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TRANSNATIONAL CORPORATIONS IN AFRICA: SOME MAJOR ISSUES

RBT/79/39

CONTENTS

Introduction

1. The purpose of this paper is to identify the major issues relating to the activities of transnational corporations in Africa and their significance from the standpoint of the socio-economic development of the region with a view to the Conference recommending some policy measures which member States may wish to adopt in the coming years.

2. It is useful to stress that the assessment of the costs and benefits of transnational corporations in Africa is not an easy matter. This is because existing methodologies for such an analysis are still inadequate as research in this area is relatively new. Moreover, information on such activities in Africa is not readily available at this point. Despite these limitations, it is important to have an understanding of the major issues of concern to African Governments and to assess their significance in light of the available information.

PART I : ECA AND TRANSNATIONAL CORPORATIONS IN AFRICA

3. In 1974, the United Nations General Assembly created the Commission on Transnational Corporations as an intergovernmental subsidiary body of the United Nations Economic and Social Council. It is a forum within the United Nations system for the comprehensive and in-depth consideration of issues relating to transnational corporations, and for spelling out areas of priorities for study and action in this field. 1/ In order to implement policies of the Commission on Transnational Corporations, the Economic and Social Council also created the Centre on Transnational Corporations **(CTNC)** is located in New York, as an autonomous body within the United Nations Secretariat that serves as a focal point for global issues on transnational corporations and acts as secretariat to the Commission on Transnational Corporations.

4. The objectives of the work programme of the Centre are to further the understanding of the nature of transnational corporations and of their political, legal, economic and social effects on home and host countries and in international relations, particularly between developed and developing countries; to secure effective international arrangements aimed at enhancing the contribution of transnational corporations to national development goals and world economic growth, while controlling and eliminating their negative effects; and to strengthen the negotiating capacity of host countries, in particular the developing countries, in their dealings with transnational corporations.

5. In order to support the work of the United Nations at regional levels, the Economic and Social Council called upon the Centre on Transnational

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1/ See United Nations General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 containing the Declaration and the Programme of Action for the Establishment of a New International Economic Order; resolution 3281 (XXIX) of 12 December 1974 containing the Charter of Economic Rights and Duties of States; and Economic and Social Council resolutions 1908 (LXII) and 1913 (LVII) of 5 December 1974 on transnational corporations.

Corporations and the regional commissions for Africa, Asia the Pacific, Europe, Western Asia and Latin America to create joint units. In the African region, prior to the creation of the Joint ECA/CTNC Unit on Transnational Corporations, ECA commissioned a four-man mission to undertake a survey of transnationals activities in 16 African countries, representing each subregion. 2/ Each member of the mission visited four countries during 1977.

6. The mission's findings, which are summarized below, served as the groundwork for the establishment of the work programme of the Joint Unit.

(a) Agriculture

7. In most of the countries surveyed transnationals were found to play an important role in the cash-crop and food processing industries, dating back to the colonial period. More recently, agro-business companies have started a new thrust of foreign investments in capital-intensive and high technology projects ranging from livestock and dairy products to highly mechanized cultivation of such traditional crops as maize and groundnuts. The impact of these developments has yet to be studied.

8. It was found that some countries have taken steps to control the activities of transnational corporations in major parts of the agricultural sector, including marketing. Others continue to practice an open door policy toward transnationals in agriculture.

9. The activities of transnationals in African agriculture were found to be concentrated in the following products and industries: coffee, tea, cocoa, palm products, groundnuts, corn, sugar, oilseeds, fruits and vegetables, cotton and wood industries. The major corporations include Lonrho, Unilever, Nestle, the Commonwealth Development Corporation, Tate and Lyle and Libby.

(b) Extractive industries

10. Given the importance of this sector, most of the countries surveyed have taken steps to control foreign companies, but the measures taken by these countries have not necessarily led to effective control. In particular, they have resorted to equity shares, including majority ownership by the host country, which has tended to leave effective control in the hands of transnationals through management and technical assistance. Exception should be made in the case of petroleum production where the producing countries have succeeded in owning and controlling oil companies.

2/ The countries visited by the mission were: Algeria, Botswana, Egypt, Gabon, the Ivory Coast, Kenya, Lesotho, Liberia, Morocco, the Niger, Nigeria, Sierra Leone, the Sudan, Swaziland, Zaire and Zambia.

11. The major mining products which have attracted transnational corporations include petroleum, diamonds, iron ore, copper, bauxite, coal, uranium, etc. Some of the transnationals still in control of mining industries include the Anglo-American Corporation and the DeBeers group in South Africa and Bureau Genéral de Recherches Minieres in French-speaking West Africa.

(c) Commerce and industry

12. The pattern of the involvement of transnational corporations in this sector varies depending on the level of development of each country and the control mechanisms used in it. Where control is weak, it is found that the higher the degree of industrialization, the greater the involvement by transnationals. But in absolute terms, the level of that involvement remains modest compared to what it is in other regions. The reason commonly given is the small size of most African markets.

13. Some of the countries visited sought to attract private foreign investment by changing their strategies from import-substitution to export-promotion. But this shift appears to have failed to result in a substantial increase in the level of foreign investment in manufacturing industries. It should be pointed out that the same countries find themselves competing with one another as they offer similar incentives to prospective foreign corporations.

14. The industries in which transnationals have been most interested include infrastructure (dams in particular), petrochemicals, pharmaceuticals, textiles, food processing, beverages, footwear, and assembly-based industries (trucks, automobiles and some electric products). The major corporations include Lonrho, Unilever, Bayer, Fiat, Berliet, Bata, Philips, Singer, IBM, Saviem, etc. No data are yet available on the extent of their involvement all over Africa.

