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## Foreign Investment in the United States: A Survey of Current Legal Literature

Igor L. Kavass

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# FOREIGN INVESTMENT IN THE UNITED STATES: A SURVEY OF CURRENT LEGAL LITERATURE

Igor I. Kavass\*

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### I. INTRODUCTION

According to the latest report, published in the August 1984 issue of the *Survey of Current Business* (p. 40), the total value of foreign owned assets in the United States is estimated to exceed 781 billion dollars. Foreign government holdings make up close to 194 billion dollars of this figure, mainly in United States government and treasury securities. The remainder consists of foreign private interests in the shape of bank deposits and direct and portfolio investments.

Western European, Canadian and Japanese corporations are vigorously setting up plants and establishing businesses in this country. In 1982, the assets of local businesses with more than ten percent of foreign ownership or control were estimated to comprise close to 473 billion dollars.<sup>1</sup> Such businesses employed a

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The author expresses his deep gratitude to Frank A. Hirsch and W. Weldon Wilson (both Vanderbilt Law 1986) for their invaluable assistance in the preparation of this bibliographic survey.

1. See Ned Howenstine, *U.S. Affiliates of Foreign Companies: Operations in*

workforce of more than 2.4 million persons. The Japanese alone control wholly or in part some 225 United States manufacturing corporations with 2,100 separate operations in forty-two states and a combined workforce of more than 100,000.<sup>2</sup> Some 320 foreign banks operate in one manner or another in the United States. More than 100 United States banks, with total assets in excess of 77 billion dollars, are owned wholly or in part by foreign interests.

Of course, the international investment situation is not all one-sided. Extensive investments by United States interests have also been made in other countries, and their value still exceeds by far the value of foreign-owned investments in this country. Nevertheless, it is important to remember that in absolute terms the present volume of foreign owned investments in the United States is the largest in the world.

Few countries in the world are as benign to foreign investors as the United States. The United States imposes no restrictions on international monetary transactions. This means that funds are easily transferable to and from other countries without any legal hindrances on the part of the United States. Subject to a few minor exceptions, foreigners are free to make investments, acquire real and personal property, form corporations, and establish businesses in this country. All that is needed is to comply with legal formalities and requirements equally applicable to United States citizens. In certain circumstances the tax treatment of foreigners may even be more favorable than that of United States citizens. Foreigners are also free to borrow local funds for use either in the United States or elsewhere. Foreign banks, as a result of recent legislation, are permitted to operate in this country with few legal constrictions or obstacles. Strict immigration laws are usually the only problem foreigners may encounter when they seek entry into the United States for themselves, or their foreign employees, in order to operate their investments and businesses in this country.

The tolerant attitude of the United States towards investments from abroad has a historical as well as a philosophical origin. Historically, throughout the course of its existence the United States has depended quite heavily on foreign capital, foreign labor and, last but not least, on foreign talent in the development of its

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1982, SURVEY OF CURRENT BUSINESS, Dec. 1984, 26-29.

2. See JOHN NAISBITT, MEGATRENDS. New York: Warner Books, Inc., 1984. 70-72.

economy. Considerable benefits were derived from the application of foreign capital. Through its resourceful absorption (contrary to the current problems created by foreign investments and loans in Latin America and other developing parts of the world) the United States was able to build a strong base for the production of wealth. The success of that experience helped to shape a resolute belief in the advantages of foreign investment.

Notwithstanding occasional fears, stirred up mainly by the media, about the imminent takeover of the United States economy by foreign interests, this belief remains as firm in the psyche of the United States people today as it was in the past. Investors from abroad are actively sought by the individual states, and a variety of attractive incentives are offered to them as inducements to invest and establish their plants in these states.

Control of investments and capital movements in general is also repugnant to the United States economic thought as a philosophical issue. Restrictions in the guise of economic planning are regarded with a deep suspicion. As a stronghold of a free market economy, the United States is expected to maintain a liberal policy on investment matters. Since the financial market has become now largely international, these philosophical considerations are also deemed to apply to foreign investments. The philosophy is that such investments should be relatively free from restrictions, except when they tend to distort or inhibit domestic or even international competition. In this respect the United States stands out in stark contrast to most other countries of the world which subject foreign investments to extensive restrictions and controls.

The United States has never spelled out a definite national policy on foreign investments. Most of the limitations imposed on such investments in the past were largely reactive. Introduced in response to the specific demands of lobbies and pressure groups, they were narrow in scope. Their purpose was no more than to cure particular grievances without the consideration of broader issues and longterm implications. For example, about thirty states currently impose restrictions in varying degrees on the ownership of land by foreigners. The respective laws were originally enacted either to protect existing land values or, as in California and other Western states, to discourage the immigration of Orientals. Though still remaining in force, such laws serve today no purpose whatsoever (except, perhaps, as a source of income for attorneys who devise schemes to circumvent them). Federal laws limiting foreign ownership of United States aircraft and ships were origi-

nally introduced to protect existing United States airlines and shipping interests. There are today some fifteen sectors of economy where federal and state laws, enacted at different times, limit foreign ownership or participation in some manner or another. These sectors include air transportation, shipping, fishing, banking, insurance, hydroelectric and nuclear power, radio and television broadcasting, submarine cables, interspatial communication, mineral resources, use of public land, real property (in some thirty states), agricultural land (disclosure only) and government contracts. Not all of these laws contain outright prohibitions of foreign ownership or participation. Some require no more than domestic incorporation or a minimum proportion of ownership by United States citizens. Some impose merely reporting or disclosure requirements on foreigners. Others authorize government agencies to restrict foreign investments without imposing any obligation on them to put such restrictions into effect. Many of these limitations actually have little practical effect today. They can be easily complied with or circumvented.

Significantly until the early 1970s the United States expressed no concern about the effect of foreign investments on the national economy. There were no investigations. Statistical data was sketchy and imprecise. Although it was known that foreign investment was coming into the United States, it was not considered to present any danger. The oil crisis with its huge transfers of dollar funds to the Arab countries and the consequent distortion of the world's financial market changed this way of thinking. As the value of the dollar declined, rumours began about sizable Arab investments and property acquisitions in the United States. This was followed by some large acquisitions and takeovers of United States corporations by Canadian and Western European interests. Western European and Japanese manufacturers began to establish plants in the United States, and there was some ambivalence about the long-term benefits of this development. Foreign banks began to press for a right to operate in this country. Columnists started raising questions about the dangers of a foreign takeover of the United States economy. This created a strong syndrome of apprehension about the future of the country's economic independence.

Congress was quick to react to this apprehension. It began to hold hearings about the volume and effect of foreign investments in the United States. Very early in the course of that process Congress discovered that the government had very little informa-

tion on the subject. Congress then enacted the Foreign Investment Study Act of 1974 which required the Department of Commerce to prepare a detailed report about foreign direct investments in the United States, and required the Department of the Treasury to prepare a similar report about portfolio investments. In the meantime, several bills were introduced to restrict foreign investments, but the Congress declined to pass them. The spirit of a free market economy, at least insofar as it related to finance and investment, continued to remain strong in the United States mentality. In 1976 the Departments of Commerce and the Treasury published their reports (preceded by a shorter Department of Commerce interim report in 1975). These reports revealed that the situation was not as critical as it had been previously made out to be by the media. Congress enacted then the International Investment Survey Act of 1976 which directed the government to continue monitoring the activities of foreign investors in the United States. This law also placed a requirement on foreign investors and their agents to disclose and report investments of certain magnitude. Two years later, in response to a strong demand of the farming lobby, Congress enacted the Agricultural Foreign Investment Disclosure Act of 1978 with similar disclosure requirements on acquisitions of agricultural land by foreigners. The Department of Agriculture was directed to monitor these activities. The same year Congress enacted the International Banking Act of 1978 which, among its many other provisions, facilitated the entry of foreign banks into the United States. Throughout this period Congress held numerous hearings on various aspects of foreign investment in the United States. Congress then turned its attention towards the taxing of real property sales by foreigners by enacting the Foreign Investments in Real Property Tax Act of 1980. Congressional hearings on foreign investment continued during the 1980s, but no new laws were made on that subject except for some amendments of the existing legislation. As the flurry of excitement about foreign investments began to die down, it became evident that Congress had acted cautiously once again in setting up restrictions against such investments. The laws it passed were narrow in scope, and it avoided speaking out on the broader issue of formulating a long-term foreign investment policy. At the present time, the United States remains without a national policy on foreign investment.

Congressional action brought about heightened activity on the part of the government which, among other things, resulted in the

publication of many large and small reports, studies and surveys. Soon economists, lawyers, other specialists, and even popular writers followed suit, and an avalanche of books, articles, essays and comments on the different aspects of foreign investments, their impact, and their control or regulation began to emerge into the world. A mere listing of all such writings, published in the past fifteen years, would require a book-length treatment.

This Survey is limited to law and law-related writings on the subject of foreign investments in the United States which attorneys and legal scholars may find useful to consult for the purposes of conducting research and performing professional work. The Survey contains information about books, articles, notes, government reports and surveys, and Congressional hearings, reports, and papers published from about 1970 through the early part of 1985. The publications it describes can be divided into four major categories:

- (1) investigative and policy-oriented monographs and articles;
- (2) practical law manuals and guides either in the form of books or articles written for foreign investors and their legal advisers;
- (3) government publications containing statistics and other official source materials; and
- (4) Congressional hearings, reports and prints.

Some economy-oriented monographs and articles are also included because of their possible relevance to legal research.

Even in the relatively limited field of "legal" writings it is necessary to be selective. There are many areas of law that foreign investors and their legal advisers may need to examine in order to make informed and intelligent investment decisions. Some of these areas, like antitrust law, securities regulation, and taxation, are equally applicable to domestic investors. Others, like immigration law, affect all foreigners irrespective of whether they are investors. Many of the books and articles described in this Survey discuss in some detail these areas of law in the context of their special application to foreign investors and the information to be found there is quite complete.

The general literature on antitrust law, securities regulation, immigration law, and taxation has also much information relevant to foreign investors; however, it is also overwhelmingly large, and listing all of it in this Survey would simply be pointless because this would make the rest of the bibliographic information less helpful. Readers who wish to learn about the applicability of the United States antitrust law, securities regulation, immigration law

and taxation to foreign investors and business-people, are advised to consult the following leading works in the respective areas of law:

(1) *Antitrust Law* by Professors Phillip Areeda and Donald F. Turner (Boston: Little, Brown and Co., 1978. 5 volumes, updated by supplements);

(2) *Fundamentals of Securities Regulation* by Professor Louis Loss (Boston: Little, Brown and Co., 1983. Updated by supplements), and the same author's *Securities Regulation* (Boston: Little, Brown and Co., 1961-1969. 6 volumes);

(3) *Immigration Law and Procedure* by Charles Gordon and Harry N. Rosenfield (New York: Matthew Bender, 1959. Multivolume looseleaf publication with regular updates);

(4) *Fundamentals of International Taxation*, 2d edition, by Jon E. Bischel and Robert Feinschreiber (New York: Practising Law Institute, 1985).

In the field of taxation innumerable articles on issues relevant to foreign investments may also be found in such specialized journals as the INTERNATIONAL TAX JOURNAL, Tax Planning International Review, Taxes, and Taxes International. An overview of such issues may be found in Professor Allaire Urban Karzon's excellent article "International Tax Evasion: Spawned in the United States and Nurtured by Secrecy Havens," published in 16 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 757-832 (1983).

The Survey is divided into six sections:

- (1) Monographs and treatises;
- (2) Articles in law reviews and other periodicals;
- (3) Notes in law reviews;
- (4) Symposia;
- (5) Government publications; and
- (6) Congressional hearings, prints and reports.

A diligent attempt has been made to have all entries fully annotated. The entries for books and articles are arranged alphabetically by author or main entry. Notes, symposia, government publications, and Congressional hearings, prints and reports are arranged alphabetically by title.



### A. Statistics

Statistical information can be important in research dealing with the legal aspects of foreign investment. For this reason, readers may find a brief description of the relevant statistical publications helpful.

The most detailed source of historical information is the multi-volume Department of Commerce publication entitled *Foreign Direct Investment in the United States, 1976*. Preceded by an interim report in 1975, this huge report contains the results of a "benchmark" survey conducted by the Department of Commerce at the request of Congress.

Simultaneously, the United States Department of the Treasury carried out a similar survey about foreign portfolio investments, and its findings are detailed in *Foreign Portfolio Investment in the United States, 1976*.

A further "benchmark" survey was conducted by the Department of Commerce in 1980, and the findings were published in a report entitled *Foreign Direct Investment in the United States, 1980*.

Since 1980, though always with some delay, the Department of Commerce has published current statistical information in a *Monthly Report on Foreign Direct Investment Activity in the United States*. These monthly reports are later cumulated in an annual publication entitled *Foreign Direct Investment in the United States* followed by the year it covers. Current information about foreign portfolio investments appears on a quarterly basis in the *Treasury Bulletin*, published by the Department of the Treasury. Banking statistics about foreign-owned deposits may be found in the *Federal Reserve Bulletin*, published by the Federal Reserve System.

A very useful source of current statistical information and analysis is the Department of Commerce monthly *Survey of Current Business* which regularly contains periodic as well as special surveys of foreign investments in the United States. In 1984 and early 1985 alone it has published the following items on this subject:

(1) Belli, R. David. "U.S. Business Enterprises Acquired or Established by Foreign Direct Investors in 1983," 64 *Survey of Current Business* 16-20 (May 1984);

(2) Schall, Russel B. "The International Investment Position of the U.S. in 1983," 64 *Survey of Current Business* 74-78 (June 1984);

- (3) "International Investment Position of the United States, 1970-1983," 64 *Survey of Current Business* 40 (August 1984);
- (4) Krueger, Russell C. "U.S. International Transactions, Second Quarter 1984," 64 *Survey of Current Business* 34-57 (September 1984);
- (5) Belli, R. David. "Foreign Direct Investment in the United States in 1983," 64 *Survey of Current Business* 26-48 (October 1984);
- (6) Howenstine, Ned G. "U.S. Affiliates of Foreign Companies: Operations in 1982," 64 *Survey of Current Business* 26-40 (December 1984);
- (7) DiLullo, Anthony J. "U.S. International Transactions, Third Quarter 1984," 64 *Survey of Current Business* 41-64 (December 1984);
- (8) Bach, Christopher L. "U.S. International Transactions, Fourth Quarter and Year 1984," 65 *Survey of Current Business* 29-58 (March 1985);
- (9) "U.S. Business Enterprises Acquired or Established by Foreign Direct Investors in 1984," 65 *Survey of Current Business* 18-23 (May 1985).

The magazine FORBES annually publishes a list of the "120 Largest Foreign Investments in the U.S." (e.g., 134: 117-28, July 2, 1984, containing information for 1983; 132: 101-10, July 4, 1983 entitled "The 100 Largest Foreign Investments in the U.S." and containing the data for 1982).

## B. Current Legal Developments

Keeping track of changes and developments in the laws relating to foreign investments is not easy. A monthly newsletter named *Direct Investment Law Report* has been published since 1980 by Transnational Investments, Ltd. in Washington, D.C. This newsletter contains short notes about laws, regulations, departmental activities, Congressional hearings, and other items of interest connected with foreign investment; however, most of the notes are sketchy. There is no cumulative index for this newsletter; therefore this publication is of little use for long-term research purposes.

From 1982 through 1984 a Washington publisher, Federal Reports, Inc., has issued a bi-weekly *Report on Foreign Investments in the United States*. This publication was similar in style to the *Direct Investment Law Report*; however, it ceased publication in January 1985.

Recently, the BNA has begun to publish a looseleaf-type news-

letter named INVESTMENT/USA. Monthly issues, consisting of approximately twenty-four pages each, report on tax and law developments affecting foreign investments in the United States. The relevant regulatory and administrative changes on the state and federal levels are also reported in each issue. Full text reprints of relevant new laws, bills, government reports, rules, regulations and even some decisions are included. A short *Acquisitions and Mergers* supplement to each issue updates information on acquisitions, mergers, and takeovers relevant to foreign investors. Subscription of this publication is available from the Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037. The current subscription price is \$280 a year.

## II. MONOGRAPHS AND TREATISES

Barak, Ronald S. FOREIGN INVESTMENT IN U.S. REAL ESTATE. San Diego, Calif.: Harcourt Brace Jovanovich, 1981. 561 pp.

A popular treatment of the subject intended for the general reader; useful as an introductory work.

Brundage, Paul and Adam Starchild. TAX PLANNING FOR FOREIGN INVESTORS IN THE UNITED STATES. Deventer, The Netherlands: Kluwer, 1983. 153 pp.

This eminently readable monograph is a short introduction to the United States tax law geared towards the foreign investor. Investors and their counsel who are not familiar with the structure of taxation in the United States would gain much insight by reading this book. Because of its insufficient detail, however, the book is of little use in actual tax planning work. In addition to a general description of the federal income tax law, the authors discuss the taxation of foreign investment activities in real property, corporate stock, securities, and other forms of investment. A separate chapter deals with tax treaties, tax havens, and foreign tax treaties. There are also brief discussions of federal estate and gift taxes, state taxes, and local taxes. The authors are well-informed on the subject, and the book may be profitably used by everyone as a beginning information source. In view of the continuously changing character of tax law it will, however, need to be updated in order to remain useful.

Chown, John F., and Lionel Halpern. THE TAXATION OF DIRECT INVESTMENT IN THE UNITED STATES. London: Butterworth, 1980. vi, 158 pp.

The purpose of the book is to explain the United States Income tax

to non-Americans who are . . . neither lawyers nor accountants. . . . The United States Federal income tax system is woefully complex and the first part of the work, entitled "Taxation in the United States—An Outline of the System," is a lucid summary of the main features of the system. . . . The value of the book must depend on the success or failure of the second and third parts, entitled "Structuring the Investment—the Dynamics" and "Special Topics." These parts are far less satisfactory. The main problem is they do not bring general principles to bear in any focused manner on the mainstream of foreign direct investment in the United States.

Reviewed by W. B. Taylor, 1981 BRIT. TAX REV. 316-320.

Cochrane, Carl L. and Johannes Graf Esterhazy. *Foreign Investment in United States*, in MODERN LEGAL SYSTEMS CYCLOPEDIA, by Kenneth R. Redden. Buffalo, N.Y.: William S. Hein & Co., 1984, Vol. 1, pp. 469-568.

This excellent overview contains several useful appendices of federal and state laws relating to foreign direct investments. The authors list states where foreign land ownership is restricted, and the friendship and commerce treaties between the United States and other countries with investment protection provisions. The authors also analyze the provisions of federal laws requiring disclosure of information about foreign investment activities.

Crowe, Kenneth C. AMERICA FOR SALE. Garden City, New York: Doubleday, 1978. 297 pp.

Pulitzer prize-winner Kenneth C. Crowe asserts that foreign investors are buying up United States land and businesses in such a manner that the United States economy is being totally transformed. He cites numerous examples of widespread foreign ownership that can greatly determine the condition of the United States economy. Examples cited by the author include: the British control of the Alaskan pipeline, Japanese land holdings in Hawaii, foreign participation in the funding of the defense industry, and the new Arab-controlled United States banks. An even more alarming claim is made that foreign governments are heavily investing in corporate America without coverage from the United States press. As a solution, Crowe recommends a national policy prohibiting foreign governments or their agencies from making controlling investments in America.

Cushman, Robert F. and Herbert A. Morey, eds. A GUIDE FOR THE FOREIGN INVESTOR: DOING BUSINESS IN THE U.S.A. Homewood, Illinois: Dow Jones-Irwin, Inc., 1984. xviii, 603 pp.

A series of papers by contributors from different disciplines discuss all conceivable matters related to foreign investment activities. They

range from business negotiation styles in the United States to an explanation of how stock exchanges operate in this country. Legal and tax aspects of investment are described briefly. There is also general information about immigration, home purchase and other practical law matters an investor may encounter in the United States. Even attorneys may find this work a convenient desk reference source to be kept close at hand.

Evans, Daniel M., John I. Forry, Vincent A. Narcisi, and Martin Perlberger, eds. **CURRENT LEGAL ASPECTS OF FOREIGN INVESTMENT IN THE UNITED STATES**. Chicago: American Bar Association, 1976. xv, 274 pp.

One of the earliest book-length surveys of the legal aspects of foreign investments in the United States, this book consists of a collection of papers presented at the National Institute of the ABA Section of International Law in Chicago on October 2-3, 1975. With a focus on the resolution of practical issues, the papers examine the applicability of the United States laws to foreign investments in such areas as taxation, antitrust, securities regulation, patents and trademarks, customs and tariffs, immigration, incorporation and the establishment of other forms of business, acquisition of local business entities, licensing and joint ventures, investments in real estate, the employment of local labor, and the use of foreign personnel. Other papers deal with the major forms of investment available to foreign enterprises, as well as the restriction and protection of their activities in the United States. Although broad in scope, this work is a useful introductory guide to the panoply of laws that a foreign investor is required to take into account prior to investment or the establishment of business in this country.

**FOREIGN INVESTMENT IN THE UNITED STATES**. (Corporate Law and Practice Course Handbook Series No. 239). New York: Practising Law Institute, 1977. 413 pp.

This is a compilation of materials presented at a Practising Law Institute workshop on foreign investment in the United States. Most of the materials are summaries of the papers, but they contain useful information frequently not discussed elsewhere. This book includes the following subjects:

*Aspects of the Regulation of Foreign Investment in the United States* by Alfred J. Law;

*State Take-Over Statutes* by Chester H. Grant; *Foreign Issues—Private Placement in the United States* by Leslie B. Samuels;

*Euro-dollar Borrowing—Proceeds to be Used in the United States*

by Leslie B. Samuels;

*Portfolio Investment* by Albert Francke III;

*United States Taxation of Foreign Investment in the United States* by John E. McDermott; and,

*Factual Situations (Methods of Acquisition and Investment)* by John E. McDermott.

**FOREIGN INVESTMENT IN THE UNITED STATES.** (Corporate Law and Practice Course Handbook Series No. 297). New York: Practising Law Institute, 1979. 458 pp.

From 1979 through 1982 the Practising Law Institute held annual programs on issues relating to foreign investment in the United States. This volume contains the brief version of the papers presented at the 1979 session and includes the following subjects:

*Tax Aspects of Acquisition by Foreigners of United States Residences and Portfolio Investments* by Richard M. Eigner;

*Business Structure* by Carl L. Estes, II;

*Structures for Foreign Investors with U.S. Business Operations* by Harve Mossawir, Jr.;

*Business Structure—Tax Considerations* by Zoltan M. Mihaly;

*The Regimen of United States Federal Taxation and Planning* by Roy A. Povell and Alan W. Granwell;

*Partnership Problems* by William S. McKee;

*Currency and Exchange Considerations Affecting Foreign Investors* by Robert J. E. Henrey;

*Foreign Investment in U.S. Real Estate* by Peter A. Gelles;

*Foreign Investment in U.S. Real Estate* by Stanley Weiss;

*Income Taxation of Non-Resident Aliens Temporarily in the United States* by Steven J. Cohen; and,

*Estate and Gift Tax Planning for Non-Resident Aliens* by Nicholas S. Freud.

**FOREIGN INVESTMENT IN THE UNITED STATES 1980.** (Corporate Law and Practice Course Handbook Series No. 331). New York: Practising Law Institute, 1980. 624 pp.

This publication is a compilation of papers on a variety of current legal issues of foreign direct and portfolio investments in the United States, with a heavy emphasis on the tax aspects of such investments.

Appendices to these papers contain texts of valuable hard-to-find documents. There is no doubt that practitioners in need of guidance for advice to their foreign investor clients will find this publication very helpful. The following subjects are covered:

*Selected Problems in the Establishment, Acquisition and Operation of U.S. Businesses by Foreign Persons* by Stanley Weiss;

*Tax Aspects of Acquisitions by Foreigners of Portfolio Investments and United States Residences* by Richard M. Eigner;

*U.S. Federal Income Taxation of Portfolio Investments by Foreign Persons* by Alex E. Weinberg and Sharon S. Hutton;

*Tax Aspects of Acquisition of a United States Business* by Peter C. Canellos;

*Certain Aspects of the Tax Consequences of Foreign Investment in the United States Through Partnerships* by Richard O. Loengard, Jr.;

*Income Taxation of Non-Resident Aliens* by Steven J. Cohen;

*Principal Tax Planning Issues for a Foreign-Controlled U.S. Operation* by Joseph H. Guttentag;

*Regulations and Restrictions on Foreign Investment in the United States* by Jeffrey G. Balkin;

*Representing the Lender in International Banking Transactions* by Nicholas S. Freud and Richard N. Frasch;

*Estate and Gift Tax Planning for Non-Resident Aliens* by Nicholas S. Freud;

*United States Taxation of a Foreign Investor's Exchange Gains and Losses* by Matthew T. Adams;

*Currency Gains and Losses* by Bernard J. Beiser;

*Recent Tax Treaty Developments* by Leslie B. Samuels;

*Foreign Investment in U.S. Real Estate* by Joel Z. Silver;

*Foreign Investment in United States Real Estate* by Neil W. Zimmerman;

*Federal Taxation of and Planning for: The Nonresident Alien Who Becomes Resident, The Resident Alien Who Becomes Nonresident, and The Citizen Who Expatriates for Tax-Avoidance Purposes* by Roy Albert Povell and Alan Winston Granwell; and,

*Treaties and Their Impact on Foreign Investment in the U.S.* by

Zoltan M. Mihaly.

