72)

Palliative governance:

Palliative governance encompasses the bundle of ways in which the OECD greases the wheels of global governance (Ibid, p.8). There are two types of OECD activities that Woodward identified within the dimension of palliative governance.

The first type is to support the work of its sister organizations. The OECD often compensates for scarcities in resources and expertise afflicting other bodies” such as WTO and G7/G8/G20 (Ibid, p. 75). Especially, as G7/G8/G20 have no permanent secretariat, they have become more and more reliant on the OECD’s analytical and monitoring work. Among them, the growing relationship between the OECD and the G20 is salient these days, so this issue will be further explored in the next section. The OECD also serves as a “pre-negotiating forum for leading player” in the international politics (Ibid, p.76). The OECD provides some baseline “consensual knowledge” about policy issues, based on which states can have clarified understanding on the issues and calculate their national interests to prepare for formal international negotiations. Furthermore, the OECD can act as a “post-negotiating forum” (Ibid, p. 77), in other words, an arena for continued conversation, in the case where there is a deadlock in formal negotiations in other international organizations.

The second type is “to fill some of the gaps in addressing global challenges” (Ibid, p. 78). The OECD has a comparative advantage in dealing with complicated interdisciplinary problems as its directorates cover a wide range of policies, while the competences of other international organizations are generally more limited. The OECD also possesses a comparative advantage in tackling issues that are exclusively or disproportionately involving member states, and thus establishes itself as an appropriate arena for addressing such issues. Furthermore, the OECD sometimes plays a role in “spotting new problems and problems that have long-lead times, and of simulating work on them before they become critical or unmanageable”, making full use of its long experience of tackling complex and interdisciplinary problems(Ibid, p. 79).

2-2. Theoretical framework of the role of the OECD in global governance – Perspective and Policy-stage model

Having in mind the above literature review, this section tries to establish a theoretical

framework to analyze the OECD'S role in global governance. For this purpose, I will first look into some perspectives on the role of international organizations mainly drawing on Keohane & Nye (1974), and then introduce the "policy-stage model" that I have found to be an appropriate framework to clarify the OECD's role in global policy process. Lastly, I would like to propose a hypothesis on the OECD's role in global governance, which will be tested in the case study covered in the next chapter.

(1) Perspectives on the role of international organizations

As noted in the Introduction, international organizations have been an intensely researched subject in the literature of global governance, and diverse models and theoretical approaches have been applied to them. (Marten & Jakobi 2010, p. 8). When we turn to the discourse of political science on this issue, two distinct perspectives on the role of international organizations in global governance can be identified.

On the one hand, realists emphasize the role of the state and its interests in world politics, and consider international organizations to be unimportant as merely an instrument of governments (Keohane & Nye 1974, p. 39). Liberalist tradition also maintains the similar perspective, as liberal intergovernmentalists mainly focus on the states' interests in solving common problems (Jakobi 2009, p. 17). From this perspective, international organizations represent arenas where "problems in international cooperation can be dealt with on differing levels, ranging from the exchange of information to negotiations between individual states or groups of states (Martens & Jakobi 2010, p. 9). On the other hand, constructivists see states as "being embedded in common world views and being shaped by ideas" (Jakobi 2009, p. 17), and tend to regard international organizations as independent corporatist actors who assume an important role of creating such common norms and ideas (Martens & Jakobi 2010, p. 9).

This divergence in perspective stems from the difference in focus on the logic of action by which political behavior is interpreted. On the one side, the state-centric perspective held by realists and liberalists tends to see actions as driven by the **"logic of consequences"**, which assumes that actors have their own preferences, they make rational choices that bring about consequences matching their preferences, and political order emerges from negotiation among such rational actors (March & Olsen 1998, pp. 949-950). On the other side, constructivists look at the substantial role of identities, rules and institutions in shaping behavior that is ignored by

the state-centric perspective, and put emphasis on the **“logic of appropriateness”**, which supposes that actors consider their identities (or roles) and situations they face, and take “appropriate” actions that match the obligations of the identities or roles to such particular situations (Ibid, pp. 951-952).

When we examine the arguments of political scientists on international relations, those who put greater weight on the logic of consequences tend to underestimate the role of international organizations, while those who think highly of the logic of appropriateness are likely to overestimate it. However, in practice, these two logics are not mutually exclusive and any political action involves elements of both logics (Ibid 1998, p.952). The reality is that the relevance of each logic and the degree of involvement of international organizations in global governance diverge if the surrounding situation differs. Keohane & Nye (1974) mentions, though not explicitly, the following three factors that are considered to influence the role of international organizations:

The extent to which the policy issue is transnational

If the policy issue is more transnational, that is, non-governmental transnational actors account for a large portion of activities related to such a policy issue, it will be more likely that a national government cannot address the problem related to the issue unilaterally and seeks policy coordination at an arena that international organizations provide. Therefore, the higher the extent to which the policy issue is transnational, the more important the role of international organizations will be.

The strength of transgovernmental (or transnational) coalition

“Transgovernmental coalition” refers to coalitions that governmental sub-units form with like-minded agencies from other governments to jointly use resources to influence governmental decisions (Keohane & Nye 1974, p. 44-47). Transgovernmental coalitions are formed and reinforced when sub-units of government have frequent contacts with each other in conferences or arenas that international organizations provide. These coalitions may be joined by non-governmental transnational actors, whereby such coalitions can be called “transnational” coalitions.

In addition to frequency of contact among sub-units of government, there are two factors that influence the strength of transgovernmental coalition; degree of conflict of interests among

sub-units of one government on the one hand, and extent of executive power to control subordinates' behavior on the other (Ibid, p. 48). If there is higher conflict of interest among sub-units of one government, a sub-unit of one government will be more likely to find a greater common interest with a sub-unit of another government and create a stronger transgovernmental coalition. If there is lower executive power, the capacity of the central executive to prevent its sub-units from forming such a transgovernmental coalition will be weaker.

If the strength of transgovernmental (or transnational) coalition is greater as a result of combination of these three factors, it will be more likely that such a transgovernmental (or transnational) coalition makes use of resources of international organizations rather than domestic political resources to influence governmental policies.

The strength of countervailing domestic political force

To countervail transgovernmental or transnational political strategies, actors whose political resources are domestic may adopt a national-assertion strategy, in which they politicize the issue domestically (Ibid, p. 59). If such countervailing force is strong, the role of international organizations may decline because the international arena will be reduced to a place for negotiation of national interests that are predetermined domestically, or because the norms or ideas created by international organizations may be rejected or inhibited at the domestic level.

From the above arguments about the role of international organizations in global governance, the following can be hypothesized:

If the policy issue is less transnational, transgovernmental (or transnational) coalition in the policy issue is weaker, and countervailing domestic political force is stronger, the role of international organizations will be more like the one that realists/liberalists perceive, that is, instruments for the states to pursue their national interests. If otherwise, the role of international organizations will be more like the one that constructivists perceive, that is, independent actors who create norms and ideas that governmental and non-governmental actors follow.

(2) Policy-stage model

As the above hypothesis on the role of international organizations in global governance is very abstract, in order to clarify it, it is important to look into how issues and policies are developed and diffused by the interplay of international organizations and other actors such as states and NGOs. For this purpose, this paper adopts “policy-stage model”. Though this model has been criticized for oversimplifying the process (Sabatier 1999), it offers a way to unravel a complex interplay of actors and surrounding environments in the policy process, and helps “to further conceptualize global policy development” (Jakobi 2009, p. 38), which is an important aspect of global governance. In this paper, the global policy process will be analyzed in three stages; agenda-setting, policy formulation, and policy implementation.

Agenda-setting

Agenda-setting phase of policy process involves the way in which social issues become public ones and are put on the political agenda. For the analysis of agenda-setting phase, this paper adopts the framework posed by Kingdon (2003), which considers agenda-setting consists of the coupling of three streams: problems, policies and politics. From this perspective, there are so-called “policy entrepreneurs”, who may be politicians, civil servants or pressure group leaders, with policies they want to put on the public agenda. In a continually changing policy process environment, their policies may draw attention by chance in the case where the problems are framed in a way that such policies can address them efficiently and effectively and where the relevant political actors reach a consensus to address the problems with the policies. In such a case, the three independent streams of problems, policies, and politics are coupled to form the so-called “window of opportunity”.

In this analytic model, international organizations are expected to act mainly in the stream of policies, where they may serve as policy entrepreneurs by themselves or as providers of an arena where policy entrepreneurs meet, exchange information, and discuss.

Policy formulation

Policy formulation phase of in global governance involves the choice of policy instruments to bring about policy change or policy diffusion on the global level to address the issue that is put on the agenda through the agenda-setting phase. For the analysis of this phase, we need to look into three dimensions: who are involved in the process, what policy instruments are advocated

by whom, and what policy instruments are adopted finally.

For the first and second dimension, an international organization can serve as an advocate of certain policy instruments, or as a 'broker' or a secretariat that facilitates the discussion among other actors.

For the third dimension, there are five types of instruments with which international organizations can promote policy change or policy diffusion on the global level: discursive dissemination, standard-setting, financial means, coordinative functions, and technical assistance (Jakobi 2009, pp. 33-36).

Discursive dissemination refers to establishing ideas about cause-and-effect relationship of the policy or the socioeconomic impact of the policy. **Standard-setting** means establishing standards or benchmarks that nation states should comply with or aim at. **Financial means** are payments by international organizations to a country for establishing programs or institutions to achieve an internationally agreed policy goal. **Coordinative functions** are instruments of surveillance to monitor the progress of policy-making in each country, which include monitoring through peer review, sanctioning false state behavior, dispute settlement, and softer means like publication of comparable policy outcomes. **Technical assistance** involves enhancing a state's capacity with expert advice or administrative support to achieve an internationally agreed policy aim.

Policy implementation

In general, policy implementation is conducted by sovereign states, but international organizations can exert a certain influence with the above-mentioned five instruments.

How do the three factors that are discussed in the previous section work in each phase of the policy process? Intuitive answers are as follows.

Firstly, in the agenda-setting phase, the strength of transgovernmental (or transnational) coalition will be a decisive factor of the role of international organizations. If the coalition is strong, it will be more likely that it seeks the window of opportunity directly at an arena that international organizations provide, rather than to push the national governments to put the issue on the international agenda. This will occur even if the issue is less transnational or the countervailing force is strong, so the strength of transgovernmental (or transnational) coalition

can be said to be the most important factor in the agenda-setting phase.

Secondly, in the policy formulation phase, the extent to which the policy issue is transnational seems to be a more relevant factor than the other factors, because the more transnational issues (such as finance) often require policy coordination that can be better handled by international organizations while more domestic issues (such as education) do not necessarily require such policy coordination. At the same time, it will more likely be international organizations rather than individual states that have information and data necessary to formulate policies for transnational issues. The other factors, the strength of transgovernmental (or transnational) coalition and the strength of countervailing force, can also influence the relevance of international organizations in the policy formulation phase, but their influences seem relatively weaker. For example, even if the transnational coalition is strong in a less transnational issue, the role of international organizations will be limited only to proposing and diffusing an abstract norm and the best practice, and most activities related to policy formulation will occur at the national level.

Finally, in the policy implementation phase, the strength of countervailing domestic political force will be the most significant factor that affects the influence of international organizations. As long as internationally-agreed policies have to be implemented domestically in order for them to be effective, the domestic political force have the decisive veto power in the policy implementation phase that may hamper the influence of international organizations, regardless of the extent to which the policy issue is transnational and the strength of transgovernmental (or transnational) coalition.

