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EXPERIENCE GAINED IN TECHNICAL COOPERATION RELATING TO FOREIGN  
DIRECT INVESTMENT AND TRANSNATIONAL CORPORATIONS

Technical cooperation activities

Report by the UNCTAD Secretariat

SUMMARY

This report provides a description of some of the major activities that have been carried out by the Programme on Transnational Corporations through its technical cooperation work during 1993. The report reviews activities concerning general policy reform regarding foreign investment as well as sectoral policy reform, with a particular focus on natural resources development. The report then describes some of the activities related to human resources development. Finally, the report examines the impact of the technical cooperation programme on host developing countries.

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## I. INTRODUCTION

1. In its resolution 1993/49, paragraph 4, the Economic and Social Council requested the Secretary-General to submit to the Commission at its twentieth session reports on experience gained in technical cooperation relating to foreign direct investment and transnational corporations (TNCs). In this connection, a number of delegations attending the nineteenth session of the Commission requested that in future the Secretariat provide more detailed information on its advisory and training activities and their impact on host developing countries. This report has been prepared in response to these requests.

2. Developing countries as well as those with economies in transition have all continued the trend of policy reform aimed at creating a vibrant private sector as well as attracting increased participation of foreign investors. For that purpose, revisions of the relevant legal framework have attempted to keep pace with the increasing efforts by all these countries to highlight the business opportunities they offer. To enhance the national capacities in this area the Programme on Transnational Corporations has continued to assist Governments in the policy and legal reform processes that support the encouragement of the private sector in general and the attraction of foreign investment in particular. This report highlights the main areas of assistance provided. The examples cited relate to requests by Governments for technical cooperation assistance in 1993.

3. During the past year, many requests by Governments for assistance have, as in the past, particularly focused on the review and revision of legislation governing foreign investment. But in most cases advice has inevitably had to be linked and followed up with advice regarding all the other basic issues that impact on the creation of an optimal investment climate. Of special interest to the work programme, however, is that 1993 evidenced a trend in that Governments increasingly tend to seek advice on not just how to attain the basic level of attractiveness for foreign investors, but more so how to be competitive among all the countries seeking the same investors.

4. The issue of competitiveness takes on a special aspect in the case of some of the countries with economies in transition. There, the science research and development sector has grown and flourished considerably through science institutes or enterprises that were supported by the central governments for the past 30 to 40 years. But with reduced government subsidies, the science sector lost, among other things, its market and its main source of funding. Nevertheless, these countries still have technology developed over the years which they now wish to market abroad. But the high-technology international markets abroad have recently become extremely competitive. Entering into alliances with TNCs could provide a competitive edge in marketing, which the staff of the science institutes and related enterprises in the former centrally planned economies may otherwise take a long time to acquire. The Programme on Transnational Corporations initiated one project in 1991 to promote such partnerships and 1993 saw a significant demand from a number of transitional economies for similar projects. The burgeoning programme on competitiveness is also being adapted for the benefit of the more traditional market-oriented economies.

5. In 1993, as in previous years, assistance in the area of natural resources formed a large component of the technical cooperation programme. Most of this work was related to the minerals and petroleum sectors. It concerned not only legislative and policy issues, but also contractual issues. Legislative and policy work undertaken or completed ranged from assistance in fine tuning existing minerals and petroleum arrangements to complete overhaul of such arrangements. Contract-related work comprised reviews of existing or proposed contracts.

6. While the work in this area was wide-ranging a pattern was discernible. In host countries with established market-based economies there is increasing awareness of and sophistication concerning the key policy issues involved in successfully organizing mineral and petroleum investment. Hence among requests made for technical assistance relating to policy matters there was greater demand for support in the fine tuning of well-established and, indeed successful, natural resource arrangements. However, this greater policy sophistication is not always matched by (a) the ability to handle the detailed business arrangements that accompany natural resources investment or (b) a capacity to monitor and audit operations to ensure full compliance with legal obligations or contractual commitments. Several requests for assistance therefore concerned the latter issues and it may be a growing trend in the technical cooperation work concerning the natural resources sector. On the other hand there is continuing need for significant overhaul and modernization of natural resources laws and policies in those transitional economies which now wish private investment to take the instrumental role. While there is no shortage in those transitional economies of non-financial technical capacity, which was developed in the State-owned enterprises, there is still much to digest about policy matters.

7. Human resources development has always been an important component of the technical cooperation programme; 1993 was no exception. In fact there was a large number of requests for training assistance and the ability to provide correspondingly was only curtailed by the limitation of available funds.

## II. GENERAL POLICY REFORM REGARDING FOREIGN INVESTMENT

### A. Review and revision of investment-related legislation

8. In many developing countries a single law, often referred to as the investment code, is still used as the vehicle to summarize the objectives, privileges, terms and conditions for the implementation of investment activities in a given environment. (Quite often, such laws are also referred to as foreign investment codes, in which case they specifically deal with just foreign direct investment.) Technical assistance is sought in drafting new codes or revising existing legislation.

9. The assistance in drafting, reviewing or revising investment-related legislation has mainly been sought in relation to two matters. First, the Programme's collective experience is brought to bear on considerations of what should be expected, in any given context, to be foreign investors' basic requirements. Two such requirements seem of particular concern to large foreign investors in most developing countries. One is an attractive foreign exchange

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regulatory scheme. The other concerns security of title - foreign investors attach considerable importance to a guarantee that in the event of expropriation the amount of compensation and the manner of payment could, in the case of a dispute, be referred for final determination to international arbitration. Second, advice is sought in government deliberations over how the code can be used as a vehicle for indicating which categories of business activities are open to foreign investment and which, if any, are to be favoured with special concessions.

10. In the provision of technical assistance in this area, perhaps the most fundamental flaw of government policy most frequently encountered is that, in trying to cover all the concerns of foreign investors, some investment codes unsuccessfully attempt to be an all too encompassing law. This is because the code is used as a "doctor" to cure all the perceived ills of the rest of the general legislative framework governing foreign investment. For example, in a southern African country, the doctoring was done by providing fiscal incentives in the context of an otherwise very unattractive tax regime with extremely high indirect taxes. The Programme on Transnational Corporations advised the Government to revise its fiscal regime related to indirect taxes rather than, as was contemplated, to try and fix parts of it through concessions granted under the investment code.