**FOREIGN INVESTMENT IN THE UNITED STATES 1981.** (Corporate Law and Practice Course Handbook Series No. 364). New York: Practising Law Institute, 1981. 759 pp.

The 1981 program on the foreign investments in the United States addressed predominantly questions of taxation. However, some of the papers continued to examine the disclosure requirements for foreign investments, particularly the scope of such requirements and legitimate methods to circumvent them. Appendices contain the texts of relevant regulations, treaties, court decisions, and government reports. The following subjects are covered:

*Tax Aspects of Acquisition of a United States Business* by Peter C. Canellos;

*Foreign Investor's Structuring of U.S. Operations* by Stuart R. Singer;

*Use of Tax Treaties by Foreign Investors* by Stuart R. Singer;

*Distribution of Earnings of U.S. Businesses to Foreign Owners* by Stuart R. Singer;

*The New Debt-Equity Regulations* by Stanley Weiss;

*Formation and Operation of Netherlands Corporations, Netherlands Foreign Exchange Regulations and Other Legal Requirements* by Peter N. Wakkie;

*Tax Aspects of Netherlands Corporations Doing Business or Investing in the United States* by H. Tom van der Meer;

*Disposition by Foreigners of United States Businesses* by Stuart R. Singer;

*Foreign Investment in Real Property Tax Act of 1980* by Carl L. Estes II;

*State Taxation of U.S. Businesses* by Stuart R. Singer;

*New Treaty Developments Relating to Foreign Investment in the United States* by Stanley Weiss;

*Non-Tax Reporting Requirements for Foreign Investments in the United States* by Stanley Weiss; and,

*Foreign Acquisition of U.S. Businesses: Securities, Financing and Disclosure Aspects* by Rodney S. Dayan.

**FOREIGN INVESTMENT IN THE UNITED STATES 1982.** (Corporate Law and Practice Course Handbook Series No. 384). New York: Prac-



tising Law Institute, 1982. 415 pp.

This Practising Law Institute volume contains papers on foreign investments in the United States. The authors analyze such issues of current interest as licensing of foreign patents and other intangible assets in the United States, foreign acquisition of banks, reporting and disclosure of confidential information by foreign investors, investment in real estate, domestic security considerations in dealing with defense contractors under foreign ownership, and different aspects of taxation involving foreign investors. This work is extremely helpful for practitioners with foreign clients. Subjects covered in this volume include:

*United States Tax Planning for Acquisitions by Foreign Investors* by Michael H. Testa;

*Licensing of Intangible Assets* by Carl Estes, II;

*Section 482 of the Internal Revenue Code and the Foreign Manufacturer* by Stuart R. Singer;

*Foreign Acquisitions of U.S. Banks* by Cameron F. MacRae, III and Alexander D. Calhoun;

*U.S. Income Taxation of Portfolio and Money Market Investments by Non-Resident Aliens* by Nicholas S. Freud;

*Dispositions of United States Businesses by Foreign Investors* by Michael H. Testa;

*State Tax Developments* by Stuart R. Singer;

*Treaty Shopping and the 1981 U.S. Treasury Model Income Tax Treaty* by Nicholas S. Freud;

*Reporting and Disclosure of Confidential Information* by David S. Foster;

*Department of Defense Industrial Security Regulations Affecting Foreign Ownership of Defense Contractors* by Martin R. Hoffman; and,

*United States Real Property Interest* by Carl Estes, II.

FOREIGN INVESTMENT IN THE UNITED STATES: POLICY, PROBLEMS AND OBSTACLES. A Research Report from the Conference Board. New York: The Conference Board, 1974, iv. 40 pp.

This is one of the first reports to suggest that a careful study of foreign investments in the United States should be conducted for the purpose of learning about the impact of foreign investments on the

local economy.

**FOREIGN INVESTMENT IN U.S. REAL ESTATE; ALI-ABA COURSE OF STUDY MATERIALS.** Philadelphia: American Law Institute - American Bar Association Committee on Continuing Legal Education, 1981. 554 pp.

In addition to a synoptic presentation of the program, this volume includes some papers as well as the texts of many supporting documents. The areas covered include disclosure of holdings and transactions by foreign investors, special taxation considerations applicable to such investors, investment and taxation planning, and related topics.

**FOREIGN INVESTMENT IN U.S. REAL ESTATE; ALI-ABA COURSE OF STUDY MATERIALS.** Philadelphia: American Law Institute - American Bar Association Committee on Continuing Legal Education, 1982. var. pag.

This volume contains updated materials on the same topics as in the 1981 volume under the same title.

**Forry, John I., et al. A PRACTICAL GUIDE TO FOREIGN INVESTMENT IN THE UNITED STATES.** London: Tax Management International (a Division of Tax Management, Inc., Washington, D.C.), 1979. xii, 301 pp.

This book describes the important legal, tax, and related considerations of foreign investments in the United States in simple and practice-oriented terms, and it outlines selected structures available for such investments.

The first chapter summarizes selected portions of the United States legal system which a foreign investor is most likely to encounter. The second chapter describes the provisions of the United States tax laws applicable to foreign investors. Subsequent chapters deal with specific types of transactions and investments. These include real estate and natural resource investments, licensing, imports, the establishment of business enterprises in this country, the acquisition of local corporations, and the use of the United States as a base for foreign operations. A separate chapter is devoted to portfolio investments in stocks and debt securities. Two final chapters examine the United States immigration laws and tax planning applicable to individual foreign investors.

This exceptionally well-organized work is easy to read and the coverage is quite comprehensive. Among the variety of works on the legal aspects of foreign investments in the United States published in the past ten years, this is probably the best introduction to a multifarious

and notoriously unstructured area of law.

Forry, John I., ed. *DIFFERENCES IN TAX TREATMENT OF FOREIGN INVESTORS: DOMESTIC SUBSIDIARIES AND DOMESTIC BRANCHES*. Deventer: Kluwer, 1984. 256 pp.

Foreign investment is largely dependent on how different forms of enterprises controlled by foreign persons are taxed in different countries. The comparison of the local income taxation of a branch and a subsidiary controlled by foreign persons is the subject of this series of reports prepared by the Committee on Taxes of the International Bar Association's Section on Business Law. Although this subject has been addressed by prior reports within the Committee on Taxes and by published treaties, this series of National Reports and the General Report are organized primarily as an updated survey of each country's laws. The book is a useful general reference source on the subject. The principal tax issues involved in establishing, operating and terminating a local branch or subsidiary owned by foreign persons are covered in separate National Reports for over 14 countries, including the United States.

Fry, Earl H. *FINANCIAL INVASION OF THE U.S.A.: A THREAT TO AMERICAN SOCIETY?* New York: McGraw-Hill, 1979.

A popular and somewhat exaggerated account of foreign investments in the United States and the adverse consequences of foreign investment.

Fry, Earl H. and Lee H. Radebaugh, eds. *REGULATION OF FOREIGN DIRECT INVESTMENT IN CANADA AND THE UNITED STATES*. Provo, Utah: Brigham Young University, David M. Kennedy International Center, 1983. xii, 198 pp.

A collection of papers presented at the Canadian-United States Investment Conference hosted by the School of Management and the David M. Kennedy International Center, Brigham Young University, on March 31, 1983. The papers deal on a comparative basis with federal and state regulations or restrictions of foreign direct investments, state incentives for such investments, antitrust and extraterritoriality aspects of foreign investment, tax considerations, and future policy developments. A paper on current United States government policy towards foreign investments by Harvey E. Bale, Jr., the Assistant United States Trade Representative, and a paper on investment policies in Georgia by W. Milton Falls, Commissioner of the Georgia Department of Industry and Trade are of special interest.

*A GUIDE TO FOREIGN INVESTMENT UNDER UNITED STATES LAW*. Committee to Study Foreign Investment in the United States of

the Section of Corporation, Banking and Business Law of the American Bar Association (Principal Coordinator: Allan R. Roth). New York: Law & Business, Inc., 1979. xii, 625 pp.

Though this is the report of the ABA Committee to Study Foreign Investment in the United States, it is organized in the form of a highly instructive manual. Information is succinctly and systematically presented about the legal issues to be encountered by foreign individuals and corporations with direct or portfolio investments in the United States.

The Committee also decided to include in a 300-page appendix the full text of the 1975 government report on the *United States Government Data Collection Activities with Respect to Foreign Investment in the United States* (prepared jointly by the Council on International Economic Policy and the Office of Management and Budget). Since it consists predominantly of forms, that report adds little to the substance of the book.

Heap, Sir Desmond, ed. *THE LAND AND THE LAW: REPORT OF THE PROCEEDINGS OF THE SEMINAR OF THE SECTION ON GENERAL PRACTICE, INTERNATIONAL BAR ASSOCIATION, HELD IN ROME, MAY 1983*. London: International Bar Association, 1984. 150 pp.

This treatise includes the following papers on foreign investment in United States real estate:

*Investment on a Collective Basis in U.S.A. Real Estate by Non-U.S. Citizens and Residents* by A. Stuart Young, Jr. (pp. 59-71);

*Foreign Investment in United States Real Estate: The Scope of Federal Disclosure Requirements* by Bernard L. Greer, Jr. (pp. 72-92);

*Tax Aspects of Foreign Investment in United States Real Estate* by William K. Norman (pp. 106-50).

Houck III, Rudolph S. and Nancy L. Caywood, eds. *LEGAL ENVIRONMENT FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES*. (2d ed.) Washington, D.C.: The International Law Institute, Georgetown University Law Center, 1981. xxiii, 318 pp.

Originally published in 1972, this is an updated second edition of a highly successful book on the subject. The work is mainly a general introduction to the law of the United States relevant to business and finance, though matters pertaining specifically to foreign businesses and investors coming into the United States are highlighted. The first chapter contains a brief description of the United States legal system. Such topics as business forms, finance and investment, accounting, taxation, antitrust, labor, environment, real estate, regulation of for-

ign investment *per se*, immigration, patents, trademarks and copyrights, torts and product liability, competing for federal government contracts, and imports are discussed in the subsequent chapters. Foreign investors and their advisers should find this book very useful.

THE INTERNATIONAL FINANCIAL MARKETS INSTITUTE. (Corporate Law and Practice Handbook Series No. 481). New York: Practising Law Institute, 1985. Volume I, 760 pp.

Includes (pp. 365-421) an interesting paper on the *Foreign Acquisitions of U.S. Corporations* by Peter Golden and Michael Zelenty of the New York law firm of Fried, Frank, Harris, Shriver & Jacobson. Several lengthy appendices contain case studies on takeovers and other acquisition techniques, and statistics on foreign acquisition of United States companies from 1982-1984.

INVESTMENT INCENTIVES AND DISINCENTIVES AND THE INTERNATIONAL INVESTMENT PROCESS. Paris: Organisation for Economic Co-Operation and Development, 1983. 249 pp.

This report on the legal, fiscal and political climate for foreign investments in the member countries of the Organisation for Economic Co-Operation and Development includes a short survey of foreign investment incentives in the United States (pp. 233-244).

Khoury, Sarkis J. TRANSNATIONAL MERGERS AND ACQUISITIONS IN THE UNITED STATES. Lexington, Mass.: Lexington Books, 1980. 320 pp.

An economic survey of corporate acquisitions and take-overs by foreign corporations in the United States.

Knight, Jr., W. Donald. STRUCTURING FOREIGN INVESTMENT IN U.S. REAL ESTATE. Hingham, Mass.: Kluwer, 1982. 600 pp.

This work contains a comprehensive treatment of the Foreign Investment in Real Property Tax Act (FIRPTA) and its application to foreign investors. The following matters are discussed: relevant rules of the Internal Revenue Code; the effect of double taxation agreements on the Code rules; the legal structure alternatives for foreign investments in United States real property; special planning techniques to minimize United States and foreign tax incidents applicable to such investments; estate and gift taxes applicable to foreign investment in real property; estate planning structures to assure the intended inheritance goals at the investor's death; legal structures to preserve the anonymity of the investor; and failsafe structures to protect the investment in the event of political emergencies. The book is published in a looseleaf format and is intended to be supplemented

periodically.

Laband, David N. *FOREIGN OWNERSHIP OF U.S. FARMLAND: AN ECONOMIC ANALYSIS OF REGULATION*. Lexington, Mass.: Lexington Books, 1984. xiii, 125 pp.

The author, who is an assistant professor of economics at the University of Maryland, investigates the extent of foreign ownership of farmland in the United States and its impact on the United States economy. There is also a chapter on the existing state restrictions and reporting requirements relating to foreign land-holdings.

This is a most interesting book, as the author finds that very little farmland is owned by foreign interests and that the lobbying for and against restrictions on acquisition of such land by foreigners is predominantly prompted by a desire of domestic farmers to retain political control of matters relating to farming.

*LAW AND TAXATION IN THE UNITED STATES: AN INTRODUCTION FOR THE INTERNATIONAL INVESTOR*. Compiled by Hansell & Post, Atlanta, 1984. 68 pp.

A concise and attractively arranged brochure, compiled by an Atlanta law firm explaining to foreign investors the legal and tax issues they are most likely to encounter when they commence business or invest in the United States. The information is presented with exceptional clarity. The brochure does not aspire to the status of a treatise on the law of foreign investment and, therefore, there is no in-depth analysis of the law. It is, however, a useful reference source.

Lees, Francis A. *FOREIGN BANKING AND INVESTMENT IN THE UNITED STATES: ISSUES AND ALTERNATIVES*. New York: Wiley, 1976. 165 pp.

The author surveys foreign banking activities in the United States and suggests ways of monitoring these through regulation. Written from an economist's standpoint, this book emphasizes statistical data.

Le Lievre, Lucien R. *FOREIGN INVESTMENT IN THE U.S.: A GUIDE FOR EXECUTIVES AND COUNSEL*. New York: Business International, 1977. 111 pp.

One of the earlier short surveys of United States restrictions and regulations applicable to foreign investments. Individual chapters discuss barriers to foreign investments, requirements for portfolio investments, procedures for acquisition of enterprises (both public and non-public), and antitrust as well as other legal problems arising in

the course of such acquisitions.

Marans, J. Eugene, Peter C. Williams, Joseph P. Griffin, and Joseph E. Pattison, eds. *MANUAL OF FOREIGN INVESTMENT IN THE UNITED STATES*. Colorado Springs: Shepard's/McGraw-Hill, 1984. xxiv, 630 pp.

This is a reference work for specialists who wish to check the appropriate laws, regulations, and judicial decisions on particular points relating to foreign investments in the United States. The first part of this book examines the general legal conditions for investment in the United States by foreigners and the few general restrictions that apply to such investments. A fairly broad range of topics is discussed, including application of antitrust laws and securities regulations to foreign investments, the taxation of foreign investments, and the provisions of immigration laws pertaining to foreign investors.

Individual chapters are excellently organized to allow a quick analysis of the specific aspects of law. The chapters are footnoted extensively and often include helpful appendices. Tables of cases, statutes, Treasury regulations, and administrative decisions follow the text and there is a detailed index. The editors plan to update the work by means of annual pocket texts.

This book is a thoroughly revised and expanded edition of *FOREIGN INVESTMENT IN THE UNITED STATES: LEGAL ISSUES AND TECHNIQUES*, edited by the first three of the above mentioned editors and published by the District of Columbia Bar in 1980.

Mutharika, A. Peter. *THE ALIEN UNDER AMERICAN LAW: TEXT, MATERIALS, CASES*. Dobbs Ferry, NY: Oceana, 1980. 2 vols., looseleaf.

The first volume of this looseleaf compilation of reproduced documents contains texts of individual state statutes restricting or regulating acquisition and ownership of land by aliens.

Pedersen, Fred C. *FOREIGN INVESTMENT REPORTING*. (2d ed.) Washington, D.C.: Tax Management, Inc., 1984. var. pag. (Tax Management Foreign Income Portfolio No. 428 - 2d.).

Written in the form of a working memorandum, this publication contains about thirty pages of analysis of the reporting and disclosure requirements related to foreign investments in the United States. These include reporting requirements under the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, and the Foreign Investment in Real Property Tax Act of 1980. The Currency and Foreign Transactions Reporting Act of 1970 which affects foreign investors, even though it does not deal with the investments themselves, is also discussed. Appendices (called

"working papers") reproduce applicable reporting forms, statutory texts, regulations, and other relevant documents.

REGULATION OF FOREIGN INVESTMENTS IN THE UNITED STATES. (Corporate Law and Practice Course Handbook Series No. 209). New York: Practising Law Institute, 1976. 432 pp.

One of the earlier PLI publications on foreign investments in the United States, this volume examines in general the legal and taxation considerations relevant to foreign investments. Special attention is given to different investment arrangements as well as the location of such investments in different regions of the United States. Individual papers discuss the purchase of a business, the formation of joint ventures, portfolio investments, licensing arrangements, and banking. There are also papers on immigration questions pertaining to foreign investors, and special taxation treatment of foreign investments.

Richards, Timothy D. THE GUIDE TO FOREIGN INVESTMENT IN UNITED STATES REAL ESTATE. Florence, Kentucky: Van Nostrand Reinhold, 1984. vii, 239 pp.

This is a practical manual on the subject, oriented towards investors and their advisors. The legal aspects of real estate investments, as well as their tax incidents, are clearly presented and explained, but they are not sufficiently detailed to serve as a substitute for an attorney's advice.

SIXTEENTH ANNUAL IMMIGRATION AND NATURALIZATION INSTITUTE. (Litigation and Administrative Practice Series, Litigation Course Handbook Series No. 233). New York: Practising Law Institute, 1983. 720 pp.

This publication contains several papers on United States immigration law issues pertaining to foreign investors and their foreign employees. Although they are not separately listed in this bibliography, course materials of the prior institutes in this series also include valuable papers on immigration topics applicable to foreign investors.

Suzman, Cedric L., ed. FOREIGN DIRECT INVESTMENT IN THE SOUTHEAST: WEST GERMANY, THE UNITED KINGDOM, JAPAN. Atlanta: The Southern Center for International Studies, 1979 (Papers on International Issues, No. 1). 88 pp.

Among its many purposes, the Southern Center for International Studies conducts workshops and promotes studies about investment opportunities for foreign enterprises in the Southeastern region of the United States. This brochure contains several papers on the economic and political aspects of investments by English, Japanese, and West



German corporations.

Tanzi, Vito, ed. *TAXATION, INFLATION, AND INTEREST RATES*. Washington, D.C.: International Monetary Fund, 1984. xxiv, 247 pp.

Foreign investors and their advisors may find this collection of research papers by the staff of the International Monetary Fund on the impact of inflation and taxation on interest rates useful for planning purposes. The papers analyze the impact of taxation on international capital flows in the United States, Canada, France, the Netherlands, Germany, Italy, Japan, and the United Kingdom. They also discuss the tax treatment of interest income and foreign exchange transactions, and the effect of inflation and taxation on interest rates in the particular countries.

*TAX PLANNING FOR FOREIGN INVESTMENT IN U.S. REAL ESTATE; CURRENT ANALYSIS AND UPDATE*. (Tax Information Planning Series, No. 53) New York: Price, Waterhouse & Co., 1983. 33 pp.

A short practical guide to tax planning under FIRPTA.

von Pfeil, Enzo Alexander. *GERMAN DIRECT INVESTMENTS IN THE UNITED STATES*. Greenwich, CT: JAI Press, Inc., 1985. 177 pp.

A factual description and economic analysis of the latest trends in industrial and commercial activities of West German enterprises in the United States.

Waldmann, Raymond J. and Robert A. Cohn. *BUSINESS INVESTMENT IN THE UNITED STATES — A GUIDE TO FEDERAL AND STATE INCENTIVE PROGRAMS, LAWS, AND RESTRICTIONS*. Washington: The Bureau of National Affairs, 1984. x, 411 pp.

An excellent reference work, this book is in effect a compilation of information useful for foreign investors presented in the form of a directory.

The first two parts, about 50 pages long, enumerate and briefly discuss the federal regulations and development programs for foreign investments. The third part is a state-by-state listing of information about the particular state's investment climate, federal development program opportunities, industrial bond issues, restriction on foreign investments, state development agencies, financing programs, industrial revenue bonds, tax incentives, and other investment advantages. The book is highly recommended to anyone actively engaged as an advisor to foreign investors.

Two earlier editions of this work were published in 1978 and 1979 respectively by Transnational Investments, Ltd. in Washington, D.C., under the title *DIRECT INVESTMENT AND DEVELOPMENT IN THE U.S.: A*

## GUIDE TO INCENTIVE PROGRAMS, LAWS AND RESTRICTIONS.

Zagaris, Bruce. *FOREIGN INVESTMENT IN THE UNITED STATES*. New York: Praeger, 1980. 334 pp.

An attractively written general work on different aspects of foreign investments in the United States. The author, an attorney and prolific writer in the areas of international tax and international commercial practice, examines the reasons for foreign investments, suggests methods for implementing foreign investments, and describes the legal and tax provisions applicable to foreign investors.

## III. ARTICLES

Abrutyn, Michael. *Investment in United States Real Estate by Nonresident Alien Individuals and Foreign Corporations*, 1977 *TAX MGT. INT'L J.* 9-28 (September).

Since it was written before the Foreign Investment in Real Property Tax Act, this article is of mostly historical value, but it outlines the general rules for taxation of nonresident alien individuals and foreign corporations with respect to real estate holdings in the United States. The article discusses the tax consequences of various alternative forms of foreign real estate investment under the revised federal statutory rules of 1966 as modified by recent bilateral tax treaties. The author also gives a brief survey of each state's regulations principally in the areas of restrictions on real estate ownership by aliens and state income taxation.

Allen, D. G. MacDonald. *Regulating Foreign Investment in the U.S.*, 125 *SOL. J.* 838-40 (Dec. 11, 1981).

A brief survey of federal and state restrictions on foreign investment in United States real estate, as well as disclosure requirements pertaining thereto, in a practitioner oriented English legal journal.

Allen, Jr., John T. and David B. Olausen. *Problem Areas Concerning Foreign Investment in U.S. Real Estate*, 2 *NW. J. INT'L L. & BUS.* 1-10 (1980).

This is a very brief, general discussion of problem areas concerning foreign direct investment in United States real estate. The authors further discuss the existing complexities and various forms of regulation.

Alexander, Jr., Robert B. *U.S. Taxation of U.S. Real Estate Owned by Nonresident Aliens and Foreign Corporations*, 21 *U.*

MIAMI L. REV. 650-75 (1967).

This article, by a former member of the IRS general counsel's office, is largely of historical interest now that the Foreign Investment in Real Property Tax Act has been implemented; but it is important as a descriptive piece analyzing in detail the Foreign Investors Tax Act of 1966—the precursor to FIRPTA.

Almond, Michael A. and Shelley A. Goldstein. *Foreign Direct Investment in the United States: An Overview*, 7 N.C. J. INT'L L. & COM. REG. 153-62 (1982).

This article briefly summarizes the legal bases, laws relating to, and specific restrictions on foreign investments as well as recent developments in North Carolina which affect foreign direct investment activities. This is a short but helpful introduction into the level of foreign direct investment activity with a short historical perspective. The author focuses on the recent rise in investment activity in the South-eastern United States.

Amador, Antonio A. *Investment in Tax Sheltered U.S. Realty Through the Netherlands Antilles*, 28 TAX EXEC. 175-80 (1976).

This brief article by a lawyer in Curacao is a virtual sales pitch for foreign investment in the Netherlands Antilles; an off-shore base, regulated under the Income Tax Convention between the Netherlands and the United States of April 29, 1948, subsequently modified by Protocol 23 October 1963.

The article discusses the tax advantages under the Convention including tax sheltered cash flow income, tax-free capital gains and elimination of estate and inheritance taxes.

Azevedo, Mary. *Foreign Direct Investment in U.S. Real Estate: A Survey of Federal and State Entry Level Regulation*, 7 N.C. J. INT'L L. & COM. REG. 27-47 (1982).

This article surveys the origins of anti-alien land regulation and reviews both state and federal regulation of land ownership by aliens, including the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1981 and the regulations of the "severely restrictive" states. The author concludes that great disparities exist at the state level in the regulation of alien ownership of real estate.

Barak, Ronald S. and Michael J. Grace. *Foreign Investment in United States Real Estate: Is There Life After FIRPTA?*, 34 U.S.C. INST. FED. TAX 12.01-12.90 (1982).

This article places the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) in its historical context and delineates the

planning opportunities that remain available to minimize the federal income tax consequences of foreign investment in United States real estate. The historical perspective enhances the understanding of FIRPTA's scope. The remainder of the article explains how the laws governing recognition of gain by foreign persons on dispositions of United States real estate may be divided into three generations: pre-FIRPTA, FIRPTA prior to amendment by the Economic Recovery Tax Act of 1981 (ERTA), and FIRPTA as amended by ERTA.

Barbary, George. *Immigration Law Concerns for Business and Corporation Lawyers*, 46 TEX. BAR J. 309-15 (1983).

A practitioner oriented explanation of the pitfalls of the various immigrant and nonimmigrant visas, this discussion is intended to help corporation and business law attorneys avoid the legal and administrative problems that can arise in dealing with clients who may harbor conflicting intentions as to their short-term and ultimate immigration status.

Berger, Robert G. *Applying Uniform Margin Requirements to Foreign Entities Attempting to Acquire U.S. Corporations*, 24 VA. J. INT'L L. 543-74 (1984).