(d) Tourism and services

15. Information on this sector is still sketchy. The mission found that tourism-oriented countries attract large international tourist concerns which tend to control most aspects of the tourism industry. In one such country, however, the Government has taken steps to encourage local entrepreneurs in co-operation with State enterprises to control nearly 90 per cent of the tourist-oriented infrastructure. But foreign groups continue to organize and manage the actual tourist activities. Transnational banking is another area where foreign interests play a decisive role and seem to cause serious concern to the Governments of many of the countries that were visited. Despite their predominance in the financial sector, transnational banks do not appear to be willing to assist host Governments in financing their development plans.

(e) Relations between transnational corporations and host Governments

16. The mission found that the control measures undertaken by host Governments have on the whole not been effective except in the cases of outright nationalization. Elsewhere, control through legislative, institutional and other means could easily be frustrated by transnational corporations. Transfer pricing, management, engineering and financial control were used effectively by transnationals to escape the measures by the host Governments.

(f) Establishment of the joint ECA/CTNC Unit on Transnational Corporations

17. The Joint ECA/CTNC Unit became operational in October 1977 as part of the International Trade and Finance Division of the ECA secretariat. 3/ It is the focal point for activities of the Centre on transnationals in Africa, especially in the fields of research, information and liaison with the Governments of the region. The Joint Unit is responsible for the following functions:

(a) To assist African countries in developing national and multinational policies and capabilities relating to transnational corporations. To this end, the Joint Unit, in co-operation with the Centre on Transnational Corporations, shall organize and carry out advisory services, training workshops, seminars and regional intergovernmental meetings on matters related to transnational corporations;

(b) To conduct studies, analyses and related activities on economic, social and institutional issues on transnational corporations concerning Africa, in particular, through case studies. The Joint Unit in this way provides inputs for the studies and analyses carried out by the Centre and other United Nations bodies;

(c) To develop contacts with and monitor the activities of African governmental as well as non-governmental organizations in order to explore and identify the problems and needs related to transnational corporations, and assist these organizations in meeting them;

(d) With the support of the Regional Data Bank to be established by ECA, to assist the Centre on Transnational Corporations in collecting and analysing information on matters related to transnational corporations in Africa as an integral part of the comprehensive information system of the Centre on Transnational Corporations;

Ag 3/ See Economic and Social Council resolution 1961(LIX) and the Agreement between the Executive Secretary of ECA and the Executive Director of the Centre on Transnational Corporations establishing the Joint ECA/CTNC Unit on Transnational Corporations for the African region.

(e) to assist the Centre on Transnational Corporations in identifying and acting on areas of co-operation with African organizations outside the United Nations system dealing with the subject of transnational corporations; and

(f) to assist the Centre on Transnational Corporations in its work related to the preparation of a code of conduct.

18. Owing to the lack of adequate information about transnational corporations in Africa, the bulk of the work of the Joint Unit is devoted to research, studies and the collection and establishment of a comprehensive information system on transnationals. Its information activities include the preparation of profiles on major corporations operating in Africa, the collection of contracts and agreements signed between transnationals and African Governments, as well as laws and regulations governing foreign investment in Africa. This information will be made available to States members of ECA when it is adequately processed.

19. In the area of research, the Unit has been conducting studies on the activities of transnational corporations in the field of primary commodity exports (e.g. coffee, cocoa, cotton, bauxite and copper) with a particular focus on the process of negotiation between African countries producing these commodities and transnationals. The Unit has also initiated a study on the impact of transnationals on the balance of payments of African countries and is in the process of planning several other studies. Some of these studies, e.g. tourism and banking, are being planned in close co-ordination with the Centre of Transnational Corporations.

20. In the field of technical advisory services, the Joint Unit works closely with the Centre in providing member States with the assistance they may request. The Centre has also commissioned studies on the role of transnationals in banking and in tourism in Africa. A paper on transnationals in southern Africa was published in the CTC Reporter. In addition, a number of workshops on negotiations with transnationals have already been organized at the national and subregional levels. Workshops, seminars and conferences will be a permanent feature of the work to be undertaken by the Unit.

PART II: MAJOR ISSUES RELATING TO THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS IN AFRICA

The nature of the problem

21. The activities of transnational corporations involve many sectors and sub-sectors of the African economies. Essentially, the degree of intensity of their impact tends to vary from one country to another, depending upon the degree of involvement in each case. Thus any generalization about the impacts of transnationals on Africa's socio-development process runs the risk of over-simplification. However, from a general standpoint the major issues relating to the activities of transnationals in Africa can be set out as follows: financing economic development; transnational corporations and employment in Africa; issues relating to the purchase and acquisition of technology by African countries; impact of transnationals on the balance of payments of African countries; restrictive and corrupt practices; negotiating capability of African countries vis-à-vis transnationals; issues of developing a comprehensive information system relating to transnationals; collective self-reliance through regional economic co-operation; issues of ownership and control of resources; and issues relating to the formulation and implementation of an international code of conduct. These issues are each examined in turn below.

(a) Financing economic development

22. The mobilization of resources, both local and foreign, and their utilization to promote a faster rate of economic growth in Africa constitute major economic policy issues. In terms of transnationals, it can be stated that the financing of economic development projects is an area where such corporations could make one of their greatest potential contributions to Africa's development. 4/ Yet it is also in this very area that African countries experience some of the greatest disappointments in their relationship with the corporations.

