

Negotiating with Transnational Corporations

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1. Transnational Corporations in the Development Process of Developing Countries

1.1 Trends in flows of foreign direct invest to developing countries

The Transnational Corporations are mainly of U.S.A. and U.K. origin, there are thousands of such corporations if at least one foreign affiliate are included. The small countries like Italy, Switzerland and the developing countries like Taiwan, Hongkong, Phillipines, India, Mexico and Brazil are also entering into Transnational Corporations and venturing to invest in the third world countries. Investment, production and scale of these corporations are huge and their activities are spread worldwide, therefore all the people of the world are affected in one way or another.

During the colonial era, the foreign companies enjoyed considerable concessions and usually the colonial law governed the companies rather than the local laws e.g. Panama Canal Zone where U.S. laws were enforced, U.S. police maintained law and order, and U.S. postal stamps were used. Similarly in China, Shanghai-China Free Post concessions were granted to British, American, & French. These concessions are gone and most of the developing countries are independent sovereign countries. The government of these coun-

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tries now want to share the benefits derived from the exploitation of their natural resources, however, it could be realised only recently though efforts were made immediately after the second world war after which the colonial power crumbled.

Despite the worldwide dissemination of Transnational investment, still the major portion of investments are located in U.S.A., U.K., Canada and Federal Republic of Germany, whose combined share is well over 40 percent of all direct investment stock. The Western Europe, United States of America, Canada and Japan all combined together have more than 90 percent of all investment of Transnational Corporations, consequently the developing countries share meagre investment, among them the least developing countries have negligible amount of Transnational Corporations investment. Among the developing countries, the most advanced countries like Brazil and Mexico followed by South East Asian countries, attracted more foreign investments than any other countries, incidently Brazil and Mexico happened to be the heavy borrowers from the international capital markets. Though the Transnational Corporations preferred to invest in the developed countries, particularly the U.S.A. where market is ensured, some new entrants to international business particularly the Japanese companies have been investing in the developing countries. They prefer to invest in the extractive sector in order to secure uninterrupted supply of raw material for their industries.

Upto late seventies, manufacturing sector got major portion of investment, followed by extraction and service sectors. The huge market potentialities of the developing countries and the export possibilities made the manufacturing sector more attractive while the interest to ensure international supply of raw materials led to the development of extraction sector. Relatively cheap labour in the developing countries resulted low cost of locally manufactured components, making final product cheaper which became export-oriented. Therefore, the foreign investment in the so-called foot-loose industries are attracted by countries such as Brazil, Hongkong, Malaysia, Mexico, The Republic of Korea and Singapore.

The total capital flow to the developing countries amounted to more than \$ 65 billion till 1976, the main constituents of the capital are the private money whose share is more than half of the total capital followed by the international bank loans which make one-third of the total capital and the OPEC, Socialist countries and multinational agencies making the rest.

1.2 Objectives, Strategies and Characteristics of Transnational Corporations

The Transnational Corporations like any other business organizations set their objectives to maximise profits, maintain growths, ensure continuity of their business and secure raw materials for their industries. In order to achieve the predetermined goals, they formulate strategies and act accordingly.

Their main strategies are to have full control over the industries and manipulate rules and regulations for their maximum possible benefits. Besides, they would try to negotiate to govern the industries by their laws rather than the host government's laws and prefer to sign contract in metropolitan cities and to make provisions of dispute settlements in these cities rather than host countries. All these strategies would put them in more advantageous positions than the host countries.

The Transnational Corporations have amassed huge wealth, accumulated incomparable experience in management, technology and have unmatched skilled manpower to tackle with any sorts of problems and difficulties. They have global links for any kind of works and are in a better position to market their products. As such, they have finance, technology, management skills and marketing capabilities, literally everything to succeed in any venture in any country. Therefore, they are better placed and have more bargaining power in dealing with the newly emerging developing countries which lack in everything except in natural resources. As a result, all the contracts signed with the Transnational Corporations for industries in the developing countries as late as seventies, placed them in a favourable position to exploit resources for their benefits. They succeeded to utilise local money and minimise their money inputs, ultimately not giving even the most deserved advantages to the host countries.

The author of "Poverty is the Product," Mr. Muller depicted a very dark picture of the Transnational Corporations. According to him, the Transnational Corporations use local resources, make maximum possible benefits, and in the long run they make negative cash flows in the host countries. They do not bring any new technology and kill capability of the national technological development either by assimilating the local technology or not letting development of technology. Regarding employment, the Transnational Corporations do not create any new job opportunities rather they eliminate employment possibilities. In spite of such gloomy picture, there are positive sides of the

Transnational Corporations whose participation in the developing countries has contributed significantly in the process of national development. However, their investments, in the developing countries concentrated in the assembling industries, mining and petroleum industries. They rarely invest in basic industries. They try to dump obsolete industries and the industries which pollute and become uneconomical owing to necessity of taking measures for preventing pollution. In such a way the Transnational Corporations exploit the developing countries. But the most advanced developing countries have maximum capital inflow of the Transnational Corporations. It shows that if the developing countries are in a position to bargain with the Transnational Corporations, they could extract more benefits than the losses they may incur in allowing foreign investments.