11. In some cases, investment codes are used to fill in the gaps left by rather underdeveloped business related laws. This is particularly so in countries that have only recently adopted a market economy. Thus, for example, a recent review of the investment law of one such country in Eastern Europe showed that many areas should really be covered by company law as well as other legislation such as labour, social security and industrial property laws. In a similar country in the same region, the Programme on Transnational Corporations continued to execute a project initiated in 1992 which includes the preparation of such legislation. That has forestalled the otherwise likely inclination to use an investment code as the only legislative reform alternative.

12. An interesting issue highlighted by a request of technical assistance from one Pacific island country is the question of what importance should be attached to the adoption of an investment code. That particular country actually had little difficulty in attracting investment. But there were some bottlenecks which the Government thought it should deal with, perhaps through the adoption of an investment code. Before embarking on such a course, the Government officials requested advice on whether an investment code was necessarily the best tool for that purpose.

13. The Programme advised that country that an investment code could be a vital policy tool for developing countries seeking to attract foreign investment. It was pointed out that the international business community still seemed overly cautious about investing in developing countries unless the government position on investors' basic requirements was clearly spelt out. An investment code formulated in appropriate terms could be used for that purpose. Nevertheless, it was emphasized that the potential influence of an investment code was limited because its effect was always subsidiary to that of other fundamental factors which were needed to provide an optimal climate for all investment. Among such fundamental factors, some of the most important are (a) local attitudes to private business in general, (b) predictability of conditions, lack of

arbitrariness and freedom from burdensome regulation, and (c) appropriate macroeconomic conditions, including the freedom to transfer profit and repatriate capital.

14. The requests for assistance in formulating and drafting policy statements on foreign investment are indicative of the importance now attached to giving an image of positive local attitudes. Government attitudes to private business are indivisible from the climate for foreign investment. Attitudes throughout government seem to depend very much on the attitudes communicated by the leadership. It is important, therefore, that the leadership come out with a clear position on its attitude to foreign investment. Often this can be achieved through the publication of an official policy statement on foreign investment, which can be much more elaborate than a code. One East African country asked for assistance in drafting such a statement last year.

15. In reviewing a recently adopted investment code of one north-east African country, the Programme on Transnational Corporations noted the element of burdensome regulation and excessive intrusion in business arrangements, albeit with the good intention of "assisting the investor". While, in many respects, the code actually captured the salient features of a liberal investment regime, it was noted that the procedures stipulated for the formation of joint ventures were highly regulatory. For example, the legislation required all joint venture agreements to follow a model joint venture agreement prepared by the Government. The intention was to assist local investors not well versed in the intricacies of international joint venture arrangements, but the result was effectively a blanket limitation on various options otherwise available to private investors.

16. The Programme on Transnational Corporations pointed out to the Government that in any market economy there was need to regulate private business in the public interest regarding such matters as those concerning, for example, public health, safety, the environment, rights to exploit natural resources, and payment of taxes. But it was also emphasized that in formulating a private sector policy (including the foreign investment role) there had to be a clear philosophy as to the scope of public interest regulation. In the first place, business regulation that goes beyond protection of the general public interest to protecting and promoting particular private interests - whether regions, industries, groups, sectors - may create economic distortions that are counter-productive to the economy as a whole. In the second place, over-regulation sometimes leads to excessive intrusion in business arrangements as in this particular case. On the advice of the Programme, the Government has now prepared a draft investment code which eliminates the excessive regulation.

17. In two recent cases (one concerning a former Soviet republic and the other an African country) extensive advice was asked on the general taxation law and tax system. As more countries take the line that soundly managed macroeconomic conditions may be more important to foreign investors than the mere creation of economic enclaves for such investors, more requests in this area are likely. While available resources do not often allow a comprehensive review of all relevant issues, the ultimate advice provided to Governments is always premised on the basis that a foreign investment policy can only be attractive if accompanied by economic conditions under which investors see an opportunity for making profit and the ability to transfer that profit. That, in effect, means creating the right macroeconomic conditions.

B. Being competitive at the country level

18. The world investment scene is highly competitive and many countries are striving to improve economic and business conditions. Beside taking account of the kind of fundamental measures mentioned above, any developing country that wishes to attract foreign investment now has to consider its investment-related policies relative to policies of other countries.

19. Adopting an open policy system with "national treatment" for foreign investors seems to create a specially strong signal for attracting foreign investment, and the Programme on Transnational Corporations has recommended that kind of policy for a number of countries. Another African country adopted that recommendation in 1993. Its foreign investment policy establishes no procedure for scrutiny and approval of foreign investments but, rather, an open system under which foreign investors are allowed in any business activity not prohibited by law as long as they operate on the terms and conditions which would apply to a similar business carried on by a citizen. 1/

20. Aside from the extent of openness, the fiscal regime is a vital factor in achieving competitiveness. Many countries offer fiscal incentives to encourage foreign investment. These typically take the form of income tax holidays, exemption from customs duties and sales taxes, lower expatriate personnel taxation and so on. To the extent such incentives induce new investment it is argued that they do not reduce the tax inflow to the national budget. However, extensive research has concluded that fiscal incentives may actually have an impact on investment decisions only in particular industries. Generally speaking, the experience of the Programme on Transnational Corporations has been that they are not among the most important factors which influence foreign investment decisions.

21. In the review of a draft investment code of an Eastern European country that only recently opened its economy and is trying to attract foreign investors, it was noted that the code followed the traditional approach of trying to attract foreign investment by means of fiscal concessions, such as free import and customs duties privileges and tax exemptions. The Programme on Transnational Corporations pointed out that foreign investment in today's world was attracted (assuming market profitability) by investment security, capital and dividend convertibility and repatriation assurances, a legal environment that protects technology and industrial property rights and, if possible, an environment of free enterprise open for competition on an equal standing with the domestic investors.

22. It was also emphasized that incentives for foreigners, not available for domestic investors as in this case, tended to create particular problems and yet not necessarily to attract foreign investment. First, tax saved by foreign corporations in host countries may be payable in their home countries - unless the home country exempts foreign income from taxation either as a general principle for certain countries or as a result of a bilateral tax treaty with a particular country. Second, it is a poor economic principle to give incentives based on source of ownership. Third, the administration of selective incentives can be intrusive and cumbersome if the incentives have to be approved on a case-by-case basis.

