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MANAGING FOREIGN INVESTMENT

A Study of Eight Selected Countries

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MANAGING FOREIGN INVESTMENT

A Study of Eight Selected Countries

Introduction

In five years, writes Robert Reich in The Next American Frontier, it is probable that 300 giant firms will produce half the world's goods and services. The Harvard economist predicts that the production processes of these firms will be dotted throughout the world with specialized parts produced and assembled in dozens of locations. Even if Reich's figures prove incorrect, the trend toward an ever greater role in the world economy for multinationals cannot be disputed, nor can the demise of 'national' products made entirely in one country such as "American" cars or "Japanese" television sets. Fragmented and flexible production based on the availability, almost anywhere in the world, of specialized skills, cheap labour, advanced technology or access to raw materials, will be an expanding fact of economic life.

Since the end of the Second World War multinational firms have assumed a greatly enhanced role in the economic life of the non-communist world. Multinationals have evolved from a few international investors seeking resources in two or three countries to world-wide industrial giants with operations in 60 or more countries. U.S. companies were the first to multiply on a large scale, but in the last few years they have had to face growing competition from European, Japanese, and even some third world multinationals.

As the breadth and power of the multinationals have grown, they have become the dominant mode of foreign investment. The question of how to handle such investment has become increasingly important to national governments. Access to financial resources, entrepreneurial skills, technological advances, export markets and other benefits offered must be balanced against such problems as low levels of research and development, export restrictions, threats to domestic producers and loss of control of important sectors of the economy.

In this paper the approaches of eight selected governments to the entry of foreign investment in their countries is examined. These countries - Australia, France, Japan, Mexico, Sweden, the United Kingdom, the United States and West Germany - present a wide range of responses to the issues raised by incoming investment. These responses generally reflect historical developments and economic conditions in each country. Countries with resource-based economies, for example, want to control the exploitation of their resources, either by reserving them for the state or by insisting that domestic firms play a role in extraction and development. As a newly industrialized country, Mexico wants access to the advanced manufacturing techniques offered by foreign companies while avoiding what it regards as harmful multinational practices. And an industrialized country, such as France, wants to ensure that domestic producers have the opportunity to develop a high technology sector without undue competition from outsiders. Such expectations, of course, are not exclusive to any one group or country, but may help to explain the use of protective measures in different countries.

Governments of countries that are predominantly "home" to multinationals - e.g. U.S., U.K., and West Germany - tend to erect far fewer overt barriers to foreign investment than do "host" countries. For these highly industrialized countries foreign investment still does not have a major impact on the economy. Nonetheless, all countries do reserve certain sectors for their nationals. Defense industries, nuclear energy and some utilities are most commonly closed to outsiders, usually for national security reasons. (Different countries tend to interpret "national security" with varying degrees of latitude and, in some cases, it may include large segments of the economy.) Financial institutions, particularly banks, are often closed to foreigners or closely regulated. For social and cultural reasons communications and media control by foreigners may also be restricted and resource extraction and processing is frequently limited to nationals. Domestic control of sectors such as transportation, petroleum, steel production, or auto manufacturing may also be considered essential to the national interest by some governments.

In addition to closing certain sectors to foreigners, governments frequently establish conditions under which the foreigner must operate. These conditions have been devised to counteract what are viewed as negative aspects of foreign investment. Thus investors are often expected to use and train local employees, purchase domestically-produced parts and services, introduce new technology, take on local partners or managers, increase exports and so on, in return for the opportunity to invest in a country.

Whether or not formal conditions of entry exist, negotiations or discussions between host governments and foreign multinationals are increasingly common. It is normal practice for officers of firms to consult with government departments and agencies before drawing up proposals for investment. On occasion these plans are so important that senior politicians become actively involved in negotiations. Such negotiations will routinely involve give and take from both sides, with most governments offering considerable incentives for desired investments at the same time that they impose conditions that will provide the economic benefits they require.

While economic conditions or political changes can influence the strictness with which investment regulations are applied, investors do not appear to be particularly influenced by the existence or severity of conditions of entry. In a study for the Conference Board entitled "Operating Foreign Subsidiaries", Ronald Berenbeim records the results of a survey of 109 multinational companies. While executives acknowledged the difficulties caused by some restrictive regulations, particularly foreign exchange restrictions, few indicated that such regulations were a factor in coming to a decision to invest in a particular country. Decisions were based, instead, on the expected profitability of an investment which in turn might be dependent on such factors as access to capital, skilled labour or consumer markets rather than investment controls. Mexico, for example, imposes quite extensive conditions on foreign investors. Nonetheless, as these conditions multiplied in the 1970's, U.S. direct investment grew steadily from $1.9 billion in 1970 to $4.6 billion in 1979, showing an average annual increase of 10.5%. Only with the decline of oil prices, the onslaught of world-wide recession and the nationalization of the banks did foreign investment in Mexico subside.

In this paper conditions governing incoming investment are examined on a country by country basis. For each country a brief description of the status of foreign investment precedes an examination of the regulations which directly affect foreign investment. Further sections on sectors which are closed to foreigners either through legislation or through ownership by the state are included, as is an examination of legislation which indirectly affects foreign investors. These latter sections are included in order to provide a more complete picture of the conditions faced by the foreign investor.

FOREIGN INVESTMENT CONTROLS IN AUSTRALIA

A. General Situation

Foreign direct investment has been an important source of capital in Australia since the end of World War II. During the 1960's Australia's open investment policies and rich mineral discoveries combined to attract large foreign mining investments. This, in turn, attracted a variety of foreign industrial and commercial investments. It is estimated that 60% of the mineral industry (excluding exploration), 50% of mineral exploration, and 33% of manufacturing, general insurance and non-bank finance are foreign-controlled. Within these broad sectors, certain industries show even higher levels of foreign control, such as automobiles (100%), oil refining (90%), basic chemicals (78%), brown coal and petroleum (84%), silver, lead and zinc (75%) and black coal (59%). These figures indicate that, among developed countries, Australia is second only to Canada in the level of foreign ownership and control of its economy.

In the early 1970's concern over the extent of foreign ownership led the Australian Government to introduce a foreign investment policy that provided for the review of new foreign investment proposals. The primary thrust of this policy is to recognize the contribution of foreign investment in Australia's economic development and to encourage such investment provided "it is consistent with Australia's national interests and meets the needs and aspirations of the Australian community". Australian participation occupies a central place in the Government's policy, making the extent of Australian equity and management key considerations in evaluating an investment proposal.

The inflow of foreign direct investment in Australia in fiscal year 1981-82 amounted to $1.8 billion*. The largest foreign investor was Japan ($341 m.), followed by the U.S. ($299 m.) and the U.K. ($268 m.). This marked the first year that Japan, a relative newcomer as an investor, took the lead over the U.S., which remains the dominant investor. Major sectors of direct investment were finance and property, manufacturing and mining.

B. Regulations Affecting Foreign Investment

The Treasurer of the Commonwealth of Australia implements foreign investment policy with the advice of the Foreign Investment Review Board (FIRB), which is composed of representatives of the public and private sectors. The FIRB, in turn, is advised by the Foreign Investment Division of the Treasury, which operates as the executive and staff of the Board. The key elements of the review process are outlined in Table 1.

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*all figures are in Australian dollars

TABLE 1

KEY ELEMENTS OF THE AUSTRALIAN REVIEW PROCESS

TREASURER - decides

- A government minister

FOREIGN INVESTMENT REVIEW BOARD (FIRB) - advises the Treasurer

- 3 members: 2 private and 1 public sector

FOREIGN INVESTMENT DIVISION of the Treasury - reviews proposals and advises FIRB

- operates as executive to FIRB

Authority for Review - The Foreign Takeovers Act
Ministerial Statements

Definition of Foreign Investment- Total foreign equity of 40% or more; single foreign shareholder with 15% or more.

Transactions Reviewed	Transactions Not Reviewed
Takeovers and acquisitions	Takeovers of less than $2 million. (automatic approval)
New investments	New investments under $5 million.
Expansions	Expansions of less than $2 million or in related activities.
Real estate acquisitions	Real estate acquisitions under $350,000.

Assessment Criteria	Review Scoreboard
Conformity with economic policies Australian participation Net economic benefit* Promotion of Australian interests*	about 1,000 - 1,200 cases annually 30 day review period normal (maximum 90 days). 95% approval rate prior negotiation encouraged

Special Treatment in Key Areas

All investments in finance and insurance sectors, the media, civil aviation and uranium must be reviewed.

Real estate investments generally require 50% Australian participation.

Resource sector investments require 50% Australian participation, except uranium which requires 75%.

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* e.g. impact on competition, new technology and skills, access to exports markets

** e.g. use of local parts and services, increased R & D, employment, and risk capital

The FIRB must be informed of all new foreign direct equity investments. It has the authority to review takeovers, acquisitions of shares, new businesses and certain expansions of existing foreign businesses. Foreign investments, for screening purposes, are defined as those with a total foreign equity of 40% or more with a single foreign shareholder owning 15% or more of total equity.

Authority to review investment proposals is granted through The Foreign Takeovers Act and through policy statements of the government. Foreign proposals falling within the scope of the Act include:

1. Any acquisition of shares which would result in, or increase, a substantial interest in an existing company.
2. Any acquisition of an Australian business by the purchase of assets. (In practice, most acquisitions involving less than $2 million are approved automatically.)
3. Any arrangement that would give a substantial foreign shareholder in an Australian business rights to representation on the board of that business.

Investment proposals not coming under The Foreign Takeovers Act are also reviewed if they come under the following categories:

1. <u>All</u> proposals to establish a new business in industries subject to special restrictions, These industries are: finance, insurance, the media, civil aviation, and uranium and its related activities.
2. Direct investments by foreign governments or their agencies.
3. Other proposals for a new business or diversification where the total investment is $5 million or over.
4. Proposals to acquire real estate valued at $350,000 or more.

