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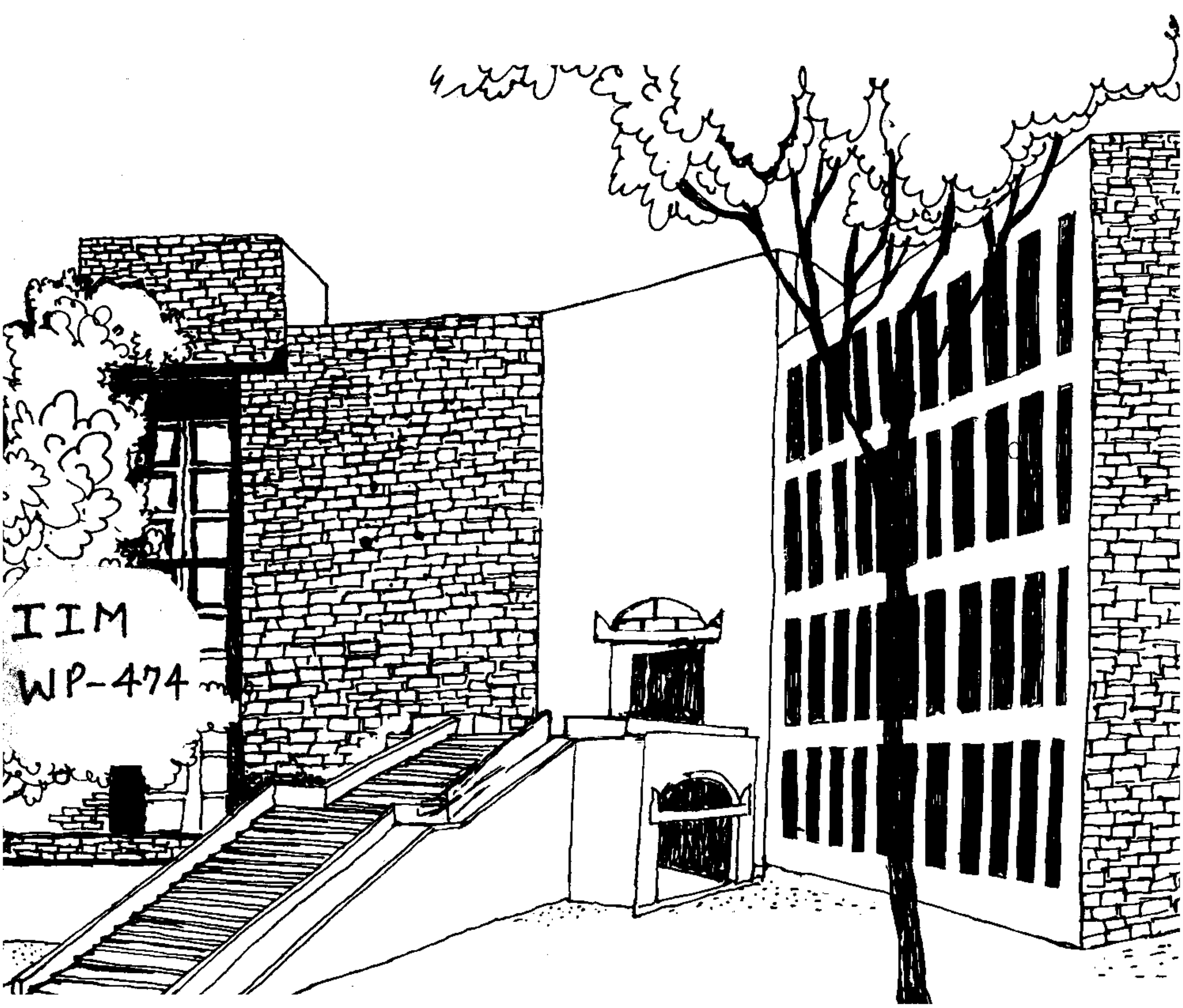
Working Paper



THE REGULATION OF TRANSNATIONAL CORPORATIONS: NATIONAL & GLOBAL INTERVENTIONS

By

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W P No. 474

September 1983

The main objective of the working paper series of the IIMA is to help faculty members to test out their research findings at the pre-publication stage.

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INDIA

The Regulation of Transnational Corporations : National & Global Interventions

Samuel Paul*

The purpose of this paper is to examine the recent trends in the policies of less developed countries (LDCs) towards transnational corporations (TNCs) and the international concerns about the operations of TNCs around the world. Recent developments in foreign private investment, the major international interventions to influence the behaviour of TNCs, and the new responses of TNCs to the changing policies and controls of host governments are among the major aspects analysed below. These developments should be of interest to policy makers and entrepreneurs in India which is not just a host country of TNCs any more. It is a home country for a growing number of TNCs of Indian origin. Being a host and home country at the same time does add new dimensions to the perspectives and responsibilities required of both Indian enterprises and the Government of India (GOI)[1]. Likely trends in the policies of LDC governments towards TNCs and their implications are highlighted towards the end of the paper.

Till recently, we in India have been preoccupied solely with issues relating to the regulation and control of the TNCs operating in or planning to enter our country. The focus of public policy was on adapting the import of capital and technology to meet our national priorities and gaining increased domestic control over the conduct of existing TNCs in the country. As a host country, our national goal is to maximise our gains from the operation of foreign TNCs in our territory and minimise the negative impact of their activities. On the other hand, as India assumes the role of a home

* The author is grateful to Miss Celine George for research assistance. An earlier version of this paper was presented at the National Workshop on Internationalisation of Business (IIM-IMEDE) held in March, 1983.

country, it will have to adopt a more outward looking posture. GOI, for example, must now assess the benefits and costs of our enterprises investing abroad and transferring technology to other countries. It must examine not only the net economic gains of these ventures, but also their impact on our political relations with the "host countries" of these ventures. Though Indian entrepreneurs are likely to take a more private view of their ventures, they must pay adequate attention to the policy framework and operating rules and cultures of their new host countries. If not, long term survival will be in peril though it is possible to achieve short term gains. Thus an important dimension of the new perspectives essential to those who wish to enter international business is the capacity to analyse, appreciate, and anticipate the policies and operating systems of their host countries and their governments. Entry and expansion decisions will have to be informed by an assessment of these factors and the associated risks.

A second dimension relates to the international concerns about the conduct of TNCs in the developing world. The early 1970s witnessed an explosion of criticisms about TNCs and their operations in many developing countries and the forum of the United Nations. Political interference in host countries, subversion of their national goals and policies, speculative financial transactions and damage to host country balance of payments, abuses of transfer pricing, and unethical conduct and restrictive trade practices in business are among the charges which have been levelled against TNCs. Government of India has been active in opposing such conduct and practices in international forums such as the UN and its agencies, and the Group of 77. India's growing status as a home country will undoubtedly add a new element of complexity to this sensitive issue. Our concern now cannot be confined to the conduct of foreign TNCs operating in India, but must include that of our own enterprises going abroad. Indian entrepreneurs and GOI need to be sensitive to the concerns of developing countries about the behaviour of TNCs, especially in regions where our own joint ventures are in operation.[2]

Before considering these two issues in depth, we shall review the recent international trends in foreign investment with special reference to the role of TNCs. This is a useful back-drop against which we shall examine the twin issues of the policies of developing countries towards TNCs, and international concerns about the conduct of TNCs. Our focus here will be on the emerging trends, country responses and collective interventions in this complex area. It is hoped that the findings and insights thrown up by this analysis will be of some value to Indian entrepreneurs as well as policy makers in GOI.

