

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

SOCIAL RESPONSIBILITY

UNCTAD Series
on issues in international investment agreements



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NOTE

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The following symbols have been used in the tables:

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IIA Issues Paper Series

The main purpose of the UNCTAD Series on issues in international investment agreements – and other relevant instruments – is to address concepts and issues relevant to international investment agreements and to present them in a manner that is easily accessible to end-users. The series covers the following topics:

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- Taxation
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- Transfer of technology
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Preface

The secretariat of the United Nations Conference on Trade and Development (UNCTAD) is implementing a work programme on international investment agreements. It seeks to help developing countries to participate as effectively as possible in international investment rule-making at the bilateral, regional, plurilateral and multilateral levels. The programme embraces capacity-building seminars, regional symposia, training courses, dialogues between negotiators and groups of civil society and the preparation of a Series of issues papers.

This paper is part of that Series. It is addressed to government officials, corporate executives, representatives of non-governmental organisations, officials of international agencies and researchers. The Series seeks to provide balanced analyses of issues that may arise in discussions about international investment agreements. Each study may be read by itself, independently of the others. Since, however, the issues treated closely interact with one another, the studies pay particular attention to such interactions.

The Series is produced by a team led by Karl P. Sauvant and Pedro Roffe. The principal officer responsible for its production is Anna Joubin-Bret who oversees the development of the papers at various stages. The members of the team include S. M. Bushehri, Patricia Mira Pontón, Aimé Murigande and Jörg Weber. The Series' principal advisors are Arghyrios A. Fatouros, Sanjaya Lall, Peter T. Muchlinski and Patrick Robinson. The present paper is based on a manuscript prepared by Peter T. Muchlinski and Sol Picciotto. The final version reflects comments received from Marino Baldi, Werner Corrales, William Dymond, Rainer Geiger, Felipe Jaramillo, Georg Kell, John Kline, Stephen Pursey, Mansur Raza, Homai Saha, Chak Mun See, Marinus Sikkel and Andreas Ziegler. The paper was desktop-published by Teresita Sabico.

Geneva, April 2001

Rubens Ricupero
Secretary-General of UNCTAD

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UNCTAD has carried out a number of activities related to the work programme in co-operation with other intergovernmental organizations, including the Secretariat of the Andean Community, l'Agence pour la Francophonie, the Inter-Arab Investment Guarantee Corporation, the League of Arab States, the Organization of American States, la Secretaria de Integración Económica Centroamericana and the World Trade Organization. UNCTAD has also cooperated with non-governmental organizations, including the German Foundation for International Development, the Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico – Universidad de Buenos Aires, the Consumer Unity and Trust Society – India, the Economic Research Forum – Cairo, the European Roundtable of Industrialists, the Friedrich Ebert Foundation, the International Confederation of Free Trade Unions, Oxfam, SOMO – Centre for Research on Multinational Corporations, the Third World Network, la Universidad del Pacifico, the University of the West Indies, and World Wildlife Fund International.

Funds for the work programme have so far been received from Australia, Brazil, Canada, France, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the European Commission. Countries such as China, Egypt, Guatemala, India, Jamaica, Morocco, Peru, Sri Lanka and Venezuela have also contributed to the work programme by hosting regional symposia. All of these contributions are gratefully acknowledged.

Table of contents

	Page
Preface	iv
Acknowledgements	v
Executive summary	1
INTRODUCTION	3
I. EXPLANATION OF THE ISSUE	5
II. STOCKTAKING AND ANALYSIS	17
A. Development obligations	17
B. Socio-political obligations	22
C. Consumer protection	25
D. Emerging issues	35
1. Corporate governance	35
2. Ethical business standards	37
3. Observance of human rights	40
III. INTERACTION WITH OTHER ISSUES AND CONCEPTS	47
CONCLUSION: ECONOMIC AND DEVELOPMENT IMPLICATIONS AND POLICY OPTIONS	53
References	63
Selected UNCTAD publications on transnational corporations and foreign direct investment	71
Questionnaire	83

Boxes

1.	Principal obligations of TNCs in the draft United Nations Code of Conduct on Transnational Corporations	6
2.	The OECD Guidelines for Multinational Enterprises	7
3.	A compact for the new century	9
4.	Development obligations imposed on regional multinational enterprises in investment promotion agreements between developing countries	19
5.	OECD Guidelines for Multinational Enterprises and the protection of consumer interests	28
6.	Examples of ethical codes of conduct	38
7.	Human rights and labour rights	42
8.	Amnesty International Human Rights Guidelines for Companies	44

Table

1.	Interaction across issues and concepts	47
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Executive summary

The social responsibility of corporations, including transnational corporations (TNCs), is typically not addressed in most international investment agreements (IIAs). Nonetheless, it is a question that has been raised through the adoption, since the 1970s, of international codes of conduct for TNCs. More recently, it has been addressed in a number of international fora and the United Nations Global Compact. The concept of corporate social responsibility is potentially very wide and may encompass most matters pertaining to the economic and social impact of TNCs. However, a more specialized approach to this concept is emerging. As a result, a number of aspects — including development obligations, socio-political obligations and consumer protection — have received some attention, and others (especially corporate governance, ethical business standards and the observance of human rights) seem to be emerging issues. These matters constitute the focus of the present paper. This is in addition to obligations particularly as regards the environment and employment issues, which are sufficiently developed in relation to their operation in international investment instruments to deserve separate study in other papers in this Series.

Given that the issues covered by this paper are relatively new to IIAs, but that their content is already developed in other instruments and codes of conduct, the stocktaking in section II draws not only on IIA provisions but also on provisions in other instruments that offer examples of the types of provisions that may be used to operationalize social responsibility obligations.

Social responsibility obligations interact with a number of other concepts, including taxation, transfer pricing, competition, transfer of technology, employment, environment, illicit payments and transparency. These interactions are considered in section III. As such, social responsibility provisions interact with a great number of other issues to be found in IIAs.

Social Responsibility

The concluding section considers economic and development implications, particularly policy options. The challenge is to balance the promotion and protection of liberalized market conditions for investors with the need to pursue development policies; social responsibility obligations are one way to move towards such a balance. Above all, social responsibility standards must be applied with sensitivity to the realities of local conditions in developing countries and should not be misused for protectionist purposes. In this light, the policy options discussed range from an absence of any reference to social responsibility in IIAs to the inclusion of non-binding standards through the reservation of regulatory powers in relation to social responsibility to the use of a no lowering of standard clause, home country promotional measures and, lastly, the inclusion of generally binding social responsibility provisions.

INTRODUCTION

Corporate social responsibility is a well-known concept in national law. Its origins can be traced to the rise of modern corporations whose shares can be freely traded on stock markets. This has necessitated a degree of protection for shareholders, who need sufficient and accurate information about the performance of companies as a guide to their investment decisions. This in turn has led to comprehensive laws on shareholder protection, both through the regulation of governance structures and disclosure regimes under company laws and through specialized securities laws that govern the trading of stocks and shares.

However, new issues of corporate social responsibility have emerged. No longer are companies regarded as being responsible to shareholders alone, although this concept still holds a central position in legal systems. For example, responsibility to employees and other “stakeholders” in a company is a concept that has gradually been gaining ground in national laws. Furthermore, wider issues, such as the need for companies to take active and responsible steps to minimize pollution, to protect consumer interests, to refrain from illicit practices or to observe fundamental ethical and human rights standards, have also inspired new regulatory initiatives.

These national trends are beginning to have an impact at the international level as well. The aim of this paper is to examine how far issues of corporate social responsibility have found their way into the provisions of international investment agreements (IIAs). Although not a central feature in most IIAs, social responsibility provisions seem to be increasingly in evidence, especially in relation to labour, environmental and consumer protection questions. However, as sections I and II will show, there are a number of other issues that come under the umbrella of social responsibility. Defining the boundaries of this concept is thus the first task of this paper, and is addressed in section I.

Social Responsibility

Section II analyses existing provisions in IIAs that cover the defined field. These may take the form of non-binding or binding clauses; they may be addressed to Governments, to Governments and enterprises, or to enterprises alone, and may be generated by intergovernmental organizations, national Governments, transnational corporations (TNCs), industry groups, employers' associations, or civil society groups acting through non-governmental organizations (NGOs) or trade unions. The implications of these alternative sources are considered. Section III looks at interactions between the concept of social responsibility and other IIA issues, while the concluding section outlines policy options for negotiators in this field.

Section I

EXPLANATION OF THE ISSUE

Corporate social responsibility is at the heart of the obligations that firms owe to the societies in which they operate.¹ This relationship is further accentuated and sensitized when the firms involved are foreign affiliates of TNCs. Such obligations can be seen as the *quid pro quo* for the protection of investors and investments under IIAs, should the negotiating parties to an IIA seek such a balance of rights and responsibilities for investors and their investments. However, it may also be argued that such responsibilities amount to corporate duties that should be discharged independently of the protection given by host countries to foreign investment.