Investors whose proposals fall under the second category are not legally required to submit them to the FIRB. However, separate foreign exchange control approval from the Reserve Bank of Australia, which controls all foreign exchange transactions with non-residents, is not normally granted without FIRB approval.

<u>Assessment Criteria</u>

Investment proposals are examined on a case-by-case basis. They are assessed on their ultimate contribution to the economy (or their "net economic benefit"). The major assessment criteria used to measure this contribution include:

1. Conformity with government economic and industrial policies.
2. The extent of Australian participation in equity, management and control.
3. The economic benefit to Australia as indicated by the proposal's impact on competition, price levels and efficiency; the introduction of new technology or skills; improvement in the quality and variety of goods and services; and the development of access to new export markets.

4. The promotion of Australian interests through local processing and the use of local parts and services; increased R & D; beneficial royalty, licencing and patent agreements; the introduction of risk capital; and improved employment prospects.

Australian participation occupies a central place in the government's foreign investment policy, reflecting its determination to ensure that Australians have the opportunity to participate as fully and effectively as possible in the development of Australia's industries and natural resources. In those sectors of the economy where foreign ownership is particularly high, significant economic benefits and/or significant Australian participation must be demonstrated before approval is granted. Concern over the growing amount of foreign speculation in property, for example, has led to a much firmer stance toward foreign real estate developers who must clearly demonstrate a commitment to Australia. In announcing the disallowance on April 6, 1983 of a proposal by Sanko Shoje of Japan to acquire land to build a holiday resort, the Treasurer, Paul Keating, stated:

> "The Government's foreign investment policy will be used to combat speculative dealings in land and property ... The proposed venture would have been largely foreign-owned and controlled, and thereby inconsistent with foreign investment policy."

And further, when the government decided to block a plan by Unilever Australia (U.K. and the Netherlands) to buy two Australian food businesses, Keating stated:

> "Foreign takeovers proposed, particularly when they involve industries such as the food industry in which foreign ownership and control are already significant, need to demonstrate net economic benefits before approval is given."

"Naturalizing" Foreign Investment

It is not yet clear whether the concept of "naturalization", introduced by the previous government in 1978, will continue to be applied by the new Labour government. Under this system a foreign company, with at least 25% local ownership and a majority of Australian citizens on its Board, that makes a public pledge to increase its Australian equity to 51% in the future, can be treated as an Australian company for investment purposes; thus allowing it to undertake new investments without FIRB approval. The method and timing of the increase in Australian equity is negotiated with FIRB, and even before the election of the Labour government in 1982, the guidelines were somewhat tightened.

C. Restricted Sectors

Closed Sectors

Foreign investment is not allowed in utilities, daily newspapers, certain parts of the civil aviation industry, and in savings and trading banks.*

Special Restrictions

Special restrictions exist in finance, insurance, the media, parts of civil aviation, agriculture, natural resources and in automobile manufacturing. In areas such as finance and insurance, where foreign ownership is widespread, all proposals are reviewed and the net economic benefits test is strictly applied. In the following sectors, specific conditions are established:

The Broadcasting and Television Act limits any single shareholder to 15% or less of issued capital of a company holding a broadcasting licence. Not more than 20% of the shares of such a company may be held by non-residents of Australia.

Real estate acquisitions valued at more than $350,000 are reviewed by FIRB and those with over 50% Australian participation are usually approved. In the case of rural land purchases, the Treasurer announced in January 1982 that only those which show "substantial net economic benefits" would be approved. It is further required that foreign investors in rural properties maintain a residence in Australia.

Natural Resources. Special regulations govern the permissible amount of foreign investment allowed in "key areas". These key areas include exploration for oil and gas; mineral production and development; agricultural, forestry and fishery projects. In these areas foreign equity and board membership may not exceed 50%, though for certain companies this 50% requirement may not be applied until the project reaches the production stage. Foreign investment in uranium is permitted, but at least 75% of the shares must be held by Australians by the start of production.

Automobile manufacturers are required to meet an 85% local content requirement by the end of 1984. However, an export 'credit' scheme, whereby an auto maker may import parts equivalent in dollar value to the parts exported, is also in operation. It has recently been expanded in such a way that a successfully exporting firm may import up to 30% of its requirements.

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* The entry of foreign banks was banned about 50 years ago and only 2 foreign banks were established at that time. However, about 80 foreign banks have representative offices. A study released in 1981 recommended that foreign banks be allowed access and in January 1983 the Fraser government announced that it would grant licences to 10 foreign banks. Observers suggest that the new Labour government will not carry out this more open policy.

D. State Ownership

Apart from the production and distribution of electricity and gas, federal and state governments have almost complete responsibility for public utilities. These include the railways, water supply, ports, harbours and telecommunications. Broadcasting, shipping, airlines and road transportation services are shared with private sector.

About 80% of the forests are government-owned and exploited privately, under licence.

Both federal and state governments are involved in finance and public housing. States also operate a variety of ventures from lotteries to brickworks. Although the Australian constitution effectively prevents the nationalization of industry, the federal government is involved in some industrial activity such as the manufacturing of drugs and the operation of an irrigation project.

E. Indirect Legislation
Trade Practices Commission

All foreign takeovers also require permission from the Trade Practices Commission which administers the Trade Practices Act of 1974. Investors may apply to both FIRB and the Commission simultaneously.

The Act is patterned on U.S. antitrust laws and prohibits price fixing, resale price maintenance, misleading advertising, exclusive dealing, monopolization and anticompetitive mergers. It is not applied as stringently as U.S. law, however, and a corporation in a monopoly position may avoid prosecution if it does not abuse its power. Certain mergers may also be allowed even if they limit competition, if they are considered to be 'in the public interest'.

Foreign Exchange Controls

Exchange control approval is required for the allotment, to foreigners, of equity capital in Australian corporations. If approval for the original transaction has been obtained, permission for the repatriation of funds is normally routine, but always subject to: (1) the economic policy of the government at the time and (2) provision for the payment of the tax liabilities in respect to foreign currency movements.

Approval from the Reserve Bank of Australia of applications from foreign investors that satisfy exchange control requirements would be subject to prior approval from FIRB.

FOREIGN INVESTMENT CONTROLS IN FRANCE

A. General Situation

France applies more controls to foreign investment than any other European country. Since 1939, when it introduced tough foreign exchange regulations, France has had in place the legal and administrative tools needed to regulate foreign investment. These tools have been used with fluctuating determination since that time.

The current approach has been characterized as "selective encouragement". Investments that offer new technology or exports, ones that promise industrial development and employment in economically depressed areas, or ones that will improve the balance of payment inflow or save a dying company, are encouraged. Those that may involve investment in sensitive industries or may result in undue competition for a developing national industry are discouraged. If a foreign investor wishes to acquire a company in a sensitive sector, a "French solution" (alternative French buyer) may be sought to avoid an increase in foreign ownership.

Foreign investment proposals are examined pragmatically on a case-by-case basis. An anonymous government source has said that "it is ... impossible to list specific criteria determining whether an applicant will be successful, except the very general criterion that the investment must be of benefit to the French economy".

Total foreign direct investment amounted to Ffr19.6 billion in 1980, an increase of about 17% over the Ffr16.8 billion of 1979. In 1980, 54% of this investment came from EEC countries and 12% from the U.S.. Services accounted for 32.4% and manufacturing 33.5% of the total. Industries in which foreign-controlled companies have more than 50% of total sales include petroleum, agricultural equipment, computers and electronic equipment, and chemicals.

B. Regulations Affecting Foreign Investment

Foreign investors are required to have approval from a number of government agencies. The Treasury Department of the Ministry of Economy and Finance has the primary responsibility for the screening and monitoring of foreign investment in France. Regulations are not encompassed in any specific law, but have evolved from a series of decrees and administrative practices.

Any non-EEC foreign investor who wishes to acquire, expand or establish a business and will hold more than a 20% interest in the business must have prior approval from the Ministry*. In special circumstances investments of less that Ffr5 million per year may be exempt from review by the Ministry.

* After years of objections to such regulations from fellow EEC countries, the French Government finally agreed in 1980 that EEC companies investing in French firms need only inform the government of their plans. If more than 20% of the company is owned by non-EEC investors, the basic approval procedures apply.

Investors are required to complete an application form which calls for the submission of detailed information on the investing company and a full description of the planned investment including volume of exports, proportion of domestic purchasing, origin of imports, level of foreign participation, licensing and technical agreements, financial arrangements and so on. The procedure for takeovers is basically the same as for new businesses, though the criteria are somewhat different. A strong deterrent to takeovers is the requirement that they be entirely for cash, payable immediately. Acquisitions for stock are not permitted.

Investment applications are also reviewed by the Ministry of Industry and the Territorial and Redevelopment Agency (DATAR). Major investments are referred to the Interministerial Committee on Foreign Investment, which consists of the heads of 14 government agencies. Each agency or department concerned examines the project in light of its special interests and a strong negative reaction from any one of them may endanger the chance of approval.

The approval process generally takes about two months, but special circumstances may delay a response and this delay is sometimes used to encourage an alternative French buyer. While no figures are available on the number of rejected proposals, it is possible to determine a current tendency to discourage investment in some areas. Officials are often resistant to plants that might compete with a local industry or interfere with government policy on industrial restructuring. Also, in the technology sector, manufacturing proposals are acceptable, while equipment sales offices which merely distribute imports are not. The reasons behind rejections are not disclosed.

Negotiations for greater benefit are not unusual. For example, after a year's indecision, the Giscard government finally allowed Star Kist, a subsidiary of H.J. Heinz, to take over Poulet, France's second largest tuna packer, after Star Kist guaranteed that it would increase exports and create 300 additional jobs. Mitel was also refused a go-ahead, even though it promised an investment of Ffr150 million and 1000 jobs, until it agreed to export 60% of production.