1.3 Policies and Objectives of Developing Countries

As the developing countries emerged as politically independent countries, they wished to be economically well off and independent if possible. This is only practicable through rapid industrial development which would be possible only with international cooperation and with acquisition of necessary technology, finance, management and marketing skill. Most of the developing countries do not possess any of these prerequisites for industrial development. In this context, the developing countries have to formulate their objectives and policies to procure necessary infrastructures for industrial development. There is a technological gap, between developed and developing countries and is widening further because of the faster growth of technical innovations in the former and the failure of the latter to catch up the latest innovations. Under such circumstances, the developing countries have to adopt comprehensive strategy which would achieve time bound sufficient technological growth, industries and economic development and create techno-economic base for further economic growth. This is possible through maximum exploitation of natural resources with the Transnational Corporations' finance, technology, management and marketing of products with fair sharing of profits and benefits agreeable to both parties.

1.4 Positive and negative Effects of Foreign Participation

The Transnational Corporations are in positions to provide the developing host countries

with finance, technology, management and marketing of products. Should the host countries possess attractive natural resources, political and economic stability, clear cut industrial and taxation laws and favourable intention of the Government towards the foreign investments, the Transnational Corporations are lured to come in. They would bring money technology and other necessary things for exploitation of natural resources. In some cases they develop transport and communication infrastructures. If the resources utilised, are properly the host countries can benefit a lot from their investment and expedite industrial development process. It could be a bonanza to the host countries if they can draw the maximum out of foreign investment. The country could develop infrastructures, industry, trained manpower and run many business of international standard. These gradually could be perhaps nationalised if the country desired. In short every possible benefits could be drawn from the Transnational Corporations if the Governments are strongly motivated by the national interest.

On the other hand when the national negotiators are not matured enough to enter into agreements with the Transnational Corporations or do not use the available advices from the multi-lateral source or from consultants or do not act entirely in the national interests, then results could be disastrous to the nation which may not gain even minimum possible advantages from the use and exploitation of natural resources. The Transnational Corporations might leave nothing but dig holes and carcasses of industrial buildings park the national economy in shambles and drain the hard earned foreign currency. Therefore, the key men in the host countries should be careful in dealing with the Transnational Corporations possess wealth of informations, skilled negotiators etc. and should think of national interest, then they could extract almost everything from the Transnational Corporations.

2. Planning for Foreign Investment

2.1 Fields for Foreign Investment

Foreign investment in the developing countries is highly desirable for overall benefits of the developing countries but they should not allow unrestricted entry of foreign investment. In fact foreign investments should be incorporated in the long term national planning and review periodically the impact of foreign investments on national economy the National goals should be clearly formulated and areas for foreign investment should be clearly identified in view of national objectives.

Most of the developing countries reserve some sectors to be developed publicly or by the national companies as per nature of industries. Defence related industries, public utilities, transportation, media of broadcasting and banking are restricted to either public enterprises or to the national private companies. Some countries nationalise mass media in order not to abuse marshall law. Besides, apart from the above mentioned industries some developing countries list additional industries which are not to foreigners according to the stage of national economic and technological developments they have reached. Some developing countries do not permit to open industries which would come close to the competition with important national industries. It is up to the national interest as to decide which industries are open to foreigners and which are not.

2.2 Setting of Investment Priorities

Depending upon nature of industries and the national requirements, most of the developing countries have established investment priorities for foreign investments and certain areas of industrial activities, where no more new investment is required, is permitted. For example, Philipines releases an annual investment priorities plan which gives clear picture of preferred sector for both national and foreign investors. Identifications of priority projects are guided by the national plans and programmes and the Government Agency, The Board of Investments should for priority interest of two classes of projects—pioneer and non-pioneer. The pioneer projects get preferential treatment because of their new products or new technological process which is not hitherto applied. Heavy emphasis is placed on the industries that produce export-oriented products and intermediate product for further processing of raw materials. Singapore attaches more important to the high technology industries which would serve world markets, however the Economics Development Board does not publish preority projects although there is a list which indicates preffered projects which are actively promoted by contacting the potential investors throughout the world through its offices abroad opened solely for this purpose. India permits foreign investment and technical collaboration under its current national policy in the areas of high priority industries, where local technology has not reached sophistication, and in basic industries, capital goods industries etc. At times., Indian Government issues list of industries where no foreign investment or technical collaboration is souget, list of indus-

tries where foreign investment is allowed and list of industries where only foreign technical collaboration but not foreign investment may be permitted. Besides these lists, there is list of priority industries which are favoured with tax incentives and treated more liberally.