23. In African countries, the Government determines development policy through the national development plan and expects the private sector, including the transnationals, to play a significant part in the financing of development projects. Parastatal financial institutions such as development banks lack either the power or the opportunity to raise funds over and above the inadequate capital subscriptions from private concerns or subventions from the Government. The latter itself directly mobilizes some resources through duties on imports and exports, property taxes, personal income taxes and other forms of taxes, supplementing such revenue from internal and external borrowing.

24. Owing to their superior knowledge and techniques in preparing financially sound investment packages, their scale of operations and their extensive international connexions, transnational corporations are generally able to obtain

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4/ For an examination of this issue within the context of world economy, see Richard J. Barnet & Ronald E. Muller, Global reach : The power of the multinational corporations, New York, Simon and Schuster, 1974, chapter 7.

greater resources than can be negotiated by most individual African Governments or indigenous enterprises. Transnationals do not necessarily finance projects through equity investment drawn from their own resources, but rely largely on loans for the greater portion of the financing. Consequently, in many cases, the debt/equity ratio of a project may be pitched so high as to require minimum financial commitment on the part of the foreign investor.

25. In the financing of economic development, an important problem that often arises in negotiating with transnational corporations for the establishment of projects, relates to the fixing of fair and advantageous debt/equity ratios. Further problems arise in the formulation of an over-all development policy for restructuring the money and banking institutions from a developmental perspective and to follow up this strategy with concrete and clear policy guidelines on a periodic basis and especially in time of economic crisis when drastic measures are called for. Such institutional restructuring and interventionist measures which would help to channel a greater flow of resources into the African economy as development proceeds become difficult where transnationals wield the controlling hand.

(b) Transnationals and employment in Africa

26. Another equally important policy issue in Africa's development efforts relates to the creation or improvement of employment opportunities. The key issues can be summarized by the following points: What is the significance of the foreign companies' contribution to the level of employment of African countries? Do these companies help to develop employment generating capabilities in these countries? Do they help to develop skills which would meet the needs of the host countries? The three issues are tied to the kind of production function used by the transnational corporations which, in the final analysis, determines the level, composition, quality and long-term contribution to the host economy of the personnel employed by the corporations. 5/

27. The contribution by transnational corporations to the level of employment in host countries has been shown by several empirical studies to be relatively unimportant. For example, it is estimated that the total number of employees of transnationals operating in all developing countries ranged from 3 to 4 million in the mid-1970s. The estimated total labour force of these countries ranged from 600 to 700 million. 6/ Thus, employment by transnationals barely reaches 2 per cent of the labour force. By themselves these statistics are not very meaningful except perhaps in disputing the claim made by some transnational executives concerning their companies' contribution to employment.

5/ See C.V. Vaitsos, "Employment effects of foreign direct investments in developing countries" in Employment in Developing Nations, Edgar O. Edwards (Ed), New York, Columbia University Press, 1974.

6/ G.L. Reuberm, Private foreign investment in development, (Oxford, 1973).

28. Transnational corporations still insist on maintaining their control over engineering and management posts through the use of their own nationals, or in any event, expatriate "corporation men". Thus, in one study based on some 50 projects, it was found that local employees filled virtually all production posts, over 90 per cent of supervisory positions (foremen and the like), nearly 80 per cent of middle-level sales and marketing functions, but only a very small proportion of engineering and management posts, and virtually none of the top management positions. 7/ To insist on greater indigenization of transnational corporation employees is only a small step which would result mainly in improving the material situation of local employees. Indeed, except for top management, many transnationals are willing to indigenize. They even are willing to train local recruits for all but top management posts. But this approach cannot provide African countries with an adequate solution if the foreign company's choice of technology and production process is left untouched.

29. In examining a proposed project to be financed by a transnational, the host Government often experiences problems in determining specific criteria for the choice of the kind of technology and subsequent employment contents of that project. The critical questions that are difficult to answer are whether: (i) the training policy of the foreign company is likely to develop skills which have long-term effects on the promotion of the country's pool of technological labour force; (ii) the training is consistent with the country's own educational and training programmes; (iii) the foreign company's employment and training policies can develop managerial and entrepreneurial skills which can be used fruitfully outside the company; (iv) serious attention has been given to labour-intensive production processes, although some sectors may require the use of high-technology processes such as oil, metal and chemical industries; (v) ways can be found to scale down imported production processes without reducing efficiency or productivity while increasing employment opportunities; and (vi) the foreign company adheres to the host country's social welfare, health and employment policies and regulations.

(c) Issues relating to the purchase and acquisition of technology by African countries

30. The question of the acquisition of technology for African development poses far greater issues than is sometimes readily appreciated. An issue of concern to host Governments is how to acquire or purchase technology from transnational corporations without incurring excessive costs demanded by transnational corporations. An equally important issue is to ensure that the imported technology to be incorporated into the host countries' development strategies is "appropriate" to their level of development and provides spill-overs on the local economy by enhancing the domestic technological capability. 8/ Another concern for African Governments is how to develop local technological capabilities which would, for a time, complement imported technology and, more important, lay the foundation for the achievement of technological self-reliance.

7/ Ibid. chapter 5.

8/ UNCTAD, Handbook on the acquisition of technology by developing countries, page 4.

31. The term "technology" needs to be more properly defined as "society's pool of knowledge regarding the industrial arts" 9/ or "the study and practice of developing practical uses of the findings of science towards production or improvement of goods or services" 10/. Under the new definition, "technology" refers not only to production techniques, but to the whole range of categories of practical knowledge, covering production, transformation, distribution and marketing of goods and services as well as such supporting activities as training, research and development, mobilization of human and material resources, institutionalization of organizations for the development of technology, etc. Under this definition and assuming that a genuine transfer does takes place the transfer of technology from transnational corporations to African countries takes on a new meaning and becomes potentially more fruitful. African Governments would then go beyond "contractual transfer" through licence agreements and the like and insist on a genuine transmission of knowledge through training, research and development including development on their capacity to transform the technology that has been "transferred" to them.

