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COMMISSION ON TRANSNATIONAL CORPORATIONS  
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Whole on the Code of Conduct  
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TRANSNATIONAL CORPORATIONS: VIEWS AND PROPOSALS OF  
NON-GOVERNMENTAL INTERESTS ON A CODE OF CONDUCT

Report of the Secretariat

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## ANNEX I

List of non-governmental organizations which submitted their views and proposals on a code of conduct on transnational corporations

## ANNEX II

Letter of the Executive Director dated 25 August 1976 sent to non-governmental interests

## INTRODUCTION

1. The Commission on Transnational Corporations, adopting its work programme at its second session in Lima, Peru (1-12 March 1976), assigned highest priority to the formulation of a code of conduct and agreed on a procedure to accomplish this goal. An Intergovernmental Working Group, to meet intersessionally, was thus established, charged with the preparation of an annotated outline to be submitted to the third session of the Commission, and to finalize a draft code of conduct for the fourth session of the Commission (Spring 1978). 1/

2. To assist the Inter-Governmental Working Group in its task, the Commission requested, inter alia, the Centre to prepare a paper containing the views of non-governmental interests, particularly trade unions, business groups and consumer groups, and submit it, along with other documents to the first session of the Working Group. 2/ This report is in compliance with this request. 3/

3. The Executive Director, on 25 August 1976, invited non-government interests to give their views and proposals on a code of conduct. 4/ The deadline for submission was set as 30 November 1976 by ECOSOC at its sixty-first session.

4. The Executive Director's letter was sent to:

(a) International organizations representing trade unions, business and consumer organizations as well as to other international non-governmental organizations dealing with economic relations. The criterion used was their status with the Economic and Social Council, i.e., consultative status, categories I and II;

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1/ See Commission on Transnational Corporations, "Report on the Second Session". Official Records of the Economic and Social Council, Sixty-first Session, Supplement No. 5 (E/5782), chap. I, paras. 10-17.

2/ See also United Nations documents, "Transnational Corporations: Issues Involved in the Formulation of a Code of Conduct", (E/C.10/17); "Transnational Corporations: Material Relevant to the Formulation of a Code of Conduct", (E/C.10/18); "Transnational Corporations: Views and Proposals of States on a Code of Conduct" (E/C.10/19).

3/ The answers received are to a certain extent different in character; some make reference to charters and guidelines published earlier by the replying organizations (ICFTU, ICC); others touch in more detail upon the whole range of substantive issues. For this reason this compilation of the views of non-government interest groups follows the division along the line of substantive issues. The full texts of the replies are available for consultation at the Centre on Transnational Corporations.

4/ See annex II for the text of this letter.

(b) Trade union and business organizations at the branch level (International Trade Secretariats and employers' organizations). This selection was done after consulting the workers' and employers' relations branches of the ILO;

(c) A number of national trade unions and employers' organizations in cases where these, while having considerable influence in the discussion on transnational corporations, are not affiliated to above-mentioned international organizations.

5. As of 22 December 1976 the following non-governmental interests had replied to the letter of the Secretary-General: 5/

Business: Association of British Chambers of Commerce (BCC)  
Business and Advisory Committee to OECD (BIAC) 6/  
Chamber of Commerce of the United States of America (USCC)  
International Chamber of Commerce (ICC)  
International Christian Union of Business Executives (UNIBAPAC)  
International Organization of Employees (IOE)  
National Association of Manufacturers of the USA (NAM)  
National Foreign Trade Council Inc. (NFTC)  
Union Centrale des Associations Patronales Suisses (UCAPS)  
Union des Industries de la Communauté Européenne (UNICE)  
Western European Metal Employees Organization (WEM)

Labour: International Confederation of Free Trade Unions (ICFTU)  
Trade Union International of Workers in Commerce (TUIWC)  
World Federation of Teachers' Unions  
World Federation of Trade Unions (WFTU)

Others: European League of Economic Co-operation (ELEC)  
International Co-operative Alliance (ICA)  
International Organization for Standardization (ISO)

6. Addenda to this present report summarizing the views on proposals of other non-governmental organizations will be issued as more replies are received.

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5/ See annex I for a brief description of these organizations.

6/ The BIAC fully subscribes to the ICC answer.



## I. SCOPE OF A CODE OF CONDUCT

### A. Purposes and limitations

7. The replies received reveal a general agreement on the need of a code of conduct. Most non-governmental groups express in their replies the hope that the negative effects of activities of transnational corporations would be minimized and positive effects enhanced through a code of conduct. It is felt that a code of conduct should contribute to the mutual trust between transnational corporations and governments and help avoid or solve conflicts between host countries, home countries and transnational corporations.

