

CHAPTER 3

MULTINATIONAL CORPORATIONS: WHY CORPORATIONS SEEK GLOBAL EXPANSION

A. Multinational Corporations

Left to their own devices corporations generate wealth, drive technological innovation and develop market opportunities. The beneficiaries are a global class of elite producers, while workers face the possibilities of exploitation. Neo-liberal policies are blind to the plight of the less fortunate, assuming that the benefits of neo-liberal policies will trickle down to all. The statistics tell a different tale. Liberalized markets tend to redistribute assets to those with wealth and power and widen gaps between rich and poor. (2.8 billion People living on \$2.00 a day)¹

The purpose of this chapter is to analyze global food supply from a neo-liberal perspective and to develop a critique of neo-liberal policy in order to realize a more just and equitable distribution of food. This paper makes the assumption that food is a basic human right, and that the west having profited greatly through the extraction of resources from developing countries, has an obligation to contribute, not through charity-but rather by the adaptation of policy, to the realization of the right to food. Much of the criticism surrounding globalization is misdirected. The global regimes bringing the world together are not inherently negative, but in general globalization entails building social relationships that span the globe. Global social relationships are not the product of neo-liberal policy frameworks but rather the result of communication developments realized through advances in technology. Problems of neo-liberal ideologies arise from the acceptance of ideational formations related to mainstream economic ideals and pedagogical assumptions that we take for granted, that is the social relationships that we have been born into and ultimately

¹ The 2007 Human Development Report (HDR) from the United Nations Development Program notes that, "There are still around 1 billion people living at the margins of survival on less than US\$1 a day, with 2.6 billion—40 percent of the world's population—living on less than US\$2 a day."

accept.²These assumptions help spread the neo-liberal philosophy through austerity demands, development programs, educational grants, seminars and within academia by international financial institutions like the International Monetary Fund and The World Bank. The GATT now WTO, most notably during the 1986-1994 Uruguay rounds has broadened and deepened reductions in trade restrictions. Meanwhile the OECD countries have collectively reduced restriction on foreign direct investment through the proliferation of free trade agreements. Neo-liberal regimes are a dominant player within the global arena setting the tone for current internalizations and meditations on globalization. Globalization therefore can be seen as a manipulation and socialization process of geography and neo-liberal policy can be seen as a policy adaptation of the aforementioned occurrence.³

Global activity, the process we refer to as globalization, as with most historical interactions, is not a new concept. Trade routes of the silk highway attest to the want of exchange, commerce, information and cultural. The British East Indies Company operated in many continents and was connected through technological advances like the telegraph. Large scale migration has occurred throughout history, forced and voluntary. However modern global connection can be viewed as quantitatively superior and in this sense differ in significant and important ways to the past, cellular telephones, fiber-optic cables, the internet, make connecting instantaneous and help to facilitate the neo-liberal doctrine. Transnational production further erodes the importance of geographical distance, supported by transcontinental shipping lines and international flights.

⁴“Globalization” has been widely used to describe the increasing internationalization of markets for goods and services, the financial system, corporations and industries, technology and competition”

The tendency to view globalization as an economic entity is pervasive. Liberalization of finance, capital flows, deregulation of financial services and opening markets to trade and investment facilitate growth and competition in international

² Jan Aart Scholte, *The Sources of Neoliberal Globalization*, Paper No. 8 (Geneva: UNRISD Publication, 2005), pp. 1-38.z

³ Ibid.

⁴ OECD, *OECD Handbook on Economic Globalisation Indicators* (2005), p. 11, <http://www.oecd.org/dataoecd/37/25/34964971.pdf>.

markets that further persuade the development of information technologies and interconnectivity. These innovations are supported by public policy formation and neo-liberal market forces and driven by transnational firms' response to changes in such policy and market forces. Further, international organizations such as the WTO influence global expansion by providing a forum to negotiate relaxed tariff regulations to facilitate trade. The global food chain then can be viewed as socially constructed modes of economic integration and cooperation seeking opportunities within the sphere of potential economic geography. ⁵An important by-product of access to geography is the fragmentation of the production process where different stages of manufacturing are carried out in many different geographical areas. The fragmenting of business into different geographical areas is a means of expanding market base; destroy market competition through "creative destruction"⁶ as well as capture added value within the manufacturing and distribution chains. The neo-liberal doctrine is considered (by neo-liberals) to be a natural process where market competition responds to a myriad of influences and factors. The market adjusting to these factors is seen by the neo-liberal as a naturally occurring social entity (as opposed to the centrally controlled markets of the former eastern block). The neo-liberal doctrine therefore must remove official restrictions to the movement of goods and services, money flow and capital flow in FDI and portfolio investment. Ultimately the neo-liberal doctrine will remove all forms of state inhibitors to free trade flow. Traditional relationships between the state and business were challenged during the oil shocks of the 1970s when restrictions on trade appeared to fuel the downward spiral of western economies. Thus neo-liberal economic policies were envisioned as a means by which state influence would be minimized, corruption