To sum up, the following can be hypothesized:

If the transgovernmental (or transnational) coalition is stronger, the role of international organizations in the agenda-setting phase as policy entrepreneurs or arenas for exchange of information and discussion among the relevant actors will be more eminent. If the policy issue is more transnational, the role of international organizations in the policy formulation phase in influencing national policy development will be more eminent. If the countervailing domestic political force is stronger, the role of international organizations in the policy implementation phase as guardians of implementation will be less eminent.

(3) Hypothesis on the OECD's role in global governance based on the policy-stage model

Based on the theoretical framework described in the previous sub-sections, how can we infer the roles the OECD plays in each stage of global policy process that is the focus of this paper? Bearing in mind the traditional understanding of the OECD's mode of governance and the recent evolution of increasing relationship between the OECD and the G20, the following would be the conceivable explanation.

In the agenda-setting phase, the OECD seems to serve as an independent policy entrepreneur, acting mostly in the policy stream. Through the recurrent meetings among the OECD Secretariat and national officials from the sub-units of government that deal with the same policy issue, they form a strong transgovernmental coalition that advocates a certain converging policy options, which may be put on the public agenda when the problem window and/or the political window are open. The recent increasing relationship between the OECD and the G20 seems to facilitate the coupling of the policy stream and political stream, increasing the probability of the OECD serving as an agenda-setter.

In the policy formulation phase, the OECD is likely to provide an arena where the deliberation, rather than negotiation, on what is right or appropriate to address the problem takes place. Considering the fact that the OECD's legal governance is characterized by soft law and it is not frequent that the OECD adopts decisions that are binding for member countries, the function of this meditative sphere is not making a binding decision but "socializing participants into appropriate behavior deemed appropriate" (Porter & Webb 2008, p. 45). With regard to policy instruments, it is likely to adopt discursive dissemination for less transnational policy issues, while it is likely to adopt stronger means such as standard-setting and/or coordinative functions for more transnational issues.

In the policy implementation phase, the OECD exerts its influence through inquisitive activities such as peer review. The effectiveness of such surveillance and monitoring mechanism is guaranteed by a shared identity among the member countries established through cognitive governance. However, this effect is constrained by the countervailing domestic force as explained in the previous sub-section.

3. Case Study (BEPS Project)

Though I described hypotheses and inferences in the previous chapter, this paper is not intended to completely verify them. It will require a vast amount of case studies covering several international organizations and a wide range of policy issues. Rather, this paper aims to examine a specific case in accordance with the proposed analytic framework, to test whether the analytic results fit with the hypotheses and inferences, to consider the reason of contradiction if the case study conflicts with them, and thus to clarify the role of the OECD in global governance.

For this purpose, this chapter deals with the BEPS Project, which is a joint project by the G20 and the OECD aimed at the modernization of international corporate tax rules. There are three reasons why this project is chosen for a subject of study. Firstly, though tax is often associated with national sovereignty, it is increasingly considered as a transnational issue for which international coordination is required, especially in the area of international corporate taxation, due to the growing number of economic actors who operate in multiple jurisdictions. As the role of international organizations should be salient in such a transnational issue according to the hypotheses set in Section 2-2, it would be easier to analyze and evaluate it in this kind of policy area than focusing on issues that are less transnational. Secondly, the OECD's activities in the issue of international corporate taxation have been eminent overtime. One of the important instruments developed by the OECD in this area is the Model Tax Convention on Income and on Capital, which is followed by more than 3,500 bilateral treaties worldwide to avoid double taxation on MNEs (Woodward 2009, p. 88). Therefore, the examination of this issue is expected to reveal the role of OECD better than that of other policy issues. Lastly, the BEPS Project symbolizes the increasing relationship between the OECD and the G20, which may have significant impact on the role of the OECD in global governance. Therefore, this case study is expected to provide a new perspective in this regard that has not been covered in the existing literature, taking account of the very recent changes in global governance structure.

3-1. Overview of the OECD/G20 BEPS Project

(1) Background and Objective of the BEPS Project

“Base Erosion and Profit Shifting (BEPS)” refers to tax planning strategies by MNEs to

artificially shift profits to low or no-tax jurisdictions where such MNEs engage in little or no economic activity, causing little or no overall corporate tax being paid. According to the OECD, the potential magnitude of BEPS could be between 4% to 10% of global corporate tax revenues, that is, USD 100 to 240 billion annually (OECD 2015e, p. 4).

Opportunities for BEPS arise from the existence from loopholes, gaps, frictions or mismatches in the interaction of countries' domestic tax laws. These frictions of domestic tax systems have been addressed through international cooperation that has resulted in establishment of shared principles, which are found in the OECD Model Convention on Income and on Capital and a network of more than 3,500 bilateral treaties based on the Model Convention. However, as these efforts have focused mainly on the prevention of double taxation to minimize distortions of business activities, the existing international taxation rules are fragile to MNEs' behavior that leads to double non-taxation. At the same time, as "BEPS strategies take advantage of the interface between the tax rules of different countries" (OECD 2013b, p. 8), it is difficult for one country to address this issue unilaterally.

With this background, the BEPS Project aimed "to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to tax payers" (OECD 2014b, p. 3), and a key focus was put on eliminating double non-taxation.

(2) Timeline of the BEPS Project

Though the official start of the BEPS Project was marked by the OECD's issuance of 'Action Plan on Base Erosion and Profit Shifting' in July 2013, the problem of BEPS was already mentioned at the G20 meeting about one year earlier. The G20 Leaders Declaration of 2012 Los Cabos Summit referred to "the need to prevent base erosion and profit shifting"¹² for the first time. This message was reiterated in the communiqué of the G20 Finance Ministers meeting of November 5-6, 2012, in which they 'welcome(d) the work that the OECD is undertaking into the problem of base erosion and profit shifting and look(ed) forward to a report about progress of the work at our next meeting'¹³.

¹² Item 48 of the G20 Los Cabos Summit Declaration, available at: <http://www.g20.utoronto.ca/2012/2012-0619-loscabos.html> (Accessed on April 30th, 2016).

¹³ Item 21 of the 2012 G20 Communiqué, available at: <http://www.g20.utoronto.ca/2012/2012-121105-finance-en.html> (Accessed on April 30th, 2016).

Following this request from the G20, the OECD prepared a report titled 'Addressing Base Erosion and Profit Shifting', which was submitted to the G20 at their meeting in February 2013. This report proposed that the OECD would develop an initial comprehensive action plan to address BEPS by June 2013 (OECD 2013b), and the G20 welcomed this initiative.

The action plan developed by the OECD was presented at the G20 Finance Ministers meeting in Moscow in July 2013. The presented report, 'Action Plan on Base Erosion and Profit Shifting', identified 15 specific actions to be taken to address BEPS, and proposed the launch of the "BEPS Project" to complete the actions in an effective and comprehensive process involving all stakeholders including developing countries (OECD 2013c, p. 25). The project set the deadline at September 2014 for 7 action items, and at September 2015 for the rest 8 action items. This proposal was welcomed by the G20 Finance Ministers, and was subsequently endorsed by the G20 Leaders at the St Petersburg Summit in September 2013¹⁴.

After the endorsement of the action plan, the BEPS Project was steered by the Committee on Fiscal Affairs (CFA) and its subsidiary bodies to prepare the final outputs by 2015. The features of this process was (i) enhanced engagement with developing countries, and (ii) intensive public consultation.

Dialogue and consultation with developing countries were first held from October 2013 to March 2014, through questionnaires, Global Forum meetings attracting more than 300 delegates from more than 100 countries, joint events with the UN, 5 regional consultations, and so on¹⁵. The results of these dialogue and consultation were reflected in 'Report to G20 Developing Working Group on the Impact of BEPS in Low Income Countries', part I of which was presented to the G20 Developing Working Group (DWG) at its meeting in Hobart, Australia in May 2014, and part II of which was presented to the DWG at its meeting in Perth, Australia in September 2014. Following this report, in September 2014, the G20 Finance Ministers asked the OECD to "develop a new structured dialogue process, with clear avenues for developing countries to work together and directly input into the G20/OECD BEPS Project"¹⁶. The OECD launched this new structured dialogue process in November 2014, whereby direct participation in the CFA and its subordinate bodies was granted to developing countries, regional network meetings with a

¹⁴ Item 50 of the G20 St Petersburg Summit Declaration, available at: <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html> (Accessed on April 30th, 2016).

¹⁵ Item 101 of OECD, "BEPS – Frequently Asked Questions", available at: <http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm#DCs> (Accessed on April 30th, 2016).

¹⁶ OECD, "The BEPS Project and Developing Countries: from Consultation to Participation", available at <http://www.oecd.org/tax/strategy-deepening-developing-country-engagement.pdf> (Accessed on April 30th, 2016)

number of developing countries were held, and toolkits to assist developing countries to implement BEPS action items were developed.

In the meantime, intensive public consultation was held in the following way. First the CFA and its subsidiary bodies developed and published discussion drafts, and then interested stakeholders commented on them. Finally, the public consultation meetings with such stakeholders were convened in a transparent manner. This process was implemented from October 2013 to July 2015, amounting to “12,000 pages of comments received on the 23 discussion drafts published and discussed at 11 public consultations” (OECD 2015e, p. 5).

The outputs of the BEPS Project were first delivered in an interim form in September 2014, which included reports on 7 action items that were due then. These outputs were delivered to the G20 Finance Ministers at their meeting in Cairns, Australia, in September 2014, and was also presented to the G20 Leaders at their meeting in Brisbane, Australia, in November 2014. Next, in February 2015, the three key elements that would enable implementation of the BEPS Project were agreed among the OECD and G20 countries, and the relevant reports were presented to the G20 Finance Ministers at their meeting in Istanbul, Turkey. Lastly, the final package of measures, which included reports on all action items, was published in October 2015, and was endorsed by the G20 Finance Ministers at their meeting in Lima, Peru. This was subsequently endorsed by the G20 Leaders at their meeting in Antalya, Turkey, in November 2015, and in its communiqué the G20 asked the OECD “to develop an inclusive framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions which commit to implement the BEPS project, including developing economies, on an equal footing”¹⁷.

Following this request, in February 2016, the OECD agreed a new framework under which all interested countries and jurisdictions could participate in meetings of the CFA and its subsidiary bodies on an equal footing with the OECD and G20 countries for the review and monitoring of the implementation of the BEPS final package¹⁸. This framework was endorsed by the G20 Finance Ministers at their meeting in Shanghai, China in the same month. The first meeting of this inclusive framework is scheduled on June 30th - July 1st, 2016 in Kyoto, Japan (OECD 2016a, p. 1).

¹⁷ Item 15 of the G20 Antalya Summit Communiqué, available at: <http://www.g20.utoronto.ca/2015/151116-communique.html> (Accessed on April 30th, 2016).

¹⁸ Press release of the OECD on February 23, 2016, “All interested countries and jurisdictions to be invited to join global efforts led by the OECD and G20 to close international tax loopholes”, available at: <http://www.oecd.org/tax/all-interested-countries-and-jurisdictions-to-be-invited-to-join-global-efforts-led-by-the-oecd-and-g20-to-close-international-tax-loopholes.htm> (Accessed on April 30th, 2016)

For the overview of the timeline, please see Table 4.

