Multinational Corporations and Restrictive Business Practices: The Case of Pakistan

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Introduction

The operations of multinational corporations (MNCs)[1] have recently been the subject of much discussion as well as controversy internationally. The issues involved have centred around the advantages and gains, as opposed to the costs, accruing to the capital exporting countries, or the host countries or the MNCs. However, the debate has acquired nationalist and, for this reason, emotional undertones. This is not surprising. The past activities of a number of MNCs are tainted with colonial exploitation or its near equivalent. Anaconda Copper and Chile, United Fruit and the Banana Republics, Union Minere and Congo, Firestone and Liberia; and, more recently, the "seven oil majors" and the Middle East countries have been in the news again.[2] These and similar cases display a common factor. They relate to the exploitation by the MNCs of either mineral or agricultural resources of the Third World countries. Our earlier experience with the East India Company is now history, of course. More recently the country's limited mineral wealth, as well as the non-plantation nature of its agricultural sector, has kept Pakistan outside the

*The author, a Director in the Monopoly Control Authority, Islamabad, is grateful to his colleagues in the Research Department of the Monopoly Control Authority and to Hafiz A. Pasha for a number of useful comments and suggestions. The remaining errors, the terminology used and the views expressed are the sole responsibility of the author and not those of the Monopoly Control Authority or any other agency of the Government of Pakistan.

[1]Two definitional problems arise: what is a multinational corporation and what is a member firm of a multinational corporation set-up. Part definition of multinational enterprise used by Raymond Vernon suffices, for the purposes of this essay, as the definition of the multinational corporation. Thus defined a multinational corporation is "...a parent company that controls a large cluster of corporations of various nationalities. The corporations that make up each cluster appear to have access to a common pool of human and financial resources, and seem responsive to elements of a common strategy ..." [30, p. 4]. A member firm is a firm controlled by an MNC. The criterion adopted in this essay for judging whether or not a firm is controlled by an MNC is the ownership of 20 percent or more of the firm's equity capital by the MNC. It is felt that under local circumstances a 20 percent stake is sufficiently high, in most cases, to confer control. And control, not ownership, is the guiding factor.

[2]For details of such cases see Louis Turner [22].

mainstream of the MNCs' investments and activities. The multinational investment stake in Pakistan is relatively insignificant.[3] Because of such factors the discussion of the operations of the MNCs has never really been a politically explosive subject in this country. This is fortunate in that it makes possible a relatively objective discussion of the issues involved. A fair amount of current concern of the Third World countries focusses on such activities of the MNCs as are more generally described as restrictive business practices,[4] and this essay, too, attempts to analyse operations of the MNCs in Pakistan which may constitute restrictive business practices.[5] There are, of course, larger problems, raised by the MNCs in course of their enterprise in the developing countries. There is the question of national interest as well as the more general debate on the costs and the benefits of direct foreign investment.[6] These topics, though extremely interesting in themselves are not examined here because it is felt that such relatively general issues are outside the scope of this essay and also because these are issues that are at present outside the author's field of work.

For the purpose of this essay such business practices are considered to be restrictive as may tend to lessen competition. These restrictive practices may be broadly classified into those at the international level and others at the national level, with some areas of overlap, of course. The international aspect includes arrangements leading to cartels as well as division of markets and territories between various MNCs in developed countries. These restrictive practices may relate to such arrangements between the MNCs as jointly to determine the levels of global output (or procurement), and the international price structure with respect to certain commodities or manufactures as well as other arrangements which may embrace international division of markets and operations between the MNCs.

At the national level, the restrictive practices are a manifestation of the size and the nature of the operations of the MNCs and their member firms within a developing country; practices bearing upon the market behaviour of the dominant firm[7] in an industry, and others relating to the arrangements and agreements for the use of trade marks and patents as well as for the provision of technical assistance and know-how (what may broadly be termed the "transfer of technology"). The dominant firm situation, where it exists, raises its own issues: firstly, is the dominant firm abusing its monopolistic position in its

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[3]At the end of 1967 the stock of total foreign direct investment in Pakistan as well as what is now Bangladesh amounted to 346 million US dollars, being approximately 0.32 percent of the global total of foreign direct investment and about 1.04 percent of the total foreign direct investment in all developing countries. The total flow of foreign investment into Pakistan, during the years from 1960 to 1970 was Rs. 962 million. *Sources*: [19, statements VIII(a) and VIII(b) of various issues] and [23, Tables 5 and 35].

