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Costs and Benefits from Foreign Direct Investment: A Study of Ghana

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COSTS AND BENEFITS FROM FOREIGN DIRECT INVESTMENT: A STUDY OF GHANA*

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The subject of foreign direct investment in developing countries has been characterized by a fluctuating love-hate attitude on the part of many host countries. On the one hand, foreign direct investment has been actively sought because of the wide range of benefits it can provide to a host nation; on the other hand, the activities of the foreign investors are feared. Investment by large and financially powerful multinational corporations may result in foreign domination of the national economic activities of the host state.

This ambivalent attitude has been the subject of numerous commentaries by political scientists, economists and businessmen. However, what is needed is the development of a systematic set of policy prescriptions for a host nation to employ in its dealings with foreign investors. This paper, therefore, seeks to develop such a systematic approach which can be employed by a host nation such

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as Ghana. The basic question addressed in this paper is how a state such as Ghana can receive all the possible benefits of foreign direct investment at the least cost.

To formulate these desired policy prescriptions, this paper will begin by examining the current governmental policies toward direct foreign investment, as evidenced by statutes, decrees and development plans. These documents reveal the continuing desire of the government of Ghana to attract, in a controlled manner, foreign direct investment.

An examination of the economy of Ghana will show why foreign investment is needed. The economy is fragile. There is continuing overdependence on one product, cocoa, as the nation's prime export commodity, while plentiful natural resources remain undeveloped. In addition, Ghana remains dependent on the importation of many basic goods. Consequently, chronic balance of trade problems plague the nation. The government understands that foreign direct investment is needed to develop a wider range of export commodities and to promote domestic industries that can produce goods that are currently imported.

What is needed is a critical examination of the effectiveness of current policies. Do these policies attract an adequate amount of foreign investment that is appropriate to the needs of Ghana? Recent studies suggest that direct foreign investment has not had the desired effect upon the balance of payments problem in Ghana or elsewhere in the developing world. In addition, such investments, while leading to growth, have not spurred development. Nor has the aggregate amount of investment to date been sufficient to spur such development; further, recent trends suggest that the growth rate of foreign investment in developing nations is declining.

The failure to attract appropriate and adequate direct foreign investment is attributable, in part, to governmental actions which discourage investment. These include restrictions on the repatriation of profits, renunciation of governmental debt and demands for renegotiation of agreements. Another reason is the conflict between the motivations of the host government and those of the multinational corporate investors. The existing relationships between host countries and foreign investors are marked by accusations, fears and mutual distrust. Finally, the incentives offered to potential investors may not appropriately address the needs of the specific investors whose projects coincide with Ghana's development needs.

While the picture appears bleak, it is not hopeless. The conflicts are not irreconcilable. When the wants and needs of both the host nation and the foreign investors are clearly delineated, it should be possible to match them in a mutually advantageous manner. This article will introduce a model which outlines the steps which should be taken by the government to ensure that the foreign direct investment benefits the investor while furthering the developmental objectives of the nation.

The proposed model requires a cost-benefit analysis of foreign direct investments, the ranking of alternatives and the choice of the most feasible projects. It also requires the reversal of the investment cycle, with the host nation seeking those foreign investors who best serve its needs. In other words, the host nation plays an aggressive role in attracting desirable projects.

Pursuant to this model, the government, through a committee to be set up for screening, evaluating and selecting foreign investments, would bargain and negotiate with potential investors. A flexible system of incentives would be used by the committee in the bargaining process. By tailoring a package of incentives to fit the needs of a desirable investor, Ghana would be better able successfully to attract those investment projects revealed by the cost-benefit analysis to be highly desirable.

While this model was developed with reference to Ghana, it is applicable to developing countries generally. Any host nation seeking the benefits of direct foreign investment may wish to employ a system, such as the one proposed here, that ensures investments which make appropriate contributions to the developmental goals of the nation.

The Role of Foreign Direct Investment in Ghanaian Development Policies

The intended role of direct foreign investment in the overall economic development of Ghana must be ascertained before one can analyze incentives and controls that would allow Ghana to benefit from direct foreign investment at the least cost. Therefore, I shall examine policy statements which set forth the government's objectives in broad terms as well as the statutes and decrees which implement those policies.

The Ghanaian government clearly set forth its economic policy and the desired role of foreign direct investment in the economic development of Ghana in the following terms:

> Ghana's present economic policy is based on the principle of self-reliance and the doctrine of "capturing the commanding heights of the

> economy." This doctrine states that Ghanaians should have *effective control* over the significant areas of the economy; those which exert considerable influence on the total economy of Ghana. This principle of self-reliance means that Ghanaians should, as far as possible, rely on their human and material resources for the economic development of the country.[1]

Ghanaians must have effective control over those sectors which have considerable influence on the total economy of the country. While the goals of the government are unambiguous, the actual terms used are not. In particular, the terms "effective control" and "significant sectors" are susceptible to a variety of interpretations. This could pose serious dilemmas in the implementation of the Ghanaian policy.

In 1975, the Ghanaian Government instituted a five year economic development plan in order to achieve economic self-reliance.[2] The plan includes policy directives to reduce the balance of trade deficits through: (1) increases in foreign exchange earnings resulting from increased exportation of Ghanaian products; (2) an increased agro-based industrial effort based on native agricultural outputs (*e.g.*, fertilizer) which will reduce Ghana's dependence on foreign production; and (3) the advantageous use of labor-intensive industries in order fully to utilize Ghana's important labor resource.[3]

In addition, one of the plan's major goals is the achievement of 5.5-percent-plus per annum economic growth rate.[4] Also part of the general scheme is a call for varying degrees of governmental

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1. *Outline of Ghana's Investment Policy* at 1.

2. Guidelines for the Five-Year Development Plan 1975-1980 (Accra-Tema: Ghana Publ. Corp., Jan. 1975).

3. *Id.* at 4.

4. *Id.* Ch. 16 at 5. This calculation, however, is based on several assumptions related to the growth rate of certain specified factors, such as population, the capital output ratio, gross domestic product, exports, and government consumption. Because of the speculative nature of these projections, the growth rate for the Ghanaian economy should be seen as being no more than the projection of an ideal growth rate. *But see*, U.S. Foreign Service, U.S. Dept. of Commerce (Industry and Trade Administration) *Foreign Economic Trends and Their Implications for the United States* July 1979 [hereinafter referred to as FET 1979] where it is stated that real GNP grew "hardly at all in 1978, and per capita GNP declined for the fourth year in a row, to a level below that for 1970." *Id.* at 3.

intervention in the management of certain economic indicators. Thus, income, prices, and wages will be heavily regulated in order to produce a minimum inflationary impact on the general economy caused by the infusion of foreign investment funds.[5] In order to diversify the export structure of the Ghanaian economy, balance of payment controls will be in effect. Thus, an increase in the international export market is sought for Ghanaian goods to accompany a decrease in Ghanaian dependence on foreign imports. Therefore, the plan addresses considerations for the domestic, private and corporate investor.[6] Foreign direct investment is needed to achieve the development goals of the Five Year Plan. In particular, it is needed to induce the transfer of technology into Ghana. According to the declared government policy, transfer of technology, both capital intensive and labor intensive, is needed—one for more complex industries and the other for less complicated industries.[7]

In pursuance of the policy of attracting direct foreign investment while insuring effective Ghanaian control of the economy, the government issued the Investment Policy Decree of 1975[8] amended subsequently by the Investment Policy (Amendment) Decree of 1975.[9] Read together, these two decrees divided the economy of Ghana, for investment purposes, into four broad categories. The first category deals with sectors which are reserved for only the state such as public utilities and the manufacture of arms and ammunition. The second category delineates areas in which there can be joint state/foreign ownership where the equity participation of the state ranges between 55 percent and 20 percent.[10] In the third category joint Ghanaian/foreign ownership is required.[11] In those industries where Ghanaian participation is mandatory, the decrees stipulate a date by which participation must commence.[12] The fourth category deals with areas where foreign investors can operate unhampered by legislative constraints. Projects associated with complicated technology requiring foreign skill usually fall

5. Guidelines for the Five-Year Development Plan 1975-1980 (Accra-Tema: Ghana Publ. Corp., Jan. 1975) at para. 17.

6. *Id.* at para. 19 (a), (b), (c).