23. Even where fiscal incentives are available to all investors for designated activities, there are problems to consider. First, as indicated earlier, in very many cases "incentives" are often forms of relief (granted by a "doctoring" investment code) from otherwise prohibitive taxes. Second, as a review of one North African country's investment code indicated, the effort to widen the list of industries eligible for the "incentives" often leads to the stage where a country ends up with two tax codes - one for the unlucky "old" investors and one for the "new" investors. The Programme on Transnational Corporations recommended to this Government the approach of introducing general tax arrangements which are non-distorting, workable and internationally competitive. But as was the case when the Programme very recently so advised another African country, such recommendation gives rise to two policy issues: (a) the level of effective tax rates, and (b) the extent to which specific incentives are still appropriate within a regime where taxes on business are moderate. On the question of the level of effective taxes the Programme in this particular case recommended that the government consider a distinctively low and attractive regime for business-related taxes with more substantial taxes on consumption as well as some additional form of progressive tax or royalty for extractive industries. The approach of imposing moderate taxes on business permits any specific incentives to be more closely targeted and is therefore less likely to create significant economic distortions. While emphasizing that there is no settled view internationally of the most appropriate incentives, the Programme has on the whole recommended to Governments striving to be competitive on a global basis to adopt policies which can be described as "low taxes not high concessions".

24. Availability of foreign exchange is a key concern of foreign investors and their lenders. The ability to transfer profits has already been mentioned among the fundamental factors needed to create an optimal investment climate. Thus, more and more developing countries are offering guarantees to foreign investors that foreign currency will be available - at least for debt service, profit remittance and capital repatriation. For export projects which generate foreign exchange these guarantees can extend to a waiver of the need to surrender foreign currency. In the latter case the investor only converts to local currency what is needed to pay local costs and taxes.

25. For those countries keen to create a competitive edge, the Programme has encouraged them to move beyond the provision of special exchange control arrangements for selected investors towards the adoption of more generally liberal foreign exchange control regimes. In one case last year, the Programme suggested that the Government consider having no exchange controls other than as may be required for record-keeping purposes to support tax compliance and for statistical purposes. In practical terms this would mean no compulsory surrender of foreign exchange earnings and no requirement that residents' savings be held in local currency or invested in the host country. A number of other policy considerations are involved in such a decision, but such a move would give a very powerful signal that a Government intends to achieve stable economic conditions through the necessary supporting fiscal and monetary policies. The Government was very attracted to the idea and is currently studying all the implications of putting such a system in place.

26. Providing security of title to foreign investors by virtue of acceding to various international legal instruments has become an increasingly vital factor



in assessing a country's competitiveness. As multilateral and bilateral investment-related treaties become more prevalent, there is an increasing demand by developing countries for assistance in examining the role of these treaties as well as the interaction between their investment policies and the multilateral and regional instruments governing foreign investment.

27. For example, when one Asian country was about to negotiate a bilateral investment protection treaty with a certain industrialized country, its officials sought a clearer understanding of some of the most important issues connected with such treaties such as national treatment, compensation, and the settlement of disputes. The Programme provided the requested information on the perspectives of developing and developed countries on the three issues, actual practice generally, and specific examples of agreements negotiated by selected countries.

### C. Being competitive at the enterprise level

28. In November 1992, missions were sent to two Eastern European countries to design a project that could assist them to bring their science-based products and services to international markets. Only one year later, this type of project is being implemented in four countries in the same region. Two other Eastern European countries have also expressed interest. A similar project, under implementation in one Caribbean country since 1991, calls for the establishment of linkages between its bio-technology sector and pharmaceutical and bio-technology TNCs so as to sell products abroad via joint ventures or other arrangements with those TNCs.

29. The objective of this element of the Programme's work programme is to form revenue-generating linkages between very specialized science institutes (mainly enterprises in Eastern European countries) and TNCs through the establishment of business joint ventures or any other form of strategic alliances. The technical assistance strategy calls for working with both the institutes and their governments: the institutes must gather the needed resources and know-how to do business with the TNCs; and the governments must support them with policies which provide the environment to promote these types of alliances.

30. The technical assistance includes (a) a review of legislation relevant to the establishment and functioning of business relations with TNCs (that is, for example, laws for foreign investment, foreign trade, intellectual property protection); (b) a review of the structure of the science sector, covering institutional and organizational issues; (c) an assessment of the science institutes' international competitiveness from both technical and marketing perspectives; and (d) training in business related activities (i.e. strategy, organizational design, marketing and promotion, negotiation etc.).

31. In reviewing legislation, specific legal issues are, where appropriate, covered at both national and enterprise levels. For example, in the case of intellectual property protection, a review is made of the relevant national legislation (e.g. patent laws) and its implementation; and then an examination is made of the institutional arrangements of the enterprise in question which affect the handling of intellectual property (e.g. how it would affect royalty payments to the generators of intellectual property).

32. In addressing issues related to the structure of the science sector, the Programme found that, unintentionally, the form of reorganization chosen for privatization has sometimes hurt the prospects for recovery of this sector. For example, in almost all the countries, Governments have privatized high technology manufacturing facilities without keeping the previous links to the State-owned science and research and development institutes. Consequently, the science institute loses a key source of income (royalty payments by the manufacturing facility) needed to continue its research. The manufacturing facility also loses access to research needed to upgrade its products. Thus, the future of both the research and development institute and the manufacturing facility are jeopardized.

33. To solve this problem, advice was provided on how to restructure the science sector by the establishment of licensing arrangements between private high technology companies and the public research and development institutes. The advice was based on the experiences of a number of developed countries, where such arrangements are made between government or university funded research and development institutions, on the one hand, and private high technology companies, on the other. The Programme also provided information to the science institutes on potential partners in the developed countries and facilitated contact between them. Some projects (mostly still small-scale) have as a result been set up between foreign companies and the local institutes.

34. Activities in Eastern Europe in the promotion of competitiveness at the enterprise level may have some lessons for many developing countries, a number of which have some intellectual capital with potential to develop high technology, high-profit productive operations. In fact, in many cases, government or university funded research has produced good quality laboratories which conduct innovative research. But, many developing country governments or companies, in part overwhelmed by the complexity of effective intellectual property management and the fierce competition in high technology industries in international markets, do not enter these markets. Successful programmes in Eastern Europe may give an impetus to such Governments to also try. The process is complex and difficult but the potential gains are enormous. The Programme has been developing the capacity to provide the assistance needed by those developing countries possessing some intellectual property and innovative capabilities.

#### D. Creating special channels for foreign investment

##### 1. Free Economic Zones

35. Free Economic Zones (FEZ) <sup>2/</sup> continue to attract the interest of many governments. The developments in the former centrally planned economies, where FEZs are considered a means to implement market economy mechanisms, have also given a new impetus to the proliferation of FEZs. However, given that the liberalized policy climate has also been coupled with public budgetary constraints, there is increased interest in FEZs in which private initiatives provide services usually provided by the public sector. For example, in the assistance provided to three countries in Northern Africa as well as the government of a South American country, privatization of the infrastructure, or at least part of it, was contemplated or was being negotiated.

