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Chapter III

RECENT POLICY DEVELOPMENTS

During 1991, a number of important policy developments of relevance to TNCs took place at the multilateral, regional, bilateral and national levels. At the multilateral level, the most significant developments on FDI took place in the context of the Uruguay Round. After almost five years of negotiations, the Uruguay Round of Multilateral Trade Negotiations entered its final phase when, on 20 December 1991, Director-General of GATT submitted a draft final act embodying the results of the negotiations, including texts on the so-called new issues, namely, services, trade related investment measures (TRIMs) and trade related aspects of intellectual property rights (TRIPs). [1] Section A of the present chapter reviews the results achieved so far in those areas, as they are of particular importance for the emerging multilateral regime for FDI.

At the regional level (section B.1), besides new developments towards regional integration already discussed in chapter I, the Council of Ministers of OECD reviewed in June 1991 the OECD instruments on TNCs and agreed on a number of changes to strengthen them. At the bilateral level (section B.2), the network of bilateral treaties for the promotion and protection of foreign direct investment continued to expand, and an antitrust cooperation agreement between the United States and the European Community was concluded.

At the national level (section C), the liberalization of inward FDI regimes continued unabated, with some 30 countries introducing or continuing policy changes, the overwhelming number of which were in a liberalizing direction. At the same time, many countries introduced or continued privatization

programmes, in many of which foreign investors are encouraged to participate. Special attention is, therefore, being given to that issue.

Finally, section D provides a brief discussion of self-regulation, an approach that has received special attention in the context of promoting environmentally sustainable growth.

A. The Uruguay Round

1. Services

The more than five years of negotiations in the framework of the Uruguay Round of Multilateral Trade Negotiations resulted in a draft of the first-ever multilateral framework to govern international transactions in services, the General Agreement on Trade in Services (GATS). [2] Although still a draft as submitted by the Director-General of GATT, most of the proposed provisions command broad consensus. The framework, which aims at expanding trade in services under conditions of transparency and progressive liberalization, consists of two principal components: general obligations (Part II) and specific commitments (Part III). Countries will be obliged to implement the former when the agreement is adopted. In distinction to general obligations, specific commitments, however, will not apply automatically. They are subject to negotiations among countries, which are still ongoing. To be actually implemented, specific commitments have to be included in the country schedules attached to the agreement, specifying industries and kinds of transactions with regard to which a country undertakes the commitments.

The scope of GATS is broad in terms of both service industries and kinds of transactions covered. All services are included, except those supplied in the exercise of governmental functions. Given the peculiarities and importance, however, of services such as telecommunications, financial services and air-transportation, special rules and provisions supplementing or interpreting the rules set out in the main text were added in the form of sectoral annexes. The agreement also covers all possible modes of delivery of services, including cross-border trade, the movement of factors of production and the movement of consumers. In other words, for the purpose of the agreement, FDI is fully covered. The main general obligation is the most-favoured-nation (MFN) principle, which is defined as "non-discrimination across foreign sources of supply", meaning that all parties to the agreement must receive the most favourable transaction terms available to any other party. Another important general obligation is the provision on transparency, which requires that any rules and regulations affecting transactions in services be published. The specific commitments cover, among other things, market access and national treatment. Naturally, the implementation of the agreement raises a number of practical questions because, so far, most countries (and especially developing countries) have had little experience with the issues related to the liberalization of FDI and trade in services (box III.1).

Since economic development, especially that of developing and least developed countries, has been recognized as a central element of the proposed framework, the Preamble and a number of Articles deal explicitly with concerns of developing countries. Contrary to past practice, therefore, this issue is not being dealt with by way of special treatment for developing countries in the form of derogations from

Box III.1. Issues in the liberalization of foreign direct investment and trade in services

The Uruguay Round has undoubtedly contributed to placing services on the agenda of policy-makers around the world. If and when GATS is adopted, policy makers in all signatory states will have to review their domestic regulatory framework in light of the provisions contained in that agreement. Other factors will nudge countries in the same direction, especially the recognition that international competitiveness is increasingly associated with access to modern producer services, and the expectation that FDI in services will play a major role in shaping investment flows in the 1990s.

Issues that arise in this context are both conceptual and practical. Conceptual issues relate to the hierarchy of national objectives and competing objectives. What do "liberalization" and "efficiency" mean in the context of various market situations in various service industries and in countries at different levels of development? What do those concepts mean in the context of services with differing degrees of tradability? What are the implications of the changing tradability of services, owing to technical progress in telematics? For example, do service providers throughout the world, including in developing countries, have sufficient access to networks—the electronic highways of world services trade—and under conditions that are not biased? What are the costs and benefits of liberalizing FDI, trade and, to a certain extent, labour movement in services? Is there an appropriate sequence in liberalizing services industries, or should an across-the-board approach be favoured? If an industry-by-industry approach is selected, what are the industry-selection criteria? To what extent do measures known and tested in the area of FDI and trade in goods apply to international transactions in services? What are their costs and benefits, and what experiences have countries gained with them so far? Can liberalization proceed at one pace in the area of trade and at another in the area of FDI and labour movement? What are the costs and benefits of different speeds of liberalization with respect to the various modes of delivery?

One of the legacies of the neglect of the services sector is that few answers are known to those questions. In the case of trade (and, to a certain extent, FDI) in goods, economists have debated the questions for years, and policy makers could gain experience during the 40 years over which liberalization was implemented in the framework of GATT. But in the area of liberalizing international services transactions, little research and experience exist to guide actions. At the same time, the likely adoption of the GATS and the factors mentioned above require immediate and broad-based action.

That calls for urgent research that is policy- and technical-assistance oriented, to put decision-makers—especially in developing countries—in a better position to cope with the new challenge. As a first step in that direction, the Division of Transnational Corporations and Management of the United Nations Department of Economic and Social Development and the World Bank, supported by UNDP, have embarked on a joint project designed to address some of the questions mentioned above. Its first output will be a *Handbook on Issues Related to the Liberalization of Foreign Direct Investment and Trade in Services.* It will be followed by technical assistance in a number of requesting developing countries to provide practical help in the area of national policy-making.

general rules and principles. In addition, GATS recognizes the right of parties to regulate in the area of services (and particularly the need of developing countries to exercise that right), when deemed necessary to meet national policy objectives. Furthermore, the agreement stipulates that the increasing participation of developing countries in international trade in services should be facilitated through negotiated commitments, to allow firms from those countries access to technologies, information networks, distribution channels and markets in industries of export which are of interest to them. Other rules provided for by GATS cover issues such as payments and transfers, exceptions and safeguards (for example, for balance-of-payments reasons), economic integration, monopolies and restrictive business practices, rules for negotiation, dispute settlement and institutional procedures.

The emerging GATS will have important implications for how FDI policies in the services sector are formulated and implemented in the future. [3] It covers modes of delivery that require FDI, including the movement of production factors such as capital and labour, and commercial presence through the establishment of offices in the importing country. Commercial presence may take the form of "any type of business or professional establishment, including through (i) the constitution, acquisition or maintenance of a juridical person" (a corporation, partnership, joint venture, sole proprietorship or association) or "(ii) the creation or maintenance of a branch or a representation office" (Article XXXIV). One mode of delivery, as well as one of the annexes to GATS, provides for the temporary movement of natural persons—in other words, service providers themselves as well as employees of service providers—provided that requirements with regard to qualifications, standards, visa and work permits are met. Thus, TNCs providing services may place key personnel in the importing country. In sum, all forms of FDI in the services sector are covered by the agreement.

A number of other provisions of GATS may affect FDI policies to various degrees. Its MFN obligation means that any preferential treatment given by parties (for example, in the context of bilateral or regional investment arrangements) has to be granted to all other parties on an MFN basis, unless such arrangements are notified and exempted from the MFN obligation in schedules of commitments of the parties. (A party may invoke such exemptions under the Annex on Article II exemptions.) Those exemptions, however, are time limited (no longer than 10 years), and subject to periodic review and negotiation in subsequent trade-liberalization rounds. Agreements concluded under Article V of GATS dealing with economic integration, which further liberalize FDI policies affecting trade in services between the parties concerned, will also be exempted from the MFN principle; such agreements would have to be notified to all other parties. According to the provision on transparency, all FDI-related rules and regulations affecting trade in services will have to be published. Parties are also requested to inform each other, at least annually, of the introduction of any new changes to such rules and regulations. The framework does not deal explicitly with the right of establishment, but it provides a procedure under which such commitments can be negotiated as part of a national schedule. The rules also allow the transfer of payments, including those related to FDI (transfer of earnings). The safeguard clause of GATS, however, may be applied for balance-of-payment reasons.

The extent to which FDI (and the movement of natural persons) as modes of delivery will be concretely governed by the agreement will be determined by the ongoing negotiations of liberalization

commitments. In other words, countries are identifying service activities for which they will undertake specific commitments regarding market access (access by services *and* service-providers to a foreign market) and national treatment (treatment no less favourable than that accorded to like domestic services *and* service-providers). If a party wishes to limit access to its market or national treatment, it is required to specify such limitations in its schedule of commitments. The schedule could include measures that restrict access by service-providers that require specific types of legal entities or joint ventures through which they may provide a service and that limit the participation of foreign capital in terms of maximum percentages of foreign shareholding, or of the total value of individual or aggregate FDI. In the ongoing negotiations of the initial liberalization commitments, offers indicate that countries wish to maintain certain restrictions relating to commercial presence, such as requirements that FDI take place only through incorporation, with a specified foreign-equity ceiling, or only via a joint-venture arrangement. There are also offers indicating restrictions with regard to the participation of foreign capital in many services industries. Negotiations are under way to reduce or eliminate those and other kinds of investment restrictions to trade in services, through inclusion of specific commitments in national schedules.