⁵ Arnaldo Camuffo, *Rolling Out a "World Car": Globalization, Outsourcing and Modularity In the Auto Industry*, pp. 1-42, <http://imvp.mit.edu/papers/0001/camuffo1.pdf>.

⁴⁵ Creative destruction assumes "discontinuity" within market competition and states that success within a given market demands change and fluidity within corporate management strategies. Corporations continuously enter the market to compete for business. Creative destruction occurs when market share is transferred from one corporation to another. For a broader and deeper explanation, see Richard N. Foster and Sara Kaplan, *Creative Destruction: Why Companies that are Built to Last Under Perform the Market and How to Successfully Transform Them* (Doubleday: Currency, 2001).

removed from trade. Even conflict was viewed as a means by which liberal democracies could be protected or disrupted (along with their markets). Prior to the 1980s most western markets were insulated, inward looking. Policies were constructed in such a way as to provide indigenous economies protection from outside competition in order to develop industries with the help of the state. Regulations protecting domestic industry were in place within the so called welfare state. Developing countries by comparison are now being subjected to development policies of liberalization and forcing unfair competition with more efficient, heavily capitalized and more experienced economically mature western industries. Structural adjustments, also known as the Washington Consensus influence the liberalization process by prescribing a list of measures intended to facilitate trade and develop a healthy economy. The set of mechanisms (listed below) were prescribed in many Latin American countries during the 1980s as a curative for financial crisis.

- ⁷ Prescribe cutbacks, “liberalization” of the economy and resource extraction/export-oriented open markets as part of their structural adjustment.
- The role of the state is minimized.
- Privatization is encouraged as well as reduced protection of domestic industries.
- Other adjustment policies also include currency devaluation, increased interest rates, “flexibility” of the labor market, and the elimination of subsidies such as food subsidies.
- To be attractive to foreign investors various regulations and standards are reduced or removed.

⁷ Anup Shah, “Causes of Poverty,” *Global Issues*, sec. Trade Economic Issue, Last updated: Tuesday, March 04, 2008, <http://www.globalissues.org/TradeRelated/SAP.asp#TheWelfareStatehasHelpedTodaysRichCountriesDevelop>.

Much criticism surrounds liberalization methods, most notably austerity measures that aim at paring back social welfare programs. Liberalization policy is the catalyst for economic expansion. The following section analyzes the theory of the firm as a means by which the firm and neo-liberal policy is connecting to further exploit potential in global markets.

In order to fully realize the operational aspects of transnational corporations, their philosophies and mechanisms, motivations and rationalizations for global business endeavors, it is essential to examine the firm from a theoretical perspective. Why do firms organize themselves under specific parameters to maximize profits and efficiencies? What are the methods that allow the firm to maximize and control assets within this type of organizational framework?

According to Marx, social scientists are concerned with clarifying the unknown. The ideas shared between Marx and Engle were in effect an effort to realize the end results of a state sponsored capitalist economy. In this sense Marx was concerned with the social aspects of the modern economy and looked at the changes inherent within these relationships. The modern global economy is best examined in this way, as a social entity in constant flux and always changing.⁸ V.I. Lenin's critique of world politics, capital accumulation and control of material assets was pretty well accepted by Marxists up until the 1960s. (1) concentration of capital and production; (2) merging of bank capital and⁹ industrial capital, into a financial oligarchy; (3) the export of capital versus the export of goods; the formation of associations of international capital, dividing the world between themselves and; (5) the division of the world's territories between the biggest capitalist powers (which Lenin referred to as imperialism). The obvious change within the Lenin paradigm is the break-up of colonial possessions. I would contend, however that Lenin's assertion that the world would be carved up and controlled by a few capitalist elites is a valid fulcrum with which to view the modern global business environment. Modern Marxist

⁸ Stephen Herbert Hymer, *The Multinational Corporation; A Radical Approach*, ed. Robert B. Cohen and others (New York: Cambridge University Press, 1979), p. 16.