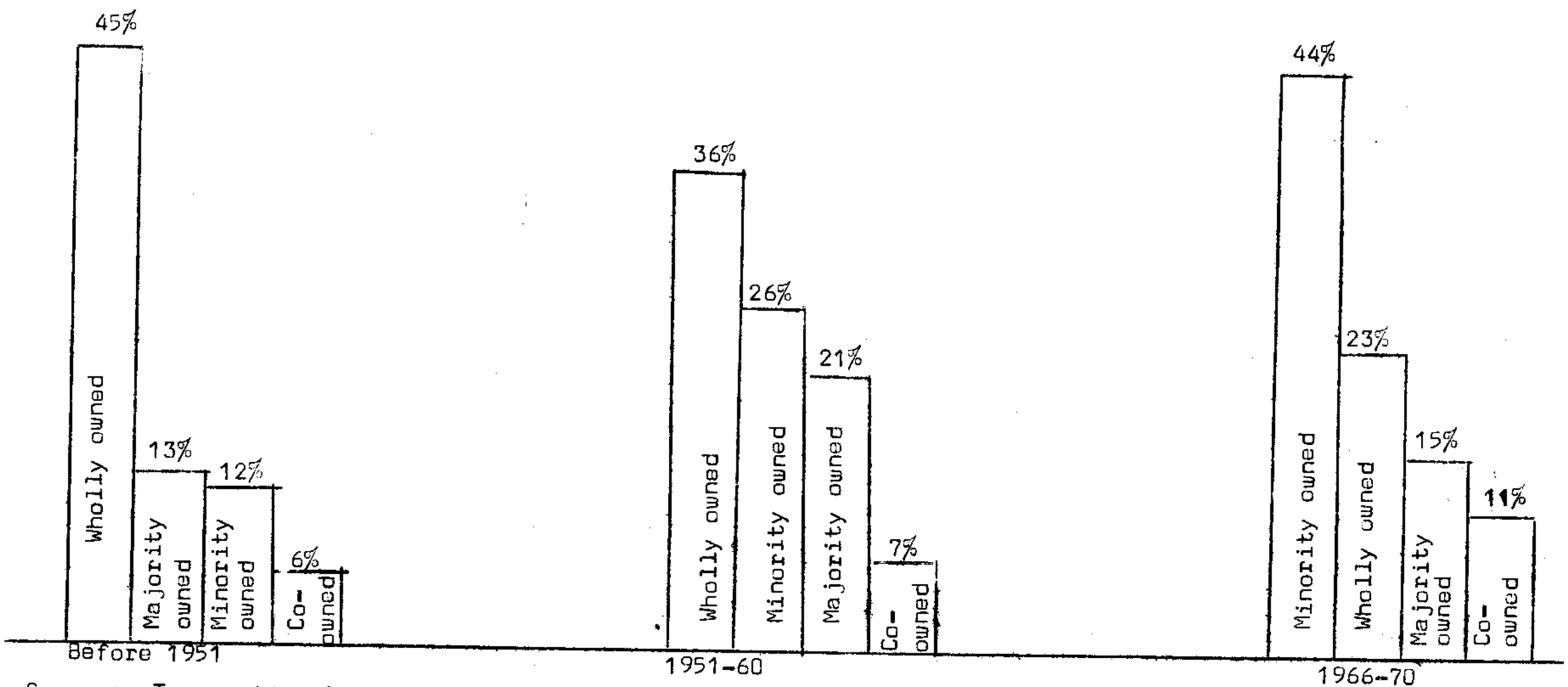
I. Activities of TNCs : Recent Trends

Foreign direct investment (FDI) on a global basis has increased from $4 billion in 1960 to $43 billion in 1980, and the average rate of growth of FDI for the entire period works out to 12% at current prices.[3] There has been a decline in FDI in the latter half of the 1970s. This slow down should be viewed in conjunction with the expansion of non-equity participation in foreign enterprises by TNCs.[4] The data on FDI flows by themselves do not any longer reflect the real growth and influence of TNCs in host countries (see Diagram 1).

The United States accounted for two thirds of global FDI in the 1960s.[5] By the end of the 1970s, however, the US share had fallen to less than half. During the same period, other developed market economies increased their share of FDI. The U.K. and Northern Ireland which accounted for only one eighth of the total FDI outflow in the early 1970s, increased its share to 15% by the end of the decade. The Federal Republic of Germany, Canada, France and Japan also increased their share of FDI during the same period.

Diagram 1

Ownership Patterns of 1276 manufacturing affiliates of 391 Transnational Corporations Established in Developing Countries by Period of Establishment 1951-75*



Source: Transnational Corporations in World Development - A Re-examination United Nations, New York, 1978

* Percentage distribution does not add up to 100 because ownership patterns of some firms are unknown.

Recipients of FDI

The developed market economies themselves are the major recipients of FDI. These countries accounted for 70% of the inflow of all FDI throughout the 1970s.[6] A surprising development was the emergence of the U.S. as the largest recipient of such inflows (30% of the total) during this period.

The flow of FDI from developed market economies to developing countries (LDCs) increased from an average of $3.7 billion in 1970-72 to $11.7 billion in 1978-80. This is equivalent to an average growth rate of 15%, a rate significantly higher than the prevailing rate of investment in LDCs (of about 10%). It is important to note, however, that LDCs' share of FDI is only 30%. The U.S. continues to be the dominant source of FDI to LDCs, accounting for nearly half of all such inflows.

The main LDC recipients of FDI are a small number of countries. Countries with an annual per capita GNP of over $2500 accounted for 30% of the total inflow in 1978-80. LDCs with a per capita GNP of $1000 - $2500 received more than 50% of the FDI. LDCs with a per capita GNP of $400 (including India) received only 5% of the total inflow of FDI, though they accounted for 30% of the total GNP of all LDCs.[7] Among the different regions of the developing world, Latin America received nearly two thirds of all FDI. South Asia and East Asia received about 25% and Africa accounted for only 18%.

Some important shifts have taken place also in the sectoral pattern of FDI in LDCs in recent years. TNCs have traditionally been more active in the extractive sector (natural resource industries) than in manufacturing in LDCs.[8] However, the share of FDI in manufacturing and service sectors of LDCs has increased significantly in the 1970s.[9] Within manufacturing, TNC operations have tended to be concentrated in chemicals, engineering and food products industries.