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36. Among the main issues for which advice was sought is the choice between adopting a general regime applying equally to any export-oriented enterprise whatever its location within the national territory may be or a regime that restricts benefits to only enterprises operating in specified enclaves. The choice depends on many factors. Among them are local circumstances such as the economic structure of the country, the level of development of the infrastructure (notably the communications network), the natural resources potential of the different regions of the country, etc. Thus for example, in advising the government of one of the three North African countries to complement its recent legislation on investment with a law establishing an "export-processing zone", the Programme's advice was partly based on considerations of the physical features of the country, the poor situation of its infrastructures and the necessity to concentrate investments in specific areas in order to reach significant dimension and to maximize their impact on the region concerned.

37. Another main issue on which advice is often sought concerns the policy on incentives. The effectiveness of any incentive policy depends not only on the competitive nature of the incentive programmes adopted elsewhere, but often more so on the scale of the shortcomings to be offset by operating in a FEZ. The issue Governments face is to ensure that incentives offered are sufficient to attract the required amount and type of investment, but are not so high as to exceed in value the perceived shortcomings. The Programme's provision of information on the range and type of incentives available in a similar environment in other countries thus provides useful guidelines.

38. The existence of standard factory buildings is an important factor in attracting foreign investors to FEZs, since they allow them to start production quickly and eliminate the need for them to erect a factory in unfamiliar surroundings. The question for some Governments is whether to build and then lease or sell the buildings, or whether to lease land sites on which an investor could erect its own buildings. Again, several factors determine the choice including, among others, the legal regime governing land tenure and the available contracting facilities. In one of last year's cases, the Programme advised the Government faced with the issue to build and lease at modest rental rates so as to facilitate the commencement of activities, with the possibility that these rates could be gradually increased later on, depending on the investment climate. In other cases, the advice has been to let the investors erect their own buildings.

39. The formulation of the contractual and regulatory framework is a crucial factor. The Programme responded to the request made by the government of an African country to evaluate a proposal by a TNC to finance, equip and manage a major export-processing zone. The proposed zone was to be located in the most developed area of the country and the zone territory would cover a large part of the country. A draft law was annexed to the proposal providing for the organization and regulation of the zone and the monitoring of all activities within the zone boundaries. The entrepreneur was supposed to be in charge of the enforcement of the zone regulations.

40. The Programme studied the offer and made an assessment of the respective rights and obligations of both parties, according to the provision of the draft legal documents submitted. The conclusion was that they were not only

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enormously unbalanced, but that the whole arrangement, if implemented, would seriously impinge on State sovereignty. In any case, the pre-feasibility study presented was not documented well enough and was deficient in many respects. The Programme suggested that the arrangement be negotiated on a quite different basis and assisted the government in the whole process.

41. In the transformation of a port site into a privatized export-processing zone, the Government of another developing country was confronted with the choice of the contractual arrangement to be concluded with the private sector. Diverse types of arrangements, involving various degrees of private sector involvement, were considered. A major consideration was that, as a matter of policy, the government was determined to limit the involvement of the public sector in economic life. Mainly for that reason, a concession form of arrangement was chosen. In the case under review, its merits were several. The private enterprise had the responsibility to build up installations and facilities, to make general improvements and to provide working capital. In addition, it was to run the service at its own risk, assume the management, maintain and improve facilities and buy all necessary equipment and material. At the end of the concession, the facilities would nevertheless become the property of the State. The main advantage of the concession contract, as perceived in this particular case, was to shield the State from financial obligations while obtaining efficient service.

42. Governments seek advice on whether there should be free access of the products obtained in a FEZ to the domestic market. In most cases, access to the host country's domestic market for FEZ's products is strictly regulated and, often, these products are simply barred from domestic markets, but this depends on the particular circumstances of each country. In advising the government of a country with an economy in transition, the Programme recommended that by-products could be sold on the domestic market, but only to the equivalent of 20 per cent of total output. One of the reasons for imposing a limit was that the country's taxation and accounting systems were not yet advanced enough to determine what duties, if any, should be payable on the products. In another country, where the national accounting system was much more advanced, the Programme suggested that products manufactured in a FEZ could be sold on the domestic market, provided that customs duties were paid on them, after deduction of the amount of the value added locally. Such provisions could encourage linkage effects between enterprises operating in the FEZ and domestic enterprises.

43. Generally speaking, there is no single model of FEZs which is ideal universally. In practice, each FEZ has to be adapted for the particular circumstances of a country and place. Such adaptation needs to reconcile the perceived interests of both the public and the private sectors in creating and operating in the FEZ. Since such a balance is not static, the success of a FEZ also depends upon how the concerned country continuously adapts to a changing environment both at home and abroad.

## 2. Build-operate-transfer arrangements for infrastructure

44. Build-operate-transfer (BOT) is a means whereby private investment and management can be invited to build and operate public facilities for eventual

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turnover to a government once the investment is recovered. There is a variety of related arrangements such as, for example, "build-lease-transfer" (BLT) where an investor constructs a facility for long-term lease to government and eventual transfer.

45. The attraction for governments of the BOT family of arrangements is the opportunity to tap new sources of finance and skills and to have key public facilities put in place with less exposure to the construction, operating, market and financial risks of being the developer and operator. Governments stand to eventually take over mature, proven facilities which are free of debt.

46. The public sector is either a customer or regulator of the service provided by a BOT facility. The developer's ability to negotiate attractive market arrangements, such as price levels, is crucial for the profitability and bankability of the project. These are matters for negotiation. In one case the Government of an Asian country requested a review of the terms of a BOT contract for a thermal power station that would supply the national grid. The developer's responsibility was to finance and construct the station. It would then operate the station for 25 years, during which time the national power authority would purchase electricity at an agreed price. The developer had been able to reduce its market risk substantially by obliging the power authority to supply fuel (the major operating cost) and to take electricity at a price sufficient to recover capital and operating cost. Arguably the power authority could absorb these risks given its position as a monopoly supplier but the review concluded that there was a case for greater flexibility in the fee structure. The review also recommended improvements in a large number of contractual provisions to clarify and tighten the developer's obligations.

