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The Impact of Industrial Legislation on the Behavior of Multinational Enterprises and Labor in the Industrializing Countries of East and Southeast Asia

Kojo Yelpaala*

The phenomenon of industrial legislation is not new in the world. Several industrialized, non-industrialized, capitalist, and socialist countries all have at different stages in their development used industrial legislation for the achievement of industrial goals, development targets and national welfare objectives.¹

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1. It is impossible to catalog the various types of industrial legislation of all the countries in the world. It is sufficient to note a few examples here. For industrialized market economies, see, e.g., legislation in the Federal Republic of Germany (West Germany): GmbH-Gesetz, 1892 Reichsgesetzblatt [RGBI] 477, in 1898 RGBI 846 (Law on Private Companies of 1892); Aussenwirtschaftsgesetz, 1961 Bundesgesetzblatt [BGBl] II 481 (Law of Foreign Economic Relations of 1961); Mitbestimmungsgesetz, 1951 BGBl I 1153 and 1976 BGBl I 1153 (Co-Determination Laws of 1951 and 1976); Tarifvertragsgesetz, 1969 BGBl I 932 (Collective Agreement Act of 1969); Gesetz Gegen Wettbewerbsbeschränkungen, 1957 BGBl I v84 (Law Against Business Restrictions of 1957); Warenzeichengesetz, 1968 BGBl I 463 (Law on Trademarks of 1968); Patentgesetz 1968 BGBl I 1154 (Law on Patents of 1968). For the laws of the United Kingdom, see Exchange Control Act, 1947, 10 & 11 Geo. 6, ch. 14; Fair Trading Act, 1973, ch. 41; Trade Union and Labour Relations Act, 1974, ch. 52; Trade Marks Act, 1938, 1 & 2 Geo. 6, ch. 22; Copyright Act, 1956, 4 & 5 Eliz. 2, ch. 74; Patents Act, 1977, ch. 37; Registered Designs Act, 1949, 12. 13 & 14 Geo. 6, ch. 88. For socialist countries, see, e.g., the legislation of Yugoslavia: Law No. 18/78, 1978 Sluzbeni list Socijalističke Federacije Republike Jugoslavije [SFJ] (Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor); Ustav SFJ (Constitution 1974); Law No. 44/60, 1960 Sluzbeni list Federacione Narodne Republike Jugoslavije [FNRJ] (Law on Patents and Technical Improvements); Law No. 45/61, 1961 Sluzbeni list FNRJ (Law on Trademarks of Goods and Services). These are only a few statutes of the system of statutes applicable to foreign investments. For details on these countries, see United Nations Centre on Transnational Corporations (UNCTC),
This legislation has generally addressed labor relations, taxes, plant location, exchange controls, and capital controls. What is perhaps new is its focus on the behavior of Multinational Enterprises (MNE). The emergence of the MNE on the world economic scene has introduced an elusive but important element in the industrial policy calculus of nations.

The MNE enjoys a degree of flexibility which poses serious difficulties for industrial policy makers. For its distinctive behavior, attributes, and effects need not, and indeed often do not, correspond with the industrialization techniques and objectives of host countries. Because of the possibility of negative effects on host countries of MNE operation, and, perhaps more importantly, the need to channel MNE operations toward the achievement of certain national objectives, national legislatures, such as those in Latin America, have begun to focus legislative efforts not just on the MNE simpliciter but more on the distinctive behavior of the MNE. Though industrial legislation exists both in industrialized and non-industrialized countries, this article will address the impact of such legislation on the behavior of the MNE and labor in the emerging industrial nations of East and Southeast Asia.

The choice of these countries is dictated by a number of considerations. First, some of these countries, in particular, the Republic of Korea (ROK or South Korea), the Republic of China (ROC or Taiwan), and Singapore, have been involved in systematic industrialization supported by legislation designed to facilitate industrial growth. Second, through such legislation and general economic planning policies, these countries have assigned a significant role to MNEs in certain industries earmarked for expansion. At the same time, these

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2. The following statutes of the ROK are examples of statutes intended as a group to assist that country's industrialization process: Law No. 2640 of 1973 (The Foreign Capital Inducement Act); Law No. 1000 of 1962, (Commercial Code) (as amended); Law No. 2506 of 1973 (Trademark Act); Law No. 2505 of 1973 (Patent Law); Law No. 911 of 1961 (Unfair Competition Prevention); Law No. 933 of 1961 (Foreign Exchange Control Act (as amended); Law No. 2180 of 1970 (Law for the Establishment of free Export Zone); Law No. 286 of 1953 (Labor Standard Act); Law No. 1329 of 1963 (Labor Union Act); Law No. 4596 of 1969 (Provisional Special Law Concerning Labor Unions in Foreign Investor Enterprises); Law No. 3872 of 1969 (Grievance Arbitration Law). In addition to various statutes on labor, patents, and trademarks, the ROC has promulgated the following statutes with specific reference to foreign investors: Statute for Investment by Foreign Nationals, promulgated July 14, 1954 (as amended); Statute for Encouragement of Investment, promulgated Sept. 10, 1960 (as amended); Enforcement Rules of the Statute for Encouragement of Investment, promulgated Jan. 11, 1961 (as amended); Applicable Scope of Strategic Industry, Exec. Decree promulgated Sept. 24, 1982 [hereinafter cited as Applicable Scope of Strategic Industry]. For description of the various taxes in the ROC applicable to foreign investors, see INDUS. DEV. AND INV. CENTER OF TAIWAN, TAXES IN TAIWAN (1981). Singapore is one of the countries with very few statutes specifically designed to deal with MNEs. Since the late 1960s, it has maintained an open door policy towards MNEs and enacted the Economic Expansion Incentives Act, Act. No. 36 (1967), which offers incentives to MNEs. It is nevertheless important to read this statute together with other business and commerce-related statutes such as those relating to patents, trademarks, taxes, labor, and free export zones similar to those of the ROC and the ROK.

3. The governments of the ROK since the Park Chung Hee regime have not been satisfied with sitting back and "letting the market system work itself." Jones and Sakong described the extent to which the governments have been pervasively interventionist: "The Korean miracle is not a triumph...
countries have tried to control the participation of MNEs in other industries. Third, these emerging nations have attracted the bulk of foreign direct investment (FDI) activities from MNEs in developed countries. Since these emerging industrialized countries have, within a short time, achieved some measure of success in industrialization, it is important for legal scholars and industrial policy makers to determine the exact nature and impact of such legislation on the behavior of MNEs and on the industrialization process generally.

The new focus of industrial legislation on the behavior of the MNE in developing nations is hardly surprising. As is obvious from the heated debate during the Sixth Special Session of the United Nations General Assembly, the MNE is perhaps the most controversial economic entity ever produced by the capitalist economic system. Both during and after that session, the Group of 77 condemned the existing international economic system as manifestly unequal and exploitative of the needy. It viewed the MNE as a convenient and willing conduit through which the economic wealth of impoverished countries is siphoned off to maintain affluent industrialized societies.

of laissez-faire but of a pragmatic non-ideological mixture of market and non-market forces where the market works fine; where it doesn’t, the government shows no hesitation in intervening by means that range from a friendly phone call to public ownership." L.P. Jones & I. Sakong, Government Business and Entrepreneurship in Economic Development: The Korean Case 3 (1980). This interventionist attitude explains the desire of host governments to target certain industries for MNE participation. See, e.g., Ministry of Finance, Investment Guide to Korea 21–22 (1983) (classification of industries in terms of their perceived importance to the government) [hereinafter cited as Investment Guide to Korea]. For the ROC, see Applicable Scope of Strategic Industry, supra note 2. Though Singapore did not have specified strategic industries, its initial policies were designed to encourage labor intensive manufactured exports. Its current policies include attracting MNEs into sectors using a highly skilled labor force, such as high technology sectors like petrochemicals, industrial electronics, precision engineering, and aerospace. See Fong, Employment Development and Basic Needs in Singapore, 119 Int’l Lab. Rev. 495, 497 (1980).

4. See infra notes 21–24 and accompanying text.

5. The Group of 77 has become a generic term used to describe a large number of developing countries, generally nonaligned, which over the years have often conferred and acted together within and outside the United Nations General Assembly on several issues involving trade, investments, economic development, and politics affecting developing countries. As a coalition, the group was first noticed in the middle of the 1960s in the intra-assembly dynamics within the U.N. It was then referred to as the 75 because that was the total number of states involved. By the time of the Sixth Special Session of the General Assembly in 1974, the group had become well established as the Group of 77. See R.O. Keohane, Political Influence in the General Assembly 7 (International Conciliation No. 557, 1966).

6. The views of the Group of 77 were effectively articulated in a fiery speech by the late Mr. Houari Boumediene, President of the Revolutionary Council and of the Council of Ministers of the People’s Democratic Republic of Algeria. 6th Spec. Sess. U.N. GAOR (Agenda Item 7) at 1-11, U.N. Doc. A/ PV/2207-2231 (1974). For example, Mr. Boumediene had the following to say about inequality:

In the eyes of the vast majority of humanity, it [the economic order of the world we live in today] is an order as unjust and as outdated as the colonial order to which it owes its origin and substance. In as much as it is maintained and consolidated and therefore thrives by virtue of a process which continually impoverishes the poor and enriches the rich, this economic order constitutes the major obstacle standing in the way of any hope of development and progress for all the countries of the third world.

