

# Economic Theory of Foreign Direct Investments and the Nigerian Immigration Regulations 2017

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## Abstract

Politically, Nigeria attained nationhood from the Great Britain on October 1, 1960. Economically, Nigeria is yet to emancipate herself from the apron-strings of imperialism. The recent attempt to deregulate the down-stream oil sector is a mere façade. Whilst the Nigerian investors pose as the arrow-heads, the foreign investors remain behind the scene blowing the piper and dictating the pace of the game. This is evident in the oil and gas sector and the telecommunication industries. Thus, the imperialist bourgeoisie remain charge d'affaires of the Nigerian economy. Nature abhors vacuo. As a result, the foreign investors by virtue of their status as aliens cannot operate in a vacuum. The legal framework that will provide the enabling environment to operate in the economy freely and successfully has to be put in place. A case in point is the Immigration Regulations 2017 which is sequel to the Immigration Act, 2015. The Immigration Regulations has come into being. Will it attract foreign investors or dissuade them from investing in the Nigerian economy? This exercise is a modest contribution on economic theory of foreign direct investments and how the Immigration Regulation, 2017 will impact on Nigeria.

**Keywords:** Foreign direct investment, economic theory, economic growth, cross-country regression, legal framework, immigration regulations, developing countries.

## 1.0 Introduction

Foreign Direct Investment(FDI), a component of a country's national financial accounts is the investment of foreign assets into domestic structures, equipment, and organizations. It does not include foreign investment into the stock markets-Foreign Portfolio Investment(FPI). Foreign direct investment is thought to be more useful to a country than investments in the equity of its companies because equity investments are potentially "hot money" which can leave at the first sign of uncertainties, whereas FDI is durable and generally useful whether things go well or otherwise. FDI is an important vehicle for the transfer of technology, contributing relatively more to growth than domestic investment. However, the higher productivity of FDI holds only when the host country has a minimum threshold stock of human capital. Thus, FDI contributes to economic growth only when a sufficient absorptive capability of the advanced technologies is available in the host economy.

FDI also involves Investment from one country into another (normally by companies rather than governments) that involves establishing operations or acquiring tangible assets, including stakes in other businesses. The purchase or establishment of income-generating assets in a foreign country that entails the control of the operation or organization is also a form of FDI.

FDI is distinguished from foreign portfolio investment (the purchase of one country's securities by nationals of another country) by the element of control. Standard definitions of control use the internationally agreed ten per cent threshold of voting shares, but this is a grey area as often a smaller block of shares will give control in widely held companies. Moreover, control of technology, management, or even crucial inputs can confer *de facto* control.

FDI is not just a transfer of ownership as it usually involves the transfer of factors complementary to capital, including management, technology and organizational skills. For instance, strategically FDI comes in three types: Horizontal: where the company carries out the same activities abroad as at home (for example, MTN Communications in both South Africa and Nigeria. Vertical: when different stages of activities are added abroad. Forward vertical FDI is where the FDI takes the firm nearer to the market and Backward Vertical FDI is where international integration moves back towards raw materials. Conglomerate: where an unrelated business is added abroad. This is the most unusual form of FDI as it involves attempting to overcome two barriers simultaneously - entering a foreign country and a new industry. This leads to the analytical solution that internationalization and diversification are often alternative strategies, not complements.

FDI can take the form of greenfield entry or takeover. Greenfield entry implies assembling all the elements from scratch as Honda did in the UK, whereas foreign takeover means the acquisition of an existing foreign company - as Tata's acquisition of Jaguar Land Rover illustrates. Foreign takeover is often covered by the term 'mergers and acquisitions' (M&As) but internationally, mergers are vanishingly small, accounting for less than one per cent of all foreign acquisitions. This choice of entry mode interacts with ownership strategy-the choice of wholly owned subsidiaries versus joint ventures to give a 2x2 matrix of choices-greenfield wholly owned ventures, greenfield joint ventures, wholly owned takeovers and joint foreign acquisitions - giving foreign investors choices that they can match to their own capabilities and foreign conditions.

In Nigeria, an alien or a foreign company may join in forming a company subject to any law regulating the

rights of alien to engage in the trade or business.<sup>1</sup> Any foreign company intending to carry on business in Nigeria shall take the necessary steps to obtain incorporation in Nigeria as a separate legal entity<sup>2</sup>. Until so incorporated, the company shall not have a place of business in Nigeria except for the purpose of receiving notices and other documents preliminary to incorporation of the company in Nigeria.<sup>3</sup> However, an alien may now freely invest and participate in the operation of any enterprise (either alone or in a joint venture with other persons) in Nigeria,<sup>4</sup> except enterprises on the negative list.<sup>5</sup> Foreign Direct Investments are more popular in Nigeria in the oil and gas, telecommunications, aviation, and banking sectors of the economy. FDI, if properly harnessed and given the enabling environment can be a catalyst for economic development. FDI is however, fraught with challenges for an emerging economy. The major challenge is the difficulty in utilizing foreign capital for economic development. The difficulty may not be unconnected to poor infrastructural capacity and others like inadequate legal regime coupled with enforcement challenges which inhibits the capacity of the host State to ensure that the process results in lasting benefits and for the good of the whole. Furthermore, importation of capital and expertise from abroad is sometimes contrary to the original development outlook of the State and thus needs new policies and regulations for implementation.

## 2.00 THEORETICAL BASIS OF FDI

The theory of foreign direct investment (FDI) has so far been built most extensively around industrial organization economics, the theory of the firm and economics of internalization, with a particular focus on either market structure or the firm as a unit of analysis. Surprisingly, it has not been conceptualized in terms of a theory of economic development (how FDI facilitates structural upgrading and economic growth), despite the crucial role transnational corporations (TNCs) play as generators and transplacers of technology, skills and linkages to the world market. One of the lacunae in the literature on international business is a dynamic approach to its role in economic development; there is little systematic exposition of the impact of (TNC) activities on dynamic comparative advantage<sup>6</sup>.

Many developing countries, especially the Asian newly industrializing countries and the emerging newly industrializing countries (Indonesia, Malaysia and Thailand), and more recently some Latin American countries (especially Brazil, Chile and Mexico), are successfully developing by opening up their economies under outward-oriented policies, albeit in varying degrees. Although outward orientation alone is not a sufficient condition for rapid growth, it does create a conducive climate for the transfer by TNCs and the absorption by local enterprises of modern managerial, production and marketing technologies which are *sine qua non* of industrial modernization. Undoubtedly, TNCs are the prime movers behind the industrial dynamism of those rapidly developing countries. Indeed, they are now increasingly counted upon to duplicate their role as development agents elsewhere in the world, especially in Eastern Europe, which is turning outward by adopting pro-market policies. Moreover, TNCs now originate not only from the advanced countries but also more and more from rapidly growing developing countries, notably the newly industrializing countries (NICs), and those TNCs, especially in manufacturing, are more active in other developing countries than in the advanced countries.

There is thus, a definite need to incorporate the recognized developmental functions of TNCs into a theory of open-economy development so as to explain, in one integrated theoretical paradigm, what type of investment activities of TNCs can facilitate a process of industrial upgrading and growth in a developing host country and in what ways; and how the developing country itself, once it gathers momentum for industrialization, is, in turn, induced to create its own TNCs in the wake of such TNC-facilitated economic transformation. The instant article is to move in that direction by integrating the relevant ideas and analytical models into a synthesized framework so as to delineate the causal relationship between the operations and economic development of TNCs, particularly in the early critical stages of transformation in a labour-surplus developing country like Nigeria at the moment.

## 2.01 Structural Characteristics of the World Economy

Theories of international economic activities are built on some perceived realities of the world economy. Some basic structural characteristics(SC) need to be analyzed for the purpose of constructing a dynamic theory of TNC-facilitated structural upgrading. Five of them are described below:

SC No. 1 Inter-economy divergences in supply and demand conditions: The individual economies are divergent in their factor endowment and level of technological competence on the supply side, and in consumers'

<sup>1</sup> Companies and Allied Matters Act, CAP C20, LFN 2004, S 20(4)

<sup>2</sup> Except the company is one of those exempted from registration under the Companies and Allied Matters Act, CAP C20, LFN 2004, ss 54 & 56

<sup>3</sup> Ibid., s. 54(1)(2)

<sup>4</sup> Nigerian Investments Promotion Act, CAP N17, LFN, 2004, s 17

<sup>5</sup> Ibid., ss 17, 18, and 31. Enterprises on the negative list are production of arms and ammunition, service uniforms, production and dealing in drugs (narcotics and psychotropic substances), coastal and inland shipping.