7. *Id.*

8. Investment Policy Decree N.R.C.D. 329 (1975).

9. Investment Policy Decree S.M.C.D. 6 (1975).

10. Investment Policy Decree N.R.C.D. 329 (1975); amended subsequently by Investment Policy (Amendment) Decree S.M.C.D. 6 Part III (1975).

11. *Id.* Part II.

12. *Id.* Part I.

within this fourth category.[13] While not officially required, the decree "suggests" that the foreign investor consult with Ghanaian citizens because their familiarity with business methods and customs is beneficial.[14]

In addition, there is a fifth category previously designated only for Ghanaian private citizens. Enterprises which do not require substantial capital outlay and complicated technology belong to this category: aliens are effectively eliminated from these industries.[15]

Since Ghanaian participation, either governmental or private, is required in all but the fourth category, government policy as set forth in investment policy decrees seeks to reap the advantages of foreign investment while increasing Ghanaian control over the economy.

Basically, the attitude of the government of Ghana toward foreign direct investment has not changed since Ghana achieved independence in 1957. Political independence, according to the government of Dr. Kwame Nkrumah, the first President of Ghana, did not make sense if the economy of Ghana was still dominated and controlled by the former colonial master, Britain, or by any other neo-colonialist power.[16] Political and economic independence must come together or liberation would be a mere farce. However, the economy of Ghana in 1957 was still dominated by alien monopoly interests, a relic of the colonialism to be eradicated.[17]

One of the major governmental objectives for foreign direct

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13. Investment Policy Decree N.R.C.D. 329 (1975); amended subsequently by Investment Policy (Amendment) Decree S.M.C.D. 6 (1975).

14. *Outline of Ghana's Investment Policy* at 2.

15. *See* Ghana's Investment Policy Decree, Part I (1975).

16. K. Nkrumah, Neo-Colonialism, The Last Stage of Imperialism 15-36 (1965); *see also* R. Genoud, Nationalism and Economic Development in Ghana (1969).

17. R. Genoud, Nationalism and Economic Development in Ghana 60-65 (1969). *See also* A. G. Frank, *The Development of Underdevelopment*, in Imperialism and Underdevelopment (R. Rhodes ed. 1970). He holds erroneous the view that the development of these underdeveloped countries, including their most underdeveloped domestic areas, must and will be accomplished by diffusing capital and institutions of the international and national metropoles. Furthermore, since expansion of capitalism through history penetrated even the most isolated sectors of the underdeveloped world, the underdeveloped sectors are as much a result of capitalist exploitation as are the more modern or capitalist features of the national metropoles of these underdeveloped countries. *Id.*

investment is to ensure maximum development and efficiency of the Ghanaian economy. However, since transnational corporations, which represent the major source of foreign investment, have profit maximization as their major objective, areas of conflict will be inevitable. There is a fear that history will repeat itself with multinational corporations playing the role of their former colonial masters. Hence, there is a growing national xenophobia against economic dominance by foreigners generally called economic nationalism.[18] As suggested by Dr. Nkrumah, however, it is the uncontrolled foreign investment, rather than foreign investment *per se,* which leads to the impoverishment of less developed countries. All the governments since the overthrow of Nkrumah have been guided by these same basic considerations.[19]

The State of the Ghanaian Economy

Given the growing fear of foreign capital, can Ghana realistically achieve its economic goals without compromising its goal of self-determination? An answer to this question demands an examination of the fragile nature of the Ghanaian economy. The economy is largely dependent on major importation of goods and services and the exportation of primary products.[20] An examination of import-export activity by Tony Killick clearly supports this view.[21]

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18. Cateora, *The Multinational Enterprise and Nationalism,* MSU Business Topics, Spr. 1971, at 51.

19. R. Genoud, Nationalism and Economic Development in Ghana, at 62, n. 4 (1969). However, there has been a clear change in the emphasis on the sectors in which foreign direct investment can take place. Under the CPP government fast industrialization was the fundamental thrust of economic development of a socialist Ghana. The government was to play a major role in obtaining capital and spearheading industrialization by controlling factors of production. Hence private industrial activity was encouraged, but a limit was put on how much foreign investors could invest in Ghana (not more than 100 million pounds). Under the present military regime there is a great emphasis on the development of agriculture. Though industrial activity is encouraged, foreign investment is solicited in the agricultural sector in line with the Operation Feed Yourself Program of the military regime. *See* text accompanying note 2 *supra.*

20. *See* FET 1979, *supra* note 4, at 4. Ghana remains the third largest market for U.S. exports in sub-Saharan Africa. U.S. sales in 1978 totaled $124 million.

21. *See generally* R. Genoud, Nationalism and Economic Development

The export sector has been, over the years, dominated by a single product, cocoa, the world price of which suffers violent fluctuations.[22]

The dependence of the Ghanaian economy on the exportation of cocoa has produced a serious and chronic balance of payment problem. Continued high consumption of foreign goods[23] combined with the wide fluctuation in the price of cocoa[24] underlies this problem.[25]

Foreign direct investment could ease the foreign exchange situation through the infusion of foreign capital and the development of industries in those sectors that encourage import substitution in essential goods.[26] This will reduce the propensity to consume foreign imported goods.[27] Import substitution would produce the highest savings if local resources were used. Most developing countries undertake industrial development using this method because a market exists for basic products that do not require

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in Ghana (1969).

22. *See* Barclays ABECOR Country Report–Ghana 2 (April, 1979).

23. FET 1979, *supra* note 4, reports that the reduction of imported goods has begun.

24. *See* FET 1979, *supra* note 4. Cocoa exports account for 65-70% of all export earnings and 35% of government revenues. Production has been declining and the situation is tenuous. *Id.* at 7.

25. International Monetary Fund, 6 Surveys of African Economics 201 (1975).

Since 1969 the system of import licensing has been relaxed. As a result, domestic demand for imported goods coupled with declining cocoa prices led to a rising balance of payments deficit. Rather than restricting imports, government authorities relied on the introduction of import surcharges, exchange taxes, and an export bonus scheme. *See* FET 1979, *supra* note 4, at 6, where it states that export bonuses that had been reduced from 20-30% to 10% were to be eliminated as of September 1979. *See generally* Guidelines for the Five-Year Development Plan 1975-1980 (Accra-Tema: Ghana Publ. Corp., Jan. 1975) at para. 18. Balance of payment controls will be in effect in order to achieve the government policy of diversifying the export structure of the Ghanaian economy. An increase in the international export market is sought for Ghanaian-produced goods. Lowering Ghanaian dependence on foreign imports is also an aim of the government. *See also* FET 1979, *supra* note 4, at 6. The list of goods banned from importation is an additional measure to improve the balance of payments situation.

26. *See* notes 2-6 *supra*.

27. S. Robock, K. Simmonds & J. Zwick, International Business and Multinational Enterprises 380 (1977).

substantial amounts of capital outlay, complicated technology, and complex skills.[28]

In addition, Ghana should also encourage foreign direct investment in sectors producing finished and half-finished manufactured goods for export. A dual purpose is served by this policy. These products could be sold in the domestic market as well as in foreign countries. Ghana's foreign exchange and balance of payment situation would thus be greatly improved.

Ghana's economy would also be strengtened by a broader industrial tax base, increased jobs, access to foreign markets, the transfer of management expertise, better production skills, improved resource allocation and capacity utilization and improved mechanization in the agricultural sector.[29] All these could be brought about by the infusion of foreign capital, the main objective being to reduce the dependence on imports through diversification in both the industrial and agricultural sectors.

Perhaps the most appealing sector of the economy for possible foreign direct investors is agriculture.[30] A wide range of primary products could be produced for local consumption as well as for export.[31] Therefore, Ghana is encouraging exploration of this untapped source by the foreign investor.

As compared with other West African countries, Ghana is blessed with a relatively well-developed infrastructure and a high per capita income which offers good production potential for corporations whose target market is Ghana.[32]

Multinational Corporate Investors

One must consider the characteristics of those who provide direct investment in Ghana. When one speaks of these investors,

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28. United Nations, *Industrialization and Development: Progress and Problems in Developing Countries*, 8 J. Dev. Plan. 1, 75. II. A. 1, ST/ESA/20 (1975).

29. *See generally* S. Robock, K. Simmonds, J. Zwick, International Business and Multinational Enterprises 449 (1977).

