

South Centre Analysis Series

**ENHANCING POSITIVE CORPORATE CONTRIBUTIONS TO
DEVELOPMENT:
MAKING CORPORATE RESPONSIBILITY FOR
DEVELOPMENT OPERATIONAL IN THE UNCTAD XI
MTR CONTEXT**

SYNOPSIS

This South Centre Analysis provides a discussion of the concept of corporate responsibility for development, existing initial initiatives in this area, and the need for UNCTAD to ensure that its mandate coming from UNCTAD XI to undertake work in this area results in substantive outcomes.

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**Enhancing Positive Corporate Contributions to Development:
Making Corporate Responsibility for Development Operational
in the UNCTAD XI MTR Context**

I. Introduction

1. Since 1990, the scope, economic influence, and global reach of transnational corporations (TNCs)¹ have become larger. For example, the annual flows of foreign direct investment (FDI) made mostly by TNCs have risen sharply from US\$200 billion in 1990 to US\$1.271 trillion in 2000 and have become an important channel of cross-border business activity. As an official WTO submission from some developing countries has pointed out, TNCs

[h]ave been characterized by their large scale of operations in many locations worldwide. They command enormous physical and financial resources, including proprietary technology and world-wide recognition of their brand or trade names. Their global scale of operations give them unique ability to respond to exchange rate movements in any part of the world, minimize their global tax bill and circumvent financial restrictions imposed by governments, ability to minimize the political risks, access to information on world markets and the ability to bargain with the potential host countries from a position of strength arising from their global position.

Given their massive economic power and their global operations, host governments have their limitations in regulating their conduct. In view of their objective of global profit maximization, there could be conflict of interests between their objectives and the development policy objectives of the host countries and they could indulge in restrictive business practices (RBPs), manipulation of transfer prices and other such practices.²

2. Over the past 15 years, various initiatives and standards relating to codes of conduct for TNCs in order to reflect corporate responsibility concepts have come into existence. Such codes of conduct “can be seen as an expression of corporate social responsibility, but also as rule-setting behaviour – attempts to help fill some of the existing international institutional voids.”³

¹ The term “transnational corporation” in this paper refers to “an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.” This definition is based on UN, *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 20. This will be used interchangeably with the term “multinational enterprises.”

² WTO, *China, Cuba, India, Kenya, Pakistan and Zimbabwe – Investors’ and Home Governments’ Obligations*, WT/WGTI/W/152, 19 November 2002, paras. 1 and 2.

³ Ans Kolk and Rob van Tulder, *Setting new global rules? TNCs and codes of conduct*, 14:3 TRANSNATIONAL CORPORATIONS (December 2005), at 1.

II. Existing International Initiatives

3. Putting in place international norms (whether in the form of legally binding rules or voluntary guidelines or codes of conduct) to govern transnational corporate activities has long been an area of intense international activity. A useful categorization of these initiatives and standards was made in a report⁴ by the UN High Commissioner on Human Rights as follows:

- (a) *International instruments.* International instruments such as treaties and declarations can be directed at States but of relevance to business - such as the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - and directed specifically at business - such as the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises;
- (b) *Nationally based standards.* Nationally, legally based standards include constitutional provisions, national laws and national regulations of relevance to business activities. Nationally based standards can also have extraterritorial effect, such as the United States Alien Tort Claims Act;
- (c) *Certification schemes.* Certification schemes are programmes established by an organization, group or network requiring adherence to a set of principles. Upon adherence, the scheme is generally monitored independently to ensure compliance. The Worldwide Responsible Apparel Production (WRAP) certification programme, the SA8000 certification scheme and the Kimberley Process Certification Scheme are examples;
- (d) *Voluntary initiatives.* Voluntary initiatives include codes of conduct, directives, policies, third-party and self-reporting initiatives established by individual companies, groups of companies, intergovernmental organizations or civil society groups and adopted by business on a voluntary basis. The Secretary-General's United Nations Global Compact provides an example of a voluntary initiative backed by the United Nations. Intergovernmental voluntary initiatives include the Voluntary Principles on Security and Human Rights for the extractive and energy sectors and the Extractive Industries Transparency Initiative. Non-governmental voluntary initiatives include the Global Sullivan Principles, the Caux Round Table Principles for Business and International Peace Operations Associations Code of Conduct. In the consultation process, individual companies - BASF, BP, Gap, Nexen, Pfizer, Rio Tinto, Shell, SONOFON, Storebrand and Telefonica - provided information on their voluntary initiatives;
- (e) *Mainstream financial indices.* These are sets of social and environmental indices based on objective criteria against which companies are monitored as a means of changing the nature of business activities through investors and markets. Examples include the FTSE4Good Index and the Goldman Sachs Energy Environmental and Social Index;
- (f) *Tools, meetings and other initiatives.* These initiatives seek to promote greater understanding of and respect for human rights in a variety of forms including methodologies for undertaking human rights impact assessments, management tools,

⁴ UN High Commissioner on Human Rights, *Report on the Responsibilities of Transnational Corporations and Related Business Enterprises with regard to Human Rights*, UN. Doc. E/CN.4/2005,91, 15 February 2005.

training manuals, workshops, pilot projects, multi-stakeholder consultations, public-private partnerships and so on. The Business Leaders' Initiative for Human Rights (BLIHR) and the Danish Institute for Human Rights Human Rights and Business Project provide examples in this category.

4. From 1977 up to 1992, much work was done in UNCTAD's then-existent Commission on Transnational Corporations to negotiate the United Nations Code of Conduct for Transnational Corporations. The Code was to establish, among other objectives, the standards for the conduct of TNCs from all countries to protect the interests of host countries, strengthen their negotiating capacity and ensure conformity of their operations with (host country's) national development objectives. Although substantial progress was made during the negotiations to the extent that over 80 percent of the draft had been agreed upon, the draft Code could not be adopted because of differences among the developed and developing countries on its legal status, among other issues. Work on the draft Code was officially abandoned in 1992.

5. More recently, the United Nations in mid-2000 launched the UN Global Compact, arguably the world's largest voluntary initiative on corporate responsibility to support development.⁵ It seeks to bring together companies together with UN agencies, labour and civil society to support universal environmental and social principles. The Global Compact is "not a regulatory instrument – it does not 'police', enforce or measure the behavior or actions of companies. Rather, the Global Compact relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based."⁶ The Global Compact basically asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption. These ten principles are:

The Ten Principles of the UN Global Compact
Human Rights
Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.
Labour Standards
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.
Environment
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly

⁵ Since its official launch on 26 July 2000, the Global Compact initiative has now grown to nearly 3,000 participants, including over 2,500 businesses in 90 countries around the world.

⁶ See the UN Global Compact website at <http://www.unglobalcompact.org/AboutTheGC/index.html>.

technologies
Anti-Corruption
Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

6. As the UN system's primary agency for trade and development issues, UNCTAD should contribute in a significant way to the further strengthening of the UN Global Compact. It can do this through the introduction of development-oriented issues and concerns in the discourse therein in the context of the identification and development of normative guidelines for corporate conduct and social responsibility in accordance with UNCTAD's Sao Paulo mandate on corporate responsibility to support development.
7. Another example of a multilateral voluntary initiative on corporate responsibility is the OECD Guidelines on Multinational Enterprises. These Guidelines are recommendations by governments to multinational enterprises (MNEs) operating in and from the territories of the 39 countries that adhere to the Guidelines.⁷ They constitute a multilaterally endorsed and comprehensive code of conduct that enjoys the backing of governments whose territories are home to almost 90 per cent of foreign direct investment flows and to 97 out of the top-100 multinational enterprises. The Guidelines establish non-binding principles and standards covering such areas as human rights, disclosure of information, anti-corruption, taxation, labour relations, environment, competition and consumer protection, drawing on the same set of core values in the areas of human rights, labour standards, the environment and anti-corruption as the UN Global Compact.⁸
8. Additionally, there are also national government-driven voluntary initiatives. These include, for example, the Swedish Partnership for Global Responsibility which was initiated by the Swedish government. It encourages Swedish companies to adhere to the OECD Guidelines for Multinational Enterprises and to the principles of the UN Global Compact.⁹ There are also industry-driven and civil society-driven initiatives and campaigns relating to corporate responsibility. Examples of each would be the Global Leadership Network¹⁰ from the industry side and the Global Sullivan Principles from the civil society side.¹¹ There are also civil society organizations that directly monitor and campaign to ensure the adherence by TNCs to human rights, fair labour practices, ethical practices, and environmental standards, such as, for example, Corporate Accountability International¹², the Global Exchange¹³, and Friends of the Earth International¹⁴.