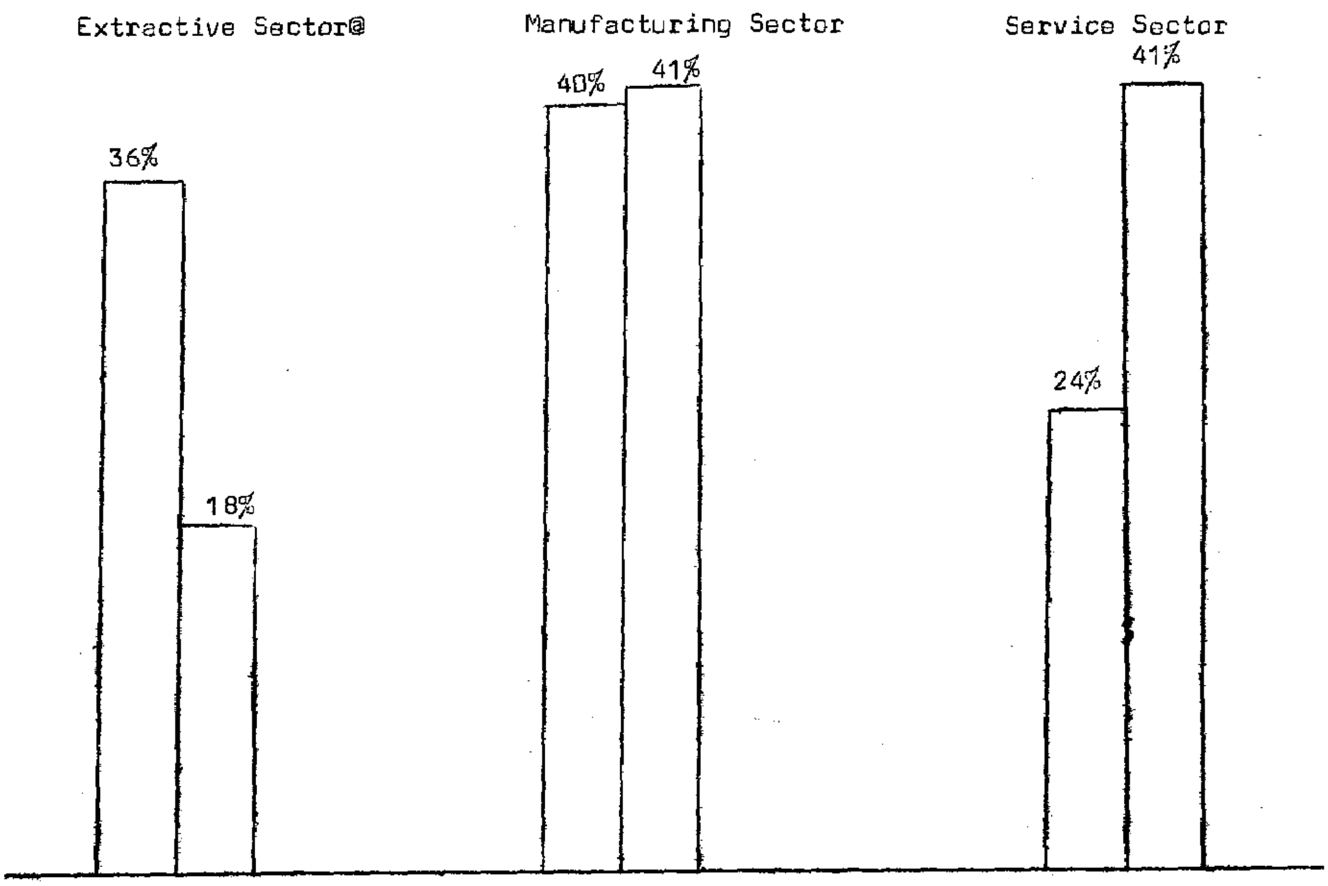
East-West Cooperation

A significant development during the past two decades was the expansion of collaboration between western TNCs and East European (Socialist) governments. A wide variety of arrangements have been used for this purpose. A UN study has shown that the number of industrial cooperation agreements between these groups increased from 600 to 1800 between 1973 and 1976.[10] Licensing, production sharing arrangements and joint ventures have become increasingly popular in the transactions between the East European countries and . TNCs of the developed market economies. For example, agreements for licensing by Czekoslovakia have increased from $4 million to $64 million between 1966 and 1974. Automative, electrical engineering, chemicals, mining equipment and building machinery industries have figured prominently in these agreements.

Joint marketing has emerged as a major form of East-West industrial cooperation in the 1970s, complementing the ongoing cooperation in production. Joint marketing has taken the form of export assistance, setting up of joint marketing companies, and establishment of consortia for the implementation of complex projects in third country markets. As of 1978, nearly 200 joint marketing companies are reported to have been set up to perform these functions. A striking feature of these recent developments is the large diversity of arrangements which have been adopted in East-West cooperation and the flexibility with which the two parties have experimented with new contractual forms for technology transfer, financing, production and marketing. The recent trend towards large scale cooperation projects in the automotive sector between East and West European manufacturers (for both passenger cars and commercial vehicles) illustrates this point. While earlier cooperation ventures were on a small scale, based on licensed manufacture by the Eastern partner and designed for substantial indigenous content, the more recent projects have been adopted to take maximum advantage of rationalisation of production

Diagram 2

Sector-wise distribution of Stock of FDI of 7 major Countries+ in the developing countries



+ U.S.A., U.K., France, W. Germany, Japan, Italy and Canada

@ includes smelting, mining, petroleum

Source: UN, Transnational Corporations in World Development - A Reexamination, New York, 1978 resulting from extremely large scales of operation (high rates of output). In the automotive sector, this has led to an integration of the industry in the two regions.