30. Guidelines for the Five-Year Plan 1975-1980 12 (Accra-Tema: Ghana Publ. Corp., 1975).

31. *See* FET 1979, *supra* note 4, at 5. Agricultural production, timber processing and mining are considered primary areas for development. Ghana News, Jan. 13, 1976, at 7, col. 1.

32. *But see* FET 1979, *supra* note 4, at 3. *See also* note 60 *infra*.

for practical purposes, it is the multinational corporations which must be considered. Multinational corporations (MNCs) account for most of the foreign direct investment in the world.[33] According to completed figures for the last decade, foreign direct investment totaled over $150 billion before 1970.[34] Most of this amount was invested by MNCs. The dominant role of MNCs in foreign direct investment has given rise to concern in various sectors which justifies an extensive coverage of MNC activities.[35]

Only a few countries have foreign direct investment in excess of one billion. Only a few of these account for 43 percent of the total foreign direct investment in developing nations.[36] This foreign investment has been concentrated in specific sectors. In Africa, Central and South America, and the Middle East, MNCs' investments are predominantly in extractive industries (especially in petroleum or mining).[37] However, the preponderant position in extractive industries may now be declining due to increasing control by nation states over their natural resources. In addition, the growing gap in investment activities between developed and developing countries reflects the trend in foreign direct investment in general, rather than MNC policy.[38] The total picture does not appear to be very promising for the developing countries. The gap may continue to widen with a continuing decline in foreign investments. For instance, in Africa, foreign direct investment has faced a continuous decline. The growth rate of foreign direct investment dropped from 52 percent in 1929 to about 37 percent in 1960 and by the end of 1970 it further decreased to 28 percent.[39]

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33. United Nations, Multinational Corporations in World Development 5 (1973).

34. Horst, *The Theory of the Firm*, in Economic Analysis and the Multinational Enterprise 31 (J. Dunning ed. 1974). *See also* Stevens, *The Determinants of Investment*, in *id.* at 47. *See also* FET 1979, *supra* note 4, at 4. U.S. direct investment in Ghana totaled $325 million.

35. J. J. Servan-Schreiber, The American Challenge (1968). *See generally* F. Knickerbocker, Oligopolistic Reaction and Multinational Enterprise (1973); United Nations, Multinational Corporations in World Development 6 (1973).

36. United Nations, Multinational Corporations in World Development 19 (1973).

37. *See, e.g.*, Ghana News, Jan. 13, 1976 at 7-8 col. 1-3.

38. Report by Secretariat of UNCTAD, 6 U.N. CTAD, Chapter III, U.N. Doc. TD/B. 466-88 (1973).

39. *See, e.g.*, Hveem, *The Extent and Type of Direct Foreign Investment in Africa*, in Multinational Firms in Africa 73 (C. Widstrand ed. 1975). The

Analysis of the distribution of foreign direct investments in Ghana reveals that as of 1967 just below a third of the total of foreign direct investments was in mining and smelting. Investments in manufacturing were about 27 percent, 21 percent in trade and 17 percent in petroleum industries. Banking accounted for 4 percent. At that time, agriculture was the least attractive to foreign investors.[40]

Motives Behind Foreign Direct Investment

Given both the basic characteristics of potential foreign investors such as MNCs and current worldwide trends in foreign investment, one might wonder what the fundamental motivations behind foreign direct investments in developing nations such as Ghana are. Although there is a wide divergence of opinion, it appears that the nature and character of foreign investors provide the answer.

Business imperatives have long dictated that profit motives override philanthropic considerations in any business venture. However, there is growing controversy over the centrality of the profit motive as the major stimulus for investing in a particular country. MNCs, it is argued, are mainly concerned with overall growth and maximization of profits.[41] Therefore, operating losses incurred in one country may have significant effect on the general strategy and profits of the company as a whole. However, it seems more likely that the profit motive remains the impetus behind foreign investment in Ghana. The volatility of governmental sentiments towards foreign economic domination has produced high investment risk for foreign investors, hence they require high rates of return as an incentive to invest.[42] The fear of violent political fluctuations has led the MNCs to require freedom in the repatriation of their profits to avoid the risk of losses that may result from

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author estimates that while investment in developing countries has grown, it has not kept pace proportionately with foreign investment in developed countries, thus reflecting an actual decline.

40. *Id.* at 86.

41. Horst, *The Theory of the Firm*, in Economic Analysis and the Multinational Enterprise 31 (J. Dunning ed. 1974). *See also* Stevens, *The Determinants of Investment*, in *id.* 47.

42. G. Reuber, Private Foreign Investment in Development 98 (1973). *See also* Ghanaian Times, *What Price Foreign Investment?*, Jan. 27, 1977, at 4, col. 3. Danish companies, it is stated, were not prepared to invest in a developing country unless a 20-25% after-tax profit could be expected from the invested capital.

sudden radical changes of government.

Foreign investors have adopted the strategy of self-sufficiency within the enterprise[43] by seeking out natural resources and primary products abroad to feed their industries at home. This type of operation is what Dunning described as backward vertical integration because it involves securing and exploiting the raw materials of the developing world for the benefit of the company's operations in its home state.[44] The need for a continuous flow of raw materials to feed the factories of the industrialized world still exists, therefore foreign investors will continue to look for them in Ghana and other developing nations. It is therefore easy to understand why such a large proportion of foreign investment is directed to extractive industries. However, in recent years, investments in that sector have started to decline because of growing tensions between the governments and foreign investors.[45] The nationalization or majority equity participation of the Government of Ghana in the mining concessions is a case in point.[46]

Manufacturing opportunities are also beginning to attract

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43. R. Vernon, Sovereignty at Bay 19 (1971).

44. Dunning, *The Multinational Enterprise*, Lloyds Bank Rev. July 1970, at 19, 22; *see also* Vernon, *International Investment and International Trade in the Product Cycle*, 80 Q.J. Econ. 190, 203 (1966).

45. R. F. Mikesell, Foreign Investment in the Petroleum and Mineral Industries (1971).

46. Ghana Investment Policy Decree, Part II, sec. 9, at 3 (1975); *see also id.* at Part III, sec. 12 and 13(a), at 4.

> Some of the claims for a new international economic order pertain to private foreign investment in developing countries . . . [F]oreign investment has been too expensive for them, has threatened their economic independence and has caused disintegration of their economies. Therefore, the developing countries now claim more control over foreign investment. The most controversial of their claims is that they demand the right to nationalize foreign-owned companies according to their own laws (regarding compensation, etc.) . . . [T]he claims are put forward by the whole group of developing countries and not only by the socialist ones. This reflects that even in non-socialist developing countries the government and the local industrialists have become more nationalistic . . . [B]y demanding the right to carry out the nationalizations according to their own laws (which means, in effect, rejecting the principle of full compensation) they may deter potential foreign investors. This reflects the growing disenchantment in developing countries regarding foreign investment.

Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977, at 4, col. 5. *See also* note 84 *infra*.

foreign investors to developing nations for several reasons. First, manufacturing would be undertaken to protect markets already developed through exports which are now threatened by barriers of entry to the markets of the developing nations by local and/or foreign competitors.[47] Secondly, this type of investment seems to be cost advantageous. Lower costs of labor and material appear to play a significant role in the location of a foreign manufacturing facility. Thirdly, a widely accepted reason for a foreign manufacturing plan is the product cycle hypothesis put forward by Vernon.[48] According to this hypothesis, innovations are first marketed in the wealthier nations. When the technology becomes common and the market expands and economies of scale assume a position of importance, then production is started in a foreign country.

Finally, a recent development is investment in manufacturing facilities that produce component parts or semi-finished products in developing countries.[49] These operations are export oriented and generally do not produce products for domestic consumption in the host nations. The products are normally shipped to a central location for distribution to various points. (For example, the Volta Aluminum Company (Valco) smelter facility in Ghana manufactures semi-finished aluminum ingots to supply the plants of the parent company in the United States.) Moreover, the risk inherent in relying on Ghanaian production of a finished product is reduced.

Foreign investors would be attracted to investment in Ghana and other developing nations for several other reasons including narrowing profits at home, maximizing economic rent on knowledge,[50] and avoiding anti-trust sanctions.[51]

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47. R. Vernon, Sovereignty at Bay 66 (1971). *But see* FET 1979, *supra* note 4. "Rising labor costs and the government's price control policies have discouraged investment in, and expansion of, the manufacturing sector in recent years." *Id.* at 9.