<sup>6</sup> Dunning, John H., *Multinationals, Technology and Competitiveness*. (London: Unwin Hyman, 1988a) 21

needs and tastes on the demand side.

SC No. 2 Firms as creators and traders of intangible assets. Individual firms are the major generators, procurers and disseminators of technology, skills and marketing channels.

SC No. 3 A hierarchy of economies. There is a hierarchy (and sub-hierarchy) of economies, globally as well as regionally, with respect to economic development; "leader" economies serve as growth centres for a cohort of "follower" economies. In other words, the individual economies in the world are at various stages of industrial upgrading and per capita income (that is, at different stages of dynamic comparative advantage in terms of levels of technological competence and factor proportions).

SC No. 4 Natural (stage-compatible) sequencing of structural upgrading and development. The currently advanced economies gradually went through multiple phases of industrial upgrading, each phase compatible with its corresponding factor endowment (capital-labour ratio) and technological capacity, albeit over a long period of time by today's standards. This evolutionary path fits the notion of an optimal sequencing of development starting from the initial stage of labour-intensive, low-skill manufacturing (or from the initial stage of natural resource extraction) and moving on to the subsequent stage of relatively physical capital-intensive industrial activities and finally to the more advanced stage of human capital-intensive growth. When that sequencing is allowed to develop, evolutionary forces are set in motion to improve steadily the country's industrial structure, step- by-step, in the most orderly manner.

SC No. 5 A strong trend away from inward-looking and towards outward-looking orientation in trade and investment policy, but simultaneously an increasing recognition that Government, though it should deregulate and privatize economic activities so as to unleash the vitality of the private sector, can play a positive role in augmenting the market system.

There are basically two types of trade and investment regimes: an outward-looking, export-oriented (OL-EO) type, and inward- looking, import substituting (IL-IS) type. But their features are often combined to produce a hybrid regime, though it still can be identified as either more strongly or weakly characterized by one approach. It is now widely recognized that OL-EO is more effective than IL-IS in achieving a faster growth and structural upgrading in the developing countries. Many of the developing countries, once enamoured of IL-IS under economic nationalism, are switching to OL-EO. This new zeitgeist is a powerful force for rapid changes in international economic relations. At the same time, the crucial role that Governments can play in supporting the competitive market to assist the development of export industries and structural upgrading is increasingly recognized.

## 2.02 Conventional Theories of International Business and Structural Characteristics

From time immemorial, different regions have been exchanging goods with each other, thereby enriching themselves in the process. The predominant basis for trade has been interregional divergences in supplies of primary factors, technological and climatic conditions and patterns of demand (SC No. 1). It was indeed against the supply side of this structural feature alone that first Adam Smith<sup>1</sup> and then David Ricardo<sup>2</sup> set out to theorize the phenomenon of trade and its benefits. Smith introduced the doctrine of absolute advantage, which is built on the economies of scale realizable from an extended market through exports, while Ricardo constructed the doctrine of comparative advantage, which is enhanced by specialization-induced allocative efficiency. The Heckscher-Ohlin theory, too, was founded on the uneven distribution of factors of production among countries. All of those trade theories assume the international immobility of factors (hence, the permanence of SC No. 1), partly because of the informational and socio-psychological costs of transactions involved in transferring them and, perhaps more importantly, for the sake of analyzing trade alone.

The conventional trade theories thus capture international exchanges of commodities basically as arbitrage operations that exploit and profit from any differentials in price and availability of commodities between different locations, the differentials being determined by productivity and factor endowments. Moreover, all of those conventional trade theories treat firms as if they were non-existent because of the usual assumption of perfect competition; hence no firm specific advantage is permissible. What matters is the country-specific features that bring about discrepancies in pre-trade commodity prices among countries. That is to say, those conventional theories are constructed against the background of SC No. 1 alone.

The theory of FDI as it has derived from Stephen Hymer's seminal work<sup>3</sup>, explicitly recognizes and, indeed, places in the spotlight the existence of firm-specific assets (SC No. 2). In other words, FDI draws on the role of firms as creators and exploiters of intangible corporate assets. Hence it is no longer logical to assume perfect competition. FDI is viewed to take place only in imperfect markets. It is, moreover, the firm, not the country,

<sup>1</sup> Smith, Adam (1776/ 1908). *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Routledge; New York: E. P. Dutton (1776/1908)

<sup>2</sup> Ricardo, David (1817/1888). *Principles of Political Economy and Taxation*. In *The Works of David Ricardo*, J. R. McCulloch, ed. London: John Murray (1817/1888) 1584.

<sup>3</sup> Hymer, Stephen. *The International Operations of National Firms*. Cambridge, Massachusetts: The MIT Press (1976)

that is the real actor motivated to trade intangible assets across national borders.

But the basis for FDI resides not only at the level of individual firms, but also at the level of regions or countries, that is, SC No. 2 should be related back to SC No. 1. Paul Krugman<sup>1</sup>, for example, relates firm-level variables to country-level variables: ". . . multinational enterprise occurs whenever there exist related activities for which the following is true: There are simultaneously transaction cost incentives to integrate these activities within a single firm and factor cost or other incentives to separate the activities geographically." Suppose, for example, there is a two-stage product process consisting of a capital-intensive upstream activity and a labour-intensive downstream activity and that (for any of the usual causes) there are compelling reasons to combine these activities inside vertically integrated firms. Suppose further that countries are sufficiently different in factor endowments that, unless these activities are geographically separated, there will be unequal factor prices. Then the result will clearly be the emergence of firms that extend across national boundaries." (Emphasis added.)

As is well known, this way of explaining the emergence of TNCs has long been stated in Dunning's eclectic paradigm<sup>2</sup> in which the necessary triumvirate conditions for international production are specified: (a) the firm must possess some ownership-specific advantages; (b) to exploit those advantages, internalization (local production under equity ownership) is more beneficial to the firm than arm's-length transactions (exporting and licensing, for example); and (c) overseas locational factors are more favourable than domestic ones. Dunning was among the first who started to combine SC No. 2 and SC No. 1 in theorizing the direct investment of TNCs.

Raymond Vernon's product-life-cycle theory of trade and investment<sup>3</sup> explicitly brings in SC No. 3, namely a hierarchy of economies, as an additional factor. New products are initially introduced in a high-income country, notably in the United States during the 1950s and 1960s, but will eventually spread to the world, first to other advanced countries, but later to the developing countries, in a trickle-down fashion as the products mature and become technologically standardized. It is a dynamic model of changing comparative advantage and technology transfers. Yet how the transfer of standardized production affects the economic development and structure of the developing host countries is outside the explanatory property of the model. It is a model constructed from the perspective of an innovating advanced country.

### 2.03 Towards a Dynamic Paradigm of Development Facilitated by TNCs

Any developing country, if it is serious about raising its standard of living, must open its economy so as to avail itself of opportunities to trade, interact with and learn from the already advanced. In fact, ever since the industrial revolution in England, industrialization in the rest of the world, wherever successful, has been a "derived" phenomenon. Continental Europe succeeded by following the United Kingdom's footsteps through commercial contracts and conscious efforts for learning and emulation<sup>4</sup>. So did the United States: "America started off as a copier"<sup>5</sup>. Japan's economic miracles in both the pre-and post-Second World War periods have been based on that mechanism of learning and emulation. A process of learning and emulation necessarily means the existence of a hierarchy of economies in terms of stages of economic development and national wealth (SC No. 3), a structure that creates opportunities for the less developed to emulate the advanced-and for the advanced to transfer their knowledge and skills down the hierarchy. The advanced countries are the rich reservoirs of industrial technology, information and experiences which the followers can tap. They also provide the promising export markets from which the less developed can earn precious hard currencies. As Adam Smith observed, "a nation that would enrich itself by foreign trade is certainly most likely to do so when its neighbours are all rich and industrious"<sup>6</sup>. Nowadays, those trading and learning opportunities are all the more enhanced, because the advanced countries themselves take the initiative to make use of hierarchical relations by way of the activities of their TNCs and their official economic and technical assistance.