⁹ Here the idea of industrial should be viewed with a more modern fulcrum to include transnational businesses. Lenin's view of the industrial state is to simplistic for the modern global era to the exclusion of certain business, notably within other areas of the service sector.

critique looks at the pool of managerial talent that accumulates in the west, its large and easy access to capital, its large sales apparatus, control of material assets and labor. These assets are said to culminate in value transfer from one area of the globe to another. Further global business elites or transnational elites, conduct business across borders for the benefit of TNCs (and themselves) live in similar fashion the world over (within private gated communities) and have begun to share similarities among themselves rather than to traditional culture residing within the nation-state apparatus.

B. Radical economic approach

An examination of current corporate activities within the context of international relations necessitates further development of the existing theoretical perspectives, pushing them forward into a more thorough and cohesive explanatory tool for the investigation of relations between societies interacting in the modern global era. The neat and convenient divisions and theoretical explanations of the cold war era, east vs. west, cannot begin to explain the interactions among states, non-states actors, global business and social connections that are forming the world over. The following theoretical perspective is based on analytical perspectives of transnational corporations and is the domain of international political economy. The analysis examines the works of economist writing at different times attempting to explain the phenomenon of global business interactions. Moreover this chapter will look at the dynamics of the transnational firm to illustrate from a procedural standpoint the networking of the TNC within global food supply. The chapter will end with a survey of contested foreign direct investment, and its arbiters, providing a window into multinational financial activity.

Theory of TNCs begins with the inner workings, the social structure of the firm. ¹⁰Modes of economic analysis changed dramatically during the period around the First World War. It was becoming increasingly evident that an analysis of industry was incomplete and that an analysis of the firm (and also the consumer) was

¹⁰ Oliver Hart and Bengt Holmstrom "A Theory of Firm Scope" (Harvard University and NBER) November 4, 2002

necessary to account for the changing dynamics arising from greater share holder participation. This change put management, with relatively little ownership, at the helm of these companies. Management styles shifted away from traditional ¹¹British marginality to the ¹²rule of thumb, to this new management style. The analysis of the firm can be further split in two. The first schism analyzes the firm as a social entity, an amalgam of individuals; the second takes the legalist viewpoint of the firm as a contractual entity, a set of rules and regulations based on the writ of law.

The operational aspect of the firm is tied directly to its internal operating philosophies. These operational philosophies form the basis of a firm's internalization process and these processes in turn constitutes its ability to operate as a firm. The enforcement cost of a firm form the basis of a managerial directive that strives to enable a firm to produce more ¹³“goods” than “bads”. Goods representing the firms outputs versus inefficiency which translates to higher production costs and therefore bads. These terms, although seemingly obvious, form the backbone of the firm's social and managerial styles. That is to say, the ways in which the employer-employee contact is produced and enforced. Firms establish rules and regulation to allow for gains within this relationship to balance the goods/bads outputs, or put another way, to offset the zero sum game where employees are allowed to slack and thus offset goods by producing bads. This procedure occurs within the firm through elaborate social interactions of hierarchy and subservience. Commonly a rewards and punishments scheme of higher wages for higher output is structured within the firm ideology. Sociological means such as selecting or convincing the employee that she

¹¹ Constraints are conceptualized as a border or margin. The location of the margin for any individual corresponds to his or her endowment, broadly conceived to include opportunities. <http://en.wikipedia.org/wiki/Marginalism>.

¹² A rule of thumb is a principle with broad application that is not intended to be strictly accurate or reliable for every situation. It is an easily learned and easily applied procedure for approximately calculating or recalling some value, or for making some determination. http://en.wikipedia.org/wiki/Rule_of_thumb.

¹³ A good or commodity in economics is any object or service that increases utility, directly or indirectly, not to be confused with good in a moral or ethical sense (see Utilitarianism and consequentialist ethical theory). A good that cannot be used by consumers directly, such as an office building or capital equipment, can also be referred to as a good as an indirect source of utility through resale value or as a source of income. http://en.wikipedia.org/wiki/Good_%28economics%29.

has the same goals as the firm is also a valuable technique.¹⁴ The cost of monitoring behavior within the firm is considerable and varies from firm to firm as well as from region to region. The firms' internal processes however, are seen as more constant than market externalities. As an example, the constant challenge of information can lead to misleading market ideas, in particular, price, and therefore, flawed business methods. For this reason a firm will develop an internalized management system whereby actors are situated to convey limited amounts of information to a lead person (boss) who will synthesize the market analysis in order to improve the instability inherent in the price/market/information system.¹⁵ These methods of organization can influence the firm, market and its location.