[4]See, for example [24, 26, 27 and 28].

[5]The subject of the MNCs and restrictive business practices has been approached indirectly in two recent articles by G.M. Radhu; these articles, though, are different in scope from the present essay. See [15] and [16].

[6]Some of the other main problem areas are: the impact of the MNCs on the redistribution of income and wealth between the developed and developing countries, the possible negative effect of the MNC investment on the level of savings in the host countries, the tendency to discourage the development of local entrepreneurs and the fairness of the returns accruing to the labour employed by the MNCs in the Third World countries. For a general discussion of some of these issues, see, [1] and [4].

[7]For purposes of this essay, an industry is said to be dominated by a firm if that firm is the largest in the industry as well as accounts for at least 20 percent of the industry's sales, the requirements are to be satisfied for at least 1968 and two other years between 1968 and 1973.

policies relating to output and prices; and, secondly, is the dominant firm following policies of a predatory kind with the obvious goal of excluding other entrants from the industry. The questionable elements of the "transfer of technology" arrangements and agreements include the prices followed in the transactions between the MNC and its member firm as well as the fairness of various charges deemed payable to the MNC by the member firm, and the restrictions to be observed by the member firm in conducting its business and trade.

Before proceeding further it would be useful to analyse the general logic of the MNCs' operations. The behaviour of the MNCs and their member firms should expectedly correspond to some objectives or goals and, it would be a plausible assumption that an MNC seeks to maximise its own revenues as well as the return to its share-holders. Monopolistic situations should therefore be of help in achieving the objective of higher returns. Where a monopoly is not possible the second best solution, from the MNCs' point of view, is perhaps some form of oligopolistic collusion such as to result in higher returns than would be otherwise possible. When achieved at the international level, oligopolistic collusion between the MNCs produces a global division of markets as well as cartels in world trade. In the course of maximising its revenues the MNC faces the considerable complications raised by operating simultaneously in several countries through subsidiaries or joint ventures. Each of the countries has its own tax laws (i.e. the method of determination of taxable income and the tax rate levied thereon) as well as its own foreign exchange laws (regarding the remittances for dividends and services rendered, repatriation of capital, etc.). It is here that the mechanism of transfer-pricing comes into play and through inter-group purchases and sales, at calculated prices, the MNCs create the desired profits or losses in a specific country so as to keep the financial situation of individual firm in harmony with the overall strategy. The prevailing market conditions therefore are of little consequence in determining the transfer-prices used for inter-group transactions. Continuing this line of argument the "transfer of technology" may also (at least partially) be a guise for increased flexibility in the desired flow of funds across national boundaries. Thus the policies of a member firm in a specific country may be largely determined by the overall strategy of the MNC. Ethics, national interests and similar concepts obviously do not enter the profit calculus.

The possible restrictive practices at the national level are the subject of the next two parts (i.e. the second and the third part) of this essay. The second part of the essay considers situations where the MNCs or member firms have the "dominating firm" position in an industry, and the aggregate share of industries dominated by the MNCs or member firms in the country's large-scale manufacturing sector is assessed. The behavioural aspects of such situations are also explored. In the third part, practices pertaining to the "transfer of technology", (i.e. the use of trademarks and patents, as well as the provision of technical assistance and know-how) are considered. The connected problems of transfer-pricing and tied-purchases are also analysed. Aspects pertaining to division of markets internationally as well as international trade cartels are the subject of the fourth part of the essay. The fifth part addresses itself to the control and regulation of the restrictive practices; the relevant laws as well as other regulatory devices,

Domestic Operations: Dominant Firm and the Control of Industry

Generally the dominant firm[8] question is as applicable to the services sectors as it is to the industrial sector. The service sectors which could be considered in the present context are finance and the wholesale and retail trade. The dominant firm point in relation to the MNCs and member firms has little relevance to the financial services.[9] The question of wholesale and retail trades is more complicated; only the organized elements of such trades could possibly be considered.[10] However, a meaningful study of the problem is possible in the industrial sector.