But to exploit those hierarchical externalities fully (positive externalities emanating from SC No. 3), a developing country must align its pattern of comparative advantage and its stage of development with advanced countries. That is to say, a stages-compatible order of sequencing structural upgrading (SC No. 4) needs to be achieved. For the sequence of development should not be jumbled as is the case with the IL-IS approach; the process needs to be organized step by step, and stage by stage, in an evolutionary fashion along the lines

<sup>1</sup> Krugman, Paul. *Rethinking International Trade*. Cambridge, Massachusetts: The MIT Press (1990) 83.

<sup>2</sup> Dunning John H. *International Production and the Multinational Enterprise*. London: George Allen & Unwin. *Multinationals, Technology and Competitiveness*. London: Unwin Hyman.

<sup>3</sup> Vernon, Raymond. *International investment and international trade in the product cycle*. *Quarterly Journal of Economics*, 80 (May), 1966 pp. 190-207.

<sup>4</sup> Landes, David S. *The Unbound Prometheus*. Cambridge: Cambridge University Press (1969).

<sup>5</sup> Thurow, Lester C. *The Management Challenge: Japanese Views*. Cambridge, Massachusetts: The MIT Press (1985). Thurow continues at page 1: "New England's textile mills hired craftsmen (we would now call them engineers) who had worked in, or toured, the British textile mills and had memorized or written down enough of what they had seen to copy those mills in the New World. American history school books remember this copying as a good example of Yankee ingenuity. British history school books see it in another light: as theft. America stole British technology."

<sup>6</sup> Smith, Adam. *Ibid* 378.

demonstrated in the past by the currently advanced countries. This means that, when a country is still scarce in human and physical capital but abundant in labour (unskilled and semi-skilled), any attempt to build a capital-intensive, skill-requiring industry is ineffective and unachievable. Such a country must first focus on introducing labour-intensive industries to employ its most abundant factor. After all, economic development is characterized by the steady accumulation of physical and human capital, which produces the sequential pattern of dynamic comparative advantage in any market-based, growing economy. Such a path assures compatibility between the factor intensities and technological requirements of the economic activities pursued at a particular stage and the domestic availability of appropriate factors and technological capacity.

Indeed, it was Adam Smith who emphasized the importance of "a natural order of things" in the developmental sequence of an economy (the "natural progress of opulence"). He envisaged inter-sectoral complementarities (first, between "town" and "country", between agriculture and manufacturing, and then, later, between manufacturing and foreign trade) and the accumulation of capital and the development of political/technological/organizational capacities ("order and good government" and the natural progression of manufactures from the "necessities" to the "conveniences" and to the "elegances of life")<sup>1</sup>.

In that regard, the "stages theory of competitive development" introduced by Michael Porter deserves special attention. He maintains that, "despite the diversity of most economies, we can identify a predominant or emergent pattern in the nature of competitive advantage in a nation's firms at a particular time"<sup>2</sup> by way of four distinct stages: (i) factor-driven, (ii) investment-driven, (iii) innovation-driven, and (iv) wealth-driven. But "the first three stages involve successive upgrading of a nation's competitive advantages and will normally be associated with progressively rising economic prosperity", while "the fourth stage is one of drift and ultimately decline".<sup>3</sup>

The factor-driven stage (akin to Smith's agriculture-first phase) is characterized either by natural-resource-based activities (primary extraction) or by labour-intensive manufacturing. The investment-driven stage, on the other hand, is associated with the manufacturing of intermediate and capital goods (heavy and chemical industrialization) and infrastructural building (housing, transportation, communications and public works construction). The innovation-driven stage arrives when a country is human-capital-abundant and active in research and development (R&D). Most developing countries are in the factor-driven stage, and some are already well on their way to the investment-driven stage. It is important to keep in mind that a particular stage of competitive development is associated with a particular pattern of export competitiveness. The factor-driven stage is related to factor-based 'trade advantages (in either primary goods or labour-intensive goods), the investment-driven stage to scale-based advantages (in large-scale, capital-intensive goods), and the innovation-driven stage to R&D-based advantages (in high-tech manufactures). Thus economic growth and transformation is accompanied by the changing patterns of dynamic comparative advantage.

Interestingly, the pattern (nature and direction) of FDI, both inward and outward, changes *pari passu* with the structural transformation of the economy. For example, the beginning of the factor-driven stage attracts resource-seeking or labour-seeking inward FDI. The transition from the labour-driven to the investment-driven stage generates outward investments towards lower-wage countries in labour-intensive manufacturing (and in resource extraction abroad, particularly if the economy happens to be natural-resource-scarce) and attracts inward investments in capital and intermediate goods industries. Similarly, the transition from the investment-driven to the innovation-driven stage brings about simultaneously inward investments in technology-intensive industries and outward investments in intermediate goods industries. This orderly flow of investment tends to occur as long as the country pursues an array of "progress of opulence".

Those stages can be distinguished in terms of the changing endowment proportions of three major factors used in a nation's overall industrial activity: resources (both natural and labour), physical capital and human capital. In other words, the nation grows by upgrading its structure as its factor and technological endowments change with the accumulation of physical and human capital (relative to resources): the higher the per capita gross national product (GNP), the larger the per capita stock of physical and human capital relative to that of resources and the larger the per capita stock of human capital relative to that of physical capital. The economy continuously evolves to develop new comparative advantages by shifting from technologically less sophisticated, low-productivity products to more sophisticated, higher-productivity industrial activities (analogous to Smith's sequence of "necessities- conveniences- elegances"). For example, this changing pattern of dynamic comparative advantage may be measured in terms of an index of the revealed comparative advantage in unskilled labour-intensive goods and an index of the revealed comparative advantage in physical/ human capital-intensive goods. At the same time, different stages-based patterns of FDI, both inward and outward, appear over a certain span of time, a span determined by how rapidly a given economy industrializes, as outlined.

Indeed, the stages-based evolutionary progression of FDI has been most clearly demonstrated by Japan's

<sup>1</sup> Smith, Adam. Ibid, p. 290-314.

<sup>2</sup> Porter, Michael. The Competitive Advantage of Nations. New York: Free Press. (1990) 545

<sup>3</sup> ibid., p. 546.

rapid post-war structural transformation and its concomitant FDI. As elaborated elsewhere, Japan's industrial structure has so far metamorphosed in three continuous stages, accompanied by different stages-specific patterns of FDI and is currently under-going the latest, fourth, stage:<sup>1</sup>

Phase I: Expansion of labour-intensive manufacturing in textiles, sundries and other low-wage goods ("what may be called Heckscher-Ohlin industries) (1950 to the mid-1960s). Accompanied by selective imports of capital goods (embodied technology) and purchase of licensing agreements (disembodied technology), and followed by the "elementary (low-wage labour-seeking)" type of FDI in standardized, labour-intensive industries in the neighbouring Asian countries (starting in the late 1950s, but notably after the mid-1960s and growing strongly, especially after the revaluations of the yen in the early 1970s).

Phase II: Scale economies-based modernization of heavy and chemical industries, such as steel, shipbuilding, petrochemicals and synthetic fibres ("non-differentiated Smithian industries") (the late 1950s to the early 1970s). Accompanied by the incessant adoption and adaptation of advanced Western technology, mostly through licensing but also via joint ventures (inward FDI) in petrochemicals, machinery and chemicals, and the "resource-seeking" (later followed by the "house-cleaning") type of outward FDI in resource-extractive and processing industries (most actively throughout the 1960s and 1970s).

Phase III: Assembly-based mass production of consumer durables, such as automobiles and electric/electronics goods ("differentiated industries") (the late 1960s to the present). Continuous adaptation of, and improvement on, imported technology and stepped-up domestic R&D, and accompanied by the "export-substituting-cum-surplus-recycling" type of outward FDI in overseas assembly operations in automobiles, electronics and related parts and components, as well as banking and finance (especially after the Plaza Accord of 1985), most actively in the United States and Europe.

Phase IV: Mechatronics-based flexible manufacturing, small-lot, multi-variety production, along with innovations in HDTV, new materials, fine chemicals, advanced micro-chips and opto-electronics ("Schumpeterian industries") (the early 1980s onwards).