This article discusses the application of Securities and Exchange Commission (SEC) margin requirements to foreign entities attempting the acquisition of United States corporations through a cash tender offer for stock. The article outlines the existing regulations under the Securities Exchange Act of 1934 that govern domestic borrowers and lenders as to margin requirements, examines recent congressional legislation (1981 proposals H.R. 1294 and S. 289 to extend uniform margin requirements to foreign entities), analyzes the reasons behind these proposals, explains the legal problems with extra-territorial jurisdiction associated with the legislation, and concludes by recommending the adoption of such proposed credit restrictions.

Berwind, Michael W. *An Overview of Inbound Foreign Investment*, 5 HASTINGS INT'L & COMP. L. REV. 475-96 (1982).

From the symposium, *Tax Aspects of Foreign Investment*.

Bricker, Jr., William L. *An Outline of Legal and Tax Aspects of Foreign Investment in the United States*, 1 AGRIC. L.J. 562-99 (1980).

A short overview of the major legal considerations for investment.

Bricker, Jr., William L. and James M. Boyd, Jr. *Foreign Acquisition of a United States Business: The Tax Considerations*, 11

CASE W. RES. J. INT'L L. 487-534 (1979).

Two New York attorneys discuss taxation of foreign corporations, structuring of an acquisition of a United States corporation by a foreign corporation, capital structure of an acquiring corporation, acquisition costs, asset and stock purchases, tax-free acquisitions, and joint venture enterprises. This is an informative article for tax planners.

Burke, Jr., Barlow. *Transnational Conveyancing*, 26 AM. U.L. REV. 1-33 (1976).

The complications of transnational conveyancing create not only investment opportunities for foreigners but also market opportunities for real estate finders and brokers, and other financial advisers or attorneys. This article examines the right of foreign nationals to hold real property in the United States. It further explores the nature and extent of foreign direct investment, and treats some of the problems involved for persons wanting to increase foreign investment in United States realty. The article also examines the potential consequences of increasing foreign direct investment for the United States as a whole and for its financial community in particular. The author concludes that the negative side of having foreigners own United States property could be controlled by reform of the reporting laws, but notes that this area must be changed so that informed progress can be made in this area.

Campbell, III Duncan A., and John C. Taggart. *The International Business Client and Immigrant Visas*, 11 COLO. LAW. 2545-52 (1982).

A brief review of visa requirements for foreign executives and business people. Convenient as an introduction to the subject.

Chilton, Jr., Frederick R. *Income Effectively Connected with a United States Trade or Business or Attributable to a Permanent Establishment*, 5 HASTINGS INT'L & COMP. L. REV. 497-514 (1982).

From the symposium, *Tax Aspects of Foreign Investment*.

Choate, Alan G., Steven Hurok and Samuel E. Klein, *Federal Tax Policy for Foreign Income and Foreign Taxpayers: History, Analysis and Prospects*, 44 TEMP. L.Q. 441-527 (1971).

A lengthy article on taxation of foreign investors. This article is unique in its historical and legal analysis (rather than economic) of the Internal Revenue Code (IRC) tax rules and the emerging United States tax policies. The authors discuss major revisions in the 1954 Internal Revenue Code dating from 1932-63, emphasizing what actually occurred in Congress, the stated goals of the legislative acts, and

whether the legislation appears in fact to be achieving the defined goals.

Coffey, Colin J. *Foreign Investment in Cable Television: The United States and Canada*, 6 HASTINGS INT'L & COMP. L. REV. 399-431 (1983).

An examination of the controversy surrounding foreign direct investment in United States cable television focusing on issues of law and policy. The article compares relevant United States and Canadian communication laws and their history of regulation. The author concludes that Congress should impose citizenship requirements on cable television ownership (based upon section 301 of the Communications Act of 1934 and not upon general principles of reciprocal access).

Conboy, Kevin. *Recent Developments in Reporting Requirements for Foreign Investors in the United States*, 9 N.C. J. INT'L L. & COM. REG. 359-83 (1984).

A 1984 update of the reporting requirements for foreign investors in the United States, this article discusses recent developments in the Commerce Department (International Investment Survey Act of 1976), Agriculture Department (Agricultural Foreign Investment Disclosure Act of 1978), and the Foreign Investment in Real Property Tax Act (FIRPTA) of 1980 (after issuance of the 1983 revised regulations). The author, devotes most of the article to detailing the new FIRPTA regulations.

Darby, Joseph J. *Guarantees Accorded Foreign Investors*, 26 AM. J. COMP. L. 171-85 (Supp. 1978).

The author reviews the special privileges enjoyed by foreign investors and businesses pursuant to treaty guarantees.

Dempsey, Paul S. *Legal and Economic Incentives for Foreign Direct Investment in the Southeastern United States*, 9 VAND. J. TRANSNAT'L L. 247-93 (1976).

This article surveys legal and economic incentives for attracting foreign direct investment in the Southeastern United States. Utilizing data from the Department of Commerce, the author traces national policy with respect to international investment and then analyzes the economic impact of foreign direct investment in the United States. Common incentives used by southeastern states to attract foreign direct investment include industrial financing, labor programs, and tax incentives. The author concludes that as foreign direct investment in the United States continues to grow there will be increased use of legal and economic incentives by state executives and legislators as

southeastern states and other regions compete for inbound investments.

Dempsey, Paul S. *Primary Tax Incentives for Industrial Investment in the Southeastern United States*, 25 EMORY L.J. 789-813 (1976).

This is a survey article by a former adviser to the Interstate Commerce Commission on the primary tax incentives utilized to attract industrial investment in the Southeastern United States. Noting first that tax incentives are but one factor to be weighed in deciding where to locate an industrial facility, the author analyzes various state and municipal tax inducements which seek to attract both domestic and foreign industries. The author utilizes materials from southeastern state development agencies, periodicals, and general primary sources on investment activity to explain how and why tax incentives attract direct investment. The article also surveys southeastern state tax statutes which affect the ongoing debate over whether tax incentives really work to attract direct investment and the underlying concern of whether the advantages of incoming investment would outweigh the disadvantages of lost revenues. The author concludes tax incentives are a helpful and practical approach to facilitating industrial development of the southeastern states.

Dempsey, Paul S. *The Solicitation of International Capital by the Southeastern United States: Environmental and Legislative Inducements for Foreign Direct Investment*, 8 CUMBERLAND L. REV. 661-81 (1978).

An exploration of the efforts of state governments in the Southeast to stimulate foreign direct investment by means of solicitation, statutory incentives, and advertising Southeast environmental attributes. The author treats the topic generally relying upon only a scant data base and his two previous articles on the same basic topic—*see supra* 25 EMORY L.J. 789 (1976) and 9 VAND. J. TRANSNAT'L. L. 247 (1976).

De Vos, Lloyd. *Foreign Entities Investing in the United States*, 37 N.Y.U. INST. FED. TAX'N 23.1-.34 (1979).

This article examines the recent tax developments that affect various types of investment activities (e.g. excess cash, securities, business solicitation offices, trading company, foreign bank branch, subsidiary agency company, offshore holding) carried on in the United States by foreign nationals and companies. Although general in its approach, the article focuses on the practical considerations of planning such investments by foreigners in the United States pointing out

opportunities as well as traps for the unwary.

Dinur, Daniel D. and Charles H. Coffin. *FIRPTA: An Update on Substance and Procedure*, 42 N.Y.U. INST. FED. TAX'N 30.1-44 (1984).

This is a relatively recent update of the Foreign Investment in Real Property Tax Act (FIRPTA) discussing the changes in the FIRPTA regulatory scheme proposed to be effected by the 1983 Regulations.

Eigenbrode, Richard. *Foreign Investment in Real Property Tax Act of 1980*, 5 HASTINGS INT'L & COMP. L. REV. 521-64 (1982).

From the symposium, *Tax Aspects of Foreign Investment*.

Elmer, Brian L. and Dwight A. Johnson. *Legal Obstacles to Foreign Acquisitions of U.S. Corporations*, 30 BUS. LAW. 681-98 (1975).

Considering only the federal limitations on foreign acquisitions, and choosing not to discuss tax and antitrust problems, the authors reveal the general restraints that are placed on most foreign acquisitions of domestic industries, and then examine the restraints on particular industries involved in maritime activities, communications, air commerce, financial institutions, as well as land and other resources.

Emch, T. Randall. *Japanese Direct Investment in American Manufacturing*, 17 STAN. J. INT'L L. 1-16 (1981).

Acknowledging that Japanese foreign direct investment in the United States has increased significantly in the last two decades, the author utilizes a simple statistical model to demonstrate that several economic variables positively correlate total investment in the manufacturing sector—including: (1) the size of the United States market for Japanese products and Japan's growing familiarity with American manufacturing; (2) the changes in yen/dollar ratio reflecting variations in the real costs of production; and (3) relative changes both in the United States and Japanese wholesale price indexes. Relying on data principally from the Department of Commerce's *Survey of Current Business*, Japan Information Service Reports, and the Council of Economic Advisers Economic Report to the President (1979), the model reveals that "relative factor input costs" between the United States and Japan greatly influence investments in the manufacturing sector.

Evans, Jr., Henry D. *Offerings of Securities Solely to Foreign Investors*, 40 BUS. LAW. 69-86 (1984).

A discussion on the manner in which an offering of securities solely to foreign investors can be structured to avoid the necessity of regis-



tration of the offering under the Securities Act of 1933 or qualification of the offering under the California blue sky law. The restrictions on resale of securities sold in such offerings and the integration of such offerings with other domestic offerings of the same issue are also discussed by the author.

Farrar, Stanley F., Allen L. Raiken and Leo L. Clarke. *Choice of Home State Under the International Banking Act of 1978, 1980* U. ILL. L.F. 91-110 (1980).

From the symposium, *1980 Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the United States—The International Banking Act of 1978*.

Feder, Arthur A. and Lee S. Parker. *The Foreign Investment in Real Property Tax Act of 1980*, 34 TAX LAW. 545-79 (1981).

This article discusses the legislative background and the technical aspects of the Foreign Investment in Real Property Tax Act (FIRPTA). It further examines how FIRPTA relates with income tax conventions.

Feder, Arthur A. and Lee S. Parker. *United States Legislation Taxing Gains on Foreign Persons from Dispositions of Direct and Indirect Interests in United States Real Property*, 1981 BRITISH TAX REV. 83-103, 176-90 (1981).

A British-oriented version of the preceding article by the same authors.

Feder, Arthur A. and Lee S. Parker. *United States Legislation Taxing Gains on Foreign Persons from Dispositions of Direct and Indirect Interests in U.S. Real Property — the Foreign Investment in Real Property Tax Act of 1980*, 29 CAN. TAX J. 1-29 (1981).

An abbreviated, Canadian-oriented version of the article published by the same authors in 34 TAX LAW. 545 (1981).

Feder, Jack M. *Planning Under the Foreign Investment in Real Property Tax Act of 1980*, 59 TAXES 81-92 (1981).

This article contains a concise explanation of the new tax provisions applicable to foreign ownership of land in the United States.

Feingold, Fred and Herbert H. Alpert. *Observations on the Foreign Investment in Real Property Tax Act of 1980*, 1 VA. TAX. REV. 105-33 (1981).

This article discusses the then new Foreign Investment in Real

Property Tax Act (FIRPTA) rules for foreigners investing in United States real estate. The article concludes that the Act will ensure that gains are subject to tax, but that the Act is broader than may have been necessary. The author also provides a brief overview of the relatively complicated FIRPTA reporting requirements. This article is only of historical or introductory interest since FIRPTA regulations and modifications later occurred.

Feinschreiber, Robert and Lana Feinschreiber. *Foreign Investment in U.S. Real Estate: The Federal Tax Considerations*, 3 REAL EST. L.J. 144-54 (1974).

A brief article surveying the then current tax regulations on foreign investors in United States real estate covering income, estate, and gift tax considerations. The tax advantages and disadvantages of electing to be taxed on a net or gross basis with a capital gains exemption, and the use of a United States corporation or a foreign corporation as the investment vehicle are detailed under the Foreign Investors Tax Act of 1966 §§ 871 (a)(1) and 881 (a)(1) and related Revenue Rulings.

Fisch, William B. *State Regulation of Alien Land Ownership*, 43 MO. L. REV. 407-30 (1978).

This article is a survey of state restrictions on alien land ownership, particularly regulations applicable to agricultural land in Missouri and Minnesota, and an analysis of the validity of state laws in the light of constitutional limitations (equal protection and due process clauses), federal treaty preemption [*Missouri v. Holland*, 252 U.S. 415 (1920)], and interference with foreign relations [*Zschernig v. Miller*, 389 U.S. 429 (1968)].

Fogarasi, Andre P. and Diane Renfroe. *FIRPTA Withholding: An Overview for Foreign Investors*, 58 TAXES INT'L 3-14 (1984).

This article gives foreign investors a brief overview of the FIRPTA withholding rules and specifically comments on how foreign investors will be affected.

Fogarasi, Andre P. and Stephen R. Corrick. *Concepts and Requirements of the FIRPTA Regulations: Is This Better Than Withholding?*, 41 N.Y.U. INST. FED. TAX'N 25.1-46 (1983).

An excellently researched and written article on FIRPTA explaining the Treasury Department's temporary proposed regulations, as well as describing the definitions, terms, conditions, and manner for

making elections under FIRPTA.

Foorman, James L. *Revised Regulation K: Selected Issues Affecting Banking Edge Corporations*, 1980 U. ILL. L.F. 41-64 (1980).

From the symposium, *1980 Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the U.S.—The International Banking Act of 1978*.

Forry, John I. *Planning Investments from Abroad in United States Real Estate*, 9 INT'L LAW. 239-50 (1975).

This pre-FIRPTA article utilizes a hypothetical fact situation to illustrate that careful choices must be made in choosing the basic structure (e.g. direct ownership, partnership, and joint venture) for foreign investment in either income producing real property, property acquired for development, or property held for appreciation. The income tax, estate planning, and tax treaty considerations are highlighted.

Forst, Bradley. *Regulation of Foreign Investment in United States Real Estate: State or Federal Prerogative?*, 1981 SO. ILL. U. L.J. 21-64.

This article is based on the thesis that the law regarding land ownership by aliens is conceptually different from the law on other forms of foreign investment and that regulation of land ownership traditionally has been considered as the legitimate domain of the individual states. The author posits that serious issues may be raised as to whether state restrictions of land ownership by aliens are valid in the light of constitutional principles regarding equal protection and other rights of aliens, and questions whether the states can legislate on matters falling within the exclusive federal realm of foreign policy and commerce. Within this framework, the article examines the interesting trichotomy of questions pertaining to the power of the states to legislate on the ownership of land by aliens: (1) whether property rights may be legislated on by the states as purely local concerns; (2) whether they should more properly be viewed as laws falling within federal legislative purview as regulations of aliens with the concomitant questions of constitutional dimension with its consideration of equal protection and due process; or (3) whether they fall entirely within the province of the federal legislature's power to regulate foreign commerce. The author concludes that alien ownership of land

should be controlled by federal law.

Foster, David S. *The Importance of Tax Treaties*, 5 HASTINGS INT'L & COMP. L. REV. 565-77 (1982).

From the symposium, *Tax Aspects of Foreign Investment*.

Freeman, Lawrence A. *Mandatory Reporting Requirements for Foreigners Who Invest in U.S.*, 56 FLA. B.J. 426-31 (1982).

A partner in the Miami law firm of Freeman & Warren gives a practical discussion of the requirements, and what forms are used, for disclosure of foreign investments in the United States.

Friberg, James J. *Monitoring Foreign Investment in Energy Resources: Problems and Proposals*, 84 W. VA. L. REV. 1093-119 (1982).

This article identifies general indications of foreign control in natural resources, analyzes policy considerations pointing toward the need for more complete data, and discusses the present laws (e.g., (1) Foreign Investment Study Act of 1974, (2) International Investment Survey Act of 1976, (3) Agricultural Foreign Investment Disclosure Act of 1978, (4) Domestic and Foreign Investment Disclosure Act of 1977, amending Securities Exchange Act of 1934).

Fuller, James P. *Structuring and Financing U.S. Businesses of Foreign Multinationals*, 43 N.Y.U. INST. FED. TAX'N 12.1—34 (1985).

A partner in the law firm of Fenwick, Stone, Davis & West in Palo Alto, California, and an editor of the JOURNAL OF TAXATION discusses the various tax considerations that enter into the structuring of the acquisition of a United States business by a foreign enterprise. His practitioner oriented approach results in a thorough and detailed article.

Fuller, James P. *The International Tax Implications of the U.S. Tax Reform Act of 1984*, 57 TAXES INT'L 1-23 (1984).

This article discusses the importance and relevance of the new 1984 tax rules pertaining to international operations and transactions.

Gaffney, Mason. *Social and Economic Impacts of Foreign Investment in United States Land*, 17 NAT. RESOURCES J. 377-93 (1977).

This article discusses the advantages and disadvantages of foreign investment in United States real estate.

Gewanter, Sidney M. *United States Taxation of Foreign Investors in Money Market and Related Instruments*, 6 N.Y.U. INT'L

INST. ON TAX & BUS. PLAN. 1-28 (1978).

A review and summary of the various principles of United States income tax law applying to foreign portfolio investors, particularly those who for tax purposes are considered to be neither United States residents nor engaged in the conduct of a trade or business within the United States.

Gewanter, Sidney M. *Factors Affecting Foreign Ownership and Operations of United States Commercial Banks and Related Financial Institutions*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 565-91 (1978).

An overview of various factors affecting the foreign ownership of commercial banks and certain related financial institutions in the United States. The factors include the legal requirements for the formation of banks under federal and state law, the regulation of banks by federal and state supervisory agencies, the applicability of the Federal Bank Holding Company Act and various securities laws to banks and their affiliates, and the effects of the Glass-Steagall Act upon underwriting and related activities. The formation of branches and agencies of foreign banks and their regulation under state and federal law also are reviewed.

Glidden, William B. and John E. Shockey. *U.S. Branches and Agencies of Foreign Banks: A Comparison of the Federal and State Chartering Options*, 1980 U. ILL. L.F. 65-90 (1980).

From the symposium, 1980 *Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the U.S.—The International Banking Act of 1978*.

Goldberg, Sanford H. and Michael Hirschfeld. *Analysis of the New Temporary Rules on Reporting Foreign Investments in U.S. Realty*, 58 J. TAX'N 258-65 (1983).

This article traces the Treasury Department's 1983 temporary regulations to the Foreign Investment in Real Property Tax Act of 1980 [see also Alan R. Johnson, 36 TAX LAW. 713 (1983)]. The authors analyze the ambiguities and operation of the temporary regulations and discuss developments through March 31, 1983.

Goodman, Gary A. and Robert M. Saunders. *U.S. Federal Regulation of Foreign Involvement in Aviation, Government Procurement and National Security*, 19 J. WORLD TRADE L. 54-61 (1985).

This is an examination of United States policy and practice on the extent to which foreigners are permitted to participate under federal regulations in the aviation, government procurement, and defense

sectors of the United States economy.

Gordon, Charles. *Immigration Problems Confronting Foreign Personnel in the United States*, 7 N.C. J. INT'L L. & COM. REG. 265-76 (1982).

From the symposium, *Advising the Foreign Investor in the United States*, this article is a brief discussion of immigration problems.

Gornall, Jr., John L. and Phillip J. Marzetti. *Taxation of Foreign Personnel in the United States*, 7 N.C. J. INT'L L. & COM. REG. 207-31 (1982).

This article provides an overview of some of the tax problems faced by foreign personnel working in the United States, including an alien's liability for income, estate, gift, and social security taxes. The authors do not attempt an in-depth tax treatment; but merely give an overview relying principally on the Internal Revenue Code, Treasury Regulations, Revenue Rulings, and limited case law. This article is published as a part of a symposium entitled *Advising the Foreign Investor in the United States* in volume 7 of N.C. J. INT'L L. & COM. REG. (1982).

Gornall, Jr., John L. and Phillip Leslie Wharton. *Significant Non-Tax Reporting Requirements Relating to Investment in the United States by Foreign Persons*, 7 N.C. J. INT'L L. & COM. REG. 163-75 (1982).

This article is an explanation of the significant reporting requirements relating to investment in the United States by foreigners with primary emphasis on the International Investment Survey Act of 1976 (IISA), the Agriculture Foreign Investment Disclosure Act of 1978 (AFIDA); and treats the Foreign Investment in Real Property Tax Act (FIRPTA) reporting requirements, and general reporting requirements under the 1934 Securities Exchange Act and the Hart-Scott-Rodino Antitrust Improvements Act. The article notes that the Commerce Department (Bureau of Economic Analysis) has primary responsibility under the IISA, that Treasury has some responsibility for portfolio investments under the IISA and that AFIDA is implemented by the Agricultural Stabilization and Conservation Service (ASCS). The article is based in large part upon the CIEP-OMB Data Collection Report on Foreign Investment (1975), *reprinted in* ABA — A GUIDE TO FOREIGN INVESTMENT UNDER U.S. LAW (1979) and H.R. No. 1216, 96th Cong., 2d Sess. (1980).

Gornall, Jr., John L. and Phillip Leslie Wharton. *Briefing the Foreign Client on Starting a Business in the United States*, 6

N.C. J. INT'L L. & COM. REG. 235-58 (1981).

Another article by the same authors as in the preceding entry on the new legislative requirements for foreign businesses and investors in the United States.

Gornall, Jr., John L. *United States: Agricultural Foreign Investment Disclosure Act of 1978 — The 1979 Final Regulations*, 10 TAX MGMT. INT'L J. 3-5 (1979).

This article is a useful and perceptive analysis of the law itself, predominantly of the regulations made in 1979.

Granwell, Alan Winston. *An Analysis of the Background and Policy of Amendments to the Repeal of the 30 Percent Tax Imposed by the United States on Interest Payments to Foreign Persons*, PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS IN 1984, 311-39.

In 1984, in a dramatic turn of events, Congress repealed the flat 30 percent withholding tax on portfolio interest payable by United States borrowers to nonresident foreign investors. This paper describes the operation of the withholding tax prior to its repeal, examines the legislative history of the repealing act (the Deficit Reduction Act of 1984, Section 127), as well as the policy reasons for the elimination of the withholding tax, and discusses the effect of the repeal on foreign portfolio investments in the United States.

Granwell, Alan Winston. *Repeal of the 30 Percent Withholding Tax on Interest Paid to Foreigners*, 13 TAX MGMT. INT'L J. 306-12 (1984).

This article is another discussion of tax consequences following the repeal of the 30 percent tax on portfolio interest paid by United States borrowers to nonresident alien individuals and foreign corporations taking effect after July 18, 1984 (passed by Section 127 of the Tax Reform Act of 1984).

Gray, H. Peter and Ingo Walter. *Investment—Related Trade Distortions in Petrochemicals*, 17 J. WORLD TRADE L. 283-307 (1983).

The authors conduct a predominantly economic analysis of the effects of international investment in the oil industry.

Green, William H. *Foreign Investment in U.S. Real Estate: Analysis of the Data*, 6 INT'L TAX J. 444-53 (1980).

The author examines data released in 1979 by the Treasury De-

partment on foreign investment in United States real estate.

Green, William H. *Proposed Legislation Affecting Foreign Investment in U.S. Real Estate*, 6 INT'L TAX J. 454-59 (1980).

The author discusses how foreigners avoid capital gains taxes and proposed legislation to curtail these abuses.

Greene, Jerome P. *Financing of Direct Investments*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 449-65 (1978).

This paper focuses on the private placement market for foreign securities in the United States. Six basic aspects of this capital funds market are addressed. First, it focuses on the United States private placement market itself—what it is and why it is attractive to foreign investors. Second, it identifies the participants in the private placement market who are interested in buying foreign issues and the factors that are considered in making their investment decisions. Third, it deals with some of the legal restrictions—and some self-imposed limitations—under which these participants are operating. Fourth, it analyzes the typical financial and restrictive covenants that are found in United States private placement of foreign issues. Fifth, it discusses how an investment banker can assist in tapping the American private placement market. Last, it briefly discusses the outlook for the United States private placement market as it relates to foreign issues.

Griffin, Joseph P. *Antitrust Constraints on Acquisitions by Aliens in the United States*, 13 INT'L LAW. 427-48 (1979).

This article examines the constraints placed on acquisitions by foreign investors by United States antitrust laws. The author covers the legal standards applied in antitrust proceedings, the methods of enforcement, and the leading cases in this area.

Gruson, Michael and Phillip L. Jackson. *Issuance of Securities by Foreign Banks and the Investment Company Act of 1940*, 1980 U. ILL. L.F. 185-230 (1980).

From the symposium, 1980 *Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the U.S.—The International Banking Act of 1978*.

Gruson, Michael and Jonathan M. Weld. *Nonbanking Activities of Foreign Banks Operating in the United States*, 1980 U. ILL. L. F. 129-62 (1980).

From the symposium, 1980 *Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the U.S.—The Interna-*



*tional Banking Act of 1978.*

Hablutzel, Philip and Carol R. Lutz. *Foreign Banks in the United States After the International Banking Act of 1978: The New Dual System*, 96 *BANKING L. J.* 133-53 (1979).

This article is a survey of the changes introduced in the regulation of foreign banking in the United States after the enactment of the International Banking Act of 1978.

Halperin, David R. *The Regulation of Foreign Banks in the United States*, 9 *INT'L LAW.* 661-88 (1975).