8. The ICC and other business organizations believe that the formulation of a code of conduct should start with the recognition of the positive contributions of transnational corporations to economic development. According to UNIAPAC, the code should achieve a balance between the rights and duties of transnational corporations in a manner similar to the Charter of Economic Rights and Duties of States 7/ and not exclusively dwell on possible negative aspects of the corporations' activities.

9. From labour's point of view, the ICFTU emphasizes in this context that a paragraph in the preamble of the code could make it clear that one of the basic objectives of the code should be the democratization of the economy and the promotion of full employment - with or without the co-operation of the transnationals - while the responsibility of the Governments would be underlined in this respect.

10. It is also recognized that a code should be effective and workable. Most answers state that national legislation is the best vehicle to achieve effectiveness.

11. According to the ICFTU, which bases its answer to a large extent on its charter of trade union demands for the legislative control of multinational companies 8/, the need for a code of conduct arises from the nature of the activities of the transnational corporations. It is the belief of the ICFTU that national legislation needs to be complemented and sometimes even preceded by international agreements equipped with machinery for supervision and enforcement. The effective implementation of the code, of course, will very largely depend on its translation into national legislation. The WFTU stresses that international rules contained in a code - whatever the legal form - could provide a reference document for member States in incorporating these principles into national legislation.

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7/ General Assembly resolution 3281 (XXIX).

8/ Multinational charter adopted by the Eleventh World Congress of ICFTU (Mexico 1973).

12. Business organizations feel strongly that for international rules of behaviour to be effective, proliferation of codes should be avoided. The BIAC, ICC, USCC, IOE, ELEC, WEM, particularly emphasize that conflicting international guidelines could be counterproductive.

13. It is generally proposed that the results of work carried out by other specialized agencies of the United Nations should be taken into account. The WFTU stresses the co-ordinating role of the Commission on Transnational Corporations in this context.

14. Most replies from business circles also note that the OECD guidelines 9/ could provide a useful reference in drafting the United Nations code of conduct.

15. Business groups feel that increased investment in the over-all economic development context is a basic objective and should be promoted by a code of conduct. Accordingly, unreasonable pressure exerted on the corporations would ultimately result in reduction of the level of foreign investment (IIM, UCAPS). An objective of the code in the international economic relations should therefore also be to create a mutually favourable and stable investment climate (ICC, IOE, NFTC).

16. From the labour side, the WFTU notes that international rules to control transnational corporations should form the basis of practical plans in accordance with the principles of the establishment of a New International Economic Order.

17. The ICFTU emphasizes that the immediate aim is to protect the general interests of the workers and the peoples by imposing social conditions on the activities of the companies. The long-term aim includes putting an end to the competition between nations to secure investment and jobs from transnational corporations and securing that industrial production is geared to satisfying the basic needs of the people.

18. Economic and social co-operation between countries and control by States over transnational corporation activities notably in the field of employment is also stressed by ICFTU and the WFTU.

19. It is pointed out by several groups from the business community (ICC, IOE, NFTC, WEM) that the code should be flexible so as to be responsive to differences in national laws, various types of transnational corporations, and other relevant circumstances. According to UNIAPAC, given the evolutionary character of transnational corporations, the effectiveness and flexibility of a code could be improved if machinery for revision is provided.

20. In their introductory remarks some answers, particularly from labour, list negative influences of transnational corporations while others, particularly from business, stress the positive ones and indicate that a code of conduct should aim at fairly assessing and recognizing both positive and possible negative effects of the activities of transnational corporations.

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9/ OECD "Declaration on International Investment and Multinational Enterprises" - Press release A/76/20, dated 21 June 1976.