47. In another case the Government requested a review of a BLT contract for a mass transit system. A private consortium was to build and maintain the system and lease it to a public authority for an extended period. In this case the public authority was to operate the system and charge passengers. The public authority was to pay a fixed lease rental based on recovery of expected investment cost and not directly linked to the revenue generated by the system. Two connected issues arose. First, it was not clear that the public authority had made adequate projections of passenger demand on which to base a long-term commitment. Secondly, the developer was taking none of the market risk since its lease rentals were independent of the traffic revenue generated. Moreover the lease rentals were to be denominated in foreign currency while passengers paid in local currency. Thus the public authority also accepted the exchange rate risk.

48. In such a case where government was underwriting the revenue stream it was questioned whether the proposal on balance was superior to the traditional method of providing public facilities - in which a government borrows directly to finance a contractor to build a facility. It was recommended that the Government review these issues.

49. This case raises the more general point that, in the provision of public facilities and services, governments have choices ranging from outright privatization to traditional forms of public provision. BOT is an intermediate approach that combines elements of both. Each BOT project has to be judged on its merits as to whether it represents a sensible allocation of risks among the

parties and whether the costs being charged for the facility or service are commensurate with the risks being assumed by the developer.

50. While many of the key business issues may be resolved differently for each project, a wide range of technical matters will be common to all projects. At the request of the Government concerned in the cases reviewed above the Programme drafted a model BOT contract. This will facilitate the application of clear and consistent contractual language in the documentation of all future BOT projects in the country.

### III. SECTORAL POLICY REFORM: NATURAL RESOURCES DEVELOPMENT

#### A. General trends

51. The year 1993 witnessed a significant reappraisal of terms in petroleum investments. The opening of new opportunities for petroleum exploration and development in the Commonwealth of Independent States (CIS) of the former Soviet Union and in Latin America was more than likely the trigger to the reappraisal process. The scene is fast moving and part of the change is driven by changing perceptions of major investors as they become more familiar with new environments and the scope of opportunities now on offer. When, in 1991, the Programme on Transnational Corporations advised on certain petroleum contracts in an Eastern European country that had long been closed to foreign investment, investors were eager to offer fiscal terms attractive to the Government. In 1994, with disappointing exploration results, investors are claiming that these same terms are onerous and that the cost of exploration operations is excessive.

52. These same trends are not so evident in hard rock mineral investment. Relatively few mineral investment contracts have been signed in the CIS countries and other former centrally planned economies. These are very recent, almost entirely restricted to gold mining and the terms achieved are not widely disseminated. Mining investors are approaching each deal in an unformed policy environment with the sense that early entrants will be able to conclude attractive deals. In turn these former socialist countries are anxious to get "on the map" and are struggling to set a firm policy background, much less to codify terms. The Government of one former socialist country negotiated the terms of a mineral investment without external advice and requested that the Programme review the agreement. The review identified a number of features unlikely to be found in the much more settled policy regimes in the established market economies.

53. In the countries with established market economies, additional work was undertaken or completed on codification of mineral investment terms and conditions. This parallels the increasing sophistication of policy makers who are sufficiently confident in their knowledge of what constitute attractive and equitable terms to be prepared to codify these terms. There is considerable convergence of opinion among policy makers and their advisers from the international agencies about appropriate terms. One area that remains unsettled is the role of additional profits tax mechanisms to inject progressivity into the mineral fiscal regimes.

54. The most significant "new" policy area is the regulation of the environmental impact on mining. Certain countries are seeking a much more detailed environmental regulation regime. It has long been the case in the Programme's work on natural resource regimes that comprehensive environmental impact statements and plans to mitigate harmful environmental impacts were a statutory or contractual requirement before a development license was issued. The statements and plans were then judged on their merits. It is increasingly the case that general environmental law and/or environmental regulations to mining and petroleum laws are being prepared which elaborate the benchmarks. In principle this should be a development welcomed by investors as they will have greater certainty from the very beginning of exploration of the kinds of standards they will be required to meet. A manual was prepared in 1993 to assist policy makers in formulating appropriate environmental regimes for mining. 3/

#### B. Policy and contract review

55. During 1993 a comprehensive review was undertaken of the petroleum contract terms for a South American country. The terms had been in place for 20 years and had been very successful. This country had noted a fall off in exploration activity in the past few years and was also concerned about new opportunities in the former centrally planned economies. It wished to ascertain that terms offered were still competitive in the world marketplace. At the same time some special issues needed reconsideration. For example the Government wished to review fiscal terms for highly profitable giant discoveries and methods of attracting more investment to more marginal situations such as frontier areas 4/ and areas perceived as gas-prone or likely to yield heavy oil.

56. A computer-aided simulation was performed to compare the country's fiscal terms with those of 11 other oil-producing nations on a range of assumptions of recoverable reserves, oil price and development cost. It was concluded the country's fiscal regime tended to be regressive, that is, discoveries of marginal viability tended to be overtaxed while it was arguable that giant fields were undertaxed. Recommendations were made to introduce more flexibility to the fiscal structure so that the tax take would be more responsive to underlying project profitability and to the investment returns likely to be required by investors before committing risk capital.

57. A large body of international practice was surveyed and reviewed on methods of encouraging investment in frontier areas. The survey identified fiscal devices designed to reduce the impact of front-end exploration costs or to speed investment recovery and a variety of non-fiscal concessions. The latter inducements included allocating larger exploration areas or relaxing relinquishment requirements, i.e. allowing the investor longer periods in which to explore, develop or produce, and also included proposals for reduced exploration programmes as a license condition. In addition, it was recommended that the Government consider an incentive in the form of a combination of accelerated depreciation and an investment allowance so as to provide a rapid investment recovery.

58. Another area that required fine tuning was the treatment of non-associated natural gas. Unlike the case of oil, which is readily saleable on the

international market, gas development requires the prior identification of a specific market. Development of that market may well require, in turn, major investment (e.g. in the case where the gas is to be the feedstock of a petrochemical plant) and possibly further heavy investment in transport and transmission systems. Often the gas may only have a domestic market and problems of establishing pricing occur. The Programme's review found that the obligations to develop gas discoveries were insufficiently differentiated from those for oil, bearing in mind the commercialization and marketing problems entailed in successful gas investment. Recommendations were made whose effect is to give the investor greater leeway to explore commercialization possibilities between making a discovery and being obliged to relinquish discoveries for failure to develop same.

59. The Government of another South American country requested a review of the terms it had just achieved for an important new mining venture. The country had the reputation over the years of having a very difficult climate for foreign investment and had expropriated mining ventures in the 1970s. Apart from the poor investment climate the project itself presented marginal ore grades. It was thus a remarkable achievement to attract foreign investment to the mine. Nevertheless, the Government wished to know if there were grounds for adjusting the arrangements for the project and what consequent revisions in its laws and model contract might be warranted. The Government was interested in receiving advice on both the fiscal structure and the regulatory issues.