Id. at para. 36.
This perception of the Group of 77 and several other critics of MNEs7 triggered a new awareness of the role of the MNE in the industrialization process of host countries. As a result, national legislatures have begun actively to design industrial legislation to arrest the siphoning process and retain as many of the benefits of MNE operations as possible.8 At the international level, the impact on economic development of the conduct of the MNE has triggered yet another debate over the necessity and appropriateness of a code of conduct for MNE behavior.9

I. Attributes of the MNE and Its Regulation in Developing Countries

The importance of these new concerns cannot be appreciated without understanding what the MNE is and what it has to offer to a host country. As an entity, the MNE appears to defy definition.10 One current attempt describes the MNE as


8. Several developing countries, particularly the newly emerging countries, have begun to see the importance of systems of legislation in their industrialization process. See, for example, the following legislative efforts of Mexico: Diario Oficial [D.O.], 9 marzo 1973 (Law for the Promotion of Mexican Investment and Regulation of Foreign Investment); D.O., 30 de diciembre 1972 (Law on Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks); D.O., 10 Febrero 1976 (Law on Inventions and Trademarks). For Brazil, see Lei No. 4.131, 1962 Coleção das Leis [Coleção], Vol. V (dez.) - Leg. (Foreign Capital Investment Law); Lei No. 5.772, 1971 Coleção, Vol. VII (dez.) - Leg. (Code of Industrial Property); Lei No. 6.385, 1976 Coleção, Vol. VII (dez.) - Leg. (Security Commissions Law). Similar legislative efforts exist in other countries. The United Nations Center for Transnational Corporations has recently compiled various legislation affecting MNE conduct in specific countries such as Argentina, Chile, the Ivory Coast, Nigeria, and Kenya. See National Legislation, supra note 1.


10. The Multinational Enterprise as a phenomenon has been characterized by definitional problems from its inception and has been defined differently by various observers. See, e.g., UNCTC, Transnational Corporations in World Development: A Re-Examination 158-161, U.N. Doc. E/C.10/38 (1978) [hereinafter cited as Transnational Corporations]; see also Multinational Corporations in World Development 5, Sales No. E. 73. II. A.11 (1973). Various definitions emphasize different criteria. For instance, on criteria such as organizational structure and ownership, see Aharoni, On the Definition of a Multinational Corporation, in The Multinational Enterprise in Transition 4-5 (1972); number of countries in which operations are carried on, see J.H. Dunning, The Multinational Enterprise 16 (1971); size of total operations, see R. Vernon, Sovereignty at Bay 4 (1971); attitude of management (ethnocentric, polycentric, or geocentric), see Perlmutt, The Tortuous Evolution of the Multinational Corporation, in The Multinational Enterprise in Transition 53 (1972); Cosmo Corporation, see Ball, Cosmo Corp: The Importance of Being Stateless, in World Business 337 (C.C. Brown ed. 1970).
an enterprise that controls and manages production establishments—plants—located in at least two countries." This definition ignores the characteristic attributes and distinctive behavior which are of central importance in assessing industrial legislation intended to harness or control MNEs.

A. Structural Characteristics of the MNE

Conceptually and functionally the MNE is best understood as an international system that owns or controls sometimes vast amounts of technological, financial, managerial, human, and marketing resources. It is a global network of operations, services, and multiplant systems connected through a common resource pool and a common operating strategy administered by a monocentric or polycentric management command system. Thus, it enjoys tremendous flexibility in its operational decision process. Its decisions are not seriously limited by considerations of distance, time, space, or regional, national, or cultural allegiances. MNEs differ in size, geographic, and product diversification. Their complexity, flexibility, and technical capabilities vary, depending on the available resources and the number of countries in which they operate.

The flexibility inherent in the MNE management system permits its production, import, export, pricing, dividend pay-out, and remittance policies to change in response to costs, profit maximizing strategies, geo-political considerations, and host government attitudes. For example, an MNE might extract raw material in one country for inputs in the manufacture of semifinished products in a second country, to be used in the manufacture of a finished product in a third, to be marketed in yet a fourth country. Thus, an MNE can through its foreign affiliates shuttle resources from one country to another in a manner that maximizes overall profits.

B. The Economic Influence of MNEs

The MNE is clearly one of the most powerful entities affecting the industrialization of the world. According to a recent study, MNEs accounted for at least one-fifth of total world output in the mid 1970s (excluding centrally planned...
economies). Since then production by MNEs has been growing twice as fast as world output. In 1976, approximately 11,000 companies operated 82,000 foreign affiliates—an increase of about 20 percent over 1973. Approximately 370 of the MNEs operated in at least 20 countries. In 1977 the sales of the foreign affiliates of 866 of the world’s largest industrial MNEs accounted for 27 percent of their total sales volume. The foreign content ratio of these enterprises is substantial.

The influence of the MNE is also felt in the primary resource industries. It is not unusual for a few MNEs to dominate world production of a particular material. Neither is it unusual for the entire raw material output of a developing country to be exported to a processing plant of an MNE in a developed country. The MNE may be very important to the economic existence of such countries.

C. The Need for Regulation of MNEs by Developing Countries

Given the significant influence of MNEs on the world economy, developing countries cannot afford to ignore the impact of MNEs on their individual economies. In 1981 it was estimated that MNEs were responsible for approximately one-third of the output in the manufacturing sector of developing countries and about one-half of the output in the primary product sector. Host governments should be particularly concerned with the operational flexibility of MNEs and their ability to shuttle resources, production, sales, and wealth from one country to another.

The structural flexibility of MNEs not only enables them to shift resources from one country to another but also makes it difficult to predict their effect on any single economy. One country might be the starting point of a sequence of MNE activities culminating in negative externalities in several other countries and substantial welfare benefits in a third. In order to ensure that countries suffering the burdens of MNE operations also enjoy the benefits, countries linked together by an MNE system must develop a concerted and uniform course of legislative action. Unfortunately, industrial legislation in the past has on occasion been motivated by the competitive spirit.

15. Id.
16. Id.
17. Id. at 4; see also Transnational Corporations, supra note 10.
20. An examination of the foreign investment statutes of these countries leave no doubt that they are in competition for similar investment funds. See supra note 2. In addition, some countries, for example the ROC and the ROK, have established very active agencies for disseminating information on investment opportunities in their respective countries. See Investment Guide to Korea, supra note 3; Indus. Dev. and Inv. Center, Economic Progress and Investment in Taiwan, R.O.C. (1983); Science-Based Indus. Paru Administration Taiwan, R.O.C., Your Partner for Technology Investments in Asia (1983). For a discussion of the competition between host
It is through FDI that the economies of developing countries are connected with and affected by MNEs. MNEs have always played a dominant role in the FDI process. About 500 of the largest firms account for over 90 percent of all FDI. Most of these firms are located in a few developed countries. Furthermore, most MNEs invest in a limited number of developed and developing countries. For example, in recent years, 11 newly industrializing countries were recipients of over 50 percent of the total FDI from industrialized countries. In the past decade, MNEs based in the United States (U.S.) accounted for approximately 50 percent of the total FDI in developing countries. Japanese MNEs appear to dominate the FDI scene in Asia, accounting for about 69 percent of the total.

In view of the potential impact of MNEs on host countries, several of the East and Southeast Asian countries have since the late 1960s and early 1970s decided to use legislation to aggressively channel MNE operations and resources toward targeted industrial goals.

D. Evolution of Industrial Legislation

The history of industrial legislation affecting MNE operations may be broken into three phases. The earliest forms of legislation were simple pioneer-industry tax incentive measures, generally of colonial origins. An example is the 1943 Income Tax Ordinance of Ghana. Such legislation provided tax incentives for FDI if MNE investment activities met certain pioneer industry criteria.

The second type of industrial legislation arose out of host government attempts to participate in, and control MNE activities in primary product industries such as crude oil drilling, and bauxite and copper mining. Recognizing the crucial importance of these non-renewable raw materials in their economic development, countries such as Iran, Indonesia, Zambia, and Chile asserted their national
soverignty over these resources through legislation altering traditional concession agreements.\textsuperscript{29} Pioneer industry and primary product legislation was simple in structure and generally not part of a system of interconnected laws to control MNE behavior comprehensively.

The most recent type of industrial legislation is more sophisticated and generally designed to deal with the characteristics of MNEs while furthering overall industrialization schemes. These laws are best understood as a system of complementary interconnected statutes with built-in flexibility that permits policy makers to influence the behavior of MNEs according to industrial policy objectives. Such comprehensive legislative systems often include the first two types of legislation. Current models of this type of legislation exist in India, the ROK, and the ROC.\textsuperscript{30} The models cover such subject areas as foreign investment inducement or screening, tax incentives, exchange controls, intellectual property protection, licensing, labor, and customs duties.\textsuperscript{31}

The particular nature and operation of this most recent MNE legislation may vary from country to country. However, host countries are particularly concerned about the impact of MNE operations on economic efficiency, equity, and their national sovereignty.\textsuperscript{32} Such legislation, therefore, generally seems to promote efficient inter-industry resource allocation. Even where MNEs presently allocate resources in an efficient manner, there remains the question of the equitable distribution of benefits among participants in the activities of a MNE. Policy makers see the role of industrial legislation as including assurances that MNE generated wealth will be equitably distributed among all the contributing factor inputs, including the workers, customers, and the tax authorities of the host country. However, the flexibility inherent in the MNE system raises questions regarding the degree to which states enjoy freedom of action in industries dominated by MNEs. Fearing the possibility of denationalization or loss of control over their economies,\textsuperscript{33} host countries resort to industrial legislation to ensure that they retain maximum control over the allocation of their national resources.

Though comprehensive industrial legislation has existed in several countries for a number of years, there have been few studies assessing its impact on the behavior and foreign investment patterns of MNEs. Any such assessment would first require an examination of the factors motivating MNE investment activities. If host governments, believing that MNEs can play an important role in the industrialization process, set out to control MNE activities, their success or failure may depend, in part, on how closely related and sensitive their legislation is to the real motivations and behavior of MNEs. Several theories explain MNE

\textsuperscript{29} Main Features and Trends in Petroleum Mining Agreements, supra note 28; Walde, supra note 28.

