

List 4

Specialized UN initiatives relating to international corporate activity

Organization	Code	Current Status
UN-ECOSOC	International Guidelines for Consumer Protection	Under Negotiation
WHA	Code on Marketing Breast-Milk Substitutes	Adopted May 21, 1981
UN General Assembly	Resolution on Use of Harmful Products	Adopted Dec. 1982
UN Environment Program	Exchange of Information on International Trade in Potentially Harmful Chemicals	Implemented 1985
WIPO	Renegotiation of Paris Convention on Industrial Property	Under Negotiation
UN-ECOSOC	International Standards of Accounting and Reporting	Under Negotiation
ILO	Convention on Termination of Employment at the Initiative of the Employer	Approved by ILO in 1982
UNCTAD	Convention on a Code of Conduct for Liner Conferences	Adopted 1983

been advanced by home and host governments. Developing countries maintain that disputes concerning MNE activity within their borders be subject to their exclusive jurisdiction, and be settled in the national courts of the host country. Proposals to refer disputes involving MNEs to an international forum are resisted by developing countries, as it removes the settlement of the dispute from their jurisdiction, and implies a lack of confidence and credibility in the laws and courts of developing countries.

The attempt to implement the UN-ECOSOC Code on Corrupt Practices appears to have been abandoned due to a lack of real interest in the code outside the US. During the 1970s the US had implemented national legislation restricting the use of illicit payments abroad, and was eager to have MNCs from other countries operate under the same set of constraints. Realizing the importance of this code to the US, developing countries used the code as a bargaining tool in attempts to obtain concessions on issues of importance to themselves. Many developing countries have also been reluctant to pursue a binding code on illicit payments. As countries with inadequate public revenue to pay for their own bureaucracies, they have often tacitly condoned illicit payments as a means by which to remunerate civil servants. With US MNEs operating under the constraint of US national legislation on illicit payments, other developed home countries to MNCs had little incentive to remove the advantage this provided their own firms. For all these reasons, vigorous US efforts to have the code implemented have failed.

By pressuring for codes of conduct in the UN, de-

veloping countries are hastening and shaping the evolutionary process of change in international law. The adoption and implementation of codes are an important source of customary international law, and can take precedence over more than a hundred years of case law on the rights of foreign investors. Developed countries strive to ensure that the codes result in a source of customary international law that will not accidentally restrict many potential global benefits of MNE activity. Such a development could occur if the practice of states in implementing restrictive codes resulted in a harsh investment climate and a reduction of beneficial MNE investment.

Canadian concerns

Canada's interest in these codes has recently broadened because its role as a host country to foreign investment has become complemented by its role as a capital exporting country. Our traditional concern as a host country to direct foreign investment is rapidly being superseded by the concerns of being a home country to such investment. Canadian direct investment abroad increased from 1981 to 1984 by about one-third to \$41.4 billion. Investment abroad is now about half the value of the investment in Canada compared with about one-fifth a decade earlier. Not only will Canada have to take a consistent stand on its policy to inward and outward investment, but future multilateral trade negotiations will need to recognize the role played by investment as a substitute to trade, and the ways in which investment codes can influence the interrelationship between trade and investment. □