Internationalisation of Banking

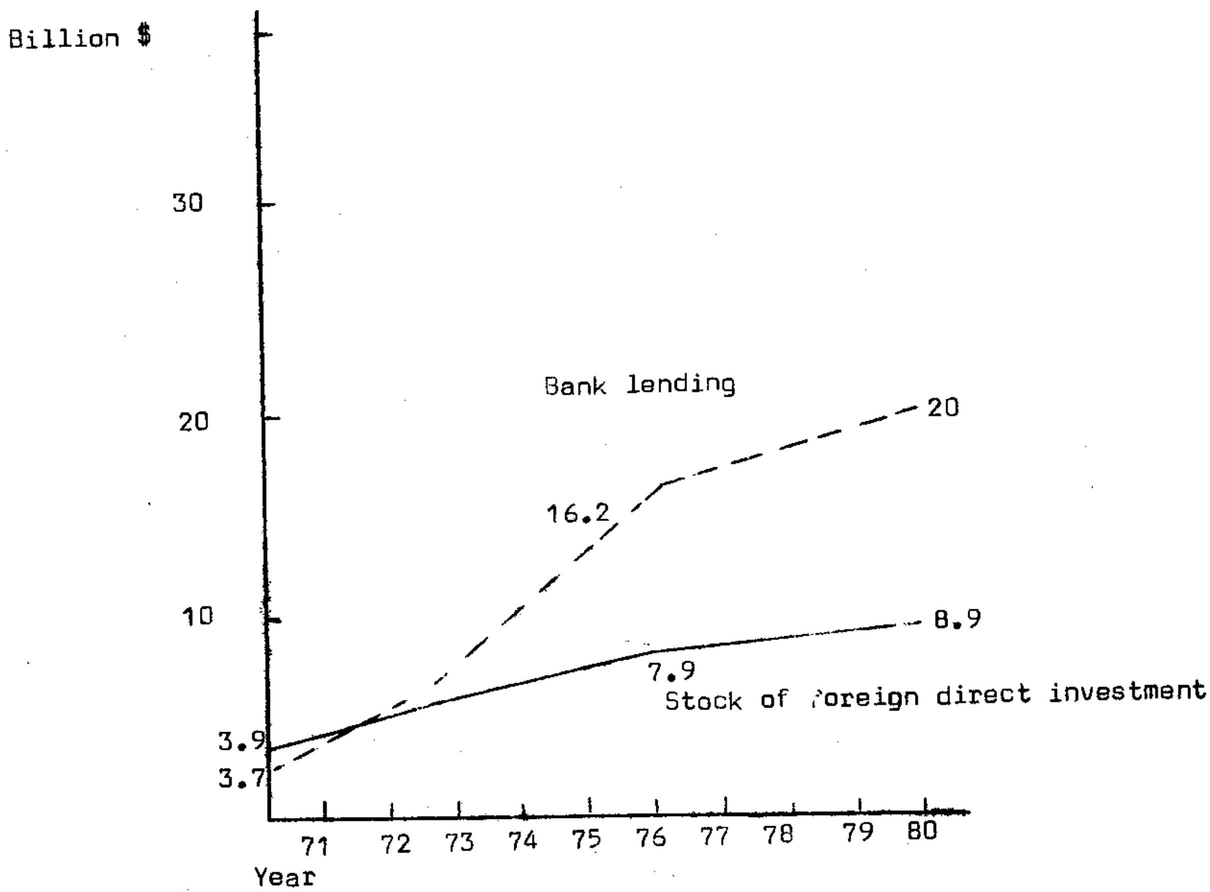
Expansion of TNCs has been followed by the growing internationalisation of a number of service industries.[11] The most outstanding example is the case of transnational banks (TNB). TNBs have been increasingly involved in the financing of payments imbalances associated with the developments in international trade. It is through their intermediation that the surpluses of oil countries and credit from the Eurocurrency market got channelled into financing the deficits of some developing countries. The stock of debt of developing countries to TNBs grew from $43 billion in 1973 to $260 billion in 1980. The annual rate of lending by TNBs in OECD countries to developing countries has far exceeded the annual inflow of FDI to these countries (see Diagram 3). Over 80% of this debt is concentrated in just twenty countries which are middle income LDCs. There has also been a significant internationalisation of other service activities such as insurance, advertising and consultancy during the past decade. However, the explosive growth of TNBs is the most notable development which has major implications for the role of TNCs in LDCs.

Emergence of TNCs from LDCs and Socialist Countries

Until recently, international investors have come exclusively from developed countries. Two groups have now joined this stream, one from the more developed among the LDCs, and the other from the socialist countries of Eastern Europe. Enterprises from LDCs account for only 2% of the total FDI outflows reported for the period 1978-80, but represent a marked increase from a mere 0.3% in 1970-72.[12] Firms in Brazil, Hong Kong, Philippines, India, Mexico, and some of the OPEC countries are among the newly emerging TNCs from LDCs. Most of these investments are directed towards other developing countries, often

Diagram 3

Flow of Foreign Direct Investment and Commercial Bank Loans to LDCs from OECD Countries



Stock: OECD Development Centre (1982)

located in the same region. The developed market economies have also received a substantial share of investment flows from the oil exporting LDCs. Thus, 13% of the FDI inflows into U.S.A. during 1978-80 originated in LDCs.

Enterprises from socialist countries operate mostly in the developed market economies through inter-governmental agreements. It is reported that in 1976, the Soviet Union and other socialist countries had a total of 700 trading and manufacturing concerns in the rest of the world as against only 50 in 1962.[13] About two thirds of these were located in Western developed economies and the remainder in LDCs. The total capital invested by these new enterprises in western countries alone was of the order of $600 million.

A number of important developments and shifts have thus taken place in TNC activities in the past two decades. The emerging global trends in this area may be summarised as follows:

1. There has been a slow down in the real rate of growth of FDI in the latter half of the 1970s. On the other hand, TNCs appear to be making increasing use of non-equity forms of participation in business with the result that current data on FDI do not fully reflect the scope and significance of TNC activities.

2. There has been a decline in the role of TNCs of US origin relative to those of Western Europe and Japan. The US has also begun to play the role of a host country to foreign TNCs.

3. LDCs continue to receive only less than a third of all FDI. The poorest among the LDCs receive the smallest share of FDI.

4. The involvement of TNCs in the extractive sector has declined sharply. FDI in manufacturing and service sectors are on the rise.

5. The emergence and rapid growth of lending by transnational banks to LDCs has overshadowed the role of FDI as a form of resource flow (capital) in the 1970s.

6. Cooperation between western TNCs and enterprises in the socialist countries of Eastern Europe has expanded considerably and makes use of a variety of contractual arrangements including joint ventures.

7. Cooperation among LDCs through the medium of joint ventures and other arrangements has led to the emergence of a set of smaller TNCs operating on a regional basis.

II. National Policies Towards TNCs

What are the risks of entry into a country? What policy instruments are host country governments likely to use to regulate the activities of foreign investors and collaborators? These are undoubtedly critical issues in assessing the investment environment of a country. In the preceding section, we summarised the global trends in the areas of foreign investment. We shall now more closely examine the actions and policies of developing countries to see what general conclusions we can draw about their likely behaviour in the future.

Political Risks and Forced Divestments

All those engaged in international business are greatly concerned about the political moves and extreme actions such as nationalisation which host countries might spring on them. Such unusual events are interpreted by private entrepreneurs and managers as evidence of hostility and political instability in the host country. It is true that acts of nationalisation in LDCs have been widespread in the past two decades and the publicity given to them have influenced the TNC perception of the investment environments in LDCs. A recent UN study, however, has shown that the actual incidence of forced divestments is quite limited. The study reports that less than 5% of all foreign affiliates in LDCs were nationalised during the period 1960-79.[14]

