Foreword

HON. FRANK CHURCH*

This volume of the San Diego Law Review, devoted to the role of the multinational corporations, is further evidence of the burgeoning literature surrounding the emergence of these corporations in the public consciousness in recent years. Economists, political scientists, sociologists, lawyers, Governors of the Federal Reserve Board, government officials, in both the executive and legislative branches, are seeking to understand how the activities of these corporations affect national and international economic and financial policies.

The emergence of the multinational corporation as a dominant force in international trade and investment has created a "whole new ballgame" with respect to the policies of national governments. What is new is not that there are now multinational corporations. These corporations, after all, first emerged in the early part of the twentieth century with the giant mining and oil companies—Anaconda, British Petroleum, Standard Oil of New Jersey, International Nickel, etc. Indeed, the first multinational corporation dates back to the eighteenth century, to the British East India Company. So, the phenomena itself is not novel. What is novel is that these corporations—now approximately 300 in number—have mushroomed

* United States Senator, Idaho; Chairman, Subcommittee on Multinational Corporations; A.B., Stanford University; J.D., Stanford University.

so in size and scope. The biggest among them command resources that rival those of nations.

Their investments increased from $3.8 billion in 1950, to $11.2 billion in 1960, and $32.2 billion in 1970—a rate of growth in the range of 10 per cent per year. By comparison, U.S. exports of manufactured goods have expanded about 5 percent per year over the past decade . The overseas production of all forms of U.S. investments in 1970—$78 billion—amounted to about $156 billion per year.

General Motors, has annual sales approaching $30 billion, a sum larger than the gross national product of all but fourteen or fifteen countries. GM dwarfs the likes of Greece and Turkey; Standard Oil of New Jersey has an annual income equal to South Africa's GNP; Ford Motor Company's annual income is larger than Austria's GNP. Royal Dutch Shell, General Electric, IBM, Mobil Oil, Chrysler, Unilever, ITT, Texaco, Standard Oil of California, British Petroleum, Ling-Temco-Vought, Standard of Indiana, Shell Oil, General Telephone—with incomes ranging between $11 billion for Royal Dutch Shell and $3.5 billion for General Tel (these are 1970 figures)—are economic nation-states. The multinational corporations are in fact, and for good reason, often referred to as the "invisible empires."

Collectively, according to a recent United States Tariff Commission Report, the multinational corporations and their private banking allies control a $268 billion pool of capital:

> This $268 billion, all managed by private persons in a private market which is virtually uncontrolled by any sort of official institution, amounts to more than twice the total of all international reserves held in central banks and international monetary institutions in the world. . . . These are reserves with which central banks fight to defend their exchange rates. The resources of the private sector outclass them.

The existence of these corporations, moreover, has completely transformed the definition of national exports; for example, in Latin America, the total exports of United States-owned manufacturing subsidiaries, which amounted to $750 million in 1968 in that region, had amounted to only $102 million in 1957. By 1968, the export of manufactured goods by foreign-owned subsidiaries, the vast majority of which were American-controlled, had come to represent about 40 percent of all exports of manufactures from Latin America.

A recent report by Professor Raymond Vernon of Harvard University on restrictive trade practices, done for the United Nations, concluded that the mix of exports of American-owned subsidiaries has included a heavy emphasis on relatively "modern production" designed for the markets of the developed nations. Moreover, the high degree of vertical integration of these industries permits the corporations to arrange prices among affiliated companies in a way which minimizes their total tax burden.

This explosive growth has led some commentators to conclude that the advance of the multinational corporations is an inevitable form of economic life. By the turn of the century, we are told that 80 percent of the world's industrial capacity may be in the hands of 200 or 300 multinational corporations. However, there is reason to doubt the inevitability of this scenario. Increasingly, there is evidence of counter-action on the part of nations which feel that their economic and political sovereignty is threatened by the emergence of these corporations. That this reaction is having an impact upon corporate thinking is evidenced by the very interesting contribution to this volume of Henry T. King, Chief Corporate International Counsel of TRW Inc. Mr. King states: "The past year has witnessed significant and far-reaching changes in legal restrictions encountered by the U.S. corporate investor in his overseas investment activities. New patterns of control and decontrol appear to be emerging in key areas of the world, and the U.S. corporate investor must be fully prepared to anticipate and deal with them."

Mr. King notes:

> In traditionally free investment areas, such as the Federal Republic of Germany, the past year has seen the development of tight exchange controls affecting the financing of foreign owned operations. . .
>
> In Australia, where the U.S. investor heretofore has had a relatively free hand, a new Takeovers Law was enacted in late 1972 which has in practice meant Australian Government review, and approval and disapproval, of all mergers or acquisitions involving the acquisition by foreign firms of the stock of Australian firms. Canada is also considering a similar law and may act on it this year.
>
> Mexico had codified and tightened by legislation its traditional administrative controls over foreign investment. Mexicanization (defined as over 50% Mexican ownership of an enterprise) is the order of the day in Mexico. Venezuela has joined the Andean Group which favors local majority ownership of local industry and is committed to limiting profit transfers annually to 14% of invested capital. In Argentina the government has placed a premium on Argentinization (51% Argentine ownership) in key industries, such as the auto parts industry, by severely limiting the financing in Argentina of foreign-controlled firms, and limiting their right to

> introduce new products into their existing operations without Argentinian participation.

What is significant is that "this counter-revolution" is not limited to the so-called developing countries. As Mr. King has stated, even advanced, industrial societies, such as West Germany, and "intermediate" countries, such as Australia and Canada, have felt compelled to review past policies which were openly conducive to unlimited and uncontrolled entry of foreign investment, which in practice has meant largely American investment.