Hosting inward FDI in chemicals, pharmaceuticals and machinery, and generating the triadic type of outward FDI in which Japanese TNCs are establishing the intraregional clusters of integrated operations and strategic alliances in the Americas, Europe and the Pacific Rim.

The Japanese experience thus delineates the close inter-relatedness between structural upgrading, dynamic comparative advantage and FDI, along the paths of its physical/human-capital-intensive factor endowment and technological progress. Because of the rapidity of Japan's economic transformation, its structural progression (from the "H-O industries" to the "non-differentiated Smithian industries", to the "differentiated Smithian industries", and finally to the "Schumpeterian industries") actually retraces, in a highly time-compressed fashion, the evolutionary changes previously experienced by the advanced Western countries over a much longer span of time. And international business is the main cause of this structural growth acceleration.

Indeed, there have been a number of empirical studies made on the relationship between a nation's changing pattern of comparative advantage in manufactured goods and the accumulation of physical and human capital.

The empirical estimates show that inter-country differences in the structure of exports are in a large part explained by differences in physical and human capital endowments. The results lend support to the 'stages' approach to comparative advantage, according to which the structure of exports changes with the accumulation of physical and human capital. The approach is also supported by inter-temporal comparison for Japan, which indicates that Japanese exports have become increasingly physical capital and human-capital-intensive over time<sup>2</sup>.

To begin with, those findings warn against distorting the system of incentives in favour of products in which the country has a comparative disadvantage. The large differences shown among product categories in terms of their capital intensity point to the fact that there is a substantial penalty for such distortions in the form of the misallocation of product factors. This will be the case in particular when the system of incentives is biased in favour of import substitution in capital-intensive products and against exports in labour-intensive products.

These types of distortions are naturally reduced when a developing country pursues an OL-EO strategy of development rather than an IL-IS one (SC No. 5). And it has been empirically and amply proved, and now accepted as an axiom, that the OL-EO approach is far superior to its IL-IS counterpart in growth performance and industrial upgrading in the developing countries, for the former allows efficacious market-guided evolutionary forces to operate at maximum efficiency.

<sup>1</sup> Ozawa, Terutomo. Japanese multinationals and 1992. In *Multi-nationals and Europe 1992*, B. Burgenmeier and J. L. Mucchielli, eds. London: Routledge, (1991a) pp. 135-154. The dynamics of Pacific Rim industrialization: how Mexico can join the Asian flock of "flying geese". In *Mexico's External Relations in the 1990s*, Riordan Roett, ed. Boulder and London: Rienner (1991b) pp. 129-154. Japan in a new phase of multinationalism and industrial upgrading: functional integration of trade, growth and FDI. *Journal of World Trade*, 25 (February, 1991c) pp. 43-60.

<sup>2</sup> Balassa, Bela, The changing pattern of comparative advantage in manufactured goods. *Review of Economics and Statistics*, 61 (May), pp. 259-266. As reproduced in *Comparative Advantage, Trade Policy and Economic Development*. New York: New York University Press (1979/1989).

In short, those structural characteristics of the global economy (SC Nos. 3, 4 and 5) that have not been explicitly reckoned with as determinants in the conventional theories of FDI constitute a new global environment highly conducive to an expansion of trade, FDI, knowledge transfer and economic growth, a climate significantly favourable for TNCs. Those characteristics have to be brought into analysis as explanatory factors in an effort to construct a theory of FDI in the field of economic development.

#### **2.04 Comparative-advantage-augmenting type of foreign direct investment**

Throughout the instant article, the term FDI is used in a very broad sense: it is meant to describe the transfer of development ingredients of all sorts by TNCs (that is, intangible corporate assets, finance and links with global markets) in both the traditional form of investment (whole or majority equity ownership) and "new" forms (minority ownership and a variety of non-equity contractual arrangements, such as licensing, managerial contracts and turnkey operations<sup>1</sup>).

What is crucial for outward-looking, export-based development is that FDI needs to be approached in such a manner that the developing countries' existing or potential comparative advantage can be fostered and fully maximized, that is, in a comparative-advantage-augmenting fashion. Here, the notion of pro-trade FDI (and that of anti-trade FDI) is quite relevant<sup>2</sup> The macro-economic theory of FDI is built on two key propositions. One is the Ricardian doctrine of comparative advantage, the other his own proposition as a supplement.

Proposition I: Countries gain from trade and maximize economic welfare when they export comparatively advantaged goods and import comparatively disadvantaged goods.

Proposition II: Countries gain even more from an expanded basis for trade when intangible assets are transplanted from the home countries' comparatively disadvantaged industries onto the host countries' comparatively advantaged ones (both current and potential).

The second proposition indicates a mutually beneficial type of FDI that parallels the mutually gainful type of trade posited in the first proposition. Ricardo built his trade model on the assumed immobility of factors (hence the persistence of SC No. 1). Furthermore, he thought that, even if factor movement occurred, it would be of the anti-trade type, and for that matter, indeed, of the hollowing-out type.<sup>3</sup> It would undoubtedly be advantageous to the capitalists of England, and to the consumers in both countries, that under [the circumstances of higher labour and productivity in Portugal in absolute terms] the wine and the cloth should both be made in Portugal, and therefore that the capital and labour of England employed in making cloth should be removed to Portugal for that purpose."

Thus, once factor mobility is admitted, Portugal alone ends up producing both goods; hence there would be no basis for trade. The end result is that Portugal flourishes, whereas England hollows out and languishes. Surprisingly, it did not occur to Richardo that instead of moving to Portugal the labour and capital of England employed in making cloth, Portugal's secret (technology) of higher productivity in cloth is transferred to England through FDI., not only is England saved from hollowing out, but both countries can prosper even more since England's comparative advantage in cloth is now enhanced by such transfers. Surprisingly, Richardo resorted to the doctrine of absolute advantage when it came to factor movement.

The distinction between pro-trade and anti-trade FDI is criticized as normative,<sup>4</sup> but can become positive analysis when combined with structural characteristics of 3, 4, and 5, since the comparative advantage oriented policy market friendly OL-EO economies is such that the pro-trade FDI as against the anti-trade FDI will be attracted to such a regime. The IS-IL regime set up in labour- surplus, capital-scarce developing countries are the ones that attract anti-trade FDI into their highly protected, stage-incompatible, import substituting industries. The phenomenon of a comparative advantage expansion made possible by the OL-EO regime will hereafter be identified as trade augmentation through FDI.

#### **2.05 OUTWARD ORIENTATION AND SUPER-GROWTH IN THE INITIALLY LABOUR-SURPLUS DEVELOPING COUNTRIES**

It is imperative to note that the Ricardian income growth effect in the static model of trade allows no transfer of factors and no structural change. Accordingly, as gains from trade are realized through specialization and reallocation of resources into comparatively advantaged industries i.e. attainment of allocative efficiency, national income rises, but no outward shift of the country's production possibility curve occurs because there is neither factor growth nor technological progress. The whole purpose of the model is to show the basis for, the

<sup>1</sup> Oman, Charles. *New Forms of International Investment in Developing Countries*. Paris: OECD (1984).

<sup>2</sup> Kojima, Kiyoshi (1975). *International trade and foreign investment: substitutes or complements*. Hitotsubashi Journal of Economics (1975, 16 June), pp. 1-12

<sup>3</sup> Ricardo, David, *Principles of Political Economy and Taxation*. In *The Works of David Ricardo*, J. R. McCulloch, ed. London: John Murray, (1817/1888) pp. 1-584.

<sup>4</sup> Gray, Peter H. *Multinational corporations and global welfare: an extension of Kojima and Ozawa*. Hitotsubashi Journal of Economics, 26 (December, 1985), pp. 125-133.

direction of, and gains from trade and nothing more.

Nonetheless, the static model can be transformed into a dynamic structural upgrading model once the role of TNCs as facilitators of industrial transformation and the additional set of structural characteristics are explicitly brought into analysis as causative factors.