Most of the developing countries do not prepare list of priority projects for investment but they formulate basic guidelines for foreign and national investors in line of national planning to achieve certain objectives.

2.3 Institutional Mechanism for Foreign Investment

Most of the developing countries realise that special institutional entity is necessary to monitor the use of foreign investments. In the absence of such organization the Transnational Corporations would have to contact a number of government Departments and Ministries before they could move for any further works. This would lead to considerable delay. In order to ease promotion and control of foreign investments and to facilitate foreign investors, a number of developing countries established an organization which in coordination with various Government Departments and Bureau formulate investment policies, define clearly terms and conditions for foreign investors, monitor progress in national economy and set priority areas for foreign investments in view of the economy is needs.

Indonesia has investment coordination Board, which is called Badam Koordinasi Penanaman Modal (BKPM). Initially it acted as a coordinating agency, now most of the ministries have delegated their authority to it for processing of investment applications, issuance of licences, registration and granting incentives and facilities to investors. Its functions are divided into two main areas: 1) Planning and Promotion and 2) Evaluation and Implementation. Under the Planning and Promotion, there are 1) Bureau of Planning and Development and 2) Bureau of Promotion. Similarly under the evaluation and implementation, there are 1) Bureau of Project Evaluation 2) Bureau of Facilities and Permits and, 3) Bureau of Implementation Controls and Supervision, Besides, there is secretariat which looks after administration of the organization and monitors progress of investment-applications.

India has established Indian Investment Centre which provides the interested potential investors with informations, advices, basic guidelines for investment and other related data. However, investment applications are received by the Secretariat of Industrial

Approvals by the Ministry of Industry and Civil Supplies. These investment applications are processed by four different committees: 1) A Licensing Committee, which is responsible for releasing Industrial Licenses; 2) A Foreign Investment Board, which approves the terms of investments; 3) A Capital Goods Committee, which issues license for importing capital equipment and machinery; 4) A Licensing cum Monopolies and Restrictive Trade Practices Committee.

Philippines has the Board of Investment (BOI) which is within the Ministry of Industry but it is an independent Statutory Organization. BOI has a Board which comprises the Chairman and four Governors who are permanent nominees. The Chairman is the Minister of Industry. Under the Governors, there are various departments and sections, which deal with different subjects, there are Management services and Research Information and Systems Offices, and Institute of Export Development which are directly under the office of the Chairman. The foreign investors should contact the Assistant of Foreign Investments, who holds office at the Institute of Export Development. Nepal has not any special entity which looks after foreign investments but there is provision of Licencing Board which will issue licences for industries whose capital investments will be more than Rs 1 million. The Industry Department, under the Ministry of Industry and Commerce issues licences for the industries whose capital investments are in between Rs 200,000 and Rs 2 million. Terms and condition of industries will be specified in the licences. There is provision to revise industrial policy prior to the formulation of every five year plan. It seems from the Industrial Policy (1974) that investors have to register their industries with concerned departments besides getting licences and there is company law which governs national and international companies. The New Industrial Policy (1981) has provision to organise an Industrial Promotion Board under the Chairmanship of the Minister of Industry and Commerce, to evaluate medium and big industrial proposals from the national point of view.

3. Forms of Foreign Investment

3.1 Wholly-owned Subsidiary

One form of the Transnational Corporations participation in the developing countries is direct investment in wholly-owned subsidiaries. Historically the Transnational Corporations procure concession for a number of years and make direct investment for exploitation of natural resources particularly minerals. But with advent of nationa

independence, most of the developing countries either nationalized or renegotiated the previous agreements.

The wholly-owned foreign affiliates are often directly controlled by the parent companies located in the developed countries, hence all decisions and measures taken by them would be always in their interests and in terms of their global strategy. Thus Governments of the developing countries would have minimum control over such companies even though there are some nationals in the top management. Frequently the nationals appointed to such positions work for the interests of the Transnational Corporations rather than for the interest of their own countries. However new forms of agreements are evolved and the Governments of the developing countries are having more controls over the foreign owned industries through purchase of 1) equity by Government or Government Enterprises 2) equity by state financial agencies such as National Development Corporation 3) equity by National Industrial Groups or individuals. After acquisition of certain share in foreign owned subsidiaries, often there is necessity of effective participation and control in various aspects of management policies and execution but a number of developing countries have limited capabilities for management control and effective participation. Hence the developing countries should develop management skill in order to ensure effective national participation and deserve benefits from the industries.