The ownership of location makes up the dimensional aspect of transnational corporation. The search for added value within the supply chain is one of the major dictates of the decision making process. It is paramount at this stage to contrast ownership with different stages of supply. Value¹⁶ gives dimension to units of production within a manufacturing and distribution system. These steps, production and manufacturing, resource acquisition and management, shipping and finally, marketing-advertising, distribution and sales constitute supply chain management. It is the manipulation of value that becomes the driving force within the value added chain of the TNC. The supply chain contains the forces effecting value, therefore it becomes increasingly necessary to control the supply lines, where manufacturing is situated nearest raw material assets, advertising and warehousing/distribution near the consumer. Moreover, it is fundamental when looking at supply, to understand ownership within different aspects of supply. Subsidiaries are adjuncts of the TNC

¹⁴ Jean-Francois Hennart, *Theories of the multinational Enterprise* (Cambridge, Mass: University of Michigan Press, 1982), chap. 5.

¹⁵ For greater detail on firm organization and the interrelationship between firms and marketplace management, see *Theories of the multinational Enterprise*, chap. 5.

¹⁶ Edith Penrose talks about "values concern with determinant factors, the forces determining quantities of a particular product in her seminal piece "The Theory of the Growth of the Firm", although in today's global market the factors influencing price have developed to include a host of new information technologies, hyper efficient transportation and the notion of vertical integration which provides for interconnecting activities between so called competitors. Traditional micro economics measures market behavior using the "General equilibrium theory seeks to explain price variation, behavior of supply and demand within an economy or several interconnected economies. The traditional theory has grown to encompass modern macro economic influences.

located within a host state while retaining ownership. Another common method is integration with traditional competitors as goods travel from one end of the supply chain to its perspective market.

In his attempt to define multinational corporate activity Dr. Stephen Hymer articulated ideas of foreign direct investment and ¹⁷later took a radical Marxist perspective. Further analysis within this chapter draws from the ground breaking works of Stephen Hymer's 1960 PhD dissertation, "The international operations of national firms ; a study of direct foreign investment".¹⁸ According to Hymer, the multinational corporation draws its operating power through intra-firm foreign direct investment which effectively bypasses markets.

Further Hymer saw corporations as a substitute for the marketplace. Corporations through organizational capacities, strive to coordinate, organize and manage international exchange. ¹⁹This phenomenon is described by Hymer as "market contradictions". In short the evolution of the corporation has been in response to different marketing needs and challenges of the last century. From domestic manufacturers in the 19th century (evolving) into multi tiered management structures that employ a multidivisional aspect with decentralized control in response to advances in technology making possible the streaming of many different products within one factory setting and today internationally. This decentralized corporation is many structures within a superstructure. When paired with the ability to finance overseas production with partnerships and subsidiaries the corporation becomes a structure geared to planning and strategizing. Further, the corporation is capable of employing modern techniques of the sciences and social sciences (such as psychology

¹⁷ Stephen Herbert Hymer, *The Multinational Corporation; A Radical Approach*, ed. Robert B. Cohen and others (New York: Cambridge University Press, 1979)

⁵⁷ Stephen Herbert Hymer, "The International Operations of National Firms: A Study of Direct Foreign Investment," (PhD diss., Massachusetts Institute of Technology, 1960).

⁵⁸ Stephen Herbert Hymer, "The efficiency (contradictions) of Multinational corporations," *The American Economic Review* 60, no. 2, papers and proceedings of the Eighty-second Annual Meeting of the American Economic Association (May, 1970): 441-448.

⁵⁹ Ibid.

in advertising) within their directive of management of the lower tiered levels of the corporation to realize management of management and production, distribution and advertisement. To use Hymer's metaphor, the corporation developed a "brain" which gave it the ability to manage assets and a longer time frame to invest achieving greater perspective than ever before possible. The modern management style paved the way for foreign investment in manufacturing and mining, becoming the precursors for modern global business. During the early stages of international business and investments, other more complex transactions were less viable in developing countries because of the governmental structures in place in regions like Latin America for instance where nationalization of the service sectors were common throughout the 1960s and 1970s.