(3) Contents of the BEPS Project

As described above, the BEPS Project consists of 15 action plans, and these action plans are categorized into three pillars, namely ‘Coherence’ (Action 2, 3, 4, 5), ‘Substance’ (Action 6, 7, 8, 9, 10), and ‘Transparency and Certainty’ (Action 11, 12, 13, 14), and horizontal issues (Action 1, 15)¹⁹. The contents of each action plan are briefly described in Table 5.

(4) Organization of the BEPS Project

The BEPS Project was led by the CFA and its subsidiary bodies, with the support from the Secretariat, Centre for Tax Policy and Administration (CTPA). The division of tasks among the subsidiary bodies is described in Table 6.

In the CFA and its subsidiary bodies, 44 countries (all OECD members, G20 countries and Accession countries²⁰) participated on an equal footing (OECD 2014b, p. 4) until 2014, and 62 countries²¹ participated (OECD 2015e, p. 4) after the direct participation was admitted to developing countries since January 2015 under the new structured dialogue.

(5) Outputs of the BEPS Project

Final outputs of the BEPS Project included four types of instruments: new minimum standards, revision to existing standards, common approaches which will facilitate the convergence of national practices, and guidance based on best practices (OECD 2015e, p. 6). New minimum standards were agreed by all the OECD and G20 countries for the issues “where no action by some countries would have created negative spillovers on other countries”, namely for

¹⁹ Slide 8 of “BEPS Webcast #8 – Launch of the 2015 Final Reports”, available at: <http://www.slideshare.net/OECDtax/beps-webcast-8-launch-of-the-2015-final-reports> (Accessed on April 30th, 2016)

²⁰ Until 2014, Accession countries were Columbia and Latvia. Costa Rica and Lithuania became Accession countries in April 2015.

²¹ This include 34 OECD members, 8 non-OECD G20 countries, 4 Accession countries, and 16 other countries. Non-OECD G20 countries and Accession countries participated in the meetings as “BEPS Associate” on an equal footing with OECD members, while the legal status of other countries was “Invitee”, which was not equal to BEPS Associate.

Action 5, 6, 13, 14. On the other hand, revision to existing standards was agreed for Action 7, 8, 9, 10, common approach was agreed for Action 2, 4, and guidance based on best practices was recommended for Action 3, 12, but these did not constitute minimum standards that the countries should abide by. For the brief explanation of these outputs, please refer to Table 7.

Table 4 Timeline of the BEPS Project

Date or Period	Events
Agenda Setting Phase	
June 19, 2012	The problem of 'base erosion and profit shifting' was mentioned in the G20 Los Cabos Summit Declaration.
November 5, 2012	The G20 asked the OECD to prepare a report about the progress of the work on base erosion and profit shifting in the communiqué of the G20 Finance Ministers meeting in Mexico City.
February 12, 2013	The first report 'Addressing Base Erosion and Profit Shifting' was published.
February 16, 2013	The OECD's report was welcomed by the G20, and the G20 asked the OECD to develop a comprehensive action plan by July in the communiqué of the G20 Finance Ministers meeting in Moscow.
Policy Formulation Phase	
July 19, 2013	'Action Plan' on Base Erosion and Profit Shifting' was published.
July 20, 2013	Action Plan and the establishment of the OECD/G20 project were welcomed in the communiqué of G20 Finance Ministers meeting at Moscow.
September 6, 2013	Action plan was endorsed by the G20 leaders at their meeting at St Petersburg.
October 2013 – March 2014	Dialogue and consultation with developing countries were held through questionnaire, Global Forum meetings attracting more than 300 delegates from over 100 countries and international and regional organizations, joint events with the UN, 5 regional consultation, Tax and Development Programme, Global Relations Programme.
October 2013- July 2015	23 discussion drafts were published, and comments on them from stakeholders (more than 12,000 pages in total) were received. 11 public consultations were held.
May 2014	Part I of the report to G20 DWG was presented to G20 DWG at its meeting in Hobart, Australia.
September 2014	Part II of the report to G20 DWG was presented to G20 DWG at its meeting in Perth, Australia. Interim BEPS outputs were delivered to the G20 Finance Ministers meeting at Cairns, Australia. The G20 Finance Ministers asked the OECD to develop a new structured dialogue process with developing countries and to develop tools to translate the BEPS Action Plan into practical support for lower capacity developing countries to be delivered in 2016.

Date or Period	Events
November 2014	Interim BEPS outputs were presented to the G20 Leaders meeting in Brisbane, Australia.
January 2015	<p>New structured dialogue process that include the following three items was launched;</p> <ul style="list-style-type: none"> - Direct participation of developing countries in the meetings of the relevant bodies of the OECD, - Regional network meetings, and - Capacity building through regional networks, OECD Global Relations Tax Programme, and the Tax and Development Programme
February 2015	<p>The three key elements listed below that would enable implementation of the BEPS Project were agreed among OECD and G20 countries, and the relevant reports were presented to the G20 Finance Ministers Meeting at Istanbul, Turkey;</p> <ul style="list-style-type: none"> - A mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures, - An implementation package for country-by-country reporting in 2016 and a related government-to-government exchange mechanism to start in 2017, and - Criteria to assess whether preferential treatment regimes for intellectual property (patent boxes) are harmful or not.
October 2015	Final package of measure was released, and endorsed by the G20 finance ministers at their meeting in Lima Peru.
November 2015	<p>Final package of measure was endorsed by the G20 Leaders at their meeting in Antalya, Turkey.</p> <p>The G20 called on the OECD to develop an inclusive framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions which commit to implement the BEPS project, including developing economies, on an equal footing.</p>
<i>Policy Implementation Phase</i>	
February 2016	The proposal for broadening participation in the OECD/G20 BEPS Project was endorsed by the G20 Finance Ministers at their meeting in Shanghai, China.

Table 5 Contents of Action Plan

Action	Explanation
"Coherence" - Establishing international coherence of corporate income taxation	
Action 2: Neutralise the effects of hybrid mismatch arrangements	Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities.
Action 3: Strengthen CFC rules	Develop recommendations regarding the design of controlled foreign company rules
Action 4: Limit base erosion via interest deductions and other financial payments	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments.
Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime.
"Substance" - Restoring the full effects and benefits of international standards	
Action 6: Prevent treaty abuse	Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances
Action 7: Prevent the artificial avoidance of PE status	Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions.
Actions 8, 9, 10: Assure that transfer pricing outcomes are in line with value creation Action 8: Intangibles Action 9: Risks and capital Action 10: Other high-risk transactions	Develop rules to prevent BEPS by moving intangibles among group members (Action 8), by transferring risks among, or allocating excessive capital to, group members (Action 9), and by engaging in transactions which would not, or would only vary rarely, occur between third parties (Action 10).

Action	Explanation
<i>"Transparency and Certainty"</i> - Ensuring transparency while promoting increased certainty and predictability	
Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it	Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis.
Action 12: Require taxpayers to disclose their aggressive tax planning arrangements	Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.
Action 13: Re-examine transfer pricing documentation	Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business.
Action 14: Make dispute resolution mechanisms more effective	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.
Horizontal issues	
Action 1: Address the tax challenges of the digital economy	Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation.
Action 15: Develop a multilateral instrument	Analyse the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties.

(Source: OECD 2013c, pp. 14-24)

Table 6 Division of Tasks of the BEPS Project

Subsidiary bodies of the CFA	Tasks
Working Party No. 1 on Tax Conventions and Related Questions	Action 2, 6, 7, 14
Working Party No. 2 on Tax Policy Analysis and Tax Statistics	Action 11
Working Party No.6 on the Taxation of Multinational Enterprises	Action 4, 8, 9, 10, 13
Working Party No.11 on Aggressive Tax Planning	Action 2, 3, 4, 12
Forum on Harmful Tax Practices	Action 5
Task Force on Digital Economy	Action 1
Ad hoc group on the Multilateral Instrument	Action 15

(Source: OECD, "About Base Erosion and Profit Shifting (BEPS)", available at <http://www.oecd.org/ctp/beps-about.htm>, accessed on April 30th, 2016)

Table 7 Outputs of the BEPS Project

Action	Outputs
"Coherence" - Establishing international coherence of corporate income taxation	
Action 2: Neutralise the effects of hybrid mismatch arrangements	A common approach which will facilitate the convergence of national practices through domestic and treaty rules to neutralise such arrangements
Action 3: Strengthen CFC rules	Recommendations in the form of building blocks of effective Controlled Foreign Company (CFC) rules
Action 4: Limit base erosion via interest deductions and other financial payments	A common approach to facilitate the convergence of national rules in the area of interest deductibility
Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance	A minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime
"Substance" - Restoring the full effects and benefits of international standards	
Action 6: Prevent treaty abuse	A minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse and offer a certain degree of flexibility regarding how to do so

Action	Outputs
Action 7: Prevent the artificial avoidance of PE status	Changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention, which is widely used as the basis for negotiating tax treaties.
Actions 8, 9, 10: Assure that transfer pricing outcomes are in line with value creation	Revision to the Transfer Pricing Guidelines which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them
<i>"Transparency and Certainty"</i> - Ensuring transparency while promoting increased certainty and predictability	
Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it	<ul style="list-style-type: none"> - Assessment of currently available data and methodologies - Conclusion that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required.
Action 12: Require taxpayers to disclose their aggressive tax planning arrangements	A modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users.
Action 13: Re-examine transfer pricing documentation	A three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting
Action 14: Make dispute resolution mechanisms more effective	A minimum standard with respect to the resolution of treaty-related disputes
Horizontal issues	
Action 1: Address the tax challenges of the digital economy	<ul style="list-style-type: none"> - Conclusion that the digital economy cannot be ring-fenced - Rules and implementation mechanisms to help collect value-added tax (VAT) based on the country where the consumer is located in the case of cross-border business-to-consumer transactions
Action 15: Develop a multilateral instrument	<ul style="list-style-type: none"> - Conclusion that a multilateral instrument is desirable and feasible - A mandate that a multilateral instrument should be developed in 2016 through an ad-hoc group open to participation of all countries

(Source: OECD 2015e, pp. 13-18)

3-2. Analysis based on Policy Stage Model

This section will look into how the OECD and other actors have interacted in each stage of the policy process, namely agenda-setting, policy formulation, and policy implementation, with a view to figuring out the role of the OECD in the global policy process. I define the period of each phase as follows for the purpose of analysis.

Agenda-setting phase:

Until the publication of the OECD's report 'Addressing Base Erosion and Profit Shifting' in February 2013, which clearly defined the problem to be tackled

Policy formulation phase:

From the publication of 'Addressing Base Erosion and Profit Shifting' until the endorsement of the final outputs by the G20 Leaders in November 2015, during which the OECD CFA developed action plans, consulted with member states, non-member states and stakeholders, and finalized the policy instruments to be implemented

Policy implementation phase:

From the endorsement of the final outputs by the G20 Leaders until now

(1) Agenda-setting phase

In this subsection, the agenda-setting phase will be reviewed based on the framework proposed by Kingdon (2003), which considers that the agenda-setting phase consists of three independent streams: problems, policies and politics.