\textsuperscript{30} For legislation in India, see National Legislation, supra note 1. For the ROC and the ROK, see supra note 2.

\textsuperscript{31} See, e.g., Law No. 2598 of 1973 (ROK) (Foreign Capital Inducement Act); Law No. 933 of 1961 (ROK) (Foreign Exchange Management Law); see also supra note 1.

\textsuperscript{32} J.H. Dunning, supra note 14, at 9–10.

\textsuperscript{33} Denationalization studies have tried to explain the political implications of the MNE to host countries. See, e.g., Brazil and Mexico, supra note 13; Connor & Mueller, Market Structure and Performance of U.S. Multinationals in Brazil and Mexico, 18 J. Development Stud. 329 (1982).
foreign investment behavior. This article will examine four: the capital arbitrage theory, the intangible assets hypothesis, the industrial organization theory, and the internalization theory.

II. EXPLAINING FOREIGN DIRECT INVESTMENT BY MNEs

A. Capital Arbitrage

Early explanations of foreign investment by MNEs were drawn from the neoclassical general equilibrium theory of international trade and capital mobility. According to this theory, foreign direct investment will flow from a capital-abundant country to a capital-scarce country in response to relative factor proportions and the ensuing differential rates of return on capital. In other words, capital moves at the margin. A country with a higher marginal rate of return will attract capital from countries with lower marginal rates of return until the rates are equalized. According to this theory, the MNE is an arbitrager of capital, and differential rates of return on capital are the most important forces guiding the flow of capital across borders.

Implicit in this theory is the conclusion that industrial legislation, such as tax incentives or foreign capital inducement statutes which effectively increase the rate of return in the host country, trigger investment by MNEs. In fact, some host countries, such as the ROK have plainly expressed the belief that such industrial legislation would encourage investment by MNEs. At a recent conference on foreign investment, members of the Association of East Asian Nations (ASEAN) also voiced their belief in the importance of tax incentives for attracting FDI. However, this theory has been seriously eroded by several severe attacks and the apparent lack of correspondence between MNE behavior and differential rates of return.


37. R.E. CAVES, supra note 11, at 31–32.

38. See Korea May Simplify Rules to Draw Foreign Investors, Asian Wall St. J., Sept. 19, 1983, at 10. In fact, the ROK legislature has enacted a statute which liberalizes the incentives for foreign investments. See Law No. 1802 of 1966 (as amended) (Foreign Capital Inducement Act).


40. Several of the theoretical attacks on the capital arbitrage theory have been advanced by the same theoreticians advancing the industrial organization theory of the FDI. See, e.g., R.E. CAVES, supra note 11; C.P. KINDLEBERGER, AMERICAN BUSINESS ABROAD: SIX LECTURES ON DIRECT INVESTMENT (1969); I.M. GROSSACK, THE INTERNATIONAL ECONOMY AND THE NATIONAL INTEREST 114 (1970); J.M. CONNOR, THE MARKET POWER OF MULTINATIONALS: A QUANTITATIVE ANALYSIS OF U.S. CORPORATIONS IN BRAZIL AND MEXICO (1977); Hufbauer, supra note 36, at 260.
too restrictive to permit any serious conclusions regarding the actual behavior of MNEs.\footnote{41}

\section*{B. Intangible Assets Hypothesis}

Critics of the capital arbitrage theory believe that the possession of knowledge is central to a MNE's decision to engage in foreign operations. Several writers have argued that the real advantage of the MNE over the non-MNE and local firms lies in its exclusive possession of some intangible asset or proprietary knowledge such as production secrets or managerial and marketing expertise.\footnote{42} MNEs go abroad to use these intangible assets and to collect rents on them. Thus, Posner\footnote{43} and others\footnote{44} have stressed the role of technology and human skills in foreign investment.

However, the possession of intangible assets or proprietary knowledge cannot alone explain MNE behavior in FDI because MNEs can exploit such advantages through means other than FDI. They may choose to serve foreign markets through exports or they may assign or license their know-how or intangible assets to a local producer. The intangible assets theory\footnote{45} argues that MNEs engage in foreign operations, instead of licensing or exporting, because of the market imperfections in arm's-length contracts involving intangible assets and the costs of exploiting foreign markets through exports.\footnote{46}

According to the market imperfection hypothesis, certain characteristics of intangible assets prevent their efficient sale in conventional markets. Intangible assets are thought of as a public good in that they can be exploited over and over again by different firms without depletion.\footnote{47} In addition, the marginal cost of their use abroad by any enterprise approaches zero. From the point of view of societal resource allocative efficiency, the rental price of such intangible assets should be close to zero. While the owners of intangible assets will not part with

\footnote{41} The assumptions underlying the neo-classical theory of FDI include the following: perfect competition, identical linear production functions, identical tastes, and no factor intensity reversals. Economists have found it convenient to refer to the theories proposed by Heckscher and Ohlin, see supra note 34, as a joint Heckscher-Ohlin theory. Any standard text on international trade refers to the theory of comparative advantage as such. See, e.g., M. Chacholaides, \textit{International Trade Theory and Policy} 206 (1978); Samuelson, \textit{International Trade and the Equalization of Factor Prices}, 58 \textit{Econ. J.} 165 (1948); Samuelson, \textit{International Factor Prices Equalization Again}, 59 \textit{Econ. J.} 181 (1949); Samuelson, \textit{A Comment on Factor Prices Equalization}, 19 \textit{Rev. Econ. Stud.} 121 (1952).


\footnote{45} See R.E. Caves, supra note 11, at 3-4.

\footnote{46} See id.

\footnote{47} Johnson, supra note 42, at 36.
them for nothing, the renters or licensees would prefer a very small rental price. Since the appropriate price is at issue, MNEs will not be able to exploit them fully in any arm's length transaction. Therefore, MNEs would prefer to engage in foreign operations in order to profit fully from intangible assets. Moreover, in any arm's length transaction for knowledge, the terms are likely to be distorted by mutual distrust and suspicion between the parties. This is sometimes complicated by serious disparities in the bargaining power of the assets' owners and licensees.

Given these perceptions of the nature of intangible assets, several host governments have legislatively intervened in arm's-length transactions between MNEs and local licensees to equalize the bargaining relationship and bring the price and other terms as close as possible to allocative efficiency goals.\textsuperscript{48} These governments believe that access to technology on reasonable terms is crucial to industrialization. In many developing countries this type of industrial legislation grants administrators and economic planners significant discretionary power to supervise the transfer of technology to targeted industries with respect to its price, quality, or quantity. The nationality of the licensee is often the crucial factor triggering government intervention. This type of industrial legislation, found in the ROK, the ROC, and the Andean Pact countries,\textsuperscript{49} seeks to guarantee some contractual and market advantage for the local licensee. According to the intangible assets hypothesis, it should induce greater FDI in industries in which MNEs can use their knowledge to the greatest profit advantage. Thus, if the nationality of the licensee triggers government intervention, the MNE will likely establish an affiliate in the host country to use and control the technology.

C. Industrial Organization Theory.

The industrial organization theory\textsuperscript{50} explains the growth of the MNE and its FDI behavior in terms of oligopolistic market structures. According to this the-


\textsuperscript{49} See id.

\textsuperscript{50} The industrial organization theory had its origins in a seminal doctoral dissertation by Hymer in 1960. Hymer's major thesis was that any attempt to explain the FDI behavior of MNEs must first explain why MNEs control or seek to control their foreign operations. To answer this question, he offered two explanations which are both related to market imperfections. The first market imperfection stems from the industrial characteristics of the markets in which MNEs operate. Where a particular industry is characterized by horizontal or bilateral monopoly or oligopoly it might be profitable for the market participants to engage in some collusive behavior. Such collusive behavior could take the form of joint ownership and control of the firm by several MNEs within the same industry. Ownership and control of these foreign operations would then permit MNEs to generate monopoly rents by removing competition. The second reason why MNEs will desire to control their foreign operations has to do with the imperfections in the rental markets. When the markets for renting, assigning, or leasing firm-specific advantages are imperfect, the MNE owning such advantages cannot exploit fully the rents attributable to them. The industrial organization theory is closely related to the intangible assets hypothesis discussed above. See S.H. HYMER, \textit{THE INTERNATIONAL OPERATIONS OF NATIONAL FORMS: A STUDY OF DIRECT FOREIGN INVESTMENT} (1976) (Ph.D dissertation published by M.I.T. Press).
ory, the advantage of MNEs lies not so much in possessing some unique intangible asset as in the stable structural traits of their industries.\textsuperscript{51} Oligopoly, characterized by differentiated products based on technology protected by patents, or advertising protected by registered trademarks and brand names, goes to the very root of the FDI process in horizontal investments. Oligopoly, and not necessarily product differentiation, also explains vertical investments.\textsuperscript{52}

In the industrial organization theory economists have developed a well established explanation of the growth of the MNE's FDI process.\textsuperscript{53} According to the theory's leading advocate, those countries with industries having the following structural characteristics are likely sources of FDI: oligopoly with product differentiation; high research and development intensity geared towards knowledge creation; and substantial barriers to entry.\textsuperscript{54}

It should be noted that oligopolistic market advantages describe a seller's concentration. Therefore, where a few firms dominate an industry, product differentiation becomes an effective tool for the accretion and retention of market power. Product differentiation, in combination with the legal protection of trademarks and brand names, also helps the oligopolist keep competitors out of the market at home and abroad. Given their size, financial resources, and marketing techniques, MNEs can more easily bear the significant costs associated with product differentiation through advertising. These oligopolistic advantages constitute significant barriers to entry.\textsuperscript{55} Since these hindrances to competition exist both at home and abroad, MNEs created for monopoly profits seek to exploit their protected advantages abroad within industries exhibiting the same structural traits as those they are involved in at home.