Economic development under OL-EO policy is a function of dynamic comparative advantage. But here the magnitude of comparative advantage is not only determined by SC No 1 alone, but also enhanced and upgraded by the confluence of SC Nos. 2, 3, 4, and 5 – a dynamic paradigm of FDI-facilitated development, which depicts the magnified power of trade as an engine for growth. The power of trade is magnified because (1) a strong outward orientation reduces market distortions and encourages competitions; (2) the basis for trade is expanded by comparative advantage augmenting FDI (inward and outward), hence a greater expansion of trade; and (3) self-propelling market forces are set in motion to upgrade the country's industrial composition towards higher value-added sectors in an un-jumbled manner, given a market-friendly environment (including incentives, guarantees, and supportive infrastructure) by the government. The net result will be a super-growth OL-EO economies accompanied by rapid structural upgrading, the type of "economic miracles" exhibited by the Asian newly industrialized countries, especially China. It is doubtful if there is any household in the world today without a Chinese product. A high correlation between outward orientation and super-growth has been empirically confirmed in many situations<sup>1</sup>. But the causative links between those two phenomena are yet to be explained.

More specifically, how this scenario unfolds itself over a time period, say from  $t_1$  to  $t_5$ , can be explained in terms of the dynamic paradigm. Consider a typical developing country that is initially plagued with high unemployment and low income.

(t1) A labour-abundant developing country (with high unemployment and underemployment) adopts an outward-looking, export-focused path of development (SC No. 5), thereby reducing market distortions and setting free the market forces for stage-compatible economic activities. A market-friendly economic system thus emerges with a strong outward orientation towards trade and investment interactions with advanced countries. The country thus stands to benefit from the hierarchical externalities (SC No. 3).

(t2) This initial condition attracts inward FDI in standardized labour-intensive manufacturing activities, that is, in a comparative-advantage-augmenting fashion (in a direction conducive to trade augmentation through FDI). At the start, the developing host country usually supplies labour from its unemployed (mostly urban) and underemployed (mostly rural) labour pool at low wage rates<sup>2</sup>. TNCs, often in joint ventures with local interests, are able to develop export-oriented manufacturing without generating upward pressure on local wages, although they usually pay a real wage rate higher than the local average, especially in fringe benefits (for example, lunches, basic health care and training). Low wages are the basis for price competitiveness. Exports are mostly of the intra-firm type, either purchased as intermediate goods by the investing TNCs or marketed through the distribution channels of TNCs (on the theoretical level, that phase of export growth corresponds to the Smithian "vent-for-surplus" phenomenon<sup>3</sup>).

(t3) But the more labour-seeking FDI flows in, the sooner the disappearance of unemployment, if not underemployment. Upward pressures on wages appear, and local wages begin to rise (that is, the Lewisian phase of unlimited labour supply ends along with the Smithian "vent-for-surplus" phenomenon, and the "factor-price-magnification" effect<sup>4</sup> now takes over, as long as labour utilization continues to be pursued under OL-EO policy).

(t4) The rising wages and the increasing availability of jobs, though still in low-productivity (hence low-wage by international standards) sectors, will result in a rapid rise in national income and an expansion of domestic markets. Wage rates are still low, but all family members (not only the traditional breadwinner, the father, but also the mother and their adolescent children) who seek employment can find jobs; hence a rise in family income<sup>5</sup>.

Given the appropriate incentives (for example, attractive interest rates on deposits, tax exemptions and hard-currency-denominated deposits), this increased household income can generate domestic savings<sup>6</sup>. Employment also leads to basic skill formation via training and a stronger desire to upgrade skills, a higher

<sup>1</sup> Balassa, Bella. *New Directions in the World Economy*. New York: New York University Press (1989), World Bank, World Development Report. Washington, D.C.: World Bank Publications (1991)

<sup>2</sup> Lewis, W. Arthur. Economic development with unlimited supplies of labour. *The Manchester School of Economic and Social Studies*, (12 May, 1954) pp. 139-191.

<sup>3</sup> Myint, Hla (1958). The "classical theory" of international trade and the underdeveloped countries. *Economic Journal*, 68 (June, 1958) pp.317-337.

<sup>4</sup> Stolper, W. F., and P. A. Samuelson (1941). Protection and real wages. *Review of Economic Studies*, 9 (November, 1941) pp. 58-73.

<sup>5</sup> The rapid build-up of the garment industry in Bangladesh provides an interesting example: "Women who never worked before are earning between \$40 and \$55 a month far above the projected 1991 national per capita income of \$202 a year. Many of these women's husbands, meanwhile, can get work only as day labourers or rickshaw drivers, earning around \$1 a day." *The Wall Street Journal*, 6 August 1991, p. A8.

<sup>6</sup> Balassa (1989) points out a strong correlation between export growth and domestic savings. What is argued in this article suggests one causal link.



motivation for learning. The country's factor endowment begins to change from low-skilled labour abundance to a relatively more capital abundance and a greater skill accumulation.

As a consequence, a factor incongruity emerges soon between the hitherto promoted export industries (whose competitiveness depends on a high input ratio of low-wage, unskilled labour to capital) and the country's changing factor endowment (which now becomes less and less unskilled-labour-abundant). This is an ineluctable outcome of the labour-driven process of development and may be called the principle of increasing factor incongruity. Those grassroots developments (improved job opportunities, rising wages, increased household savings and the desire to seek education and upgrade one's skills) are crucial in shifting the country's factor endowment towards more human and physical-capital abundance, endogenously paving the way to the next phase of investment-driven industrialization.

As wages rise, the country's comparative advantage in labour-intensive industries naturally wanes. Given the macroeconomic stability that ensures a competitive exchange rate for the country's currency at the start of economic development, the more successful labour-intensive exports are (that is, the greater the improvement in the country's balance-of-payments conditions), the greater the chances that the currency will begin to appreciate. Higher wages and the appreciated currency thus render low-productivity, labour-intensive industries less competitive, compelling domestic industry to move into higher value-added, more capital-intensive sectors. At that point, in order to protect their hard-won export markets, local entrepreneurs, as well as TNCs, begin to transplant their existing operations to other developing countries where they can still find a supply of low-wage labour. Of course, those local firms that succeed in moving upmarket (via an introduction of labour-saving measures and new higher-value-added varieties, or moving into a more capital-intensive industry) may remain at home.

This is an interesting-and seemingly paradoxical-turn of events: a once highly labour abundant (hence low-wage) developing country itself has metamorphosed, over a relatively short span of time, into an active foreign investor, seeking lower-wage labour in other developing countries. Its firms now possess their own advantages and experiences freshly gained over the period of from  $t_1$  to  $t_4$  (SC No. 2), mostly through the "apprenticeship" of firms to foreign technical assistance<sup>1</sup>. The Japanese, back in the 1950s, 1960s and 1970s, and more recently the Asian NICs have amply demonstrated the capability of followers to come up with their situation-specific improvements on imported technology as well as their own innovations. This may be called localized learning and technological accumulation<sup>2</sup> and has been emphasized as the key determinant of FDI from developing countries. That becomes even more relevant in the later stages of development that are increasingly characterized by a growing abundance of human capital.

What is more, the momentum of learning in both production and marketing skills continues and even takes the form of technology-seeking, information-gathering and trade-supportive outward investment in advanced countries. Thus, "localized learning" now actually turns to more and more "internationalized learning".

Increasing factor incongruity is also observed as primary resource-seeking outward investment and is induced in search of secure supplies of natural resources abroad. In particular, as a natural-resource-indigent "Ricardian" economy experiences rapid industrialization, it inevitably becomes more and more dependent on overseas resources. This incongruity between the resource requirements of the economy and its own endowments (and hence the rising vulnerability of dependence on imported industrial resources) can only be dealt with by means of FDI in resource-extractive industries abroad so as to secure long-term supply bases. All this outward FDI is fully compatible with and supportive of the evolving pattern of comparative advantage, enhancing the basis for trade (that is, trade augmentation through FDI is in operation).