(a) Problems

Though the term 'base erosion and profit shifting' is a recently coined one, the problem of 'tax avoidance' by MNEs has been recognized by the governments worldwide long before the start of the BEPS Project. The rapid growth of MNEs and the increasing use of tax havens since the 1950s raised strong concerns about tax avoidance especially in the US, the home of many of them (Picciotto 2013, p. 15). This led to the enactment of Controlled Foreign Corporation (CFC) rules,

which were designed to include in the profits of an US parent company the income of its affiliates gained in low-tax jurisdictions if they fall within the definition of CFC, and other OECD countries eventually adopted similar measures (Picciotto 1992, pp. 144-146). In the 1990s, this issue came up on the international policy agenda following the increasing need among the OECD countries to increase tax revenues for reduction of fiscal deficits as well as the rising concern about growing use of tax havens (Webb 2004, p. 795). This political impetus led to the “Harmful Tax Competition” (HTC) initiative, undertaken by the OECD’s CFA since 1996. Though this project faced a certain scale-back on its scope due to strong opposition from tax havens and business community as well as due to the ideological challenge from the US Bush Administration petitioned by the tax planning industry and free market think tanks (Ibid), it succeeded in involving tax haven jurisdictions as “participating partners” for discussing the rules on tax information exchange, which led to the establishment of the Model Agreement on Exchange of Information on Tax Matters (OECD 2004). Thus, under the HTC initiative, the problem was addressed by establishing a framework in which exchange of information on tax matters is implemented effectively in a transparent manner among the jurisdictions including tax havens, not by curbing the tax planning opportunities that may cause double non-taxation.

Afterwards, the issue of tax avoidance by big business came to the fore in the media coverage since around 2009, as illustrated by Bloomberg’s “The Great Corporate Tax Dodge”, the New York Times’ “But Nobody Pays That”, The Times’ “Secrets of Tax Avoiders” and the Guardian’s “Tax Gap” (OECD 2013b, p. 13). Though the underlying reasons why the issue of tax avoidance received growing attention as a problem to be tackled at this timing are not clear, one of the plausible factors was fiscal austerity under the recession following the 2008 financial crisis²². This increased perception of tax avoidance as a problem was salient especially in the UK, where Starbucks, which had sales of £400 million in the UK in 2011, did not pay corporation tax, Amazon, which had sales of £3.35 billion in the UK in 2011, only paid a tax of £1.8 million, and Google, which had sales of £395 million in the UK in 2011, only paid a tax of £6 million²³. This situation caused the political impetus to tackle this issue, which will be further explained in the sub-section of ‘Politics’ below.

²² The article of the BBC, “Google, Amazon, Starbucks: The rise of ‘tax shaming’” on May 21, 2013, indicated that deep public spending cuts and real austerity during the recession were the factors that turned public opinion on tax avoidance by big business firms.

²³ Ibid.

(b) Policies

Policy instruments to address tax avoidance by MNEs, which had been implemented before the BEPS Project, included transfer pricing rules based on the arm's length principle (ALP)²⁴, general anti-avoidance rules, CFC rules, Thin capitalization rules²⁵, and so on, but these anti-avoidance rules differed from country to country due to different legal traditions, level of sophistication of the tax system and national courts' approaches to the interpretation of tax law.

The efforts to streamline these differences in corporate tax regulations had been made by the OECD before the BEPS Project. As noted earlier, the OECD Model Tax Convention on Income and on Capital was followed by more than 3,500 bilateral treaties worldwide, and the OECD Transfer Pricing Guidelines for Multinational Enterprises, which had been updated overtime, had provided guidance on how to apply transfer pricing rules (OECD 2013b, pp. 36-37). The OECD's HTC initiative, which was aimed at eliminating harmful tax practices by tax havens and harmful preferential tax regimes, had subsequently led to the establishment of Global Forum on Transparency and Exchange of Information for Tax Purposes in 2009, which is in charge of ensuring the implementation of the internationally agreed standards of transparency and exchange of information in tax matters through peer review process²⁶. The OECD had also worked on the issue of aggressive tax schemes and hybrid mismatch arrangements²⁷ and provided recommendations for countermeasures (OECD 2011, 2012).

In the meantime, the 2000s saw the growing mobilization of civil society who advocates more drastic policy alternatives against tax avoidance by MNEs. One of the key civil society actors in this regard was the Tax Justice Network (TJN), which was founded in 2003 by the activists against tax havens. The TJN put forward their own reform agenda of international corporate

²⁴ The "arm's length principle" refers to the transfer pricing determination rules that require, for tax purposes, the price and other conditions of transactions between associated enterprises to be consistent with those that would occur between unrelated enterprises for comparable transactions under comparable circumstances (OECD 2013b, p. 36), in order to prevent MNEs from deliberately allocating more profits to low-tax jurisdictions.

²⁵ Thin capitalization rules refer to regulations that deny the deduction of certain interest expenses when, for example, the debt-to-equity ratio of the debtor is considered to be excessive (OECD 2013b, p. 38), in order to prevent MNEs from taking advantage of tax deductions of interest payments by relying too much on loan financing from associated enterprises.

²⁶ Global Forum on Transparency and Exchange of Information for Tax Purposes, "About the Global Forum", available at: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en#page51 (Accessed on April 30th, 2016).

²⁷ Hybrid mismatch arrangements refer to the arrangements used by MNEs to reduce overall tax by exploiting differences in the tax treatment of instruments, entities, or transfers between two or more countries.

taxation that were different from the OECD's ones in three ways. Firstly, it criticized that the current separate-entity approach and the ALP for transfer pricing had created the opportunities for tax avoidance through tax planning strategies, and as an alternative it proposed the unitary taxation approach, where the income of an MNE would be identified on the consolidated basis and the income would be apportioned to each jurisdiction for taxation purpose by a formula using factors such as assets, labor and sales that would quantify the actual geographical location of its activities (Picciotto 2012). Secondly, it insisted, in replacement of the OECD that was biased to developed countries, the initiation of a democratic and inclusive global forum, where representatives from governments and citizens' groups across the world would discuss international cooperation in tax matters in a democratic way. Lastly, in order to increase the public scrutiny on tax avoidance behavior of MNEs, it advocated the publication of "county-by-country reporting", in which an MNE would be required to report in its accounts the following information (Tax Justice Network 2008):

- Which countries it operates in;
- What name it trades under in each country;
- Its financial performance in the countries where it operates, including:
 - Sales, both within the group and outside the group;
 - Purchases, split the same way;
 - Financing costs, split the same way;
 - Labor costs and employee numbers;
 - Pro-tax profits;
 - Tax payments to the government of the location where it is trading.

Thus, we could identify two distinctive "policy entrepreneurs" in the policy stream. The one was the OECD, which served mostly as a transmitter of existing policy instruments that had been implemented in the US or the EU (Kurdle 2010, p.76), putting forward reforms within the existing institutions such as the ALP for transfer pricing. The other was civil society actors represented by the TJN, which sought a fundamental reform and a more inclusive and democratic framework for international cooperation in tax matters.

(c) *Politics*

In the political stream of agenda-setting phase, one of the most important factors to note is a

strengthened relationship between the G20 and the OECD over the last decade in terms of transparency and exchange of information on tax matters.

In 2003, the OECD was mentioned for the first time in the communiqué of the G20 Finance Ministers' Meeting (Wouters & Van Kerckhoven 2011, p. 361), in which the OECD and its member countries were asked to address tax evasion through enhanced exchange of fiscal, financial and customs information between the countries²⁸. At the next Finance Ministers meeting in Berlin in 2004, the G20 expressed the commitment to fight the abuse of the international financial system in its communiqué²⁹ and published the "G20 Statement on Transparency and Exchange of Information for Tax Purposes", in which it affirmed its support for the efforts of the OECD to promote high standards of transparency and exchange of information for tax purposes that was reflected in the Model Agreement on Exchange of Information on Tax Matters. Since this communiqué, the work of the OECD on transparency and effective exchange of information for tax purposes had been reviewed and praised in several G20 Finance Ministers meeting and Leaders meeting before the BEPS Project (Ibid, pp. 362-363). The OECD's work on this issue had been conducted through its subsidiary body, the Global Forum on Transparency and the Exchange of Information for Tax Purposes, as explained earlier.

Considering this background, it was no surprise that the G20 stated it would "follow with attention the ongoing work of the OECD" regarding BEPS at the G20 Los Cabos Summit in June 2012, and asked the OECD to prepare a report on it at the G20 Finance Ministers meeting in November 2012. In the background of the G20's raised awareness of BEPS, there was a shared concern about BEPS among political leaders of major countries. In the US, the White House showed its concern about BEPS in its report in February 2012, stating that "empirical evidence suggests that income-shifting behaviour by multinational corporations is a significant concern that should be addressed through tax reform" (The White House & the Department of the Treasury 2012, p. 7). In November 2012, the German Finance Minister Schauble and British Chancellor of the Exchequer Osborne issued a joint statement calling for concerted international cooperation to strengthen international corporate tax standards (OECD 2013b, p. 14).

To sum up, the shared concern about BEPS among the major countries such as the US, the UK and Germany gave the political impetus for launching the BEPS Project, while the strengthened

²⁸ The 2003 G20 Communiqué, available at:

<http://www.g20.utoronto.ca/2003/2003communiqué.html> (Accessed on April 30th, 2016).

²⁹ Item 8 of the 2004 G20 Communiqué, available at:

<http://www.g20.utoronto.ca/2004/2004communiqué.html> (Accessed on April 30th, 2016).

relationship between the G20 and the OECD during the last decade paved the way for mandating this task to the OECD.

(d) Summary

The rising public awareness of BEPS as a problem as seen in the stream of problems and the increased attention on it by political leaders of the major states as seen in the stream of politics resulted in the so-called “window of opportunity” at the G20 Finance Ministers meeting in November 2012, where the OECD was mandated to prepare a report on BEPS. The OECD’s consecutive work around this issue as seen in the stream of policies and the appreciation of it by the G20 over the last decade enabled the OECD to take the lead in addressing BEPS, and the OECD, as a policy entrepreneur, successfully framed the problems of BEPS and the possible measures to them in its report ‘Addressing Base Erosion and Profit Shifting’ in February 2013. What the OECD identified as the key pressure areas in this report were “(i)nstruments to put an end or neutralise the effects of hybrid mismatch arrangements and arbitrage”, “(i)mprovements or clarifications to transfer pricing rules”, “(u)pdated solutions to the issues related to jurisdiction to tax, in particular in the areas of digital goods and services”, “(m)ore effective anti-avoidance measures”, “(r)ules on the treatment of intra-group financial transactions”, and “(s)olutions to counter harmful regimes more effectively” (OECD 2013b, pp. 52-53), which are more reforms within the existing institutions than reforms to the existing institutions. This framing of the agenda was significant in a sense that it eliminated other policy options advocated by other policy entrepreneurs such as the TJN.

(2) Policy formulation phase

The policy formulation phase can be divided into two stages. At the first stage, the OECD developed 15 action plans internally³⁰, which were endorsed by the G20 Leaders in September 2013. This stage was significant in strengthening the OECD’s framing of the agenda because the action plan explicitly denied the possibility of unitary taxation approach advocated by the TJN, by stating that “there is consensus among governments that moving to a system of formulary

³⁰ To develop action plans, the CFA gave a mandate to the CFA Bureau, together with the chairs of the relevant working groups, to work with the Secretariat, in consultation with interested countries and other stakeholders. The developed action plans were submitted to the CFA for discussion and approval at its June 2013 meeting (OECD 2013b, p. 52). In this process, there were no such engagement with developing countries nor public consultation as found at the second stage.

apportionment of profits is not a viable way forward: it is also unclear that the behavioural changes companies might adopt in response to the use of a formula would lead to investment decisions that are more efficient and tax-neutral than under a separate entity approach” (OECD 2013c, p. 14).