The industrial organization theory has some interesting implications for the behavior of MNEs in host developing countries. First, if ownership and control are central to the MNE, then one should observe a marked preference among MNEs for countries and industries in which the opportunity to own and control is greatest. They should prefer to operate in countries permitting at least majority ownership, and at best 100 percent ownership, of subsidiaries by foreign investors. Thus, where the host government requires majority local ownership, such as Nigeria,\textsuperscript{56} the theory dictates that MNEs will reduce their involvement. However, the issue of control is not that simple. MNEs may not have de jure control but

\begin{itemize}
  \item \textsuperscript{51} Caves, \textit{International Corporations: The Industrial Economics of Foreign Investment}, 38 \textit{ECONOMICA} 1 (1971).
  \item \textsuperscript{52} \textit{Id.}
  \item \textsuperscript{53} See C.P. Kindleberger, \textit{supra} note 40; R.E. Caves, \textit{supra} note 11, at 31–32; Caves, \textit{supra} notes 51 and 37; F.T. Knickerbocker, \textit{Oligopolistic Reaction and Multinational Enterprise} (1973).
  \item \textsuperscript{54} Caves, \textit{supra} note 51.
  \item \textsuperscript{55} The advantages of MNEs were recently described as monopolistic advantages. See generally Lall, \textit{Monopolistic Advantages and Foreign Involvement by U.S. Manufacturing Industry}, 32 \textit{OXFORD ECON. PAPER} 102 (1980).
  \item \textsuperscript{56} The appropriate Nigerian statute dealing with this is the decree popularly known as the Indigenization Act. It was promulgated as the Nigerian Enterprises Promotion Decree 1977, Decree No. 3, 1977 \textit{ANNUAL VOLUME OF THE LAWS OF THE FEDERAL REPUBLIC OF NIGERIA}, at A 17. This statute contains several provisions stipulating the degree of maximum foreign participation in different categories of business.
\end{itemize}
might well have de facto control over operations majority-owned by local partners. Industrial legislation tends to stress a legal right of control while MNEs might insist on effective or operational control. The impact of majority local participation or indigenization statutes on MNE behavior is therefore unclear.

Second, the theory suggests that the host country eager to attract MNEs should provide them with industrial property laws—patent, copyright, trademark, and trade secrets statutes—which facilitate monopoly control over the market. Monopolization by MNEs is easiest if the host country's laws permit MNEs to replicate their home, oligopolistic market structures. Indeed, industrial legislation which targets certain industries for development through legal controls, inducements, and intellectual property protection laws may be unintentionally responding to the characteristic attributes and distinctive behavior of MNEs.

D. Internalization Theory

The internalization theory is the most ambitious attempt yet to develop a comprehensive theory of the MNE and the FDI process. Internalization may be defined as bringing under common ownership and control the same activities linked together by markets. Internalization will take place if there are distortions or market imperfections in an MNE's goods and factor markets. The basic goal of internalization is efficiency. The operational efficiency of any business depends on the degree to which it can coordinate various aspects of its activities through efficient external goods and factor markets. However, the external markets for several intermediate products—defined broadly to include intangible assets, human skills, knowledge, and semi-finished products—are either inefficient or difficult to organize. Internalization permits a firm to bypass these inefficiencies or to replace them with its own internal and therefore more efficient set of markets. Internalization across national boundaries explains foreign production, sales, and other operations of MNEs.

The internalization paradigm suggests that the MNE is an efficient alternative to a less than free trade economy. If the world were characterized by free trade, there would be no need for the MNE. However, perfectly free trade among nations does not exist. The rise of the MNE and the FDI process is then an efficient second best response to market imperfections.

The market imperfections that may trigger internalization stem from two sources: exogeneous government-induced inefficiencies and normal market failure in the goods and factor markets. Government-induced imperfections normally arise from government intervention in the international markets through

57. For the original explication of the theory, albeit in a domestic context, see Coase, The Nature of the Firm, 4 ECONOMICA 386 (1937).
59. Id.
60. Id.
62. Id. at 367.
tariffs and non-tariff barriers. They may also arise from legislative controls and restrictions on international capital flows, foreign exchange regulations, tax incentives, and discrepancies between corporate tax rates among countries. These imperfections provide an incentive for internalization across national boundaries. For instance, exchange control restrictions or corporate tax differentials may induce an MNE to shift its profits from one country to another through its own internally controlled transfer pricing system by the use of a foreign subsidiary.\(^6\)

Similarly, non-government market failures promote internalization. For instance, imperfections may exist in the intermediate goods markets where the transactions are characterized by significant time lags without efficient futures markets, or in markets in which discriminatory pricing is prevalent. Significant disparity in the bargaining power between buyers and sellers can also result in market failures, leading to internalization. Finally, in the case of bilateral concentration of market power, the cost of sanctions inherent in the bargaining process creates some uncertainty and therefore may require some joint control or ownership.\(^6\) Any of these market imperfections could induce an MNE to create its own internal, efficient markets for these goods.

The internalization theory appears to explain the dynamism of MNEs. Their adaptability, flexibility, and strong preference for controlling their own operations should, according to this theory, be seen as part of the broader global profit maximization purpose of MNEs. The extent to which any industrial legislation would affect them depends on how restrictive such legislation is of MNE behavior. Any rule that effectively restricts the ability of MNEs to shuttle their resources and engage in intra-firm transactions deprives MNEs of their economic justification. As in the case of control, the assessment of laws seeking to restrict the behavior of MNEs should be based on actual effects rather than on intended legal effects. The next sections illustrate the probable effects of various types of legislation on the behavior of MNEs in light of their known characteristic behavior.

III. THE EFFICACY OF TAX INCENTIVE LEGISLATION

Measuring the efficacy of tax incentive legislation on the behavior of MNEs is not easy. Nevertheless, the capital arbitrage theorists and industrial policy makers seem to agree on the probable impact of tax incentive legislation on the behavior of MNEs. Both believe that incentives granted to MNEs in the form of tax holidays, tax reductions, and other tax advantages influence the location of MNEs' production facilities.\(^6\) Such measures, in their view, encourage MNEs to respond to the foreign investment inducement policies of host governments. Therefore, MNEs can be expected to flock to countries offering such incentives and into those industries targeted by such statutes. However, the available statistics fail to support the claims of the theory and policy makers.

Incentive legislation is common in all the categories of developing countries:

\(^{64}\) Id.

\(^{65}\) Id.

\(^{66}\) See supra notes 34–39.
low income countries (LICs), middle income countries (MICs), newly industrializing countries (NICs), and members of the Organization for Petroleum Exporting Countries (OPEC). If the theory were correct, all these countries would attract a significant amount of MNE operations in the form of FDI. Instead, the available statistics seem to confirm a different pattern of MNE behavior. According to the statistics, MNEs originate from a few industrialized countries and locate their operations in a few developed and developing countries.

Even with very liberal tax incentives, developing countries, as a group, have always been least attractive to MNEs. Between 1967 and 1975, FDI in developing countries dropped from 33 percent of the total FDI to 26 percent while that of the developed market economies increased from 69 percent to 74 percent. Within developing countries, the MNEs are most attracted to the MICs such as the ROK, the ROC, Hong Kong, Singapore, Brazil and Argentina, rather than to the LICs such as Niger and Somalia.

As is obvious from Table 1, NICs (only 11 in number) accounted for a huge portion of the total FDI in developing countries between 1977 and 1981—as much as 61 percent in 1979. These figures demonstrate the apparent unattractiveness of LICs; yet incentive legislation is as prevalent in the LICs as in the NICs. If tax incentive legislation were important in the MNE plant location decision process, the gap between NICs and LICs would be narrower. Furthermore, the similarity of tax incentives among developing countries, caused by avid competition among them for scarce MNE funds, undercuts the argument that differential tax incentive policies play a role in MNE plant location decisions. Thus, it is very difficult to explain the attractiveness of the NICs on the basis of their tax incentive laws.

About half of the MNE operations are in tax havens or off-shore banking

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Table 1
Share of Developing Country Groups in Allocated Development Assistance Countries Foreign Direct Investment Flows (NET) 1977–81 (figures in percentages)

<table>
<thead>
<tr>
<th></th>
<th>1977</th>
<th>1979</th>
<th>1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIC</td>
<td>8</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>MIC</td>
<td>19</td>
<td>31</td>
<td>27</td>
</tr>
<tr>
<td>(off-shore banking centers)</td>
<td>(7)</td>
<td>(19)</td>
<td>(15)</td>
</tr>
<tr>
<td>NIC</td>
<td>51</td>
<td>61</td>
<td>44</td>
</tr>
<tr>
<td>OPEC</td>
<td>22</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>


67. INVESTING, supra note 22, at 19.
68. Transnational Corporations, supra note 10.
69. Id. at 237.
centers. These countries largely attract holding companies and other MNE affiliates not designed to carry out any substantial operations in manufacturing, sales, or other business within the country. Tax havens in which foreign source income is not taxed, are the most attractive for this type of FDI. These countries help MNEs work their international system to an advantage by enacting the tax, confidentiality, and exchange control laws that allow MNEs to pool earnings for reinvestment purposes from subsidiaries in other countries. However, such laws can hardly be said to constitute industrial legislation since their objectives are not industrial development as such.

The casual observer of the efforts of countries such as the ROK and the ROC to attract business and of the resulting level of MNE activity in these countries, might conclude that tax incentive legislation has had a positive effect on investment by MNEs. However, several studies conducted since the 1950s have cast serious doubts on the efficacy of such statutes. Most survey studies found incentive legislation to be of low significance in the motivational scale of MNEs. Though more recent econometric studies arguably show some relationship between differential tax rates and MNE behavior, they included all known motivational factors for FDI and could not isolate the effects of taxes on MNE behavior. In fact, there is no general theoretical or empirical basis for tax incentive legislation as a motivator for MNE foreign investment.