(t5) By now, the country is on the threshold of the investment-driven stage in which more physical-capital and more skill-intensive industries are to be built; it may not be long before the country is classified as a newly industrialized country. To build higher value-added, more scale-dependent industries, the role of the Government becomes even more crucial in providing physical infrastructural facilities, education, public health, R&D incentives and other "public goods". As compared to the labour-driven stage, which can be left largely to the dictates of the market with the minimum selective involvement of Government, the development of more advanced industries entails an appropriate management of externalities (market imperfections), since education and training (which are the causes of positive externalities) are now the key industrial inputs, along with the minimum scale of operation required by indivisible capital investments and the accompanying economies of scale. The Government is thus called upon to provide the stage-appropriate institutions and infrastructural

<sup>1</sup> Amsden, Alice H. *Asia's Next Giant: South Korea and Late Industrialization*. Oxford: Oxford University Press (1989)p. 20

<sup>2</sup> Lall, Sanjaya. *Multinationals from India*. In *The New Multi-nationals*, Sanjaya Lall, ed. Chichester: John Wiley & Sons, (1983) pp. 21-87; Stiglitz, J. E. *Learning to learn, localised learning and technological progress*. In *Economic Policy and Technological Performance*, P. Dasgupta and P. Stoneman, eds. Cambridge: Cambridge University Press(1987) pp. 125-153, and Cantwell, John A. (1989). *Technological Innovation and Multi-national Corporations*. Oxford: Basil Blackwell and Paz Estrella E. Tolentino (1990). *Technological Accumulation and Third World Multinationals*. Discussion Paper No. 139, Department of Economics, University of Reading, Series B, III.

investments to support dynamic comparative advantage<sup>1</sup>.

Although the above scenario is presented in a highly stylized fashion, it nevertheless fits very nicely with the recent experience of Asian newly industrialized countries, which have been skillfully taking advantage of both inward and outward FDI as catalysts of industrial transformation. In fact, they are already in the midst of investment-driven industrialization or even at the beginning of innovation-driven growth in some sectors. In this stages-theoretic framework of analysis, it is often said that Asian NICs are following the footsteps of Japan, and that emerging

NICs (Indonesia, Malaysia, the Philippines and Thailand) are, in turn, duplicating the experiences of NICs and that others (Bangladesh, India, Pakistan and Sri Lanka) are about to repeat the same labour-driven episode. In fact China is a good and living example. That sequential pattern of development in the Asian-Pacific region is often referred to as "a wild-geese flying formation"<sup>2</sup>. But Japan itself has been closely emulating the West in its effort to catch up and take over and has very quickly succeeded in going through the first three stages described by Porter, thereby emerging as a highly advanced economy. Japan's rapid industrial transformation in the period following the Second World War discussed earlier illustrates the efficacy of a stages-based "progress of opulence" and may serve as an important paradigm for developing countries.

The wild-geese flying formation or a stage-based development can alleviate the "fallacy of composition" problem of OL-EO industrialization: if the developing countries adopt the OL-EO approach all at once, will there be enough export markets? The stages approach to comparative advantage permits one to dispel certain misapprehensions as regards the foreign demand constraint for manufactured exports under which developing countries are said to operate. With countries progressing on the comparative advantage scale, their exports can supplant the exports of countries that graduate to a high level<sup>3</sup>.

TNCs are no doubt the facilitators of that type of market recycling as they are able to shift manufacturing activities from one location to another, in a fashion compatible with the prevailing factor and technological endowments of the economies of host countries, within a hierarchy of economies (SC No. 3).

## Conclusions

Although the functions of TNCs as providers of technology, management expertise, finance and links with the world market have often been mentioned, the role of their FDI in industrial up- grading and growth has not been incorporated into a theory of outward-oriented economic development. The dynamic paradigm presented here recognizes five crucial structural characteristics of the world economy as explanatory factors. Those structural features fall under the rubric of the environment-system-policy frame of analysis. Hence, the dynamic paradigm may be construed as one detailed structural model of this genre. Focusing on the case of a representative developing country, that is, an initially labour-surplus economy, the dynamic paradigm traces out the inter temporal sequence of interactions between FDI (first inward and, later, outward) and structural transformation, a sequence that results in an evanescent pattern of comparative advantage during the course of labour-driven industrialization. That is the stage from which the Asian NICs have just graduated, and which many other developing countries are expected to go through in their early phase of development.

The operational mechanism of the dynamic paradigm so far rests on three basic principles: those of trade augmentation through FDI, of increasing factor incongruity and of localized (but increasingly trans-nationalized, at least in part) learning and technological accumulation. Some more conceptual work is needed to explore the investment-driven and the innovation-driven stages in order to complete the stages theory of TNC-facilitated growth in its entirety. No doubt the demand-side factors play a greater role as development proceeds to later stages. This evolutionary aspect of demand needs to be explicitly conceptualized. Perhaps what may be tentatively called the principle of catch-up in income and increasing diversity in tastes is a relevant consideration. In that regard, the Japanese and Chinese experience, which encompasses all the developmental stages from the factor-driven to the innovation-driven in a highly condensed time-capsule, may serve as an important guide-post. Yet such a comprehensive analysis requires far more space than is available in the present article. Only the first dimension has been elaborated, which is none the less the most relevant to the role of TNCs as "jump-starters" for economic development.

<sup>1</sup> Ozawa, Terutomo. Can the market alone manage structural upgrading? A challenge posed by interdependence. In *Structural Change, Economic Interdependence and World Development*, 1, J. H. Dunning and M. Usui, eds. Basingstoke, United Kingdom: Macmillan (1987) pp. 45-61; Dunning, John H, 1988a). *Multinationals, Technology and Competitiveness*. London: Unwin Hyman (1988a), and *Governments-markets-firms: towards a new balance?* The CTC Reporter, 31 (Spring), (1991) pp. 2-7; World Bank. *World Development Report*. Washington, D.C.: World Bank Publications (1991)

<sup>2</sup> Akamatsu, Kaname, A theory of unbalanced growth in the world economy. *Weltwirtschaftliches Archiv*, 86, (1950) pp. 196-217.

<sup>3</sup> Balassa, Bella, *New Directions in the World Economy*. New York: New York University Press (1989) p. 28.

### **3.00 THE NIGERIA IMMIGRATION REGULATION 2017: A CORPORATE IMMIGRATION LAND MINES?**

Sequel to the Nigerian Immigration Act, 2015, on March 20, 2017, the Immigration Regulations 2017 (the “Regulations”) was issued.<sup>1</sup> The Regulations, however became effective from February 27, 2017. The objectives of the new immigration regulations are to provide a legal framework for the effective implementation of the Immigration Act, 2015 and consolidate existing Immigration Regulations in Nigeria. The regulations repealed the 1963 Immigration Regulations and the 1963 Immigration (Control of Aliens) Regulations. It would also enable global mobility practitioners and other relevant stakeholders to better understand immigration policies relating to expatriate employment and related border control issues in the country. The expectation, therefore, is that the Regulations will facilitate easy entry of foreign nationals into the country and consequently help to improve the ease of doing business in Nigeria and attract the much needed FDI and TNCs into the country. The Regulations however, raise a myriad of compliance issues, which TNCs and corporate entities that have foreign nationals, as employees, need to be abreast of for strict compliance.

#### **3.01 BUSINESS PERMIT**

The Regulations codify the need for a foreign national to obtain a business permit,<sup>2</sup> prior to establishing a profession, business or trade in Nigeria. The issuance of the permit is subject to any condition(s) that the Minister may choose to impose. The Minister can, therefore, revoke, vary or cancel a business permit, if the stipulated conditions are not met. In addition, the Minister or the Comptroller General should be notified within 21 days of any change of name, nature or address of a business or trade. However, having a business permit does not give any right or entitlement to the holder to enter or remain in Nigeria without a valid residence permit or visa.

There are questions about the continued relevance of the requirement for Business Permit, given that there are many other provisions that serve the same purpose. For example, issuance of expatriate quota can also serve as an authorization for the establishment of a business, trade or profession in the country. The concern therefore is why duplicate such authorization if the intention is to improve Nigeria’s competitiveness in the Doing of Business Index of the World Bank Group. There is also a provision in the Nigerian Investment and Promotion Commission (NIPC) Act to the effect that any business with foreign shareholding must register with the Commission<sup>3</sup>.

Thus, a business permit is issued to Nigerian registered entities that have foreign interest or investment and the permit is issued in the name of the Nigerian registered entity. It is pertinent to note that the business permit in itself does not grant the holder a resident status. The holder must, in addition to obtaining a business permit for the requisite business, also apply for and procure the requisite visa or permit to reside in Nigeria. The Regulations also provide a penalty for failure to renew business permit<sup>4</sup> failing which same may be revoked<sup>5</sup> It is germane to note that the practice, post issuance of the Regulation, didn’t require the renewal of a business permit, though the Act provides for the replacement of the permits under such terms and conditions as the Minister may prescribe from time to time<sup>6</sup>. We therefore look forward to receiving further guidelines from the Ministry in relation to the business permit renewal.