At the second stage, the OECD elaborated the policy instruments in accordance with the action plans through (i) enhanced engagement with developing countries and (ii) intensive public consultation, as noted earlier. The following sub-sections will analyze this stage taking account of actors involved and policy instruments that were discussed and finally adopted.

(a) *Enhanced engagement with developing countries*

In ‘Action Plan on Base Erosion and Profit Shifting’, involvement of developing countries in the BEPS Project was described as follows.

“Developing countries also face issues related to BEPS, though the issues may manifest differently given the specificities of their legal and administrative frameworks. The UN participates in the tax work of the OECD and will certainly provide useful insights regarding the particular concerns of developing countries. The Task Force on Tax and Development (TFTD) and the OECD Global Relations Programme will provide a useful platform to discuss the specific BEPS concerns in the case of developing countries and explore possible solutions with all stakeholders. Finally, existing mechanisms such as the Global Fora on Tax Treaties, on Transfer Pricing, on VAT and on Transparency and Exchange of Information for Tax Purposes will all be used to involve all countries in the discussions regarding possible technical solutions.”
(OECD 2013c, pp. 25-26)

Based on this plan, the OECD conducted direct consultations with developing countries in February and March 2014 at events organized by itself (in Asia and Latin America), the African Tax Administration Forum (in South Africa) and the Centre de rencontres et d’études des dirigeants des administrations fiscales (in Paris) (OECD 2014a, p. 7). It also had dialogue with developing countries at meetings of the Task Force on Tax and Development (in October 2013 and March 2014) and Global Fora on Tax Treaties (in September 2013) and on Transfer Pricing (in March 2014) (OECD 2014a, p. 7). The Global Forum on Transfer Pricing gathered more than 330 delegates from more than 110 countries (OECD 2014a, p. 36).

The inputs from developing countries during these consultation and dialogue were reflected in 'Report to G20 Developing Working Group on the Impact of BEPS in Low Income Countries', part I of which was presented to the G20 DWG at its meeting in Hobart, Australia in May 2014, and part II of which was presented to DWG at its meeting in Perth, Australia in September 2014. This report identified high priority BEPS action items for developing countries, namely Action 4, 6, 7, 10, 11, and 13 (OECD 2014a, pp. 32-35), as well as other issues that were not included in the Action plans but considered as of key importance in developing countries such as the granting of wasteful tax incentives and the significant difficulty in obtaining comparable data for transfer pricing purposes (OECD 2014a, p. 37). Based on this analysis, this report proposed that the OECD should ensure enhanced engagement with developing countries so that BEPS solutions would take account of specific capacity and political challenges faced by developing countries, and the OECD, in cooperation with the IMF, the UN, the WBG and regional organizations, should assess how they could assist developing countries in this regard, including in terms of capacity development (OECD 2014a, p. 47).

Following this report and the G20's request to the OECD to strengthen the engagement with developing countries, the OECD launched the new structured dialogue process in November 2014. This process consisted of three pillars³¹. Firstly, direct participation in the meetings of the CFA and its subsidiary Working Parties was admitted to interested developing countries³² since the beginning of 2015. The legal status of these countries was not 'BEPS Associate' but 'Invitee', which meant they were not participating on an equal footing with the OECD and G20 countries³³, but they were able to provide input at the working and decision-making levels. Secondly, Regional Network meetings were organized with a broader group of developing countries, particularly low-income countries that might lack the capacity to directly participate in the BEPS Project. The Regional Network meetings were held twice a year, the first round of meetings in February/March 2015³⁴ and the second round of meetings in October/November 2015. Thirdly,

³¹ OECD, "Developing countries and BEPS", available at: <http://www.oecd.org/tax/developing-countries-and-beps.htm> (Accessed on April 30th, 2016).

³² These countries were Albania, Azerbaijan, Bangladesh, Croatia, Georgia, Jamaica, Kenya, Morocco, Nigeria, Peru, Philippines, Senegal, Tunisia, and Viet Nam. At the same time, two Regional Tax Organizations - the African Tax Administration Forum (ATAF) and the Inter-American Centre for Tax Administration (CIAT) - also directly participated in the meetings (Source: Ibid).

³³ OECD, "Webcast 5: Update on 2014 Deliverables", on December 15, 2014, available at: <http://www.oecd.org/ctp/webcast-update-on-2014-deliverables-december.htm> (Accessed on April 30th, 2016).

³⁴ In the first round of meetings, 61 countries and jurisdictions participated. (Source: OECD, "Developing countries and BEPS", available at: <http://www.oecd.org/tax/developing-countries-and-beps.htm> (Accessed on April 30th, 2016)).

capacity building support was conducted by the OECD Secretariat, in cooperation with the IMF, the UN, the WBG and regional organizations. This support aimed to develop toolkits³⁵ to help developing countries implement BEPS action items, which is not completed yet as of May 2016 and will continue through 2016 and 2017 (OECD 2015e, p. 6).

(b) Intensive public consultation

In 'Action Plan on Base Erosion and Profit Shifting', consultation with non-governmental stakeholders was described as follows.

"Consultation with non-governmental stakeholders is also key. Business and civil society representatives will be invited to comment on the different proposals developed in the course of the work. The OECD's core relationship with civil society is through the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) to the OECD. Nongovernmental organisations, think tanks, and academia will also be consulted. The OECD's work on the different items of the Action Plan will continue to include a transparent and inclusive consultation process, and a high-level policy dialogue with all interested parties will be organised on an annual basis." (OECD 2013c, p. 26)

Based on this plan, public consultation with stakeholders was designed as follows. First, for each action plan, the working party in charge made a discussion draft with the support of the Secretariat, and published it at the approval of the CFA³⁶. In making a discussion draft, the working party sometimes chose to publish a request for input in advance to get an insight from stakeholders. Second, comments on the discussion draft were invited from interested stakeholders, and after receiving the comments, a public consultation meeting was held. This meeting was organized in a transparent manner, in that it was broadcast live on the Internet and

³⁵ These toolkits include report on tax incentives, tools on lack of comparables for transfer pricing purposes, report on indirect transfers of assets, toolkit on Transfer Pricing Documentation requirements, toolkit on Tax Treaty Negotiations, toolkit on Base Eroding Payments, Toolkit on Supply Chain Restructuring, and toolkit on assessment of BEPS risks (Source: OECD, "Addressing developing countries' international tax concerns", available at: <http://www.oecd.org/ctp/addressing-developing-countries-international-tax-concerns.htm> (Accessed on April 30th, 2016)).

³⁶ OECD, "Webcast 1: Update on 2014 Deliverables", on January 23, 2014, available at <http://www.oecd.org/ctp/beps-webcast-update-on-2014-deliverables.htm> (Accessed on April 30th, 2016)

can still be accessed online³⁷. Finally, taking into account the inputs from stakeholders during the meeting, the output for each action plan was finalized at the Working party in charge, and was published at the approval of the CFA.

This process was held from October 2013 to May 2014 for the action plans that were due in September 2014, and from September 2014 to July 2015 for the action plans that were due in September 2015³⁸. In total, 23 discussion drafts were published, 12,000 pages of comments were received, and 11 public consultations were held (OECD 2015e, p. 5).

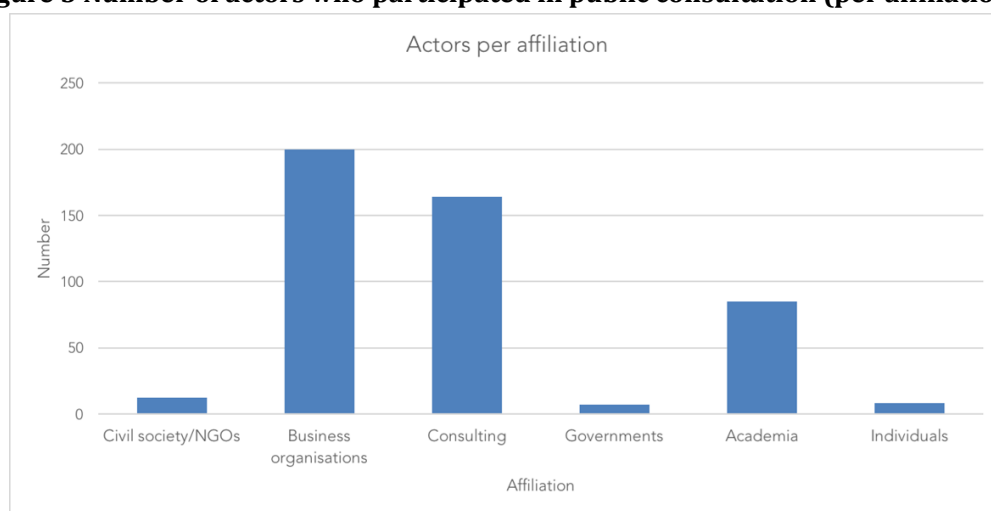
(i) Overview of actors represented in public consultation

Affiliation

The stakeholders that participated in public consultation can be classified into six categories: Civil Society/NGOs, business organizations, consulting groups, governments, academia, and individuals.

As Figure 3 shows, business organizations and consulting firms are the two main actors who were heavily involved in public consultation, and most comments were received from them. On the other hand, the number of participants from civil society/NGOs was fairly small, though they were represented in every public consultation.

Figure 3 Number of actors who participated in public consultation (per affiliation)³⁹



³⁷ Videos on public consultation can be accessed from: <http://video.oecd.org/>.

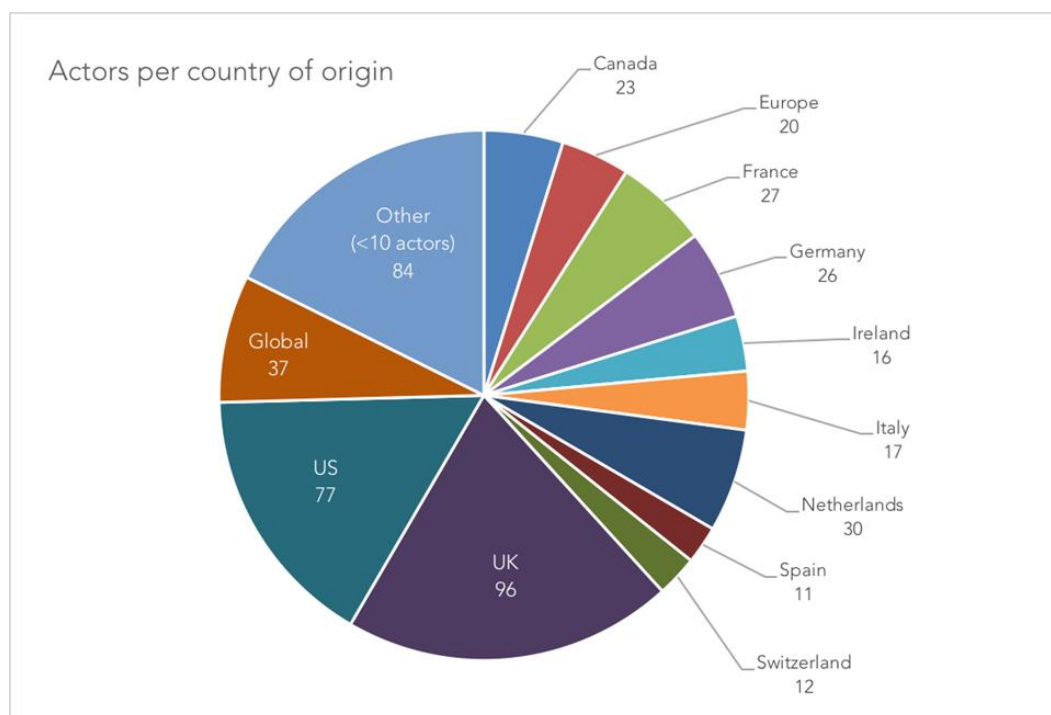
³⁸ OECD, "Previous requests for input", available at <http://www.oecd.org/tax/previous-requests-for-input.htm> (Accessed on April 30th, 2016).