3.2 Joint Ventures

After the colonial rule, the developing countries with the sense of nationalism, owned certain share in the industries owned by foreign companies, hence some developing countries entered into joint ventures with foreign companies. But immediately after the second world war, the Governments of the developing countries though acquired shares, remained non-votees and non-dividends. Consequently they have no little control over the industries and benefits were reaped by foreign companies only. This phenomenon could be attributed to the post colonial political and economic situation of the world. The young developing countries Governments had little experience to deal with the giant Transnational Corporations who have everything, so terms and conditions were

often dictated by them. As the host countries realised such unequal joint venture agreements, these contracts slowly disappeared, however many developing countries need to enter into joint ventures to have 1) access in the market 2) technology 3) management skill.

For successful joint ventures, fair shares should be made available to all partners and stable and harmonious relationship should prevail among the partners, unfair games should be played by any partners.

Joint ventures may be more fruitful to the Transnational Corporations because they may have effective control over the host country natural resources without arousing objections from the nationalists, besides they may derive benefits of having easy access to the Government bureaucratic machinery to get permits, licences, tax deductions, import duty exemption etc. Therefore, the representatives of the host countries in joint ventures should be very careful not to allow more facilities than what they deserve, and should be of high morale.

3.3 Production Sharing Agreement

Recently the production sharing contracts in the developing countries became fashionable. The technique itself is not new and it is mostly used in agriculture for crop sharing between the tenants and land owners. The production sharing is used in petroleum production and hard mineral mining also but it is not so easy to share production in hard minerals as in petroleum because of uncertain quality of hard mineral products.

There are two main components of the production sharing agreements 1) The investors' cost pack 2) The remaining portion divided by some formula. If the investors' cost turns more than the mutually agreed percentage figure the extra cost is carried over in the next year to have minimum profits to be shared. The investor will bear cost of development and production cost of petroleum and is responsible for providing with necessary appropriate technology. Such production sharing agreements were signed by Pertamina formula Permina - Indonesian National Oil Company, with the Transnational Phillips Petroleum and Tennoco. The Transnational Corporation which bears all necessary costs, will recover from the 40% of the annual crude oil production and the remaining 60% will be divided between the Corporation and Pertamina at 35% respectively. However at the present oil market price it is possible that the Transnational Corpora-

tions would agree even with 2% share, 98% going to the host Government, the owners of the resource.

3.4 Technology Contract

Almost all Research and Development take place in the developed countries, only fraction of man power engaged in Research and Development is deployed in the developing countries and a small amount of money is spent for this purpose. Hence there is wide technological gap between the developed and developing countries. The developing countries have many options to import technology. The relatively rich developing countries could purchase new technology directly from the developed countries as Japan did and employed new technology and successfully closed the technological gap at the cumulative cost of \$ 9 billion from 1950 through 1978 whereas the U.S. annual expenditure for Research and Development is estimated at about \$ 50 billion, as such at the cost of a fraction of the U.S. annual Research and Development expenditure. No doubt for such massive inflow and successful application of technology, the developing countries should have developed infrastructures to receive them and the favourable Government Industrial Policies. However the developing countries should attempt to import technology as much as possible at the same time build national technological capabilities. For many years to come, the technology transfer will be one way traffic and the developing countries have to pay for it in many forms. Under this contract the Transnational Corporations will provide only technology for which they may demand equity share, royalty payment etc.

3.5 Service Contract

Under service contracts, the Transnational Corporations are supposed to work merely as contractors to accomplish certain assigned jobs. There will be no financial obligations on the part of the Transnational Corporations because the developing countries assume full financial responsibilities of the projects while committing to pay predetermined amount of fees or a certain percentage of turn-over. They will be responsible for the services which are agreed to be undertaken without claiming for any ownership.

For example Venezuela hired Wells Cargo to mine iron ore and hired SATISIORO-Saies Company for marketing of the products. Similarly, a national mining company of Iran, Sar Chesmeh Copper Mine Company entered into such service contract with Anaconda

Iran, a wholly-owned subsidiary of the Anaconda Company, which agreed to do the job of accommodating its staff who were disposed of from nationalization of Chilean Copper Mines. Similar contracts pronounced in different words are prevailing e.g, development contract, work contract, cooperation contract and trade compensation contract. China uses the term cooperation contract which is for mutual benefits as claimed by them. Other socialist countries usually prefer Trade Compensation Contract which is mainly based on barter of goods. The developing countries may exchange textile goods for tractors etc, but before doing so careful assessment of the total worth of textile goods should be made and compare with the worth values of tractors and the time schedule of delivery should be accounted in calculating values of tractors. There is turnkey contract under which the host Government contract entire job of setting up an industry to one company which will complete the work and upon handing over the key to the Government, the industry should run just turning on the key.

