

# International regulation of foreign investment

by Christopher J. Maule and Andrew Vanderwal

**P**ressure for the development of international investment codes grew in the early 1970s. Initiatives were taken by developing countries individually and through the United Nations and regional organizations, as well as by labor and business organizations. Two related antecedent events were the US government's voluntary balance of payments guidelines in the 1960s, which affected outward investment flows and the repatriation of earnings and capital, followed by the passage of the Canadian government's *Principles of Good Corporate Behavior for Foreign Investors*.

Revelations that multinational enterprises (MNE) were engaging at times in conduct that was clearly detrimental to the interests of some of the countries in which they operated led to mounting pressure for the international regulation of MNEs. An investigation of transfer pricing in the sale of drugs led to Hoffman-La Roche paying \$30 million to the British National Health Service. During their Watergate investigations the US Securities and Exchange Commission (SEC) found that corporations frequently used funds set up outside corporate financial accountability to bribe foreign governments or officials, and to make legal and illegal political contributions in host countries. The resulting US pressure to regulate US corporations led these firms to attempt to internationalize any debate on regulation, in the hope that an international forum would be less discriminatory by including all MNEs.

During the mid-1970s numerous cases of high ranking public officials accepting bribes offered by US corporations severely embarrassed governments around the world. Implicated for taking a series of bribes from the US Lockheed Aircraft Corporation, Prince Bernhard of The Netherlands abdicated all public posts in 1977, and escaped prosecution only by virtue of being the husband of the country's Queen. A major bribery scandal also emerged in Canada concerning the efforts of a crown corporation, Atomic Energy of Canada Ltd. (AECL), to sell a CANDU reactor to Argentina. AECL deposited \$ US2.5 million into a Swiss

bank account in 1974, to act as a payment to an undisclosed agent who would facilitate the Argentine sale. These incidents underlined the need for guidelines for the international commercial activities of both private and government-controlled corporations.

## Multinationals on the loose

A number of further considerations served to increase the momentum for developing a regulatory framework. The currency exchange instability in the early 1970s, at a time when attempts were being made to maintain the fixed exchange regime, raised the issue of the damaging role MNEs can play in currency speculation. Additionally, US labor organizations protested what they saw as an export of jobs through the foreign investments of US MNEs, while European labor organizations were growing increasingly concerned over the effectiveness of collective bargaining on a national scale with firms that operated globally. At the same time, developing countries were discussing the need for a new international economic order (NIEO) that would redress economic disparities in the world. Developing countries exerted pressure through the UN for the international regulation of MNEs as part of their greater efforts to bring about a NIEO. Provided that their actions could be regulated, MNEs were to play an important role in this new order by becoming a vehicle to transfer resources to the Third World.

An early initiative for the international regulation of MNEs was the 1970 request by the International Confederation of Free Trade Unions (ICFTU) to the UN to develop a code of conduct for MNEs. In 1972 the UN responded by establishing a Group of Eminent Persons (GEP) — including John J. Deutsch from Canada — to prepare a report on MNEs. Impetus to UN initiatives was given by a debate in the UN's Economic and Social Council (ECOSOC), brought about by charges that the US-owned International Telephone and Telegraph (ITT) had interfered in Chile's domestic political process. At the same time, the business-based International Chamber of Commerce (ICC) issued guidelines for international investment, and the UN-related International Labor Organization (ILO) convened a tripartite meeting of experts on MNEs with representation from labor, business and governments.

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