What precisely is meant by social responsibility in the context of IIAs? This issue can be considered in the broader context of the overall obligations of TNCs, and these can be drawn rather widely. For instance, the draft United Nations Code of Conduct on Transnational Corporations² (which was never adopted) lists the obligations of TNCs across a wide range of issues relating to such matters as respect for the sovereignty of the host State and its political system, respect for human rights, abstention from corrupt practices, refraining from using their economic power in a manner damaging to the economic well-being of the countries in which they operate, including observance of tax and anti-monopoly laws, and ensuring full disclosure concerning their activities. (A full listing of the matters covered by the draft United Nations Code of Conduct is given in box 1.) A similar list of obligations is to be found in the (voluntary) OECD Guidelines for Multinational Enterprises, which were revised in 2000 (box 2).

Box 1. Principal obligations of TNCs in the draft United Nations Code of Conduct on Transnational Corporations

The Code of Conduct lists the obligations of TNCs under the general heading of “Activities of Transnational Corporations”, comprising three subheadings. Under the subheading “General and political”, the following are found:

- “respect for national sovereignty and observance of domestic laws, regulations and administrative practices;”
- “adherence to economic goals and development objectives, policies and priorities; ”
- “review and renegotiation of contracts;”
- “adherence to socio-cultural objectives and values;”
- “respect for human rights and fundamental freedoms;”
- “non-collaboration by transnational corporations with racist minority regimes in southern Africa;”^a
- “non-interference in internal political affairs;”
- “non-interference in intergovernmental relations;”
- “abstention from corrupt practices.”

Under the subheading “Economic, financial and social” responsibilities come:

- the duty, by TNCs, to allocate their decision-making powers among their entities so as to enable them to contribute to the economic and social development of the countries in which they operate;
- observance of the balance of payments policies and financial transactions policies of such countries;
- avoidance of transfer pricing practices;
- avoidance of corporate structures and practices aimed to modify the tax base of the corporation contrary to national laws and regulations;
- observance of the principles concerning restrictive business practices and competition as contained in the Set of /...

Box 1 (concluded)

Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980;

- contribution to strengthening the technological capacities of developing countries in accordance with the practices and priorities of these countries;
- observance of national consumer protection laws and regulations and international standards;
- observance of environmental protection laws and regulations and international standards;
- take steps to protect the environment and make efforts to develop and apply adequate technologies for this purpose.

The third subheading concerns “Disclosure of Information” and urges TNCs to disclose to the public in the countries in which they operate, by appropriate means of communication, full and comprehensible information on the structure, policies, activities and operations of the TNC as a whole.

Source: UNCTAD, 1996, vol. I. pp. 161-171.

^a The apartheid regime in Southern Africa has since been abolished.

Box 2. The OECD Guidelines for Multinational Enterprises**II. General Policies ^a**

“Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.

/...

Box 2 (concluded)

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities."

The OECD Guidelines also have an implementation mechanism which, among other things, can make use of National Contact Points.

Source: OECD, 2000a, pp. 3-4.

^a The remaining chapters include "Disclosure", "Employment and Industrial Relations", "Environment", "Combating Bribery", "Consumer Interests", "Science and Technology", "Competition and Taxation".

As may be apparent from this wide-ranging list of issues, the precise classification of corporate social responsibility standards is difficult, since the concept potentially covers all aspects of corporate behaviour. However, some typology is necessary so that negotiators can have a more focused view as to what issues fall under this general heading.

In this connection, the United Nations Secretary-General, Kofi Annan, in a speech to the World Economic Forum in Davos on 31 January 1999, challenged world business leaders to “embrace and enact”, both in their individual corporate practices and by supporting appropriate public policies, nine universally agreed values and principles derived from universally accepted United Nations instruments. He placed observance of human rights, labour rights and environmental protection at the heart of a socially responsible agenda for global business (box 3). This list was not designed as a code, but as a “framework of reference to stimulate best practices”, in order to bridge the legitimacy gap created by the rapidity of economic globalization outpacing “the ability of societies and their political systems to adjust to them, let alone to guide the course they take” (Annan, 1999). This is intended as an inter-agency activity of the United Nations (involving the International Labour Organization, the United Nations Environment Programme and the Office of the High Commissioner for Human Rights) (Kell and Ruggie, 1999).

Box 3. A compact for the new century

The Secretary-General asked world business to uphold the following:

1. The Universal Declaration of Human Rights

- support and respect the protection of international human rights within their sphere of influence; and
- make sure their own corporations are not complicit in human rights abuses.

/...

Box 3 (concluded)

2. The International Labour Organisation's Declaration on fundamental principles and rights at work

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced and compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

3. The Rio Declaration of the United Nations Conference on Environment and Development

- support a precautionary approach to environmental challenges;
- undertake initiatives to promote greater environmental responsibility;
- encourage the development and diffusion of environmentally friendly technologies.

Source: UNCTAD, based on Annan, 1999.

With regard to drawing up social responsibility provisions for IIAs, the key issues identified by the Secretary-General are by no means exhaustive (UNCTAD, 1999b). Other issues of relevance to developing countries in particular (especially in the economic area) can be gleaned from the above-mentioned draft United Nations Code of Conduct and the OECD Guidelines for Multinational Enterprises. They include technology transfer, training of the local workforce, the importance of backward linkages and the promotion of local entrepreneurship. Equally, certain issues of interest to both developing and developed countries regarding the proper regulation of corporate behaviour are also present in the draft Code and the Guidelines. In particular, requirements regarding transparency through corporate disclosure, accountability

through corporate governance structures to various stakeholder groups, and ethical responsibility in relation to such matters as illicit payments, advertising and product safety and quality could be included under the broad heading of social responsibility.

Thus, social responsibility may assume economic, social, political and ethical dimensions in that TNCs are expected to conduct their economic affairs in good faith and in accordance with proper standards of economic activity, while also observing fundamental principles of good socio-political and ethical conduct. Although the latter issue has been dealt with in the past — as witnessed, for example, by the references to the observance of human rights and non co-operation with the apartheid regime in South Africa in the draft United Nations Code of Conduct — it is receiving renewed emphasis today, as shown by the Secretary-General's highlighting of these issues. Such a position is also taken in the General Policies section of the revised OECD Guidelines (box 2). On the other hand, responsibilities in respect of economic matters (which were prominent in earlier years) are receiving less attention, in line with a general inclination in the economic sphere to rely more on market forces. The rise of social, ethical and environmental concerns suggests, however, that, a certain re-balancing may eventually take place — if only because market pressures may seek to protect their brand names by behaving in a socially responsible manner and avoid being caught in a general impression that business is socially irresponsible because of the behaviour of firms.

Given the range of questions that come under the heading of “corporate social responsibility”, they can not all be covered in one paper. Indeed, certain issues have generated sufficient IIA practice and/or are important enough in their own right to deserve being dealt with in separate papers in this Series. These include:

- environmental issues;
- employment;
- transfer of funds;

Social Responsibility

- competition;
- transfer pricing;
- taxation;
- technology transfer;
- illicit payments;
- transparency and disclosure; and
- foreign direct investment and development.

These matters will therefore not be discussed in the present paper, although, brief references and illustrations taken from these other areas will be used where this adds to the clarification of the issues discussed here.

The present paper focuses on certain specific questions of social responsibility that extend the coverage of IIAs to matters falling within the broad notions of development obligations, socio-political obligations, and the protection of consumers. These can be briefly introduced as follows:

- **Development obligations.** Such obligations arise as a result of TNCs potential impact on the economic development goals of the host countries in which they operate. In particular, countries seek to harness the economic resources of TNCs to help achieve such goals. On the other hand, there is a danger that their weight may be applied without due consideration of its effects on such goals. Consequently, certain development-oriented IIAs have addressed the issue by requiring enterprises to observe development policy goals in their operations. Equally, non-governmental instruments have stressed the need for TNCs to act in a manner consistent with development goals. As discussed earlier, development obligations cover a number of economic issues. Given their importance, they are dealt with in separate papers. The discussion below therefore focuses only on the broader concept of development obligations.
- **Socio-political obligations.** Apart from employment issues, which (owing to their importance) are examined in a

separate paper,³ these cover such corporate responsibilities to host countries as non-involvement in a host country's political processes, observance of the sovereignty and cultural integrity of host countries, and cooperation in good faith with the economic and social policies of those countries. These obligations were included in various codes of conduct relating to TNCs developed during the 1970s, as a response to the perceived risk to host country sovereignty and independence posed by powerful TNCs.

- **Consumer protection.** With the growth of international business, consumer issues have, in their turn, taken on an increasingly international character, involving issues relating to, among others, marketing, product packaging, sales and safety. In response, a trend has developed in intergovernmental organizations dealing with specific consumer-oriented issues towards drawing up codes of conduct after consultation with experts, corporations, civil society and other interested parties, in areas that have become of central interest to society, given the potential (if not actual) harm that corporate activity could generate for consumers in the area concerned. The best-known example is the WHO Code of Breast-milk Substitutes. More general initiatives have taken place at the level of the United Nations and the OECD. These will be examined further in section II below.

Three other areas are increasingly being addressed by firms in their own corporate codes and in national laws concerning corporate responsibilities, as well as in some international instruments. These **emerging issues** may well become important in relation to IIAs in the years ahead:

- **Corporate governance rules** have more recently been set out in an OECD instrument. Corporate governance, as defined in the OECD Principles, concerns primarily the relationships between a company's management, its board, its shareholders and its other stakeholders. In the main, these relationships involve the governance of a corporation

for gain. However, the reference to “other stakeholders” introduces issues of corporate social responsibility, in that this term refers to other groups of persons interested in the operation of a corporation apart from its investors, namely employees, contractors, trade unions, consumers and consumer groups and the general public at large. Indeed, the OECD Principles assert, in the Preamble, that “factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the reputation and the long-term success of that company”.