Exchange Controls

Since May 1981, foreign investors have been required to bring 75% of their investment capital from abroad, though once a business is established they are free to borrow locally. Repatriation of capital requires prior approval from the Ministry of Economy and Finance.

Real estate

Foreign real estate investments must be approved by the Bank of France. However, there are no restriction on foreign acquisitions for industrial purposes.

C. Restricted Sectors

Foreign investment is restricted, normally to a 20% share of equity, in highway transportation, stock brokerages, travel agencies and life insurance companies. In banking, mutual funds and other insurance, foreign investors must comply with special approval procedures. In the petroleum industry, the government has imposed a limit to the number of firms authorized to operate refineries. At present, only nine firms, some domestic and some foreign, are allowed.

Companies in other sectors do not face specific limitations, but the government, at times, controls the extent of foreign ownership in certain industries. Nuclear power and computers are current examples. U.S. companies in these industries were forced to reduce their shareholdings in the "national interest". Japanese investment in electronics is closely watched and Thomson's planned joint venture with Victor Co. of Japan, Thorn Emi of the U.K. and AEG-Telefunken was dropped because of Government opposition to Japanese participation.

D. State Ownership

The state has exclusive ownership in broadcasting, postal and telecommunication services, tobacco, railroads, gas and electricity. It has also become a major manufacturer of airplanes, automobiles and tractors and is heavily involved in oil production and refining.

The nationalization program of tne Mitterand government, introduced in October 1981, called for the government takeover of five major industrial groups and thirty-six banks. In 1982 financial companies were added to the list. Companies that are more than 50% state-owned and financed are considered nationalized and now number over one thousand. These account for 32% of French manufacturing and 38% of production. Industries which are more than 50% state-owned include steel (80%), metalworking (63%), base chemicals (54%), arms (75%), aircraft (84%) and banks (90%).

The state has long played an active role in business affairs and continues to be closely involved in the management of both fully and partially-controlled enterprises. It has engineered the restructuring of several industries (e.g. steel, shipbuilding, pharmaceuticals) and plans are in progress to restructure the chemical industry in the near future.

E. Legislation Which Indirectly Affects Foreign Investment

In addition to regulating foreign investors, the French government imposes controls on all investors, both domestic and foreign.

Plant construction or expansion

Both local and national governments are involved in plans for the construction or expansion of business operations. Zoning, building and architectural approvals are all required, a process which takes from two to four months. Companies are also required to carry out an environmental impact study which must be published in the local newspapers so that the communities affected may voice any possible objections. Because of the government's decentralization policies, even stricter requirements are enforced in Paris.

Share purchases

Acquiring firms must disclose share purchases to the Commission des Operations de la Bourse, the regulatory body of the French stock exchange, once they exceed 10%, 33% and 50% levels.

Competition Laws

While cartel laws prohibit all agreements which impede free competition, the law has not been strictly applied and cartels are now widespread in France. In fact, the government often encourages mergers and other kinds of cooperation among competing companies. Practices which would lead to higher prices are the ones most closely watched by the Competition Commission.

Approval of the Competition Commission is required for any horizontal merger that would result in control of 40% of the market share, or any vertical merger that binds two companies controlling 25% of the market.

Labour legislation

France's labour laws are very strong, particularly in cases which involve mass dismissals. Most companies prefer alternatives, such as compensated early retirement, to large-scale permanent layoffs.

FOREIGN INVESTMENT CONTROLS IN JAPAN

A. General Situation

Japan's liberalization of its foreign investment laws has been described as an adjustment from "prohibition in principle" to "freedom in principle". The liberalization process, which began 10 years ago, has been implemented slowly. For years, traditions of cultural isolation and economic protection were effectively maintained by complex bureaucratic processes which excluded foreigners from the economic system. However, the very success of this system internationally finally led to its demise, as Japan's trading partners demanded access to the Japanese economy and as Japanese businessmen sought joint ventures with foreign entities that could offer them technological or marketing advantages.

The Japanese version of free enterprise remains confusing to westerners. On the one hand, nationalization and government ownership is unusual, on the other, central government influence over the economy is strong. The close links between government, private organizations (e.g. The Japanese Federation of Economic Organizations, the Japan Chamber of Commerce and Industry etc.) and business has meant that officials have been able to offer "administrative guidance" on an informal basis. For years the Japanese economy appeared to be a "closed shop" which operated with an amazing degree of unanimity among its key players.

Though formal controls on incoming and outgoing investments were removed in December 1980, major industrial groups and the Ministry of International Trade and Industry (MITI) continue to cooperate to ensure that domestic firms will not suffer from the influx of foreign firms. Orderly marketing, R & D financing and mergers of local companies have been encouraged. Complex bureaucratic procedures are still available to control unwanted foreign investment.

Foreign investment has risen substantially in Japan in the past few years, but after years of strict limitations it represents only a very small proportion of the economy.* Since the removal of formal controls in 1980 there has been a substantive rise in both the number of foreign firms and the amount of their investment. Prior to 1980 the average annual increase in the number of firms was 6%. In 1981, however, it jumped to 22%. The increasing value of investment also reflects this rise. For 1981-82, foreign direct investment amounted to U.S. $432 million. This figure was quickly overtaken in the first six months of 1982-83, when it rose to $450 million.

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*The Economist (November 13, 1982) reports that foreign firms in Japan account for 1% of the work force, 2% of Japan's corporate sales and 3.3% of its total profits.

The cumulative value of foreign direct investment as of March 1982 was $3.4 billion. In 1981-82 the largest investor was the U.S., which accounted for 34.5% of the total, followed by Switzerland (8.8%), Germany (8.6%) and the U.K. (6.9%). Manufacturing industries drew 68% of these incoming funds.

MITI reports that European firms are now beginning to overtake the U.S. as the dominant investors. In 1981, for example, 54 new EEC companies were established in Japan, one third more than those from the U.S.

A joint venture with a local partner had been the usual mode of investment. This enabled the foreign investor to use his Japanese partner to lead the way through the intricacies of the bureaucracy and was also often imposed by government regulations that limited the proportion of foreign ownership. This pattern is changing now that 100% foreign ownership is allowed. MITI and some prefectoral governments have even introduced incentive programs for investors which include 100% foreign-owned firms as well as joint ventures. These programs are used primarily to encourage investment in rural areas, particularly in high tech industries.

B. Regulations Affecting Foreign Investment

Rules governing foreign investment are integrated under the Foreign Exchange and Foreign Trade Control Law. Regulations applied under this law were liberalized in 1973 and 1980. The most important change for the foreign investor came in 1980 when foreigners were permitted to hold 100% of the equity of a business in most industries. The investor must, nonetheless, go through a formal notification procedure involving the following considerations:

1. The investor must submit an application for validation of his proposed investment to the Foreign Exchange Council, the Ministry of Finance and other interested ministries and then wait 30 days before proceeding. During this period, the government can order changes in the proposal if it considers any part to be contrary to the national interest. In practice, unless the proposal is in a "strategic" industry, approval is readily granted.

2. Following this approval (and sometimes following the implementation of the proposal) the Fair Trade Commission (FTC) reviews the proposal to ensure that it does not violate antitrust laws. This procedure normally takes 60 days and alterations in a proposal are negotiable. Since the FTC has authority only over 'international' agreements, its procedures may be avoided by entering into an arrangement with a Japanese firm through a branch office or subsidiary.

   The FTC may re-open contracts at any time and may insist on the renegotiation of the terms of an existing agreement. This has recently been true of heavy industry agreements signed about 15 years ago when Japanese needs were different than today. In 1979, for example, the FTC, suspecting unfair restrictions on exports, held a

public inquiry into the 1962 joint venture contract and 1970 licencing agreement between Bucyrus-Erie (U.S.) and two Japanese companies, Komutsu and Mitsui. In 1981 proceedings were dropped, when the companies agreed to cancel their contracts.

The FTC also uses pressure to have restrictive clauses removed. This was the case with Caterpillar Tractor which tried to limit transfers of technology and its Japanese partner's right to develop new products and markets.

3. Building permits must be granted by local authorities, but may also be reviewed nationally if pollution questions are involved. Foreigners are free to purchase land and buildings only if the investment has been validated and the land and buildings are for a business use.

4. Except in "restricted" companies, takeovers are possible provided the target company's management is not opposed. This requirement is regarded as a major barrier by many foreign investors.

5. A branch business may be established through simple registration procedures. However this does not replace the validation procedure, which must also be followed.

6. In joint ventures, Japanese membership on the Board of Directors is expected to be in proportion to its shareholdings. In 50-50 ventures at least one of the chief executives (often the president) is normally Japanese. Note that these are 'expectations' rather than formal requirements.

7. Approval is sometimes contingent upon the use of local materials or components. Joint ventures, such as Nichiro-Heinz, had to pledge to make maximum use of domestic raw materials; and MacDonalds was required to import its beef from Australia and purchase locally all its other raw materials, except potatoes and barley seed.

8. Other conditions may also be imposed before approval is granted. The product line or the scale of output may be controlled, or clauses requiring the importation of raw materials or machinery may be deleted. When Kaiser Aluminum entered a joint venture with Showa Denka and Yawata Steel, for example, they agreed to avoid production in lines in which small Japanese firms specialized.

The foregoing list illustrates the importance of developing an accord with the Japanese authorities before embarking on the formal application process, particularly for investments in sensitive areas. Three-sided talks between the Japanese and foreign partners and government officials are common and may be extended to include representatives of the industry involved and even rival manufacturers. Officials are sensitive to opposition from such groups and this can lead to protracted negotiations, such as the 1980 Exxon and Mobil agreement to acquire 50% of Nippon Unicar which took 3 years of discussion before advancing to formal consideration by the Foreign Exchange Council.