B. Coverage

21. As to the addressees of the code, the ICFTU considers that it should be ensured that the code is translated by Governments into binding legislation. It is considered immaterial whether this is done by addressing the code to both TNCs and Governments or through separate agreements amongst the latter.
22. On the other hand, the ICC states that, as in its own Guidelines, 10/ the United Nations Code should be directed to host and home Governments and to transnational corporations. This view is held by the ELEC and by other business groups (e.g., UNICE, ICA, USCC) as well.
23. The ICC also notes that in view of the fact that only 25 per cent of total investment of transnational corporations is in developing countries, the major part of industries to which a United Nations code would be applicable is operating within developed market economies.
24. According to the Swiss Employers Association (UCAPS), trade unions should also be included among those to whom the code is addressed for matters of employment. The IOE also suggests that employees should be covered by the code.
25. As to the substantive coverage of a code of conduct, the replies indicate a general agreement on a broad coverage of issues. However, issues like corrupt practices, disclosure of information (mentioned, for instance, by NAM, ICC) require separate and more detailed elaboration. The ICFTU and the ELEC mention that other issues require identification and further elaboration leading to international agreements.
26. The ICFTU stresses that questions related to employment and labour should be emphasized to highlight that the code should have not only economic and political but also social and human objectives.
27. The question of definition is given some prominence in the replies. The definition of the Group of Eminent Persons 11/ is considered an adequate formula by a number of organizations (ICC, ELEC, IOE, NAM, NFTC, UNICE). More specifically, it is stressed that all transnational corporations - private, mixed and state-owned - should be included under the term used (UCAPS, ICC, ELEC, NAM, NFTC, UNICE). The main reason given for adopting a broad definition is to avoid discrimination and distortion of competition between national enterprises and transnational corporations as well as between private and public sectors. On the other hand a narrower definition is provided by the WFTU to identify a TNC: most of the capital is private, the aim is to maximize profit, co-ordination and decision-making is centralized; production, trade and finance are closely integrated.

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10/ International Chamber of Commerce: "Guidelines for International Investment" - ICC Brochure No. 272, Paris, 29 November 1972.

11/ Group of Eminent Persons: "The Impact of Multinational Corporations on Development and on International Relations", United Nations Sales Publication No. 74.II.A.5, 1972.

28. The WFTU proposes that the code should consist of a brief definition of general principles regarding economic and productive activities, an economic chapter, a social chapter and a final chapter concerned with the transfer of technology and policies on specialists.

### C. Approach and legal form

29. Business and employers' organizations reflect the view that a code of conduct should be of a voluntary nature, non-mandatory in character and flexible to allow for different situations arising out of national legislation and practices. The opposite view is taken by the trade union organizations which call for a binding code.

30. From the labour side, the ICFTU believes that a voluntary code of conduct is inadequate in face of the challenge posed by transnational corporations. It could be accepted only as a first step towards binding regulations. As the optimal solution, the ICFTU advocates a general multilateral treaty under United Nations auspices. However, such a code of conduct should not be open to the interpretation that it could restrain the freedom of action of Governments to adopt any measures whatsoever required for imposing social controls on the TNCs.

31. According to the WFTU, the code should not be conceived as a "charter of rights and duties" of transnational corporations but should spell out the international obligations of Member States to exercise strict control over the corporations both in the home and host countries. It could serve as a reference document for States and its principles could be respected in national legislation and regional agreements or bilateral and multilateral inter-State treaties.

32. Of the replies received, all business organizations reflect the view that a code of conduct for transnational corporations should be of a voluntary nature, non-mandatory in character and flexible enough to allow for different situations not only arising out of varying national legislation and practices but also out of the different kinds of TNCs. It is felt by this group as a whole that a binding code would be unacceptable and impractical for both home and host countries, since an international treaty necessarily involves surrender of sovereignty and restriction of legislative discretion (ICC, UNICE, NAM). At present no international body has the sovereign power to legally enforce global standards (NAM).

33. According to ELEC and USCC, a voluntary code based on clear general principles, recognized by the international community, would impose itself upon the parties concerned through the pressure of international public opinion. Such a code could lead to international agreements on specific issues and its recommendations according to ELEC could be included in bilateral investment contracts.

34. The International Co-operative Alliance (ICA) believes that a voluntary code, or even a simple declaration could, over a period of time, evolve in the direction of an international convention.

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## II. MAJOR SUBSTANTIVE ISSUES 12/

### A. General principles of behaviour of transnational corporations

35. Agreement exists among the non-governmental groups that transnational corporations should observe national laws and adhere to the social, economic and cultural goals of the countries in which they operate.

36. Most business groups feel the formula used in the OECD guidelines to be an adequate expression of this principle.

37. The ICC points out that the investor should ensure, through consultations with the competent authority, that his investment fits satisfactorily into the economic and social development plans and priorities of the host country.

38. The ICFTU refers to its charter noting that the long-term aim is to substitute the international division of labour created by the transnational corporations with a more just and humane system of international co-operation under democratic control.

39. The WFTU points out that all investments should be conceived in accord with the United Nations programmes and declarations on the establishment of a New International Economic Order and for economic and social development. The investments of transnational corporations must be an addition to, and not a substitution for, local investments and they should be directed to sectors liable to assure a large-scale creation of job opportunities.