- **Ethical business standards** have hitherto generated numerous corporate, industry, governmental and intergovernmental codes dealing not only with industry-specific matters but also, more broadly, general policies of good corporate behaviour that seek to ensure an ethical approach to the conduct of business.
- **The observance of human rights** standards by TNCs has generated a number of codes and guidelines emanating from civil society groups, which require *inter alia* respect by TNCs for fundamental human rights in their relations with local communities in the countries in which they operate, avoidance of complicity in human rights abuses and violations by the Governments of countries of those countries, and ensuring that corporate security policies do not violate human rights.

In each case, new transnational standards of good corporate conduct may be developed which may qualify the scope of investor protection standards in IIAs, especially as regards the issue of home or host country regulation.

The next section of this paper provides a general survey of these more specific measures or provisions covering social responsibility areas that are not dealt with in other papers in this Series.

Notes

- ¹ For a discussion of the concept of social responsibility and its implications, see UNCTAD, 1994 and 1999a, ch. XII.
- ² Unless otherwise indicated, all instruments cited herein may be found in UNCTAD, 1996 and 2000b.
- ³ Particularly relevant here is the ILO's "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy", adopted in 1977. In a sense, this instrument was one of the first "social responsibility codes"; it also included a follow-up mechanism.

Section II

STOCKTAKING AND ANALYSIS

Following on from the list of issues discussed in section I, this section analyses in more detail the substance of existing IIAs dealing with social responsibility. Overall, it needs to be noted that the subject matter of this paper is conspicuous by its relative absence from IIAs. On the other hand, there are numerous voluntary codes of conduct developed by TNCs, industry groups, employers' organizations, NGOs and intergovernmental organizations that have produced standards in this area and may help in creating an environment that could promote the wider acceptance of their provisions by the international community. At the same time, however, care needs to be taken that social responsibility standards are not abused for protectionist purposes. While concentrating primarily on the provisions of IIAs, this section will also draw on those other sources as necessary so as to provide a more complete picture of the types of issues that may arise in connection with future IIAs.

A. Development obligations

Certain IIAs introduce positive, albeit voluntary, obligations upon enterprises to act in a manner consistent with the development goals and policies of the developing countries in which they operate. Thus the draft United Nations Code of Conduct on TNCs stresses, in paragraph 9, the need for TNCs to carry out their activities in conformity with the development policies, objectives and priorities set out by the Governments of the countries in which they operate. TNCs are, in addition, expected to work seriously towards the achievement of those objectives and to consult with those countries for that purpose. Similarly, the revised OECD Guidelines provide that enterprises should "contribute to

Social Responsibility

economic, social and environmental progress with a view to achieving sustainable development” (OECD, 2000a, p. 3). This general commitment to sustainable development is accordingly echoed in the Guideline on the environment, in which enterprises are required to take due account of the need to protect the environment, and public health and safety, and generally conduct their activities in a manner contributing to the wider goal of sustainable development (ibid., p. 6). Likewise, the Guideline on Science and Technology exhorts enterprises to ensure that their policies in this area are compatible with those of the countries in which they operate and that they contribute to the development of local and national innovative capacity. In addition, where enterprises grant licences for the use of intellectual property rights, or otherwise transfer technology, they should do so on reasonable terms and conditions and in a manner that contributes to the long-term development prospects of the host country (ibid., p. 8). Finally, in relation to the Guideline on Disclosure, the OECD Commentary on the revised Guidelines notes that enterprises may take special steps to make information available to communities that do not have access to printed media, for example poorer communities that are directly affected by the enterprise’s activities (OECD, 2000b, p. 6, para. 17).

In contrast to the voluntary provisions outlined above, a particular type of a binding, development-oriented clause can be found in regional investment promotion agreements entered into by developing countries *inter se*. Typically, such agreements may offer preferential treatment for enterprises established by regional investors from more than one member country. Such treatment is made conditional upon observance, by the enterprise in question, of the development objectives of the member countries in which the enterprise operates. Failure to observe these objectives may lead to the withdrawal of privileged status for the enterprise.

Box 4. Development obligations imposed on regional multinational enterprises in investment promotion agreements between developing countries

- Community Investment Code of the Economic Community of the Great Lakes Countries (CEPGL) (1982), Article 19: the authorized Community enterprise shall agree *inter alia* to “develop local resources; give priority of supply to CEPGL Member States in times of scarcity; give priority to exports to Member States of the goods produced”. The privileges of the enterprise may be revoked under the procedure outlined in Articles 50-53.
- Charter on a Regime of Multinational Industrial Enterprises (MIEs) in the Preferential Trade Area for Eastern and Southern African States (1990), Article 17: MIEs are obliged to implement a local value-added programme, an export programme and a training programme. Under Article 19 MIEs must contribute to “a Special Development Tax for the benefit of the less developed Member States of the Preferential Trade Area”. Under Article 20 the status of an MIE can be revoked for “a serious violation or a number of recurring violations of this Charter”.
- Agreement for the Establishment of a Regime for Caribbean Community (CARICOM) Enterprises (1987): Article 3 provides for a general power to determine the purposes and functions of such an enterprise. Article 11 (2c) allows for the revocation of such status where the enterprise carries out business in gross or persistent violation of the Agreement.

Source: UNCTAD, 1996.

Another source for development oriented social responsibility clauses can be found in instruments adopted by NGOs. Thus, for example, the International Chamber of Commerce’s Guidelines for International Investment of 1972, under the heading “Investment Policies”, state that investors should consult over the proposed investment and its “fit”

Social Responsibility

with the economic and social development plans of host countries. Similarly, the Charter of Trade Union Demands for the Legislative Control of Multinational Companies drawn up in 1975 by the International Confederation of Free Trade Unions (ICFTU), lists in an Appendix on the Social Obligations of Multinational Companies, three development-specific obligations to be observed by such companies:

- to inform the authorities and trade unions of the home and host countries as to their ongoing or planned activities for the purpose of adjusting these to the economic and social planning of both countries;
- to use production methods and forms of cooperation that are in harmony with the economic and social conditions of the host country and contribute to a development consistent with that country's interests;
- to contribute to a development fund in developing host countries in which they operate.

Finally, the Pacific Basin Charter on International Investments, issued by the Pacific Basin Economic Council in 1995, under the heading "Basic Principles", asserts that:

"International investors, in pursuit of their business objectives, should proceed in ways which will contribute to economic and social development, particularly in host economies, and they should maintain a sensitivity to changing domestic goals and aspirations in all economies with which they are concerned."

There are also a number of instruments issued by NGOs that include provisions declaring that TNCs should observe the general development policies of the countries in which they operate. Thus:

- The Draft NGO Charter on Transnational Corporations issued by the People's Action Network to Monitor Japanese

Transnational Corporations Abroad (PAN), in its Code of Conduct for TNCs, asserts that TNCs should make every possible effort to help develop the economic and social independence of the host country.

- The Polaris Institute of Canada, in its discussion paper “Towards a Citizens’ MAI” includes within its “Operating Principles” a section on corporate responsibilities which highlights certain social responsibilities that corporations should meet in return for their right to invest. First, they must ensure that their investment is designed to serve the public interest by meeting performance requirements such as labour and environmental standards; second they must recognize the right and responsibilities of States to protect, preserve or enhance strategic areas of their economies and the commons. Third, they must contribute to revenues through taxation that can be used for social programmes, environmental projects, cultural initiatives and a variety of public services.
- The World Development Movement’s Core Standards of 1999 include, under the heading “Sovereignty and development strategies”, a section requiring TNCs to take account of countries’ policy objectives, including development and social priorities. They should pay due regard to using technologies that generate employment and consider giving contracts to local companies using local materials and local processing.

Thus there are some significant models that may form the basis of future clauses aimed at promoting corporate social responsibility in the area of development. As noted earlier, a number of IIAs also deal with specific economic issues in terms of seeking to establish development obligations for TNCs. Given their importance, they are being dealt with in separate papers.

B. Socio-political obligations

Under this heading, IIAs have considered what is perhaps the most politically sensitive question to have emerged from the relationship between TNCs and developing host countries in particular. It concerns the question of how far a TNC can, or should, become actively involved in the internal and external political processes of a host country, and how far it should respect the national, political, social, cultural and economic policy goals of that country. This raises questions as to the scope of clauses dealing with this issue. Do they aim to prevent TNCs from *any* involvement in the political processes of the countries in which they invest, or do they merely prevent improper involvement, e.g. where a particular activity is illegal under the law of the country concerned?

As noted in section I, the draft United Nations Code of Conduct contains a section addressing the “Activities of Transnational Corporations”. The standards for TNC’s activities which are stressed, in relation to social and political obligations, are the following:

- respect for national sovereignty and observance of domestic laws, regulations and administrative practices;
- review and renegotiation of contracts;
- adherence to socio-cultural objectives and values;
- non-collaboration by TNCs with racist minority regimes in southern Africa;
- non-interference in internal political affairs; and
- non-interference in intergovernmental relations.