³⁹ This figure is created during the class of 'Mapping Controversies: a Global Information System for Taxing Transnational Corporations' at Sciences Po PSIA, by analyzing all the stakeholders who submitted their comments during the public consultation process.

Country of origin

As Figure 4 shows, the great majority of actors involved in public consultation are from the OECD member countries, and many of them are from the US and the UK.

Figure 4 Number of actors who participated in public consultation (per country of origin)⁴⁰



(ii) Public consultation process – on Action 13

This sub-section will take up the public consultation process on Action 13 undertaken by the Working Party No. 6 of the CFA (WP6) as an example. Action 13 dealt with the rules regarding transfer pricing documentation, to ensure that MNEs provide all relevant tax administrations with information on global allocation of the income, economic activities and taxes paid that are needed for tax administrations to conduct transfer pricing risk assessment and audits (OECD 2013c, pp. 22-23). This paper focuses on this Action 13 for two reasons. Firstly, Action 13 was an issue that received the most comments (183 comments, amounting to more than 1,400 pages)⁴¹. Secondly it was concerned with country-by-country reporting that had originated from

⁴⁰ Ibid.

⁴¹ The comments received on Action 13 are available at: <http://www.oecd.org/ctp/transfer-pricing/comments-discussion-draft-transfer-pricing-documentation.htm> (Accessed on April 30th,

civil society (TJN) as noted earlier but was adopted in a different way from their original idea, and it would be interesting to look into how this solution was discussed through the public consultation process organized by the OECD.

Publication of White Paper on Transfer Pricing Documentation and the first Public Consultation (July – November 2013)

The OECD's work on transfer pricing documentation had already started before the launch of the BEPS Project. In November 2011, the WP6 approved "the programme of work on transfer pricing simplification, which included as one of its work streams a project on the simplification or streamlining of transfer pricing documentation requirements" (OECD 2013d, p. 1). Based on this work programme, the White Paper on Transfer Pricing Documentation was developed by the WP6, and was published for comments from interested stakeholders in July 2013. In order to make transfer pricing compliance simpler and more straightforward for MNEs and to provide tax authorities with more focused and useful information for transfer pricing risk assessment and audits, this White Paper proposed a two-tiered approach, through which both the "big picture" information would be made available for risk assessment purposes in the form of "master file", and detailed information on the related party transactions could be required in the form of "local file" when the arm's length character of specific transactions would need to be assessed. At the same time, it mentioned that the OECD was requested by the G8 at their summit meeting on June 17-18, 2013 at Lough Erne to develop a common template for country-by-country reporting to tax authorities by major multinational enterprises for the purpose of transfer pricing risk assessment (OECD 2013d, p. 20).

The White Paper received comments from 50 parties⁴² by October 2013. Among them, the BEPS Monitoring Group (BMG), which was formed by the TJN and cooperating civil society actors, insisted that country-by-country reporting as proposed by them should be disclosed not only to tax authorities as mandated by the G8, but to the general public in order to ensure that MNEs could be held to account locally in each jurisdiction in which they operate⁴³. From their point of

2016).

⁴² The list of the parties and their comments are available at: <http://www.oecd.org/ctp/transfer-pricing/public-comments-white-paper-transfer-pricing-documentation.htm> (Accessed on April 30th, 2016). The breakdown of the parties is 23 from law & accounting firms, 20 from business and its lobby, 3 from MNE, 2 from Academia and 2 from NGO and civil society (classification done by the author).

⁴³ The comment by the BMG is available at: <http://www.oecd.org/ctp/transfer-pricing/BEPS-Monitoring-Group.pdf> (Accessed on April 30th, 2016).

view, country-by-country reporting is required not only for tax purposes but for MNEs' accountability to broad stakeholders (Murphy 2012). On the other hand, business organizations argued that the reporting should be limited in terms of both contents and extent of disclosure on ground of administrative burden and confidentiality. This issue was the main conflict point among the stakeholders, especially between civil society actors and business organizations, throughout the public consultation on Action 13.

Afterwards, the public consultation with the interested stakeholders was held on November 12-13, 2013. The topics discussed at the public consultation were as follows⁴⁴.

- With regard to country-by-country reporting, (i) what information should be reported; (ii) at what time should that information be reported; (iii) to whom should such information be reported; and (iv) how should such information be shared among relevant governments.
- With regard to two-tiers documentation (master file and local file), (i) the implementation of a standardized two tier documentation system; (ii) the use and content of a global master file; (iii) mechanisms for limiting early reporting to information useful in risk assessment with subsequent opportunity for governments to obtain detailed information necessary for audit; (iv) the development of materiality standards; (v) implementing consistent documentation formats across countries; and (vi) mechanisms for minimizing unnecessary compliance burdens.

Publication of Discussion Draft on Action 13 (January 2014)

Based on the inputs from the stakeholders at the first public consultation, the WP6 developed a discussion draft on Action 13 and published it for comments from interested stakeholders on January 30, 2014. This discussion draft elaborated the two-tiered approach, and requested comments mainly on the following points.

- (i) Whether preparation of the master file should be on a line of business or entity wide basis;
- (ii) Whether the country-by-country report should be part of the master file or a completely separate document;
- (iii) Whether the country-by-country report should be prepared by aggregating local

⁴⁴ Source: the draft agenda for the public consultation on November 12-13, 2013, available at: <http://www.oecd.org/ctp/transfer-pricing/Programme-12-13-November%202013.pdf> (Accessed on April 30th, 2016).

- statutory accounts (“bottom-up” approach) or by allocating the MNE’s group’s consolidated income among countries (“top-down approach”);
- (iv) Whether the country-by-country template should be prepared on entity-by-entity basis or on consolidation basis;
 - (v) Whether specific materiality thresholds (to permit exemptions for transactions that are not sufficiently material to require full documentation) should be introduced;
 - (vi) How to ensure the confidentiality of sensitive information in transfer pricing documentation without limiting tax administration access to relevant information; and
 - (vii) How to make the master file and country-by-country report available to relevant tax administrations.

At this point it became clear that the OECD decided to limit the use of country-by-country reporting to tax purposes, contrary to the proposal by the BMG that insisted public disclosure of country-by-country reports. The focus of debate was put on what kind of information should be included in the report and how the reports should be disclosed to relevant tax authorities.

This draft received comments from 183 parties, 67 from business and its lobby, 66 from law & accounting firms, 21 from MNE, 18 from NGO and civil society, and 9 from academia⁴⁵.

Tentative decisions by the WP6 and the second Public Consultation (May 2014)

After the comments were received, the meeting of the WP6 was held for two days in March, and tentative decisions were made as follows, and these decisions were broadcast online before the next public consultation⁴⁶.

- (i) Flexibility should be allowed as to whether preparation of the master file should be on a line of business or entity wide basis;
- (ii) The country-by-country-report should not be part of the master file;
- (iii) Flexibility should be allowed as to the adoption of “bottom-up” approach and “top-down” approach in preparing the country-by-country report;
- (iv) The country-by-country report should be on consolidation basis;
- (v) Any materiality thresholds should not be included;

⁴⁵ OECD, “Webcast 3: Update on BEPS Project”, on May 26, 2014, available at <http://www.oecd.org/ctp/beps-webcast-3-project-update.htm> (Accessed on April 30th, 2016)

⁴⁶ OECD, “Webcast 2: Update on BEPS Project”, on April 2, 2014, available at <http://www.oecd.org/ctp/webcast-update-on-beps-project.htm> (Accessed on April 30th, 2016)

- (vi) Filing and sharing process of the country-by-country report and the master file should be discussed at the public consultation, taking into account the confidentiality issue;
- (vii) Contents to be included in the master file and the country-by-country reporting are clarified in a way that compliance burdens on MNE should be proportionate to the tax administrations' needs of such information.

The public consultation, which gathered around 190 participants⁴⁷, was held on May 19 2014. This meeting was composed of 4 sessions, each of which was dedicated for a certain topic (the content of the country-by-country report, filing and sharing of the country-by-country report, the content of the master file and local file, and other topics). For each session, 4 participants were asked to make a brief presentation (about 5 minutes) on the topic, which was followed by open discussion among the participants. The breakdown of the 16 presenters was 5 from law & accounting firms, 5 from business and its lobby, 4 from NGO and civil society and 2 from MNE (classification done by the author).

Based on the inputs from the stakeholders at this meeting, the meeting of the WP6 was held from May 20th -23rd, 2014⁴⁸. During this meeting, a three-tiers approach (the master file, the local file, and the country-by-country report) instead of the previous two-tiers approach was agreed, and the contents to be included in each documentation were finalized. At the same time, the WP6 recognized that a monitoring mechanism to assess the effectiveness and efficiency of these tools was needed as these were new tools. Based on this consensus, the WP6 finalized the report, which was sent to the CFA for approval in June 2014.

Publication of the interim output (September 2014)

After the approval of the CFA, the output, 'Guidance on Transfer Pricing Documentation and Country-by-Country Reporting', was published on September 16, 2014 with the other deliverables of the project on the basis of consensus reached by all the OECD and G20 countries. This report noted that though the contents to be included in each transfer pricing documentation had been finalized, some countries (Argentina, Brazil, China, Colombia, India, Mexico, South Africa, and Turkey) expressed the view that additional transactional data would be necessary to

⁴⁷ OECD's video on demand, "OECD Conference Centre: Public Consultation on transfer pricing documentation", available at: <http://video.oecd.org/1138/or/OECD-Conference-Centre:-Public-Consultation-on-transfer-pricing-documentation.html> (Accessed on April 30th, 2016)

⁴⁸ OECD, "Webcast 3: Update on BEPS Project", on May 26, 2014.

be included in the country-by-country report and thus the implementation of these new standards would be carefully reviewed and participating countries would reassess by the end of 2020 whether modifications to the content of these reports should be made or not (OECD 2014c, p. 10). At the same time, it mentioned that additional work on filing and sharing of the documentation would be undertaken over the next several months, taking account of confidentiality of the information required by the reporting standards and the need for making the information available in a timely manner to all relevant tax administrations (OECD 2014c, p. 10).

Publication of 'Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting' and 'Country-by-Country Reporting Implementation Package' (February - June 2015)

After the publication of the output in September 2014, the WP6 continued to work on the additional work as mentioned above and, after the approval of the CFA in January 2015, published the 'Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting' in February 2015, which was presented to the G20 Finance Ministers meeting.

This guidance dealt with the following issues (OECD 2015b):

(i) The timing of preparation and filing of the country-by-country reports:

The first country-by-country report on the fiscal year of 2016 should be submitted by the end of the fiscal year of 2017.