If and when GATS is adopted, its immediate impact on the liberalization of FDI may vary from negligible to substantial, depending on the results of the ongoing negotiations of liberalization commitments to be included in the national schedules. At the beginning of 1992, the initial offers of developed countries concerning FDI-related transactions were more comprehensive than those of developing countries. In general, countries seemed to proceed with caution. Offers indicated a tendency among countries to bind their regulations, in most cases, below the existing levels of liberalization, rather than to make substantial progress in the opening of markets. A few countries with more open markets in telecommunication and financial services have even suggested that those services be exempted from MFN treatment until other countries reach the same levels of liberalization. But even if the cautionary approach prevails at that stage, there may be progress in liberalization, because, as a result of the MFN obligation, a number of existing bilateral or regional investment and related arrangements (for example, the Convention on a Code of Conduct for Liner Conferences) may be "multilateralized", requiring the extension of their provisions to non-member countries. In addition, the immediate effect of GATS—if adopted—would be to reduce uncertainty for providers of services by increasing the transparency of regulatory regimes and reducing the scope of discrimination across the sources of supply.

In the long run, the process initiated by the Uruguay Round, and GATS specifically, will not only increasingly determine the formulation and implementation of FDI policies in the services sector, but also may accelerate the liberalization of FDI policies in other sectors. The reason is that GATS, if adopted, includes, for the first time ever, multilateral binding rules on FDI. Although they would apply only to one part of FDI, they may eventually be extended to other sectors as well.

2. Trade related investment measures

The Uruguay Round negotiations on trade related investment measures (TRIMs) have attempted to establish multilateral standards to govern the use of TRIMs by host countries. TRIMs were a controversial issue during the negotiations in that member countries had diverging views concerning the interpretation of the Punta del Este negotiation mandate, which stipulated that further provisions under GATT that might be necessary in order to avoid trade-restrictive and distortive effects of investment measures on trade were to be elaborated, as appropriate. A broad range of TRIMs relating mainly to performance requirements were discussed during the negotiations (table III.1).[4] It was also suggested that investment incentives, home-country measures (for example, export limitations on foreign affiliates, preferential taxes for income on investments) and corporate measures (restrictive business practices) be considered TRIMs, to the extent that they influence patterns of trade and investment.[5] Those measures, however, did not receive nearly the same attention as performance requirements.

A good part of the discussion concerned the extent to which TRIMs are trade distorting and would need to be addressed by new GATT rules. Some developed countries were seeking to prohibit TRIMs and related investment measures *per se,* whereas other developed and developing countries considered that the Punta del Este mandate was solely to address the trade-restrictive and trade-distortive effects of investment measures, particularly those that were not already covered by GATT.[6] Developing countries also argued that TRIMs, applied by a country for the purposes of achieving socio-economic development objectives, should fall outside the negotiating mandate.[7]

The draft Decision on TRIMs, included in the Draft Final Act[8] released in December 1991, covered TRIMs related to trade in goods only. It requires each Party to notify the GATT Secretariat of the publications in which TRIMs may be found, and to be prepared to consider in a positive way requests of other parties for information and/or consultations on TRIMs. A Committee on TRIMs would be established to monitor the operation and implementation of the Decision. With regard to consultation and the settlement of disputes, the GATT mechanism (Articles XXII and XXIII and related instruments) would apply. Parties would review the operation of the Decision within five years, and at that time would consider whether its scope should be broadened to include provisions on investment and competition.

An illustrative list attached to the draft Decision (box III.2) identifies the TRIMs that are seen as inconsistent with the provisions of GATT on national treatment (Article III) and the general elimination of quantitative restrictions (Article XI). Those measures concern performance requirements, such as requirements for import substitution, domestic sales, trade balancing and local content. The last three measures are already covered by existing GATT rules. The list also covers foreign-exchange restrictions, but only those to be used for trade-balancing. The list is non-exhaustive in nature, which reflects a recognition that there might be other TRIMs that are inconsistent with Articles III and XI of GATT. It should be noted that the list does not include export-performance requirements, which are among the most frequently used TRIMs in developing countries, and which were the subject of intense negotiations. Negotiators, however, have so far not been able to agree upon a discipline for that type of TRIM. TRIMs that are inconsistent with the Decision should be notified and eliminated within two years by developed

Table III.1. Trade related investment measures and their possible impact on trade and investment

Measures	*Possible economic impact*
Investment incentives [a]	**Influence location of investments**
Tax concessions	
Tariff concessions	
Subsidies	
Investment grants	
Performance requirements	
Local-equity requirements [a]	Require ownership of investments
Licensing requirements [a]	Require technology transfer
Remittance restrictions [a]	Restrict external financial transfers
Foreign-exchange restrictions [b]	Restrict external financial transfers
Manufacturing limitations [b]	Restrict production
Transfer-of-technology requirements [c]	Require technology transfer
Domestic sales requirements [d]	Displace imports
Manufacturing requirements [e]	Displace imports
Product-mandating requirements [e]	Displace other exports
Trade-balancing requirements [e]	Displace other exports
Local-content requirements [f]	Displace imports
Export requirements [f]	Displace other exports
Import-substitution requirements	Displace exports
Corporate measures (resrictive business practices) [g]	
Market allocation	Restrict exports
Collusive tendering	Excessive pricing for imports
Refusal to deal	Restrict exports/imports
Exclusive dealing	Export prohibition
Tied sales	Displace other imports/exports
Resale price maintenance	Excessive pricing for imports
Price fixing	Excessive pricing
Differential pricing	Excessive pricing
Transfer pricing	Excessive pricing for imports; Low pricing for exports
Home-country measures	
Export limitation on foreign affiliates	Restricts trade
Preferential taxes for income on investments	Subsidize investments

Source: UNCTC, *New Issues in the Uruguay Round of Multilateral Trade Negotiations*, UNCTC Current Studies, Series A, No. 19 (United Nations publication, Sales No. E.90.II.A.15).

Note: The countries identifying particular measures in the Uruguay Round are indicated as follows:

a United States.
b European Community and the United States.
c Japan and the United States.
d European Community, Japan and the United States.
e European Community, Japan, Switzerland and the United States.
f European Community, Japan, Switzerland, the Nordic countries and the United States.
g India.

countries, within five years by developing countries and within seven years by least developed countries. The need for special treatment of developing countries is stipulated in the Preamble and in a number of the Articles, of which one (that is, longer transition periods) has already been mentioned.

Developing countries would also be free to deviate temporarily from the provisions of the Decision, that is, they would be allowed to apply, temporarily, TRIMs that are prohibited, but that may be needed to promote government policy objectives regarding socio-economic growth and development. In short, the draft Decision (Article IV) essentially reaffirms that relevant Articles of GATT, giving developing countries the right to use trade restrictions for balance-of-payment measures and allowing them to protect infant industries, would continue to apply; no additional rights are conferred on developing countries by Article IV. At the same time, all exceptions under GATT would apply.

With regard to transitional arrangements, member countries that have notified a TRIM inconsistent with the Decision may, during the transition period and under certain conditions, apply the same TRIM to a new investment in order not to disadvantage established enterprises subject to the notified TRIM. They must be terminated, however, at the same time.

Box III.2. Illustrative list of "unacceptable" trade related investment measures

1. TRIMs that are inconsistent with the obligation of national treatment provided for in Article III:4 of the General Agreement include those which are mandatory or enforceable under domestic law or under administrative rulings or compliance with which is necessary to obtain an advantage, and which require:

- the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production;
- that purchases of an enterprise or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of the general elimination of quantitative restrictions provided for in Article XI:1 of the General Agreement include those which are mandatory or enforceable under domestic law or under administrative rulings or compliance with which is necessary to obtain an advantage, and which restrict:

- the importation by an enterprise of products used in or related to its local production, generally, or to an amount related to the volume or value of local production that it exports;
- the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise;
- the exportation or sale for export by an enterprise of products whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

Source: Quoted from the annex to the Draft Decision on trade related investment measures, Section N of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (MTN.TNC/W/FA, 1991).

The potential implications of the draft Decision on TRIMs are difficult to foresee, because there is no commonly accepted method of drawing a line between so-called "legitimate" and "illegitimate" measures (in home or host countries) that may affect the location of production and the associated flows of goods, services, technology and capital among markets. The TRIMs included in the illustrative list of the draft Decision are mainly various performance requirements whose major economic impact may be the displacement of exports or imports. There is, however, no common agreement on how, precisely, such measures actually affect firm behaviour, or what their impact is on trade and development. Furthermore, in the competition for FDI, developed countries frequently use market access, tariff escalation and investment incentives to attract foreign investors in the same way that developing countries use TRIMs. [9]

Given the fact that GATT already allows developing countries greater flexibility in the use of trade-restrictive measures for a variety of reasons, including balance-of-payments problems and infant industry and development considerations, [10] the Decision, if adopted, will not affect significantly the use of TRIMs by those countries. In any event, most developing countries have substantially liberalized their FDI regimes (see below) with a view to increasing inward FDI flows. Such liberalization may tend to reduce the possibility of violations of the Decision on TRIMs, if it is adopted.

While the Uruguay Round negotiations have focused on efforts to control, reduce and prohibit TRIMs, the distortionary effects of TRIMs, as compared with other types of locational policies (for example, cash grants or tax breaks), are still being debated. In particular, prohibiting one type of policy instrument potentially affecting locational decisions of TNCs, while leaving others intact, might in itself be distortionary. Therefore, a more balanced multilateral approach may be needed, incorporating all locational policies affecting FDI, especially performance requirements and investment incentives. Those matters are likely to be discussed in a newly established Committee on TRIMs, in which contracting parties may consult on matters relating to the operation and implementation of the Decision. The provisions on transparency will further contribute to a more effective decision- and policy-making process by allowing Governments, companies, investors and others increased access to information on TRIMs applied by national authorities.