32. The overriding considerations with regard to the "transfer" of technology are the following: (a) the predominance of transnationals in the international market of technology, particularly industrial-managerial technology; (b) the weakness in the bargaining powers of African countries with regard to the satisfaction of their technological needs; (c) the confusion and myths surrounding transnational-generated technology and the alleged need for it; and (d) the subsequent dissatisfaction of African policy makers with the conditions under which technology is acquired from transnationals and the impact of that technology of their societies.

33. The predominance of transnationals as sellers of technology can be explained briefly by the following factors 11/ the large size of transnational corporations often located in highly concentrated technology-intensive sectors. This makes them important centres of scientific and technical production; and the large expenditures

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9/ See Edwin Mansfield Industrial Research and Technological Innovation N.Y W.M. Norton (1968) and Jack Baranson "Transfer of Technical Knowledge by International Corporations to Developing Economies", American Economic Review, 56, (May 1966), pp. 259-67.

10/ ECA, The Application of Science and Technology to Development in Africa (May 1978).

11/ See C.A. Michael "The international transfer of technology and the multinational entreprises" Development and Change, 7 (1976), 157-174 and Miguel Wionewek "Notes on technology transfer through multinational entreprises in Latin America" Development and Change, 7 (1976), 135-155.

devoted by such corporations to reach and development (R&D). several studies have shown that these expenditures reach up to 80 per cent of all funds devoted to R&D activities in industrialized OECD countries. 12/

34. Not only do transnational corporations hold such an overwhelming power as sellers of technology, but they also increase their monopoly position by tying up the sale of technology to investment packages and forcing African countries to negotiate for the package as a whole. Given the urgent need for capital in most African countries, the desire to get transnational-generated capital often overshadows the importance of negotiating for a genuine transfer of technology. This results in relative weakness of African countries in their technological capabilities. 13/

35. This dependence is reflected in the ratio of imported knowledge to Africa's production needs, the haphazard imports of that knowledge without the use of efficiency criteria and the one-way flow of knowledge reducing the potential for exchange and assimilation. Weakness and dependence result in (a) the loss of control of decision-making in programming, production and marketing; (b) the frequent import of inappropriate technology in terms of inputs and the type of demand created, and (c) the reduced negotiating power of African countries in the purchase of technology. 14/

36. Most transnational corporations insist on selling technology, capital and management in one "package". This gives them an effective control over the use of their technology in all phases of a project including feasibility and market surveys, engineering design, plant construction and installation of equipment, process technology, management and operation of production and marketing.

37. The attempt by some host countries to exercise control over the technology component of a foreign project through joint-venture schemes, including majority ownership of equity, misses a central issue. Control over a foreign company can be exercised much more effectively through technology than through equity participation. Majority equity ownership will neither reduce the technological dependence of the host country nor ensure a genuine transfer and diffusion of the imported technology. The main issue in this regard is the need to insist on "depackaging" technology from the other components of the foreign project. This can usefully be achieved within the context of (a) control of the transfer of imported technology; (b) setting up alternative ways of acquiring technology; and (c) incorporation of the technological needs of African countries in their development strategies and programmes.

12/ See United States Senate Committee on Finances: Implications of multinational firms for world trade and investment and for United States Trade and Labour (Washington, 1972) pp. 562-569, and K. Pavitt: "The multinational enterprise and the transfer of technology" in J.H. Dunning (ed): The Multinational Enterprise (London, Allen & Unwin Ltd., 1971), p. 61.

13/ See The application of science and technology to development in Africa, ECA op. cit.; UNESCO Survey of the scientific and technical

(d) Impact of transnationals on the balance-of-payments of African countries

38. Another important issue affecting Africa's development efforts is the problems of balance of payments. The balance-of-payments difficulties faced by many African countries are due to many factors, some of which are beyond their control. The key issue here is the specific role played by transnationals in adding to those difficulties. The following discussion will focus on (i) the extent to which the impact of transnationals can be measured, (ii) an assement of that impact based on available evidence, and (iii) proposals for corrective measures.

39. To measure the full range of effects of the operations of transnationals on the balance of payments of host countries would require a greater degree of analysis than is possible in this brief paper. To this end a paper on the impact of transnationals on balance of payments in Africa is under preparation. For the moment, it may be useful to begin by distinguishing between "direct effects" and "indirect effects" 15/. The direct effects result first from the initial effects of the flows of capital and imported capital goods for the establishment of an affiliate; second, from the recurrent effects of the affiliates' exports, imports of inputs, service and management fees, dividends and interest payments by the affiliates and any other disguised or hidden payments incurred by the affiliate as a result of say, transfer pricing or payment for R&D activities; and third, from the terminal effects of the repatriation of capital and repayment of loans. With the exception of hidden or disguised payments, direct effects are both identifiable and measurable, at least when balance-of-payments statistics are compiled thoroughly and regularly.

40. The indirect effects result from the "immediate multiplier" effects of the initial injection of capital into the economy which can increase aggregate demand and income with subsequent multiplier effects upon the level of aggregate demand and the demand for imports. They also result from the "sustained multiplier" effects due to the current operations of the affiliates. Indirect effects are much more difficult to isolate and measure than direct effects. The difficulty is increased by the need to estimate what would happen, in the absence of foreign investments, to the demand for imports and the performance of exports. Analysts have yet to develop adequate tools for measuring indirect effects.