48. R. Vernon, Sovereignty at Bay 65 - 106 (1971). Available capital and advanced technology provide sufficient impetus for firms in developed countries to produce new and innovative products and processes. Because of their position of comparative advantage, these firms are able to exploit foreign, less developed markets. They do so by exporting their ideas and products to foreign countries. When their export position is threatened, overseas subsidiaries are established to exploit what remains of their oligopolistic advantage.

49. United Nations, Multinational Corporations in World Development 30 (1973).

50. Parry, *The International Firm and National Economic Policy: A Survey of Some Issues*, 83 Econ. J. 1201, 1203 (1973).

51. I. A. Litvak & C. J. Maule, Foreign Investment: The Experience

Incentives

The incentives used by Ghana to attract foreign investment must be examined. Facially, they are a liberal set of inducements which should be attractive to the multinational corporate investor. They must be considered, however, in light of the government policies and actions which act as disincentives. These disincentives can negate the advantages of investing in Ghana and drive away the foreign investors that the government seeks to attract.

Ghana's approach to acquiring foreign direct investment is a generalized approach to all potential investors and is similar to that of most other developing countries.[52] This approach is buttressed by several policy, legislative, and economic inducements aimed at removing obstacles likely to operate as disincentives to foreign investments. Policy oriented inducements have been issued by the government at various times through different channels.[53] The high rate at which foreign direct investment is sought may be some indication of how badly Ghana needs foreign investments to support its five-year development plan.

Policy statements alone are not the only indicators of government intention as a wide range of liberal legislative and economic inducements have been introduced. Most of these inducements are contained in the Capital Investments Decree of 1973. The Decree provides, *inter alia,* employment tax credits,[54] tax

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of Host Countries (1970). United States Court rulings with respect to mergers have been restrictive with the result that United States firms, in seeking to escape anti-trust policies, pursued overseas expansion. *But see* United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945), which indicates that United States courts would have jurisdiction over their nationals whose overseas activities have intended effects within the United States. Therefore, in very few cases will United States firms actually be escaping anti-trust policies through foreign expansion.

52. *See, e.g.,* Ekundare, *The Political Economy of Private Investment in Nigeria,* 10 Journal of Modern African Studies 37 (1972); MacDonald, *Recent Legislation in Nigeria and Ghana Affecting Foreign Private Direct Investment,* 6 International Lawyer 548 (1972).

53. Capital Investment Decree Part V. secs. 13-24, N.R.C.D. 141 at 5-8 (1973).

54. Capital Investment Decree, sec. 13, N.R.C.D. 141 (1973), Employment Tax Credit. "Notwithstanding the provisions of any other enactment, the Board may, in order to stimulate investment in labour-intensive industries, grant

holidays,[55] capital allowances,[56] deductions for scientific research,[57] and exemption from direct taxes and charges,[58] while

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to a company approved under this Decree, during the continuance in force of an agreement executed under subsection (3) of section 5 of this Decree, and subject to the other provisions of this Decree, an employment tax credit for a period not exceeding ten years from such date as the Board may determine." *Id.* *See also* note 100 *infra;* The Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977, col. 3. A tax holiday of 5-10 years does not affect the most important consideration of the investor (the risk factor), as it is important only if the investment is profitable.

Although an inefficient means of attracting foreign investment, such tax holidays increase profits considerably and thus increase the cost of the investment of the host country.

55. *See* Capital Investments Decree, sec. 14, N.R.C.D. 141 (1973).

> Notwithstanding the provisions of any other enactment, the Board may, in exceptional cases, where the technology for a particular industry is necessarily capital-intensive, grant income tax holiday to the company concerned for a period not exceeding five years from such date as the Board may determine.

Id. *See also* note 100 *infra.*

56. *Id.* sec. 15.

57. *Id.* sec. 16.

58. *Id.* sec. 18. That section provides incentives in the form of exemptions from the payment of indirect taxes and charges for specified periods.

Outside of these incentives, a number of foreign exchange difficulties in Ghana have resulted in a shortage of imported raw materials and a lack of spare parts which act as a *disincentive* to the establishment of new industries; further, such difficulties hamper export diversification and expansion because existing industries can operate at only 20-30% capacity.

The major foreign exchange problem is that in recent years inflation has been running at 100-125%, which has put tremendous pressure on the limited foreign exchange reserves. The authorized Ghanaian banks do not maintain foreign exchange balances, but receive their requirements from the central bank of Ghana on a day-to-day basis. This provides a powerful incentive to use the black market currency exchange, where the exchange rates are four times higher than the official rate. *See* Ghana Abecor Country Report (1979); *see also* FET 1979, *supra* note 4.

The sad fact is that potential United States and other foreign investors have been discouraged by the continual difficulties in repatriating profits and dividends. Other potential investors are discouraged by the difficulty of assuring an adequate supply of imported raw material and equipment, which problem has long plagued those companies that already operate in Ghana.

The Five-Year Development Plan seeks to eliminate the gap between potential and actual tax collections. An integral part of this process will be efforts to increase the amount of import duties by minimizing the number of indicating no restriction on the repatriation of profits.[59] In fact, the entire Capital Investments Decree could be described as a full package of legislative inducements of various types. Economic inducements may be termed multi-purpose instruments directed at sectoral or regional allocation of investment activity.[60] These economic inducements are a popular means of attracting foreign investments to relatively deserted sectors or regions.

The policy behind these legislative and economic inducements is based on certain underlying presumptions. It assumes that an investor can be attracted by a promise of normalization of the investment climate until it closely approaches the domestic environment. Maximum profit motives as well as a desire for appreciation in the value of their productive investment is assumed. In addition, relief from the normal disincentive of taxation is assumed to be a most efficient way of facilitating foreign investment needs, thereby maximizing the flow of investment capital. But for these incentives to be truly effective they must bear a close relationship

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concessions granted to importers as well as preventing misclassification of imported goods. Guidelines for the Five-Year Plan 1975-1980 para. 19(a).

59. *See* International Monetary Fund, 6 Surveys of African Economies 206 (1975). Under the Capital Investment Decree, companies with foreign participation are, in principle, permitted to transfer freely their net profits after tax, but at present, such transfers are authorized only on a limited basis. The transfer of profits by companies that are either foreign-owned or owned or controlled by non-residents and which have been financed with locally raised capital, is not permitted. All outward capital transfers are subject, however, to individual approval by the Bank of Ghana. Transfers of resident-owned capital are not normally permitted by the Bank of Ghana. *See also* FET 1979, *supra* note 4. Exporters are required to collect and repatriate the proceeds from their exports within 60 days of shipment; export proceeds in foreign exchange must be surrendered to a commercial bank in Ghana upon receipt. Exporters surrendering export proceeds in external African currencies or convertible currencies are granted an export bonus. This bonus is 10% of the proceeds for all exports except cocoa. *Id.* at 169. *Cf.* note 25 *supra.*

For the corporate investor, incentives for the reinvestment of profits in Ghana rather than repatriation are mentioned in the Five-Year Plan at *para.* 20 (b). *Cf.* FET 1979, *supra* note 4, wherein it is stated that American and other foreign investors are discouraged by the difficulties faced in repatriating profits and dividends as well as assuring adequate supplies of imported materials to companies operating in Ghana. *See also* note 61 *infra.*

60. *See* FET 1979, *supra* note 4, at 12. A free zone in Ghana's main port of Tema is now open to foreign investors. The basic infrastructure including utilities is scheduled for completion in 1980.

to the revealed preferences of individual investors and must outweigh the perceived risks and the disincentives which result from other aspects of government policy.

Although officially seeking foreign direct investments, certain government actions more than offset its efforts. Foremost is the issue of repatriation of profits and dividends. Under section 12 of the Capital Investment Decree the government undertakes not to restrict the repatriation of profits with the exception that the Commissioner may impose temporary restrictions in order to safeguard the external payments position. According to IMF reports, these "temporary" restrictions appear to be becoming permanent in nature because of administrative bottlenecks designed to hamper the repatriation of profits even when the temporary bans are lifted for short periods of time.[61]

These practices have the total effect of creating a negative impact on the flow of foreign direct investments. Interpretation of government action by investors is the key issue here. It is conceivable that the reaction of potential investors would have nothing to do with either the validity or rationality of government action.