Since industrial legislation is better understood and evaluated as a system of interconnected statutes, it is likely that tax incentives do not by themselves influence the behavior of MNEs. However, when combined with other statutes dealing with ownership, related party transactions, imports, exports, and industrial property protection, they may marginally influence the general calculus of MNE plant location decisions.

IV. EFFECTS OF INDUSTRIAL LEGISLATION ON MNE BEHAVIOR

To explain the impact of industrial legislation on MNE behavior it is best to remember that no single theory can explain the FDI behavior of MNEs. MNE


actions closely resemble those predicted by the intangible assets and the industrial organization theories, but a complete explanation must also draw from the firms' overall profit or growth objectives. MNEs invest abroad to exploit their know-how if that fits into their system of interconnected operations for profit maximization and growth. For MNEs to achieve these objectives, however, the opportunity must exist for them to engage in their distinctive behavior of controlling the system and each of its component parts run by their foreign affiliates. Determining the impact of industrial legislation on the behavior of MNEs therefore requires an examination of the extent to which such legislation facilitates or restricts their ability to control their operations.

The various measures of countries in the East and Southeast Asian regions incorporate mixed objectives. On the one hand, foreign capital inducement statutes and free export zone laws seek to attract FDI into industries considered important for the industrialization process of host countries. On the other hand, other provisions of the foreign capital inducement laws restrict the entry of foreign investors into certain industries through foreign investment screening procedures and ownership limitations.

A. Patterns of MNE Investment Behavior

In the case of foreign investment statutes, several countries have earmarked for MNE operations certain manufacturing activities requiring high capital expenditures, complex technology, or the use of local resources. By law, MNEs can establish majority or wholly-owned subsidiaries in these industries. The theory of FDI suggests that MNEs tend to locate in those industries in which they can exploit their monopolistic advantages. MNEs have generally enjoyed such advantages in manufacturing. In 1976, manufacturing accounted for about 45 percent of U.S. MNE operations, 35 percent of Japanese MNE operations and 70 percent of West German MNE operations. In the case of developing countries, the concentration of MNEs in manufacturing follows the same pattern. According to some OECD estimates, 42 percent of the total stock of FDI in developing countries is in manufacturing. U.S. MNE activity in manufacturing is 39 percent of total U.S. FDI, while that of Japanese and West German MNEs is 37 percent and 68 percent, respectively. Statistics for certain developing countries are even more striking. In 1975, 80 percent of the stock of FDI in the ROK was in manufacturing. The concentration of MNE activities in manufacturing fell by almost ten percentage points to 71.2 percent by 1982. However, as demonstrated in Table 2, MNE dominance of

74. See supra note 2.
75. See supra note 2. Some countries such as the ROC have no statutory ownership limitations. However, government preference for local majority ownership is said to be an undeclared rule. See, e.g., Wan, *A Comparative Study of Foreign Investment Laws in Taiwan and China*, 11 CAL. W. INT’L L. J. 236, 253 (1981). For the ROK, see Yoon, *Legal Aspects of Foreign Investment in the Republic of Korea*, 10 INT’L L. 729 (1976); Lee, *The Effectiveness of Incentives Under the Foreign Capital Inducement Act of Korea*, 8 KOREAN J. COMP. L. 110 (1980).
77. INVESTING, supra note 22, at 26.
Table 2
Foreign Investment Approvals by Industry
Republic of Korea (end 1982) (in thousands of U.S. dollars)

<table>
<thead>
<tr>
<th>Industry</th>
<th>No. of Projects</th>
<th>Amount</th>
<th>Composition (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRICULTURE, FORESTRY &amp; FISHERY</td>
<td>41</td>
<td>$13,866</td>
<td>1.0</td>
</tr>
<tr>
<td>AGRICULTURE &amp; FORESTRY</td>
<td>22</td>
<td>$5,923</td>
<td>0.4</td>
</tr>
<tr>
<td>FISHERY</td>
<td>19</td>
<td>$7,943</td>
<td>0.6</td>
</tr>
<tr>
<td>MINING &amp; MANUFACTURING</td>
<td>749</td>
<td>1,025,822</td>
<td>71.4</td>
</tr>
<tr>
<td>MINING</td>
<td>12</td>
<td>2,817</td>
<td>0.2</td>
</tr>
<tr>
<td>MANUFACTURING</td>
<td>737</td>
<td>1,023,015</td>
<td>71.2</td>
</tr>
<tr>
<td>Foods &amp; Beverages</td>
<td>22</td>
<td>42,807</td>
<td>3.0</td>
</tr>
<tr>
<td>Textile &amp; Wearings</td>
<td>67</td>
<td>67,808</td>
<td>4.7</td>
</tr>
<tr>
<td>Wood Products</td>
<td>3</td>
<td>1,113</td>
<td>0.1</td>
</tr>
<tr>
<td>Chemicals</td>
<td>108</td>
<td>319,344</td>
<td>22.4</td>
</tr>
<tr>
<td>Medicine</td>
<td>24</td>
<td>38,588</td>
<td>2.7</td>
</tr>
<tr>
<td>Fertilizer</td>
<td>4</td>
<td>41,975</td>
<td>2.8</td>
</tr>
<tr>
<td>Petrochemicals</td>
<td>4</td>
<td>31,535</td>
<td>2.2</td>
</tr>
<tr>
<td>Ceramics</td>
<td>22</td>
<td>14,387</td>
<td>1.0</td>
</tr>
<tr>
<td>Iron &amp; Steel Metallics</td>
<td>67</td>
<td>63,232</td>
<td>4.4</td>
</tr>
<tr>
<td>Machinery and its Spare Parts</td>
<td>121</td>
<td>89,600</td>
<td>6.2</td>
</tr>
<tr>
<td>Electrical &amp; Electronics</td>
<td>178</td>
<td>221,487</td>
<td>15.3</td>
</tr>
<tr>
<td>Transportation Equip.</td>
<td>8</td>
<td>52,731</td>
<td>3.8</td>
</tr>
<tr>
<td>Others</td>
<td>109</td>
<td>38,351</td>
<td>2.6</td>
</tr>
<tr>
<td>SERVICES</td>
<td>91</td>
<td>396,747</td>
<td>27.6</td>
</tr>
<tr>
<td>Banking</td>
<td>11</td>
<td>87,404</td>
<td>6.1</td>
</tr>
<tr>
<td>Construction &amp; Services</td>
<td>31</td>
<td>68,669</td>
<td>4.8</td>
</tr>
<tr>
<td>Electricity</td>
<td>2</td>
<td>3,395</td>
<td>0.2</td>
</tr>
<tr>
<td>Transport. &amp; Storage</td>
<td>13</td>
<td>30,632</td>
<td>2.1</td>
</tr>
<tr>
<td>Hotel</td>
<td>34</td>
<td>206,647</td>
<td>14.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>881</strong></td>
<td><strong>$1,436,445</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>


manufacturing in the ROK continues. Table 3 confirms a similar picture of concentration in the ROC where manufacturing accounted for 75 percent of MNE operations. In Singapore, MNEs accounted for, on the average, almost 80 percent of all manufacturing investments as shown by Table 4. Other studies confirm a similar pattern in other countries.78

Clearly, manufacturing is vital to both the host countries and the MNEs. Industrial legislation, such as that enacted by the ROK, the ROC, and others, facilitating the building of plants and permitting full or majority foreign ownership is exactly what MNEs desire in making their locational decisions. Such legislation encourages MNEs to locate in industries in which they have previously operated. According to industrial organization theory, legislation

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78. Transnational Corporations, supra note 10, at 259 table III-50.
Table 3

Private Foreign & Overseas Chinese Investment in Approvals—By Industry (amounts in thousands of US dollars)
Republic of China (Taiwan) (1952–1982)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Total Cases</th>
<th>Total Amount</th>
<th>Overseas Chinese Cases</th>
<th>Overseas Chinese Amount</th>
<th>Private Foreign Cases</th>
<th>Private Foreign Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>2,974</td>
<td>3,494,166</td>
<td>1,557</td>
<td>1,063,870</td>
<td>1,417</td>
<td>2,430,296</td>
</tr>
<tr>
<td>Agriculture &amp; Forestry</td>
<td>15</td>
<td>3,000</td>
<td>14</td>
<td>2,962</td>
<td>1</td>
<td>38</td>
</tr>
<tr>
<td>Food &amp; Beverages</td>
<td>138</td>
<td>94,970</td>
<td>91</td>
<td>42,996</td>
<td>47</td>
<td>51,974</td>
</tr>
<tr>
<td>Electronic &amp; Electric Products</td>
<td>454</td>
<td>1,006,591</td>
<td>104</td>
<td>28,069</td>
<td>350</td>
<td>978,522</td>
</tr>
<tr>
<td>Fisheries &amp; Livestock</td>
<td>54</td>
<td>18,297</td>
<td>47</td>
<td>16,329</td>
<td>7</td>
<td>1,968</td>
</tr>
<tr>
<td>Textiles</td>
<td>281</td>
<td>146,400</td>
<td>186</td>
<td>89,593</td>
<td>95</td>
<td>56,807</td>
</tr>
<tr>
<td>Paper &amp; Paper Products</td>
<td>45</td>
<td>23,515</td>
<td>31</td>
<td>11,958</td>
<td>14</td>
<td>11,557</td>
</tr>
<tr>
<td>Chemicals</td>
<td>526</td>
<td>490,899</td>
<td>229</td>
<td>69,285</td>
<td>297</td>
<td>421,614</td>
</tr>
<tr>
<td>Non-metallic Mineral Products</td>
<td>158</td>
<td>341,721</td>
<td>95</td>
<td>285,136</td>
<td>63</td>
<td>56,585</td>
</tr>
<tr>
<td>Metal Products</td>
<td>289</td>
<td>267,103</td>
<td>85</td>
<td>17,905</td>
<td>204</td>
<td>249,198</td>
</tr>
<tr>
<td>Machinery, Equipment &amp; Instruments</td>
<td>168</td>
<td>232,783</td>
<td>44</td>
<td>28,038</td>
<td>124</td>
<td>204,745</td>
</tr>
<tr>
<td>Transportation</td>
<td>65</td>
<td>49,585</td>
<td>59</td>
<td>41,743</td>
<td>6</td>
<td>7,837</td>
</tr>
<tr>
<td>Construction of Buildings</td>
<td>160</td>
<td>104,961</td>
<td>152</td>
<td>93,973</td>
<td>8</td>
<td>10,988</td>
</tr>
<tr>
<td>Banking &amp; Insurance</td>
<td>37</td>
<td>120,987</td>
<td>18</td>
<td>64,162</td>
<td>19</td>
<td>56,825</td>
</tr>
<tr>
<td>Foreign Trade</td>
<td>98</td>
<td>8,033</td>
<td>95</td>
<td>5,633</td>
<td>3</td>
<td>2,400</td>
</tr>
<tr>
<td>Services</td>
<td>178</td>
<td>484,313</td>
<td>117</td>
<td>223,035</td>
<td>61</td>
<td>261,278</td>
</tr>
<tr>
<td>Others</td>
<td>308</td>
<td>101,008</td>
<td>190</td>
<td>43,048</td>
<td>118</td>
<td>57,960</td>
</tr>
</tbody>
</table>