Similarly, the OECD’s Guidelines for Multinational Enterprises are directly addressed to TNCs (OECD, 2000a). As can be seen in box 2, the revised Guidelines mention a number of general social obligations that should be observed by TNCs in their dealings with the countries in which they operate. Each obligation is subject to a general duty on enterprises to take fully into account established policies in the countries in which they operate, and to consider the

views of other stakeholders. On the specific question of social and political obligations, point 11 of the General Policies Guidelines states that enterprises should “abstain from any improper involvement in local political activities”. This includes (point 6 of the section on “Combating Bribery”) that enterprises should “not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management”. These norms re-emphasise the obligation of TNCs to respect legitimate forms of political behaviour. However the Commentary on the Guidelines is silent on the scope and meaning of this duty. Thus there is little guidance as to the effect of this provision.

In addition, another non-binding code, the Asia Pacific Economic Cooperation (APEC) Non-Binding Investment Principles, states, under the heading of “Investor Behaviour”:

“Acceptance of foreign investment is facilitated when foreign investors abide by the host economy’s laws, regulations, administrative guidelines and policies, just as domestic investors should”.

Apart from the above mentioned codes, relatively few IIAs expressly include a provision on political or social responsibility. One example arises from the Agreement on Promotion, Protection and Guarantee of Investments Among Member States of the Organisation of the Islamic Conference (1981). Under Article 9 thereof:

“The investor shall be bound by the laws and regulations in force in the host state and shall refrain from all acts that may disturb public order or morals or that may be prejudicial to the public interest. He is also to refrain from exercising restrictive practices and from trying to achieve gains through unlawful means.”

Social Responsibility

In addition, the Community Investment Code of the Economic Community of the Great Lakes Countries (CEPGL) (1982), Article 21, provides that authorization for inclusion under its regime of advantages for Community enterprises does not exempt an authorized enterprise from compliance with the political, financial, fiscal and social legislation of the host country.

Certain codes developed by civil society groups also address the issue of social and political obligations of TNCs. Thus, the World Development Movement's Core Standards include a section requiring TNCs to respect every State's right to choose its own economic system and to regulate foreign investment and the activities of TNCs within its jurisdiction. Similarly, the PAN draft NGO Charter on Transnational Corporations requires that TNCs operate in harmony with the local economy and culture. This involves duties to observe strictly the laws, regulations and administrative practices of a country or international standards regarding pollution controls, environmental protection, consumer protection and labour rights where that country's laws and regulations are not up to (or on par with) such standards; to respect the social and cultural values and customs of the locality where a TNC operates; and to refrain from political and illegal activity, such as bribery.

Finally, mention should be made of certain intergovernmental instruments that have imposed obligations on TNCs to refrain from doing business in host countries that are pursuing internationally unacceptable policies, such as systematic denial of human rights or discrimination. Of particular historical note in this regard are the various United Nations resolutions instituting an economic boycott of South Africa and other racist regimes in southern Africa that pursued apartheid policies. A similar approach was taken by the European Union which adopted a code of conduct concerning business with South Africa (European Community, 1985). At the non-governmental level, a number of significant initiatives were also taken, chief among these being, the Sullivan Principles (Sullivan, 1977).

C. Consumer protection

The growing internationalization of business has led to the creation of a transnational dimension to the already well-established issue of consumer protection. As business crosses borders in search of new markets and customers, problems of good corporate practice towards consumers follow. This issue can become more salient in the context of developing countries that may not have the resources or the regulatory structure to deal effectively with such matters. The result may be an enhanced risk of abuse of consumer rights. In these circumstances, a measure of co-ordinated international action may be necessary. Equally, a harmonization of consumer protection standards across national boundaries may be necessary on efficiency grounds, so that firms will need to observe only one universal set of standards, and as a stimulant to market integration, through the greater ease of compliance with national standards that follows from such harmonization.

In this connection, the European Union (albeit, admittedly, a special situation) has developed a number of instruments on consumer protection. These will only be discussed briefly in this section, but nonetheless they represent the most developed supra-national scheme of consumer protection in existence. The European Union instruments are based on the terms stipulated in Article 153 of the Treaty establishing the European Community under title XIV, on Consumer Protection, which states that the Community shall “contribute to protecting health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests” (European Commission, 1997, p. 109).

The European Union instruments on consumer protection can be divided between legislative directives dealing with the protection of economic interests of consumers and the protection of their safety, and non-legislative directives that are mostly made up of actions with budgetary

Social Responsibility

consequences. More specifically, the European Union directives have concentrated on the following key areas:

1. Safety and liability.
2. Directives concerning the protection of economic interests such as:
 - misleading and comparative advertising;
 - price indication;
 - contracts negotiated away from business premises (doorstep selling);
 - package travel;
 - unfair contract terms;
 - timeshare contracts; and
 - distance contracts.
3. Financial services.
4. Access to justice.
5. Consumer representation, information and education.
6. Links of consumer policy with other European Union policies.

The United Nations has also developed a set of Guidelines for Consumer Protection. These Guidelines were adopted by the 1985 United Nations General Assembly (Resolution 39/248), in order to protect consumers, particularly those in developing countries. As a General Assembly resolution, the Guidelines were mainly drafted to advise Governments on how best to protect consumers. The language used in the Guidelines is therefore not mandatory.

The Guidelines' main objectives are:

- (a) "To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices”.

The General principles provided in the Guidelines are the following:

- (a) “the protection of consumers from hazards to their health and safety;
- (b) the promotion and protection of the economic interests of consumers;
- (c) access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) consumer education;
- (e) availability of effective consumer redress; and
- (f) freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them”.

The development, implementation and monitoring stages of national consumer policies are left to Governments, which are urged to follow the standards contained in the Guidelines in order to achieve stronger protection policies.

The 2000 OECD Guidelines for Multinational Enterprises complement the United Nations Guidelines, in that chapter VII of the Guidelines deals with the responsibilities of TNCs with respect to the protection of consumer interests (box 5).

Box 5. OECD Guidelines for Multinational Enterprises and the protection of consumer interests

“VII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.”

Source: OECD, 2000a, p. 7.

The first reference to consumer interests was made in the OECD Guidelines in 1984, which reflected the increasingly internationalised aspects of consumer protection policies and laws in terms of product packaging, marketing and sales, and product safety (OECD, 2000b). This development, coupled with the continuing recognition of the issue of consumer protection by TNCs (as manifested by the emphasis

placed on it in corporate policies and management practices), led to the addition of the chapter in 2000.

The United Nations Guidelines can also be read alongside the Consumer Charter for Global Business of 1995, produced by the NGO Consumers International. It covers much of the same ground as the United Nations Guidelines and includes provisions on ethical business conduct carried out in the interests of consumers, fair competition, proper marketing practices, product standards and labelling. In addition, consumers have a right to expect appropriate information as to storage and disposal of products, the establishment of informal systems for the redress of complaints and the provision of proper guarantees. Other NGOs have also referred to the protection of consumers in their codes on TNC responsibilities (see PAN Draft NGO Charter on Transnational Corporations paragraph 12; Consumer Unity and Trust Society International Agreement on Investment Article 1.F; World Development Movement's Core Standards "Consumer Protection"). In a similar vein, the ICC has issued its own codes on marketing. These cover *inter alia* direct marketing, advertising practice, environmental advertising, sales promotion and sponsorship (ICC, 2000).

A further noteworthy development has been the adoption of certain issue-specific codes by intergovernmental organizations, designed to deal with issues of direct concern to consumers in the field under scrutiny. Such codes establish internationally agreed standards, usually aimed more directly at enterprises. A number of issue areas have been covered. These include:

- **Breast-milk substitutes.** Perhaps best-known is the WHO's International Code of Marketing of Breast-milk Substitutes. This Code was adopted by the Thirty-fourth World Health Assembly in 1981, after it had been discovered that the use of Western style breast-milk substitutes in the less hygienic conditions of developing countries could be harmful to the good health of infants, and after a concerted campaign by civil society groups targeted at the TNCs

responsible for the marketing and sale of this product to mothers in developing countries. The Code recognised that the encouragement and protection of breast-feeding is an important part of the health, nutrition and other social measures required to promote healthy growth and development of infants and young children. Therefore, the aim of the Code, as stated in the first article, is to:

“contribute to the provisions of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution. The Code applies to the marketing, and practices related thereto, of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottle-fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.”

The United Nations Children’s Fund (UNICEF) has been active in assisting with its monitoring, mainly by NGOs (Chetley, 1986; IBFAN, 1994).

- **Pesticides.** The Food and Agriculture Organization of the United Nations (FAO) has long been involved in developing technical standards and codes, several of which have important social and environmental aspects. Its International Code of Conduct on the Distribution and Use of Pesticides (adopted in 1985) established voluntary standards of conduct for all public and private entities involved with the distribution and use of pesticides, particularly in countries with national laws inadequate for regulating pesticides. The Code is based on the shared responsibility of all segments of society, and upon a co-operative effort between Governments of pesticide-exporting and importing countries. Initially, the Code was developed to address

certain issues associated with the use of pesticides, particularly in developing countries where adequate regulatory infrastructures are frequently lacking. It was recognized, however:

“that in order to remain relevant the Code must evolve in order to reflect changing needs of countries and that there was a need to monitor progress in the observance of the Code. The objectives of the Code are to set forth responsibilities and establish voluntary standards of conduct for all public and private entities engaged in or affecting the distribution and use of pesticides. The Code suggests how to distribute the responsibilities between government, industry and others. The twelve articles of the Code are supported by a set of detailed technical guidelines which provide guidance on their implementation” (FAO, 1990, p. 2).