60. Concerning the fiscal structure the review found that tax elements were reasonable and competitive for projects of the kind. However, there were aspects of the business arrangements which led to a notably strong tilt of revenue sharing towards the investors. In particular the project was financed with a high level of debt and debt-like instruments, mostly provided by the principal shareholder. This reduced both tax receipts and the present value of expected dividends from the Government's minority equity share.

61. On balance it was concluded that these arrangements did not lead to an unduly high return to the investors at the expense of government owing to the marginal nature of the underlying economics of the project. Thus it was recommended that the project arrangements should stand. Nevertheless, the Programme advised the Government that some useful lessons could be learned for new projects and thus appropriate changes in the model contract should be made.

62. Concerning regulatory issues the review found that the Government's rights to terminate the agreement for just cause, which as a threat for compliance is essential for effective regulation, were severely limited, while the company's powers to suspend or terminate operations were unusually wide. For example the Government gave up the right to terminate the agreement (in favour of a relatively small financial penalty) if the company through wilful misconduct or gross negligence submitted false information to the Government which resulted in the Government incurring financial loss. However, the company could, in addition to its rights under force majeure, suspend operations for any business reasons the company deemed valid. And resumption of operation tests gave the Government little opportunity of speeding up the process.

63. Previous reports on technical cooperation in the minerals sector highlighted issues involved in the question of whether governments are wise to



seek equity in minerals ventures. It has generally been concluded that adequate public interest controls can be achieved by government in its capacity as regulator. Ownership, even majority ownership, can actually be a weaker instrument. Also it has generally been concluded that well-designed tax arrangements, supported by good tax administration and monitoring systems, can achieve an adequate revenue share to government without the expense and risks of ownership participation. During 1993 some requests were received that continued to raise these issues.

64. The Government of a South American country requested a review of a mining venture in which the State had taken 50 per cent interest in partnership with a major international mining company. The Programme reviewed the financial terms agreed by the parties. It should be noted that in theory it is possible to devise alternative tax or ownership participation structures that yield equivalent revenues for government. However, the review conducted for this government illustrates the fact that satisfactory results can be difficult to achieve in practice through the ownership route.

65. In the case reviewed the government owned 100 per cent of a mining operation. It decided to privatize the venture but agreed to waive its rights to royalty and profits tax in return for taking a 50 per cent participating share in the project. Two problems were apparent. First, the 50 per cent share had been agreed prior to the conduct of the feasibility study and thus government had a poor understanding of the project's likely profitability. It had insufficient information upon which to judge the value of the 50 per cent participation that the foreign investor was getting. Secondly, the Government appeared to have counted loans to the project (albeit provided by the foreign partner) as part of the equity contribution of the foreign partner. This inflated the foreign partner's apparent contribution.

66. Furthermore, the Government had accepted business risks including a full share of project loan guarantees and cash support obligations corresponding to its share of ownership. The acceptance of such business risks does not occur when a government seeks revenue participation through taxation. In this case, if the government could not reduce its exposure to these risks in the negotiations it should have at least sought to calculate its required profit participation to compensate for them.

67. The Government concerned is reviewing its policy in relation to mandatory State participation. The project review provided some instructive examples of the pitfalls of the ownership route to mineral revenue sharing as an alternative to taxation. In the established market economies this has of course been a lively issue for some time. However, it now appears likely to become quite an important matter in the former socialist economies as State instrumentalities seek to preserve an important role in their emerging market economies.

68. From the preceding discussion it will be seen that the policy nature of technical cooperation has shifted somewhat towards "fine tuning" issues. <sup>5/</sup> This reflects greater awareness by the governments of developing countries with established market economies of the key requirements in mineral arrangements needed to satisfy issues in the public interest and the requirements of investors. <sup>6/</sup> However, governments are less sure footed when confronted with purely business arrangements. Furthermore, considerable improvement in capacity

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is needed in the ability of governments adequately to monitor and audit the key operations and transactions of the investors.

C. Project oversight and audit

69. The lack of ability to monitor and audit natural resource operations can lead to government revenues falling well below expectations. This can be a serious revenue (and counterpart foreign exchange) loss for economies dependent on natural resources. Requests from governments of established market economies for technical cooperation programmes to strengthen institutional capacity in this regard may increase. The Government of a country in the Asia-Pacific region has made a preliminary request for assistance in conducting an audit of the expenditures incurred in the exploration and development phases of a major petroleum project. Indeed, such requests may in time become as prominent as the more traditional requests for policy support.

70. In an African country where the Programme advised in the renegotiation of arrangements for a mineral venture it was clearly important that mineral shipments be monitored to ensure genuine reporting of sales revenues. Adequate inspection powers had long existed in customs law but there was a lack of technical capacity to undertake the inspections. Unfortunately, a lack of funding prevented the implementation of a training programme that had been designed immediately following the negotiations to strengthen the government's ability to monitor export shipments.

71. In another case, the government of a Caribbean country requested the Programme's assistance (as part of a team with other advisers) to consider whether the income tax law as applied to the country's major mineral investments was working as intended by the Government. The review found weaknesses in the control of certain business arrangements, especially undue debt gearing of the kind previously discussed. More significantly, field audit by the taxation authority was several years behind owing to a lack of trained audit specialists. The most recent field audit had revealed a number of problems including excessive management fees paid to affiliates and other very aggressive claims for tax expenses. This was of major concern to the Government as mineral revenues account for a significant proportion of the national budget. Moreover, the Government had only recently moved to place greater reliance on income tax as part of the fiscal package for the ventures and rather less on ad valorem charges which were easier to collect. This change, by introducing greater flexibility into the fiscal regime, was designed to encourage expanded investment.

72. Apart from measures needed to strengthen the tax authority's capacity to conduct field audits the review found that a number of supporting amendments to the income tax law would be beneficial, including improvements in the system for provisional tax payments, provision for interest and penalties on arrears, introduction of new tax forms to improve disclosure and amendments to enhance the tax authority's access to documents and records. All of these measures would be commonplace in the principal domiciles of the investors and could, indeed, be modelled on arrangements in these countries.