Considering the major divergences in views on TRIMs by member countries at the time of the launching of the Uruguay Round, the present draft text is certainly an achievement. At the same time, the outcome of the TRIMs negotiations so far represents mostly a reaffirmation of existing GATT rules. Since the final provisions of the Decision provide, however, that investment and competition policies will be considered for potential inclusion into the scope of the Decision within five years, it may well be that the seeds have been planted for a broader multilateral framework for FDI and related policy issues. [11]

3. Trade related aspects of intellectual property rights

The draft agreement negotiated in the Uruguay Round on trade-related aspects of intellectual property rights (TRIPs), including trade in counterfeit goods, contains three major elements of potential importance for TNCs:

- First, it sets minimum standards of protection for seven categories of intellectual property rights: copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits and undisclosed information (trade secrets);
- Second, it sets out the obligations of member Governments on the civil, judicial and administrative procedures to be available under national law, both internally and at the border, for the enforcement of those rights;
- Third, it sets up a multilateral procedure for the settlement of any disputes that might arise between member Governments.

The standards of protection provided, especially in the technology-related areas of patents, integrated circuits and undisclosed information, would be generally higher than those prevailing hitherto, notably in a number of developing countries. It is intended that the agreement will form part of the overall results of the Uruguay Round and will be adopted by over 100 countries.

In considering the economic impact of higher standards of intellectual-property protection, two considerations need to be borne in mind. First, the impact is likely to be greater in industries in which cheap or costless imitation is relatively easy, such as pharmaceuticals, chemicals and computer software, than in high technology areas in which the co-operation of the inventor is more essential for technology diffusion. It is in the former category that intellectual- property regimes have hitherto varied most sharply; those differences would be eliminated or significantly narrowed by a TRIPs agreement. It is in the areas in which copying is easier that the role of intellectual-property protection has been most significant in preventing the appropriation of R&D activity. In other areas, inventors can more easily use other means, such as secrecy, advertising and increasing returns to scale, to secure the benefits of their research and create barriers to entry, so that intellectual-property protection as such is relatively less important. Second, the economic effects of higher intellectual-property protection, including those on market structure, prices, output and profits, are influenced by a host of other measures relating to, especially, competition policy, price controls, advertising and taxation, which a TRIPs agreement would not regulate. For example, the increase in prices that better patent protection could bring about could, to a certain extent, be offset by price controls.

In the long term, better intellectual-property-right protection may be expected to induce more R&D generation by TNCs, though it is difficult to predict the size and nature of such effects. Given that the change in intellectual-property regimes will be more pronounced in developing countries and, therefore, that much of the improvement in corporate performance, such as may occur, would be derived from markets in those countries, it may be that the incentive to innovate in product areas of special interest to

developing countries, such as tropical medicine and inputs for tropical agriculture, would also be enhanced. If that happened, it would be an important departure from past trends whereby intellectual-property rights in developing countries were used predominantly for trade purposes rather than for investment and local production. In general, if the induced effects on R&D were strong, the dynamic benefits of increased intellectual-property protection, in the form of lower production costs, lower prices and greater product variety, could be considerable.

It is also likely that stronger protection of intellectual property will facilitate technology transfer, since there is some evidence that companies have been unwilling to export the latest technology in the absence of security against appropriation. In the short run, however, as imitation-based technology is substituted by protected technology whose costs may be higher, technology diffusion in some sectors may be slowed down. In the long term, higher protection should encourage the invention of cheaper and better technology, which would increase global welfare. [12]

In sum, the impact of the agreement, if adopted, on foreign direct investment should in general be favourable, partly through the reduction of disincentives to technology transfer (mentioned above) and partly through the creation of a policy climate more favourable and receptive to FDI. In industries that have hitherto been supplied largely by imitation-based production, such production could in principle be replaced by imports, by FDI or by local production under licence. The effect of a TRIPs agreement in the patent area is to put those three means of supplying the market on an equal footing, so that decisions on investment and industrial location are more likely to be based on commercial considerations and less likely to be affected by government policy on patents.

B. Regional and bilateral developments

1. The 1991 review of OECD instruments

On the interregional level, the most important development was the review of the OECD Declaration on International Investment and Multinational Enterprises, adopted in 1976. [13] The latest review of that instrument was endorsed by the OECD Council of Ministers in 1991. Among the main changes approved were the following:

- The Decision on National Treatment was revised by strengthening the obligation of notification of measures that are contrary to the principle of national treatment. Also reinforced were the existing examination procedures with a view to accelerating liberalization;
- The existing provisions on the environment in the Guidelines for Multinational Enterprises were strengthened and expanded into a full new chapter dedicated to that topic;

- It was agreed to incorporate in the Declaration an earlier agreement on general considerations and practical approaches to take into account in adopting legislation that may lead to conflicting requirements being imposed on TNCs.

The 1991 review clarified that the obligations of the revised national-treatment instrument apply to all member countries and at all levels of Government (federal, state and local Governments). Moreover, under the strengthened procedures, all exceptions to national treatment will be notified and listed in an annex to the Decision. Other measures having a bearing on national treatment will also be subject to notification for transparency purposes. Instead of the periodic examination of compliance conducted on the basis of categories of measures, as was done until now, in the future there will be country-by-country comprehensive reviews. Follow-up procedures to determine the effect given to the recommendations after a country has been examined are specified. It was also agreed that exceptions to national treatment will be examined in conjunction with the Committee on Capital Movements and Invisible Transactions. A significant new development was the adherence for the first time of the European Community to the section of the Declaration dealing with national treatment in those aspects which are within its competence. Moreover, according to its Article 7, the Revised Decision on National Treatment is now open for accession by the European Community.

With respect to environmental protection, a new chapter was introduced in the Guidelines for Multilateral Enterprises, thus stressing the importance attached to that topic by OECD and emphasizing the linkages between economic objectives and environmental concerns. The new chapter on environment strengthens cooperation between Governments and industry by suggesting practical ways of solving major international environmental issues. Under the new guidelines, TNCs will be expected to undertake several preventive measures, such as assessment of environmental and health risks in decision-making, and disclosure of relevant information to competent authorities regarding the potential impact of their operations. Under the new provisions, both transnational and domestic enterprises are subject to the same expectations, with respect to the duty to protect the environment and avoid creating environmental problems. The specific measures recommended to prevent and minimize risks include those related to the use of safe technology and processes; environmental protection at the enterprise level, including, where appropriate, environmental auditing; provision of adequate equipment and information to local enterprises; education and training programmes; and support for public-information programmes.

The overall strategy of OECD member States with respect to FDI is also reflected in a new initiative taken by that Organisation to study the advantages and feasibility of a comprehensive investment instrument that would apply to all levels of Government and cover entry and establishment of FDI, as well as treatment of already established foreign affiliates. The instrument might draw upon the OECD Liberalisation Codes, the National Treatment Instrument, as well as other international instruments, which it would consolidate, in order to strengthen and enlarge the OECD framework on FDI.

2. Bilateral arrangements

During 1991, the network of bilateral treaties for the promotion and protection of FDI continued to expand, to reach a total number of 440 by mid-1991 (table III.2 and annex table 10). As of mid-year, 19 new treaties had been concluded, mainly by Western countries with States in Central and Eastern Europe, as well as Latin America. The network confirms a trend that began a few years ago when, for the first time, some countries in Latin America and Central and Eastern Europe joined in the practice of concluding bilateral investment treaties, as one of the policy measures adopted by those countries with a view to creating a favourable climate for foreign investors. By mid-1991, Poland had concluded 16 treaties; the USSR signed 14; Czechoslovakia 13; and Hungary had signed 18 bilateral treaties. As to Latin America, 10 new treaties were signed between 1990 and mid-1991, and others were under negotiation. The conclusion of bilateral investment treaties by countries such as Argentina, Bolivia, Chile, Peru and Venezuela marked a significant policy change in the approach of those countries towards foreign investors. Until recently, the countries of that region had rejected bilateral investment treaties as being incompatible with their adherence to the Calvo Doctrine.[14]

Table III.2. Distribution of bilateral investment treaties between OECD countries and developing regions and Central and Eastern Europe, by ten-year period

Region	*1950s*	*1960s*	*1970s*	*1980s*	*1990-1991*[a]	*Total*
Africa	-	56	38	33	13	140
Asia	1	1	28	46	3	79
Latin America and the Caribbean	1	6	3	32	12	54
Middle East	-	1	12	9	1	23
Central and Eastern Europe	-	-	11	42	25	78
Memorandum						
Among OECD countries	-	5	2	9	2	18
Among developing countries	-	3	5	15	6	29
Between developing countries and Central and Eastern Europe	-	-	4	13	2	19
Among Central and Eastern European countries	-	-	-	-	-	-
Total	2	72	103	199	64	440

Source: UNCTC and ICC, *Bilateral Investment Treaties 1959-1991* (United Nations publication, Sales No. E.92.II.A.16).

a First six months of 1991 only.