- **Hazardous chemicals and pesticides.** Most recently, in conjunction with the United Nations Environment Programme (UNEP), FAO has developed the Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, agreed and opened for signature in September 1998 (UNEP/FAO, 1998). Though addressed to Governments, this initiative aims to influence the conduct of TNCs. The PIC procedure is:

“a means for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of a certain chemical and for ensuring compliance to these decisions by exporting countries. The aim is to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of such chemicals. The Convention contains provisions for the exchange of information among Parties about potentially hazardous chemicals that may be exported and imported and provides for a national decision-

making process regarding import and compliance by exporters with these decisions” (ibid., p. 2).

- **Tobacco.** More recently, the WHO has called for work to begin on a Framework Convention on Tobacco Control which would contain *inter alia* rules relating to issues that involve regulation of the activities of tobacco corporations, including tobacco advertising and promotion, especially in relation to young persons and children, agricultural diversification, smuggling, taxes and subsidies (WHO, 1999). The Framework Convention is meant to become an international legal instrument that will circumscribe the global spread of tobacco and tobacco products. It is being developed by WHO’s 191 member States, so as to ensure that their concerns are adequately reflected throughout the process. Protocols are envisaged as separate agreements to cover the substantive part of the Convention.
- **Food safety.** Brief mention should be made of the FAO and WHO Codex Alimentarius. Although not entirely uncontroversial, this extensive Code seeks to set global standards for the elaboration and establishment of definitions and requirements for foods, to assist in their harmonization and, in doing so, facilitate international trade. Not only are standard definitions of foods developed, but also standards concerning food labelling and principles of food hygiene. The Codex is expressly mentioned in paragraph 39 of the United Nations Guidelines for Consumer Protection as the source of consumer protection standards in the field of food policy. The WTO has recognized Codex standards as the international reference for settling disputes in relation to food safety issues. Though addressed to member Governments of the FAO and WHO, the Codex influences the conduct of TNCs in the food industry (FAO/WHO, 1999).
- **Electronic commerce.** Another initiative undertaken by the OECD was the adoption, in 1999, of the Guidelines for Consumer Protection in the Context of Electronic Commerce. This aims to assist Governments to formulate

consumer policies for electronic commerce and outlines information disclosure requirements to protect consumers. In particular the Guidelines require that consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is no less than the level of protection afforded in other forms of commerce. To this end, the Guidelines recommend that businesses engaged in electronic commerce should pay due regard to fair business, advertising and marketing practices; provide accurate, clear and easily accessible information about themselves to allow for identification of their business, prompt, easy and effective consumer communication with the business, appropriate and effective dispute resolution, service of legal process and location of the business for regulatory purposes; offer sufficient information about the goods or services offered so as to enable consumers to make an informed decision about entry into a transaction; offer sufficient information about the terms, conditions and costs associated with the transaction; provide an effective confirmation process for the transaction in question; provide easy-to-use and secure payment mechanisms and information as to these mechanisms; and provide access to fair, timely and affordable alternative dispute settlement mechanisms. Furthermore, electronic commerce transactions should be carried out in accordance with recognized privacy principles. Finally, Governments are expected to carry out programmes of consumer education in this field, to review and promote self-regulation by private business, and to cooperate with other countries in the development of regulatory environments (OECD, 1999b).

- **Protection of personal data on consumers.** Closely linked to the development of standards in relation to electronic commerce are initiatives to secure privacy and security in relation to electronic data stored and processed by firms. Thus in 1981 the Council of Europe adopted a Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. The European Parliament and Council issued a Directive in this field in 1995 (Council

of the European Union, 1995). For its part, the OECD issued in 1998 a Ministerial Declaration on the Protection of Privacy on Global Networks (OECD, 1998).

- **Pharmaceutical products.** The International Federation of Pharmaceutical Manufacturers Associations (IFPMA) adopted, in 1981, a voluntary Code of Pharmaceutical Marketing Practices. Its aim is to “promote and support continuous development throughout the pharmaceutical industry of ethical principles and practices voluntarily agreed on” (IFPMA, 1994, p. 1). To this end, it sets standards for promotional material that seek to ensure its accuracy, fairness and objectivity so as to ensure not only conformity with legal requirements, but also adherence to high ethical standards and to good taste.
- **Quality assurance.** Apart from the above-mentioned codes, the series of generic technical standards developed by the International Standardization Organisation (ISO) are worthy of special note: ISO 9000, for quality assurance management (to ensure products conform to customers’ requirements), and ISO 14000 for environmental system management (to eliminate the harmful environmental impact of enterprise activities) (ISO 1999). However, these focus on management systems rather than measuring actual performance. Implementation is not the direct responsibility of ISO itself, but certification is carried out by its national member organizations, usually through accredited bodies. Though not specifically addressed to TNCs, these codes are relevant since they offer guidance to TNCs on the development of their quality assurance systems.
- **Social accountability.** The ISO approach has also been adopted by the United States based Council for Economic Priorities. It has launched “Social Accountability 8000” (SA8000), also as a management system standard. The SA8000 system is based on ISO 9000, which is widely used by companies to ensure quality control. The auditing techniques of ISO include:

“specifying corrective and preventive actions; encouraging continuous improvement; and focusing on management systems and documentation proving these systems’ effectiveness. In addition, the SA8000 system includes three elements essential for social auditing:

- (a) Specific performance standards set with minimum requirements;
- (b) Auditors are required to consult with and learn from interested parties, such as NGOs, trade unions and, of course, workers; and
- (c) A complaints and appeals mechanism allows individual workers, organizations, and other interested parties to bring forward issues of noncompliance at certified facilities” (CEPAA, 2000, p. 3).

D. Emerging issues

Certain new issues are emerging in the practice of corporations, industry organizations, Governments and civil society that may influence the future content of provisions in IIAs on the social responsibility of corporations. They include, most importantly, corporate governance, ethical business practices and the need for TNCs and domestic firms to observe fundamental principles of human rights in their operations. Indeed, all three issues appear prominently in the General Policies chapter of the 2000 OECD Guidelines for Multinational Enterprises (box 2).

1. Corporate governance

The “Principles of Corporate Governance” were adopted by the OECD Council in May 1999. Expressed in general terms, these are aimed at providing guidance to Governments, public bodies and companies in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate

Social Responsibility

governance in their countries. The OECD Principles concentrate on:

“governance problems that result from the separation of ownership and control. Some of the other issues relevant to a company’s decision-making process, such as environmental or ethical concerns, are taken into account but are treated more explicitly in a number of other OECD instruments (including the Guidelines for Multinational Enterprises and the Convention and Recommendation on Bribery) and the instruments of other international organisations” (Preamble).

Against this background, the OECD Principles contain the following provisions on corporate governance that can be seen as relating to social responsibility:

- The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
- The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.
- The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding a corporation, including the financial situation, performance, ownership, and governance of the company. The disclosure framework of the OECD Guidelines on Multinational Enterprises is relevant in this context.
- Risks related to environmental liabilities should be disclosed.

- Information relating to human resource policies, such as programmes for human resource development or employee ownership plans, should be disclosed as these can communicate important information on the competitive strengths of companies to market participants.

2. Ethical business standards

The developments discussed in section I have given a new impetus to various types of corporate codes, some of which have a long history. Although such codes are voluntary rather than legally binding requirements, they are often the result of social pressures, and are adopted in response to real or perceived threats of social sanctions or legislative action. Furthermore, they may incorporate or refer to standards that have some legal status; they may be monitored or enforced by often sophisticated auditing procedures; and non-compliance may potentially entail harmful or damaging consequences, such as loss of contracts and damaging publicity. Codes may be formulated and adopted by an individual firm, but set standards of conduct to apply not only throughout a firm and its foreign affiliates, but also to its entire supply chain, sometimes involving thousands of contractors and subcontractors, often in many countries. These can therefore have widespread effects if adopted, for example, by large retail trading firms, perhaps responding to consumer pressures. Industry codes may cover enterprises based in several home countries, as well as affiliates and contractual suppliers in many host countries.

Codes of this type have been adopted by companies in almost all OECD countries (Kline, 1985; Kolk, van Tulder and Welters, 1999; Gordon and Miyake, 1999; see also OECD, 1999a). Some schemes may spread by being adopted in many host countries, often through international action. Thus, the Responsible Care scheme originated by the Chemical Manufacturers Association in the United States was spread through the International Council of Chemical Associations into over 40 countries. In many respects, therefore, the

emergence of codes laying down social responsibility standards seems to be an international phenomenon, linked to the trends of privatization, deregulation and liberalization of the present phase of globalization (UNCTAD, 1999a). Examples of such codes dealing generally with ethical business standards are listed in box 6.