Foreign direct investment is the engine that drives global business. International banking, opportunities for foreign direct investment and portfolio investment fuel the global supply chains. It is a TNC's ability to obtain finance for its project that makes possible operations on a global scale. The partnerships between TNCs and international banking are not dissectible from global supply chains. Free trade agreements, FDI and trade are synonymous with global food supply.

Today's modern TNC has a much wider and deeper access to industries within the services, technology and information sectors. Hymer's size and concentration perspective illustrates an idea that at first glance feels counterintuitive. FDI investment results in competition between fewer firms. A large firm investing in FDI will transfer technology and management/organizational skills and capital but in doing so will restrict, via acquisition of an enterprise, the sheer size of the market which lessens competition. Thus FDI can be viewed as anticompetitive. The large corporation will enlarge the area of control while decreasing the size of decentralized (or local) control; however the area of decentralization may offset the FDI. That is to say that market control may offset the market investment in remote operations.

Governments are engaged in the active solicitation and procurement of foreign direct investment. Bilateral trade agreements and regional trade agreements along with The World Trade Organization, strive to create an environment for secure global investment creating a "spaghetti bowl" of overlapping treaties and agreements

.Simultaneously, state policy makers are bridled with the task of regulating interstate commerce.

It is common knowledge that the state governing apparatus in the west evolved simultaneously and probably at the behest of the capitalist economy.²⁰ From feudal and manorial forms of management in Europe to a “free labor” industrial society with a national industrial class, a state mechanism was developed for control of the economy. As labor grew in size and influence a stronger governing state emerged to control this new system. Later, labor and resources were found within the newly acquired colonies which became the foundation of the modern capitalist economy. The outcome of strong industrial states was the conquest and division of non-industrial states into spheres of influence, the erecting of trade barriers and the later nationalism that led to the First World War and the breakdown of the capitalist system with the great depression.

John Maynard Keynes developed a substantial critique of the world economic system. His work is undoubtedly the most influential of all the economists of the post war period. Keynes preached self sufficiency in manufacturing and financial sectors; capital should remain within the domain of the nation state apparatus. Although the movement of global capital slowed until the 1970s the die had been struck and the generation of wealth for domestic and international portfolio holders was still the object of structuring procedures behind multinational corporations.

C. Theory of global food trade, imperfect market, Strategic trade theory, oligopoly and International Dispute Settlement

This survey is taken from current strands of economic theory, strategic trade theory and imperfect markets in the presence of oligopoly structures. Strategic trade theory conspires to understand how international food markets respond in the face of government subsidies within imperfectly competitive agricultural markets. The synthesis takes as its starting point Jeffery J. Reimer and Kyle Stiegar’s (2003) (2006) work on imperfect competition oligopoly, protectionism and strategic trade. Kyle Bagwell and Robert W. Staiger pursue an economics model of strategic trade

²⁰ Stephen Hymer contrasts the strengthening of the state with the rise of labor in his work, see *The Multinational Corporation; A Radical Approach*.

theory not restricted to imperfectly competitive markets. Further an analysis of relevant literature was made concerning strategic trade policy, such as Brander (1995), because of his focus on literature review, which strives to explain why policy deviates above and beyond the usual terms of trade, most commonly in the face of oligopoly.

²¹International food markets are characterized by the presence of oligopoly, trade that is controlled by a few private firms. “Export subsidies become ²²‘rent shifting’ policies shifting oligopoly profits from foreign to domestic firms”. Further, strategic trade theory relies on the interdependence of firms and the interconnectedness of transactions for the generation of profits. The strategic element is aggressive marketing by domestic firms in the place of domestic support to the advantage of monopolistic groups in the form of tariffs, quotas, R&D subsidies voluntary export restraints capacity building measures and government subsidies. The strategic theory shows that government subsidies lower domestic firm costs making the firm available for greater export within a given or “rival” market. Therefore a rival market must reduce its “equilibrium” output.²³ As output from the rival market slows, supplies increase and prices fall, increasing the profit to the domestic firms. Moreover government subsidies often originate from focused interests such as political action committees. Detrimental effects can occur when domestic consumption is offset by international marketing preference.²⁴ Significant factors distinguish food trade from other forms of global market interaction especially when considering economic configurations. Imperfect markets refer to markets with few competitors. These

²¹ Jeffrey J. Reimer and Kyle Stiegert, “Imperfect Competition and Strategic Trade Theory: Evidence for international Food and Agricultural Markets,” *Journal of Agricultural and Food Industrial Organization* 4, no. 1 (2006): 1134.