The second important action which temporarily created doubts about the government's credibility was the repudiation of Ghana's external debts by the military regime in 1972. In February of that year the government, in an attempt to mitigate the effects of the external debts (which included profits and dividends) on the balance of payments and the total economy of the country took the following actions: (1) cancellation of certain debts believed to have been vitiated by corruption, fraud and other illegality, (2) agreed to the repayment of long-term loans in accordance with existing terms, and (3) declared its intention to make a "steady if even small reduction in our short-term indebtedness as the nation's resources will permit."[62]

While there may have been valid reasons for the government's drastic action, the repudiation alarmed both Ghana's creditors and the international financial community at large.[63] Ghana and a group

61. International Monetary Fund, 6 Survey of African Economies 207 (1975). *See also* Bank of Ghana, Ghana: Outstanding Applications as of March 31, 1974 for Transfers of Profits and Dividends Relating to Accounting Years, 1956/57-1974/75, Table XXXIII, which reflects total outstanding applications numbering 120,574.

62. International Monetary Fund, 6 Survey of African Economics 198 (1975).

63. The Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977

of creditor countries met in Rome in 1974 in an effort to resolve their differences and were at least partially successful. The parties signed an Agreed Minute subject to ratification. But despite this eventual agreement, Ghana's credibility was damaged by the repudiation. Investors are understandably hesitant to pour capital into a country whose future leaders fail to honor the obligations of their predecessors.

In April 1975, the government issued the Investment Policy Decree calling for Ghanaian participation in a wide range of foreign business concerns. The Decree actually forced Ghanaian participation, but not necessarily government cooperation, in certain sectors. It also established a body to evaluate the value of the assets of foreign businesses affected by the Decree. A controversy arose concerning the valuation of the assets and the repatriation of the funds accruing from the transfer of these assets. According to the United States Embassy report from Accra, foreign investments have been negatively affected as potential investors wait to see the outcome.[64]

Another important action of the government that appears to have had some negative effect on its efforts to induce investment is the attempt to renegotiate the Valco Agreement with Kaiser and Reynolds.[65] The Valco Agreement was considered by many to have been a one-sided contract in which Valco got the "lion's share." The Ghanaian government assumed that the Agreement would result in the formation of an integrated industry, which would both extract and process bauxite. When the mining of bauxite in Ghana was found to be more expensive than importing bauxite from Jamaica, the government's hopes for the development of an integrated industry within Ghana were frustrated and it sought renegotiation of the Agreement. Despite the changed circumstances, Valco contended that the agreement should not be renegotiated. It is unnecessary to proceed to the merits of the controversy in order to recognize its deleterious effect on Ghana's reputation among foreign investors. A controversy of this sort inevitably raises doubts among foreign investors concerning the government's willingness to comply

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at 4, col. 3. *See also* IMF, 6 Surveys of African Economies 199 (1975). The Agreed Minute provided for rescheduling of all principal and contractual interest payments.

64. FET 1979, *supra* note 4, at 11.

65. *See* FET 1979, *supra* note 4. According to this report, the Kaiser and Reynolds aluminum smelter plant accounts for 78% of the $325 million total U.S. direct investment in Ghana. *Id.* at 4.

with the terms of a contract after it becomes a burden to do so.

Careful planning is needed to minimize the danger of those problems and to bolster investors' confidence in the enforceability of their agreements with Ghana.

Benefits of Foreign Direct Investment

Some intellectual observers have seen the operations of MNCs as blatant acts of exploitation at the expense of host countries. Others, agreeing that there might be exploitation, stress that the host countries nevertheless stand to benefit in several ways. They argue that foreign investments bring about the transfer of foreign capital and access to well organized foreign financial markets which ordinarily would have been inaccessible to the host country. However, the benefits accruing from the transfer of foreign capital may be limited, since it normally has to be repaid in foreign currency later on. Closely related to this is the issue of foreign exchange and balance of payments. Given a completely shattered balance of payments situation and a constantly deteriorating foreign exchange position, a positive effect on both or either of these would be more than palliative to Ghana. However, studies so far indicate that foreign investments tend to have a negative effect on balance of payments and foreign exchange in general.[66] This becomes more obvious with the repatriation of profits, dividends and repayment of foreign debt/capital.[67]

Another scarce commodity that foreign investment offers Ghana is modern technology. The transfer of technology and the training of local technical personnel have been one of the most attractive features of the multinational enterprise.[68] Unfortunately,

66. Main Findings of a Study of Private Foreign Investment in Selected Developing Countries, UNCTAD, TD/B/C.3/111 (1973). *See, e.g.*, The World Bank, World Development Report (1980). Table 13 at 134 contains figures for balance of payments and debt service ratios. The current account balance reflects the difference between (1) exports of good and services plus inflows of unrequited official and private transfers and (2) imports of goods and services plus unrequited transfers to the rest of the world. Interest payments on external public and publicly guaranteed debt are excluded from that balance amount. *Id.* at 161.

67. *See* note 59 *supra.*

68. United Nations, Multinational Corporations in World Development (1973).

however, the transfer of technology has so far not yielded its fullest potential benefits because the technology transferred is modern, capital intensive and labor saving whereas the technology needed is labor intensive. Ghana has a surplus of labor and little capital. Capital intensive methods of production reduce the employment effects of foreign investments. However, the total number of people employed would increase, thus reducing unemployment.[69] According to Reuber, the direct employment contribution of foreign affiliates is modest in a global perspective.[70]

Another significant potential offering of foreign investments to Ghana is the training of local managerial staff by foreign enterprises. Such training has a direct effect on the operations of the firms and affects the total economy through increased employment.

Foreign firms of investors also tend to have access to large markets outside the host country. This offers an opportunity to the host country to sell its products to those markets. The net effect of this on the host country would tend to be positive. If import substitution or export promotion or both are undertaken, the domestic sectors would expand through the purchasing of inputs from various other sectors.

With their wealth of resources—human, financial and technological—the MNCs as foreign investors offer Ghana better and more efficient production possibilities, better technology, increased employment opportunities, training for local technical personnel and managerial experts, foreign capital and access to foreign financial and product markets.

The Negative Effects of Conflicting Interests

The discussion of the wants and needs of both foreign investors and the government of Ghana has revealed several areas of potential or actual conflict. In fact, the area of foreign direct investment in most developing countries is dominated by accusations, recriminations, denials, fear and mutual distrust. Host developing countries are often painted, at best, as capricious, unsophisticated and insensitive to basic drives for profit. Moreover, they are perceived as having

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69. Hyson & Weigel, *Investment in the LDC's: The Unresolved Debate*, Colum. J. World Bus., Jan.-Feb. 1970, at 33.

70. G. L. Reuber, Private Foreign Investment in Development 167-84 (1973).

an almost irresistible tendency to confiscate foreign assets with reckless disregard for foreign investors' interests. The MNCs, on the other hand, are often faulted for their acquisitive tendencies. These colossal companies engage in sophisticated acts of exploitation. They are seen to be insensitive to the basic human needs of the poor and needy and willing instruments of continued neo-colonialist domination.[71]

This picture may appear too grotesque to be true. But the problem is not whether these accusations are true or false, but is rather that these unhealthy attitudes exist. If the attitudes exist, it makes the parties involved offensive or defensive, thereby creating a serious communication barrier. The end result of such attitudes can only be negative. Given the critical need for foreign direct

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71. J. O'Connor, *The Meaning of Economic Imperialism*, in Imperialism and Underdevelopment (R. Rhodes ed. 1970). The most important aspect of an effective neo-colonialist policy is economic imperialism. The definition of economic imperialism is the economic domination of one region or country over another. Formal or informal control over local resources (including liquid and real economic resources), is maintained to the advantage of the metropolitan power and at the expense of the local economy. Freedom from colonialism and replacement with neo-colonialist institutions have produced little change in terms of the framework of economic relationships. In the pure case of neo-colonialism, the allocation of economic resources, investment effort, legal and ideological structures and other features of the old society have been preserved. Independence's only achievement has been the transfer of power from former colonial masters to the domestic ruling class. This ineffectual transition was necessary to further modern economic imperialism, for it requires the active participation of the state in international economic relationships. Hence, although countries gained their political independence, they had to be kept economically dependent and securely within the world capitalist system. Neo-colonialism was designed to preserve this dependent relationship. *Id.* at 117-18. *See also* H. G. Johnson, *A Theoretical Model of Economic Nationalism in New and Developing States,* in The Multinational Enterprise in Transition (A. Kapoor & P. Grub eds. 1972). In an attempt to strengthen their economic bases, underdeveloped countries strive to replace reliance on imports with domestic production. Their efforts, however, are often misguided. The economies of the situation would indicate that economic efficiency would be maximized through the principle of comparative advantage.