The extent of control of the MNCs over Pakistan's manufacturing industries depends on the choice of the criterion used in determining whether a firm constitutes a member firm of the MNCs.[11] Of course, different definitions produce different results. If the guideline of 50 percent or more of equity ownership is used then member firms dominate the manufacture of chemicals and pharmaceuticals (including fertilizer and paints), tobacco products, edible oils and fats, electrical machinery, footwear, tyres and tubes, beverages of carbonated water, and tin cans as well as tea blending and drilling and mining for petroleum. Besides these industries, which are reported in the census, 50 percent or more of the dominant firm's equity in the following industries is also held by the MNCs: manufacture of matches, sewing machines, industrial gases, and a small number of similarly controlled industries which are not very significant.[12] Relaxing the criterion of 50 percent or more of equity ownership to 20 percent would result in the addition of petroleum refining and distribution as well as the extraction and distribution of natural gas. Of all the above industries, those reported in the manufacturing census constitute 24.87 percent of the fixed assets, 32.08 percent of the production, and 35.93 percent of the gross value added, for all large-scale manufacturing industries reported in the census.[13]

The restrictive practices arising from dominant firm's behaviour should logically be equally applicable to local and foreign enterprises. Such issues include the impact of a firm's market power on the pricing of its products

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[8]"Dominant Firm" is defined in footnote 7 above.

[9]The scale of operations of the firm of multinational origin is relatively insignificant in the country's financial sector and for this reason is not considered in this essay. For example, in the banking sector, these firms constituted about 7-1/2 percent of total deposits and a similar proportion of total advances in 1974. However, the assets and liabilities amounted to about 12 percent of the overall total and the net profit made by these firms constituted 1/4th of all banking net profits. *Source*: [18].

[10]Although the member firms of the MNCs control a substantial share of the organised distributive trades (through franchises and distributor appointments), this aspect has not been considered here. Relevant factual data are of course lacking, but the more difficult problem is the lack of a suitable analytical framework that would reduce the many ramifications of the trading sector to a working hypotheses linking the form of control, the extent of competition and the possible restrictive practices encountered.

[11]See footnote 1 above.

[12]For example, cosmetics, electric bulbs and tubes, and the assembly and part manufacture of television sets and radios.

[13]The industries included are tea blending, manufacture of soft-drinks and carbonated water beverages, tobacco products, edible oils and fats, footwear, tyres and tubes, chemicals, pharmaceuticals, paints, products of petroleum and coal, tin cans, and electrical machinery. *Source*: [8, Table 1].

(including the possibility of restricted output and monopoly profits) and predatory practices aimed at keeping out competitors (including the creation of barriers to entry). The analytical framework for examining these issues is the industrial organization methodology. The first pointer is that industries where the MNC member firms are in the dominant position are significantly more concentrated than industries in which local firms dominate. The respective two-firm concentration ratios are 0.63 and 0.41. To emphasize, what is being said here is that in such industries where the leading firm is a member firm of an MNC set-up, the two largest firms account for 63 percent of the total market sales whilst the corresponding statistic for industries dominated by local firms is 43 percent.[14] The cause and effect relationship, though, is not entirely clear: is the higher concentration owing to policies of the foreign firms aimed at keeping competitors out (i.e. raising barriers to entry), or is it that, *ab initio*, the MNC member firms like to enter the monopolistic sectors of the industry (a situation arising by definition in a nascent industrial sector).[15]

Other tentative results show that the more concentrated industries have, over the years 1968 to 1973, shown higher profits, lower capacity utilization and relatively static output. This evidence is suggestive of the restriction of output. Moreover, the relatively more concentrated industries of 1968 are also the more concentrated industries of 1973—a pointer towards barriers to entry.[16] The

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[14]The two concentration ratios quoted are for 1968 (West Pakistan) and are based on research currently being done by Khalid Sharwani. The data used by Sharwani are derived from the census of manufacturing industries and published corporate annual reports. Alternate four-firm ratios, derived from Lawrence White's recent work [31] are 0.91 and 0.63 respectively for Pakistan of 1968. Similar four-firm ratios for West Pakistan (again derived from White's work) are 0.71 and 0.54. The variation between the ratios from the two sources is partly explained by the difference in the two-firm and the four-firm base in Sharwani's [17] and White's [31] work, as well as by the different methods of the classification of industries used. Sharwani has largely followed the *Pakistan Standard Industrial Classification* [9] 1970, at the four-digit level. White, on the other hand, has not elaborated on his basis for classifying industries and, moreover, the classification adopted by him in the case of Pakistan appears to be at a significantly higher level of aggregation than that used by him for West Pakistan. However, the finding that the MNC-dominated industries are more concentrated than industries dominated by Pakistan firms is supported in all cases by the different sources used and the different methods of computation employed. *Sources*: [1] and [31, Tables 5-1 and 5-4 at pp. 92-93 and 102-103].

[15]The available evidence suggests the explanation of barriers to entry. See the following paragraph.

