



# Texas: Outbound and Inbound Foreign Direct Investment

**State Bar of Texas  
International Law Section  
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# Gross Domestic Product by Nation - Texas #13

2010 Gross Domestic Product by Nation

Rank	Nation	\$ in Trillions*
1	United States**	14.65
2	China	5.73
3	Japan	5.39
4	Germany	3.26
5	France	2.55
6	United Kingdom	2.25
7	Italy	2.02
8	Brazil	1.97
9	Canada	1.58
10	India	1.53
11	Russia	1.46
12	Spain	1.39
13	Texas***	1.29
14	Australia	1.23
15	Mexico	1.03

\*Totals are rounded

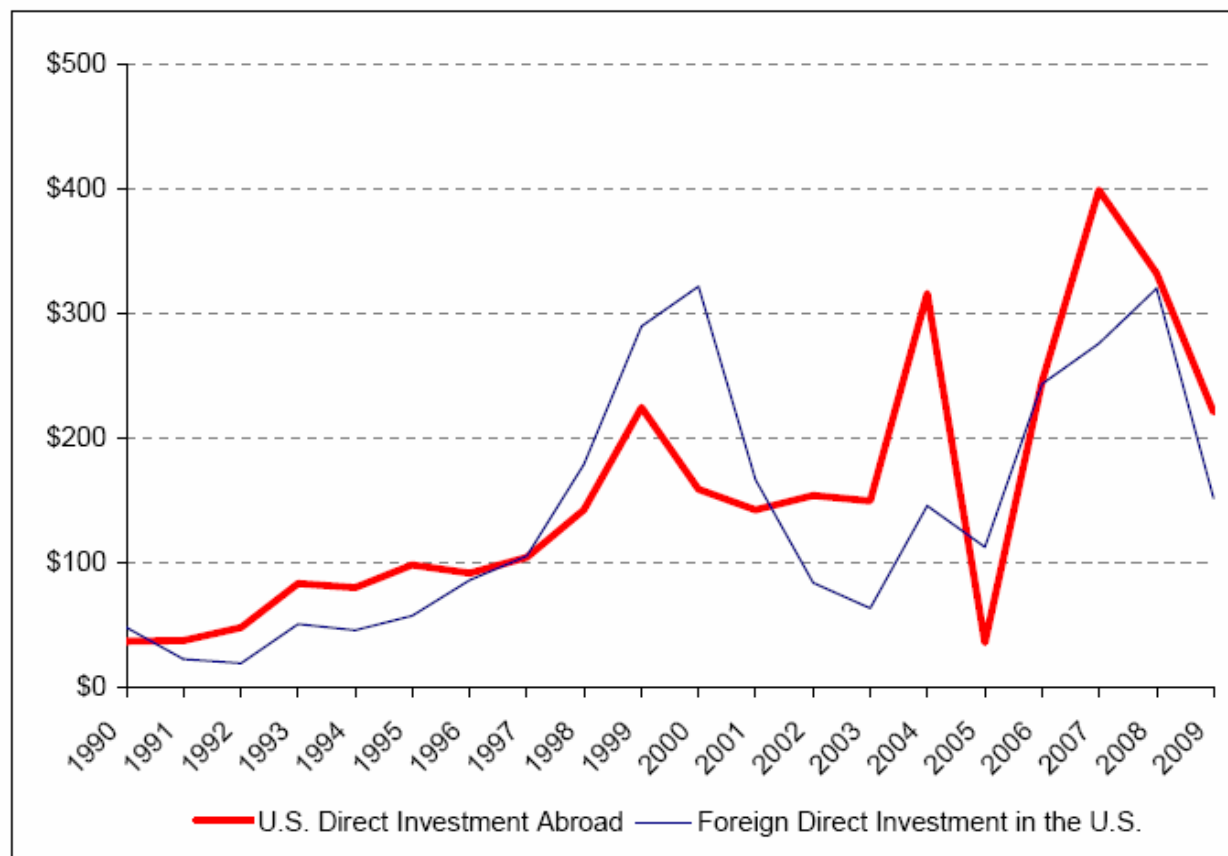
\*\* U.S., including Texas

\*\*\*If Texas were a nation

Source: IHS Global Insight, Inc., and  
Fall 2010 Texas Economic Data Bank,  
Texas Comptroller. Produced in 2011  
by Texas Comptrollers of Public  
Accounts staff.