40. The World Federation of Teachers' Unions suggests that it is essential to include in a code of conduct consideration relating to the activities of transnational corporations in the field of education, science, culture and information. Such issues as the impact of transnational corporations on scientific research, professional training, media and opinion making should be studied in co-operation with UNESCO.

41. The ICA believes that transnational corporations should be asked to operate more in the public interest and direct production to the basic needs of the population.

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12/ Not all replies received contain detailed indications on the substantive issues referred to in this chapter. The ICFTU refers to its Charter of Trade Union Demands ...; the TUIWC submitted a general action programme on transnational corporations in the field of trade; the USNFTC submitted a Policy Declaration on various issues related to international investment.



42. Most answers received from the business and "other" groups deal in some detail with issues raised by unethical or corrupt practices.

43. The ELEC stresses the general validity of the relevant formulation adopted by OECD. It is generally felt that any recommendations or rules regarding this question should be applicable to all enterprises in order to ensure equal treatment (ELEC, ICC, NAM, UCAPS).

44. The ICC provides the information that it has established a Commission on Unethical Practices which is currently preparing on this subject an international code to be administered by a council and be self-regulatory in nature. The ICC points out that disclosures of all payments to political parties, as already required under the laws of several countries, might be an appropriate means to control such irregular payments.

45. According to ELEC, in matters of corrupt practices, host country jurisdiction should apply exclusively, although judicial assistance should also be provided by the home country. The NAM of the United States supports the proposal of a multilateral agreement on this question. On the other hand, however, the UCAPS of Switzerland states that the issue of corruption should not be treated in the code as this is exclusively a matter of national penal law.

B. Political issues related to policies and  
practices of transnational corporations

46. Concerning issues raised by improper involvement by transnational corporations in local political activities, the WFTU notes unlawful interference, aggravation of international tension and distortion of peaceful development.

47. Improper involvement in local politics by transnational corporations should be prohibited (ICA, ELEC, NAM, IOE, ICC). The ELEC considers, for example, that the formulation used by OECD on political interference is most appropriate in its flexibility and should be interpreted in the light of national legislation on the subject. The BCC feels, however, that a general principle requiring non-intervention into local politics by transnational corporations is wholly unrealistic, as any activity in any country might have political connotations or consequences; it is thus preferable - and this view is shared by UCAPS - to specify in detail what activities are unacceptable. The ICA suggests that parliamentary committees should be established in host countries to check political interference by transnational corporations.

C. Economic and commercial issues related to policies  
and practices of transnational corporations

Ownership and control

48. Questions relating to ownership and control have not been extensively covered in the replies received.

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49. From the labour side the ICFTU considers it essential that strict controls should be initiated over foreign investment and takeovers; in fact, takeovers should not be considered only from the shareholders' but also from the workers' point of view. For the WFTU, takeovers should, inter alia, be subject to approval by Governments and trade unions.

50. The ELEC recognizes the right of host countries to define the sectors from which foreign corporations are excluded.

51. The ICC, referring to its Guidelines, recommends that investors should favourably consider association with local interests and encourage local participation leading to voluntarily established joint ventures.

#### Balance of payments

52. In the view expressed by WFTU, public and democratic control should be exercised over short- and long-term transfers, import and export transactions and terms of payment. Parts of the profits of transnational corporations activities should be reinvested in the country and States should be allowed to impose ceilings on profit repatriation.

53. According to the ELEC, the effect on the balance of payments should be judged in the medium-term considering direct and indirect effects of the transnational corporations' activities. However, ICC stresses that Governments' concern about the balance of payments should always be taken into account by the transnational corporations.

54. The ICA suggests that transnational corporations should be granted the right to pay an unlimited return on capital to the parent for a specified period only, e.g. 5 to 10 years; thereafter, a limited return based on asset values at the end of that period should determine the return to the shareholders.

#### Financing

55. Only a few replies consider the subject of financing separately. The ICC, referring to its Guidelines, recommends that transnational corporations, when using local sources of capital, should take into account the impact on the availability of funds to local enterprises. Reinvestment of profits should be favourably considered by the investor; in fact it should provide an additional source of finance. This view is shared by WFTU.

56. The WFTU states that, as a rule, foreign investments must be financed out of resources from outside the host country.

#### Transfer pricing

57. All the replies from business groups commenting on this subject agree that these prices should be set on an arm's length basis as formulated in the OECD Guidelines.

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58. The ICC suggests that the issue of transfer pricing lends itself to an intergovernmental agreement. Such an agreement should provide methods for establishing transfer prices, in cases where no market prices exist. Countries should use arbitration to solve potential conflicts. Co-operation between States on pertinent information on this point could be regulated in an international agreement (also FLEC).