C. Restricted Sectors

Investments in aircraft, arms or ammunition, atomic energy, aerospace development and narcotic industries are virtually prohibited for reasons of national safety and public order.

Until December 1980, foreign investment was also prohibited in agriculture, forestry and fisheries, petroleum refining and marketing, mining, leather and leather-product manufacturing. These restrictions have been formally lifted, but investments in these areas are reviewed carefully and a ceiling of 50% foreign ownership appears to apply.

Some industries are considered 'strategic', which means that the Ministry of Finance or other competent ministries have set limits on the degree of foreign ownership. The following eleven companies are presently considered to have strategic importance and the extent of foreign shareholding in them is limited as indicated: Sankyo Pharmaceutical (vaccine manufacturing, limit of 25%), Katakura Industries (textiles, 25%), Fuji Electric (heavy electric machinery, electric appliances and nuclear power, 26%), Hitachi (general electric machinery, electronic equipment and nuclear power, 30%), Tokyo Precision Instrument (aeronautic instruments, 32%), Arabian Oil (25%), General Oil (49%) and Showa Oil, Mitsubishi Oil, Toa Nenryo Kogyo and Koa Oil (all 50%).

D. State Ownership

In Japan the state's role is normally that of a regulator, rather than proprietor. The government owns the Telegraph and Telephone Corporation, most of the national railways and 40% of Japan Air Lines. It also has a production and sales monopoly over tobacco, salt and industrial alcohol. The Administrative Reform Commission, which submitted its recommendations in July 1982, has called for a reorganization and denationalization of government-run institutions. If these measures take place, foreign firms could particularly benefit from a reduction in the state's role in the tobacco and telecommunication industries.

E. Indirect Legislation

The Antimonopoly and Fair Trade Law was written by the U.S. occupying authorities in 1947. Until 1977 it was applied very leniently, since the government preferred to encourage cooperation. Legal cartels have, in fact, been widely used by the Japanese to enforce cooperative production and marketing. The use of cartels is diminishing, but foreign firms may still occasionally be required to participate. This may happen if a foreign firm is part of a joint venture participating in a cartel or if MITI stipulates, as a condition of approval, that a proposed joint venture belong to a cartel. Such a requirement can create difficulties for U.S. and German firms that are in danger of infringing on their home country's antitrust legislation.

Since 1977 the FTC has become more vigilant in preventing monopolistic situations. Mergers which would bring a company close to a 30% market share are near the "peril point" and would not be allowed more than this share without strong justification.

FOREIGN INVESTMENT CONTROLS IN MEXICO

A. General Situation

In some ways the Mexicans face foreign investment problems that are similar to those encountered in Canada. They also share a common border with the United States and feel they must protect themselves from being overcome by its massive financial and industrial strength. Mexico, too, has vast petroleum reserves which contribute substantially to its economic base. And Mexico, like Canada, recognizes that foreign investment is essential to provide the capital and technology necessary to exploit resources and develop an expanding manufacturing sector. Furthermore, in both countries the state has traditionally played a significant role in economic development.

There are, of course, great differences between Canada and Mexico, not only culturally and linguistically, but also in the evolution of their approaches to foreign investment. In the early years of this century foreigners owned over half the total wealth of Mexico and one quarter of the arable land. Foreign enterprises were dominant in all economic areas except agriculture. This dominance contributed to the nationalism and revolution of the period from 1910 to 1920. Revolution, expropriation and depression, all led to a massive flight of capital over the next 25 years. Only in petroleum did foreign investment increase - until the industry was nationalized in 1940. In 1944 a presidential decree limited foreign equity in businesses to 49%. Even though the degree was not enforced at the time, the principle that Mexicans should have majority ownership and control in most industrial endeavours has remained.

The rapid growth of the Mexican economy from 1940 to 1970 led to a level of 27% foreign ownership in manufacturing by 1970, with particular concentration by foreign multinationals in the electrical machine industry (79% foreign) and the rubber industry (84%). The tendency of the multinationals to eliminate Mexican competition in some sectors led the government to search for an effective method of controlling foreign investment.

In many instances foreign ownership was replaced by state ownership - which expanded steadily. In the last few years, however, a trend toward "Mexicanization" of industries, rather than state ownership, has been evident. The current approach to foreign investment is one of selective encouragement. This approach is written into Mexican investment law which generally limits foreign equity and control in Mexican enterprises to 49%. Investments which involve a higher level of foreign participation must be approved by the government. Foreign investment is expected to help achieve Mexican economic objectives by complementing national investment and by creating development in areas as yet untapped by Mexican businesses. Foreign investments which introduce new skills or technology and ones which increase exports are encouraged. However, foreign parent restrictions on the use of technology or restrictions on the sale or distribution of Mexican products abroad are not considered acceptable unless offset by other benefits for Mexico.

Estimates of the extent of foreign ownership in the Mexican economy vary from 3 - 5%. At the end of 1982 total foreign direct investment amounted to U.S.$11 billion. It is concentrated primarily in the automotive and farm machinery industries, secondary petrochemicals, electronics, metals, pharmaceuticals and paper and food processing. The U.S. is the dominant investor (69% in 1980), followed by Germany, Japan and Switzerland.

B. Regulations Affecting Foreign Investment
The National Commission on Foreign Investment

The Law to Promote Mexican Investment and to Regulate Foreign Investment is the basic law establishing the role of foreign investment in Mexico. It is administered by the National Commission on Foreign Investment (FIC) which reviews all investments that involve more than 49% foreign equity or control. In some sectors, such as petrochemicals and auto parts, the allowable level of foreign participation is lower. The basic elements of this law are outlined in Table 2.

The National Commission in Foreign Investment has overriding authority to interpret the law, establish guidelines and consider special requests. It may use its authority to negotiate whole packages of measures designed to contribute to Mexican development. In fact, at times the Commission prefers to avoid Mexicanization of a firm, which would end its influence over the firm's investment plans.

The Commission normally reviews 200-300 cases a year. The approval rate was 85% in 1978, 75% in 1979 and 66% in 1980. Proposals were most frequently rejected because they involved the displacement of domestic producers or failed to fall within the government's priority sectors. Investors whose proposals fit the government's regional and sectorial policies were usually approved. Kentucky Fried Chicken was refused permission to expand, for example, because the Commission felt that local investors could manage similar ventures. A cassette producer was rejected because he wanted to manufacture in Mexico City. On the other hand, Nissan Mexicana received permission to expand its facilities, while retaining 100% ownership, because the Commission approved of its large export program and its planned location in one of the government's development zones.

The Calvo clause

The permit for establishing a company stipulates that this clause be inserted in the bylaws and on stock certificates. Under it, the investor waives the right to invoke foreign diplomatic intervention and forgoes any claim to treatment different from that accorded to Mexican nationals.

Table 2

MEXICO

Law To Promote And To Regulate Foreign Investment 1973

Administered by: National Commission on Foreign Investment (FIC)

Comprised of: Secretaries of: Interior, Foreign Affairs, Finance and Public Credit, Energy, Mines and Parastate Industry, Commerce and Industrial Development, Labour and Social Welfare, and the Presidency.

Assisted by: Executive Secretary - appointed by the President.

Law applies to: (1) All new Mexican ventures, both new businesses and expansions, in which foreign equity is over 49% or in which the management of the company is under foreign control except for:

a) companies in petrochemicals or auto parts where foreign equity is limited to 40%
b) special mining concessions where the limit is 34%
c) the purchase of stock in a Mexican company by a holding company with foreign participation, where net foreign ownership is limited to 25%. (1981 amendment)

(2) Acquisitions in which foreigners acquire over 25% of the capital or over 49% of the fixed assets
(3) Any alterations in these percentages which may be introduced by the FIC in the best interests of the Mexican economy.

Procedures: (1) Foreign investors submit applications to the FIC
(2) The FIC consults with relevant departments and may negotiate with the investor
(3) If the investment is approved, applicants must then obtain a permit from the Secretariat of Foreign Affairs
(4) After the permit is granted, the investment must be registered with the National Registry of Foreign Investment.

Major Assessment Criteria: The investment must be complementary to national investment and consistent with the government's economic policy. It should have a positive effect on the balance of payments and it should increase employment, exports, R & D, the use of domestic products and establish industries in government-designated areas. The displacement of Mexican businesses or the creation of a monopoly is to be avoided.

Border plants

Ownership of land and waters within 100 kilometres of the border and 50 kilometres of the coastlines is prohibited to foreigners, however 100% foreign-owned companies may lease land in these areas and assemble and process foreign materials there for re-export. The normal restrictions on ownership and imports do not apply in such cases. There are plans to extend this program to other parts of the country.

Local content requirements

Foreign investors are normally expected to meet specific local content levels. These may vary by industry, but in all cases are expected to meet the 50% level within 5 years. In the auto industry, for example, the minimum required level is 50%, though most Mexican-produced cars now exceed that amount. If special concessions are offered to an investor he may be expected to reciprocate by planning to attain 60% local content within a specified period of time. These levels may also be adjusted if a company exports a high proportion of its exports.

Companies whose products have reached the 50% local content level are considered Mexican and may participate in tenders restricted to local firms.

Branch plants

Few companies establish branches since they are not popular with the Mexican authorities. Branch companies cannot own real estate; they cannot deduct, for tax purposes, royalties, interest, or service payments to their parents; and they must submit to more restrictive charters than other corporations. Nonetheless, some companies find them a useful first step in developing an investment in Mexico.

C. Restricted Sectors

The following sectors are closed to foreign investors: radio and television, urban and national automotive transportation, domestic air and maritime transportation, forestry exploitation, gas distribution and Mexican financial institutions. (Citibank is an exception to this.)