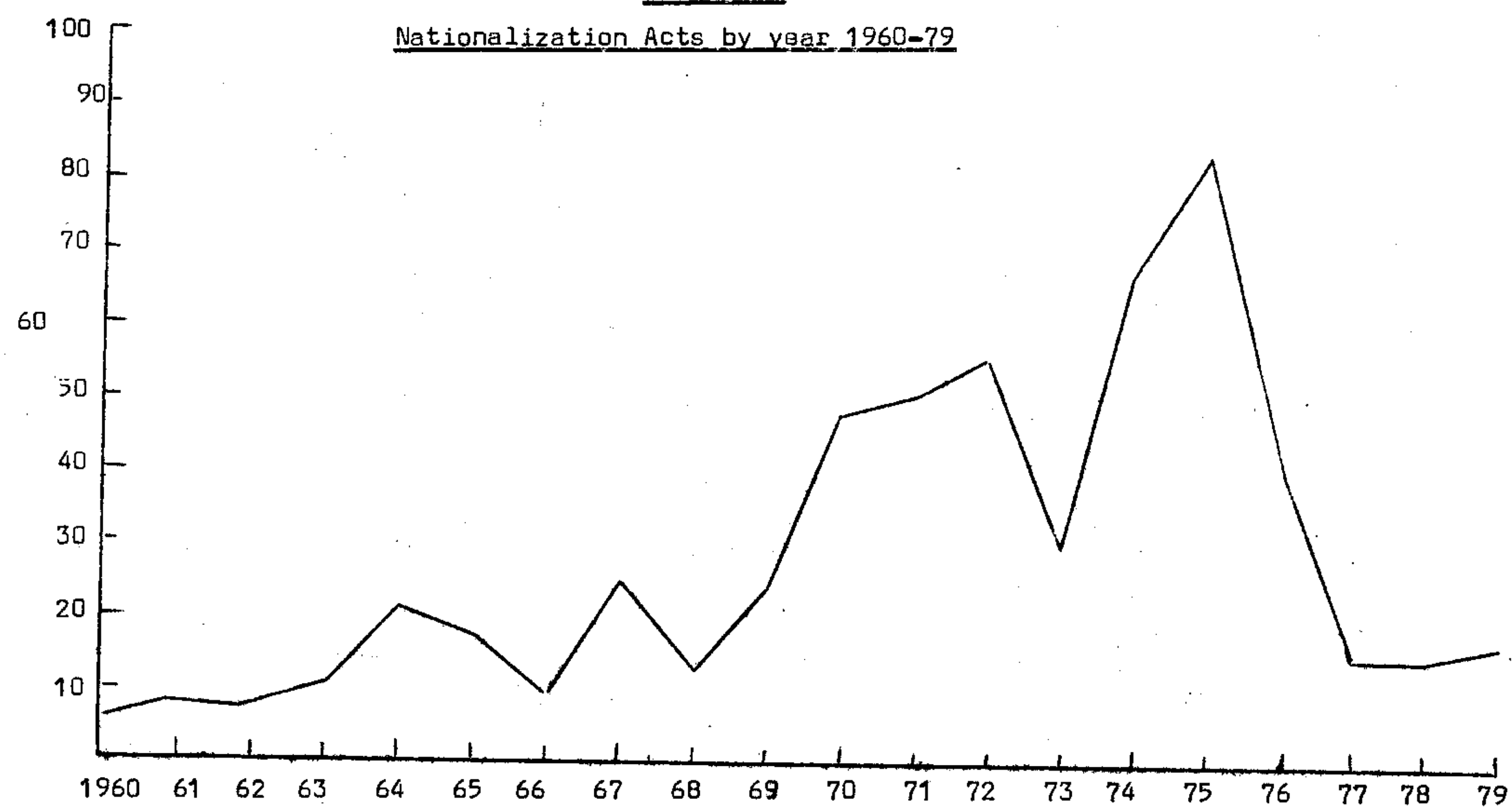
Diagram 4 shows that there was a definite time pattern to forced divestment. Of the 563 acts of nationalisation which occurred in 79 countries, nearly 67% took place during the period 1971-76. In fact, there has been a marked decline in these acts during 1977-79. This pattern seems to reflect the inevitable trend that followed a period of decolonisation and emergence of independent states in different parts of the developing world. It may also mean that a more complex and indirect phenomenon is at work. In many LDCs, indigenous control is perceived as incompatible with foreign control over sectors which are critical to physical and economic security. Thus infrastructure industries and extractive industries are more vulnerable to political intervention.

A further analysis of the 563 acts of nationalization supports this hypothesis (See Table I).[15] Only 10 out of the 79 countries could be regarded as having resorted to nationalisation on the basis of ideological motivation. A classification of the 79 countries by the number of acts committed by them shows that of the 17 countries which had a large number of acts to their credit, 12 had TNCs dominating their extractive industries.[16] Of the 62 countries which had resorted to fewer acts (less than 10), only 13 had TNC domination in their extractive industries. In other words, foreign dominance of the sensitive extractive sector (oil, minerals etc.) alone explains a major share of the forced divestments which have taken place during the past two decades.

A number of reasons might be responsible for the declining trend in acts of nationalisation. _Firstly_, the ownership of major oil and mineral industries seemed to have been taken over by governments in most LDCs by the mid-1970s. _Secondly_, the ability of most LDCs to achieve their goals through regulatory policies has improved significantly. _Thirdly_, a certain measure of learning has taken place and increased confidence in the capacity to administer

Diagram 4

Nationalization Acts by year 1960–79



Source: The CTC Reporter, Fall, 1982

Table 1

Countries Grouped by Number of Acts of Nationalization

(1960-79)

(1 - 10) (No. of Acts)		(11 - 35) (No. of Acts)
Antigua	Nepal	Algeria
Abu Dhabi	Nicaragua	Angola
Afghanistan	Nigeria	Chile
Argentina	Oman	Cango
Bahrain	Pakistan	Ethopia
Benin	Panama	Ghana
Bolivia	Philippines	Indonesia
Brazil	Quatar	Iraq
Burma	Saudi Arabia	Libyan Arab Jamakiriya
Central African Republic	Senegal	Malagasy
Chad	Sierra Leone	Morocco
Colombia	Somalia	Mozambique
Costa Rica	Sri Lanka	Peru
Democratic Kampuchea	Surinam	Sudan
Dubai	Swaziland	Uganda
Dominian Republic	Syrian Arab Republic	United Republic of Tanzania
Ecuador	Thailand	Zambia
Egypt	Togo	
El Salvador	Trinidad & Tobago	
Gabon	United Republic of Cameroon	
Gambia	Venezuela	
Guatemala	Yemen	
Guinea	Zaire	
Guyana		
Haiti		
Honduras		
India		
Iran		
Jamaica		
Kenya		
Kuwait		
Laos People's Democratic Republic		
Lebanon		
Liberia		
Malaysia		
Malawi		
Mauritius		
Mexico		

Source: The CTC Reporter

policies may have weakened the tendency to take procipitate action. Fourthly, the oil crisis and the new resource constraints which many LDCs currently face may have made them more cautious in taking over foreign assets. Thus, while acts of forced divestments are bound to recur, the possibility of mass, ideologically motivated take overs is less likely in the future than has been the case in the past. A trend projection of political risks based on past experience does not seem to be in order for the foreseeable future.

Host Country Policies and Controls

The 1960s and early 1970s witnessed the introduction of a variety of policies and regulations by LDC governments to control TNC activities in their territories. These policies generally specify the conditions for foreign investment and the import of technology. Some observers believe that over the years, such policies have become more pragmatic and flexible in many LDCs.[17] The major areas in which LDC policies have focused are fivefold: domestic ownership and control, specification of priority areas for entry, performance requirements, access to domestic finance, and investment incentives.