59. According to the UNIAPAC, however, it seems difficult to introduce this matter at all in a code.

60. From the labour side the WFTU states that an international machinery must be created to supervise transfer price setting. The ICFTU in its Mexico Charter proposes to establish effective co-operation between the authorities to exchange information on transfer price practices. This might be regulated in regional or international conventions.

#### Taxation

61. Questions relating to taxation of transnational corporations are generally considered a matter of national jurisdiction. Conflicts of jurisdiction should be solved by intergovernmental agreement. However, it is felt by some, particularly by labour, that the tax legislation of different countries should be harmonized to ensure a just taxation system in each country and to eliminate tax evasion (ICA, WFTU, ICFTU).

62. The general principles should be non-discrimination, avoidance of double taxation and intergovernmental co-operation in tax matters (ELEC, ICC). It is, according to ICC, the transnational corporations' responsibility to provide adequate and appropriate information to the tax authorities.

63. The ICA states, however, that tax systems should be adapted to favour smaller companies and co-operatives competing with transnational corporations; action should be taken to prevent tax avoidance by international movement of funds.

#### Competition and restrictive business practices

64. The WFTU recommends that the code explicitly prohibits restrictive practices in tendering as well as "lion's share" agreements, e.g., restrictions on exports, guarantees against variations of exchange rates or customs duties and stipulations concerning supply of raw materials.

65. The ICC and ELEC recommend that the OECD Guidelines on competition be considered in drafting a code. The ELEC proposes a set of guiding principles on competition which should be respected by corporations in addition to their conforming with national competition rules and policies. These include discriminatory practices, e.g. transfer pricing, anti-competitive takeovers and national as well as international restrictive agreements. According to ICA, national anti-monopoly legislation needs to be strengthened.



### Transfer of technology

66. The contribution of transnational corporations to research and technology is recognized in several answers. It is generally held that enterprises should also integrate their activities into the scientific and technological plans of host countries, allow rapid dissemination of technology with due regard for the protection of industrial property, grant licences and technological transfers on reasonable conditions. This, according to most replies, should be included in the code.

67. On the other hand, for the UCAPS, transfer of technology should only be dealt with by UNCTAD and not included in a general code. According to ELEC, the code of conduct might incorporate UNCTAD's recommendations on the subject.<sup>13/</sup> The ICC also refers to UNCTAD's ongoing work as well as to the ICC Guidelines.

68. Generally, ICC agrees to the need of promoting international co-operation by transfer of technology on fair and reasonable terms and by encouraging local technology. A legally binding code is not considered an appropriate instrument for this purpose. Transfer of technology is a transaction between parties that requires assurance of mutual benefits: there is an essential link between research, invention and investment in modern technology and the protection necessary to safeguard its commercial value. Growing industrialization of developing countries promises an increasing counterflow of technology that should be in the long-term interest of the world community.

69. On the other hand, the WFTU argues that each country must have full control over its scientific and technological resources and decide itself on the techniques to be used, based on locally available resources. Transnational corporations should contribute to the development of scientific and technological research and provide access to know-how and should not be involved in economic exploitation and the brain drain from developing countries should be discouraged.

70. The ICFTU suggests to use other channels than the transnational corporations to transfer technical know-how to the countries which need them most. There are vast untapped possibilities in co-operation between countries with a well developed public sector, as well as in international investment by the co-operative movement.

### Employment and labour

71. General agreement exists that the ILO, with its tripartite structure and its long standing tradition, is the most competent body within the United Nations family to deal with this question.

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<sup>13/</sup> UNCTAD: An International Code of Conduct on Transfer of Technology. United Nations Publication, Sales No: E.75.II.D.15, 1975.

72. The ICFTU urges the adoption, by the ILO, of international instruments on the social aspects of transnational company activities, irrespective of any contribution which that body may eventually make to a general United Nations code of conduct.

73. The WFTU, supporting the co-ordinating role of the Commission on Transnational Corporations, hopes that ILO and other United Nations specialized agencies can be asked to give priority to formulating measures in their different spheres.

74. According to the ICFTU, the need to put an end to anti-union measures offered as investment incentives should be included in a code of conduct. It suggests also the adoption of ILO standards as the criterion for observance of labour standards and notes that transnational corporations should follow the laws, rules and practices of the host country regarding the labour market only if these are not inferior to ILO standards, in which case the ILO standards should be followed.

75. The ICFTU points out that in regard to recognition of unions, transnational corporations should, owing to their character, extend this recognition to international groupings representative of the corporations' employees.