[16]This paragraph is based on Khalid Sharwani's research on Pakistan's Industrial structure and market performance [17]. The significant results include (t statistics in parentheses):

(*i*) $P = 11.80 + \underset{(4.05)}{0.53}\,CR$

$\bar{R}^2 = 0.43$

(P and CR denote the rate of profit and the two-firm concentration ratio respectively; based on observations on 24 industries for 1968.)

(*ii*) $CU = 83.05 - \underset{(3.06)}{0.35}\,CR - \underset{(2.56)}{25.55}\,M$

$\bar{R}^2 = 0.53$

(CU, CR and M stand for the rate of capacity utilization, the two-firm concentration ratio and a 0.1 dummy variable for imports, respectively, based on observations on 16 industries for 1968).

The data used are derived mainly from published corporate annual reports and the census of manufacturing industries. Work is currently being done to test the above results for different years as well as a larger set of observations. The drawback is the lack of a readily available set of comparable statistics for different industries and different years. —*Continued*

present findings are, of course, at an aggregate level, and without a considerable amount of additional work a definitive statement as to whether the MNC member firms abuse the dominant position more than the local firms is, in fairness, not really possible.

Domestic Operations: "The Transfer of Technology"

The one area where restrictive business practices are believed to be rampant is the "transfer of technology" from the developed to the developing countries. The MNCs are said to be the foremost vehicle for such "transfers".[17] Concrete data and statistics are difficult to come by as this whole matter is particularly vague: in the first instance the term technology is ill-defined and embraces every thing from procedural manuals and office layouts to chemical formulae and advanced electronic computers; secondly, no organized market or known objective method of determining the price for a particular technology transfer exists; thirdly, the technology in question has been developed largely in response to the needs of developed economies and the MNCs seldom offer the developing country versions of such know-how; fourthly, no objective measures exist to ascertain whether the "technology" in question is obsolete or not. In these circumstances it comes as no surprise that the final outcome in terms of "technology" acquired and the price paid really reflects the respective bargaining power of the parties involved rather than any objective factors—different prices may often be charged by an MNC from different parties for the same "technology".

Though referred to as part of the larger problem of "transfer of technology," trade marks and patents are not unambiguously so. The use of a trade mark confers the right to use a specific name for a product. To illustrate the point, whilst anyone may manufacture soft drinks, the beverages may not be described as any of the internationally known brands, unless so authorised. In the case of patents, the licence to use a patent constitutes the legal permission to use the technology embodied in the patent. It is not entirely clear as to what "transfer of technology" is involved in either case.[18] Nevertheless, the term is used quite frequently for such cases—this may be the practice if only because the words "transfer of technology" perhaps add respectability to the restrictive practices involved. And as for the restrictive practices, a large number cur-

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Besides the above results, the concentration ratios for different industries in respect of 1968 and 1973 show a strong correlation and also a tendancy to increase over the five-year period—this result can only be called tentative, though, as the concentration ratios for the two years have to be thoroughly checked for consistency in classification and computation. Similarly tentative results show a weak realtionship between high concentration ratios on the one hand and high profits and relatively static output on the other hand—the problem here, apart from lack of data referred to earlier, is also one of constructing suitable indexes of output and prices for such industries as are not covered by the Government's Statistical Division in this respect.

[17]This is the view taken by the developed countries and this position was reportedly reasserted by the United States at the recent 7th Special Session of the United Nations General Assembly, viz.

> On science and technology, and technology transfer, the American position is that only trans-national corporations have the technology and unless the developing countries can woo them into their economy, the governments of the advanced countries cannot help. What they can do in that event, is to give the multinationals the kind of guarantee they need to expand their business into the developing countries [3].

[18]For a detailed discussion of these points, see [29, pp. 315-322].

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rently exist in the field of trade marks and patents. Most of the restrictions, which accompany the permission to use a trade mark or a patent, pertain to (a) the amount of payments for royalties, know-how, patent and trade mark fees and technical assistance, the mode in which such payments may be made and the duration of these payments; (b) tying of purchases of inputs and capital equipment to specified sources; (c) limiting the output of the product to a particular level; (d) restricting the sales, including exports, of the product to defined markets only; (e) the marketing of the output at a specified price; and (f) the hiring of specified personnel. Clearly, such a list of restrictions can only be illustrative.