(ii) Which MNE groups should be required to file the country-by-country report:

MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of no less than Euro 750 million should be required to file the country-by-country report.

(iii) The necessary conditions underpinning the obtaining and the use of the country-by-country report by jurisdictions:

Jurisdictions should enforce legal protections of the confidentiality of the reported information, should use their best efforts to adopt a legal requirement for MNEs to prepare and file the country-by-country report based on the standard template, and should use the country-by-country report only for assessing high-level transfer pricing risk or other BEPS-related risks.

(iv) Filing mechanisms and government-to-government exchange:

Jurisdictions should require in a timely manner the country-by-country reporting from ultimate parent entities of MNE groups resident in their country, and exchange this information on an automatic basis with the jurisdictions in which the MNE groups operate.

Regarding the last issue, the OECD and G20 countries agreed to develop an implementation package for government-to-government exchange of country-by-country reports, which was subsequently published in June 2015 after the work conducted by the WP6. This implementation package consisted of (i) model legislation which could be used by countries to require the ultimate parent entity of an MNE group to file the country-by-country report in its jurisdiction of residence including backup filing requirements and (ii) three model Competent Authority Agreements that could be used to facilitate implementation of the exchange of country-by-country reports (OECD 2015e, p. 5).

Publication of the final report (October 2015)

The final report of Action 13 was issued in October 2015, at the same time as the final reports on the other actions. This report combined the revised Transfer Pricing Guidelines on Documentation (which included the requirement for the master file, local file and the country-by-country report) and the country-by-country report implementation package noted above. Among the requirements stipulated in this report, implementation of the common template for country-by-country reporting in a consistent manner was regarded as a minimum standard to be followed by all the OECD and G20 countries (OECD 2015e, p. 17). This report noted that, as a next step, an XML Schema and a related User Guide would be developed with a view to accommodating the electronic exchange of country-by-country reports and thus facilitating implementation of the exchange of the reports among tax administrations (OECD 2015f, p. 10).

(c) Summary

The policy formulation process seen above can be summarized as follows:

- (i) The CFA's subsidiary bodies (Working Parties) and the Secretariat (Centre for Tax and Administration) played a central role in consulting developing countries and

stakeholders and in formulating policy instruments.

- (ii) Not only the OECD member countries, but also the non-OECD G20 countries participated in the meetings of the CFA and Working Parties on an equal footing. The work done by Working Parties was first approved by the CFA, and then by the G20, not by the OECD Council. This expanded participation and approval process involving the G20 were different from the normal working process of the OECD.
- (iii) Non-OECD, non-G20 developing countries and stakeholders were intensively consulted, and their voices were certainly heard in a transparent consultation process. They had indirect influence in policy-making, as the discussion in Working Parties proceeded based on the inputs from them (for example, the meeting of WP6 in May 2014 was scheduled just after the public consultation). As a result, the initial discussion drafts created by the OECD (CTPA, CFA and its subsidiary bodies) went through substantial changes before they became final reports.
- (iv) The adopted policy instruments included minimum standards to be committed by all the OECD and G20 countries for the issues “where no action by some countries would have created negative spillovers on other countries”, while less binding instruments such as “common approach” and “guidance based on best practice” were adopted for other issues. These were all ‘soft law’ instruments in a sense that there were no material sanction mechanism in case of non-compliance and compliance to these standards was expected to be assured by peer review process.
- (v) The policy instruments for capacity building support to low-income countries were also considered in parallel to the BEPS Project, at the direction of the G20 DWG. These policy instruments will be developed in 2016 and 2017, in cooperation with other international organizations that have better knowledge and experience in doing so, namely the IMF, the UN, and the WBG.

(3) Policy implementation phase

In the policy implementation phase, the OECD has made progress in three aspects so far: establishment of an inclusive framework, development of multilateral instrument, and development of a framework for facilitating the automatic exchange of country-by-country reports.

(a) Establishment of an inclusive framework

Following the request by the G20 to develop an inclusive framework with the involvement of interested non-G20 countries and jurisdictions on an equal footing at the G20 Leaders meeting in November 2015, the OECD agreed a new framework under which all interested countries and jurisdictions could participate in meetings of the CFA and its subsidiary bodies on an equal footing with the OECD and G20 countries, which was subsequently endorsed by the G20 in February 2016. The outline of this framework is as follows (OECD 2016a).

- (i) The work programme is carried out by the CFA through groups of national experts in its subsidiary bodies (Working Parties and other bodies).
- (ii) The working groups meet regularly, and discuss draft documents prepared by the OECD Secretariat.
- (iii) The working groups report to the CFA where senior officials of participating countries can 1) decide on the working groups' outcomes on the consensus basis; 2) hold further discussions on issues working groups could not reach consensus on; or 3) require the working groups to carry out further work.
- (iv) Non-OECD, non-G20 countries and jurisdictions can join this framework as BEPS Associates, on an equal footing with OECD member countries and non-OECD G20 countries.
- (v) Participating countries and jurisdictions are required to commit to the BEPS final package and its consistent implementation and to pay an annual member's fee to cover the costs of the framework.
- (vi) This framework will 1) develop standards for the remaining for remaining BEPS issues; 2) review the implementation of the 4 minimum standards stipulated in the BEPS final package, 3) monitor BEPS issues related to tax challenges raised by the digital economy (Action 1) and measurement of the economic impact of BEPS (Action 11); 4) gather additional data on the implementation of the BEPS final package; and 5) support the development of the toolkits for low-capacity developing countries.
- (vii) The first meeting of this inclusive framework is planned on June 30th-July 1st, 2016 in Kyoto, Japan, where senior officials of the participating countries and jurisdictions will take decisions on the governance, structure and work program of the framework,

including monitoring process of the 4 minimum standards and the timing of the implementation of the other elements of the BEPS final package.

(b) Development of multilateral instrument

As the BEPS final package includes minimum standards or recommendations for tax treaty revisions, in order to implement the BEPS final package effectively, the revision to more than 3,500 bilateral tax treaties in a timely manner is essential. Therefore, under Action 15, the OECD has studied the feasibility of a multilateral instrument to enable countries that wish to do so to amend bilateral treaties to implement the BEPS measures at one time. After the consultation with public international law and tax experts, in its interim report in September 2014 the OECD concluded that a multilateral instrument was desirable and feasible and an international conference to negotiate such an instrument should be convened in 2015 (OECD 2014d, p. 27). For this purpose, in February 2015 the OECD decided to set up an ad hoc non-permanent group under the aegis of the OECD and the G20 served by the OECD Secretariat, in which any interested countries and jurisdictions could participate on an equal footing (OECD 2015c, pp. 5-6). So far, about 90 countries are participating in this framework, and this ad hoc group is expected to conclude its work and open the multilateral instrument for signature by December 2016 (OECD 2015e, p. 9).

(c) Development of a framework for facilitating the automatic exchange of country-by-country reports

As described earlier, one of the outputs of Action 13, the implementation package for government-to-government exchange of country-by-country reports, included three model Competent Authority Agreements that could be used to facilitate implementation of the exchange of country-by-country reports. These three models were: 1) Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA), 2) Competent Authority Agreement on the Exchange of Country-by-Country Reports on the Basis of a Double Tax Convention, and 3) Competent Authority Agreement on the Exchange of Country-by-Country Reports on the Basis of a Tax Information Exchange Agreement (OECD 2015d). The MCAA, which is considered to be both time- and resource-efficient for the automatic exchange (OECD 2015d, p. 6), was signed by 31 countries on January 27th, 2016⁴⁹, which means that the automatic

⁴⁹ OECD, "A boost to transparency in international tax matters: 31 countries sign tax co-operation agreement to enable automatic sharing of country by country information", available at:

exchange of country-by-country reports will be implemented among these countries.

In the meantime, the OECD developed and released a standardized electronic format for the exchange of country-by-country reports between jurisdictions, which will facilitate the swift and uniform implementation of automatic exchange of the reports (OECD 2016b).

(d) Summary

Though the implementation of the BEPS final package depends on each country's action, the OECD has taken the initiative in 1) establishing an inclusive peer-review framework to ensure effective implementation by the participating countries, and 2) developing tools to facilitate implementation for each country, as illustrated by the multilateral instrument, model domestic legislation and model international agreements regarding country-by-country reports, and the standardized electronic format for the exchange of country-by-country reports. However, the effectiveness of these efforts remain to be seen. The multilateral instrument has not completed yet, and with regard to the automatic exchange of country-by-country reports that is one of the important policy instruments of the BEPS final package, the US, China and Russia have not signed the MCAA so far, which may affect the effective implementation of this policy instrument.

<http://www.oecd.org/newsroom/a-boost-to-transparency-in-international-tax-matters-31-countries-sign-tax-co-operation-agreement.htm> (Accessed on April 30th, 2016). The 31 countries who signed were Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and United Kingdom.

3-3. Discussion

This section tries to review the roles of the OECD in each phase of the BEPS Project in accordance with the analytic framework set out in Chapter 2.

In the agenda-setting phase of the BEPS Project, the OECD acted mostly in the stream of policies, and served as a “policy entrepreneur” who aimed to tackle the problem of BEPS with policy instruments it had been working on. This is in line with the inference described in Section 2-2. There seem to be two factors that made the OECD relevant in this stream. The first factor was a strong transgovernmental coalition formed among the OECD Secretariat (CTPA) and national officials and experts on tax matters. Through the recurrent meetings of the CFA and its subsidiary working groups, they shared common ideas and norms on appropriate policies to address tax avoidance by MNEs. Their ideas on international corporate tax reform were changes within the existing institutions such as the ALP for transfer pricing, and quite distinct from those embraced by civil society groups such as the TJN who preferred more fundamental reforms. The second factor was a growing relationship and cooperation with the G20. Over the last decade the OECD has supported the G20 with the secretariat function and enormous knowledge pool, which has increased the G20’s dependence on the OECD. Now the G20 mandates more and more tasks to the OECD, which enables the OECD to frame the mandated policy issue as it desires. This situation was clearly detected in the case of the BEPS Project, where the OECD could frame the reform agenda based on their ideas, expressly denying the possibility of the other policy options advocated by the TJN.

To sum up, the role of the OECD as a policy entrepreneur was salient owing to a strong transgovernmental coalition created around the CFA, which is in line with the hypothesis set out in Section 2-2, and the OECD enjoyed the comparative advantage over other policy entrepreneurs thanks to its increased relationship with the G20 who assumed an increasingly important role in global economic governance since the 2008 financial crisis.

With regard to the policy formulation phase, the OECD has long been an arena where international tax regulation is discussed, as illustrated by the OECD’s work on Model Tax Convention on Income and on Capital which forms the basis of more than 3,500 bilateral treaties on taxation. This conforms to the hypothesis set out in Section 2-2 in that international corporate taxation is considered as transnational issue and the OECD has taken the lead in dealing with this transnational issue. The policy formulation in the BEPS Project was also assumed mainly by

the OECD, but contrary to the agenda-setting phase, the OECD worked more as a facilitator of deliberation among the participants including non-member countries and stakeholders than as a policy entrepreneur who push their own policies. It is true that the OECD led the discussions to some extent by setting the agenda and drafting policy proposals, but their initial drafts were subject to substantial changes through public consultation and in some cases the OECD relied on the inputs from the public to create the initial drafts. At the same time, the discussions were aimed at reaching consensus on “appropriate” solutions rather than at pressing certain policies by majority vote to those who didn’t favor them. As is often the case with the OECD’s decisions and recommendations, the BEPS final package was adopted on the basis of unanimity. And when there was disagreement on the content of the country-by-country report among the participating countries, they frankly admitted it in the final report and coped with it not by making decisions based on majority but by including a review clause which stated that the implementation of these new standards would be carefully reviewed by the end of 2020 to see whether modifications to the content of these reports should be made or not. Thus, the policy formulation process at the OECD is characterized by deliberation on what is right and appropriate rather than by negotiations based on predefined national interests, as expected in Section 2-2. This deliberation is in part enabled by the fact that the OECD lacks the formal power to enforce its decisions unlike the UN, which makes participants feel easy to discuss without fear of material sanctions in case of non-compliance.