41. The difficulty of measuring the impact of transnational corporations is further increased by the existence of hidden or invisible transactions. This is particularly serious in the cases of the use by transnationals of "leads and lags" and "transfer pricing" techniques. "Leading" is the payment of a loan before maturity and "lagging" is a delay in payment. These practices are commonly used in intra-firm transactions including trade and services, transfer of dividends, intra-company credit and loans. Their use, on instructions from the parent company, is based on the need to keep funds in one part of the company or another depending on such factors as liquidity needs, exchange rate fluctuations, tax considerations and the like. The use of leads and lags makes it difficult to identify the transactions even if they appear under recognizable categories such as "royalties", "dividends" and "interest". In the balance of payments, they often appear under "errors and omissions".

15/ See Madeuf et al. "Impact of TNCs on the balance of payments", CTNC.

42. Transfer pricing is even more difficult to detect because there is as yet little empirical evidence in the case of African countries. 16/ But a number of important studies of the impact of transnationals on the balance of payments of several developing host countries were carried out by UNCTAD. 17/ These studies are valuable in that they break new ground and focus on areas of transnationals' activities requiring the attention of authorities. These areas cover intra-firm transactions, including export restrictions and transfer pricing; taxation of profits and royalties; alternative uses of local capital; technology transfer; and the degree of protection of the market enjoyed by the foreign company.

43. The UNCTAD studies have shown considerable evidence of the use of transfer pricing by transnationals. A study of one country revealed that corporations over-priced imports of certain products by anywhere from 20 to 3,000 per cent in comparison with their world market prices. For a sample of 14 firms, the average over-pricing of imports ranged from 24 to 300 per cent of world market prices. 18/ When combined with the practice of under-pricing exports, the net effect of transfer pricing can be very substantial indeed and further deteriorate the balance-of-payments difficulties of host countries. Transfer pricing also distorts the profits declared by transnationals; the cost of technology, R&D and other fees paid by the affiliates; and the interests paid on intra-company loans. The cumulative and substantial effects of these practices, worsened by the extreme difficulty of controlling them, can all but frustrate the host countries' efforts at redressing their balance-of-payments deficits.

(e) Restrictive and corrupt practices

44. Restrictive practices by transnational corporations cover a wide spectrum of activities undertaken by them for the purpose of tightening their control over a given project or a product line or a particular market. These activities include licensing and patent agreements intended to restrict trade and technology, cartel arrangements for sharing and controlling specific markets, price fixing, exclusive dealing arrangements, consignment selling, etc.,

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16/ UNCTAD Intra-firm transactions and their impact on trade and development, seminar programme, report series No. 2, May 1978.

17/ "Balance of payments effects of private foreigh investment; case studies of Jamaica and Kenya," July 1970, (TD/B/C.3/79/Add.2) "Balance of payments and income effects of private foreign investment in manufacturing; Case studies of India, and Iran," December 1971 (TD/B/C.3(V)/Misc.1); and "Balance of payments and income effects of private foreign investment in manufacturing; case studies of Colombia and Malaysia," May 1973 (TD/B/C.3(VI)/Misc.1). Balance of payments effects of private foreign investment in developing countries; Summary of case studies of India, Iran, Jamaica and Kenya", April 1972 (TD/134/Supp.1). P.P. Streeten et S. Lall, Foreign investment, transnationals and developing countries, (London: Macmillan, 1977), Part II: The country studies.

18/ UNCTAD, Main findings of a study of private foreign investment in selected developing countries, (TD/B/C.3/111, p.12). See also United States Senate Committee on Finance, Implications of multinational firms for world trade and investment and for United States trade and labour (Washington D.C. 1973), R.H. Bell, "Private capital movements and the United States balance of payments position" in Factors affecting the United States balance of payments, Joint Economic Committee, United States Congress; I. Polk, I. Meister and L. Veit, United States production abroad and the balance of payments (New York, 1968), W.B. Reddaway, Effects of United Kingdom direct investment overseas (Cambridge, 1967); G. Hufbauer and F.M. Adler, Overseas manufacturing investment and the balance of payments (Washington D.C.; United States Treasury Department, 1968); R. Stobough, Nine investments abroad and their impact home: Case Studies on MNES and the United States Economy (Boston, Harvard U. Press, 1976).

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15/ See Madeuf et al. "Impact of TNCs on the balance of payments", CTNC.

42. Transfer pricing is even more difficult to detect because there is as yet little empirical evidence in the case of African countries. 16/ But a number of important studies of the impact of transnationals on the balance of payments of several developing host countries were carried out by UNCTAD. 17/ These studies are valuable in that they break new ground and focus on areas of transnationals' activities requiring the attention of authorities. These areas cover intra-firm transactions, including export restrictions and transfer pricing; taxation of profits and royalties; alternative uses of local capital; technology transfer; and the degree of protection of the market enjoyed by the foreign company.

43. The UNCTAD studies have shown considerable evidence of the use of transfer pricing by transnationals. A study of one country revealed that corporations over-priced imports of certain products by anywhere from 20 to 3,000 per cent in comparison with their world market prices. For a sample of 14 firms, the average over-pricing of imports ranged from 24 to 300 per cent of world market prices. 18/ When combined with the practice of under-pricing exports, the net effect of transfer pricing can be very substantial indeed and further deteriorate the balance-of-payments difficulties of host countries. Transfer pricing also distorts the profits declared by transnationals; the cost of technology, R&D and other fees paid by the affiliates; and the interests paid on intra-company loans. The cumulative and substantial effects of these practices, worsened by the extreme difficulty of controlling them, can all but frustrate the host countries' efforts at redressing their balance-of-payments deficits.