The restrictive conditions attaching to the use of the trade mark[19] and patents acquire the force and sanctity of law when embodied in a duly constituted agreement. In most of the Third World countries such agreements are not, *per se*, unlawful. The laws prohibiting agreements of a restrictive nature were enacted only recently in Pakistan. Consequently the type of agreement that was quite common five years ago does not exist any longer; the restrictive agreements of earlier years have either lapsed or have been terminated or perhaps exist in a modified form. Nevertheless it is interesting to study these old agreements as they are suggestive of possible practices that may be in existence at present, albeit without legal force but with the mutual consent of all parties: even now, not all the clauses mentioned below are prohibited by law. Such agreements often contained clauses prohibiting exports of manufactured products, specifying the size and the maximum number of the manufacturing plants that may be set up, mentioning the hiring of specified personnel, dividing markets and customers within the country, providing for fixing of prices, tying up the purchase of raw materials and capital equipment with the respective MNC or its member firms, prohibiting the setting up or carrying on of another business as well as determining the technical fees, know-how fees, trade mark and patent fees, and royalties payable. One agreement, interestingly enough, was drawn up between a cartel of foreign firms (having the same nationality) and a cartel of Pakistani firms; besides other restrictive clauses, each of the parties undertook not to deal with any other party concerning the trade of specified items in Pakistan.[20]

The logic of tied-purchases (i.e. purchases made from the parent MNC and its other member firms) and "transfer of technology" payments (i.e. the payments for royalties, technical fees, know-how fees, patent and trade mark fees) as parts of the MNC profit-management mechanism has been explained earlier in the introduction to this essay. Planned and efficient use of these instruments enables the MNC to maximise its revenues and the returns to its share-holders. By pricing the purchases made by the domestic member firm from the MNC at a rate higher than the prevailing market prices, the MNC in effect funnels out funds as well as profits from its member firm. Similarly, the "transfer of technology" payments are also a substitute for profits. As mentioned elsewhere in this essay, these devices are resorted to in preference to ordinary dividends because of the need to evade the local taxes and the existence of foreign exchange controls (which make difficult free flow of funds across national

[19]Some idea of the volume of agreements pertaining to the use of the trade marks may be had from the fact that one leading MNC alone has over 100,000 registered trade marks throughout the world. See [25, p. 11].

[20]This paragraph is based on notes taken from [14].

borders) and also perhaps because of the possible adverse publicity attracted by high profit rates and consequent dividend remittances. Moreover, any declared profits and dividends have to be shared with local participants—a disadvantage that tied-purchases' margin and the "transfer of technology" payments do not suffer from. This reasoning leads one to expect that declared large profits and high dividend payments are only resorted to in situations where the quantum of tied-purchases is not significant and the "transfer of technology" payments are relatively small. The dividend payment is therefore inversely related to tied-purchases and the "transfer of technology" payments. To restate the proposition, if the level of tied-purchases and various "transfer of technology" payments is high then the dividends paid tend to be relatively small. Some preliminary work has been done in an effort to evaluate the above argument quantitatively. The available evidence confirms the expected relationship.[21] Tentative findings for 1973 also show that the tendency is to pay more than the available profit for the year as dividend (the difference being made up through use of reserves accumulated over the past years). Estimates of the relevant parameters based on aggregate statistics are also revealing. On the average about 36 percent of the total purchases of an MNC member firm were made from other associated firms. Similarly, royalties, technical fees, know-how fees, patent fees and trade mark fees remitted (i.e. the "transfer of technology" payments) averaged 35 percent of the net profits that were finally available. Over 80 percent of the available profits were distributed as dividends and remitted.

The leading question in the area of the "transfer of technology" is whether too much is being paid for too little. In the overall perspective the dimensions of the problems are perhaps not very large for Pakistan. The know-how for light industry as well as other middle-technology industries is fortunately available locally in most cases and, indeed, in a number of fields Pakistan is an exporter of technology to some of the Third World countries. Thus for example, Pakistanis manage and operate the refining and the distribution processes for the petroleum products, chemicals, fertilizer, and pharmaceutical plants as well as a number of other industries and processes involving a reasonable level of technological sophistication. As regards the heavy industries such as manufacture of steel and the manufacture of machine tools and industrial plants, the socialist countries are at present assisting in technical matters and providing the know-how. Of course, Pakistan does not possess the know-how