76. The WFTU, advocating a social chapter dealing with living and working conditions, democratic freedoms and trade union rights, also points out relevant ILO Conventions. <sup>14/</sup> Transnational corporations should be compelled to employ local labour and not discriminate against local workers regarding wages, working conditions, training and access to management hierarchy. Factory closures should be prohibited in cases involving labour conflicts. (The two latter points are expressed also by ELEC.)

77. The WFTU also states that the creation of a "favourable climate for investment" by limiting the full enjoyment of human and trade union rights should be prevented, and home countries should be obliged to prevent the establishment of transnational corporations in countries where workers' rights are not respected and where discrimination in racial or national grounds is practised in the matter of working conditions.

78. The WFTU stresses the importance of the bargaining rights of trade unions, prohibiting all coercive measures or the foundation of "company unions". More favourable conditions won at the national level by trade unions should not be down-graded or obstructed as a result of less advantageous clauses in international agreements.

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<sup>14/</sup> ILO Convention No. 27 on freedom of association and protection of trade union rights 1948; ILO Convention No. 98 on the right to organize and bargain collectively 1949; ILO Convention No. 135 concerning members representation 1971.

79. Business and employers' organizations state that a tripartite declaration of principles by the ILO should, as suggested by the Governing Body of ILO, be incorporated in a central United Nations code of conduct (IOE, WEM, ICC, UCAPS).

80. The ELEC refers to the OECD declaration on labour and industrial relations, where questions concerning employment have been treated in detail, and suggests in addition a number of general rules to be respected: e.g., right of workers to be represented, duty to inform employers' representatives about the corporations' activities and other matters relevant to employment conditions and collective bargaining.

81. Corporations should respect the social legislation of the host countries (UCAPS, ELEC), but should not be discriminated by heavier obligations than those imposed on national companies.

82. The negotiations and decisions concerning working conditions and remunerations ought to be the responsibility of the national or even local manager (ELEC, IOE). Collective bargaining with the trade unions can be carried out locally, but in the view of the UCAPS multinational collective union contracts are unrealistic and trade unions should not be given a veto right in matters of industrial restructuring.

83. The code, according to the IOE, should recognize the significant contribution of TNCs to the improvement of living standards as well as to the creation of employment both directly and indirectly throughout the world.

#### Consumer protection

84. On the question of consumer protection, the ISO draws attention to its "Guide on Product Information for Consumers". 15/ This document recommends general and specific rules for, inter alia, product information such as compliance with national safety regulations, full and relevant information on characteristics of the products that are of special importance to the customer, information on methods of test or measurements.

85. The ICC refers to its "International Codes of Marketing Practice" and stresses that fair competition based on truthful advertising and labelling is one of the best forces of consumer protection. 16/ Transnational corporations should use their knowledge to help host countries maintain standards applicable to all corporations.

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15/ ISO/IEC "Guide on Product Information for Consumers", as adopted in September 1976. Not yet published.

16/ ICC "International Codes of Marketing Practice", containing International Code of Practice in Marketing, International Code on Marketing Practice, International Code of Marketing Research Practice, International Code of Sales Promotion Practice and International Code of Advertising Practice - ICC publication 275, as adopted in Rio de Janeiro, 1973.

86. On appropriateness of products and on standards of safety, the transnational corporations should also use their knowledge and experience to help host countries set and maintain standards if asked (ICC), but host country standards should apply to avoid discrimination (ELEC).

87. In the views of ELEC it is a normal consequence of cost and market structure that the same product is not priced identically in all countries.

88. The transnational corporations should, however, according to ICA, operate more in the public's interest by producing products geared to the basic needs of the people.

#### Environmental protection

89. There is generally considerable concern for the effects of industrialization on the environment. Few replies, however, specify how the subject could be treated in the code.

90. The ICC has worked out a set of environmental guidelines that might be considered in a code of conduct; 17/ individual Governments should apply these standards and decide on priorities of all aspects involved (ICC, ELEC).

91. According to the WFTU, the working environment must be protected and improved both because of environmental considerations and also to ensure the protection of health of both the workers and the population. The public authorities should be allowed to enter the premises to check on the standards maintained by the corporation.

#### D. Disclosure of information

92. The issue of disclosure of adequate information is emphasized in most replies received.

93. The ICFTU considers this to be basic to any system of control and refers to appendix I of its Mexico charter. In drafting the code the main reporting data included in that appendix could form the basis for a control system on transnational corporations. Others (ELEC, ICC, IOE) refer to the OECD Guidelines on information.