Table 4

Net Investment Commitments in Manufacturing by Industry (millions of U.S. dollars)
Singapore

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Food &amp; Beverages</td>
<td>3.4</td>
<td>2.0</td>
<td>—</td>
<td>2.6</td>
<td>14.4</td>
<td>27.4</td>
<td>8.5</td>
<td>40.8</td>
<td>103.5</td>
<td>90.7</td>
<td>97.8</td>
</tr>
<tr>
<td>Textiles</td>
<td>2.2</td>
<td>14.5</td>
<td>20.9</td>
<td>0.9</td>
<td>6.5</td>
<td>1.7</td>
<td>11.0</td>
<td>14.2</td>
<td>32.6</td>
<td>17.7</td>
<td>8.9</td>
</tr>
<tr>
<td>Wearing Apparel</td>
<td>6.4</td>
<td>—</td>
<td>—</td>
<td>1.5</td>
<td>3.0</td>
<td>2.7</td>
<td>1.4</td>
<td>8.0</td>
<td>8.3</td>
<td>10.4</td>
<td></td>
</tr>
<tr>
<td>Wood Products</td>
<td>14.2</td>
<td>9.3</td>
<td>6.9</td>
<td>1.4</td>
<td>8.3</td>
<td>5.3</td>
<td>9.8</td>
<td>33.2</td>
<td>30.8</td>
<td>16.8</td>
<td>9.1</td>
</tr>
<tr>
<td>Paper Products &amp; Printing</td>
<td>—</td>
<td>6.3</td>
<td>1.0</td>
<td>—</td>
<td>1.0</td>
<td>4.2</td>
<td>—</td>
<td>8.0</td>
<td>27.2</td>
<td>161.8</td>
<td>116.1</td>
</tr>
<tr>
<td>Industrial Chemicals</td>
<td>2.1</td>
<td>5.1</td>
<td>26.0</td>
<td>7.5</td>
<td>5.0</td>
<td>4.9</td>
<td>13.9</td>
<td>5.4</td>
<td>76.8</td>
<td>63.8</td>
<td>16.9</td>
</tr>
<tr>
<td>Plastic Products</td>
<td>6.7</td>
<td>6.3</td>
<td>—</td>
<td>4.3</td>
<td>11.8</td>
<td>8.6</td>
<td>13.4</td>
<td>34.0</td>
<td>66.8</td>
<td>41.9</td>
<td>47.4</td>
</tr>
<tr>
<td>Other Chemical Products</td>
<td>0.9</td>
<td>2.4</td>
<td>15.0</td>
<td>2.0</td>
<td>0.4</td>
<td>1.2</td>
<td>14.5</td>
<td>31.0</td>
<td>101.1</td>
<td>95.7</td>
<td>47.4</td>
</tr>
<tr>
<td>Petroleum</td>
<td>—</td>
<td>—</td>
<td>135.0</td>
<td>16.0</td>
<td>66.2</td>
<td>330.0</td>
<td>224.5</td>
<td>200.0</td>
<td>162.0</td>
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<td>5.2</td>
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<td>6.8</td>
<td>13.8</td>
<td>56.2</td>
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<td>95.1</td>
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<td>291.9</td>
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<td>120.2</td>
<td>205.0</td>
<td>599.1</td>
<td>540.3</td>
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which includes patent, trademark, and other intellectual property protection statutes permits—indeed, encourages—MNEs to reproduce their home oligopolistic market structures in host countries. In fact, when, as in the ROK, the ROC, and Singapore, the host countries have an aggressive export policy for manufactured goods supported by various export incentives and the export-free zones, MNEs are able to operate their international systems smoothly.

Export-free zones were designed to cut red tape and reduce administrative costs associated with normal investment screening procedures. They attracted primarily specialized, labor-intensive activities in industrial sectors such as electronics, electrical appliances, machine tools, small machines, cameras, watches, and radios. Historically, these are the product lines which have been most attractive to MNEs. As Tables 2 through 4 demonstrate, in 1982 MNE activities in the ROK, the ROC, and Singapore were concentrated in these product lines. MNE investment in electrical products and electronics was about 15 percent of total investment in the ROK and 28 percent in the ROC. Most of the MNEs operating in this sector in the ROC were from the U.S., Japan, or Europe. The MNEs in the ROC also devoted ten percent and eight percent of their operations to metals and machinery, and equipment, respectively.

MNEs were attracted to these sectors for several reasons. The cost of labor, for example, in the ROC and in the ROK, as compared to the U.S. and Japan, was significantly lower. Singapore also enjoyed a comparative labor cost advantage over the U.S., although not over Japan. Moreover, the productivity of labor in the ROC and the ROK was as high or higher in certain product lines than in the U.S. In addition, the host governments assured MNEs that they would maintain tight control over the conduct of labor within the export-free zones. As a result, it became common practice for MNEs to import, duty free, materials or component parts from their various operations in developed countries to be processed or assembled in these export-free zones for global re-export to their other affiliates.

B. Impact on Labor

MNEs appear to make a significant contribution to the direct and indirect employment effects in these countries. Studies which have addressed the rela-

79. The ROK is one example of a developing country which has established a free export zone through statute. See supra note 2.
82. For instance, Scott reported the following comparative hourly wage rates for the following countries in 1972: U.S. $2.75, Germany $1.90, Japan $1.20, the ROK $0.22, the ROC $0.20. See Scott, supra note 80.
83. See T. Ozawa, MULTINATIONALISM, JAPANESE STYLE 90 (1979).
84. Scott, supra note 80, at 360.
86. See, e.g., Galenson, The Labor Force, Wages, and Living Standards, in ECONOMIC GROWTH AND STRUCTURAL CHANGE IN TAIWAN 384, 388 (W. Galenson ed. 1979); Watanabe, Export and
tionship among unions, governments, and MNEs, within the framework of labor legislation, have tended to show that the implementation of various labor statutes favored MNEs over workers.\textsuperscript{87}

The newly industrializing countries' policy of export-led growth requires a stable and efficient, but not necessarily cheap, labor force. However, various statutes affecting unions, strikes, conditions of employment, and minimum wage laws, have caused many of these countries to become cheap labor havens.\textsuperscript{88} Their current comparative advantage in world markets depends on their ability to keep labor cheap and efficient. If industrial legislation was intended in part to address the distributional equities in MNE-generated wealth, it has failed. MNEs inadequately compensate workers for their real contribution to manufacturing. In fact, industrialization might be said to be taking place through exploitation of labor. For instance, a department of the government of the ROK openly advertised its cheap and abundant labor force. It stressed that the average wage level of the ROK worker was about half that in Hong Kong, 30 percent of that in Japan, and just about the same as the ROC.\textsuperscript{89} In addition to lower average wage costs, MNEs benefit from these efficient and productive workers working 48 regular hours a week, about eight hours more than in the United States.

Some MNEs have developed a consistent pattern of discrimination in wages and general treatment of female workers, particularly within the export-free zones.\textsuperscript{90} About 80 percent of the workers employed by foreign firms in these zones are women.\textsuperscript{91} Not only do they receive a fraction of what their male counterparts receive in wages, but these women are also subjected to various physical and sex-related abuses not tolerated anywhere in the home countries of

\textit{Employment: The Case of the Republic of Korea}, 106 Int'l. Lab. Rev. 495, 504 (1972). This author noted the following effects of exports on labor:

According to my estimation, every $1 million increase in exports of manufactures from Korea will create, on the average and in the short term, jobs for some 500 workers in export industries, about 150 jobs in their supporting industries and another 150 in consumer goods and service industries. In the longer run its total effect will be much larger, partly owing to the cumulative nature of the various employment effects and partly because capital investment and construction works will be induced as a result of export expansion.

\textit{Id.} at 514. The importance of these estimates lies in the fact that several of the labor intensive products are those in which MNEs invested. \textit{See also} Fong, \textit{Employment and Basic Needs in Singapore}, 119 Int'l Lab. Rev. 495, 497–98 (1980).