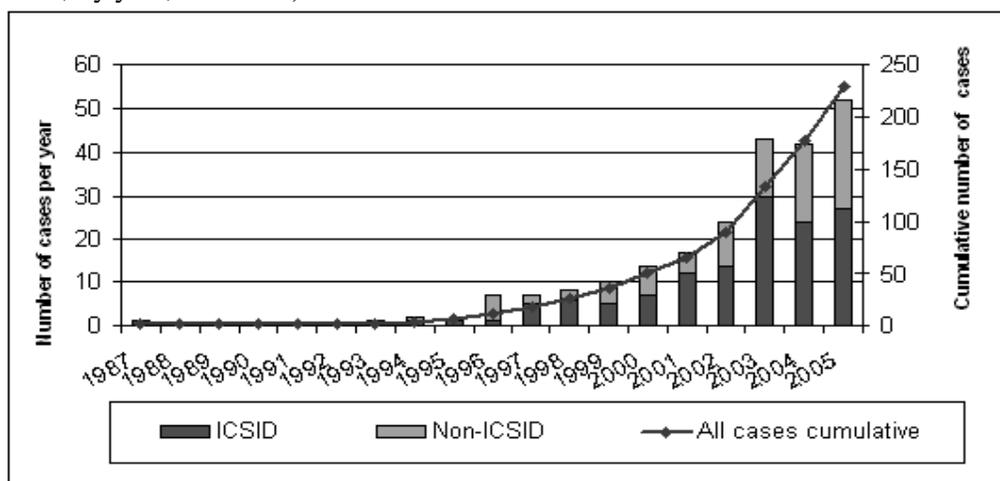
²² Rent shifting occurs when a buyer and seller negotiate a price with the intention of extracting price surplus from a second buyer.

²³ In its simplest form the equilibrium model states that output=income. In actuality lower prices and loss of market by a third party competitor may not allow for greater market share due to loss of income from loss of sales. In this case lower production from the third party competitor may help to revive economic conditions.

²⁴ For more information on the dynamics of rent shifting and strategic trade theory, see “Imperfect Competition and Strategic Trade Theory: Evidence for international Food and Agricultural Markets” as well as Kyle Bagwell and Robert W. Staiger, “Strategic Trade Industries and Agricultural Trade Disputes.” *Economics and Politics* 13, no. 2 (2001): 113-128.

markets, which are characteristic of global food supply, are used to formulate strategic policy between foods suppliers and governments as a means of market maximization. The benefits from control of the international food supply by a relative few corporations are obvious. The theoretical explanation for the dominance of oligopoly configurations is less evident. The following section of the paper is devoted to strategic trade theory as a tool for understanding formations of oligopoly structures while making the assumption that oligopoly formations benefit through government intervention. Strategic trade policy is possible when the terms of trade are unequal, when a state has the power to influence the world market and becomes efficient in the face of market inefficiencies such as market distortion. Strategic trade policy evolves in the presence of monopsonistic structures in tandem with government subsidies. Vague wording within article XVI of the GATT (WTO) Agreement on Agriculture allow for subsidies of “primary products” such as agricultural goods which allows for the displacement of exports from one to another rival market.

Figure 3.1: Known investment treaty arbitrations - (cumulative and newly instituted cases, by year, end 2005)



Source: Luke Eric Peterson, *The Global Governance of Foreign Direct Investment: Madly Off in All Directions*, 2005

1). International Political Economy

In its simplest form, the critique of international political economy can be distilled into two mutually opposing forces. Firstly the economic needs of the state to

pursue foreign direct investment, foreign currency, and tax revenues necessitates policies that allow for the safe operations of international business, one that guarantees safety and stability for foreign firms operating internationally. The second and opposing force is the broad issue of human rights. In economic terms human rights is most often displayed through abuses of labor and the environment. The following section of the chapter is concerned with state's management of its food assets, the ability to feed its people and the outcomes following a state's inability to provide its people with this most basic of obligations.