In most other sectors foreigners are generally limited to 49% participation and management control is restricted to the same level as equity participation. In petrochemicals and autoparts, foreign equity is limited to 40%. In special mining concessions the limit is 34%.

D. State Ownership

In the 1960's and early 1970's certain sectors were reserved for the state. The major reserved industries include petroleum and hydrocarbons, basic petrochemicals, nuclear energy, certain mining areas, electric power, railroads and telecommunications.

With the exception of the banks, which were nationalized in 1982, the government has more recently emphasized Mexicanization rather than complete state ownership. It has purchased a partial interest in several companies, such as the Mexican Power and Light Co. (Belgian Sofina Group), Azufrera Panamericana (Pan American Sulphur Co.) and Cananea (a copper company owned by Anaconda, U.S.). It has also participated in partial takeovers in the motion picture, tobacco and coal mining industries.

E. Legislation Indirectly Affecting Foreign Investment

The transfer of technology and the use of patents and trade marks

Most agreements in these areas require prior approval of, and registration by, the National Registry of Transfers of Téchnology. Agreements are strictly controlled and will not be approved if the technology is available elsewhere, or if it is too expensive. Agreements which limit the purchaser's R & D activities, exports, source of equipment supplies, freedom to sell and so on, are not usually acceptable.

In 1976 patents were eliminated entirely on products and processes in food processing, pharmaceuticals, agriculture, agro-industries, nuclear energy and anti-pollution industries. However, companies may apply for inventor's certificates which provide for royalty payments, but at the same time make the technology available to all who want it. In the chemicals industry, only new methods for developing and applying chemicals may be patented.

Building and related permits

During the foreign investment approval process, specifications for new plants are submitted to the Secretariat of Commerce and Industrial Development which consults other departments on zoning and environmental protection. Federal and state public works departments must also be consulted, as well as Health and Water Department Officials.

Plans must fit in with the Development Plan which is designed to control growth in over-burdened urban areas and to develop new urban centers.

Price controls

A complex three-tiered system of price controls has been in effect since the devaluation of the peso in February 1982. The government is also committed to keeping price increases under 25% in 1983. Prices for most consumer goods are set by the Secretariat of Commerce and Industrial Development and are rigidly enforced. On the other hand, in specific industries the government has been willing to allow higher prices to encourage investments.

Exchange controls

In December 1982 exchange controls were liberalized. However, FIC approval is still required for transfers of proceeds from Mexicanization or liquidation. Transfers at free-market rates of exchange, which are less advantageous, are uncontrolled up to a limit of $20,000 per transaction.

FOREIGN INVESTMENT CONTROLS IN SWEDEN

A. General Situation

The Swedish Government welcomes foreign investment and particularly cooperates with those who are introducing advanced technology or are willing to establishing a business in a development area. Foreign investment is considered a source of new capital, increased employment and wider experience in international management and marketing practices. Foreign companies are generally subject to the same business conditions as Swedish companies, but some foreigners find it difficult to adjust to the active participation of government and labour that is a normal part of Swedish business practice.

Foreign-owned companies play a minor role in the Swedish economy and most of them remain quite small. Foreigners became more active in the 1980's, with their investments in Swedish-listed firms growing by 45% in 1982, to a total of Skr 1.6 billion.* Foreigners now own about 6% of the total share value quoted on the Swedish stock exchange. Foreign investment comes primarily from Norway, the U.S., Germany, France and Finland.

Regulations governing foreign investment have recently been relaxed. In 1982, under the preceding government, the stock exchange was opened to foreigners and foreign-owned finance companies were allowed to operate. Further liberalizing measures, such as the allowance of foreign banks, were stalled by a change of government in September 1982. The victorious Social Democrats generally take a more restrictive approach, though this has been somewhat tempered by the current recession. In the meantime, no foreign investment in financial institutions will be allowed until an investigating committee reports its findings in 1984 or 1985.

B. Regulations Affecting Foreign Investment

For a foreigner to set up or acquire a business in Sweden he must have approval from:

1. The Bank of Sweden - Transfer of capital for a direct investment requires permission from the Bank of Sweden (Sveriges Riksbank). This is normally readily obtained and takes about one week. At least 50% of the investment funds must come from outside Sweden.

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* The Swedish Krona is exchanged at about 7.5 to the U.S. dollar.

2. The Ministry of Commerce - If a member of the board of directors or the managing director is to be a foreigner, approval (usually automatic) is required from the Board of Commerce. For companies capitalized at Skr 500,000 or more, foreigners may constitute up to one-third of the board of directors. A larger proportion requires permission from the Ministry. The Chairman must be a Swedish citizen.

3. The Ministry of Justice - Acquisitions of Swedish companies require approval when foreign shareholdings rise above 10%. As of January 1, 1983 this approval is also required if an earlier acquisition is increased to more than 10% of total equity. Once total foreign investment reaches 20%, 40% or 50% thresholds, companies must once again apply to the Minister of Justice. Permission cannot be denied unless the investment is contrary to the national interest. While specific commitments (i.e. increased employment, increased exports or additional investment) may not be tied to an approval, voluntary, informal commitments may be important in assisting or encouraging the Minister to come to a prompt and positive decision.

C. Restricted Sectors

Foreigners are forbidden from owning or publishing Swedish newspapers and periodicals, running an agency which distributes credit information on Swedish companies or individuals, manufacturing war materials, operating banks that involve deposits and advances, owning Swedish registered vessels and engaging in domestic air transport.

Foreign companies are also barred from owning Swedish "natural wealth" such as mines, oil deposits, farms, forests and waterfalls, and may not hold more than 20% of the voting shares in a firm holding such property. The same rule applies to Swedish companies unless they have company statutes which restrict foreign holdings to 20%. Exceptions to this rule are now apparently possible if the investment offers substantial benefits to Sweden. B.P. Minerals, in a joint venture with the state-owned LKAB, is the first foreign firm since 1910 to gain exploration and mining rights. B.P. is introducing highly-sought technology and has agreed to hand over 50% of the volume mined to the Swedish state, if the prospecting is successful.

The acquisition of real estate by companies with more than 20% foreign ownership requires permission from the local county council. Permits are usually easily acquired if the property is necessary for business.

D. State Ownership

The government is actively involved in the development of the economy. It has not hesitated to step in when it deemed an industry essential to the country's economic health. Companies have been acquired, or infusions of capital offered, when necessary to keep a company afloat. The development of growth sectors is regarded as a state responsibility and is encouraged through grants, loans and special investment companies that are financed with both private and public funds.

Public enterprises account for about 6% of industrial turnover and employment. However, with the exception of public utilities, no area of activity is closed to private enterprise. In a number of industries joint ventures have been established with the participation of state enterprises and private companies, some of them foreign.

Public utilities such as telecommunications, post office, railways, electricity and air lines are state-owned. In addition, state holding companies have interests in mining, forestry and forest products, chemicals, petrochemicals, tobacco, pharmaceuticals, machine tools, engineering, textiles, printing and publishing, hotels, restaurants, services, building materials, warehousing, shipyards, credit institutions and development companies.

E. Regulations Which Indirectly Affect Foreign Investment

Competition and labour laws are applied equally to domestic and foreign investors. While the competition laws are not onerous, the extensive role of labour in management decision-making may discourage some foreign investors. The government also plays a role in the choice of location and the timing of business establishment, so that consultations are required with the Ministry of Labour and the Federation of Industries before a decision is made. Foreign enterprises are not required to join employer organizations, but are expected to do so.

Competition Law

Cartels are legal in Sweden and there are presently 1200 registered there. Similarly, monopolies are often encouraged to allow for specialization and economies of scale. Mergers are generally allowed, unless labour dismissals are involved.

A number of government bodies exist to protect consumers from harmful practices. The Antitrust Ombudsman's powers were expanded in 1983 to provide additional protection against cartels and mergers that are not in the public interest. Companies must report all acquisitions and mergers to the Price and Cartel Office within four months and such transactions can be referred to the Market Court and eventually nullified if they are found to be damaging to competition or the public interest.

Labour Legislation

Government and labour consultation is normal in private enterprise decisions. An employer is required to keep employees well informed about the state of, and prospects for, the business. If he employs 25 or more people, he must establish an economic committee comprised of three management and three employee representatives. This committee must have full access to company accounts and business affairs.

The concept of shared responsibility between employer and employee was greatly expanded by the Codetermination Law, initially introduced in 1977, and formally implemented in 1982. Certain private sector practices, such as organizing and distributing work, introducing new technology, and corporate planning and budgetting, are now subject to codetermination.

The most controversial element of codetermination, which has yet to be implemented, is a proposed 20% tax on profits which would be used to set up union-controlled investment funds for buying company shares. The Swedish Employers Federation is strongly opposed and one of its members, Datatronic, has announced that it will move its operations to the U.S. rather than submit to the plan.

FOREIGN INVESTMENT CONTROLS IN THE UNITED KINGDOM

A. General Situation

In recent years U.K. governments have actively welcomed foreign investment. As a highly industrialized western country that has been the home base for multinationals operating in all parts of the world, the U.K. sees foreign investment as a positive contributor to its economy. The benefits of foreign direct investment such as new technologies and skills, improved management techniques and increased employment are encouraged, particularly in the present period of recession.

Foreign direct investment inflow reached its peak in 1980 when it amounted to £2.6 billion in manufacturing (excluding oil). By 1982 it had fallen by 55% and was valued at £1.2 billion. The cumulative value of foreign-owned non-oil assets in 1981 was £17 billion and oil assets were £9.5 billion. U.S. companies normally account for more than half the foreign direct investment in the U.K., but in the past 2 years the bulk of investment has come from Swiss, Japanese and German firms. While U.S. firms were disinvestors in 1981, their interest will continue, since an operation in the U.K. provides both a tariff-free entry into the EEC and the opportunity to work in a common language.