Domestic Ownership and Control continue to be the major political and economic objective of most LDC governments. This is reflected in the exclusion of TNCs from investing in sensitive sectors such as national resources. However, the same countries do permit TNCs to participate in these excluded sectors in other ways (eg. contracts, technical collaboration, etc.). Many LDCs now favour majority foreign ownership in capital intensive, technology intensive, and export oriented industries. Greater flexibility in the implementation of these policies is being shown by several LDCs which recognise the limitations of majority domestic ownership as an effective tool of control.

A growing number of LDCs have introduced performance requirements in respect of export obligations, use of domestic raw materials, indigenisation of manufacturing, and employment and training of nationals. The trend in LDCs towards improving national entrepreneurial, managerial, and technological capabilities in order to make domestic control more effective is bound to become stronger over time.

The evolution of policies towards TNCs varies from country to country. By way of illustration, we present below a segmentation of countries by the types of policies towards investment, technology, investment guarantee, and dispute settlement. The analysis is based on data assembled by the United Nations. An overall ranking of countries by the restrictiveness of their policies cannot possibly be done on the basis of such limited data. Indirectly, one can get a sense of the investment environment of a country even from this preliminary analysis.

Diagrams 5 and 6 shed interesting light on the configuration of national policies. Countries which are liberal towards foreign equity participation are generally more liberal about investment guarantees and disputes settlement. On the other hand, a few countries are strict on some dimensions of policy, but liberal on others. Nigeria and Malaysia are more restrictive than several other countries towards foreign equity participation. Yet, they do not have a centralised monitoring agency for the import of capital and technology. Malaysia and Indonesia have provision for settlement of disputes through international institutional arrangements though both are rather restrictive about the conditions for foreign equity participation. National policies should thus be disaggregated and compared on different dimensions in order to gain insights into their implications for prospective entrepreneurs. Clearly, changes in policies will alter these assessments. Hence the need to monitor policies and controls on a continuing basis.

Diagram 5

Segmentation of Countries by Foreign Equity Participation Allowed and Regulations Regarding Investment and Technology Transfer

Investment Technology Transfer \ Foreign equity participation	Ordinarily 51% and less	Ordinarily more than 51%
Centralized/ Government Screening/ Monitoring Agency	India Iraq Algeria Mexico Turkey	Indonesia Ghana Pakistan Egypt Tunisia Papua New Guinea Ancom @
No specific centralised screening/ monitoring agency	Zambia * Nigeria Tanzania Malaysia Iran £	Singapore + Zaire

@ Limits foreign participation to 49% within 15 to 20 years. Andean Common Market.

* The minister approves all investment applications.

£ Since 1979, changes may have taken place in Iran's policies towards TNCs. Lack of documented evidence makes it impossible to classify the country accordingly.

+ Approval is required from the Trade Department for foreign investors who wish to establish sales and trading operations.

Diagram 6

Segmentation of Countries by Foreign Equity Participation Allowed and Provisions for Settlement of Disputes

Settlement of disputes \ Equity participation	Ordinarily 50% and less	Ordinarily greater than 51%
Subject to Local Law	India Iraq Mexico Turkey	Ancom
Subject to Bilateral/ International Provision for Settlement	Algeria Zambia Nigeria Tanzania Malaysia Iran	Indonesia Ghana Pakistan * Egypt Tunisia Papua New Guinea Singapore Zaire

* Foreign awards recognized, but generally disputes settled under code of civil procedure.

Regulating Transborder Data Flows

An interesting new development is the emergence of policies to control the flow of information across national borders in which TNCs have been active in recent years. New technologies have in recent years challenged and transformed conventional concepts of information. Telecommunications and informaties have virtually caused an explosion in information generation and trade across borders with important potential effects on the structures of decision making and political power. Computerised communication has led to the concept of information trade which is distinctly different from the classical trade in goods and services. There are now commercial transborder data flows which are traded and corporate transborder flows which are private and support other economic activities. TNCs have been the pioneers in this field and dominate transactions in data in many LDCs. Since information is a significant source of economic and political power, its potential impact on the development process is enormous. Besides, since the new telematic networks augment the transnational access to data, they are bound to increase the scope for an international exchange of information which could benefit both LDCs and developed nations.

Among LDC governments which have perceived the significance of this new development and evolved policies to regulate transborder flows is Brazil. Through a variety of policies, the Brazilion Government has tried to maximise the information sources located in Brazil and acquire and maintain national control over the technologies and decisions relating to the Brazilian information industry.[18] Brazil has also made considerable progress towards building an infrastructure to facilitate national control over the activities of TNCs and domestic firms in this field. For example, commercial transnational data flows are permitted only through the Brazilian public telecommunications network. In respect of corporate data flows, a copy of the data base is to be retained in Brazil. Data processing abroad is not favoured unless no local alternative exists. For commercial on-line transborder data flows, data base access is encouraged, but in cooperation with a Brazilian institution. These are examples of how an LDC government has intervened in a potentially powerful new industry in which TNCs are dominant, to minimise the abuse of data flows and gain from the use of new technologies and information networks. Brazil has shown that LDCs need to be sensitive to the implications of new technologies and the need to design policies to cope with them since conventional regulations of ownership investment, prices and trade may not be adequate tools of control.

New TNC Responses

The rising wave of forced divestments and more comprehensive host country policies have led to two important developments which deserve to be noted. Firstly, new forms of TNC participation in LDCs have emerged. Secondly, the pattern of financing has changed significantly, leading to the emergence of TNBs as the dominant source of funds, as has already been noted.

The rise of joint ventures in the 1970s shows how TNCs adapted to the policies of LDCs which emphasised domesti ownership and control. Joint venturos and licensing of technology and knowhow without foreign equity participation are two important forms of TNC participation which have become increasingly popular. For example, international payments for trade in technology have increased from $2,700 million in 1965 to over $11,000 million in 1975. The main forms of non-equity arrangements are licensing of patents, trade marks, and knowhow, technical assistance agreements, turnkey and production sharing contracts, financing, management contracts and marketing contracts. These different forms have provided a wide range of alternatives for securing TNC participation and for paying for such participation within the framework of host country policies. However, technology payments by LDCs in the form of fees and royalties account for only 15-20% of the global total of such payments. It is important to note that while TNCs' role in FDI has not accelerated, their growing role in the new forms of non-equity participation represents a different dimension of involvement in LDCs. This development has to be given due recognition in assessing the impact of TNCs on the economic and social development of LDCs.

The growing role of TNBs in the commercial flows to LDCs has several important implications. Is there a close relationship between industrial TNCs and TNBs? Are TNB loans used to finance TNC activities which are forced to reduce the scale of their equity participation in LDCs? Will TNBs have a major influence on the corporate strategies of the industrial TNCs operating in LDCs? There has been a growing trend towards the concentration of industrial assets through mergers in countries like the U.S. Conglomerate mergers, expanding intra-firm trade, growing linkages between industrial TNCs and TNBs, and the increasing indebtedness of LDCs to TNBs may imply interlocking areas of control even though non-equity arrangements and joint ventures may create the impression of the weakening power of TNCs. The implications of these emerging relationships for the bargaining power of LDCs deserve to be examined with care.

