

Some regional groups have proposed, however, that the code should also apply to transactions within one country. Under these proposals, the code would apply to domestic transactions between parties that do not reside or are not established in the same country, and between parties that are resident in the same country if at least one is owned or controlled by a foreign entity and the technology transferred has not been developed in the recipient country. For Canada and other developed countries, such an approach would alter the principle of national treatment. Different rules would apply to transactions according to the origin of the party involved.

While substantive agreement exists on the content of the restrictive business practices to be listed in the code, differences remain regarding criteria that should guide the application of the provisions.

Finally, no text has been agreed on in respect of applicable law and settlement of disputes. At the heart of remaining differences are questions related to choice of law. Developing countries would like to stress the importance of the public policies of the countries involved in the transaction, particularly those of the acquiring country which may eventually nullify the choice of law itself. The industrialized market economy countries have stressed the freedom of the parties to choose the law applicable to their contractual relationships, but have also recognized that a contractual choice of law does not affect the application of mandatory provisions of legal systems having a substantial connection with the transaction.

The next session of the Conference on the Draft Code of Conduct on the Transfer of Technology is scheduled for 1985. For Canada, the moment is at hand when the negotiations must be concluded. Failure at the next round could lead some countries to begin to reconsider their positions on parts of the Code already agreed upon. There is therefore a risk that progress to date may come undone, with the consequence of making agreement of such a code in the future unlikely, at best.

The UN Code of Conduct on Transnational Corporations

Paralleling the development of a Draft Code of Conduct on the Transfer of Technology has been work on a Code of Conduct on Transnational Corporations. Begun in 1977, the Code is designed to improve the international investment climate, and particularly the contribution of multinational enterprises to developing countries. Although again the vast majority of the Code is agreed on, there remain difficult issues relating to nationalization and compensation, coverage of state-owned corporations, and the relevance of current customary international law. The failure of the June 1984 negotiating session suggests that agreement on such a code is unlikely in the foreseeable future.

Restrictive business practices

I have already mentioned the fact that, particularly for the developing countries, restrictive business practices are seen to have an adverse impact on the international transfer of technology. Consider some of the terms and conditions which may attach to transfer of technology, such as:

- price (which may take the form of royalties and ownership dividends as well as lump sum fees);
- the structure of ownership and management control;
- rules and requirements related to exports;