94. The ELEC specifically also recommends that corporations should regularly publish information on financial data, structure of the enterprise, geographical areas of activity, sales and production figures by zone, new investments, employment figures, research expenditures, accounting practices used and transfer price policies.

95. Non-discrimination in information disclosure is stressed by several replies from business and industry (UCAPS, NAM), as well as respect for business confidentiality

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17/ ICC "Environmental Guidelines for World Industry", adopted on one hundred first session in Hamburg, 10 June 1974.

(ICC, NAM, NFTC, UNIAPAC). According to NAM, in view of information already published by corporations, particularly in the United States, the real need for additional data should be carefully examined. Further additional points stressed in the replies are that duplication of information should be avoided (ICC, IOE, NAM, ELEC), no competitive disadvantage be created and consideration be given to the costs involved (NAM, IOE, ICC). The IOE and NAM state that international standardization is needed to make international comparison of data useful.

#### E. Principles of government policies

##### Treatment of transnational corporations

96. Business groups in general favour the principle of non-discrimination and national treatment. Corporations, according to them, should be treated equitably, in accordance with international law, international agreements and contractual obligations. One view adds that countries may wish to grant better-than-national treatment to investors (ELEC).

97. From the labour side, the WFTU states that transnational corporations should not enjoy preferential treatment over national corporations.

98. As to the reach of law, the ELEC states that the laws of the host country should have priority over the laws of the home country. According to the NFTC of the United States, a code should respect the international limits of the jurisdiction of a State, which generally restrict its jurisdiction to persons and conduct within its own territory.

99. The TUIWC states that each country has the right to nationalize affiliates of transnational corporations. The WFTU considers that expropriation in the public interest and nationalization, if considered essential for national independence or in the interest of the workers or the community as a whole, as well as the determination of possible compensation, are subject to national legislation.

##### Nationalization

100. All statements on this issue from the business sector emphasize that in case of nationalization, corporations are entitled to prompt and adequate compensation in conformity with international norms.

101. According to UCAPS, in almost all cases of nationalization, corporations could call on the protection of their home country. To avoid this, this group suggests that adequate negotiation, conciliation and arbitration procedures, or systematic recourse to existing institutions at the Arbitration Court of the International Chamber of Commerce be created.

102. According to the UNIAPAC, the code should introduce the concept of contract by mutual agreement between a transnational corporation and a Government for a determined period of time to be revisable or renewable. Such a concept, by establishing clear conditions, would decrease unforeseeable risks.

103. The WFTU states that expropriation is allowed when in the public interest. Nationalization is allowed when considered essential for national independence or in the interest of the workers or the community as a whole. Questions on expropriation and nationalization, as well as on possible compensation for these, are subject to national legislation.



### III. NATURE AND MACHINERY

#### A. Machinery and implementation

104. It is generally felt that the code should be implemented nationally by domestic law, so that it can take account of the diversity of transnational corporations and the priority accorded to their activities in the economic development of the countries concerned.

105. For the ICFTU, the optimal solution is a general multilateral treaty under United Nations auspices, with a new fully-fledged United Nations agency for supervising its application. This agency should elaborate international agreements on a social, economic, commercial, technological, fiscal and financial nature required to co-ordinate, complement and reinforce national legislation. Pending this, the ICFTU suggests four lines of simultaneous action. Firstly, to establish guidelines and machinery for effective co-operation between Governments in their relations with transnational corporations; secondly, to promote co-ordinated national legislation; thirdly, to adopt international conventions imposing enforceable standards and rules on the corporations; and fourthly, to keep under constant review the impact of transnationals on industrial structures and social and economic development in all countries. An essential element would be the establishment of tripartite committees with equal representation of governments, trade unions and employers' organizations, to receive complaints, conduct public hearings and reach conclusions with legal force.

106. According to ELFC, BCC, IOF and NAM the code itself should be an instrument of moral persuasion, strengthened by the authority of international organizations and the support of public opinion, as stated by the Group of Eminent Persons. Where appropriate, joint intergovernmental consultations should be sought to avoid arbitrary interpretations (NAM).

107. On the question of implementation, both the BCC and the ELEC agree, as stated above, that domestic law is the proper vehicle. For the BCC, the application of domestic law can best be complemented by a specialized agency with full investigative powers, which has the ability to issue decisions and directives that might form the basis of action. Such an agency should be a non-political body such as the ICC. The ELEC, however, suggests the establishment of an ad hoc working group for the implementation of the code of conduct.