Overall, the format of bilateral investment treaties has not changed very much over the years. Bilateral investment treaties continue to provide a number of general standards of treatment (that is, fair and equitable, national and most-favoured-nation

treatment), as well as specific standards for the most sensitive issues in investment relations, namely, expropriation, transfer of payments, subrogation and settlement of disputes between investors and the Governments, of their host countries. Although the question of entry and establishment has traditionally been left out of the treaties (to be determined by the laws of the host country), there is, nevertheless, a clear emphasis in the treaties on the facilitation of entry and establishment of foreign investments from the other contracting party. Recent treaties, notably those concluded by the United States, prescribe that the entry and establishment of investors from the other contracting party should be granted on the basis of national and most-favoured-nation treatment. Specific issues related to operational conditions are usually left to be determined by the laws of the contracting States. Provisions relating to performance requirements are not a common feature of bilateral investment treaties, but the United States treaties include a clause specifically prohibiting performance requirements between the contracting States. [15]

A significant new development since mid 1990 has been the conclusion, by the United States, of 15 trade and investment framework agreements involving a total of 31 Latin American and Caribbean countries (only Cuba, Haiti and Suriname are not parties to any such agreement). Thirteen such agreements were concluded with individual countries (Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, and Venezuela). The other two agreements were signed with the Southern Cone Common Market (Mercosur) [16] and with the Caribbean Community (CARICOM). [17] The arrangements are meant to be policy-building blocs that could eventually lead to full free trade and investment agreements. While they do not prescribe binding commitments on trade and investment liberalization, they seek to monitor relations in these two areas. They establish working groups to put in motion a series of policy goals aimed at increasing access to markets and diminishing trade restrictions. They also seek to strengthen the protection of intellectual-property rights, and set up mechanisms for dispute settlement. [18]

Another significant bilateral undertaking is the antitrust cooperation agreement concluded between the United States and the Commission of the European Communities on 23 September 1991. [19] The agreement permits the United States to request the European authorities to take action against anti-competitive conduct occurring in Europe and vice versa. To that effect, the agreement contains, among other things, the following:

- a commitment to notify the other party of antitrust enforcement activities that may affect important interests;
- an undertaking to take into account the important interests of the other parties at all stages of their antitrust implementation activities;
- coordination of enforcement activities, if it is mutually advantageous;
- ad hoc consultations to resolve issues as they arise;
- regular meetings to exchange information and views on antitrust policy.

Because of the extraterritorial nature of some of the existing antitrust laws, and the different approaches adopted by various national regulations in that area, there have been many instances of

conflicting requirements and conflicts of jurisdiction in the application of antitrust legislation. Those problems have interfered with the establishment of trans-border mergers within the EC and the United States. The adoption of the agreement would, therefore, help minimize those difficulties and intensify intergovernmental cooperation in the area of competition law, thus paving the way for further harmonization and integration efforts still to come.

C. National developments

1. Regulatory changes

The trend towards liberalization of government policies on FDI that started in the 1980s continued—even accelerated—during 1991 (table III.3 and annex table 11).[20] During that year, especially countries in Central and Eastern Europe liberalized their FDI regimes (for example, Albania, Bulgaria), as part of their efforts to attract and facilitate FDI flows. In other countries, the pattern of liberalization that was initiated in the past few years has continued and even intensified, for example, in India (see box III.3), Viet Nam and Saudi Arabia. On the other hand, a few Western countries traditionally associated with liberal attitudes towards foreign investors (for example, the United States), introduced some controls on business operations affecting foreign investment, although, overall, the framework for FDI in all developed countries is now liberalized to a very large extent.[21] Moreover, as some regional integration institutions assume stronger functions, some aspects of investment regulation are now being dealt with at the regional level, for instance, by the EC, CARICOM, PTA and MERCOSUR.

In the developing world, many countries had already introduced new laws on FDI, or modified existing ones during the 1980s. Still, in 1991, some countries that had not undertaken a comprehensive review of their FDI regimes introduced new policies aimed at liberalizing some of the existing restrictions. But the pace of changes varies considerably from country to country. The new liberalizing measures adopted by developing countries typically included the lifting of local ownership requirements and sectoral restrictions (for example, in service industries such as banking, tourism and telecommunications), the simplification of approval procedures and the introduction of more liberal rules for the repatriation of capital and payments. In addition, developing countries continued to offer a wide variety of incentives to attract foreign investors (mainly tax exemptions, tax holidays and custom exemptions). In many countries, incentives were granted on the condition that certain performance requirements were met by the investor, related either to the size and importance of the project or to requirements such as local content or levels of exports. In general, most incentives differentiated between local and foreign enterprises and between different industries. But there appeared to be some efforts aimed at harmonizing incentives granted to foreign investors within particular regions.

The most dramatic changes in FDI regimes during 1991 continued to take place in Central and Eastern Europe. The fundamental economic and political changes initiated in 1989 have required the introduction of new laws reflecting market principles in virtually all aspects of economic activity. Foreign

Table III.3 Main changes in investment regimes in 1991

	Effected by		*Type of measure*									
			Foreign ownership/ sectoral restrictions		*Approval procedures*		*Incentives*		*Guarantees*		*Controls*	
Region	*New law*	*Revision of law*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*
Asia	China						x					
	India		x		x							
	Mongolia						x					
	Philippines		x									
	Republic of Korea				x							
		Taiwan Province of China	x				x					
		Viet Nam	x									
Africa	Egypt		x									
	Uganda				x		x					
	Zambia				x		x					
Middle East		Bahrain	x									
	Saudi Arabia				x							
	Syrian Arab Republic						x		x			
	Yemen						x		x			
Latin America and the Caribbean	Bolivia		x		x				x			
	Colombia		x		x				x		x	
	Ecuador		x		x				x		x	
	Jamaica										x	

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(Table III.3, cont'd.)

	Effected by		*Type of measure*									
			Foreign ownership/ sectoral restrictions		*Approval procedures*		*Incentives*		*Guarantees*		*Controls*	
Region	*New law*	*Revision of law*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*	*More liberal*	*Less liberal*
Latin America and the Caribbean (cont'd.)	Nicaragua		x		x				x		x	
	Peru		x		x				x		x	
Central and Eastern Europe	Albania		x				x		x		x	
	Belarus		x				x				x	
	Bulgaria		x				x		x		x	
		Czechoslovakia							x			
	Estonia		x						x			
	Poland				x		x		x		x	
	Romania		x		x		x		x		x	
	Russian Republic		x		x		x		x		x	
	Ukraine		x		x				x			
	Uzbekistan								x		x	
OECD	Japan		x		x				x			
	Sweden		x				x					
	Switzerland											x
		United States										x

Source: United Nations, Department of Economic and Social Development, Transnational Corporations and Management Division, based on annex table 11.

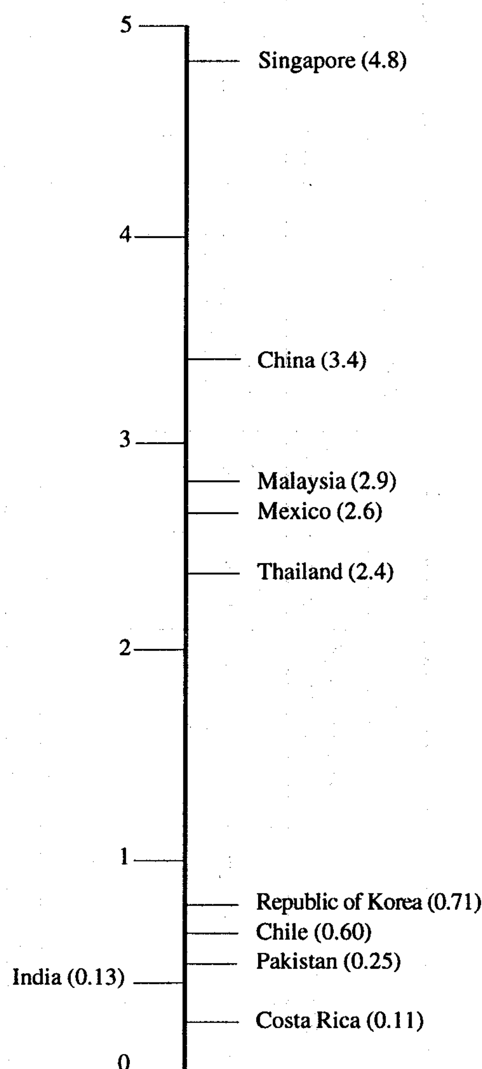
Box III.3. India: a new pragmatism

Despite the advantages of a rapidly-expanding market, a well-developed infrastructure and industrial base, a large pool of scientific and engineering personnel and a tradition of medium-scale entrepreneurship, India has received far less in FDI compared with other developing countries (table 1). The main reason has been negative investor perception, whether well founded or not, of national commitment to foreign capital.

Inheriting a distrust of TNCs as a legacy of colonial domination, the Government evolved a complex legal and institutional labyrinth to ensure a marginal and highly circumscribed role for FDI in the economy. As a corollary, the normal ceiling on foreign-equity participation was limited to 40 per cent, and FDI was largely restricted to priority industries requiring sophisticated technology, undertakings with high export-earnings capacity, industries lacking in indigenous technology or industries in which a critical production gap existed. While earlier reservations towards FDI had given place to a more realistic appraisal of the need for technology and investment liberalization measures, particularly in the period 1985-1990, the basic structure of controls and regulations on TNCs did not change significantly to encourage FDI and technology imports.

In a series of bold moves, the industrial policy unveiled on 24 July 1991 moved the Indian economy from a very restrictive industrial regime towards a market-friendly, outward-looking one. More liberal and sweeping than at any time in the past, the across-the-board reforms set out a clear objective of resuscitating the faltering economy, improving the investment climate and integrating India into the world economy. The reforms liberalized many of the industrial-licensing, foreign-exchange and anti-monopoly regulations; partially freed the financial system from controls on interest rates; allowed partial convertibility of the rupee; proposed a more limited role for the public sector; revamped trade policy to make exports more profitable; and simplified the taxation structure. Overall, the reforms signalled a fundamental shift in attitude towards FDI.

Table 1. Investment inflows, 1990
(Billions of dollars)



Source: International Monetary Fund, balance-of-payments tape, retrieved in December 1991.

The role of the public sector will be restricted to eight core industries (including arms, atomic energy, mineral oils, rail transport and mining), opening new investment opportunities for foreign and domestic capital

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(Box III.3, cont'd)

in other industries. In a sharp break from the past, the new policy abolished the requirement of licensing for all but 18 industries and swept away the limitations under the Monopolies and Restrictive Trade Practices (MRTP) Act. The MRTP companies, foreign and domestic, with assets of $30 million or more, will no longer require licences for starting new industries, expanding existing ones and merging with or taking-over other companies.