#### **3.02 RESIDENCE PERMIT**

The Regulations make rules regarding the grant of residence permits. Specifically, the Regulations stipulate that the Comptroller General of the Nigerian Immigration Service (“CGI”), is responsible for the issuance of residence permits to immigrants that intend to reside in Nigeria. The Regulations also provide that residence permits may be granted for a period not exceeding two (2) years<sup>7</sup>, thereby making it possible for an expatriate to obtain a residence permit valid for more than one (1) year. The permit can also be renewed on expiration. It is, however, pertinent to note that the validity of the residence permit is subject to the validity of the expatriate quota. Valid residence permits are also used for the purposes of re-entry into Nigeria, while foreign nationals awaiting regularization are allowed re-entry within ninety (90) days from the date of endorsement on their passports<sup>8</sup>. Furthermore, the date endorsed on the passport is the effective date for re-entry purposes and not the date on the Combined Expatriate Resident Permit and Alien Card (“CERPAC”) temporary receipt.

<sup>1</sup> By the Minister of Interior, Lt. Gen. Abdulrahman Dambazau (retired).

<sup>2</sup> Nigerian Immigration Regulations 2017, Regulation 4(1).

<sup>3</sup> Nigerian Investments Promotion Commission Act, Cap N17, LFN, 2004, Section 20(1)(2).

<sup>4</sup> Nigerian Immigration Regulations 2017, Regulation 47(b)

<sup>5</sup> Nigerian Immigration Regulations 2017, Regulation 4(3)

<sup>6</sup> Nigerian Immigration Act, 2015, section 39(2).

<sup>7</sup> Nigerian Immigration Regulations 2017, Regulation 5(2).

<sup>8</sup> Ibid, Regulation 12(5).

### 3.21 Issuance of Residence Permits

A foreign national who has imported an annual minimum “threshold of capital” over a period of time may be issued a permanent residence permit, provided that the investment is not withdrawn<sup>1</sup>. This is designed to encourage foreign nationals to make investments in the country, while remaining compliant with any other condition prescribed for the issuance of such permit. This is a welcome development as an investor can be given a residence permit on his own merit, without occupying an Expatriate Quota slot or coming on the platform of a registered company in Nigeria.

However, the enabling Act and the Regulations did not specify the minimum capital threshold. It is likely that this will be subject to government’s dictates on annual basis. And if that be the case, it will lead to uncertainties as to what the threshold is all about. It is therefore necessary to leave no one in doubt and make it certain on what the threshold is.

The residence permit, which has a maximum validity period of two (2) years, shall be valid for the purposes of re-entry into Nigeria by the holder while the permit remains valid. However, expatriates awaiting regularization shall be allowed re-entry within ninety (90) days from the date of endorsement of “Awaiting Regularization” (AR) on their international passports. This is important as it reinforces the need for expatriates to obtain permanent residence permits (green card) within three months of receiving the AR endorsement.

The Regulations also provide for the issuance of residence permits to all foreign nationals (male or female) married to Nigerians, as multiple re-entry permits, irrespective of the class of visas with which they entered Nigeria. In essence, male spouses can now enjoy same privileges as Nigerian wives<sup>2</sup>.

### 3.03 ECOWAS NATIONALS

Citizens of the Economic Community of West African States (ECOWAS) are now entitled to be issued with residence cards provided they register with the Nigerian Immigration Service (“NIS”) at the Local Government Area Headquarters, or the Command Headquarters of their State of residence, or the Federal Capital Territory, as the case may be<sup>3</sup> before they take up employment. It is pertinent to bear in mind that ECOWAS nationals have a right of entry valid for ninety (90) days.

### 3.04 TEMPORARY WORK PERMIT

The Regulations provide for the implementation of the issuance of Temporary Work Permit (“TWP”) outside the expatriate quota provision. The TWP is a single-entry work visa authorization valid for two (2) to three (3) months subject to the discretion of the Comptroller-General of Immigration (CGI). Thus, subject to the provisions of the Act<sup>4</sup>, the CGI may in deserving cases authorize the issuance of TWP outside the quota provision, which may be issued by way of letter of approval transmitted to the appropriate Nigerian Mission<sup>5</sup>. The TWP may be extended in the country for another thirty (30) days.

Any expatriate who fails, neglects or refuses to apply for the regularization of his stay in Nigeria within the stipulated period of three months<sup>6</sup>; renewal of his Business Permit, Transit Visa, Visitors Pass or Temporary Work Permit<sup>7</sup>, or Residence Permit<sup>8</sup> after expiration commits an offence under the Act, and is liable on conviction to a term of three years imprisonment or a fine of Five Hundred Thousand Naira or both<sup>9</sup>.

### 3.05 VISA ON ARRIVAL

Upon an application for Visa on Arrival (VoA) in the prescribed manner, the CGI may approve the issuance of a VoA in respect of any person applying for same<sup>10</sup>. The Act had specifically provided for foreign nationals that can be issued with the VoA who are generally, frequent travel business persons of international repute, executive directors of multinational companies and members of government delegations, holders of the United Nations Laissez-passer, holders of African Union Laissez-passer, holders of ECOWAS Laissez-passer, and any other official travel documents of other recognized international organizations who are on short visits to Nigeria

The Federal Government of Nigeria recently announced that the VoA has been extended to business travelers who may not be able to obtain a consular business visa because Nigeria does not have a consulate in their home country, or due to the exigencies of urgent business travel. Based on the foregoing, the VoA is now available to all foreign nationals. It must be noted that the foreign national must have obtained a pre-approval in

<sup>1</sup> Ibid, Regulation 5(7).

<sup>2</sup> Ibid, Regulation 14.

<sup>3</sup> Nigerian Immigration Regulations 2017, Regulation 5(9); Nigerian Immigration Act, 2015, Section 37(8).

<sup>4</sup> Nigerian Immigration Regulations 2017, Regulation 8(1).

<sup>5</sup> Nigerian Immigration Regulations 2017, Regulation 47(a).

<sup>6</sup> Nigerian Immigration Regulations 2017, Regulation 47(b).

<sup>7</sup> Nigerian Immigration Regulations 2017, Regulation 47(c).

<sup>8</sup> Nigerian Immigration Act, 2015, Section 57(5)(c).

<sup>9</sup> Nigerian Immigration Regulations 2017, Regulation 9.

<sup>10</sup> Nigerian Immigration Act, 2015, Section 20(7).

the country before boarding the aircraft.

### **3.06 EXPATRIATE QUOTA**

The Regulations mandate the prior authorization of the Minister in writing, before a foreign national establishes a business, trade or profession, in Nigeria. The authorization would be given in the form of the business permit or expatriate quota or both. In addition, the Regulations also provides for the stay of action letter which acts as a bar to deportation during the pendency of an application for renewal of the expatriate quota<sup>1</sup>. This means that if the expatriate quota expires during the renewal process, the company may apply for a stay of action letter which would allow the foreign national(s) in the company remain in Nigeria till the quota is renewed and work permits extended.

### **3.07 SPOUSAL RESIDENT PERMITS**

The Regulations introduce a spousal residence permit for foreign nationals married to Nigerian nationals. The permit is issued irrespective of the entry visa and serves as a multiple entry visa<sup>2</sup>.

It is important to note that the Regulations is silent on the sex of the spouse (this means that the spousal permit is available to both a husband and a wife that is a foreign national). However, Nigeria does not recognize civil partnerships and same sex marriages; consequently, the spousal resident permit would not apply to this class of marriages.

### **3.08 IMMIGRATION REGISTRY**

The Regulations introduce an Immigration Registry to monitor the movement of foreign nationals. The registry is to be maintained in the State where the foreign national resides<sup>3</sup>. The essence of the registry is to identify, register and monitor the movement of foreign nationals. Upon completion of the registration, the foreign national will be issued a certificate of registration. In addition, foreign nationals who intend to change their residence status or have changes in their circumstances, must notify the NIS office in the State where they are registered, within seven (7) days. Regarding changes in circumstances, the requirement to notify the NIS office is only where the changes are such that they affect the information provided during registration<sup>4</sup>.