The vagueness of British laws and an occasionally-sensed undercurrent of disapproval of foreign investment combine, at times, to make difficulties for the foreign investor. Rather than cope with foreign investment issues directly the British prefer to "muddle through" and the investor must protect himself as well as he can.

The resultant situation is difficult to pin down. It has been suggested, for instance, that British business executives are not always enthusiastic about competing foreign firms and will unite to keep them out. This happened when three U.K. chemical concerns united to block Dow Chemical's planned construction of a Scottish ethyline plant in 1980. In 1982, U.K. auto manufacturers objected to Nissan's proposed auto plant and finally forced the government to demand such an excessive proportion of local content (80%) that Nissan's plans fell through*.

A survey of 2,600 European, American and Japanes companies in Europe conducted by Larsen Sweeney, a Scandinavian publisher of computer data, revealed that international investors generally found British public servants "obtuse" and "dishonest" in their dealings with foreign investors. And when two U.S. businessmen, Marshall Cogan and Stephen Swid, owners of a highly

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* This project, the subject of discussion between the British and Japanese prime ministers, was revised in 1983 and is now expected to go through, though the terms have not yet been announced.

successful carpet underlay business in the United States, made a takeover bid for the venerable Sotheby's Parke Bernet, Sotheby's executive found the offer "unacceptable at any price" because Cogan and Swid were "the wrong people". In the end, however, a second American bid, by millionaire art patron, Alfred Taubman, was found to be "not against the public interest."

These approaches are sometimes well served by the U.K.'s controversial and confusing merger policy which has been described by the Economist as follows:

> "British merger policy has traditionally tried to do two (often conflicting) things: prevent companies from merging simply to hog a bigger share of a market and to reduce competition; and to veto or promote mergers which serve a ragbag of other aims, from extra efficiency to keeping out foreigners, preserving jobs, placating noisy interests like trade unions or Scottish voters and even curbing the ambitions of businessmen disliked by the establishment."

Thus, while the vast majority of foreign investors meet few difficulties in the U.K., the means are still available, and are used on occasions, to control an unacceptable foreign investment.

B. Regulations Affecting Foreign Investment

Foreign companies face the same requirements as domestic companies when acquiring or establishing a business in the U.K. Foreign exchange regulations, which previously provided a means of controlling foreign investment, were abolished in 1979.

Control over foreign takeovers is still possible through use of the contingency powers provided by The Industry Act of 1975. This Act allows the government to halt the transfer of U.K. manufacturing assets to a non-resident if the change of control would be "contrary to the national interest". This authority has never been applied, though, on occasion, the delays involved in examining a takeover have provided time for U.K. counterbids to develop.

Some London financial markets restrict foreign shareholdings in member companies. Stockbrokers, for example, are limited to 30% foreign ownership and merchant banks can no longer belong to the Accepting House Committee if they are foreign-owned.

Regulations governing branch businesses generally discourage this form of foreign investment. Tax treaties with the Netherlands, Norway, Switzerland and the U.S. have the effect of raising the taxes on branches of companies of these nationalities to 52%, which is substantially higher than the 45% tax paid by subsidiaries. Furthermore, parents of branch companies must file, for public inspection, all disclosure details required of U.K. companies. In practice, consolidated global accounts are usually accepted.

Local content requirements do not officially exist, however Business International reports that the Department of Industry "has been known to put pressure on investors, while negotiating incentive agreements to ensure that a specified percentage of output value is added locally". Further, export licences and insurance "may be withheld if there is no provision for domestic sourcing".

C. State Ownership

While no sectors, other than certain parts of the defense industry, are officially closed to foreigners in the U.K., the widespread existence of nationally-owned and/or controlled sectors has effectively closed them off from foreign ownership. These limitations will undoubtedly be lessened as the Thatcher Government continues its program of selling off all or parts of the nationalized industries. However, it appears unlikely that the Government would allow a foreign takeover of any industry which could be considered vital to the national interest. In the case of the oil industry, for example, certain parts of British Petroleum and the British National Oil Corporation have been sold, but the Government still retains effective control over North Sea activities.

Major industries presently owned and/or controlled by the Government include the railways, British Airways and other public transport; utilities such as the mail, telephone, gas, electricity and water services; coal and steel production; and shipbuilding and aircraft manufacture. Some of the above are statutory public monopolies, but others include private sector companies, some of which are, as in the case of the steel sector, foreign-owned.

Some of these companies, such as British Telecom, are expected to be denationalized in the near future.

D. Legislation Indirectly Affecting Foreign Investment
Antitrust Legislation

The U.K. has enacted a number of statutes to deal with anticompetitive practices and monopoly situations which apply to both domestic and foreign firms. The Fair Trading Act of 1973, The Restrictive Trade Practices Act of 1976 and 1977 and The Competition Act of 1980 form a large part of the U.K.'s antitrust legislation. Nonetheless, neither monopolies nor cartels are illegal and at times they are regarded as beneficial. British legislation is aimed, rather, at curbing abuses of monopolies, market domination and certain cartel practices.

Once a merger or takeover is proposed it must be reviewed by the Fair Trade Office (FTO), which may refer the transaction to the Monopolies and Mergers Commission (MMC), which submits its recommendation to the responsible government minister, the Trade Secretary. All transactions which involve a company with assets over £15m or 25% or more of the market share must be considered for referral to the Monopolies and Mergers Commission.

Because the wording of the Fair Trading Act is so vague, using such phrases as "against the public interest" and the "desirability of maintaining the balanced distribution of industry and employment", it is difficult to determine a consistent policy or to depend on precedent to predict future decisions concerning foreign takeovers.

It is through these rather complicated and arbitrary procedures that foreign investments are most frequently blocked. The following list of recently vetoed takeovers or mergers indicates that, on occasion, investment is stopped simply because it is foreign. At the same time it is important to remember that the vast majority of foreign investments, even some which are patently anticompetitive, are allowed to go through.

Selected Blocked Foreign Takeovers

1. Hiram Walker's (Canada) bid for Highland Distilleries - The MMC said that Highland would be more successful as an independent company and that the takeover was contrary to regional and national interests.

2. Hongkong and Shanghai Banking Corp. bid for the Royal Bank of Scotland - Regional and national interests were also raised in this takeover; but what was also raised was the Bank of England's objection to an aggressive outsider that refused to give up. The MMC stated that the takeover would "diminish confidence and morale in Scottish business".

3. Enserch Corp. (U.S.) bid for Davy Corporation (a U.K.-based international engineering company) - the MMC said it was important for Davy to be identified as a U.K. company in order to protect its export contracts.

Offshore Supplies Office (OSO)

In order to bring British industrial potential to the attention of multinational oil companies operating in the North Sea oil fields the government introduced 3 procedures:

1. The Government monitors all aspects of oil industry offshore activity.

2. The Government created the Offshore Supplies Office (OSO) to audit the petroleum industry's purchasing activities.

3. The OSO offers venture-management assistance to British firms anxious to bid on offshore goods and service contracts.

This approach was so effective that British firms were able to reach a direct British supply capability of 79% in 1979, a substantial increase from an estimated 25-30% in 1972.

Under the auditing procedure established by the OSO, multinational oil companies are required to submit a summary of their purchases, including "orders placed for goods and services needed for exploration, development, production and transport of oil and gas in the U.K. Continental Shelf." Companies are required to give the name and nationality of the supplier and the approximate proportion of U.K. content in an order. When using a foreign supplier, companies must explain the reason for doing so. The U.K. firms approached for supplies must also be listed.

FOREIGN INVESTMENT CONTROLS IN THE UNITED STATES

A. General Situation

The traditional approach to foreign investment in the U.S. has been termed as "neutrality with encouragement". This continues to be the case; though a rapid rise in foreign investment in the past ten years has led some members of the political and business communities to call for a more extensive tabulation and screening of this investment. In 1974 Congress authorized a comprehensive study of foreign investment in the U.S. The examination of foreign investors has expanded steadily since then and organizations such as the Committee on Foreign Investment in the United States (CFIUS) have been created to monitor certain foreign investments.

Despite a generally positive attitude toward foreign investment in manufacturing, especially among state governments, the U.S. public has become uneasy over the expanding activities of international companies. A survey of U.S. "opinion leaders", conducted by Opinion Research Corp. of Princeton, N.J. in 1982, revealed that only 28% favoured restrictions on new foreign plants, but over 60% wanted to control foreign acquisitions of U.S. companies and any build-up of foreign holdings in U.S. real estate.

A 1974 survey of foreign investment in the U.S. showed that about 2% of the economy was foreign-controlled. Today the level of foreign control is estimated at 3-4%. In the past five years foreign investment has tripled and foreigners are now estimated to own $100 billion worth of direct investment in the U.S.*. Since 1978, 10% of all takeovers in the United States have been by foreign-controlled companies. These companies now generate 3-4% of U.S. jobs, 4-5% of sales and, in some industries, 10% of production.

Most foreign investment comes from the seven major trading partners of the U.S.: Britain, Canada, France, the Netherlands, Japan, Switzerland and West Germany. Manufacturing has normally been the sector favoured by foreigners, though recently energy, real estate and banking and financial services have attracted more interest.