The cornerstones of the new policy are, however, the measures designed to attract FDI and increase the national technology base and international competitiveness. Automatic approval will be given to joint ventures with up to 51 per cent (up from 40 per cent) foreign-equity participation in 34 high-priority industries, provided foreign equity covers the foreign-exchange requirement for imported capital goods. Changes have also been made in the very restrictive Foreign Exchange Regulation Act (FERA), which effectively required foreign companies to limit equity participation to 40 per cent or face stringent controls. A few TNCs (like IBM and Coca-Cola) preferred to divest in 1977 rather than dilute their equity holdings. IBM is now returning to India, in a 50-50 joint venture with the Tata group, to produce personal computers and software packages for export, as well as for sale to the local market. Foreign partners in several existing ventures in India are increasing their equity participation to take advantage of the relaxed ownership restrictions. For instance, Suzuki has been allowed to raise its equity in Maruti Udyog to 50 per cent from 40 per cent. Lesaffre (France) will also increase its equity to 51 per cent from 40 per cent in its local yeast plant, Safyeast Ltd.

In a further policy relaxation, FERA companies (companies with more than 51 per cent foreign interest) have been allowed to set up trading offices and branches, borrow money and accept deposits, deal in immovable property and use foreign trademarks. Formerly, for example, Pepsico could market its drinks only with a local prefix to its international brand name, Lehar Pepsi. In essence, under the new policy initiatives, FERA companies have been placed on a par with Indian companies for all operational purposes.

To further streamline the FDI applications process, the Government has pledged to take no more than 36 days to reach a decision. Furthermore, a high-powered Foreign Investment Promotion Board has been constituted to invite, negotiate and facilitate investment proposals from large foreign companies that may fall outside the usual parameters and procedures. In a clear and positive signal to prospective foreign investors, for example, the Government has expeditiously granted approval to proposals from a number of major TNCs (table 2).

In another policy reversal, the Government has lifted its ban on foreign participation in the oil and gas industry, including the exploration and development of existing fields, production, refin-

Table 2. Foreign-collaboration approvals, August 1991-February 1992
(Millions of dollars)

Joint venture	*Industry*	*Investment* [a]
IBM-Tata	Computer systems, software	9.8
BMW-Escorts	Motorcycles	3.8
Ford/Sumitomo-Maruti	Aluminium radiators	3.1
Fujitsu-PSEDPS	Digital electronic-switching systems	12.8
Kellogg's	Food processing	16.6
Coca-Cola-Pillai	Snack food and beverages	20.0
General Motors-Hindustan Motors	Automobiles and parts	30.0
General Electric-Godrej	Kitchen appliances	20.0

Sources: Indian Investment Centre; *India Today*, 15 December 1991.

[a]Estimates.

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(Box III.3, cont'd)

ing and marketing. The reversal will favour the proposals submitted by Shell, Caltex, Chevron and Total. British Gas and Gaz de France have also submitted a proposal with the Gas Authority of India for joint distribution of gas in Bombay. Similarly, in telecommunications, the Government has reversed its previous policy of indigenous development and is now inviting FDI; for example, it is discussing joint ventures with Motorola, AT&T, Siemens, Ericsson, NEC and Fujitsu. The drive of the Government to attract more FDI in all sectors of the economy may well lead to greater protection of intellectual-property rights.

To harness both domestic and international savings in its industrialization process, the new policy allows foreign pension funds and the like to invest in the Indian stock market. The investment will not only boost share prices and bring in foreign equity, but will also mark the first steps towards an integration of the Indian stock markets with the international ones. In addition, a plan approved on 7 February 1992 allows Indian companies to issue equity to foreign investors through convertible instruments. Further, if approved, the foreign collaboration between Unit Trust of India and Alliance Capital Management LP will be the first to provide investment-management services to Indian investors.

The new policy also spells out more incentives to attract FDI from non-resident Indians (NRIs). On a non-repatriable basis, areas like housing, real estate and infrastructure have been opened to NRIs. Interestingly, in a calculated move to take advantage of the special privileges extended to NRIs, including entry into restricted areas, easier approvals and 100 per cent equity, Coca-Cola teamed with a Singapore-based NRI to secure its recent investment decision under liberal conditions.

Competing for scarce international capital, the Government has found it necessary to market India aggressively in high-powered business and official forums at home and abroad. In order to strengthen the diplomatic missions abroad in that respect, the Government is considering a proposal to induct personnel from the corporate sector in the commercial wing of the missions. A further indication of the changing attitude towards TNCs is the growing competition between state Governments to attract foreign investors.

The reforms have generated considerable interest in several foreign companies that are seeking to take advantage of the more liberal environment as the ability of the Government to back its policy assertions with actions becomes apparent. The most recent estimates indicate that the amount of FDI approved between August and December 1991 was more than nine times that approved in the corresponding period in 1990: $165 million against $18 million. Several other TNCs have announced plans for new projects in India. In light of the recent changes, some firms like Fujitsu and Alcatel are submitting revised proposals rejected in the past. At the same time, firms already operating in India are seeking more liberal conditions.

Still, while as many as 760 foreign proposals have been approved since the announcement of the new policy (August-December 1991), the foreign equity involved has fallen far short of what the Government had hoped for. And, in nearly all cases, the ventures had been formulated before the new policy announcements.

The shortfall might well simply reflect the normal lags in the reaction of investors to policy change, or it could mean that, given the fierce global competition for capital, liberalization measures in India may have to go further to attract a substantially increased stream of FDI. For, despite the substantial progress made in several areas, what matters to investors is not what dramatic departures from past practices have been introduced by the new policy, but how the new climate compares with investment opportunities elsewhere.

Sources: Government of India, *India's New Economic Policies* (New Delhi, Ministry of External Affairs, 1991); UNCTC, *Foreign Direct Investment and Technology Transfer in India* (United Nations publication, Sales No. E.92.II.A.3); *Far Eastern Economic Review*, various issues; *Financial Times*, various issues; *India Abroad*, various issues; *Times of India*, various issues; *Financial Express*, various issues; *The Wall Street Journal*, various issues; *Business Asia*, various issues; *The New York Times*, various issues.

direct investment was among the priority areas targeted for new legislation. By the end of 1991, most countries in the region had adopted legislation providing liberal conditions for FDI, including (in most cases) 100 per cent foreign ownership, free transfer of profits and the repatriation of capital (although restrictions on currency exchange and convertibility continue), guarantees for expropriation, and incentives, mainly tax holidays (table III.3). [22] Moreover, after only a few years of being in force, some of the new-generation FDI laws passed in that region are being clarified and amended, building now upon experience gained with their application. Given the fact that, until recently, all industries were in the hands of the public sector, major privatization programmes have also been set in motion. The new privatization rules being implemented are also important elements of the FDI regimes, since main major industrial enterprises are expected to attract foreign investors, at least until the indigenous industrial and financial base of those countries is modernized. In many respects, the new regimes reflect state-of-the-art provisions in areas such as environmental protection, competition and intellectual-and-industrial property protection. Yet, gaps in basic economic legislation (contractual and company law, financial markets, banking legislation) render the application of the new laws difficult.

Within the OECD area, several countries have adopted new legislation affecting FDI, including the liberalization of rules on take-overs and mergers. Thus, for example, Japan lifted existing restrictions including the requirement of prior notification for effecting inward investments. In addition, the recently completed agreement between the EC and EFTA countries (described in chapter I) will have many and immediate consequences for the legal frameworks of the latter countries. Many of those countries are now compelled to align their legislation with EC regulations in a number of significant areas, such as company law, consumer protection, the environment and restrictive business practices, as well as those applying to specific industries. In the past few years, liberalization efforts among Western countries have gained momentum, mainly in response to closer integration ties being developed among groups of countries within that region. Within the OECD area, those efforts have concentrated mainly on the liberalization of cross-border flows of capital and services and on the lifting of existing government measures that discriminate between foreign and national enterprises.

Despite the overall pronounced liberal attitude towards FDI, some policies and practices have emerged in the OECD area that may suggest a more regulatory approach towards TNCs. In the United States, most importantly, the Exon-Florio amendment to the Defence Production Act has become, since 1991, a permanent fixture of the United States legislation, and grants the President authority to screen out specific foreign-investment projects on the grounds of national security. In fact, it has been argued that the Exon-Florio amendment could be implemented in such a way that competition from foreign investors could be limited, and incentives for domestic firms to develop technologies equal or superior to those held by foreigners would be removed. Such implementations could in the long run have the effect that the competitiveness and productivity of United States firms would be hampered. [23]

2. Privatization

Privatization of former state-owned enterprises has become an increasingly attractive option in developed and developing countries alike, alongside the liberalization of investment policies, and as part of an increasing application of free-market economic policies.[24] With active privatization efforts in more than 70 countries, the annual number of privatizations world-wide more than quintupled between 1985 and 1990, to around 130.[25] By the end of the 1980s, the value of state enterprises sold was reported to have reached over $185 billion, with no sign of a slow-down.[26] Although only limited statistical evidence is available, the role of TNCs in privatization efforts (table III.4) seems to be important in developing countries, especially in Latin America (in Asia, privatization has been of less significance, despite ambitious plans of many Governments in the region).[27] In Central and Eastern Europe, TNC participation in privatization programmes has become crucial in the transition from centrally-planned to market economies.

The increasing utilization of privatization programmes in a large number of countries arises from a number of factors. Most important among them are the disappointing performance of many public-sector enterprises, exemplified by the recent collapse of the centrally planned economies, as well as economic stagnation (and correspondingly large budgetary deficits) in many developing countries with large public sectors. While there may be ideological underpinnings in some privatization efforts, the main rationale seems to be a pragmatic one, namely, the need to improve the provision of goods and services to meet demand, to reduce public-sector deficits and to develop the requisite entrepreneurial capacity for sustained economic growth. It follows that Governments often adopt a selective approach towards privatization, maintaining certain activities in the public domain in order, for example, to keep down the costs to the public of certain services (for example, domestic transportation), or to ensure their availability to all sections of the population (for example, health care). Other enterprises that Governments retain in the public sector tend to be natural monopolies (for example, postal services), or of a strategic nature (for example, oil), or those that involve defence-oriented activities (for example, armaments firms).