Apart from the foregoing, the Regulations stipulate that a foreign national must have a copy of the certificate of registration in his possession at all times in the event that an immigration officer demands for same<sup>5</sup>. Also, the Regulations also place a responsibility on house holders that lease or rent their property to foreign nationals to ensure that the foreign nationals comply with the provisions of registration requirements<sup>6</sup>. They are therefore, mandated to keep a register of their foreign occupants which shall contain the following: (a) full name of the foreign national, (b) last address of the foreign national, (c) occupation or profession of the foreign national, (d) nationality and passport number of the foreign national, (e) date of arrival and departure of the foreign national, (f) destination of the foreign national, and (g) signature of the foreign national.

The register shall at all times be available for inspection to an Immigration Officer acting in the execution of his (lawful) duties<sup>7</sup>, who may by notice in writing addressed to the owner or manager of any boarding-house, hotel, lodging-house, or rest house or any premises where lodging or sleeping accommodation is provided for payment, require such owner or manager to provide to the immigration officer in the State in which such premises is situated the register of foreign nationals accommodated therein<sup>8</sup>. Thus, the householders need to confirm the resident status of foreign nationals before the lease or similar transactions of arrangements come into effect.

Although, the Regulations did not provide a specific penalty for failure on the part of the house holder to report a foreign national that fails to comply, the Act however made provision for illegal occupants and a wide range of penalty section which, we hope, would cover this infraction<sup>9</sup>.

### **3.9 ISSUANCE OF FRESH INTERNATIONAL PASSPORTS TO NATURALIZED NIGERIANS AND ADOPTED CHILDREN**

The Regulations stipulate that all applications for the issuance of fresh international passports to naturalized Nigerians as well as children adopted by Nigerians must be processed at the Immigration Headquarters in Abuja

<sup>1</sup> Nigerian Immigration Regulations, 2017, Regulation 20.

<sup>2</sup> Nigerian Immigration Regulations, 2017, Regulation 14.

<sup>3</sup> Nigerian Immigration Regulations, 2017, Regulation 22(1)(2).

<sup>4</sup> Nigerian Immigration Regulations, 2017, Regulation 26.

<sup>5</sup> Nigerian Immigration Regulations, 2017, Regulation 33(1).

<sup>6</sup> Nigerian Immigration Regulations, 2017, Regulation 29.

<sup>7</sup> Nigerian Immigration Regulations, 2017, Regulation 31.

<sup>8</sup> Nigerian Immigration Regulations, 2017, Regulation 32.

<sup>9</sup> Nigerian Immigration Regulations, 2017, Regulation 60

only<sup>1</sup>.

### **3.10 PENALTIES**

#### **3.10.1 Individual Penalties**

The Regulations provide that foreign nationals who fail to: (a) regularize their stay within the prescribed three (3) months; (b) renew their business permit, visitor's visa, transit visa, TWP after expiration; or (c) renew their resident permit within thirty (30) days from expiration, shall be liable on conviction to a term of three (3) years imprisonment or fine of Five Hundred Thousand Naira (N500, 000) or both<sup>2</sup>

#### **3.10.2 Corporate Penalties**

Additionally, the Regulations further recognize infractions committed by the relevant corporate entities. Specifically, the Regulations provide that a body corporate that fails to renew the expatriate quota or render its expatriate monthly returns commits an offence and is liable to a fine of Three Million Naira (N3, 000 000)<sup>3</sup>.

#### **3.10.3 Understudy Of Expatriates**

The Regulations also provide for failure to employ a Nigerian to understudy the foreign nationals (expatriates). It is important to note that one of the conditions for the grant of expatriate quota is the employment of at least two (2) local employees to understudy the foreign national that fills the role. Accordingly, the penalty for failure to employ local employees to understudy foreign nationals is Three Million Naira (N3, 000 000) for each month the expatriate quota position has been occupied without understudies and the expatriate shall be deported<sup>4</sup>.

#### **3.10.4 Quota Trafficking**

It is also an offence to allow another company utilize the expatriate quota position. This is referred to as 'quota trafficking' and the penalty is Three Million Naira (N3, 000 000)<sup>5</sup>.

### **3.11 Power To Arrest Without Warrant**

Immigration officers are also empowered to arrest, without warrant, any person for which there are reasonable grounds to believe that he or she has committed an offence under the Immigration Act<sup>6</sup>.

### **3.12 Non Compliance With Immigration Facilities**

The Regulations further emphasize the implications of non-compliance with immigration policies as stated in the Immigration Act, 2015. The related penalties for immigration offences, such as presentation of forged documents, failure to renew immigration facilities, altering of travel documents, enabling illegal residence, smuggling of illegal immigrants, obstruction of justice and other relevant offences by corporate bodies, have been highlighted for clarity.

## **5.00 CONCLUSION**

Although the functions of TNCs as providers of technology, management expertise, finance and links with the world market have often been mentioned, the role of their FDI in industrial up- grading and growth has not been incorporated into a theory of outward-oriented economic development. The dynamic paradigm presented here recognizes five crucial structural characteristics of the world economy as explanatory factors. Those structural features fall under the rubric of the environment-system-policy frame of analysis. Hence, the dynamic paradigm may be construed as one detailed structural model of this genre. Focusing on the case of a representative developing country, that is, an initially labour-surplus economy, the dynamic paradigm traces out the inter temporal sequence of interactions between FDI (first inward and, later, outward) and structural transformation, a sequence that results in an evanescent pattern of comparative advantage during the course of labour-driven industrialization. That is the stage from which the Asian NICs have just graduated, and which many other developing countries are expected to go through in their early phase of development.

The operational mechanism of the dynamic paradigm so far rests on three basic principles: those of trade augmentation through FDI, of increasing factor incongruity and of localized (but increasingly trans-nationalized, at least in part) learning and technological accumulation. Some more conceptual work is needed to explore the investment-driven and the innovation-driven stages in order to complete the stages theory of TNC-facilitated growth in its entirety. No doubt the demand-side factors play a greater role as development proceeds to later stages. This evolutionary aspect of demand needs to be explicitly conceptualized. Perhaps what may be tentatively called the principle of catch-up in income and increasing diversity in tastes is a relevant consideration. In that regard, the Japanese and Chinese experience, which encompasses all the developmental stages from the

<sup>1</sup> Nigerian Immigration Regulations, 2017, Regulation 40(1)(2).

<sup>2</sup> Nigerian Immigration Regulations, 2017, Regulation 47.

<sup>3</sup> Nigerian Immigration Regulations, 2017, Regulation 52.

<sup>4</sup> Nigerian Immigration Regulations, 2017, Regulation 52(8)(b).

<sup>5</sup> Nigerian Immigration Regulations, 2017, Regulation 52(8)(b).

<sup>6</sup> Nigerian Immigration Regulations, 2017, Regulation 63.

factor-driven to the innovation-driven in a highly condensed time-capsule, may serve as an important guide-post. Yet such a comprehensive analysis requires far more space than is available in the present article. Only the first dimension has been elaborated, which is none the less the most relevant to the role of TNCs as "jump-starters" for economic development.

With the advent of the Nigerian Immigration Regulations, 2017, we foresee an increase in immigration audits from the NIS to checkmate the inordinate ambitions of its over-zealous personnel who may want to enrich themselves to the detriment of the country and ensure strict compliance with the provisions of the Regulations. Furthermore, it is paramount, for corporate bodies in Nigeria to ensure that their personnel are abreast of the various changes in the Regulations, and also carry out internal compliance audits in order to conform with the stipulations of the Regulations.

Seemingly, the Regulations is quite ambitious and laudable. It is envisaged that it will serve as a parameter to facilitate a more efficient and effective management of Nigeria's immigration processes. Given the right political will, and patriotism on the part of the government and the relevant agencies to put in place measures for the effective implementation of the regulations and strict compliance by the relevant stakeholders, the Regulations will usher in sanity in the Immigration operations in the country. And with the dawn of certainty in the Immigration services coupled with the various incentives and assurances by the government, it is envisaged that Nigeria will in the foreseeable future become a safe heaven to foreign direct investments.