The author presents detailed description of the legal regulation of foreign banks and banking operations in the United States prior to the International Banking Act of 1978.

Hammer, Richard M. *General Tax Rules and Planning for United States Operations*, 6 *N.Y.U. INT'L INST. ON TAX & BUS. PLAN.* 319-74 (1978).

This paper considers the existing United States policy toward inflowing foreign investment, and then discusses some of the significant technical aspects of the United States tax system. The author focuses on how the tax system affects the foreign businessman coming to the United States to sell to United States customers or to produce goods or services for the United States market.

Hart, Peter J. *Use of Tax Treaties and Offshore Investment Vehicles for Foreign Investors*, 6 *N.Y.U. INT'L INST. ON TAX & BUS. PLAN.* 125-54 (1978).

This article points out opportunities to minimize the United States tax imposed on foreign portfolio and real estate investors, who do not have income "effectively connected" with a United States trade or business. The author suggests that substantial tax minimization can be achieved only through employing income tax treaties which exist between the United States and an investor's home country and, in certain instances, between the United States and a third country.

Hatab, John O. *U.S. Taxation of Foreign Banking in the United States—An Overview*, 41 *N.Y.U. INST. FED. TAX'N* 27.1-.36 (1983).

A step-by-step explanation of how foreign banks are taxed in the United States is the focus of this paper.

Heleniak, David W. *Restrictions on Foreign Investment: Developments in United States Law*, 3 *J. COMP. CORP. L. & SEC. REG.*

330-38 (1981).

The author reviews the latest legal requirements applicable to foreign investments in the United States.

Hendrickson, Robert A. *The Agricultural Foreign Investment Disclosure Act of 1978: Don't Panic!*, 13 INT'L LAW. 407-26 (1979).

This article thoroughly discusses the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978 by examining the definitions within the Act and what parties will be affected.

Hirschfeld, Michael. *Withholding Tax on Dispositions of U.S. Realty by Foreigners*, 62 TAXES 667-78 (1984).

The author sets forth a brief practical description of the tax procedures applicable to foreign vendors of United States real property.

Hoefs, Richard A. *Taxation of Foreign Investors*, 61 CHI. B. REC. 300-10 (1980).

From the symposium, *Advising Foreign Investors*.

Hoff, Reka Potgieter. *Foreign Investment in U.S. Farmland—the Facts and the Law*, 31 DRAKE L. REV. 547-63 (1981-1982).

This broad survey of the topic is useful as an introductory reading.

Hollingsworth, Tracy and Douglas W. Banks. *Foreign Investment in U.S. Real Estate: An Analysis of Code-Treaty Interaction*, 52 J. TAX'N 38-43 (1980).

This article discusses how the Internal Revenue Code provisions concerning the treatment of foreign investors are modified by treaties between the United States and other countries.

Horigan, James E. *Foreign Participation in Domestic Oil and Gas Ventures*, 28 ROCKY MTN. MIN. L. INST. 969-1019 (1982).

A Denver attorney discusses federal and state restrictions on foreign participation in oil and gas production and exploration activities in the United States and provides a selective state-by-state survey of such restrictions.

Horten, Michael R. and Charles B. Harrison. *FIRPTA "Domestication" Election: Tax Planning Considerations*, 1983 TAX MGMT. INT'L J. 3-18 (June).

The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) contains a provision which allows certain foreign corporations to make an election (the "domestication election") to be treated as a domestic corporation for tax purposes. The requirements and

procedures for such election are set out in detailed regulations. This article examines the legislation and regulations applicable to the making of a domestication election and the authors discuss the circumstances in which the election may be advantageous, as well as related planning considerations.

Irvin, Robert J. *Foreign Investment in U.S. Real Estate: Recent Reporting and Disclosure Requirements*, 53 FLA. B.J. 715-21 (1979).

This article is a brief practitioner-oriented description of the disclosure requirements under the International Investment Survey Act of 1976 and the Agricultural Foreign Investment Disclosure Act of 1978.

Jarchow, Stephen P. *Foreign Investment in U.S. Real Estate*, 12 ST. MARY'S L.J. 1069-103 (1981).

This article examines the historical origins of foreign land ownership in the United States. The author then takes a practical approach on advising foreign investors who wish to acquire land in the United States and analyzes the Foreign Investment in Real Property Tax Act (FIRPTA) and other tax legislation affecting foreign investments in United States real property.

Johnson, Alan R. *The Initial FIRPTA Regulations*, 36 TAX LAW. 713-49 (1983).

In an article of limited value because of its narrowed scope and because of subsequently issued regulations, the author analyzes the Treasury Department's initial and "temporary" proposed regulations under the Foreign Investment in Real Property Tax Act (FIRPTA) passed in 1980. This paper focuses principally on those regulations dealing with the definition of a "U.S. real property interest," possible elections by foreign corporations to be treated as a domestic corporation, and the reporting requirements under the Act.

Kanner, Stephen Barrett. *Foreign Investment in U.S. Real Estate—Expropriation Fail-Safe Devices*, 8 REAL EST. L.J. 270-73 (1980).

The author sets forth a brief discussion of the possible structuring of United States investments by a foreign investor to minimize the possibility of the investor's home government gaining control of the investment in the event that the investor's assets are expropriated.

Kaplan, Philip T. *International Developments — Another View*, 4 J. CORP. TAX 271-80 (1977-78).

United States tax advisers are increasingly asked to help foreign

enterprises establish businesses in the United States. A Professor of Law at the University of Illinois suggests that tax considerations are the most important factor in the planning of such investments. In this respect, the tax laws of a foreign enterprise's home country are as important as those of the United States. A German company with heavy initial capitalization of its American business is used as an example to illustrate the significance of multinational tax planning for investment in the United States.

Kaplan, Richard L. *Creeping Xenophobia and the Taxation of Foreign-Owned Real Estate*, 71 GEO. L. J. 1091-128 (1983).

Prior to 1980 certain nonresident alien individuals and foreign corporations were exempt from United States tax on their United States source capital gains that were not effectively connected with the conduct of a trade or business within the United States. Congress enacted FIRPTA to close this perceived loophole to the extent that it exempted gains derived from sales of United States real estate. Professor Kaplan analyzes the pre-FIRPTA tax regime and the modifications introduced by FIRPTA, arguing that the loophole addressed by FIRPTA not only was of minor significance, but was consciously created because of the difficulty of collecting taxes on the capital gains of nonresident, nonbusiness foreign investors, and was justifiable on additional policy grounds. In partially closing this limited loophole, FIRPTA complicates the tax code, overrides bilateral tax treaty provisions, and creates an intrusive but unenforceable collection scheme. Professor Kaplan suggests that FIRPTA can only be understood as an attempt to discourage foreign investment in United States real estate—a xenophobic goal, lacking any economic or common sense rationale, which FIRPTA is in any case unlikely to accomplish—and recommends that FIRPTA be repealed in its entirety.

Katz, Julius L. *Foreign Direct Investment in the United States—Advantages and Barriers*, 11 CASE W. RES. J. INT'L L. 473-86 (1979).

The author, an Assistant Secretary of State for Economic and Business Affairs, discusses the recent importance of foreign investment, the criticisms of foreign investment, and United States policy toward foreign investment.

Kinzer, William L. and John L. Gornall. *Tax Treatment of and Planning for Real Estate Investments in the U.S. by Europeans*, 1978 TAX MGMT. INT'L J. 16-27 (Jan.).

This article provides a readable summary of basic tax considerations in planning and expected tax treatment of foreign investments in United States real estate. The authors cite the relevant Internal

Revenue Code provisions and outline basic considerations under the Foreign Investors Tax Act of 1966 (FITA) tax regulations.

Klein, Susan F. *An Analysis of the Foreign Investment in Real Property Tax Act of 1980: How it Works*, 54 J. TAX'N 202-07 (1981).

This article examines the Foreign Investment in Real Property Tax Act (FIRPTA), how it is expected to operate, and what advantages or disadvantages it presents to the foreign investor in United States real estate.

Klein, Susan F. *Investments by Foreign Persons in United States Real Estate*, 2 J. REAL EST. TAX 265-71 (1975).

The author provides a general survey of investments by foreigners in United States real estate, and tax incidents relating thereto.

Knight, Jr., W. Donald. *Planning for Foreign Investments in U.S. Real Estate: An Update After the Foreign Investment in Real Property Tax Act of 1980*, 39 N.Y.U. INST. FED. TAX'N 30-1 to 30-117 (1981).

This is a lengthy and very detailed account of the Foreign Investment in Real Property Tax Act of 1980 by one of the most prolific writers on the regulation of foreign investment in the United States.

Knight, Jr., W. Donald. *Planning for Foreign Investments in U.S. Real Estate*, 36 N.Y.U. INST. FED. TAX'N 1081-167 (1978) (also 6 INT'L BUS. LAW. 456 (1978)).

This article is a detailed summary of the basic Internal Revenue Code "ground rules" for investment planning with foreign investors considering the effects of tax treaties on the Code ground rules, the alternative legal structures available for foreign direct investment in United States real estate, and reviewing useful tax planning techniques. The author concludes with a discussion of United States estate, gift, and "generation-skipping" taxation of foreign investors, and the effects of state and local taxation schemes.

Knight, Jr., W. Donald and Terrance A. Noyes. *The New FIRPTA Withholding and Investor Disclosure Rules*, 13 TAX MGMT. INT'L J. 312-19 (1984).

This article discusses the July 18, 1984, amendment to the Foreign Investment in Real Property Tax Act (FIRPTA) which institutes a system requiring the withholding of taxes on all dispositions of real property interests by foreign persons. The purpose of the new withholding system is to replace the information reporting requirements

previously utilized as the primary enforcement mechanism under FIRPTA. The article details the basic duty to withhold, exemptions from withholding, special withholding rules applicable to certain entity-owner transactions, and reductions in the withholding obligation.

Knight, Jr., W. Donald and William J. Wilkins. *Planning for Foreign Investments in U.S. Timberlands*, 1978 TAX MGMT. INT'L J. 3-21 (May).

Foreign investment in United States timberlands is increasing in part because of the economic incentives flowing from a strong demand for timber products, but mostly because of the fewer day-to-day management demands of such investments. The author seeks to point out proper planning concerns from the interplay of Internal Revenue Code special rules for taxing foreign investors, particular tax rules for timber income, tax treaties and other basic tax rules. The focus of the article utilizes federal regulations under the Foreign Investors Tax Act of 1966 (FITA), rather than the later Foreign Investment in Real Property Tax Act (FIRPTA).

Langer, Marshall J. *Europeans Investing in U.S. Real Estate Through Netherlands Antilles and British Virgin Islands Corporations*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 155-71 (1978).

The author examines the use of tax havens in the Netherlands Antilles and the British Virgin Islands as a way to utilize tax avoidance possibilities. More recent developments in United States tax legislation may make such tax havens impracticable.

Lees, Francis A. *Foreign Banking in the United States: Growth and Regulatory Issues*, 5 DEN. J. INT'L L. & POL'Y 463-83 (1975).

One of the earliest articles on the role of foreign banks in the United States; the author bases much of the discussion on statistical information published by the Federal Reserve Board and its banks. The article is exceptionally well-written, and the author's analysis of the advantages and disadvantages of regulating foreign banks is stated with clarity and dispassionate objectivity.

Leonard, Craigh. *Financing Foreign Investment in the United States*, 7 N.C. J. INT'L L. & COM. REG. 233-63 (1982).

From the symposium, *Advising the Foreign Investor in the United States*.

Lichtenstein, Cynthia Crawford. *Foreign Participation in United States Banking: Regulatory Myths and Realities*, 15 B.C. INDUS. & COM. L. REV. 879-976 (1974).

In light of the February 1, 1973, "Fed" Board of Government an-

nouncement of the creation of a System Steering Committee on International Banking Regulation (59 Fed. Res. Bull. 123 (1973)); this lengthy and detailed article surveys the then current legislation and regulations, both state and federal, applying to foreign bank entry. The author suggests some considerations for future legislation which would specifically, not backhandedly, regulate foreign direct investment in banking at the federal level.

Liebman, John R. and Beth Levine. *Foreign Investors and Equal Protection*, 27 MERCER L. REV. 615-28 (1976).

From the symposium, *Foreign Trade and Investment*.

Losey, F. Richard. *Special Problems of Nonresident Aliens*, 36 N.Y.U. INST. FED. TAX'N 1039-79 (1978).

This article provides a detailed step-by-step analysis of the foreign investor's or businessperson's liability to pay United States tax.

Lowe, Ronald E. *The Arizona Alien Land Law: Its Meaning and Constitutional Validity*, 1976 ARIZ. ST. L.J. 253-76 (1977).

The Arizona Alien Land Law prohibits aliens ineligible for citizenship from acquiring Arizona real property and further prohibits them from acquiring interests in associations or corporations with agricultural land acquisitions in the state. Violation of the statute may result in escheat of the property and criminal penalties. This article examines this Arizona law and its constitutional validity.

McCann, John J. *Restrictions on Foreign Investment: United States of America*, 4 INT'L BUS. LAW. 177-99 (1976).

The first of three papers presented at a Paris Conference in October, 1975, on the foreign direct investment situation in the United States and the United Kingdom (the other two papers deal with the U.K. and OPEC countries), this article traces current reporting requirements, identifies general statutes which exclude some types of foreign direct investment (securities regulations, antitrust, taxation, environmental and employee protection, labor laws) and notes the specific prohibiting federal laws in communications, energy and natural resources, and transportation.

This article has the same general format as a later article by Adis

Vila, 16 *Int'l Law*. 1 (1982) which is more detailed.

McCarthy, Paul. *Advising Foreign Investors in the U.S.: Direct Investment*, 61 *CHI. B. REC.* 286-99 (1980).

From the symposium, *Advising Foreign Investors*.

McDonnell, John P. *Tax Aspects of Currency Fluctuations*, 5 *HASTINGS INT'L & COMP. L. REV.* 649-74 (1982).

From the symposium, *Tax Aspects of Foreign Investment: A Symposium*.

Metzger, William D. *Foreign Investors Real Property Tax Act: Historical Perspective and Critical Evaluation*, 5 *W. NEW ENG. L. REV.* 161-201 (1982).

This article first discusses the United States tax treatment of foreigners generally and the withholding and taxation schemes before FIRPTA. The author notes several ways in which foreign real estate investors were, before FIRPTA, able to avoid tax on the disposition of property, and then critically evaluates FIRPTA's response. The article concludes with a discussion of FIRPTA enforcement provisions and a general discussion of withholding of tax on nonresidents—a modification of FIRPTA which the author supports.

Mihaly, Stephen A. *Tax Treatment of Gains Realized by Foreigners on Sale of U.S. Real Property*, 16 *INT'L LAW*. 95-109 (1982).

This article discusses FIRPTA and its applicability to gains from real estate sales.

Morgenstern, Marc H. *Real Estate Securities and the Foreign Investor—Some Problems and a Proposal*, 11 *SEC. REG. L. J.* 332-50 (1984).

This article analyzes when real estate interests (e.g. indirect ownership through a partnership or joint venture interest) are "securities" subject to the registration requirements of the federal securities laws. The mechanics of complying with Securities and Exchange Commission (SEC) rules in order to meet the registration exemption are detailed and the author suggests that the SEC adopt new rules to clarify its administrative position on the exact parameters of the present exemption. Finally, the author proposes a starting point for new federal



legislation.

Morrison, Fred L. *Limitations on Alien Investment in American Real Estate*, 60 MINN. L. REV. 621-68 (1976).

In one of the first major articles on this subject, a Professor of Law at the University of Minnesota traces the historical background of foreign investment in United States real estate, and the then current state and federal restrictions on this type of investment. The possible constitutional and treaty limitations on the restriction of foreign investments in real estate are also discussed.

Morse, III, Joshua M. *Legal Structures Affecting International Real Estate Transactions*, 26 AM. U.L. REV. 34-65 (1976).

This article examines the worldwide regulation of international real estate transactions in two parts. Part one examines the effects of international treaty and customary law upon the different methods of regulating alien land ownership. Part two surveys foreign statutory regulations with emphasis on Yugoslavia, Mexico, and Canada to determine whether these laws may be adaptable to the United States, what obstacles are present to their implementation and typical modes of avoiding the regulations. In his conclusion, the author (Professor of Law and former Dean at the Florida State University Law School) suggests alternative forms of regulatory action including the advantages and disadvantages of: (1) broad statutory controls on alien land ownership which might be preempted by numerous United States treaties; (2) narrow federal statutes regulating land ownership in agricultural or mineral lands - which still might run afoul of broad MFN principles in existing treaties; (3) bilateral treaties; or (4) state statutory schemes. The author suggests that state regulations are the safest and the least likely to upset international relations, but he cautions that whatever scheme is chosen the need for registration and information gathering is paramount.

Moses, Bonnie S. *Taxation of Foreign Investors on Their Capital Gains from the Sale of United States Real Estate*, 16 INT'L LAW. 561-73 (1982).

This paper explores the various principles under which foreign investors have been taxed since 1934 by the United States and describes the basic contents of the congressional bills introduced to "cure" the loopholes existing under present law explaining why the proposed cures may not really ameliorate the problems.

Mundheim, Robert H. and David H. Heleniak. *American Attitudes Toward Foreign Direct Investment in the United States*, 2

J. COMP. CORP. L. & SEC. REG. 221-43 (1979).

A former Professor of Law at the University of Pennsylvania and General Counsel of the Department of Treasury and an Assistant General Counsel of the Treasury Department discuss United States government policy, domestic limitations on foreign investment, and foreign investment in American banks.

Munsell, James F. and Stephen J. Field. *Foreign Acquisitions of U.S. Banks and the Principles of U.S. Banking Law*, 1980 U. ILL. L.F. 163-84.

From the symposium, 1980 *Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the United States—The International Banking Act of 1978*.

Newton, III, William H. *Tax Planning: Foreign Investment in United States Real Property*, 12 GA. J. INT'L & COMP. L. 1-29 (1982).

This article presents a good general discussion of the Foreign Investment in Real Property Tax Act of 1980; however, it is somewhat outdated in light of new regulations.

Nicholson, Gordon J., Paul Farber, Sidney M. Gewanter, and Leslie Samuels. *Foreign Entities in the United States—A Panel Discussion*, 34 N.Y.U. INST. FED. TAX'N 923-1016 (1976).

From the symposium, *Foreign Entities Doing Business in the United States*.

Niehuss, John M. *Foreign Investment in the United States: A Review of Government Policy*, 16 VA. J. INT'L L. 65-102 (1975).

This article traces the development of federal policy toward inbound foreign investment from the early 1970s until the major policy review of 1975, the point at which policymakers' attention was specifically focused on the potential investment power of the OPEC countries. The author traces the development of federal policy toward foreign investment with particular regard to the 1973 Policy Review which highlighted the need to collect empirical data, the Foreign Investment Study Act of 1974, and the 1975 Policy Review. The author notes both the 1973 and 1975 Policy Reviews conclude that existing United States investment laws give adequate protection, but that a current empirical foundation on which to base future policy adjustments would be well-advised. This is a very useful historical piece based primarily upon departmental reports, task force studies, and

congressional hearings.

Nihill, Julian D. *Foreign Investment in United States Real Estate: Proposals to Tax Capital Gains and New Reporting Requirements*, 7 J. REAL EST. TAX 127-38 (1980).

The author discusses a subsequently abandoned Department of Treasury proposal to require reporting of direct or indirect ownership of land by foreigners for the purposes of a more efficient taxing of the capital gains of foreign real estate investors. Existing reporting requirements of foreign land ownership by the Departments of Commerce and Agriculture are detailed, but the author questions the need for such reporting.

Nihill, Julian D. *Foreign Investment in United States Real Estate: Proposals to Tax Capital Gains—An Update*, 8 J. REAL EST. TAX 67-70 (1980).

An update of the above article on real estate reporting requirements.

Norman, William K. *Tax Aspects of Foreign Investment in U.S. Real Estate*, 1985 INT'L BUS. LAW. 213-35.

This article presents a general review of the Foreign Investment in Real Property Tax Act of 1980, current regulations pertaining to FIRPTA and planning suggestions for the acquisition of land by foreigners in the United States. The author originally delivered this article as a paper at a seminar of the International Bar Association Section on General Practice on "Real Estate Investment in the USA and Canada - The Principal Legal Issues for the Foreign Investor" held in Hong Kong in November, 1984. An earlier paper by the same author is *THE LAND AND THE LAW*, edited by Sir Desmond Heap and published by the International Bar Association in 1984 (see the list on monographs and treatises in this bibliography).

O'Connor, Walter F. *Taxation of Foreign Investors*, 38 N.Y.U. INST. FED. TAX'N 22-1 to 22-30 (1980).

This practitioner-oriented general discussion of foreign investors' tax liability in the United States contains many illustrations and examples.

O'Connor, Walter F. and Stephen M. Brecher. *Tax Planning Techniques for Foreign Investors Considering U.S. Operations*, 17 STAN. J. INT'L L. 17-44 (1981).

The authors examine the taxability of foreigners in the United States, techniques which could reduce the tax burden of acquiring a United States company, tax aspects of financing United States opera-

tions, transfer pricing, and alternative methods of structuring FDI operations. The recurrent theme in this article is the importance of advance planning. The authors, International Tax Partners at Peat, Marwick, Mitchell & Co., state: "[t]he techniques mentioned should provide a good checklist for the foreign investor to anticipate problems and to structure transactions in order to avoid costly problems and obtain the maximum benefit from venturing into the American marketplace."

The article presents a broad, practical overview of planning opportunities and pitfalls, and discussion is organized into areas of particular problematic treatment by the Internal Revenue Service.

Oliver, II, Harry Gordon. *U.S. Taxation of Foreign Nationals*, 43 INST. ON FED. TAX 16-1 to 16-41 (1985).

This article examines the tax liability of resident and nonresident aliens in the United States, including the impact of special treaty laws such as the Foreign Investment in Real Property Tax Act of 1980.

Olson, Thomas H. *Tax Considerations in Structuring Foreign Investment in the United States*, 1983 B.Y.U. L. REV. 713-54.

This article identifies some of the factors that affect the cumulative income taxes burdening foreign investment in the United States. The author illustrates a practitioner's approach toward analyzing multiple taxation, United States taxation of foreign persons, relief provisions, and coordinating United States and foreign tax laws. The author specifically discusses some of the tax consequences of Canadians investing in the United States. This article, however, was written before the passage of the United States-Canada Tax Convention of 1984, or the Tax Reform Act of 1984.

Orlin, Howard J. *Foreign Investor Considerations in Acquiring a U.S. Business*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 375-422 (1978).

This article presents a general discussion of the legal and tax provisions applicable to the acquisition of United States businesses by foreign investors.

Orlin, Howard J. and Stanley C. Ruchelman. *U.S. Taxation of Foreign Portfolio Investors*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 29-69 (1978).

The author provides an excellent introduction to the tax considerations applicable to foreign portfolio investments in the United States, examining such matters as: the classification of aliens for tax purposes; how resident status is determined; how various types of income

are taxed to the nonresident alien; the implications to a nonresident alien of engaging in a United States trade or business and of "effectively connected income;" the impact of owning portfolio investments through a separate entity; how and when tax returns must be filed; and how United States taxes are collected.

Patrikis, Ernest T. *Marginal Reserve Requirements on Branches and Agencies of Foreign Banks*, 1980 U. ILL. L.F. 111-28.

From the symposium, 1980 *Univ. of Ill. Law Forum No. 1: Symposium on Regulation of Foreign Banks in the United States - The International Banking Act of 1978*.

Pattison, Joseph E. *The United States-Egypt Bilateral Investment Treaty: A Prototype for Future Negotiation*, 16 CORNELL INT'L L.J. 305-39 (1983).

This article traces the evolution and current status of the Bilateral Investment Treaty (BIT) concept as a part of United States policy. The author first reviews the history and important characteristics of Friendship Commerce and Navigation (FCN) and BIT systems; he then describes and analyzes the U.S.-Egypt BIT (signed Sept. 29, 1982) and finally, examines that treaty's deficiencies and recommends solutions.

Pfeffer, Alan I. and Rikki L. Quintana. *Foreign Investment in the United States: A Nineteenth Century Perspective*, 17 STAN. J. INT'L L. 45-82 (1981).

This is an interesting work, valuable for its historical focus, but somewhat weak in its conclusion. The authors begin with a historical survey of foreign investment in the United States from the latter part of the 18th century to the early part of the 20th century. Part one deals with the "contentious" issue of owning real property; part two examines the exploitation of natural resources; part three discusses foreign purchases of both United States government and privately issued securities; part four examines foreign involvement in several categories of the United States economy (shipping, use of foreign labor, and immigration); and finally, part five considers whether the various United States regulations reveal a general underlying policy.

Phillips, David M. *Foreign Investment in the United States: The Defense Industry*, 56 B. U. L. REV. 843-906 (1976).

The author surveys United States laws which restrain foreign direct investment in the defense industry, examining arguments for and against national treatment for foreign direct investment in the United States and discussing the interests most affected by foreign direct investment in the defense industry. The author points out the recent

regulations aimed at foreign direct investment in the defense industry, and specifically analyzes the Industrial Security Program, as well as laws less frequently applied (e.g. Title 10, Chap. 135 of the United States Code entitled Encouragement of Aviation; Section 408 of the Federal Aviation Act, and Section 37 of the Shipping Act of 1916).