3.6 Management Contract

The management contract is worst of all contracts, as most of control lies in the management which will take lion's share without capital and any other risk. Management contract is usually signed for the enterprises which are nationalized by the developing countries for example Zambia nationalized 50% of the copper mine and signed management contract with foreign party. The fee for management service is fixed as 5% of gross sale, immediately sales of copper in all metropolitan cities went up and company made more money than before its shares were nationalized. Similar contracts were signed by Zaire, Tanzania.

The developing countries which have not developed management skill, should have such contracts only for shortest possible period to run industry and to train national cadres in this field. Even at this stage there should be some national people, occupying key positions in management for crucial decision making, The developing countries should endeavour to have upper hand in management and to take over entire management within shortest possible period.

3.7 Some Problems in Different Agreement

Various contracts and agreements with best terms and conditions may be most suitable at the time of formulation but prediction of world economy for even five years is very

difficult as some unexpected changes occur and tremendous windfall profits may go to the foreign investors whereas the national Government, owners of resources, may be left without much gain from the international favourable situations. Hence there should be flexibility as much as possible in contract, flexibility will help to renegotiate with the Transnational Corporations in case of such anomalous gains from the unexpected high commodity prices.

Sliding scale or progressive scale is used to keep amount of money flow constant but in case of rigidly pegged at certain figure that will destroy the possibility of gaining more benefits in any favourable conditions. Renegotiation provision fixed rigidly at certain year interval will also cause the same undesirable results, therefore, flexibility is most important for any type of contract to get fair share for the host Government.

4. Ownership and Control

4.1 Alternative Agreement for Sharing Equity

Many developing countries realise the necessity of control and ownership over industries and activities which affect the national economic life. Hence, most of them formulated legislations and rules for ownership and control of industries and economic activities within the national boundaries. Depending upon the development stage and national requirement of the developing countries, various industries are differentiated for foreign investment. Some industries are closed for foreign investment, whereas some others are allowed with centpercent foreign owned. But most of the cases industries are with a certain percentage of national shares. For example Philippines has closed permanently for foreign participation in 1) rural banks 2) mass media 3) Retail trade 4) rice and corn retailing and certain military goods. The so-called overcrowded industries are temporarily closed to foreign investment and they are allowed to invest have if the products would be exported or the industries are located in the less developed areas to promote regional disposal of industries. His Majesty's Government of Nepal has formulated new industrial policy (1981) in which foreign investments are welcomed. There is a section in the industrial policy "Provision Relating To Foreign Investment" with the following statements.

- 1) Foreign investment in industrial enterprises will be welcomed on the grounds of obtaining access to desirable technology, expansion of export markets, higher management standards and an increase in employment opportunities.
- 2) Foreign investment will be limited to medium and large industrial enterprises. The investors may be Government, firm, individual, company, or an international institution.
- 3) An industrial enterprise financed by foreign investment must be incorporated as a limited liability company in Nepal. Foreign investment is allowed upto majority holding in the medium and one hundred percent in the large industrial enterprises.
- 4) If a foreign investor makes an equity investment in a Nepalese industrial enterprise, in convertible foreign currency, one hundred percent of the dividend may be remitted in convertible currency, whether the enterprise is jointly or severally owned.
- 5) If a foreign investor invests in shares in terms of convertible foreign currency, such shares may be sold only after an enterprise has commenced operation. Repatriation of capital will be at the rate of 20% of the sales proceeds of the shares each year upto the limit of the total investment made in convertible currency.
- 6) If a foreign investor has invested in a Nepalese public limited company and has sold shares through the Nepalese security marketing centre, the sales proceeds may be remitted in convertible currency at the maximum annual rate of 25% of the original total investment made in convertible foreign currency.
- 7) Managerial and technical experts who have been engaged, with the prior approval of HMG and who belong to countries where convertible currency is freely exchanged, can limit, in convertible currency, upto 75% of earnings generated by way of salary and allowances.
- 8) Industrial enterprises with foreign equity participation will not be nationalised except in special circumstances, in which case, compensation will be paid to investors on the basis of a just valuation of the net worth of the enterprise.
- 9) If an industrial enterprise, having foreign investment, goes into liquidation, a foreign investor can repatriate his share of proceeds of sale of assets in convertible currency under the Nepal Company Act. No taxes will be levied on such amounts.

10) HMG or its designated agency will stand guarantee on long-term loans under prescribed terms and conditions.

11) Provision will be made through institutionalised procedures to facilitate a simple, smooth and integrated approach to foreign investment, joint ventures and arrangements for the guarantee of longterm loans. The Department of Industry will be the focal point and will be as such for liaison in all these matters.