> In almost all the developing countries and new nations, there is strong opposition to the investment of foreign capital and to the employment of foreign scientific, technical and managerial personnel, even though capital and professional people are scarce and their scarcity frequently constitutes the major bottleneck in the process of economic development. Both phenomena are clearly derived from nationalism.

Id. at 327.

investment in Ghana, the government must work to resolve the misunderstandings and conflicts. Otherwise, Ghana will not be able to attract the investment it so critically needs.

A prime example of an area where suspicion and misunderstanding run rampant is the question of profit maximization alluded to above.[72] The MNC essentially is an institution governed by the profit motive. Its prime responsibility is to its shareholders and is to see that capital is used profitably. In fact, profit maximization is considered by Milton Friedman and his disciples to be the only social responsibility of a corporation.[73] Profit motives are therefore seen as commendable in a free market society and perhaps in the rest of the world. Unfortunately, however, developing nations have not progressed into an age where they can appreciate this basic attitude. Their attitude is described by W. M. Clarke in the following terms:

> What lies behind much of the thinking of the developing countries is the idea that there is somehow something wrong with the pursuit of profit by commercial concerns among the poor and needy.[74]

History, however, has continually demonstrated that basic economic drives are not inherently or predominantly a phenomenon of Western industrialized societies. Therefore, the issue between MNCs and developing nations is not the profit motive *per se*, but the "fair and equitable" distribution of profits between MNCs and the poor and needy.

It is common knowledge that MNCs in Ghana and other developing countries have in the past, under the protection of colonial laws, made excessive profits from ludicrously low-priced, long-term mineral concessions for which they paid nominal rent and a minute

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72. *See, e.g.*, note 41 *supra* and accompanying text.

73. M. Friedman, Capitalism and Freedom 133 (1962).

> The view has been gaining acceptance that corporate officials and labor leaders have a 'social responsibility' that goes beyond serving the interest of their stockholders or their members. This view shows a fundamental misconception of the character and nature of a free economy. In such an economy, there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in free and open competition, without deception or fraud.

Id.

74. W. M. Clarke, Private Enterprises in Developing Countries 8 (1966).

three to five percent of the declared gross profits.[75] In post-independence Ghana, the rules of the game were changed by the foreign investors. There were several allegations of accounting, pricing, invoicing and tax manipulations geared at shifting profits from Ghana to other countries in an effort to avoid local taxes. Some of these allegations have been confirmed by the Ghanaian authorities. Instances of excessive effective rates of return reported by Vaitsos[76] in Latin America, which oscillate between 32.1 percent and 96.21 percent with an average of 79.1 percent, tend to support what has been described as a "monkey wrench" attitude.[77] Such financial juggling is a zero sum game: one man's profit is another man's loss. It is the ability of the MNCs and other investors to use their resources to shift, transfer or reduce profits to the detriment of host countries which is detested. In short, as much as developing nations would welcome profits if they were distributed fairly, they resent "monkey wrench" tendencies.

It may be recalled that one of the major objectives of the government for encouraging foreign direct investment is to provide overall economic development. This fundamental objective often conflicts with the basic objectives of foreign investors, i.e., profit maximization. Economic development and profit maximization are not *inherently* self-opposing concepts, but in practice they often are. In spite of earlier statements that profits undoubtedly promote development,[78] there is now almost a general consensus that the operations of MNCs do not generally spur economic development.[79] They may increase growth, but not development. Therefore, the activities of the multinationals tend to accentuate rather than minimize the problems of development. They distort local economies and reinforce inequality in the distribution of income and wealth.[80]

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75. Address by Dr. S. K. B. Asante, Deputy Attorney General of Ghana, Foreign Investment Process in Africa (1976) (unpublished lecture given at the University of Michigan School of Law, Ann Arbor).

76. C. V. Vaitsos, Interaffiliate Charges by Transnational Corporations and Inter-Country Income Distribution, (June 1972) (unpublished Ph.D. thesis, Harvard University).

77. R. J. Barnet and R. E. Muller, Global Reach, The Power of the Multinational Corporations 124 (1974).

78. W. M. Clarke, Private Enterprise in Developing Countries 7 (1966).

79. United Nations, *The Impact of Multinational Corporations on Development and on International Relations,* (No. E.74.II.A.5) E/5500/Rev. 1, ST/ESA/6 (1974) [hereinafter cited as Impact of Multinationals].

80. Impact of Multinationals, *supra* note 79, at 33.

Of late the issue of transfer pricing as a tool for shifting money out of Ghana to avoid the very stringent foreign exchange rules and regulations is gaining prominence in Ghana. The *Ghanaian Times* carried several pages reciting areas of conflict between developing nations and foreign investors in which the issue of transfer pricing was stressed.[81] A similar tool often used is over-invoicing or under-invoicing.[82] The sum total of all these practices is that the Ghanaian government is cheated out of its "fair share" of profits arising from joint ventures, as well as taxes and other revenues due to it from profits and export duties.

Of course the other side of the story is that Ghana for some years placed a freeze on the repatriation of profits and dividends in order to combat its deteriorating foreign exchange and balance of payment problems. Sporadic announcements are made from time to time by the Bank of Ghana, but, according to the International Monetary Fund (IMF), these announcements are not only short, but most often very ambiguous.[83] As a result, only a few companies benefit from them and thus foreign investors feel tempted to resort to the methods noted above to take profits from the country. Several Lebanese companies have been nationalized for rampant violations of over-invoicing and under-invoicing. One of the oldest German firms, R. T. Briscoe, has been nationalized for the same reason.[84]

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81. The Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977 at 4, col. 3.

82. W. Chudson, *Africa and the Multinational Enterprise*, in Nationalism and the Multinational Enterprise (H. R. Hahlo, J. G. Smith and R. W. Wright, eds. 1973). In his article, the author expressed concern regarding direct foreign investment in Africa. To begin with, the foreign firm as a result of its monpolistic or monopsonistic position, will earn high profits. Foreign firms employ two methods to protect these profits and to escape the consequences of the local tax system. The first is the under-invoicing of exports on the part of firms acting as brokers in the marketing of commodities. The second, which is more often practiced, is the over-invoicing of imports. If the tax system of the firm's home country is reasonably efficient, the author observed, there could be no strong motive for over-invoicing imports except as a means of evading either existing or anticipated foreign exchange restrictions in the host country. *Id.* at 143.

83. *See generally* International Monetary Fund, 6 Surveys of African Economies 206 (1975). *See also* note 62 *supra* and accompanying text.

84. *See* note 6 *supra*. *See also* International Monetary Fund 6 Surveys of African Economies 207 (1975) where it is stated that all investment projects must be submitted to the Capital Investment Board for approval, and both the

Interests and needs again conflict in the transfer of technology. Because of the exclusiveness of the technology offered by MNCs, it is an important source of power to them. For various reasons, MNCs tend to transfer obsolete or over-priced technology. The distribution of the last generation of technology is a good way to prolong its profitability. Moreover, for efficiency, cost advantages and so on, the technology used is often complicated and capital intensive instead of labor intensive.[85] Thus the assets (abundant labor) of the developing nations are not utilized by the importation of capital intensive technologies.[86]

Foreign capital is often seen as a means of reducing the burden of the balance of payments, but much to the chagrin of most host countries, foreign direct investment results in a marginal or negative effect on the balance of payments in the long run.[87] The reasons are readily apparent. MNCs tend to finance their projects with a disproportionate mix of local and foreign funds.[88] Since the latter is most often the smaller, the inflow of foreign capital is small. However, profits from the use of local funds are repatriated. Moreover, due to continuing inflation, the purchasing power of the money received for primary products is at best fluctuating

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investor and Government consent to the jurisdiction of the International Centre for Settlement of Investment Disputes. Furthermore, projects approved under the decree shall not be subject to expropriation. However, in exceptional cases where an approved project is taken over in the public interest, the Government shall pay adequate compensation. *See also* Capital Investment Decree N.R.C.D. 141 (1973) para. 11(1).

85. Mansfield, *Economic Impact of International Technology Transfer*, 17 Research Management 7,9 (1974). *See also* United Nations, *The Acquisition of Technology from Multinational Corporations by Developing Countries*, (No. E74. II.A.7) ST/ESA/12 (1974).