[21]This paragraph is based on preliminary work done by the author towards establishing a relationship between the proportion of profit paid as dividend, purchases from associated firms and payments for "transfer of technology". The sample at present includes data for 1973 on eight leading member firms of different MNCs and for this reason the results reported below may be taken as only indicative of a relationship. Observations on four other firms could not be included although these cases appear to strengthen the argument. These four firms had made losses but paid dividends nevertheless. The existing specification does not cater for such cases as it assumes that the profits are positive. For these reasons a suitable alternative specification is being worked out. It is expecded that eventually the sample could be ncreased to about 20 firms and the observations extended to other years as well. The results are (t statistics in parantheses):

$$PD = 1.12 - \underset{(3.72)}{0.66\,PT} - \underset{(3.17)}{0.50\,TT}$$

$$\bar{R}^2 = 0.89$$

(PD, PT, and TT stand for the proportion of available profits remitted as dividend, proportion of purchases made from associated undertakings, and the "transfer of technology" payments as a proportion of available profits.)

Source: Published corporate annual reports.

in some of the high technology industries such as electronic computers but then it may be argued that as of now such know-how is not desperately needed. The foregoing remarks need to be qualified in one respect. The highest payments made for the "transfer of technology" relate to situations where the use of patents, trade marks and brand names is involved—an area where (as has been explained earlier) restrictive practices are abundant and the term "transfer of technology" is only a guise to provide legitimacy to these practices. Prime examples of such industries include soft drinks, pharmaceuticals, cosmetics and tea blending.[22]

International Operations: Division of Markets and Trade Cartels

This section deals with the international aspect of restrictive business practices. In particular, the arrangements and the agreements existing between the MNCs in the developed countries are examined along with the ramifications of such arrangements and agreements for Pakistan. The issues involved may be classified into two broad groups: those concerning the international division of markets and others that relate to the international trade cartels.

The international division of markets and allocation of regions between the MNCs is extremely difficult to establish as such arrangements are necessarily kept secret. The obvious effect of such division of markets is to lessen competition. Some indication of these arrangements may be inferred from the fact that only one of the several MNCs that are globally active in a particular industry may be operating in a specific country. Thus whilst Metal Box, ICI, Siemens, General Electric (U.K.), and EMI operate in Pakistan, their American counterparts, i.e. American Can, Du Pont and Dow Chemicals, ITT, Westinghouse, and RCA do not. These observations can only be suggestive and do not constitute conclusive evidence.[23] An exception is the division of markets arrangement between ICI and Du Pont which had been substantiated by the United States Federal Trade Commission in 1952.[24]

Once again there is little in the way of direct evidence available when it comes to assessing the role of the MNCs in international cartels and the consequent impact on Pakistan's terms of trade. Whilst the producers' organizations of the developing countries are well publicized[25] the same treatment is not accorded to the arrangements reached in the developed countries Every newspaper reaerd has been made familiar with the OPEC and its adverse implications but no talk of cartels of oil companies, companies producing heavy chemicals, producers of electronic computers and other manufactured goods has ever appeared in a similar campaign. Perhaps because such cartels do not affect adversely the

[22]For a summary view of the "transfer of technology" from MNCs to certain Iranian industries (some of the observations have equal relevance to Pakistani cases), see [7, pp. 90 and 93].

[23]For a summary discussion of some international division of market cases, see [20].

[24]See [21, p. 51] and [20, pp. 40-42].

[25]Recently publicized cases of producers' cartels include International Bauxite Association, International Council of Copper Exporting Countries, International Tin Agreement, Association of National Rubber Producing Countries, Union of Banana Exporting Countries and the "cartels" of coffee and cocoa producers. With the exception of Australia's inclusion in the International Bauxite Association, all these bodies have only the Third World countries for members. See [6].

interest of those who control international news media.[26] Faced with a total lack of pertinent facts I have attempted to gauge indirectly how far Pakistan's trade may be subject to the international cartels existing between the leading MNCs. Of the largest 650 MNCs, 562 MNCs or 86.46 percent of the total, are based in North America and Western Europe.[27] The trend in the value of Pakistan's trade with these countries is shown in Table 1.

Table 1
Pakistan's Trade with North America and West Europe as a Percentage of the Country's Total Trade

Period	Imports	Exports
1969-71	66.08%	29.66%
1971-73	52.86	30.37
1973-75	42.45	31.80
1974-75	27.40	27.61

Source: [10, Table 35].

The imports show a sharply declining trend.[28] This fact argues for the declining influence of the leading MNCs (and consequently that of international cartels) over the country's import trade. Exports have remained more steady. The leading export items, though, appear to be relatively less subject to cartel manipulation. About 70 percent of the total exports are accounted for by seven items; rice, raw cotton, manufactured cotton goods, petroleum and petroleum products, carpets and rugs, cement and sports goods. The respective shares of these items in the country's total exports are given in Table 2.