4.2 Alternative Methods of Acquiring Equity

The host Government can capitalize intangible and tangible assets but great care should be taken before capitalizing such assets because it may lead to unequal sharing of profits, risk, and control of assets.

The so-called free share just for authorising to do joint ventures, e. g. right to open casino, for tax concessions etc. which is given to the host countries without cash contribution, is the form of capitalization of intangible assets.

Similarly without any cash contribution the host Governments can capitalize uses of such tangible assets like land, water, minerals and many other resources.

The Government negotiators should be very careful in negotiating with the Transnational Corporations for capitalizing such intangible and tangible assets, otherwise it may be more harmful and even dangerous for the host countries. They should ascertain benefits accrued by getting such free shares and be careful how much they are giving away their national assets in the form of various concessions and how are allowing uses of national resources. The assessment of such gain versus loss should be done in view of future changes in international economic situation.

4.3 Changes in Ownership

The Transnational Corporations prefer wholly-owned subsidiaries to other forms of agreements in manufacturing sectors. But in some sectors such as primary-mineral and raw material productions, they prefer joint ventures to other forms of agreements to avoid expropriation and claims of the nationalists for the national wealth. Joint ventures will provide with ample sense of the national participation. The host countries should be careful while negotiating with the Transnational Corporations in allowing joint ventures for ex-

exploitation of natural resources particularly the nonrenewable and depletable mineral resources which are becoming rare and urgent as the uses of such minerals increased due to the rising living standards of the world population as a whole and fast increasing living standard of the western hemisphere in particular. The host countries should materialise the control over wholly-owned ownership after a certain period. For this purpose, the host countries negotiate with provision to transfer ownership to the nationals or the Government, such arrangement is provided under **Fade-out policies** but special characteristics of particular industries should be taken into account because such **Fade-out policies** may have harmful side effects to the host countries because the Transnational Corporations always attempt to cream off from the industries, particularly the mineral industries, selecting and mining richest portions of ore bodies. The purpose of **Fade-out policies** is to educate the nationals in technology and management so that dependency on the Transnational Corporations will be decreased. But adopting such fade-out formula, the developing countries may have to pay a lot and often may lose more than what they gain, hence careful studies and elimination of ambiguities associated with such arrangements will help to benefit to a certain degree.

4.4 Risk and Liabilities

The Transnational Corporations use pay back period, other less sophisticated criterion, and rule of thumb for their investments made in various countries; currently they possess army of experts in various disciplines, and sophisticated tools to help them for investment in any country.

Countries are rated safe and unsafe for investment depending upon the political and economic situation and prevailing laws. Enterprises with rate of return slightly above bank rate may be attractive for the Transnational Corporations whereas the unsafe countries would not attract foreign investments even with 22% discounted cash flow rates. The United States of America is rated as safest country to invest, other countries like Canada and Australia are rated as intermediate countries because of growing nationalism.

Apart from the risk analysis the Transnational Corporations carry out sensitivity analysis, to decide how much will cost them for waiting to get licenses for foreign exchanges, for export etc and due to expropriation. They will check the opportunity cost i.e. how much they will lose or gain by losing opportunity to invest in the safer countries.

The host governments are responsible to maximise possible benefits for their countries from any foreign investments; hence the Government negotiators should not only account and the cash flow, rate of return but also the multiple effects of projects which have positive and negative effects. The positive effects are infrastructure development, employment opportunities, utilisation of national resources, technological development etc, the negative effects are pollution, drain of national resources, inappropriate technology and non-beneficial products for the country. In the developed countries, pollution cost is becoming more significant and it is posing serious problems to the investors, as such the tendency is to shift the pollution-oriented industries to the developing countries. All these factors should be carefully weighed and accounted before granting permission to open any enterprises.

The transnational corporations are concerned with assets and liabilities particularly in the uncertain environment of currency situations and for the countries with a high risk of exchange rate, their strategies will be to 1) minimize the difference between assets and current liabilities, and 2) maximise utilization of local credit.

4.5 Disclosure of Information, Accounts, Reporting

The host governments, which are entering agreements with the transnational corporations, should get the feasibility reports of the proposed project, along with the expected cash flows, the expected discounted cash flows and the rates of returns. After commissioning the proposed project, the host Governments should monitor all informations regarding the project activities. Preparation and submission of annual reports should be made mandatory. These reports should be checked by the government appointed auditors. Predetermined agenda should be made compulsory for any meeting and minutes of all meetings should be ensured to tally with the notes made in the meetings. Account books and records should be stored in the host country. Any transactions between the affiliates should be disclosed. Disclosure of informations to the host countries is made prerequisite by some governments, for registration or qualification of a foreign corporation to do business, some countries have included informations reporting in contracts or legislations.