With regard to policy instruments, the OECD adopted several ‘soft law’ instruments that differed in the extent of binding force. It adopted minimum standards for the issues where no action by some countries would have created negative spillovers on other countries, while it provided “common approach” or “guidance based on best practice” for other issues. This fact conforms to the inference set out in Section 2-2, which expects that standard-setting and/or coordinative functions will be adopted for more transnational issues while discursive dissemination will be adopted for less transnational issues.

Another feature of the policy formulation phase of the BEPS Project, which is not expected in Section 2-2, is its emphasis on “participation”. This aspect becomes more salient when contrasted with the OECD’s prior project on tax avoidance, the HTC project, where non-members did not participate in the debates that produced the OECD’s 1998 report ‘Harmful Tax Competition: An Emerging Global Issue’ because the member countries chose not to consult with them (Webb 2004, p. 804). The involvement of non-members in the consultation process had

the effect of adding legitimacy to the final outputs of the BEPS Project on the one hand, as even the TJN, who advocated more drastic reforms, admitted that the OECD's action was "the first serious global effort to combat widespread corporate tax cheating – and that in itself has been a huge step forward"⁵⁰. On the other hand, however, such inclusiveness entailed sacrifice of like-mindedness of the members, which made it more difficult and burdensome for the OECD to achieve a workable consensus. This trade-off is illustrated by the fact that developed countries and emerging countries disagreed on the content of the country-by-country report as noted above, and that the OECD had to provide technical assistance to low-income countries who faced different difficulties from its members, which had not been the function of the OECD traditionally.

When it comes to the policy implementation phase, as noted in Section 2-2, the OECD's influence has conventionally been exerted through its monitoring and surveillance activities whose effectiveness is guaranteed by the motivation for the member countries to live up to the identity of the ideal modern state, characterized by being liberal, democratic, market-friendly and efficient. In the BEPS Project as well, the OECD is trying to secure the effective implementation of its policy proposals through its well-known peer review process. However, the broad involvement of non-member countries in this peer review process may pose difficulty in guaranteeing the effectiveness of implementation because 'cognitive governance' may not work well for those non-member countries. They do not necessarily share the common identity or norms with the OECD member countries, and therefore they have weaker incentive to conform to the desirable behavior the OECD recommends. The increased legitimacy of the OECD's outputs owing to extended participation in the policy formulation phase may make up for this difficulty to some degree, but it remains to be seen.

Another factor that affects the OECD's influence in the policy implementation phase is the strength of countervailing domestic political force as explained in Section 2-2. Especially, the American pressure groups may have the capacity to suppress the OECD's influence to a great degree. In the past HTC project, the Coalition for Tax Competition, an alliance of the US-based right-wing think tanks like the Heritage Foundation and Cato Institute led by the Center for Freedom and Prosperity (CFP), strongly campaigned against the OECD's efforts working closely

⁵⁰ Press release of the TJN on October 5th, 2015, "Press release: OECD's BEPS proposals will not be the end of tax avoidance by multinationals", available at: <http://www.taxjustice.net/2015/10/05/press-release-oecd-beps-proposals-will-not-be-the-end-of-tax-avoidance-by-multinationals/> (Accessed on April 30th, 2016). Though the TJN welcomed the OECD's effort as a huge step forward, it argued that "(t)here is still much work to be done if tax avoidance by multinationals is to be effectively dealt with".

with sympathizers in the Bush administration at that time, which caused a certain scale-down of the HTC project (Webb 2004). To make this campaign more effective, in 2004 and 2006 the CFP attempted to cut the US funding on the OECD that accounted for quarter of the OECD core budget (Part I budget) at that time, by sending letters to the Congress and the government⁵¹. The CFP is still active and strongly criticizes the OECD BEPS Project, stating that “the OECD’s sweeping proposals to combat BEPS would create a privacy nightmare and stifle economic growth” (Garst 2015). Considering its strong relationship with Republican politicians, it may emerge as critical obstructive force against effective implementation of the BEPS measures if the Republican takes the reins of government after the coming 2016 election. Thus, the effect of the OECD’s efforts to guarantee effective policy implementation can be constrained by countervailing domestic political force, especially one in the US that still supplies over 20% of the OECD’s core budget.

⁵¹ The CFP and its allies sent letters to this effect to the members of Congress on October 20, 2004 (available at <http://freedomandprosperity.org/2004/letters/ctc-letter-on-oecd-funding/>) and to the Director of the White House’s Office of Management and Budget on February 2006 (available at <http://freedomandprosperity.org/2006/letters/ctc-letter-to-omb-director-bolten-on-oecd-funding/>) (Accessed on April 30th, 2016).

Conclusion

In the existing literature, the OECD has been described in a variety of ways. Those who put emphasis on its membership structure would call it “a rich man’s club”, while those looking at its enormous capacity of knowledge production and policy analysis would describe it as “the world largest think tank”. Even the political scientists disagree on their evaluation of the OECD’s role in global governance. The realists would describe it as an “empty shells or impersonal policy machinery to be manipulated by other actors” (Barnett & Finnemore 1999, p. 704), while the constructivists would put stress on its contributions to creation and dissemination of ideas that “identify what a modern state is and sanction appropriate modes of internal and external conduct” (Mahon & McBride 2008, p. 3). Furthermore, the neo-Gramscians would say the OECD is a critical actor in promoting a hegemonic neoliberal world order through a process of negotiation and consensus-making (Ruckert 2008, p. 98). These various discourses on the role of the OECD indicate that the OECD is involved in such a diverse range of activities that its influence and its relation with other actors in global governance cannot be assessed in single dimension and vary on a case-by-case basis.

In order to disentangle the role of this complex organization, this paper applied a policy-stage approach to a specific case, the OECD/G20 BEPS Project. As discussed in Section 3-3, the key findings are as follows.

- 1) The periodical meetings among the OECD Secretariat and national officials from the sub-units of government strengthened the transgovernmental coalition, which enabled the OECD to act as a relevant “policy entrepreneur” in the agenda-setting phase of the BEPS Project. At the same time, the recent phenomenon of increasing cooperation between the OECD and the G20 bestowed the OECD with the privilege of framing the policy issue in this phase.
- 2) The fact that the issue of corporate tax became increasingly transnational in parallel with the growing transnational flow of investment made the OECD an appropriate arena to deal with policy coordination on this issue, and that’s why the OECD took the lead in the policy formulation phase of the BEPS Project. In this phase, the conventional characteristics of the OECD as lacking in “hard” power enabled the participating countries to focus on discussing “appropriate” measures in the policy formulation phase rather than pushing forward their own national interests. Furthermore, the inclusive policy formulation framework adopted in

the BEPS Project added to the legitimacy of the OECD's policy instruments on the one side, but it menaced the conventional consensus-based decision-making among the like-minded OECD member countries on the other side.

- 3) In the policy implementation phase of the BEPS Project, the OECD is trying to secure the effective implementation of its policy proposals through its well-known peer review process, but the effectiveness of such monitoring and surveillance process may be constrained by strong domestic political force of the member states, as it was affected by the campaign of the US-based CFP in the past HTC Project. Furthermore, the inclusive framework may also affect the effectiveness of the peer pressure, which traditionally worked well among the relatively homogeneous OECD member countries through the mechanism known as "cognitive governance".

These findings reveal that the OECD performs various roles in global policy process owing to its characteristics as an international organization that cultivates transgovernmental coalition and relies on soft regulation. However, they also imply that those roles have recently been changing due to the OECD's growing relation with the G20 and its enhanced engagement with non-member countries. Conventionally the OECD has relied on its "cognitive governance" function to make the member countries perceive its policy proposals to be legitimate and thus to secure the voluntary compliance with its norms. However, the increasing heterogeneity of the countries participating in the OECD's working process caused by the growing engagement with non-member countries is diluting this function, because non-member developing countries do not necessarily share norms with the member countries and thus they do not always have the spontaneous incentive to follow the model posed by the OECD. This makes it more difficult for the OECD not only to reach unanimous consensus on policy instruments but also to secure compliance with the standards through peer pressure, both of which have been the key components of the OECD's traditional governance mechanism. How the OECD reconciles this dilemma, between cognitive governance based on like-mindedness and legitimacy based on inclusive participation, will certainly have an impact on the role it assumes in global governance, but for the moment the effects of this recent change are not clear since the situation is still evolving, and therefore this issue needs to be observed consecutively in the coming years.

The findings of this study have mostly been explained above, and the remaining part will explain three limitations of this study.

Firstly, though the case study covered in this paper was consistent with the hypothesis set out in Section 2-2, this does not mean that these hold true for any other case. The relevance of this hypothesis needs to be assessed through comprehensive case studies, and there may be some cases that do not fit well with them. For example, the rise of the OECD as an “educational organization” over the 1990s (Jakobi & Martens 2010, p. 268) is not in line with the expectation derived from the hypotheses, because education policy is in its nature less transnational and the role of international organizations in such a less transnational policy issue should be limited according to the hypotheses. This contradiction can be explained by the OECD’s data generation activities in education policy such as policy examinations of countries (so-called country reviews) and yearly publication of statistics and indicators (Rubenson 2008, pp. 245-246). These activities may have enabled the OECD to accumulate information required for policy formulation and to emerge as a relevant actor in the sphere of education policy. As this example illustrates, the hypothesis posed in this paper need refinement through careful analyses on a variety of cases.

The second limitation relates to the specificity of the case study. The BEPS Project explored in this paper was unique compared to the OECD’s conventional work in that it was a joint project with the G20 and it involved large-scale participation of non-members. The project was a proper subject of study to take account of the recent evolution of the OECD’s growing cooperation with the G20 and enhanced engagement with non-member countries, but this does not tell anything about the extent to which the work of the OECD in aggregate, especially in other policy areas than tax matters, is influenced by these latest trends. In order to grasp the changing characteristics of the OECD’s role as a whole, it would be necessary to look into how these new trends are permeating each section (directorate and committee) of the OECD and how each section copes with the dilemma between like-mindedness and inclusive participation.

Finally yet importantly, this paper did not explicitly deal with competition between the OECD and other international organizations in global governance. However, the increasing relationship with the G20 and enhanced engagement with non-member countries can be partly explained by the OECD’s efforts to regain its relevance in global governance to compete with other institutions who have overlapping functions, such as the UN, the IMF and the EU. Considering the fact that this OECD’s strategy for inclusiveness to compete with these organizations is threatening the like-mindedness of the membership that has been the OECD’s comparative advantage over universal international organizations, this aspect will be worth researching to clarify the changing role of the OECD in global governance.

I must admit that many issues, not least the above-mentioned three limitations, are left for future research to unveil the complex, floating role of the OECD in global governance, but I hope this paper helps advance the understanding of it.

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