#### B. Dispute settlement

108. Most answers concur that a machinery for settlement of disputes is necessary. It is generally felt, however, that as far as possible existing international machinery should be used to deal with conflicts between governments and between governments and corporations.

109. The ICFTU suggests the establishment of tripartite committees to whom infringements, especially social ones, are reported. Their hearings should be public and carry legal force.

110. The UNICE believes that an international body with legal force would not be acceptable to most countries because of the implied loss of sovereignty. It proposes consultation among countries. Interpretation of the code of conduct should be a matter of consultation among States and not of international jurisdiction (UNICE).

111. According to IOE, any instrument to be effective should include provisions for the settlement of differences. The NFTC seeks an effective mechanism for dispute settlement between enterprises and host governments on a basis which would assure efficient procedures for objective third-party resolution under the rule of law.



## ANNEX I

List of non-governmental organizations which submitted their views and proposals on a code of conduct on transnational corporations

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(Information is based on the Yearbook of International Organizations 14th (1972-73) edition)

### BUSINESS

Association of British Chambers of Commerce (BCC).  
Based in London.

Business and Industry Advisory Committee to OECD (BIAC).  
Based in Paris. Composed of industrial federations or organizations in member countries of Organisation for Economic Co-operation and Development (OECD).

Chamber of Commerce of the United States of America (USCC).  
Based in Washington, D. C.

International Chamber of Commerce (ICC).  
Based in Paris. An international business organization representing national committees, business federations and corporations in over 40 countries. It especially deals with economic questions.

International Christian Union of Business Executives (UNIAPAC).  
Based in Brussels.

International Organization of Employers (IOE).  
Based in Geneva. An organization of employers representing national federations in 83 countries. It especially deals with social questions.

National Association of Manufacturers of the United States of America (NAM).  
Based in Washington, D.C. An organization of industrial and business firms.

National Foreign Trade Council Inc. (NFTC).  
Based in New York. An association of United States businesses in international trade and investment.

Union Centrale des Associations Patronales Suisses (UCAPS).  
Based in Zurich. An organization of Swiss employers.

Union des Industries de la Communauté Européenne (UNICE).  
Based in Brussels. An association of national industrial organizations of the countries of the European Common Market.

Western European Metal Employers Organization (WEM).

Based in Cologne, Federal Republic of Germany. An organization representing employers' federations in the metal trades.

TRADE UNIONS

International Confederation of Free Trade Unions (ICFTU).

Based in Brussels. Composed of national trade union centres and individual national trade union organizations from 89 countries.

Trade Union International of Workers in Commerce (TUIWC).

Based in Prague. Representing 39 national trade unions.

World Federation of Teachers Unions.

Based in Prague. Representing 52 national trade unions in 37 countries.

World Federation of Trade Unions (WFTU).

Based in Prague. Is composed of national trade union centres and individual trade union organizations in 60 countries.

OTHERS

European League of Economic Co-operation (ELEC).

Based in Brussels. Representing national committees in 17 countries. Aims to encourage cultural and economic rapprochement.

International Co-operative Alliance (ICA).

Based in London. Composed of approximately 500,000 co-operative societies.

International Organization for Standardization (ISO).

Based in Geneva. Composed of national standardization bodies in 59 countries.

ANNEX II

Letter of the Executive Director sent to non-governmental interests

25 August 1976

Dear Sir,

I am pleased to invite you to refer to the decisions taken by the Commission on Transnational Corporations at its second session, and endorsed by the Economic and Social Council at its sixty-first session concerning the preparation of a code of conduct.

The Commission on Transnational Corporations decided to assign the highest priority to the preparation of a code of conduct. Towards that end, it decided to establish an intergovernmental working group, which will meet intersessionally with a view to submitting to the third session of the Commission in the spring of 1977 an annotated outline of a code and, on the basis of further directives of the Commission, to submit to its fourth session in the spring of 1978, the full text of a code of conduct.

To assist the intergovernmental working group in its task, the Commission on Transnational Corporations decided inter alia to invite non-governmental interests, particularly trade unions, business groups and consumer groups, to submit their views on a code of conduct. The views received from non-governmental interest groups will be incorporated by the Centre on Transnational Corporations into a single document and will be submitted to the intergovernmental working group in time for its first session which will take place from 10 to 14 January 1977 in New York. In order to enable the Centre to include your views in this document, it is important that they be received by 30 November 1976 at the latest.

At the request of the Commission on Transnational Corporations, the Centre has completed an action-oriented paper on all issues involved in a code of conduct which is being distributed to all States. A copy of this document is attached for your information.

Yours sincerely,

(Signed) Klaus A. Sahlgren  
Executive Director

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