D. Special considerations in formerly  
central planned economies

73. The governments of the former centrally planned economies are now entering natural resource investment arrangements with foreign investors. In 1993, two requests were received to review draft agreements. It appears to be the case that these governments favour a high level of State ownership. For example, the Government of one such country in Asia requested that a review be undertaken of a gold project in which a State instrumentality had negotiated a draft agreement providing for its participation in the venture. The State had negotiated a paying participation of 51 per cent. However, it had left itself open to the prospect of having to guarantee 100 per cent of the project loans. Moreover, the debt-to-equity gearing of the project was not defined. These weaknesses left the Government responsible for shouldering a much greater share of the project's financial exposure than its profit participation. The Government was also unprotected in the agreement from transfer pricing.

74. One issue of particular pertinence to the former centrally planned economies was highlighted in some requests received. These countries in general have devoted considerable effort and expense to geological survey and other exploration work, more so than is typical of the developing market economies. In some cases reviewed, the State appeared to have received no credit for this work of a kind, which might normally apply in "farm-in" arrangements between private parties. Assistance may be needed in valuing and negotiating these credits.

75. One possible approach to obtaining value for prior exploration effort was taken by the Government of an Eastern European country. It entered into a draft agreement with a specialized foreign consulting firm in which all the country's accumulated petroleum seismic data would be reprocessed by the company and then sold to interested oil explorers. Sales revenue would be shared with the Government. This had the makings of a sensible arrangement. However, the partner sought not only control over release of the data but also an undertaking that the Government would prevent oil explorers from obtaining permits unless the data package was purchased. While this might maximize the price of existing data it could well restrict exploration and not be in the national interest of opening the country to private investment in the sector. The Government was advised to attempt to reformulate the arrangement.

76. In addition to the financial issues it appears that in many of the former centrally planned economies, governments have not moved to formulate in any systematic way the terms and conditions applicable to exploration. There is a natural desire to encourage private investment quickly, but terms agreed to with the early entrants might overly restrict the acreage available to later, and perhaps more substantial, foreign investors. In one case reviewed, the first foreign entrant in the minerals sector had, in partnership with a State instrumentality, been allocated a very large exploration area for a 20-year term with no work programme, no minimum expenditure obligations and no relinquishment provisions.

77. Many of these countries appear most uncertain about appropriate terms to offer private investors in both the minerals and petroleum industries. In cases reviewed this is reflected in the conclusion of arrangements which may not fully

be in the national interest, but in other cases it is reflected in the absence of any functioning deals with major investors at all - or in continual changes in arrangements which foreign investors had thought were settled.

#### IV. HUMAN RESOURCES DEVELOPMENT

78. The Programme's training now concentrates on building national capacity not only to deal on an equal par with foreign investors in, for example, negotiating investment agreements, but also to be able to create and manage the policy and operating climate in which international business can thrive. Many developing and formerly centrally planned countries have, in their efforts to streamline their investment environment, set up one-stop investment boards/centres that are to function as the national core institution for the promotion and in some cases the screening, approval and monitoring of foreign investments. In a Caribbean country, an African country and an East European country, among others, the Programme provided training to investment board officials on aspects related to promoting their countries to potential foreign investors and on aspects related to administering and servicing operating investments.

79. The year 1993 witnessed the usual large numbers of requests for training in the area of natural resources development, particularly for the petroleum sector. Rich in these resources, many of the newly-open door countries of Eastern Europe, Asia and Africa have been concluding mining and petroleum agreements with foreign companies and are eager to compare their regime with terms offered elsewhere. Training has focused on the legal and economic aspects of individual natural resource industries and provided comparisons of the main contractual forms and contract terms used in recent negotiations worldwide. Workshops now increasingly include use of computer models developed by the Programme to perform financial and economic analyses and also demonstrate the effect of different variables on the tax and royalty rates in a real negotiations situation.

80. Some countries with quite extensive petroleum and mineral exploration activity have relied almost exclusively on foreign consultants to negotiate the terms of granting exploration and exploitation rights. While outside expertise is always useful to complement local capacity, there has to be a conscious policy of nurturing domestic expertise. In a new approach in training in the natural resource sector, the Programme, with financial support from the United Nations Development Programme (UNDP), provided a country in the Asia-Pacific region with a resident legal adviser with a specific purpose of hands-on training in negotiations for government lawyers. Attached to the Office of the State Solicitor for three years, the adviser trained and advised the department's lawyers in negotiating natural resource contracts with transnational corporations. As a result, by the end of 1993, government lawyers were fully involved in negotiating natural resource contracts with foreign investors. Previously they had only relied on outside consultants. The work of the legal adviser is continuing.

81. Tourism development continues to be a popular subject among requests for training, with many developing countries and formerly centrally planned economies actively seeking tourism to boost their foreign exchange earnings. In the last year, the Programme focused on helping governments prepare strategic

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development plans for their tourism sectors and on providing training to improve related institutional structures and skills. The Programme also organized study tours for local tourism officials to enable them to study the running of major tourist resorts in other developing countries.

82. In 1993, a number of requests for training were received on issues of international finance, banking and insurance. With over a half of all global foreign direct investment now flowing into service industries, state-of-the-art skills are being called for in the supervision and management of cross-border financial flows, international debt management, and the negotiation of finance and related agreements. In addition, many host countries are loosening earlier restrictions on foreign investor access to local financing. And in undertaking privatization, governments are seeking to better mobilize and draw on the pool of domestic private savings. Capital markets development is an area to which most governments, in both developed and developing countries, are beginning to pay close attention. The Programme conducted in 1993 workshops in Eastern Europe, the Caribbean and Africa, on the management and supervision of financial institutions, and on the setting up and operation of national stock exchanges.

83. Greater cooperation with international business was a theme of some of the Programme's training programmes in 1993. In many workshops or seminars representatives of TNCs were accorded a major role so as to give host government and the local private sector participants the opportunity to hear directly from potential foreign investors on their motivations and constraints vis-à-vis the host country. For instance, a TNC - the Fiat car company - was among the key sponsors of a major public seminar on foreign direct investment in a Latin American country. At another international round table in an Asian country, senior executives from 40 of the world's largest TNCs met with senior government policy makers to review the impact of the country's current economic reform process and to suggest further improvements in the foreign direct investment environment.

84. In another innovation, TNCs are also providing their expertise and support to the Programme's programmes for developing local managerial talent by providing in-house training. Under a multi-stage training programme, 30 national managers from an Asian country were placed in the overseas offices of major TNCs in 1993 for up to a year of hands-on training in international business. Participating TNCs not only provide supervision and training but a monthly stipend as well.