88. See E. Utrech, supra note 85, at 221.

89. See id. at 238.

90. \textit{Id.} at 241–45. This is very serious when one takes into consideration the fact that women have contributed significantly to the economic development of several of the East and Southeast Asian countries. According to one study, in 1976 women constituted nearly a third of the labor force in the ROC. Their share of the labor force in manufacturing was a little below one-half. \textit{See} Galenson, \textit{supra} note 86, at 393.

91. See, \textit{e.g.}, Scott, \textit{supra} note 80, at 339.
The plight of female workers is widespread in Southeast Asia, and it appears that Japanese MNEs may be more culpable than others.

Job related discrimination against women is hardly an isolated phenomenon unique to Asia. However, its scope, character, and intensity in this region when compared to developed countries, appears more offensive. Due perhaps to cultural reasons, the general awareness of the problem is low. The commitment of host governments to provide a strike-free labor force limits the options of these workers.

Despite the exploitation they suffer, it is not the case that workers do not benefit from MNE investment. The real issue is whether the distribution of MNE-generated wealth should reflect the actual contribution of labor. One commentator suggests that in trying to assess the equities between MNEs and labor one should consider that MNEs provide workers with higher wages and better working conditions than they could otherwise obtain. However, this suggestion seriously misses the crucial issue. It is not a comparison between ex ante and ex post wages and conditions of work which is important. But rather, the issue is whether FDI should make labor better off and whether it can make labor better off without making MNEs worse off.

The conduct of a Japanese technician named Kobayashi (aged 28) of “Korea F-One, Ltd.” shows well the contemptuous attitudes held by Japanese toward Koreans: the brutality, deception and violence used against workers by management; and the deep discrimination against women workers which prevails in the [Masan Free Export Zone]. In 1972, Kobayashi made advances to a certain woman worker. When she refused him, he started kicking and slugging her, and as she tried to run away from him, he beat her more and dragged her before a Korean director and continued to beat her, calling her a “base, insolent bitch.” . . . Again in 1973, Kobayashi started trouble by beating a worker over a trivial matter, calling all Koreans “Liars.” . . . The contempt for women workers and infringement on their rights by the Japanese are best illustrated by a case in which the Japanese president of “Hokuryo Corporation,” a frozen food processing industry, made women workers line up in his office. He bluntly told them, “Koreans are filthy and smelly. We won’t allow that here. Clean yourselves up.” In September 1974, a case of women workers being raped was confirmed as a fact, though such incidents had long been rumored around Masan.


93. Id.; see also A.R. Negandhi & B.R. Baliga, Tables are Turning: German and Japanese Multinationals in the United States 69 (1981). According to this study, Japanese MNEs were more likely to hire Japanese lower level personnel managers than their counterparts. As a result, they had significant operational problems with most of their non-Japanese employees. Id. at 83-84.


95. See supra note 92.

96. See E. Utretcht, supra note 85, at 241.

97. See Scott, supra note 80, at 340.
From the external orientation of these countries it can be said that policy makers face a dilemma: having attracted MNEs through cheap labor, they cannot easily improve working conditions without jeopardizing their industrial drive. Since their comparative advantage lies in the productivity and cheapness of labor in the production of labor-intensive goods, a rise in labor costs would reduce their external price competitiveness. Therefore, any improvement in wages and working conditions would threaten the country's international competitiveness. In fact, the recent deterioration of export performance of the ROK as compared with other East Asian countries is said to have emanated from the decline in its external competitiveness. In response, the ROK government has embarked on a policy of limiting wage increases.

Workers in economies attracting MNEs through cheap labor are vulnerable to exploitation. Their jobs depend on the extent to which legislatively created economic and social conditions continue to attract MNEs. In the short term, any decline in the economic conditions in export markets would result in labor being called upon to accept even lower wages and benefits. If labor insists on higher wages and benefits, MNEs are likely to shift their production to countries with lower labor costs. Labor's desire to save jobs would make it more difficult for it to demand better conditions, even if it had the opportunity.

In the long run, labor suffers the effects of cost-saving technological change. For instance, the advent of automated equipment for assembling integrated circuits reduces the demand for manual labor. Because several of the products in which countries with cheap labor economies have a comparative advantage have a short life cycle, industrial policies which encourage concentration of these product lines expose workers to short and long term vulnerabilities.

C. Effects upon Local Economies: Linkage and Control

The electronics industry in the ROK presents an interesting case. In 1973, over 80 percent of its total output in electronics was exported. In components, 86 percent of the output was exported to the U.S. and Japan. In consumer electronics, 90 percent of output was exported to the U.S. and Japan, and sold mostly under the brand names of Japanese and U.S. MNEs. The export-free zone statutes which encourage the shuttling of these resources between parents and subsidiaries facilitated intra-firm transactions and correspondingly diminished any linkage effects in the local economies. In other words, these statutes encouraged the creation of industrial enclaves, the benefits of which went largely to industrialized countries. In another case, less than 14 percent of the machinery, equipment, and raw materials required in the ROC's export-free zones between 1966 and 1974 came from local sources.

99. Id. at 22.
100. P. HASAN, KOREA: PROBLEMS AND ISSUES IN A RAPIDLY GROWING ECONOMY 182 (1976).
101. The issue of enclave economies with very little linkage effects was addressed by Singer in an article in the 1950s. See Singer, The Distribution of Gains between Investing and Borrowing Countries, in READINGS IN INTERNATIONAL TRADE 306 (1968).
102. Little, supra note 81, at 451.
In addition, the success of the zones depended substantially on the existence of international markets for the products. Through control over established brand names and their network of foreign affiliates, the MNEs offered the desired link between these export processing zones and the markets. Hence intra-firm transactions between U.S. MNEs and their majority owned affiliates in developing countries, excluding Latin America, equaled 65 percent of total manufactured exports. For West German MNEs in countries where their investments are significant, the corresponding figure was about 60 percent of exports. These export zone statutes greatly facilitate the operational smoothness and functional dynamism of MNEs, permitting them to shuttle resources among countries and control their international marketing and distribution.

As to whether the wholly-owned or majority-owned operation is the preferred MNE-affiliate relationship, several studies indicate that most U.S. and European MNEs prefer wholly-owned operations. In contrast, Japanese MNEs readily accept minority ownership. One recent study showed that about 75 percent and 66 percent of the subsidiaries of U.S. and European MNEs are wholly-owned as opposed to only 26 percent in the case of Japanese subsidiaries. This study confirmed the results of a study by the OECD reporting the generally strong, but declining, preference of U.S. MNEs for wholly-owned operations.

Statistics show that only a small percentage of the operations of MNEs in the countries covered in this study are wholly-owned by their parent corporations. In the ROK, out of 381 enterprises affiliated with manufacturing MNEs, only 61 (15 percent) are wholly-owned. The rest are majority owned. However, while in a distinct minority of cases, wholly-owned operations can be quite significant in particular activities such as the electronics industry. By the end of 1973, foreign investment in electronics in the ROK amounted to $104 million, 60 percent of which was held by 12 wholly-owned subsidiaries and the rest by 42 joint ventures. The ownership structures are not vastly different in other countries within the region. U.S. MNEs in the export-free zones of the ROC usually retain 100 percent ownership in their operations. Between 1967 and 1970, 25 percent of FDI in Indonesia was wholly foreign owned while the bulk of the remainder was at least 60 percent foreign owned.

The nature of ownership acceptable to Japanese MNEs is not based solely on their willingness to accept a minority position. It is also a result of the demands

103. The Role of Transnational Corporations in the Marketing and Distribution of Exports and Imports of Developing Countries 5, U.N. Doc. No. TD/B/C.27197 (1978) [hereinafter cited as The Role of Transnational Corporations].
104. Id.
107. INVESTMENT GUIDE TO KOREA, supra note 3, at 24. The statistics do not reveal information about the size or nature of these 61 operations.
108. Id.
109. P. HASAN, supra note 100, at 179.
111. 1 T. ALLEN, ASSOCIATION OF SOUTH EAST ASIAN NATIONS REPORT 107 (1979).
of the market. For instance, Japanese MNEs have preferred wholly-owned operations in export-free zones where the total output is to be exported to other markets. In fact, 70 percent of their operations were wholly-owned largely for two reasons. First, intense competition and the fact that they supplied other distributors under their own brand names made product quality vital. They therefore were less willing to risk any interference with quality by a local partner. Second, full ownership gave them some flexibility in transfer pricing.

The implication of these statistics on ownership patterns is that industrial legislation such as that of the ROK, the ROC and other emerging industrialized countries, which encourages wholly-owned or majority-owned MNE operations actually caters to the demonstrated wishes and needs of MNEs. Rules responding to the desiderata of MNEs, especially those permitting firms the flexibility to respond to various global economic stimuli and exploit low costs and profit opportunities, might well be a more effective inducement for FDI than differential rates of return.

These arguments do not account for the fact that the vast majority of these statutes seek to control the actual behavior of MNEs. Host governments are seriously concerned about the nature and quality of MNE activities on their economies. They seek greater and more efficient integration of MNE operations into their local economies. MNE operations would be most beneficial to them if they generated greater linkage effects and led to more efficient utilization of local resources. To ensure that MNE operational decisions take into account national industrial and economic policies, output targets, export levels, and the balance of payments, local participation laws demanding that MNE operations be majority owned by local interests have become commonplace. Host governments, including several countries of Southeast Asia and Latin America, seem to believe that local majority ownership, dictated by law, will translate into effective control. However, their real impact on the behavior of MNEs remains unclear. This section argues that, in the vast majority of cases, laws requiring majority local participation have not had any serious restrictive effects on the characteristic behavior of MNEs. The reasons are not hard to find.

By nature, majority local participation statutes stress ownership and not effective control. They confer the legal right of control but many extraneous and non-legal factors determine the effectiveness of that right. For example, the local majority owner might not have the know-how or experience to run the operation efficiently. Moreover, the industries normally targeted for local majority ownership are those in which the MNEs enjoy a monopolistic advantage over the local partner. MNEs can often use such an advantage to control subsidiary operations. The insignificance of the local majority participation statutes becomes even more glaring in light of other government objectives.