III. Behaviour of TNCs : International Concerns

In the 1960s, TNCs were referred to as "engines of development" by some observers. By the end of that decade, however, TNC activities in many parts of the world began to be viewed with considerable alarm and hostility, largely because of their negative impact on many countries, especially LDCs. Political interference in the internal affairs of host countries, economic exploitation through the abuse of transfer pricing and restrictive trade practices, illegal payments and unethical conduct in respect of pricing and advertising are among the facets of their behaviour which received much adverse publicity in the early 1970s. Critics pointed out that the global strategies of the TNCs were invariably in conflict with the national goals of their host countries, and that the inability of any single government to regulate them was the major source of the problem. In a well known critique of TNCs, Barnett and Muller summarised the negative impact of TNCs as follows:

> "Global companies have used their great levers of power - finance capital, technology, organisational skills, and mass communications - to create a Global Shopping Centre in which the hungry of the world are invited to buy expensive snacks and a Global Factory in which there are fewer and fewer jobs. The World Manager's vision of the One World turns out in fact to be two distinct worlds - one featuring rising affluence for a small transnational middle class and the other escalating misery for the great bulk of the human family. The dictates of profit and the dictates of survival are in clear conflict."[19]

In both developed and developing countries, trade unions have been highly critical of the behaviour of TNCs. Though the latter are usually high wage islands, trade unions have questioned corporate decisions to close down operations in some countries and shift them to others. Such decisions are consistent with the global strategies of TNCs, but are not in the interests of worker groups.

Yet another major reason for the rising international hostility towards large TNCs is their role in South Africa where, it was alleged, that the racist regime has received support and collaboration from TNCs inspite of international sanctions against this regime. Trade unions and governments of LDCs (Group of 77) have publicly condemned this unjust conduct of TNCs. The UN Commission on TNCs has documented extensively the involvement of TNCs in South Africa. As a result of the mounting pressure, countries such as Sweden have recently prohibited their TNCs from investing in South Africa.

Thus during the past decade, considerable international concern has been expressed about the behaviour of TNCs and their adverse impact in terms of the political, economic and social consequences of their actions especially in LDCs. It is not that their positive role and potential contribution towards accelerating development were not recognised. But this aspect was drowned in the international publicity given to the disclosure of many instances of corporate misconduct. This development has led to interventions of two types. The first is a deliberate move by host and home countries to regulate the activities of TNCs through national policies and laws. The second is a move towards the international regulation of TNC conduct, not through legislation, but by laying down standards for TNC behaviour through the medium of the United Nations, and international business organisations. We have already commented on national policy interventions. The aims of these endeavours is to create a national framework to minimise the negative effects of TNCs while improving their positive contribution to the process of development. In this section, we shall survey the international regulatory interventions currently under negotiation.

The need for an international framework stems from the realisation that national regulation and control are inadequate to deal effectively with the global strategies of TNCs. LDCs, especially the smaller among them, have found the task of regulation too complex and cumbersome. A multilateral approach has therefore been welcomed by all developing countries. Developed countries have also seen merit in the multilateral adoption of common standards for TNC behaviour. The code of conduct for TNCs formulated under the auspices of OECD (Organisation for Economic Cooperation and Development) is an example of a joint intervention by developed countries to regulate TNC conduct. Another important international response was the establishment of a United Nations Commission on Transnational Corporations in 1974. In creating this Commission, and a Centre to serve as its Secretariat in New York, the UN General Assembly signalled the high priority it attached to the formulation of a code of conduct dealing with TNCs, and strengthening the capacity of LDCs to regulate TNC conduct.

Other agencies within the UN system have also been active in formulating codes of conduct for TNCs in specialised areas. Thus, the International Labour Organisation (Geneva) has concluded a code of conduct on employment practices.[20] The UNCTAD (UN Conference on Trade & Development) is engaged in the formulation of a code of conduct on the transfer of technology and restrictive business practices.[21] The proposed UN code of conduct will incorporate these specialised codes as well as the more general principles and guidelines of a political, economic, legal and social nature.

Areas of Concern

The draft UN Code of Conduct highlights the major areas of international concern about TNC behaviour and the nature of standards which this international body is struggling to evolve. The very fact that more than five years have passed since this work began shows how difficult it is to reach a consensus on these complex issues. The substantive provisions (yet to be adopted) of the proposed UN code may be divided into four parts:

1. General and Political Matters

The issues covered in this section are as follows:

a) TNCs should respect national sovereignty and observe the domestic laws, regulations and administrative practices of their host countries;

b) TNCs should adhere to the economic goals, politice and priorities of the host country;

c) Contracts between governments and TNCs should be negotiated in good faith. Where there has been a fundamental change in circumstances, TNCs should cooperate with governments for review or renegotiation of the contracts involved;

d) TNCs should respect the socio-cultural objectives and values of countries;

e) TNCs should respect human rights and fundamental freedoms in the host countries, and avoid discrimination on the basis of race, creed and colour;

f) Non-collaboration of TNCs with the racist regime of South Africa is emphasised with a call to TNCs to divest their South African assets;

g) TNCs should not interfere in the internal affairs of the host countries;

h) TNCs should not interfere in intergovernmental relations;

i) TNCs should refrain from corrupt practices, and maintain records of payments to public officials and their intermediaries.

2. <u>Economic, financial and Social Matters</u>

There are seven major themes under this section:

a) TNCs should allocate decision making powers among its entities so as to enable them to contribute to the development of the countries in which they operate;

b) TNCs should not engage in short term financial operations so as to destabilise the currency of the/country, and worsen its balance of payments;

/host

c) TNCs should not use pricing policies in their intrafirm transactions that are not based on market prices or the arm's length principle;

d) TNCs should not, contrary to national laws, use their corporate structure and mode of operations to modify their tax base;

e) TNCs should refrain from restrictive business practices in their operations;

f) TNCs should conform to the transfer of technology laws and regulations of their host countries;

g) TNCs should observe national laws pertaining to the protection of consumers and the environment.

3. Disclosure of Information

a) TNCs should disclose to the public in the host country information on the structure, policies and activities of the corporation as a whole. The financial information on their operations should be presented on a consolidated basis annually.

b) TNCs should provide to trade unions the necessary information on the activities discussed in the code, and where appropriate on the corporation as a whole.

4. Treatment of TNCs : Obligations of States

On issues relating to the treatment of TNCs by governments, representatives of governments are divided. The question of settling disputes in the event of nationalisation is one such issue. Many LDCs feel that TNCs should be subject solely to national laws and regulations in this case whereas developed countries argue that settlements should be in accordance with international law and conventions. The question of defining a TNC is also in dispute. The Soviet Union has argued that state owned enterprises should not come within the purview of the definition.[22] Most other countries feel that the code should apply to both private and public enterprises operating in two or more countries.