It is anticipated that the continuing growth of foreign investment will lead to an expansion of U.S. regulations. Recent government studies and congressional hearings indicate that the present approach is confused and haphazard. In order to correct this situation Congressman Robert Kastenmeier introduced the Foreign Investment Review Act of 1983 which, he said, would:

> "first, reorganize, consolidate, and transfer to an independent Foreign Investment Commission essential responsibilities concerning inward foreign investment now performed by 18 separate Federal agencies and entities; second, prohibit foreign acquisitions in narrowly

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* Foreign direct investment in the U.S. is still less than half the value of investment by U.S. companies abroad.

specified vital national interest sectors of the U.S.economy, specifically, defense, weapons, nuclear energy, and telecommunications; third, require the Commission's review and prior approval of foreign acquisitions in sensitive national interest sectors, such as banking, energy, minerals, transportation, and high technology; fourth, encourage, in nonvital sectors, beneficial investments that would rescue failing U.S. companies, create new jobs, infuse capital or otherwise benefit the American economy; and fifth, end the secrecy surrounding foreign investment by strengthening the 1976 International Investment Survey Act to require effective reporting of inward direct investment on a country-by-country and industry subsector basis."

This bill joins a host of others dealing with foreign investment. While few are likely to become law, there is little doubt that the extent of regulations and restrictions will increase.

B. Regulations Affecting Foreign Investment

Three federal statutes require the reporting of certain foreign investments in the U.S.

1. The International Investment Survey Act of 1976 requires that a foreign investor report any direct or indirect acquisition of 10% or more of a U.S. business, including real estate, to the Commerce Department. Foreign owners of U.S. affiliates must also file annually, Form BE-15: Interim Survey of Foreign Direct Investment in the U.S. All business operations with sales or income over $5 million or land holdings of more than 200 acres are required to file detailed information on ownership, financial operations, exports, employment and property holdings.

2. The Agricultural Foreign Investment Disclosure Act of 1978 requires foreigners and U.S. entities in which foreigners hold at least 5% interest to report to the Secretary of Agriculture any holdings in agricultural land.

3. The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires foreigners to file annual information returns on their U.S. property holdings, if they are worth a total of $50,000 or more, to the Internal Revenue Service (IRS). The Act was designed to end the widespread avoidance of the U.S. capital gains tax and to collect more comprehensive data on foreign holdings in real estate. Canada's current tax treaty with the U.S. exempts from U.S. taxation capital gains realized in the U.S. by Canadian residents, however after 1984 FIRPTA will override any exemptions provided by tax treaties. Included in the definition of real property are interests in mines, oil and gas wells, leaseholds and options to acquire land.

This very complex legislation, which applies to condominium owners as well as multinationals, requires the completion of detailed tax forms. Penalties for non-compliance are heavy. An alternative to compliance is entry into a agreement with the IRS to secure payment of the capital gains tax when the property is sold.

The Committee on Foreign Investment in the United States (CFIUS)

This Committee, comprised of ranking members of the departments of the Treasury, State, Defense, Commerce, the Office of the U.S. Trade Representative and the Council of Economic Advisors, has the primary responsibility for monitoring the impact of foreign investment in the U.S., both direct and portfolio and coordinating U.S. policy on foreign investment. Its major concerns are consultations with foreign governments on their prospective investments and a review of all foreign public and private investments which, in the view of CFIUS, might have implications for the national interest. The Committee has no legal power to block or modify investments, but considers that diplomatic representation would generally be enough to bar an unwanted investment by a foreign government. It has reviewed investments such as the Government of Iran's proposed acquisition of stock in Occidental Petroleum, Shell Oil's proposed acquisition of Beldridge Oil Co., Nippon Kokan's proposed acquisition of Kaiser Steel and Elf Acquitaine's merger with Texasgulf.

State Regulations

In addition to federal legislation, many states have laws that affect the foreign investor. While foreigners are rarely banned completely from an industry, certain conditions of establishment or operation frequently apply. Reciprocal requirements (in which the home country of the applicant allows the same opportunities to U.S. investors) are a common feature of many statutes. State restrictions are the most frequent in land and real estate where they may limit or prohibit ownership, agricultural activity or mineral exploration.

In banking and insurance the number of foreign directors or incorporators is often severely limited and special deposit or asset requirements are common. In eleven states foreigners are banned from ownership of utilities. The right of states to prescribe the terms under which foreigners may hold stock in a corporation has been upheld in the courts, and a number of states do require that a majority of the shares of certain companies be held by U.S. nationals.

C. Restricted Sectors

As Table 3 indicates, federal legislation prohibits or restricts foreign ownership in a number of sectors.

TABLE 3

Activities in which foreign ownership is restricted or prohibited in the U.S.

Activity	Status of Foreign Control	Legislation
coastal and freshwater shipping	prohibited	The Jones Act Merchant Marine Act
dredging and salvage operations	restricted	Regulation of Vessels in Domestic Commerce
shipbuilding	barred from Government benefits	Fishing Fleet Improvement Act Merchant Marine Act Merchant Ship Sales Act
fishing	reciprocal countries restricted others: prohibited	Fish & Wildlife Act Fishery Conservation & Management Act
air carriers (domestic)	prohibited	Federal Aviation Act
air carriers (international)	restricted	Int'l Air Transport. Fair Competitive Practices Act
radio, television, telegraph & telephone licenses	prohibited	Communications Act
radio and television operators	prohibited	Communications Act
nuclear power	prohibited	Atomic Energy Act
hydro-electric facilities	restricted	Federal Power Act
transmission of natural gas and electricity	permitted or "restrained"	Federal Power Act
transfer of federally-owned land	prohibited unless reciprocal	Small Tract Act
mineral rights - oil, coal etc.	prohibited unless reciprocal	Mineral Land Leasing Act
mineral leases on continental shelf (oil, gas, sulphur)	restricted (in practice: prohibited)	Outer Continental Shelf Lands Act
exploration for deep sea resources	restricted	Deep Seabed Hard Mineral Resources Act
defense supplies from all parts of the U.S. economy	prohibited (in most cases)	National Security Act
banking	regulated	The Banking Act The Int'l Banking Act Bank Holding Co. Act

D. Public Ownership

The federal and state governments generally oppose government ownership of business. Nonetheless, the number of government rescue operations of failing companies that provide "essential services" is growing. The federal government has bailed out such large companies as Lockheed and Chrysler with loan guarantees when they were on the brink of collapse (they both repaid without any loss to the Government) and state governments have often taken over unprofitable transportation companies.

The federal government owns the postal service and the Tennessee Valley Authority. In 1971 it also set up the National Railroad Passenger Corp. (Amtrak) to take over, consolidate and improve existing intercity rail passenger service which was previously run by private companies. The Consolidated Rail Corp. (Conrail) was set up in 1974 to consolidate freight operations in the northeast.

E. Legislation Indirectly Affecting Foreign Investment

Anti-trust and securities legislation affect both domestic and foreign-controlled firms. Since this legislation opens the door to administrative delays and myriad legal obstacles, it can have, and on occasion has had, a serious impact on the foreign investor.

Securities Legislation
Securities Act of 1933 and Securities Exchange Act of 1934

Any firm that acquires more than 5% of the shares of a publicly owned U.S. company must notify within ten days, the Securities and Exchange Commission (SEC). It must report the name of the company whose securities were acquired and the U.S. exchange on which the securities are listed. The detailed disclosures required often discourage the foreign investor, as does the requirement that companies adhere to U.S. financial accounting practices. Alleged violations of securities requirements provide a means of legally attacking both domestic and foreign investors. Société Nationale Elf Aquitaine of France faced lawsuits for securities violations in its bid to acquire Texasgulf Inc., as did Dome Petroleum when it made a bid to purchase Conoco shares.

Anti-trust Legislation

1. The Clayton Act is designed to safeguard against industrial concentration in the U.S. Takeovers, mergers and joint ventures which involve interstate commerce are not allowed if they would reduce competition or create a monopoly. These rules apply to both domestic and overseas production facilities.

2. The Sherman Act also prohibits actions which would weaken or eliminate competition. Practices such as monopolizing, price-fixing, group boycotts and market allocation are outlawed under the Act.

3. The Federal Trade Commission Act sets up the Federal Trade Commission (FTC) and gives it power to investigate the management and business practices of corporations, other than banks and common carriers, that engage in commerce. Acquisition of an export trade corporation that would restrain trade or substantially lessen competition within the U.S. may be forbidden.

A number of foreign companies have found their business plans challenged under anti-trust laws. Inco, Alcan, Mitsui Petrochemicals, B.C. Forest Products and the Siemens Corp. have all faced litigation under section 7 of the Clayton Act and British Oxygen, BIC Corp. and Nestle were subjected to FTC challenges of their planned acquisitions.

As administrations change in the U.S. government, so does the strictness with which these laws are enforced. The Reagan administration's emphasis on economic efficiency and reduction of government interference has led to a significant relaxation of anti-trust surveillance. Joint ventures with foreign companies and vertical mergers which might previously have aroused a challenge are now allowed to proceed and even horizontal mergers are expected to meet less exacting standards.

The Unitary Tax

A 1983 ruling by the U.S. Supreme Court confirming the right of states to impose what is called a unitary tax on multinational companies may have far-reaching implications for U.S.-based subsidiaries of foreign multinationals. The tax, which has existed for years in California and eleven other states, may now be adopted by other states. Any multinational which has an establishment or permanent sales force within such a state can be taxed on the profit of its world-wide operations. To determine the amount of tax, states generally use a formula which applies the state's share of sales, labour and assets to the total profit of the company.

While the Court said its decision upheld the tax only for subsidiaries of U.S.-based multinationals, states continue to apply the same legislation to foreign subsidiaries within their boundaries.

FOREIGN INVESTMENT CONTROLS IN WEST GERMANY

A. General Situation

West Germany has virtually no restrictions on foreign direct investment. The government has the authority, under the Law of Foreign Economic Relations to impose restrictive measures in the national interest, but in practice this authority has not been exercised. However, foreign investors who acquire more than 25% of an existing company's capital must report this to the competent state central banking authorities for "statistical" purposes. In most other ways foreign-owned or controlled firms are treated like domestically owned firms and are subject to the same requirements. This approach is explained, in part, by the fact that the German federal or lander (provincial) governments have equity participation in many major industrial firms in West Germany, as described later in the section on state ownership and therefore need not be concerned with any significant penetration of the West German economy by foreign investors.