⁷ These include the 30 OECD Member States and 9 non-OECD Member States, i.e. Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.

⁸ For more discussion on the OECD Guidelines, please see http://www.oecd.org/department/0,2688,en_2649_34889_1_1_1_1_1_1,00.html.

⁹ For more information on the Swedish Partnership for Global Responsibility, please see <http://www.sweden.gov.se/sb/d/3087>.

¹⁰ See <http://www.accountability.org.uk/training/default.asp?pageid=275>.

¹¹ See <http://www.thesullivanfoundation.org/gsp/default.asp>.

¹² See http://www.stopcorporateabuse.org/cms/index.cfm?group_id=1000.

¹³ See <http://www.globalexchange.org/campaigns/sweatshops/>.

¹⁴ See <http://www.foei.org/corporates/index.html>.

9. However, except for the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (which in any case is binding only on its signatories), all existing initiatives and standards are voluntary in nature. This means that the growth and spread of TNC activities have been taking place without any effective and legally enforceable set of global rules that regulate the behaviour and operations of TNCs or to ensure their corporate responsibility and accountability.
10. The lack of such effective and legally enforceable global rules on TNC behaviour and corporate responsibility to support development is highlighted by the various cases of corrupt corporate practices and fraud involving TNCs such as Enron and WorldCom; by the operations of financial sector corporate actors involved in speculative capital flows and investment; and by the actions of resource-extraction TNCs that have damaged the environment or dislocated local communities in their host countries of operations.

III. International Recognition of the Need for Norms of Conduct for TNCs

11. Therefore, legally enforceable norms of investors' or corporate conduct are urgently required to prevent such cases of corporate tort or misbehaviour from happening again. They could also serve the useful purpose of protecting the global environment by prescribing the norms of corporate conduct with respect to environment, bring about transparency in the corporate dealings by prescribing the disclosure requirements and accounting practices, control restrictive business practices and curb the manipulation of transfer prices and thus improve global welfare.¹⁵
12. Corporate responsibility to support development was recognized at the 2002 Johannesburg World Summit on Sustainable Development. The WSSD Plan of Implementation committed the UN's Member States to "actively promote corporate responsibility and accountability, based on the Rio principles, including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public-private partnerships and appropriate national regulations, and support continuous improvement in corporate practices in all countries."¹⁶
13. In particular, the WSSD encouraged UN Member States to:¹⁷

[e]nhance corporate environmental and social responsibility and accountability. This would include at all levels to:

- (a) Encourage industry to improve social and environmental performance through voluntary initiatives, including environmental management systems, codes of

¹⁵ WTO, *China, Cuba, India, Kenya, Pakistan and Zimbabwe – Investors' and Home Governments' Obligations*, WT/WGII/W/152, 19 November 2002, para. 8.

¹⁶ UN, *Report of the WSSD – Annex: Plan of Implementation*, UN Doc. No. A/CONF.199/20, 2002, para. 49. See also para. 140 thereof.