86. It would be misleading to think that the source of this problem is one-sided, however. It is reported that the governments of some developing nations sometimes adamantly insist on the most up-to-date, complicated and capital intensive technologies for purely prestigious reasons. It is therefore not unlikely that a foreign investor might push labor-intensive technology only to find it unacceptable to his host country.

87. Barnet & Muller, Global Reach, The Power of the Multinational Corporations 156 (1974).

88. *See, e.g.*, The Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977, at 4, col. 3. "Another reason for the high return to foreign investment is that the foreign companies usually borrow money from the banks of the host countries. Usually, these loans carry an interest . . . less than the interest rate prevailing in many developed countries." *Id.*

and at worst continually decreasing. MNCs' inter-company pricing and other accounting practices tend to aggravate the delicate existing balance of the situation. Companies using export franchising would also reduce export earning of the local subsidiary and hence the foreign exchange.[89] The record so far shows that the Government of Ghana is likely to nationalize or expropriate foreign firms engaging in illegal or unethical methods to evade foreign exchange regulations.[90]

Cost-Benefit Analysis

In order for Ghana to receive the greatest benefit from foreign direct investment at the least possible cost, specific projects should be selected through the use of a cost-benefit analysis. Since relatively little has been written about cost-benefit analysis as it pertains to foreign direct investment in developing countries, it is suggested that the following model be utilized as a means for selecting the most desirable projects.[91]

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89. T. Parry, *The International Firm and National Economic Policy: Survey of Some Issues*, Eco. J. (Dec. 1973).

90. A. Seidman, Ghana's Development Experience 1951-1965, (Doctoral Thesis Univ. of Wisconsin 1968).

91. The model produced below sets out the various stages in the process of appraising and attracting investment projects. First, at position A in the diagram, the government, through an Economic Planning Committee, sets up the role of foreign direct investment in the overall economy development strategy. Given these objectives, the next crucial step would be to obtain from all the sectors of the economy (position B) all possible investment projects which fall within the policy objectives set out in A. The model given below outlines only seven sectors for the sake of simplicity. It is not unusual for economic planning to have a matrix of 29 sectors. A screening committee composed of members of the Economic Planning Committee, the Attorney General, financial and accounting experts, and the Capital Investment Board should be set up to examine critically the costs and benefits of the projects submitted. The Committee would be responsible for determining which projects would be most beneficial to Ghana (position C). It would then seek appropriate investors for the desired projects, relying, in part, on information obtained from organizations such as the United Nations and the International Monetary Fund. These investors would likely come from many of the developed nations and would include individuals and companies other than the large MNCs who have traditionally dominated foreign direct investment. The Committee would be responsible for negotiations with potential investors (position D). The

The model divides the costs of a contemplated project into the quantifiable and the non-quantifiable. The quantifiable costs would be further divided into the following categories:

1. Government's share of initial outlay and operational costs.
2. Tax exemptions given to investors as inducements.
3. Import and export duty tax exemptions.
4. Profit repatriation, debt service dividend payments, etc.
5. Opportunity costs of 1-4.
6. Remedial costs arising from pollution, industrial diseases and accidents, population relocation, etc.

All of the above would be discounted to their net present value (NPV).[92]

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negotiation process would include agreement upon personalized incentives fitted to the particular needs of the desired investors. These incentives would replace the generalized incentives that are currently offered.

FOREIGN DIRECT INVESTMENT SCREENING MODEL

A	GOVERNMENT'S OBJECTIVES B		C	D
	Agriculture	UN		
	Mining and Smelting	IMF	Project 1	Canada
	Trade		Project 2	France
	Services		Project 3	Fed. Rep. of Germany
GHANA				
	Banking		Project 4	
		Screening Committee		Japan
	Transport and Communication		Project 5	
				USA
			Project 6	
	Petroleum Refining			UK
			Project 7	

92. S. Robock, K. Simmonds, J. Zwick, International Business and Multinational Enterprises (1977). "Net present value" is the most widely used method for evaluating investments. This method takes earnings over the life of a project into account. Expected future net cash flows are discounted, using the cost of capital as the discount rate. The original cost of capital is then deducted to determine the present net value of the project. *Id.* at 499.

Many of the true costs of a project are non-quantifiable in nature. A dollar value cannot be affixed to dilution of the native culture, an increase in crime, or the other possible societal consequences of a project. These costs must be weighed, however, if intelligent decisions are to be made. Since the ultimate goal of the model is to select those projects which will have the greatest positive effect on the Ghanaian people, it would be counter-productive to achieve economic goals at the expense of the environment, the culture, or the people themselves.

Like costs, benefits may be quantifiable or non-quantifiable. The following are perceived as quantifiable benefits likely to accrue to the government from direct foreign investments:

1. Profits from the project due to the government as a partner.
2. Taxes due to the government from the operations.
3. Foreign exchange saved as the result of the operations.
4. The increase in the marginal productivity of labor arising from the project.
5. Labor absorption rate (the rate at which labor will be absorbed by the new project if it is chosen).
6. Increased output in other sectors of the economy due to demands for goods and services generated by the project.
7. Contribution to GNP and growth.

Non-quantifiable benefits must also be delineated and evaluated. Increases in the self-esteem, independence and education of the people cannot be given a dollar value, but can be given an arbitrary value assignment so that they can be balanced against non-quantifiable costs. For example, the employment of a given number of people might result in an increase in morale and political stability in addition to its economic benefits. These non-quantifiable benefits may be of greater import to the country than the economic benefits. The model accounts for these non-quantifiables in the second step of a two-step process.

In the first step, the quantifiable costs of a project are subtracted from the quantifiable benefits. If the result is negative, then the project would be deemed non-viable and would receive no further consideration. If the quantifiable benefits exceed the costs the project would be further evaluated in step two.

The second step nets the non-quantifiable costs and benefits of the project. As mentioned earlier, value assignments must be assigned to every effect of the project. While it may be somewhat artificial to balance a decrease in political unrest against an increase in pollution, it must be recognized that these decisions are inescapable. Assigning values to the various costs and benefits will result in a consistent method of weighing the relative merits of each project. If the non-quantifiable benefits outweigh the costs, the government should solicit foreign investors who are willing to undertake the project.

Before the government enters into negotiations with investors, it should ascertain the feasibility of the specific project from the perspective of the investor. There are three frequently used approaches: (i) the pay back method, (ii) the net present value approach (NPV), and (iii) the internal rate of return (IRR) method.[93]

The pay back period is the number of years it takes an investor to recover its original investment from net cash flows.

In the net present value approach, the expected net cash flows of an investment are taken over the entire life of the project and discounted at the cost of capital. The initial cost outlay of the project is subtracted then from it, resulting in either a positive or negative NPV.

The internal rate of return is different from the NPV. It is the interest rate which equates the present value of the expected future cash flows or receipts to the initial cost outlay.

By applying these three methods to a specific project, the government will gain an accurate perception of the project's appeal to foreign investors. Armed with this information, the government can adopt a realistic stance in negotiations. If a project is economically desirable to an investor, the government need make few if any concessions. If the government desires a certain project to be undertaken which is not attractive to investors, it will be willing to make greater concessions to induce participation by the investor.

In all of these calculations, the risk factor cannot be ignored. Investors will discount the expected rate of return to account for the risks of nationalization, political upheaval and other occurrences which would reduce profitability. To the extent that the government can minimize these risks, the project will be more desirable to investors.

The next step is to look for those foreign investors who have the most appropriate technological, managerial, and financial resources to fulfill the development objectives of the government. These investors need not be in any particular country or the biggest

93. *See* note 92 *supra*.

MNCs. Medium size investors with the potential for growth may be preferable, as they may demand a lower rate of return than the largest investors.

Information about these investors is generally not easily available in Ghana or any other developing country. Therefore, it would be necessary for efficient selection and bargaining to seek the assistance of institutions like the International Monetary Fund (IMF) and some organs of the United Nations. These institutions, because of their vast resources of skilled personnel, tend to have information on multinational corporations. Specific requests should be made for advice on locating investors who would offer the best technological, human and financial resource mix for the objectives of Ghana. Together with this, information should be obtained on other investors in those particular industries under consideration. This way the government can make a complete evaluation of all possible investors before a final decision is made as to whom to contact.

As noted earlier, this approach forces a reversal of the typical investment cycle where MNCs looked for investment opportunities in developing countries. The cycle is reversed in that the investment opportunities are taken to the MNCs and the host country is playing the aggressive role.