Capital, which is fluid, more so in portfolio investments, but also within FDI, has the ability to easily transverse state boundaries. Modern communications technology assists in information gathering and transaction by increasing the speed of transactions while lowering transactional costs. Bi and multi lateral agreements rather than mere facilitators of market liberalization are the facilitators of FDI. Free trade agreements, as mentioned above, strive to protect investors from the instabilities that can arise from time to time at the state level. To sum, the friction between the state and FDI lives between the states need of FDI for strengthening and growing its economy and the need to protect domestic business, labor and environmental issues.²⁵ Conflict between transnational corporations and host states arise when the two needs become conflicted. Contractual issues of free trade agreements and parochial states concerns with domestic protection. For this reason international mechanisms for conflict resolution have evolved simultaneously with the proliferation of bi and multilateral free trade agreements.²⁶ The International Centre for Settlement of Investment Disputes is a branch of the World Bank Group. As its name suggests, the

²⁵ This idea is credited to Under Secretary of State to Lynden Johnson, George Ball. Highlighted by Stephen Hymer in *The Multinational Corporation: A Radical Approach*, pg 9

²⁶ Luke Eric Peterson, *Dialogue on Globalization, The Global Governance of Foreign Direct Investment: Madly Off in All Directions* (Geneva: Friedrich-Ebert-Stiftung, 2005). Dialogue on Globalization contributes to the international debate on globalization – through conferences, workshops and publications – as part of the international work of the Friedrich-Ebert-Stiftung (FES). For more information on Dialogue on Globalization see the FES web site, <http://www.fes-globalization.org/>.

²⁷ICSID is the arbiter of international economic disputes. In addition to the ICSID the United Nations, UN Commission on International Trade Law (or UNCITRAL) drafts international commercial rules regulations and legislation.²⁸ The UNCITRAL mandate concerns “the progressive unification and homogenization of the laws of international trade. A survey of case loads within these institutions reveals a sharp increase in international arbitration over the past several years. International arbiters are seen as a reasonable conduit between the opposing forces of state control and FDI.

D. Analyzing Free Trade Agreements: Archer Daniels Midland Co. and A.E. Staley Manufacturing Co. v. The United Mexican States: Overview

In the following section of the chapter I will attempt to contrast the power of the state in trading agreements relative to TNCs (in this case through examination of an FTA arbitration); and assess the state’s ability to regulate multinationals and protect indigenous industries in the era of liberal economic policies. ²⁹I use NAFTA dispute settlement “HFCS” case involving Archer Daniels Midland (with claimants A.E. Staley Manufacturing Co.) and The United States of Mexico as the subject of my examination.

³⁰A short History of the Archer Daniels Midland Company and market concentration begins with John W. Daniels Linseed Oil Company in 1902; later in 1903 John W. Daniels forged a partnership with George A. Archer. Archer Daniels Linseed was founded in 1905 and incorporated in 1923 after the acquisition of Midland linseed products the company became Archer Daniels Midland Company. In the 1930s ADM began manufacturing “formula” seeds and solvent extraction of soy beans. Steady research and development in the 1940s allowed ADM to manufacture oils into several hundred different products. By the late 1940s, net sales

²⁷ For more information on the International Center for the Settlement of Investment Disputes (ICSID) including past and pending cases as well as member states, see their web site, <http://icsid.worldbank.org/ICSID/Index.jsp>.

²⁸ For a more detailed profile of UNCITRAL see, <http://www.uncitral.org/uncitral/index.html>.

²⁹ It is important to note that the “HFCS” case was also heard by WTO dispute settlement.

³⁰ History of Archer Daniels Midland, <http://www.admworld.com/naen/about/history.asp>.

reached 300 million dollars. ADM diversified with the purchase of U.S. Industrial Chemicals resin division in 1954. By the 1960s ADM had expanded its shipping into the gulf (of Mexico) and began manufacturing textured soy proteins. In the 1970s ADM purchased interest in feed corn and dry corn milling facilities³¹. Later in the decade ADM entered into the corn sweetener business with the purchase of a wet corn milling plant³². In the 1980s the company began to produce ethanol from corn and started operation in industrial oils. During the 1990s ADM entered into citric acids and began manufacturing bio diesel from canola oil operations in Germany. In 2000 ADM entered China with 5 new seed crushing plants; in Turkey ADM acquired an oil processing and packaging operation. In Bolivia, ADM acquired an oil processing and packaging plant with grain storage elevators becoming truly global in scope and integration.

³³The dispute between ADM and Mexico is a condition of NAFTA liberalization policies, market barriers, and the antidumping policies contained within the NAFTA protocol. The central question of the arbitration is Mexico's ability to protect its indigenous sugar industry versus free trade within and between North American producers through the NAFTA protocol.