¹⁷ *Id.*, para. 18.

conduct, certification and public reporting on environmental and social issues, taking into account such initiatives as the International Organization for Standardization standards and Global Reporting Initiative guidelines on sustainability reporting, bearing in mind principle 11 of the Rio Declaration on Environment and Development;

- (b) Encourage dialogue between enterprises and the communities in which they operate and other stakeholders;
- (c) Encourage financial institutions to incorporate sustainable development considerations into their decision-making processes;
- (d) Develop workplace-based partnerships and programmes, including training and education programmes.

14. In addition to the WSSD mandate above, the 2004 UNCTAD XI Sao Paulo Consensus (TD/410, 24 June 2004), mandated UNCTAD to “carry out analytical work with a view towards facilitating and enhancing positive corporate contributions to the economic and social development of host developing countries. UNCTAD should consult with all interested parties as appropriate, including in particular UNCTAD’s private sector business partners, in carrying out this work. Taking into account existing international initiatives in this area, UNCTAD should draw lessons as far as the trade and development dimension is concerned and make the outcome of such work available to those parties interested or seeking guidance on this matter.”¹⁸

15. This mandate was established because of UNCTAD XI’s recognition of the role that corporate actors, especially TNCs, “have an important role in supporting technology transfer, supplier linkages and the provision of access to export markets for developing countries” and that they “have a positive role to play in stimulating the economic development of host countries and in supporting social and environmental development and the competitiveness of local enterprises.”¹⁹ In this regard, UNCTAD pointed out that there are “various voluntary international instruments that could be improved and made more coherent, covering economic, social and environmental dimensions, to help increase the contribution of corporate actors, especially TNCs, to the advancement of development goals.”²⁰

16. “Corporate social responsibility is at the heart of the obligations that firms owe to the societies in which they operate.”²¹ This statement in an UNCTAD publication reflects the conceptual foundation for all corporate responsibility-related initiatives and discussions. It is not a new concept, since the development of modern corporations whose ownership has become diffused as a result of the sale of their shares of stock in stock markets has also given rise to the need to protect the share holders of these corporations. This protection, in most domestic jurisdictions, has been through the enactment and enforcement of legislation and regulations that govern corporate formation, ownership and governance, sales of stock, dissolution, information disclosure, etc. Rather, the concept of corporate responsibility is simply an extension of the concept that corporate

¹⁸ UNCTAD, *Sao Paulo Consensus*, TD/410, 25 June 2004, para. 58.

¹⁹ *Id.*, para. 45.

²⁰ *Id.*

²¹ UNCTAD, *Social Responsibility*, UN Doc. No. UNCTAD/ITE/IIT/22, 2001, at 5.

share holders, especially minority share holders, need to be protected in their dealings with corporations.

17. By understanding that the activities of corporations impact more than just the economic welfare of their owners or share holders, the concept of corporate responsibility implies that corporations are also now regarded as being responsible and accountable not only to their owners or share holders, but also to their employees (e.g. in terms of ensuring fair labor practices) and to society at large (e.g. in terms of advancing societal goals such as minimizing environmental pollution, protecting consumer interests, refraining from illicit practices, observing fundamental ethical and human rights standards).
18. To date, however, there has been no initiative within UNCTAD to move this mandate forward in terms of responding to developing countries' suggestions for a more pro-active norm-generating approach to addressing the issue of corporate responsibility of TNCs and its role in promoting developing countries' development prospects. UNCTAD's work in this area since Sao Paulo has been focused on issues relating to public-private partnerships, corporate contributions to development (including FDI), looking at best corporate governance practices, and encouraging developing countries to engage with and encourage the entry of TNC actors into their domestic economies (in the context of FDI).