This exceptionally well documented article is based on a report the author prepared in April 1976 (known as the "Phillips Report") for the Department of Commerce for submission to Congress. The author concludes that the existing legislation does not offer an integrated approach because some of it is directed only at the protection of classified information and most of it does not cover all aspects of the defense production. The author concludes by offering guidelines for streamlining the existing legislation.

Phillips, David M. *Restraints on Foreign Investment in the Merchant Marine — An Asset or Liability to United States Interests?* 11 CORNELL INT'L L.J. 1-49 (1978).

In this article, the author discusses marine transportation in the United States and its relationship to national interests. He then examines investment restraints on foreign investors and the policy reasons underlying these restraints.

Povell, Roy A. and L. Frank Chopin. *Pre-Immigration Tax Planning: Income, Estate, and Gift Tax Planning for the Nonresident Alien Moving to the United States*, 1 INT'L TAX & BUS. LAW. 47-81 (1983).

The authors provide this article as a concise survey of tax planning opportunities under the United States law for aliens intending to settle in this country.

Protti, Maria Evelyn. *Foreign Investments in the United States, 1976-1980: A Selected Annotated Bibliography*, 17 STAN. J. INT'L L. 83-97 (1981).

This is a brief bibliographic survey of predominantly nonlegal books and articles on foreign investment in the United States.

Pugh, Richard C. and Leslie Samuels. *U.S. Tax Aspects of Acquisitions of U.S. Corporations by Foreign Corporations*, 34 N.Y.U. INST. FED. TAX'N 991-1016 (1976).

From the symposium, *Foreign Entities Doing Business in the*

*United States.*

Rabinovitz, Joel. *Foreign Investment in United States Real Estate*, 6 HASTINGS INT'L & COMP. L. REV. 599-626 (1983).

This article surveys the Foreign Investment in Real Property Tax Act (FIRPTA) in outline form with citations to the Internal Revenue Code and FIRPTA regulations. The major FIRPTA areas treated include: operating income; dispositions of United States real property; and reporting requirements. This article is primarily helpful for general explanatory purposes.

Razook, Richard J. and Leon O. Stock. *Proposals for Change: U.S. Tax Laws Affecting Foreign Investment in U.S. Real Estate*, (Pts. 1 & 2), 54 FLA. B. J. 151-54 (1980), 54 FLA. B. J. 231-37 (1980).

A general discussion of the reasons for foreign investment in United States real estate, the tax considerations involved in such investments, and the applicable tax treaties.

Reisner, Ralph. *A Developmental Perspective on the International Banking Act of 1978*, 1980 U. ILL. L.F. 1-11.

From the symposium, 1980 U. Ill. L.F. No. 1: *Symposium on Regulation of Foreign Banks in the United States - The International Banking Act of 1978*.

Richards, David A. *FIRPTA-the-second: Disclosure and Withholding*, 58 TAXES INT'L 15-24 & 71-82 (1984).

The former Chairman of the ABA Committee on Foreign Investment in United States Real Estate authors this comprehensive and detailed survey of the first two versions of the Foreign Investment in Real Property Tax Act (FIRPTA).

Richards, David A. *Real Estate Counsel, Contract and Closing for the Foreign Investor*, 14 REAL PROP., PROB. & TRUST J. 757-846 (1979).

An extremely useful and practical article with copies of different forms and documents, including a full set of documents on the formation and operation of an investment management corporation in the Netherlands Antilles. The author describes immigration requirements applicable to foreign investors, investment choices, reporting requirements, financing, land transfer formalities and title insurance, partnership agreements as a means of investment, foreign exchange controls, and many other legal and practical issues a foreign investor may

encounter when investing in the United States.

Richards, David A. *Telling the Taxman: Reporting and Avoidance Under FIRPTA*, 17 REAL PROP., PROB. & TRUST J. 1-17 (1982).

This article presents a careful analysis of the reporting provisions of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) and an explanation of its relationship to other federal disclosure acts applicable to foreign investors.

Richards, David A. *Telling the Transferee: Disclosure and Withholding Under FIRPTA, as Amended*, 19 REAL PROP., PROB. & TRUST J. 826-58 (1984).

This article discusses an important aspect of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).

Richards, David A. *Trial by Certification: Establishing Non-Foreign Status (and Other Points) Under FIRPTA Withholding Regulations*, 13 PROB. AND PROP. 35-45 (Spring 1985).

The author provides an excellent examination of the regulations, made pursuant to the tax reform legislation of 1984, requiring withholding of ten percent of the purchase price payable to a foreigner who sells United States real property.

Roberts, Maurice A. *The General Practitioner - Pitfalls in Counselling Aliens and Immigrants*, 58 INTERPRETER RELEASES 689-97 (1981).

This article outlines and discusses the problems encountered by inexperienced business people and lawyers attempting to arrange their own immigration to and residence in the United States.

Rooney, Francis. *Regulation of Foreign Banking Activity in the United States*, 10 ST. MARY'S L. J. 483-510 (1979).

The author examines the United States regulatory framework for foreign banks after the enactment of the International Banking Act of 1978.

Rosso, David J. *Advising Foreign Clients with Regard to the Acquisition of an Existing U.S. Enterprise*, 61 CHI. B. REC. 275-83



(1980).

From the symposium, *Advising Foreign Investors*.

Roulac, Stephen D. *Advising Foreign Investors in U.S. Real Estate*, 9 REAL EST. L.J. 108-27 (1980).

This interesting "how-to" article is both informative and easy to read as it analyzes foreign investment operations in United States real property and the laws relating to such investments. The author examines reasons for the acquisition of United States real property by foreigners, and offers how their investment objectives may best be achieved under the existing tax and disclosure laws.

Rowe, Frederick M. *Antitrust Aspects of European Acquisitions and Joint Ventures in the United States*, 12 L. & POL'Y INT'L BUS. 335-68 (1980).

Recent economic and political developments in the United States and Europe have presented many European firms with new commercial opportunities for investment in the United States. This article focuses specifically on the antitrust aspects of European expansion into United States markets. The author discusses general antitrust considerations and examines the specific risks involved in European acquisitions of United States firms with respect to United States antitrust laws. In light of these risks, the author identifies several issues that must be addressed by the European and United States firms in their acquisition and merger antitrust planning. Finally, as a variation in this planning, the alternative investment route of joint ventures is discussed.

Ruchelman, Stanley C. *Principles Relating to Organization and Taxation of Foreign Investment Activity in the United States*, 7 N.C. J. INT'L & COMP. L. 177-205 (1982).

With the general goal of providing readers with a starting point for their own research, the author provides general tax advice on structural and operational matters—both of which are relevant to profit maximization and the avoidance of costly mistakes when advising foreign clients on the acquisition of United States businesses. The author analyzes the available structures for entities and how each would be subject to United States taxes under the Foreign Investment in Real Property Tax Act (FIRPTA) and other federal statutes. The author also stresses that familiarity with the existing income tax treaties is essential when planning a transnational investment.

Sawyer, Michael T. *Encouraging Foreign Investment in the United States by Limiting the President's Emergency Authority under the Trading with the Enemy Act*, 27 MERCER L. REV. 681-

715 (1976).

From the symposium, *Foreign Trade and Investment*.

Scarborough, Kirby. *The Foreign Investor in the United States: Disclosure, Taxation and Visa Laws*, 19 INT'L LAW. 85-115 (1985).

This general, practitioner-oriented overview of the laws and regulations affecting foreign investors in the United States includes the following topics: current disclosure requirements for foreign direct and portfolio investments; foreign investments in agricultural land; taxation of foreign recipients of United States income—as well as the applicable tax treaty exemptions; and visa index for foreign investors.

Schmitz, John W. *Immigration Possibilities for Foreign Investors*, 25(4) PRACT. LAW. 73-81 (1979).

This short article outlines the various classes of visas for immigrants and nonimmigrants and briefly suggests steps that potential investors from other countries can take in order to obtain permanent residency in the United States. The author provides citations to relevant laws and regulations.

Schulweis, Harvey. *Foreign Investments in United States Real Estate*, 38 INST. FED. TAX'N 15-01 to 15-21 (1980).

This article covers many areas of concern in foreign investment in United States real estate, including portfolio management, partnership tax considerations, real estate investment trusts, and tax treaties between the United States and foreign countries, but places particular emphasis on the tax considerations of such investment.

Seidman, Herta Lande. *State and Local Government Incentives for Foreign Investment: New York's Approach*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 621-38 (1978).

This helpful guide on the subject is equally useful for decisions on foreign investments in states other than New York.

Sturm, Simon G. *Taxation of the Foreign Investor in the United States*, 55 TAXES 542-65 (1977).

This is a helpful article which treats the United States tax laws applicable to foreign investors, explains some key principles and concepts, and highlights the application of United States tax laws to specialized investment transactions by foreigners. The article is useful for general tax planning guidelines but also examines the consequences of tax structuring and some of the potential advantages of

investing in tax haven communities.

Sullivan, John J. *Application of Margin Rules to Tender Offers by Foreign Investors*, 8 N.C. J. INT'L L. & COM. REG. 17-38 (1982).

This article examines the applicability of United States margin rules, under the Securities Exchange Act of 1934, to cash tender offers by foreign investors who borrow abroad to acquire United States publicly held corporations. While United States margin rules are not generally applicable to foreigners, both the functioning of the margin rules and the purposes of the margin regulations might be extended such that regulatory coverage would include all borrowings by foreign investors acquiring corporate control, as Congress proposed in 1981. The author concludes that at the present time extending the margin requirements to foreign purchases would be unwise because the intrusions into foreign lending practices and deterrent effect on foreign investment would outweigh the benefits of loophole plugging in the existent regulations especially when the original purpose of the margin rules is still under scrutiny.

Taylor, Willard B. *Financing of Foreign Direct Investment*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 423-36 (1978).

This paper discusses the following financing areas: (1) borrowings to finance direct investments in the United States by foreign corporations; (2) tax considerations; (3) the "thin capitalization" problem; (4) borrowings by United States corporations from foreign lenders; (5) withholding taxes; (6) borrowings prior to the expiration of interest equalization tax; (7) borrowings since the expiration of interest equalization tax; (8) withholding tax indemnities; and (9) other public issues.

Taylor, Willard B. *Investment Funds and Investments in Oil and Gas*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. 437-48 (1978).

This is an excellent survey of business, law and tax issues pertaining to foreign investment in the United States oil and gas industry.

Tillinghast, David R. *A Matter of Definition: "Foreign" and "Domestic" Taxpayers*, 2 INT'L TAX & BUS. LAW. 239-72 (1984).

A prominent specialist on international taxation examines the law on the determination of the foreign or domestic status of a taxpayer for the purposes of tax liability under the United States federal tax

law. He concludes that the law on this subject is far from clear.

Treumann, Walter. *Foreign Direct Investment: Basic Considerations*, 61 CHI. B. REC. 255-62 (1980).

From the symposium, *Advising Foreign Investors*.

Trumpy, Thomas B. *Formulation of Government Financial Regulations and Incentives for Foreign Private Direct Investment: A Methodological Inquiry*, 3 B.C. INT'L & COMP. L. REV. 29-66 (1979).

This article focuses on the theory, economics, and effectiveness of attempted regulation of foreign direct investment activities in general. The author sets out policy considerations, economic and political purposes for financial regulation of foreign direct investment, surveys incentives and policies, and then examines the scope and methods of regulation. He concludes that regulation of foreign direct investment can be effective, but only after clear, up-front formulation of economic and policy goals that the chosen regulatory framework is designed to achieve.

Vila, Adis M. *Legal Aspects of Foreign Direct Investments in the United States*, 16 INT'L LAW. 1-49 (1982).

This very useful article explores the special problems posed to the foreign investor by the complex scheme of United States regulations and laws of general applicability. The author briefly surveys the federal regulation of key industries — government contracting, coastal shipping, aviation, communications, land use, energy sources, entry and immigration, and environmental protection. The article also traces regulation of the banking industry including: federal banking entities (International Banking Act of 1978); Edge Act Corporations (12 U.S.C. §§ 611-632); state banking entities; and U.S. banks as suppliers of funds to investing foreigners. The legislation discussed includes antitrust laws, securities regulations, and labor laws.

Wallich, Henry C. *Perspectives on Foreign Banking in the United States*, 5 NW. J. OF INT'L L. & BUS. 711-21 (1983-84).

A short examination of the reasons for foreign bank entry into the United States by a member of the board of Governors of the Federal Reserve System.

Wangerin, Paul T. *A Beginner's Guide to Business-Related Aspects of United States Immigration Law*, 5 NW. J. OF INT'L L. & BUS. 844-70 (1983-84).

The author presents helpful introductory guide to the procedures and different types of visas applicable to foreign business people and

investors entering the United States.

Weisman, Joshua. *Restrictions on the Acquisition of Land by Aliens*, 28 AM. J. COMP. L. 39-66 (1980), reprinted in 4 IMMIGRATION & NATIONALITY L. REV. 1-28 (1981).

This is a broad comparative survey of policies and reasons for the imposition of legislative restrictions on the acquisition of land by foreigners. The article examines in great detail the nature of such restrictions and the groups of persons they are intended to affect; moreover, it discusses exemptions to such restrictions based on social, economic or political grounds. The article is a major jurisprudential study on the subject of foreign land ownership restrictions.

Weiss, Michael N. *Immigration by Foreign Businessmen and Investors*, 56 FLA. B. J. 421-25 (1982).

This article surveys and explains the various nonimmigrant visa categories which allow the foreign visitor to engage in business or to make an investment in the United States. Because of its length, however, the work is only a basic discussion of the often complex and confusing United States immigration laws and procedures.

Williams, Robert L. *Permanent Establishments in the United States*, 29 TAX LAW. 277-354 (1976).

The existence of a "permanent establishment" in the United States provides a treaty nexus for the taxation of business and investment income of aliens and foreign corporations in this country. The author examines in great detail the various factors which bring about the creation of such "permanent establishments" under the United States tax law.

Williams, Robert L. *Tax Consequences of Foreign Investment in the New York Insurance Exchange*, 1980 INS. L. J. 433-46; also 58 TAXES 610-18 (1980).

This article describes possible tax and economic advantages resulting from foreign investment in a corporate syndicate and provides guidelines by which the foreign investor may avoid the characterization of having a principal/agent relationship with a United States syndicate. The article is written as a response to the March 31, 1980, opening of the first United States insurance exchange in New York City which gave substantial tax and economic incentives to foreign persons and foreign corporations for investment in either corporate or noncorporate Exchange underwriting syndicates.

Wilner, Gabriel M. and Terry K. Smith. *Is Georgia on Their Minds?—Some Legal Aspects of Investment and Trade by For-*

*eign Business Enterprises*, 27 *MERCER L. REV.* 629-56 (1976).

From the symposium, *Foreign Trade and Investment*.

Yelpaala, Kojo. *The Efficacy of Tax Incentives Within the Framework of the Neoclassical Theory of Foreign Direct Investment: A Legislative Policy Analysis*, 19 *TEX. INT'L L. J.* 365-414 (1984).

This article addresses the important issue of whether there is any theoretical basis for a legislative policy of inducing foreign direct investment behavior through tax incentives. The author asserts that tax incentives have been proven ineffective in attracting foreign direct investment and are based upon a conceptually flawed economic theory. The author explains the traditional neoclassical economic theory of foreign direct investment (the capital arbitrage theory) and why it is flawed. He seeks to demonstrate "the need to shift the focus of incentive granting countries away from tax inducements to other, possibly more effective policies" (i.e. nontax instruments including cost elements, multinational corporate intrafirm transactions, tariffs, and cash flow considerations). The article provides a valuable bibliographical survey of published studies on tax incentive legislation.

Young, John H. *The Acquisition of United States Businesses by Foreign Investors*, 30 *BUS. LAW.* 111-28 (1974).

This article examines the legal aspects of acquisitions of United States businesses by foreign investors and discusses the relevant United States laws in the area with emphasis on antitrust laws and securities regulations. The tax considerations for both the purchaser and seller of the business are also examined.

Zagaris, Bruce. *The Agricultural Foreign Investment Disclosure Act of 1978: How Will It Affect the Market in U.S. Real Estate?*, 8 *REAL EST. L.J.* 3-21 (1979).

The author examines the scope of the Agricultural Foreign Investment Disclosure Act, and its impact on foreign investors.

Zagaris, Bruce. *Investment by Nonresident Aliens in United States Real Estate*, 31 *U. MIAMI L. REV.* 565-613 (1977).

This article focuses on the domestic and foreign tax implications involved in foreign investment in United States real estate. Forms of ownership, types of property, currency restrictions, estate and gift taxes, and double taxation are discussed as well as other planning mechanisms for foreign investment.

Zahn, Donald J. *Vehicles for Foreign Investment in United States Real Estate and Mineral Interests—Two Case Studies*,

1978 TAX MGMT. INT'L J. 14-23 (April).

This is a brief case study of both investment in United States mineral interests and investment in United States real estate. The author illustrates the complexities connected with structuring such investments, and emphasizes that choosing the appropriate vehicle for entering, operating in and ultimately terminating operations in the United States is a crucial factor.

Zedalis, Rex J. *Disclosure of Foreign Investment in U.S. Agricultural Land*, 31 MERCER L. REV. 711-25 (1980).

The author describes the purposes and operation of the Agricultural Foreign Investment Disclosure Act enacted by Congress in 1978. The Act requires the filing of information about any foreign acquisitions or transfers of agricultural land with the Agricultural Stabilization and Conservation Service Office of the United States Department of Justice. The author discusses the filing procedures, and examines the extent to which they apply to land transactions involving foreign interests. Further, the author points out several gaps and loopholes in the laws.

Zimmerman, Neal W. and Gregory P. Hickey. *Foreign Investment in U.S. Real Estate Reporting Requirements*, 14 TAX ADVISER 214-17 (1983).

This is a short, up-to-date article on the actual workings of the Foreign Investment in Real Property Tax Act (FIRPTA). Relying heavily on FIRPTA Temporary Regulations as issued by the IRS, the author discusses the FIRPTA changes effectuated by the Economic Recovery Tax Act of 1981 (ERTA), and notes that although the Service Regulations under FIRPTA interpreting the "reporting requirements" are significant in scope, the regulations pertaining to recognition provisions are only minor.

Zimmerman, Neal W. *Foreign Investment in U.S. Real Estate—A New Set of Rules*, 12 TAX ADVISER 324-35 (1981).

The author discusses the history, provisions, and effect of the Foreign Investment in Real Property Tax Act (FIRPTA).

#### IV. NOTES

*Alien Land Laws: Constitutional Limitations on State Power to Regulate*, 32 HASTINGS L.J. 251-83 (1980).

This note is a review of the historical restrictions on the ownership of land by aliens which came in three waves. The first wave began in the 1880s and ended around the turn of the century. The first restric-

tions were seen as necessary to alleviate depressed agricultural conditions and to guard against absentee ownership. The second wave occurred in the 1920s when anti-Japanese sentiment was strong on the West Coast. Racially oriented, this wave began to slow down in the 1930s, but it revived for a short time during the Second World War. The third wave began in the 1970s as an emotional response to largely incorrect media reports of a growing rate of acquisition of real property in the United States by foreigners.

Laws restricting alien ownership of land raise a plethora of constitutional questions about federal and state competence to legislate in such matters. State powers may be limited by the exclusive powers of the federal government to regulate foreign commerce and conduct international relations. The federal, as well as state, laws may also be affected by equal protection rights as well as treaty arrangements.

*Alien Ownership of Kansas Farmland: Can it be Prohibited?*, 20 WASHBURN L.J. 514-34 (1981).

This note discusses the history of state and federal restrictions, restraints on state legislation, and recent Kansas proposals affecting alien ownership of land.

*Alien Ownership of South Dakota Farmland: A Menace to the Family Farm?*, 23 S.D. L. REV. 735-62 (1978).

This note analyzes three problems associated with foreign-owned farmland in South Dakota: (1) the amount of farmland owned or controlled by nonresident aliens and its impact on agriculture in the state; (2) the legal and constitutional constraints on the legislature's ability to restrict foreign land ownership; and (3) whether restricting ownership is sound policy and whether state legislation is the best vehicle for implementing a restrictive policy. The note concludes that there is insufficient statistical evidence regarding alien ownership of farmland, and that regulation should be federal since any restrictions on ownership by states would be tantamount to making foreign policy.

*Capital Gains Taxation of Foreign Investors in United States Real Estate: The Foreign Investment in Real Property Tax Act of 1980*, 13 RUTGERS L.J. 117-62 (1981).

This note discusses the Code's statutory framework for taxation of foreign investors prior to passage of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) and explains how foreign investors were able to escape taxation on gains derived from the sale of United States real estate. The provisions of the FIRPTA are then explained in detail, and their effectiveness in closing off capital gains taxation escape routes discussed and analyzed. Finally, tax planning



alternatives still available to the foreign investor in United States real estate are examined.

*Closing the Barndoor: A Suggested United States Response to International Restrictions on Foreign Acquisition of Agricultural Land*, 10 CAL. W. INT'L L.J. 536-71 (1980).

This note examines the historical open-door policy of the United States toward foreign direct investment in agricultural lands, and discusses existing legislation. In part, the note defines the problem with foreign direct investment in agricultural lands, analyzes both local and national policies made and their constitutional implications, and surveys policies of other foreign nations (Canada, Mexico, OPEC countries, Switzerland, Andean Pact countries and Australia). Finally, the author recommends new legislation which would either restrict investment through federal legislation or pursue mixed federal-state regulations.

*Closing the Open Door to Foreign Direct Investment*, 15 CORNELL INT'L L.J. 121-47 (1982).

This is a survey of the political and economic ramifications of foreign direct investment in the United States. This note specifically examines several congressional proposals of the early 1980s to curtail the freedom of such investments.

*Direct Foreign Investment in Cable Television Systems: An Analysis of Alien Ownership in the Context of the United States and Canada*, 10 SYRACUSE J. INT'L L. & COM. 113-33 (1983).

There has been widely divergent treatment of foreign owners of cable television in the United States and Canada. The United States, as the federal regulatory agencies apply the Communications Act of 1934, does not prohibit foreign ownership of cable systems. By contrast, Canada imposes restrictions on foreign ownership of broadcast stations, cable television systems and common carriers. This note discusses the current status of foreign direct investment in United States cable television, looks at traditional justifications for imposing alien ownership restrictions, expresses disagreement with the Federal Communication Commission's 1980 Report and Order which failed to apply appropriate provisions of the 1934 Act, and, finally, calls for American regulation of cable television as a common carrier to ensure more balanced international investment opportunities between the United States and Canada.

*Disclosure of Foreign Direct Investment in United States Agricultural Property*, 12 VAND. J. TRANSNAT'L L. 665-88 (1979).

This well-written note provides a valuable source of historical back-

ground and legislative history as it examines the background and operation of the Agricultural Foreign Investment Disclosure Act of 1978. The author discusses the potential conflict of the Act with state disclosure laws and United States treaty obligations.

*Economic and Political Impacts of Taxation of Foreign Investment in United States Agricultural Land*, 15 *TEX. INT'L L.J.* 287-315 (1980).

This pre-FIRPTA comment examines the impact of foreign direct investment in United States agricultural lands and discusses the possible damaging consequences of the legislation proposed in the 96th Congress on United States capital formation (12 bills sought to end the current exemption from capital gains tax on sales of American assets which are not "effectively connected" with a United States trade or business).

*An Evaluation of the Need for Further Statutory Controls on Foreign Direct Investment in the United States*, 8 *VAND. J. TRANSNAT'L L.* 147-87 (1974).

This well-researched note provides good background information explaining the basis for the increased attention given foreign direct investment in the late 1970s. The author examines whether it is in the best economic and political interest of the United States to maintain a policy of allowing unrestricted foreign direct investment. The above question is analyzed in light of three congressional proposals to restrict, prohibit, or increase reporting requirements on foreign investment transactions. The note also traces the federal statutes regulating foreign direct investment and compares United States regulatory practice with policy. Finally, the note posits the reasons for increased growth in foreign direct investment in the United States and concludes with an analysis of the potential political and economic repercussions of foreign investment.

*Extending Margin Requirements to Foreign Investors: Proposed Amendments to the Securities Exchange Act of 1934*, 16 *GEO. WASH. J. INT'L L. & ECON.* 659-85 (1982).

This note examines the purposes behind federal margin requirements for lending institutions under the Securities Exchange Act of 1934 and the expansion of those requirements in 1970 to regulate not only lenders, but also foreign investors who borrow to buy securities.

*The Extraterritorial Application of Securities Laws*, 3 *INT'L BUS. LAW.* 173-95 (1975).

This note provides an excellent discussion of the applicability of United States securities laws to actions committed outside the terri-

tory of the United States and considers the effect of such laws on the investment activities of foreigners.

*Foreign Access to U.S. Fisheries in the Wake of the Fishery Conservation and Management Act*, 18 VA. J. INT'L L. 513-67 (1978).

This note discusses foreign direct investment in the United States fishing industry and details current and proposed restrictions on foreign investment in this area.

*Foreign Direct Investment in the United States: Possible Restrictions at Home and a New Climate for American Investment Abroad*, 26 AM. U.L. REV. 109-53 (1976).