Box 6. Examples of ethical codes of conduct

The following are examples of various codes. They are presented without examining their economic or other implications, merely as examples of what is emerging in this field.

Corporate codes:

- The General Mills Statement of Corporate Responsibility 1994 (UNCTAD, 1994, p. 317).
- The Caterpillar Code of Worldwide Business Product and Operating Principles 1992 (UNCTAD, 1994, p. 319).
- Levi-Strauss Business Partner Terms of Engagement and Guidelines for Country Selection 1994 (UNCTAD, 1994, p. 325).
- More recently, the United Kingdom food retailer J. Sainsbury & Co established a code for the monitoring of ethical business practices on the part of suppliers of its “own brand” goods (Fridd and Sainsbury, 1999).

Industry codes may be adopted by coalitions of firms, or by an industry association (sectoral and multisectoral):

- Some of these codes originate from concerns specific to an industry, such as the environmental impact of mining, the rights of indigenous people in relation to land use by agricultural or extractive industries, health and safety in chemicals production, the exploitation of children or other workers in clothing manufacture; privacy, intellectual property rights and ethical business practices in Internet commerce. But a code’s content may extend beyond such direct concerns.

/...

Box 6 (continued)

- Other codes are issued by *general business associations*, including international organisations, such as the International Chamber of Commerce. For example, it has drawn up ethical marketing codes such as its International Code of Environmental Advertising (ICC, 1991).

Third-party codes may be issued by public interest groups, or by trade unions (especially the international trade secretariats), sometimes working together. Thus, some International Trade Secretariats have negotiated codes focusing mainly, but not exclusively, on labour rights, either directly with TNCs, or jointly with NGOs and covering specific industries:

- The International Metalworkers' Federation has a Model Code of Conduct for TNCs, which is being discussed with individual firms through their World Union Committees (IMF, 1997). It is derived from the ICFTU/ITS Basic Code of Labour Practice (ICFTU/ITS, 1997).
- A Code on Clean and Safe Drinking Water has been established in a common effort of companies providing the public service of supplying clean and safe drinking water to communities, and trade unions organising water workers affiliated to the Public Service International (PSI), to address issues related to public service obligations, democratic regulation, environmental standards and fair labour practices (PSI, 1999).
- Following publicity about child labour used for stitching footballs to be used in the World Cup, the Fédération Internationale de Football Association (FIFA), in conjunction with international trade union bodies and other organisations, developed a code and agreement aimed at eliminating this practice (Kearney, 1999, p. 219).

Government codes. Governments have also often been involved in the encouragement of corporate codes. For example, the United States Apparel Industry Partnership was encouraged by the White
/...

Box 6 (concluded)

House; the Governments of Australia and New Zealand have produced guides to the development of codes; and the Government of Canada has encouraged, through the Office of Consumer Affairs of Industry Canada, effective codes and implementation processes. One significant example of a governmental code on ethical business practices is the United Kingdom's Ethical Trading Initiative (ETI). This entails a commitment to a Base Code which has specifically-defined standards; these require wages and benefits to meet, at a minimum, the higher of national legal or industry benchmark standards; and an Appendix lists "relevant international standards", including ILO conventions (ETI, 1998).

Source: UNCTAD.

3. Observance of human rights

It was noted above that the draft United Nations Code of Conduct mentioned observance of human rights by TNCs among its substantive standards. More specifically, the draft Code mentions, in paragraph 13, the need for TNCs to respect human rights and fundamental freedoms in the countries in which they operate. However, no agreement was reached on whether this should be expressed as an obligation by incorporation of the word "shall" into the text or as a hortatory standard expressed by the word "should". Equally, the 2000 OECD Guidelines for Multinational Enterprises stress, as part of the General Policies to be observed by TNCs, "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments" (OECD, 2000a, p. 3).

Also more recently, the United Nations Sub-Commission on the Promotion and Protection of Human Rights has established a working group on the working methods and activities of TNCs and, through this body, is currently undertaking work towards the drafting of a Human Rights Code of Conduct for Companies. This code foresees that it

would apply to foreign and domestic companies alike and would expect companies to respect, ensure respect for, and promote internationally recognised human rights within their respective spheres of activity and influence. It then goes on to elaborate more specific obligations in relation to a number of major areas of activity, including war crimes and crimes against humanity, non-discrimination, slavery, forced labour and child labour, respect for national sovereignty and self-determination, fundamental labour rights and environmental rights (United Nations, 2000).

Most importantly, the United Nations Secretary General's Global Compact (box 1) stresses the need for business to observe the human rights contained in the Universal Declaration of Human Rights and the core labour standards contained in the ILO Declaration on Fundamental Principles and Rights at Work of 1998 (ILO, 1998). Indeed, the clearest link between corporate social responsibility and the observance of human rights arises in the field of labour standards. Although an employment issue (UNCTAD, 2000a), the relationship between fundamental human rights and labour rights must be mentioned in this paper, given the central importance of this issue to the wider debate on the applicability of human rights obligations to TNCs.

The most comprehensive set of international agreements embodying social standards is the ILO's International Labour Code, which consists of both legally binding conventions and recommendations. Although ratification of the conventions is a matter for each State, they are regarded as aspirational in that membership of the ILO entails the obligation to establish at least basic labour rights, and members are required to report both on the implementation of ratified conventions and on the progress made in relation to those that embody fundamental rights. This has now been strengthened by the adoption of the Declaration on Fundamental Principles and Rights at Work.

The observance of human rights by TNCs is becoming an increasing object of discussion leading to new initiatives by NGOs. This issue is mentioned for example in:

Box 7. Human rights and labour rights

In accordance with the most central guiding policy of the ILO, the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (UNCTAD, 1996, vol. I, p. 89) recognizes the right of workers to establish and to join organisations of their own choosing without prior authorisation, and to enjoy adequate protection against anti-union discrimination in respect of their employment. This right appears to have the status of a fundamental human right. Thus, Article 22(1) of the International Covenant on Civil and Political Rights 1966 states: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests” (UNGA, 1976). Article 22(2) then enumerates certain public interest exceptions to this principle. These must be prescribed by law and may be necessary in a democratic society for the protection of those interests. However, Article 22(3) stresses:

“Nothing in this article shall authorize States Parties to the International Labour Organisation Convention in 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures that would prejudice, or apply the law in such a manner as to prejudice, the guarantees provided for in that Convention” (ibid).

This right is addressed primarily to States. As such, TNCs are not the object of the right. It is for the Government of a host state to ensure that freedom of association is observed in law and in fact. It is for TNCs to observe the law of the land. However, foreign firms may be in a position to take the lead in the removal of restrictions over the freedom of association, by encouraging trade unions in their plants, and by defending their right to exist.

Source: Muchlinski, 1999, p. 471.

- The Draft NGO Charter on Transnational Corporations (paragraph 4) prepared by the People’s Action Network to Monitor Japanese Transnational Corporations Abroad in 1998.

- So as to avoid the dilution of human rights standards by way of investor protection standards, Article 1.E of the Indian-based Consumer and Unity Trust Society’s “International Agreement on Investment” asserts that a contracting party shall be free to adopt or continue, with or without modification, such measures as are required for securing conformity with international treaties, conventions and agreements relating to human rights.
- The Polaris Institute for the Council of Canadians, in its discussion paper “Towards a Citizens MAI” of 1998, makes it clear that investment by foreign-based corporations is welcome, provided that it observes *inter alia* regulations designed to enhance the economic, social and environmental rights of citizens. Equally, in case of conflicts, internationally agreed citizens’ rights such as the Universal Declaration of Human Rights and its Covenants take precedence over the rights of corporations and investors.
- The “Core Standards” annexed to the World Development Movement’s consultation paper “Making Investment Work for People” of February 1999 include the following obligations for TNCs: respect for the right to life and the right not to be tortured or subjected to cruel treatment or arbitrary arrest; the promotion of basic human rights, ensuring that they are universally and effectively observed; and ensuring that any security force working for them abide by basic standards.
- A notable recent example is the Amnesty International United Kingdom Business Group’s “Human Rights Guidelines for Companies” (Amnesty International, 1998). These deal *inter alia* with general human rights standards as applicable to corporate operations, and with security issues in particular (box 8).

Box 8. Amnesty International Human Rights Guidelines for Companies

According to Amnesty International:

“Companies have a direct responsibility for the impact of their activities on their employees, on consumers of their products and on the communities within which they operate. This means ensuring the protection of human rights in their own operations. They also have a broad responsibility, embodied in the expectations of civilised society and in international protocols, to use their influence to mitigate the violation of human rights. This applies whether these violations are committed by governments, by the forces of law and order, or by opposition groups in the countries where companies have a presence.” The Amnesty International Guidelines go on to note that TNCs often also operate in countries with poor human rights records. In such cases, firms are urged to use their influence to promote respect for human rights, given that silence might increasingly be interpreted as providing support for oppressive regimes, which in turn might adversely influence a company’s reputation.