5. Financial Issues Including Transfer Pricing

5.1 Measuring the Profitability of Foreign Investment and Joint Venture Projects

The host governments should establish certain criteria of assessing the profitability of joint ventures of wholly owned foreign subsidiaries or of any other types of foreign investments. There are many positive and negative factors which should be carefully assessed before permitting to do business. Not only the economic benefits should be considered for positive decision of foreign investment but also the social cost/benefit analysis should be carefully weighed before taking any concrete decision.

Economic Analysis

The transnational corporations measure expected profit computing discounted cash flow at the maximum for fifteen years because within this period the transnational corporations realise profits and return on their investments. The transnational corporations judge that investment possibility based on the expectation that they could realise reasonable profit and their investment would be safe and they could make enough profits within the expected period before any major political changes affect their interests. Hence, the interest of the transnational corporations is mainly economic gains by any means.

The host countries would not act merely on the apparent economic benefits only but also assess social cost and benefits. Foreign exchanges and tax benefits should be included. Various industries have different economic return, and social cost and benefits; hence proposed venture should be carefully assessed on the basis of its expected economic return against possible social costs and benefits.

Social Benefits and Costs

Every venture should be evaluated in the light of social benefits and costs. Social benefits include increased employment opportunities created directly by the proposed industries and directly by other services. There will be creation of labour class, even township may be created and may bring industrial revolution. Agriculture labour will be diverted to industry releasing pressure on land and agriculture.

Social cost includes the inevitable damage of environment due to pollution. Most of industries with high pollution are moved to the developing countries where environmental

protection laws are yet non-existent. The host countries might have to pay huge cost in terms of environmental damage if due considerations are not given to the possible pollution in time. Some experts consider changes of life style brought by industrial development, as social cost but such changes are inevitable and should be permitted as long as good habits are imitated.

5.2 Transfer Pricing and Control Methods

To deviate market price from real price for benefits of company is the nature of transfer pricing.

There are varieties of reasons for transfer pricing. Some of them are enumerated as: To evade taxes, to avoid sharing of profits in joint ventures, to escape possible renegotiation of contract and even nationalisation of industries and to divert possible demand of higher wages of workers when high profits are evident, to avoid exchange control of currency. This is the practice primarily of the transnational corporation to maximise profits. Some forms of transfer pricing are high rate of license fee, unreasonably high amount allocated for research and development which are carried out in the developed countries. From the transfer pricing the only beneficiary become the multinational companies; host countries loose in all cases. Hence control of transfer pricing is utmost important for the host countries. In order to control transfer pricing it is necessary to understand it by watching affiliates and their activities in relation to real world activities. Nevertheless it is necessary to have upto date information to have effective control on transfer pricing. Host governments in absence of real world market price of products, use posted price, cost plus profit to compute taxes. There are some commodities like bauxite whose price is difficult to establish; hence the price of aluminium is used to calculate bauxite price for the purpose of tax computation. Control of pricing is not an easy job for the unexperienced administrative personnels of developing countries particularly of the least developing countries like Nepal. However, constant watch on the activities of the transnational corporations and study of data supplied by them would surely lead to control of transfer pricing considerably. For this purpose, personnels with nationalistic feelings should be employed for such jobs to control transfer pricing.

5.3 Project Financing

Projects could be financed by equity and loans. There are various sources of loan financing if proposed projects are economically sound and geographically well located. The machinery and equipment suppliers could provide credit; similarly, the consumers could provide credit with long-term supply contracts. Funds could be raised from public in the form of debentures.

There are many national and international organizations which could provide with funds at reasonable interest rates and even with grace period. In Nepal, National Industrial Development Corporation and Agriculture Development Bank could finance appropriate projects. World Bank, Asian Development Bank, etc, could lend a considerable amount of money but private companies could get loans only with government guarantee.

Loans could be secured in the form of aid with bilateral agreement with other countries. There are Euro and petrodollars which could finance projects.

In the loan agreement repayment schedule should be clearly stated; it could be short-term or long-term with a number of years with grace period, annuity basis and bulk of payment at the end; thus there are various ways making of schedule depending upon the cash flow of the proposed projects.

International organizations and companies prefer to lend money in metropolitan cities like New York, London, Tokyo; etc. If problems or disputes came out, these disputes would be settled in accordance with the laws of the cities where money was borrowed. Hence the borrowers should carefully study the prevailing laws of the places where money would be borrowed.