This note treats the same legislative proposals as discussed in the notes, *U.S. Regulation of Foreign Direct Investment: Current Developments and the Congressional Response*, 15 VA. J. INT'L L. 611 (1975), and *The Rising Tide of Reverse Flow: Would Legislative Breakwater Violate U.S. Treaty Commitments*, 72 MICH. L. REV. 551 (1974) concerning the attempts of the 94th Congress to control inbound foreign direct investment. Comparatively, the note is fairly well researched and provides the latest data of the three articles, including discussion of the proposed Foreign Investment Reporting Act of 1975, the Foreign Government Control Act of 1975, and the more seriously considered Foreign Investment Disclosure Act of 1975.

*Foreign Direct Investment in the United States: Disclosure Regulations*, 12 GA. J. INT'L & COMP. L. 193-207 (1982).

This brief general survey of the pro and con arguments regarding the effects of increased foreign direct investment in the United States concludes that more precise and reliable data is needed. The note details the operations of the International Investment Survey Act (IISA) of 1976 as implemented by the Bureau of Economic Analysis (Department of Commerce) and the author points out the needs for reevaluation of the IISA.

*Foreign Direct Investment in United States Real Estate: Xenophobic or Principled Reaction?*, 28 U. FLA. L. REV. 491-520 (1976).

This note traces federal and state methods of regulating real estate investments by foreigners and surveys the methods of regulating foreign direct investment in Canada, Japan, Latin America and Saudi Arabia. The author also considers the constitutional questions in regulating foreign investment.

*Foreign Investment—The Agriculture Foreign Investment Disclosure Act of 1978*, 19 HARV. INT'L L.J. 1026-31 (1978).

This note provides a good, but brief, description of the Agricultural

Foreign Investment Disclosure Act (AFIDA) as complimentary legislation to the International Investment Survey Act (IISA) of 1976.

*Foreign Investment in Cable Television—The United States and Canada*, 6 HASTINGS INT'L & COMP. L. REV. 399-431 (1983).

Focusing on the increased Canadian investment in United States cable television companies, this note discusses the application of federal restrictions on foreign ownership of interests in American telecommunications generally to the specific case of cable television. The author concludes that Congress should require United States citizenship for investment in cable television businesses.

*Foreign Investment: Investment Disclosure Requirements—Amended Regulations to Implement the International Investment Survey Act of 1976*, 22 HARV. INT'L L. J. 694-97 (1981).

This note discusses the amended regulations promulgated to implement the International Investment Survey Act of 1976.

*Foreign Investment in United States Energy and Mining: Crossroads for Policy*, 8 COLUM. J. ENVTL. L. 237-67 (1982).

This note highlights and analyzes current United States law and policy regarding foreign investment in domestic mining and energy (i.e. oil and gas) operations, and discusses legislation then pending before Congress. Canadian restrictions in these same areas are also analyzed as possible prototypes for future United States legislation. Current United States laws including the Mineral Lands Leasing Act of 1920 and the Outer Continental Shelf Lands Act of 1976 are also considered.

*Foreign Investment in United States Real Estate: Congress Acts to Reduce Incentives*, 7 INT'L TRADE L. J. 150-65 (1981/82).

This brief examination of the regulatory schemes of Foreign Investors Tax Act of 1966 (FITA) and Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) explores the concept of tax treaties and concludes with planning ideas for foreign investors.

*Foreign Investment in U.S. Real Estate: Federal and State Laws Affecting the Foreign Investor*, 14 REAL PROP., PROB. & TRUST J. 1-41 (1979).

In what is essentially an update of the information contained in Morrison's article in 60 MINN. L. REV. 621 (1976), this note provides a helpful survey and summary of state laws regulating foreign invest-

ment in United States real estate current to May 1, 1978.

*Foreign Investment in U.S. Real Estate: Federal and State Laws Affecting the Foreign Investor—An Update*, 16 REAL PROP., PROB. & TRUST J. 465-87 (1981).

As a supplement to the information contained in the 14 REAL PROP. PROB. & TRUST J. article (above), this note examines the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978 and makes brief reference to the Foreign Investment in Real Property Tax Act of 1980.

The update on new state legislation runs from May 1, 1978 until July 1, 1980 and includes all relevant state laws approved in the interim. The state laws discussed include Arkansas, Illinois, Iowa, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia.

*Foreign Investment in the United States: Is America for Sale?*, 12 HOUSTON L. REV. 661-88 (1975).

This general review of the investment situation in the United States (in the early 1970s) draws some conclusions about the desirability of allowing the continued unfettered flow of foreign direct investment in the United States. The author surveys some of the legislative proposals of the 93rd and 94th Congress to curtail such investments and expresses the opinion that there is no need for the additional legislation. This note concludes with a call for more precise and comprehensive data on foreign direct investment in the United States.

*Foreign Investment in United States Real Estate: Federal and State Regulation*, 12 CASE W. RES. J. INT'L L. 231-47 (1980).

This is another general survey on state regulation of foreign direct investment (similar to the articles by Fred L. Morrison, *Limitations on Alien Investment in American Real Estate*, 60 MINN. L. REV. 621 (1976) and Mason Gaffney, *Social and Economic Impacts of Foreign Investment in United States Land*, 17 NAT. RESOURCES J. 377 (1977)). The note concludes that the potential for comprehensive federal regulation is growing, but that the diverse state regulations reflect a system based on local needs and perceptions. The note discusses several methods by which the present regulations could become predominantly federal, but questions the ultimate wisdom of such a policy choice.

*Host Countries' Attitudes Toward Foreign Investment*, 3 BROOKLYN J. INT'L L. 233-57 (1977).

The author of this note concludes that a trend exists among devel-

oped and developing nations to impose restrictions upon incoming foreign direct investments.

*Impact of FIRPTA and ERTA on Florida Real Estate Investment by a Netherland Antilles Corporation*, 6 NOVA L. J. 163-74 (1981).

For many years incorporation in the Netherlands Antilles functioned as an effective tax avoidance device for foreign investors in United States real estate. The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) attempted to close that device. This note discusses the possible tax impacts of FIRPTA and the Economic Recovery Tax Act of 1981 (ERTA) on foreign investors utilizing the corporate screen in the Netherlands Antilles.

*Income Taxation—Disposition of Investments in United States Real Property—Enactment of I.R.C. §897*, 4 FORDHAM INT'L L.F. 425-37 (1981).

This note explores the historical methods previously utilized by nonresident aliens and foreign corporations to avoid the payment of capital gains tax on the disposition of real property held in the United States and examines the newly-implemented section 897 of the Internal Revenue Code. The author discusses whether section 897 is likely to achieve the goal of equal tax treatment for domestic and foreign investors on the disposition of United States real property.

*International Banking Facilities*, 8 N.C. J. INT'L LAW & COM. REG. 61-75 (1982).

This note discusses federal regulation of international banking facilities and related state tax incidents.

*International Investment Survey Act: The High Cost of Knowledge*, 14 L. & POL'Y INT'L BUS. 481-504 (1982).

This note provides a comprehensive historical analysis of foreign direct investment activities leading to the passage of the International Investment Survey Act (IISA) in 1976. The author examines the IISA in some detail and questions its unclear priorities. The author calls upon the Commerce Department to request that Congress clarify the Act's priorities since the author believes that "achieving accurate, worthwhile, and comprehensive information on the nature and extent of foreign direct investment in the U.S." will lead to a "substantial decrease" in foreign direct investment. The author argues that decreases will result because of the burdensome effects of reporting and because of the deterrent effect of required

identification.

*Making Active and Passive Investments in the United States: Appropriate Immigrant Status*, 1 IMMIGRATION L. REP. 25-32 (1981).

This note outlines the possibilities for novel and creative uses of the various temporary visa categories on behalf of clients who do not qualify for one of the relatively rare visas explicitly available to foreign investors. The author discusses how various economic activities and professional qualifications can affect immigration status.

*Monitoring Foreign Investment in United States Real Estate*, 2 B.U. INT'L L.J. 29-49 (1983).

This note calls for a comprehensive monitoring system of foreign investment in United States real estate. The author discusses United States market conditions which encourage foreign direct investment in real estate, analyzes public opinion favoring regulations as well as government rationale for opposing further regulations, summarizes the major federal actions taken, and proposes an information gathering system.

*Our Land is Your Land: Ineffective State Restriction of Alien Land Ownership and the Need for Federal Legislation*, 13 JOHN MARSHALL L. REV. 679-715 (1980).

This author argues that the present state laws on the restriction of foreign land ownerships in the United States are a hodgepodge of confusion and inconsistency. Although they are a nuisance for the ordinary immigrants coming to settle in this country, they are easily circumvented by the large investors through the subterfuge of corporate or trust arrangements. The author concludes that the policy as well as effectiveness of such restrictions are questionable.

*The Regulation of Foreign Banking in the United States After the International Banking Act of 1978*, 65 VA. L. REV. 993-1030 (1979).

This note evaluates the regulations concerning foreign banking activities in the United States after the International Banking Act (IBA) of 1978. Patterns of state regulation are examined and contrasted to determine whether local regulation can and should play a role in the international banking field. The author considers the merits of the new IBA regulating structure and concludes that there is a need for federal supervision of foreign banking activities in the United States, but expresses concern with overregulation that could

dampen the new competitive spirit in the banking industry.

*Regulation of Foreign Investment in U.S. Real Estate*, 33 TAX LAW. 586-629 (1980).

Taxation of foreign investment in United States real estate is examined under the federal code, tax treaties, proposed legislation, state laws, and federal disclosure laws.

*The Rising Tide of Reverse Flow: Would a Legislative Breakwater Violate U.S. Treaty Commitments?*, 72 MICH. L. REV. 551-92 (1974).

This rather unfocused note explains the potential problems which the United States may encounter by not controlling foreign investment — particularly “portfolio” investment (where more than 5 percent of control in a United States corporation is acquired by a foreign investor). The author surveys legislative proposals to restrict such investments which were aired in the Congress in the early 1970s and examines the relevant treaties which would potentially preempt such proposals.

*Rights and Restrictions on Interests of Aliens in U.S. Estates: Federal and State Laws Affecting Administration and Distribution of U.S. Estates in Which Aliens Hold Interests*, 15 REAL PROP., PROB. & TRUST J. 659-99 (1980).

This note is one of the clearest and most thorough surveys of United States federal and state laws affecting foreign ownership or conduct of business in this country. The information is presented in the form of an easily verifiable checklist.

*The Scope of the Withholding Tax on Payments to Aliens: A Survey*, 22 COLUM. J. TRANSNAT'L L. 359-88 (1984).

This is a very useful note on tax withheld from all types of income derived by foreigners in the United States.

*Selected Bibliography—Foreign Investment in United States Real Estate*, 14 REAL PROP., PROB. & TRUST J. 42-44 (1979).

This bibliography lists sources on foreign investment in the United States and its regulation by federal and state laws with a special emphasis on investment in land.

*Selected Bibliography: Foreign Investment in U.S. Real Estate*, 16 REAL PROP., PROB. & TRUST J. 488-500 (1981).

This short bibliography cites additional sources relevant to federal and state laws affecting foreign investment in United States real



estate.

*State Regulation of Foreign Investment*, 9 CORNELL INT'L L.J. 82-100 (1975).

This note surveys the current state regulations of foreign investment in light of their constitutionality under both federal treaties and the 14th Amendment (Due Process Clause). The author proposes that the United States negotiate new commerce and trade treaties with critical trading partners so as to render ineffective onerous state regulations.

*State and Local Industrial Location Incentives—A Well-Stocked Candy Store*, 5 J. OF CORP. L. 517-687 (1982).

This note provides a thorough examination of the structure of financial incentives, tax concessions, labor conditions, environmental regulations, land use restrictions and other factors involved in the decision-making process of selecting industrial sites.

*State Taxation of Foreign Source Income Through Worldwide Combined Reporting*, 17 VAND. J. TRANSNAT'L L. 95-154 (1984).

This note explains the "arms-length" method of taxing foreign source income and outlines the Due Process and Commerce Clause limitations on a state's jurisdiction to tax. This note explores state methods used to apportion the business income on a unitary business in order to comply with the Commerce Clause and details the problems posed by worldwide combined reporting from the state perspective, as well as from the perspectives of corporations and foreign governments. Finally, this note discusses the effects of the 1983 Supreme Court decision in *Container Corporation of America v. Franchise Tax Board*.

*A Survey of Techniques Employed by State and Local Governments for the Promotion of Foreign Direct Investment*, 18 GEO. WASH. J. INT'L L. & ECON. 155-81 (1984).

This note surveys trends in state and local promotional activities to attract foreign direct investment. The author examines the structural organization for recruiting, foreign investment, community self-assessment studies, strategies for enhancing a community's attractiveness, incentive packages, and the distribution of information. Relying on the Department of Commerce and General Accounting Office data, the author also provides general statistical information regarding foreign direct investment in the United States, including the predominant forms of foreign direct investment, the leading investing countries, major reasons for increased foreign direct investment activity,

and recent rate of foreign direct investment growth.

*Tax Treatment of Gains Realized by Foreigners on Sale of U.S. Real Property*, 16 INT'L LAW. 95-109 (1982).

This note provides an instructive practitioner oriented analysis of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).

*U.S. Regulation of Foreign Direct Investment: Current Developments and the Congressional Response*, 15 VA. J. INT'L L. 611-47 (1975).

This note examines the attitudes toward foreign direct investment in the mid-1970s following increased foreign direct investment and the OPEC oil embargo, and specifically looks at the legislative response in the 93rd and 94th Congresses. The author calls for current and accurate information on foreign direct investment and states that, because of the lack of accurate data, there is no way to demonstrate the need for the proposed congressional restrictions on foreign direct investment. The note criticizes the proposed legislation as "crude, across-the-board economic restrictions which are insensitive and ill-suited to the political dilemmas [posed by foreign direct investment]."

*Withholding from Recipients of FIRPTA Gain*, 35 VAND. L. REV. 439-69 (1982).

This note begins by reviewing the tax law inequities before Congress passed the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). The author traces the legislative intent behind the Act and, thereby, the policy that should determine what type of collection procedure is compatible with FIRPTA. He then discusses the operation of FIRPTA and various FIRPTA withholding proposals and concludes with an in-depth examination of the justifications for withholding requirements and a proposal that Congress adopt a limited and uncomplicated withholding provision to accompany FIRPTA.

## V. SYMPOSIA

*Advising Foreign Investors in the United States*, 61 CHI. B. REC. 255-310 (1980).

This brief and topically general symposium contains the following five articles on foreign investment in the United States:

Treumann, Walter. *Foreign Direct Investment: Basic Considerations*, 255-62.

Allen, Jr., John T. and David B. Olausson. *Problem Areas Concern-*

*ing Foreign Investment in Real Estate*, 263-74.

Rosso, David J. *Advising Foreign Clients with Regard to Acquisition of an Existing U.S. Enterprise*, 275-85.

McCarthy, Paul. *Advising Foreign Investors in the U.S.: Direct Investment*, 286-99.

Hoefs, Richard A. *Taxation of Foreign Investors*, 300-10.

*Advising the Foreign Investor in the United States*, 7 N.C. J. INT'L L. & COM. REG. 153-277 (1982).

This symposium contains the following articles and a student note on foreign direct investment in the United States:

Almond, Michael A. and Shelley M. Goldstein. *Foreign Direct Investment in the United States: An Overview*, 153-62.

Gornall, Jr., John L. and Phillip Leslie Wharton. *Significant Non-Tax Reporting Requirements Relating to Investment in the United States by Foreign Persons*, 163-75.

Ruchelman, Stanley C. *Principles Relating to Organization and Taxation of Foreign Investment Activity in the United States*, 177-205.

Gornall, Jr., John L. and Philip J. Marzetti. *Taxation of Foreign Personnel in the United States*, 207-31.

Leonard, Craig. *Financing Foreign Investment in the United States*, 233-63.

Gordon, Charles. *Immigration Problems Confronting Foreign Personnel in the United States*, 265-76.

Note. *Employment Discrimination—Friendship, Commerce and Navigation Treaties and Title VII*, 277-84.

*Symposium: Tax Aspects of Foreign Investment*, 5 HASTINGS INT'L & COMP. L. REV. 473-674 (Spring 1982).

This symposium is helpful for general overview purposes; however, the articles are not extensively footnoted or sufficiently explanatory. This symposium consists of the following articles:

Berwind, Michael W. *An Overview of Inbound Foreign Investment*, 475-96 (transcript and outline). See the *Articles* section of this bibliography for comment.

Chilton, Jr., Frederick R. *Income Effectively Connected with a United States Trade or Business or Attributable to a Permanent Establishment*, 497-514.

Eigenbrode, Richard. *Foreign Investment in Real Property Tax Act of 1980*, 521-64.

Foster, David S. *The Importance of Tax Treaties*, 565-77.

McDonnell, John P. *Tax Aspects of Currency Fluctuations*, 649-74.

1980 *University of Illinois Law Forum 1: Symposium on Regulation of Foreign Banks in the United States*, 1980 U. ILL. L. F. 1-356.

This comprehensive symposium deals with the following subjects related to foreign investment in the United States:

Reisner, Ralph. *A Developmental Perspective on the International Banking Act of 1978*, 1-11.

Bellanger, Serge. *The Future of Foreign Banking in the United States or How to Get There*, 21-31.

Miozzi, Alfred F. *Foreign Banks at Home in the U.S.*, 33-39.

Foorman, James L. *Revised Regulation K: Selected Issues Affecting Banking Edge Corporations*, 41-64.

Glidden, William B. and John E. Shockey. *U.S. Branches and Agencies of Foreign Banks: A Comparison of the Federal and State Chartering Options*, 65-90.

Farrar, Stanley F., Allen L. Raiken, and Leo L. Clarke. *Choice of Home State Under the International Banking Act of 1978*, 91-109.

Patrikis, Ernest T. *Marginal Reserve Requirements on Branches and Agencies of Foreign Banks*, 111-28.

Gruson, Michael and Jonathan M. Weld. *Nonbanking Activities of Foreign Banks Operating in the United States*, 129-62.

Munsell, James F. and Stephen J. Field. *Foreign Acquisitions of U.S. Banks and the Principles of U.S. Banking Law*, 163-83.

Gruson, Michael and Phillip L. Jackson. *Issuance of Securities by Foreign Banks and the Investment Company Act of 1940*, 185-229.

Note. *The Nonbanking Activities of Foreign Banks and the International Banking Act of 1978*, 325-56.

*Direct Foreign Investment in the United States*, 17 J. INT'L L. (1981).

This symposium consists of the following three articles and a bibliography:

Emch, T. Randall. *Japanese Direct Foreign Investment in Ameri-*

*can Manufacturing*, 1-16.

O'Connor, Walter F. and Stephen M. Brecher. *Tax Planning Techniques for Foreign Investors Considering United States Operations*, 17-44.

Quintana, Rikki and Alan Pfeffer. *Foreign Investment in the United States: A Nineteenth Century Perspective*, 45-82.

Protti, Maria Evelyn. *Foreign Investment in the United States, 1976-1980: A Selected Annotated Bibliography*, 83-97.

*Foreign Trade and Investment*, 27 *MERCER L. REV.* 597-851 (1976).

This symposium contains the following discussions of foreign investment in the United States:

Inouye, Sen. Daniel K. *Political Implications of Foreign Investment in the United States*, 597-614.

Liebman, John R. and Beth Levine. *Foreign Investors and Equal Protection*, 615-28.

Wilner, Gabriel M. and Terry K. Smith. *Is Georgia on Their Minds?—Some Legal Aspects of Investment and Trade by Foreign Business Enterprises*, 629-56.

Sawyer, Michael T. *Encouraging Foreign Investment in the United States by Limiting the President's Emergency Authority under the Trading with the Enemy Act*, 681-715.

*Foreign Entities Doing Business in the United States*, 34 *N.Y.U. INST. ON FED. TAX'N* 923-1016 (1976).

This series of articles covers several aspects of foreign investment in the United States:

Nicholson, Gordon, Paul Farber, Sidney M. Gewanter and Leslie Samuels. *Foreign Entities in the United States—A Panel Discussion*, 925-66.

Topics discussed in this article include: branch operations; cash acquisitions; tender offers; Securities and Exchange Commission (SEC) compliance; stock acquisitions; marketability of foreign stock; U.S. source financing; off-shore financing; use of United States and foreign holding companies; and consolidated financial statement problems. The following outlines of relevant statutory provisions accompany the panel discussion: Sidney M. Gewanter, *Legal and Financial Considerations in Acquisitions of United States Companies by Foreign Investors*, 973-80; and Paul Farber, *Structuring and Financing Considerations for Foreign Investors in United States*

*Businesses*, 981-89.

Pugh, Richard C. and Leslie Samuels. *U.S. Tax Aspects of Acquisitions of U.S. Corporations by Foreign Corporations*, 991-1016.

This is a thorough discussion of the income tax considerations for foreign corporations acquiring United States corporations.

*Foreign Investment in the United States and in the European Community*, 6 N.Y.U. INT'L INST. ON TAX & BUS. PLAN. (1978).

This symposium contains the following articles discussing foreign investment in the United States:

Gewanter, Sidney M. *United States Taxation of Foreign Investors in Money Market and Related Instruments*, 1-28.

Orlin, Howard J. and Stanley C. Ruchelman. *U.S. Taxation of Foreign Portfolio Investors*, 29-69.

Hart, Peter J. *Use of Tax Treaties and Offshore Investment Vehicles for Foreign Investors*, 125-54.

Langer, Marshall J. *Europeans Investing in U.S. Real Estate Through Netherlands Antilles and British Virgin Islands Corporations*, 155-71.

Hammer, Richard M. *General Tax Rules and Planning for United States Operations*, 319-74.

Orlin, Howard J. *Foreign Investor Considerations in Acquiring a U.S. Business*, 375-422.

Taylor, Willard B. *Financing of Foreign Direct Investment*, 423-36.

Taylor, Willard B. *Investment Funds and Investments in Oil and Gas*, 437-48.

Greene, Jerome P. *Financing of Direct Investments*, 449-65.

Gewanter, Sidney M. *Factors Affecting Foreign Ownership and Operation of United States Commercial Banks and Related Financial Institutions*, 565-91.

Seidman, Herta Lande. *State and Local Government Incentives for Foreign Investment: New York's Approach*, 621-38.

## VI. GOVERNMENT DOCUMENTS

CONTROLLING FOREIGN INVESTMENT IN NATIONAL INTEREST SECTORS OF THE U.S. ECONOMY. Washington, D.C.: General Accounting Office. Report ID-77-18, 1977. Report of the Comptroller Gen-

eral. (GA1.13:ID-77-18).

This lengthy report focuses on the fact that no single federal agency coordinates all foreign investment restrictions and related reporting. It recommends that regulatory and other agencies assess the reliability of their foreign investment data and periodically publish and summarize it for United States policymakers. Thirteen supportive letters from various government administrators are included.

**THE COSTS AND BENEFITS OF FOREIGN INVESTMENT FROM A STATE PERSPECTIVE.** Washington, D.C.: U.S. Department of Commerce, International Trade Administration. August 1982. viii, 205 pp. (C61.2:In8/3).

An excellent overview of the pertinent issues based on new and heretofore not available data, this report prepared by the Southern Center for International Studies in Atlanta, Georgia was edited by Cedric L. Suzman. The document discusses the following subjects:

*Foreign Direct Investment in the Southeast United States: A Comparative Analysis* by Cedric L. Suzman;

*Foreign Direct Investment in Florida: Costs and Benefits* by Mira Wilkins;

*The Economic Impact of Foreign Investment in Georgia* by William A. Schaffer;

*Costs and Benefits of Foreign Investment from a State Perspective: The Case of Louisiana* by S. Young and B.L. Kedia;

*Impacts of Inward Direct Investment on North Carolina Development* by Jack N. Behrman; and

*Foreign Direct Investments in South Carolina* by Jeffrey S. Arpan.

**DIRECT INVESTMENT IN THE UNITED STATES BY FOREIGN GOVERNMENT-OWNED COMPANIES 1974-81.** Washington, D.C.: U.S. Department of Commerce, International Trade Administration, 1983. 109 pp. (C61.2:In8/4).

This report, prepared by Michael A. Goodwin in the Office of Trade and Investment Analysis, examines characteristics of foreign direct investment in the United States by government-owned corporations. The report is limited to data collected on United States firms with at least 10 percent foreign equity ownership as part of the daily monitoring of public information sources by the Office of Trade and Investment Analysis. A significant portion of the data is derived from the public files of relevant federal regulatory agencies and such secondary sources as newspapers, magazines, and business or trade jour-

nals. The information in this report does *not* rely on the data collected by the Bureau of Economic Analysis in the Department of Commerce.

The report concludes that foreign government investment represents a relatively modest share of the total foreign direct investment. Major industrial countries, i.e., Canada, France, the United Kingdom, and Western Germany, are the primary investors. Most of the investments are in mining and oil rather than manufacturing. The three top states reported to have most of the foreign government investment transactions are California, New York, and Texas.

**FOREIGN DIRECT INVESTMENT IN THE UNITED STATES.** Report of the Secretary of Commerce to the Congress in Compliance with the Foreign Investment Study Act of 1974 (Public Law 93-479.) Washington, D.C.: U.S. Department of Commerce, U.S. Government Printing Office, 1976. 9 vols. (var. pag.).