(e) Restrictive and corrupt practices

44. Restrictive practices by transnational corporations cover a wide spectrum of activities undertaken by them for the purpose of tightening their control over a given project or a product line or a particular market. These activities include licensing and patent agreements intended to restrict trade and technology, cartel arrangements for sharing and controlling specific markets, price fixing, exclusive dealing arrangements, consignment selling, etc.,

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16/ UNCTAD Intra-firm transactions and their impact on trade and development, seminar programme, report series No. 2, May 1978.

17/ "Balance of payments effects of private foreigh investment; case studies of Jamaica and Kenya," July 1970, (TD/B/C.3/79/Add.2),"Balance of payments and income effects of private foreign investment in manufacturing; Case studies of India, and Iran," December 1971 (TD/B/C.3(V)/Misc.1);and "Balance of payments and income effects of private foreign investment in manufacturing; case studies of Colombia and Malaysia," May 1973 (TD/B/C.3(VI)/Misc.1). Balance of payments effects of private foreign investment in developing countries; Summary of case studies of India, Iran, Jamaica and Kenya", April 1972 (TD/134/Supp.1). P.P. Streeten et S. Lall, Foreign investment, transnationals and developing countries, (London: Macmillan, 1977), Part II: The country studies.

18/ UNCTAD, Main findings of a study of private foreign investment in selected developing countries,(TD/B/C.3/111, p.12). See also United States Senate Committee on Finance, Implications of multinational firms for world trade and investment and for United States trade and labour (Washington D.C. 1973), R.H. Bell, "Private capital movements and the United States balance of payments position" in Factors affecting the United States balance of payments, Joint Economic Committee, United States Congress; I. Polk, I. Meister and L. Veit, United States production abroad and the balance of payments (New York, 1968), W.B. Reddaway, Effects of United Kingdom direct investment overseas (Cambridge, 1967); G. Hufbauer and F.M. Adler, Overseas manufacturing investment and the balance of payments (Washington D.C.; United States Treasury Department, 1968); R. Stobough, Nine investments abroad and their impact home: Case Studies on MNES and the United States Economy (Boston, Harvard U. Press, 1976).

The ability to make rational and responsible choices among competing corporations in respect of particular projects, and between alternative policies governing the activities of transnationals depends largely on access to, and comprehension of, reliable information on the competitors and their operations.

55. The availability of adequate information is also pertinent in the pre-establishment as well as the post-entry stages of transnationals' operations. For the purpose of negotiations leading to the establishment of such operations, host country officials need, but do not often possess, sufficient information as to the organizational structure of the corporation in question: for example, its geographical spread, the names of its holding company, subsidiaries or affiliates, and the percentage share of ownership of the subsidiary by the parent company; the extent of existing and new investments, including the sources of funds; the turnover and geographic breakdown of the network as a whole; the flow of intra-firm goods and services and the mode of pricing them and the nature of the technology that is proposed to be introduced as well as where alternative sources of technology can be developed.

56. Transnational corporations may not on their own wish to furnish information on the extent of implementation of terms and conditions agreed upon in the agreements establishing particular projects. For example, they may not pursue an agreed rate of employment and training of local people; they may also fail to develop national sources of supply for materials and equipment already agreed upon. Public information on all such issues may be lacking, and it is therefore important constantly to monitor establishment agreements.

57. As an attempt to tackle the problem of insufficiency and non-disclosure of information on transnationals, host countries may wish to insist on provisions in establishment agreements that require the presentation of business information going beyond that which most African company laws currently demand. The information should be such as to facilitate the analyses and assessment required for the formulation of rational and realistic government policies on international business operations. Furthermore, the problem of the lack of comparability of accounting information should be overcome by the negotiation and adoption of uniform international standards.

(h) Collective self-reliance through regional economic co-operation

58. The role and impact of transnationals on African regional economic co-operation constitutes a vital area requiring special mention. 21/ The main problem is that most African States are severely handicapped in their capacity for planned economic change and rapid development by the limited range of national resources available to each of them; the small size of their national markets; the lack of capital needed to provide large-sized efficient industrial complexes; and the inequalities imposed by their small economic size in bargaining with foreign interests.

59. The range of natural resources available to a wider African regional economic unit would be such as to permit the manufacture of major agricultural and industrial products required by a modern economy. Moreover, investment could be concentrated in efficient large-scale plants and specialization in related industries, leading to rapid increases in productivity at reduced costs. In addition, such an economic unit would be able to exert significant bargaining power on the world market.

21/ For a full discussion of this issue see: Constantine V. Vaitsos, The role of transnational enterprises in the Latin American economy: Who integrates with whom, how and for whose benefit? Report prepared for the UNCTAD secretariat, Lima, Peru, 15 May 1978.

60. The general expectations are that transnationals would not only welcome but could also actually work towards the achievement of such an economic framework, which would guarantee them economies of scale in production and wider markets for their products. Yet the actual policies and motivations of transnationals often compel them to sidestep African institutions for co-operation in preference for their own systems of product and market integration.

61. Yet transnational corporations tend to be primarily interested in economic integration only in so far as it affords them an opportunity to market their international brands of products either manufactured abroad or merely assembled by the branch plants or extensions of their production lines in Africa. In other words, while transnationals would seek to reinforce vertical integration, they do not appear to be enthusiastic about horizontal co-operation. Such an approach does not contribute significantly to the growth of technical skills in the community and to real industrial development, for what is largely involved is the utilization of existing facilities in the economic co-operation grouping.