Table 2
Share of Major Items in Pakistan's Total Exports

	Share in Total Exports (%)	
Major Export Items	1969-75	1974-75
Rice	16.97	24.70
Raw cotton	12.59	14.36
Manufactured cotton goods	30.82	20.88
Petroleum and petroleum products, carpets and rugs, cement and sports goods.	8.74	9.16
Total	**69.12**	**69.10**

Source: [10, Table 32].

[26]Even the treatment accorded in a developed country's antitrust laws to home-based export cartels, vis-a-vis import cartels based abroad, is sometimes quite lenient. In the United States, for example, combinations and cartels of exporters are specifically exempted from the purview of the antitrust laws unless the domestic U.S. economy is adversely affected. However, if a foreign seller discriminates between competing American purchasers he is violating the law which may then be enforced by serivce on his U.S. agent or subsidiary. See [5, pp. 63 and 128-129].

[27]See [23, Table 1].

[28]Pakistan's imports from North America and Western Europe are, of course, part of the exports of that region. Available evidence shows that the leading MNCs control a substantial part of this trade accounting for 70 percent of the total U.S. exports, 80 percent of the UK's exports and over 75 percent of Sweden's exports. See [25, pp. 7-9].

In none of the seven goods, except in petroleum and its products, have any established cartels been known. The exports of petroleum and related items averaged 2.36 percent of the total exports over the years 1969-75. Though the evidence is both indirect and sketchy, it does consistently support the proposition that Pakistan's external trade is not significantly subject to any of the international cartels that the MNCs may operate.[29]

Regulation and Control

The restrictive business practices considered have national as well as international aspects. Although the restrictive practices, earlier identified as arising from the domestic operations of the MNCs, can perhaps be regulated through suitable measures taken by the national government, the jurisdiction of the individual national state does not similarly extend to practices resulting from the international operations of the MNCs. The regulations and control of restrictive business practices at the international level are properly a subject of international concern and warrant action at the inter-governmental level; various useful proposals exist but the matter is currently at the discussion stage[30] and there is little in existence in the way of actual regulations and controls. The best known concrete example of an inter-governmental effort in the Third World is the regional association of countries known as the Andean Common Market. Consisting of six Latin American countries, the Andean Common Market has of course a broader purpose than the control of restrictive business practices. Nevertheless, increased bargaining power (a product of the harmonization of relevant laws and of common policies) has resulted in these countries obtaining more advantageous terms from the MNCs than would otherwise by the case [23, p. 86]. Perhaps similar leverage could eventually be a by-product of Pakistan's participation in the RCD pact.

At the national level, the question of the extent of regulation and control is very much associated with the degree of the country's need for foreign capital.[31] The regulatory devices available include specific laws as well as general administrative procedures. The law addresses itself to the problem far more precisely than the administrative procedures—the latter, though more general in scope, have the advantage of greater flexibility and relative speed. The following paragraphs are an attempt to describe the relevant legislation and the administrative procedures (in that order). The last paragraph in this section considers some of the general policy measures which aid in the regulation and control of restrictive business practices although the main object of these policies may be otherwise.

A substantive part of the existing legislation on restrictive business practices addresses itself to the dominant firm problem. Firstly, informational requirements (i.e. registration with the authorities) exist in all cases where a

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[29]The raw cotton and manufactured cotton goods together constituted about 43.41% of Pakistan's total exports during 1969-75 (Table 2 above). The value and quantum of these exports is affected adversely by the quotas allotted and tariffs imposed by the developed countries against raw cotton and manufactured cotton goods. Whilst the MNCs are not directly involved in the matter (which is apparently decided at the government level) some of them may nevertheless be the gainers from these policies of quotas and tariffs and may constitute a lobby for that purpose.

[30]For a brief summary of the current discussions, see [25, pp. 26-29].