Based on an extensive inquiry into foreign direct investment in the United States, this report is the chief source of information on the subject presenting comparative statistical information about foreign direct investment as well as a thorough analysis of the data. From a research standpoint the most valuable portion of the report is its several appendices which examine the state of foreign investment in different industries, geographic locations, and sources. The full titles of these appendices are:

*Industrial and Geographic Concentration of Foreign Direct Investment in the United States*, prepared by the Conference Board;

*The Foreign Ownership of, Influence on, and Control of Domestic Energy Sources and Supply*, prepared by the Federal Energy Administration;

*Foreign Direct Investment in Selected Natural Resources*, prepared by the Office of International Finance and Investment;

*Foreign Investment in the United States Commercial Fisheries Industry*, prepared by the Economic and Marketing Research Division;

*Foreign Investment in the United States Grain Trade*, prepared by the Department of Agriculture;

*Foreign Banking in the United States*, prepared by Office of International Finance and Investment;

*The Reasons and Outlook for Foreign Direct Investment in the United States*, prepared by Arthur D. Little, Inc.;

*Process, Mechanisms, and Methods of Financing Foreign Direct In-*



*vestment in the United States*, prepared by Booz, Allen & Hamilton, Inc.;

*Management and Employment Practices of Foreign Direct Investors in the United States*, prepared by Georgia State University;

*Tax Aspects of Foreign Direct Investment in the United States*, prepared by Cole Corette & Bradfield;

*Legal Restraints on Foreign Direct Investment in the United States*, prepared by David Morris Phillips, Professor of Law, Boston University School of Law;

*Foreign Investment in Land*, prepared by the Department of Agriculture;

*Legal Regulation of Alien Land Ownership in the United States*, prepared by Fred L. Morrison, Professor of Law, University of Minnesota Law School;

*Policies, Laws and Regulations of Other Major Industrialized Nations Concerning Inward Investment*, prepared by the Office of Foreign Investment and the Office of International Finance and Investment;

*Technology Transfer from Foreign Direct Investment in the United States*, prepared by the National Secretary of Engineering and the National Research Council;

*Effects of Variations Between Accounting, Financial Reporting and Other Business Practices of United States and Foreign Investors on Foreign Direct Investment in the United States*, prepared by Touche Ross and Co.; and

*Federal Government Agency Sources of Data on Foreign Investment in the United States*, prepared by Price Waterhouse & Co.

The report concludes that the state of foreign direct investment in the United States is sound and that it does not create any risk of danger to the United States economy. The report replaces a two-volume INTERIM REPORT ON FOREIGN DIRECT INVESTMENT IN THE UNITED STATES, presented by the Secretary of Commerce to the Congress in October, 1975. (C59.2:F 76/980).

*Foreign Direct Investment in the United States, 1980*. Washington, D.C.: U.S. Department of Commerce, 1983. 236 pp. (GA1.13:ID 80-24).

The International Investment Survey Act of 1976 required the Department of Commerce and the Department of the Treasury to prepare complete statistical reports of foreign direct and portfolio invest-

ments in the United States. This report, prepared by the Bureau of Economic Analysis at the Department of Commerce, presents the data of the 1980 benchmark survey of foreign direct investment and updates the information contained in the 1976 report of the Secretary of Commerce to Congress entitled *Foreign Direct Investment in the United States*.

*Foreign Direct Investment in the United States: Completed Transactions, 1974-1983*. Washington, D.C.: U.S. Department of Commerce, International Trade Administration, 1985. 3 Volumes (165, 169 and 165 pp. respectively).

The Office of Trade and Investment Analysis of the International Trade Administration at the Department of Commerce has gathered information on foreign direct investments in the United States since 1974. Direct investment has meant in this respect the acquisition of ten percent or more of the voting securities in a corporation or an equivalent interest in an unincorporated business enterprise, and the acquisition of a ten percent or larger interest in real property.

This information for the ten year period from 1974 through 1983 is now presented in a tabulated form with appropriate analytical notes, trend indicators, and summaries in the three volumes of the present publication. The first volume reports on completed transactions by source country, the second by industry sector, and the third by state location. In the compilation of the report, the Office of Trade and Investment Analysis did not rely solely on its own data. Public files in other federal regulatory agencies, as well as newspapers, magazines and business or trade journals were also consulted. The cumulated information presents a revealing picture of foreign direct investment trends. It is an important reference source for anyone interested in the subject of foreign investment in the United States.

*Foreign Direct Investment in the United States—The Federal Role: Report to the Congress by the Comptroller General*. Washington, D.C.: General Accounting Office, 1980. (C61.2:H31).

This document examines the function of the federal government in either encouraging or discouraging foreign investments in the United States.

*Foreign Direct Investment in the United States: Geographic Studies—Hawaii*. Washington, D.C.: U.S. Department of Commerce, 1980. 132 pp.

A joint survey by the Hawaii International Services Agency and the Department of Commerce Office of Foreign Investment in the United States, this publication specifically examines foreign investment patterns in Hawaii. The survey is based on many different sources of

information, including privately-conducted empirical investigations and interviews. The conclusion is that foreign investments in Hawaii are relatively moderate in comparison to the total investment pool.

*Foreign Direct Investment in the United States Petroleum Industry.* Washington, D.C.: U.S. Department of Commerce, 1982. 126 pp.

This document presents data which measure the contribution of foreign-owned United States business enterprises in the petroleum industry to total United States petroleum industry sales, capital investment, employment, employee compensation, and merchandise trade for the most recent years for which data are available.

*Foreign Direct Investment in the United States 198( )—Transactions.* Washington, D.C.: U.S. Department of Commerce, International Trade Administration. (Yearly publication). (C61.25/2).

This is an annual report on specific foreign direct investment transactions in the United States. The transactions are monitored by the Department of Commerce using government materials available primarily through its own files, the Securities and Exchange Commission, Federal Trade Commission and Federal Reserve Board, as well as materials from general public sources including newspapers, magazines, and business and trade journals. The transaction values noted in this annual report refer to the reported total cost of the investment.

The transactions are tabularly listed in the report and are arranged in three different ways: (1) by source country; (2) by primary industry classification of the United States company; and (3) by state location. Prior to 1982 real property investments were included within the overall transactions but in recent years these are listed separately. The overview of foreign direct investment for the year includes helpful graphs, diagrams and summaries of major transactions and trends.

The data in the report, although not comprehensive, includes a broader range of transactions, particularly with regard to plant expansions, equity increases and real estate investments, than the Bureau of Economic Analysis reports that have also been published annually by the Department of Commerce since 1979. The Department of Commerce, however, notes that the aggregate yearly data in the present reports is *not* strictly comparable to the Bureau of Economic Analysis series because of the differences in data compilation. The Bureau of Economic Analysis reports are based solely on individual firm responses to mandatory reporting requirements. They are more accurate on the reported items, but narrower in their scope.

In 1984, the Department of Commerce Office of Trade and Investment Analysis published a comprehensive set of all foreign direct in-

vestment transactions during the 1974-83 period listed by source country, industry, and state location.

*Foreign Investment in the United States: A Summary of Federal Laws Bearing on Foreign Investment in the United States.* Washington, D.C.: U.S. Department of the Treasury, September 1979. viii, 33 pp.

This is a handy publication suitable for quick reference. Part I describes specific provisions of federal laws which restrict or control participation by aliens, foreign corporations, foreign governments, and foreign-controlled enterprises in particular sectors of the United States economy. These sectors encompass the communications industry, atomic energy, mining, oil, fishing, aviation, shipping, custom-house brokering, banking, government procurement, defense, and the ownership of public lands.

Part II covers laws that apply to both citizens and non-citizens in the areas of antitrust, taxation, securities, and intellectual property. It also contains a brief summary of immigration provisions affecting foreign investors.

Part III includes a statement of the United States policy on foreign investment and a summary of certain reporting requirements. The text is supported by citations to the relevant provisions in the United States Code.

*Foreign Investment in U.S. Agricultural Land.* Washington, D.C.: U.S. Department of Agriculture, January 1979. x, 292 pp. (Y4.Ag 8/3:In8).

This document is prepared by the Department of Agriculture pursuant to the Agricultural Foreign Investment Disclosure Act of 1978.

*Foreign Ownership Control and Influence on Domestic Energy Sources and Supplies.* Washington, D.C.: Federal Energy Administration, Office of International Energy Affairs Report to Congress, December, 1974. 94 pp. (A1.107:447).

This general survey of foreign ownership of the United States energy sources is also included in *Federal Energy Administration Act Extensions: Hearings Before the Subcommittee on Energy and Power*, 94th Cong., 2d Sess., March 15-19, Apr. 14, 1976. (Y4.In8/4:94-119).

*Foreign Ownership of U.S. Agricultural Land.* Washington, D.C.: U.S. Department of Agriculture, Economics, Statistics, and Cooperatives Service. Agricultural Economic Report No. 447, 1980.

(A1.75:440).

By mandate of Section 5 of the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978, this report analyzes information on the foreign ownership of United States agricultural land, the impact of such ownership on family farms and rural communities, and the effectiveness of the reporting requirements. The AFIDA report form, which all foreign owners of United States agricultural land are required to complete, is shown. The general conclusion reached in analyzing such report forms is that the effects of foreign ownership, based on the initial data, cannot be identified with certainty. Specific findings are that a substantial percentage of the land held or acquired by foreigners is used for forest or timber, foreign holdings are concentrated in the South, and that United States corporations with foreign interests operated 24 percent of United States foreign-held agricultural land.

*Foreign Ownership of U.S. Agricultural Land: Through December 31.* Washington, D.C.: U.S. Department of Agriculture, Economic Research Service. 38 pp. Annual since 1981.

The Agricultural Foreign Investment Disclosure Act of 1978 requires the Department of Agriculture to present annual reports on the acquisition of United States farmland by foreigners. Published with some delay, these reports are nevertheless a good information source for research.

*Foreign Ownership of U.S. Banks.* Washington, D.C.: U.S. Comptroller of Currency, 1980. 32 pp.

This document is a staff paper prepared by William A. Longbrake, Melanie R. Quinn, and Judith A. Walter.

*Foreign Ownership of U.S. Farmland: Much Concern, Little Data.* Washington, D.C.: U.S. General Accounting Office Report, Report of the Comptroller General to the Congress. June 12, 1978. (9A1.13:CED-78-132).

This is a response to a request from the Senate Committee on Agriculture, Nutrition and Forestry for information about state and federal data on foreign ownership of United States farmland. The report suggests there is an absence of an adequate reporting system nonetheless, even though it is based on inadequate data, the evidence indicates that only 0.3 percent of all United States farmland is owned by foreign interests.

*Foreign Portfolio Investment in the United States: Report to the Congress.* Washington, D.C.: U.S. Treasury Department, August

1976. 2 vols. (210 and 522 pp.). (T1.2:F 76/7).

This is the major Treasury Department study on foreign portfolio investment in the United States. Several appendices contain important statistical and empirical background information. Especially valuable are the two appendices prepared by R. Shriver Associates and contained in Volume 2. The first appendix examines the *Institutional Aspects of Foreign Portfolio Investment in the United States*; the second consists of a detailed 400-page analysis of the *Legal Aspects of Foreign Portfolio Investment in the United States*.

This publication is one of the most important documents on foreign investment and is indispensable to research in the area.

*Foreign Takeovers of United States Banks*. Washington, D.C.: Federal Reserve Board. Staff study prepared for the Senate Banking, Housing, and Urban Affairs Committee. July, 1980. vi and 75 pp. (Y4.B22/3:F76/9).

This document reports on the development of foreign banking in the United States and its impact on the monetary policy, financial market competition and bank performance. (Also published by U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs as a print).

*Impact of Foreign Direct Investments on U.S. Cities and Regions*. Washington, D.C.: U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 1979.

This short study on a subject related to foreign direct investment fails to supply any clear conclusions about any correlations between such investments and the housing patterns in the United States.

*Inward Foreign Portfolio Investment: 1979 Survey*. Washington, D.C.: U.S. Department of the Treasury.

This document is an unpublished staff paper with the latest cumulated information about foreign portfolio investment in the United States.

*Monitoring Foreign Ownership of U.S. Real Estate: Report to Congress*. Washington, D.C.: U.S. Department of Agriculture, 1979. 3 vols. (A105.2:Ow4/sum).

This publication presents the data of a benchmark survey by the Department of Agriculture pursuant to the Agricultural Foreign In-

vestment Disclosure Act of 1978.

*Monthly Report on Foreign Direct Investment Activity in the United States.* Washington, D.C.: Investment Analysis Division - Office of Trade and Investment Analysis - Department of Commerce. (C61.25/3:2).

The *Monthly Reports* on foreign direct investment are published in compliance with Executive Order No. 11858 (May 7, 1975). They contain the most current and timely information the Department of Commerce has on hand, and sometimes includes items of foreign direct investment that have been announced but not consummated, or reported but not confirmed. Any changes in the status of transactions are reported in subsequent publications.

The *Monthly Reports* contain a brief summary of foreign direct investment activity for the preceding three months, tables on foreign direct investment activity by country of foreign origin, and complete tabular accounting of such investment by standard industrial classification categories—indicating the host state, type of transaction, value and country of origin for each month during the reporting period.

The information for this publication is collected by the Investment Analysis Division of the Department of Commerce and is then presented in the same manner as in the Department's annual report entitled *Foreign Direct Investment in the United States: 198()—Transactions*.

The *Monthly Report* data is not recommended for comparative studies over long periods of time since investments are classified as complete when *arrangements* for the transaction are finalized, not after they actually occur. The Investment Analysis Division data should also not be compared with that of the Bureau of Economic Analysis since the data collection methods of the two offices differ significantly.

*OPEC Direct Investment in the United States.* Washington, D.C.: U.S. Department of Commerce, 1981. 29 pp. (C61.25:980-81).

This document lists investments of the Organization of Petroleum Exporting Countries (OPEC), arranged country-by-country. The listing also includes information on the location of the investment, the United States industrial category, the foreign corporate owner, the foreign beneficial owner, the type of investment, and the value of the transaction where available.

*Profiles of Foreign Direct Investment in U.S. Energy.* Washington, D.C.: Energy Information Administration, U.S. Department of

Energy, 1985. 42 pp.

Separate chapters in this document, with accompanying tables, analyze the role of foreign investments in the United States petroleum and other energy resources.

*Report on Foreign Portfolio Investment in the United States as of December 31, 1978.* Washington, D.C.: Department of Treasury—Office of Secretary. December 1980. 125 pp.

This study was made by the Department of Treasury pursuant to the International Investment Survey Act of 1976 and fulfilled the responsibilities of the Secretary of the Treasury under Executive Order 11961 (January 19, 1977). The Act requires a comprehensive benchmark survey of foreign portfolio investment at least once every five years for the purpose of determining "the magnitude and aggregate value of portfolio investment, form of investments, types of investors, rationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record."

The survey contains: (1) a summary of the report, (2) analysis of the economic aspects of foreign portfolio investment, (3) treatment of public policy perspectives, and (4) extensive tables and charts. It explains the questionnaire forms upon which data is based and contains numerous tables and charts giving various breakdowns of portfolio investments. Typical charts include: total portfolio investment in the United States; total government liabilities to foreigners; private sector liabilities by type of investor and type of liability; reported holdings of equity securities by type of investor and region; and United States industries in which foreigners hold stock.

The tables include such information as composition of foreign portfolio investment by economic sector; ten largest positions by country of holder; ten largest positions in United States equity securities; foreign portfolio investment in private debt securities by Industrial sector; and foreign portfolio investment 10 percent of outstanding equity securities in United States corporations classified (a) by industrial sector; (b) by number of countries; (c) by company size; and (d) by recorded holders located in a single country.

The survey is largely dependent on data supplied by either "issuers" or "holders of record" as required by SEC reporting requirements. The survey's new data is limited to these file reports on foreign investment positions in marketable long-term United States securities. Other data relied on is drawn from ongoing reporting systems operated by the United States Government — collected principally through the Treasury International Capital (TIC) Reporting System. The TIC receives reports on nonsecurity portfolio investments either monthly, quarterly or semi-annually, from some 550



banks, 175 securities firms and approximately 900 nonbanking concerns (importers, exporters, industrial and commercial concerns, and financial concerns other than banks and brokers). Understanding the significance of the data requires familiarity with the Securities Exchange Commission forms and procedures including valuation rules.

This survey represents the most comprehensive, up to date analysis of portfolio foreign investment available; however, its usefulness is strongly dependent on data methodology and the inherent limitations set by reporting requirements. All data should be read with an understanding of the Securities Exchange Commission reporting requirements and different quirks of the various forms. For example, the geographical breakdown of the reported data may not in all cases represent the *ultimate ownership* of assets since reporting institutions are not required to go beyond the addresses shown as holders "of record."

Estimations of foreign holdings of U.S. securities *between* survey years can be made by utilizing TIC Form S reports — however, the utility of this data is severely limited by reporting requirements. Form S reports provide information on transactions in four types of securities: Treasury bonds and notes, Government agency issues, other bonds, and corporate stocks. Monthly Form S Reports are filed by banks, brokers, and securities dealers who directly engage in transactions in long-term securities in amounts in excess of \$500,000. Form S data covers transactions only during the respective month on aggregate purchases and sales and does *not* identify the foreigners involved in the transactions nor the particular securities traded.

The TIC data is collected on a payment flow basis primarily for balance of payments purposes. Thus, the data provides market value of holdings on a particular day; monthly stock values for foreign holdings must be estimated based on calculating monthly net transactions, summed with an initial base and adjusted for change in market valuation.

*Selected Characteristics of Foreign-Owned United States Firms: 1975-1976.* Washington, D.C.: U.S. Department of Commerce, 1978. 17 pp. (C3.254:1).

This document is a special study of investment related issues.

*Selected Characteristics of Foreign-Owned United States Firms: 1978.* Washington, D.C.: U.S. Department of Commerce, 1980. 17 pp.

This short study of an important aspect of foreign direct investment includes information about the main characteristics, employ-

ment rates and payroll of foreign investors.

*Selected Characteristics of Foreign-Owned United States Firms: 1979.* Washington, D.C.: U.S. Department of Commerce, 1981. 21 pp.

This document studies foreign investment patterns in the United States.

*Selected Data on Foreign Direct Investment in the United States, 1950-79.* Washington, D.C.: U.S. Department of Commerce, Bureau of Economic Analysis. December 1984. 50 pp.

This useful publication presents historical estimates of foreign direct investments in the United States for 1950-79. It includes tables on foreign direct investment positions at the end of every year, capital inflows, equity and intercompany account flows, reinvested earnings and incorporated affiliates, interest transfers, dividends, and earnings of unincorporated affiliates, income, earnings, and fees and royalties.

*State Laws Relating to the Ownership of U.S. Land by Aliens and Business Entities.* Washington, D.C.: U.S. Department of Agriculture, Economic Research Service, 1981. 65 pp.

This staff report, prepared by J.W. Mayer, updates the information on alien landholding restrictions in state laws originally published in one of the appendices of the Commerce Department's monumental 1976 report to the Congress entitled *Foreign Direct Investment in the United States*.

*State Laws Relating to the Ownership of U.S. Land by Aliens and Business Entities.* Washington, D.C.: U.S. Department of Agriculture, Economic Research Service, 1984. 95 pp.

This staff report, prepared by Dale C. Schian, contains the latest update on state restrictions of foreign holdings in agricultural land. (A portion of this publication is also published by the Department of Agriculture under the title *State Laws Relating to the Ownership of U.S. Agricultural Land by Aliens and Business Entities* as staff report AGEJ840812 (68 pp.)).

*Taxation of Foreign Investment in U.S. Real Estate.* Washington, D.C.: U.S. Department of Treasury, 1979. 68 pp.

This report had a direct bearing on the enactment of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). The report found that, while most foreign real property holdings in the United States are used for trade or business purposes, foreign owners of such properties rarely incur capital gains tax liabilities on the disposition

of their property holdings. Through the subterfuge of holding companies foreign owners converted gains from real property transactions into disposition of stocks. The Treasury found that taxing capital gains on the sale of corporate shares would not be practiced, but it recommended strongly that appropriate legislation should be introduced to prevent foreign investors from taking shelter behind holding companies in their real property transactions. The Foreign Investment in Real Property Tax Act was enacted in the year after the publication of this report. (This report is reprinted in *BNA Taxation and Finance* No. 91 (1979)).

## VII. CONGRESSIONAL HEARINGS, PRINTS, AND REPORTS

### 1973

*Impact of Foreign Investment in the United States.* U.S. Congress. Senate. Committee on Commerce, Subcommittee on Foreign Commerce and Tourism. Hearings. 93d Cong., 1st Sess. Dec. 27-28, 1973. 88 pages. (Y4.C73/2:93-71).

These hearings focus on foreign investment in Hawaii.

### 1974

*Direct Foreign Investments in the U.S.* U.S. Congress. House. Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy. Report. 93d Cong., 2d Sess. July 7, 1974. vii and 14 pages.

Following the Subcommittee's hearings in January and February, 1974, this report summarizes the extent, nature, and trends of direct foreign investment in the United States industry, real property, and agricultural land. The benefits and disadvantages of such investments are briefly outlined, and the inadequacy of data is commented upon. A short appendix lists restrictions as well as incentives relating to foreign direct investment.

*Foreign Investment in the United States.* U.S. Congress. House. Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy. Hearings. 93d Cong., 2d Sess. Jan. 29, Feb. 5 & 21, 1974. 478 pages. (Y4.F76/1:In8/56).

These hearings focus primarily on investment in agricultural land, although they also discuss other forms of investment.

*Foreign Investment in the United States.* U.S. Congress. Senate. Committee on Commerce, Subcommittee on Foreign Commerce and Tourism. Hearing. 93d Cong., 2d Sess. Mar. 7, 1974. 220

pages. (Y4.C73/12:93-82).

These are hearings on a bill to authorize the Secretary of Commerce to conduct a study of foreign direct investment in the United States. This hearing was concerned with S.2840, the bill which eventually became the Foreign Investment Study Act of 1974 requiring the administration to conduct a comprehensive study of foreign direct and portfolio investments in the United States. Different methods of information gathering and acquisition were discussed in this hearing.

*Foreign Investment in the United States: Part 1. Current and General Policy Considerations.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on International Finance. Hearings. 93d Cong., 2d Sess. Jan. 23, Feb. 21-22, 1974. 150 pages. (Y4.B22/3:F76/4/pt.1). (There appears to be no Part 2.)

These hearings examine the quantity and effect of foreign investment in this country.

*Foreign Investment Review Act of 1974.* U.S. Congress. Senate. Committee on Commerce, Subcommittee on Foreign Commerce and Tourism. Hearing. 93d Cong., 2d Sess. Sept. 18, 1974. 121 pages. (Y4.C73/2:93-113).

Senate Bill 3955, the "Metzenbahr Bill," was introduced to control the inflow of foreign investment into the United States. The bill did not pass. These hearings examine the ramifications of various forms of foreign investment.

*Foreign Investment Study Act of 1974.* U.S. Congress. House. 93d Cong., 2d Sess. 1974. 9 pages. Report No. 93-1183.

- This document includes a section by section analysis of the proposed Act.

*Foreign Investment Study Act of 1974.* U.S. Congress. Senate. Committee on Commerce. Report. 93d Cong., 2d Sess. 1974. 13 pages. Report No. 93-910.

This document accompanies Senate Bill 2840 and recommends passage of the bill with amendments, to authorize and direct the Secretary of Commerce and the Secretary of Treasury to conduct a study of foreign direct and portfolio investment in the United States.

## 1975

*Foreign Investment Act of 1975.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on Securities. Hearings. 94th Cong., 1st Sess. Mar. 4-6, 1975. 542

pages. (Y4.B22/3:F76/5).

These hearings dealt with S.425, a bill introduced by Senator Williams (N.J.) which proposed restrictions on foreign investments in the United States. The proposal was opposed by the government witnesses.

*Foreign Investment and Arab Boycott Legislation.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs Subcommittee on International Finance. Hearings. 94th Cong., 1st Sess. July 22-23, 1975. 413 pages. (Y4.B22/3:F76/6).

Several bills to restrict acquisition of interests in United States companies by foreign investors from countries discriminating against United States businesses are discussed in this document.

*Foreign Investment Legislation.* U.S. Congress. Senate. Committee on Commerce, Subcommittee on Foreign Commerce and Tourism. Hearings. 94th Cong., 1st Sess. May 7 & 12, 1975. 215 pages. (Y4.C73/2:94-19).

This document consists of hearings on measures to regulate and require disclosure of foreign investment. Several proposals for the gathering of information on foreign investments, as well as their control and restriction, were made in the Senate. These proposals are discussed in a context of surveying the overall impact of such investments.

*Foreign Investment in the United States.* U.S. Congress. House. Committee on Banking, Currency, and Housing, Subcommittee on International Trade, Investment, and Monetary Policy. Hearing. 94th Cong., 1st Sess. Sept. 24, 1975. 216 pages. (Y4.B22/1:In8/30).

These hearings examine the federal government's policy on foreign investment in the United States, with a special emphasis on a tender offer made by Societe Imetal, a French corporation, to purchase Copperweld Corporation of Pittsburgh, Pennsylvania.

## 1976

*Federal Energy Administration Act Extension.* U.S. Congress. House. Committee on Interstate and Foreign Commerce, Subcommittee on Energy and Power. Hearings. 94th Cong., 2d Sess. Mar. 15-19 & Apr. 14, 1976. 618 pages. (Y4.In8/4:94-119).

This document contains the Federal Energy Administration report to Congress: *Foreign Ownership Control and Influence on Domestic*

*Energy Sources and Supply.*

*Foreign Bank Act of 1975.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions. Hearings. 94th Cong., 2d Sess. Jan. 28-30, 1976. vi and 604 pages. (Y4.B22/3:F76/7).