85. Public education on foreign direct investment issues was another focus of training in 1993. A number of seminars and discussion forums intended for large audiences were organized, aiming to enhance popular understanding of foreign direct investment, its developmental potential, and the relevant policy issues. Sustained public information can help generate the public support necessary to sustain the momentum of foreign direct investment liberalization and reform. In a Latin American country, the Programme was among the sponsors of an international seminar on foreign direct investment flows attended by 250 members of the local public and private sectors, trade unions, and universities. Also in the same country, a global entrepreneurship fair was attended by over 250 entrepreneurs from eight countries in Latin America and Africa.

86. Finally, the Programme designed and executes a programme called EMPRETEC, which promotes the creation and growth of entrepreneurship. EMPRETEC provides a tightly organized system to select entrepreneurs, train them and offer them a business support network. This network is a self-sustaining and active coalition of public officials, entrepreneurs, corporate managers, bankers and executives of TNCs. EMPRETEC offers these entrepreneurs the skills, technology, opportunities, training and information necessary to help them realize their objectives, expand their activities and establish productive, stable linkages with transnational corporations. In 1993 EMPRETEC was active in three countries in Africa and five in Latin America. A separate report to the Commission has been prepared on the EMPRETEC programme (see E/C.10/1994/9).

## V. CONCLUSIONS

87. The advisory work of the Programme on Transnational Corporations has had a significant impact on recipient countries. Examples can be given of previous technical assistance that bore fruit during 1993. A country in the Asia-Pacific region that commenced oil production and export in the latter part of 1993 benefited from long-term technical assistance starting at the exploration stage right up to the production stage. With the development of oil production and, in addition, mineral investment on which the Programme also advised, this country has been one of the fastest growing economies in the world in recent years. A country in Africa which benefited from the Programme's advice on minerals agreements at the beginning of the 1990s is now receiving substantially increased fiscal revenues within a framework which has sustained increased investment. Also the Programme's independent advice given in 1991 at the request of the government of a South American country was an element in resolving major contractual disputes which were holding up all new investment. This country, which is highly prospective and has implemented a number of general reforms, has seen a revival of foreign investment to an extent unimaginable only two years ago.

88. Where the Programme provides assistance in formulating and/or revising a country's investment legislation or in providing an advisory report, the legislative draft or report that is submitted to a government is accompanied by an evaluation questionnaire to gauge the effectiveness or usefulness of the advice. In addition to the comments then received, a crucial part of the feedback is whether the draft legislation is enacted into law or the advice in a report is implemented. Even in those cases, it may remain difficult to judge the impact of this particular type of assistance amidst all the other factors that influence foreign investment flows. Nevertheless, the Programme often receives feedback from governments attributing increased investor interest to changes in the legislative framework or to policies implemented on recommendation of the Programme.

89. With regard to assistance related to helping host countries in the structuring and negotiation of particular transactions in specific sectors and industries, the impact is often more visible, but how immediate it is felt differs from case to case. For example, in the natural resources sector, the Programme's assistance to a West African country in the renegotiation of certain contracts resulted in the government's tax revenue increasing by millions of dollars in a matter of months. Increased government revenue is perhaps the most

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visible impact in these types of transactions. On the other hand, in the case of new projects for exploration, there is frequently a significant lag between the provision of the Programme's assistance and the start of actual production. For example, as mentioned above, petroleum production in an Asian Pacific country commenced only in 1993, even though the technical assistance related to the same project started in the mid-1980s. Not all technical assistance work carried out in 1993 can therefore be expected to have an immediate impact, at least in terms of increased government revenue. But of course, while increased revenues may not be realized in the short term, the goal of increased investment can be immediately achieved through these transactions. As is noted in the Programme's Technical Cooperation Brochure, by 1991 its assistance is estimated to have affected over 700 projects with a value of about \$25 billion worth of foreign investment.

90. In the area of training and human resource development, impact is gauged in terms of local capability. In the report to the Commission in 1991 on experiences gained in training and the development of human resources (see E/C.10/1991/13), it was indicated that since 1976 the Programme had organized 261 training workshops, seminars and round tables and 35 fellowships and study tours. Over 7,000 medium and high level officials were said to have benefited from the workshops and over 150 senior officials from the fellowships and study tours. That report included a summary of the government and private sector participants' responses to questionnaires that are issued at the end of each workshop and, also, results of follow-up questionnaires relating to workshops that took place a few years earlier. The questionnaire results in both cases seemed to indicate a very positive impact. A preliminary review of the questionnaire results of the workshops held in 1993 suggests that the capacity building effect will be similarly favourable.

91. The EMPRETEC programme has had a significant impact in the form of entrepreneurs trained, business generated, jobs created, export growth and technology transfer. More than 25,000 entrepreneurs applied in the past six years for participation in the entrepreneurship workshops. After careful selection, 2,257 (of whom 25 per cent are women) were trained and received technical assistance as of January 1994. About 80 per cent of the entrepreneurs who entered the programme already operated a business and were looking for assistance in expanding their enterprise. Of the entrepreneurs who did not have a business, over 250 started a new enterprise in such sectors as food-processing, agro-industry, textiles, plastics, chemicals, automobile parts, informatics, and bio-technology.

92. Nearly all entrepreneurs who enrolled in the programme and already had a business were able to expand or modernize their business operations after joining EMPRETEC. Statistics from the EMPRETEC programme in Uruguay show that entrepreneurs who have been in the programme for two and a half to three years, despite the difficult economic situation in Uruguay, have increased the number of employees by 18 per cent, sales volumes by 87 per cent, assets by 42 per cent and their exports as percentage of total sales by 100 per cent.

Notes

1/ Although the cornerstone of the policy is an open house, there are some exceptions and the law gives the government power to exclude foreign investors from participating in certain activities. The concern is that some very small investments might be made by foreigners in business such as small retail trading, which would otherwise be carried on by nationals who might not have many other opportunities.

2/ FEZs include export processing zones, special economic zones, Maquiladoras and other comparable institutions.

3/ "Mineral Development and Environment Protection in Developing Countries" (forthcoming publication).

4/ Frontier areas are areas with comparatively little exploration history or are certain to have high development costs, such as difficult offshore or difficult terrain areas.

5/ Indeed it can be argued that the increased attention to documenting environmental requirements is not new but also a case of fine tuning. The governments of many market economies with major mining interests have long paid careful attention to the environmental impact of mining.

6/ As documented elsewhere in this report PTC has assisted the government of one country with highly active minerals and petroleum sectors by posting a full-time legal adviser to undertake training so as to broaden this knowledge within the ministries dealing with natural resources.

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