The Guidelines advocate the following principles as being of importance to companies:

- All companies should adopt an explicit policy on human rights which includes public support for the Universal Declaration of Human Rights
- All companies should ensure that any security arrangements protect human rights and are consistent with international standards for law enforcement.
- All companies should take reasonable steps to ensure that their operations do not have a negative impact on the enjoyment of human rights by the communities in which they operate.
- All companies should ensure that their policies and practices prevent discrimination based on ethnic origin, gender, sex, colour, language, national or social origin, economic status, religion, political or other conscientiously held beliefs. All companies should ensure that their policies and practices prohibit the use of chattel slaves, forced labour, bonded child labourers or coerced prison labour.
- All companies should ensure that their policies and practices provide for safe and healthy working conditions and products.

Source: Amnesty International, 1998, pp. 1-7.

* * *

The preceding survey indicates that a number of IIAs have addressed development obligations, socio—political obligations and consumer protection obligations as a part of corporate social responsibility. Furthermore, new issues are emerging in relation to corporate governance, ethical business standards and the observance of human rights, indicating a growing concern about corporate social obligations not only among civil society groups but also among TNCs themselves. Further, there are intricate and, sometimes indeterminate, interrelationships between binding and non-binding standards, and between international and national and private and public law. Thus, for example, a corporate code adopted by a TNC distributing consumer goods in developed countries, and applied in its relationships with a network of independent suppliers in developing countries, may incorporate references to ILO conventions, which may or may not have been ratified in the suppliers' countries of operation. Even if the code is not formally regarded as contractually binding on the suppliers, their compliance may well be monitored as part of the normal process of supervision of product quality, backed up by some form of third-party social audit; and suppliers that fail to make improvements to ensure compliance could well lose their contracts (Fridd and Sainsbury, 1999, pp. 223-224). By such means, international standards, which may formally be non-binding or binding only on States, may effectively be enforced transnationally. It is this “soft law” element which emerges from voluntary initiatives that may have an impact on the evolution of international standards in the field of social responsibility.

Section III

INTERACTIONS ACROSS ISSUES AND CONCEPTS

This section examines how social responsibility issues — in whatever instrument or agreement they may be addressed — tend to interact with other issues and concepts covered by this Series (table 1).

Table 1. Interaction across issues and concepts

Concepts in other papers	Social responsibility
Scope and definition	+
Admission and establishment	+
Incentives	+
Investment-related trade measures	+
Most-favoured-nation treatment	+
National treatment	+
Fair and equitable treatment	0
Taxation	+
Transfer pricing	+
Competition	+
Transfer of technology	+
Employment	+
Environment	++
Home country measures	+
Host country operational measures	+
Illicit payments	+
Taking of property	+
State contracts	+
Transfer of funds	+
Transparency	++
Dispute-settlement (investor-State)	+
Dispute-settlement (State-State)	+

Source: UNCTAD.

Key: 0 = negligible or no interaction.
+ = moderate interaction.
+ = extensive interaction.

- **Taxation.** Taxation has a principal interaction with social responsibility in so far as there is a duty on TNCs to pay the taxes to which they are subject in the countries in which they operate (UNCTAD, 2000c). Furthermore, in relation to taxation, the 2000 OECD Guidelines state that:

“It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s length principle” (OECD, 2000a, 8 p.).

- **Transfer pricing.** As the preceding quotation indicates, particularly important aspect of corporate social responsibility for TNCs is to refrain from taking advantage of their transnational network of affiliates by engaging in the manipulation of intra-firm transfer prices so as to achieve a revenue-shifting effect. Such practices may be especially damaging to the economies of developing countries in that they might be deprived of revenue on profits made within their territories. The taxable profits made by TNCs may be a vital contribution to the revenue base of such countries; thus any action designed to reduce such profits through transfer pricing manipulations will reduce that revenue base to the detriment of economic and social policy funding in the developing countries concerned, which in turn prejudices the welfare of local populations. Such action may, in addition, be regarded as an unfair abuse of corporate power to the detriment both of local competitors who cannot engage in cross-border transfer pricing manipulations, and of local investors who obtain less than the full market return on the investment in that this would be calculated on the basis

of the artificially lower returns declared by the TNC after it has shifted profits out of the jurisdiction in question (UNCTAD, 1999c).

- **Competition.** The principal interaction between social responsibility and competition issues concerns the obligation for TNCs not to abuse their market power in a way that violates competition rules as this may undermine the competitive position of smaller firms operating in the local market and thereby adversely affect local employment, business interests and development. The control of anti-competitive practices has a further social dynamic in that it prevents the abuse of consumers through monopolising pricing practices and the prevention of choice in markets through the erection of barriers to competition from other firms. Such regulation may be especially important in relation to developing countries whose ability to protect themselves from anti-competitive restrictive business practices may be hindered owing to inadequate resources (UNCTAD, forthcoming a). Thus a regulatory gap could be reduced by way of cooperation and technical assistance in competition matters under the regime of any applicable IIA. The UNCTAD Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices may serve as a model in this regard.
- **Transfer of technology.** The principal interaction in this area concerns the transfer of socially useful technology to developing countries. This entails the transfer of technologies that can produce a positive impact on the productive situation in the host country. It has been said that the most appropriate technology for developing countries is labour-intensive technology as it permits the application of the major comparative advantage possessed by developing countries, a supply of cheap labour, to economic production (Helleiner, 1975). While this may have been true in certain countries at certain times in their economic history, contemporary concerns have moved on towards higher-value-added activities in developing countries, entailing a transfer of higher-skilled work and

its attendant technologies. Nonetheless, the effects of FDI on technology transfer have been uneven (UNCTAD, 1999d). Thus TNCs should consider carefully how their investment in developing countries can provide the most useful technology for economic development purposes (see further UNCTAD, forthcoming b). Another factor in this regard concerns the need to transfer environmentally sound technology to developing countries (see further UNCTAD, forthcoming c).

- **Employment.** The treatment of workers by TNCs is a core issue in the field of social responsibility. As noted at the beginning of this paper, the rights of workers have been given a leading place in the development of international obligations to be observed by TNCs by the Secretary-General of the United Nations. This issue is further discussed in the separate paper on employment (UNCTAD, 2000a).
- **Environment.** The observance by TNCs of environmental protection standards has also been given prominence by the Secretary-General of the United Nations. The responsibilities of TNCs in this regard can be listed as relating to the observance of sustainable development principles in the conduct of their operations, and to ensure the transfer of environmentally sound technologies and management practices, especially to developing countries. These matters are further discussed in the paper on environment (UNCTAD, forthcoming c).
- **Illicit payments.** Another issue of social responsibility that has a long history is bribery and corruption. In the light of recent developments culminating in the Convention on Corruption drawn up by the Organization of American States and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, it is clear that a major aspect of corporate social responsibility is for firms to refrain from the making of illicit payments to public officials. This issue is further considered in the paper on illicit payments (UNCTAD, forthcoming d).

- **Transparency.** A crucial aspect in the effective regulation of corporate social responsibility is the provision of clear and transparent information about the activities of an enterprise. In developed countries, this may be ensured by a comprehensive code of disclosure backed up by an administrative enforcement system and sanctions for non-compliance. In the context of developing countries, while formal legal rules may require full and fair disclosure, the resources may not always be available for enforcement. Accordingly, TNCs may have a strong social obligation to offer full and useful disclosure about their activities in accordance with the standards set in international instruments and in the domestic laws of the countries in which they operate. In particular, they should give adequate information about their corporate structure and organization, their principal product and geographical lines of business and any other information necessary for a full and true view of their activities to be obtained by relevant stakeholders. These issues are further discussed in the paper on transparency (UNCTAD, forthcoming e).

CONCLUSION:

ECONOMIC AND DEVELOPMENT IMPLICATIONS AND POLICY OPTIONS

Until relatively recently, IIAs rarely included references to social responsibility standards. Beginning with the voluntary codes of conduct for TNCs in the 1970s, social responsibility issues have continued to appear on the negotiating agenda of IIAs. The main issues were identified in sections I and II of this paper. They represent a response to the growing awareness that the liberalization of international investment conditions requires a corresponding assumption by firms of certain responsibilities.

This evolution in the agenda of IIAs is not free from controversy and debate. Thus, from the perspective of developing countries, development obligations may be desirable, while, from the perspective of developed countries, they may be not, their preference being for market liberalization. On the other hand, developing countries may be concerned that the application of certain social responsibility standards to international business may be inimical to development, by imposing inappropriate levels of social or environmental protection, entailing unfair costs on poorer countries, or may be abused for protectionist purposes. It may well be the case that the concerns of consumers or other socially-concerned groups in developed countries stimulate unilateral initiatives, which may take little account of the practical situation of those in developing countries whom they are intended to help. At the same time, the pressures of economic competition resulting from increasing global economic integration may result in the adoption of short-sighted business practices, imposing high social costs that are themselves inimical to development. Thus, for example, low business awareness of good environmental protection practices can impose high costs for energy generation, or

environmental clean-up. Furthermore, the adoption of best practices is often good business: for example, producers of food or consumer products are more likely to build a favourable reputation in world markets by adopting high standards of safety and quality, as well as good terms and conditions of employment for their workforce. Nevertheless, it is important that social responsibility standards be applied in ways that permit sensitivity to local conditions. As noted in the OECD Guidelines on Multinational Enterprises, “Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country” (OECD, 2000a, p. 3). Finally, standards that are intended to operate internationally should be multilaterally agreed, monitored and applied through procedures that are themselves transparent, accountable and socially responsible. Implementation and monitoring are particularly important, if effectiveness is the objective.