62. Furthermore, transnationals tend to concentrate in activities such as mining where unit production costs are low but returns are high. But these are precisely the areas in which intra-African trade hardly exists. Moreover, since mining tends to be country-based, regional integration suffers a set-back to the extent that corporation resources are geared towards the mining industry.

63. Unless adequate measures are adopted, a situation could be created whereby the advantages from regional economic co-operation are primarily realized by transnationals which undertake the production, marketing and distribution of commodities produced from integrated industries. The success of regional integration programmes is determined essentially by those who own and control the means of production, because effective decisions can be taken only by those who have the resources to back such decisions.

(i) Issues regarding ownership and control of resources

64. A major area of development policy relates to the problems of ownership and control of resources and the resulting relationship between host countries and transnationals. The main questions of significance include: (i) how to exercise effective control over the activities of transnational corporations and (ii) how to ensure an optimal degree of their integration into the local economy. The question of control of transnationals by host Governments continues to be one of the most controversial and confusing problems facing all parties concerned.22/ For the sake of clarity, it is useful to distinguish between two general approaches to control: majority government ownership (through equity participation, joint venture and the like); and effective policy control (through taxes and other regulations).

65. Various strategies can be chosen for effective control of the foreign company. For instance, a company can be simply subjected to the law of the host country in all its aspects as is the case in most industrialized countries. This means that any change in the law would be automatically applicable to the foreign company. But transnationals tend to resist this formula and insist on guarantees which would ensure respect of the negotiated agreement.

22/ See also, Karl P. Sauvant and Farid G. Lavipour, Controlling multinational enterprises: Problems, strategies, counterstrategies, Boulder, Colorado, Westview Press, 1976; and CTC, Transnational corporations in world development: A re-examination, op.cit..

66. Another measure of control occurs when the host Government insists on reviewing all aspects of the projects on a regular basis, including development plans, budget, sales, employment, production levels, etc. But few corporations would be willing to be so constrained. In other cases government representatives sitting on the board of directors could have a veto power over all major decisions, even if the host Government holds less than 50 per cent of equity. But government representatives tend to be at a disadvantage vis-à-vis company officials who are in a better position to have access to vital information (provided by the parent company) and to manipulate technical data.

67. In the case of government ownership of over 50 per cent of equity, control can be exercised if voting rules are made to apply to the following questions: appointment and discharge of the chief executive officer, reinvestment policies, sales of the company's assets, loans, increase of capital, amendment of by-laws, transfer of shares, handling of dividends, appointment and discharge of board members and any substantial change in the project.

68. Three key factors which help to determine control are the composition of the Board of Directors, the role of the General Manager (or Managing Director) and resort to management agreements. The composition of the Board, which is generally proportionate to the share of equity held by each party, can be tipped in favour of the host Government through a special provision in the agreement. But despite the Board's mandate in making final decisions, the role of the General Manager is in practice more crucial than that of the Board. He usually has a broad mandate in the day-to-day decision-making process concerning all aspects of the subsidiary's operations. Although he is formally appointed by the Board, the General Manager is in fact generally designated by the parent company and comes from headquarters or from other subsidiaries.

69. Another way of controlling the General Manager has been to circumscribe the scope of his mandate by putting certain important decisions outside his jurisdiction. Such decisions would involve, for example, production levels, expansion, reinvestment, profit determination and remittance, large-scale contracts and so on. Another approach would be for the Government to appoint its own General Manager whose function would be to share management responsibilities with the company-appointed counterpart.

(j) The formulation and implementation of an international code of conduct

70. An issue which African countries would wish to monitor constantly relates to the on-going work on the proposed international code of conduct. The need for such a code originated from the deliberations of the Group of Eminent Persons who suggested, inter-alia, that the Commission on Transnational Corporations should evolve a set of recommendations which, taken together, would represent a code of conduct for Governments and multinational corporations to be considered and adopted by the Economic and Social Council, and review, in the light of experience the effective application and continuing applicatlicability of such recommendations 23/. The Commission established an Intergovernmental Working Group on a Code of Conduct to deal with this issue. The Centre on Transnational Corporations subsequently produced documents which outlined some of the issues relevant to a code of conduct, including the scope, content (substantive provisions), nature and machinery of the code, and a survey of various international instruments (universal or regional) dealing with transnationals 24/.

71. The nature of the code is envisaged as having any of the following three broad characteristics: (i) an international multilateral convention, signed and ratified by sovereign States (home and host Governments); (ii) a declaration of principles (and rules), adopted at an international conference by participating sovereign States, and (iii) a resolution of an international organization (e.g. United Nations General Assembly or Economic and Social Council). There is no agreement on these issues but the final decision on the form of a code to be adopted would largely be determined by how effectively it can be observed or respected by transnational corporations and their home Governments.

72. The basic issues to be the subject matter for a code of conduct are very complex but broadly would include the following:(a) general principles of be- (e.g. observance of local laws, adherence to social and economic goals of the host countries and abstention from corrupt practices; (b) policies and practices of transnationals (e.g. non-interference in political affairs, ownership and control of resources, transfer of inappropriate technology, consumer and environmental protection); (c) co-operation between home and host Governments and issues of jurisdiction in dealing with transnationals 25/.

23/ See United Nations. The impact of multinational corporations on development and on international relations, (E/5500/Rev.1: ST/ESA/6), New York, 1975.

24/ United Nations Centre on Transnational Corporations, International code and regional arrangements relating to transnational corporations, (E/C.10/9) and corporations issues involved in the formulation of a code of conduct (E/C.10/17).