# Foreign Direct Investment in the United States

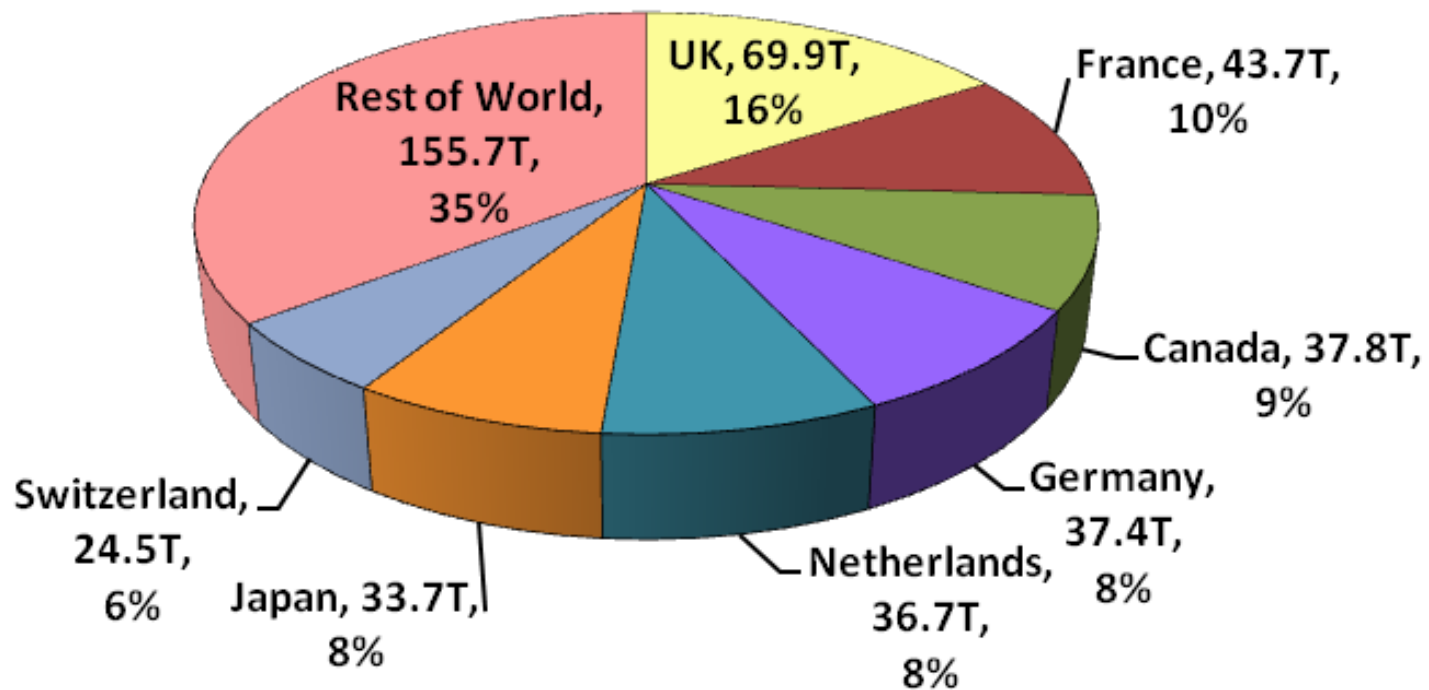
Figure 1. Foreign Direct Investment in the United States and U.S. Direct Investment Abroad, Annual Flows, 1990-2009 (in billions of dollars)