IV. Suggestions for the UNCTAD XI MTR

19. The Sao Paulo mandate²² suggests that UNCTAD undertake the following tasks:
 - (i) "carry out analytical work with a view towards facilitating and enhancing positive corporate contributions to the economic and social development of host developing countries. UNCTAD should consult with all interested parties as appropriate, including in particular UNCTAD's private sector business partners, in carrying out this work"; and
 - (ii) "[t]aking into account existing international initiatives in this area, UNCTAD should draw lessons as far as the trade and development dimension is concerned and make the outcome of such work available to those parties interested or seeking guidance on this matter."
20. In the context of the UNCTAD XI Mid-Term Review process, developing countries should suggest that UNCTAD's analytical work in the area of corporate responsibility to support development should be focused on identifying how, in the context of designing a pro-active and strategic development policy, TNC activities may be best put to use in order to contribute to the economic and social development of host developing countries.

²² UNCTAD, *Sao Paulo Consensus*, TD/410, 25 June 2004, para. 58.

21. Such analytical work should go beyond simply looking at the positive contributions of TNCs and how TNCs may better penetrate developing country economies (through FDI regime liberalization, for example). It should also look at what kind of domestic regulatory policies will need to be put in place by host developing countries in order to ensure that TNC activities and conduct in their territories could provide them with long-term developmental benefits (e.g. in terms of employment, technology transfer, increase industrial capacity, etc.).
22. UNCTAD has already developed a large body of work, experience, and technical expertise in establishing soft law or normative instruments that UN Member States could adopt and apply, especially with respect to competition policy and restrictive business practices,²³ trade facilitation,²⁴ and corporate transparency and accounting.²⁵ This experience and expertise should be utilized and built upon by UNCTAD in carrying out its UNCTAD XI mandate on corporate responsibility.
23. In building on its existing work relating to corporate conduct and activities in the areas of competition policy, trade facilitation, and corporate transparency and accounting, UNCTAD should pro-actively look at existing international initiatives relating to corporate responsibility that TNCs should observe, and then identify and promote a set of clear normative guidelines that UNCTAD could then encourage UN member States to either negotiate and adopt in the form of a legally binding treaty or else to unilaterally adopt and implement in the form of binding domestic legislation or regulation. An example of a set of such normative guidelines, as obtained from various existing international initiatives, is contained in the Annex of this paper.

²³ See *UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*, UN Doc. No. TD/RBP/CONF/10/Rev.2 (2000). See also <http://r0.unctad.org/en/subsites/cpolicy/index.htm>.

²⁴ See e.g. <http://r0.unctad.org/ttl/>.

²⁵ See e.g. <http://www.unctad.org/Templates/StartPage.asp?intItemID=2531&lang=1>. See also UNCTAD, *Guidance on Good Practices in Corporate Governance Disclosure*, UN Doc. No. TD/B/COM.2/ISAR/30, 26 September 2005.