This document consists of hearings on several bills to regulate foreign banking operations in the United States.

*Foreign Boycotts and Domestic and Foreign Investment Improved Disclosure Acts of 1975.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Report. 94th Cong., 2d. Sess. Feb. 6, 1976. iii and 33 pages. Report No. 94-632.

This report recommends passage, with amendments, of Senate Bill 953 which would have, *inter alia*, authorized the government to seek information about foreign ownership of United States corporations. The bill did not pass.

*Foreign Investment Study Act of 1974.* U.S. Congress. Senate. Committee on Commerce, Subcommittee on Foreign Commerce and Tourism. Hearing. 94th Cong., 2d Sess. May 3, 1976. 55 pages. (Y4.C73/2:94-79).

This document reviews the highlights emerging from the final reports of the Departments of Commerce and Treasury on foreign investment in the United States submitted pursuant to the Foreign Investment Study Act of 1974.

*International Banking Act of 1976.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions. Hearings. 94th Cong., 2d Sess. Aug. 31, 1976. iv and 399 pages. (Y4.B22/3:In8/18).

Further hearings on the regulation of foreign bank activities in the United States are continued in this document.

*Foreign Investment Survey Act of 1976.* U.S. Congress. Senate. Committee on Commerce. Report. 94th Cong., 2d Sess. May 13, 1976. 14 pages. Report No. 94-834.

This report recommends passage, with amendments, of Senate Bill 2839, the Foreign Investment Survey Act of 1976, which would have empowered the United States government to collect regular and periodic information about foreign direct and portfolio investments. The

bill did not pass.

*Foreign Portfolio Investments in the United States.* U.S. Congress. Senate. Committee on Finance, Subcommittee on International Finance and Resources. Hearing. 94th Cong., 2d Sess. Mar. 1, 1976. 45 pages. (Y4.F49:F76/14).

This report examines the proposal of the Department of the Treasury to eliminate withholding taxes on dividends and interest paid to foreign holders of United States portfolio investments.

*200-Mile Fisheries Zone and Joint Ventures.* U.S. Congress. House. Committee on Merchant Marine and Fisheries, Subcommittee on Fisheries and Wildlife Conservation. Hearings. 94th Cong., 1st Sess. Sept. 8, 1976. 205 pages. (Y4.M53:94-44).

This document contains hearings on foreign investment and joint ventures in the United States fishing industry.

## 1977

*Data on Foreign Ownership of Property Within the United States.* U.S. Congress. House. Committee on Post Office and Civil Service, Subcommittee on Census and Population. Hearing. 95th Cong., 1st Sess. July 15, 1977. 48 pages. (Y4.P84/10:95-38).

This document consists of hearings on a bill to amend Title 13 of the United States Code to provide for the publication of data on this subject.

*Tax Treaties with the United Kingdom, the Republic of Korea, and the Republic of the Phillipines.* U.S. Congress. Senate. Committee on Foreign Relations. Hearings. 95th Cong., 1st Sess. July 19-20, 1977. 496 pages. (Y4.F76/2:T19/10).

This document contains discussion of the effects of a California-type unitary tax law on foreign investment.

*International Banking Act of 1977.* U.S. Congress. House. Committee on Banking, Finance, and Urban Affairs, Subcommittee on Financial Institutions, Supervision, Regulation, and Insurance. Hearings. 95th Cong., 1st Sess. July 12, 13, & 19, 1977. v and 781 pages. (Y4.B22/1:In8/38).

This document presents further discussion of bills introducing reg-

ulations for foreign banking operations in the United States.

### 1978

*Agricultural Foreign Investment Disclosure Act of 1978.* U.S. Congress. House. Report. 95th Cong., 2d Sess. 1978. 30 pages. Report No. 95-1570.

This report recommends the passage of House of Representatives Bill 13356, the Agricultural Foreign Investment Disclosure Act of 1978.

*Agricultural Foreign Investment Information Act of 1978.* U.S. Congress. Senate. Committee on Agriculture, Nutrition, and Forestry. Report. 95th Cong., 2d Sess. Aug. 8, 1978. 27 pages. Report No. 95-1072.

This report recommends passage of Senate Bill 3384, the Agricultural Foreign Investment Information Act of 1978, which would require foreign nationals who acquire, transfer, or hold an interest in United States agricultural land, to report their transactions and holdings to the Department of Agriculture. The Department of Agriculture would also be required to assess and report the effect of such transactions and holdings.

*Amendments to International Investment Survey Act of 1976.* U.S. Congress. House. Committee on International Relations. Report. 95th Cong., 2d Sess. May 15, 1978. 6 pages. Report No. 95-1154.

This report recommends passage of House of Representatives Bill 12589 to extend the deadline and authorize additional appropriations for studies on foreign investment in the United States by the Department of Commerce and the Department of the Treasury. This report would also extend the deadline for the Department of Agriculture study on the monitoring of foreign investments in United States farmlands.

*Authorization for the International Investment Survey Act.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Hearing. 95th Cong., 2d Sess. Apr. 19, 1978. iii and 114 pages. (Y4.C73/7:95-84).

This report consists of hearings on Senate Bill 2928 to amend and extend the International Investment Survey Act of 1976. This bill did not pass.

*Impact of Foreign Investment in Farmland.* U.S. Congress. House. Committee on Agriculture, Subcommittee on Family



Farms, Rural Development, and Special Studies. Hearings. 95th Cong., 2d Sess. June 20, July 19 & 28, 1978. (Y4.Ag8/1:In8/2).

This hearing focuses on the effects and implications of land acquisition by foreign interests on the family farm system and food supply in the United States. Most witnesses suggest, and the subcommittee agrees, that acquisition of land is becoming a choice investment for foreigners though American farmers cannot afford it because of high prices and taxes and prohibitive marketing policies.

*International Banking Act of 1978*. U.S. Congress. House. Committee on Banking, Finance, and Urban Affairs. Report. 95th Cong., 2d Sess. Feb. 28, 1978. 50 pages. Report No. 95-910.

This report recommends passage with amendments of House of Representatives Bill 10899, the International Banking Act of 1978, to establish a system of federal regulation over the activities of foreign banks in the United States.

*International Banking Act of 1978*. U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions. Hearing. 95th Cong., 2d Sess. June 21, 1978. iv and 394 pages. (Y4.B22/3:In8/21).

This report consists of hearings on House of Representatives Bill 10899, the International Banking Act of 1978, to regulate foreign bank operations in the United States.

*International Banking Act of 1978*. U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Report. 95th Cong., 2d Sess. Aug. 8, 1978. iii and 25 pages. Report No. 95-1073.

The document recommends passage of House of Representatives Bill 10899, the International Banking Act of 1978, to regulate foreign bank operations in the United States.

*International Investment Survey Act of 1976 Authorization*. U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Report. 95th Cong., 2d Sess. May 15, 1978. 9 pages. Report No. 95-863.

This report recommends passage, with amendments, of Senate Bill 2928, to extend the deadline and authorize appropriations for studies of foreign investments in the United States by the Department of Commerce and the Department of the Treasury.

*International Investment Survey Act Authorization for Fiscal Year 1979*. U.S. Congress. House. Committee on International Relations, Subcommittee on International Economic Policy and

Trade. Hearings. 95th Cong., 2d Sess. Apr. 25, May 4 & 10, 1978. iii and 33 pages. (Y4.In8/16:In8/12/979).

These hearings examine authorization of further funds for studies of foreign investment in the United States.

*The Operations of Federal Agencies in Monitoring, Reporting on, and Analyzing Foreign Investments in the United States: Parts 1-5.* Committee on Government Operations, Subcommittee. Hearings. 95th Cong., 2d Sess. through 96th Cong., 2d Sess. 1978-80. (Y4.G74/7:F76/9/pts. 1-5).

*Part 1.* Sept. 19-21, 1978. 531 pages.

*Part 2.* July 16-18 & 26, 1979. Hearings on OPEC Investment in the U.S. 476 pages.

*Part 3.* July 30, 1979. Examination of the Committee on Foreign Investment in the United States, Federal Policy Toward Foreign Investment, and Federal Data Collection Efforts. 1062 pages.

*Part 4.* July 31 & Aug. 1, 1979. Hearing on Foreign Investments in U.S. Banks. 336 pages.

*Part 5.* Appendices. 253 pages.

## 1979

*Agricultural Foreign Investment Disclosure Act Administration.* U.S. Congress. House. Committee on Agriculture, Subcommittee on Family Farms, Rural Development and Special Studies. 96th Cong., 1st Sess. July 26, 1979. 19 pages. (Y4.Ag8/1:96V).

These hearings on P.L. 95-460 discuss the implementation of the recently enacted Agricultural Foreign Investment Disclosure Act of 1978. Spokespersons from the Department of Agriculture explain disclosure procedures and their monitoring and reporting by the department.

*Amending the International Banking Act of 1978.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Report. 96th Cong., 1st Sess. Aug. 2, 1979. 3 pages. Report No. 96-301.

This document recommends amendments to the International Banking Act of 1978.

*Authorize Appropriations Under the International Investment Survey Act of 1976.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Hearing. 96th Cong., 1st Sess. Apr. 11, 1979. iii and 48 pages. (Y4.C73/7:96-16).

This report consists of hearings to authorize further funds for for-

eign investment studies in the United States.

*Carillon Bells*. U.S. Congress. Senate. Committee on Finance. Report. 96th Cong., 1st Sess. Dec. 19, 1979. 50 pages. Report No. 96-532.

This document recommends the passage of a bill which would establish special tax treatment for foreign investors in the United States.

*Description of Proposals Relating to the Tax Treatment of Foreign Investment in the U.S.* U.S. Congress. House. Committee of Ways and Means. Print. 96th Cong., 1st Sess. Oct. 24, 1979. iii and 8 pages. (Y4.T19/4:T19/15).

This document describes six bills to tax foreign investors on capital gains from the sale of property in the United States.

*Edge Corporation Branching; Foreign Bank Takeovers; and International Banking Facilities*. U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Hearings. 96th Cong., 1st Sess. July 16 & 20, 1979. 655 pages. (Y4.B22/3:C81/3).

This document consists of hearings on oversight of the International Banking Act, the new Edge Act regulations and the issue of foreign acquisitions of United States banks.

*Foreign Investment in U.S. Agricultural Land*. U.S. Congress. Senate. Committee on Agriculture, Nutrition, and Forestry. Print. 95th Cong., 2d Sess. Jan. 1979. x and 292 pages. (Y4.Ag8/3:In8).

This is the report Congress requested from the Department of Agriculture (see the section on *Government Documents* for comments).

*Hawaiian Telescope*. U.S. Congress. Senate. Committee on Finance. Report. 96th Cong., 1st Sess. Dec. 13, 1979. 27 pages. Report No. 96-499.

These hearings recommend the passage of a bill which, among other things, would alter tax treatment of foreign investors in the United States.

*International Investment Survey Act Authorization for Fiscal Years 1980 and 1981*. U.S. Congress. House. Committee on Foreign Affairs, Subcommittee on International Economic Policy and Trade. Hearing. 96th Cong., 1st Sess. Apr. 26, 1979. iii and 46 pages. (Y4.F76/1:In8/58/980-81).

This document examines the status of studies about foreign invest-

ment in the United States.

*Synthetic Rutile*. U.S. Congress. Senate. Committee on Finance. Report. 96th Cong., 1st Sess. Dec. 15, 1979. 19 pages. Report No. 96-504.

These hearings recommend the passage of H.R. 2297 to tax foreign investors for the sales of their United States properties and to repeal withholding tax on interest paid to foreign investors.

*Taxation of Foreign Investment in the United States*. U.S. Congress. Senate. Committee on Finance, Subcommittee on Taxation and Debt Management. Hearing. 96th Cong., 1st Sess. June 25, 1979. 260 pages. (Y4.F49:T19/71).

This document consists of hearings on bills that would amend the Internal Revenue Code to (1) equalize tax treatment of domestic and foreign investors, and (2) subject foreign investors to capital gains tax from the sale of real property in the United States.

*Taxation of Foreign Investor Direct and Indirect Ownership of Property in the United States*. U.S. Congress. House. Committee on Ways and Means. Hearing. 96th Cong., 1st Sess. Oct. 25, 1979. 84 pages. (Y4.W36:96-43).

This document presents hearings on a proposal to tax the capital gains of foreign investors in the United States.

## 1980

*Absentee Ownership of Farmland*. U.S. Congress. House. Committee on Agriculture, Subcommittee on Family Farms, Rural Development, and Special Studies. Hearing. 96th Cong., 2d Sess. Sept. 22, 1980. iii and 91 pages. (Y4.Ag8/1:96-XXX).

These hearings focus on the impact of foreign and corporate farmland ownership.

*The Adequacy of the Federal Response to Foreign Investment in the United States*. U.S. Congress. House. Committee on Government Operations, Subcommittee of Commerce, Consumer, and Monetary Affairs. Report. 96th Cong., 2d Sess. 1980. 217 pages. Report No. 96-1216.

These hearings recommend legislation to increase the efficiency of federal agencies entrusted with the monitoring of foreign investments in the United States.

*Description of H.R. 7553 Relating to Exemptions from U.S. Tax for Interest Paid to Foreign Persons*. U.S. Congress. House. Ways

and Means Committee, Subcommittee on Select Revenue Measures. Print. 96th Cong., 2d Sess. June 18, 1980. 23 pages. (Y4.T19/4:T19/26).

This bill recommends the repeal of withholding tax on interest paid to foreign investors.

*Foreign Acquisitions of United States Banks and the Nonbanking Activities of Foreign Bank Holding Companies.* U.S. Congress. House. Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs. Hearings. 96th Cong., 2d Sess. May 15 & June 25, 1980. 999 pages. (Y4.G74/7:F76/10).

These hearings examine the various means of regulating foreign acquisitions of United States banks. Extensive supplementary materials are included.

*Foreign Bank Operations and Acquisitions in the U.S.: Parts 1 and 2.* U.S. Congress. House. Committee on Banking, Finance, and Urban Affairs, Subcommittee on Financial Institutions, Supervision, Regulation, and Insurance. Hearings. 96th Cong., 2d Sess. Sept. 24-25, 1980. iv and 1448 pages. (Y4.B22/1:96-77/pts. 1 and 2).

This document examines the extent and impact of foreign acquisitions of United States banks.

*Foreign Takeovers of U.S. Banks.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs. Print. 96th Cong., 2d Sess. (Y4.1322/3:F76/9).

This Federal Reserve Board staff study analyzes the impact of an increasing number of foreign acquisitions of United States banks on the country's economy, and surveys the development of foreign banking by considering its effect on monetary policy, financial market competition, and bank services and their efficiency.

*Japan — U.S. Trade.* U.S. Congress. House. Ways and Means Committee. Report. 96th Cong., 2d Sess. Sept. 18, 1980. 9 pages. Report No. 96-1345.

These hearings recommend the passage of House of Representatives Concurrent Resolution 376, to urge Japan to reduce the United States — Japan trade deficit through increased investment in the United States.

*Reciprocity in Investment.* U.S. Congress. House. Committee on Interstate and Foreign Commerce, Subcommittee on Consumer

Protection and Finance. Hearings. 96th Cong., 2d Sess. Aug. 19 & Sept. 9, 1980. 225 pages. (Y4.In8/4:96-234).

This document consists of hearings on amending bills to allow alien ownership of securities only to the extent that the laws of the foreign country are no more restrictive on ownership by United States citizens or corporations on securities in that country.

*Trade with Japan.* U.S. Congress. House. Committee on Ways and Means, Subcommittee on Trade. Hearing. 96th Cong., 2d Sess. Aug. 26 & Sept. 18, 1980. 230 pages. (Y4.W36:96-121).

This document contains reports and statistics on Japanese investment in the United States.

*U.S. Trade and Investment Policy: Imports and the Future of the American Automobile Industry.* U.S. Congress. Joint Economic Committee. Hearing. 96th Cong., 2d Sess. Mar. 19, 1980. iii and 148 pages. (Y4.Ec7:T67/8).

This document discusses Japanese investments in this country and the possibility of Japanese automobiles being manufactured in the United States is seriously examined.

## 1981

*Acquisition of United States Companies by Foreign Nationals.* U.S. Congress. House. Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance. House. 97th Cong., 1st Sess. Feb. 26 & Apr. 2, 1981. 277 pages. (Y4.En2/3:97-2).

These hearings are on (1) House of Representatives Concurrent Resolution 59 requesting a report from the Securities Exchange Commission on acquisitions of United States firms by foreign nations, and (2) House of Representatives Bill 1294 requiring uniform margin requirements in transactions involving the acquisition of securities of certain United States corporations by non-United States persons where such an acquisition is financed by a non-United States lender.

*Congressional Handbook on U.S. Materials Import Dependency Vulnerability.* U.S. Congress. House. Committee on Banking, Finance, and Urban Affairs, Subcommittee on Economic Stabilization. Congressional Research Service Study. 97th Cong., 1st Sess. Sept. 1981. viii and 605 pages. (Y4.B22/1:M41/2).

This document includes a survey of foreign investments in United

States mining operations.

*Effects of Proposed Canadian Pacific Acquisition of Hobart Corporation.* U.S. Congress. Senate. Committee on the Judiciary. Hearing. 97th Cong., 1st Sess. Feb. 16, 1981. iv and 88 pages. (Y4.T89/2:T-97-3).

These hearings examine United States economic implications of a proposed unsolicited takeover by the Canadian Pacific Enterprises Ltd. of Hobart Corporation, an Ohio-based manufacturer of food industry and household equipment.

*Extension of Margin Requirements to Foreign Investors.* U.S. Congress. Senate. Committee on Banking, Housing, and Urban Affairs, Subcommittee on Securities. Hearing. 97th Cong., 1st Sess. July 8, 1981. 147 pages. (Y4.B22/3:97-29).

This document consists of hearings on (1) Senate Bill 1429 which would amend the Securities Exchange Act of 1934 to make the margin requirements for domestic purchasers of securities applicable to foreign purchasers of securities in certain significant transactions involving the United States securities market, and (2) Senate Bill 1436 requiring uniform margin requirements in transactions involving the acquisition of securities of certain United States corporations by non-United States persons where such an acquisition is financed by a non-United States lender.

*Federal Response to OPEC Country Investments in the United States: Parts 1, 2, and 3.* U.S. Congress. House. Committee on Government Operations, Subcommittee on Commerce, Consumer and Monetary Affairs. Hearings. 97th Cong., 1st Sess. and 2d Sess. Sept. 22-23, Oct. 20, 22, Nov. 24, & Dec. 9, 1981, & Apr. 6, 1982. 2078 pages. (Y4.G74/7:F31/42/pts. 1, 2, and 3).

This document contains numerous reports and statistical studies on this subject, and investigates the Kuwait Petroleum Corporation takeover of Santa Fe International Corporation.

*Impact of Canadian Investment and Energy Policies on U.S. Commerce.* U.S. Congress. House. Committee on Energy and Commerce, Subcommittee on Oversight and Investigations. Hearings. 97th Cong., 1st Sess. July 9, & Aug. 6, 1981. v and 391 pages. (Y4.En2/3:97-41).

These hearings examine the impact of Canadian foreign investment

policies on the United States.

*Nonimmigrant Business Visas and Adjustment of Status.* U.S. Congress. Senate. Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy. Hearing. 97th Cong., 1st Sess. Dec. 11, 1981. 147 pages. (Y4.J89/2:J-97-86).

These hearings include a discussion of the application of immigration laws to foreign investors (pp. 82-144).

*Uniform Margin Requirements.* U.S. Congress. House. Committee on Foreign Affairs. Report. 97th Cong., 1st Sess. Sept. 30, 1981. 31 pages. House Report No. 97-258. (Y1.1/8:97-258).

This document recommends passage of a bill to amend the Securities Exchange Act of 1974 to extend securities margin restrictions to transactions involving foreign acquisitions of United States stock with credit from foreign lenders.

## 1982

*Cable Telecommunications Act of 1982.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Report. 97th Cong., 2d Sess. Aug. 10, 1982. 50 pages. Report No. 97-518.

These hearings recommend the passage of Senate Bill 2172, the Cable Telecommunications Act of 1982, which would have given the Federal Communications Commission authority to control and restrict foreign ownership of cable TV systems in the United States.

*Cable Television Regulation, Parts 1 and 2.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation, Subcommittee on Communications. Hearings. 97th Cong., 2d Sess. Jan. 18, Feb. 16, & Apr. 26-28, 1982. 671 pages. (Y4.C73/7:97-97/pts.1-2).

These hearings examine the possibility of controlling and restricting foreign ownership of cable television in the United States.

*Foreign Government and Foreign Investor Control of U.S. Banks.* U.S. Congress. House. Committee on Government Operations, Subcommittee. Hearing. 97th Cong., 2d Sess. Sept. 30, 1982. 931 pages. (Y4.G74/7:F76/11).

This document presents reports and statistics in this area and gives a thorough discussion of some specific cases.

*Foreign Investment in the United States.* U.S. Congress. House. Committee on Foreign Affairs, Subcommittee on International Economic Policy and Trade. Hearing. 97th Cong., 2d Sess. Feb.



23, 1982. 106 pages. (Y4.F76/1:In8/56/982).

These hearings examine the effect of foreign acquisitions of United States companies on the economy and securities market of this country.

*Impact of Canadian Energy and Investment Policies on U.S. Commerce.* U.S. Congress. House. Committee on Energy and Commerce, Subcommittee on Oversight and Investigation. Report. 97th Cong., 2d Sess. Oct. 1982. v and 67 pages. (Y4.Eu2/3-97-66).

This report is based on the hearings held by the Subcommittee on June 19, July 9, and August 6, 1981.

### 1983

*Cable Telecommunications Act of 1983.* U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Report. 98th Cong., 1st Sess. Apr. 27, 1983. 45 pages. Report No. 98-67. (Y1.1/5:98-67).

This document recommends the passage of Senate Bill 66 which, among other things, would also authorize the Federal Communications Commission to restrict foreign ownership of cable television in the United States.

*Technology and Employment.* U.S. Congress. House. Committee on Science and Technology, Subcommittee on Science, Research and Technology, and Committee on the Budget, Task Force on Education and Employment. Joint Hearings. 98th Cong., 1st Sess. June 7, 9-10, 14-16, & 23, 1983. 1397 pages. (Y4.Sci2:98/41).

This document contains the reports *Japanese Management of the U.S. Work Forces* and *Japanese Investment in the United States: An Opinion Survey of Elected Officials*.

### 1984

*Description of S. 1915 Relating to Tax Treatment of Foreign Investment in U.S. Real Property.* U.S. Congress. Senate. Committee on Finance. Print. 98th Cong., 2d Sess. June 18, 1984. iii and 19 pages.

This document includes a description, prepared by Joint Taxation Committee staff, of Senate Bill 1915, which would repeal the Foreign Investment in Real Property Tax Act of 1980 and thereby remove the current tax liability of foreign investors on the sale of United States

real property.

*Equity in Foreign and Domestic Credit and Tender Offer Reform.* U.S. Congress. House. Committee on Energy and Commerce. Report. 98th Cong., 2d Sess. Sept. 7, 1984. 47 pages. Report No. 98-1028.

These hearings recommend the passage of House of Representatives Bill 5693 to amend the Securities Exchange Act in order to authorize the Federal Reserve Board to impose margin requirements on foreign firms that borrow from foreign lenders to purchase United States securities.

*Repeal of Foreign Investment in Real Property Tax Act.* U.S. Congress. Senate. Committee on Finance, Subcommittee on Energy and Agricultural Taxation. Hearing. 98th Cong., 2d Sess. June 19, 1984. 171 pages. (Y4.F49:S. hrg. 98-947).

These hearings represent yet another attempt to do away with the Foreign Investment in Real Property Tax Act (FIRPTA) of 1980.

*Takeover Tactics and Public Policy.* U.S. Congress. House. Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection and Finance. Hearings. 98th Cong., 2d Sess. Mar. 28 & May 23, 1984. 746 pages. (Y4.En2/3:98-142).

In the course of a general examination of corporate tender offers, the hearings consider the requirement of a margin to be imposed on foreign investors buying United States securities with funds borrowed from foreign lenders.

*Tax Treatment of Interest Paid to Foreign Investors (Including H.R. 3025 and H.R. 4029).* U.S. Congress. House. Ways and Means Committee. Print. 98th Cong., 2d Sess. Apr. 28, 1984. 31 pages. (Y4.T19/4:F76/2).

These hearings recommend the repeal of withholding tax on United States interest paid to foreign investors of corporate bonds.

*Tax Treatment of Interest Paid to Foreign Persons.* U.S. Congress. House. Ways and Means Committee. Hearing. 98th Cong., 2d Sess. May 1, 1984. 328 pages. (Y4.W36:98-84).

This is an effort to repeal the requirement of a withholding tax on interest paid to foreign purchases of United States corporate bonds

for the purpose of increasing the sale of such bonds to foreigners.

*U.S.—Japan Relations.* U.S. Congress. House. Committee on Foreign Affairs, Subcommittee on Asian and Pacific Affairs. Hearings. 98th Cong., 2d Sess. May 2, 3, 23, & June 12, 1984. 490 pages. (Y4.F76/1:Un35/49/984).

This document contains a discussion of Japanese capital investments in the United States.