Loan Equity Ratio

Usually projects are financed by loaned money with a certain amount of equity. This loan equity ratio is called gearing. In the U.S.A., companies are allowed to have gearing upto 2:1 while the Japanese permit gearing upto 8:1 because Japanese banks are allowed to take part in industries whereas U.S. banks are not permitted to have shares in industries. Some experts think that the higher the gearing, the higher the expected rate of return to equity. Because the interest rate on borrowed capital will usually be less

than the expected rate of return on equity that is necessary to attract the foreign investors". Other experts think that higher gearing should not be permitted. Hence it is necessary to analyse various economic impacts on projects due to various sizes of gearing; there is not a single figure of loan equity ratio which is most appropriate for all projects. The parent companies which provide with loan money would charge high interest rate in which case high gearing is not desirable but money borrowed at international money market with a reasonable interest rate may prove to be more economical and high gearing may be beneficial to the host country. So careful study of all combinations of loan equity should be done before coming into any concrete decision.

6. Acquisition of Technology

Technological infrastructure and absorption capacity are the essential prerequisites for industrial development. creation of such infrastructures entirely depends upon the short and long-term national planning which again depends on the national policy of industrial development. For the country like Nepal with limited domestic market and with geographical constraints for competing with international market may be limited. National requirement of industrial products and the abundant nationally available raw materials may indicate selection of industries and then technology.

6.1 Selection of Technology

Selection of technology depends upon the economic, social, commercial and scientific development level of a country and its geographical location and size. An island country could select export-oriented industries whereas a land-locked country may limit with high value commodities to offset high transportation cost. Similarly some countries have very big domestic markets whereas small countries have limited domestic markets and may have to rely on foreign markets.

Many things are to be taken into account while selecting technology including raw materials, local skill and technological absorptive capacity of a country. As far as possible appropriate technology should be selected but the meaning of appropriate may vary from country to country. The selected appropriate technology should be strictly related to the immediate economic development priorities of a country. To recognise and identify such technology national capabilities on (a) technological policy formulation (b) implementation of the policy at the macro level and (c) project evaluation at the micro level should be built up.

Contractual Issues

Payment for technology contract should clearly be stated in an agreement. Equity shares, lump sum annual payment, certain percentage of gross sales are some of the various forms of payment to technology. Payment in the form of equity share would be undue favour to the licensor; so it may be possible to negotiate in other form for a limited period from 5 to 10 years.

Licensors may impose many restrictions on the use and improvements of technology but the recipients should attempt to avoid any restriction and should have access to research and development.

Licence should not permit any clause of restricting post contract use of technology.

In any event of dispute regarding technology there should be a clause to settle the disputes by the governing law of licenses, in no case arbitration should be allowed outside the country because it may incur considerable cost to license and may place at a great disadvantage.

7. Investment Incentives

There is worldwide competition among developed, developing and socialist countries for attracting investment. In this context, the developing countries with no or little industrial development have to struggle and survive for foreign investment by offering many sorts of investment incentives which differ from country to country depending upon the political, social, economic and industrial development level. The developing countries regard investment incentive as an instrument for achieving specific developmental objectives rather than inducement for attracting foreign investment. Hence incentives are conditional to fulfil particular objectives by investors. Usually incentive are same for both, foreign and national investors with some assurances and guarantees to foreign investors for remittances of investment income, repatriation of capital etc. There are financial, non-financial and industrial environmental incentives which determine foreign and domestic investments. The financial incentives are a) various tax reduction, exemptions refund of import duties b) capital grants, loans, guarantees for foreign borrowing, provision of infrastructural facilities, etc. The non-financial incentives include clarity in industrial policy, simplified government mechanisms and procedures for approvals of licenses etc, permit for import of various raw materials, intermediate goods and spare parts not indigenously available.

Apart from financial and non-financial incentives provided by the host countries, the investors account such industrial environmental factors like size of the domestic market, per capita income, buoyancy of economy, political stability and availability of natural resources. The potential investors ascertain and assess all the positive and negative facts of incentives. If the positive incentives outweigh the negative facts considerably, then only there may be private investment for industrial development.

8. United Nations Centre on Transnational Corporations (UNCTC)

Most of the developing countries had no bargaining power to negotiate with the transnational corporations because of lack of knowledge on the activities of the transnational corporations and on the technology. In 1974 the United Nations established Centre on Transnational Corporations to assist the developing countries in dealing with the transnational corporation, to do research on the transnational corporations, activities, to analyse and disseminate informations, to provide advisory services and to assist the developing countries by providing expert staff to support in negotiation with the transnational corporations. Since the establishment of the Centre, it received more than 50 requests for help and it has conducted about 40 workshops together with more than thousand participants from many countries.

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16. - Discounted Cash Flow Calculations.
17. - Strengthening the Negotiating Capacity of Developing Countries.
18. - Transnational Corporations and Technology Transfer to Developing Countries.
19. - Issues in the Taxation of International Business Transactions.
20. - National Legislations and Regulations Relating to Transnational Corporations.
21. - Foreign Investment Policies and Screening and Monitoring Procedures in Selected Developing Countries.
22. - Incentives for Investment in Selected Developing Countries.