The role of FDI in any privatization programme depends on at least two factors. One is the willingness of foreign investors to invest in enterprises that are being privatized. Another concerns the political willingness to admit foreign capital which, in turn, is also a function of the extent to which domestic capital and entrepreneurial resources are able to absorb and operate the available public-sector enterprises. There is, quite often, a considerable resource-gap in the latter respect in many developing countries, as well as the countries of Central and Eastern Europe, thereby making FDI a crucial element in the success of privatization programmes. Some estimates indicate that domestic private capital resources available in some countries, such as Hungary and Poland, would cover less than 25 per cent of the public-sector assets likely to be put on the market.[28] Consequently, an infusion of foreign capital, through loans or FDI, is in many cases required if privatization is to occur, unless Governments decide to transfer ownership of enterprises to the public through a mass distribution of shares (for example, as initiated in Czechoslovakia and proposed in Poland and Romania).

Table III.4. Examples of recent privatizations with the participation of transnational corporations

Host country	*Privatized enterprise*	*Year*	*Industry*	*Foreign TNC*	*Home country*	*Value of the equity sold off (Millions of dollars)*	*TNC share of the equity sold off (Percentage)*	*TNC share of total equity in the enterprise (Percentage)* [a]
Argentina	Aerolineas Argentinas	1990	Air transportation	Iberia	Spain	531[b]	24	20 (with option to buy additional 10)
	ENTEL	1990	Telecommunications	Telefónica de España Citibank Societa Finanziaria Telefónica France Telecom	Spain United States Italy France	964[c]	100	60
Czechoslovakia	Rakona	1991	Detergents	Procter & Gamble	United States	20	100	100
	Skoda	1991	Automobiles	Volkswagen	Germany	409[d]	100	31 (increasing to 70 by 1995)
Hungary	Tungsram	1989	Light bulbs	General Electric	United States	150	100	51
Mexico	Teléfonos de Mexico (Telmex)	1990	Telecommunications	Southwestern Bell France Telecom	United States France	1 760	48	10 (with option to buy additional 5)
Poland	Alima	1991	Fruit juice and baby foods	Gerber Products Co.	United States	11	100	60
	Pollena Bydgoszcz	1991	Detergents	Unilever	Netherlands	20	80	80
	Wedel	1991	Chocolates	Pepsico Inc.	United States	25	100	40
Venezuela	CANTV	1991	Telecommunications	GTE AT&T Telefónica de España	United States United States Spain	1 885	72	29
	Viasa	1991	Air transportation	Iberia	Spain	146	75	45

Source: United Nations, Department of Economic and Social Development, Transnational Corporations and Management Division, based on various sources.

a Since state enterprises are not always sold in their entirety (that is, the Government keeps a certain share of the equity) or since a part of them is sold to domestic investors, the percentages in this column can differ substantially from those in the preceding column.

b Estimated cash price on the basis of the cash value of $130 million in cash, $130 million in cash over five years and $2 billion in debt paper.

c Estimated cash price on the basis of the cash value of $214 million in cash and $5 billion in Argentinean debt paper.

d The amount is equal to DM620 million, at an exchange rate of DM1.516=$1. Volkswagen also pledged to invest $6.4 billion in Skoda over the following ten years.

The willingness of TNCs to invest in host countries is also an important determinant of their participation in the privatization programmes of those countries. That willingness depends on factors such as the overall investment climate in a host country and the industry in which TNCs operate. In several countries, little FDI has been forthcoming, despite liberalized investment legislation and incentives. This is particularly true of several African and certain Central and Eastern European countries. Privatization programmes may, in and of themselves, improve the overall investment climate; however, other factors, such as adequate physical and communication infrastructure, attractive markets, and a stable legal framework, are likely to be more important in this regard. Regarding the industry-specific aspects of privatization, TNCs often tend to operate in relatively globalized manufacturing industries characterized by a high degree of technological, capital and marketing intensity; in vertically integrated resource-based industries; as well as in such services industries as telecommunications, airlines, banking and business services. The creation of private enterprises, therefore, often involves the need to establish equity linkages with foreign firms to obtain the technology, capital and market connections required to become internationally competitive. The linkages are particularly important in economies which, parallel to privatization programmes, also liberalize the framework for external transactions. It may also be necessary for host country financial institutions to establish closer linkages with international financing bodies, in order to obtain financial participation and support for privatized enterprises. On the other hand, in the case of firms in industries that are primarily oriented towards the domestic market and in which international competition may be more limited (for example, utilities), the incidence of TNC participation tends to be lower, except for countries with large and growing markets, such as Brazil, China and India.

Active TNC participation, to the extent that it is available, can have considerable impact on in host-country privatization programmes. The participation of foreign investors in the bidding process increases the number of potential buyers and may increase the sales revenues for the Government. Participation by TNCs may also improve the balance-of-payments position of the host economy. In many instances, TNC participation in host-country privatizations may also lead to the transfer of knowledge by the foreign investor to the privatized enterprise, for example, in the form of production, marketing and management skills; such transfers may be greater than those from a host-country buyer. That may be particularly the case in those countries that are short of the skills and technology required to compete internationally, such as in Central and Eastern European countries, which have little recent prior experience with the management of private enterprises in a market economy. [29] In this regard also, the export performance of a privatized business might be increased through the use of the global networks of TNCs and their knowledge of product needs in other countries. The recognition of those potential benefits by the host-country Government, together with the need to reduce external debt, has led to an increase in the use of debt-equity swaps in privatization programmes particularly in Latin America in the late 1980s. [30] Additionally, when debt-equity swaps are undertaken in the context of a privatization programme, the potentially inflationary impact of such swaps can be greatly reduced, since this investment does not necessarily involve the creation of new money.

The negative aspects of allowing TNCs to participate in privatization programmes concern, in particular, the programmes associated with a de-nationalization of enterprises, especially when the enterprises are in economically or strategically important sectors and occupy the commanding heights

of the economy. Furthermore, foreign investors may, sometimes, buy a privatized enterprise primarily to acquire its market share. In those cases, production (or part of it) would be phased out, plants would be closed and the market would be served from production facilities abroad. This may occur occasionally where established facilities are quite outdated (and hence require substantial modernization efforts), and are located in countries not far from existing, modern production facilities of the foreign investor, Thus, it may be necessary for Governments to agree with foreign investors on certain targets regarding future investment and employment in the privatized enterprise to ensure its future development. Additionally, the risk that a former state monopoly might become a foreign-owned monopoly could also be a source of concern. As a condition for privatization, however, Governments may have to allow TNCs some form of (temporary) monopoly to make it attractive for those firms to invest. The allowance was exemplified by the 1990 privatization of Teléfonos de Mexico (Telmex), in which equity stakes were sold off to Southwestern Bell of the United States, France Telecom and a local partner. The Government of Mexico had to guarantee Telmex a monopoly through 1996, as a compensation to the new owners for making substantial net investments in the telephone system by installing 4.5 million new lines, improving rural services by 100 per cent, introducing optical fibre communication, increasing digitalization by at least 65 per cent and upgrading 480,000 obsolete lines, in addition to maintaining prices in real terms until 1996, with a 3 per cent annual decrease thereafter.[31] Thus, certain agreements with the new owners may sometimes be necessary to secure public-policy goals in the industry.

* * * * *

A few conclusions emerge from the discussion of the role of TNCs in the privatization process. Since TNCs facilitate the transfer of capital, technology and skills, the industries in which TNC participation appears to be relatively more important are those in which host-country investors lack those resources. Moreover, when the competitiveness of a firm is best sustained through a global presence, TNC involvement may be particularly important.

British Telecom's recent investment in the Belize telecommunication system illustrates the important combination of technology transfer and capital infusion. The Belize telecommunication system lacked experience in the modern and highly technology-intensive telecommunications industry that is critical for competitiveness in that industry. Furthermore, it was also unable to develop much-needed customer service, a decisive element in attracting investors to the country. British Telecom, itself a state-owned enterprise until 1984, took an ownership stake in the Belize telephone system, thereby securing technological and managerial know-how for the enterprise.[32]

In many cases, particularly in former centrally planned economies, privatization entails a degree of transformation of the economic culture of the country and the introduction of new concepts, ideas and systems of economic management, with which the cadre of personnel in that country is relatively unfamiliar. In such cases, there is a need to introduce training programmes in certain areas, such as in business administration and accounting, which involves, essentially, a re-tooling of manpower resources,

in addition to the re-shaping of the macroeconomic and legal environment. By the same token, the relatively low development of an entrepreneurial class possessing the necessary capital and skills to manage a major enterprise effectively, which characterizes many economies in transition and developing economies, also indicates the need for programmes oriented towards management and entrepreneurial development, in which TNCs may play an important role.

Where such programmes have to be carried out in the midst of an economic crisis, FDI becomes a critical element in the economic recovery effort. But, since many TNCs may shy away from investing in a turbulent and risky economy, privatization must often go hand-in-hand with the overall promotion of FDI, in addition to the promotion of domestic private investment. It is thus crucial for those countries to establish attractive policy and regulatory regimes for FDI, in order to carry forward their privatization programmes successfully.

D. Self-regulation

National laws and regulations, together with international agreements, are the main instruments through which the rights and responsibilities of Governments and firms are defined. In market economies, furthermore, there is also a certain degree of self-regulation that sometimes even has quasi-official status (in the area of professional activities, including, for example, in accounting). In the area of FDI, the International Chamber of Commerce (ICC), the principal international organization of the business community, addressed the question of treatment of foreign investors by the Governments of their host country as early as in the 1940s, when it issued its "International Code of Fair Treatment for Foreign Investments". In 1972, the same issue became the subject of the highly publicized ICC "Guidelines for International Investment", which was followed by a number of voluntary sector-specific codes and guidelines. In addition, many corporations adopted their own corporate behaviour codes. [33]

There are many reasons why industry engages in self-regulation. Self-regulation may be used to shape or avoid future legislation. Voluntary guidelines adopted by the business sector may be more stringent than national legislation and therefore make such legislation unnecessary. In some cases, self-regulation may be more effective than national regulations themselves, especially in those countries in which enforcement mechanisms are weak. For regulators, self-regulation by business fulfills a useful function in that the resulting self-imposed standards can provide practical internal guidance while responding to public-interest questions. Thus, self-imposed standards can be instruments against which the position of firms on public policy issues can be measured.