West Germany's liberal approach to foreign investment developed in the post-war years when it was essential to the rebuilding of the country. For many years the United States accounted for the largest proportion of foreign investment and many of the largest foreign-controlled enterprises are U.S.-controlled. European countries are now the largest investors in Germany, accounting for about 65 - 70% of incoming foreign investment. Ten of the 50 largest companies in Germany are foreign-owned (based on sales). Foreign investment is concentrated in oil refining and processing, chemicals and plastics, banks, automotive industries, iron and steel production, and foodstuffs.

In the mid-1970's some public concern was raised over the large investments being made by oil-producing countries. Several firms, including Mannesmann and Deutsche Bank, adopted special voting rules to limit takeovers. This concern eventually subsided and the Government has consistently refused to take any official steps to limit foreign investment.

B. Regulations Affecting Foreign Investment

At the federal level companies do not require authorization to establish and conduct business operations. There are no restrictions on foreign exchange transactions. Incentives may be offered to any firm, domestic or foreign, whose plans will further regional development in less-developed areas or in West Berlin. Incentives are also given to encourage small and medium business and to increase research and development.

At the state level both domestic and foreign companies must meet certain licencing and reporting requirements to start a new business or purchase an existing enterprise.

To open a branch operation in Germany, a foreign firm (except for EEC companies) must register with the Commercial Register of the local commercial or state court. Changes in the articles of incorporation, board members or executives of the parent enterprise and of the branch must also be reported. These reporting requirements plus complicated accounting and taxation regulations have led foreign investors to prefer wholly or partly-owned subsidiaries to branch offices. Double-taxation conventions also favour foreign investment in a company incorporated in Germany.

C. Restricted Sectors

Federal trade monopolies exist in alcohol, matches and public service sectors such as postal and telephone services; air, maritime and railway transportation; and radio and television.

D. State Ownership

State-controlled industries account for a substantial share of the country's total industry. Post-war governments have officially endorsed denationalization of the many industries nationalized after World War I and during the Nazi era, but this program has proceeded very slowly. The Government continues to have equity in many firms in banking, transportation, development and industrial enterprises. In addition, lander (provincial) governments own many firms, either wholly or jointly, in mining, manufacturing and utilities.

Even where divestment has taken place, the Federal Government has retained an interest in most companies. Thus it owns 26% of the mining company, Preussische Bergiwerks-und Hutten-AG, 40% of Volkswagenwerk AG and 44% of Vereinigte Elektrizitats-und Bergwerks-AG, a mining, chemical and electricity holding company. In addition, it maintains at least a 25% participation in numerous other industrial firms which have been grouped under three holding companies totally owned by the Federal Government (Salzgitter AG), or partly by the Federal and partly by lander governments (Vereinigte Industrieunternehmungen AG and Saarbergwerke AG). Their activities include the production and distribution of coal, aluminum, steel, chemicals, machinery, electrical power plants, ships, railway transport equipment and electricity.

In 1979 the Government owned 50% of aluminum production, 46% of iron ore, 40% of auto production, 25% of electric power, 22% of hollow glass and 18.5% of ship building. The impact of such widespread government ownership (which amounted to almost 30% of gross fixed capital formation in industry in 1976) on the economy is considerable. There is little doubt that the extent of these activities provide the West German government with the means to monitor, if not control, foreign investment in most sectors of the economy.

E. Factors Which Indirectly Affect Foreign Ownership

Most laws affecting investment apply to both domestic and foreign firms. While this is the case with antitrust and labour legislation as well, the impact of some of this legislation on foreign investors is, at times, onerous and may discourage foreign investment.

Anti-trust Legislation

Germany, like the United States, has strong antitrust legislation. The Act Against Restraints of Competition bans agreements by 2 or more enterprises if they limit competition through price fixing; restriction of production, purchasing or sales; allocation of markets, customers or sources of supply; boycotts of suppliers or purchasers; and unusual restrictions on licensees.

A 1980 amendment to the Competition Act gives the Federal Cartel Office (FCO) extensive power over mergers - in order to protect small companies from the advances of very large ones. The DM 2 billion turnover criterion used to define large companies refers to world-wide sales which means that many multinationals are affected even though they may operate only a small German subsidiary. Among the mergers forbidden by the FCO was the proposed merger of Sachs with the UK's Guest, Keen and Nettlefolds. It was stopped on the grounds that Sachs's dominant position in the German market for clutch components would be further strengthened. Another proposal by Pilkington (UK) to acquire the German, Belgian and Dutch glassmaking subsidiaries of BSN-Gervais-Danone was stopped because it would make Pilkington too strong in the German market. As a result of this decision Pilkington ended up taking over the German firm only.

Labour Legislation

Codetermination, or joint participation by labour and management in policy decisions, has existed in Germany since the 1920's. In 1976 when the Codetermination Act was passed, it called for 50% labour representation on supervisory boards of companies with more than 2,000 workers. A labour director must also be appointed to represent labour's interests on the management board. While, in practice, labour's influence is fairly limited, international companies have expressed reservations about codetermination, fearing that labour may interfere in business decisions, such as the shut-down of a German plant in favour of operations in another country. Opel, the German subsidiary of General Motors, has complained, for example, of labour's attempt to influence international decisions made by the company.

The Role of the German Banks

German banks have a very close relationship with German industry, which is dependent on the banks for external finance. Close relations are also a result of the significant industrial holdings of the largest German banks. These banks, reports the Inter-Bank Research Organization of the British clearing banks, "have also taken an active part in arranging mergers and takeovers and have occasionally used their strength to prevent the purchase of stakes in German companies by 'undesirable' elements". An example of this preventative stance was the Deutsche Bank's refusal to allow Mercedes Benz to fall under foreign control, a move which reinforces the "image that the banks patrol the borders of German industry". (John Zysman, Governments, Markets and Growth, Cornell University Press, 1983, p. 265.)

SUMMARY AND CONCLUSION

The following table is a very generalized summary of the factors affecting incoming foreign investment in Canada and the eight sample countries. Any such categorization is fraught with difficulties since complex arrangements that involve both informal pressures and formal, but perhaps unused, regulations must be considered. Nevertheless, it is a useful means of comparing conditions in these countries.

All countries, other than West Germany and the U.K., have a notification or review procedure which applies to incoming foreign investment. In all but a few instances, the U.S. government imposes only reporting requirements and does not review investments. In Australia, Mexico and Canada a special review agency exists, while in the remaining countries the review mechanism is part of the administrative machinery in economic or industrial government departments.

All countries have closed some sectors to foreign investment. Once again, West Germany, the U.S. and the U.K. have fewer restrictions than other countries. Only West Germany appears to be free of formal regulations which limit the amount of foreign equity in certain industries.

On the other hand, West Germany, the U.S. and the U.K. have the toughest competition legislation, and it is in these countries that such legislation is most likely to be used to keep out or control an unwanted foreign investment.

State ownership of industry is widespread in Europe, including West Germany, and Mexico and can have the effect of cutting off investment opportunities in some sectors. Even partial state ownership can give governments control over what foreign investment, if any, may be allowed in an industry.

Requirements to use local parts and services, in law or in practice, are widespread and probably exist in all countries. It is likely that in all cases local and regional governments pressure companies to provide some local input before contracting for their services. The recent demand, of some U.S. autoworkers and congressmen, for all automobiles sold in the U.S. to have a set percentage of local content illustrates the pressures on government, even in a highly developed economy, to try to alter multinational practices to meet domestic needs.

It is clear that all countries attempt to control the amount and nature of foreign investment to some extent. Advanced industrial nations do tend to have fewer restrictions simply because foreign investment is not as important in the functioning of a mature economy.

Table 4

FACTORS AFFECTING FOREIGN INVESTMENT

COUNTRY	France	West Germany	Sweden	United Kingdom	Aus-tralia	Mexico	Japan	United States	Canada
Formal Review or Notification Procedures	●	no	●	no	●	●	●	●	●
Exchange Controls	●	no	●	no	●	●	no	no	no
Some Industries Virtually Closed to FDI	●	●	●	●	●	●	●	●	●
Limits on Foreign Equity in Some Industries	●	no	●	●	●	●	●	●	●
Restrictions on Foreign Ownership of Real Estate	●	no	●	●	●	●	●	●	●
Competition Legislation Sometimes Used to Control FDI	no	●	no	●	no	no	no	●	no
Local Content Requirements - in Law or in Practice	●	no	no	●	●	●	●	no	●
Significant State Ownership of Industry	●	●	●	●	no	●	no	no	●

In his book, The Politics of International Investment, Earl Fry predicts that investment restrictions in almost all countries, whether industrialized or not, will become more onerous. On the other hand, he points out, "most nations will continue to actively solicit foreign direct investment and will be very careful not to regulate themselves out of the investment game". The existence of these two opposing forces - the need for foreign investment and the desire for national economic independence - will produce a "highly complicated milieu" of investment restrictions and incentives in which international investors will have to

> "appreciate the fact that the formulation of public policy may differ dramatically from the implementation of such policy. In other words, a wide range of investment restrictions may have been enacted into law by executives and legislatures, but the bureaucracy may have great latitude in selectively implementing and enforcing these restrictions. Conversely, bureaucratic agencies can cause great grief for foreign investors even when national legal statutes are devoid of investment restrictions. Furthermore, provisions which treat foreign and domestic businesses equally, such as environmental-protection, product-liability, and equal-opportunity standards, may have a greater impact on the success or failure of a foreign-controlled business venture than those restrictions which are aimed specifically at overseas investors".