[31]Although frequently the regional distribution of foreign investment follows the prospect of profits in spite of staff regulation. See [1, p. 324].

firm has one-third of the market in a province. Situations of associated firms controlling one-fifth of a province's market are also subject to similar requirements [11, Sub-section 16(1)a, 16(1)b, 16(1)c, 16(1)f and 16(1)g]. Secondly, the law defines certain dominant firm situations which may be deemed "unreasonable". Such situations include relationships creating the status of associated firms between two or more firms that may control one-fifth of the market, mergers between firms that may lead to the aforementioned situations, and the advancing of loans by financial institutions on specially favourable terms to a specific firm. These situations need not be prescribed as "unreasonable" if it is shown that they satisfy the "gateway" clauses, i.e. have the effect of greater efficiency, increased exports and enhanced technical progress [11, Section 5]. Thirdly, the law provides remedial action (by the authorities) to counter the unreasonable circumstances in the dominant firm case. Such action includes, specifically, the power to remove a person or persons (including firms) from the ownership, control or management of the firm in question, limit the loans being made by financial institutions to the firm in question, and, more generally, require the person or firm concerned to take such action as may be necessary to restore competitive prices and eliminate restrictions on output or entry of competitors in the market [11, Sub-section 12(1)b].

The law has further declared as unreasonably restrictive trade practices agreements between actual and potential competitors where the purpose or the effect is to fix prices, divide customers or markets, restrict output, distribution or sale, limit technical development, exclude by boycott (or other means) any other person or firm from entering the trade in question, and impose any other restrictive trading conditions. Also classified similarly are all agreements which require the acceptance of additional goods or services which are not, by custom of the trade, related to the subject matter of the agreement as well as all agreements where the effect is the fixing of prices between a supplier and a dealer of goods [11, Section 6]. The "agreement" need not be in writing, (it may be inferred from the conduct of the parties) and it need not be legally enforceable [11, Sub-section 2(1)a]. Exemptions exist in the usual "gateway" clauses of efficiency, exports and technical progress. The law further requires that the authorities be informed of the particulars of the type of agreements described above as well as any licence of patents or technology which limits the licensee to manufacture, price or sell the goods as he chooses and in areas that he chooses [11, Sub-section 16(1)e, 16(1)i, 16(1)k, and 16(1)l]. Where an agreement is established as an "unreasonably restrictive trade practice" the law provides for remedial action. In such cases the agreement may be terminated or modified as to remove the cause of offence and the firm may be required not to repeat the offending acts in future. More generally, any necessary action for restoring competition may also be ordered [11, Sub-section 12(1)d].

Besides legislation specifically aimed at dominant firm situation and other restrictive business practices, there are a number of regulations and administrative procedures of more general applicability that also have some ancillary effects relating to restrictive business practices. The firms of multinational origin in the petroleum refining and distribution business as well as the extraction and distribution of natural gas business almost invariably have one or more Government of Pakistan nominees on the board of directors. Rules relating to disclosure in the annual accounts of firms quoted on the stock exchanges require that amounts paid for royalties, technical fees, patent and

trade mark fees, and know-how fees be stated. Purchases made from and sales made to the associated firms also require disclosure. If more than fifty percent of the firms' equity capital is held by one firm or person then the exact amount of the shares held and the name of the owner need to be stated.[32] These informational requirements, besides bringing otherwise obscure but important facts to light, also tend to discourage extreme situations for fear of adverse publicity. Quite independent of the applicability of the above requirements, all transactions involving foreign exchange fall within the jurisdiction of the State Bank of Pakistan and are subject to the relevant regulations of the Bank as well as to other laws having applicability to foreign exchange transactions. In keeping with such regulations, all agreements and arrangements that require payments abroad of royalties and related fees as well as dividends are studied by the Bank and are subject to its approval. Administratively, all investment proposals of meaningful size are in one aspect or another subject to scrutiny and approval of the Ministry of Industries and the Ministry of Finance as well as a committee comprising officers from the several concerned deprtments of different Ministries.

Finally, certain recent measures taken by the Government for objectives other than the control of restrictive business practices may, nevertheless, be significant in the present context. State control was extended to the Pakistani firms in a number of industries. Although the state-controlled units at present exist independently but eventual consolidation should produce units larger than the leading foreign firms that may currently dominate the market; industries where this point is of relevance are edible oils and fats as well as chemicals. Another measure, the promulgation of the Generic Names Ordinance, should have a discouraging effect on the restrictive business practices that may at present prevail in the pharmaceutical industry: the law requires that practically all pharmaceutical products be marketed by the common generic names and not under the trade marks or by the brand names. Over a period of time, this new practice should lead to increased competition as brand loyalties, and consequently patents and trade marks, lose significance.

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[32]Rule 12(2) of the Second Schedule (Paragraph 8(B) ix of Part I and paragraphs 1(C)vii and 4(1)k of Part II) of [13] read jointly with section 33 of [12].

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