Since 1993 ADM and Staley have held joint interest in a Jalisco Mexico based corn sweetener manufacturing, transportation and warehousing/storage facility called ALMEX. ADM shipped sweeteners from North American plants to ALMEX to be sold in Mexico. The state of Mexico has a large sugar industry which is both privately

³¹ The first step in the dry corn milling process is to dry clean the corn, separating fines and broken from the whole corn. Occasionally wet cleaning follows to remove surface dirt, dust and other matter. The clean corn is tempered to 20 percent moisture. While moist, the majority of the outer bran or pericarp, germ, and tip cap are removed, leaving the endosperm. The bulk of the corn endosperm, known as the "tail hominy fraction," proceeds through the degerminator, is dried, cooled, and sifted. A portion of this "fraction" is isolated as large flaking grits. Further separation is accomplished using roller mills, sifters, grinding tables, and aspirators so that an infinite variety of smaller grits, meals and flours can be produced. http://www.namamillers.org/prd_c_mill.html.

³² Corn is processed using a wet milling procedure to produce several important products. The most abundant of these is starch, which is further processed to generate sweeteners used mostly in soft drinks. In addition, oil is also separated from the corn in this process. One hundred pounds of dry corn produces 67 pounds of starch and sweeteners, 3.6 pounds of oil, and 29.4 pounds of byproducts or co products. http://www.ext.vt.edu/news/periodicals/livestock/aps-99_05/aps-0062.html.

³³ NAFTA Agreement, "Article 1119: Notice of Intent to submit a Claim of Arbitration," under section B of chapter 11.

held as well as partially state owned. Mexican plants produce sugar that is used in food manufacturing and interchangeable with³⁴corn sweeteners. Corn sweeteners however, are lower in price. Mexican manufacturing, such as the soft drink industry soon changed to the corn based sweeteners leaving the indigenous Mexican sugar industry with sagging sales of their product. At the request of the Mexican sugar industry, the Mexican government issued antidumping measures against ADM and other American producers of high fructose corn sweeteners (HFCS). The response to the antidumping measure by the Mexican state included a tariff on all drinks made with HFCS sweeteners of 20%.³⁵This had the effect of removing profitability of using HFCS. American producers filed for arbitration through the NAFTA protocol and at the WTO.³⁶The arbitration tribunal was constituted under Chapter Eleven of the NAFTA for dispute settlement; Article 1102 which states that no preferential treatment shall be given to a domestic producer of “like” substances. Therefore, the Mexican soft drink tax was seen to unfairly discriminate against HFCS producers from the U.S. Further, Mexico was found to discriminate against the U.S. producers as (Mexico) had known that HFCS were only available from U.S. manufacturers and that the tax would prevent the importation of the sweetener to the advantage of the Mexican sugar industry.³⁷ In addition the tax did influence the investment potential for foreign investors and in doing so created a hostile investment environment. Under Article 1110 of NAFTA,³⁸Mexico may not nationalize or expropriate an investment or investor of another party or take measures to nationalize investment. By removing HFCS from the market through heavy taxation, Mexico effectively removed the only viable alternative to sugar and so nationalizes the product in “de facto”. Moreover, by removing the possibility for the free exercise of foreign investment within the ALMEX Company, their imports, transportation and marketing

³⁴ No Mexican plant is involved in corn sweetener manufacturing that is not wholly owned by a US company.

³⁵ NAFTA Agreement, *Article 1119*.

⁷⁶ *Ibid*.

⁷⁷ The goal of the FTA is not necessarily greater market liberalization but rather aims to ensure a reliable and safe environment for investment and investors.

⁷⁸ *Idem, Article 1119*.

apparatus, at a substantial monetary loss to ADM and Staley, did effectively expropriate the sweetener from the market. Because of the expropriation of investment to ADM and Staley the Mexican government was ordered to pay compensation equal to the fair market value of investment before the expropriation.

The ability of the state to set rules in the era of the FTA can be seen as problematic. The many international agreements further complicate the process of international business. Ascending to FTA protocols gains states advantages in terms of attracting FDI and entrance into markets while at the same time, each new agreement, bi or multilateral as well as WTO accords may be seen as an erosion of state's power. However the experience of the Cargill Corporation in the Brazilian rain forest illustrated below may contradict this perceived erosion of state power.

In the last chapter we examined legal mechanisms available to the state and found that domestic governments ascending to FTA protocols may relinquish legal domain over domestic food policy. Next we turn to domestic government's responsibilities as ensconced in the conventions of the Food and Agriculture Organization's Right to Food protocol.