25/ See United Nations, Centre on Transnational Corporations: Issues involved in the formulation of a code of conduct (E/C.10/17).

PART III: SUMMARY AND CONCLUSIONS

73. The major transnational-related issues outlined in part II of this paper and which are likely to feature prominently in Africa's socio-economic development in the 1980s can be summarized as follows:

(a) The problems of financing economic development partly resulting from the excessive outflow of resources from Africa prompted by transnationals; the lack of direct and visible contribution by transnationals towards Africa's development objectives and priorities; the adoption of more favourable investment policies by transnationals;

(b) The absence of any real desire by transnationals to contribute to the solution of unemployment problems in Africa as well as their reluctance to help to develop managerial and technical skills required in development;

(c) The problems of purchase and acquisition of technology from transnationals by African countries and the related excessively tight and exclusive control over the transfer of technology, including its research and development related to specific African needs, patents and licensing;

(d) The impact of transnationals on Africa's balance-of-payments positions including problems of "transfer pricing" and other unauthorized transfers of resources;

(e) Problems arising from restrictive and corrupt business practices on the part of transnationals as well as their attempts to circumvent national laws and regulations concerning the conduct of business;

(f) Problems arising out of the relative weakness of the negotiating and bargaining capacities of African countries vis-à-vis transnationals owing to a lack of adequate and comprehensive information concerning the full scale of the operations of such corporations as well as the lack of appropriate institutions to deal with them; and

(g) The problems of restructuring the ownership and control of development resources and the marked reluctance, if not refusal by transnationals to accept host country jurisdiction over their activities.

74. This list, which is by no means exhaustive, is intended to highlight the magnitude of the issues involved. The ECA secretariat has already started to examine some of these problems

in greater depth with a view to proposing appropriate policy actions which could be considered for adoption by member States. At this stage, however, it was thought opportune to confine the paper to a bare analytical presentation of the facts and issues, as they appear to the secretariat, with a view to giving member States the opportunity to discuss them and to consider the various implications especially at the policy-making level. It is hoped that the policy guidelines for a future course of action could be spelt out in a resolution which the Conference of Ministers may wish to adopt following its deliberations on this issue.

ANNEX

Draft work programme and priorities relating to transnational corporations

9.345 Developing national and regional policies and capabilities relating to transnational corporations

Origin: General Assembly resolutions 3201(S-VI) and 3202(S-VI); ECOSOC resolutions 1913(LVII) and 1961(LIX) and Commission resolution 326(XIII).

Project aim: To assist African countries in sharpening their perceptions of the structures, policies and operations of foreign transnational corporations, building institutional machinery and capabilities for monitoring and evaluating these issues, and in adopting effective policies in respect of such corporations.

Priority A

Work content: I. GENERAL PROGRAMME

9.345.01 (a) Assistance to countries and territories, subregional and regional groupings in Africa (1980-1981):

(i) In developing and strengthening their capabilities to take maximum advantage of the presence of foreign transnational corporations, including the strengthening of the bargaining positions of African countries in negotiations with transnational corporations and the development of a common African stand in respect of such corporations;

(ii) In evolving a new set of relationships between transnational corporations and indigenous enterprises including the question of effective linkage between them;

(iii) In instituting a system of bilateral and multilateral consultations and an exchange of information among Africn countries, and between Africa and other regions, relating to transnational corporations;

(iv) In harmonizing national policies on the control and supervision of the activities of transnational corporations through the adoption and implementation of a code of conduct and other multilateral agreements and arrangements;

(v) In the creation of African intergovernmental enterprises to assume some of the functions of transnational corporations;

(vi) In adopting and implementing interregional programmes aimed at the development of concerted action in respect of transnational corporations, including joint studies on mutual concern and the possibilities of increased trade among the interested countries.

II. REGIONAL PROGRAMME

(b) Studies:

9.34.02 Studies of the impacts of transnational corporations on selected issues and sectors such as balance of payments, purchase and acquisition of technology, employment and training (1980-1981);

9.345.03 Case studies on the activities of foreign transnational corporations in selected key economic sectors or subsectors such as extractive industries, transport and shipping, banking and financial intermediaries, import and export trade (1980-1981);

9.345.04 Study on the reporting and accounting standards of transnational corporations (1980-1981);

9.345.05 Study on the code of conduct and its implementation (1980-1981);

9.345.06 Study on negotiation techniques of transnational corporations (1980-1981);

9.345.07 Study of the impact of transnational corporations on baby food and beverage industries (1980).

(c) Collection and dissemination of information (1980):

9.345.20 Collection, analysis and dissemination of national laws and regulations as well as of studies, bibliographies and other forms of documentation, dealing with transnational corporations;

9.345.21 Profiles on selected transnational corporations in the African region (1980-1981);

9.345.22 Introduction of annual publication summarizing the main findings and conclusions of the joint ECA/CTNC unit studies on activities of transnational corporations in Africa (1980).

(d) Conferences, meetings, seminars, training courses and expert working groups (1980-1981):

9.345.26 Seminar on the framework and problems of implementation of a code of conduct from the African perspective (1980);

9.345.27 Regional seminar on the impacts of transnational corporations on baby food and beverage industries (1981);

9.345.28 Workshop on accounting and reporting standards of transnational corporations (1981);

9.345.29 Expert working group on the role of transnational corporations in export-oriented primary commodities (1980);

9.345.30 Regional ministerial conference on transnational corporations and Africa's development in the 1980s (1981);

Related programmes: Close collaboration with UNCTAD, CTC, ILO, Industry, Trade, Transport and Social Development Divisions.