Annex: Suggested Normative Guidelines for TNC Conduct

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
A. Respect for International Law and Host Country Sovereignty and National Law	
<p>TNCs shall recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, national sovereignty and authority of the countries in which the enterprises operate. They shall not interfere in internal political affairs or intergovernmental relations.</p>	<p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 10</p> <p>ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), para. 8</p>
B. Human Rights	
<p>TNCs shall promote, secure the fulfillment of, respect, ensure respect of and protect internationally proclaimed or nationally recognized human rights, including the rights and interests of indigenous peoples and other vulnerable groups</p>	<p>Principle 1, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 1</p>
<p>TNCs shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights.</p>	<p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 12</p>
<p>TNCs shall ensure that they are not complicit in human rights abuses. TNCs shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.</p>	<p>Principle 2, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other</i></p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
	<i>Business Enterprises with Regard to Human Rights</i> , UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 11
TNCs shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.	UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i> , UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 3
C. Employment and Industrial Relations	
TNCs shall uphold the freedom of association and the effective recognition of the right of workers to collective bargaining by protecting workers' right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization.	<p>Principle 3, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 9</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:1(a), IV:2, IV:7 and IV:8 (Employment and Industrial Relations)</p> <p>ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), paras. 42-43, 47, 49-59</p>
TNCs shall eliminate or not engage in all forms of forced and compulsory labor as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.	<p>Principle 4, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No.</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
	<p>E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 5</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:1(c) (Employment and Industrial Relations)</p>
TNCs shall eliminate or not engage in child labor as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.	<p>Principle 5, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 6</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:1(b) (Employment and Industrial Relations)</p> <p>ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), para. 36</p>
TNCs shall eliminate or not engage in discrimination in respect of employment and occupation. TNCs shall ensure equality of opportunity and equal treatment for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age – except for children, who may be given greater protection – or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.	<p>Principle 6, UN Global Compact</p> <p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 2</p> <p>ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), para. 22</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:1(d)</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
	(Employment and Industrial Relations)
TNCs, particularly when operating in developing countries, shall endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise	ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), para. 13
TNCs shall endeavour to provide stable employment for their employees and shall observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which TNCs may have, they shall strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment. In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, TNCs shall provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals. Arbitrary dismissal procedures shall be avoided.	ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), paras. 25-27
TNCs shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law	UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i> , UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 7 OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:4 (Employment and Industrial Relations) ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), para. 38
TNCs shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement. Wages, benefits and conditions of work offered by TNCs shall not be less favourable to the workers than those offered by comparable employers in the country concerned. When TNCs operate in developing countries, where comparable employers may not exist, they shall provide the best possible wages, benefits and conditions of work, within the framework of government	UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i> , UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003,