113. Id.
114. See supra note 2.
115. For a discussion of these statutes, see, for example, Gordon, Observations on the Nature of Joint Ventures in Mexico: Are They Involuntary and Transitory?, 2 B.C. INT’L & COMP. L. REV. 338 (1979); Ness, Brazil: Local Equity Participation in Multinational Enterprises, 6 L. & POL’Y INT’L BUS. 1017 (1974).
Most of the newly industrializing nations choose to pursue growth through exports. This strategy requires high quality, internationally competitive products, a network of markets, established brand names, and efficient international marketing and distributing systems. Local partners cannot ignore the fact that MNEs can offer these advantages to export-oriented joint ventures. To meet their own and the government’s export objectives, local majority owners are virtually at the mercy of the MNEs. One popular way to circumvent these statutes is to lease the joint venture operations to the minority owner MNE for effective control. In fact, in international marketing and distribution, ownership of the operations is not as crucial as control over them.\textsuperscript{16} The attributes of MNE minority owners enable them to control effectively the manufacturing, marketing, and distribution of imports and exports.

An example can be found in the manufacturing investments\textsuperscript{17} of Japanese trading houses in Southeast Asia. Most were motivated by the need to defend export markets and to exploit the comparative advantage of the host countries in exporting to third countries. About 80 percent of such investments were joint ventures in which the Japanese investors took minority interests.\textsuperscript{18} The strategy of the Japanese parent companies was to maximize exports from Japan and maintain high levels of intra-firm transactions between themselves and the joint venture companies. Therefore, notwithstanding their minority position, their affiliates received between one-third and three-quarters of their materials and component inputs from the parents and also marketed their finished products through them.\textsuperscript{19}

Thus it appears that the Japanese MNEs were concerned only with achieving the degree of control necessary to attain their objectives. So long as the local participation statutes permitted them to exercise the control necessary to meet their objectives, minority ownership was acceptable. In this sense, Japanese MNEs are not drastically different from U.S. and European MNEs; they all see effective control as imperative.

The response of MNEs to local participation statutes in other developing countries appears to be the same. Studies on denationalization and the market power of MNEs highlight the ability of MNEs to circumvent various national economic policies through their market power.\textsuperscript{20} A recent study on the indigenization experience of Nigeria illustrates the ability of MNEs to block the

\textsuperscript{16} The Role of Transnational Corporations, \textit{supra} note 103, at 6.

\textsuperscript{17} In the aggregate, Japanese investments in Southeast Asia are declining because of their strategy of heavier FDI into developed countries. See E. UTRECHT, \textit{supra} note 85, at 48. However, the picture for individual countries might be different. American MNEs dominate in the ROC with 44 percent of the total FDI, whereas the Japanese and European MNEs hold 28 percent and 13 percent, respectively. The trends are apparent from Table 5, \textit{infra} p. 410–11. The picture is reversed in the ROK where Japanese MNEs accounted for 47 percent of the total FDI with American and European firms taking 29 percent and 13 percent, respectively. However, in Singapore in 1976, Japanese MNEs held a mere ten percent of the total FDI as opposed to 36 percent for U.S. and 33 percent for European MNEs. ALLEN, \textit{supra} note 111, at 94.

\textsuperscript{18} The Role of Transnational Corporations, \textit{supra} note 103, at 6.

\textsuperscript{19} M.Y. YOSHINO, \textit{supra} note 112, at 143.

\textsuperscript{20} See, \textit{e.g.}, \textit{BRAZIL AND MEXICO}, \textit{supra} note 13; Connor & Mueller, \textit{supra} note 33.
Table 5

Private Foreign Investment in Approvals—by Area (amounts in thousands of US dollars)
Republic of China (Taiwan)

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intended effects of a local statute. MNEs operating in Nigeria used structural reorganizations and other measures to not only manipulate but also to violate the spirit and letter of the Nigerian indigenization decree. For example, an MNE manufacturing for local distribution might divide its operations into a wholly-owned manufacturing unit and a jointly-owned marketing and distribution group in which the MNE would take a minority interest but find local partners known to be incompatible with one another. The two companies would be in the same building and share the same board of directors and officers. As a result, the MNE maintained effective control over its entire operations notwithstanding the law.

Evaluating industrial legislation requires an examination of other related objectives of host governments, such as protection of certain industries and the promotion of technology transfer. Because such legislation is generally the product of a planning group it tends to benefit the national economy and has usually been followed by tremendous economic growth. Moreover, the legislation of some developing countries protected from MNE participation, certain manufacturing sectors in which local entrepreneurs had a decided comparative advantage in world markets. The technology in these sectors was generally labor intensive, requiring light and medium equipment which local entrepreneurs could easily handle. Since these measures also permitted the screening of licensing agreements for the quality, quantity, and price of technology transferred, they checked the behavior of MNE licensors, and enabled local manufacturers to maintain their export markets.

Though we cannot rule out the possibility of positive spill-over effects of joint ventures on local partners, the benefits of local majority participation legislation may still lie in the future. When local majority owners begin to acquire the requisite know-how and managerial expertise, and to establish international marketing links, the transformation of legal rights of control into effective control may take place. The recent controversy between Dow Chemical and its former joint venture partner in the ROK is a clear illustration of how these laws can, in the long run, be effectively used by local partners. In that case, questions arose as to the price of material inputs supplied by a wholly-owned subsidiary of Dow Chemical to the joint venture. The 50 percent local partner challenged Dow and threatened a rescission of the contract if the price for these inputs were not brought more closely in line with the world market price. Dow Chemical eventually pulled out of the venture. As more local partners understand the international marketplace better, an increasing number of such revolts are likely.

One of the major objectives of industrial legislation has been positive linkage effects between MNEs and the local economy. This analysis suggests that these linkage effects have not been particularly positive. With the creation of export

122. Id. at 215–18.
123. This is what Biersteker calls a two company strategy. Id. at 216.
124. The full story of the Dow Chemical venture has yet to emerge. However, see Breakup of Dow Chemical's Joint Venture with Koreans Leaves Both Sides Unhappy, Wall St. J., Jan. 5, 1983, at 42.
125. Id.
enclaves, isolated from the mainstream of economic activity, the benefits to local economies have been sparse. However, in some specific cases the effects have been substantial. In the ROK, the World Bank reported that foreign capital and technology stimulated the development of local suppliers of component parts which increased from 41 in 1965 to 702 in 1973.126 Furthermore, there is also some evidence of increased subcontracting for parts from local sources in India.127

Finally, the rise of MNEs from developing countries should be noted.128 Most of the MNEs come from countries competing for limited export markets in the developed countries. It appears these MNEs would checkmate each others' strategic location decisions, depending on the competitive forces. For example, from the People's Republic of China (PRC), MNEs locating in the ROC are, in part, making a defensive move. They will locate in the ROC to produce and export to third countries in which they are losing their comparative advantage to ROC exports. But the comparative advantage of ROC manufacturers lies in ROC industrial legislation which significantly lowers their cost of production with respect to labor, land, and other factors.129 If this phenomenon continues, industrial legislation could produce some positive effects in the host countries since the technology requirements of MNEs from developing countries are less capital intensive, more in tune with host governments' objectives, and likely to create more linkage effects.130

V. Conclusion

After being in force for several years, the effects—intended, perceived, and actual—of industrial legislation are ripe for assessment. Central to the concern of much industrial legislation is the MNE.

Blessed with tremendous financial, technological, human, and other resources, MNEs stand as giants in the industrialization of several developing countries. Their contribution to industrialization could be significant. Because MNEs enjoy a very high degree of freedom and flexibility, they could also hinder industrial progress of a country by stultifying its industrial growth by distorting the distribution of the wealth they generate. Thus, industrial legislation has often tried to encourage some aspects of MNEs' behavior while curbing or controlling others.

This article addresses the impact of such legislation on the behavior of MNEs and upon labor in some of the East and Southeast Asian countries that have been most attractive to MNEs. It is apparent from this study that the desirability and

126. See P. Hasan, supra note 100, at 179.
129. See Chen, Hong Kong Multinationals in Asia: Characteristics and Objectives, in Multinationals from Developing Countries, supra note 128, at 86.
130. See L.T. Wells, Jr., supra note 128. See in particular chapters 3 and 4 where he investigates the nature of the linkage effects.
nature of industrial legislation in newly industrializing countries depends on an accurate understanding of the nature and motivations of the MNE. Without this, most legislative efforts might be misguided and, therefore, useless for achieving their intended effects.

Legislation intended to entice MNEs through tax incentives is usually not only costly but also either redundant or ineffective. Laws designed to improve the international competitiveness of labor-intensive products in order to attract MNE production facilities have increased the dependency and vulnerability of workers to the volatile external economic environment. Legislation intended to transfer control in joint ventures from MNEs to their local partners has generally been ineffective largely because such laws have not addressed the operational dynamics of joint ventures which still permit MNE minority owners to exercise effective control over their joint ventures.

Given the complexity of industrial legislation designed to address the nature, quantity, quality, and timing of MNE involvement in host countries' industrialization process, it will be important for more work to be done in this area in relation to other developing countries. Future work should address the normative issues in legislating for industrialization. For instance, it might explore the design of industrial legislation to provide the incentives for industrial growth while encouraging distributional equities in the benefits of industrialization. It will also be important to address how such legislation might generate the necessary linkage effects between MNE operations and various sectors of the local economy. Finally, there is the issue of denationalization. In an age when the relationship between MNEs and the nation-state is not always cordial, it will be important to assess how legislative measures might be used to encourage MNE participation in industrialization without depriving host countries of their policy autonomy in economic issues.