In those and other respects, a distinction should be made between self-regulation by business associations and self-regulation through specific codes or guidelines of firms. There are similarities in the motivations and functions of the two kinds of instruments, but there are also important differences.

Self-regulation by associations involves the imposition of certain common standards on *all* firms in the industry. The sanctions for non-compliance involve the good name of the firm, its acceptance by

other firms in the specific context of the industry represented by the association and any other sanctions the association may impose. In other words, the other members of the association are charged with ensuring compliance with the association's standards. That type of self-regulation is similar to the kind of self-regulation that has long been the hallmark of the liberal professions, and which often has had a quasi-official status.

Corporate codes or guidelines do not function in that manner. Their role is to impose certain disciplines within the firm, without necessarily involving other firms or others to ensure compliance. Adherence to certain strict corporate standards that go beyond existing legislation can become a competitive tool, for example, by saving money in the use of resources, energy use and waste disposal; on the other hand, voluntary self-regulation by a firm can result in costs that may place it at a competitive disadvantage *vis-à-vis* non-self regulating firms. Furthermore, enterprise self-regulation is often seen as an issue of corporate responsibility *vis-à-vis* shareholders, customers and the public at large. Self-policing by firms can also be an effective public-relations technique, especially at a time when consumers increasingly scrutinize industry performance before making purchasing decisions. For business generally, self-regulation of that kind is a preferable alternative to codes of conduct developed by international organizations, or to those prepared by non-governmental organizations. [34]

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In the past few years, self-regulation received a particular impetus in the area of environment, especially in preparation for the United Nations Conference on Environment and Development. (In fact, international business was invited by the Secretary-General of the Conference to develop proposals for its participation in the Conference and for follow-up action.) Efforts in that area reach back to 1974, however, two years after the United Nations Conference on the Human Environment, held in Stockholm, when the first attempts by industry to self-regulate its environmental performance were made. The ICC issued "Environmental Guidelines for World Industry", [35] which attempted to balance corporate environmental responsibility with financial realities; but the document provided only general guidance. In April 1991, the ICC launched the "Business Charter for Sustainable Development", [36] which is a set of 16 principles aimed at providing common guidance on environmental management to all types of business and enterprises around the world, and aiding them in the development of their own environmental policies and programmes. The stated intent of the Charter is to lay the foundations of policies that will lead corporations towards overall sustainability of their operations in the context of working towards sustainable development in general. Although the Charter contains no specific references to the application of the principles to a corporation's transnational operations, one would presume that they are also covered as well.

Apart from the ICC, a number of industrial and national associations have generated voluntary codes and guidelines. [37] The environmental guidelines developed by the Chemical Manufacturer's Association and the Conseil Européen des Federations de l'Industrie Chimique address a number of

important issues, such as product stewardship and the provision of information to the public for contingency procedures. As with the ICC Business Charter, environmental responsibilities *vis-à-vis* the foreign affiliates of corporations are not discussed, although again, presumably, they are also covered. The subject, however, is addressed explicitly by Keidanren, the Japanese industry association, in its environmental guidelines. [38] In fact, Keidanren expects its members to go beyond compliance with national laws in developing countries, where environmental standards are less stringent than those in Japan; furthermore, the transfer of most advanced technology and know-how related to environmental management measures is advocated.

The transnational nature of the environmental performance of a corporation is increasingly addressed by individual corporations that have developed formal corporate-wide policy statements on their commitment to the protection of the environment. The benchmark survey of international corporate environmental policies conducted by UNCTC in 1991 found that, among the 169 responding firms, 43 per cent stated that they have developed formal international environmental policies (although, of course, their focus and specificity vary). In addition, the survey found that 75 per cent of the responding

Box III.4. Environmental policy of Chevron

The following is an excerpt from the environmental policy statement of Chevron. In addition to socially responsible behaviour, the corporation pledges integration of environmental concerns in all business decisions, participation in the formulation of pertinent legislation, openness in its operations as they affect safety and the environment and efficiency in the use of natural resources.

It is the policy of Chevron Corporation to conduct its business in a socially responsible and ethical manner that protects safety, health and the environment. ...To that end, the Company will:

- Integrate safety, fire, health and environmental protection into every aspect of its business activities;
- Comply with all safety, fire, health and environmental laws or regulations without regard to the degree of enforcement;
- Seek opportunities to participate in the formulation of safety, fire, health and environmental legislation, regulation or policy issues that may significantly impact our business. Work actively with the appropriate governmental agencies to ensure timely, reasonable and cost-effective solutions for issues wherever possible;
- Encourage employees to initiate and maintain an open dialogue within the Company and with the public or its agents regarding safety, fire, health and environmental matters. This includes recognizing and responding as appropriate to Company and community concerns about such matters...;
- Exhibit socially conscious leadership and demonstrate exemplary safety, fire, health and environment performance;
- Conserve Company and natural resources by careful management of emissions and discharges and by eliminating unnecessary waste generation. This also includes wise use of energy in our operations. Discretionary environmental, health and safety expenditures should be managed prudently to enhance Chevron's long-term competitive position.

Source: Excerpts from Chevron Corporation, "Strategic management in the environmental era", in brochure containing Chevron's Corporate Policy No. 530 for Safety, Fire, Health and the Environment, p. 5.

firms had between 1 and 23 specific environmental policies on issues such as air, water, health and safety, or waste reduction that go beyond the requirements of national legislation (boxes III.4 and III.5).

Some corporations have taken steps to improve their environmental performance, even if doing so means sacrificing a line of business.[39] Other companies pledge to improve product and resource efficiency within target dates.[40] At times, environmental responsibility is extended to outside of the boundaries of a corporation, to include its business associates.[41] Self-regulation is sometimes the result of corporations seeking to address pro-actively major areas of concern,[42] while other corporations seek to increase energy and resource-use efficiency by reducing pollution at its source and by pledging to discontinue certain environmentally harmful processes.[43]

Box III.5. Self-regulation and environmental protection

Below are illustrations of self-regulatory responses of a few firms to inadequate local environmental regulations. The corporations make a commitment in their environmental policy statements to apply their own standards where adequate protection to health, safety and the environment is not provided for by the law.

Company	*Statement*
Eli Lilly and Company	***Environmental Policy:*** "The company will comply with or exceed all applicable laws and regulations. Where existing laws and regulations are not adequate, the company will adopt its own environmental quality standards".
Allied Signal	***Health, Safety and Environmental Policy:*** "Adopt its own standards where laws or regulations may not be adequately protective, and adopt, where necessary, its own standards where laws do not exist".
Pennzoil Company	***Corporate Policy Manual:*** "...it shall be the company's policy to comply with all applicable federal, state and local regulations. Should the company believe that existing laws and regulations are not adequately protective, risks are unacceptable, or if proper regulations are nonexistent, Pennzoil may develop more demanding company environmental, safety, and health standards".
Apple Computer, Inc.	***Environmental Health and Safety Policy:*** "Adopt our own corporate standards for protection of human health and the environment in those areas where Apple believes that current laws and regulations either don't exist or are inadequate"
Boise Cascade Corporation	***Environmental Policy:*** "Adopt our own environmentally sound operating practices in areas where laws and regulations are inadequate or nonexistent".
Bayer AG	***Policy Guidelines for Environmental Protection:*** "Not only does Bayer comply with the legal and official requirements relating to environmental protection, but it also takes additional measures on its own initiative and out of its own sense of responsibility".

Source: UNCTC "Benchmark corporate environmental survey 1990-91" (New York, UNCTC, 1991), mimeo.

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Self-regulation offers a number of benefits to industry and the regulatory authorities. As some of the examples show, corporations can pursue more stringent standards than those legislated by the State. At the same time, self-regulatory instruments can often be phrased in relatively general terms, can be self-serving, and compliance with them by all firms can typically not be enforced. Thus, voluntary initiatives cannot be expected to replace regulation, nor can they function effectively in a regulatory vacuum. Indeed, 63 per cent of the respondents to the UNCTC benchmark survey indicated that changes in home-country legislation were the main reason for developing their own company-wide environmental policy. Still, self-regulation can be one means through which the sometimes adversarial position between industry and the authorities can become one of cooperation and mutual consultation.

Notes

[1]For a discussion of these issues as far as they relate to transnational corporations, see UNCTC, *New Issues in the Uruguay Round of Multilateral Trade Negotiations,* UNCTC Current Studies, Series A, No. 19 (United Nations publication, Sales No. E.90.II.A.15).

[2]On 20 December 1991, the Draft Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations was released by the Director-General of GATT. The draft GATS (which is part of the Draft Final Act) consists of three parts: the articles of the agreement; a set of annexes that cover, among other things, sectoral specificities for financial-, telecommunication- and air-transportation services, the movement of natural persons providing services under the agreement, and exemptions; and a number of decisions and understandings concerning institutional arrangements, certain dispute settlement procedures, environmental concerns in relation to services trade, commitments in the area of financial services and substantive guidelines for the negotiation of initial commitments during the Uruguay Round. They all form an integral part of the draft GATS.

[3]On TNCs and FDI in services, see Karl P. Sauvant and Padma Mallampally, eds., *Transnational Corporations and Services. United Nations Library on Transnational Corporations* (London, Routledge, forthcoming).