In the light of the preceding discussion the following policy options present themselves and, as always in this Series, they may be relevant at whatever levels IIAs are being pursued:

- **Option 1: No reference to social responsibility.** This approach is currently taken in the vast majority of IIAs, although some specific issues may be addressed. In particular, Bilateral Investment Treaties (BITs) are largely restricted to issues related to the protection of investors and their investments. Social responsibility issues are seldom expressly mentioned although there may be an indirect impact of such issues on the content of investors obligations, to the extent that national laws of the contracting parties cover social responsibility questions. Given that most BITs contain a reference to the entry of investors and investments in accordance with the laws and regulations of the receiving contracting party, where such laws and regulations cover social responsibility issues they will extend to foreign investors from the other contracting party as well, provided that they apply in a manner consistent with the non-

discrimination provisions of an agreement. Thus both foreign and domestic investors would be equally subject to the social responsibility requirements of a host country's laws. However, apart from such an indirect effect, BITs do not in general aim to introduce social responsibility issues into their express provisions.

- **Option 2: Non-binding social responsibility standards included in an agreement.** Where the parties to an IIA accept the need for a reference to social responsibility issues, but are not prepared to introduce binding rules in this area, one option is to introduce these issues into a non-binding section of the agreement. This was proposed in relation to the draft Multilateral Agreement on Investment (MAI) where the OECD Guidelines on Multinational Enterprises could have been included as a non-binding annex to the main agreement.

This has the advantage of avoiding possible negotiating problems that would arise in relation to binding rules. In particular, it might be easier for countries fearing the protectionist abuse of certain social responsibility standards to accept them if they were not legally binding. Equally, business fears of being subjected to legal accountability for their observance of certain social responsibility obligations would be allayed. Furthermore, the use of non-binding standards leaves open the possibility that a moral obligation to observe those standards would arise, perhaps because of monitoring by civil society groups. In this way “soft law” would be created and, eventually, might crystallize into “hard law”.

On the other hand, such an approach fails to meet the criticism that a pure investor/investment promotion and protection agreement is unbalanced since it fails to meet the legitimate social concerns generated by internationally mobile TNCs, while at the same time giving them rights and privileges in relation to the countries in which they operate.

- **Option 3: Reservation of regulatory powers in relation to social responsibility issues.** As investment liberalization and protection measures have increasingly been embodied in binding instruments, a variety of means have been used both to limit the restrictions they impose on national measures involving social responsibility and to permit or encourage the adoption and application of non-binding social responsibility standards. Thus, host countries may seek to replace traditional investment scrutiny procedures with regulatory arrangements that are non-discriminatory or otherwise compatible with trade and investment treaties. This may entail the use of exclusions and exceptions from investor protection standards, which serve to protect a host country's discretion to regulate investors and investments in the light of social responsibility standards. The effects of general obligations in an investment agreement may be limited by the specific national exceptions that a party may be permitted to make. In the case of "top down" agreements, such as the draft MAI, these would have to be agreed in advance and explicitly listed, and be subject to "standstill" and "rollback" requirements.

An alternative approach is a broader general exceptions provision, along the lines of GATT Article XX, which exempts national state measures under a number of headings, provided they do not constitute arbitrary or unjustified discrimination or a disguised restriction on international trade (or, in this case, investment). GATT article XX includes exceptions allowing States to preserve their own social and environmental responsibility standards, notably the protection of public morals; the protection of human, animal or plant life or health; and the protection of national treasures of artistic, historical or archaeological value. However, the scope of such exceptions has proved uncertain or limited, since the GATT/WTO is reluctant to give *carte blanche* to a government to introduce measures that restrict trade on the basis of its unilateral standards of social or environmental protection. This has resulted in the elaboration of more detailed agreements, notably those on Government Procurement, Technical Barriers

to Trade and Sanitary and Phytosanitary Measures (WTO, 1995).

- **Option 4: No lowering of standards clause.** An alternative approach was adopted in the North American Free Trade Agreement (NAFTA), and proposed in the MAI, in response to concerns that the relaxation of controls on investment flows might lead to a deterioration of standards of social and environmental protection in host countries. Thus, NAFTA provides, in Article 1114 on Environmental Measures:

“1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.”

In the MAI negotiations, a similar clause was proposed, which referred also to labour standards (with proposed qualifications limiting it to “domestic” and “core” labour standards). It should be noted that these clauses refer to the non-lowering of standards in order to attract a *particular* investment, and thus do not cover a more generalized relaxation, or one applicable to a class of investors or a particular area such as a special investment zone.

There is no reason why this technique could not be extended to some of the other issues mentioned in sections I and II of this paper. In particular, a commitment not to lower consumer protection standards or rules on corporate governance are an option. On the other hand, this approach may not be well suited to more general social obligations imposed directly on TNCs. Examples include the duty not to interfere in socio-political affairs or the observance of fundamental human rights. The “no lowering of standards” option applies to those cases in which host countries may be tempted to lower their social standards so as to attract marginal inward investment. It does not apply to TNC behaviour as such. Countries may be opposed to such a clause on the grounds outlined in the introduction to this section. However, it should be made clear that this technique does not demand positive action to raise standards — only that countries refrain from lowering them. Thus a comparative advantage associated with a pre-existing level of social responsibility is unlikely to be interfered with.

- **Option 5: Home country promotional measures.** As part of an ongoing relationship of cooperation for development, the principal home countries of TNCs may seek to undertake positive obligations to promote good corporate social responsibility on the part of their firms when operating in developing host countries (UNCTAD, forthcoming f). These may be little more than non-binding “best efforts” commitments, although, negotiators may agree to make such commitments binding in appropriate cases. As noted in the introduction to this section, a non-binding hortatory approach is taken in the OECD Guidelines, which exhort the OECD home countries to encourage in their turn the observance of the Guidelines by their firms wherever they operate. Similarly, a precedent for home country social responsibility measures exists in relation to codes adopted to set standards for TNCs operating in southern Africa during the period of apartheid, of which the Sullivan

Principles (Sullivan, 1977) and the European Union code are the most well known (European Community, 1985).

Alternatively, a binding commitment might be undertaken. The advantage of this approach is that firms are subjected to home country supervision. This is likely to entail high standards of social responsibility, where the laws and regulations of a home country maintain a comprehensive code of social responsibility rules. The main disadvantage of this approach rests in the associated extraterritorial extension of home country laws and regulations to a host country's territory. This may often not be welcomed and may, in certain cases, be perceived as a threat to the sovereignty of a host country. It may also stoke fears of the protectionist use of higher OECD regulatory standards to hold back competition from less developed host countries. Furthermore, it does not address the related issue of whether the same approach would make sense if the home country of a TNC was itself a developing country, with social responsibility standards different from those found in OECD legal systems.

- **Option 6: Inclusion of generally binding social responsibility provisions into an -agreement.** While rare, some regional integration agreements have begun to develop coordinated policies and to harmonize some standards and even laws relating to social policy. The European Union, especially, has developed an active programme of environmental protection laws and standards. Since the incorporation of the Social Charter into the Treaty of the European Union, employment rights and social policy more generally have begun to be the subject both of coordinated action and of some harmonization. Thus the most far reaching option for dealing with social responsibility in an IIA would be to include a legally binding set of provisions covering some or a number of the major issues identified as falling within this concept, for example in the form of a detailed chapter on social responsibility. However, that might prove to be very difficult to negotiate.

Two further options present themselves:

- annexing existing instruments and/or international agreements to an IIA as binding provisions. This would raise questions of choice — which instruments and/or agreements should be included? However, in the end the crucial element is the question of whether or not agreement can be reached on the substantive content of any standards.
- to establish linkages with other binding instruments. Relevant agreements standards could be associated with IIAs on an opt-in basis. States and enterprises could be encouraged to sign up to a range of agreements and codes as appropriate to their activities and circumstances. This would help to provide a higher visibility for positive regulatory standards, as well as helping to authenticate both those standards and their monitoring and compliance mechanisms.

* * *

The preceding discussion has concentrated on the principal techniques for dealing with social responsibility provisions in IIAs (limited as they are). It should not be forgotten, however, that — independently of what happens in relation to IIAs — work also continues on the *content* of social responsibility standards. In the international arena, that work has to date been mainly carried out by such regional bodies as the European Union and the OECD, or by specialised agencies, most prominently by the ILO. Of particular relevance is also the further development of social responsibility standards through the Global Compact (United Nations, 1999). This allows not only a universal body of countries to be associated with this effort, but it also offers a multidisciplinary context for such discussions, in that a wider range of issues can be considered. Thus, following the lead given by the Secretary-General of the United Nations in his above-mentioned Global Compact, both the United Nations, its membership

and specialized agencies, business and civil society can come together and develop a new agenda for social responsibility which may well influence the provisions of future IIAs. In addition to the substantive content of social responsibility standards, a further matter to be determined is whether, in future, IIAs should address Governments only, leaving with them the responsibility to enforce social responsibility standards, or whether TNCs should be directly addressed, thereby imposing direct duties upon them. Such an approach has been taken in various non-binding codes discussed earlier in this paper. It remains to be seen whether binding agreements will take this approach further.

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