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
<p>policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.</p>	<p>para. 8 ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), paras. 33-34</p>
D. Environment	
<p>TNCs shall adopt and implement a precautionary approach to environmental challenges. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, TNCs shall not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage.</p>	<p>Principle 7, UN Global Compact OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline V:4 (Environment)</p>
<p>TNCs shall undertake initiatives to promote greater environmental responsibility. TNCs shall:</p> <ul style="list-style-type: none"> - establish and maintain a system of environmental management appropriate to its operations - provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of its activities - engage in timely and adequate consultation with local host communities directly affected by the environment, health and safety policies and the activities of the TNC - put in place and implement an adequate environmental impact assessment system - maintain contingency plans to prevent, mitigate, control environmental or health damage from their operations - provide adequate environmental safety and health training for its employees - contribute to the development of environmentally meaningful public policy 	<p>Principle 8, UN Global Compact OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline V (Environment)</p>
<p>TNCs shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.</p>	<p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 14</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
E. Consumer Protection	
TNCs shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.	<p>UN, <i>UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 13</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline VII (Consumer Interests)</p> <p>UN, <i>UN Guidelines for Consumer Protection</i> (1999)</p>
F. Science, Technology and Skills Transfers	
TNCs shall undertake and support activities to encourage the development and diffusion of environmentally-friendly and other technologies, especially to developing countries, which are compatible with and appropriate for the development of local and national innovative and productive capacity in their host countries	<p>Principle 9, UN Global Compact</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline VIII (Science and Technology)</p>
TNCs shall engage in technology and skills transfer activities, including employment of local personnel and provision of training with a view to improving skill levels. TNCs shall give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organizations of these workers and governmental authorities. When investing in developing countries, TNCs shall have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they shall adapt technologies to the needs and characteristics of the host countries. They shall also, where possible, take part in the development of appropriate technology in host countries. To promote employment in developing countries, in the context of an expanding world economy, TNCs shall give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials.	<p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IV:5 (Employment and Industrial Relations) and Guideline VIII:3 (Science and Technology)</p> <p>ILO, <i>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i> (1977), paras. 18-20, 30-31</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
G. Competition and Restrictive Business Practices	
<p>TNCs shall refrain from entering into or carrying out anti-competitive agreements or activities among competitors. They shall conform to the restrictive business practices laws, and the provisions concerning restrictive business practices in other laws, of the countries in which they operate, and, in the event of proceedings under these laws, shall be subject to the competence of the courts and relevant administrative bodies therein. TNCs shall consult and co-operate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, TNCs shall also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provisions shall be in accordance with safeguards normally applicable in this field.</p> <p>TNCs, except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other, engaged on the market in rival or potentially rival activities, shall refrain from practices such as the following when, through formal, informal, written or unwritten agreements or arrangements, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:</p> <ul style="list-style-type: none"> (a) Agreements fixing prices, including as to exports and imports; (b) Collusive tendering; (c) Market or customer allocation arrangements; (d) Allocation by quota as to sales and production; (e) Collective action to enforce arrangements, e .g. by concerted refusals to deal; (f) Concerted refusal of supplies to potential importers; (g) Collective denial of access to an arrangement, or association, which is crucial to competition. <p>TNCs shall refrain from the following acts or behaviour in a relevant market when, through an abuse or acquisition and abuse of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade,</p>	<p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline IX (Competition)</p> <p>UNCTAD, <i>1980 UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices</i>, UN Doc. No. TD/RBP/CONF/10/Rev.2 (2000), Part D</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
<p>particularly that of developing countries, and on the economic development of these countries:</p> <ul style="list-style-type: none"> (a) Predatory behaviour towards competitors, such as using below-cost pricing to eliminate competitors; (b) Discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods and services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises; (c) Mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature; (d) Fixing the prices at which goods exported can be resold in importing countries; (e) Restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical with or similar to the trademark protected as to identical or similar goods in the importing country where the trademarks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence and where the purpose of such restrictions is to maintain artificially high prices; (f) When not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service: <ul style="list-style-type: none"> (i) Partial or complete refusals to deal on the enterprise's customary commercial terms; (ii) Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods; (iii) Imposing restrictions concerning where, or to whom, or in what form or quantities, goods supplied or other goods may be resold or exported; (iv) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee. 	
H. Corruption and Bribery	
<p>TNCs shall avoid or not engage in all forms of corruption, including extortion and bribery. TNCs shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper</p>	<p>Principle 10, UN Global Compact UN, <i>UN Norms on the Responsibilities of</i></p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
<p>advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization.</p>	<p><i>Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>, UN Doc. No. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, para. 11</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline VI (Combating Bribery)</p> <p>OECD, <i>OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions</i> (1997)</p> <p>UN, <i>UN Declaration against Corruption and Bribery in International Commercial Transactions</i>, UN Doc. No. A/RES/51/191, 21 February 1997</p>
I. Taxation	
<p>TNCs shall contribute to the public finances of host countries by making timely payment of their tax liabilities. They shall comply with the tax laws and regulations in all countries in which they operate and shall act in accordance with both the letter and spirit of those laws and regulations.</p>	<p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline X (Taxation)</p>
J. Corporate Disclosure	
<p>TNCs shall disclose financial and non-financial corporate governance matters, such as:</p> <ul style="list-style-type: none"> - basic information showing their name, location and structure, information on parent enterprises and subsidiaries or affiliates - financial and operating results - board responsibilities regarding financial communications - significant transactions by the board or management with related parties - corporate objectives 	<p>UNCTAD, <i>Guidance on Good Practices in Corporate Governance Disclosure</i>, UN Doc. No. TD/B/COM.2/ISAR/30, 26 September 2005</p> <p>OECD, <i>OECD Guidelines for Multinational Enterprises</i> (2000), Guideline III (Disclosure)</p>

Suggested Normative Guidelines for the Conduct of Activities by TNCs	Basis in Existing CSR-Related International Initiatives
<ul style="list-style-type: none"> - ownership and shareholder rights - changes in control and transactions involving significant assets - governance structures and policies - members of the board and key executives - material issues regarding stakeholders, environmental and social stewardship - material foreseeable risk factors - independence of external auditors - internal audit function - process and conduct of general shareholder meetings - timing and means of disclosure - good corporate governance practices - good practices for compliance with good corporate governance practices 	

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