Mr. King's article reflects a perceptive attempt to adapt to this changed environment in which nations are evidencing a clear decision to control the terms upon which foreign investment is to operate within the host countries. Indeed, the King article may be indicative that corporate perceptions are ahead of U.S. Government policy in recognizing a changing climate in developing countries for multinational corporate investment.

The contribution by Clark N. Ellis, Financial Economist in the Office of Investment Affairs of the Department of State, provides a useful summary of the evolution and current state of U.S. Government policy with respect to multinational corporate investment abroad.

Mr. Ellis states:

> The U.S. Government actively encourages foreign direct investment in those LDCs which seek it. This policy, which is a cornerstone of U.S. policy towards the developing world, is based on the assumption that foreign direct investment is a vital contributing factor in the development process and, as such, a necessary complement to official assistance flows . . . .
>
> Specifically, the U.S. Government provides incentives for investing in LDCs by means of the investment insurance and financing programs of the Overseas Private Investment Corporation (OPIC), general exemption of the developing countries from the foreign direct investment controls program, and preferential tax treatment.

But, there is increasing controversy with respect to the traditional view of the linkage between foreign private investment, economic growth and development. James Grant, Executive Director of the Overseas Development Corporation, in a recent article, thus, stated, "A major rethinking of development concepts is taking place, compelled by a single fact: the unparalleled economic growth rates achieved by most developing countries during the 1960's had little or no effect on most of the world's people, who continue to live in desperate poverty."

These considerations were also reflected in the comments made by Robert McNamara, President of the World Bank, in his April

14, 1972, speech in Santiago, Chile, before the United Nations Conference on Trade and Development, in connection with Brazil, a country which has attracted a large amount of foreign investment and achieved a high growth rate: "In the last decade Brazil's GNP per capita, in real terms, grew by 2.5% per year, and yet the share of the national income received by the poorest 40% of the population declined from 10% in 1960 to 8% in 1970, whereas the share of the richest 5% grew from 29% to 38% during the same period. In GNP terms, the country did well. . . . But throughout the decade the poorest 40% of the population benefited only marginally."

Moreover, the Senate Foreign Relations Subcommittee on Multinational Corporations concluded with respect to OPIC that;

i. The investment guarantee program administered by OPIC is, at best, only a marginal contributor to the development of the poorer countries of the world and OPIC is only a marginal stimulus to private investment in less developed countries.

ii. The program, as presently conceived, tends to increase the likelihood of United States Government involvement in the internal politics of other countries in connection with the property interests of United States corporations.

iii. The program, as presently administered by OPIC, and previously by its predecessor, AID, had inherent within it a conflict between the achievement of public policy and management by sound insurance principles. The result has been a large and unsatisfactory exposure of the good faith and credit of the U.S. Government.

The Subcommittee, therefore, proposed that OPIC be considered an insurance rather than a development program which should be administered by the private insurance industry. It is somewhat disappointing to find no mention by Mr. Ellis of the above factors as considerations in the evolution of U.S. policy with respect to foreign direct investment.

The article by Professor David H. Blake, Associate Professor, Graduate School of Business, University of Pittsburgh, concerns labor and the regulation of multinational corporations. Professor Blake's article analyzes the concerns of labor unions with respect to the activities of the multinational corporations and evaluates the attempts by labor to cope with these activities. The basic problem, according to Professor Blake, from labor's point of view, is the fact that multinational corporations have a number of options as to where to invest. This gives the companies great leverage in negotiations with individual unions in the countries in which they are located. If they are not satisfied with the course of labor negotiations or practices, the corporations may pose the alternative of investing in new plant and facilities in jurisdictions where labor unions are more amenable or not permitted at all. To date, labor unions have not been successful in devising an effective strategy to deal with the "mobility" of the corporations in deciding where to locate capital investments.

Professor Blake analyzes at length Sweden's attempt to link the availability of investment guarantee insurance with commitments on the part of Swedish corporations to adhere to a "code of conduct" in developing countries which cover such items as health and welfare standards, recognition of trade unions and effective collective bargaining. The premiums for this insurance offered by the Swedish government are substantially less than those charged by the OPIC. Nevertheless, very few, if any, Swedish companies have been willing to use the program under these conditions. Instead, they have foregone the availability of the insurance. This may be indicative of the fact that one reason for investing in developing countries is precisely to take advantage of less stringent social welfare requirements than are imposed by more developed countries; the availability of investment guarantee insurance, even at low premium rates, is not sufficient to offset the attraction of a more favorable "investment climate" in the developing countries.

The apparent lack of success of the Swedish program may indicate that a stringent code of conduct for multinational corporation investment in development countries has dim prospects for success. But before drawing this conclusion, more extensive investigation will be necessary.

The three remaining contributions to this volume, *Export Financing* by William P. Streng, Visiting Associate Professor of Law, School of Law, Southern Methodist University, *Centralizing the International Operations of Multinationals* by Albert S. Goldbert and James J. Wilson of the law firm of Diamond, Tilem, Colden & Emery, Los Angeles, and *Use of a Domestic International Sales Corporation to Reduce Federal Income Tax on Export Earnings* by Robert S. Rendell, Deputy General Counsel, Export-Import Bank of the United States, are lucid presentations of the subject matter with which they deal. The export financing analysis in the Streng article is particularly comprehensive. However, it would have been even more valuable if it had (a) compared U.S. export financing facilities with those provided by other developed countries, and (b) determined whether the aggregate of U.S. policies favored investment abroad rather than investment in the U.S. and how this aggregate of policies compared with those of other countries.

Each of the contributions which are included in this volume is written with admirable clarity. Indeed, the volume as a whole makes a significant addition to the growing literature on this highly controversial but very important subject.