Source: U.S. Department of Commerce

# 2008 Texas Foreign Direct Investment (FDI) Charts

**2008 Texas FDI Employment\* by Country**  
In Thousands (T)

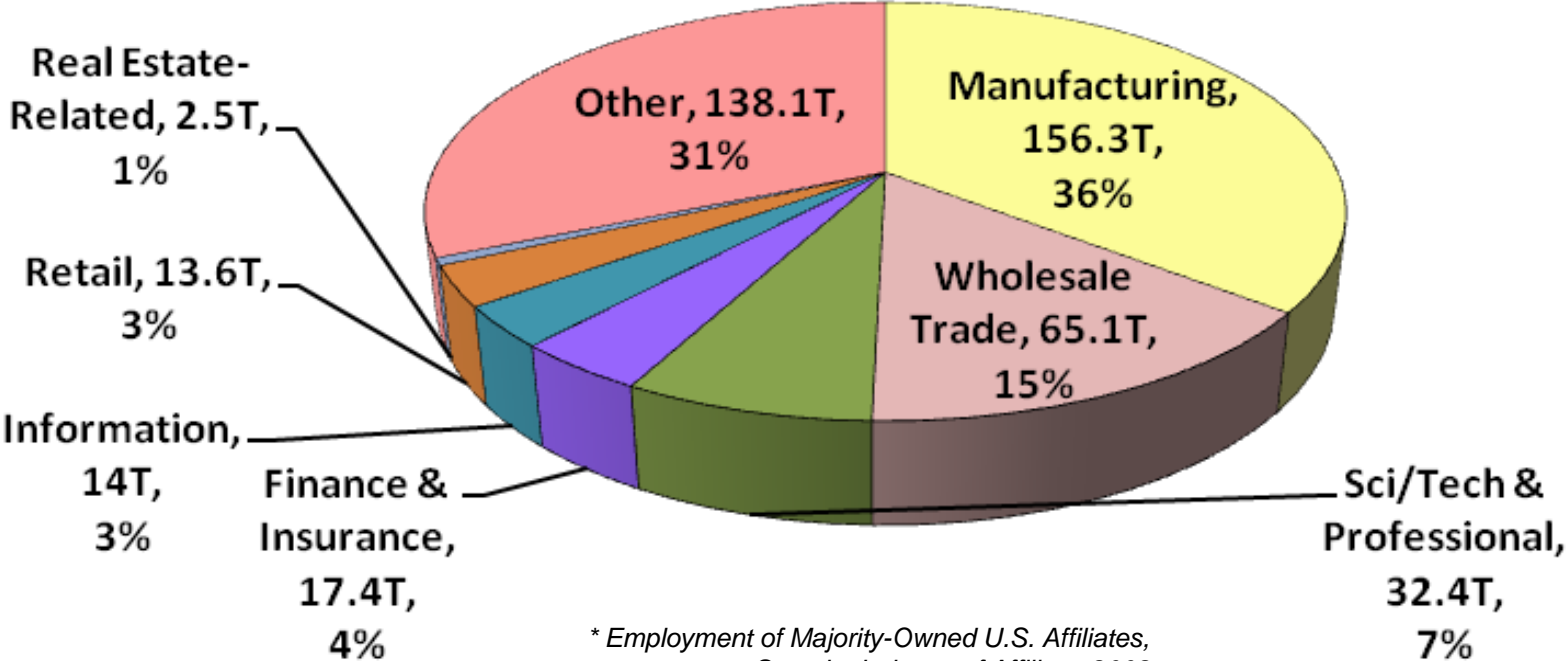


\* Employment of Majority-Owned U.S. Affiliates, State by Country of UBO, 2008

# Texas ranked No. 2 nationally for FDI employment with 439,400

## 2008 Texas FDI Employment\* by Industry

In Thousands (T)



\* Employment of Majority-Owned U.S. Affiliates, State by Industry of Affiliate, 2008

Source: Foreign Direct Investment in the U.S.: Financial and Operating Data for U.S. Affiliates of Foreign Multinational Companies.