If and when the code is completed, member governments of the United Nations will be asked to adopt it for implementation through an inter-government agreement.[23] It is unlikely that the declaration of a code of conduct will drastically influence the behaviour of TNCs. The clout of a general code of conduct of this type cannot possibly come from its being a legal instrument. Rather, its impact will be determined by the support it receives from member states who in turn might incorporate many of its key provisions in their own laws and regulations. The code itself may remain a voluntary instrument, and yet make its impact felt through the cooperative action it may facilitate among governments. For example, discussions on the code have already had an educative effect on many LDC governments which are now more aware and sensitive to what they can do to regulate international business. TNCs have also been influenced by these debates, and have begun to adapt to the new situation by resorting to new forms of non-equity participation and disclosing more information about their operations. LDC governments are seeking technical assistance and advice to improve their policies and controls in respect of foreign investment and technology import.

IV. Emerging Trends and Their Implications

We summarise below some patterns which emerge from the foregoing analysis. It is risky to predict future trends in country policies, and the likely behaviour of TNCs in the face of increasing controls. One can only speculate on these complex issues. For one thing, countries will differ in terms of the influence global trends will have on their policies and behaviour. They tend to differ also in their capacity to modify their own environments. We cannot, therefore, expect that all LDCs or TNCs will behave similarly in the face of the developments analysed above. Nevertheless, we highlight below four areas which deserve careful attention.

Control through Policies

LDCs are likely to rely increasingly on policy interventions to regulate international business under their jurisdiction rather than through precipitate action such as forced divestments. As has been noted, the political risk of expropriation by LDCs may now become less significant than in the past. Instead, taking advantage of the information generated through international agencies such as the UN, governments may compare notes among themselves and improve their control and policy capabilities. For instance, the UN code's focus on domestic ownership, consumer protection etc., is bound to encourage LDCs which have left these aspects unspecified to initiate suitable laws and regulations in this regard. In a sense, this is a positive development though some businessmen may see it as an unwanted intervention. LDC governments may in the process become less arbitrary which is better for business in the long run.

Focus on Selected Aspects of Operations

An important consequence of the public debate on the global concerns about TNCs and the code of conduct is that LDC governments will watch more closely, and certainly raise questions about important aspects of business operations. Likely targets are transfer pricing, employment and training of nationals, domestic ownership and balance of payments impact on their economies. Sensitivity to these issues has been hightened by recent public debates. Technical assistance to governments to analyse country experiences is likely to be increasingly available in the future. Especially in view of the resource constraints faced by many governments, the impact of enterprise behaviour in these areas will be closely monitored.

Disclosure of Information

Whether small or large, TNCs are likely to be asked by host countries to divulge more information about their operations on a global basis. This is one part of the UN code which has been agreed to by both developed and developing country governments. One might argue about the effectiveness of this approach as TNCs will always find ways of hiding more than they reveal. But there is no question about the direction in which the wind is blowing. The major implications of the requirement of information disclosure are the following:

(a) A TNC in a host country may be required to disclose financial and non-financial data not only about its operations in that country, but also on its operations in other countries on a consolidated basis. Details may have to be provided by country on sales, operating results, new investments, etc. For smaller TNCs, these requirements could mean an additional burden although confidentiality of data is to be assured by governments. The objective here is to enable host countries to obtain a fuller picture of the TNC's operations and compare the performance of its entities in different countries.

(b) The disclosure of accounting policies and policies on transfer pricing of the TNC is to help governments crosscheck ongoing practices. It is possible that comparisons will enable governments to propose changes or monitor certain practices more closely.

(c) The disclosure of information to trade unions is to enable the latter to obtain a true and fair view of the performance of the TNC. Specifically, plans for future development which have major implications for employees may have to be made available to the latter. The bargaining pressure from trade unions can be expected to derive strength from this provision. In brief, those engaged in international business should note that their operations will become more of an open book in the future than has been the case in the past.

Increased Bargaining Power of Host Countries

Increased policy orientation and sensitivity on the part of governments and the public dissemination of the provisions of the different codes of conduct on TNCs can be expected to strengthen the bargaining power of host countries, many of whom are LDCs. As we have noted, a voluntary code cannot have any legal sanction behind it. However, public discussion about such codes of conduct and the sharing of experiences in regulating TNCs among LDC governments will improve the knowledge base of the latter and enable them to learn faster in the process. Governments of developed countries which are home and host countries all along have taken legislative and other measures to ensure that TNCs conduct their affairs within the framework of their goals and policies. It is a similar path that LDCs now seem to be taking. Well designed policies, disclosure of information, publicised codes of conduct, and increased competition among TNCs due to larger numbers and newer forms of non-equity participation could thus strengthen the bargaining power of LDCs in dealing with TNCs. A great deal, however, will depend on the institutional capacities and monitoring skills of these governments.

References

1. A home country is one where a transnational originates. A host country is a country where it operates. A transnational corporation is an enterprise with commercial operations in two or more countries.
2. One may argue that Indian enterprises and collaborations abroad will be relatively small and therefore unlikely to attract such criticisms. Yet, comments on Indian ventures operating in African and Asian countries show that they will be vulnerable to such criticisms.
3. FDI is regarded as a good measure of the investment abroad by TNCs.
4. Licensing, technical collaboration, management contracts, etc. are forms of non-equity participation by TNCs. This issue will be discussed further in later sections of this paper.
5. The data reported in this section are based on the following report: UN, Transnationals in World Development - A Reexamination, New York, 1978.
6. See UN report cited above for further details.
7. The least developed countries received only a negligible share of FDI.
8. Eg. mining, oil and mineral related industries.
9. See Diagram 2.
10. "Issues in East-West Industrial Cooperation", Economic Bulletin for Europe, March, 1981.
11. The service sector refers to industries such as commercial banking. insurance, tourism, advertising, consultancy, etc.
12. UN, Salient Features of Foreign Investment, New York, 1982.
13. See Transnationals in World Development - A Re-examination New York, 1978.
14. S. Kobrin, Trends in Forced Divestments of Foreign Affiliates 1960-79, Report for UNCTC, 1982.
15. Based on data furnished in Kobrin's study.
16. The remainder are highly ideologically or politically motivated regimes as in Ethiopia and Uganda.
17. N.P. Girvan, "TNCs in a changing world economic environment : Some issues for research and policy", CTC Reporter, Fall, 1982.
18. Details are based on Transnational Corporations and Transborder Data Flows : A Technical Paper, United Nations, New York, 1982

19. R. Barnett & R. Muller, Global Reach : The Power of the Multinational Corporations, Simon & Schuster, New York, 1974, p. 184.

20. ILO, The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Geneva, 1977)

21. UNCTAD's progress on this code has been slow. Some of the provisions on technology transfer have run into rough weather because of the opposition of developed countries.

22. The basic argument is that the need for the code arose out of the misconduct of private TNCs engaged in profit maximisation.

23. The implementation of the code is to be monitored by the UN Commission on TNCs. The OECD similarly monitors the working of its code and prepares periodic reports on itsprogress and problems.