[4]See UNCTC and UNCTAD, *The Impact of Trade-related Investment Measures on Trade and Development* (United Nations publication, Sales No. E.91.II.A.19), annex.

[5]The last two types of measures were suggested by developing countries.

[6]UNCTAD, *Trade and Development Report, 1991* (United Nations publication, Sales No. UNCTAD/TDR/11), p. 143.

[7]UNCTC, op. cit., p. 86.

[8]When the Draft Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations was released in December 1991, it was done with the understanding that no single element of the Draft Final Act would be considered agreed until the total package was agreed.

[9]UNCTC and UNCTAD, op. cit.

[10]The FIRA-panel case; see UNCTC, op. cit., p. 13.

[11]For a review of the international regulatory framework on FDI, see A. A. Fatouros, ed., *The International Legal Framework for Transnational Corporations. United Nations Library on Transnational Corporations* (London, Routledge, forthcoming).

[12]See also UNCTC, op. cit.

[13]The Declaration contains four instruments: the "Guidelines for Multinational Enterprises" and the Decisions on "National Treatment", "Incentives and Disincentives" and "Conflicting Requirements". Together with the Codes of Liberalisation of Capital Movements and Current Invisible Transactions, they constitute the OECD framework for foreign direct investment. The Codes and Decisions are binding upon States. The Guidelines are a set of recommendations addressed to TNCs.

[14]The Calvo doctrine (which takes its name after the Argentinean jurist who formulated it) has traditionally determined the practice of the Latin American States. It affirms that, under international law, States are required to accord to aliens the same treatment as that accorded to their nationals under their national laws; that disputes by aliens against the host State must be decided exclusively by the courts of that State; and that a foreign affiliate does not have the right to diplomatic protection by its home State.

[15]For a more in-depth analysis of recent bilateral treaties, see UNCTC, "Other international, regional and bilateral arrangements and agreements relating to transnational corporations: report of the Secretary-General" (E/C.10/1991/9, of 25 February 1991). For the most recent list of bilateral investment treaties, see UNCTC and ICC, *Bilateral Investment Treaties 1959-1991* (United Nations publication, Sales No. E.92.II.A.16).

[16]Members of Mercosur are Argentina, Brazil, Paraguay and Uruguay.

[17]*International Trade Newsletter,* vol. 6, No. 3 (September 1991), pp. 1-2.

[18]See *International Trade Newsletter,* op. cit., pp. 1-20.

[19]United States, Department of Justice, *Press Release,* 23 September 1991, annex.

[20]For a review of domestic regulatory issues relating to TNCs, see S. Rubin and D. Wallace, eds., *Transnational Corporations and National Law. United Nations Library on Transnational Corporations* (London, Routledge, forthcoming).

[21]See OECD, *Foreign Direct Investment: Policies and Trends in the OECD Area* (Paris, OECD, 1992).

[22]The relevant laws are contained in Transnational Corporations and Management Division and ECE, *World Investment Directory: Central and Eastern Europe* (New York, United Nations, 1992).

[23]Edward M. Graham and Michael E. Ebert, "Foreign direct investment and US national security: fixing Exon-Florio", *The World Economy,* vol. 14, No. 3 (September 1991), p. 267.

[24]For a review of the issues involved, see B. Balassa, "Public enterprises in developing countries: issues of privatization" (Washington, D.C., The World Bank, 1989), mimeo; and N. Van de Walle, "Privatization in developing countries: a review of the issues", *World Development,* vol. 17, No. 5 (1989), pp. 601-615.

[25]The figures exclude the ongoing extensive privatizations in the former German Democratic Republic. Caution should be exercised regarding those figures, as they are preliminary data from an ongoing research project at the Division. In particular, the definition of privatization influences estimates on the number of privatizations. However, the increase in the number of privatizations from 1985 to 1990 is clear. The definition used here is that any case of equity sold off from a majority-owned state enterprise represents a case of privatization. According to the German Treuhandanstalt, in charge of the privatization programme in the former German Democratic Republic, more than 5,500 firms (of a target of more than 10,000 firms), valued at about $70 billion, have been sold to private investors, as of 31 January 1992. Of those privatizations, FDI accounts for around 12 per cent. See *Deutschland Nachrichten,* 6 March 1992, p. 4.

[26]Caution should be exercised in interpreting this figure, since no information on source, definition of a privatization or period studied was disclosed. See John B. Goodman and Gary W. Loveman, "Does privatization serve the public interest?", *Harvard Business Review,* vol. 69, No. 6 (November-December 1991), p. 26.

[27]Matthew Montagu-Pollack, "Privatization: what went wrong", *Asian Business,* vol. 26, No. 8 (August 1990) pp. 32-39. For an extensive review of the role of FDI in the privatization process, see Maurice Odle, "Privatization in developing countries: the foreign direct investment dimension." Paper submitted to the Conference on Management of Privatization Process, Islamabad, Pakistan, 2-6 March 1992, mimeo.

[28]David Fairlamb, "The privatizing of Eastern Europe", *Institutional Investor,* vol. 24, No. 4 (April 1990), p. 173.

[29]See, for example, Jan Vañous, "Privatization in Eastern Europe: possibilities, problems, and the role of Western capital", *PlanEcon Report,* vol. V, No. 38-39 (1989), pp. 1-32.

[30]Transnational Corporations and Management Division, *Debt-Equity Swaps and Development* (ST/CTC/126, forthcoming). For a discussion of the role of debt-equity swaps in the privatization process, see also Antoine Basile "The role of debt-equity conversions in privatization and deregulation processes", in Dennis J. Gayle and Jonathan N. Goodrich, eds., *Privatization and Deregulation in Global Perspective* (Westport, Connecticut, Quorum Books, 1990), pp. 139-155.

[31]Matt Moffett, "Rewiring a nation: Teléfonos de Mexico makes promising start on a daunting task", *The Wall Street Journal*, 19 February 1992; Odle, op. cit., p. 36.

[32]Richard Molz, "Privatization in developing countries", *Columbia Journal of World Business*, vol. 25, No. 1-2 (Spring/Summer 1990), p. 18.

[33]For a discussion of the history of voluntary guidelines by industry see John M. Kline, *International Codes and Multinational Business* (Westport, Connecticut, Quorum Books, 1985).

[34]For a discussion, see ibid., pp. 89-97; Charles S. Pearson, *Down to Business*, World Resources Institute, Study 2 (January 1985), pp. 69-71; "The greening of corporate America", *Business Week* (23 April 1990), pp. 96-103.

[35]International Chamber of Commerce, *Environmental Guidelines for World Industry* (Paris, ICC, 1974), revised in 1981, 1986 and 1990.

[36]International Chamber of Commerce, *The Business Charter for Sustainable Development* (Paris, ICC, 1991).

[37]For a discussion of sectoral and national industry environmental guidelines (such as those of the Chemical Manufacturers Association and the Conseil Européen des Federations de l'Industrie Chimique), see Business and Industry Advisory Committee to the OECD, "Voluntary agreements and initiatives in environmental policy", first draft, 9 October 1991, mimeo.

[38]Keidanren, *Keidanren Global Environmental Charter* (Tokyo, 1991).

[39]For example, E.I. Du Pont de Nemours and Company, which accounts for 25 per cent of the world production of chlorofluorocarbons (CFCs), announced after the adoption of the Montréal Protocol that it would support a complete phase-out of CFCs before either the United States or the European Community announced a similar intention.

[40]Kubota Corporation, for example, has a policy to reduce the usage of electricity and oil by 20 per cent by March 1994. Toyota has plans to reduce by 10 per cent the electricity use by 1995 and to stabilize the level of carbon dioxide through afforestation. Texas Instruments Japan has as a corporate goal the abolition of the use of CFCs by the end of 1993. See UNCTC, "Benchmark corporate environmental survey" (New York, UNCTC, 1991), mimeo.

[41]For example, the Bank of America pledged to "...make a special effort to identify businesses and organizations that are attempting to find solutions to environmental problems and provide appropriate support"; see Bank of America, "Environmental principles", *BankAmerican* (San Francisco, California, January 1991), p. 1.

[42]Apple Computer, Inc., for example, intended to "...strive to anticipate future environmental, health, and safety risks and regulatory requirements, and have a proactive approach to dealing with them whenever appropriate..."; see Apple Computer, Inc., *Policy on Environmental Health and Safety* (Cupertino, California, 14 March 1990); Gechem/Recticel stated that: "It is our decision that safety and environment concern should become a second nature for all of us... The Recticel Management ensures that all plants shall ... use no raw materials upon which a reasonable doubt lies as to their toxicity or environmental implication... use as little as possible of the natural resources... exhibit a pro-active policy towards new environmental issues"; see Gechem/Recticel, *Management Declaration on Environment and Safety* (Brussels, 1990).

[43]Polaroid, after having been named a major polluter of the Boston harbour by an environmental group in 1987 (even though the company was well within existing dumping regulations), announced plans to slash the amount of toxic chemicals the company used, as well as the amount of overall waste generated by 50 per cent within five years; see Sana Siwolop and Amy Barrett, "Business and the environment", *Financial World*, 23 January 1990, p. 42; in 1975, when legislation in the United States, such as the Clean Air Act, was first being drafted, 3M launched a formal, in-house pollution reduction programme, the first of its type for United States industry at that time. Since 1975, 3M's "Pollution prevention pays" programme has come to embrace 900 projects and has cut air pollution emissions by 120,000 tons. This programme has earned the company top ranking from a social investment fund and has saved the company $450 million. See Arthur Zich, "Keeping tabs on risky business", *Tomorrow*, vol. 1, No. 2 (1991), p. 26; in addition, 3M plans to spend $150 million over three years to control air pollution at some of its United States and overseas plants. More recently, it has started unveiling products that it considers environmentally helpful, including a foam landfill cover that takes up far less dump space than dirt. See Jackey Gold, "The pioneers", *Financial World*, vol. 159, No. 2 (23 January 1990), p. 57.