# Texas Inbound Foreign Direct Investment

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- **Huawei Technologies**
  - Plano, U.S.A. headquarters
  - Test lab
  - 600 jobs (1,000 in U.S.)
- **Alcatel-Lucent**
  - Plano facility
  - Applications software, Optical technology
  - 2,000 jobs

## Texas Inbound Foreign Direct Investment *cont.*

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- **BP America**
  - Houston, U.S.A. headquarters
  - Alternative energy, refining
  - 7,000 jobs
- **TOTAL S.A.**
  - Houston, U.S.A. headquarters
  - Port Arthur refinery investment (\$2.2 billion)
  - Process heavy and sour crude to ultra low sulphur diesel
  - 17,000 construction workers; 300 operations jobs
- **Reliance Industries**
  - Joint Venture with Pioneer Natural Resources in Irving
  - Eagle Ford Shale

## Texas Inbound Foreign Direct Investment *cont.*

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- **Tecpetrol International S.A.**
  - Houston, U.S.A. headquarters
  - Oil & Gas exploration, development
- **CNOOC / Chesapeake Energy Shale Assets**
  - Eagle Ford
  - Shale oil & gas
  - \$2.2 billion investment
  - Technology Motivation?
- **Common Resources**
  - Sale to Talisman Energy of Eagle Ford shale assets
  - Share sale to BG/Exco of Haynesville shale assets

# Potential Challenges to Outbound Investments from Emerging Markets

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- **Lack of managerial expertise and experience**
- **Regulatory hurdles to foreign investment**
  - U.S. National Security Act, Committee on Foreign Investment in the USA (CFIUS)
    - Section 721 of Defense Production Act of 1950; Amended by Foreign Investment and National Security Act of 2007
    - Executive Order 11858
    - 31 C.F.R. Part 800
    - Voluntary Notice - 30 day review period
    - Additional information may be requested (three days to respond)

# Potential Challenges to Outbound Investments from Emerging Markets *cont.*

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- Possible 45 day subsequent investigation
- Transaction may be restructured to mitigate national security impact
- President may suspend or prohibit transaction
- Antitrust: HSR filings
  - HSR Form – Being revised: information about "associates" will be required to be disclosed
  - Reserves that are state secrets of state-owned enterprises (SOEs): use of estimates in trade publications
- Federal lease ownership requirements
- **Litigation risk**

## **EB-5 Visa Program: A New Corporate Finance Tool?**

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- **Immigrant investor program - created by Congress in 1990**
- **10,000 visas available annually**
- **Investment of \$1 million (but can be only \$500,000 if in a "Targeted Employment Area")**
- **Investment in a new commercial enterprise in the U.S.**
- **Must create or preserve 10 full-time jobs for U.S. workers within two years of immigrant investor admission to U.S.**
- **Investor is a conditional permanent resident**

## **EB-5 Visa Program: A New Corporate Finance Tool? *Cont.***

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- **Target processing time - 5 months**
- **Form I-526 - Petition for Alien Entrepreneur**
- **Form I-485 - Application for Lawful Permanent Resident**
- **Form I-829 - After 2 years, petition by an Entrepreneur to Remove Conditions**
- **Investors must**
  - Exercise managerial control *or*
  - Formulate business policy
- **Can service on a "Board of Advisors" suffice?**
- **See 8 CFR § 204.6(j)(5)(i - iii)**

# **Sensitive Legal Issues in Representing Foreign Clients**

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- **Investment vehicles**
- **Title to real property and minerals**
- **Management rights - active vs. passive investing**
- **Technology**
- **Dispute avoidance**
- **Dispute resolution**
- **Employment law**
- **Hydrocarbon Marketing**
- **Midstream Development**

# Foreign Direct Investment into Emerging Markets

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## ■ Trends:

- Increasingly focused on growth of emerging market economy, not just exports
  - Wal-Mart to buy land to build more stores, predicting China to be largest grocery market by 2014
- Transactions not based on the need for capital. Based instead on:
  - Natural Resources
  - Technology
  - Markets/Brands
- Changing sanctions policies by U.S. Treasury's Office of Foreign Assets Control (OFAC)
  - E.g., Libya
  - Executive Order 13566