The evaluative process advocated here should increase the confidence of current and successive host governments in themselves and the benefits they receive from foreign direct investments. It will improve the communication problem between host countries and the MNCs and the confidence of the MNCs in the host governments as being able to manage their economies or at least taking serious positive steps in that direction. The net effect would be an improvement in the overall investment climate.

The current approach of *ex post facto* appraisal of MNC operations based on criteria and objectives of both parties which were initially undeclared or merely implied but often conflicting when actually identified is not satisfactory. For, by whose criteria or objectives must those evaluations be done? The procedure advocated here should result in the identification and establishment of objectives and criteria *ex ante* by which *ex post facto* appraisals or evaluations of projects can be carried out. In other words, the rewards and penalty rules of the cooperative ventures would have been established well in advanced and would be known by all. This should result in the stabilizing of the relationships between the host government and the MNCs.

Lastly, the approach offered here would also *reduce* the chances of nationalization since host countries would be receiving the desired benefits and the investments are in conformity with national development goals. Moreover the involvement of some international or U.N. organ in the early stages or during negotiations is likely to be an additional constraint on nationalization.

The adoption of the proposed model would increase investor confidence in Ghana. The investor would have clear notice of the guidelines governing its participation. Since these guidelines were set forth by and advantageous to the government, there is little risk that they would be changed "midstream." In addition, properly selected projects would foster positive attitudes among the people, thereby lessing the risks of strikes, sabotage or other threats to profitability.

In order for the model to produce the desired effect, well-trained and impartial people must be employed in the various decision making processes. If these decisions are not isolated from political pressures and individual preferences, the model cannot accomplish its function of selecting the most advantageous projects.

When the cost-benefit analysis has been used to identify those projects most beneficial to the development objectives of the host nation it will then be necessary for the government to consider what concessions will be necessary to attract the desired investors.

The continuing decrease in foreign capital inflow implies that the very liberal concessions currently offered by the government of Ghana have not had the desired effect on the investment decisions of the MNCs and should force an inquiry into the validity of the assumptions underlying these incentives. It should force a search into the actual primary motivations for foreign direct investments in developing countries. It should also compel a reexamination of government action toward foreign investors. The results of these inquiries could be the basis for new incentives and redirected government effort and action which together could increase foreign investments in Ghana.

Since serious doubts exist as to the efficacy of current incentives, the next question to ask is what remedial steps should the government of Ghana take if it wants foreign direct investments? The first step should be to identify the fundamental motivations behind foreign direct investments. Given these motivations, any attempt at drawing up incentives to entice foreign investments should be directed at those identified motivations which direct investment behavior. Countries are likely to be misled by declarations such as those made by the International Chamber of Commerce on attracting foreign direct investments,[94] which tend to focus on issues which are peripheral to actual investment decision making. Therefore, host countries should evaluate what foreign investors actually do in addition to what they say.

Since firms' behavior varies greatly according to the type of operation, the geographical location, general and indiscriminate *ex ante* incentives may simply fail to attract a particular investor. Ideally, incentives should be personalized and tailored according to the observed behavior and interest of each investor.[95] Incentives would then be part of the terms to be negotiated. In this way, incentives could be tailored to the needs of the particular company which is party to the negotiation. The model discussed earlier provides a suitable base for the personalization of incentives.[96]

In a dynamic business world, legislation meant to answer the ever-changing motives of businessmen is likely to fail if it is not adjusted frequently. Frequent changes might be costly in terms of time and personnel. One potential solution is to frame incentive legislation in very broad terms giving a screening committee the power to identify and negotiate incentives deemed by it to be necessary for the particular project at hand. A provision of this nature would actually be very flexible, would stand the test of time and work to the benefit of the country if not abused.

Another option open to the government is to adopt legislation similar to the Jamaican Industrial Incentives Law 1956 (No. 45).[97] This law provides the investor with two options for examption from income tax and import duties and gives the administration some latitude to deal with each applicant on a case-by-case basis. Under the first option, an investor could receive a seven-year tax exemption with normal depreciation.[98] The second option permits the benefits to be spread out over a period of six years and permits accelerated depreciation. The investor can choose when to start enjoying the benefits but it should not be later than three years.[99]

94. *See generally* ICC Publishing Corp., Inc., 1212 Avenue of the Americas, New York, N.Y., for various articles on foreign direct investment.

95. Dixon-Fyle, *Economic Inducements to Private Investment in Africa,* 4 J. Dev. Stud. 127 (1967).

96. *See* note 91, *supra.*

97. Jamaican Indus. Incentives L. No. 45, secs. 10-12 (1956) as amended by L. 12 (1960).

98. *Id.* at 8, Part II.

99. *Id.* at 9.

The creation of differentiated categories of concessions to be negotiated between the host country and the foreign investor perhaps offers another opportunity for effective inducement policies rather than the monolithic and undifferentiated incentives found in the legislation of many host countries. However, the problem of this approach is that some incentives will still be entrenched in the law, as opposed to a free-wheeling incentives system. The entrenchment of these incentives may encourage misapplication in that they may be offered to investors who least deserve them. It should be noted that incentives, like tax concessions, are issues which investors worry about after they have decided that a particular project is profitable to them.[100] Therefore, such incentives operate as economic rents (profits above normal profits). They do not contribute to the decision to invest. To entrench them is to increase the profitability of an already appraised profitable project at the expense of the host country. A variation of the Jamaican law would provide unentrenched and differentiated incentives which could be negotiated. The foreign investor would choose the most suitable option and the terms would be negotiated with the host country.

At the policy level, there is great need for harmonization of incentives in developing nations. A great deal of similarity already exists between various legislations[101] but unfortuantely, new incentives are created by African governments competing for foreign investments. In any case, the incentives African governments offer do not *per se* contribute significantly to a firm's decision of where to locate a plant. Therefore, harmonization and the elimination of competitive incentives should not work to the detriment of any country.

Government actions often speak louder than words. The government should develop a consistent policy toward foreign direct investments. It should also follow its policies as strictly as possible. This would create a predictable political climate in which investors could operate with a minimum of apprehension. In fact, from the revealed preferences of the investors discussed above, the ideal incentives should be improving the overall investment climate and not offering overly liberal tax and other concessions to foreign investors.

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100. *See, e.g.,* The Ghanaian Times, *What Price Foreign Investment?* Jan. 27, 1977, at 4, col. 4. "Many of these concessions, e.g., tax holiday, do not affect the most important consideration of the investor, viz the risk factor, as they are only important if the investment is profitable." *Id.*

101. *See* note 97 *supra.*

Conclusion

In spite of the volumes of literature devoted to the subject of foreign direct investments in developing countries, there does not appear to be any systematic analytic approach which sets forth policy guidelines for maximizing benefits accruing from foreign direct investments and minimizing overall costs to host developing countries. An approach which would fulfill the goals of a host country such as Ghana has been advocated. The task involves in-depth examination of the role of foreign direct investments, the needs and offerings of both investors and Ghana, and the fundamental motivations behind investment activities not only in developing countries but overall.

A cost-benefit analysis model is then developed to insure that the host country has a systematic approach to foreign investments. The total effect of the procedures prescribed by the model would be Ghanaian control of the type of incoming foreign direct investment as well as the type of industries in which investments are made. It would also insure that only those investment projects which are likely to have significant contributions toward the government's economic development would be accepted. A country using this approach does not have to rely on the generalized incentives approach to foreign investment. The country should be aggressive by developing investment packages, identifying all potential foreign investors and negotiating with them. It is then that incentives become important on a very personal case-by-case basis.

At the outset, the implementation of the model would be costly. However, the contribution of foreign direct investment to the economy should be significant and multiplicative in the long run. Therefore, it is suggested that the model would not have an overall negative effect on the economy of Ghana if adopted. It is further suggested that there is a serious need to revise the rather liberal provisions of the Capital Investment Decree which do not appear to have produced the intended favorable effect on foreign investments in Ghana.

Instead of conventional foreign direct investments, other alternatives such as management contracts and intergovernmental projects should be given serious consideration. Finally, it should be noted that foreign direct investments involve compromise, consistency, political stability, credibility and mutual respect of all parties involved. Given these, a favorable investment climate is likely to exist and capital inflow would increase without overly liberal fiscal incentives or wooing from the government of Ghana.